



Department for
Communities and
Local Government

Section 106 Planning obligations –
speeding up negotiations

Student accommodation and affordable
housing contributions

Government Response to consultation

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Section 1: Introduction and Overview

1. In February 2015 the Government published a consultation document on “Section 106 Planning Obligations – speeding up negotiations”. This consultation sought views on the impact of Section 106 planning obligations within the planning approval process; and on potential measures to improve and speed-up negotiation of these agreements. The consultation document also invited views on the impact of affordable housing contributions on development delivering new student accommodation. This document summarises the comments received and the Government’s response to the consultation.
2. 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.
3. This consultation took forward the Government’s 2014 Autumn Statement commitment to consult on measures to speed up Section 106 negotiations. Section 106 agreements have an important role in securing infrastructure and site specific mitigation to make development acceptable in planning terms. However, the Government is committed to tackling the delays associated with the negotiation of these agreements, which can delay development being delivered on the ground.
4. The Government also wished to understand whether developer contributions to affordable housing create a barrier to delivering dedicated student accommodation, which, when provided by individual private landlords, is a means of delivering much needed low-cost housing. Encouraging more dedicated student accommodation helps free up low-cost properties in the private rented sector and address problems associated with homes in multiple occupation.
5. The consultation closed on 19 March 2015. Section 3 of this document sets out a broad description of the responses received following this consultation.

Section 2: About the consultation

6. The consultation sought views as to whether Section 106 negotiations are a significant source of delay within the planning application process and a common reason for seeking extra time to determine planning applications. Consultees were also asked if the current legislative framework supporting Section 106 agreements provided effective mechanisms for resolving delays and disputes in negotiating such agreements; or whether legislative change was required to bring about a significant reduction in the delays associated with their negotiation.
7. The consultation set out an option for speeding up Section 106 negotiations through the development of a dispute resolution mechanism to be available where Section 106 negotiations breach set timescales. Views were then sought on a number of issues around this:
 - Whether a solution involving an automatic or deemed agreement would be unworkable in practice;
 - Should submission of a draft Section 106 agreement or unilateral agreement during the negotiation process be a requirement of being able to seek dispute resolution;
 - Should the dispute resolution mechanism be binding on the all parties involved;
 - Which bodies or appointed persons would be suitable to provide a dispute resolution service;
 - How long should a dispute resolution process take and should fees be charged to cover the cost of providing the service;
 - Should all types of planning applications have recourse to the dispute resolution process;
 - Whether any dispute resolution mechanism would also need to involve the determination of the related planning application;
 - Whether there are any ways in which a resolution mechanism could only involve determination of the Section 106 agreement.
8. Views were also sought on the extent that the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation.

Section 3: Summary of Consultation Responses

9. The consultation ran from 20 February to 19 March 2015. There were 172 responses to the consultation. The table below provides a breakdown of the respondents by category.

Local Authority	Developer/ Business	Professional /Trade Association	Planning Consultant	Parish/ Community Council	Voluntary Sector/ Charity	Other
73	27	15	10	8	5	34

10. Not all respondents commented on each of the questions in the document and some expressed equivocal views. We have therefore given a broad sense of the views of those who commented in relation to the proposals in the consultation document.

Responses to specific consultation questions

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?

11. More than two thirds of responses agreed that Section 106 negotiations were a significant source of delay within the planning application process. Others did not agree, or suggested this was the case only in a minority of planning applications. Respondents who agreed with the question cited a number of reasons for the delays, which could include the legal process, lack of early engagement with drafting agreements, difficulty agreeing contributions prior to the determination of the resolution to grant planning permission, lack of agreement over the obligations and lack of standardised planning obligations templates. Many respondents cited strategic or complicated sites as the main types of planning applications where Section 106 caused delays to the process.
12. Many local authorities mentioned the submission and review of viability evidence and the number of parties, for example different land owners, who have to sign the agreement as the most common reasons for the delay in completion of Section 106 agreements. Developers and planning consultants among others

frequently cited local planning authority staff resources and the amount of planning obligations which were being sought as a common reason for delay. The complexity of Section 106 negotiations was identified as an important reason for delay; particularly in relation to larger sites.

13. The majority of respondents agreed that failure to agree or complete Section 106 agreements are common reasons for seeking extra time to determine a planning application; and that time extensions were commonly agreed through a Planning Performance Agreement. Of those that did not agree with the proposition in this question, many said that there were often other factors which could delay the planning application process. These included the number of representations received, the need for additional studies, and other material planning considerations.

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?

14. Overall both propositions were supported by the majority of respondents, although a smaller majority favoured legislative change. Those in favour of legislating tended to support the introduction of an independent dispute resolution mechanism as an appropriate approach. Some respondents advocated introducing statutory timescales into the application and pre-application process for handling Section 106 negotiations and the drafting and signing of agreements, with sanctions for non-compliance. Conversely, others considered the complexity of Section 106 requirements, cost and resource issues would make this approach too blunt an instrument and could lead to poor decision making for either party. Amending the appeals process was suggested by some of those in favour of legislative change.
15. A significant number of those opposed or not sure of the merits of legislative change argued for clearer expectations on what might be good practice and supported the Governments' commitment to amend guidance around existing statutory timescales, earlier engagement, standardised clauses and greater transparency. Some respondents, particularly local planning authorities, felt that the pooling restrictions on Section 106 agreements from April 2015 would lessen the number of such agreements to the extent that legislation to speed their process would not be necessary. A small minority opposed any additional measures arguing that there were adequate systems in place, including an appeals process.

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

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

16. A significant majority of respondents, including representatives from the construction industry, supported the proposition that any future dispute resolution mechanism should be available where negotiations have breached statutory or agreed timescales; arguing that such a mechanism was necessary and would help to speed up the planning process. However approximately two thirds of local authority responses opposed; primarily rejecting the need for a new dispute resolution mechanism, arguing that the existing planning appeal process was adequate, or that the creation of a third party process would encourage some developers to deliberately wait for this mechanism to apply in hopes of a better outcome.

17. Respondents overwhelmingly agreed that a solution involving an automatic or deemed agreement after set timescales would be unworkable in practice; although a small number suggested that it might be appropriate to consider further to apply in certain circumstances.

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?

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

18. A wide range of responses were received, many of which agreed that some form of draft Section 106 agreement or unilateral undertaking should be required as part of any dispute resolution mechanism. A number of local authorities said that this was already part of good practice where draft Section 106s were considered prior to applications being considered at Committee. Many respondents suggested that Section 106 Heads of Terms discussions should form part of any pre application process; also that any dispute resolution mechanism should start at the beginning of the planning application process, which would further reduce any potential delays in the process.

19. To help speed up Section 106 negotiations, several respondents suggested that there should be more use of standard Section 106 forms and templates, which should be made readily available to all parties. It was also considered that the submission of a draft agreement would encourage engagement between parties; and would be particularly helpful in processing large scale planning applications. Those against this measure considered that the ability to appeal planning decisions was the most appropriate mechanism for resolving any disputes; there is also the ability to recourse matters back to planning committees. There was also concern over the quality of Section 106 and unilateral agreements submitted in order for planning applications to be considered through any dispute resolution process.
20. The majority of responses said that should a dispute resolution mechanism be introduced then this would need to be binding on all parties, otherwise the process would not work. A number of respondents suggested that this process should be considered as a last resort. Of those not in favour of a binding dispute resolution mechanism, it was considered that the process would be undemocratic, that planning obligations should not be considered in isolation, mediation was a more favourable approach and parties already had the right to appeal.

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

Question 10: How long should the process take?

21. A wide range of suggestions were received, the majority view being that any body or individual resolving disputes would require significant experience in the field. The Planning Inspectorate were most frequently identified, by a cross section of respondents, as the most suitable body, although many considered that specialist advice provided by the District Valuer or other experts would also be required for it to act successfully. A small number of respondents raised concerns over the resources of the Planning Inspectorate if this was added to their existing roles.
22. Another frequent suggestion, particularly by planning consultants and developers, was that there may be a role for the Royal Institution of Chartered Surveyors dispute resolution service. It was felt the role of this service could be expanded from resolution of disputes within the property and construction industries to also resolve Section 106 disputes.
23. The timescales suggested for resolving disputes by the respondents varied considerably and suggestions ranged from 2 weeks to 6 months. Overall the most frequent suggestion by a cross section of respondents was for a timescale of around 6-8 weeks to resolve disputes. It was generally agreed amongst respondents that the timescale should take into account the complexity of the agreement. A number of local planning authorities raised a concern that the dispute process may adversely affect their performance against statutory targets.

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. The vast majority of respondents were in favour of the body offering a Section 106 dispute resolution service charging a fee. This clear majority of respondents in favour applied across all of the sectors and type of bodies/groups/organisations responding.
25. However, there were mixed views as to whether that fee should be shared between the local authority and applicant, or just the applicant paying fees. Many felt the fee should be proportionate to the scale of development and complexity of the Section 106 agreement; also that there should be a de minimus level and a maximum fee ceiling. Some local authorities did, however, have concerns about the introduction of a fee, particularly its potential impact on their resources or on taxpayers; also how the paying of fees might impact on public perceptions of impartiality that local authorities had in providing their planning service.
26. There was clear support for a fee amongst most other organisations that commented with the view that for the process to be resourced effectively it may be necessary to change a fee. Some respondents commented that the willingness of a developer to pay the fee would increase if this meant more certainty of a decision within a specified period. The construction industry supported the need for a fee, provided it was fairly apportioned, and felt the cost should not fall solely on the applicant. The legal sector also generally supported a fee provided it was regulated, reasonable and borne fairly by both parties.

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

27. A majority of respondents agreed that all types of planning application should have recourse to Section 106 dispute resolution. Although the majority of respondents were in favour, there was a distinct split across the different sectors. Particularly noticeable was that whilst the majority of local authorities said no to this question, the vast majority of respondents in the construction/development industry and associated bodies said yes.
28. Amongst local authorities there was a majority who felt that there was no need to introduce a Section 106 dispute resolution mechanism at all, but if such a mechanism were to be introduced, numerous local authorities strongly felt it should be focussed primarily on major applications to avoid the system becoming overloaded and unwieldy. Many considered that an agreed threshold would need to be set out with various different suggestions put forward.
29. Amongst other organisations there was greater support for all types of planning application having recourse to a Section 106 dispute resolution procedure. This was particularly the case for the construction industry and associated bodies. Whilst some in the construction sector pointed out that major development schemes were more likely to use such a service, others noted that delays can

often affect smaller developers more acutely, for example where they are only building on one or two sites.

30. Some respondents in the legal sector had concerns that to prevent the dispute resolution process becoming overburdened, it should be limited to the most strategic sites where gains from swift resolution are the greatest. Others in the legal sector felt there will still be a need for many disputes, such as in relation to viability or delay, to continue to go through the planning appeals system.
31. Several respondents across each sector expressed the view that there was a danger this might create another layer of bureaucracy and not in reality actually speed things up.

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?

32. Many respondents stressed that under the current legal framework, the terms of a Section 106 agreement and the associated planning decision are interconnected, making it difficult to isolate the former from the latter. Nevertheless, several respondents noted that the practice of planning committees resolving to grant planning permission subject to the approval of a Section 106 agreement means that planning obligations are often finalised after an application has been approved “in principle”.
33. There was concern from many local authorities about the impact on local decision-making if a Section 106 dispute resolution mechanism also involved determination of the related planning application. Respondents questioned whether such a mechanism would speed up the planning process, and how it would differ from a “standard” planning appeal.
34. Of those that responded to question 14, just over half thought that it would be possible for a future mechanism to relate only to the Section 106 agreement. Respondents put forward a number of detailed proposals for how disputes over Section 106 agreements could be swiftly resolved and we will consider these suggestions further.

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?

35. Approximately half of respondents commented on this question, just over a quarter of which considered that the requirement to provide affordable housing contributions acted as a barrier to the development of dedicated student accommodation. The majority of such respondents cited viability issues as the main reason affordable housing acted as a barrier to such development. They also felt that as student accommodation had its own special requirements, it

should not attract an affordable housing contribution. Respondents also considered that the requirement to provide affordable housing as part of a student accommodation scheme does not meet the tests for planning obligations set out in the Community Infrastructure Levy regulations; and queried why an application for student housing should provide affordable housing as there is no connection between the two uses. Some respondents also felt that imposing affordable housing contributions on dedicated student development increased the rental level of the subsequent student accommodation often above that of non purpose built accommodation and therefore encouraged uncontrolled houses in multiple occupation; as well as limiting the number of suitable sites available for student accommodation. The majority of those respondents who felt that affordable housing contributions did not act as a barrier considered that local planning authorities should retain the ability to consider the local context when deciding which elements of planning obligations should or should not apply.

36. Across all sectors there was recognition that dedicated student accommodation can make a positive contribution towards housing provision, releasing housing back onto the open market and reducing the impact of homes in multiple occupation, occupied by students, on local communities. Several respondents queried the need to differentiate student accommodation from other forms of 'specialist' housing citing that affordable housing contributions can be a barrier to all kinds of residential development.

Section 4: Government response

37. The Government wishes to thank all those who have responded to this consultation. The responses have been very helpful and insightful and provide a basis for Government to further develop national policy on these matters in the next Parliament.
38. Most of the responses to the consultation confirmed the Government's view that Section 106 negotiations are a significant source of delay within the planning application process, citing various reasons for these delays. A number of which are being addressed by updated Section 106 planning obligations guidance which will be published on 26 March. This:
- Confirms that Section 106 negotiations should be concluded within statutory timescales;
 - Promotes the use of standardised clauses to minimise the need to draft agreements from scratch;
 - Sets expectations of earlier engagement at the pre-application stage by all parties;
 - Promotes greater transparency about what has been raised through Section 106 agreements and what it has been spent on
 - Encourages the use of flexible approaches for boosting local authority capacity.
39. The outcomes of the consultation indicate that Government should consider further a basis for strengthening the legislative framework for resolving delays in negotiating Section 106 agreements to deliver the objective of a significantly faster, more transparent process to secure these developer contributions. This could include setting within legislation stricter timescales for Section 106 negotiations and creating a dispute resolution mechanism to resolve these where timescales are not adhered to.
40. The Government remains committed to ensuring that the planning system is proactive in providing the housing the country needs and ensuring that the need for all types of housing, including affordable housing and student accommodation, are met. The Government will now undertake further discussions with relevant parties to further support dedicated student accommodation.