

**Proposed Decision to be taken by the
Portfolio Holder for Sustainable Communities
on or after 23 November 2012**

**Response to Communities and Local Government Consultation –
Renegotiation of Section 106 Planning Obligations**

Recommendation

- 1) That the Portfolio Holder for Sustainable Communities approves the County Council's response to the consultation, as outlined at **Appendix A**.

1.0 Background

- 1.1 At present, the Section 106A of the Town and Country Planning Act 1990 allows voluntary renegotiation of a planning obligation at any time. Where voluntary agreement cannot be reached there may be a formal request to reconsider an obligation when that obligation is 5 years old. The local authority must take a decision on such a request. If the local authority decision is not to renegotiate terms then there is a right to appeal to the Planning Inspectorate.
- 1.2 The government is consulting on proposals for all planning obligations agreed on or prior to the 6th April 2010, the relevant local authority can be asked to formally renegotiate the terms one month after the introduction of new regulations. For all planning obligations agreed after 6th April 2010, the period will remain at 5 years. There will be no change to the ability to renegotiate obligations voluntarily at any time, and the Department encourages this to happen where appropriate.
- 1.3 The government is proposing that for all planning obligations agreed on or prior to the 6th April 2010, the relevant local authority *can be* asked to formally renegotiate the terms one month after the introduction of new regulations. The County Council's response to the consultation is contained in the questionnaire, as outlined at **Appendix A**.

2.0 The County Council's view

- 2.1 In brief; we welcome the changes but we also believe that other evidence and options to make site more viable should be considered before any re-negotiations take place. We also point out some potential technical loopholes that could be exploited by developers to landbank their sites i.e. pay lower levels obligations and then mothball sites until the economic conditions improve.

3.0 Finance considerations

- 3.1 As a result of re-negotiation of S106 agreements, there is a potential for the County Council to receive less money for supporting infrastructure that is provided by the County Council. The County Council has statutory duties – e.g. to ensure the provision of adequate educational facilities, or to secure highway safety. If a development puts pressure on these facilities without providing adequate funding, we would still be under a duty to provide the facility. Therefore, this could put pressure on the Councils future budgets. Consequently, we are recommending that robust tests and evidence are provided before any renegotiations take place.

Background Papers

CLG - Renegotiation of Section 106 planning obligations

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2196058.pdf>

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Consultation questions – response form

We are seeking your views to the following questions on the proposals to allow earlier renegotiation of section 106 obligations agreed prior to April 2010.

How to respond:

The closing date for responses is 8 October 2012

Responses should be sent preferably by email:

Email response to cil@communities.gsi.gov.uk

Written response to:

William Richardson
Communities and Local Government
CIL Team
Zone 1/E2 Eland House
Bressenden Place
London SW1E 5DU

About you

i) Your details:

Name:	Jasbir Kaur
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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 council

Community council

Non-Departmental Public Body (NDPB)

Planner

Professional trade association

Land owner

Private developer/house builder

Developer association

Voluntary sector/charity

Other

(please comment):	
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**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):	
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes / No

ii) Questions

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

Question 1 – is the Government’s objective to encourage formal reconsideration of Section 106s on stalled development supported by the shortened relevant period given in the draft regulation?

Yes

Comments

Yes, this provides local flexibility subject to :-

- The regulations should only apply to the current economic cycle and a review period of, say 3 years, should be built in.
- The informal consideration should be a matter for the Local Planning Authority to determine i.e. to weigh up the benefits and impacts of particular sites to the locality.
- It is assumed that the stalled sites would be re-negotiated down. If the stalled sites are re-negotiated down there should be a strict short time period to implement the planning permission i.e. development commences within 12 months, or, the first house or building is built within 12 months following first commencement of the planning permission.
- Further, there are potential loopholes in supporting the re-negotiation of planning obligations down i.e. technically commence the permission (start building roads) but not actually build houses until when economic conditions improve.

Any re-negotiations should be based on evidence i.e.:-

- Viability and the funding gap of the development.
- Evidence of making the development more viable i.e. re-formatted scheme for example for mixed sites to substitute commercial to housing or vice versa to increase the balance of more marketable parts of the development.
- Increasing longer the times/trigger points for payment of obligations;
- Reduction in the level of affordable housing or payment in kind or developing affordable housing at the end of the scheme.

Potential of adverse impacts on public resources.

The re-negotiation of S106 agreements should not put additional pressure/demands on local public services that are needed to support the development.

For example reducing contributions for schools could mean expansions of schools would be not take place or delayed. Therefore, the solution for schools would be to have temporary class room building or to have larger classes. This would not be acceptable in areas where there is already pressure on school places.

Question 2 – does 6 April 2010 represent a reasonable cut off for the proposed change?

Yes

Comments

This is a reasonable cut off. However, the government should also consider a cut for commenced/building out of the site and 12 months of renegotiation would be reasonable.

Question 3 – what approaches could be taken to secure acceptable affordable housing delivery through revised obligations? Comments

The reconsideration of S106 obligations for affordable housing should be weighed up alongside other competing demands. Any voluntary or formal re-consideration should be based on criteria/tests. We suggest that the following sequential test could be applied:-

- Viability assessment and the funding gap should be demonstrated by the developer and independently verified. The very special circumstances to set aside obligations should be stated for any re-consideration i.e. what are the wider benefits of bringing forward this site above other sites.
- Evidence of making the scheme more viable should also be submitted i.e. re-formatting schemes to make the development more viable i.e. for mixed sites to substitute commercial to housing or visa versa to make the site viable;
- Financial trigger points should be examined to assess whether longer payment times would make the site more viable.
- payment in kind could also make the site more viable;
- Building of affordable housing at the end of the scheme. This could also help with cash flow issues and make the site more viable.