

DCLG  
3<sup>rd</sup> Floor Fry Building  
2 Marsham Street  
London  
SW1P 4DF  
19 March 2015

Dear Sir,

## **Section 106 Planning Obligations – speeding up negotiations**

### **Introduction**

Accessible Retail (AR), the trade body which represents the property interests of the retail warehouse and retail park sector of the retail industry. We have over 1000 members comprising retailers, developers, owners/investors and advisers, including most of the major companies active in the sector

Our sector plays a significant role in the economy and in the retail industry. It accounts for a third of total retail spend and comprises the largest part of investment grade retail commercial property with a value in 2013 of some £49.7 billion.

### **Main Considerations**

We share the view that Section 106 (S106) agreements are too complex and the negotiating process over extended. However, whilst we support the aim to address these problems, we believe the proposals in the consultation remain complicated albeit less so than the present arrangements and should be given further consideration to see whether simpler solutions might be found. In particular, we suggest the approach taken in the Law Society's 2010 Model Agreement is given consideration.

However, the main concern of our members regarding the use of S106 agreements is not their complexity or the length of the negotiating process, but the circumstances of their use by LPAs following the introduction of the Community Infrastructure Levy (CIL). One of the important consequences expected of LPAs adopting CIL was a reduction in the use of S106 agreements with the latter returning to their original purpose to ensure the provision of site specific infrastructure which could not be adequately dealt with by the use of conditions. To date, this has happened in some

LPA's only, an outcome which we believe is at least in part due to a failure to properly differentiate between the use of CIL and S106 agreements.

Given this, AR welcomes the proposed revised guidance in paragraph 13 of the consultation, but believes it should clearly state the principle that where CIL operates, S106 agreements should only be used to resolve a site specific infrastructure requirement and only then when it cannot be dealt with by condition.

**Question 1: Do you agree that Section 106 negotiations represent a significant source of delay within the planning application process?**

Yes. However, major developments often give rise to complex S106 agreements and guidance should recognise that they may need additional time.

**Question 2: Do you agree that failure to agree or complete Section 106 agreements are common reasons for seeking extra time to determine a planning application?**

Yes.

**Question 3: Do you agree that the current legal framework does not provide effective mechanisms for resolving Section 106 delays and disputes in a timely manner?**

Yes. A straightforward appeal mechanism is needed. Perhaps this could be based on adopting a key element by which commercial contracts are often negotiated and agreed between parties. Here the key components (Heads of Terms) are agreed early on in the process with the subsequent contract given detailed expression to these terms. In the context of S106 agreements, suggested Heads of Terms could be submitted with the application and agreed whilst the application is being considered. Failure to subsequently adhere to the Heads of Terms would constitute a basis for appeal.

**Question 4: Do you agree that legislative change is required to bring about a significant reduction in the delays associated with negotiating Section 106 agreements?**

Yes. Although improved guidance would be very helpful, we believe stopping the inappropriate use of S106 agreements will only be secured through legislation.

**Question 5: Do you agree that any future dispute resolution mechanism should be available where Section 106 negotiations breach statutory or agreed timescales?**

Yes.

**Question 6: Do you agree that a solution involving an automatic or deemed agreement after set timescales would be unworkable in practice?**

Yes.

**Question 7: Could submission of a draft Section 106 agreement or unilateral agreement during the negotiation process be a requirement of being able to seek dispute resolution where statutory or agreed timescales are breached?**

Yes.

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

No.

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

A qualified person appointed by the President of the RICS, RTPI or other appropriate chartered professional body. . . .

**Question 10: How long should the process take?**

The issues are likely to be more limited than in the consideration of a planning appeal and it should be possible to reach a quicker conclusion. No more than three months would be needed. . . .

**Question 11: Do you agree that the body offering Section 106 dispute resolution should be able to charge a fee to cover the cost of providing the service?**

Costs should be awarded according to the usual practice adopted in dispute resolution.

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

Yes.

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

No. Moreover, it would be undesirable as different skills are needed to decide other elements of the planning determination process.

**Question 14: Are there any ways in which this could be done where only the Section 106 agreement is the subject of the resolution mechanism?**

No comment.

**Question 15: To what extent do you consider the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation?**

No comment.

AR would be very pleased to discuss our comments with you further.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'William McKee', written in a cursive style.

William McKee

Chief Executive

Accessible Retail,

Orb Support Ltd,

PO Box 164,

Saffron Walden,

Essex, CB10 9AA

email [william.mckee@btclick.com](mailto:william.mckee@btclick.com)

Mobile 07711 069 140