

Discussion paper on changes to Planning Policy on s106 Developer Contributions

1. Policy background

The National Planning Policy Framework (NPPF) applies nationally, and is supported by Planning Practice Guidance (PPG). Paras 203-205 of the NPPF govern planning conditions and obligations, while the PPG on Planning Obligations comprises 23 paras covering when, where and how such obligations may be sought.

Planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. Contributions may be made by way of the Community Infrastructure Levy, section 106 agreements and section 278 highway agreements. S106 funding is commonly required for new roads, street lighting, open spaces, schools, surgeries, police stations and community buildings. A major element of s106 agreements is often for the provision of affordable homes. Some s106 money, in the form of so-called *tariff style contributions* is for the improvement of public open spaces and playgrounds.

There is a national shortage of housing, and it is Government policy to increase the housing supply. One area of concern was that the number of small building firms had fallen from over 6,000 in 1997 to less than 3,000 in 2014. It was believed that one factor in this decline was the disproportionate burden of developer contributions on small developments, and in March 2014 a national consultation was carried out on measures proposed to reduce this burden. It was reported that some councils had been charging contributions of up to £145k/dwelling.

The measures were announced by Brandon Lewis (The Minister of State for Housing and Planning) in a Written Ministerial Statement (WMS) on 24th November 2014. It was estimated that the changes would reduce developer's costs by £15k per new dwelling in s106 housing contributions on average, plus tariff contributions.

2. Recent history

The WMS of 2014 stated that requirements for affordable housing or for `tariff-style` (ie H&BBC Play & Open Space) section 106 contributions should not be sought from developments of 10 units or less and which have a maximum gross floorspace of no more than 1000m². These provisions were included in the PPG and became effective from that date. They meant HBBC could not require tariff contributions towards public open space on developments of less than 10 units.

The WMS was challenged in the High Court in July 2015 by two councils and the judge held that the provisions in the WMS must not be treated as a material consideration in considering planning applications for developments of 10 units or less. Following this decision, the Government removed the provisions from the PPG and H&BBC again sought POS contributions on developments of 10-units or less, but the Government also appealed against the decision of the High Court judge to the Court of Appeal.

The Court of Appeal gave its decision on 13th May 2016 and disagreed with the High Court judge and reinstated the provisions of the WMS. The Government moved quickly and reintroduced the provisions of the WMS from 19th May 2016. The effect is that H&BBC will not seek POS contributions in section 106 agreements on developments of less than 10-units from this date.

The text above is based on a review presented at the H&BBC Parish Forum on 23rd June 2016. At this meeting the Clerk noted the severe and disproportionate financial impact this would have on small rural

PCs, and suggested that the payment of a share of New Homes Bonus Funding to PCs might be reinstated to mitigate the impact.

At a meeting of Carlton PC on 27th July, it was resolved that a letter expressing concern about the impact of this policy on small communities be sent to the Prime Minister, with a copy to the local MP (p.1620/3e refers). Copies were also sent to LRALC and the H&BBC s106 Officer. The text of this letter is at Appendix A; no answer has been received to date.

3. Effect on the Parish of Carlton

H&BBC developed a tariff contribution scheme as part of its Green Space Policy. These contributions are held by H&BBC for 5 years from receipt on behalf of the PC, and may only be spent on playgrounds and public open spaces within 400m of the development.

Since 2005, the PC has received the following amounts from s106 developer contributions for play & open space:

	£ . p
2006-7	1750.00
2008-9	6845.50
2011-12	3790.00
2015-16	13767.90
<u>2016-17</u>	<u>2602.48</u>
Total	28755.88
Agreed projects 2016-17	2400.92
<u>Additional s106 funds held by H&BBC</u>	<u>1250.80</u>
Total s106 funding achieved 2006 - 2016	32407.60

Of these receipts, £13,767.90 was from a single development of more than 10 dwellings.

This money has been used for the creation of the Glebe Farm Green, kerbing works on the West Green, building a new path in the Cemetery, replacing the parish noticeboard, felling the churchyard chestnut tree and carving the stump into a seat, providing toddlers play equipment, and providing a new litter bin on the East Green. Later this year, new kerbing is to be installed on the East Green, and the path and parking areas in the Diamond Jubilee Orchard are to be surfaced.

The total precept income of the PC over the financial years 2006-7 to 2016-17 inclusive will be £60,350. S106 developer contributions therefore provided additional income equivalent to 54% of the precept over this period.

New Homes Bonus Funding was intended by the Government to encourage communities to accept new housing. However, the money was paid to H&BBC, which forwarded a share to the PC only during the financial years 2011-12 to 2014-15 inclusive. During this period the PC received a total of £9467.13 from this source.

4. The Hinckley & Bosworth Local Plan

In the Hinckley & Bosworth Local Plan, Carlton is defined as a rural hamlet because it has limited services and relies on the Key Rural Centre of Market Bosworth for schooling, employment and the provision of goods and services. Because of this, Carlton is not considered a suitable location for sustainable development, and has not been allocated new housing under the Local Plan.

New development is confined to infill housing development, local choice schemes and conversion of agricultural buildings to employment uses.

5. Additional dwellings in Carlton

Since 2005, additional dwellings have been constructed in the following locations within the settlement of Carlton. Please note that where one dwelling is demolished and the site redeveloped for several dwellings, the number below is the number of additional dwellings created.

Shackerstone Walk	adj Willows	1
	Adj The Croft	2
Main St	18	4
	69	1
	85	11
Barton Road	Fern Lea	4
	Treetops	1
Bosworth Road	adj Overdale	2
<u>Nailstone Rd</u>	<u>Northfield</u>	<u>2</u>
Total		28

In addition, 11 affordable homes were built on a rural exception site adjacent to the settlement boundary. These homes were not liable for s106 contributions for play & open space.

6. The Sustainable Communities Act 2007

LRALC and NALC have suggested that the Sustainable Communities Act 2007 (SCA) provides a mechanism by which the PC might seek to change the 10 unit rule.

The SCA allows PCs to ask central government to remove legislative or other barriers that prevent them from improving the economic, social and environmental well-being of their area. The PC can submit proposals jointly with principal authorities or community groups.

Sustainable communities are defined in the Act as incorporating local economies, environmental protection, social inclusion and democratic involvement.

In order to use the Act the PC must involve citizens in their area and try to reach agreement with them on what proposals the PC will submit. One recommended way of doing this is to set up a panel including people from ethnic minorities, young people, older people, tenants etc.

Proposals are submitted in the first instance through the *Barrier Busting Form*. This form requires:

- a description of the problem
- an account of what has been done so far to resolve the problem
- who has been consulted about the problem and what responses have been received
- what should be done to resolve the problem.

The website <barrierbusting.communities.gov.uk> lists many proposals, but none currently relate to the payment of s106 developer contributions to small communities.

7. Assessment and suggestions

Redevelopment of sites within the current settlement boundary is likely to continue at the current rate for the foreseeable future. This is likely to create about two additional dwellings each year on average. There are no obvious redevelopment sites which could accommodate 10 or more dwellings within the current settlement boundary. Without a change in the policies or rules governing s106 developer contributions, the PC is unlikely to receive new funding from this source – a loss of income of about £2,500 pa.

The changes to planning policy in the WMS of 2014 remain controversial, but will be difficult to challenge until new evidence emerges as to their effects. The Government has already shown determination in defending these policies, and is likely to resist making any significant changes.

The letter to the Prime Minister is unlikely, on its own, to have any effect.

The complaint of Carlton PC refers only to the loss of tariff contributions for play and open space. The PC can provide evidence of the beneficial effect of this funding when it was received, and in due course of the impact of the loss of this funding.

H&BBC has always adopted a pragmatic approach to s106 developer contributions for housing, and has never sought to levy tariff charges as high those reported in the WMS. The level of the H&BBC play & open space tariff is low (currently £1,250.80/unit), and is not significant in the context of the costs of acquiring and developing a small development site.

In planning policy terms, it should be possible to differentiate between s106 housing contributions and tariff contributions for play & open space.

There are already exceptions to the 10-dwelling rule for (i) Rural Exception Sites and (ii) an optional lower limit of 5 dwellings for rural areas designated under S157 of the Housing Act 1985.

The impact of the current 10-unit limit is most severe in small communities with limited facilities which are not suitable locations for sustainable development. The cumulative effect of incremental new dwellings in such small communities is significant, and reduces their sustainability. The withdrawal of s106 contributions for play and open space will have a severe and disproportionate effect on the economic viability and provision of local services in these communities.

I suggest that:

(i) the PC considers making a proposal under the SCA that settlements designated rural hamlets or equivalent in a Local Plan and which are not allocated new housing because they are not considered sustainable locations for new housing development be exempted from Planning Policy Guidance that `tariff-style` section 106 contributions should not be sought from developments of 10 units or less and which have a maximum gross floorspace of no more than 1000m²;

(ii) the PC consults widely on this proposal, seeks advice as to the best way forward, and publicises the problem and the suggested solution;

(iii) the PC's case will be strengthened if the proposal is supported or duplicated by other small PCs and that their support be sought;

(iv) the PC seek the advice and possible co-operation of H&BBC and LCC;

(v) the PC consult with local residents, as required by the SCA.

The preparation of a proposal under the SCA will require a significant input of Officer time. The direct costs of public consultation and documentation should not be significant, and will be chargeable to budgeted contingency funding.

C J Peat Parish Clerk 20th August 2016

Appendix: text of letter to Prime Minister – 9th August 2016

Rt Hon Theresa May MP
Prime Minister
House of Commons
London
SW1A 1AA

Small developments in small communities and s106 contributions

Dear Mrs May,

Carlton Parish Council considers that it is being unfairly discriminated against because of the current rule that s106 Developer Contributions cannot be sought on developments of fewer than 10 dwellings.

The Council considers that the impact of 1-9 new dwellings on a small community is at least as great as that of 10 or more dwellings on a larger community, and the effect of the current policy is to deny vital funding to the many small communities that need it most. Since there are about 9,000 parish councils in England, and about 80% of these represent a population of less than 2,500 electors this policy has a significant impact nationally.

Carlton is a small parish and settlement with 144 dwellings and 305 registered electors where new development is limited to infill. Most development sites are small, and typically create 1-3 additional dwellings. Until the recent rule change, the Parish Council received around £1,200 per additional dwelling for the improvement of local green spaces.

To a developer these contributions are small relative to the cost of preparing and submitting a planning application for a small site, and insignificant if land acquisition and building costs are factored in. Further, s106 contributions are returned to the developer if they have not been spent within five years.

To Carlton Parish Council the extra funding from s106 contributions is very significant relative to the current annual precept of £5,800. In the past these contributions have enabled the creation of an equipped Toddlers Play area, and significant improvements to the village green, cemetery and local infrastructure.

I apologise for writing at this busy time so near to the beginning of your premiership. However, in view of your comments about creating a fairer and more inclusive society the Parish Council thought it appropriate to draw this matter to your attention.

We hope that this letter will prompt a review of this discriminatory and unfair policy.

Yours sincerely,

Chris Peat
Parish Clerk