Consultation Response

Section 106 Planning Obligations –speeding up negotiations

Communities and Local Government Consultation

Date: 19 March 2015

CLA (Country Land and Business Association)

The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners, and those with an economic, social and environmental interest in rural land. Our 33,000 members own or manage around half the rural land in England and Wales and run more than 250 different types of businesses.

CLA General Comments

Having read the Government's Plain English guide to the planning system and it appears that there might be confusion about the use of conditions, and section 106 agreements, to mitigate the impacts of a development.

The first tool to use to ensure that the impacts of a development are mitigated are **conditions**. There has been a long-standing policy to use conditions rather than section 106 agreements, unless the matter cannot be addressed by a condition. This long-standing advice must be followed and enforced.

Other tools include the description of the development granted permission, and section 106 agreements. It is important to make this distinction because this confusion is tending towards fostering a call for "planning obligations" to secure extraneous benefits or some sort of community gain.

The plain English guide to the planning system goes on to suggest that planning obligations can be secured under legislation other than s106 TCPA 1990 when it states "They are **commonly** secured under section 106". It is the CLA's view that planning obligations can **only** be secured by s106 which provides a very tight definition. If s106 agreement proposes obligations that go outside what s106 allows, this means no planning obligation at all, and an inability to enforce using the mechanism specifically designed for that purpose, namely s106 itself.

If planning permission is granted relying on a benefit which is not secured within an s106 agreement, it will mean the planning permission is voidable, unless it is enforceable under other legislation. This makes such permissions and s106 agreements easy targets for objectors wanting to quash planning permissions.

Of course, agreeing conditions is usually a much faster route to issuing planning permissions than negotiations over a section 106 agreement. By suggesting that planning obligations are the

device of choice to secure impact mitigation, means that simpler solutions are ignored i.e. the use of conditions.

With respect to the scale of development proposed by this consultation. It appears to suggest that the dispute resolution mechanism would only be aimed at major development. This ignores the longstanding problem experienced by those wishing to develop new homes in rural areas that are subject to agricultural/rural occupancy conditions. Very often, the planning authority places the occupancy condition on a planning permission, but also requires a section 106 agreement to be signed as well, with the very same condition contained within it. Often the requirement for a section106 agreement stalls the planning permission – we therefore strongly suggest that all development no matter how big or small which is the subject of s106 agreements should be able to access the dispute resolution mechanism proposed in this consultation.

Question 1: Do you agree that Section 106 negotiations represent a significant source of delay within the planning application process?
Yes, they can be. But there are simpler solutions that must be encouraged, used and enforced first i.e. the use of conditions.

Question 2: Do you agree that failure to agree or complete Section 106 agreement are common reasons for seeking extra time to determine a planning application?
Yes. But there are simpler solutions that must be encouraged, used and enforced first i.e. the use of conditions.

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 we agree.

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?
There is a need to work out what is the answer and then decide whether primary legislation is required.

Question 5: Do you agree that any future dispute resolution mechanism should be available where Section 106 negotiations breach statutory or agreed timescales?
The CLA has been advocating dispute resolution as a mechanism for speeding up various parts of the planning application process for some years. Potential gains for offloading work from PINS will be quite substantial. ADR mechanisms have huge ability to decrease workload from Bristol.

Yes we agree with the proposal in question 5.

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

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?
In the case of an applicant applying for a rural workers dwelling which will be the subject of an occupancy condition on the planning permission, are you suggesting that the applicant, i.e. the farmer, would be responsible for producing a draft section106 agreement? In our view, for small scale development such as a rural dwelling subject of an occupancy condition, and if a section106 agreement is considered necessary, then there will need to be pro forma section 106 agreements easily accessible by applicants.

Question 8: Do you agree any dispute resolution mechanism would need to be binding on the parties involved?
Yes otherwise it won't work.

Question 9: Which bodies or appointed persons would be suitable to provide the dispute resolution service?
There are tried and tested methods for dealing with disputes with binding decisions on both sides. These include

RICS Arbitration – Dispute resolution service
Lands Tribunal
RICS appointment system for independent experts has been around for a very long time

Question 10: How long should the process take?
Depends on size of development – if small scale i.e. rural dwelling subject of an occupancy condition and a s106 agreement then the time frame should be no longer than 4 weeks.

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 but payable by both sides + Award of costs if one or other side seen to be time-wasting

Question 12: Should all types of planning application have recourse to Section 106 dispute resolution?
Yes including small scale rural development which are being subjected to section106 agreements rather than the use of conditions.

Question 13: Do you consider that any dispute mechanism would need to also involve the determination of the related planning application?
No. These are two separate matters. The planning application must be decided in the usual fashion taking into account local plan policies. The Section 106 agreement must not become the "tail wagging the dog".

The focus of the dispute resolution mechanism should be solely on getting agreement on the s106 obligation.

However, the use of the dispute resolution mechanism should not prevent the applicant from being able to appeal for non-determination.

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?

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?
N/A

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