



## BRIEFING PAPER

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# Planning Obligations (Section 106 Agreements)

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## Summary

Planning obligations, sometimes known as section 106 agreements, are legally enforceable obligations entered into under section 106 of the [Town and Country Planning Act 1990](#) (as amended). They are agreements made between a developer and the Local Planning Authority (LPA) designed to meet the concerns an LPA may have about meeting the cost of providing new infrastructure for an area.

In order for planning obligations to be used, they must meet three legal tests set out in part 11 of the [Community Infrastructure Levy Regulations 2010](#). A planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

In 2014 the Government's Planning Practice Guidance was amended to exempt developments of 10 units or fewer and developments with less than 1,000 square metres of floor space from the requirement to contribute towards affordable housing. The Government argued these changes would help increase housing supply. However, some local councils objected to the loss of income these exemptions would bring. In August 2015 the Government revoked this policy following a judicial review brought by West Berkshire District Council and Reading Borough Council after it was judged to be "incompatible" with the statutory planning framework. The Government appealed this judgement and, in May 2016, won its appeal. The Government has now reintroduced this policy in its amended [planning practice guidance](#).

The former Coalition Government made changes to how planning obligations interact with the Community Infrastructure Levy (CIL). LPAs must not double charge developers for the same infrastructure projects, and since April 2015 LPAs can no longer pool more than five planning obligations if they were entered into since April 2010, and if it is for infrastructure capable of being funded by the CIL.

In the HM Treasury's July 2015 Productivity Plan, [Fixing the foundations: Creating a more prosperous nation](#), the Government announced its intention to introduce a dispute resolution mechanism for section 106 agreements, in order to "speed up negotiations and allow housing starts to proceed more quickly." The Housing and Planning Act 2016, once in force, will provide for a dispute resolution process designed to speed up section 106 negotiations.

This briefing paper looks at recent changes to planning obligations, the appeals process surrounding them and how planning obligations interact with the Community Infrastructure Levy.

This briefing paper applies to England only.

# 1. What are planning obligations?

Planning obligations, sometimes known as section 106 agreements or “affordable housing levies”, are legally enforceable obligations entered into under section 106 of the [Town and Country Planning Act 1990](#) (as amended) to mitigate the impacts of a development proposal. They are agreements made between a developer and the Local Planning Authority (LPA) designed to meet the concerns an LPA may have about meeting the cost of providing new infrastructure for an area.

New developments often bring wider impacts. A new housing development, for example, will result in more people living in an area, and more people using local facilities such as roads, parks and leisure centres. New or upgraded facilities may therefore be required to cope with this, or the council might be keen for some of the housing in a new development to be affordable (that is, “social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market”)<sup>1</sup>. Section 106 of the *Town and Country Planning Act 1990* (as amended) allows developers to enter into “planning obligations” with a local authority to meet these requirements in order to secure planning permission for a development. The obligations may be provided by the developers “in kind” – that is, where the developer builds or provides directly the matters necessary to fulfil the obligation. This might be to build a number of affordable homes for an area. Alternatively, planning obligations can be met in the form of financial payments. In some cases, it can be a combination of both.<sup>2</sup>

Planning obligations are agreements between a developer and LPA designed to meet the concerns an LPA may have about meeting the cost of providing new infrastructure for an area

Section 106 of the *Town and Country Planning Act 1990* (as amended), outlines how planning obligations might be used. A developer may enter into obligations

- (a) restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the authority [(or, in a case where section 2E applies, to the Greater London Authority)] on a specified date or dates or periodically.<sup>3</sup>

The Government’s [Planning Portal](#) highlights how planning obligations are used for three specific purposes. To:

<sup>1</sup> Communities and Local Government, [National Planning Practice Guidance](#), March 2012, p50

<sup>2</sup> Communities and Local Government, [Planning Obligations: Practice Guidance](#), July 2006, para 2.3

<sup>3</sup> [Town and Country Planning Act 1990](#), Section 106(1)

## 5 Planning Obligations (Section 106 Agreements)

- I. **Prescribe** the nature of development (for example, requiring a given portion of housing is affordable),
- II. **Compensate** for loss or damage created by a development (for example, loss of open space), or
- III. **Mitigate** a development's impact (for example, through increased public transport provision). Planning obligations must be directly relevant to the proposed development.<sup>4</sup>

### 1.1 When can planning obligations be used?

In order to support a new development, planning obligations must help to meet the objectives of the local and neighbourhood plans for a particular area. The Coalition Government also tightened up on when planning obligations can be used by introducing three legal tests which must be met. These were previously included as part of five policy tests set out in the Labour Government's circular on planning obligations in 2005.<sup>5</sup> They are now set out in part 11 of the *Community Infrastructure Levy Regulations 2010*, which has given them a statutory platform making them mandatory. Each of these three legal tests must be met before a planning obligation can be used:

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.<sup>6</sup>

In addition, the following policy tests for using planning obligations are also set out in the Government's [National Planning Policy Framework](#) (NPPF)

203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

204. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

205. Where obligations are being sought or revised, local planning authorities should take account of changes in market

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<sup>4</sup> Planning Portal, [Planning Obligations and Agreements](#)

<sup>5</sup> Office of the Deputy Prime Minister, [Planning Obligations](#), ODPM Circular 05/2005, 18 July 2005

<sup>6</sup> [Community Infrastructure Levy Regulations 2010](#), Part 11, SI No. 948

conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.<sup>7</sup>

Many LPAs also produce supplementary planning documents setting out more information about the likely scale, nature and cost of planning obligations in their area.

## 1.2 Enforcement

Planning obligations are formal legal documents, and are registered as local land charges. This means that the land itself, rather than the person or organisation that develops the land, is bound by a planning obligation.<sup>8</sup> This is something any future owner should take in to account, as planning obligations can have significant effects on the use and value of land.<sup>9</sup>

If a planning obligation is not complied with, it is enforceable against the person(s) that entered into the obligation or any subsequent owner of the land. Planning obligations are enforceable by the LPA, either through the courts by application for an injunction or by carrying out any operations required by the planning obligation and recovering the cost from the person(s) against whom the obligation is enforceable.

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<sup>7</sup> Communities and Local Government, *National Planning and Policy Framework*, March 2012, paras 203-206

<sup>8</sup> Planning Portal, [Planning Obligations and Agreements](#)

<sup>9</sup> Planning Advisory Service, [S106 Obligations Overview](#), 27 March 2015 [accessed 27 April 2015]



## 2. Appealing a planning obligation

A planning obligation may be modified or discharged at any time by agreement with the LPA. If there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application can be made to the Local Planning Authority to change the obligation if it “no longer serves a useful purpose”.<sup>10</sup> If this results in a refusal, an appeal can then be made. The Government’s national planning practice guidance states that an appeal under section 106B of the [Town and Country Planning Act \(1990\)](#) “must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months starting at the 8 weeks from the date of request to amend if no decision is issued”.<sup>11</sup>

### 2.1 Appealing affordable housing obligations

The Government’s Planning Practice Guidance (PPG) sets out how an appeal procedure for the review of affordable housing obligations, as introduced by the *Growth and Infrastructure Act 2013*, has now been repealed as of April 2016:

[Sections 106BA to 106BC of the 1990 Act](#) used to provide an application and appeal procedure for the review of affordable housing obligations based on economic viability without taking into account other aspects of the planning consent. These provisions were repealed at the end of 30 April 2016. [Guidance](#) concerning applications made under section 106BA continues to apply to applications received before the end of April 2016.<sup>12</sup>

The *Growth and Infrastructure Act 2013* introduced changes to allow planning obligations which relate to affordable housing to be renegotiated, in order to make a development more economically viable. This has now been repealed.

### 2.2 Disclosure of viability in planning applications

Viability assessments are used by developers to help demonstrate to the local planning authority that an existing affordable housing obligation is economically unviable and should be overturned. However, these assessments have come under some criticism recently, particularly regarding their confidential nature. A *Guardian* newspaper article has argued that such arrangements “cloud the accountability and transparency of what should be a statutory public process”; and developers and councils have come under increasing pressure to disclose the details of viability assessments.<sup>13</sup>

Courts and Tribunals have taken different approaches to the disclosure of viability in planning obligations. In the recent case of *Royal Borough*

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<sup>10</sup> [Town and Country Planning Act 1990](#), Section 106A

<sup>11</sup> Planning Practice Guidance, [Planning Obligations](#), para 11

<sup>12</sup> HM Government, Planning Practice Guidance, [Paragraph: 009 Reference ID: 23b-009-20160519](#), Revision date: 19 05 2016

<sup>13</sup> [‘The truth about property developers: how they are exploiting planning authorities and ruining our cities’](#), *The Guardian*, 17 September 2014

of *Greenwich v IC and Brownie (EA/2014/0122)*, a Ministry of Justice tribunal ordered the full disclosure of a viability report used to argue the case for a reduction in the number of affordable houses on a 10,000-home Greenwich Peninsula scheme. The applicant had already been given much of the information requested. However, certain information relating to pricing and profit assumptions, sales and costs forecasts, was withheld. The Tribunal concluded that any harm in disclosing the information was outweighed by the public interest in understanding the reasoning for particularly controversial decisions.<sup>14</sup>

However, a recent court case, *George Turner v SoS CLG and others [2015] EWHC 375*, challenged a decision by the Secretary of State to approve the development of the Shell Centre, London. The site developers had commissioned a report arguing that only 20 per cent of affordable housing on the site (as opposed to the 40 per cent specified in the Local Plan for sites as large as the one in question) could be achieved in order to make the site economically viable. The local authority's own commissioned report concurred with this. However, at the Secretary of State's inquiry, in accordance with the inspector's directions, only statements of evidence were logged. The developer's statement did not include either report, although the developer did produce the local authority's report following a complaint by the applicant. It was argued that the developer should also have disclosed their own viability report since it was not possible to check the local authority's appraisal without it.

This argument was rejected by Judge Justice Collins on the grounds that the applicant's contention that the developer's report had to be disclosed was "not maintainable". The Judge argued that "It must be open to applicants for planning permission to submit confidential material in support of their applications". Although the Judge did maintain that it was important controversial decisions were not reached with material not disclosed to objectors, he also concluded that where there was a call-in, the local authority officer's report could be produced but, subject to what the developer might need to include to make its case, no more was required. The Judge also argued that the report commissioned by the local authority had been sufficient to enable the inspector to give proper consideration of viability.<sup>15</sup>

The law firm Denton's [UK Planning Law Blog](#) has raised questions about this decision. They argue that "inquiry evidence must be heard in public, unless the SoS makes a – rare – direction for a shielded procedure for scrutiny of sensitive information".<sup>16</sup>

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<sup>14</sup> [Westlaw.Uk, Case Comment: Greenwich RLBC v Information Commissioner Unreported January 30, 2015 \(FTT \(GRC\); 'Why developers could share less viability information following a tribunal ruling'](#), *Planning Resource*, 13 February 2015

<sup>15</sup> [Westlaw.Uk, Summary of George Turner v SoS CLG and others \[2015\] EWHC 375](#)

<sup>16</sup> ['Strange Tides – Courts and Tribunal Pull in Different Directions'](#), UK Planning Law Blog, 17 April 2015



### 3. Affordable housing obligations

The Coalition Government repeatedly expressed a desire to address delays in the planning process in order to increase the supply of housing. The [2013 Autumn Statement](#) included a commitment to consult on a proposed new 10-unit threshold for section 106 affordable housing contributions,<sup>17</sup> and in February 2014 a [consultation](#) was held seeking views on this threshold.<sup>18</sup>

In November 2014 the [Planning Practice Guidance](#) (PPG) was then changed to exempt developments of 10 units or fewer from the requirement to contribute towards affordable housing. Residential developments with less than 1,000 square metres of floor space were also exempt. In a Written Ministerial Statement confirming this change, the Government argued that there was a “disproportionate burden of developer contributions on small-scale developers” and that the exemption for developments of 10 units or less from planning obligations, would increase housing supply by freeing up the planning system.<sup>19</sup>

Planning Practice Guidance exempts developments of 10 units or fewer from affordable housing obligations. This policy was reintroduced on 19 May 2016.

Some local councils objected to the loss of income from exemption for sites of 10-units or less for affordable housing contributions. Areas where a large proportion of affordable housing contributions come from smaller projects, particularly those in rural areas, urban areas which are constrained by the green belt or those with a dearth of suitable large scale sites, were concerned about the loss of income. Some LPAs were also confused about to respond to this policy change where policies in their adopted local plans on developer contributions now conflicted with the PPG. For example, [Chiltern District Council](#) has adopted an “interim approach”, as of 16 January 2015.<sup>20</sup>

In February 2015 it was [reported](#) that West Berkshire and Reading Councils had taken the government to court for judicial review on the grounds of “irrationality” over the decision to introduce these exemptions.<sup>21</sup> They claimed that the policy change would effectively give state aid to small developers, distorting competition and breaching European laws. They also claimed that the new policy was irrational, because developers could already be exempted from planning obligations if these could be shown to make schemes unviable.<sup>22</sup>

In the case of *R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government* [2015] EWHC 2222 (Admin) in the High Court, the judge found that the Government’s new policy was “incompatible”

<sup>17</sup> HM Treasury, [Autumn Statement 2013](#), December 2013, para 1.226

<sup>18</sup> Communities and Local Government, [Planning performance and planning contributions: consultation](#), March 2014

<sup>19</sup> [HC Deb 28 Nov 2014 55WS](#)

<sup>20</sup> Chiltern District Council, [Affordable Housing Contributions - Validation Requirement](#), 2 March 2015

<sup>21</sup> “Minister accused of 'irrationality' over affordable housing exemption” [Inside Housing](#), 4 February 2015

<sup>22</sup> Reading Borough Council, [West Berkshire and Reading Councils Join Forces to Challenge Government Changes to Planning System](#), 16 January 2015

with the statutory planning framework. Following this judgement the Government [cancelled](#) those paragraphs in the PPG which exempted developments of ten homes or fewer from section 106 obligations. For discussion about the implications of this judgement see article from law firm [Bond Dickinson](#) "Court declares guidance on affordable housing planning obligations and VBC unlawful" 4 August 2015.

The Government appealed this judgement in the Court of Appeal and on 11 May 2016 had the High Court's ruling overturned.<sup>23</sup> The Government issued a press release following this judgement, [Judgment paves way to build more homes on small sites](#), 11 May 2016.<sup>24</sup> On 19 May 2016 the Government amended the PPG section on planning obligations to reintroduce the exemption from section 106 affordable housing contributions for developments of 10 houses or fewer. The revised guidance sets out the circumstances where planning obligations should now not be sought:

As set out in the [Starter Homes Written Ministerial Statement](#) of 2 March 2015, starter homes exception sites should not be required to make affordable housing or tariff-style section 106 contributions.

There are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-built development. This follows the order of the Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the [Written Ministerial Statement of 28 November 2014](#) and should be taken into account.

These circumstances are that;

- contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm
- in designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development. This applies to rural areas described under [section 157\(1\) of the Housing Act 1985](#), which includes National Parks and Areas of Outstanding Natural Beauty
- affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home<sup>25</sup>

<sup>23</sup> Secretary of State for Communities and Local Government and (1)West Berkshire District Council (2)Reading Borough Council [\[2016\] EWCA Civ 441](#)

<sup>24</sup> HM Government, [Judgment paves way to build more homes on small sites](#), 11 May 2016

<sup>25</sup> HM Government, Planning Practice Guidance, [Paragraph: 031 Reference ID: 23b-031-20160519](#), Revision date: 19 05 2016

## 11 Planning Obligations (Section 106 Agreements)

Planning magazine reported that there was still the possibility that the matter could go to the Supreme Court for a further appeal.<sup>26</sup>

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<sup>26</sup> "Court backs government plans to exempt small sites from affordable homes obligations" [Planning](#), 11 May 2016

## 4. The interaction between planning obligations and the Community Infrastructure Levy

The Community Infrastructure Levy (CIL), originally introduced by the Labour Government in 2010, is a levy that local authorities in England and Wales can choose to charge on new developments in their area. It is basically a charge on new buildings and extensions to help pay for supporting infrastructure. In areas where a community infrastructure levy is in force, land owners and developers must pay the levy to the local council. The money raised from the community infrastructure levy can be used to support development by funding infrastructure that the council, local community and neighbourhoods want, like new or safer road schemes, park improvements or a new health centre. For further information on the CIL see the Library Standard Note: [Community Infrastructure Levy](#).

Both planning obligations and the CIL are therefore designed to help pay for local infrastructure. However, there are differences regarding when the two charges should be used. The CIL is intended to provide infrastructure to support the development of an area, while planning obligations are used to make an individual planning application acceptable in planning terms.<sup>27</sup> The CIL does not therefore need to be used for providing infrastructure on the site it is collected from. The current [CIL guidance](#) in the NPPG makes it clear that where the CIL and planning obligations interact, “section 106 requirements should be scaled back to those matters that are directly related to a specific site”.<sup>28</sup> Most site specific impact mitigation which is required in order for a development to be granted planning permission should therefore be done using a planning obligation.<sup>29</sup>

The CIL is intended to provide infrastructure to support the development of an area, while planning obligations are used to make an individual planning application acceptable in planning terms

### 4.1 No “double-charging”

An important element in the interaction between the Community Infrastructure Levy and planning obligations is that there should be no double charging to developers for the same purpose, i.e. the levy and a planning obligation cannot be used to fund the same infrastructure project. The Government’s National Planning Practice Guidance states that it is expected that:

charging authorities will work proactively with developers to ensure they are clear about charging authorities’ infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived ‘double dipping’, with developers paying twice for the same item of infrastructure.<sup>30</sup>

<sup>27</sup> National Planning Practice Guidance, [Community Infrastructure Levy](#), para 94

<sup>28</sup> Department of Communities and Local Government, [Community Infrastructure Levy: Guidance](#), April 2013, para 87

<sup>29</sup> National Planning Practice Guidance, [Community Infrastructure Levy](#), para 94

<sup>30</sup> Ibid, para 85

## 13 Planning Obligations (Section 106 Agreements)

During a Westminster Hall debate on the Community Infrastructure Levy in February 2014, the Parliamentary Under-Secretary for Communities and Local Government highlighted some further differences between the CIL and planning obligations, while also commenting on the issue of double charging:

With the levy, developers know up front what they will be charged and when payment will be required. Section 106 agreements, on the other hand, do not offer the kind of transparency that the levy provides, as contributions are determined through often lengthy negotiations between developers and local authorities. The levy enables local authorities to prioritise spending on infrastructure across their area to facilitate local growth and development. Authorities are also able to use levy funds to deliver infrastructure outside their area, by working with other local authorities, so long as it supports development in their area.

Section 106 agreements are site-specific and cannot be used to mitigate wider impacts of development. Individual section 106 agreements may be subject to viability testing, which can cause delays. That is not an issue for the levy, as local economic viability will have been tested at examination prior to adoption of the charging schedule. The levy does not replace section 106 planning obligations, but restricts their use in areas that have adopted the levy to ensure there is no double charging of developers.<sup>31</sup>

*“Section 106 agreements [...] do not offer the kind of transparency that the levy provides, as contributions are determined through often lengthy negotiations between developers and local authorities”.*

Brandon Lewis MP,  
Planning Minister.

### 4.2 No “pooled” contributions

From 6 April 2015, the use of ‘pooled’ contributions toward infrastructure projects has been restricted. Previously, LPAs had been able to combine planning obligation contributions towards a single item or infrastructure ‘pot’. However, under the Community Infrastructure Levy Regulations introduced in 2010, LPAs will no longer be able to pool more than five planning obligations together if they were entered into since 6 April 2010, and if it is for a type of infrastructure that is capable of being funded by the CIL.<sup>32</sup> These restrictions apply even where an LPA does not yet have a CIL charging schedule in place.

Affordable housing provision is not bound by these restrictions.

These regulations are designed to encourage LPAs to use the CIL rather than planning obligations to pay for local projects. The Government argues that raising money through the CIL is fairer, faster and more transparent than doing so through planning obligations.<sup>33</sup> This is because the CIL is charged per square metre of floor space, according to rates set by councils, while planning obligations are often negotiated on a case-by-case basis.

However, there are some issues with the restriction on pooling contributions from planning obligations. Only around 20 per cent of LPAs in England and Wales have adopted a CIL charging schedule,

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<sup>31</sup> [HC Deb 5 Feb 2014 c134WH](#)

<sup>32</sup> Planning Practice Guidance, [Community Infrastructure Levy](#), para 099

<sup>33</sup> Department of Communities and Local Government, [Planning Reform: Community Infrastructure Levy](#), accessed on 7 May 2015

which sets the authority's proposed levy rates.<sup>34</sup> Some in the planning industry have argued that this might result in developments stalling, with councils being forced to refuse or not determine applications that would have relied on the use of planning obligations to meet infrastructure requirements necessary for a development. Others have suggested that LPAs may have to become more creative in how they apply planning obligations, perhaps by splitting infrastructure projects up into several smaller ones, thereby enabling them to pool more contributions.<sup>35</sup> For example, a developer could be asked to make a contribution to a specific classroom rather than simply contributing to the expansion of a school.

During a Westminster Hall debate on the National Planning Policy Framework in March 2015, Geoffrey Clifton-Brown MP argued that the pooling restrictions on planning obligation contributions may prevent new schools, doctors' surgeries and other facilities required as a result of a new development from being built, despite the existence of the CIL:

No more than five section 106 agreements will be allowed to pay for the same project. That could prevent important services from being provided to towns and villages, such as new schools, doctors' surgeries, libraries and so on, which are required as a result of new development.<sup>36</sup>

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<sup>34</sup> Planning Resource, '[Policy Briefing: Net draws tighter on pooled infrastructure contributions](#)', 1 April 2015

<sup>35</sup> Planning Resource, '[Why so few councils have a CIL schedule in place despite looming S106 restrictions](#)', 20 March 2015

<sup>36</sup> [HC Deb 5 Mar 2015 c368WH](#)



## 5. Future changes to planning obligations

The Autumn Statement 2014 included a commitment to consult on measures to speed up planning obligations as part of the Government's pledge to deliver a faster planning system. The consultation was held between 20 February and 19 March 2015, and sought views on potential measures to improve and speed-up negotiating planning obligations and on the impact of affordable housing contributions on developments delivering new student accommodation.

The Government's response to this consultation was published on 25 March 2015.<sup>37</sup> The Government said that consultation feedback indicated that they should consider further basis for strengthening the legislative framework for resolving delays in negotiating planning obligations. This may include setting stricter timescales for planning obligation negotiations and creating a mechanism whereby disputes could be resolved if the timescales are not adhered to. The Government also said that they would "undertake further discussions with relevant parties to further support dedicated student accommodation".<sup>38</sup>

In the HM Treasury's July 2015 Productivity Plan, [Fixing the foundations: Creating a more prosperous nation](#), the Government announced its intention to introduce a dispute resolution mechanism for section 106 agreements, in order to "speed up negotiations and allow housing starts to proceed more quickly."<sup>39</sup>

In the November 2015 [Autumn Statement](#) the Government said it will bring forward proposals for a more standardised approach to section 106 viability assessments, and extend the ability to appeal against unviable section 106 agreements to 2018.<sup>40</sup>

### 5.1 Housing and Planning Act 2016

The Housing and Planning Act 2016, once in force, will provide for a dispute resolution process designed to speed up section 106 negotiations. During debates on the then bill, the Housing and Planning Minister Brandon Lewis explained this new provisions as follows:

They provide for a person to be appointed to help resolve outstanding issues in relation to section 106 planning obligations. The new process will also apply only in situations where the local planning authority would be likely to grant planning permission if satisfactory planning obligations were entered into, ensuring that

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<sup>37</sup> Department of Communities and Local Government, [Section 106 Planning Obligations – Speeding up negotiations: Government response to consultations](#), March 2015

<sup>38</sup> Communities and Local Government, [Section 106 planning obligations – speeding up negotiations: student accommodation and affordable housing contributions: Government response](#), March 2015, paras 39-40

<sup>39</sup> HM Treasury, [Fixing the foundations: Creating a more prosperous nation](#), July 2015, para 9.17

<sup>40</sup> HM Government, [Spending review and autumn statement 2015](#), 27 November 2015, section 12

we only target sites where prolonged negotiations could stall development.

After the appointed person issues their report on that mechanism, the parties will still be free to agree their own terms if they do not agree with the report, but only if they do so quickly. We want to encourage the parties to tie up their loose ends quickly. We are consulting on the finer detail of the process and we will bring forward regulations in due course.<sup>41</sup>

Chapter 10 of the Government's February 2016 [Implementation of planning changes: technical consultation](#) provides further information about how the proposed dispute resolution mechanism would work.

Another provision in the Act will provide the Secretary of State with powers to restrict the enforcement of planning obligations in relation to affordable housing in certain situations. Brandon Lewis said that Government would later consult on how to use this power, which would be introduced through regulations.<sup>42</sup>

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<sup>41</sup> [HC Deb 5 January 2016 c216-7](#)

<sup>42</sup> [HC Deb 5 January 2016 c217](#)

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