

Developer Contributions Consultation response form

If you are responding by email or in writing, please reply using this questionnaire pro-forma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space. Required fields are indicated with an asterisk (*)

This form should be returned to
developercontributionsconsultation@communities.gsi.gov.uk

Or posted to:

Planning and Infrastructure Division
Ministry of Housing, Communities and Local Government
2nd floor, South East
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By 10 May 2018

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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?*

Organisational response

If you are responding on behalf of an organisation, please select the option which best describes your organisation.*

Trade association, interest group, voluntary or charitable organisation

If you selected other, please state the type of organisation

Click here to enter text.

Please provide the name of the organisation (if applicable)

Chartered Institute of Housing

Please note that rather than responding to individual questions, we have included below our comments specifically on Section 106 and viability in relation to supporting the delivery of homes through developer contributions.

Affordable housing requirements in the NPPF and in section 106 contributions

The consultation paper has some welcome proposals on section 106 contributions, although its focus largely on CIL means that s106 receives minimal attention, despite its importance.

Most importantly, the paper does not actually spell out the huge dependency of affordable housing provision on s106. As pointed out in the *UK Housing Review 2018* (chapter 4), s106 provided 18,200 homes in 2016/17, the majority without grant. This was 43% of total affordable output and a significant increase on the total for the previous year (12,910). A small but significant proportion of the total (14%) was housing for letting at social rents (for which grant is now practically unobtainable). In other words, the government's affordable housing output is massively dependent on s106 and if for any reason obligations were to be reduced in importance (e.g. if they began to be replaced by CIL, which does not yet appear to have happened), the consequences would be very serious.

It is therefore surprising that in the paper's objectives for reform of developer contributions, maintaining the output of affordable homes does not appear. This is a major gap. Similarly, while the draft NPPF emphasises the importance of affordable homeownership, it misses the opportunity also to point out the importance of affordable and social rented homes in new developments. It should be made much clearer that affordable housing requirements are not restricted to homeownership and that balanced affordable housing requirements will take full account of the need for affordable and social rented homes. Maintaining and if possible raising the level of affordable housing provision should similarly be a key objective of s106 reform.

Viability tests

The consultation paper highlights the problems caused by the introduction of viability tests and it is notable that it says (para. 32) that 'the current system... may only have captured a small proportion of the increase in [land] value that has occurred since 2011'. This seems to confirm evidence that viability tests have suppressed section 106 contributions, as is generally considered to be the case.

Again, however, the paper misses an opportunity to summarise the ways in which viability tests have become a major obstacle to the delivery of affordable housing. The CIH's *UK Housing Review 2018* (contemporary issues chapter 2) points to research showing this. For example:

- Reading University showed that current policy and RICS guidelines encourage the use of a viability model that means that planning obligations become the residual (preserving developer profits and land values at the cost of affordable housing).¹
- There have been many examples cited in investigations of the abuse of viability tests, such as those by the Bureau of Investigative Journalism.²
- The *UK Housing Review* itself readily found and gives detailed examples of consultants reducing affordable housing obligations to zero in various types and sizes of new development (see table).
- Overall the Centre for Progressive Capitalism estimates that £2.8 billion of land value uplift arising from newly built homes was captured through s106 agreements and CIL in 2014/15, but £9.3 billion was not captured.³

Examples of viability tests reducing affordable housing requirements

Local Planning Authority	Year	Development	Normal requirement/request from LPA	Outcome and claimed saving to developer
Cornwall CC	2015	Site of derelict business premises: 27 houses, 131 flats, 1161m ² offices, 600m ² retail, 50-room hotel, a microbrewery	Request for 40% affordable homes in line with council policy	Zero contribution (saving £106,328)
LB Sutton	2014	Conversion of premises to form 13 self-contained flats	6 affordable housing units in line with council policy	Zero contribution (saving £500,000)
Stockport MBC	2015	Erection of 4 detached and 6 semi-detached houses on	40% affordable housing	Zero contribution (saving

¹ Crosby, N. (2017) *Development Viability Assessment and the Provision of Affordable Housing. A game of 'pass the parcel'?*, Constructing Real Estate Markets symposium, September 14. Sheffield: University of Sheffield.

² Mathiason, N. *et al* (2013) *Thousands of Affordable Homes Axed*, September 18 (see www.thebureauinvestigates.com/stories/2013-09-18/thousands-of-affordable-homes-axed).

³ Centre for Progressive Capitalism (2017) *Estimating land value capture for England – updated analysis* (see <http://progressive-capitalism.net/2017/03/estimating-land-value-capture-england-updated-analysis/>).

		vacant site	under council policy	£106,328)
Stroud DC	2013	51 dwellings on brownfield site	15 affordable homes + £56,250 for recreation facilities	Permission for 49 open market houses (saving £750,000)
Thurrock DC	2013	41 flats and 270m ² of shopping space	14 affordable homes under council policy	Zero contribution (saving c. £1 million)

Source: s106 Management (see www.s106management.co.uk/case-studies).

The consultation paper's statement that viability assessments should not normally be required where a proposal accords with an up-to-date development plan is therefore very welcome. So is the requirement that assessments should be on an open-book basis and the guidance on them in the paper *Draft Planning Practice Guidance for Viability*. It also helps that the guidance moves towards such assessments being based on a standard methodology, as argued by the CIH's recent report *Building Bridges* and also by the NHF.⁴

However, it is not clear that these measures go far enough to remove the abuses that are currently taking place. How should authorities respond to viability assessments voluntarily compiled by developers to argue against affordable housing obligations? Why is the expectation of developer profit levels set so high (20%)? It should be made abundantly clear that only overriding circumstances should enable fresh viability assessments to be used to reduce or remove planning obligations, and that these do not include simple reduction in profit or land value for the developer/landowner (reflected in the price paid for land, as recently upheld by the High Court decision on the case between Islington Council and developer Parkhurst Road Limited⁵). Guidance could also emphasise both that a properly conceived section 106 policy should already have taken viability into account, rendering further tests redundant, and that if obligations are reduced it will rarely be necessary for them to fall to zero (as is so often currently the case).

⁴ Fraser, R. et al (2017) *Building Bridges: A guide to better partnership working between LAs and HAs*. Coventry: CIH.

⁵ http://www.islington.media/r/97837/high_court_backs_islington_in_a_landmark_planning_case_on

Monitoring of developer contributions and viability tests

In addition to the points made above, CIH would urge MHCLG to commit to a review of the planned measures within three years, to ensure that affordable housing output via s106 is not reduced and that the abuse of viability tests has been successfully curtailed.