

# Comment

## LEGAL VIEW Rory Stracey

### Planning reforms give developers some bite to go with their bark



**A**s things stand, if a council will not budge on a contentious planning obligation or clause, often the only options for the developer are to concede or go through a lengthy and costly planning appeal for the whole scheme.

However, a new addition to the Housing and Planning Bill will give developers the right to refer disputes about draft planning agreements to the planning inspectorate. The bill now includes a dispute resolution mechanism that will allow developers to ask the planning inspectorate to rule on planning agreements before the agreement is entered into. The mechanism could even be invoked before an application goes to the planning committee.

The planning inspectorate must have regard to any 'model section 106' agreement published by the secretary of state when determining a dispute. Therefore, where the planning inspectorate rules that a planning obligation (or lack of one) is acceptable, councils will be barred from citing that planning obligation (or lack of it) as a reason for refusal.

This move will finally add some bite to the bark surrounding changes to the planning system. Those acquainted with the system will be all too familiar with the delays and costs that result

from negotiating planning agreements. Worst of all, it is often not the principal heads of terms that are in dispute; the levels of financial contributions towards infrastructure are often agreed quickly. Instead, the delays and frustrations felt by developers during negotiations are often caused by draconian clauses.

The changes should also standardise the use of a model s106 agreement. For many years, the Law Society has published a model s106 agreement, with the intention of standardising agreements, but it has no statutory or policy status, and is generally ignored by local planning authorities where there is a disagreement. The requirement for the planning inspectorate to have regard to a model s106 published by the secretary of state is therefore a welcome move towards harmonising planning agreements across the country. Finally - a model s106 agreement that has some statutory teeth.

Once published, we are likely to see a gradual move towards the adoption of the model s106 by local authorities, which will be keen to avoid the possible cost implications of falling foul of the model agreement under the new dispute resolution mechanism.

The government must ensure it provides sufficient numbers of inspectors so that this is a quick and easy remedy. Without proper resourcing of the remedy, the government may struggle

to bring s106 delays to heel.

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