

DRAFT RESPONSE SERVICE

As part of the Rural Opportunities Bulletin, RSN will regularly provide concise potential responses to key current consultations. These are not intended to be definitive or to reflect the views of RSN and may include potentially opposing responses to reflect different views designed to assist individual organisations in compiling their own response. We do however recognise the pressure members are under and we hope this service will assist.

Renegotiation of Section 106 planning obligations – Department for Communities and Local Government, August 2012

<http://www.communities.gov.uk/publications/planningandbuilding/renegotiationobligationsconsult>

This consultation proposes that for all planning obligations agreed on or prior to 6 April 2010, the relevant local authority can be asked to formally renegotiate the terms one month after the introduction of new regulations. Currently, formal requests to reconsider an obligation can only be made when that obligation is 5 years old, although voluntary renegotiation can take place at any time. This proposal is intended to make planning obligations more reflective of the current market and to help unlock stalled development. 6 April 2010 is considered an appropriate cut-off date as the date when new statutory tests were introduced for most planning obligations to ensure they only cover what is necessary to make the development acceptable, must be directly related to the development and reasonable in scale and kind. The consultation closes on 8 October 2012.

Consultation 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?*

Draft Response: No. Local authorities and registered providers are already working hard with developers to assist as far as possible in bringing schemes forward to achieve local and strategic objectives through renegotiation of planning obligations and other means. It is important that these efforts are effectively targeted to maximise the impact of available resources. Reducing the period will potentially lead to an influx of schemes requiring reassessment even where this may not be warranted creating unnecessary additional pressures on local authority resources. In addition, there is a significant danger that reducing the formal period in such a way will make communities much more reticent to endorse schemes in the future due to a perception that agreed obligations may not be delivered.

Local authorities are renegotiating planning obligations through local agreement to reflect the greatly changed economic circumstances which now exist. There is no need to make this change. Furthermore, the economics of development are complex and there is a danger that removing planning obligations simply results in an increase in the price of land demanded by landowners. In such circumstances, the viability of a particular scheme will not be improved at all.

In addition, a subsequent Ministerial Statement was published on 6 September 2012 which will allow any developer of sites which are considered unviable because of the number of affordable homes required to appeal immediately following the introduction of legislation in early 2013. Taken together there is a real danger of confusion which could add time to sensible renegotiations rather than achieve the desired objective.

Alternative Draft Response: Yes. The shortened period will achieve the stated objective and will

enable the renegotiation of obligations to be prioritised alongside the consideration of current planning applications. However, recognition of the pressure this may place on local authorities already stretched resources should be made. The resultant likely reduction in the number of affordable homes developed should be compensated for by other means including increased investment in the Affordable Homes Programme and other mechanisms.

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

Draft Response: Yes. If this proposal is to be implemented then a cut off date is required. This will serve to place a finite limit on the number of obligations to which the amendment will apply. To allow the potential amendment of more recent decisions would undermine the decision making process and create unnecessary workload. In addition, these decisions were made in full knowledge of the current economic climate and, therefore, their inclusion is not warranted.

However, confusion is likely to arise with the Ministerial Statement published in September. This will allow appeals to be made against affordable homes requirements with no such cut off date.

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

Draft Response: The provision of affordable homes as part of private sector developments has long been a key method of delivery. The main objective of any change to planning obligations should be to maximise the provision of greatly needed affordable dwellings. The great danger in shortening the period for potential formal review of obligations is that less affordable homes are delivered not more.

It should not be assumed that affordable housing is the cause of stalled development sites. More fundamental issues exist such as the inability of potential buyers to buy houses due to, for example, significantly reduced access to mortgages, and the often high land price which developers have previously negotiated with landowners. It should also not be assumed that local authorities are requesting planning obligations to deliver unnecessary obligations. This is not the case.

Registered providers are working very hard with developers to make affordable housing provision viable. Different approaches to this provision through different tenures, construction methods and so on are already in use and should all be included as part of any renegotiation which takes place.