



PINS NOTE 10/2013r1

To: All Inspectors (England)

Date of Issue: 6 June 2013

Currency: review at 6 months after issue

Last Updated: 7 June 2013 – to replace references to 'agreements' with 'obligations' at paragraphs 3 & 4

Section 106 affordable housing requirements – review and appeal

Action

1. Inspectors should be aware that the Growth and Infrastructure Act 2013 ('the Act') inserted new sections 106BA, BB and BC into the Town and Country Planning Act 1990. This introduces a new application and appeal procedure to review affordable housing obligations on the grounds of viability. DCLG published guidance titled 'Section 106 affordable housing requirements: Review and Appeal' which provides information on the purpose and scope of these measures.
2. The guidance provides an overview of the evidence that may be required to support s106BA applications and s106BC appeals. Annex A of the guidance identifies the key variables which could be relevant in the reassessment of viability, whilst Annex B contains a procedural note for applications and appeals. The Government intends to consult on a legislative procedure for s106Bc appeals, but in the interim the procedures set out in Annex B will apply.

Background

3. The provision is designed to enable the review of S106 Obligations attached to permissions for housing developments where the developer considers that the scheme has stalled due to unrealistic s106 obligations, negotiated under differing economic conditions.
4. Section 7 of the Act¹ makes provision for the modification or discharge of affordable housing requirements by introducing a new application and appeal procedure, for the review of planning obligations which relate to the provision of affordable housing. These new procedures are limited to

¹ This inserts new sections 106BA, BB and BC into the Town and Country Planning Act 1990.

an assessment of the viability of affordable housing requirements only. Other planning policy considerations will not be re-opened and the merits of the permitted scheme will not be reviewed. The new procedures do not replace the existing powers to renegotiate s106 obligations on a voluntary basis.

5. These measures are intended to be temporary, with the sections subject to repeal at the end of April 2016, although there is provision for the SoS to extend the period.
6. Please contact xxxx if you have any queries on this Note generally or xxxx if it relates to a casework matter.

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Director of Technical Services