

APPENDIX 2 RESPONSE TO CONSULTATION

Annex C: Contributing to sustainable communities - A new approach to planning obligations

Your response to this consultation

The Government would welcome your comments our proposals. We have asked questions throughout this consultation document and these questions are repeated on the following pages.

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If you are replying on behalf of an organisation, please briefly describe what the organisation does and its size.	
Local Planning Authority	
A: Do you agree that these are the most significant problems with the current approach to planning obligations? Are there others?	

Brent has endeavoured to expedite the S106 negotiating process by drafting 'Heads of Terms' very early in the application determination process. However, developers and their lawyers often argue about these fundamental issues thereby unduly prolonging the negotiations.

The Planning Obligations system is increasingly being regarded as a compensation vehicle to secure the necessary capital funding for infrastructural projects which the Government will not make available to local authorities.

The absence of any effective speedy enforcement system to ensure developers' compliance with planning conditions has resulted in the increasing use of S106 agreements to ensure that the planning consent will be properly implemented.

B: Do you agree that these should be the objectives for a new approach to planning obligations? If you do not agree, what objectives would you like to see?

Objective f) "not impose financial burdens on developers which in themselves deter desirable development" is unacceptable to the Council because :

1. "Burden" is a totally inappropriate term, with highly negative connotations, for use in any planning guidance and particularly that dealing with planning obligations.
2. The contextual reference to a "desirable development" needs to be elaborated and clarified to clearly establish that objectives a), b) & c) constitute the essential elements of a 'desirable development'.

C: Are you aware of any examples of innovative and/or good practice in the use of planning obligations? If you are, please send information about these examples with your response.

See the Brent procedures as detailed in the attached letter.

D: Do you agree that planning obligations should be used to seek contributions towards the range of impacts implied by case law?

If you do not agree, what do you think the relationship should be between the development and the contributions it makes?

Yes, as the courts have commented on the inappropriate constraints of Circular 1/97. However, this in itself does not justify the proposed radical reform. It should also be noted that the use of planning obligation to mitigate some of the cited impacts, has already been recognised in the relevant planning guidance (eg) PPG 25 Flood Prevention.

E: Do you agree that local planning authorities should set out, in their development plans, policies explaining how they will use negotiated planning obligations to secure developer contributions?

If you don't agree, would you like to see local planning authorities set out policies in another way?

Yes, in so far as it relates to general strategy and indicates the likely type of development where a planning obligation may be sought.

F: Do you agree that where possible, local planning authorities should use formulae to explain the scale of contributions they will seek towards specific areas?

Alternatively, if you disagree that the use of formulae will help achieve our objectives, can you suggest an alternative approach that will?

The use of formulas in the development plan to generally establish the fundamentals of the sought contribution in areas such as affordable housing and additional school places requirements (as employed in Brent UDP Policy CF6 School Places) can be beneficial but the details, in terms of cash or in-kind contributions, are best presented in supplementary planning guidance which can be more frequently revised and updated.

G: Do you agree that local planning authority planning obligations policies should be examined as part of the development plan process?

If you do not agree, can you suggest an alternative approach?

Brent's general planning obligations strategy was examined at the UDP Public Inquiry (2002). However, the Council is firmly of the opinion that an examination of the detailed methodology of the wide range of likely planning obligations and, in particular, their respective potential costs, is inappropriate for a development plan inquiry .

H: Do you agree that, in some circumstances, local planning authorities should be able to use planning obligations to secure ongoing contributions?

And if you disagree, can you suggest an alternative approach that could help both the affordability of contributions and help manage risk?

Yes, as the Council has experienced problems with the revenue funding of facilities, such as open space and childrens playgrounds, whose capital provision was a planning obligation.

I: Do you agree that voluntary pooling of Section 106 contributions should be encouraged where this can help meet the needs of the new development and the local community?

If you disagree, can you suggest an alternative approach that could enable developers to contribute towards larger projects where the contributions that are needed are greater than those that could reasonably be secured from one development or authority?

Yes, both for inter-borough and intra-borough use, where this would be to the mutual advantage of adjacent boroughs. However, the actual drafting of the requisite planning obligation agreement(s) for intra-boroughs use may present complex legal problems whereas the pooling of small contributions, (eg) in lieu of individual amenity space, to enhance a local park, is quite feasible and commonplace under the current system.

J: Do you agree that local planning authorities should use standard heads of terms and clauses for negotiated planning obligations?

And do you agree that this approach could help reduce delays?

Or, if you disagree, can you suggest an alternative approach?

Yes, Brent routinely employs such 'standardisation' wherever appropriate.

Yes, if the developer does not dispute standard heads of terms etc.

K: Do you agree that local planning authorities should consider bringing in additional resources and that this could help reduce delays?

If you agree, do you also agree that they should be able to ask the developer to pay for this faster service through the s106 agreement?

If you disagree with the proposal, can you suggest an alternative approach that will help reduce delays?

Yes, if the necessary funding can be secured . However, it must be appreciated that, although funding is an important constraint on the ability of the Council to expedite planning obligations negotiations, there is a fundamental shortage across the public and private sectors of planners and other professionals with the necessary skills and experience.

Yes, as it should be a fundamental principle of the planning obligations negotiations process that no additional costs should fall upon the local authority. This should also include payment of costs for negotiations which do not result in an agreement.

L: Do you agree that both local planning authorities and developers should consider using expert mediators to help resolve disputes?

If you disagree, can you suggest an alternative mechanism to help resolve disputes?

Yes, where this is appropriate and incurs no additional cost for the local authority.

M: Can you suggest any additional measures that could help reduce delays sometimes associated with negotiated planning obligations

Developers should be liable to fiscal penalties if they unreasonably delay planning obligations negotiations and the signing of the resultant agreement.

N: Do you agree that the optional planning charge should be used to secure the same range of contributions as negotiated planning obligations?

If you don't agree, what do you think an optional planning charge should cover?

No, the Council is opposed to the principle of the optional planning charge as this is contrary to all good and well established planning principles.

O: Do you agree that local planning authorities should set out the basis for the new optional planning charge in their development plans?

If you disagree, who should set out the basis for the charge

Only in so far as it relates to the general strategy as currently employed in Brent's UDP, as the likely formulae and other calculations would represent matters too detailed for a development plan which is not subject to annual review and updating.

P: Do you think there should be different levels for some types of land or development?

If you agree, do you think the charge should be set at different levels for brownfield and greenfield, and for residential and commercial development?

Or can you suggest a different approach?

Yes, in respect of a higher charge to deter 'greenfield' sites development in areas where there is sufficient brownfield land.

Q: Do you think local planning authorities will be able to set charges that take into account all likely impacts of development on sites identified in the development plan?

No, as this would involve a disproportionately high level of scarce technical and other resources expenditure and would, moreover, not be able to anticipate changes in site and other circumstances that might occur several years after the adoption of the plan.

R: How do you think local planning authorities should secure affordable housing contributions as part of the optional planning charge?

- i. As a financial contribution?
- ii. As an in-kind contribution, including on site?
- iii. As a combination of both?

And should local planning authorities be given the flexibility to decide which option best meets local needs, or do you think they should be restricted to using only your preferred option?

A financial contribution should normally only be acceptable in exceptional circumstances, as advised by draft revised PPG 3, primarily where the development is too small to enable satisfactory management of the potential on-site affordable housing provision. On-site provision should always be the primary requirement, provided the dwellings are constructed to the appropriate affordable housing providers' standards and needs.

Yes, the local authority must have total flexibility to determine affordable housing provision in the light of local needs and circumstances.

S: Do you agree that the amount payable under a new charge scheme should vary according to this size of the development?

If you agree, do you agree that the amount payable should be calculated per unit for residential and by floorspace for commercial? Or can you suggest a better alternative?

Any planning obligation, be it S106 or the proposed optional charge, must properly reflect the scale of development.

Residential development could be assessed on either a dwelling or a habitable room basis.

T: Do you agree that the charge should only apply to sites identified in the development plan?

If you agree, how do you think the local planning authority should respond to applications on windfall sites or other sites outside the plan?

The inherent logic of the optional charge infers it should apply to all sites, development plan proposals and windfall sites. However, as it will be difficult enough for an authority to precisely estimate the option charge costs for a scheduled development plan proposal site, it will be nigh impossible to do so for 'unknown sites', such as windfalls, which represent such a significant source of new housing and other development opportunities in Brent.

U: Do you agree that local planning authorities should be able to pool planning charge contributions, provided they have clear policies explaining how the contributions will be used as set out in their development plans?

This question essentially poses the same issues as Q I , so see above response to QI.

V: Do you agree that local planning authorities should be able to spend the receipts from the planning charge only on those elements specified in the local development plan? If not, how much flexibility do you think there should be in how the receipts are spent?

Local planning authorities should have the maximum possible flexibility to spend such receipts in the light of current circumstances, subject to their statutory obligations, and not as they may have been several years previously at the time of the development plan inquiry. However, it may be necessary for the Government to take 'reserve powers' to ensure that essential areas, such as affordable housing provision, are properly prioritised for planning obligation funding.

W: Do you agree with our view that, although the charge is less flexible than negotiated planning obligations, the developer's right to choose to negotiate will ensure the overall approach is still sufficiently flexible to adapt to the needs of individual developments?

The Council is opposed to the principle of the developer being able to choose between the traditional planning obligations negotiations process and the payment of the optional charge as it considers this is contrary to basic planning principles.

X: Do you agree that once a developer has chosen to pay the charge, they should not be asked to make additional financial contributions through a s106 agreement?
If you disagree, when should local planning authorities be able to seek additional negotiated contributions and what could these contributions cover.

No, the local planning authority must have the discretion to ensure that all appropriate sites make satisfactory planning obligations contributions in the light of the prevailing circumstances.

We would also welcome comments on the Regulatory Impact Assessment (RIA).

The RIA, and indeed the proposals as a whole, unduly favour the individual interests of the developer and landowner at the expense of the community as democratically represented by the local planning authority.

Comments are invited on the benefits, costs and assumptions above on Option A. In particular, can you quantify benefits or costs?

The Council's concerns as to the likely very significant additional resource burden that Option A will impose, without any discernible compensatory benefits, has been sufficiently exhibited elsewhere in this response and also the attached letter.

Do you have any other comments on our proposals or on the RIA?

The proposals totally underestimate the resources burden, even if such skills are readily available and affordable, that the extensive technical calculations of the optional charge methodology will impose on the local authority.