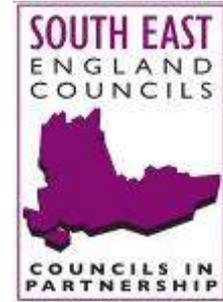


**SOUTH EAST ENGLAND COUNCILS
EXECUTIVE COMMITTEE MEETING**



Date: 11 September 2012

Subject: Consultation on renegotiation of Section 106 planning obligations

Report of: Nick Woolfenden, SEEC Head of Policy Co-ordination

Recommendations:

Executive members are asked to consider whether SEEC should respond to CLG's current consultation, emphasising the importance of retaining adequate Section 106 developer contributions for infrastructure despite the challenging economic conditions.

1. Background

- 1.1 Section 106 of the Town & Country Planning Act 1990 allows local authorities to enter into legally-binding agreements with landowners or developers linked to the granting of planning permission. These 's106' planning agreements, or obligations, ensure developers contribute to infrastructure needed to make developments acceptable in planning terms eg affordable housing provision, specific road junction improvements, community facilities. They differ from the more-recently introduced Community Infrastructure Levy (CIL) in being specific to a development, whilst CIL can gather contributions for infrastructure across a wider area.
- 1.2 The Government is concerned that some s106 planning agreements negotiated in more buoyant economic conditions now make sites economically unfeasible, leading to stalling of development. Ministers are keen to ensure, where necessary, renegotiation takes place to make agreements more reflective of the current market.

2. The consultation proposals

- 2.1 Currently s106 agreements can be voluntarily renegotiated at any time, but a formal request can only be made if the agreement is over 5 years old. To encourage renegotiation the Government is proposing¹ that where agreement cannot be reached on a voluntary basis, signatories to s106 agreements made before April 2010 should be able to formally request reconsideration of planning obligations at any time. Those agreed after this date would still be subject to 5 year rule.
- 2.2 The Government's consultation runs from 13 August to 8 October. The consultation focuses on three main questions relating to the practicality of its proposals:
- i) Is the Government's objective to encourage formal reconsideration of s106s on stalled development supported by the shortened relevant period given in the draft regulation?
 - ii) Does 6 April 2010 represent a reasonable cut off for the proposed change?
 - iii) What approaches could be taken to secure acceptable affordable housing delivery through revised obligations?
- 2.3 SEEC has frequently emphasised to Government the importance of infrastructure provision to support development and growth. Whilst individual member authorities may wish to submit detailed responses to the consultation questions reflecting local

¹ <http://www.communities.gov.uk/publications/planningandbuilding/renegotiationobligationsconsult>

circumstances, we invite member views on whether SEEC should take this opportunity to submit a high-level response emphasising:

- Whilst SEEC supports the need to progress stalled developments, it will be important to retain adequate levels of developer contributions for infrastructure to support new development.
- The Government must avoid introducing any unnecessary centralist controls. The voluntary renegotiation process is already well-used by councils and s106 signatories. This should remain the first option, and any new formal requirements must be as light-touch as possible to avoid increasing burdens.
- The Government must also continue to allow local authorities to determine the appropriate and viable level of s106 contribution with developers, reflecting local circumstances.
- Planning is not the only factor affecting the viability and progress of development - other key issues such as lack of liquidity in the finance market and limited availability of mortgages must also be addressed by the Government.