



Department for  
Communities and  
Local Government

# Planning Contributions (Section 106 planning obligations)

Government response to consultation



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# Section 1: Introduction and Overview

1. In March 2014 the Government published a consultation on “Planning Performance and Planning Contributions”. This document summarises the comments received and the Government’s response to the planning contributions part of the consultation. The Government published a response on the planning performance proposals in June, which can be found at <https://www.gov.uk/government/consultations/planning-performance-and-planning-contributions>
2. The Government has reformed the planning system to enable a more transparent and locally driven process; through which new homes and economic growth can be delivered. Important reforms, delivered through the Localism Act 2011 and the Growth and Infrastructure Act 2013, have simplified and speeded-up planning procedures.
3. This consultation took forward the Government’s 2013 Autumn Statement commitment to consult on a proposed new 10-unit threshold for section 106 affordable housing contributions within national policy to reduce planning costs to developers. The Government considers that such charges can place a disproportionate burden on small scale developers, including those wishing to build their own homes, and prevent the delivery of much needed, small scale housing sites.
4. The consultation closed on 4 May 2014. Section 4 of this document provides details of the measures the Government proposes to implement through changes to national policy on the use of section 106 planning obligations. The final proposals have been informed by the responses we received.

## Section 2: Consultation Measures

5. The consultation proposed that before any request for affordable housing contributions can be considered, authorities will have to have regard to national policy that such charges create a disproportionate burden for development falling within a combined 10-unit and 1,000 square metres gross floor space threshold. A maximum total floor space was proposed in combination with a unit threshold to avoid creating an unintended incentive to alter scheme construction densities. In addition, it was proposed that authorities should not seek affordable housing contributions for residential extensions or annexes added to existing homes.
6. Rural Exception Sites would be outside the scope of the proposed threshold.
7. The consultation also asked for views on the extension of the proposed national threshold beyond affordable housing contributions to include tariff based charges.
8. Finally, views were invited on a further amendment to national policy so that local authorities should not apply section 106 affordable housing contributions to buildings brought back into any use, other than proportionately for any increase in floor space. This would be on the basis of providing an incentive for brownfield development in accordance with national policy.

## Section 3: Summary of Consultation Responses

9. In total 325 organisations and individuals responded to the consultation. Nearly half (48%) were on behalf of local authorities including parishes. 22% were from developers or those with a development interest, 7% from representative bodies, such as the Local Government Association and the Home Builders Federation, and 23% of replies were from individuals, both members of the public and persons with a role in the local government or development sectors.
10. Some responses did not provide clear “yes” or “no” answers – instead offering further questions or raising broader issues. A number of responses also provided local data relating to affordable housing contributions and development viability. This document summarises issues raised under questions to which they most appropriately relate.

### Responses to specific consultation questions

**Question 5: Is the Government’s objective of aiding the delivery of small scale housing sites and expanding the self- build housing market supported by:**

- **the introduction of a 10-unit and 1000 square metres gross floor space threshold for section 106 affordable housing contributions; and**
- **the exclusion of domestic extensions and annexes from making section 106 affordable housing contributions?**

11. Developers, development representative bodies, and some members of the public generally supported the proposed changes, arguing that excessive affordable housing contributions were often being applied. They considered that more sites would be built out as a result implementing the threshold:
- a. A significant number of developer responses cited examples of substantial upfront contributions being requested and the consequent stalling of sites as a result. Some referred to protracted negotiations, and others to a total lack of negotiation, over the scale of affordable housing contributions, consequently either delaying new development unnecessarily or making it unviable.
  - b. The amount of affordable housing or contributions being sought from sites, particularly smaller sites, was raised as a significant factor in making some

sites economically unviable. Some developers referred to this being compounded in respect of brownfield sites, which often had higher land prices.

- c. Some responses highlighted cash-flow restrictions, allied to the often upfront requirement to meet affordable housing contributions, as an equally significant factor for small developers.

12. Local Authority responses generally opposed both the principle of a national threshold for affordable housing contributions and the size of the proposed threshold.

- a. Some authorities, particularly rural areas and the National Parks, argued that a 10-unit threshold would disproportionately impact on these locations as it would apply to a higher proportion of proposed new development, and would hamper their ability to provide adequate levels of affordable housing for local people.
- b. Reference was also made to measures already taken by the Government to help ensure that affordable housing contributions were viable, including the new review and appeals process introduced by the Growth and Infrastructure Act 2013.
- c. Many local authority responses referred to the differences between land values and development costs both nationally and from site to site; arguing that these considerations should remain part of the locally led approach to plan-making and, where necessary, on a site-by-site basis.
- d. A number of responses cited concerns over the impact of a set threshold on local land markets, suggesting it would be landowners rather than developers who may benefit from the proposal.

13. There was general support for the exclusion of residential annexes and extensions from affordable housing contributions. Some local authorities agreed with the proposal on the basis that it would bring consistency with the exclusion of such development from the Community Infrastructure Levy.

**Question 6: Should the proposed exemption apply beyond affordable housing to other tariff style contributions based on standard formulae?**

14. This question concerned the tariffs that some authorities use to provide general funding pots for infrastructure, other than for affordable housing.

15. Responses were mixed, although a majority of local authority responses did not support the proposed measure while developers and representative bodies were generally in favour.
16. A significant number of respondents, both for and against the proposal, acknowledged that the proposal echoed to an extent the existing exemption for self builders from the Community Infrastructure Levy introduced in February 2014. Others highlighted that tariffs are already not collected where the Community Infrastructure Levy has been implemented and that the restriction on pooling planning obligations,<sup>1</sup> would effectively restrict such tariffs from April 2015.

**Question 7: We would like your views on the impact on the Government's policy objectives to incentivise brownfield development through proposed national policy change. This would reduce the financial burden on developers by requiring that affordable housing contributions should not be sought where buildings are brought back into any use – other than proportionately for any increase in floor space.**

17. Again a similar balance of responses split largely between local authorities opposed to the proposal and developers in favour but with more support from local authorities than for the propositions in questions 5 and 6. A broad range of responders supported the Government's objective of providing stronger incentives for brownfield development.
18. Some developers referred to the challenging and costly nature of brownfield development which, when allied to significant section 106 requirements, can make such development unviable. Some further argued that brownfield land often had existing infrastructure, which should be reflected, but often was not, in section 106 contribution expectations. Some local authorities did not agree that buildings brought back into use had a more limited impact on local infrastructure.
19. A number of respondents, both for and against the measure, expressed some concern that the policy as proposed would adversely impact on design quality by providing a perverse incentive to retain buildings, rather than demolish and re-build when it was more appropriate to do so.

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<sup>1</sup> The pooling restriction is contained within the Community Infrastructure Levy Regulations 2010, as amended by the 2014 Community Infrastructure Levy (Amendment) Regulations. When the levy is introduced (and nationally from April 2015), the regulations restrict the use of pooled contributions towards items that may be funded via the levy. At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.

## Section 4: Government response

20. The Government has carefully considered the wide range of views and evidence submitted in response to the consultation. The Government intends to strike an effective balance between providing the support and incentives which will drive up self-build, small scale and brownfield development without adversely impacting on local contributions to affordable homes and infrastructure.
21. We have taken account of responses highlighting the greater impact a 10-unit threshold might have on rural areas and in National Parks and Areas of Outstanding Natural Beauty by allowing a lower 5-unit threshold in designated rural areas. We have balanced this, and responded to consultation submissions highlighting the issue of cash-flow for small builders, by policy change to allow developments of 6-10 units in those areas to pay contributions in cash, deferred until after completion, rather than in kind. This will provide small builders the boost that they need through reduced borrowing costs and by allowing contributions to potentially be met from sale receipts. At the same time this proposal will help maintain the flow of affordable houses for local communities and funds for infrastructure. The 5-unit threshold will not, unlike the 10-unit threshold, be combined with a maximum floorspace limit as this would inhibit the development of very small sites.
22. We have listened to concerns about the potential impact an exemption for buildings brought back into use might have on scheme design by converting it into a credit which should apply whether the building is retained or demolished for re-development. This reflects the approach taken through the Community Infrastructure Levy.

### **Changes to National Planning Policy**

23. After careful consideration of these responses we are making the following changes to national policy with regard to section 106 planning obligations:
- Due to the disproportionate burden of developer contributions on small scale developers, for sites of 10-units or less, and which have a maximum combined gross floor space of 1000 square metres, affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions.
  - For designated rural areas under section 157 of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty, authorities may choose to implement a lower threshold of 5-units or less, beneath which affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions. Within these designated areas, if the 5-unit threshold is implemented then payment of affordable housing and tariff style

contributions on developments of between 6 to 10 units should also be sought as a cash payment only and be commuted until after completion of units within the development.

- These changes in national planning policy will not apply to Rural Exception Sites which, subject to the local area demonstrating sufficient need, remain available to support the delivery of affordable homes for local people. However, affordable housing and tariff style contributions should not be sought in relation to residential annexes and extensions.
- A financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This will not however apply to vacant buildings which have been abandoned.

24. Revised guidance is being published on the Planning Portal website to assist authorities in implementing these changes.