

Royal Institute of British Architects

All-Party Parliamentary Group for Housing and Planning: developer contributions inquiry

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What is your aspiration for England's developer contribution system?

The current developer contribution system is not providing the appropriate infrastructure, facilities and services needed to support growing communities, both now and in the future.

The introduction of the Infrastructure Levy must address these concerns. It must capture non-financial obligations, such as employment, training and community investment, and allow local authorities to increase the provision of genuinely affordable, high-quality and accessible homes. Any potential to exacerbate regional imbalances must not be worsened as an unintended consequence.

Crucially, reform should simplify the planning system rather than adding further barriers, while ensuring there are no opportunities for developers to circumvent making contributions.

How would you recommend that government improves Section 106? Please provide any evidence you can to demonstrate why these changes would be effective.

RIBA has been clear that, if implemented well, a single Infrastructure Levy would increase certainty in planning and speed up the development management process. As such, instead of improving Section 106 and CIL the focus must be on ensuring that the proposed Infrastructure Levy meets the aims set out in Question 1. It is therefore useful to acknowledge and build on the strengths and weaknesses of the existing system of developer contributions.

There are several benefits and disadvantages to the way that S106 contributions currently work. One benefit of S106 is that it facilitates a well-integrated mix of housing tenures and non-financial obligations. However, sector colleagues have noted that due to a lack of certainty over the capture of land value under S106, developers have been able to 'use arguments about the financial viability of sites to limit their obligations'.¹

At present, it appears far too easy for developers to avoid paying developer contributions and reduce affordable housing provision by renegotiating viability assessments. This has a negative



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impact on housing targets, community facilities and services and development quality. Many local planning authorities (LPAs) lack the technical skill necessary to negotiate S106 contributions,ⁱⁱ and RIBA members have previously raised concerns that unequal power distribution between LPAs and large developers exacerbates the ability of developers to avoid contributing to infrastructure.

There are two clear improvements that could be made to S106 as it stands. First, ensuring that LPAs are comprehensively resourced to recruit and retain in-house technical expertise, therefore strengthening the LPA's ability to negotiate in favour of the highest amount of affordable housing and contributions for infrastructure and amenities. RIBA has been calling for better resourcing for LPAs.

Second, poor resourcing has often led to a lack of enforcement and the management of public space and other community amenities provided under S106 being taken under private management. This can lead to costs being passed onto residents and bodies such as housing associations, rather than being paid for via developer contributions. We would welcome strengthened provision to avoid this, and this must be rectified in the proposed Infrastructure Levy.

**How would you recommend that government improves the Community Infrastructure Levy?
Please provide any evidence you can to demonstrate why these changes would be effective.**

As with S106, there are both positive and negative aspects to the current application of CIL which will provide learnings for best practice in implementing the Infrastructure Levy. Mechanisms such as Neighbourhood CIL, which allow for increased community engagement in the provision of housing, amenities and infrastructure, are integral to empowering communities via the planning system. We are pleased that a continuation of this was consulted on as part of the Infrastructure Levy consultation.

CIL is payable according to a set tariff (specific to local authorities, for regional appropriation), creating upfront certainty in terms of the developer contributions it will capture. As a result, CIL is perhaps therefore more effective than S106 at capturing regional context and development type.ⁱⁱⁱ

However, House of Commons research from 2019 notes that CIL has not always benefitted larger sites with complex requirements, and as such has 'effectively transferred the burden and risk of providing infrastructure from developers to local authorities who are not well placed to deliver.'^{iv} This is as the nature of CIL payments means not all necessary infrastructure is provided at the start of a project, when early stages of development mean it is needed.

While there are benefits and risks attached to staggered charging schedules and payment on site completion, we must ensure that any system of developer contributions does not inadvertently act to place an increased financial burden on a local authority.

Research has also highlighted continued regional disparity in the value of CIL, with 80% of all agreed CIL contributions for the 2018/19 period being in London and the South East.^v As we outlined in our response to the recent DLUHC consultation on the Infrastructure Levy, any planned reform of the developer contributions system must acknowledge and take steps to rectify its impact on entrenching existing regional inequalities.

ⁱ https://www.jrf.org.uk/file/59032/download?token=C3_g1iA&filetype=full-report

ⁱⁱ <https://neweconomics.org/2022/02/how-private-developers-get-out-of-building-affordable-housing>

ⁱⁱⁱ https://www.jrf.org.uk/file/59032/download?token=C3_g1iA&filetype=full-report

^{iv} <https://researchbriefings.files.parliament.uk/documents/SN03890/SN03890.pdf>

^v Ibid.