



Department for
Communities and
Local Government

Section 106 Planning Obligations – speeding up negotiations

Student accommodation and affordable housing
contributions

Consultation



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The consultation process and how to respond

Scope of the consultation

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| Topic of this consultation: | The Autumn Statement 2014 included a commitment to consult on measures to speed up the negotiation and agreement of section 106 agreements as part of the Government's commitment to delivering a faster and more effective planning system |
| Scope of this consultation: | <p>The consultation seeks views on what mechanisms may be used to speed up the process of agreeing planning obligations.</p> <p>The consultation also seeks views on whether the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation.</p> |
| Geographical scope: | These proposals relate to England only. |

Basic information

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| To: | This is a public consultation and it is open to anyone with an interest in these proposals to respond. |
| Body responsible for the consultation: | The Department for Communities and Local Government is responsible for the policy and the consultation exercise. |
| Duration: | This consultation will begin on 20 February and end on 19 March. |
| Enquiries: | planning.consultation@communities.gsi.gov.uk |
| How to respond: | <p>Please respond to this consultation by email to: planning.consultation@communities.gsi.gov.uk</p> <p>Alternatively, please send postal responses to: Department for Communities and Local Government 3rd Floor, Fry Building 2 Marsham Street London SW1P 4DF</p> |
| After the consultation: | A summary of responses to the consultation will be published. |

Background

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| Getting to this stage: | The Autumn Statement 2014 can be found at: https://www.gov.uk/government/topical-events/autumn-statement-2014 |
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Introduction

About this consultation

1. The Government has already taken steps to transform the planning system into a simpler, more transparent and streamlined process, through which new homes can be delivered and business investment secured. The National Planning Policy Framework streamlined over 1,000 pages of planning policy into a clear, easily accessible statement of national policy. Through the Localism Act 2011 and the Growth and Infrastructure Act 2013, important reforms to simplify and speed-up planning procedures have been taken forward.
2. Our reforms have given significant additional power to local authorities and communities in deciding the scale, location and form of development in their areas. But with this power comes a responsibility to exercise planning functions properly. We are making good progress. Since the introduction of these reforms, decision making performance has improved. Local residents have seen the positive impact of Section 106 contributions while small scale developers and self-builders have benefited from new policy thresholds to remove disproportionate charges. There remains some way to go, however, before every local authority uses its powers effectively to encourage appropriate development.
3. Views are sought on proposals relating to the following two areas:
 - Speeding up the negotiation and completion of Section 106 planning obligations.
 - Whether the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation.
4. We would welcome comments from any individuals or organisations with an interest in these proposals, which apply to England only. Responses will inform consideration of detailed proposals to speed up section 106 negotiations, which may require primary legislation in the next Parliament. We will consult further on any changes in relation to student accommodation should the responses to this consultation suggest that there is an issue. The closing date for responses is 19 March.

Speeding up Section 106 negotiations

Section 106 agreements and planning performance

5. The Community Infrastructure Levy is the Government's preferred mechanism for collecting developer contributions to infrastructure identified as necessary to support the development of an area. Nevertheless, planning obligations entered into under Section 106 of the Town and Country Planning Act 1990 ("Section 106 agreements") continue to play an important role in securing mitigation to make proposed developments acceptable.
6. Subject to meeting the tests in national policy¹ and legislation², Section 106 agreements can provide a flexible tool for delivering a broad range of site-specific infrastructure and community facilities necessary to get schemes off the ground. Given this important role in unlocking development, it is vital that the process of finalising Section 106 agreements is as swift and efficient as possible.
7. Section 106 agreements are negotiated alongside the planning decision-taking process. Negotiations should be concluded within the statutory timeframes of 8 weeks, 13 weeks for major development or a longer period agreed in writing between the applicant and local planning authority ("agreed extension of time"). [Guidance is clear that apart from in exceptional circumstances](#), planning obligations should not be the subject of a planning condition. Therefore, any delays in finalising Section 106 agreements can hold up decision notices being issued, which in turn delays the delivery of much needed housing and commercial development.
8. Clear feedback from the sector suggests that protracted Section 106 negotiations can cause significant delays to the planning application process. These may arise for a variety of reasons, including:
 - The contentious nature of agreeing:
 - what is fair, reasonable and necessary mitigation in the circumstances of the case, exacerbated by parallel viability testing to "prove" what is affordable.
 - detailed and robust drafting of the agreement itself.
 - Limited legal capacity, particularly in smaller authorities.
 - A lack of incentives to resolve negotiations quickly.
9. Delays may occur after a planning committee has resolved to grant planning permission subject to the completion of a Section 106 agreement. To incentivise speedy negotiations, we are aware that some councils attach a time limit to such committee resolutions, after which the application will be refused if the Section 106 agreement is not signed. As long as this encourages swift negotiations and does not

¹ See [paragraph 204 of the National Planning Policy Framework](#)

² See [Regulation 122 of the Community Infrastructure Levy Regulations 2010](#)

lengthen the application process beyond statutory or agreed timeframes, we support the use of such local time limits.

10. However, where negotiations get bogged down (even after a committee resolution to grant), councils may seek repeated extensions of time to avoid Section 106 delays from adversely affecting planning performance statistics. While applicants do not have to agree to an extension of time, the prospect of being refused planning permission and going to appeal makes it unlikely that they would not do so.
11. Agreeing to an extension of time may also be preferable to appealing against non-determination because this could potentially add even more time – and cost - to the application process than waiting out local delays. Appealing against non-determination also involves the Planning Inspectorate considering the whole scheme, not just the specific terms of the Section 106 agreement. We therefore consider that the current appeal routes provide too blunt a mechanism where Section 106 negotiations are the principal source of delay to a planning decision being issued.

Question 1: Do you agree that Section 106 negotiations represent a significant source of delay within the planning application process?

Question 2: Do you agree that failure to agree or complete Section 106 agreements are common reasons for seeking extra time to determine a planning application?

Discussion

12. The Government is determined to tackle delays associated with Section 106 negotiations. Implementation of the Community Infrastructure Levy should help because where a charging schedule is in place, the scope of Section 106 agreements is scaled back, enabling these to be simpler and quicker to negotiate. Section 106 plays a useful role in securing site-specific mitigation, particularly on large strategic sites, which justifies taking decisive action to speed up this part of the planning system.
13. In the short-term we will amend guidance to address some of the issues identified in paragraph 8. Revised guidance will:
 - confirm that Section 106 negotiations should be concluded within statutory timescales;
 - set expectations of earlier engagement at the pre-application stage by all parties to front-load discussions about the scope of the Section 106 “ask”;
 - encourage greater use of standardised clauses to minimise the need to draft agreements from scratch;
 - set expectations for greater transparency about what has been raised through Section 106 and what it has been spent on.
14. Although guidance has a role to play, we consider that the current statutory framework provides neither sufficient incentives to conclude Section 106 negotiations promptly, nor effective sanctions where delays and/or disputes occur. Delivering real

change requires primary legislation. We therefore propose to consider primary powers to tackle these shortcomings in the next Parliament, with the aim of significantly streamlining the process.

Question 3: Do you agree that the current legal framework does not provide effective mechanisms for resolving Section 106 delays and disputes in a timely manner?

Question 4: Do you agree that legislative change is required to bring about a significant reduction in the delays associated with negotiating Section 106 agreements?

15. As noted above, the current appeal routes provide too blunt an instrument to deal effectively with delays or disputes related solely to the Section 106 agreement. We think creation of a much more focussed mechanism may be required to bring resolution where:
 - Parties to the Section 106 agreement cannot agree on the scale and scope of mitigation necessary to make the development acceptable in planning terms; or
 - Parties agree on the Section 106 “ask” but the process of completing the necessary agreement drags on beyond statutory or agreed timeframes.
16. There are a number of possible options, and we invite the views of developers, local authorities and others on how future legislation might tackle the issues discussed above. We have set out below what we consider to be the broad parameters of any future resolution mechanism. Subject to the views of respondents, a further consultation on detailed proposals will be held in the next Parliament ahead of any amendments to primary legislation.

When should dispute resolution be available?

17. To tie Section 106 negotiations more closely to planning timeframes and reduce the incidence of delays associated with the negotiation process, we think that a specific dispute resolution mechanism for Section 106 agreements should be available where statutory or agreed timeframes (such as in a Planning Performance Agreement) have elapsed.

Question 5: Do you agree that any future dispute resolution mechanism should be available where Section 106 negotiations breach statutory or agreed timescales?

What form should dispute resolution take?

18. We are interested in the views of respondents about what form the resolution process itself might take once it is invoked, and what the outcome of the process would be.
19. The fastest form of resolution would be to allow for an automatic or “deemed” solution. For example, if the applicant submitted a draft Section 106 or unilateral undertaking with a planning application, this would become the deemed planning

obligation after statutory or agreed timeframes were breached. We consider such an option unlikely to be workable in practice because:

- Local planning authorities would refuse applications where they did not consider the draft agreement/unilateral undertaking made the proposal acceptable in planning terms.
- There would be limited incentive for an applicant to negotiate with the local planning authority – the negotiation process would be significantly skewed in favour of the applicant.
- Unilateral undertakings cannot oblige an authority to deliver any of the items funded through the undertaking.

20. Rather than providing an automatic source of resolution, the submission of a draft Section 106 agreement or unilateral undertaking during the course of negotiations could instead be a requirement of being able to refer the case to “external” dispute resolution (see below) in the event that set timescales are not met. Unlike the deemed approach, this may also help to encourage early engagement between parties.

Question 6: Do you agree that a solution involving an automatic or deemed agreement after set timescales would be unworkable in practice?

Question 7: Could submission of a draft Section 106 agreement or unilateral agreement during the negotiation process be a requirement of being able to seek dispute resolution where statutory or agreed timescales are breached?

21. Instead of a deemed approach, an option would be to provide access to external mediation where parties cannot agree on the scope of the Section 106 agreement within set timeframes. However, mediation has been trialled in the context of renegotiating Section 106 agreements on stalled sites and only had limited uptake. Part of the problem is that a mediated draft Section 106 agreement would not be binding on the parties involved, and so may not bring the process to conclusion.
22. The resolution process may therefore need to involve an external body or suitably qualified individual, who would help determine what was necessary to make a proposed development acceptable, and their judgement would need to be binding on the parties to the Section 106 agreement. We are interested in the views of respondents on which bodies or appointed persons would be suitable for this role.
23. Given the overall ambition of reducing planning delays, the resolution process would need to be completed quickly. To cover the costs of this fast-track service, we think it should be self-funding through an appropriate level of fees. We would welcome views on how long the dispute resolution process should take and whether it should be subject to a fee.

Question 8: Do you agree any dispute resolution mechanism would need to be binding on the parties involved?

Question 9: Which bodies or appointed persons would be suitable to provide the dispute resolution service?

Question 10: How long should the process take?

Question 11: Do you agree that the body offering Section 106 dispute resolution should be able to charge a fee to cover the cost of providing the service?

24. A further consideration is what types of application should have access to a Section 106 dispute resolution mechanism. Restricting it to certain types of application, such as those for major development, may reduce the overall burden on the body appointed to provide the service. We are interested in the views of respondents on this point, including whether Section 106 delays are an issue for small-scale as well as major developments.

Question 12: Should all types of planning application have recourse to Section 106 dispute resolution?

25. Section 106 agreements mitigate the impact of unacceptable development to make it acceptable in planning terms. The terms of the agreement are therefore closely linked to the planning application itself. We think that if the dispute resolution mechanism created a binding Section 106 agreement, then the question arises as to whether it would also need to determine the related planning application.
26. However we are keen to ensure that any dispute resolution mechanism was focused on instances where there is an issue with the Section 106 agreement specifically.

Question 13: Do you consider that any dispute mechanism would need to also involve the determination of the related planning application?

Question 14: Are there any ways in which this could be done where only the Section 106 agreement is the subject of the resolution mechanism?

Affordable housing contributions and Student Accommodation

27. In many of our university towns and cities purpose built accommodation provides affordable housing for students. Local authorities are rewarded through the New Homes Bonus for the provision of such accommodation, and planning guidance already allows them to count the provision of all student accommodation towards meeting their local housing requirement.
28. Student housing provided by individual private landlords is a low-cost form of housing. Therefore encouraging more dedicated student accommodation will help free up low-cost properties in the private rented sector and help address problems associated with the cheaper end of the private housing market and with homes in multiple occupation. It will also help to address any harm to local amenity that can be experienced in some university towns.
29. However, there is concern that some local authorities are seeking Section 106 affordable housing contributions for proposals for dedicated student accommodation, and that this is deterring such types of development from coming forward. The Government is therefore keen to understand the extent of any barriers to dedicated student accommodation.
30. The Government will also provide further guidance to local planning authorities on the policies in their Local Plans concerning student accommodation.

Question 15: To what extent do you consider that the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation?

Consultation questions – response form

We are seeking your views to the following questions on the proposals to speed up section 106 negotiations and on student accommodation.

How to respond:

The closing date for responses is 19 March 2015.

Responses should be sent to: planning.consultation@communities.gsi.gov.uk

Written responses may be sent to:
Section 106 Consultation
Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF

About you

i) Your details:

| | |
|--|--|
| Name: | |
| Position: | |
| Name of organisation (if applicable): | |
| Address: | |
| Email: | |
| Telephone number: | |

ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

- Organisational response
- Personal views

iii) Please tick the box which best describes you or your organisation:

- District Council
- Metropolitan district council
- London borough council
- Unitary authority
- County council/county borough council
- Parish/community council
- Non-Departmental Public Body
- Planning Consultant
- Professional trade association
- Private developer/house builder
- Developer association
- Residents association
- Voluntary sector/charity
- Other

| | |
|-------------------|--|
| (please comment): | |
|-------------------|--|

**iv) What is your main area of expertise or interest in this work?
(please tick one box)**

- Chief Executive
- Planner
- Developer
- Surveyor
- Member of professional or trade association
- Councillor
- Planning policy/implementation
- Environmental protection
- Other

| | |
|-------------------|--|
| (please comment): | |
|-------------------|--|

Would you be happy for us to contact you again in relation to this questionnaire?

Yes No

v) Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

Question 1: Do you agree that Section 106 negotiations represent a significant source of delay within the planning application process?

Yes No

Comments

Question 2: Do you agree that failure to agree or complete Section 106 agreements are common reasons for seeking extra time to determine a planning application?

Yes No

Comments

Question 3: Do you agree that the current legal framework does not provide effective mechanisms for resolving Section 106 delays and disputes in a timely manner?

Yes No

Comments

Question 4: Do you agree that legislative change is required to bring about a significant reduction in the delays associated with negotiating Section 106 agreements?

Yes No

Comments

Question 5: Do you agree that any future dispute resolution mechanism should be available where Section 106 negotiations breach statutory or agreed timescales?

Yes No

Comments

Question 6: Do you agree that a solution involving an automatic or deemed agreement after set timescales would be unworkable in practice?

Yes No

Comments

Question 7: Could submission of a draft Section 106 agreement or unilateral agreement during the negotiation process be a requirement of being able to seek dispute resolution where statutory or agreed timescales are breached?

Yes No

Comments

Question 8: Do you agree any dispute resolution mechanism would need to be binding on the parties involved?

Yes No

Comments

Question 9: Which bodies or appointed persons would be suitable to provide the dispute resolution service?

Yes No

Comments

Question 10: How long should the process take?

Yes No

Comments

Question 11: Do you agree that the body offering Section 106 dispute resolution should be able to charge a fee to cover the cost of providing the service?

Yes No

Comments

Question 12: Should all types of planning application have recourse to Section 106 dispute resolution?

Yes No

Comments

Question 13: Do you consider that any dispute mechanism would need to also involve the determination of the related planning application?

Yes No

Comments

Question 14: Are there any ways in which this could be done where only the Section 106 agreement is the subject of the resolution mechanism?

Yes No

Comments

Question 15: To what extent do you consider that the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation?

Yes No

Comments

Thank you for your comments.