

The Rt Hon Michael Gove MP
Secretary of State
Department for Levelling up, Housing and Communities
2 Marsham Street
London
SW1P 4DF

16 February 2023

Dear Secretary of State,

Levelling Up and Regeneration Bill: Infrastructure Levy

We are writing to you jointly as public, private and third sector organisations from across the housing sector to express our concern about the impact proposals for a new Infrastructure Levy in the Levelling Up and Regeneration Bill will have on the supply of new affordable and social housing.

Our priority is tackling the housing crisis and ensuring affordable and social housing is delivered across the country, an aim we know you are supportive of. We would appreciate an opportunity to meet with you before the Bill reaches its next report stage to discuss the issues and work with you to protect affordable housing delivery so that the government can deliver its levelling up agenda.

In its current form, the Infrastructure Levy risks a significant reduction in the delivery of affordable housing and homes for social rent through the planning system. With the majority of the detail of how the proposed levy would operate yet to be shared, we believe that fundamental issues need to be addressed on the 'face' of the Bill to provide assurances on affordable and social housing delivery. We are therefore calling for amendments to the Levelling Up and Regeneration Bill to protect and build upon current levels of new social housing. It is also important that the proposals do not reduce and delay funding for infrastructure which is crucial to enable delivery and community support for development.

Our concerns with the Infrastructure Levy are detailed below but include how funding for affordable and social housing can be protected against the increased pressure on local authority funding; how to ensure onsite delivery and the valuable creation of mixed communities; and how disparities in land value and viability could affect delivery.

Developer contributions currently play a vital role in delivering affordable and social housing, with Section 106 alone currently accounting for 47.3% of all affordable

homes from 2021-2022, a figure which represents 12% of all new homes delivered annually¹. While there is clear scope to reform and improve developer contributions, they are nonetheless responsible for a huge proportion of new affordable and social homes. As its proposed replacement, the Infrastructure Levy represents a radical shift in how this housing will be funded and delivered. In the context of acute housing need, a change of this scale must be well-evidenced and adequately resourced. It is of particular concern that there has been no evidence published by your department to support the case for this policy change, despite it being initially proposed almost three years ago and its imminent examination in the House of Lords.

At the time of writing, no impact assessments have been made or government consultation responses issued in response to repeated concerns raised about the design, implementation and application of the Levy. Research commissioned by your department on 18 August 2021 to understand the implications of the proposed Levy undertaken by the University of Liverpool has never been published.

We remain keen to work with your department constructively on this issue but are concerned by the government's apparent willingness to press ahead with unevidenced planning reforms, which risk worsening pre-existing pressures on the supply of affordable and social housing.

Protecting funding for affordable housing

Ministers have frequently responded to criticism of the Infrastructure Levy by pledging that it will deliver “at least as many affordable homes as the current system.” But without robust protections for affordable and social housing in primary legislation, it is difficult to see how this claim can be justified. We would urge you to set out the evidence behind repeated government assurances that affordable and social housing supply will be protected under the new system.

The Bill currently contains only vague wording about “the desirability of” local authorities delivering affordable and social housing when setting Infrastructure Levy rates. This provides no meaningful protection for affordable housing or homes for social rent. In its current form, the new Infrastructure Levy could lead to the diversion of developer contributions away from affordable and social housing and towards other, unspecified forms of expenditure entirely unconnected to development. By contrast, a very high proportion of the value of developer contributions obtained via

¹ DLUHC, Affordable housing supply, Table 1011; Table 1011; Net additional dwellings, Table 120 new build completions

Section 106 agreements currently enables the delivery of affordable and social housing which plays a crucial role in helping to address housing need.

According to research commissioned by the Ministry of Housing, Communities and Local Government in 2020, 78% of Section 106 funds were spent on affordable housing in 2018/19². Achieving a similar level of funding via the Infrastructure Levy would require ring-fencing a proportion of developer contributions for affordable housing or setting baseline levels for affordable and social housing delivery.

Contributions for infrastructure are also vital to enable the delivery of development without placing undue pressure on local facilities. Both affordable housing and infrastructure delivery would be put at risk if the Levy can be used as general funding for services as set out by Ministers.

Value disparities, viability and inequality

We strongly support the government's ambition to reduce inequalities through levelling up. It is our view that this cannot be meaningfully delivered without boosting the country's supply of good quality, genuinely affordable housing and homes for social rent.

The move away from a nationally set levy is welcome but replacing the current system for developer contributions with a single, fixed levy system aiming to deal with both affordable housing and other infrastructure risks exacerbating inequalities. Land values vary significantly in different parts of the country and even within local authority areas, so levy receipts based on a proportion of land value uplift could result in similarly uneven outcomes. In some areas, setting rates at the level needed to maintain current levels of affordable and social housing delivery could make many developments unviable. Alternatively, setting rates at a low enough level to keep all sites viable would result in less value capture and a level of affordable and social housing supply far below what is currently achieved. Local authorities would still be encumbered by a complex system unresponsive to differences in land value and site viability. This problem may be particularly pronounced in areas with variable development values and low land value, where affordable and social housing need can be acute and the need to 'level up' most urgent.

Whilst we acknowledge this is a feature of the current system, Section 106 agreements have been relatively efficient in channelling developer contributions to

² The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19

the provision of on-site affordable housing and homes for social rent. It is therefore all the more important to ensure that levy proceeds are prioritised to support the provision of affordable and social housing where this is possible, especially in lower value areas and where housing need is greatest. There is also a strong case for ensuring that Homes England deploys its resources strategically, to support provision in those areas where levy proceeds are likely to be low, and we would urge the Department to ensure this is part of their forward strategy. It would be helpful if you could set out what assessment the government has made of the Levy's responsiveness to differences in viability and land value.

Although imperfect, one of the relative benefits of Section 106 is its site-specific responsiveness to marginal differences in viability. We note that the government has committed to retaining the use of Section 106 agreements in specific circumstances. By making adoption of the Infrastructure Levy optional rather than mandatory, local authorities would be able to adopt the system for developer contributions which optimises affordable and social housing delivery. If local planning authorities determine that the Infrastructure Levy is unable deliver the same level of social housing and infrastructure as Section 106 agreements or the Community Infrastructure Levy, it should not replace the existing process for developer contributions.

Onsite delivery and the value of mixed communities

Existing processes for the delivery of onsite affordable and social housing have facilitated a well-integrated mix of housing tenures to support households of different sizes, ages and incomes. By moving away from an 'in-kind' system of affordable and social housing delivery towards a finance-based system, the Infrastructure Levy risks undoing important progress in this area.

We therefore welcomed the government's commitment to bring forward a "right to require", allowing local authorities to determine the portion of the Levy they receive as onsite affordable and social housing. It was disappointing to see this absent from the Bill without explanation. We would urge you to place this commitment on the face of the Bill to safeguard the future of mixed communities prior to the implementation of the Levy.

Capacity in the planning system

Stakeholders from across the housing sector continue to report problems caused by under-resourced planning departments with over-stretched staff. Local authority net expenditure on planning has fallen by 43% in the past decade, amounting to just 0.45% of local government budgets allocated to planning services.

The Infrastructure Levy represents a significant new burden for planning departments, with a lengthy implementation period operating alongside existing systems for developer contributions. We have real concerns around local planning authorities' capacity challenges and their ability to implement these changes effectively. Local planning authorities' understanding of and ability to operate these new systems and processes will be critical to their success. It would be helpful to know the steps the government are taking to improve capacity in the planning system and to ensure the implementation of the Infrastructure Levy is adequately resourced.

Working together to improve the planning system

For the reasons outlined above, it is with regret that we cannot support the Infrastructure Levy in its current form. Since it was first proposed in 2020, we have engaged constructively with the detail of this policy and remain willing to work with you to deliver an effective new system for developer contributions. We believe the government should amend the Bill in several specific areas including by strengthening the requirement for local planning authorities to set Infrastructure Levy rates at a level which would not result in a loss of affordable or social housing, and by ensuring IL regulations introduce a mechanism for the delivery of onsite affordable and social housing as an in-kind levy payment.

With 4.2 million people currently in need of social housing in England, these changes to the planning system must improve the delivery of new affordable housing. But without further protections included on the face of this Bill, the new Infrastructure Levy risks severely undermining the delivery of new affordable and social housing. In light of interest rate rises and the ongoing impact of inflationary pressures across the housebuilding sector, this would represent a serious threat to development at a time when these homes are urgently needed.

We would be grateful for an opportunity to discuss this with you further before the Bill progresses to report stage.

Yours sincerely,

Angela Gascoigne, Chair, Rural Housing Alliance

Dr Hugh Ellis, Policy Director, Town and Country Planning Association

Gavin Smart, Chief Executive, Chartered Institute of Housing

Geeta Nanda, Chair, G15

James Francis, Chair, Build East

Karen Cooper, Chair, G320

Kate Henderson, Chief Executive, National Housing Federation

Manny Hothi, Chief Executive, Trust for London

Matt Downie MBE, Crisis

Melanie Leech CBE, Chief Executive, British Property Federation

Mike Kiely, Chair, Planning Officer's Society

Polly Neate CBE, Chief Executive, Shelter

Rt. Revd Dr Guli Francis-Dehqani, Church of England Bishop for Housing

Samantha Stewart, Acting CEO, The Nationwide Foundation

Steve Coffey, Chair, Homes for the North

The Church Housing Foundation

Tom Copley, Deputy Mayor for Housing and Residential Development, Greater London Authority

Victor da Cunha, Chair, Homes for the South West