

30 August 2023



## Record of Submission

### APPG on Housing & Planning – inquiry into England’s developer contributions system

#### Context:

The All-Party Parliamentary Group on Housing and Planning has launched an inquiry into England’s developer contributions systems, which will run over the summer of 2023.

The APPG is calling on local government, housebuilders, social and affordable housing providers and other interested academics, charities and businesses to submit evidence about the Government’s proposed Infrastructure Levy and explore proposals to improve existing Section 106 (S106) and Community Infrastructure Levy (CIL) mechanisms.

The inquiry aims to build on the work of successive governments, parliamentary committees and other experts to recommend improvements to our planning system in recent years.

#### The objectives of this inquiry are:

- To assess the opportunities and challenges facing England’s developer contributions systems today
- To collect evidence and the experiences of organisations, professions and people using Section 106 and CIL to enable development
- To assemble and review proposals made to improve the performance of England’s developer contributions mechanisms in recent years
- To help parliamentarians understand the nature of responses submitted to the Department for Levelling Up, Housing and Communities’ recent technical consultation on the Infrastructure Levy
- To make recommendations to Government on the future direction of its planning reforms

Please submit your responses to this inquiry by 5PM on Tuesday 5 September using our webform.

#### Submission:

##### 1. **What is your aspiration for England’s developer contribution system? (100 words) \***

*Quick, simple, transparent, based on stakeholder engagement and flexible.*

*As recommended by the 2017 CIL Review (Liz Peace), the Alliance suggests that the example of London’s Mayoral CIL could be extended nationwide to create a simple, flat-rate, levy that could increase revenue raised by new development in a straightforward manner. This could come alongside proposals that would streamline the use of existing provisions in s106, such as standardised clauses for some common s106 topics. This could be implemented using existing provisions with a minimum of disruption, whilst avoiding potential adverse effects both on new developments and on local authority resourcing. (100 words)*

##### 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)**

*The Mayor of London’s CIL has been reasonably positive – it’s a relatively simple system with flat rates, which has made a valuable contribution towards delivering Crossrail, an important piece of infrastructure.*

*Borough CIL is more mixed because of the huge variation in rates set across London boroughs and land uses/areas, with CIL rates to a certain extent reflecting borough’s land use priorities rather than viability. This can result in CIL rates distorting development viability and disincentivising development.*

*The CIL mechanism (by statute) has caused complexities which have needed to be tested through the courts, which is ineffective and slow. This has caused major issues for some schemes e.g. those*

*bringing back into use vacant buildings/sites which generate substantial CIL liabilities for relatively small schemes.*

*S106 can result in significant delays to permissions being granted and uncertainty. Nevertheless S106 enables important flexibility for developers and LPAs to negotiate and weigh up how development should contribute to local infrastructure needs (including affordable housing) and take into account specific site/development circumstances.*

*Neither system provides the transparency needed to inform communities of how and where developments contribute to local infrastructure and affordable housing, which would help build trust and a positive case for growth.*

**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)**

*S106 provides developers/LPAs with flexibility for negotiation to secure the optimum contributions whilst seeking to ensure that development remains deliverable. Often there are competing planning priorities, and S106 provides a mechanism to agree the balance of priorities on a case-by-case basis e.g. on a site where a school is needed, the provision of affordable housing ('AH') may be less to facilitate delivery of such infrastructure. S106 also ensures delivery of AH (and other infrastructure) and links this to the development, unlike the mechanisms of CIL and the IL, which break the link between development and delivery. Development contributes significantly to AH and community infrastructure. To build trust between developers and communities, we consider it important that this link is maintained and S106 often does this well.*

*The following changes could be brought forward:*

- *Standardisation – Agreed, standardised S106 clauses for common topics would help streamline the process, creating consistency for developers across boroughs.*
- *Clarity - Clearer LPA guidance on what contributions/delivery is expected of development would help developers account for this at feasibility stages.*
- *Complexity - The growing length and complexity of S106 agreements, and associated delays, to some extent reflects the growing complexity of the planning process and the topics it is expected to address. This is an area of wider concern, but in part it manifests itself in delays in S106 agreements.*
- *Viability and deliverability - Viability remains an area of concern. Policy / guidance should seek to maximise contributions/infrastructure delivery but in a way which still encourages development and is responsive to market conditions. Maximising contributions/infrastructure may be effective in strong market conditions, in weaker environments (such as now), this may well disincentivise development. Review mechanisms can add further complexity to S106 agreements and development risk. Without development, there would be no contributions/infrastructure delivery so it is important that development remains financially attractive.*
- *Amendments – The need to have a deed of variation to a S106 where a permission is amended is unnecessary and adds considerably to delay. This could be avoided through clearer guidance and model clauses.*

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) \****

*We have significant concerns about the structure and application of the proposed IL system, as outlined in our [attached representations](#). Whilst the current S106/CIL systems need improvement, they are by and large understood by the development industry. The starting point for improving the developer contribution system should be working with the existing systems rather than introducing an overly-complex process which is ill-suited to complex urban areas and will likely cause uncertainty, delay and ultimately will disincentivise development and investment.*

*In respect of CIL, we suggest that any system be similar to London's Mayoral CIL i.e. a simple system with flat rates which is easy to understand and apply. The setting of any rates should be done simplistically (not across a huge geographical/land use variation) and should be set at a reasonable level to enable development to come forward and other contributions to be able to be made (including the provision of affordable housing). There should be clearer guidance from Government/LPAs as to the priorities between the provision of affordable housing and other infrastructure which could be delivered under CIL (and possibly the IL).*

*Some of the most significant issues in respect of CIL arise from its origins within statute and the inability for LPAs to take a flexible approach where it may be considered necessary – e.g. redevelopment of a large, under-utilised brownfield site to deliver mixed use redevelopment may generate a substantial CIL liability which due to Regulation 124 cannot be utilised for affordable housing. This in turn will affect the viability of the scheme (and any affordable housing that could be delivered) but as CIL is mandatory and non-negotiable, there is no ability for the LPA/the developer to negotiate a more favourable option which both parties would prefer. We would therefore suggest that any CIL regime be brought forward via planning policy, as opposed to statute. This would still maintain a strong regime which should be followed in most instances, but would enable some flexibility should there be a strong case for deviation.*