



## PLANNING BULLETIN

### Draft Revised Circular on Planning Obligations – An Overview

The legislative framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the Planning and Compensation Act 1991. Current Government policy is set out in DoE Circular 1/97 however, case law has allowed a broader interpretation of the type of developer contributions that can be secured by local authorities.

The draft revised Circular on Planning Obligations was published on 2 November 2004. It sets out the possible changes to the current negotiated system to be made in advance of potentially more major reforms to the system that may come forward in the next 2-3 years, in response to the recommendations of the final report of the Barker Review of Housing Supply (March 2004).

The draft Circular seeks to promote speed, certainty, transparency and accountability, but does it go far enough?

The key revisions relate to:

#### *Clarifying the Relationship Between Contributions and Development*

The draft:	<ul style="list-style-type: none"><li>• Confirms that planning obligations can contribute to both direct and indirect impacts; this brings policy into line with case law.</li><li>• Guides local planning authorities (LPAs) to include planning obligation policies in their Local Development Frameworks (LDFs).</li><li>• Amends the “necessary” test to remove ambiguity and place greater emphasis on the link between planning policy and the contributions sought.</li><li>• Reiterates that planning obligations are not the right mechanism to capture development gain.</li><li>• Introduces three new categories of planning obligations – those that <i>Prescribe</i> the nature of development, <i>Compensate</i> for loss or damage created by development, or <i>Mitigate</i> a development’s impact on a locality.</li><li>• Clarifies that in seeking the delivery of affordable housing through Section 106, LPAs are prescribing the nature of development rather than mitigating/compensating its impacts – this legitimises current practice.</li></ul>
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## *Providing Greater Transparency, Predictability and Accountability*

The draft:	<ul style="list-style-type: none"><li>• Advises LPAs to set out broad policies in their LDFs and detailed policies in Supplementary Planning Documents. This makes policies a crucial pre-determinant in justifying the seeking of any planning obligations</li><li>• Encourages LPAs to set out formulae for calculating costs of elements in planning obligations.</li></ul>
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## *Promoting Flexibility to Meet the Needs of Sustainable Communities*

The draft:	<ul style="list-style-type: none"><li>• Enables ongoing, phased contributions.</li><li>• Clarifies the use of pooled contributions. It advises that if a development is of strategic/regional importance, pooled contributions should be addressed in the Regional Spatial Strategy.</li><li>• Enables contributions to all aspects of public infrastructure that may be affected by development.</li></ul>
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## *Reducing Delays*

The draft:	<ul style="list-style-type: none"><li>• Guides the use of standard heads of terms, agreements/undertakings and clauses.</li><li>• Promotes the use of expert third parties to overcome shortages of skilled staff.</li><li>• Reduces from 6 to 3 months the time limit for appeals relating to refusals by LPAs of applications for the modification and discharge of planning obligations.</li><li>• Enables LPAs to recoup some of the costs incurred during the process of agreeing planning obligations should the process be made more efficient.</li><li>• Promotes the use of unilateral undertakings where developers are likely to ascertain the requirements of the LPA in advance. This is likely to be increasingly the case if policies are contained within the LDF.</li></ul>
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## **Pros of Draft Circular**

- LDF policies should improve certainty and risk in process and outcomes.
- Enables quicker negotiations resulting in reduced legal and consultation fees.
- Greater flexibility of payment should enable developments to proceed that were previously made non-viable by substantial up-front payments.
- Optional planning Charge (OPC) should enable negotiations to conclude more quickly and easily resulting in development proceeding earlier.
- Emphasis on LDF policies may mean a more strategic approach is taken to infrastructure provision and the cost shared through 'pooling'.
- As local communities are consulted on LDF policies there may be less NIMBYism.

## Cons of Draft Circular

- Developers are likely to face additional costs either in relation to third party costs and/or the LPA's administration costs. These may prevent development from proceeding or increase legal objections to planning obligations.
- The OPC is likely to result in higher contributions, as it is non-negotiable. Developments are also likely to be required to contribute to more forms of community infrastructure. The apparent simpler and faster OPC system is likely to be increasingly encouraged by LPAs and the associated higher costs may deter some development.
- LPA staff resources will need to be redistributed due to greater emphasis at planning policy stage. Overall, the two systems (negotiated and OPC) are likely to need more resources.

The proposed amendments clearly provide an opportunity for a speedier, and more certain, transparent and accountable system but this will come at a financial cost to most applicants.

As increasing emphasis will be placed on LDF policies we recommend, where appropriate, that applicants submit representations to seek to influence emerging planning obligation policy. CgMs Consulting has extensive experience in submitting representations and would welcome the opportunity to discuss this further with you.

The deadline for comments to the draft Circular is 25 January 2005.

*This is a brief summary of the main implications of the proposed changes. For further information or a discussion on the implications for your property decisions, please contact:*

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Or your usual **CgMs** contact