

Consultation questions – response form

We are seeking your views to the following questions on the proposals to speed up section 106 negotiations and on student accommodation.

How to respond:

The closing date for responses is 19 March 2015.

Responses should be sent to: planning.consultation@communities.gsi.gov.uk

Written responses may be sent to:
Section 106 Consultation
Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF

About you

i) Your details:

Name:	James Caird
Position:	Consultant Consultations Coordinator
Name of organisation (if applicable):	Institute of Historic Building Conservation
Address:	IHBC Business Office Jubilee House High Street Tisbury Wiltshire SP3 6HA
Email:	consultations@ihbc.org.uk
Telephone number:	01584 876141

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/community council

Non-Departmental Public Body

Planning Consultant

Professional trade association

Private developer/house builder

Developer association

Residents 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):	I submit the considered view of the Institute.
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes No

v) Questions

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

Question 1: Do you agree that Section 106 negotiations represent a significant source of delay within the planning application process?

Yes No

Comments

They can be.

Question 2: Do you agree that failure to agree or complete Section 106 agreements are common reasons for seeking extra time to determine a planning application?

Yes No

Comments

We believe this is the case.

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 No

Comments

Broadly, yes, but, as we discuss later, we think there dangers in dealing with the issues by sequential questions.

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?

Yes No

Comments

But we are doubtful whether new legislation per se would have much effect.

Question 5: Do you agree that any future dispute resolution mechanism should be available where Section 106 negotiations breach statutory or agreed timescales?

Yes No

Comments

We think this is sensible. But we are very wary of introducing a completely new procedure. The requirements of a s106 are supposed to be what is required to avoid a refusal of planning permission. We do not think, therefore, that you can separate the terms of the agreement from consideration of the proposal as a whole.

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

Yes No

Comments

This would lead in many cases to legitimate community needs not being met.

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?

Yes No

Comments

If the terms of a s106 agreement is to be decided by a third party mechanism, it follows that the precise terms must be known at the time of the decision. This means the vehicle for the agreement must be known. If a draft is not submitted by either of the parties, then a deemed format might be used.

Question 8: Do you agree any dispute resolution mechanism would need to be binding on the parties involved?

Yes No

Comments

We think this is necessary, otherwise what would be the point of using the procedure?

Question 9: Which bodies or appointed persons would be suitable to provide the dispute resolution service?

Yes No

Comments

We think PINS is the obvious candidate. A single body is necessary to ensure uniformity of decision-making and trust in the system.

Question 10: How long should the process take?

Yes No

Comments

We have no view on this. Bearing in mind that the issues will often be relatively straight forward, we think the target period should shorter than for written rep. appeals.

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 No

Comments

Question 12: Should all types of planning application have recourse to Section 106 dispute resolution?

Yes No

Comments

We can see no reason to restrict the process to some applications just because (say) they are large in scale. A small project may be just as vulnerable to delay as a large one.

Question 13: Do you consider that any dispute mechanism would need to also involve the determination of the related planning application?

Yes No

Comments

We think the principle of this is important, but it cannot be taken literally unless the decision-maker is given powers to issue legally binding documents to the parties. Rather we think that the terms of the decision should be binding but the execution of the s106 and the issue of the permission should remain with the LPA.

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?

Yes No

Comments

There may be. If the parties agree in advance that their difference amounts only to, say, quantifiables like numbers of affordable dwellings or tenure mixes, then the process might be limited to this. But for other aspects, like off-site infrastructure, it will be necessary to consider the requirements of the agreement in relation to the principle of the development.

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?

Yes No

Comments

We have no view on this.