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September 2023

Developer Contribution Inquiry

Response from The Housing Forum

Response submitted by:

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About The Housing Forum

The Housing Forum is the UK's cross-sector, industry-wide organisation that represents the entire housing supply chain. Our growing membership drawn from over 150 organisations across the public and private sectors and includes local authorities, housing associations, housebuilders, architects and manufacturers. All share our determination to drive quality in the design, construction and decarbonisation of UK homes. They have a commitment to partnership working and share in our vision of 'A Quality Home for All'.

In order to achieve this, we have advocate for policy change needed for everyone to live in a good quality, sustainable and affordable home. Our key [Housing Solutions](#) set out how we think this can be achieved.

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Introduction

The All-Party Parliamentary Group on Housing and Planning launched an inquiry into England's developer contributions systems over the summer of 2023.

The APPG called 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.

This contribution sets out the response from The Housing Forum, representing our cross-sector membership and in line with our mission of A Quality Home For All.

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Response to questions

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

The Housing Forum believes that the current system based around S106 and CIL should be retained and improved.

The system should be flexible and market-sensitive. It should also:

- Provide early certainty for developers so the contributions can be factored into land prices, ensuring that the costs of infrastructure are ultimately borne out of land values.
- Provide as much funding as possible for infrastructure, and for Affordable Housing in areas where it is most needed.
- Ensure that schemes remain viable.
- Collect contributions at the right time to deliver the required infrastructure.
- Be transparent over what financial contributions are being spent on.

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) *

Our members across the housing sector all report that under-resourcing in local authorities is a major problem for effective negotiation of S106 and delivering infrastructure and causes delays.

Other issues include:

- S106 requirements can be unpredictable and vary from those outlined in local plans. Housebuilders and housing associations need upfront certainty on what will be required.
- There is a lack of clarity over whether CIL is required on Affordable Housing. This is needed upfront and with an agreed approach if the amount of Affordable Housing is subsequently varied.
- CIL charging structures can be unclear, and they are not always clear on what the funding is being used for or that they are not being "double-charged" if S106 and CIL are both charged. If money is not spent locally, it can fail to alleviate residents' concerns about the impact of new housing on local infrastructure.
- CIL payments can be required at too early a stage, creating cash flow difficulties and a risk to viability.
- Increasing CIL payments can come at the expense of Affordable Housing where there are viability challenges.

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- There are issues with two-tier authorities where county councils need to provide some of the infrastructure but cannot access CIL receipts.

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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) *

- Better resourcing of local authority planning departments would speed up the process of agreeing S106 agreements.
- Housebuilders would like to see hard deadlines imposed on LPAs, but local authorities are not keen on these – at least not until the wider issue of local authority under-resourcing issue has been addressed. Introducing some statutory time limits for elements of S106 that are required at different stages (start of works, etc), along similar lines to the existing rules for planning conditions would help.
- The use of standardised S106 templates may reduce the workload on local authorities and help focus negotiations on the site-specific factors rather than legal wordings. Alternatively, some councils engage early with a third party lawyer who can draw up the skeleton agreement, which then allows negotiations to move on faster.
- Local authorities should be clear on S106 requirements at the outset to reduce the risk of viability disputes and delays.
- The broad principles around what is required via S106 should be set out in Local Plans. This would mean the viability could be tested during examination, and allow LPAs to request Heads of Terms to be submitted with applications, reducing the risk of future viability disputes and delays.
- Phasing in the Threshold approach used in the London Plan across other parts of the country would help. This has been successful in speeding up agreement on the Affordable Housing contributions and removing the need for viability testing.
- The government should remove the 5 year limit on requests to reconsider planning obligations for sites where there have been significant changes to viability – for instance due to policy changes or housing market changes.

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) *

- Clarity is needed that CIL is not to be sought on Affordable Housing, even if it is over-providing against what planning policy requires. This would help boost delivery of Affordable Housing and provide certainty to social landlords.
- Improved clarity over what CIL must be spent on would improve transparency and increase the sense of fairness. The money should be spent on things that service the housing being built and this should be demonstratable. At present CIL can be spent on things that seem remote to the residents near to

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a new housing development, which can increase the sense that the necessary infrastructure is not being provided to support new housing, increasing resistance to new housing.

- A system should be established to enable county councils to access CIL funding in two-tier authorities.
- Applying the calculation to net saleable area rather than gross area would be fairer for some types of development.
- Increased flexibility to allow for in-kind contributions or to pay to a developer who has provided infrastructure to service other areas would help.
- We would recommend that the government retains the approach of CIL being an optional levy, at the discretion of local authorities, and that guidance is published on when and how CIL can be used effectively vs when it might be better to rely on S106.

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

housingforum.org.uk/wp-content/uploads/2023/06/Technical-consultation-on-the-Infrastructure-Levy-Housing-Forum-response_-002-1.pdf

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Conclusion

The Housing Forum very much welcomes the APPG's efforts to look at improvements to the current system of developer contributions via S106 and CIL. Our members come from across the housing sector – including housebuilders, housing associations and local authorities. We have serious concerns about the deliverability of the proposed infrastructure levy, and do not think it is viable to take it forward without cross-party support. The current system does work and generates cross-subsidy for a significant amount of Affordable Housing, especially in the areas where it is most-needed. There are ways in which it could be improved, and we are keen to support the APPG with developing measures that can do this.

We look forward to working with Government to help take forward the ambition of 300,000 new homes a year, increasing the supply of Affordable Housing and working towards our ambition of a **Quality Home for All**. Our key [Housing Solutions](#) set out how we think this can be achieved.

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