

# Consultation Response – Proposed Introduction of the Infrastructure Levy

From BPS Chartered Surveyors

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## About BPS

- 1.1 BPS is a niche firm of Chartered Surveyors providing development viability advice to Local Planning Authorities for over 20 years. We currently act for over 20 London Boroughs and some 40 other unitary and district authorities in this capacity across the South East of England.
- 1.2 Andrew Jones also served on the Ministry of Housing, Communities and Local Government's Expert Consultation Panel concerning revisions to the National Planning Policy Framework and National Planning Policy Guidance (NPPG) in 2018 and has worked with the Planning Advisory Service.

## Scope of Response

- 2.1 BPS advises on over 200 major planning applications annually and therefore has unique insight into the current viability process.
- 2.2 As a result, we have an extensive information base from which to provide detailed analysis to test the proposed approach for delivering infrastructure and other planning obligations including affordable housing outlined in the Bill. We hope this analysis will assist the Government in its further deliberations on the proposed implementation of the Levy.
- 2.3 The following analysis reflects our Company's specialism and knowledge base and we have not sought to comment more widely on the consultation, as these areas are outside our core professional expertise.
- 2.4 This document provides analysis based on real and recent planning applications which have been tested for viability to assess how the imposition of a levy would impact the delivery of planning obligations.

## Basis of Response

- 3.1 Presented below are the findings of our analysis of a representative, random, sample of 68 recently consented schemes across 16 Local Planning Authorities. All the schemes have gained planning permission since mid-2018 and have a total Gross Development Value of over £2.5 Billion. The analysis tests the potential impact of the two key elements of the proposed levy, namely: -
  - a) **The introduction of a threshold Gross Development Value (GDV) below which the levy would not apply.** We have tested various GDV thresholds to identify which schemes would still deliver affordable housing under each scenario. It is assumed that if a scheme falls under the stated threshold, it would not be required to make any affordable contribution. The analysis seeks to identify the net loss of affordable housing at different threshold levels.

- b) **The impact of the levy rate** The levy is designed to fund both infrastructure and affordable housing which are currently funded through a combination of S106 affordable housing and contributions, CIL, and S278 obligations to deliver affordable housing. To test the impact of the levy we have equated the scale of the levy to a fixed percentage of affordable housing delivery. This parameter is by far the most expensive planning obligation sought from major developments and provides a clear basis on which to test the impact of the levy on the delivery of both overall housing numbers and affordable housing delivery. Affordable housing unlike CIL is subject to viability testing as such it is the key element to fall into the new levy as such an appropriate measure to test. The analysis assesses which schemes remain viable and capable of delivery at different levels of levy/target affordable housing delivery. From this it is possible to determine which schemes are still able to come forward for delivery

## Conclusions

- 4.1 Irrespective of the rate set, the analysis clearly demonstrates that the introduction of a levy threshold would result in a net loss of both affordable and overall housing delivery. For this sample, this would not be less than 29% (*Graph 4*) of all housing currently delivered if a threshold GDV of £5m were adopted. (£5m equates to a 10-unit scheme with average unit values of £500,000.) This would of course be highly damaging to the Government's aspiration to deliver more housing.
- 4.2 The dataset highlights the significant variation in the GDV of viability tested schemes and their ability to deliver affordable housing (*Graph 1*) and confirms that a one size fits all approach to setting a levy cannot serve to maximise the delivery of either private or affordable housing. Furthermore, schemes with a higher GDV cannot be assumed to be able to deliver more affordable housing with significant variation shown by GDV band. (*Graph 2*)
- 4.3 Therefore, setting a fixed levy would create both an effective lower and an upper limit on delivery and as a result significantly limit housing and affordable supply due to: -
- a) **A significant number of viability tested schemes are genuinely unable to afford to deliver any affordable housing.** Specifically, 51% of the schemes in this study are unable to deliver any affordable housing, of which 74% have a GDV in excess of £5 million. If a fixed levy was introduced, the private housing that these schemes currently deliver would not be viable therefore would not be built. (*Graphs 4 and 6*)
- b) **Other schemes currently provide affordable housing at levels significantly exceeding the potential levy delivery target,** and the additional affordable homes provided by these schemes under the current system would then not be delivered. Consequently, a levy set at say 10% affordable would mean that schemes currently delivering above this level (46% of all schemes analysed) could reduce their delivery to this rate, resulting in a significant net loss of affordable housing.

For example, if a scheme were able to deliver 18% affordable housing, assuming the levy was set at 10%, 8% of the scheme's affordable housing which is currently being delivered would be lost. If the levy were set at a higher level of 20% the same scheme could not deliver at this threshold and therefore neither the affordable housing nor the private sale housing would be delivered as the scheme would not be viable and would not therefore be delivered.

- 4.4 The only basis on which it could be considered that a levy would deliver more housing and affordable housing than the current system, is to believe that a significant number of applications deliver little or no affordable housing through a failure to test their viability and that they represent a hidden reservoir of potential delivery. Significantly, there is no evidence to suggest that Local Planning Authorities are failing to test schemes or that the current system under delivers in this way. This does not mean to say that developers have not sought to avoid or limit their contributions through the current process, but since the 2018 and 2019 revisions to the NPPG, the scope for such evasion has reduced considerably. If this is the concern underpinning the levy's proposed introduction, then it suggests a tightening of the current rules would be of greater benefit than a wholesale change of approach which would be detrimental to overall delivery of both private and affordable housing.
- 4.5 Consequently, there is a strong case for either strengthening the current system or adapting the proposed levy to avoid reducing housing and affordable housing delivery.

#### *Potential alternative approach*

There could be a benefit to the levy operating as a target, rather than a fixed % of delivery, in the same way that affordable housing targets operate under the New London Plan. Developers could, for example, be offered a simplified planning route when meeting or exceeding the proposed levy contribution in the same way that schemes in London delivering 35% affordable housing are fast tracked and not assessed for viability.

Setting the levy as a target rather than a specific hurdle rate for delivery, critically allows less viable schemes to be tested but then still come forward for delivery, enhancing both affordable and overall housing delivery. In this way developers could elect to choose a rapid passage through the planning system or not.

- 4.6 The results of the analysis demonstrate that lower viability schemes are unlikely to come forward if the levy is in any way ambitious. As a result, the land allocation process would inevitably need to involve detailed viability assessments to test whether potential sites are capable of coming forward at the stated levy rate, in order to ensure that land supply targets are realistic and deliverable. Consequently, the land allocation process will prove a much lengthier and more involved exercise than is currently the case and will severely hamper the release of some sites for development. The timescale for the introduction of the new planning system does not appear to recognise the importance of site viability assessment prior to allocation as this will be critical to boosting the supply of deliverable land.
- 4.7 The pressure to ensure a deliverable development land supply simply means that viability assessments will move from the application stage to the initial allocation stage. However at this point the Local Planning Authority would have far less information on which to base its decisions compared to the current later application stage, which will inevitably cast doubt over the achievability and delivery of the land supply.

#### **The Evidence Base**

- 5.1 Our analysis is based on a representative sample of 68, randomly selected, fully viability tested projects undertaken by BPS Chartered Surveyors, all of which have secured planning permission since mid-2018, (post changes to the NPPF and NPPG) with a total GDV of £2.54

Billion. The sample includes schemes across 9 London Boroughs (both inner and outer) and 7 Councils elsewhere in the South East.

- 5.2 The sample schemes provide for a total delivery of 7,720 residential units of which 1,730 (22%) are affordable housing.
- 5.3 We consider the sample a sufficiently broad base from which to provide reliable conclusions as to the impact of this proposal if rolled out nationally, with at least 6 schemes in each of the GDV bands tested.
- 5.4 The application numbers and addresses of the schemes in the sample can be provided on request although several of the financial assessments are subject to confidentiality and are therefore anonymised in this response.

## **Approach**

- 6.1 The sample consents have all been assessed in accordance with the current NPPG. Therefore, they are all fully compliant with NPPG's requirements in respect of benchmark land value following an existing use value (EUV plus) approach, or in a few cases, an alternative use value (AUV) approach.
- 6.2 This is extremely important because if the levy were to be set at a level which could not viably be supported by the development, a developer would only have two options to ensure the scheme could be delivered, these being:
  - a) To pay less for the site
  - b) To take a lower profit

There being no scope to reduce the scale of the levy though virtue of viability.

- 6.3 By taking an EUV plus approach to site value there is no scope within this sample to allow for a reduction in site value as any reduction would result in the land not being released for development by the current owner but retained in its existing use.
- 6.4 This leaves the developer the option of taking less profit. In practice developers, their funders and shareholders would not accept this option but would instead choose either to invest in other activities or more viable sites.
- 6.5 In drawing these two conclusions we acknowledge the developer cannot easily change construction costs or sales values, these being factors driven by market circumstances and site location.

### *Testing the threshold for applying the levy*

- 6.6 Each consented scheme within the sample has an identified Gross Development Value (GDV) and an associated level of affordable housing delivery. A range of GDV thresholds have been tested, each with a sample of at least 6 schemes, to see what impact this would have on affordable housing delivery. The assumption being that if a scheme is below the given threshold it will not make an affordable housing contribution. If it is above it will deliver the levy.

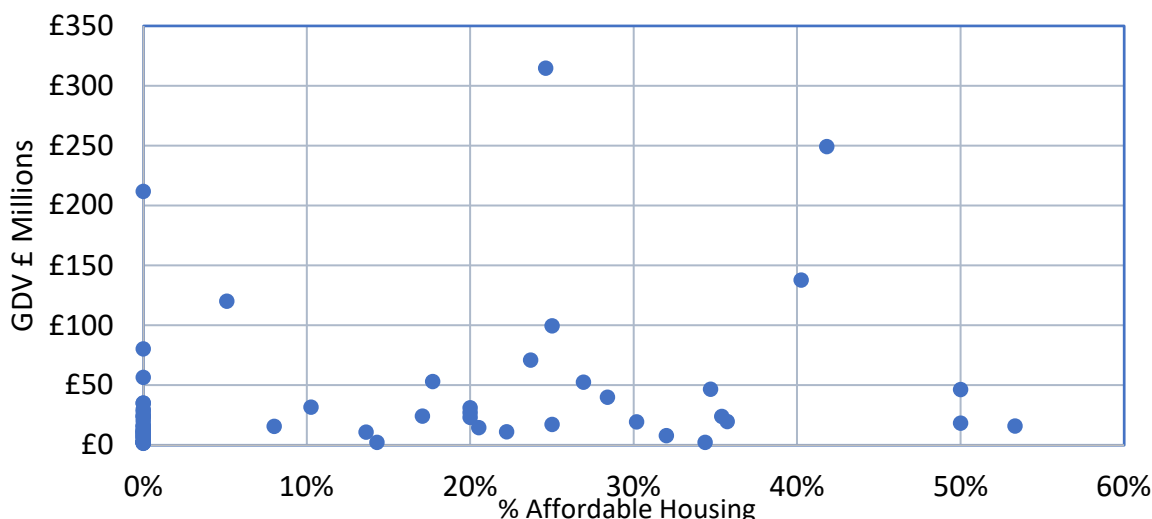
## Testing the level of the levy

- 6.7 The impact of the levy has been tested by using different levels of affordable housing delivery as a proxy to model the impact of the levy, noting that other development contributions are relatively small in development cost terms in comparison to affordable housing. The level of the levy has been assumed to represent both the upper and lower limits of delivery. Under the current system the upper limit is defined by a mixture of policy requirement and scheme viability. Under a levy system there would be no requirement to deliver beyond the level required by the levy, as such developers could retain surplus viability rather than voluntarily contribute higher level of affordable housing. The level has then been compared to the sample to determine its impact.

## Analysis

- 7.1 Whilst there are some non-standard schemes in the sample, which for example deliver other uses such as commercial or community uses, all the schemes are residential led. This reflects the reality of the planning and development landscape. The sample includes four schemes which deliver 100% affordable housing which are either Registered Provider or Local Authority led estate regeneration schemes and have been excluded at points in the analysis below as it is assumed they would come forward without reference to the levy but would be reliant on grant for delivery.
- 7.2 The review analyses schemes by their total GDV, total residential units and % affordable delivered. The scatter graph (*Graph 1*) below shows the significant variation in the GDV of the schemes reviewed and their ability to deliver affordable housing (excluding 4 x 100% affordable schemes which are estate renewal schemes).
- 7.3 The graph also highlights why a one size fits all approach to setting a levy cannot serve to maximise the delivery of either private or affordable housing.

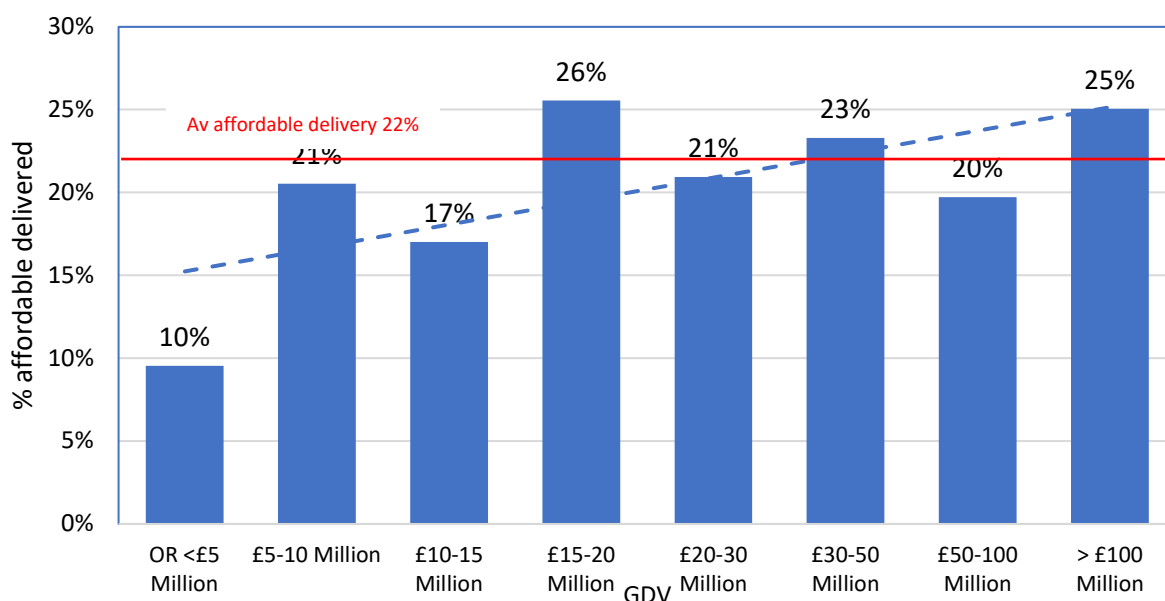
Graph 1: % Affordable (Excluding 100% affordable) V GDV



- 7.4 Graph 2 below summarises the data by % affordable delivered. Whilst the majority of schemes in the sample under £5 million GDV (9 of 11 schemes) delivered no affordable housing, 2 delivered 14% and 34% respectively, meaning on average this group delivered 10% affordable.

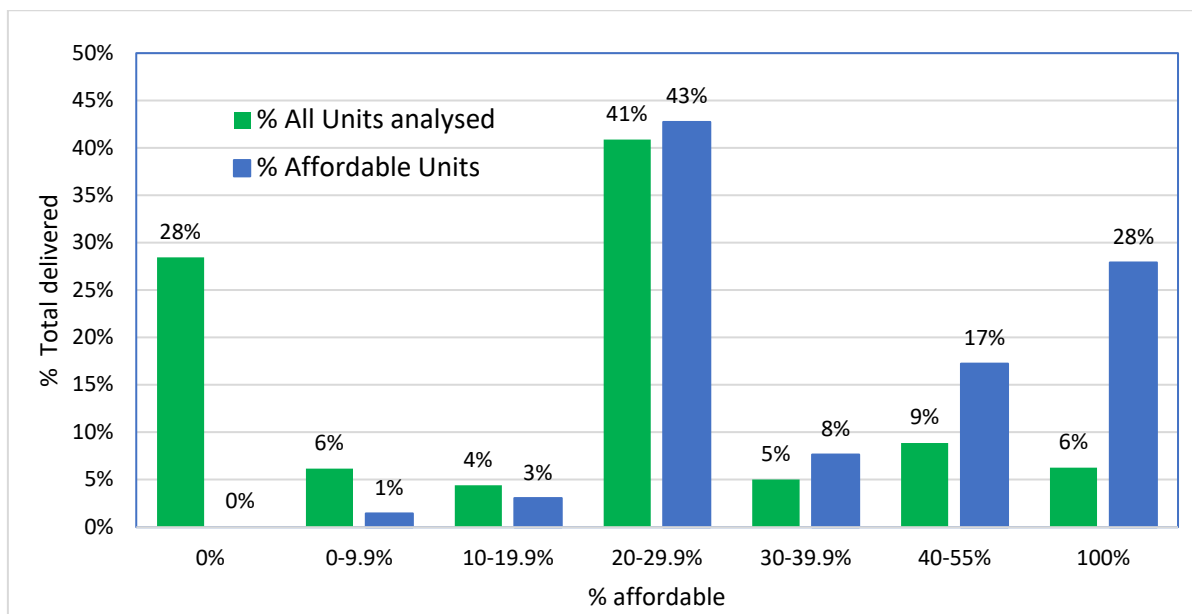
- 7.5 The graph also suggests that whilst in this data set there is an upward trend in the amount of affordable delivered by scheme value, the highest affordable delivery in this sample (26%) was in schemes with a value of £15-20 million and one of the lowest (20%) in schemes with a much higher average GDV of £50-100 million.
- 7.6 The data highlights that if for example the threshold was set above £5 million, the 12 affordable units (10%) which were delivered from schemes below this level, can be assumed to not be delivered and all 138 units in the schemes would instead be for private sale. Further, if the threshold were set at £10 million GDV before affordable housing needed to be delivered a further 21% (32 of 156 total units) would not be obliged to be delivered as affordable.

**Graph 2: Average % Affordable delivered by GDV**



- 7.7 Graph 3 below highlights that 28% of residential units in schemes in the sample delivered no affordable housing. Of these only 4% were in developments under £5 million GDV and a further 5% in developments between £5 and 10 million GDV. 91% of those delivering no affordable were therefore in schemes with a GDV of more than £10 million. (See also Graph 4)
- 7.8 It can be seen from the graph that 41% of all residential units were delivered by schemes that provide between 20-30% affordable housing. This group represents 43% of overall affordable housing delivery. If the levy is set at say 20% affordable delivery, any affordable housing in excess of 20% which this band is currently achieving, will not be delivered. This is analysed in greater detail in graph 6.
- 7.9 Further, 28% of all affordable units were in the 4 schemes in the sample delivering 100% affordable although this represents only 6% of all residential units delivered.

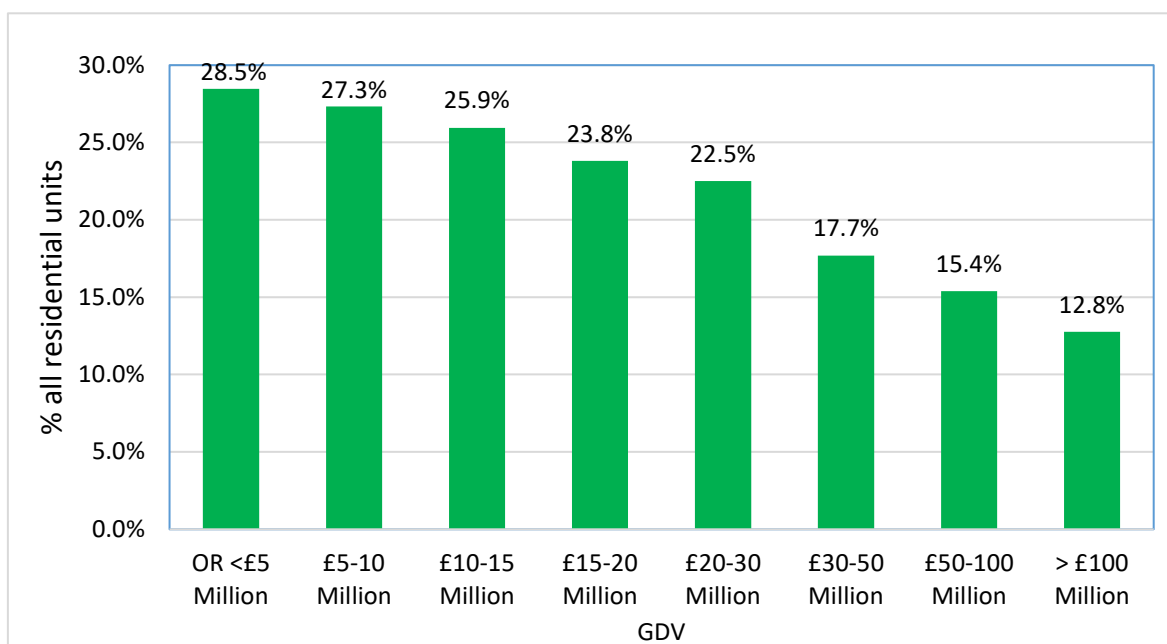
**Graph 3: % of Total and Affordable housing units delivered by % Affordable**



7.10 Graph 4 below, analyses the 35 schemes in the sample delivering no affordable housing by reference to their GDV. Whilst the level of the levy is still to be confirmed, the graph highlights that if for example all schemes with a GDV in excess of £5 million had to deliver some level of affordable housing, the schemes with a higher GDV in this group could not viably meet this target and it must be assumed that the schemes would therefore not come forward and their private housing delivery would be lost.

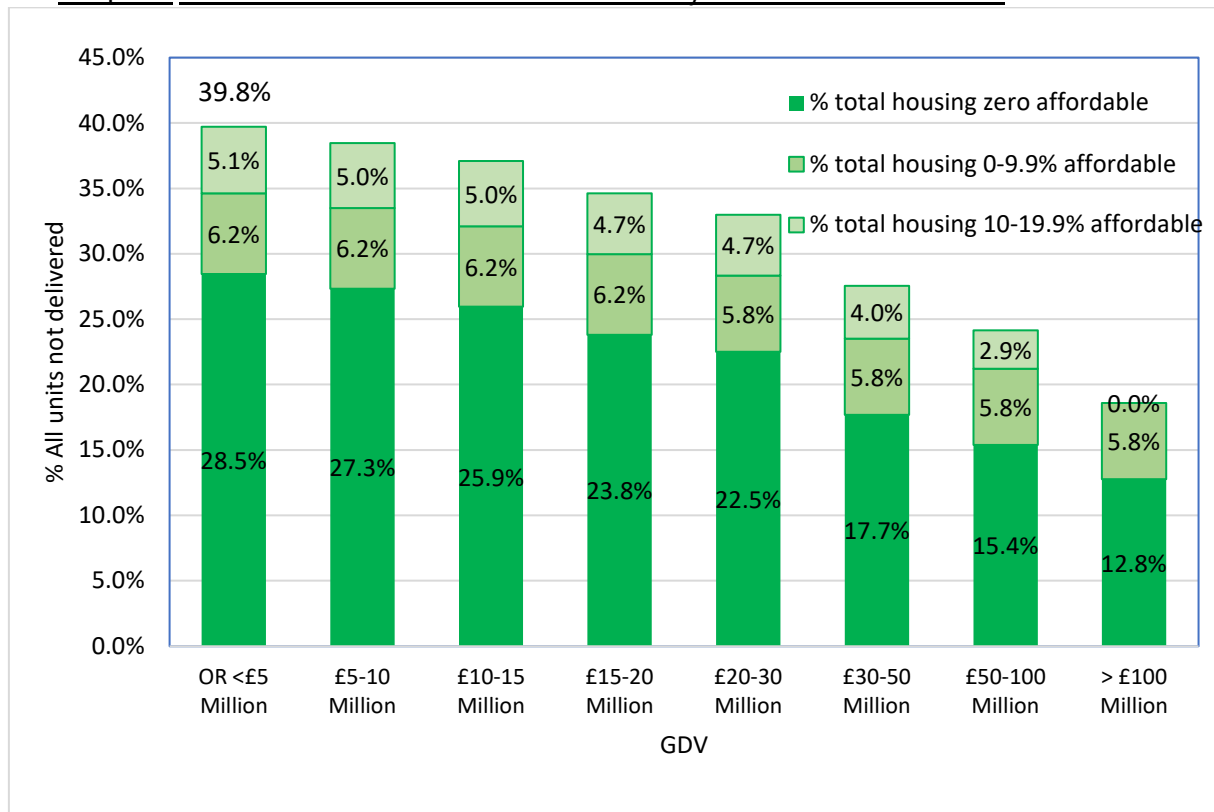
7.11 For example, if the levy was only applied to schemes over £20 million GDV, at least 22.5% of all housing in the overall sample would not be delivered as over a quarter of residential units (28%) are in schemes that deliver no affordable.

**Graph 4: % of all residential units in sample not delivered at various thresholds of GDV as they currently deliver no affordable (1212 units in 7 schemes)**



7.12 Graph 5 adds two further assumed levels of affordable delivery to the results shown in Graph 4 above and highlights that if, for example, all schemes over £20 million GDV had to deliver at least 10% affordable housing, in addition to the 22.5% loss of total housing units noted above, a further 5.8% of all residential units (28.3% in total) would not be delivered. This loss increases with the scale of the levy and the lowering of the GDV.

Graph 5: % of all residential units not delivered by GDV and % affordable



7.13 Graph 6 below, (which excludes the 4 x 100% affordable schemes) should be viewed in conjunction with Graph 5 above (total residential units lost). Graph 6 identifies that in addition to the loss of residential units noted above, significant numbers of affordable units would not be delivered if a fixed levy is set because the level required by the levy is below the actual number achieved through the viability tested route for some schemes.

7.14 The graph highlights that at the lower potential levels of levy (10% or 20%) the main loss of affordable housing delivery is due to schemes being required to deliver less than they are currently offering (*blue*), whilst at a 35% levy the majority is not delivered because the majority of schemes are not viable at this level and therefore neither affordable or private housing will be delivered. (*red*)

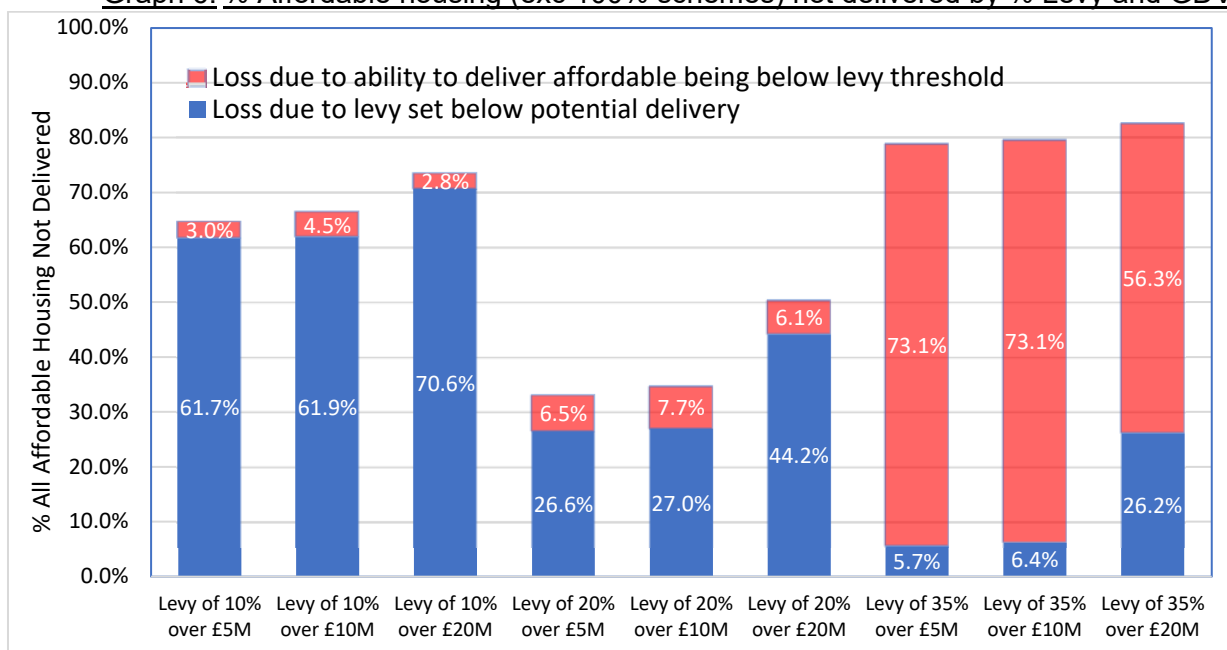
7.15 For example, if a levy was set at a threshold over £10 million GDV and eligible schemes were required to provide 10% affordable provision, 66.4% of overall affordable housing currently delivered from schemes (excluding the 100% affordable schemes) would then not be delivered.

7.16 This conclusion results from two main factors:-



- a) A significant number of schemes currently provide little or no affordable housing. Therefore, with a fixed levy they would not be viable or therefore deliverable and all the private housing they currently deliver would be lost.
- b) In addition, some schemes currently provide affordable housing at levels exceeding the likely levy delivery target, (*blue in the graph below*) given the levy would have to balance overall scheme delivery with generating meaningful affordable and infrastructure contributions. For example, if a scheme were able to deliver 18% affordable housing, assuming the levy was set at 10%, some 8% of the scheme's affordable housing which is currently being delivered would be lost. If the levy were set at a higher level of 20% the example scheme could not deliver at this threshold and therefore neither the affordable housing nor the private sale housing would be delivered as the scheme would not be viable therefore would not come forward.

**Graph 6. % Affordable housing (exc 100% schemes) not delivered by % Levy and GDV**



7.17 More affordable housing (as well as private) is lost assuming a 35% levy, primarily because of the increased number of schemes not able to viably come forward as they are only able to deliver less than 35% affordable, (*red*) and to a lesser extent the loss of provision from schemes which would be able to deliver in excess of 35%. (*blue*)

7.18 Whilst the results of a 20% levy suggest the lowest, although not insubstantial, impact on affordable housing delivery, it should be viewed in conjunction with Graph 5 highlighting that at say a £5 million GDV threshold, 39.8% of all housing would no longer be delivered.