

Section 106 Exemptions Survey

Survey Results

May 2015



To view more research from the Local Government Association Research and Information team please visit: <http://www.local.gov.uk/local-government-intelligence>

Contents

- Foreword 4
- Introduction 5
- Methodology..... 5
- Key Findings 6
- Impacts of Changes to s106 Policy 7
 - Impacts of s106 Policy..... 7
 - Affordable homes 8
 - Financial Contributions 9
 - Future Contributions10
 - Rural Areas10
 - Impact on Outstanding Planning Applications.....11
 - Negotiation with Developers11
 - Additional Comments12

Foreword

Councils have a crucial role to play in tackling the housing shortage and ensuring good quality and affordable homes are built where they are needed and with the infrastructure needed to support them. The ambition of councils to increase investment in affordable housing is clear – through working with partners, using innovative funding models, as well as bringing forward surplus public land for development.

The objective of our survey was to assess the impact of new national planning policy exempting development of 10 homes or less and redevelopment of vacant buildings (the so-called ‘Vacant Building Credit’) from section 106 affordable housing contributions. The key conclusion is that the exemptions are eroding councils’ ability to secure the homes so desperately needed in communities across the country. They are also having an impact on planning applications already in the system, with developers seeking to remove previously agreed affordable housing contributions.

Whilst the survey focuses on the most recent exemptions for developments of 10 units or less and the introduction of the Vacant Building Credit, there have been a number of other mandatory exemptions to affordable housing contributions in recent years. The cumulative impact of these exemptions undermines the ability and ambition of councils to deliver housing to cater for local needs.

Councils are acutely aware of the importance of striking a balance between the requirement for affordable housing on new development and the potential effect on the viability of development across their area. This is best achieved through robust and transparent viability assessments that are much more sensitive to local conditions than blunt central policies. This is borne out in the survey results which show that councils already take a pragmatic approach to affordable housing requirements for small scale housing to enable development to come forward.

There is an overwhelming need to build confidence in councils’ role in delivering housing for their local communities. To support this we recommend that the new government reverses the trend of national exemptions for affordable housing contributions. Alongside giving councils’ the powers, resources and flexibilities to enable them to build at scale this will provide the necessary environment to fully unlock councils’ ambitions to build more local, affordable homes.

Cllr Peter Box

Chair LGA’s Environment, Economy, Housing and Transport Board

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

Introduction

On 28 November 2014, new s106 affordable housing exemptions came into force.

These included new rules that introduce into national policy guidance a threshold beneath which affordable housing contributions should not be sought. The threshold is for developments of ten units or less (and which have a maximum combined gross floor space of no more than 1,000 square metres). Councils are able to apply a lower threshold in areas designated as 'rural' under S157 of the 1985 Housing Act, which includes National Parks and Area of Outstanding Natural Beauty. In these areas, Local Planning Authorities (LPAs) should not seek an affordable housing contribution from sites of five units or less. They can take an affordable housing contribution on sites of six to 10 units, but this can only be in the form of a financial sum commuted until after completion of the homes.

In addition the new rules mean that where vacant buildings, of any size or use, are brought back into any lawful use, or is demolished to be replaced by a new building/s, the developer should be offered a financial credit equivalent to the existing gross floor space of relevant vacant buildings when the local planning authority calculates any affordable housing contribution – the so-called 'vacant building credit'. Affordable housing contributions can be sought only on any increase in floor space after the vacant building credit has been applied and if the site is viable.

The LGA surveyed local authorities to establish the impact of these new exemptions. The results of which are intended to feed into lobbying and advocacy work and used in discussions with Ministers about the impact these changes will have on the delivery of affordable housing in local areas.

Methodology

An online survey comprising 10 questions was sent electronically to heads of planning in all 326 councils in England. It was in the field between 3 February 2015 and 11 March 2015; reminders were sent to non-responding councils during the data collection process.

The survey was fully completed by 97 councils and partially completed by one authority, a response rate of 30 per cent; Table 1 shows the response rate by region.

Tables and figures report the base, the description refers to the group of people who were asked the question. The number provided refers to the number of respondents who answered the question. Please note that bases vary throughout the survey. Throughout the report, percentages may not add up to exactly 100 per cent due to rounding. Where the response base is less than 50, care should be taken when interpreting percentages, as small difference can seem magnified.

Table 1: Response rate by region

	Respondents	Authorities	Response rate by region
	Count	Count	%
East Midlands	7	40	18
East of England	18	47	38
London	15	33	45
North East	4	12	33
North West	6	39	15
South East	18	67	27
South West	9	37	24
West Midlands	10	30	33
Yorkshire and the Humber	11	21	52
Total	98	326	30

Key Findings

- 77 per cent of respondents strongly or tended to agree that the new s106 policy will result in a smaller number of new affordable homes in their authority area.
- 85 per cent strongly or tended to agree that vacant building credit would result in a smaller number of new affordable homes and/or decrease in financial contributions towards new affordable homes.
- More than nine in 10 respondents (93 per cent of those that prior to the s106 changes had received financial contributions) strongly or tended to agree that the new s106 policy will result in a decrease in financial contributions towards new affordable homes in their authority area.
- The introduction of the new s106 policy has had negative impacts on the number of affordable units and/or financial contributions of outstanding planning applications. Sixty six per cent were able to identify impacts on outstanding planning applications, the most common was a refusal by developers to pay affordable housing s106 contribution which had been agreed in principle before the announcement was made (31 per cent). The second impact most experienced was the withdrawal and resubmission of planning applications with the affordable housing element removed.
- Councils were already taking a flexible approach in accepting financial contributions towards affordable homes from developers of sites of less than 10 units before the new policy was introduced.
- The councils were already varying levels of affordable housing contributions required on sites of less than 10 units based on local circumstances before the new policy was introduced.
- Just over half (51 per cent) of councils have areas they consider to be rural in nature, to which, because they do not meet the 'rural' criteria introduced by government, they won't be able to apply a lower threshold.

Impacts of Changes to s106 Policy

This section provides detailed aggregated results for each question contained within the survey.

Impacts of s106 Policy

So as to establish what the impacts of the different elements of the new s106 policy are for authorities, respondents were asked to what extent they agreed or disagreed with a number of statements.

- 77 per cent of respondents strongly or tended to agree that the new s106 policy will result in a smaller number of new affordable homes in their authority area.
- 85 per cent strongly or tended to agree that vacant building credit would result in a smaller number of new affordable homes and/or decrease in financial contributions towards new affordable homes.
- 72 per cent of respondents strongly or tended to agree that new s106 policy will render their authority's existing or emerging local plan policy on securing affordable housing out of date, this is in contrast to nearly a quarter of respondents (24 per cent) who tended to or strongly disagreed that it would render their existing or emerging plan out of date.
- Opinions were split as to whether the new s106 policy would render their existing or emerging neighbourhood plan policy on securing affordable housing out of date with just over a quarter (26 per cent) strongly or tending to agree that it would and a quarter (25 per cent) strongly or tending to disagree that it would.

Table 2: To what extent do you agree or disagree with the following statements:						
	Strongly agree	Tend to agree	Neither agree nor disagree	Tend to disagree	Strongly disagree	Don't know
	%	%	%	%	%	%
The new s106 policy will result in a smaller number of new affordable homes in this authority area	60	17	6	10	6	0
Vacant building credit will result in a smaller number of new affordable homes and/or decrease in financial contributions towards new affordable homes	57	28	5	5	1	4
The new s106 policy will render existing or emerging local plan policy on securing affordable housing out of date in this authority area	51	21	3	12	12	0
The new s106 policy will render existing or emerging neighbourhood plan policy on securing affordable housing out of date in this authority area	15	11	32	11	15	14

Q1

Base: all respondents (98)

Prior to the new s106 policy 57 per cent of respondents had accepted financial contributions towards affordable homes from developers of sites of less than 10 units, illustrating that councils were already taking a flexible approach prior to the introduction of the new s106 policy.

Of these respondents more than nine in 10 (93 per cent) strongly or tended to agree that the new s106 policy will result in a decrease in financial contributions towards new affordable homes in their authority area.

Table 3: To what extent do you agree or disagree with the following statement: The new s106 policy will result in a decrease in financial contributions towards new affordable homes in this authority area?

	%
Strongly agree	80
Tend to agree	13
Neither agree nor disagree	2
Tend to disagree	2
Strongly disagree	0
Don't know	4

Q3

Base: all respondents who had previously accepted financial contributions (56)

Affordable homes

Authorities were asked for the past three financial years and in the current year up to the date of the exemption announcement, how many affordable homes were granted through planning applications on sites of less than 10 units. Table 4 shows the proportion of respondents that had granted affordable homes through applications on sites of less than 10 units, as well as the total number of affordable homes granted by those authorities. Sixty eight per cent of respondents knew how many affordable units were granted through planning applications on sites of less than 10 units between 2011/12 and 2014/15, within these authority areas a total of 2,853 affordable homes were granted.

The information provided by survey respondents reveals substantial local variation, with the number of affordable homes granted ranging from one home, up to 898 in 2013/14. Below are areas which granted counts of over 100 affordable homes per financial year:

- In 2011/12 one London borough granted 319 affordable homes, another 108
- In 2012/13 a district in the East Midlands granted 118
- In 2013/14 a London borough granted 898 affordable homes
- In 2014/15 up to the date of the exemption announcement no authorities had granted more than 100 affordable homes

Table 4: For the following financial years how many affordable homes were granted through planning applications on sites of less than 10 units?

	% of respondents who had affordable homes granted	Sum of all affordable homes granted	% of respondents who had granted no affordable homes	% of respondents who don't know how many affordable homes were granted
2011-12	23	687	45	33
2012-13	28	515	42	32
2013-14	32	1,360	41	29
2014-15*	23	291	44	34

Q4

Base: all respondents (98)

* 2014/15 up to date of exemption announcement

Written comments provided by respondents at the end of the survey (additional comments) showed that thresholds for affordable contributions were determined by undertaking local viability assessments. It is likely therefore, that in many of the cases where respondents had not secured any affordable homes, their local threshold was set higher than 10 units.

Financial Contributions

Authorities were asked whether prior to the new s106 policy their authority accept financial contributions for minor developments. Sixty six per cent of respondents had accepted financial contributions¹, 32 per cent had not and two per cent didn't know. The 65 respondents who had received financial contributions were asked how much s106 financial contributions were secured for affordable housing through planning applications for development on sites of less than 10 units.

Much like the number of homes granted, the information provided by respondents shows substantial local variation, with financial contributions ranging from as low as £7,000 to as much as £4,490,740. Table 5 shows the proportion of respondents that had secured financial contributions for affordable homes through applications on sites of less than 10 units as well as the total sum of financial contributions secured by those authorities.

Sixty two per cent of the respondents, who had accepted financial contributions for minor developments, knew how much was granted through planning applications on sites of less than 10 units between 2011/12 and 2014/15, within these authority areas a total of £23,053,129 was secured.

¹ The variation between the number of respondents that accepted financial contributions for minor developments and the number of respondents that accepted financial contributions towards affordable homes for developments of 10 units or less (question 3) reflects authorities' variation in the definition of minor developments as well as the different types of financial contributions that authorities can receive.

Table 5: For the following financial years how much s106 financial contributions were secured for affordable housing through planning applications for development on sites of less than 10 units?

	% of respondents who had secured financial contributions	Sum of all financial contributions secured	% of respondents who had secured no financial contributions	% of respondents who don't know how much financial contributions were secured
	%		%	%
2011-12	17	£3,578,268	43	40
2012-13	22	£7,964,251	40	38
2013-14	31	£4,621,616	34	35
2014-15*	35	£6,888,994	28	37

Q6

Base: all respondents who received financial contributions (65)

* 2014/15 up to date of exemption announcement

Future Contributions

Authorities were asked how many new affordable housing units from sites of less than 10 units their authority had estimated to achieve in the financial year 2015/16. Sixty one per cent of were able to provide information on future contributions, a third of all respondents (34 per cent) estimated that they would not have achieved any new affordable homes and 28 per cent were able to provide an estimate, totalling 480 homes.

Authorities were also asked how much financial contribution for affordable housing from sites of less than 10 units their authority had estimated to achieve in the financial year 2015/16. Fifty eight per cent were able to provide information on future contributions, 41 per cent estimated that they would not achieve any financial contributions in 2015/16 and 17 per cent were able to provide a figure, totalling £5,943,987.

Rural Areas

Councils are able to apply a lower threshold of five units or less within parishes designated as 'rural' under the 1985 Housing Act, which includes all National Parks and Areas of Outstanding Natural Beauty. So as to establish how many authorities would be able to apply a lower threshold respondents were asked which statement best described their council area. Table 6 shows the proportion of respondents that have rural parishes which meet the lower threshold criteria.

Just over half (51 per cent) of councils have areas they consider to be rural in nature, but do not meet the 'rural' criteria introduced by government, meaning that they will not be able to apply a lower threshold.

Table 6: Councils are able to apply a lower threshold of five units or less within parishes designated as 'rural' under the 1985 Housing Act, which includes all National Parks and Areas of Outstanding Natural Beauty.

	%
We have rural parishes, none of which meet the lower threshold criteria	20
We have rural parishes, some which meet the lower threshold criteria and others that do not	31
We have rural parishes, all of which meet the lower threshold criteria	7
We have no rural parishes that meet the lower threshold criteria or otherwise	41
Don't know	0

Q7

Base: all respondents (98)

Impact on Outstanding Planning Applications

Authorities were asked whether any outstanding applications had been affected by the introduction of the new s106 exemption. Respondents were able to tick all that apply. Sixty six per cent were able to identify impacts on outstanding planning applications, the most common was a refusal by developers to pay affordable housing s106 contribution which had been agreed in principle before the announcement was made (31 per cent). The second impact most experienced was the withdrawal and resubmission of planning applications with the affordable housing element removed. Under a third of respondents (31 per cent) said that there had been no impacts to outstanding applications.

Table 7: Have any outstanding planning applications been affected by introduction of the new s106 policy?

	%
Yes: There have been impacts to outstanding applications	67
Refusal by developers to pay affordable housing s106 contributions which had been agreed in principle before the announcement was made	31
Current planning applications have been withdrawn and resubmitted with the affordable housing elements taken out	26
Resolution to grant now requiring reassessment	25
Breakdown in discussions with developers where ongoing negotiations on s106 affordable housing contributions had been taking place at the time of the announcement	23
Other*	18
No: There have been no impacts to outstanding applications	31
Don't know	2

Q8

Base: all respondents (98)

*'Other' impacts varied, but included challenge and negotiation, the reduction in contributions and revisions of applications. Two authorities also noted that they were continuing to take contributions.

Negotiation with Developers

Authorities were asked whether prior to the new s106 policy (November 2014) their council officers negotiated with developers of sites of less than 10 units on s106 contributions, including those for affordable housing.

Seventy three per cent of respondents had previously negotiated with developers, whilst 25 per cent had not; two per cent did not know. This illustrates that the majority of

respondents were already varying the levels of affordable housing contributions required on sites of less than 10 units to enable development, before the new policy was introduced.

The authorities that had previously negotiated with developers asked whether they could provide any short illustrative examples of negotiation with developers for s106 or affordable housing. Written comments provided by participants illustrated they approached negotiations:

“The council’s preference is for on-site delivery of affordable housing on all sites regardless of size, however it is acknowledged that a flexible approach may be required on the smallest sites eligible to make an affordable housing contribution. Example: Planning application for 10 dwellings following demolition of the 2 existing dwellings and commercial buildings (net gain of 8 units). The location was considered to be too remote for inclusion of on-site affordable housing. A more sustainable site owned by the same developer in a neighbouring village will provide an additional 3 affordable units plus a commuted sum of £300,000.”

District, South East

“Since 2012 we have completed six open book viability exercises on schemes delivering between 5 (our Local Plan threshold for affordable housing) and 10 homes. Of the six two resulted in a financial contribution being agreed to affordable housing through section 106. The other 4 resulted in no contribution being agreed.”

District, East of England

“We provide an assessment of the affordable housing requirement as part of pre-application advice given to developers. We make it clear that if this level of affordable housing is claimed to be unviable that this needs to be justified through a financial viability submission. There is also a requirement for this to be validated by independent consultants. Where the independent validation exercise identifies a higher surplus available for affordable housing, we use this as the basis for our negotiations.”

District, East of England

“Typically on small sites the Council was able to negotiate between 100% and 0% of the Local plan policy requirement. Each scheme was assessed on its merits through the submission and analysis of viability studies. In all cases a mutually acceptable solution was reached.”

District, South East

Additional Comments

At the end of the survey respondents were given the opportunity to provide any additional comments in regards to the s106 exemptions that had not been covered by the survey. Fifty eight respondents provided an additional comment.

Fifteen respondents provided comments and examples of the impacts that the changes are having and will have for their area. One district in Yorkshire and Humber said:

“This new 'policy' seriously undermines our rural districts ability to properly deal with a chronic affordable housing problem in this high value area.”

Others set out the financial implications, for example this quote from a district in the East Midlands:

“In the few days since the announcement, three schemes involving Section 106 contributions totalling £255,000 which had already been agreed in principle with developers have collapsed. Those developers will still implement the schemes but, in light of this change in Government policy, they have also realised an unanticipated financial windfall in the process. The main losers in this case will not be the developers but the hard pressed families who are desperately trying to obtain much needed affordable housing in XX.”

Nine respondents commented on the particular effects of the vacant building credit, many of which said the impacts would be worse than the changes in thresholds, this appeared to be a significant issue for London boroughs:

“In XX there are large number of vacant office, furniture and industrial buildings where with the vacant building credit the redevelopment of these sites may mean there is little or no affordable housing secured. It is flawed that the value of empty non-residential buildings can be offset against affordable housing.”

District, South East

“On 1 scheme that has just been approved by Committee, a contribution of £4m was reduced to £420,000 as a result of the Vacant Building Credit..... Looking ahead, as all building in XX takes place on previously developed land, it is likely that affordable housing contributions will be reduced significantly and that XX's affordable housing programme will be scaled down significantly.”

London Borough, London

“Vacant building credit will have a far more significant impact on XX than the threshold change. Based on permissions granted in 2012/13 and 2013/14, we estimate an annual reduction of 3,520 sq m (or approx 35 homes) in affordable housing delivery, £185,000 of agreed payments towards affordable housing, and up to £8.12 million potential payments based on viability appraisal at the end of the development process.”

London Borough, London



Local Government Association

Local Government House
Smith Square
London SW1P 3HZ

Telephone 020 7664 3000
Fax 020 7664 3030
Email info@local.gov.uk
www.local.gov.uk

© Local Government Association, July 2014

For a copy in Braille, larger print or audio, please contact us on 020 7664 3000.

We consider requests on an individual basis.