

# Shropshire Council Response: Government's Consultation on the Proposed Infrastructure Levy



## Chapter 1 – Fundamental design choices

**Question 1:** Do you agree that the existing CIL definition of ‘development’ should be maintained under the Infrastructure Levy, with the following excluded from the definition:

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) – Yes/No/Unsure
- Buildings which people do not normally go into - Yes/No/Unsure
- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - Yes/No/Unsure
- Structures which are not buildings, such as pylons and wind turbines. Yes/No/Unsure

Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Agree – yes to all of the above.**

The existing definition works well in the current CIL system, ensuring that monies are collected from developments which have an impact on local infrastructure. It is suggested that any regulations for the Infrastructure Levy provide a definition for a building. The CIL Regulations do not currently have such a definition which has led to numerous appeals regarding what proposed floorspace and existing floorspace to include in the calculation of CIL. Including such a definition whilst maintaining the CIL definition of development would provide clarity for all parties and should reduce the amount of appeals on chargeable amounts.

**Question 2:** Do you agree that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Yes.**

In particular, it is agreed developers should continue to provide the infrastructure which is considered necessary to make the development suitable in planning terms which is currently secured by planning conditions or Section 106 agreements. Any infrastructure requirements triggered by the cumulative growth of the area should be covered by the Infrastructure Levy. This would reflect the current system with regard to the use of planning conditions/Section 106 agreements and CIL.

**Question 3:** What should be the approach for setting the distinction between ‘integral’ and ‘Levy-funded’ infrastructure? [see para 1.28 for options a), b), or c) or a combination of these]. Please provide a free text response to explain your answer, using case study examples if possible.

**Shropshire Council Response: A combination of Options A and C – A set of principles is established in regulations or policy, providing guidance as to how to set the distinction on a local level and a site by site basis.**

The importance of distinguishing between ‘integral’ and ‘Levy-funded’ infrastructure is considered crucial by Shropshire Council. It would be helpful for a set of broad principles to be established at the national level, providing high-level guidance, structure and principles on what constitutes integral and ‘levy funded’ infrastructure. This would then be complemented by more detailed definitions, responsive to local factors, at a local level. This local input is important as infrastructure needs can vary between sites and also between

local authority areas. Shropshire Council would suggest therefore that the ultimate decision on this distinction is made at the local level. However, providing principles at the national level would ensure a level of consistency, provide structure for local consideration and reduce the potential for dispute about categorisation of infrastructure requirements.

This would then directly inform the evidence prepared to inform the establishment of the minimum threshold and provide clarity to developers regarding what specific infrastructure they will be expected to deliver on site and what infrastructure will be delivered using Infrastructure Levy proceeds.

**Question 4:** Do you agree that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items such as service provision? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Yes.**

Shropshire Council would expect Infrastructure Levy funding to be prioritised for the delivery of affordable housing and infrastructure, however providing flexibility regarding a small proportion of levy funding in circumstances where all 'critical' infrastructure priorities (including affordable housing) is addressed may be appropriate – although it is considered unlikely that this situation would often arise.

It is important to note that providing too much flexibility for local authorities to use this funding on non-infrastructure items could hamper affordable housing and infrastructure delivery. One of the most common type of objections to development encountered by Shropshire Council is the perceived lack of infrastructure to support new development and the cumulative growth of the area and this could increase this perception. For a local authority to use too much of the Infrastructure Levy funding for non-infrastructure items would also be counter-productive, since this funding is generated directly from development and should be used to fund affordable housing and infrastructure to mitigate the cumulative impact of development on a local authority's area.

However, even in circumstances where all 'critical' infrastructure priorities have been addressed, there should remain flexibility for local authorities to retain funds to meet future infrastructure and affordable housing needs which have not yet been identified in the Infrastructure Delivery Strategy.

**Question 5:** Should local authorities be expected to prioritise infrastructure and affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? [Yes/No/Unsure]. Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Yes**

Please see the response to Question 4. This also applies here and explains why local authorities should be expected to prioritise Infrastructure Levy funding for infrastructure and affordable housing before non-infrastructure items. Regulations should be used to confirm that infrastructure and affordable housing must be prioritised before non-infrastructure items, whilst allowing appropriate flexibility to spend a proportion of receipts on non-infrastructure items once all 'critical' infrastructure needs are met.

The Infrastructure Delivery Strategy would be able to identify if there is potential for all 'critical' infrastructure and affordable housing needs to be met and so confirm if it is possible for any remaining funds to be spent on non-infrastructure items.

**Question 6:** Are there other non-infrastructure items not mentioned in this document that this element of the Levy funds could be spent on? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Unsure.**

**Question 7:** Do you have a favoured approach for setting the 'infrastructure in-kind' threshold? [high threshold/medium threshold/low threshold/local authority discretion/none of the above]. Please provide a free text response to explain your answer, using case study examples if possible.

**Shropshire Council Response: High threshold**

Shropshire Council supports the proposed high threshold for the 'infrastructure in-kind' routeway. As recognised, this would ensure that almost all development would then fall under the Core Levy routeway, somewhat simplifying the application of the Levy for most local authorities including Shropshire Council compared to an approach with multiple routeways. It also removes the ability for in-kind payments (this can become complex and take up significant local authority resourcing, but equally it is appreciated that this approach has been used effectively in some instances).

However, it should be noted that there is an apparent contradiction within the proposals for Delivery Agreements under the core levy routeway. Specifically, paragraph 1.39 of the consultation material suggests that these agreements *"can be used to secure a timely minimum payment towards off-site mitigation that is needed to make the development acceptable"*, but paragraph 1.40 states that *"Delivery Agreements will not be a means to request additional contributions from developers towards 'Levy-funded' infrastructure."* The Delivery Agreements would have to allow for potential additional levy payments towards levy-funded infrastructure if they are to ensure that a minimum amount of funding is secured.

Shropshire Council is somewhat concerned that a Delivery Agreement would likely be required for the vast majority of schemes considered through the core routeway in order to provide certainty about the funding available for infrastructure that is required to support the cumulative impact of a development. This would significantly increase the complexity of the administration of the Infrastructure Levy.

Shropshire Council is also somewhat concerned that under the infrastructure in kind routeway there would be an expectation that the infrastructure necessary to support the development would be identified within the Local Plan, so that it can be factored into the evidence informing charging schedules. Whilst this may be the case for much of the infrastructure, needs can emerge during the planning application process that were not identified at the Local Plan stage and there needs to be sufficient flexibility to reflect this.

**Question 8:** Is there anything else you feel the government should consider in defining the use of s106 within the three routeways, including the role of delivery agreements to secure matters that cannot be secured via a planning condition? Please provide a free text response to explain your answer.

**Shropshire Council Response:** There is a need for recognition of the potential significant use of Delivery Agreements to provide certainty that sufficient funding is available to deliver the infrastructure required to address the cumulative impact of development, consistent with paragraph 1.39 of the consultation material. Indeed, this may be required by many statutory consultees and infrastructure providers during the planning application consultation process.

## Chapter 2 – Levy rates and minimum thresholds

**Question 9:** Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure]. Are there some types of permitted development where no Levy should be charged? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Yes – Shropshire Council agrees the Levy should capture value uplift from schemes that create new dwellings under permitted development rights.**

These developments contribute to the cumulative impact on infrastructure in much the same way as dwellings approved via planning permissions. Shropshire Council proposes to maintain the current system for permitted development rights schemes in CIL, which is to apply the Levy to these schemes in the same way as it would be applied to schemes granted planning permission.

**No – Shropshire Council considers that this should be a matter for each local authority, informed by the viability evidence available to them.**

This approach allows local authorities to decide what types of development (whether through permitted development or granted through planning permission), would be charged the Levy and the rate of this charge. It is considered this approach would be more beneficial in ensuring development is subject to an appropriate Levy.

**Question 10:** Do you have views on the proposal to bring schemes brought forward through permitted development rights within scope of the Levy? Do you have views on an appropriate value threshold for qualifying permitted development? Do you have views on an appropriate Levy rate ‘ceiling’ for such sites, and how that might be decided?

**Shropshire Council Response:** Shropshire Council is of the view there should be no separate threshold for qualifying permitted development, or a Levy rate ceiling for such developments. There are a large number of permitted development schemes in Shropshire, particularly for the change of use from agriculture to residential. Applying such measures would reduce Levy revenue in areas with large numbers of permitted development schemes, which would slow down infrastructure and affordable housing delivery. Instead, these rates should be identified in a manner consistent to that of other mechanisms for securing permission for development.

**Question 11:** Is there is a case for additional offsets from the Levy, beyond those identified in the paragraphs above to facilitate marginal brownfield development coming forward? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary, using case studies if possible.

**Shropshire Council Response: No.**

As explained in response to questions 9 and 10, these developments contribute to the cumulative impact of development on infrastructure and so should be making an appropriate contribution to infrastructure provision through the Levy.

However, Shropshire Council would support retaining the offset for existing ‘in-use’ buildings which is available through CIL (in lawful use for a continuous period of 6 months within the 3 years prior to the development being approved). This would assist brownfield developments where buildings are currently ‘in-use’ and so would likely have a lower contribution to the cumulative impact of development on infrastructure.

Brownfield developments with no 'in-use' buildings likely have a higher contribution to the cumulative impact on infrastructure and so should be making a larger contribution through the Levy.

This is an important distinction and one which does not seem to be recognised within the consultation material. If the offset/zero rate proposed for existing buildings is applied to all existing buildings whether in use or not, this has the potential to significantly reduce levy receipts.

Furthermore, failing to include this distinction also opens up the potential for significant avoidance of the levy – construct a form of development that is not liable for the levy and then demolish it and replace it with a form of development that is liable, but this is offset/zero rated due to the existing floorspace.

Ultimately, the proposed approach to 'in-use' buildings and permitted development has the potential to reduce rather than increase the forms of development in-scope. It also has the potential to significantly reduced receipts from the forms of development 'in-scope'.

**Question 12:** The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?

**Shropshire Council Response:**

- Charging the Levy on final sale GDV of a scheme: **Neutral**
- The use of different Levy rates and minimum thresholds on different development uses and typologies: **Neutral**
- Ability for local authorities to set 'stepped' Levy rates: **Neutral**
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced: **Strongly Disagree**

**Question 13:** Please provide a free text response to explain your answers above where necessary.

**Shropshire Council Response:** Shropshire Council does not necessarily agree charging the Levy on the final sale GDV would increase the amount collected. This is ultimately dependent on the minimum thresholds and percentage of the GDV above these thresholds established within the relevant charging schedule. It is acknowledged that it provides the potential to secure additional funds in circumstances where GDV improves during the life of the project, however the Council is concerned that this is offset by the greater uncertainty and risk about levy funds to be secured at both the decision making stage and likely at the time funds are being utilised to deliver infrastructure.

The Council is also concerned that there is a risk that the minimum thresholds will be aligned with the highest potential build costs and land values for each type of development (particularly given reference to the need for buffers within the consultation material) and higher levels of developer profit resulting in a lower percentage of the GDV, particularly through the examination process. This would result in the new levy securing a lower amount of income than the current system which is more responsive to individual sites viability. It is appreciated that the consultation material indicates that it is intended that this will be avoided, but there is no clarity on how this will be achieved.

Comparatively, Shropshire Council has a small number of brownfield developments. Whilst the study published alongside the consultation suggests the Levy is likely to perform best on

less complicated greenfield sites, Shropshire Council would note the current system also has this benefit.

The setting of different rates is similar to the current CIL system, albeit the proposed Levy appears to allow for greater levels of distinction. Since the current system already allows for local planning authorities to set rates in response to local conditions to help maintain viability, it is hard to say whether the proposed Levy would increase the amount collected and reduce the impact on viability.

The ability to introduce 'stepped' rates would be useful to help maintain development viability after the introduction of the Levy, however it cannot be determined at this time as to whether stepped rates would lead to an increase in the amount of Levy collected. There is also a need for clarity about what evidence would be required to justify stepped rates, as viability changes over time for numerous known and unknown factors which are impossible to predict.

However, the Council is concerned that the approach to permitted development and existing floorspace may have the opposite intention and reduce funds secured from these forms of development and fail to respond to the cumulative impact of such development on infrastructure – particularly the approach to existing floorspace.

Whilst it is noted setting separate lower rates for developments involving existing floorspace would potentially assist with the viability of brownfield developments, this would reduce the amount of Levy collected. The current CIL system allows for local planning authorities to determine whether an existing building has been in lawful use within specified timescales. Any sites involving buildings which have been vacant for a significant period of time would not be deducted and the full amount of CIL would be payable. This means that buildings which are in use and are already contributing to the cumulative impact of development on infrastructure, would be offset leading to a lower CIL amount. It is implied to introduce lower rates for all developments involving existing buildings, regardless of whether they have been in use. Shropshire Council would propose maintaining the discretion for local planning authorities to be able to determine if an existing building has been in use so it can be determined if a lower liability can apply.

### **Chapter 3 – Charging and paying the Levy**

**Question 14:** Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: No.**

Shropshire Council has significant concerns about this proposed process. It is considered to be far more complex and resource intensive than the current CIL / Section 106 system. Furthermore, at each of the 3 steps, there is the possibility the liability can change significantly, and this could require payments to be refunded, creating greater uncertainty and likely delaying the delivery of infrastructure. The delay to infrastructure delivery would also be exacerbated by the fact that payment is due later in the process than is currently the case. Whilst the risk of delayed infrastructure delivery is somewhat offset by the ability to 'borrow' there is likely to be significant reticence to do so when the eventual receipts could be less than anticipated and therefore realised funds may not cover the amount borrowed. Furthermore, borrowing funds inevitably comes at a cost.

The potential for funds to be reduced at two stages following the grant of planning permission means that there is much less certainty about whether the infrastructure required

to offset any cumulative impacts of a development can be delivered. This increased uncertainty will either result in the use of Delivery Agreements for the majority of sites or could in the worst case scenario lead to refusal of planning permission if the decision taker is not convinced that necessary infrastructure can be delivered.

It is also less clear for other parties (such as communities) how much in the way of infrastructure contributions are being provided by a development.

There is also concern that whilst the intention is for affordable housing delivery to increase, that it could in actuality be reduced as it would be the 'easiest' component of the Levy to return if overpayments have been made.

As such, Shropshire Council would strongly suggest that the initial liability calculation is established as a precautionary minimum (backstop), below which the liability cannot fall, thereby increasing certainty and reducing risk. In this way, the planning application decision maker and those planning for infrastructure provision have confidence about the minimum funding available for infrastructure, the risk of reduced affordable housing provision is removed and the applicant/developer has confidence about minimum levy requirements. This would also allow the reduction of steps in the process from 3 to 2, initial calculation of the backstop liability (payable by way of instalments triggered by commencement) and adjustment calculation.

**Question 15:** Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Yes.**

Shropshire Council would strongly endorse the retention of the instalment policy mechanism available within the current CIL system.

The instalment policy available under the CIL regulations, allows for local authorities to adopt payment regimes that balance issues of developer cashflows with the need to secure funding at appropriate points to allow for infrastructure delivery. This is important as larger housing schemes will have dwellings sold and occupied whilst the development of the wider site continues to be built out. This "lag," between the completion (and selling) of the first plot to the completion and sale of the final plot will undoubtedly create a strain on existing infrastructure, due to the nature of an increase in population in the immediate setting. Therefore, it is considered that expected funds from such a development should be available earlier than the completion of the whole site, to allow local authorities to implement the necessary infrastructure to support the new/ongoing development(s). This complements the ability to borrow to fund the delivery of larger infrastructure projects.

This approach is also beneficial to developers, aiding cash-flow and removing the need to hold infrastructure funds for payment at the end of the process.

Shropshire Council would also strongly suggest that the initial liability calculation is established as a precautionary minimum (backstop), below which the liability cannot fall, thereby increasing certainty and reducing risk. In this way, the planning application decision maker and those planning for infrastructure provision have confidence about the minimum funding available for infrastructure, the risk of reduced affordable housing provision is removed and the applicant/developer has confidence about minimum levy requirements. This would also allow the reduction of steps in the process from 3 to 2, initial calculation of the backstop liability (payable by way of instalments triggered by commencement) and adjustment calculation.



**Question 16:** Do you agree with the proposed application of a land charge at commencement of development and removal of a local land charge once the provisional Levy payment is made? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary

**Shropshire Council Response: No.**

It is proposed that the current system under CIL of registering a land charge as soon as possible after planning permission has been granted is retained. If the 3 step process is adopted, this would mean the indicative liability can be recorded as a land charge. The benefit of this approach is that where the land is sold with planning permission prior to the commencement of development, potential buyers are fully aware from the outset of the potential Levy liability. Registering the land charge at commencement of development would mean parties who have acquired the land before this but after planning permission was granted may not be aware of the potential liability.

Furthermore, removing the land charge once the final adjustment payment has been made, rather than after initial payment would be more appropriate. This approach ensures that potential buyers of properties on a site are fully aware of the calculated liability and that there remains a potential for a further liability. Shropshire Council would suggest that legal advice may be required to establish whether the land charge can actually be removed following initial payment if there remains the potential for an adjustment payment – which purchasers of properties on the site would have no knowledge of without the land charge. Furthermore, removing the land charge at the earlier stage removes one means of securing the final adjustment payment in circumstances where a developer is unwilling to make payment.

**Question 17:** Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/ Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Neutral**

In Shropshire Council's experience, the land charge is not the primary tool which prevents avoidance of paying developer contributions. It is acknowledged the maintenance of land charges may well delay sales and encourage developers to make payment. However, enforcement measures available through the CIL system such as late payment surcharges, interest, stop notices and legal action are more effective in recovering any overdue liabilities.

This of course has implications for any final adjustment payment, which would need to be secured in the absence of a land charge.

However, enforcement measures available through the CIL system such as late payment surcharges, interest, stop notices and legal action are more effective in recovering any overdue liabilities.

**Question 18:** To what extent do you agree that a local authority should be able to require that payment of the Levy (or a proportion of the Levy liability) is made prior to site completion? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]. Please explain your answer.

**Shropshire Council Response: Strongly agree**

Leading on from Shropshire Council's response to question 15, an approach which builds on the instalment policy mechanism in the current CIL system would be supported. This would apply to all liabilities. Dependent on the speed at which a development is completed, this

would mean the majority or even all of the liability would be paid prior to the completion of development. This would allow local authorities to facilitate infrastructure provision and affordable housing using cash already received, rather than borrowing against future receipts.

The one concern to this approach is the potential for paying back levy receipts. As per the response to question 15, this could be offset by establishing a minimum levy contribution at the outset which can increase if GDV improves but cannot fall below a set amount.

**Question 19:** Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy? Please provide a free text response to explain your where necessary.

**Shropshire Council Response: Yes**

Shropshire Council considers that a local authority should be able to require early payment of at least a proportion of the Levy in all cases. This is proposed to be through the instalment policy mechanism currently available in the CIL system. This is considered to be essential in ensuring local authorities have the necessary funding available to facilitate infrastructure delivery as soon as possible.

**Question 20:** Do you agree that the proposed role for valuations of GDV is proportionate and necessary in the context of creating a Levy that is responsive to market conditions [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Unsure**

Whilst the role of valuations of GDV seems proportionate and necessary given the 3-step process proposed, the Council would suggest that a simplified process would allow for this to be reduced, perhaps by index linking liabilities in a way similar to CIL levy rates rather than requiring repeated valuations of GDV?

Irrespective of this, Shropshire Council would strongly suggest that the initial liability calculation is established as a precautionary minimum (backstop), below which the liability cannot fall, thereby increasing certainty and reducing risk. In this way, the planning application decision maker and those planning for infrastructure provision have confidence about the minimum funding available for infrastructure, the risk of reduced affordable housing provision is removed and the applicant/developer has confidence about minimum levy requirements. This would also allow the reduction of steps in the process from 3 to 2, initial calculation of the backstop liability (payable by way of instalments triggered by commencement) and adjustment calculation.

## **Chapter 4 – Delivering infrastructure**

**Question 21:** To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? [Strongly Agree/Agree/Neutral/ Disagree/Strongly Disagree/Unsure]. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Disagree**

Given the levels of uncertainty and risk to local authorities due to the potential for levy funds to reduce between the first, second and third steps of the levy calculation process, it is considered that borrowing will be unlikely to occur except for high-profile and strategic

infrastructure. As such, the delivery of all other forms of infrastructure would likely be delayed.

As such, Shropshire Council would strongly suggest that the initial liability calculation is established as a precautionary minimum (backstop), below which the liability cannot fall, thereby increasing certainty and reducing risk. In this way, the planning application decision maker and those planning for infrastructure provision have confidence about the minimum funding available for infrastructure, the risk of reduced affordable housing provision is removed and the applicant/developer has confidence about minimum levy requirements.

The Council would also advocate the continuation of instalment policies available within the CIL regime, which would allow earlier payment of liabilities to fund infrastructure earlier in the process (whilst balancing the need to maintain developer cash flow). This would complement the use of borrowing against later receipts within the instalment policy for larger strategic infrastructure projects.

**Question 22:** To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Agree**

This would seem a sensible mechanism – Shropshire Council would advocate the use of an instalment policy as per the CIL regime.

However, it does have the potential to increase the risk regarding the need to return levy funds if GDV decreases. As such, Shropshire Council would strongly suggest that the initial liability calculation is established as a precautionary minimum (backstop), below which the liability cannot fall, thereby increasing certainty and reducing risk. In this way, the planning application decision maker and those planning for infrastructure provision have confidence about the minimum funding available for infrastructure, the risk of reduced affordable housing provision is removed and the applicant/developer has confidence about minimum levy requirements. This would also allow the reduction of steps in the process from 3 to 2, initial calculation of the backstop liability (payable by way of instalments triggered by commencement) and adjustment calculation.

**Question 23:** Are there other mechanisms for ensuring infrastructure is delivered in a timely fashion that the government should consider for the new Infrastructure Levy? [Yes/No/Unsure] Please provide free text response to explain your answer where necessary.

**Shropshire Council Response: Yes**

Shropshire Council would strongly advocate the use of an instalment policy as per the CIL regime.

Alternatively, Delivery Agreements offer the potential to agree timescales for delivery of key infrastructure (whether integral or levy funded). This would provide greater certainty to the decision maker for the planning application, infrastructure providers, local communities and the developer.

**Question 24:** To what extent do you agree that the strategic spending plan included in the Infrastructure Delivery Strategy will provide transparency and certainty on how the Levy will be spent? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Agree**

Shropshire Council agrees that the provision of a breakdown of infrastructure priorities within the Infrastructure Delivery Strategy will provide greater transparency and certainty on how the levy will be spent. However, the Council is concerned that the proposed approach will result in a rigid process for the identification and prioritisation of infrastructure.

The requirement for examination of an Infrastructure Delivery Strategy means that the document cannot be agile or responsive to new infrastructure requirements emerge through further work by infrastructure providers or as a result of development (whether planned or windfall). Similarly, it cannot be responsive to new approaches to meeting infrastructure requirements, which could achieve better outcomes or reduce costs.

Shropshire Council would strongly suggest that the initial Infrastructure Delivery Strategy is subject to examination alongside the Infrastructure Levy Charging Schedule, but that flexibility is provided for subsequent updates without the need for examination.

**Question 25:** In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?

**Shropshire Council Response:** The most important information will be:

Development proposals within a Local Plan and the infrastructure needs and requirements associated with these proposals.

Information from infrastructure providers on the infrastructure needs and requirements in the area (particularly in the context of the Local Plan growth proposals). The suggested right to require assistance from these bodies within paragraph 4.29 of the consultation material is welcome. However, there must be very clear minimum expectations in terms of the scope and quality of information to be provided. This must expressly include all infrastructure needed to support existing and future development (informed by adopted/emerging Local Plans), the severity of the need, delivery mechanisms and timescales (where known), known/potential funding sources (where known) and any funding gaps.

This right to require assistance should also be extended to address the timely provision of infrastructure to support development proposals.

However, the Council is concerned that the proposed approach will result in to rigid a process for the identification and prioritisation of infrastructure which does not accurately align with how infrastructure planning works in practice.

Shropshire Council would strongly suggest that the initial Infrastructure Delivery Strategy is subject to examination alongside the Infrastructure Levy Charging Schedule, but that flexibility is provided for subsequent updates without the need for examination.

**Question 26:** Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Yes.** However, in so doing it will be important to distinguish between actual infrastructure requirements and perceived infrastructure requirements.

Shropshire Council would suggest that proactive engagement with communities should be undertaken at an early stage of compiling the evidence to inform the Infrastructure Delivery Strategy, this can then inform discussions with infrastructure providers and the subsequent drafting of the Infrastructure Delivery Strategy. This information can also help local communities to prioritise use of the neighbourhood portion which is often the most appropriate funding mechanism for local priorities.

It will however be important to emphasise the fact that it is ultimately the local authority that is responsible for identifying and prioritising infrastructure needs and requirements.

The Council is concerned that the proposed approach will result in a rigid process for the identification and prioritisation of infrastructure which does not accurately align with how infrastructure planning works in practice.

Shropshire Council would therefore strongly suggest that the initial Infrastructure Delivery Strategy is subject to examination alongside the Infrastructure Levy Charging Schedule, but that flexibility is provided for subsequent updates without the need for examination.

**Question 27:** Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:

- Identification of general 'integral' infrastructure requirements
- Identification of infrastructure/types of infrastructure that are to be funded by the Levy
- Prioritisation of infrastructure and how the Levy will be spent
- Approach to affordable housing including right to require proportion and tenure mix
- Approach to any discretionary elements for the neighbourhood share
- Proportion for administration
- The anticipated borrowing that will be required to deliver infrastructure
- Other – please explain your answer
- All of the above

**Shropshire Council Response: All of the above.**

Shropshire Council would also suggest that the Infrastructure Delivery Strategy and the associated infrastructure assessment and prioritisation process provides an opportunity to consider the implications for and opportunities to positively respond to our changing climate.

However, the Council is concerned that the proposed approach will result in a rigid process for the identification and prioritisation of infrastructure which does not accurately align with how infrastructure planning works in practice.

Shropshire Council would strongly suggest that the initial Infrastructure Delivery Strategy is subject to examination alongside the Infrastructure Levy Charging Schedule, but that flexibility is provided for subsequent updates without the need for examination.

**Question 28:** How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?

- Guidance to local authorities on which infrastructure providers need to be consulted, how to engage and when
- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy
- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies
- Guidance to local authorities on prioritisation of funding
- Implementation of statutory timescales for infrastructure providers to respond to local authority requests
- Other – please explain your answer

**Shropshire Council Response:**

Shropshire Council supports the principle of providing clear guidance on the factors that should inform the preparation of Infrastructure Delivery Strategies. However, this guidance needs to be sufficiently flexible to respond to differing circumstances and reflect the principle that inevitably there will be more infrastructure requirements than funding available and as such it is the responsibility of the local authority to prioritise infrastructure.

The Council would also support provision of guidance for parish and town councils regarding use of the neighbourhood portion and the relationship to wider infrastructure priorities.

**Question 29:** To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Agree**

Shropshire Council considers that overarching infrastructure requirements can be effectively identified at the Local Plan stage.

However, the refinement of these strategic infrastructure requirements, detailed infrastructure requirements and the most effective means of achieving infrastructure requirements will inevitably emerge during the implementation of the plan and as more detailed information becomes available at the planning application stage for specific development proposals.

It is for this reason that the Council is concerned that the proposed approach will result in a rigid process for the identification and prioritisation of infrastructure which does not accurately align with how infrastructure planning works in practice.

Shropshire Council would strongly suggest that the initial Infrastructure Delivery Strategy is subject to examination alongside the Infrastructure Levy Charging Schedule, but that flexibility is provided for subsequent updates without the need for examination.

## Chapter 5 – Delivering affordable housing

**Question 30:** To what extent do you agree that the ‘right to require’ will reduce the risk that affordable housing contributions are negotiated down on viability grounds? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

### **Shropshire Council Response: Disagree**

Shropshire Council acknowledges that having a ‘right to require’ affordable housing based on a set percentage of the total infrastructure levy receipts which is non-negotiable reduces the risk that affordable housing contributions will be negotiated downwards in the planning application process. However, although in theory the proposed ‘right to require’ provides a simple approach to seeking to maximise on-site provision of affordable housing, it fails to recognise the various sensitivities surrounding the provision of affordable housing and how these do not purely relate to tenure and size, but instead can provide opportunities to deliver specialist and bespoke units of accommodation which the current Section 106 approach facilitates.

It should also be acknowledged that this generally only occurs where development viability is more marginal. If such sites are to come forward in the future under the new proposed Infrastructure Levy, there is a real risk of the minimum threshold being based on the schemes with the lowest viability from the outset to ensure that all development subject to the levy is viable, this in turn would actually reduce affordable housing overall.

Furthermore, by combining the affordable housing fund with the infrastructure fund (which can also be applied to non-infrastructure) there is increased pressure / competition for funds which presents a significant risk to infrastructure and affordable housing delivery.

Shropshire Council is also very concerned that where the final step (final adjustment for GDV) in the liability process results in a reduction of the liability, it would very likely impact negatively on affordable housing, as wider infrastructure funding may have already been spent/applied to infrastructure requirements and as such affordable housing is perhaps one of the easiest obligations to forego.

It should be noted that the current system provides a high degree of certainty in terms of affordable housing delivery. Also, the delivery and transfer of affordable housing provides a degree of ‘cash flow’ certainty to the developer, given that affordable dwellings are delivered in the early stages of the development process.

Shropshire Council would therefore advocate affordable housing contributions forming part of the baseline information considered when establishing minimum thresholds. They will then be non-negotiable, benefit from a separate funding stream and can be secured through Delivery Agreements (which also provides security that such units will remain affordable in perpetuity).

**Question 31:** To what extent do you agree that local authorities should charge a highly discounted/zero-rated Infrastructure Levy rate on high percentage/100% affordable housing schemes? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary

### **Shropshire Council Response: Strongly Agree**

Affordable housing schemes should be zero rated – otherwise and understandably the numbers and potential quality of affordable housing is likely to be compromised. 100% affordable housing schemes are already reliant on Government funding from Homes England and commuted sums from the local authority to enable such schemes. Zero rated

Infrastructure Levy is one mechanism to encourage enhanced delivery of affordable housing provision. Shropshire Council would note that this approach has been applied to the current CIL regime in Shropshire and works effectively, providing confidence amongst registered providers, certainty for developers and removes the unnecessarily bureaucratic process associated with the exemption mechanism used nationally.

**Question 32:** How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system? Please provide examples.

**Shropshire Council Response:** Affordable housing development is generally delivered as a planning policy requirement on market schemes or through small scale exception sites. The wholly affordable housing developments do not generally deliver major off site infrastructure given the size of the schemes in Shropshire.

As such, the proposed approach to integral infrastructure is likely to be sufficient to ensure that affordable housing schemes provide a similar level of infrastructure to the current system and ensure that the infrastructure necessary to support these forms of development are secured.

**Question 33:** As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the government? [Yes/No/unsure] Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority? [Yes/No/unsure]. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: No** – Government shouldn't need to set an upper limit for the 'right to require'.

**Shropshire Council Response: Yes** – where the 'right to require' is set should be left to the discretion of the local authority.

Shropshire Council considers that local authorities are best placed to establish the proportion of the infrastructure levy that is applied to affordable housing, informed by wider infrastructure needs and priorities. Whilst the concern regarding the potential for 100% of the liability to be applied to affordable housing is noted, this is highly unlikely given the wider infrastructure needs and priorities of an area. Such an approach would also likely be subject to challenge at the examination of the Infrastructure Delivery Strategy.

The types of affordable housing that are to be provided under the right to require should also be established at a local level. It is important to recognise that the types of affordable housing required do not purely relate to tenure and size, but also adaptations to meet specialist and bespoke requirements of households within local communities.

## Chapter 6 – Other areas

**Question 34:** Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy? [Yes/No/Unsure?]

**Shropshire Council Response: Yes.**

Shropshire Council is supportive of the principle of the retention of a Neighbourhood Share which can be utilised by town and parish council's to deliver community infrastructure priorities. However, the specific percentage will require very careful consideration. This is because the Infrastructure Levy will of course apply to a larger proportion of developer contributions from a development than the current CIL neighbourhood fund portion, as it also



includes funding secured through affordable housing contributions and S106 contributions. The neighbourhood share is an important principle but must not undermine the ability to deliver affordable housing and local authority identified infrastructure priorities required to address the cumulative impact of development.

As such, further clarity on what percentage of the Infrastructure Levy would be designated for the Neighbourhood Share is needed.

**Question 35:** In calculating the value of the Neighbourhood Share, do you think this should A) reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues), B) be higher than this equivalent amount C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary

**Shropshire Council Response: Option A – reflect the amount secured under CIL in parished areas.** Shropshire Council's experience is that the neighbourhood fund portion of CIL provides considerable funding to town and parish council's to deliver community infrastructure priorities without significantly undermining the delivery of local authority identified infrastructure priorities required to address the cumulative impact of development. A similar principle would also apply to affordable housing under this option.

**Question 36:** The government is interested in views on arrangements for spending the neighbourhood share in unparished areas. What other bodies do you think could be in receipt of a Neighbourhood Share in such areas?

**Shropshire Council Response:** Shropshire Council is fortunate in that there are town and parish council's for the majority of the local authority administrative area. However, it would seem sensible to continue the approach to unparished areas that exists within the CIL regime.

**Question 37:** Should the administrative portion for the new Levy A) reflect the 5% level which exists under CIL B) be higher than this equivalent amount, C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response:** The administrative burden associated with the proposed Infrastructure Levy appears to be significantly higher than that associated with CIL/S106 Legal Agreements. As such, it would seem sensible for the administrative portion to be higher than the equivalent amount at present, particularly in the first years of the Infrastructure Levy's implementation in an area, reflecting the costs of its implementation and the greater administrative burden associated with a new mechanism, where all are learning the system (local authorities, developers and communities).

**Question 38:** Applicants can apply for mandatory or discretionary relief for social housing under CIL. Question 31 seeks views on exempting affordable housing from the Levy. This question seeks views on retaining other countryside exemptions. How strongly do you agree the following should be retained:

- residential annexes and extensions; [Strongly Agree/Agree/ Neutral/Disagree/Strongly Disagree]

- self-build housing; [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree]

If you strongly agree/agree, should there be any further criteria that are applied to these exemptions, for example in relation to the size of the development?

**Shropshire Council Response:**

**Residential extensions – Agree.** Shropshire Council is supportive of maintaining exemptions for residential extensions (and the requirements for achieving this exemption that currently exists in the CIL regime), as these schemes generally have a lower impact on infrastructure than other forms of residential development and also experience a lower uplift to land values. This exemption would of course apply for developments for extensions of over 100m<sup>2</sup> since any development under this would be excluded under the definition of development in any event.

**Residential annexes – Neutral.** These types of development have a larger contribution to the cumulative impact on infrastructure than residential extensions and experience suggests they are often ‘segregated’ from the main dwelling in the future. However, it is acknowledged that they generally have a lower impact on infrastructure than forms of residential development which result in new dwellings (immediately) and also experience a lower uplift to land values than such dwellings.

**Self-build housing – Strongly Disagree.** Shropshire Council was significantly opposed to the introduction of self-build relief under the CIL regime. This is in no way predicated on development viability and ignores the cumulative impact that such development has on infrastructure. It also ignores the principle that the proposed new infrastructure levy will be applied to a wider range of development and will secure more affordable housing and infrastructure funding.

A significant way in which the infrastructure levy could increase infrastructure funds secured is the removal of this relief. In Shropshire, self-build development represents a significant amount of the total development that is undertaken. Shropshire Council has been administering CIL for over 11 years and it have been very evident how the self-build exemption mechanism introduced in 2014 negatively impacted on potential and actual revenues achieved under this regime.

Additionally, the self-build exemption process is extremely onerous and often confusing for individuals. Officers have spent significant time since 2014 in advising applicants on how this mechanism works, which ultimately leads to no revenue (including admin).

Should the self-build exemption remain, Shropshire Council recommends that the mechanism raises the minimum threshold for smaller scale self-build homes rather than simply removing the entirety of the liability. In this way it encourages self-build undertaken in circumstances where it is the only means of accessing the housing market and meeting a need. Larger self-build properties (which are often much larger than the average dwelling size) should be required to pay the full liability of an equivalent non-self-build dwelling.

**Question 39:** Do you consider there are other circumstances where relief from the Levy or reduced Levy rates should apply, such as for the provision of sustainable technologies? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: No.** The provision of sustainable technologies is strongly encouraged by Shropshire Council but does not remove the need for the provision of infrastructure to address the cumulative impact of such development. Furthermore, the consultation material specifically states that such provision should be considered integral

rather than levy funded infrastructure, so such an approach would result in double counting of this provision.

**Question 40:** To what extent do you agree with our proposed approach to small sites? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Strongly disagree**

Shropshire Council was very strongly opposed to the introduction of the affordable housing exemption for smaller sites within the written ministerial statement and subsequent amendment to the National Planning Policy Framework (NPPF). This exemption was in no way predicated on development viability, disregards the fact that such development does of course cumulatively impact on infrastructure and resulted in a significant reduction to affordable housing delivery in Shropshire and in many other parts of the Country.

If the proposed Infrastructure Levy is to achieve the stated objectives of being applicable to a wider range of development and securing more affordable housing and infrastructure funding, removing an unnecessary reduction to affordable housing provision from small sites is an obvious way of doing so and one which would in no way impact on development viability, as the rates set for this form of development would be informed by viability evidence consistent with that for other forms of development.

This proposal also ignores the fact that as the current approach to affordable housing on small sites improves development viability, such sites can provide more S106 contributions if required to do so, which would not be achievable under the new system. The proposed approach would therefore reduce infrastructure contributions secured from such development.

The perceived (or real) extension of small sites exemption from affordable housing provision to also include infrastructure is not justified by evidence or responsive to the impact of such development on infrastructure and sends completely the wrong message about development contributing to the infrastructure needs that it generates. It must be remembered that in smaller communities, such development represents the majority or all of the development that occurs.

The other very real concern is that there is no clarity on what level of reduction is proposed. This could therefore be much higher than that which currently exists in some parts of the Country.

**Question 41:** What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas? Please provide a free text response using case study examples where appropriate.

**Shropshire Council Response:** As documented in the response to Question 40, the existing exemption from affordable housing contributions is in no way predicated by viability. Requiring infrastructure levy contributions from small sites will in no way impact on development viability, as the rates set for this form of development would be informed by viability evidence consistent with that for other forms of development.

**Question 42:** Are there any other forms of infrastructure that should be exempted from the Levy through regulations?

**Shropshire Council Response:** Shropshire Council is of the view that local authorities should be able to set differential rates for particular types of development through their charging schedule. Local authorities would then have the discretion to exempt infrastructure from the Levy, dependent on local circumstances.

**Question 43:** Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Unsure**

Shropshire Council notes the consultation document does not provide specific details in regard to the enforcement of unpaid liabilities, since this will be provided in regulations. Based on the information provided however, Shropshire Council considers the proposed enforcement measures to be limited.

As with CIL, the local land charge can help to encourage payment but this does not always work and it is unclear how this would relate to an adjustment payment given that the local land charge would have already been removed by this point. This may also have legal implications as potential purchasers of homes would not be aware of the potential for a further Levy payment through a local land charge.

Issuing a Stop Notice to prevent commencement when a developer has not assumed liability is supported. It is noted however that there is no mention of issuing a Stop Notice to prevent further development in the event of non-payment. From experience, Shropshire Council would comment the Stop Notice available in the CIL system is the most effective and efficient measure a local authority can take. Were the timing of payments adjusted to earlier in the development process, Shropshire Council would strongly support the introduction of a Stop Notice should payment not be received.

Restricting occupation until the provisional liability is paid would represent a new enforcement mechanism, but Shropshire Council is unsure how this would work in practice and whether this would disproportionately impact on households purchasing houses on the site rather than the developer.

Shropshire Council generally agrees with the need to continue to have financial penalties, similar to the existing CIL system.

Ultimately, due to the lack of detail at this stage, Shropshire Council cannot determine if these mechanisms would be sufficient to secure payment.

## **Chapter 7 – Introducing the Levy**

**Question 44:** Do you agree that the proposed ‘test and learn’ approach to transitioning to the new Infrastructure Levy will help deliver an effective system? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary

**Shropshire Council Response: Strongly agree.**

Shropshire Council is supportive of the proposed transition period to the new Levy. The test and learn approach allows for the refinement of the Levy before it is rolled out to all English Local Planning Authorities. It is hoped this would avoid the situation where there were a number of amendments once operation is ongoing by a large number of local authorities, as

occurred within the CIL Regulations which of course made administering CIL more difficult in the first few years following its introduction.

The continuation of CIL and Section 106 agreements for all Planning Permissions granted prior to the introduction of a new Infrastructure Levy charging schedule for the area also seems sensible and ensures that there is not a 'gap' in securing funds for infrastructure provision.

**Question 45:** Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

**Shropshire Council Response: Yes.**

Although in theory the proposed 'right to require' affordable housing provides a simple approach to seeking to maximise on-site provision of affordable housing, it fails to recognise the various sensitivities surrounding the provision of affordable housing and how these do not purely relate to tenure and size, but instead can provide opportunities to deliver specialist and bespoke units of accommodation to meet the needs of particular households within our communities. Meeting such needs is facilitated by the current Section 106 approach which allows for more detailed stipulations regarding the type, tenure and design of affordable housing and Shropshire Council is concerned that this will not be the case under the proposed 'right to require'.