



Growth and Infrastructure Act 2013

2013 CHAPTER 27

Promoting growth and facilitating provision of infrastructure, and related matters

7 **Modification or discharge of affordable housing requirements**

(1) After section 106B of the Town and Country Planning Act 1990 insert—

“106BA Modification or discharge of affordable housing requirements

- (1) This section applies in relation to an English planning obligation that contains an affordable housing requirement.
- (2) A person against whom the affordable housing requirement is enforceable may apply to the appropriate authority—
 - (a) for the requirement to have effect subject to modifications,
 - (b) for the requirement to be replaced with a different affordable housing requirement,
 - (c) for the requirement to be removed from the planning obligation, or
 - (d) in a case where the planning obligation consists solely of one or more affordable housing requirements, for the planning obligation to be discharged.
- (3) Where an application is made to an authority under subsection (2) and is the first such application in relation to the planning obligation—
 - (a) if the affordable housing requirement means that the development is not economically viable, the authority must deal with the application in accordance with subsection (5) so that the development becomes economically viable, or
 - (b) if paragraph (a) does not apply, the authority must determine that the affordable housing requirement is to continue to have effect without modification or replacement.

Status: This is the original version (as it was originally enacted).

- (4) Where an application is made to an authority under subsection (2) and is the second or a subsequent such application in relation to the planning obligation, the authority may—
- (a) deal with the application in accordance with subsection (5), or
 - (b) determine that the affordable housing requirement is to continue to have effect without modification or replacement.
- (5) The authority may—
- (a) determine that the requirement is to have effect subject to modifications,
 - (b) determine that the requirement is to be replaced with a different affordable housing requirement,
 - (c) determine that the planning obligation is to be modified to remove the requirement, or
 - (d) where the planning obligation consists solely of one or more affordable housing requirements, determine that the planning obligation is to be discharged.
- (6) A determination under subsection (5)(a), (b) or (c)—
- (a) may provide for the planning obligation to be modified in accordance with the application or in some other way,
 - (b) may not have the effect that the obligation as modified is more onerous in its application to the applicant than in its unmodified form, and
 - (c) may not have the effect that an obligation is imposed on a person other than the applicant or that the obligation as modified is more onerous in its application to such a person than in its unmodified form.
- (7) Subsection (6)(b) does not apply to a determination in response to the second or a subsequent application under this section in relation to the planning obligation; but such a determination may not have the effect that the development becomes economically unviable.
- (8) In making a determination under this section the authority must have regard to—
- (a) guidance issued by the Secretary of State, and
 - (b) where the determination relates to an application to which section 106BB applies, any representations made by the Mayor of London in accordance with that section.
- (9) The authority must give notice of their determination to the applicant—
- (a) within such period as may be prescribed by the Secretary of State, or
 - (b) if no period is prescribed under paragraph (a) (and subject to section 106BB(5)), within the period of 28 days beginning with the day on which the application is received, or such longer period as is agreed in writing between the applicant and the authority.
- (10) Where an authority determine under this section that a planning obligation is to have effect subject to modifications, the obligation as modified is to be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

- (11) The Secretary of State may by regulations make provision with respect to—
- (a) the form and content of applications under subsection (2), and
 - (b) the notices to be given to applicants of determinations under subsection (9).
- (12) This section and section 106BC do not apply in relation to an English planning obligation if planning permission for the development was granted wholly or partly on the basis of a policy for the provision of housing on rural exception sites.
- (13) In this section and section 106BC—
- “affordable housing requirement” means a requirement relating to the provision of housing that is or is to be made available for people whose needs are not adequately served by the commercial housing market (and it is immaterial for this purpose where or by whom the housing is or is to be provided);
- “the appropriate authority” has the same meaning as in section 106A;
- “the development”, in relation to a planning obligation, means the development authorised by the planning permission to which the obligation relates;
- “English planning obligation” means a planning obligation that—
- (a) identifies a local planning authority in England as an authority by whom the obligation is enforceable, and
 - (b) does not identify a local planning authority in Wales as such an authority.
- (14) The Secretary of State may by order amend this section so as to modify the definition of “affordable housing requirement” in subsection (13).
- (15) An order under subsection (14) may have effect for the purposes of planning obligations entered into before (as well as after) its coming into force.
- (16) The Mayor of London must consult the local planning authority before exercising any function under this section.

106BB Duty to notify the Mayor of London of certain applications under section 106BA

- (1) This section applies to an application under section 106BA(2) in relation to a planning obligation where—
- (a) the application for the planning permission to which the planning obligation relates was an application to which section 2A applied (applications of potential strategic importance relating to land in Greater London),
 - (b) the application for planning permission was not determined by the Mayor of London, and
 - (c) pursuant to an order under section 2A or a development order, the local planning authority that determined the application for planning permission were required to consult the Mayor of London in relation to that determination.

Status: This is the original version (as it was originally enacted).

- (2) A local planning authority that receive an application to which this section applies must send a copy of the application to the Mayor of London before the end of the next working day following the day on which the application was received.

In this subsection, “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

- (3) The Mayor of London must notify the local planning authority before the end of the period of 7 days beginning with the day on which the application was received by the authority whether the Mayor intends to make representations about the application.
- (4) Where pursuant to subsection (3) the Mayor of London notifies the local planning authority that the Mayor intends to make representations, those representations must be made before—
- (a) the end of the period of 14 days beginning with the day on which the application was received by the authority, or
 - (b) the end of such longer period as may be agreed in writing between the authority and the Mayor.
- (5) Where this section applies, section 106BA(9)(b) applies as if it required an authority to give notice of their determination to an applicant within—
- (a) the period of 35 days beginning with the day on which the application was received by the authority, or
 - (b) such longer period as is agreed in writing between the applicant and the authority.

106BC Appeals in relation to applications under section 106BA

- (1) Where an authority other than the Secretary of State—
- (a) fail to give notice as mentioned in section 106BA(9),
 - (b) determine under section 106BA that a planning obligation is to continue to have effect without modification, or
 - (c) determine under that section that a planning obligation is to be modified otherwise than in accordance with an application under that section,
- the applicant may appeal to the Secretary of State.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the planning obligation is to continue to have effect without modification.
- (3) An appeal under this section must be made by notice served within such period as may be prescribed by the Secretary of State.
- (4) If no period is prescribed under subsection (3), an appeal under this section must be made—
- (a) in relation to an appeal under subsection (1)(a), within the period of 6 months beginning with the expiry of the period mentioned in section 106BA(9) that applies in the applicant’s case, or

- (b) otherwise, within the period of 6 months beginning with the date on which notice of the determination is given to the applicant under section 106BA(9).
- (5) An appeal under this section must be made by notice served in such manner as may be prescribed by the Secretary of State.
- (6) Subsections (3) to (8), (10) and (11) of section 106BA apply in relation to an appeal under this section as they apply in relation to an application to an authority under that section, subject to subsections (7) to (15) below.
- (7) References to the affordable housing requirement or the planning obligation are to the requirement or obligation as it stood immediately before the application under section 106BA to which the appeal relates.
- (8) References to the first, the second or a subsequent application in relation to a planning obligation are to an appeal under this section against a determination on the first, the second or a subsequent application in relation to the obligation (whether or not it is the first such appeal).
- (9) Section 106BA(5)(d) (discharge of affordable housing requirement) does not apply in relation to an appeal under this section.
- (10) Subsection (11) applies if, on an appeal under this section, the Secretary of State—
 - (a) does not uphold the determination under section 106BA to which the appeal relates (if such a determination has been made), and
 - (b) determines that the planning obligation is to be modified in accordance with section 106BA(5)(a), (b) or (c).
- (11) The Secretary of State must also determine that the planning obligation is to be modified so that it provides that, if the development has not been completed before the end of the relevant period, the obligation is treated as containing the affordable housing requirement or requirements it contained immediately before the first application under section 106BA in relation to the obligation, subject to the modifications within subsection (12).
- (12) Those modifications are—
 - (a) the modifications necessary to ensure that, if the development has been commenced before the end of the relevant period, the requirement or requirements apply only in relation to the part of the development that is not commenced before the end of that period, and
 - (b) such other modifications as the Secretary of State considers necessary or expedient to ensure the effectiveness of the requirement or requirements at the end of that period.
- (13) In subsections (11) and (12) “relevant period” means the period of three years beginning with the date when the applicant is notified of the determination on the appeal.
- (14) Section 106BA and this section apply in relation to a planning obligation containing a provision within subsection (11) as if—
 - (a) the provision were an affordable housing requirement, and
 - (b) a person against whom the obligation is enforceable were a person against whom that requirement is enforceable.

Status: This is the original version (as it was originally enacted).

- (15) If subsection (11) applies on an appeal relating to a planning obligation that already contains a provision within that subsection—
 - (a) the existing provision within subsection (11) ceases to have effect, but
 - (b) that subsection applies again to the obligation.
 - (16) The determination of an appeal by the Secretary of State under this section is to be final.
 - (17) Schedule 6 applies to appeals under this section.
 - (18) In the application of Schedule 6 to an appeal under this section in a case where the authority mentioned in subsection (1) is the Mayor of London, references in that Schedule to the local planning authority are references to the Mayor of London.”
- (2) Schedule 2 (amendments relating to this section) has effect.
 - (3) The amendments made by this section and that Schedule apply in relation to planning obligations within the meaning of section 106 of the Town and Country Planning Act 1990 entered into before (as well as after) the coming into force of this section.
 - (4) Sections 106BA, 106BB and 106BC of the Town and Country Planning Act 1990, and subsection (5) of this section, are repealed at the end of 30 April 2016.
 - (5) The Secretary of State may by order amend subsection (4) by substituting a later date for the date for the time being specified in that subsection.
 - (6) The Secretary of State may by order make transitional or transitory provision or savings relating to any of the repeals made by subsection (4).