

**Cambridge** Centre  
for Housing &  
Planning Research

# The provision of affordable housing through Section 106: an update

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## **Report for the Joseph Rowntree Foundation**

**Gemma Burgess, Sarah Monk, Christine Whitehead from the Cambridge Centre for Housing and Planning Research, University of Cambridge and Tony Crook from the Town and Regional Planning Department, University of Sheffield.**

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## Key Findings

- Overall, local planning authorities (LPAs) have continued to implement their S106 policies very much as before and the case studies did not present any real surprises.
- However, some of them have become a little more sophisticated in relation to the financial aspects of negotiations, with a greater understanding of the economics of housing development and what makes a scheme 'stack up' in terms of delivering satisfactory outcomes for all parties.
- There remains a highly differentiated picture. LPAs have quite different views about their role in negotiations between developer and RSL. Some feel that this is not an area of concern to them and have no interest in what the developer contributes. They are only interested in the delivery of the completed units. In contrast other LPAs are far more involved in these negotiations. They want to determine what the developer's contribution will be, for example by determining what price the RSL will pay for the completed units. None of the LPAs in this study specify the developer contribution in the form of land. One LPA did initially intend to use this as a starting point, but did not find it viable given their commitment to pepper-potting the affordable units. This suggests that there is no consensus amongst LPAs regarding their role in these negotiations.
- The priorities of the LPA vary from site to site. In some cases achieving the % target is the over-riding priority. In other cases a lower proportion of affordable housing may be accepted on a scheme in order to achieve a house type that meets local needs such as family-sized units, or to achieve the tenure that is most needed such as social rented. Sometimes there are wider considerations beyond affordable housing that have to be taken into account such as regeneration and these can lead to less affordable housing being sought in some instances.
- The high requirements for other planning obligations such as highways and education can make the proportion of affordable housing sought by the LPA unviable. It is almost inevitably the affordable housing requirement that is reduced when viability issues are raised due to the demands of planning obligations. This problem has been exacerbated in some instances by county demands for contributions to planning obligations not being put forward until relatively late in the negotiations.
- The site examples discussed with the LPAs show that the affordable housing outcome on each site may vary despite negotiations beginning from the same starting point. Each site and scheme has its own characteristics that shape what can be achieved. The provision of affordable housing depends on the economics of each scheme. It is not always possible to meet the affordable housing target, particularly on difficult brownfield sites.
- Achieving the target % is easier in some LPAs than others. This is due in part to lower targets in some LPAs than in others. Three LPAs in our study achieve an average proportion of about 25% affordable housing, despite their differing targets, land values and housing markets.
- LPAs believe that there is increasing acceptance among developers of the need to provide affordable housing. Tenure is becoming a negotiating point in some cases where the target proportion can be met. However, the argument from developers that a site is not viable given the proportion of affordable housing requested by the LPA is

still very common. For some LPAs financial viability assessments have become increasingly necessary and have added considerably to their workload.

- Negotiations are still long and drawn out, especially on large sites, where subsequent sales to other developers can lead to re-negotiation. Equally, where a site takes 10 years to reach completion, local authorities' priorities can change, leading them to seek re-negotiation and thereby adding to delays.
- Finally, housing associations are still brought to the table very late, so that they have been unable to contribute to the S106 negotiations, yet are faced with having to deliver the affordable housing. This can present problems, but while planners may say that they have learnt lessons from previous schemes where the RSL was not brought in until afterwards, it is proving difficult to ensure the early appointment of an appropriate RSL.

## Introduction

Since 2002 the policy of seeking affordable housing through the planning system via Section 106 (S106) agreements has been under review, creating considerable uncertainty. The Government has consulted on replacing the S106 policy with tariffs, in an attempt to speed up negotiations and introduce greater certainty. Planning Policy Statement 3: Housing (PPS3), published in March 2007 after lengthy consultation, introduced new definitions of affordable housing which have largely been welcomed. Proposals for moving to a Planning-gain Supplement alongside a scaled-back S106 system as recommended by the Barker Review of Housing Supply of 2004 have gone through several rounds of consultation. Revised official household projections demonstrate a new deficit of housing while affordability has worsened, pricing more people out of the market and placing greater pressure on affordable housing. Local development frameworks have been introduced in an attempt to speed up the planning system, but few are in place as yet and many authorities are operating with very out of date plans. With an increased emphasis on the regional level, the Housing Corporation grant allocation mechanisms have changed.

The Housing Green Paper of July 2007 raised the following issues:

- Planning-gain supplement
- More new housing to be built with extra funding
- Improved housing quality, notably carbon neutral developments
- A different mix of affordable housing.

Instead of PGS the new Community Infrastructure Levy (CIL) proposed in the Planning Bill in 2007 is now the Government's preferred option to try and harness the value of an increased range of planning permissions in order to generate additional infrastructure funding and thereby unlock housing growth.

These continuing changes have created a period of uncertainty for planning authorities and developers alike. So because the policy has been unclear, the aim of this study was to find out how local authorities are dealing with the provision of affordable housing and S106 in practice, and to explore how they feel things have changed.

## Aims

The aim of this piece of work was to explore what planning authorities have been doing in this period of uncertainty. It was a two stage project. This report for the JRF builds on the general survey and interviews with local planning authorities that were conducted with support from the RICS Education Trust. The final report from that study, *The Provision of Affordable Housing Through S106: The Situation in 2007* (Burgess *et al* RICS Research Paper Series Vol. 7 No. 14), is available from the RICS. The Joseph Rowntree Foundation provided additional funding to conduct five case studies of individual local authorities, their policies and how they have changed, and the outcomes on up to three recent sites.

The findings from this study were summarised and published by the JRF at <http://www.jrf.org.uk/knowledge/findings/housing/2171.asp>

This report presents the findings from the case studies in greater depth, looking at what is going on in terms of Section 106 negotiations, in the context of rapidly changing national and regional policy and the resulting uncertainties.

The RICS research found that:

- In many LPAs, policy on affordable housing is in a state of flux, with changes either recent or underway. Policy is by no means consistent across the country. Whilst the

data show that more affordable housing is being delivered through S106, few LPAs meet their affordable housing targets.

- There is great variation in what different LPAs manage to deliver through S106. Policy is far clearer and more robust in some LPAs, which means that developers know what to expect, giving the LPA stronger grounds for negotiation. In contrast, other areas have only recently experienced housing pressure, and thus have little experience at negotiating S106 agreements.
- Practice with regard to S106 negotiations varies between LPAs. Some have a model S106 agreement available for developers, a dedicated team working on S106 and affordable housing and a clear structure and set of expectations for the negotiation process. However, many LPA representatives interviewed for the study were not even clear whose responsibility it was to deal with S106 and affordable housing. This suggests that 'best practice' is yet to be taken on board by many LPAs, and there is scope for improvement in most LPAs.
- Many LPAs complained of problems in S106 negotiations. The most common was the difficulty in countering developer claims that the site would be unviable with the proportion of affordable housing sought by the LPA. This suggests that there is still considerable scope for improving the skills of the planning, housing and legal department members who are involved in negotiating S106 agreements, particularly in understanding development economics.
- The introduction of PPS3 was welcomed particularly for the change in the definition of affordable housing and the ability to reduce the site thresholds above which affordable housing has to be provided. Its impact on the provision of affordable housing seems more uncertain. The majority of LPAs registered concern over the possible introduction of PGS. Most felt they would lose control of how the funds were spent at the local level.

In other words, most authorities are 'doing their own thing' and developing rules of thumb which vary quite dramatically across the country. Despite this, the system has been delivering significant amounts of new affordable housing, but there has been a reduction in the amount of affordable housing coming through on non-S106 sites, so S106 has been largely compensatory for reduced levels of overall subsidy. The system continues to provide more affordable housing in the most pressured regions, and can therefore be said to be addressing the greatest housing need. The S106 mechanism has increased delivery but there remain problems on large sites, particularly those that will take 8-10 years to reach completion.

## **The Case Studies**

Five LPAs were selected as case studies for the research. These were Derby, South Norfolk, Swindon, Bristol and Cambridge City. These were chosen based on information gathered from earlier studies of S106 in order to assess how policy and practice has changed. The recent RICS study of all LPAs was also used to select the case studies. The RICS project was comprised of a questionnaire sent to all LPAs, and telephone interviews with twelve of the LPAs that responded. This study for the JRF builds on that research with in-depth case studies.

Each of the five LPAs were visited and interviews carried out with the relevant officers. The policies and practices relating to S106 and the delivery of affordable housing of the LPA were explored, particularly in relation to how they have changed over the past five years.

Three recent sites were chosen by each LPA for discussion. The S106 negotiations and the affordable housing outcome were examined in each case. Information from each case study LPA has been used to highlight the key findings of the research.

## Findings and Analysis

The research showed that S106 still poses a number of challenges for LPAs in trying to secure affordable housing.

One issue is the 'rational nexus challenge', that is developments for which permission is being sought do not 'cause' an increase in demand for affordable homes— this is largely resolved by making negotiating for affordable housing 'legitimate' in terms of planning policy, i.e. PPS3 legitimates it. The study found that in some cases LPAs have a long list of other planning gain in addition to affordable housing that they want to deliver through S106. For example, Figure 1 shows the very long but not exhaustive list of other obligations that Bristol specify in their 2005 SPG and expect to be provided through the S106 for a housing development. This suggests the strain that is put on a development by planning gain, of which affordable housing is only one aspect.

- Affordable business space provision
- Affordable housing provision
- Community facilities provision (includes meeting rooms, improvements to library facilities, improvements to existing community halls, community use of private facilities, e.g. health clubs, schools etc)
- Community Forest contributions
- Education facilities provision
- Highway infrastructure works (includes fees for the processing of Traffic Regulation Orders (TRO's))
- Landscape improvements
- Local labour and training initiatives
- Maintenance payments (relating to obligations for the provision of traffic signals, street trees and recreational facilities)
- Park and ride contributions
- Pedestrian, cycle and public transport improvements
- Plant and wildlife habitat areas conservation and enhancement
- Pollution control contributions
- Public art provision
- Public realm provision
- Recreational facilities provision (includes formal and informal play space, sports provision, open space enhancements)
- Training & Employment fund contributions (includes childcare provision)
- Travel plans

Figure 1: Planning obligations sought by Bristol listed in the 2005 SPG.

The study found that there is still ambiguity as to whether S106 in relation to affordable housing is about providing land or also about providing finance. This ambiguity is not yet resolved and evidence suggests that planners do have varying attitudes to using S106 to source finance. For example in Bristol the LPA is very closely involved with the financial aspects of the affordable housing as they determine the developer's contribution to the affordable housing themselves. They expect to achieve reduced-cost units as the developer meets part of build cost. The price the RSL pays for the units is determined by a 'Matrix of Registered Social Landlord payments'. The Matrix is a set of prices for different sizes and types of dwellings that the RSL will pay to the developer. The LPA feels that this approach means that:

“Developers are happy because it provides certainty even before they have acquired the land so they can build it in to their calculations. Given that the developer knows

up front what his obligations will be, it is up to him to negotiate with the landowner to pass on (some of) the costs of the affordable housing.

It is up to the developer to prove or demonstrate that the amount produced by the matrix is unviable. To do so, they have to complete two pages of A4 on an open book basis (kept completely confidential by the council).”

This case study shows a different approach to securing affordable housing through S106 to the others. Whereas in South Norfolk the LPA is not at all concerned with what contribution the developer makes, in Bristol this is closely controlled. As the interviewee in South Norfolk said:

“We do not get involved in the cost of the affordable housing in any way. It’s a black box. What goes on between the developer and the housing association is no concern of the council as long as we get what we ask for. We believe that various RSLs are putting quite a bit of cash in out of their own reserves. But you can’t control it. We have never accepted land ever. We have accepted a few small commuted sums where it wasn’t practical to do the affordable housing on site. We said all along we want dwellings. We are not interested in who pays for them as long as they get built.”

In some cases the LPA feels that RSLs should compete to offer the best price for the affordable units and in this way the LPA has a better chance of achieving their targets, but in others the LPA feel that this competition is unacceptable and is looking to remove it by specifying what the RSL will pay. LPAs clearly have differing notions of how S106 and the financing of affordable housing should work and these variations mean that developers have to engage with a variety of systems.

In so far as it is about finance some LPAs have the problem of maximising financial contributions whilst not foregoing units. The most common issue in Bristol has been dealing with developer claims that sites are not viable with the proportion of affordable housing the LPA seeks. The council has invested considerable resources in overcoming this:

“The biggest barrier is demonstrating viability on the site. We have spent a huge amount of money– used the 3 Dragons tool kit, got professional valuations, and now have a fairly robust model to help challenge developers –but it all depends on the data. We have bought Hometrack ‘real demand’ and used consultants (very successfully) because of the complexity of mixed use sites in central Bristol.”

Despite these different approaches, the two LPAs achieve the same proportion of affordable housing. The discretionary nature of policy means that application varies between LPAs. This was illustrated starkly by the evidence from the English Valuing Planning Obligations study that showed wide ranging variations in numbers of the value of agreements amongst planning authorities in similar socio-economic circumstances; similar findings were gathered by the Audit Commission.

Figure 2 shows that there is considerable variation between the affordable housing targets of the case study LPAs. It also shows that whilst they are relatively successful at meeting their targets, the actual proportion of affordable housing secured varies. This reflects a number of factors, such as variations in land values and what is feasible as a result, but also that policy is often out-dated and slow to change. For example, many LPAs have Local Plans that were adopted a decade ago, such as South Norfolk’s which was drafted in 1997. Bristol also has to manage with a Local Plan from 1997 which gives a target range of affordable housing of between 10% and 30%, meaning planners have to constantly push for the higher end of the range. In order to deal with these problems some LPAs have introduced SPGs that specify a higher affordable housing target, such as Bristol’s SPG from 2005, mentioned earlier.

LPA	Target	% Achieved
Derby	20-30%	25%
Swindon	30%	30%
Cambridge City	40%	40%
South Norfolk	25%	25%
Bristol	10-30%	25%

Figure 2: Proportion of affordable housing sought and achieved.

There are also practical issues related to the transparency and clarity of the policies; in some cases the requirements of the LPA are not written in any policy but are simply common practice. The length of negotiations prior to signing off agreements can be considerable. Most of the interviewees described schemes that had taken several years of negotiations before the S106 was signed off.

Previous research has highlighted the varying skills set of planning authorities, resulting in authorities with the same intent achieving very different outcomes. The Government has sought to address this by commissioning good practice studies such as the Audit Commission's report on Securing Community Benefits through the Planning Process: Improving Performance on Section 106 Agreements, in August 2006, and issuing subsequent guidance such as the DCLG Planning Obligations: Practice Guidance in July 2006. The study found that some LPAs have found this useful. One interviewee said that in the past they had made mistakes, but that their skills have improved and feedback from the Audit Commission has been very helpful in guiding their future decision making.

The use of economic models and toolkits to consider scheme viability has become increasingly common, particularly as affordable targets increase and difficult sites come forward. In South Norfolk where the target is a relatively low 25% there has been little need for their use, but the target is likely to increase to 30% or 35% in the near future and the interviewee foresaw a need for more viability studies, a greater workload and more lengthy negotiations. The RICS study found that the understanding of development economics varies between LPAs, but that this knowledge is crucial in negotiating successfully with developers. There is still an unequal playing field between developers and LPAs. As one interviewee commented:

“It is easier to believe a developer and their legion of staff with their sharp suits and nice spreadsheets and presentations than your own officers. In most 106 negotiations it will be me sat against three or four developer staff who won't be on less than a £70k salary and there is an expertise and a manner that comes with that. It can be difficult for members to stand up against that.”

LPAs have had to deal with some recent changes to affordable housing policy. The PPS3 threshold of 15 has been adopted by most LPAs. The response to this change has been mixed, for example with regard to the impact of the lower threshold the interviewees in Derby said:

“From one side it is great because we can secure more affordable housing, but on the other the lower the threshold gets the more problems you've got of viability as you have sites coming forward that are very small with small profit margins. When you start sticking affordable housing in they start to become marginal and we are having to do a lot of hard work, housing are having to do a viability on a site almost every day now. We have a hugely increased work load and the small sites just don't seem to be able to take the 30% or even any affordable housing in some cases. It

has also brought in smaller developers which brings its own complications. The sites that are coming in between 10 and 24 have not been able to provide affordable housing as they have been small, difficult sites. I am not convinced that it is going to make 100% difference here.”

The LPAs in this study all felt they were relatively successful at delivering affordable housing. A number commented that affordable housing has recently become a priority for elected members and this has provided further impetus to seek more affordable housing. As one interviewee said:

“They were not really bothered 3 or 4 years ago. Because there is the public perception that people are struggling to buy houses members have become more aware that affordable housing is important and they have been pushing us a lot at committee. Four years ago they wouldn’t have even asked what the affordable housing was on a site, they weren’t bothered about 106s, now it is the key question on every site, “Are you getting 30% and if not why not?” That has added an extra impetus to us and helped because when the developer complains we can say that if you go to committee without our backing then you will just get thrown out.”

One interviewee highlighted the need to have a policy that could be supported by all LPA departments and members in order to present a united front to developers:

“We are trying to get to a position where we have this policy that is supported by all the members and planning so we have a solid position when a developer pushes against us. In the past we have been guilty of a developer being able to push at various points in the authority until they have found a weak spot and they have been able to exploit that.”

It seems that whilst there will always be developers who will try and reduce the affordable housing requirement to a minimum there has been greater acceptance that planning consent will not be forthcoming without it. One interviewee described how recently there has been a shift in what developers want to negotiate over:

“The sticking point in negotiations is starting to subtly change. It used to be the % but now most developers have taken on board that from a member’s point of view and getting it through planning control they will have a much easier ride if they don’t argue for something lower. So now we get developers saying they will do the 30% but not the tenure split and offering less social rented.”

It was very clear from the case studies that affordable housing is not the only or the overriding priority in negotiations for LPAs. In some cases the priority is simply getting a site to come forward, or meeting regeneration goals. Conversely there are instances where the LPA were very keen to achieve their affordable housing targets but other planning gains took priority. These other planning obligations have created difficulties for the officers trying to secure affordable housing. An interviewee in Cambridge reported that the County do not use the formula specified by the government for calculating planning obligations. They also do not make their requirements known early enough:

“Contributions to road infrastructure on the edge of Cambridge are not in dispute. The difficulty is that while there is supposed to be a partnership, in reality the County Council do what they want regardless— they won’t budge on education etc. The site has been hit for things that we were not made aware of earlier. Things are coming out too late from the County.”

The interviewee felt that this is not a problem specific to this area, but that this happens more widely. A similar problem was identified in the other case studies, where requirements from the County were demanded late in the negotiations and had not been planned for. The affordable housing is inevitably the planning obligation that suffers:

“It is nice to have frills, but if so, the affordable housing will go.”

## **Conclusions, Recommendations and Policy Implications**

There have been central government initiatives attempting to reform the system and the progress that has been made (and it is significant given the very substantial increase in affordable homes secured on S106 sites) has been largely the result of all parties improving the negotiation 'game' and of LPAs setting out their policies in their development plans with greater clarity. The S106 system for delivering affordable housing means that output is tied crucially to the state of the private housing market. There is evidence that success in S106 has taken place in a period of rising house prices and therefore land values. LPAs should ensure they have the skills in place to ensure their ability to provide affordable housing in such circumstances.

Instead of PGS the new Community Infrastructure Levy (CIL) proposed in the Planning Bill in 2007 is now the Government's preferred option to try and harness the value of an increased range of planning permissions in order to generate additional infrastructure funding and thereby unlock housing growth. It is clear that this option is designed to raise funds for infrastructure and it is unclear how it might impact on securing affordable homes. Some problems will remain (for example there will be no contribution to affordable housing from small and commercial sites) and it is likely to create new difficulties and to increase rather than decrease risk for developers. In all there is a genuine risk that less affordable housing will be secured than under current arrangements.

It is important to note that the affordable housing output through S106 has increased. The system may be patchy but it is working. Rather than changing the system in any radical way as proposed, the findings from this research suggest that a better way forward would be to focus on improving the current system.

It is clear that both practice and policy vary across the country. Many LPAs have struggled with Local Plans that are now very out of date and do not reflect recent changes to the housing market. The process of introducing local development frameworks is very slow, and LPAs have tried to meet this gap with affordable housing requirements specified in Supplementary Planning Documents as an interim measure. The variation in policy leads to a lack of clarity for developers. One recommendation would be a central database listing the affordable housing requirements of all LPAs. This would make the information easily accessible to developers in a standard format, and give LPAs an opportunity to see what other authorities are doing and to benchmark against them.

It may also be beneficial to generate debate as to what the role of the LPA should be in the negotiations between the developer and the RSL and to consider the role of LPAs in raising finance. More detailed research may reveal what the strengths and weaknesses of the different approaches are.

Whilst skills have improved there is still variation in the skill set of LPAs. Understandings of development economics vary and these differences in skills and knowledge may give developers an upper hand in negotiations. Most LPAs are in the process of raising their target for the proportion of affordable housing they seek, or have already done so, and as a result the need for viability studies is likely to increase. Some LPAs have found that input from the Audit Commission has been of help. There are still lessons to be learnt from guidance such as this, some LPAs may benefit from re-visiting it. One suggestion would be to enable some form of knowledge-sharing between LPAs, and to focus guidance and training on site viability issues, and understanding development economics and using toolkits and economic models to help.

Generally it seems that developers accept that the provision of affordable housing is now an important goal for LPA members and that planning consent may simply be withheld if

requirements are not met. The tenure split is often negotiated as a way of meeting the target proportion of affordable housing whilst ensuring the scheme remains viable. The lowering of the threshold has resulted in some LPAs having to consider the viability of many smaller sites.

Affordable housing may be the planning gain that is lost when scheme viability comes under pressure from the demands of other planning obligations. Sound negotiating skills and a united front on the policy is needed. Planning and Housing working closely together seems to be very important, and a dedicated team for a scheme is even better, although only likely to be viable for LPAs on larger sites. In some cases trade-offs are inevitable to ensure that goals other than affordable housing are met.

The findings of this study suggest that efforts should be made to communicate and implement best practice in affordable housing negotiations if S106 is to produce more consistent and productive affordable housing outcomes in the future. Efforts could be made to ensure that policy requirements are clear and easily accessible by developers. Skills in negotiating and engaging with development economics may help LPAs that have not previously been under pressure to deal with S106 affordable housing provision. This study shows that when LPAs have clear expectations from their S106 negotiations that are consistently applied and are supported by members, then the current system has the capability to deliver affordable housing effectively. The way forward is now to ensure that all LPAs have the same abilities to engage in affordable housing negotiations successfully.

## Appendix: Case Studies

The full interview transcriptions are replicated below; quotes from them have been used to highlight points in the main report.

### South Norfolk

The policy on affordable housing is contained within the Local Plan. This was drafted in 1997 for consultation and as a result is almost ten years out of date. Although due to expire this year the Local Plan will remain in force due to delays in preparing the LDF which is not due until 2010. Some of the Local Plan was worded without figures to enable changes to be made, but some aspects of policy such as the threshold of settlements under 3000 and 0.4 of a hectare cannot be changed until the LDF comes into force. However the council are going to introduce the threshold of 15 in settlements over 3000 immediately because legal advice said that because it is in PPS3 there is no conflict with the current Local Plan. There are a few individual site briefs but to some extent they have been superseded as so much planning guidance has come out since they were written 10 years ago. The LPA had quite a number of sites allocated for housing in the LP and almost all have planning permission. They have between three and six S106 agreements with affordable housing per annum.

The policy for the area is to seek at least 25%. This ensures that in a development of ten dwellings for example, three affordable units will have to be provided rather than two. When describing how the target and other starting points were decided the interviewee explained:

We didn't know if 25% was going to be easily deliverable as we never did an economic exercise based on land values and what it might achieve. We just felt our way. We started off at 15% in the old LP, realised we were getting that without any trouble and thought we'd try 25% without public subsidy and we are getting it.

We have never had a policy on tenure split. That came out of my head 10 years ago. I thought what would be reasonable? Lets try 2/3 rent 1/3 shared ownership. I got it from the first developer I tried it with and it became standard. Never less than 2/3 rent is the way I approach negotiations.

The Local Plan tells developers to assume no grant will be available. There have been some cases where grant has been used where it creates additionality, changing tenures, increasing standards or energy efficiency for example.

There is also an SPG on housing generally which contains relevant information about affordable housing. Tenure split and property type and size are not explicit in policy but are a matter of practice that has emerged over time. What the LPA aims for has changed to reflect shifting government priorities. At first government guidance was focused on getting all families with children out of temporary accommodation so the council targeted family homes. Now they try to get a mix. It will generally work out as a mix overall of 1/3 flats, 1/3 family houses and 1/3 shared ownership. They try to get a mix of newly forming households, families and intermediate tenure.

If we look at the existing stock there is a desperate shortage of small units. We are the opposite of the urban situation. Despite having sold 3000 properties under the right to buy, which is 40% of the total AH stock since 1980 and most were family houses, family houses are still the vast majority of the social rented stock. The stock of flats is only about 10% of the stock of social rented. We have heard reports from all around the country that developers are only offering flats. We never give them the chance to offer anything. We tell them what we want!

There is an explicit policy of local connection cascades. For settlements over 3000 1/3 of the negotiated properties will be for local need with the cascade starting in that settlement. The other 2/3 will be district need, recognising that market towns are an attraction for people wanting to move.

The site examples discussed with the interviewee highlighted that affordable housing negotiations can have varying priorities. Sometimes achieving the target % is the priority, in other cases it is achieving the required tenure mix. In one case the priority was getting a difficult site brought forward at all. As the interviewee said:

Housing is not the be all and end all.

There are also triggers relating to when the affordable housing has to be provided and how much market housing developers can complete before they have to deliver the affordable housing. Again this is practice, not policy. There is usually a lot of haggling around exactly what the triggers are going to be. However whilst negotiations do take place and can be quite lengthy the LPA does generally get the starting point they seek:

Developers just say 'ok'. This is the advantage of only seeking 25%. Developers don't try to negotiate us down which in terms of staff resources is wonderful. We don't spend hours looking for financial information on sites haggling over costs.

There are likely to be a number of changes to current policy. In the future everything will be sub-regional. The LDF core strategy document will be a sub-regional document. The RSS feedback from government reported that in Greater Norwich they were not working closely enough together, so they are now to have a common core strategy document. Consultation has only recently begun on the LDF, but a possible outcome could be sub-regional affordable housing documents and a target of 35%. The council are not sure if this would be deliverable in this area. Whereas with a target of 25% they achieve their starting point, the interviewee felt that seeking 35% may mean they have to switch the ratio between shared ownership and rented. He also thought that there would be a lot more detailed negotiations if the target increases and that there will be a need for long, costly negotiations relating to the financial viability of sites.

The council do not specify what the developer contribution should be, as the interviewee said:

We do not get involved in the cost of the affordable housing in any way. It's a black box. What goes on between the developer and the housing association is no concern of the council as long as we get what we ask for. We believe that various RSLs are putting quite a bit of cash in out of their own reserves. But you can't control it. We have never accepted land ever. We have accepted a few small commuted sums where it wasn't practical to do the affordable housing on site. We said all along we want dwellings. We are not interested in who pays for them as long as they get built.

This case study shows that the starting point for affordable housing negotiations can emerge from experience and become common practice, rather than always being written into policy. It shows that an LPA can regularly achieve the starting point they seek. However in this case it may be due to the relatively low target of 25%. It is possible that negotiations will become more lengthy and that the LPA will need to consider studies of financial viability if the target is increased to the proposed 35%. This LPA are not interested in what the developer contribution is, they are only concerned with the delivery of completed units and see no role for the LPA to play in either specifying what the developer contribution should be, or becoming involved in negotiations between the RSL and the developer.

## Derby

Derby's affordable housing policy is based on their Local Plan of January 2006. They also have an SPG from 2004 but are working on a new SPD on planning obligations in general which will include affordable housing, due to go out to consultation in November next year. In addition they recently published a good practice guide for affordable housing as an interim measure. It doesn't have any real policy basis but is an indication of the direction they are going in and has formed the basis of the SPD. The Local Plan has site-specific targets of 30% and a windfall target of 20-30%. They are trying to move towards 30% and specify it in the SPD but don't have the policy basis for this at the moment as the Local Plan still says 20-30%. It won't be until the LDF with the core strategy comes through that they will be able to change it in 2008/9.

The PPS3 threshold of 15 has been adopted rather than the previous 25, with no space requirements, implemented after April 1<sup>st</sup>.2007. Provisions still hold regarding the following material considerations: evidence of local need, site size, suitability and economics of provision, and the presence of competing planning objectives. They look for 80% rent and 20% shared ownership, but this is common practice and not in the SPG. This is their starting point on any site, which assumes no grant. They also specify pepper-potting in groups of no more than five.

With regard to the impact of the lower threshold the interviewees said:

From one side it is great because we can secure more affordable housing but on the other the lower the threshold gets the more problems you've got of viability as you have sites coming forward that are very small with small profit margins. When you start sticking affordable housing in they start to become marginal and we are having to do a lot of hard work, housing are having to do a viability on a site almost every day now. Hugely increased work load and the small sites just don't seem to be able to take the 30% or even any affordable housing in some cases. It has also brought in smaller developers which brings its own complications. The sites that are coming in between 10 and 24 have not been able to provide affordable housing as they have been small, difficult sites. I am not convinced that it is going to make 100% difference here.

What the LPA achieves in practice depends on the economics of the site:

We do have a CSP but every single site progresses differently. We are very consistent in the way we do things and what we ask for.

A few years ago sites were large greenfields and negotiations were straightforward. Now these have been developed the LPA has difficult brownfield sites coming forward and site viability studies have become common. A procedure of financial appraisal is in place so that if a % lower than the target is agreed, the LPA are sure this is all the site can support. Tenure is used as a negotiating tool in these cases. Local housing need drives what are the priorities on each site. In some cases it is getting the %, in others it is delivering family-sized homes for example. As the interviewees said:

Although we have this starting point what we really want to do is achieve the best affordable housing for that area and that site.

Interviewees feel that they are relatively successful now at delivering affordable housing. The LPA has been doing so for more than fifteen years and the team have considerable experience. They said that the recent increase in the housing market generally has enabled them to be stronger on affordable housing. They also said that the feelings of elected members have provided further impetus to seek more affordable housing:

They were not really bothered 3 or 4 years ago. Because there is the public perception that people are struggling to buy houses members have become more aware that affordable housing is important and they have been pushing us a lot at committee. Four years ago they wouldn't have even asked what the affordable housing was on a site, they weren't bothered about 106s, now it is the key question on every site, "Are you getting 30% and if not why not?" That has added an extra impetus to us and helped because when the developer complains we can say that if you go to committee without our backing then you will just get thrown out.

Negotiations are often lengthy but not difficult. Recently there has been a shift in what developers want to negotiate over:

The sticking point in negotiations is starting to subtly change. It used to be the % but now most developers have taken on board that from a member's point of view and getting it through planning control they will have a much easier ride if they don't argue for something lower. So now we get developers saying they will do the 30% but not the tenure split and offering less social rented. The last few months has seen this argument a lot.

In contrast to South Norfolk where it is preferred that the RSL is kept out of negotiations, in Derby they hope that the RSL can be involved as soon as possible. Whilst the SPG 2004 specifies what developer contribution has to be as free land, discounted value land or serviced plot land, the LPA does not actually pursue this. They did not feel that the transfer of land would work when the affordable housing had to be pepper-potted. They will be moving towards prescribing what the developer will pay the RSL for the units based on a rental-stream approach:

There is an element of competition as we tell the developer to negotiate a price that reflects HC target rent levels, but then maybe one RSL can pay slightly more than another. We are not happy with that situation so we are moving towards prescribing transfer prices as that will remove the element of competition.

The interviewees voiced concern about the possibility of the government introducing a common starting point for affordable housing negotiations. They said that:

We were not anti a CSP as that creates a level playing field and developers are not playing LPAs off against each other. But we were concerned that free land or discounted land was a step back for us because we are securing more than that.

This case study again shows that the starting point for negotiations may be established practice but not all aspects will be written into policy documents. It also shows that the characteristics of individual sites determine what affordable housing can be supported. It is not economically viable in all cases to deliver the target % of affordable housing, particularly when sites are difficult brownfields. The Green Paper on Housing published in July 2007 reiterates the government's commitment to building 60% of new homes on brownfield sites, but the difficulties in bringing these sites forward and the other planning obligations they can require can mean that meeting the % target for affordable housing is not economically viable as shown in Derby. It will be interesting to see if the situation in Derby changes due to being identified as a New Growth Point in the Green Paper. This case also shows that some LPAs that are already quite successful at securing affordable housing feel that a common starting point may mean they would deliver less in the future.

## **Bristol**

Affordable housing policy in Bristol is based on the 1997 Local Plan which has a target of 10-30%. Bristol also has an SPG which contains model S106 agreements. The out-dated target of 'between 10% and 30%' has been problematic as developers aim for the lower end of the range. In 2002 Bristol only achieved 6% affordable housing, but this has now increased to almost 25% delivered grant free. The LPA hopes that this improvement will continue and that a clear LDF policy backed up by the West of England affordable housing needs model will allow them to "get firmer and firmer". As the interviewee described, negotiations have not been easy:

We have been very successful in achieving affordable housing without grant but we are always struggling to get it.

The policy position is changing. Bristol City Council has now agreed to adopt 15 units as the threshold for affordable housing contributions on the basis of the PPS3. About 80 more a year will fall into this category so the LPA will be looking at 5 affordable units at most. They have looked at a formula, so if they accept some affordable housing, instead of 4.5 units it will be 4 plus cash. The LPA envisages problems with the introduction of the lower threshold as this will bring in smaller developers who have never dealt with the system. The interviewee said that he can see Bristol taking the cash rather than negotiating for units simply because it is not worth lengthy negotiations for so few dwellings in total.

The most common issue in Bristol has been dealing with developer claims that sites are not viable with the proportion of affordable housing the LPA seeks. The council has invested considerable resources in overcoming this:

The biggest barrier is demonstrating viability on the site. We have spent a huge amount of money— used the 3 Dragons tool kit, got professional valuations, and now have a fairly robust model to help challenge developers —but it all depends on the data. We have bought Hometrack 'real demand' and used consultants (very successfully) because of the complexity of mixed use sites in central Bristol.

Mixed tenure schemes are very important but there is still a need for social rented housing only. A full mix would include shared ownership but the demand for social rented is greater. The split varies between areas. For example St Paul's has a lot of social rented housing already so shared ownership will be more important. Service charges are another interesting area:

Unless we address all of these elements— ground rent, estate fees etc. —there will be an impact on affordability. Currently we stipulate that these extra charges must be a maximum of £300 p.a. (increased each year by RPI plus half a percent). So we now say, rather than fully pepper potted, we are content with 'fully integrated' schemes— a different floor for the affordable units with a different lift, separate access compared with the main access and so on. From a human rights point of view, why should RSL tenants pay less than owners etc? So in fully integrated as opposed to pepper potted schemes, they are not subsidised by the owners, they get a different service— no underground parking, no leisure centre, no grand foyer etc. There will be a challenge in the European Courts eventually on the part of owners who pay far higher service charges than tenants for the same services so we are making sure that the services are different.

The LPA prefers on-site completed units. The council is closely involved in determining the developer contribution to the affordable housing. What is provided are reduced-cost units as the developer meets part of build cost. The price the RSL pays for the units is determined by

a matrix of Registered Social Landlord payments. The matrix is a set of prices for different size and type of dwellings that the RSL will pay to the developer. It is based on target rents, and the maximum that the RSL can raise through borrowing against future rental income streams. For shared ownership, it is based on the affordability of a 40% share (in high priced areas) or a 50% share (elsewhere). The developer effectively pays for the 'gap' between what the RSL or shared owner can pay for the dwelling. The matrix is generated from research of incomes of those in housing needs and their ability to pay. There is a matrix of payments for five different property types in inner and outer Bristol thus recognising different land costs. The LPA feels that this approach means that:

Developers are happy because it provides certainty even before they have acquired the land so they can build it in to their calculations. Given that the developer knows up front what his obligations will be, it is up to him to negotiate with the landowner to pass on (some of) the costs of the affordable housing.

It is up to the developer to prove or demonstrate that the amount produced by the matrix is unviable. To do so, they have to complete two pages of A4 on an open book basis (kept completely confidential by the council).

There are incentives for the developer in this approach:

Developers like Barratts know that if they accept our approach, and are open with the landowner, then they can agree a deal with the landowner which will satisfy everyone. Maybe getting planning permission and signing the S106 won't be as quick as 13 weeks but definitely within 16 weeks. So that can cut down the developer's planning permission costs.

This case study shows a different approach to securing affordable housing through S106 from the others. Whereas in South Norfolk the LPA is not at all concerned with what contribution the developer makes, in Bristol this is closely controlled. Whilst this has not necessarily been popular with developers, it is intended to make negotiations clearer and easier. However, despite the different approaches, the two LPAs achieve the same proportion of affordable housing.

### **Cambridge City**

The city is just beginning the process of moving from a Local Plan to a Local Development Framework, and as part of this they have produced several Local Development Documents and Supplementary Planning Documents, including one on Planning Obligations and one on Affordable Housing.

The threshold for S106 contributions has not changed but the proportion of dwellings that need to be affordable has increased from 30% to 40%. The council had wanted 50% but the Inspector rejected this as not justified. There is a draft SPD on affordable housing that builds on existing policy, mainly adding further detail and clarification. Cambridge has reduced the threshold for affordable housing in line with PPS3, it is still half a hectare but it is now only 15 dwellings instead of 20. The mix of tenure and size and type is determined by negotiations on each site. The SHMA will play a role in these decisions in the future, providing supporting evidence for what the LPA asks for. Provision in the inner city areas is for flats, while the urban extension areas will be houses. There will be a long term sustainable mix of sizes to enable moves for families to grow and then downsize. A study by Fordham suggested a need for 80% one and two bed units but that was not included in the Plan. Whilst high land values in Cambridge make the affordable housing viable, grant is still used in the City:

Certainly it is more profitable for developers where prices are high and our analyses show this. So it is more realistic for Cambridge to have a 40% target than Fenland.

But grant comes in to address needs, without grant there would be more intermediate housing. A lack of grant would also affect the mix, we might still get 40% but probably all flats.

Elected members have always been very supportive of affordable housing. The city has always been pressured and has done quite well in terms of grant and the LPA feel that this is set to continue. Amongst developers the interviewee felt that there is more recognition about the need for affordable housing, meaning that they do not quibble about the percentage on infill sites now, only the mix and the details.

The case officer has a significant role in negotiations on a site by site basis, plus the housing enabling officer and a new housing officer. On smaller sites they have never had anyone refuse to meet the 30% and now the target is 40% it has still not been challenged even on small infill sites. The SPD suggests that where there is disagreement on viability, developers must pay for an expert decision. The major planning obligations over the last 4 or 5 years have involved the road corridor strategy, urban space (recreation), transport, and education. The difference is the big urban extension sites where there are high transport requirements and sites required for schools so these will make it more costly. The LPA has accepted evidence of exceptional costs through contamination and reduced the affordable housing requirement in some cases. Things may be different on the urban extension sites because there is such a large array of other planning obligations. The details of the mix of affordable housing and the overall percentage are part of the current ongoing negotiations.

Cambridge was marked as a Growth Area. The biggest change is the Cambridge Challenge, particularly the eco-towns prospectus. This is being trialled in three large sites within the Growth Area– Cambridge Southern Fringe, Northstowe and the North West Cambridge NIAB site. The council are currently appointing a single RSL partner, probably a consortium, to take responsibility for delivering all the affordable housing in these eco-towns. This RSL partner will have a guaranteed funding commitment for five years which is intended to make it easier for the affordable housing to be delivered. The eco-town concept will be a challenge for the LPA. The council needs a good understanding of all the other issues relating to the sites in order to negotiate the affordable housing. A full schedule of planning obligation costs has been prepared and is being looked at by King Sturge, Cambridge City's advisors who are looking at what will work and be viable. This enables an exploration on varying the mix and other details since King Sturge has access to 'open book' developer information that will not go to the council.

The Southern Fringe is the most progressed of the Growth sites in terms of S106 negotiations. They are currently testing viability given the huge contribution required by the County Council for highways etc. As the interviewee said:

The wish list for S106 is enormous. We will have to trim somewhere. No doubt that it will be the tenure split that gets tweaked. They will get 40% affordable, but the political line is that this will be split 75% social rented, 25% shared ownership. 50/50 is the bottom line, without grant.

These other planning obligations have created difficulties for the officers trying to secure affordable housing. The interviewee reported that the County do not use the formula specified by the government for calculating planning obligations. They also do not make their requirements known early enough:

Contributions to road infrastructure on the edge of Cambridge are not in dispute. The difficulty is that while there is supposed to be a partnership, in reality the County Council do what they want regardless– they won't budge on education etc. The site

has been hit for things that we were not made aware of earlier. Things are coming out too late from the County.

The interviewee felt that this is not a problem specific to this area, but that this happens more widely. A similar problem was identified in the other case studies, where requirements from the County were demanded late in the negotiations and had not been planned for. The affordable housing is inevitably the planning obligation that suffers:

It is nice to have frills, but if so, the affordable housing will go.

The interviewee described problems with the Housing Corporation as significant barriers to delivery.

The Cambridge Challenge process has taken far too long, a year so far! Yet the whole point was to get a housing partner early, now it is too late for the Southern Fringe as the S106 is almost sewn up. The LPAs learnt the lesson from Cambourne and Arbury Park that you need the housing association on board early but now this will not happen on the Southern Fringe.

This case study shows that whilst developers may agree initially to the requested proportion of affordable housing, demands for other planning obligations can make this unviable. This is particularly problematic if these demands come from County level late in negotiations meaning developers have not been able to take account of them sufficiently. It is the affordable housing that suffers when other planning obligations are significant.

### **Swindon**

The Local Plan is quite vague but says that sites of 15 dwellings and above should provide 30% affordable housing. Although the Local Plan was only adopted last year, the LPA find it out of date since the process of preparing took so long. House prices in the area have increased considerably and the Local Plan does not reflect this and is found to be inflexible.

The aim is for a tenure split of 60% social rented and 40% low cost home ownership (LCHO). The threshold was previously 25 but is now in line with PPS3. The policy in the SPG specifies that the units should be transferred to a partner housing association at supportable deficit loan debt, so whatever they can afford to pay based on what rents the RSL will charge and what they will get from the receipt on the LCHO.

However, this policy is not pursued in practice. Instead, the LPA has moved to a system where they take no part in selecting the RSL and do not get involved in the price paid by the RSL to the developer. This will become official policy later this year, and should also include a revised tenure split of 70/30. The LPA has found this system more straightforward for both themselves and for developers. It creates competition between RSLs and encourages them to use as much of their funds as possible. This helps to ensure the affordable housing target is met. When developers argue that a site is not viable, the LPA can ensure they have an RSL who is offering the greatest amount for the affordable housing. As the interviewee said:

They can't come to us and say we are half a million short on this site if they have chosen an RSL that is not really paying top dollar. If the developer can't afford it then we need the RSL to put as much money in as possible, to get up to the 30%, to get up to the tenure split. I am confident the changes will deliver more affordable housing simply because developers will have less of a case for reducing it through viability assessments because when they come to us and say they can't afford the affordable, we can say we can find them an RSL who will pay them more than the one they are currently intending to use. Their gap is wiped out and they will have to go ahead with the affordable units.

The interviewee described the need for a policy that all officers in the LPA and members can support:

We are trying to get to a position where we have this policy that is supported by all the members and planning so we have a solid position when a developer pushes against us. In the past we have been guilty of a developer being able to push at various points in the authority until they have found a weak spot and they have been able to exploit that.

The interviewee said that whilst he would like to see a policy with high targets and a lot of social rented housing, he would rather have lower targets but have unilateral support. He described how differing levels of understanding of development economics has been a problem, and also that in the past LPA members have been too easily swayed by developers rather than having faith in the arguments of their colleagues:

It is easier to believe a developer and their legion of staff with their sharp suits and nice spreadsheets and presentations than your own officers. Most 106 negotiations it will be me sat against three or four developer staff who won't be on less than £70 000 and there is an expertise and a manner that comes with that. It can be difficult for members to stand up against that.

The LPA hopes that the new policy will remove the need for so much negotiation. The interviewee said that:

The problem we have at the moment is that we are not sure enough of our position to face down a developer.

The LPA also has to make decisions about priorities in S106 negotiations. Whilst officially affordable housing is the priority aim, in reality many other provisions have to be made through planning obligations:

The LPA is faced with a shopping list of education etc that can be calculated as an amount, say £800K. This figure gets fixed in the minds of members and developers. They think the affordable housing has to take account of this amount. But what we should be saying is this keeps reducing until the affordable housing is met if it really is the main priority. But if you are offered a huge handful of cash as an LPA and want to do lots of important things, it is difficult for members to say they will forego that contribution to deliver affordable housing. There are times when other things have to be achieved.

However, the interviewee was in no doubt that things have improved. Skills of LPA members have improved and feedback from the Audit Commission has been very helpful in guiding future decision making. Affordable housing has become a priority amongst elected members which adds further impetus to ensuring the affordable target is met, which it generally is.

The interviewee thought that the LPA would benefit from more government guidance and that the S106 system would be improved by a standard approach across the country:

If the government feels the S106 system should pay for AH they should be very clear how it should do that. There should be a standardised approach. I shouldn't be doing anything different from Bristol or Reading etc.

This case study shows that each LPA has a different idea of the rules that should govern the developer contribution to affordable housing. This LPA found that to achieve the target of

30% they had to move away from prescribing what the RSL will pay the developer. Instead they have encouraged a market to exist and RSLs to compete with one another. This works well here as there is such huge expansion going in the LPA, RSLs are keen to be involved. This system is enabling the RSL to top up what the developer can show is viable for them to provide on the site and the affordable housing target is being met.





