In a speech to the South East Regional Housing Conference on 15 April 2002 Lord Falconer said 'It cannot be solely the Government's responsibility to provide housing. All of us must seek to provide affordable homes for the people who make our communities and our society work'. In setting out a framework for the delivery of more and better houses he focused, inter alia, on the planning system and said that a planning system was needed which ‘extracts the maximum number of affordable homes or their equivalent in money as planning gain without choking off developments.’

Section 106 agreements (also referred to as planning obligations or planning gain) are one means by which local authorities can influence the amount of affordable housing that is developed within their areas. This note explains what section 106 agreements are and discusses proposals for their reform in relation to the provision of affordable housing. Library standard note SN/SC/1298 deals with wider aspects of planning obligations.

Contents

A. Defining affordable housing

B. Section 106 agreements
   1. Current arrangements
   2. The effectiveness of the current arrangements
   3. The 2001 proposals and responses
   4. The 2003 proposals
   5. Provisions in the Planning and Compulsory Purchase Act 2004

C. The Barker Review & ‘planning-gain supplement’

D. Planning obligations: the next steps
A. Defining affordable housing

There is no statutory definition of 'affordable housing'. In Housing Demand and Need in England 1996-2016 Alan Holmans\(^1\) said that the term had 'acquired the meaning of renting at below market rents from a public body or a housing association (also referred to as Registered Social Landlords or RSLs); shared ownership sponsored by a housing association; or renting from a private landlord with all or part of the rent paid from public funds, currently Housing Benefit.'\(^2\)

The Government’s position on the definition of affordable housing is as follows:

Ms Keeble: There are no formal definitions of affordable housing within housing policy and we have no plans to introduce a definition confined to rental and shared ownership homes. We will continue to keep the situation under review.

For the purposes of securing affordable housing through the planning system affordable housing encompasses low-cost market and subsidised housing whether for rent or shared ownership. Local authorities are expected to define in their local plans what they consider to be affordable in the plan area, in terms of the relationship between local income levels and house prices or rents for different types of households.\(^3\)

There was disappointment amongst some respondents to the Government’s 2001 consultation exercise on planning obligations (see section B.3 below) that the opportunity had not been taken to revise the definition of affordable housing in relation to section 106 agreements:

Many of our members are frustrated that they are unable to specify the type of affordable housing to be included on a site. The problem with the current definition is that market housing sold at lower than market costs cannot be differentiated from housing for rent or shared ownership, even though these fulfil different purposes in the housing market, and the former is not available to meet needs in perpetuity. Developers’ preference is to provide this low-cost market housing as their on-site contribution, but this means it is not available to meet needs in the long term.\(^4\)

B. Section 106 agreements

1. Current arrangements

Section 106 of the Town and Country Planning Act 1990 (as amended) allows local planning authorities to negotiate arrangements with developers under which some undertaking is given in return for the grant of planning permission:

---

\(^1\) An academic with Cambridge University.

\(^2\) March 2001, jointly published by the National Housing Federation and the Town and Country Planning Association.

\(^3\) HC Deb 5 March 2002 c189-90W
Planning obligations, also known as section 106 agreements, are typically agreements between local planning authorities and developers negotiated in the context of granting a planning consent. They provide a means of ensuring that developers contribute towards the infrastructure and services that local authorities believe to be necessary to facilitate proposed developments. Contributions may either be in cash or in kind. Planning obligations are also used to deliver affordable housing.\textsuperscript{5}

Department of the Environment, Transport and the Regions (DETR)\textsuperscript{6} Circular 1/97 currently sets out the regime for the use of planning obligations. This Circular is supplemented by Planning Policy Guidance notes (PPGs): PPG3\textsuperscript{7} and DETR Circular 6/98\textsuperscript{8} on affordable housing specify planning agreements as one means by which affordable housing can be secured through the planning system. These agreements usually require developers to provide a proportion of affordable units on larger residential developments. In this context 'affordable' is defined as what the authority regards as affordable and includes both low-cost market and subsidised housing.\textsuperscript{9} PPG3 emphasises the role of the authority in defining affordability with specific reference to incomes, house prices and rents.\textsuperscript{10}

Where a local authority requires an element of affordable housing to be included in a suitable residential development it must be justified by a demonstrable housing need. Affordable housing can only be sought from residential development and on sites above prescribed thresholds. PPG3 states that Local Plans (including Unitary Development Plans) should:

\begin{itemize}
  \item Indicate how many affordable homes need to be provided throughout the plan area, and
  \item Identify suitable areas and sites on which affordable housing is to be provided and the amount of provision which will be sought.\textsuperscript{11}
\end{itemize}

Circular 6/98 provides specific guidance on thresholds that can be adopted in local plans which effectively defines the sites on which affordable housing is sought:\textsuperscript{12}

\begin{itemize}
  \item a) 25 or more dwellings or sites of one hectare or more;
  \item b) in inner London 15 or more dwellings on sites of 0.5 of a hectare or more;
  \item c) in settlements with a population of 3,000 or fewer, the local planning authority should adopt appropriate thresholds.
\end{itemize}

Where a local authority can demonstrate \textit{exceptional local circumstances} it has flexibility to adopt a lower threshold but may not go below that set out in b) above. In the Rural White Paper\textsuperscript{13} the DETR emphasised that local planning authorities outside London could seek to

\textsuperscript{4} CIH response online at: http://www.cih.org/cgi-bin/display.pl?db=policies&id=304 (para 6.2)
\textsuperscript{5} DTLR, Reforming Planning Obligations: a consultation paper, December 2001, para 1.1
\textsuperscript{6} Now the DTLR
\textsuperscript{7} Housing, DETR 2000.
\textsuperscript{8} Planning and Affordable Housing, 8 April 1998
\textsuperscript{9} DETR Circular 6/98, para 9a
\textsuperscript{10} DETR PPG3, para 12
\textsuperscript{11} This includes provision on mixed tenure sites and sites developed solely for affordable housing.
\textsuperscript{12} Para 10(i)
\textsuperscript{13} DETR, Our Countryside: The Future - A Fair Deal for Rural England, 2000
adopt lower thresholds than the 25 dwellings 'where acute pressures can be shown to exist and smaller schemes would be viable.'\(^\text{14}\) It also referred to authorities' flexibility to set their own thresholds for settlements of 3,000 or less: the White Paper noted that this option 'is not always used to its full effect.'

In the recently published London Plan, which identifies a need for an additional 30,000 homes a year in the Capital, 50 per cent of which should be affordable housing, the site thresholds for the provision of affordable housing by developers have been dropped. The plan recommends that authorities should seek the ‘maximum reasonable amount’ of affordable housing on any development.\(^\text{15}\)

Two consultation documents outlining changes to PPG3 were published in July 2003. One looked at the issue of unneeded employment and commercial sites while the other proposed changes to make PPG3 better at influencing the size, type and affordability of housing.\(^\text{16}\) The consultation period closed on 31 October 2003. Keith Hill has said that the aim of updating PPG3 ‘is to provide a framework that will secure more affordable housing, deliver a better mix of housing in new developments in terms of size, type and affordability, and ensure that the needs of the whole community are addressed, including for particular groups such as key workers.’\(^\text{17}\) The new version of PPG3 is yet to be published.

2. **The effectiveness of the current arrangements**

Research into the effectiveness of the current planning policy guidance on the provision of affordable housing was carried out on behalf of the Department of Transport, Local Government and the Regions (DTLR) over 2000 and 2001 in five English regions.\(^\text{18}\) ‘This research revealed a 'mixed record' on delivering affordable housing through the planning system. Lord Falconer, commenting on the research findings, said 'it's apparent from the research that some councils are not properly using planning policies and this is a lost opportunity to secure more affordable housing’.\(^\text{19}\)

Specifically the research found:

---

\(^{14}\) para 5.4.2


\(^{16}\) Consultation Paper on a Proposed Change to Planning Policy Guidance Note 3 Housing - Supporting the delivery of new housing and Consultation Paper on a Proposed Change to Planning Policy Guidance Note 3 Housing - Influencing the size, type and affordability of housing. ODPM Press Notice 2003/0137, 17 July 2003

\(^{17}\) HC Deb 16 December 2003 c851W

\(^{18}\) Delivering Affordable Housing through Planning Policy, ENTEC, Three Dragons, Nottingham Trent University, February 2002

\(^{19}\) DTLR Press Release 074 , 28 February 2002
• Authorities are not consistent in defining affordable housing according to the definitions in PPG3 and Circular 6/98. In the south there is a tendency to equate affordable housing with social rented housing and ‘not to consider the full range of alternatives available.’

• Authorities are not necessarily following Government best practice advice in the compilation of their Housing Needs Assessments.

• Authorities are under pressure to secure affordable housing on as many sites as possible and are under pressure to reduce thresholds and for the proportion of affordable housing on development sites to increase. However, rural authorities are reluctant to set low thresholds in villages of 3,000 or less. There is a need for authorities to establish a clear definition of housing need in their areas and to quantify what that means in terms of affordable housing. They should demonstrate how that need will be addressed by thresholds and targets within their areas.

• Section 106 agreements are often protracted and inhibit the delivery of affordable housing. Authorities need to adopt a clear and corporate approach to their negotiation.

• Authorities should gain a better understanding of development economics to ensure that the delivery of affordable housing units can be achieved without making a scheme uneconomic.

• Where commuted sums are preferred in lieu of on-site provision authorities should make their reasons for this choice clear. The sum should equate with the cost of on-site provision and should be accounted for.

• Authorities should be able to provide accurate figures of affordable housing provision and account for any commuted sums provided in lieu of on-site provision.

• There is a need for better corporate working relationships between housing and planning departments and between local authorities and stakeholders.

In 1998/99 and 1999/2000 the Government used the Housing Investment Programme (HIP) process to collect data about affordable housing secured through the planning system. The data for 1998/99 showed that 13,892 units of affordable housing were ‘secured’ through planning policies and in 1999/2000 15,529 units were ‘approved’, representing around 10% of all new homes.21

The Director of the Town and Country Planning Association, Gideon Amos, said at a recent conference, Encouraging Affordable Housing: key policy issues,22 that the maximum possible number of housing units one could get from section 106 is about 15,000 per year. He stressed the need to recognise that section 106, which he referred to as a charge on private housing development, ‘could not solve the nation’s affordable housing need on its own.’

20 The definitions were altered in the second year but essentially refer to the amounts of new affordable homes to be provided in the future as a result of successful outcomes of section 106 negotiations.


22 The Waterfront Conference Company, 24 February 2004
3. The 2001 proposals and responses

In December 2001 the DTLR published a consultation paper, *Reforming Planning Obligations: delivering a fundamental change*, in which it set out proposals for the reform and improvement of the planning obligations system. The deficiencies of the current system are seen as:

The primary legislation under which planning obligations are made, as interpreted by the courts, allows greater flexibility in their use than present Government policy. As a result, planning obligations are being used by some local authorities to provide benefits or contributions that have minimal connection to the developments to which they are supposed directly to relate.

The current arrangements and the way on which they have been applied, have been criticised in a number of other ways:

- the absence of predictable limits on the scope or total cost of a planning obligation has led to charges that, on the one hand planning permission is being bought and sold and on the other that developers are being held to ransom;
- planning obligations are time-consuming to agree, can slow the development process down and are expensive in legal costs;
- negotiations are often conducted in private, leading to charges of impropriety and lack of transparency; and
- there is a lack of accountability, with contributions not necessarily being used for the purposes for which they were originally sought.

In response to these concerns, the view of the Nolan Committee was that the scope of planning obligations should be restricted by strictly enforcing the “necessity test” in circular 1/97. The Committee suggested that ‘the present guidance ... might usefully be drawn on when amending legislation to prevent obvious abuse’. Others believe that circular 1/97 is too narrowly drawn and that it would be appropriate for planning obligations to deliver a wider range of objectives and benefits to the local community.

The consultation paper proposed the replacement of the current system of planning obligations with a tariff based system. Under such a system local authorities would set standardised tariffs for different types of development through the plan making process. These tariffs would contribute to meeting a range of planning obligations, including the

\[\text{Footnotes:}
\begin{align*}
23 & \text{This paper complements the wider review of planning being undertaken by the Government (see Library SN/SC/1160)} \\
24 & \text{Third report of the Committee on Standards in Public Life, Cm 3702-1, para 313}
\end{align*}\]
provision of affordable housing. The paper proposed that negotiated agreements should only supplement or substitute for the tariff where these were clearly justified to deliver, for example, site-specific requirements.

We propose to withdraw the current policy guidance and incorporate the contribution towards affordable housing within the planning obligation tariff. Local authorities would define the proportion of the tariff to be used to deliver affordable housing. Depending on the local assessment of the needs of the area and regional policies, the affordable housing element may represent a large proportion of the overall tariff. The tariff supporting affordable housing would be paid by both residential and commercial development schemes.\(^{25}\) It follows that the present thresholds set out in circular 6/98 for the size of residential scheme from which an affordable housing contribution can be sought, would no longer apply. Para 4.13 above addresses the possible minimum thresholds for the new tariff.\(^{26}\)

The overall value of the affordable housing contribution from a development would be determined by the tariff and would be known in advance by a developer. It could be taken in cash or kind, or a mixture of both. The Government believes, however, that the planning system should continue to support the objective of creating balanced and mixed communities to promote sustainable development and social inclusion. We shall continue to encourage local authorities to seek on-site provision as a first choice.

The decision about how much affordable housing should be provided on-site and its type, would be for local authorities to agree with the developer. Equally, the form of that contribution – which could be in land or dwellings – would be a matter for agreement. Local authorities would need to take full account of their housing needs assessments so as to ensure provision of the most appropriate type of housing to meet, for example, the need for social rented housing or housing for key workers.\(^{27}\)

The paper proposed that local authorities might be allowed to allocate sites solely for affordable housing where there is a demonstrable need: financial contributions obtained from tariffs could be used for these schemes. The paper suggested that tariffs might also be used to bring empty property back into use.\(^{28}\) To ensure that authorities would use their powers to seek an affordable housing contribution from developers the Government proposed that they would have to make clear in their development plans (or new Local Development Frameworks) what proportion of the tariff would be devoted to affordable housing, the nature of local need and their policies on seeking on-site provision.

\(^{25}\) Currently councils can only require affordable homes as part of a planning consent given to a residential development.

\(^{26}\) Views were sought on exempting smaller developments.


\(^{28}\) *ibid* paras 4.24-25
The stated aim of the proposals was to increase the supply of affordable housing and to 'ensure that both commercial and residential developers support its provision within a simplified, predictable and transparent framework.'

Housing commentators involved in the provision of affordable housing were generally supportive of the proposed tariff system but there was some concern over the detailed arrangements for its operation. The Local Government Association said:

The tariff approach is welcomed. The Association considers that the approach has the potential to achieve more predictable, speedier, less costly and transparent outcomes than is currently the case with many negotiated Section 106 agreements. But it should be recognised that, overall, the system should not divert contributions away from other planning benefits to affordable housing. It is not a substitute for government provision of adequate funding for affordable housing. The Association however, considers that much consideration needs to be given to the detail and practicalities of putting a tariff system into operation. In particular, the following issues need to be addressed:

- Devising a standard tariff mechanism that is sensitive to variations in development value for the same types of development within a geographical area.
- Formulating policy that is responsive to local conditions yet is simple to operate and is comprehensible by planners, developers and the community.
- The location of tariff policy. The Green Paper refers to tariff policy being set out in the Local Development Framework, however Local Action Plans may be more appropriate in some circumstances.

The proposals in relation to the delivery of affordable housing are broadly welcomed. The retained emphasis on achieving onsite provision is strongly supported. So too is the ability to use tariff receipts from both residential and commercial developments. The Association considers that the mechanics for translating tariff receipts into onsite provision needs due consideration. Also the Association believes that authorities should have the power to determine the mix, size type and tenure of onsite affordable housing provision.

The Chartered Institute of Housing’s response questioned whether the level of affordable housing secured from planning obligations would fall significantly if the proposals were adopted unchanged:

In many areas there is a lack of political (and in some cases public) support for affordable housing. Giving council’s more flexibility in how the tariff is spent will almost certainly result in less, rather than more, affordable housing being developed at the local level, unless safeguards are put in place.

29 ibid para 4.29
30 LGA response online at: http://www.lga.gov.uk/Briefing.asp?lsection=0&ccate=1&id=SXF210-A780C2F1
One of the advantages of on-site provision of affordable housing is that a degree of mixing is automatically achieved. The CIH has in the past been opposed to the use of commuted sums, apart from in exceptional circumstances, for the reason that it provides a means of evading the requirement to include affordable housing on sites developed for market housing. Developers largely favour this option that goes against the creation of mixed developments and sustainable communities.

As is stands, the tariff proposal will strengthen developers’ negotiating position for payment of a cash sum instead of on-site provision and would certainly provide a means to reduce integration of house types and tenures on new developments.

A liquid contribution is more difficult to trace and the certainty of the outcomes is reduced. It is essential that this money is understood to be additional locally derived money, and that funding for main programmes is not reduced as a result. Clearer guidance on what constitutes a ‘legitimate purpose’ for spending the tariff locally is required, to prevent leakage into main programmes that should be financed through other funding streams.31

The House Builders Federation reportedly questioned whether a private industry should be expected to ‘bail out the country’s lack of investment in social housing over the last 30 years and warned that strict national guidelines on tariffs could ’render developments in some parts of the country financially unviable’.32 The proposed tariff was regarded as a ‘development tax’ in some quarters which may not be spent on affordable housing.33 It was also argued that because the existing system was still 'bedding in' after amendments in 1998, that there was a case for improving on this policy rather than starting again with a different approach.34

The Transport, Local Government and the Regions Committee published the report of its Inquiry into the Planning Green Paper on 1 July 2002.35 The Committee rejected the Government’s proposal for planning tariffs claiming that the proposal’s ‘would replace one form of complexity with another’ and that ‘there is a danger that the change to the tariff system will affect the Government’s grant to local authorities.’ The Committee was in favour of improving the speed and transparency of the system, but believed that other less radical procedural changes could help with this.

The consultation period on the Green Paper ended on 18 March 2002. The DTLR announced how the Government intended to take forward the reform of the planning system on 18 July 2002:

---

31 CIH response online at: [http://www.cih.org/cgi-bin/display.pl?db=policies&id=304](http://www.cih.org/cgi-bin/display.pl?db=policies&id=304)
32 ‘Planning tariffs under fire’, *Housing Today*, 7 March 2002
33 ibid
34 Centre for Housing and Planning Research, University of Cambridge & Development of Town and Regional Planning, University of Sheffield, *Reforming Planning Obligations - will the proposals secure more affordable housing?*, March 2002
35 HC 476B-I Session 2001-02
Mr Prescott said there would be changes to the Section 106 planning obligations system, to make it more transparent and simple. There will be no new legislation to introduce a tariff, but new guidance will be issued on how planning obligations will work.

He said the acquisition of land for regeneration and large-scale projects would become simpler and quicker. While strengthening Local Authority powers there would be improved compensation levels by introducing additional loss payments.36

4. The 2003 proposals

In Sustainable Communities – Building for the Future (February 2003) the Government set out its plans for securing affordable housing through the planning system. Specifically in relation to planning obligations a commitment was made to:

…seek to reduce the time taken for negotiations over planning obligations and to optimise outcomes for both local authorities and developers. One possibility is to encourage an "open book" approach which works well where developers and local authorities find this in their mutual interest.37

On 6 November 2003 the Government issued a further consultation paper, Contributing to Sustainable Communities - a new approach to planning obligations.38 This paper marked a return to the idea of replacing planning obligation negotiations with a tariff-style contribution. However, bowing to concerns from developers, the proposals also give the option of negotiating the level of contribution, instead of paying a fixed charge. Keith Hill said:

The planning system has the potential to deliver so much for the community, from affordable homes to health centres to parks and open spaces. The problem is the system is simply too slow and fails to deliver what's needed when it's needed. We need a radical solution to simplify and speed up the process.

This new optional charge is the solution. It will give developers a choice. If they wish to negotiate a traditional section 106 agreement then they can. But if they want greater speed and certainty they can pay the charge, leaving them free to get on with things and the local authority the resources to spend on community projects - green travel plans, education facilities or roads improvements. That’s good news all round.

Under the proposal local authorities must set out details of the charge (e.g. £ per unit of housing, or sq. m of retail floorspace) in their local development plans. This would ensure all the parties involved would know the cost of the charge before an application is submitted.

37 http://www.odpm.gov.uk/stellent/groups/odpm_communities/documents/page/odpm_comm_022184-06.hcsp#P445_49218
The proposed optional charge is one of a raft of changes being made to the planning system to make it fairer, faster and more flexible.  

5. **Provisions in the Planning and Compulsory Purchase Act 2004**  

The consultation period on *Contributing to Sustainable Communities - a new approach to planning obligations* closed on 8 January 2004. Clauses to provide the legal basis for the new system of planning obligations were added to the *Planning and Compulsory Purchase Bill* on 8 December 2003.  

On 30 January 2004 the Government issued a statement on its planning obligation proposals and responses to the consultation exercise. The Government noted that responses to the consultation paper had been ‘more mixed and moderate’ than responses to the previous consultation document issued in December 2001:  

The responses which have been received see the benefits and objectives of the proposed reforms, but contain concern about the detail and practicalities of the optional planning charge. Many responses focus on how the charge will work - identifying problems, concerns, ideas and opportunities. They suggest that a charge may be appropriate if (and only if) certain aspects of the proposals are modified. 

A summary of responses to the proposals was published on 2 February 2004. In a statement at the end of January the Government responded to some of the main concerns raised. Specifically in relation to comments on the provision of affordable housing, the Government said:  

**Affordable housing**  
15. Planning obligations can be used to address a wide range of impacts of development. But many responses to the consultation have asked particularly about the relationship between the Government’s proposals for planning obligations and the provision of affordable housing. Concern has been expressed that the new planning obligations policy, and the optional planning charge in particular, will result in a reduction in the level of affordable housing provided by or funded by the applicant.  
16. Prior to the publication of the consultation document on planning obligations, the Government issued a consultation document on a proposed revision to Planning Policy Guidance Note 3 (Housing) (PPG3). The PPG3 consultation document set out the Government’s proposals for a new policy on influencing the size, type and affordability of housing. That document proposes (at paragraph 13) to make explicit an existing policy presumption that affordable housing, where provided, should form part of the proposed development of the site under consideration. The revised text also indicates that a financial contribution made in lieu of on-site provision of

---

39 ODPM Press Notice 2003/0231, 6 November 2003  
affordable housing is only likely to be acceptable in limited circumstances, for example because provision of affordable housing off-site is more likely to widen housing choice and encourage better social mix.

17. Planning obligations are one route by which affordable housing objectives are currently achieved. Agreements made under section 106 may secure either in-kind or cash contributions from applicants in fulfilment of an affordable housing need. The consultation document on planning obligations suggested as an objective that obligations should "continue to provide affordable housing" and asked consultees how this would best be achieved, in particular through the optional planning charge. The consultation document invited views on whether it would be possible to seek affordable housing with a cash charge, an in-kind charge, or a combination of the two. It also asked how much flexibility local authorities should have to decide which option best meets local needs.

18. Some consultees mistakenly assumed that the charge would always be in cash and that the Government was therefore proposing a change of policy to encourage "cash in lieu" contributions rather than the provision of affordable housing on site. These consultees also equated "in kind" contributions with the negotiated route, despite the fact that the negotiated route is already sometimes used to secure cash contributions. But the consultation document is clear that there is an 'in kind' charging option, and this option has since been enshrined in the Bill clauses. As already indicated, it is expected that local authorities will have flexibility to decide the circumstances in which they wish to offer a charge and the form that the charge should take, subject to a framework laid down by Government.

19. Some consultees suggested that it might be possible for a cash charge to secure affordable housing on site, for example if it were associated with an option to purchase completed units on site exercisable by the local authority. These consultees argued that where such a route can be demonstrated to represent value for money and to deliver the right type of affordable housing, it would not be sensible to preclude it.

20. Others argued that the proposed policy on affordable housing provision is likely to be best delivered by local authorities setting and seeking the charge in kind. These consultees argued that cash contributions should be the exception rather than the rule, and should be justified by a local planning authority in its development plan on the basis of evidence contained in a robust assessment of local housing needs.

21. The Government is still considering the responses to the two consultations and will reflect its views in final versions of its policies. The Government is committed to creating mixed communities and to maintaining the level of affordable housing delivered through the planning system. Its planning obligations policy will need to be consistent with the final version of revised PPG3 and the Government therefore expects that the final version of updated PPG3 and its new policy on planning obligations will be issued simultaneously.

22. The benefit of an in kind charge, as opposed to an in kind negotiated contribution, is that there is certainty over the quantum of affordable housing to be provided. The level of the charge must be stated clearly in advance and in public. While negotiated
policies are also stated in this way, the applicant has no certainty as to whether that policy will be adhered to by the local authority in a negotiation.\textsuperscript{42}

The proposed changes to planning obligations have proved controversial. During the Bill’s committee stage in the House of Lords Lord Best argued that the provisions should be removed from the Bill:

\textbf{Lord Best:} I suggest that Clause 46 should not be in the Bill, partly because of the practical difficulties that we discussed and partly because of the dangers that, I fear, it poses to the provision of affordable housing, despite the Government’s good intentions.

It is certainly true that the current arrangements for Section 106 agreements are not working too well. A major research project by the universities of Cambridge and Sheffield, led by Professors Christine Whitehead and Tony Crook, showed that negotiations over the agreements lacked clarity, varied in effectiveness between authorities and suffered from shortages of planners with the skills to negotiate sophisticated deals with developers. I declare my interest in the research, which was largely funded by the Joseph Rowntree Foundation, supported by the Housing Corporation, the Royal Institution of Chartered Surveyors and the Countryside Agency. I chaired the project’s advisory board.

The defects in the current system of negotiation are not so awful that they cannot be remedied. We should be careful about inventing alternatives before trying out ways of improving the present system. The good news from our research was that the use of negotiated Section 106 agreements had meant that housing associations had obtained 12,000 to 15,000 affordable homes each year on sites being developed by private house builders. In earlier times, house builders would only have built homes for sale on the land that they secured. A housing association would have produced segregated social housing and, perhaps, some shared ownership housing on whatever land was left for it to buy.

That separation of house builders and housing associations led to stigmatised rented estates for poorer households on the worst sites—between the gas works and the motorway, or on an unpopular council estate. That further marginalised those people on low incomes. The deals now being negotiated between developers and planners are enabling housing associations to secure homes on decent sites and to provide rented homes or low-cost home ownership in mixed communities, which raise, rather than diminish, the life chances of those households.

Overall, the present system is benign and beginning to be accepted by all parties. As our research project concluded, Section 106 agreements have, “changed the geography of new social housing” to good effect. The Minister can properly suggest that the Bill includes many safeguards. Today’s statement from the Office of the Deputy Prime Minister covers some of those issues. It explains that a revised planning policy

\textsuperscript{42} \textit{ibid}
guidance note PPG3 will make clear that a financial contribution in lieu of affordable housing will be acceptable only in limited circumstances; for example, where the cash raised might be sufficient to produce a better development solution elsewhere. But my concerns are not just about the planning contribution, the tariff, being payable in cash rather than in kind. I accept that the intention is not to raise revenue for spending on unrelated purposes or even, usually, to subsidise social housing built on a separate site.

There are more subtle dangers from that opening of a Pandora's Box, including intense pressures on politicians to minimise the amount of affordable housing built in anyone's back yard. I know from the work of the Joseph Rowntree Housing Trust that people can feel real hatred for proposals to build what they believe, in the words of one of the anonymous poison-pen letters sent to my home, to be, "squalid little houses for the poor"; whereas in reality we are planning a mixed-income community to extremely high standards. The City of York will not succumb to such pressures. But in some places the chances to take the alternative, more electorally popular, benefits from a developer could be seized upon. Those people living beside a planned development will always have a shopping list of alternatives to affordable housing which tariff funds could cover—local amenities and facilities, improvements to the roads around the site, environmental enhancements and so on.

Perhaps pressures and temptations will be resisted and just as much affordable housing as now will result. But why risk any reduction when, as Kate Barker's interim report for the Chancellor suggests, we need a step change in output of affordable homes of at least 31,000 extra homes, just to keep pace with rising household numbers?

I believe that Section 106 agreements can be redeemed. I refer your Lordships to the suggestions by the ODPM Select Committee and others for ways of making the current system work better. Obstructive practices could be outlawed and timetables set for Section 106 agreements to be negotiated. Systems could be put in place for arbitration and mediation to break deadlocks and see fair play for all parties. The planning improvement grant, mentioned by the Minister, to up the game for planners, should produce better skilled people, able to negotiate those deals. This week the Joseph Rowntree Foundation is publishing advice for house builders and housing associations on ways they can work better together using standard documents and clearer procedures for partnerships.

Rather than risk the consequences of an untried scheme that could mean less affordable housing, or housing on the worst sites that are away from the mix and community balance of tenures and incomes that we all strive to create, it would seem preferable to test out the various opportunities to improve existing negotiated Section 106 agreements, as the ODPM Select Committee and others have suggested.\(^43\)

\(^43\) HL Deb 2 February 2004 cc532-4
In response to the concerns raised by Lord Best and others Lord Rooker agreed to conduct further research into the role of tariffs as an alternative to Section 106 agreements:

I shall suggest to my colleague, the planning Minister, Mr Keith Hill, and to the Deputy Prime Minister, that the researchers to whom the noble Lord, Lord Best, referred, be contacted by the department, if they have not already been contacted. For Report, I want a precise answer to every one of the concerns that have been raised here tonight, particularly on affordable housing.\(^4\)

Further concerns were raised during the Report Stage of the Bill to which Lord Rooker responded at some length:

**Lord Rooker:** My Lords, I say at the outset that this area has been complicated, and it has changed a couple of times since the planning Green Paper, when the Government rejected tariffs and went for Section 106. Later, because we had more time to deal with the Bill and more time to think about it because of coming from one Session to another, we have put what looks like tariffs back in, but not at the expense of Section 106. I want to repeat that again. We do not want to throw the baby out with the bath water. I hope to deal briefly with the central issues; it would frighten the House if I held up all my notes. I believe that I have a positive answer to the issues that have been raised.

There is a problem about why we have these clauses in the Bill. We have pursued the reform of planning obligations in recent years because there are difficulties in the current system. From my experience in planning when it was my day job, I know that performance varies around the country. Some smaller authorities do not fully exploit all the positive aspects of Section 106. Sometimes, there are legal arguments about whether an issue raised under Section 106 is directly related or ancillary to the development. Some of the issues are very narrow.

We want to capture more of the value of the details of infrastructure projects. We have been looking for easier, more transparent and faster means of doing that. Sometimes, more time is spent debating and discussing Section 106 than the original planning application. The present process causes problems. Therefore we have been searching for a means of reform.

There is a consensus about the need for reform. There is not a consensus about the solution. Given that there is a problem, the Government now think that they have some answers. Planning obligations affect most or all of the players in the planning process, which is why everyone has an opinion on them. It is important that the system is a good one. Business wants a system that is quick and certain, so that it knows what it will have to contribute and can get on with their developments—their prime function.

\(^4\) HL Deb 2 February 2004 c536
Likewise, local authorities want a system that is quick, so that they do not have to spend precious local authority resources on lengthy negotiations. Indeed, some authorities do not have the resources to spend on the negotiations, so they lose out on the benefit that Section 106 provides.

Local communities want agreements that are fair, where developers make a fair contribution in respect of the impact of new developments on the local community. As I say, there are arguments that lawyers can have about that. It is also right that the obligations are honoured and spent as intended. Local communities want to see the money properly spent. Developers want an assurance that their contributions have been properly used.

In turn, planning obligations can be a key tool in delivering sustainable communities, whether in a run-down industrial town in need of regeneration or in a growth area seeking infrastructure and services to support new housing. That infrastructure could run right across a community; it does not apply just to transport. It could include old disused railway lines, closed stations that trains still run through, education and/or health facilities. Planning obligations are a part of that, which is why reform of the current system is a priority.

Our solution is twofold. The first and most important change is that planning obligations policy will be established by local authorities up front in the plan-making process. They will need to identify the matters for which they would typically seek a contribution from developers, such as affordable housing, and, where provided in cash, how they would use such contributions. That will promote transparency for local communities and predictability for the development industry. We hope that it will encourage greater participation by the local community in making the development—whatever it may be—acceptable.

The second important part of the proposals relates to the optional planning charge. It is, optional—an alternative. We are not getting rid of the present system, although there is a technical point in the way that the Bill is drafted: Section 106 would disappear, but it would be reconstituted as an alternative in the new tariff system in the regulations. So it is not being abandoned. We will not be left with tariffs only. I repeat, we will not be left with tariffs only. That is exactly the opposite of our proposals.

Under the optional planning charge, the local authorities would attach a cost to the contributions that they would expect from the development which they plan in their local community. That would give developers further certainty about the extent of the contribution that they would be expected to make and could speed up the process of agreeing the development. There is no doubt that it also promotes greater transparency and openness and should reduce the number of negotiations taking place behind closed doors. We want to avoid people arguing that a council has been bribed in order to obtain planning permission. That is the sort of thing that my constituents would have said.

Regarding an individual proposal, the developer will have a choice: to pay the charge or to negotiate a Section 106 agreement. The charge offers speed and predictability.
The conventional negotiated route offers greater flexibility. There is a choice. We recognise that where developers opt for the charge, in some cases there are likely to be issues still requiring negotiation and it will be possible to have a separate agreement alongside the charge. As I said at an earlier stage, they will not have to pay for the same thing twice. It will not be possible to negotiate a charge and for the local authority then to try to obtain, under Section 106, the same thing through the other route. The developer will not pay twice for the same items, which is a principle set out in the Bill.

The negotiated system will remain in place very much as it is at present. We intend to reconstitute Section 106 in the secondary legislation; that is, the regulations. That is why Amendments Nos. 148 and 151, which aim to retain Section 106 alongside the new clauses, are unnecessary. That is the broad vision of the Government. Obviously, there are details to be worked through. I could go on, but it would take a lot longer than I think would be useful. Those are some of the issues in terms of regulations and the new advisory group that I think are helpful to the House. That should put the lid on the fact that we are serious and genuine about this.

In Committee, concern was expressed about the process of developing the system proposed by the Government. The view was that there should be full consultation, and not to have a new system rushed through Parliament without proper consideration and broad support from stakeholders. That is true. Initially, there was an intention to consult on tariffs in the Green Paper. When a change was proposed, the ODPM became involved. We looked at it. There was a policy decision not to proceed down that route. I remember telling a senior industry official that we would not slip changes in the Bill through the back door. However, a year later, because of the way the Bill changed due to changes in respect of compulsory purchase and moving into the next Session, we have sought alternatives and additions to give another tool to local authorities to look particularly for infrastructure products. Basically, we have had another year in which to work on it.

In addition to the consultation that we propose on the draft regulations and draft circular—which will happen because they will come back to this House—I would like to announce today that the Government are to set up a special advisory group of stakeholders to advise them on the reform of planning obligations. We are very grateful to the Royal Town Planning Institute and the other organisations that have expressed an interest in participating. Together they represent the full range of the sectors, including the Royal Town Planning Institute, the British Property Federation, the Chartered Institute of Housing, the Confederation of British Industry, the House Builders Federation, the Local Government Association, the National Housing Federation, the Royal Institution of Chartered Surveyors and Shelter.

The group will meet regularly over the next few months to work through the detail of the proposals. My right honourable friend Keith Hill, the Planning Minister, will chair those meetings where possible. The next months will be critical in developing the detail of the new system so that we can look forward to the valuable input of the special advisory group on the shape of the reforms. We shall also have its views on the draft regulations, the circular and the good practice guide.
I can go through a considerable number of reassurances. I hope that I have convinced the House that the repeal of Section 106 is necessary technically because it is moving from one part of legislation to another. It is not being abandoned; it is still there. As regards affordable housing, concern was expressed by the noble Lord, Lord Best. I understand why he cannot be here today. One of the problems of membership of this place is that of holding down a job that is not in London.

However, the noble Lord and the noble Baroness, Lady Maddock, are very positive about the consequence of the charge for the delivery of affordable housing. In particular, they were both concerned that developers would prefer to pay cash and, as a result, local authorities would obtain less affordable housing through planning obligations. I reassure the House that our objective remains the same. We are committed to the policy objectives of promoting mixed communities and the supply of affordable housing. More will be said about that tomorrow. I am certain that no one here today would remotely expect me to comment on the little bit that I might know, but I am such a small cog in the wheel that I do not know anything. It would be quite inappropriate, but it will all be good and positive news.

Our reforms of the planning obligations, including the charge, do nothing to change our objective of mixed communities and of promoting the supply of affordable housing. There have been misunderstandings regarding our proposals and, frankly, in some ways I am not surprised, simply because of the way the Bill has processed through Parliament. It is an object lesson. It is the first time that we have carried a major flagship Bill from one Session to another and made changes during that carry over. There have been lessons to be learned in the way that was done, particularly when you need to be able to take the outside world with you because the Bill affects thousands of people—councillors and developers—whom we need to keep on board with what we are doing.

It also looks a bit daft for a Minister to stand up and say that we are going to operate Section 106 where noble Lords can find bits of the legislation that say, "Section 106 is hereby repealed", and then I have to explain why it is repealed. But it is not. In other words, developers will not be left with only the charge. There will be planning obligations under Section 106 that are broadly the same as they are now. Therefore the package of legislation on planning obligations will give the optional charge—the optional charge—for the developer if it is wanted. It will be there as an alternative. Developers will not be required to pay twice for the same thing. That will be of benefit and hopefully help speed up the process, giving greater certainty, clarity and flexibility where required, and certainly transparency.

I hope that I have said enough to indicate that we are serious and genuine about that. There has been a misunderstanding about Section 106 disappearing, but developers will not be left only with the charge. That would be the direct opposite of what we intend.45

---

45 HL Deb 16 March 2004 cc172-176
The Planning and Compulsory Purchase Act 2004 obtained Royal Assent on 13 May 2004 and the planning contribution provisions can be found in sections 46-48. The Act provides for the making of regulations in relation to planning contributions.

Gideon Amos, Director of the Town and Country Planning Association, gave his views on the ‘optional charge’ at a recent conference, Encouraging Affordable Housing: key policy issues:

The optional charge is the great new thing. I realise that this is fairly unpopular, particularly with the social housing sector, but I invite you to be more optimistic. Section 106 in its own right is problematic. I worked for four years for Planning aid. Do not under-estimate the cynicism and suspicion with which communities treat section 106 negotiations, which they see as taking place behind closed doors in smoke-filled rooms.

…we need to grab this opportunity to deliver something which is more open for the community and more predictable for those developing housing, whether in the social or the private sector – in order to transfer costs on to land value, for example and enable development to come forward more openly and quickly.

I hope that we can find ways of making the optional charge work so that it does not distract local planning authorities from demanding affordable housing provision on site in mixed-income communities. That is what we want, and there is plenty of provision in the broad powers envisaged in the Bill for the optional charge to require affordable housing to be provided on site as part of the tariff. It does not have to be a cash tariff: it can be a certain number of houses on site. I hope that that is the road we follow, but we shall see: Parliament will make its decision, I guess, over the next couple of months.

Should we broaden the optional charge to pay for housing? The problem with that is that you lose the relationship to the development itself – the proportionality and what the Americans call rational nexus. That would create great complications in planning law and would confuse the purpose of planning obligations and optional charge. That purpose in my view should be to address the inadequacies of the site and rectify the problems of development.

That is not to say that there is not an argument for capturing a greater proportion of land value. In fact, the optional charge would capture a much wider range of developments in its net, because it could be applied to much smaller developments than section 106. It would be very simple: you could have a very simple tariff on developments of one or two houses or whatever. I think that you would attract more funding into local authorities for those reasons. But there is also an extremely good case for capturing land value: I just do not think that it should be confused with the objectives of section 106, planning obligations or optional charge.

---


47 The Waterfront Conference Company, 24 February 2004
C. The Barker Review & ‘planning-gain supplement’

The final report of the Barker Review of Housing Supply, Delivering Stability – Securing Our Future Housing Needs, was published on 17 March 2004.\(^{48}\) In chapter 3, Delivering Development, Kate Barker notes that section 106, as it currently stands, offers the local authority the prospect of obtaining planning contributions over and above those strictly required to mitigate the impact of development:

Section 106 has, therefore, come to offer a possible method of allowing local authorities to share in development gain – that is, access some of the windfall gains that accrue to landowners from selling land for residential development. By changing the relative costs and benefits of development, this can have the effect of addressing the externalities facing local authorities when deciding on housing growth.

The proposition that Section 106 allows for development gain appropriation, is supported by evidence of the behaviour of land prices. Residential land values, as measured by the Valuation Office Agency, now usually include a ‘Section 106 charge’ typical for the area and are thus lower than they would otherwise be. Therefore, although intended as a mitigation measure, Section 106 offers local authorities a mechanism for sharing development gain more widely.\(^{49}\)

Kate Barker’s Interim Report (December 2003) noted problems with the ‘incentivising and value capture’ effects of section 106 in practice:

- the value of contributions achieved varies considerably between areas, and even between sites, in the same housing market locality;
- Section 106 agreements are mostly attached to major housing schemes and many authorities will deal with applications of this scale relatively infrequently;
- negotiations can take many months, occasionally years, and are costly in both local authority and developer time and resources;
- there may be asymmetries in negotiating expertise between the two parties, leading to unsatisfactory outcomes;
- local authorities are not always aware of the level of planning contributions that might reasonably be expected in a given development, due to the non-transparent nature of the system; and
- some local authorities may misuse Section 106 to delay or discourage development, by asking for unreasonably onerous levels of developer contributions.\(^{50}\)

The final report argues that local authority incentives for housing development and the infrastructure necessary to facilitate it are essential if housing supply is to be increased.

\(^{48}\) http://www.hm-treasury.gov.uk/media//B3F15/barker_review_report_494.pdf
\(^{49}\) paras 3.46-7
\(^{50}\) para 3.48
However, section 106 in its current form is not seen as the best method of achieving these aims. The Government’s moves to reform section 106 agreements are acknowledged but the Review suggests an alternative which it says ‘develops the principals behind the Government proposals.’ Recommendation 24 of the final report covers the reform of section 106:

Section 106 should be reformed to increase the certainty surrounding the process and to reduce negotiation costs for both local authorities and developers.

If the Government accepts the recommendations outlined in Chapter 4 concerning the capture of development gains:

- Section 106 should be ‘scaled back’ to the aim of direct impact mitigation and should not allow local authorities to extract development gain over and above this, except as indicated below. ODPM should issue guidance, or new legislation, to this end.
- Section 106 should retain its current affordable and/or social housing requirements as set out in Circular 6/98, and other specific regional guidance.
- Local authorities should receive a direct share of the development gain generated by the Planning-gain Supplement in their area, to compensate for a reduced Section 106. Local authorities should be free to spend this money as they see fit. This share should at least broadly equal estimates of the amount local authorities are currently able to extract from Section 106 agreements.

If the Government decides to maintain the current fiscal framework as it is, then it should press ahead with the Section 106 reforms, on which it has recently consulted, that aim to introduce an optional planning charge in place of a negotiated agreement. However, this would be second best and leaves open the possibility of prolonged and costly Section 106 negotiations for large developments.

Chapter 4 of the Report, Contributing to Development, recommends the introduction of a ‘planning-gain supplement’ a proportion of which would be paid to local authorities:

- Government should use tax measures to extract some of the windfall gain that accrues to landowners from the sale of their land for residential development.

- Government should impose a Planning-gain Supplement on the granting of planning permission so that landowner development gains form a larger part of the benefits of development.

The following principles might be considered:

- Information would need to be gathered as to the value of land proposed for development in each local authority. Sources of data could include actual

---

51 para 3.52
52 para 3.54
transactions and/or Valuation Office Agency estimates as to the land prices in various local authority areas.

- Government would then set a tax rate on these values. This tax rate should not be set so high as to discourage development, but at a rate that at least covers the estimated local authority gain from Section 106 developer contributions and provides additional resources to boost housing supply.
- The granting of residential planning permission would be contingent on the payment of the supplementary planning contribution of the proposed development.
- Government may want to consider the operation of a (substantially) lower rate or housing development on brownfield land, and the possibility of varying rates in other circumstances, e.g. for areas where there are particular housing growth strategies, or where other social or environmental costs may arise.
- A proportion of the revenue generated from the granting of planning permissions in local authorities should be given directly to local authorities. Government should also amend the operation of Section 106 planning obligations, as set out in Chapter 3, to take account of this new charge.
- The Government may want to consider allowing developers to pay their contributions in instalments over reasonable time periods so as to ensure that housebuilder cash flow pressures are sufficiently accounted for.

The introduction of a tax would need to be accompanied by transitional measures to ameliorate the impact on developers already engaged in land sales contracts that were drawn up before this charge was introduced, or for those who hold large amounts of land already purchased, but where planning permission has yet to be secured.53

The Government issued an early response to this aspect of the Barker Review’s proposals:

The Barker Review concludes that a Planning-gain Supplement based on the uplift when land is sold for development would be an efficient source to release resources to help in the expansion of housing supply.

The Government accepts that, in order to meet the key objectives of stability and improved market affordability, there is a good case for additional social housing investment, incentives to local authorities to deliver housing growth, support for infrastructure to complement new developments and potentially support to the industry to train their employees to deliver this challenging agenda, all of which would require additional investment. The Government agrees with the recommendations of the Review that it is in principle fair to fund this proposed package of measures out of the uplift in land values experienced during the development process. This could also alter the balance of incentives between greenfield and brownfield development, helping to encourage a more efficient use of land.

Achieving long-term stability will require the delivery of all the elements within this overall package. The Government will work with stakeholders to ensure that the

53 Recommendation 26, para 4.73
necessary conditions are in place for the package proposed by Kate Barker to succeed. Therefore, in considering a package of reforms to follow the Barker Review, the Government will need to be sure that:

- planning reforms are underway and the system is delivering a coherent and efficient service capable;
- there is a positive impact on supply from the introduction of these incentives;
- the industry is responding to the Review’s recommendations and is capable of rising to the challenge;
- the 2004 Spending Review has begun to put in place increased investment for social housing; and
- the design of the proposed Planning-gain Supplement is effective and workable.

The Government will review progress against these objectives by the end of 2005. If the Government is satisfied that these are all on track, it will bring forward this package to deliver economic stability and improved affordability to address housing needs. 54

**D. Planning obligations: the next steps**

On 17 June 2004 Keith Hill issued a written statement setting out how the Government intends to take forward the reform of planning obligations and Kate Barker’s recommendations in relation to a national planning-gain supplement:

_The Minister for Housing and Planning (Keith Hill):_ In the light of the report of the Barker review of housing supply, _Delivering stability: Securing our future housing needs_, published on 17 March, the Government has reviewed its plans for taking forward the reform of planning obligations foreshadowed in the consultation paper, _Contributing to Sustainable Communities; a new approach to planning obligations_, published in November 2003.

The Government proposed in its November 2003 consultation paper a number of measures aimed at improving the current negotiating arrangements under s106 of the Town and Country Planning Act 1990 (amended by the 1991 Act), and a new optional planning charge. Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004 provide powers to make regulations to implement changes to the planning obligations system.

Separately, the Barker report recommended that the Government should introduce a planning-gain supplement (PGS) tied to the granting of planning permission so that part of landowner development gains could contribute to wider benefits for the community. It also recommended that, if the Government were minded to do this,

planning obligations should be "scaled back to cover direct impacts and mitigation along with affordable and social housing requirements".

The Government agreed that it was in principle acceptable to fund social housing and other measures out of the uplift in land values associated with the development process and the Chancellor of the Exchequer said in the Budget report of 17 March 2004 that he would consider proposals for a national PGS and make a decision by the end of 2005.

Against this background the Government now proposes to take matters forward as follows:

The Government will press ahead with identifying and implementing changes to the current arrangements for negotiated agreements. It will do this by revising the current circular 1/97 on planning obligations and publishing good practice guidance for local authorities and developers. The aim is to issue a draft revised circular for consultation in autumn 2004 with a view to putting the new arrangements in place early in 2005.

The Government will continue to work up proposals in parallel for an optional planning charge, on a timetable consistent with that for decisions on the PGS. During this process, the Government will also encourage a number of local authorities to pilot options for charging by local authorities.

In developing all these proposals we will work closely with our stakeholders, including my advisory group on planning obligations the membership of which is drawn from the major planning, housing, developer, voluntary sector and local authority interests.\

On 2 November 2004 the Government published a revised draft circular aimed at improving the way in which planning obligations are negotiated under section 106 of the 1990 Act (as amended). Keith Hill issued the following written statement on the draft circular:

The system of planning obligations in England has been widely criticised for some time for its often opaque nature and its contribution to delays in the planning process. The Government are therefore publishing today a draft revised circular, aimed at improving the way in which planning obligations are negotiated under s106 of the Town and Country Planning Act 1990 (amended by the 1991 Act).

The draft revised circular on negotiated agreements, which will now be consulted on for three months, aims to contribute to the speeding up of the planning system and therefore the creation of sustainable communities.

The circular brings planning obligations into line with the new arrangements established by the Planning and Compulsory Purchase Act 2004. Given the possibility of more major reforms to the system of planning obligations in the next

55 HC 17 June 2004 cc43-44WS
few years, referred to in my statement of 17 June 2004, the circular seeks to minimise the additional administrative burdens placed on local planning authorities and developers, whilst seeking to streamline the system and promote best practice.

It seeks to ensure that affordable housing continues to be secured through s106 on a more consistent basis and in line with the direction of reform to Planning Policy Guidance Note 3 (Housing). ODPM consulted on proposed updates to PPG3 last year entitled "Influencing the Size, Type and Affordability of Housing", and "Supporting the Delivery of New Housing". Concerns have been expressed about the proposed policy update on housing mix in particular.

The office continues to discuss these issues with stakeholders. The intention is to publish the PPG3 updates by the end of the year.

The draft circular has been produced following extensive discussions with stakeholders to seek their views on the difficulties experienced with the current system. In addition, the work of the Advisory Group on Planning Obligations has been useful in helping to formulate the proposals being published today.

Following public consultation, a final version of the circular will be issued in spring 2005, accompanied by good practice guidance, which is being prepared by Halcrow group.

In the meantime, the Government are continuing to consider Kate Barker’s proposal for a planning-gain supplement, made in her final report of her "Review of Delivering Stability: Securing our Future Housing Needs", 17 March 2004. Depending on the outcome of further work over the next 12 months, further changes to the system of planning obligations may be required.56

56 HC Deb 2 November 2004 cc5-6WS