Chairman: Cllr Matthew Hicks

Managing Director: Cheryl Davenport

Infrastructure Levy Technical Consultation		Ask for:	**Matthew Stewart**
Planning Directorate		Mobile:	**07816 367334**
InfrastructureLevyConsultation@levellingup.gov.uk		email:	**Matt.stewart@eelga.gov.uk**
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East of England Local Government Association Infrastructure Levy Technical Consultation Response

We write to you today in response to the Technical Consultation on the Infrastructure Levy published on 17 March 2023. This response is following engagement with EELGA's members; the fifty local authorities within the East of England. For more granular detail, please study the individual responses made by those members.

We have significant concerns about the fiscal burden that these measures would put on EELGA's member authorities. While the Government's ambition for the Levy to generate more funding for both infrastructure and affordable housing is welcomed in principle, local authorities have expressed concern about the risks posed by borrowing against expected Levy returns. In addition, due to the predominantly two-tier nature of the East of England, it risks creating a disconnect between district and county councils in our area. This could have negative impacts on governance arrangements, and important relationship building, at the local level.

Infrastructure Funding and Affordable Housing Provision

There are parts of the Infrastructure Levy that have been raised by our member authorities as welcome additions. For example, we welcome the government's ambition to ensure that the proposed Infrastructure Levy delivers more affordable housing and strategic infrastructure funding. These funds would be acutely welcome given the ongoing housing crisis. A lack of infrastructure funding and affordable housing are highlighted to be the key barriers to solving the housing crisis in EELGA's latest report, "Opening the door: Good Quality, Available and Affordable Housing in the East of England".

The East of England is at the forefront of the housing crisis, with housing becoming increasingly more expensive in relation to income over the past 20 years. The average home in the East of England is now 10.1 times average incomes – nearly twice what it was 20 years ago and much higher than the national average of 8.3[1]. Our region needs affordable housing in a variety of tenures if it is to retain key employers and their employees, attract talent to our economic clusters, and ensure affordable housing for all those who need it. If this extra funding was guaranteed, and paid in addition to funding needed to introduce, administer, and regulate the new Levy, then this could be a positive development.

Furthermore, if this system is based on local data, local decision making and local freedom to choose thresholds, exemptions, and rates, this could empower planning authorities to create the criteria they need to encourage growth. However, such measures should not come at the expense of infrastructure – if this levy led to diversions of funding away from essential infrastructure needed to serve new homes, or does not lead to more infrastructure funding, this would be a negative consequence. EELGA's recent report highlights that the fiscal constraints around infrastructure delivery are themselves a barrier to housebuilding. Therefore, the issue is a lack of consistent funding to construct both housing and infrastructure effectively and with any certainty.

Payment of the levy

We have significant concerns around the financing model presented in the Infrastructure Levy. First is the timescale of this funding. The proposed system requires developers to make two payments – a provisional payment, and a final, adjusted, payment on completion. We have concerns that this creates significant bottlenecks in the payment of the Levy, where local authorities obtain the full funding for infrastructure only after it is built. Simultaneously, developers will need to find lump-sums to pay the levy off at inconvenient and potentially premature times during their housebuilding schedule.

Our member authorities have expressed the view that the use of charges on land to secure the levy payments would be considered useful and would assist in enforcement. However, the exact time of the expected infrastructure payments does appear to be contingent on agreement of certain negotiated timelines that could be quite specific for each area, rather than being a straightforward and homogenous process. Furthermore, the system should not be designed with costly enforcement measures from local authorities as the general backstop. Enforcement of the levy will be resource-intensive, and systems should be considered that ensure that this is only required as a last opportunity, and at minimum cost to local authorities.

Borrowing against future proceeds

We envisage considerable drawbacks to the proposed solution to allow districts to borrow against future Infrastructure Levy receipts. While there are some opportunities around the use of this funding, particularly around the freedom to use this funding as revenue income rather than just capital income, there are issues with this approach.

We have concerns about the fiscal risk that this exposes local authorities to. At a time when the Government is increasingly concerned about the financial stability of local authorities, it feels counterintuitive to burden authorities – especially smaller district authorities – with considerable amounts of debt. This is made less intuitive when it is understood that infrastructure delivery is often handled by bodies external to districts – the NHS, county councils and so on. Therefore, while districts are exposed to the financial risk, they do not have direct control over the delivery itself.

[1] Housing affordability in England and Wales - Office for National Statistics (ons.gov.uk)

Understandably, many district authorities may choose to be risk-adverse in their borrowing against future uncertain expenditure. This will be exacerbated at times where the housing market is showing signs of slowing down such as in the current economic climate, making investment into housing less reliable for private investors, and increasing the chance of default. This potentially limits the amount of infrastructure that can be built. It may also lead to further monies being allocated to reserves to cover potential shortfalls and insure against the risk of developer default – something we are aware that central government is looking to monitor through the Office for Local Government.

Operation and enforcement

In addition, the delivery of the levy itself is felt to be fiscally onerous. The system places considerable administrative demands on planning authorities to manage, operate and regulate its use, from valuation to enforcement. Planning departments are already underfunded and understaffed, with the Royal Town Planning Institute suggesting that net real-terms expenditure in the East of England on planning services has fallen by roughly a quarter between 2009/10 and 2020/21[2]. Therefore, given the additional demands placed on the system by this proposal, there are concerns that the levy will be unworkable from a planning authority perspective without new funding alongside it. Likewise, while the need to create an infrastructure Delivery Plan may have some merit, it will be a costly and time-intensive exercise for county councils.

We have also heard from planning authorities that are concerned that developers may use this lack of council resource to potentially misuse and manipulate the levy and its valuation regime to their advantage. The more it is turned into a stratified system, the more it can be manipulated, with loopholes found to get around planning authority protections. This could impact on the funding levels expected from the levy without proper channels of enforcement and responsive amendments to regulations when such exceptions are found.

Summary

In summary, while there are some good ideas to be found in this technical consultation, such as the acknowledgement that more funding is needed, there are serious concerns for local authorities. These include how much funding will be provided to enact the new Levy, the tensions between its use to provide affordable housing and help fund infrastructure, the potential for exposure to borrowing risk for all kinds of local authorities, and the opportunity for developers to be able to manipulate the system for their tax advantage.

I hope this response has been helpful and look forward to the publication of a response.

Yours sincerely

Cllr Matthew Hicks
Chair of the East of England Local Government Association (EELGA)

[2] RTPI | Planning Agencies