

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:	Alan Dyer
Position:	Planning Manager
Name of organisation (if applicable):	Sevenoaks District Council
Address:	Council Offices, Argyle Road, Sevenoaks, TN13 1HG
Email:	Alan.Dyer@sevenoaks.gov.uk
Telephone number:	01732 227196

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):	
-------------------	--

**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):	
-------------------	--

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

The Council is aware of cases where the finalization of S106 agreements has resulted in delay but it notes that there is no objective research supporting the consultation to establish its relative significance as a contributory factors in delays to decision making.

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

The process of agreeing the contents of a Section 106 agreement can be time consuming but in most cases it need not delay the overall decision provided parties adopt a constructive approach and draft proposals form part of pre application discussions. The Government's response should focus on promoting early engagement rather than legislative change.

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

The process of agreeing the contents of a Section 106 agreement can be time consuming but in most cases it need not delay the overall decision provided parties adopt a constructive approach and draft proposals form part of pre application discussions. The Government's response should focus on promoting early engagement rather than legislative change.

Where there is disagreement over the substance, these are likely to relate whether an obligation is needed to make a development proposal acceptable and are likely to form part of the overall consideration of the acceptability of the proposal. If agreement cannot be reached with the local authority then the appropriate mechanism for resolution is by the planning inspectorate through the appeals process

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

The Council supports the measures outlined in para 13 of the consultation document and considers that these should be introduced and given time to take effect. It also agrees with the comments in para 12 that the introduction of CIL reduces the need for S106 agreements and notes that there will be consequential improvement as more Councils introduce CIL

The Council does not agree with the comment in para 14 that real change requires primary legislation. It has not seen any evidence accompanying the consultation that supports this contention. Legislation should not be considered at least until advice has been updated and given time to take 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

It should be recognized that there is already a dispute mechanism via the ability to appeal on grounds of non determination. The Council does not see a need for another mechanism.

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

The Council agrees with the reasons for rejecting this option set out in para 19 of the consultation document.

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

The Council does not agree that a new dispute resolution mechanism should be introduced at this time.

Should the Government decide to introduce a new mechanism the requirement is supported subject to a reasonable period being allowed for following the submission of a draft agreement to give time for a negotiated agreement.

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

Yes No

Comments

The Council does not agree that a new dispute resolution mechanism should be introduced at this time.

Should the Government decide to introduce a new mechanism the Council agrees that it should be binding for the reasons given in paras 21 – 23.

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

Yes No

Comments

The Council does not agree that a new dispute resolution mechanism should be introduced at this time.

Should the Government decide to introduce a new mechanism the Council considers that the most suitable body to operate it would be the Planning Inspectorate.

Question 10: How long should the process take?

Yes No

Comments

The Council does not agree that a new dispute resolution mechanism should be introduced at this time.

Should the Government decide to introduce a new mechanism the timescale may depend on whether it involves determining the application (see comment on Q.13.)

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

The Council does not agree that a new dispute resolution mechanism should be introduced at this time.

Should the Government decide to introduce a new mechanism the Council agrees that a fee should be chargeable both to cover the cost of the service and to deter frivolous referrals. The fee should be payable by the body referring the dispute to the service.

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

Yes No

Comments

The Council does not agree that a new dispute resolution mechanism should be introduced at this time.

Should the Government decide to introduce a new mechanism the Council considers that in the interests of fairness it should not be restricted to particular types of application.

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

Yes No

Comments

One of the reasons the Council is opposed to a separate dispute mechanism is that in many cases it will not be possible to separate consideration of the S106 agreement from consideration of the merits of the proposal as a whole.

In cases where the dispute can only be resolved through deciding on the acceptability of the planning application then the decision should be made through the appeals process following the Planning Inspectorate's timetable for appeals.

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

One of the reasons the Council is opposed to a separate dispute mechanism is that in many cases it will not be possible to separate consideration of the S106 agreement from consideration of the merits of the proposal as a whole. In such cases decisions should be made by the local planning authority or on appeal to the Planning Inspectorate.

There may be occasional cases where the dispute is limited to the right way to deliver an agreed obligation but the Council does not see that legislation to introduce a new mechanism is justified for such limited cases.

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

The Council does not have a significant demand for student accommodation in its area and is not able to comment on this question.

Thank you for your comments.