



RTPI

mediation of space · making of place

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18th June 2010

Natasha Trinidad
Communities and Local Government
Zone 1/E2
Eland House
Bressenden Place
London
SW1E 5DU

Email response sent to: planning.obligations@communities.gsi.gov.uk

Dear Ms Trinidad,

RESPONSE TO CONSULTATION PAPER: New Policy Document for Planning Obligations

Thank you for the opportunity to respond to this consultation. The Royal Town Planning Institute (RTPI) represents over 22,000 spatial planners, existing to advance the science and art of town planning for the benefit of the public.

This document responds to the New Policy Document for Planning Obligations. It has been formed drawing on the expertise of individual members.

The RTPI welcomes the new policy document for planning obligations as an important accompaniment to the recent CIL regulations. It is important for developers and local communities that transparency and consistency in formulating and negotiating planning obligations are maintained to provide clarity and certainty.

The RTPI supports the proposal to exclude a 'general' contributions from planning obligations to ensure developers are not charged twice through CIL and planning obligations.

At a time when local authorities are reducing services due to reduced income streams, there will be issues arising in relation to maintenance of assets and infrastructure such as open spaces, biodiversity corridors, etc for those infrastructures in the wider public benefit. With both the CIL regulations and the proposals set out in this document to preclude maintenance payments (other than for on-site assets), alternative funding options will need to be investigated to ensure assets provided as part of planning obligations are adequately maintained.

In responding to this consultation, the Institute recognises that the new government has made further commitments to review related aspects of the planning system, and we would urge CLG to ensure that key conclusions arising from this and earlier consultations are fed into that review.

Enclosed is the RTPI's response to the formal consultation questions.

If you require further assistance, have any queries relating to the enclosed or require clarification of any points made, please contact Rebecca Coates, Planning Policy Officer on 0207 929 9466 or email rebecca.coates@rtpi.org.uk.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Thomson', with a long horizontal flourish extending to the right.

Matt Thomson
Head of Policy and Practice
Enc.

Response to specific consultation questions on the draft policy

Question 1: Key principles

The policy content of Circular 5/05: Planning Obligations has largely been retained in the Key Principles section of the Annex.

a) Do you agree with the principles set out in paragraphs PO1.1 to PO1.5? Yes/No

Yes. The RTPI are supportive of the principles set out in PO1. We welcome the clear drafting of these principles which highlight the overall role and use of planning obligations.

b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?

No further comment.

c) If no, please state which principles you disagree with and why?

Not applicable.

Question 2: Three tests

The Community Infrastructure Levy (CIL) regulation 122 will place into law the three tests described in this section, which will make it unlawful for a planning obligation, concerning a development that is capable of being charged CIL, to be taken into account in determining a planning application. The three tests are proposed to remain a material consideration for all other uses of planning obligations.

a) Do you agree with the principles set out in paragraph PO2.1? Yes/No

Yes. The RTPI is satisfied that the three tests provide local planning authorities with an appropriate context within which to prepare planning obligations.

b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?

No further comment.

c) If no, please state which principles you disagree with and why?

Not applicable.

Question 3: Maintenance payments

The policy content of Circular 5/05: Planning Obligations has largely been retained in the Maintenance Payments section of the Annex.

a) Do you agree with the principles set out in paragraphs PO3.1 to PO3.3? Yes/No

The RTPI is satisfied with PO3.1 and 3.2 as they sufficiently cover maintenance provisions for on-site maintenance and the process by which this should be entered into. However some members have expressed concerns relating to the policy set out in PO3.3. Although we fully support the *principle* behind this aspect of the policy, it may have unintended

consequences in terms of practicalities. With both the CIL regulations and the proposals set out in this document to preclude maintenance payments, alternative funding options will need to be investigated to ensure assets provided as part of planning obligations are maintained in the long term. The main concern is that resource-strapped local authorities may consider that where they are not able to guarantee funding for maintenance of assets intended for wider use, then this would constitute a reason either to not secure the asset itself (to the detriment of the wider community), or to refuse permission for the whole development on the basis that the asset cannot be maintained. Another concern is the extent to which it is possible to determine when an asset is "predominantly" for the benefit of users of the associated development or for wider use. The most common asset types where maintenance is required are open space and play areas, and the impact of this aspect of the policy might be that such places end up being gated off from the rest of the community in order to justify maintenance payments.

- b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

See above.

- c) If no, please state which principles you disagree with and why?**

See above.

Question 4: Relationship with conditions

The policy content of Circular 5/05: Planning Obligations has largely been retained in the Relationship with Conditions section of the Annex. The use of planning conditions has been subject to a separate consultation, launched on 21 December 2009, to replace the existing policy in Circular 11/95 with a new policy Annex as part of the Development Management Planning Policy Statement (which has also been subject to consultation from the same date).^{3, 4}

- a) Do you agree with the principles set out in paragraphs PO4.1 to PO4.2? Yes/No**

Yes. The RTPPI supports these principles.

Where conditions can be used to secure infrastructure they should be used in place of planning obligations as they can save negotiating time, and are sufficiently binding for local authorities to enforce.

- b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

No, these appear clear and workable.

- c) If no, please state which principles you disagree with and why?**

Not applicable.

Question 5: Pooled contributions

The legal framework with which planning obligations may be used to seek pooled contributions for

infrastructure items that are capable of being funded by the Community Infrastructure Levy (CIL) has been changed by CIL regulation 123. Policies in this section of the Annex reflect these new legal developments.

a) Do you agree with the principles set out in paragraphs PO5.1 to PO5.6? Yes/No

Yes. The RTPI is supportive of these principles provided they ensure that CIL remains the primary tool for collecting contributions for accumulative impacts rather than pooled contributions. CIL is favoured by the RTPI as it is transparent and attributed to the development plan rather than negotiated on an *ad hoc* basis.

b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?

We suggest that local planning authorities are encouraged to publish a policy for pooling contributions together with their CIL to ensure certainty and consistency.

c) If no, please state which principles you disagree with and why?

Not applicable.

Question 6: Planning framework

The policy content of Circular 5/05: Planning Obligations has largely been retained in the Planning Framework section of the Annex. Some policies have been revised to reflect wider changes to the planning system as set out in Planning Policy Statement 12: Local Spatial Planning.

a) Do you agree with the principles set out in paragraphs PO6.1 to PO6.4? Yes/No

Yes. The principles appear workable in practice.

b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?

No further comment.

c) If no, please state which principles you disagree with and why?

Not applicable.

d) Do you think that local communities have sufficient opportunity to comment on proposed developer contribution policies to ensure that local needs arising from new development are properly understood and addressed? Yes/No

Yes. Provided local authorities consult communities using the statutory timeframes and best practice the RTPI is satisfied that communities are provided with sufficient information to comment on policies.

e) If not, how do you think this might be improved?

No further comment.

Question 7: Transparency and accountability

The policy content of Circular 5/05: Planning Obligations has largely been retained in the Transparency, reporting and implementation section of the Annex.

a) Do you agree with the principles set out in paragraphs PO7.1 to PO7.4? Yes/No

Yes, the RTPI is supportive of these principles.

b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?

No further comment.

c) If no, please state which principles you disagree with and why?

Not applicable.

The Government has set out in the Empowerment White Paper Communities in Control: Real People, Real Power (launched in July 2008) its desire to explore whether it can strengthen the information provided to local communities about how planning obligations have been delivered by developers (for example, information about when payments have been made) and how the local authority has put those contributions to use. Greater transparency will enable local communities to hold local authorities to account if infrastructure agreed in a planning obligation and paid for by a developer does not come forward. It will also help ensure that local authorities do not amass significant levels of unspent developer contributions without good reason.

d) Do you agree with the proposal at Paragraph PO7.3 that local planning authorities should publish on their websites on a quarterly basis details of all planning obligations agreed and delivered during that period, including any monies that remain unspent and their intended use? Yes/No

Yes, the RTPI supports this principle however, it would be helpful for the reporting of planning obligations (PO7.3) if pooled contributions and CIL could also be published alongside planning obligations in a central area.

e) If no, what else do you think could be done to improve the transparency of planning obligations to provide information to the public?

See above.

Question 8: Appeals modifications and discharge

The policy content of Circular 5/05: Planning Obligations has largely been retained in the Appeals modifications and discharge section of the Annex.

a) Do you agree with the principles set out in paragraph PO8.1? Yes/No

Yes, the RTPI supports this principle.

b) If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?

No further comment.

c) If no, please state which principles you disagree with and why?

Not applicable.

Question 9: Guidance

The Government is intending to review and replace the current Planning Obligations: Practice Guidance, which was published in 2006, in light of the policy changes set out in this document, as well as building upon the latest best practice and taking account of the introduction of CIL.

a) Do you agree that new guidance on the use of planning obligations should be provided?

Yes.

b) If yes, who do you think would be best to provide such guidance? And

CLG should lead the preparation of guidance and invite targeted stakeholders to provide input. The RTPi is well placed to provide practitioner input. Please contact policy@rtpi.org.uk if seeking our involvement.

c) What issues or topics should be covered specifically in any new guidance?

The guidance needs to reflect the recent changes to planning obligations in light of CIL. However, it is important that the guidance supporting this policy does not duplicate the CIL guidance.

Question 10: Any other questions

a) Do you have any other comments that you would like to make about matters raised in the draft policy Annex which are not covered by the questions above? Yes/No

No.

b) If yes, please comment.

Not applicable.