



Report To: Planning Portfolio Holder
Lead Officer: Director – Planning and New Communities

10 March 2015

Section 106 planning obligations – speeding up negotiations: student accommodation and affordable housing contributions consultation

Purpose

1. On 20 February 2015 CLG launched a consultation seeking views on proposals relating to the following 2 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
2. The closing date for responses is 19 March 2015.
3. This is not a key decision because it is securing the Portfolio Holder's endorsement as to the Councils consultation response, rather than creating new policy itself.

Recommendations

4. It is recommended that the Portfolio Holder approves the draft response as per Appendix B and further provides delegated authority to the Director - New Communities & Planning to (i) make minor changes and (ii) provide supplemental information to support the response.

Executive Summary

5. 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.
6. 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, extending the time it takes to deliver much needed housing and commercial development.
7. The Government claims that protracted s106 negotiations arise for a variety of reasons, including:
 - The contentious nature of agreeing:
 - (i) what is fair, reasonable and necessary mitigation in the circumstances of the case, exacerbated by parallel viability testing to "prove" what is affordable.
 - (ii) detailed and robust drafting of the agreement itself.
 - Limited legal capacity, particularly in smaller authorities.
 - A lack of incentives to resolve negotiations quickly.

8. Officers consider that common reasons for section 106 agreements being delayed are:
- (i) The applicant not engaging in proper community engagement or seeking pre-application advice that would help determine the heads of terms
 - (ii) The applicant being unwilling to submit a heads of terms alongside the planning application, including land registry details
 - (iii) The time period within which consultation responses are received
 - (iv) The requirement for multiple signatories to the agreement, including mortgagees
 - (v) Land being unregistered
 - (vi) The issue of development unviability being raised at a later point in the application process, or being raised but with insufficient information for the Council to properly assess the claims
 - (vii) Competing and conflicting workloads within legal services
9. Government are proposing that legislative change is required to bring about a significant reduction in the delays associated with negotiating Section 106 agreements, and that this should best be achieved by the introduction of a new dispute resolution mechanism.
10. Officers support the use of conditional time limits on planning approvals, but do not support the proposal for any dispute resolution, as this would introduce additional bureaucracy, probable delay and expense.
11. Lastly Government are seeking views as to what extent consultees consider that the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation.
12. Officers confirm that affordable housing is not sought on developments proposing student housing.
13. Responses will inform consideration of detailed proposals to speed up section 106 negotiations, which may require primary legislation in the next Parliament.

Considerations

14. Any new legislation of guidance introduced by Government will have an effect on the Councils decision making process and resourcing.

Options

15. (i) To approve the consultation response as currently drafted
(ii) To propose an alternative response to the consultation

Consultation responses (including from the Youth Council)

16. No consultation has been undertaken on the content of this report.

Implications

17. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, there are no significant implications.

Background Papers

APPENDIX A: CLG CONSULTATION

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405819/Section_106_Planning_Obligations_speeding_up_negotiations.pdf

APPENDIX B: DRAFT SOUTH CAMBRIDGESHIRE RESPONSE

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