



BPF RESPONSE TO THE HOUSING AND PLANNING APPG'S CALL FOR EVIDENCE ON DEVELOPER CONTRIBUTIONS

PREPARED AND SUBMITTED BY

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British Property Federation

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers, and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work, and relax.

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1. What is your aspiration for England's developer contribution system? (100 words)

Flexible and responsive to local market conditions – any system needs to be flexible enough to respond to market conditions on the ground and find solutions for our most complex urban sites. S106 can be viewed as a useful problem-solving tool in this sphere and contrary to some commentary this mechanism has actually enabled the development sector to contribute more to infrastructure and affordable housing over the years by enabling certain sites to come forward that otherwise would not have.

Clarity over the purpose of developer contributions – In the BPF's view, the overall purpose of developer contributions should be to mitigate the impact of development locally. The developer contributions system can include tools to extract land value arising from public investment but only in prescribed circumstances e.g. where value is created or sites are released due to forward investment such as Crossrail and Mayoral CIL in London.

Linkage between payment and delivery of infrastructure – The CIL system and to a lesser extent S106 is good at collecting developer contributions but much poorer at translating this into infrastructure delivery in a transparent way. Developer contributions should be spent solely on infrastructure to meet the needs arising from the development and should not be used to plug gaps in other areas of local authority spend or spent on other council 'priorities'.

2. What has been your experience of Section 106 and CIL? Please provide any evidence you can to demonstrate why improvements are necessary. (200 words) *

BPF members are of the view that despite its critics in recent years, S106 remains a valuable problem-solving tool for developers and local authorities. Advantages of S106 include it being a well understood mechanism that can solve problems through constructive dialogue between developers and local

authorities that can reflect the specific circumstances of the site or scheme. S106 is of particular use when dealing with large and complex development schemes as it enables bespoke solutions to be developed for the particular challenge on the scheme. We list our suggestions for how S106 can be improved further in our response to Q.3.

S106 can also be an extremely helpful tool to help mitigate impacts that local stakeholders and communities really hold dear, and can be one of the most important tools applicants have in terms of being able to meaningfully respond to local consultation feedback.

Feedback on the experience of CIL was generally more mixed from members. Some members suggested that it has worked well where it has been set at a relatively low level. However others (whilst recognising improvements in the actual regulations have been made in recent years) suggested that the system still remains overly complex in practice. In certain areas, it was also suggested that councils with very high CIL rates simply dilute the amount of contributions that an applicant can make in other important areas of infrastructure provision, such as affordable housing. There is also a lack of connection between specific developments and infrastructure funded through CIL.

We also received feedback suggesting that CIL can work better on small to medium sized schemes or large but ultimately straightforward projects. It works much less well for large scale, multi-phase projects, where S106 is probably more appropriate to deliver infrastructure and be adaptable to the inevitable change that these schemes face over the course of their development.

3. How would you recommend that government improve Section 106? Please provide any evidence you can to demonstrate why these changes would be effective. (350 words) *

Suggestions for improving the system of S106 agreements include:

Local authority resourcing: Members fed back that many of the issues around administering and getting S106 agreements signed off simply comes back to the resourcing of local authority planning departments and local authority legal departments. If more resources were put in, then it would be the case that many of the issues around speed of progressing the agreements would fall away.

Simplifying S106 agreements: We received feedback that in many cases S106 agreements are unnecessarily long documents and that there is a lot of 'low hanging fruit' for policymakers and practitioners in terms of encouraging more efficient drafting. Members cited a joint Law Society and government 'model S106 agreement' which could be worth reviving as a joint initiative in combination with some form of government requirement for developers and local authorities to start with such a document as the default position. Model clauses and best practice examples would aid negotiations, provide a good starting point for drafting and provide clarity to communities.

4. How would you recommend that government improve the Community Infrastructure Levy? Please provide any evidence you can to demonstrate why these changes would be effective. (350 words) *

As noted above, a key criticism of CIL is that in practice it is still a complex system despite the improvements government have made to the regulations in recent years and a lack of connection between charges and delivery of infrastructure.

One point regularly cited by members is that various aspects of the CIL regime sit with the local authority in terms of deciding whether a particular provision is enabled locally or not. One example of this is whether 'exceptional circumstances reliefs' apply locally or not. Members suggested that there would be a value in more consistency across local authorities in terms of how CIL operates with national government deciding the structure of the system.

A further criticism of the CIL regime is the practice across certain local authorities of developer contributions collected simply sitting in local authorities' bank accounts for many months or even years. The BPF does recognise the challenges in this sphere for local authorities in that CIL funding tends to make up only a small portion of funding for certain infrastructure projects which can lead to the funds sitting there for some time.

However, members are of the view that there would be merit in government introducing some form of supervisory function to intervene in the scenarios where there is genuinely unspent funds for no good reason. The transparency brought about through the introduction of CIL infrastructure funding statements has been a welcome development in recent years but this does not move the dial in terms of getting the funds spent in reality and providing a connection between the development and infrastructure provision.

To conclude with a quote from a BPF member on CIL eroding the connection between development and infrastructure provision:

'This is one of my main criticisms of CIL. A developer is happy to provide a school but as it is funded through CIL, there is no connection in the community's mind that the development has paid for that school. Development can achieve many benefits for communities but CIL has eroded the transparency of that connection'

5. If you're able, please share a link of your formal IL consultation response here.

<https://bpf.org.uk/media/6375/bpf-response-to-dluhcs-technical-consultation-on-the-infrastructure-levy.pdf>