

MHCLG Consultation – Reforming Developer Contributions: Technical Consultation on Draft Regulations - 20th December 2018 – 31st January 2019

Arun District Council Officer Response

This consultation publishes draft regulations proposed as a result of the “Supporting Housing Delivery through Developer Contributions which took place last March. Arun’s officer response is provided below:

1) Ensuring Consultation is Proportionate

Proposal to:

- remove the statutory requirement to consult on a Preliminary Draft Charging Schedule;
- remove the requirement to advertise consultations in the local press and;
- remove the statutory four week consultation timescale for the Draft Charging Schedule.

Question 1: Any elements in regulation 3 which will prevent Government achieving the policy intent?

Answer:

Arun District Council agrees with the principle of making it quicker revise and update a Charging Schedule. However, there should remain a minimum statutory period of consultation and for charging authorities preparing its first charging schedule, a Preliminary round of consultation remains a useful engagement process. This change could result in greater challenge at a later stage of the process.

Please see three points of clarification below:

1. correct typo: “drafting charging schedule”
2. “in regulation (2) after “In this regulation”. Should this refer specifically to Regulation 16?
3. Under the definition of “consultation bodies”, the meaning within section 37 of PCPA 2004 includes county councils. Therefore, is (iii) needed?

2) Removing Restrictions which prevents local authorities using more than five S106 obligations to fund a single infrastructure project

Proposal to lift the S106 pooling restrictions altogether. The requirement to prepare a Regulation 123 list will also be removed and replaced by an Infrastructure Funding Statement (to be submitted by 31st December each year) which monitors and presents infrastructure funding from S106 and CIL in a way that is available for the public.

The consultation document explains that it will incentivise continued use of the Levy by requiring local authorities to consult on the withdrawal of a charging schedule. The consultation will require charging authorities to set out the financial impact of ceasing to charge CIL and how the authority intends to replace any lost funding.

This is considered to be a pragmatic approach to the withdrawal from CIL by charging authorities. Agree that charging authorities should provide CIL receipts for five years preceding the point at which the statement is published. This is because significant amounts of CIL are not received until at least 5 years after a charging authority first implements CIL.

Question 2: Are there any elements in draft regulations 4 and 11 which will prevent the Government achieving the policy intent?

Answer:

Draft regulation 4 (procedure in relation to a charging schedule ceasing to have effect) – Agree

Point of clarification – This response answers question 2 as if it refers to draft regulation 12, not 11 because draft regulation 11 relates to “fees for monitoring planning obligations”. Draft regulation 12 refers to “Removal of Pooling Restrictions”

Arun District Council agrees with Draft Regulation 12.

3) Improving transparency and increasing accountability

Removing regulation 123 restrictions and introducing Infrastructure Funding Statements.

The Government proposes to introduce a requirement for all local authorities (including those that have not implemented the Levy) to publish an annual Infrastructure Funding Statement by 31st December each year. It would report on what has happened on revenues from developer contributions (S106 and CIL) and how they propose to apply them in the following years. Although charging authorities are already required to report on the spending of CIL, this change extends the monitoring requirement to include S106 also.

Draft data specification and prototype tools are available for review and comment. Arun District Council officers have reviewed the data requirement and comments on these are provided below under Question 8.

Question 8: Are there any elements in draft regulation 9 which will prevent the Government achieving the policy intent?

Technical response:

Assume this is referring to draft regulation 10 rather than draft regulation 9?

Under 121A (1) d and e. Is this referring to a three year forecast? It currently reads “a three forecast”.

Response to the principle of including a requirement on local planning authorities to prepare and submit an Infrastructure Funding Statement (IFS)

Duty to Cooperate - Completing an IFS

The regulations require a “Contribution receiving authority” to prepare an IFS. The definition of a contribution receiving authority relates to the charging authority and a local planning authority which enters into S106 agreements. However, S106 agreements are entered into by local planning authorities alongside service providers such as the education authority, the highway authority, the NHS for example. It should be made clear in the regulations that there is a level of responsibility upon the receiving authorities to submit spending data on a regular basis.

In response to the draft online form to be completed:

Standardised unique reference number:

ADC would use a planning application reference which is unique to the authority and site or NLPG?

Entry date:

In some cases the entry date may be different to the date the agreement was made due to the time taken to enter data. In some cases, where new systems have been set up, older but extant S106 agreements were given a generic entry date.

End Date:

How will this be defined? For example, the date the final payment made, the date the agreement fully complied with? Will it relate to just financial or financial and non financial obligations?

Document URL:

It may not be possible to provide a URL directly to a specific S106 agreement but a URL can be provided to the front page of the planning reference which is subject to the S106 agreement. The different methods that could be required to provide this information will need to be considered given the impact upon resources that each methodology could result in.

Contribution Purpose:

How to standardise such an array of contributions?

Amount:

Although this should be a simple exercise, S106 agreements include a range of formula for calculating contributions and triggers for when the contributions should be paid. There is also reliance, in some cases, on services to inform the Local Planning Authority when the money was spent. This case applies particularly in two-tier authorities but also between local planning authorities and the NHS for example.

It will only be possible for local planning authorities to provide data on the total amount provided by planning obligations **completed** in that monitoring year. Therefore, this should be made clear in the regulations to ensure a clear process is in place.

Development agreement transactions:

A unique reference for a “transaction”? There is no definition of a transaction in this context or how the transaction reference should be set up. Is the transaction financial or could it include land?

Reporting Timescales:

There needs to be clear guidance about how far back a S106 should be reported upon. Some large sites have agreements going back eight years. During that time period, recording methods have changed and systems updated which may result in challenges in retrieving information.

Overall, this is a process that Arun District Council will be able to complete. However, there are concerns regarding the level of detail required and the uncertainties involved in receiving data from external service providers within required timeframes.

The proposed regulations may provide a useful means to simplify the S106 process by incorporating requirements for S106 agreements to be standardised to ensure that they can be reported as efficiently as possible.