

STANDARD PLANNING AGREEMENTS FOR MEDIUM-SIZED SITES

CONSULTATION RESPONSE

Response from: BusinessLDN, One Oliver's Yard, 55-71 City Road, London EC1Y 1HQ

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INTRODUCTION

1. BusinessLDN is a business membership organisation with the mission to make London the best city in the world to do business, working with and for the whole UK. BusinessLDN works with the support of the capital's major businesses in key sectors such as housing, commercial property, finance, transport, infrastructure, professional services, ICT, and education.
2. We welcome the opportunity to respond to the Ministry of Housing Communities and Local Government (MHCLG) consultation on standard planning agreements for medium-sized sites. Many of the questions posed in the consultation document are technical questions about legal drafting and planning law experts within local authorities and the private sector are best placed to provide feedback on those. However, we wish to provide commentary on the principle of standardisation for medium-sized sites and the need for guidance to cover some key issues. We have also answered some specific questions on issues that are of significant interest to our members.

GENERAL COMMENTS

3. We welcome the Government's commitment to greater standardisation in the planning system on smaller and more straightforward sites. Furthermore, we have supported Town Legal's work in raising awareness of the need for a standardised approach to legal agreements for medium-sized sites and we were involved in some of their early cross-sector workshops. We are therefore pleased that MHCLG, Town Legal and the Planning Advisory Service have worked together to develop draft templates and launch this detailed consultation. Once in place, the templates will support SME developers and free up local authority planning and legal resource to be able to deal with more complex, strategic sites more quickly.

4. Attempts have been made previously to introduce a standard template for Section 106 (S106) legal agreements with limited uptake. When the new National Planning Policy Framework was published in August 2026, we welcomed the requirement in Policy DM6(4) that where national model planning obligations are relevant to a development, they should be used unless there are strong reasons for using a different obligation.
5. To ensure widespread adoption of the new templates, it is vital that the final versions strike the right balance between these two objectives:
 - i. the templates are kept as simple as possible and they are not over complicated; and
 - ii. they retain a limited degree of flexibility for amendments, where justified by exceptional circumstances that require a bespoke approach.
6. Key to their success, and the level of uptake, will be the future guidance published alongside the templates. In addition to reinforcing the default position that all medium-sized applications should use the standard templates and obligations, it would also be extremely helpful if guidance could set out requirements and recommendations for the process of agreeing terms, drafting and finalising an agreement.
7. Our members advise that process guidance would be particularly helpful in relation to input from internal local authority consultees and external consultees. Currently, this aspect can cause significant delays to the issuing of the planning permission. In some instances, this could be caused by a delayed consultee response and no input provided prior to the application being presented to the planning committee for a resolution, meaning it is not possible to present the final, agreed heads of terms to the committee members. In other circumstances, heads of terms may have been agreed prior to committee resolution, but then post-committee, stakeholders are re-consulted on draft obligations and they request changes and/or they propose additional terms, leading to further negotiation and delay.
8. If guidance could set out an agreed 'modus operandi' for the legal agreement process, including input from consultees, this would ensure that maximum benefit can be garnered from the new standardised system in terms of time savings and more efficient use of resources.

RESPONSES TO RELEVANT CONSULTATION QUESTIONS

Q.2: Do you agree that the definition of “Commencement” used in the templates is appropriate? Please explain your answer, including any views on the list of excluded works and activities set out within it.

9. Strongly Agree. The list of excluded works set out at (a) to (p) in the definition of “Commencement” are comprehensive and it is important that they are retained in full.

Q.23: Do you agree with the drafting of this clause [concerning future planning permissions granted under s73]?

10. Strongly Agree. If a new planning permission is granted under Section 73 of the Town and Country Planning Act 1990, and the amendments to the original permission do not necessitate any changes to the obligations contained in the legal agreement, then the original agreement should automatically apply to the new permission. It is a waste of everyone's time and resource to prepare a formal deed of variation in these circumstances.

Q.68: Do you agree with the inclusion of a discretionary cascade mechanism where affordable housing cannot be delivered on site?

11. Strongly Agree. Including a discretionary cascade mechanism is the right approach because some local authorities choose to use these widely, whilst others prefer not to.
12. Notwithstanding these different approaches, more widespread use of cascade mechanisms should be encouraged in the guidance accompanying the finalised templates. They are a practical and effective tool at maintaining the delivery of new homes in the event of reduced demand from Registered Providers (RPs) and this approach encourages local authorities to explore new routes for the delivery of affordable homes including delivery themselves.
13. It has been increasingly problematic in recent years for developers to find RPs to take on their S106 affordable homes and this can delay or stall otherwise viable schemes. Due to an increase in regulation and a renewed focus on existing homes, RPs have diverted significant capital investment away from new homes and into the maintenance and remediation of existing stock. Without an RP buyer, developers can struggle to secure finance and recover capital, while planning obligations can prevent market homes from being occupied until the affordable housing is taken up. This leaves completed homes empty, delays sales and ties up funding that could otherwise support new development. The use of a cascade mechanism allows for alternative means to meet affordable housing obligations provided reasonable endeavours have been made to secure an RP within a reasonable timeframe.

Q.69: Do you agree with the proposed operation of the cascade mechanism, including the order of stages, marketing opportunities and associated timescales?

14. Strongly Agree. The structured approach is clear and comprehensive. Including a methodical process to explore options for the local authority to purchase the S106 homes, or agree an alternative dwelling and tenure mix, or ultimately a payment in lieu of on-site provision, ensures that all reasonable steps are taken to maintain affordable housing obligations and reduce the risk of delivery being stalled.

Q.74: Which approach to the geographic use of Affordable Housing contributions do you prefer?

15. Contributions should be capable of being spent across the LPA area from receipt.

Q.75: What should be the default approach to the repayment of unspent Affordable Housing Contributions?

16. Repayment should apply after 5 years.

Q.76: What approach should be taken to payment triggers for Affordable Housing Contributions that are agreed at the outset instead of on-site provision?

17. Contributions should be paid in phased instalments linked to development progress.