CONSULTATION ON PROPOSED REGULATIONS FOR A TIME-LIMITED RELIEF FROM THE COMMUNITY INFRASTRUCTURE LEVY IN LONDON

CONSULTATION RESPONSE

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INTRODUCTION

1. BusinessLDN is a business membership organisation with the mission to make London the best city in the world to do business, working with and for the whole UK. BusinessLDN works with the support of the capital's major businesses in key sectors such as housing, commercial property, finance, transport, infrastructure, professional services, ICT and education. We welcome the opportunity to respond to relevant questions in the Ministry of Housing, Communities & Local Government's working paper on proposed regulations for a time-limited relief from the Community Infrastructure Levy in London.

2. The situation in London remains challenging. New housing starts and applications are very low, with a significant number of schemes still on hold while developers await access to the proposed CIL relief. We are now fast approaching a year since the Government originally announced the emergency measures in October 2025, and the time being taken to make the relief available is increasingly undermining its purpose, particularly given the Government's original objective of providing a simple measure that could be accessed quickly and without extensive conditions. Instead, the proposed approach has become increasingly complex, risking delaying or discouraging the development it is intended to unlock. The Government should therefore move swiftly to make the relief operational and ensure it remains simple, proportionate and focused on bringing schemes forward.

RESPONSES TO RELEVANT CONSULTATION QUESTIONS

Question 4: What is the maximum proportion of the site that should be permitted to fall on excluded land for the development to remain eligible for the relief? Please explain your reasoning.

3. The maximum 25 per cent threshold provides the necessary flexibility for mixed-typology sites and avoids unnecessarily excluding schemes from the relief. Given the scale of London's housing need, its limited land supply and the range of development typologies needed to meet demand, the policy should not constrain where development can come forward, provided schemes are high quality and well designed. The priority should be to maximise housing delivery and ensure the relief encourages viable schemes to come forward, rather than creating an overly restrictive eligibility test.

4. It should also be questioned whether the excluded land test is necessary at all. Where a residential scheme has planning consent and meets the relevant affordable housing requirements, relief should apply regardless of the existing or previous use of the land.

Question 6: Do you agree that the residential part of mixed-use developments should be eligible for relief?

5. Yes. The residential element of mixed-use developments should be eligible for relief. Mixed-use developments represent a significant part of London's development pipeline, reflecting long-established NPPF and London Plan policies that actively promote a mix of uses where practicable. It is also important to note that all types of development have been impacted by viability challenges, not just residential development.

6. Excluding residential elements simply because they form part of a mixed-use scheme would risk limiting the reach of the relief and would not support the emergency measures' purpose of bringing forward more development – this type of development is providing much need homes and are still impacted by the same challenges standalone residential development faces.

7. In line with our answer to Question 4, the conditions should be designed to allow as much development as possible to come forward and avoid unnecessarily restricting access to the relief. This will help maximise housing delivery and ensure the relief supports as many schemes as possible.

Question 7: Do you agree that CIL liability attributable to the floorspace of communal space for residents should be eligible for relief?

8. Yes. Communal space is an essential element of the design of any residential development, and it is effectively a cost on the delivery of saleable or lettable habitable floorspace. CIL liability attributable to communal space for residents should therefore be eligible for relief. In line with our responses to Question 4 and 6, the conditions should be designed to allow as much development as possible to come forward and avoid unnecessarily restricting access to

the relief. This will help maximise housing delivery and ensure the relief supports as many viable schemes as possible.

Question 8: Do you agree with the proposed approach to defining excluded dwellings?

9. We support the proposed approach to defining excluded dwellings and the focus on supporting long-term housing delivery. In particular, the relief should support those forms of development that have faced the greatest viability and delivery challenges in recent years, including Build to Rent (BtR) and homes for sale. This is particularly important for BtR given the significant downturn in starts, with only 613 new BtR homes starting construction in London in 2025, an 80 per cent fall compared with 2024. The proposed approach should therefore ensure that the relief remains available to BtR and other forms of long-term housing where it can help unlock delivery.

Question 9: Do you agree with the use of "dwelling" (as opposed to the residential use classes) to define residential?

10. Yes, we agree with the use of "dwelling" for the definition. This ensures it applies to any residential unit intended for self-contained occupation and contributes to meeting housing targets. Relying on residential use classes could capture forms of accommodation that are not intended to benefit from the relief.

Question 10: Do you agree with excluding from the relief dwellings that are intended only to be occupied on a temporary basis?

11. We support excluding dwellings intended solely for temporary occupation from the relief. This ensures that the measure remains focused on supporting longer-term housing delivery and is consistent with the wider objective of the emergency measures. The relief should be targeted at forms of housing where viability and market conditions are preventing schemes from coming forward. BtR is a particularly important example, given the significant fall in starts over the past 12 months.

12. However, a clearer definition of what constitutes 'temporary' occupation would be welcomed to provide certainty for applicants and avoid different interpretations of the eligibility criteria.

Question 11: Do you support the £500k threshold applying to the total development (inclusive of all phases), rather than the chargeable development?

13. We support applying the £500,000 threshold to the total development, including all phases. This better reflects the viability and delivery challenges of a scheme as a whole and avoids arbitrary outcomes where individual phases do not reflect the financial position of the development as a whole, which is key in terms of a developer securing any financing.

14. A whole-development approach is also more consistent with the objective of supporting housing delivery as part of larger, complex mixed-use schemes.

Question 12: Do you foresee any risks or unintended outcomes as a result of allowing estimated CIL liabilities for the purposes of calculating the £500k threshold? Do you have any other observations to make on how this issue can be addressed?

15. Allowing estimated CIL liabilities is a pragmatic approach, particularly for outline and hybrid planning permissions where some phases of the development may be subject to agreed development parameters rather than final floorspace figures.

16. However, different approaches to calculating estimates could create inconsistency and uncertainty over eligibility. The Government should therefore provide a clear, standardised methodology for calculating estimated liabilities and confirm that eligibility, once established on a reasonable evidential basis, will not be revisited due to Non-Material Amendments in scheme design or floorspace. This would provide greater certainty for applicants and charging authorities.

Question 13: The Government welcomes views on the proposed approach of requiring both a planning obligation and the affordable housing requirements set out in the CIL social housing relief to be satisfied in the affordable housing requirements.

17. The proposed approach appears unnecessarily time-consuming and difficult to achieve within the proposed timescales. There are significant sequencing issues in securing a Section 106 agreement and grant funding, with each process potentially dependent on the others. Requiring all these elements to be in place within a tight timeframe will be challenging for many schemes.

18. More broadly, the measures are intended to provide greater certainty and support schemes to come forward, but the proposed timescales and the risk of clawback could have the opposite effect. The uncertainty around whether the necessary requirements can be met within the timeframe may lead developers to consider alternative routes rather than rely on the relief. For example, a Section 73 Application, supported by viability testing, becomes a more attractive proposition if it brings more commercial certainty.

19. The affordable housing requirement should also be measured by habitable room rather than unit count. This aligns with the approach taken by most boroughs and the London Plan, while avoiding penalising schemes that meet the relevant affordable housing requirement when measured on a habitable room basis but fall short when measured by unit numbers.

20. The process should therefore be simplified and provide greater flexibility around sequencing and timescales, so that the CIL relief delivers the certainty and viability benefits it is intended to provide.

Question 14: Do you agree with the proposal to allow tenure flexibility for affordable housing over and above the first 35 per cent of affordable homes?

21. The rationale for the proposal is understood, but greater flexibility should be provided across the affordable housing component. If the objective is to improve viability and support housing delivery, imposing fixed tenure requirements risks making schemes more difficult to deliver.

22. The tenure mix should be able to respond to the circumstances of individual schemes, local housing need and the requirements of registered providers. Greater flexibility would help schemes remain viable and maximise the overall delivery of affordable housing, rather than enforcing rules that could ultimately constrain delivery.

Question 15: Do you agree that development on public sector land should be subject to a minimum 35 per cent affordable housing threshold in order to qualify for the CIL relief?

23. Development on public sector land faces similar viability and delivery challenges. As set out in our response to the previous question, greater flexibility on all types of sites would be preferable to help schemes remain viable and support delivery.

24. A minimum 35 per cent threshold risks excluding schemes that could otherwise deliver significant numbers of homes and affordable housing. A less restrictive approach would allow the relief to support a wider range of schemes and help unlock public sector land at a time when increasing overall housing starts should be the imperative.

Question 16: Do you agree that development on industrial land (where industrial floorspace capacity has not been re-provided) should be subject to a minimum 35 per cent affordable housing threshold in order to qualify for the relief?

25. As set out in our response to the previous questions, a less restrictive approach would better support delivery. Applying a higher 35 per cent affordable housing threshold to development on industrial land where industrial floorspace has not been re-provided risks adding further costs and requirements to schemes that are already facing significant viability challenges.

26. There is also an inconsistency between the proposed CIL amendment regulations and the threshold for the time limited route. As currently drafted, our interpretation is that 35 per cent affordable housing would be required to qualify for CIL relief on industrial land, regardless of whether industrial capacity is re-provided, while only 20 per cent would be required to access the time limited route where there is no reduction in industrial floorspace capacity. This should be addressed to ensure the two approaches are aligned.

27. The purpose of the relief is to reduce development costs and encourage schemes to come forward, and the additional threshold could undermine this objective by making some schemes ineligible for relief. The approach should instead allow the circumstances and viability of

individual sites to be considered, particularly where there are significant costs associated with bringing forward development on industrial land. This would provide greater flexibility to support the delivery of both housing and employment space.

Question 17: Do you agree that BtR developments which meet the relevant criteria should be able to qualify for relief by satisfying an alternative affordable housing tenure requirement, rather than the general requirement that at least 60 per cent of the affordable housing provided should be Social Rent?

28. The 60 per cent Social Rent requirement is particularly challenging for BtR schemes, where the affordable housing model is typically based on Discount Market Rent, which also allows for consolidated ownership and management of the development. Requiring some homes to be owned by a registered provider is not a model that many BtR investors will support. As set out in BusinessLDN's response to the earlier emergency measures consultation, this risks making the proposed route largely unworkable for BtR and excluding an important source of housing supply from the emergency measures. This is particularly concerning given that only 613 new BtR homes started construction in London in 2025, an 80 per cent fall compared with 2024, highlighting the need for the emergency measures to support rather than further constrain BtR delivery.

29. Allowing greater flexibility for BtR developments to deliver alternative affordable housing tenures is important given the current viability pressures facing the BtR sector. A more flexible approach would help ensure the relief supports a wider range of housing delivery models and maximises the number of homes that can come forward.

Question 18: Do you think that applicants for the relief should be required to provide evidence that a scheme is financially unviable in order to be eligible for the CIL relief (i.e. the revised approach set out in the Government response in March 2026)? If you agree, please explain why. If you disagree, please explain why.

30. It would be more appropriate for applicants to demonstrate that a scheme is financially unviable in its current form, rather than requiring an assessment of whether an uncertain level of CIL relief would make that scheme viable. This would provide a clearer and more proportionate basis for determining eligibility.

31. A viability-led approach would also better reflect the purpose of the relief, ensuring that it is targeted at schemes that genuinely require support to come forward. It would avoid unnecessary complexity and provide greater certainty for applicants when assessing whether the relief could make a meaningful difference to delivery.

Question 19: Do you alternatively think that applicants for the relief should be required to provide evidence that a scheme will be made viable by the CIL relief (i.e. the original

approach set out in the consultation in November 2025)? If you agree, please explain why. If you disagree, please explain why.

32. As set out in the response to Question 18, requiring applicants to demonstrate that a scheme is unviable in its current format provides a simpler and more robust basis for assessing eligibility. Establishing whether a scheme is currently unviable is more straightforward and relies on known costs and values, whereas assessing whether an uncertain level of CIL relief will make a scheme viable introduces additional complexity and assumptions.

Question 21: Do you agree that Government should require applicants to submit a pro forma for viability evidence?

33. No, we do not support the principle of standardising viability inputs through a mandatory pro forma. Similar proposals were previously considered and removed from the NPPF, and the same concerns apply here. The draft pro forma appears too rigid and does not adequately reflect the site specific circumstances that can affect viability.

34. More fundamentally, where a scheme delivers the required 20 per cent affordable housing and meets the other conditions set out in the consultation, this should be sufficient to qualify for CIL relief. A further viability assessment or standardised pro forma should not be required where these requirements have been met. The purpose of the relief is to support schemes that are able to meet the specified policy requirements, rather than introduce an additional viability test.

35. In particular, previously agreed or approved viability inputs should not be subject to reassessment through a new standardised process. Different development models can also require different approaches to valuation, with BtR schemes being a particular example. There are also practical issues for schemes that are already part built or have commenced, where the viability position and relevant inputs may differ from those at the original application stage.

36. There is also uncertainty around the availability of grant funding, particularly for later phases of larger schemes. The pro forma should not create additional uncertainty or require applicants to provide information that cannot reasonably be confirmed at the point of application.

37. If Government proceeds with a pro forma, it should therefore be flexible enough to reflect site specific circumstances, avoid duplicating information already provided through the usual viability assessment process, and provide clarity on the evidence required. It should not result in previously agreed viability inputs being reassessed or create additional delays for schemes seeking relief.

Question 22: Do you have any views on how the draft pro forma (the “Residual Appraisal Summary Template”) could be improved, including if any additional or different information should be sought?

38. As set out in our response to Question 21, we have a number of concerns about the draft pro forma. If Government decides to proceed with it, however, further clarification will be needed to ensure it can be applied consistently and produces fair and reliable outcomes.

39. In particular, greater guidance is needed on how Benchmark Land Value (BLV), Existing Use Value (EUV) and Alternative Use Value (AUV) should be assessed, including the relevant valuation date and how cleared sites should be treated. As currently drafted, the methodology could result in sites that have been demolished, but not yet implemented, being assigned artificially low benchmark values. This could mean that commercially unviable schemes appear to be viable. The interaction between existing planning permissions, AUV and previously agreed viability positions should also be clearly addressed.

40. The approach to finance assumptions, profit benchmarks and borough benchmarking data would also benefit from further refinement. The template includes a number of standard assumptions that may not reflect actual funding structures, development risks or the circumstances of individual schemes. The proposed amber/red flag system should be used as a prompt for further explanation, rather than suggesting that an input is by default deemed to be unreasonable. Publishing the benchmarking methodology, data sources and evidence base would also improve confidence and consistency in how the template is applied.

41. The template would also benefit from clearer guidance on the evidence required, the responsibilities of practitioners in verifying information, and the level of review expected from local planning authorities. Several glossary definitions require further development to ensure they are interpreted consistently, particularly in relation to development value, abnormal costs, contingencies, profit assumptions and grant funding.

42. Overall, we would encourage Government not to pursue the proposed pro forma. Where a scheme delivers the required 20 per cent affordable housing and meets the other eligibility conditions set out in the consultation, this should be sufficient to qualify for CIL relief without a further viability assessment or standardised pro forma. If the pro forma is retained, it should be proportionate and flexible, reflect site specific circumstances, avoid duplication and not create additional delays or uncertainty.

Question 23: Do you agree with the use of benchmarking against datasets derived from individual boroughs?

43. While borough-level datasets can provide a useful reference point, they should not be relied upon as a fixed benchmark when assessing the viability of individual schemes. Development costs, values, funding structures and market conditions can vary significantly between schemes, even within the same borough.

44. The use of borough-level benchmarking should therefore be treated as a guide rather than a prescriptive test. Applicants should be able to explain where scheme-specific circumstances justify variations from the benchmark, without this automatically being deemed to be

unreasonable. The methodology and data sources used to establish the benchmarks should also be published to ensure transparency and consistency.

Question 24: Do you agree with the proposed wording for the statutory declaration?

45. We broadly support the use of a statutory declaration as part of the application process, as it provides a formal mechanism for confirming that a suitably qualified professional has assessed the scheme and concluded that it is unviable. However, the draft declaration should be accompanied by clearer guidance on the evidence required and the level of professional scrutiny expected.

46. The proposals require practitioners to certify that inputs and assumptions are fair and reasonable while also relying on information provided by the applicant. However, the draft documents do not set out the level of validation or independent verification that must be undertaken before these assurances can be given. This creates uncertainty for both applicants and the professionals required to make the declaration and could leave decisions open to challenge.

Question 25: Do you have any observations on the use of the statutory declaration as a method of securing the required assurances?

47. The statutory declaration is a reasonable way of providing assurance that viability evidence has been prepared and reviewed by a suitably qualified independent professional. However, its effectiveness will depend on a clear appraisal framework and a consistent approach from local planning authorities (LPAs).

48. There remains uncertainty over the extent of interrogation needed or expected from LPAs, the weight that should be given to benchmark flags and the standards against which appraisal assumptions will be assessed. Without clearer guidance, practitioners and authorities may assume different approaches, undermining the consistency the declaration is intended to provide and risking unnecessary delays. Clearer verification requirements and guidance on LPA review procedures should therefore be provided alongside the declaration.

Question 26: Do you agree that the revised commencement deadline of 31 March 2030 provides a more workable timeframe for development to follow the required steps and apply for the relief?

49. Yes. A commencement deadline of 31 March 2030 is more realistic given the number of steps that must be completed before CIL relief can be secured. These include agreeing a Section 106 legal agreement, resolving any other applicable CIL reliefs, preparing the viability appraisal, completing the statutory declaration, submitting a valid claim and securing a determination from the LPA before commencement.

50. However, the emergency measures were first proposed in October 2025, meaning that almost a year of the original timeframe has already been lost. In addition, the legal challenges to the emergency measures brought by a group of London boroughs are likely to have slowed uptake, as developers wait for greater certainty on how these challenges will be resolved before committing to the alternative route. Given the length and complexity of the process and the delay in getting the system in place, further consideration should be given to extending the deadline beyond 31 March 2030. This would improve the practical deliverability of the CIL relief and reduce the risk of otherwise eligible schemes missing out because of programme delays outside the applicant's control. Additional flexibility may also be needed for larger phased developments or schemes facing abnormal delays in the planning or delivery process. Examples include unforeseen ground contamination or delays associated with the Building Safety Regulator requirements.

Question 27: Do you agree with the proposed timescales for LPAs to determine relief applications?

51. We have some concerns about the proposed determination period. While 28 days may be reasonable once an application has been confirmed as valid, the draft regulations do not set a deadline for the LPA to determine whether an application is valid, nor do they provide for deemed approval or a right of appeal. Requests for clarification or additional information (in the form of both reasonable requests and unnecessary requests) could therefore delay the point at which the 28-day period begins, creating uncertainty for applicants managing development programmes and commencement dates. Greater clarity on validation requirements and the assessment process would improve the certainty and consistency needed.

Question 28: Do you agree with the proposed timescales developers must follow when returning requested information during the new relief application process?

52. Any timescales for responding to information requests should recognise the complexity of the viability evidence being submitted. The process requires a viability appraisal, supporting evidence, explanations for benchmark exceptions and a statutory declaration, while the consultation does not clearly define the boundary between a proportionate review and a detailed viability assessment. This uncertainty could affect the volume of information requested and the time required for applicants to respond. Applicants should therefore have sufficient flexibility to respond to LPA requests, particularly where professional advice, updated appraisal inputs or third-party information is required. A reasonable extension mechanism should be provided to ensure otherwise valid applications are not prejudiced by procedural timing issues.

Question 29: Do you agree that, as a default position, development should be expected to complete within five years of commencement in order to retain relief?

53. We accept that a completion deadline is necessary to ensure the CIL relief supports development delivery and to encourage developers to progress schemes at a reasonable pace, and that five years may be appropriate for many schemes. However, a single completion

period will not be suitable for all developments, particularly larger, phased or more complex schemes. Delivery programmes can be affected by factors outside an applicant's control, including market conditions, funding arrangements, infrastructure delivery, statutory approvals and construction constraints. The regulations should therefore retain flexibility to allow longer delivery periods where there is a clear and reasonable justification.

Question 30: The Government welcomes examples of circumstances in which a longer timeframe would be needed, and whether case-by-case agreement would allow for this.

54. We support a mechanism allowing longer completion periods to be agreed on a case-by-case basis where there is reasonable justification. Additional time may be required for large phased developments, regeneration schemes delivered across multiple phases, developments requiring substantial infrastructure works, schemes affected by Building Safety Act requirements and Gateway processes, projects involving significant remediation or abnormal works, and developments dependent on affordable housing grant funding or complex funding structures.

55. In these circumstances, a fixed five-year deadline could put the project at risk even where the development is progressing as intended. A transparent process should therefore allow authorities to agree longer periods based on evidence provided at application stage, or where circumstances subsequently change. This would provide a more practical and proportionate approach while still maintaining a clear expectation around timely delivery.

Question 31: Do you consider the proposed additional clawback mechanism to be necessary? If not, what safeguards already exist to ensure that relief is not provided on phased developments and affordable housing delivery subsequently delayed to later stages? Are there wider considerations, including current market conditions, which render such concerns unnecessary?

56. No, the additional clawback mechanism is not considered necessary. The proposed CIL relief already includes extensive safeguards, including independently certified viability evidence, a statutory declaration, commencement and completion deadlines, and affordable housing obligations secured through Section 106 agreements. These provide sufficient assurance that relief is targeted at schemes where it is needed to enable development to proceed.

57. A further clawback would add complexity, uncertainty and administrative burden, undermining the purpose of the CIL relief and encouraging applicants to instead pursue a Section 73 application supported by viability testing that justifies a lower than 20 per cent affordable housing provision. This is particularly concerning for phased developments, where delivery can be affected by market conditions, funding, infrastructure and other factors outside a developer's control. Delays to later phases should not automatically trigger clawback where there remains a clear commitment to delivery.

58. Existing planning and Section 106 mechanisms already provide appropriate and proportionate controls over the timing and delivery of affordable housing. If further safeguards are considered necessary, these should be targeted at exceptional circumstances rather than introducing a blanket clawback mechanism that could deter take-up of the emergency measures and create additional uncertainty for funding and delivery.