



The Incidence, Value and Delivery of Planning
Obligations in England in 2007-08
Final Report



The Incidence, Value and Delivery of Planning Obligations in England in 2007-08 **Final Report**

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The findings and recommendations in this report are those of the authors and do not necessarily represent the views of the Department for Communities and Local Government.

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Executive Summary

Planning agreements are the outcomes of negotiations between planning authorities and those with interests in land ('developers') about matters related to developments. These agreements, most of which are made under S106 of the Town and Country Planning Act 1990, are 'struck' alongside the process of securing planning permission. Agreements normally place obligations on developers as a way of accessing part of the development value created by the granting of planning permission. This value is used to provide for infrastructure and other wider needs associated with the development.

This study examines the use of planning agreements in England in 2007-08 and the value of the obligations upon developers that arose as a result of such agreements.

Background and results of previous studies

The current study was commissioned to update two earlier studies. These examined the numbers of agreements and the value of obligations in England in 2003-04 and 2005-06.

The 2003-04 study was the first ever attempt to systematically collect information on planning agreements and obligations throughout England and to place a value on them. It showed that local planning authorities (LPAs) had agreed approximately £1.9bn worth of obligations in 2003-04, of which £1.2bn was for affordable housing. It also showed that planning permissions for large developments were significantly more likely to have agreements than smaller ones, but that only a minority of large developments had agreements, suggesting potential to secure more.

It also showed that there were big variations in the number and value of agreements between LPAs but that the underlying pattern of development pressure and land values did not explain these variations. Instead variations in local policy and practice appeared to be the key to explaining them so that neighbouring LPAs operating under similar development pressures secured very different numbers of agreements and values of obligations.

Two years later, in 2005-06, there had been important changes. Three results stood out from the second study:

- The proportion of permissions for large developments with agreements rose significantly (but on smaller ones fell) and each consisted of more individual obligations. LPAs were focusing their efforts on securing more

obligations on the largest developments, especially in the southern regions whilst in the northern regions they were increasing the proportion of all permissions with agreements.

- The value of these obligations, approximately £4bn, was significantly higher than the amount secured in 2003-04, with approximately half being for affordable housing. This was against a period of significant land price inflation – some 32% for residential building land between the two study years outside London – so although there was significantly more value to access in 2005-06 than in 2003-04, the above-inflation increase in the value of obligations suggested that stronger policy and better practice were also having an impact.
- Whilst there were still significant variations between LPAs in the number and value of agreements, there was a more evident relationship between these and variations in market factors such as development pressure and land values than in 2003-04. LPAs considered the introduction of new local policies on developer contributions and increases in land value to be the two main factors behind the changes in the number and value of agreements between 2003-04 and 2005-06.

Background to the 2007-08 study

The third in this sequence of studies was designed to:

- update the two previous studies
- value the obligations and
- examine and analyse any variations in incidence and value between LPAs.

In addition, the study looked in much more detail at the delivery of obligations than the two previous studies had done.

It is important to stress the specific planning, administrative and market context of this third study:

- First, although there had been no change to the legal framework nor to central government policy advice, proposals to introduce a Community Infrastructure Levy running alongside a scaled back planning agreement framework were announced in 2007 (and the legislation was enacted in 2008 – although the powers have not been implemented yet).
- Second, by the time of the research there had been several changes to the pattern of local government with several new unitary authorities taking over the responsibilities of former two tier local governments (although the data gathered in this study was derived from the records of the authorities as they were constituted in 2007-08 prior to them becoming parts of unitary authorities). At the same time several consortia of LPAs

had emerged to address the strategic planning of large-scale development and of the associated infrastructure required, for example Cambridge Horizons.

- Third, the period of this sequence of studies from 2003-04 to 2007-08 was one of sustained development pressure and increased land and development values. These were favourable circumstances for LPAs when negotiating with developers to mitigate the consequences of their proposals. That period has now been succeeded by one of lower development pressure and falling development values. Hence the results of this and the previous two studies are not necessarily a guide to the short term future in terms of the incidence of agreements and the value of obligations.

Key findings

There has been an increase since 2005-06 in the numbers of agreements successfully negotiated. There has been a continued increase in the proportion of major developments with agreements but also an increase in the proportion of minor developments with agreements, reversing a trend in the previous period. The numbers of obligations secured within each agreement has also increased. The local policy framework for planning agreements has also been further developed. Formal policies on planning obligations set out in Local Development Frameworks are now present in many LPAs and a large majority are also producing infrastructure plans.

The value of the obligations secured has increased since 2005-06. Those secured in 2007-08 are worth £4.9bn, of which approximately half is for new affordable housing. This represents an increase of just under a quarter, compared with the £4bn negotiated in 2005-06. It is, however, smaller than the 57% increase experienced between 2003-04 and 2005-06, reflecting in part the smaller rise in development values in the more recent period. Variations still persist between LPAs in the numbers of agreements and value of obligations. Evidence suggests that variations in development pressure and land values rather than LPA policy and practice now explain these variations.

Planning obligations are largely delivered in accordance with the negotiated agreements. Although monitoring of delivery by LPAs is less well developed than the original negotiations, analysis of case study sites shows that a large majority of what is negotiated is subsequently delivered. When changes in delivery occur, these are generally related to the timing of direct payments or in-kind obligations and have been agreed by LPAs in response to changes in the pace of site development, a reflection of the current state of the development market as a result of the economic downturn. LPAs are not, however, allowing changes to the substance of agreements since these had been originally agreed in accordance with planning policy and deemed necessary for the proposed developments to proceed.

Summary of detailed findings in 2007-08

Agreements and obligations

- The number of agreements per LPA increased, especially in rural England and urban London, compared with the previous two survey years (average of 30 per LPA compared with 25 in each of the previous two surveys);
- The proportion of permissions with agreements rose to 7% (from 6% in 2005-06);
- Breaking down the total of agreements into its component parts shows that:

The proportion of major development permissions for dwellings (10 or more) with agreements continued to rise (to 51%);

That for minor dwellings (and all other minor developments) rose slightly (but explains the big increase in numbers of agreements per LPA);

- Almost all residential permissions for sites of 50 or more dwellings had agreements; about 85% of those between 15 and 50 had agreements, and nearly half of all 'below threshold' sites had agreements¹;
- There has been a continued increase in the number of obligations per LPA and per agreement, both in-kind and direct payments, but by not so large a proportion as between the previous two surveys; the increases were greater proportionately in rural areas than in urban areas, and in the three Northern and two Midlands regions than in other regions;

Policies

- Only 7% of LPAs surveyed had no formally adopted policy about planning obligations and 42% had policies already adopted under the development planning framework introduced by the Planning and Compulsory Purchase Act 2004;
- 76% of LPAs were undertaking infrastructure planning;
- Standard charging was widely used (e.g. 63% for affordable housing; 81% for open space; 75% for education); 86% of LPAs pool charges (including 11% across the LPA and across the sub-region);
- 12% of LPAs used a defined 'tariff style' agreement;

¹ 15 dwellings is now the threshold outside London above which LPAs are advised to negotiate contributions to affordable housing needs. LPAs may operate lower thresholds with the basis for doing so set out in their relevant Local Development Framework document.

- Change to land and property prices was rated the most important factor in explaining changes in the numbers and value of obligations since 2005-06 by 45% of LPAs; and 33% of LPAs rated this factor as having a negative impact; employing a designated S106 officer was rated the second most important factor by 27% of LPAs;
- Advice on formulae and standard charging was the advice on policy and practice in Circular 5/05 that was most highly rated by LPAs as being 'crucial' or 'very important' in changing their practice (34% of LPAs);

Value of obligations

- The total value of all obligations agreed in 2007-08 in England was £4.9bn, an increase of 24% (nominal) on 2005-06. Of this:
 - £2.6bn was for affordable housing (increase of 31%);
 - £235m was for open space (9% increase);
 - £462m was for transport and travel (28% increase);
 - £192m was for community and leisure facilities (155% increase);
 - £271m was for education (76% increase);
 - £183m was for other obligations (60% increase);
 - £16m was for obligations entered into directly with county councils related to waste and minerals permissions (60% increase);
 - £900m was for land contributions for uses other than for affordable housing (much of this was secured in London);
- The total value of direct payment obligations per LPA agreed in 2007-08 was £3.55m (£2.67m in 2005-06).

Delivery of obligations: survey evidence

- The total value of direct payment obligations paid to all LPAs in 2007-08 (whatever the year of the agreement) was £561m (an average of £1.6m per LPA; with a range of £582k per LPA in the North West to £5.8m per LPA in Greater London);
- The total value of affordable housing obligations delivered in 2007-08 was £1.3bn;
- 36% of LPAs estimated that over 75% of direct payment obligations agreed in 2005-06 had been received by the end of 2007-08 (58% estimated this was 50% or more);

- LPAs estimated that on average 8% of agreements were subsequently modified;
- They also estimated that the following proportion of permissions with agreements had since been started: 2003-04: 67%; 2005-06: 63%; 2007-08: 50%; the respective proportions for completions were: 63, 53 and 29%.

Delivery of obligations: case studies

How LPAs monitor delivery

- Monitoring the delivery of obligations appears to be less well developed than negotiating the original agreements, especially in LPAs in the northern regions, and is not always undertaken by qualified planners (nor by those who did the original negotiations);
- LPAs are losing staff because of the fall in planning applications (and hence income from fees); they are also losing specialist staff whose salaries come from S106 contributions paid by developers towards the costs of administering planning agreements;
- Most LPAs have good monitoring systems for direct payments and more attention appears to be made to monitoring these than in-kind obligations; thus monitoring is often concentrated on ensuring that direct payments are received; and increasingly on the extent to which monies collected are spent;
- LPAs rely upon local housing authorities to check the delivery of affordable housing components of planning agreements but are not always clear how this monitoring is done; a few LPA staff are only concerned about the total quantity delivered;
- There are varying arrangements for collecting county contributions² and sometimes these are collected directly by the County Councils;
- A particular problem for LPAs is to know if events or development stages which should trigger payments (or other obligations, e.g. the delivery of affordable housing which may be tied to the number of market dwellings completed) have taken place;
- There were often conflicts between LPAs' own monitoring records and the physical evidence of completions found when visiting case study sites;
- Monitoring, in itself, appears to have an independent impact on outcomes with monitored schemes being more likely to deliver obligations in full.

² e.g. where the contribution is for education it is the responsibility of county councils to provide this in two tier local authority arrangements, although the contribution itself will have been negotiated by the district councils because they are the authorities responsible for planning.

Evidence of delivery

- In most cases obligations had been fully delivered on the sample of sites where agreements were signed in 2003-04 and 2005-06; in the case of half of the 96 case study sites examined the contributions agreed were delivered in line with the agreements and to expectations, although five% of these required much effort by the LPAs to get them delivered. LPAs expect another 20% to be delivered in full. 10% of cases were delivered, but with agreed changes. In 13% of cases the obligations were not delivered as had been agreed. In 6% of cases the outcome was unknown;
- For agreements signed since 2005-06 (and in earlier years where the developments are not yet completed) matters have changed, for example:
- As a result of the economic downturn LPAs have had to spend more time than in the past chasing developers to deliver direct payments on time;
- LPAs have largely been willing to renegotiate payment schedules so that payment becomes due at later stages of the development;
- LPAs appear to be more lenient about late payments if these involve small local developers; they are less lenient with large national developers;
- LPAs have not been willing to reduce the obligations due on development (save for timing changes), since these obligations were initially agreed because they were necessary for the development in the first place; in only one case had a lower contribution been agreed following renegotiation; any renegotiation would require developers to submit viability studies at their own cost and also to pay for the LPAs' due diligence on their submitted studies;
- Where agreements contain automatic payment or 'in-kind' delivery 'triggers', the recent slowing down in the pace of completion leads to an automatic slowing down in the pace of delivery of obligations;
- There is evidence that some developers are selling parts of S106 sites to registered social landlords to enable the affordable housing element to proceed and at the same time generating cash for the developers; there is also some evidence of a switching to social rented from intermediate homes within the affordable housing element;
- There is substantial evidence that smaller proportions of individual sites are being completed compared with earlier years. In some cases previous applications are being superseded with new ones on the same sites;

Conclusions

- LPAs continued to take advantage of a still buoyant housing and property market, at least in the early part of 2007-08, although with some evidence that agreements were beginning to be harder to negotiate; about £4.9bn worth of obligations was agreed in 2007-08;
- LPAs were maintaining the focus on larger development sites but with evidence that more agreements were being struck on smaller sites, especially for housing and in rural areas, and the greater use of standard charging was a key factor in this latter trend;
- Although monitoring was on the whole more poorly developed than negotiations, it appeared that most obligations agreed in 2003-04 and 2005-06 were being delivered;
- For agreements signed later than 2005-06 developers were attempting to renegotiate obligations but LPAs were resisting this, albeit with some willingness to renegotiate dates for delivery.

Structure of the Report

The report has seven chapters, two annexes and five appendices. Chapter 1 sets out the policy and research context and describes the research methods in outline. Chapter 2 deals with the incidence of planning agreements and planning obligations in 2007-08 and the differences between these results and those from the two earlier surveys. The third chapter examines the valuation of the planning obligations agreed in 2007-08. Chapter 4 examines the variations in incidence and valuation between planning authorities and assesses the impact of both policy factors and the market on these variations. Chapters 5 and 6 look at the delivery of obligations both from the perspective of the survey of all authorities and the more detailed evidence from the case studies. Chapter 7 summarises the evidence and draws conclusions. There follow two annexes, one describing in more detail the statistical analysis of variations between LPAs and the other providing a more detailed description of the delivery case studies. They are followed by a list of references. The five appendices contain details of the research methods, lists of planning authorities that took part in the survey and case studies, the survey questionnaire and the delivery topic guide.

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Chapter 1

Research Context and Methods

This chapter examines three issues:

1. The policy background;
2. The need for the research;
3. An outline of the research methods.

The details of the research methods are shown in Appendix 1 and include an analysis of whether the study year, 2007-08, was typical of recent experience and also an analysis of the responses to the survey undertaken for the research.

1.1 Policy Context

Planning agreements are the outcomes of negotiations between local planning authorities (LPAs) and those with interests in land ('developers') about matters related to developments. These agreements are 'struck' alongside the process of securing planning permission. They are normally entered into to obtain planning permission and enable planning authorities to address issues that cannot be secured through the placing of conditions on planning permissions. The outcome of the process places obligations on developers (hence 'planning obligations') that are enshrined in legal agreements between developers and planning authorities. Developers may also give undertakings unilaterally (hence 'unilateral undertakings'³). The resulting permission can increase the value of land and this development value can be accessed to provide contributions to the communities affected by the development. These agreements are, in essence, private contracts between planning authorities and developers but are also registered as local land charges so that the obligations are binding on successors in title as well as those who signed agreements in the first place.

Throughout, this report uses the phrase 'planning agreements' to refer to the legal agreements themselves and 'planning obligations' to refer to the matter or matters to which developers are bound by the agreements. A planning agreement can contain more than one planning obligation.

The main legal basis for planning obligations is set out at section 106 of the Town & Country Planning Act 1990 (hence the phrases 's106 agreements', 's106 policy', 'S106s' and the like).⁴ A planning agreement is a legally binding

³ A unilateral undertaking is an obligation offered by the applicant to the planning authority either in support of a planning application or a planning appeal. The terms of the agreement are identified by the applicant. This is produced by the applicant's solicitor in its entirety with no Council involvement.

⁴ Agreements may be made under s106 of the Town and Country Planning Act 1990, as substituted by the Planning and Compensation Act 1991, s299A of the Town and Country Planning Act 1990 and s278 of the Highways Act 1980, and are subsequently called 'planning agreements'. Agreed contributions also include offers made under unilateral undertakings.

agreement between a developer and a local planning authority and operates alongside a planning permission. Such agreements can require developers to carry out specified obligations when implementing planning permissions and are the result of negotiations on these matters between the two parties. Obligations may be entered into to prescribe the nature of development and to secure a contribution from a developer to mitigate the loss or damage caused by a development. Agreements can thus be negative (restrictions about uses or development) or positive. On positive obligations, the agreements can specify that developers provide 'in-kind' what is needed directly or pay sums to the planning authority which will then either provide the facility itself or pass the sum to other infrastructure providers, for example a county council in a two-tier local authority where the county is responsible for schools and the developers have provided contributions towards new schools or extensions of existing ones.

Agreements enable local planning authorities to secure matters that, in their view, are essential if developments are to be allowed to proceed but which would be *ultra vires* if pursued through a normal condition. Powers to enter into agreements with developers have long existed in planning law but their use has grown very considerably over the last two decades (Campbell et al, 2002; Healey et al, 1995).

Until the 1990s their use was largely restricted to requiring developers to contribute to a limited range of 'off site' costs, such as providing access roads to sites (as well as dealing with some of the intricacies of the site development process itself, for example phasing). Their use can be conceptualised as requiring developers to contribute to the mitigation of some of the 'externalities', or social costs, of site development that would otherwise fall on neighbours or on the public purse. As public expenditure constraints on local authority capital spending tightened, so the use of planning agreements grew (Campbell et al 2002). Had they not done so it is difficult to see how much recent development that required new key off-site infrastructure could otherwise have been permitted to proceed in accordance with planning authorities agreed development strategies set out in their newly adopted local development frameworks or in earlier plans adopted under previous planning legislation.

More recent years have seen a significant growth of planning agreements to secure wider community benefits, and not just limited to developers' contributions to off-site infrastructure. This can be seen as an extension to the idea of requiring contributions to the range of off-site infrastructure that is needed by virtue of the development itself, for example by asking for contributions to extensions of local schools. In this way, local authorities are seeking to ensure that the development contributes to all of the costs it imposes on the community.

This latter category includes asking developers to make contributions to meeting local affordable housing need. This development in the use of planning obligations is an extension to the idea that agreements should deal only with the costs imposed by the development, whether the need for new transport links or extra school places, to enabling planning authorities to seek contributions to wider community needs, including affordable housing

but other needs as well. With respect to affordable housing Government policy has explicitly legitimated the use of planning agreements to facilitate developers' contributions from appropriate types of development to affordable housing. Initially restricted to meeting rural housing needs, Government policy now enables planning authorities to seek planning obligations to obtain contributions from residential development (DETR, 1998; ODPM, 2005a, b; CLG, 2006; Crook et al, 2006). They can do this either by providing affordable housing within the market site or on another site, although the Government's policy to encourage mixed communities favours on-site rather than off-site contributions. Thus planning agreements are used by planning authorities not just to secure the land and additional funding needed for new affordable homes, but also to secure the implementation of mixed community policies set out in their development frameworks (Crook et al 2002; CLG, 2006; Monk et al 2005).

The Government has issued guidance and policy on the use of planning obligations, in part to limit planning authorities' discretion as to what they may seek as well as to foster a more open and transparent process, not the least in the light of allegations that planning obligation negotiations might be interpreted as attempts by planning authorities to 'sell' and by developers to 'buy' permissions.

Current Government policy and advice on the use of planning obligations is set out in a 2005 Circular, which updates earlier 1997 advice (ODPM, 2005a). Planning obligations might be used to safeguard the local environment or meet the costs imposed as a result of development but what this means in practice will depend on the circumstances of each case. 'Properly used planning obligations may enhance the quality of development and enable proposals to go ahead which might otherwise be refused' (ODPM, 2005a).

The Government's policy is that planning obligations must meet all of the five following tests:

1. be relevant to planning;
2. necessary to make the proposed development acceptable in planning terms;
3. directly related to the proposed development,
4. fairly and reasonably related in scale and kind to the proposed development; and
5. reasonable in all other aspects.

Planning agreements can involve lengthy and sometimes difficult negotiations between developers and local authorities. Not only can agreements take a long time to negotiate, but they have not always been strongly related to local planning policy frameworks. As a result, Government policy about planning obligations has been under review in recent years whilst at the same time it has

been identifying and disseminating good practice under current arrangements (CLG 2006a). On policy, its concern has been to speed up process, improve transparency and reduce uncertainty.

At one stage the Government consulted widely about replacing negotiated outcomes with a tariff approach, but following consultations decided against adopting this route. It subsequently examined the possibility of combining negotiations with a 'tariff' alternative whereby developers could opt to comply with a contribution (labelled an 'optional charge') set out in a plan as an alternative for negotiating a (presumably) lower contribution. These provisions were not implemented. The Government has more recently clarified the basis on which planning authorities may use formulae and standard charges, provided a model agreement (ODPM, 2005), clarified current policy (ODPM, 2005), published good practice guidance for local authorities and developers with respect to affordable housing (CLG, 2006a) and has also published proposals to make the planning system more responsive to changes in the market demand for housing (ODPM, 2005b). In addition the Government has recently further clarified aspects of policy on affordable housing and the planning system (CLG, 2006b, 2006c). It has also commissioned research on the use of common starting points for negotiations over affordable housing agreements (Monk et al, 2008)

Kate Barker in her review of housing supply (Barker, 2004) recommended that the use of planning obligations should be scaled back to dealing with the mitigation of development impact and to agreeing affordable housing contributions. A new tax, to be known as Planning-gain Supplement (PGS) would be used to extract a modest amount of the windfall gain from the grant of planning permission with the yield recycled to help finance infrastructure. In the Pre-Budget Report for 2007 the Government announced that, following discussions with key stakeholders, it would not be introducing legislation for PGS, and would instead legislate for a new planning charge in the Planning Bill, to be called the Community Infrastructure Levy (CLG 2007c).

The Community Infrastructure Levy (CIL) is intended to allow planning authorities to charge a levy on all developments (except very small scale, including 'householder' ones) in order to secure contributions to sub regional and other infrastructure. In the CIL explanatory and consultation documents it is proposed that S106 planning agreements would be limited to addressing more local site-specific infrastructure and any other mitigation needed for development to proceed. It will also be used to secure contributions to affordable housing (CLG, 2008a, 2008b, 2009).

The introduction of CIL will loosen the 'rational nexus' that currently restricts S106 agreements to securing contributions only to meeting need that directly arises for individual developments⁵. CIL will not provide the whole of the

5 The 'rational nexus' is a phrase designed to describe how S106 agreements must clearly relate contributions sought through agreements to proposed developments. Hence it would be improper to require, through S106, developers to contribute to the funding of infrastructure or community needs when the need for the latter are not 'caused' or need enhanced by the proposed development. The phrase has its origins in the literature in the USA that addresses the way impact fees must only be charged when the fee will mitigate the impact of proposed development. CIL will enable LPAs to charge all developers a levy on new development so that all will contribute to sub regional infrastructure thus loosening the rational nexus between individual pieces of development and the infrastructure required in the sub region.

funding for the necessary infrastructure. The CIL charge will depend on the overall level of infrastructure needed over a plan period, and its costs, and the extent of other funding. Planning Policy Statement 12 on Local Spatial Planning stresses the importance of infrastructure planning and encourages all LPAs to pursue plans that consider costs, sources and timing of funding (CLG, 2008c).

CIL levies will need to be fixed in relation to the sums required but also to take account of site viability issues across the LPA area. CIL charges are likely to be averaged, and not site specific, but also not necessarily the same across a whole of an LPA's area. The CIL levy will not be part of LPAs' statutory planning frameworks but will be subject to consultation and review at public hearings following which LPAs will be obliged to accept the report from hearings (alternatively they may draw up revised charge documents for further review). Legislation enabling local planning authorities to charge a CIL was included in the 2008 Planning Act. The relevant parts of the legislation will not be enacted until 2010. CLG have consulted on detailed regulations and procedures (CLG, 2009).

1.2 Research Context

Until the first of the previous studies was undertaken in the year 2003-04, knowledge of the value of planning obligations and their local derivation was very limited. Earlier studies had been undertaken of the extent to which planning agreements were being used in England by Healey et al (1995) and by Campbell et al (2001) but no study had attempted to calculate the total value of obligations secured.

Specific work had, however, been undertaken on the use of planning agreements to secure affordable housing, showing the extent to which increasing proportions of all new affordable housing were being secured on sites with planning agreements (Crook et al, 2002, 2007; Monk et al 2005a, 2005b, 2006). These studies had also shown the great variety of planning authority policy and practice with respect to planning agreements and the importance of effective policy and negotiation in securing obligations and contributions. They had shown how complex the financing of contributions was on even simple sites and how difficult it was to collect information about developer contributions. They also showed how much variation there could be, not only between planning authorities in similar circumstances but also within them, and that the variation in numbers and values of obligations agreed was not easily explained by market pressure or other socio-economic factors. Finally the work revealed that there was also tremendous variation in monitoring, such that studies of the delivery of planning agreements are often reliant on collecting information from several parties and not just from the planning authorities themselves.

The 2003-04 study provided for the first time information about the numbers of agreements entered into by planning authorities in England and the value of the planning obligations secured by those agreements and this was followed up by the second study of 2005-06 (Crook et al, 2006; 2008). A study was later

completed for Wales using a similar methodology (Rowley et al, 2007). A study, albeit on a different basis, was also carried out in Scotland (McMaster et al, 2008).

There have been significant changes since the second English study. On the local policy and practice 'front' LPAs have had more time to absorb and implement the elements of good practice, for example about standard charging, that were disseminated in 2005 and 2006 whilst they have also been updating their local development frameworks and associated documentation under the 2004 planning legislation. In this respect government policy has stressed the importance of planning obligations policy being part of a sound core strategy in local development frameworks, based on clear evidence about viability and supported by development plan documents.

In the market place the housing and commercial markets had continued to be buoyant up to 2007-08, resulting in both steady flows of planning applications and permissions and in continued rising property and land prices, albeit with less pronounced increases than occurred between 2003-04 and 2005-06. All these changes provided a context, *prima facie*, for planning authorities to be able to negotiate more planning agreements and to secure more planning obligations of higher value from developers than in 2003-04 and in 2005-06. Now, of course, there are more challenging prospects on the horizon because of the impact of the economic downturn on property and land markets

At the same time, as described above, there has been much consideration in Government of the national policy framework, with consideration of CIL and on scaling-back the use of S106 of the Town and Country Planning Act 1990, whilst new guidance was distributed in 2006 both on the operation of the existing framework both in terms of planning obligations and in terms of affordable housing policy specifically.

It is important therefore to look again at the number of planning agreements, planning obligations and their value in England to ensure that policy and practice is as well informed as possible by up to date information, not the least in the light of the forthcoming changes that LPAs may decide to implement by introducing CIL and scaling back what S106 agreements may achieve after 2010.

This current study was commissioned therefore to examine the numbers of planning agreements, planning obligations and their value in England in 2007-08, to both update the estimates made for 2003-04 and 2005-06 and to examine any trends that could be discerned.

In addition there was an additional focus on the delivery of obligations to examine the extent to which agreements previously entered into have been implemented. Whilst considerable sums are involved in agreements that are signed, little is known about how much of this eventually gets delivered and how many agreements are subject to later renegotiation. Some work has been done on the delivery of affordable housing obligations which suggested that most of the new affordable homes that were agreed were eventually delivered,

albeit with some changes to the tenures involved (Monk et al 2006). Although limited attempts were also made to collect information about delivery in the 2005-06 study, this was very partial. The issue of delivery has become more significant in recent years because of two concerns. First, that many agreements may be currently the subject of renegotiation by developers given the current challenging property climate. Second, concerns (that are reflected in specific inquiries to LPAs) that not all that is agreed is actually being delivered by developers or by the LPAs themselves (although the latter may be explained by the inevitable delay whilst pooled contributions accrue until an LPA has secured the sum required to construct a particular piece of infrastructure).

Monitoring of the outcomes of planning agreements needs to be a key part of planning authorities' systems if delivery is to be monitored – and this is not always the case (Monk et al, 2006). Moreover what is agreed in any one year will be delivered over subsequent years and in large and complex developments this may take many years. Further, not all of what is agreed will be delivered. Some planning permissions are not acted upon and some are changed following resubmission and renegotiation with the planning authority. Even when permissions proceed, the agreements attached to them may be changed with the consent of the planning authority (and sometimes without formal consent). As a result of all these factors capturing information about what is delivered and comparing it with what is agreed is very difficult indeed, especially through questionnaire surveys. Hence in the current study, although some limited information was collected in the questionnaire survey, the main focus of inquiries about delivery was on the detailed discussion with LPA staff as well as the examination of records in sample of LPAs and visits to sample sites within each of them.

1.3 The research approach in outline

A similar approach was adopted in this study to that taken for the two previous ones. This was crucial if comparisons between the two surveys were to be made. In addition a new approach was taken to examining the delivery of obligations. The key features of the current study are as follows:

1. Primary data on planning agreements and on in-kind and direct payment obligations, as well as on LPA policy, was collected through a self-completion questionnaire sent to all English planning authorities. A small expert group of LPA S106 officers help to pilot the draft. The response rate to the survey was 43%, higher than in both the two previous surveys and those that responded were statistically representative of all planning authorities in terms of population size and the number of planning permissions granted. Appendix 1 has a map showing the location of the responding LPAs
2. Primary data was also gathered on the delivery of obligations in 24 case study LPAs and on 4 sites in each of those LPAs. The location of the 24 LPAs is also shown on the map in Appendix 1.

3. Secondary data on each planning authority was collected from a wide range of sources including the Census of Population, on affordable housing, planning permissions, and LPA performance on dealing with planning applications from CLG's HSSA, PS2 and other data series, on house prices from the Land Register, on land prices from the Valuation Office Agency and from other sources identified in Appendix 1.
4. The typology of planning obligations used in the two previous studies was used in this one as well. Calculations of direct payment and in-kind obligations were made separately using information of direct payments to extrapolate calculations of the value of in-kind obligations of the same type. The separate method for calculating the value of affordable housing developed for the two previous studies was also used in this one, although benefiting from the greater detail of information available from the HSSA data for 2007-08 than for the two previous studies.
5. LPAs were grouped into 'families' of local authorities using the same classification adapted for each of the two earlier studies.
6. Most of the information presented in the rest of the report is based on the results from the survey LPAs but the national figures for the value of obligations secured and delivered are based on figures 'grossed' up from the sample. The nature of the data used is identified at the bottom of each table. Where the data is taken from the survey results and not grossed up, the base is 'survey sample'. Where grossed up figures are used the base is 'grossed up sample'.
7. Where the value of obligations secured in 2003-04 or 2005-06 is quoted in this report, the values have not been adjusted from those shown in the reports of those surveys so that no allowance has been made for subsequent inflation.
8. The preliminary findings from the research were presented to a series of three feedback seminars attended by representatives from 45 of the LPAs who had participated in the research. Their comments on the findings are incorporated in the final chapter.

1.4 The study year

In terms of development pressure and land prices, 2007-08 was similar to the two previous years studied, 2003-04 and 2005-06. Appendix 1 examines the trends in planning permissions and in land prices. It shows that the number of permissions was broadly the same in each of the three years although in 2007-08 there was a fall in the number of permissions for major residential development (sites of 10 or more dwellings) and a rise in those for minor residential development. Land prices continued to rise until January 2008 although have fallen thereafter and by January 2009 were at the same level

as in January 2004. The analysis confirms that 2007-08 was broadly the same as the two previous study years in terms of both development pressure and in terms of a trend of increasing land prices, albeit the latter being now curtailed.

Chapter 2

Numbers of Planning Agreements and Obligations

Key findings

This chapter examines the numbers of planning agreements signed by planning authorities and developers in 2007-08. The key findings are:

- There are, as in the previous studies, big variations between authorities in the numbers of planning agreements entered into with developers;
- the total number of planning agreements per authority increased between 2005-06 and 2007-08 having changed little between 2003-04 and 2005-06;
- the numbers of major agreements with permissions rose between 2003-04 and 2005-06 but fell slightly in 2007-08;
- by contrast the numbers of minor agreements with permissions rose significantly in 2007-08 compared with the previous two study years;
- the proportion of major developments with agreements was higher in 2005-06 than two years earlier and this increase was maintained into 2007-08;
- southern planning authorities had more planning agreements per authority in all three study years than northern and midlands and there were substantial increases in the numbers of agreements per authority in the south in 2007-08 compared with both the earlier study years;
- the numbers of agreements in northern and midlands authorities fell in 2007-08 compared with 2005-06 and the number per authority was smaller than in 2003-04
- most large residential schemes with planning permission have planning agreements.
- the average number of planning obligations per planning agreement rose over the three years;
- between 2005-06 and 2007-08 the increase in obligations per agreement was more pronounced in rural planning authorities and in the northern regions;

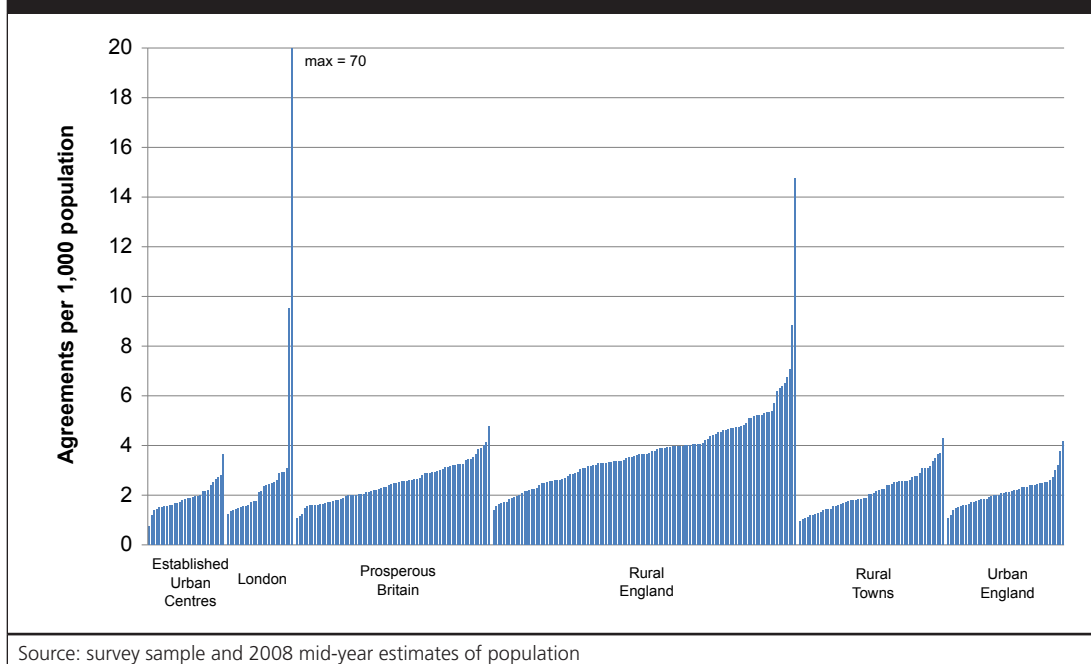
- direct payment obligations constitute over 70% of obligation types, although in-kind obligations rose by more than direct payments between 2005-06 and 2007-08;
- a wider range of planning obligations was also secured; affordable housing is mainly delivered in-kind and educational obligations wholly by direct payments.

This suggests that in 2007-08 planning authorities continued the focus on negotiating agreements on the largest sites that had been found in 2005-06 but also that there was an increase in agreements on smaller scale development, especially in rural areas. Although the increase in agreements in the northern regions found in 2005-06 was reversed in 2007-08, planning authorities in those regions achieved more obligations for each agreement they negotiated. In contrast the number of obligations for each agreement stabilised in the southern regions, although these had experienced an increase in the numbers of agreements. Part of the explanation for these trends lies in the changing pattern of planning applications and permissions. In particular the number of permissions for major dwellings fell in 2007-08 compared with previous years whilst the numbers for minor dwelling applications rose. It also lies in the changing pattern of development values that shapes the opportunity planning authorities have for securing obligations.

2.1 The overall numbers of agreements

Planning authorities responding to the survey in 2007-08 entered into just under 30 agreements per authority. Some of these involved unilateral undertakings with 84% of authorities receiving these in 2007-08, each receiving an average of nine such undertakings, with average numbers being higher in both Rural (13) and Urban England (15).

As Figure 2.1 below shows, there are wide variations between planning authorities in the numbers of agreements, even after taking account of their different population sizes. Many had very few, most had a handful, and a few had large numbers of planning agreements. This pattern is repeated amongst all types of local authority family.

Figure 2.1 Total Agreements per 1000 residents by local authority family

There are thus some important variations as Tables 2.1a and 2.1b also confirm. Chapter 4 examines the patterns to these variations in more detail whilst this chapter looks at the 'bigger picture' in terms of variations by families and region and changes between the three surveys.

In terms of the average numbers of planning agreements per authority, those in Prosperous Britain, Urban England, and Urban London had far more than others in both 2003-04 and 2005-06 especially and not surprisingly when compared to Rural England. Although there was little change in the average total number per authority between these two survey years for England as a whole there was a significant increase in 2007-08 from 25 to 30 agreements per authority. This increase is largely the result of a big increase in the number of agreements per authority in rural England. By 2007-08 there were approximately three groups of authorities in terms of numbers. Urban London had many more agreements per authority (47) than others, and rural towns the least (13) with all other authorities in Established Urban Centres, Rural England, Prosperous Britain and Urban England having between 25 and 36 agreements on average in each authority.

Looking at regional differences, the southern regions and Greater London have tended to have more planning agreements per authority on average than others with the exception of Yorkshire and the Humber where two of the latter's metropolitan districts have large numbers. It is notable that this regional pattern is approximately the same for all three years, although average numbers per

authority fell in the South East between 2003-04 and 2005-06, rose significantly in Greater London, the South West and East, and after rising in the Midlands and northern regions between 2003-04 and 2005-06 declined in 2007-08.

Table 2.1a Planning Agreements in 2003-04, 2005-06 and 2007-08 by local authority families⁶

LA Family	Average Agreements per Authority			Change 2003-04 to 2007-08	Change 2005-06 to 2007-08	Rank
	2003-04	2005-06	2007-08	(% change)	% change	
EUC	13.8	25.5	25.0	81.2	-2.0	3
RE	26.9	13.8	36.2	34.6	162.3	1
RT	15.1	17.1	12.9	-14.6	-24.6	6
PB	33.9	28.3	27.6	-18.6	-2.5	4
UE	19.3	35.1	29.5	52.8	-16.0	5
UL	25.9	41.0	47.5	83.4	15.9	2
Total	25.0	24.9	29.8	19.2	19.7	

Source: survey sample

Table 2.1b Planning Agreements in 2003-04, 2005-06 and 2007-08 by regions

Region	Average Agreements per Authority			Change 2003-04 to 2007-08	Change 2005-06 to 2007-08	Rank
	2003-04	2005-06	2007-08	(% change)	% change	
North East	7.4	9.0	9.7	30.7	7.4	3
North West	10.1	12.0	9.4	-7.0	-21.8	6
Yorkshire and Humber	39.3	62.0	27.4	-30.3	-55.8	7
East Midlands	10.2	18.0	7.7	-24.2	-57.1	8
West Midlands	15.3	19.0	7.4	-51.5	-60.9	9
East	10.2	12.0	28.2	176.5	135.0	2
South West	48.5	20.0	81.7	68.5	308.7	1
South East	42.2	28.0	27.5	-34.8	-1.7	5
Greater London	25.0	39.0	41.3	65.3	6.0	4
Total	25.0	24.9	29.8	19.2	19.7	

Source: survey sample

⁶ Note that the figures for 2003-04 and 2005-06 differ slightly from those included in previous reports due to the inclusion of local authorities that responded too late to be included in the original analysis for the final reports.

Turning to the types of development, Table 2.2 and Figure 2.2 again both show that the average number of planning agreements per planning authority rose slightly by 3% between 2003-04 and 2005-06 but rose much more in 2007-08 with each authority responding to the survey negotiating an average of 4.1 more agreements in 2007-08 than in 2005-06, an increase of 16%.

The breakdown between types of applications is significant. Between 2003-04 and 2005-06 the number of major residential planning agreements per authority increased from 8 to 11, an increase of 36%. Similarly the numbers of planning agreements related to major commercial development rose by 21%. In contrast, however, the number of minor residential planning agreements per authority fell by 13%. This suggests that planning authorities may have been focusing their negotiating efforts more on larger developments in 2005-06 than in 2003-04. This explained why there were on average fewer planning agreements per authority in 2005-06 than in 2003-04 in the types of planning authority and regions under greatest development pressure in the South.

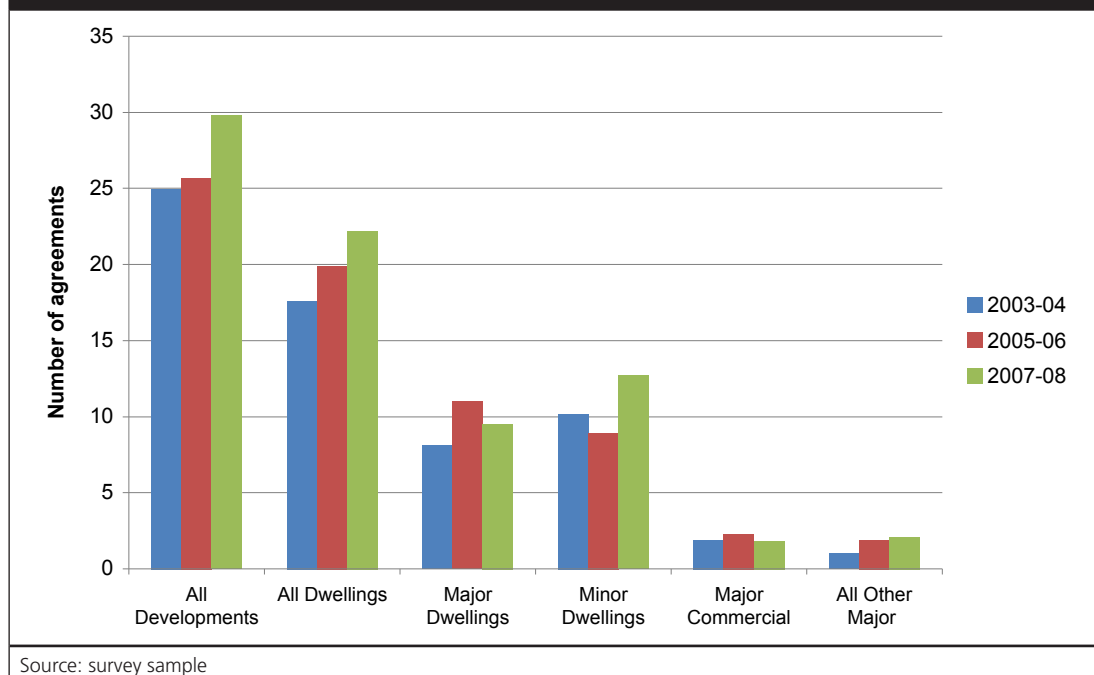
Between 2005-06 and 2007-08 the most noticeable change was the increase in the numbers of agreements for minor dwellings from 8.9 per authority to 12.7 per authority, an increase of 43%, largely the result of obligations related to open space. The numbers of agreements for major residential development fell from 11 per authority to 9.5 although this was still higher than in 2003-04. This, together with the data shown above about the pattern of total agreements in each local authority family and each region, suggests that whilst planning authorities have to an extent maintained their increased focus on larger schemes, they are now also negotiating far more agreements on minor residential developments than in either of the two previous study years, a reverse on the decline noted between 2003-04 and 2005-06. This is allied to the increase in agreements in Rural England and also in the South West. As in both the two previous survey years the total numbers of agreements are largely related to residential applications, with the numbers negotiated for major commercial and all other major development being limited to a handful (on average two per authority).

These trends are, of course, not only related to LPAs' changing foci on large or on small developments but to the overall trends in applications and, as Appendix 1 shows, applications for major residential developments fell between 2005-06 and 2007-08 whilst those for minor developments rose.

Table 2.2 Number of Agreements per Authority by size of development

Size of development	Average agreements per authority			Change 2003-04 to 2007-08		Change 2005-06 to 2007-08	
	2003-04	2005-06	2007-08	No.	%	No.	%
All Developments	24.97	25.7	29.8	4.83	19.3	4.1	16.0
All Dwellings	17.6	19.9	22.2	4.6	26.1	2.3	11.6
Major Dwellings	8.1	11	9.5	1.4	17.3	-1.5	-13.6
Minor Dwellings	10.2	8.9	12.7	2.5	24.5	3.8	42.7
Major Commercial	1.9	2.3	1.8	-0.1	-5.3	-0.5	-21.7
All Other Major	1	1.9	2.1	1.1	110.0	0.2	10.5

Source: survey sample

Figure 2.2 Average Number of Planning Agreements per Planning Authority

Source: survey sample

2.2 The proportion of permissions with agreements

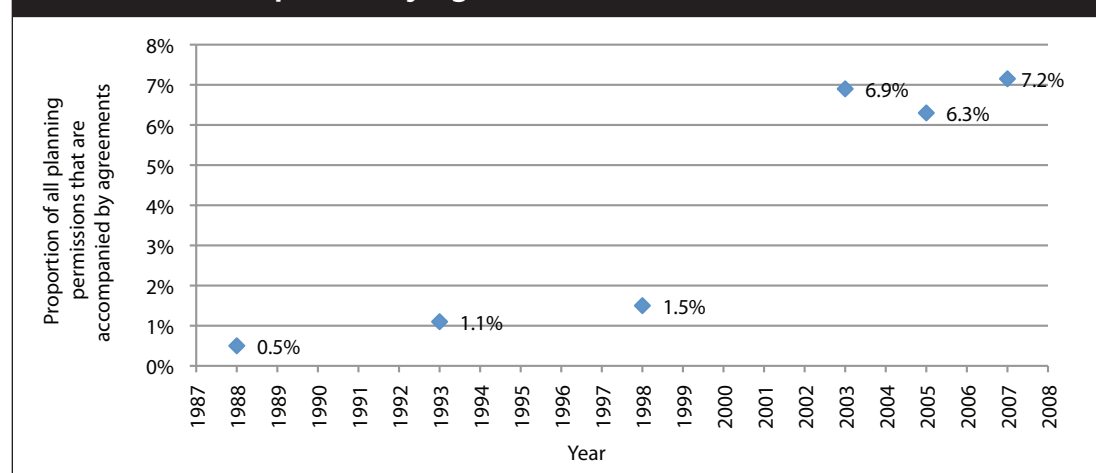
Only a small proportion of all planning permissions is accompanied by agreements. In 2007-08 only 7.15% of permissions had agreements, the respective figures for 2003-04 and 2005-06 being 6.9 and 6.36% (see Table 2.3).

These are however much greater percentages than in the recent past as Figure 2.3 shows. Placing these three recent proportions in the context of the longer term is not easy because, despite their long history, researchers have paid

little attention to planning agreements until comparatively recently. A marked growth in the use of planning agreements prompted a series of surveys in the late 1980s and early 1990s⁷. They indicated that only a very small proportion of the total number of planning permissions was accompanied by agreements, but that the use of such agreements was increasing (Healey et al. 1995). From a sample of local authorities, Grimley JR Eve (1992) estimated that, on average, 0.5% of decisions⁸ were accompanied by planning agreements over the three years from April 1987 to March 1990. In a later study of five areas, Healey et al. (1993) found that 1.1% of planning permissions involved a planning agreement. Campbell et al (2000) estimated that for the year ending June 1998, 1.5% of the planning permissions had an associated planning agreement. Consideration of the overall picture (see Figure 2.3) reveals a distinct break in trends around 2000-03, when there was a dramatic increase in the use of planning agreements.

It is possible to speculate as to the reasons for this, two of which may relate to the changing policy on using planning agreements to secure affordable housing as well as a more buoyant property market that enabled planning authorities to secure more obligations, including for affordable housing, through agreements in the last decade than in earlier ones (see Chapter 1). This hypothesis was confirmed by those respondents who attended the focus groups held to discuss the preliminary findings of the 2005-06 study. It was also discussed, and broadly confirmed, at the feedback seminars held with LPAs to discuss the preliminary findings of the current study, although some participants thought the lower proportions in the last century might also reflect the poorer quality of LPA records compared with now (see Chapter 7).

Figure 2.3 Percentage of all planning permissions that are accompanied by agreements 1987-2007



Source: Grimley JR Eve (1992), Healey et al. (1993), Campbell et al (2000) and 2003-04, 2005-06 and 2007-08 surveys.

⁷ see, for example, Durman and Rowan-Robinson (1991); MacDonald (1991); Grimley JR Eve (1992); Whatmore and Boucher (1992); Barlow and Chambers (1992); Healey et al. (1995).

⁸ The use of the term 'decisions' in Grimley JR Eve (1992) is ambiguous. If "decisions" which were accompanied by planning agreements" (p.v) is assumed to mean planning permissions, on the grounds that no refusal of planning permission could be linked to an agreement, then Grimley JR Eve's data can be compared to those of other sources. If, however, they refer to all planning decisions, including refusals, then the 0.5% figure is an underestimate of the proportion of planning permissions accompanied by an agreement. This is because around 12% of planning applications are refused.

That planning authorities may be maintaining their bigger efforts on larger developments is partially confirmed by Table 2.3, which shows that the proportion of all (non-householder) planning permissions accompanied by planning agreements increased between 2003-04 and 2007-08 for almost all types of 'major' development. Although the proportion of 'minor' development⁹ with permissions had fallen between 2003-04 and 2005-06 this trend was substantially reversed in 2007-08 with an increase in the proportion of all minor development that had agreements¹⁰.

The proportion of major residential permissions with a planning agreement attached rose from 40% in 2003-04 to 47% in 2005-06 and to 51% in 2007-08. There have been similar increases in the proportions with respect to retail permissions and other major development. Nonetheless only a minority of major development other than residential has agreements, including only a third of retail developments.

By contrast, the proportion of permissions for minor development with planning agreements had fallen for almost all types of development between 2003-04 and 2005-06, so that, for example, only 7% of permissions for minor residential developments had planning agreements. Because minor development dominates the total number of permissions, the overall proportion of permissions with planning agreements had also fallen slightly because of the reduction in the proportion of minor permissions with agreements. By 2007-08 this fall had been significantly reversed with higher proportions of all minor development having agreements. Nonetheless agreements on minor developments are rare, with only residential development having more than one or two agreements in every hundred permissions.

9 Planning authorities at the feedback seminars for the preliminary survey results in 2005-06 confirmed this and stated that targets for processing applications meant there was not enough time to negotiate planning agreements on small applications.

10 Planning authorities at the feedback seminars in 2007-08 confirmed this trend and noted that the great use of standard charging enabled them to enter into agreements on smaller sites without breaching targets for processing planning applications (see Chapter 7 for a further discussion of this issue).

Table 2.3 Proportions of Non-householder Planning Permissions Granted

	2003-04	2005-06	2007-08
Major Developments			
Dwellings	40.00	47.73	50.91
Offices / R&D / light industry	20.40	27.11	19.84
General industry / storage	12.00	10.78	11.21
Retail, distribution etc	21.40	31.97	33.92
All other major development	7.50	16.09	13.58
Minor Developments			
Dwellings	9.20	7.17	9.43
Offices / R&D / light industry	2.60	1.95	3.66
General industry / storage	0.90	0.95	2.33
Retail, distribution etc	1.80	0.84	2.24
All other minor developments	1.80	0.50	1.18
All Developments			
All Dwellings	13.90	13.53	14.44
All Offices / R&D etc	5.80	6.77	7.28
All General industry etc	3.40	3.64	4.80
All Retail, distribution etc	3.70	2.84	3.82
All other development	2.30	1.51	2.16
Percentage of All Permissions with Agreements	6.90	6.36	7.15
Source: survey sample			

The proportions in Table 2.3 confirm that agreements are most common amongst residential developments but that even amongst these only 1 in 7 permissions have planning agreements attached to them. This does not mean however that only a small proportion of residential dwellings are on sites where there is a planning agreement attached to the permission. Most permissions are for small sites but these comprise only a small proportion of the total numbers of new dwellings.

Whether or not planning authorities can secure more planning agreements on residential development is partly dependent on the thresholds for affordable housing negotiations since this appears to drive the need to enter into planning agreements. In the study years of 2003-04 and 2005-06, government policy was that planning authorities should seek affordable housing on all schemes where 25 or more dwellings are to be built (there were lower thresholds in London). Planning authorities could also seek contributions for smaller schemes if they provide for this in their planning policy. This was changed under PPS3 and the threshold was set at 15 dwellings (CLG, 2006b). Approximately half of all new dwellings were on above threshold schemes when the threshold size was set at 25 dwellings (Bibby and Brindley, 2006).

Table 2.4 Planning Agreements by Size Category of Residential Development

	<i>0-15 Units</i>	<i>16-24 Units</i>	<i>25-49 Units</i>	<i>50-99 Units</i>	<i>100- 999 Units</i>	<i>Over 1,000 Units</i>	<i>Total</i>
Number of Planning Agreements in each size category	2303	389	289	179	212	13	3385
Percentage of Planning Agreements in each size category	68.0%	11.5%	8.5%	5.3%	6.3%	0.4%	100.0%
Estimated Percentage of Developments with an Agreement by size category	46%	83%	87%	90%	93%	96%	
Source: survey sample							

Table 2.4 shows the proportion of agreements that are on 'above' and 'below threshold' sites and the proportion of agreements on schemes of varying size that have agreements. It shows that nearly 90% or more of planning permissions for dwellings on sites of 25 dwellings or more have planning agreements. That it is not 100% is possibly due to the fact that a small number of developments involve the sale of local authority land and matters that would otherwise be handled in a planning agreement are handled as part of the conditions attached to the sale of the land. LPAs at the feedback seminars also attributed this to the fact that on occasion S106 agreements are entered into after permissions have been granted. The table also shows that over 8 in 10 of permissions just above the current threshold (16 to 24 dwellings) also had agreements attached in 2007-08. Moreover nearly half of sites given permission for below threshold sites have agreements. Given that just under 1 in 10 of minor residential developments have agreements (Table 2.3 above) this suggests that there is a very rapid fall off in the use of agreements on sites of under 10 dwellings. This shows that there is some capacity to negotiate more planning agreements on very small sites where planning policy can justify this. The more detailed evidence on this issue showed that there was little variation in the pattern between local authority families.

2.3 Regional and other variations in proportions of permissions with planning agreements

Table 2.5 and Figure 2.4 show that permissions, taken as a whole, are more likely to have planning agreements in the Prosperous Britain and Urban London families and that the lowest proportions are found in the Rural Town family. In 2005-06 the lowest proportion was in Rural England but this is no longer the case. This increase in permissions with agreements in rural England is consistent with the increase in the numbers of agreements for minor dwelling permissions and in the percentage increase in the proportion of minor dwellings with agreements.

This pattern also applies to major residential permissions. For major other developments, the table shows that Urban London stands out from other authorities with significantly higher (and high) proportions of permissions

attracting planning agreements. The 'major other' category in Urban London reflects the large number of mixed-use developments with planning agreements attached. For minor developments, a higher (though still absolutely small) proportion of minor dwelling permissions have agreements in the Prosperous Britain and Rural England families than elsewhere. Permissions for small-scale commercial and other developments attract negligible proportions of planning agreements everywhere in England, again apart from Prosperous Britain and Rural England.

Table 2.5 Proportion of Planning Permissions Granted with Planning Agreements by Family

	<i>Major</i>			<i>Minor</i>			<i>All permissions</i>			
	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>All</i>
EUC	46.30%	29.19%	21.29%	1.65%	0.83%	0.20%	15.04%	4.52%	1.42%	5.39%
L	78.80%	20.08%	42.79%	9.52%	0.80%	1.26%	15.02%	3.18%	3.81%	7.70%
PB	56.36%	26.40%	13.17%	11.60%	3.38%	0.63%	15.77%	6.35%	1.67%	8.15%
RE	50.20%	13.98%	8.32%	11.89%	7.23%	2.68%	15.54%	8.27%	3.10%	9.55%
RT	37.31%	17.92%	6.74%	6.41%	0.41%	0.39%	11.58%	3.02%	1.02%	5.34%
UE	47.63%	17.49%	8.72%	4.19%	1.61%	0.32%	11.43%	3.64%	1.09%	5.75%
ALL	50.91%	19.86%	13.58%	9.43%	2.60%	1.18%	14.44%	4.93%	2.16%	7.15%

Note: D = Dwellings; C = Commercial; O = Other
Source: survey sample

Figure 2.4 Proportion of major dwelling and commercial permissions with planning agreements by local authority family

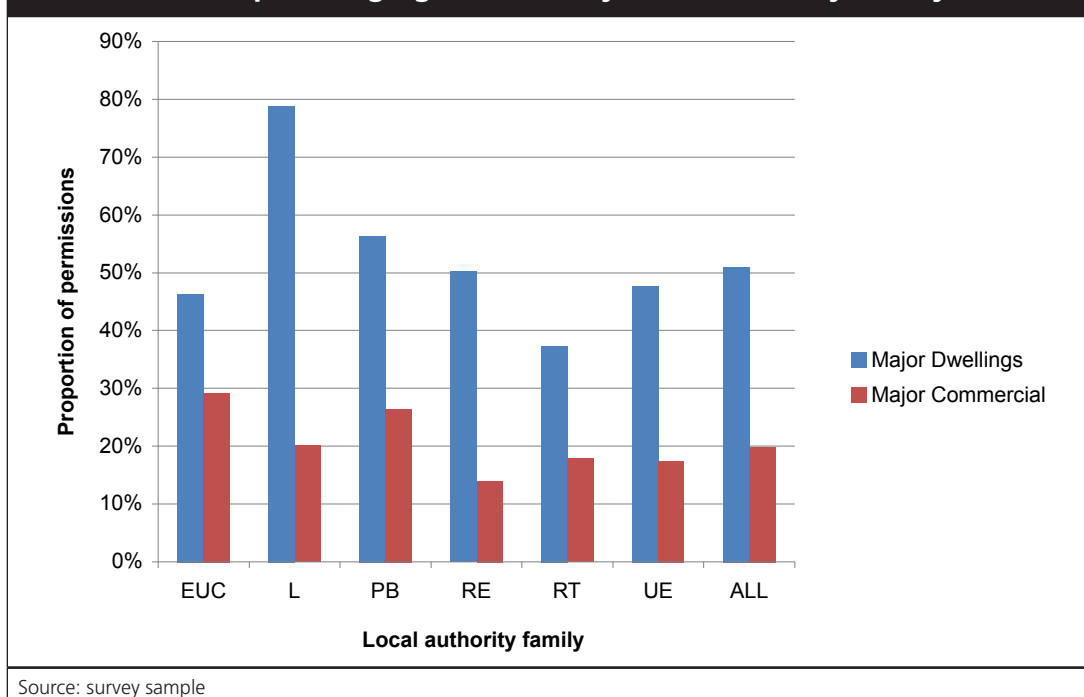
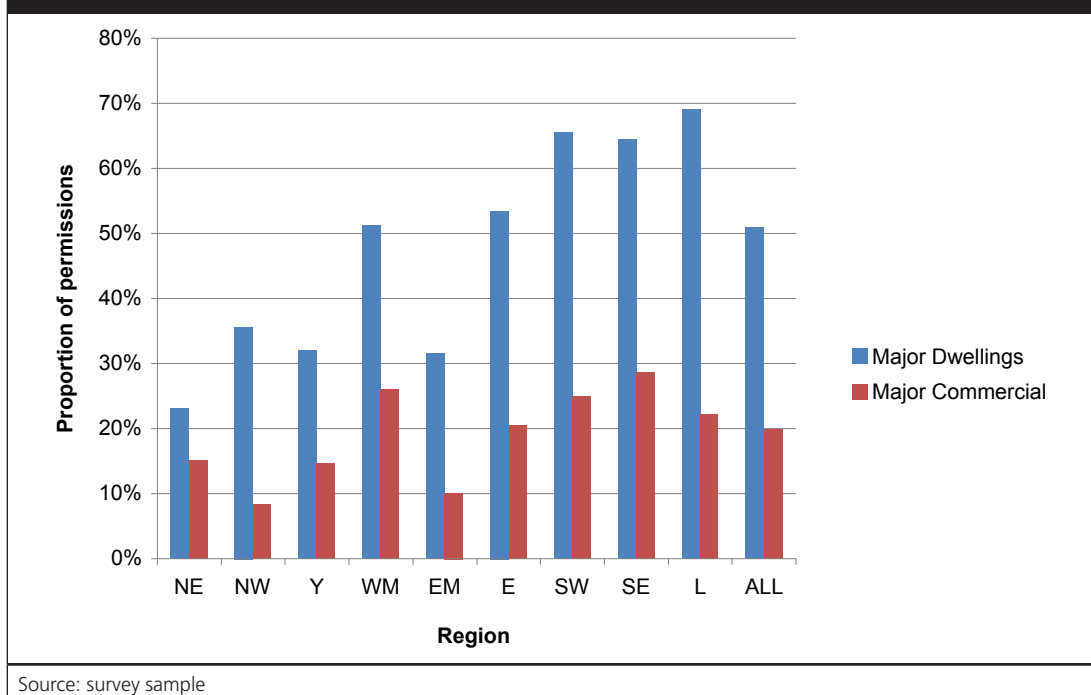


Figure 2.5 Proportion of major dwelling and commercial permissions with planning agreements by region

Another measure of variability is to examine the changing proportion of LPAs where more than 40% of major dwelling permissions have agreements attached to them. This rose from 48% in 2005-06 to 58% in 2007-08. The 'above average' LPAs in 2007-08 were in Urban London (83%), Prosperous Britain (76%) and Established Urban Centres (60%). The below average LPAs were in Rural Towns (52%), Urban England (50%) and Rural England (44%). The best performing regions were in southern England and the West Midlands, all with 60% or more of LPAs achieving this (for example in the South East it was 72% of LPAs, whereas the remaining regions achieved only 33% or less).

2.4 The numbers of planning obligations

Not only did the overall proportion of permissions with planning agreements and the number of planning agreements per authority increase, but there were also significant increases in the average numbers of planning obligations per agreement, increasing from 1.45 per agreement in 2003-04, to 2.44 in 2005-06 and to 2.96 in 2007-08.

Table 2.7 Average Obligations per agreement by local authority family

<i>Region</i>	<i>Average Obligations Per Agreement</i>			<i>Change 2005-06 to 2007-08</i>
	<i>2003-04</i>	<i>2005-06</i>	<i>2007-08</i>	
EUC	1.38	1.99	2.52	0.53
RE	1.00	1.59	3.22	1.63
RT	1.68	2.28	4.51	2.23
PB	1.57	2.80	3.24	0.44
UE	1.96	2.50	2.84	0.34
UL	1.84	2.26	1.62	-0.64
ALL	1.45	2.44	2.96	0.52

Source: survey sample

As Table 2.7 shows, the numbers of planning obligations per agreement have risen almost everywhere over the period of the three study years, but between 2005-06 and 2007-08 rose especially in the Rural England and Rural Town families but actually fell in Urban London (where it was already relatively high in 2005-06). The numbers rose in all regions between 2003-04 and 2005-06, but especially in the South East and South West and particularly in Yorkshire and Humberside where two metropolitan districts performed very well. Between 2005-06 and 2007-08 the numbers of obligations per agreement rose significantly in the two northern and the West Midlands regions whilst in the southern and East Midlands regions the numbers rose only slightly or fell.

Table 2.8 Average Obligations per agreement by region

<i>Region</i>	<i>Average Obligations Per Agreement</i>			<i>Change 2005-06 to 2007-08</i>
	<i>2003-04</i>	<i>2005-06</i>	<i>2007-08</i>	
North East	1.69	2.68	4.21	1.53
North West	1.50	2.09	9.10	7.01
Yorkshire and Humber	0.52	1.57	2.01	0.44
West Midlands	1.55	2.51	5.36	2.85
East Midlands	2.13	2.25	1.48	-0.77
East of England	2.65	2.94	3.22	0.28
South West	1.16	2.75	2.55	-0.2
South East	1.39	2.83	3.30	0.47
London	1.81	2.25	1.68	-0.57
All	1.45	2.44	2.96	0.52

Source: survey sample

2.5 Direct and in-kind planning obligations

As well as securing more planning obligations in each planning agreement, planning authorities have also achieved far more direct payments than in-kind obligations (see Chapter 1 and Appendix 1 for this distinction). Table 2.19 shows that the number of direct payment obligations per authority doubled over the period 2003-04 to 2005-06 with a slight rise again by 2007-08.

Table 2.9 Number Direct Payment Obligations Agreed			
	2003-04	2005-06	2007-08
Number of Responding Authorities	102	126	151
Total Number Direct Payment Obligations	2545	5785	8016
Average per Authority	25	46	53
Source: survey sample			

What is also particularly interesting is that there has also been a changing balance in the type of planning obligations, as shown in Tables 2.10 and 2.11. Direct payment obligations increased much more per authority than in-kind obligations between 2003-04 and 2005-06 (85% increase in direct payments compared with a 17% increase in in-kind obligations) but the biggest increases in direct payments have been in transport, community works, education and a wide range of obligations in the 'other' category (see Appendix 1 for the typology). By 2007-08 the numbers of direct payment obligations per authority rose only slightly with the increase being largely in the 'other' category (which includes contributions by developers to local authorities' planning agreement administration costs).

Table 2.10 Average number of Direct Payment Obligations per LPA			
	2003-04	2005-06	2007-08
Affordable Housing	0.7	0.9	0.9
Open Space	11.1	12.5	14.1
Transport and Travel	7.3	12	12.2
Community and Leisure	3	6.1	6
Education	2.5	5.2	4.6
Other	0.4	9.4	15.3
ALL	25	46	53.1
Source: survey sample			

As Table 2.11 shows there was no major increase in in-kind obligations per authority between 2003-04 and 2005-06 as there had been in direct payment obligations but these did increase from the latter year to 2007-08, across almost all categories. It will be noted that the balance between direct payment and in-kind obligations varies significantly by obligation type. Only 10% of affordable

housing obligations are delivered by direct payments. In contrast all education obligations are delivered by direct payments, as are 70% or more of all other obligations types.

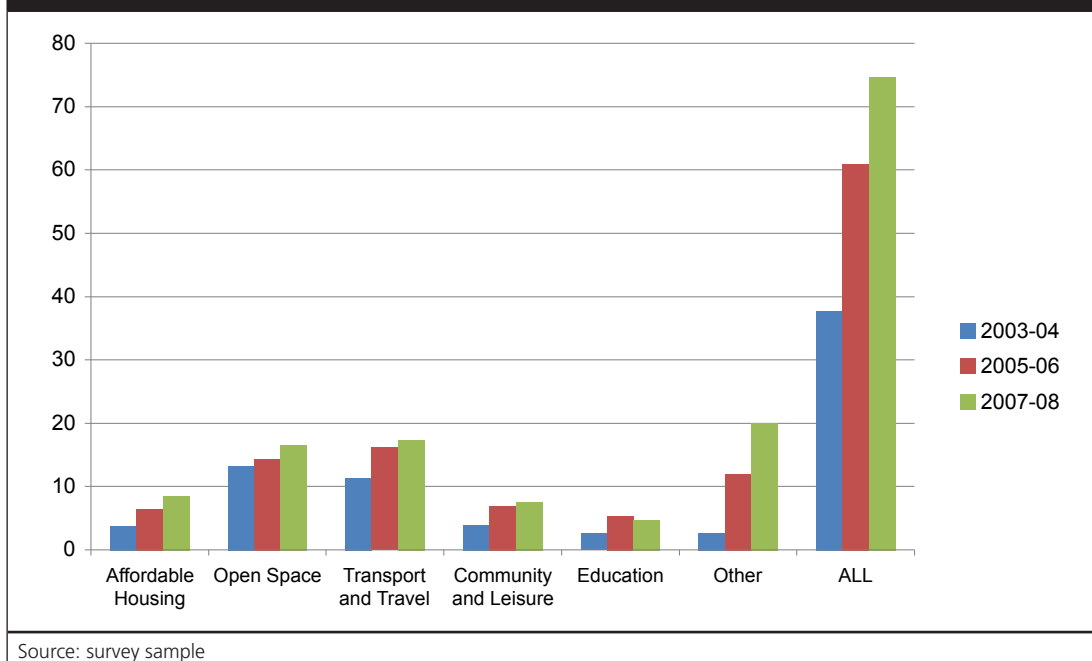
Table 2.11 Average number of in-kind obligations per LPA

	2003-04	2005-06	2007-08
Affordable Housing	3.1	5.6	7.6
Open Space	2.2	1.8	2.5
Transport and Travel	4.1	4.2	5.1
Community and Leisure	0.9	0.8	1.4
Education	0.1	0.1	0
Other	2.3	2.6	4.9
ALL	12.8	14.98	21.6

Source: survey sample

Figure 2.6 confirms the pattern of increase in planning obligations secured per authority for all categories of obligations. It also confirms that planning obligations for open space and transport are the commonest of all types of developer contribution. Obligations for affordable housing are amongst the smaller numbers per authority although their value dominates that of all others (see Chapter 3 below).

Figure 2.6 The numbers of obligations by obligation type in 2003-04, 2005-06 and 2007-08



Chapter 3

The Value of Planning Obligations

Key findings

This chapter examines the value of the planning obligations agreed between local planning authorities (LPAs) and developers in 2007-08 and also explores the value of the obligations delivered that year. The key findings are that:

- nearly £5bn worth of obligations was secured by planning authorities in England in 2007-08;
- the total value increased by just under a quarter (24%) over the two years since 2005-06;
- about half of the total (53%) was for affordable housing and there was an increase of 37% in the value of new affordable homes agreed between 2005-06 and 2007-08;
- over two thirds of the total value of obligations was secured in London, the East and the South East, with London clearly dominating.
- planning authorities in Rural England, Prosperous Britain, and Urban London had the highest average value of direct payment obligations.

In this chapter the total value of obligations agreed in England is based on estimates for each LPA, grossed up to provide an estimate for England as a whole. The data on obligations per LPA are based on the sample LPAs alone.

3.1 The Total Value of Planning Obligations Agreed in England

Table 3.1 and Figure 3.1 combine the total value of non-affordable housing planning obligations with that of the transferred land and the affordable housing contributions to produce an estimate for the total value of planning obligations agreed in 2007-08. Table 3.2 shows the value by region. The total value is estimated to be just under £5bn. Table 3.3 compares the estimate with that of both 2003-04 and 2005-06 and reveals an overall increase of 108% since 2003-04 and of 33% since 2005-06 (this allows for the fact that the value of transferred non housing land did not form part of the 2003-04 survey and so is excluded from the comparisons between the years)¹¹.

¹¹ The value of land transferred for affordable housing was estimated for all three surveys, but the value of land transferred by developers to provide, for example, a site for a school, was not estimated in the 2003-04 survey. An estimate of the value of such transfers in 2005-06 and 2007-08 was made and is included in the results shown in Table 3.1. Much of the value was agreed by LPAs in Greater London.

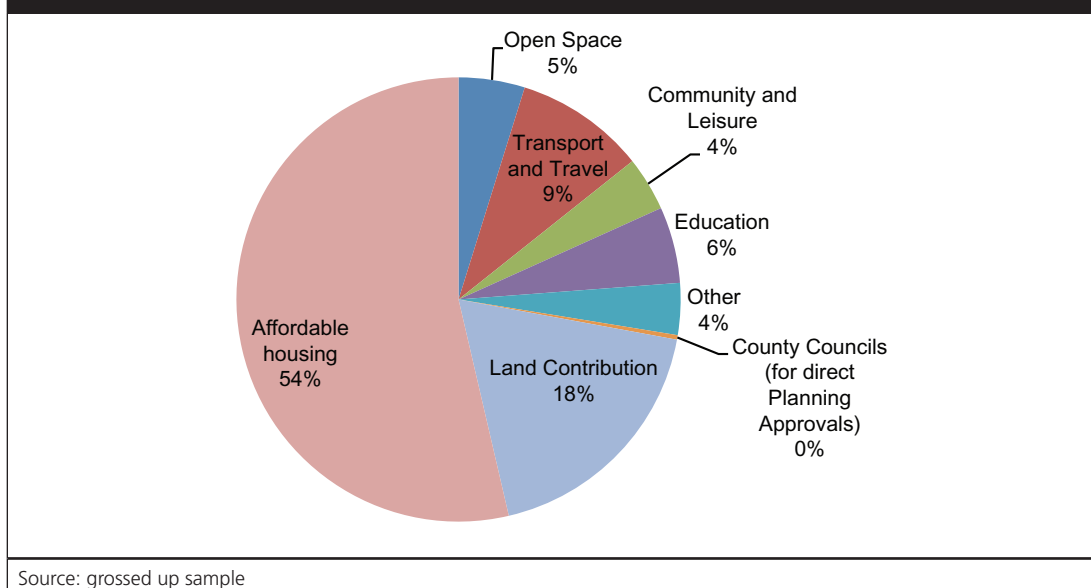
Table 3.1 The Total Value of Planning Obligations in 2007-08¹²

<i>Obligation type</i>	<i>2007-08</i>			<i>Difference between 2005-06 and 2007-08</i>	
	<i>2005-06 value</i>	<i>Value</i>	<i>% of Total</i>	<i>Value</i>	<i>% change</i>
Open Space	£215,684,473	£234,863,533	5	£19,179,060	9
Transport and Travel	£361,956,329	£462,289,953	9	£100,333,624	28
Community and Leisure	£75,439,392	£192,616,712	4	£117,177,320	155
Education	£154,053,871	£270,684,150	6	£116,630,279	76
Other	£149,893,307	£183,563,161	4	£33,669,854	22
County Councils (for direct Planning Approvals)	£10,000,000	£16,000,000	0	£6,000,000	60
Land Contribution	£960,000,000	£900,000,000	18	£-60,000	-6
Affordable Housing	£2,000,000,000	£2,614,403,249	54	£614,403,249	31
Estimated Total Value	£3,927,027,372	£4,874,420,758	100	£947,393,386	24
Source: grossed up sample					

As Figure 3.1 confirms, the value of affordable housing secured dominates, just as it did in 2005-06 (and in 2003-04 as well). It accounts for just over half the total. Land contributions for other types of development (for example land on which the local authority could build a school) account for a fifth. Despite their large absolute amounts (for example £462m provided for transport and travel) the proportions accounted for by other categories are all small. The biggest proportionate increases were in the value of agreements for community and leisure and for education. The value of contributions secured by county councils is small and covers the value of obligations agreed for planning permissions for minerals and waste developments which are the responsibility of county councils in two tier local authorities.

¹² not estimated in the 2003-04 survey. An estimate of the value of such transfers in 2005-06 and 2007-08 was made and is included in the results shown in Table 3.1. Much of the value was agreed by LPAs in Greater London.

Figure 3.1 The Total Value of Agreed Planning Obligations in 2007-08 by Type of Obligation



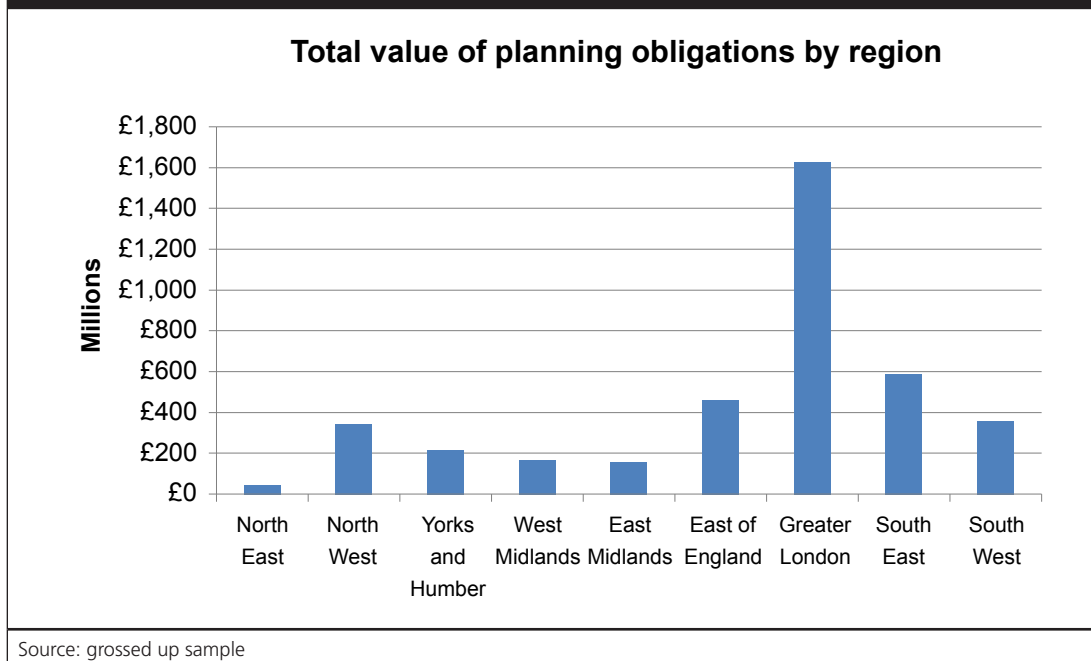
Of the total value, 21% constitute direct payments (excluding direct payments for affordable housing), 7% constitute in-kind obligations (apart from affordable housing), 18% covers land contributions (apart from affordable housing) and the balance, 54%, is the value of all types of obligation related to affordable housing.

As Table 3.2 shows - and Figure 3.2 vividly portrays - London dominates the regional pattern. It accounts for 41% of the total value, over half of the affordable housing (51%) although only a quarter (23%) of other obligations. The South East accounts for 15% and the East for 12% (a proportion significantly accounted for by the value of the Milton Keynes 'tariff'). Hence the major areas of development pressure secured over two thirds (68%) of the value of all obligations in England, a total of £2,672m worth of affordable housing and other infrastructure. By contrast the three northern regions secured 10%, the two Midlands regions secured 8% whilst the South West secured 9% of the total value. It should be noted that it was two of the regions in northern England (the North West and Yorkshire and the Humber) and the West Midlands region where the growth in value of obligations was proportionately greatest.

Table 3.2 Regional Estimate of the total value of Planning Obligations agreed in 2007-08 (excluding Land Contributions and County Councils)

	<i>Affordable Housing</i>	<i>All Other Obligations</i>	<i>Total 2007-08</i>	
North East	£26,580,369	£15,415,144	£41,995,513	
North West	£129,887,191	£210,425,621	£340,312,812	
Yorks and Humber	£116,347,225	£99,731,330	£216,078,555	
West Midlands	£120,805,060	£45,203,247	£166,008,306	
East Midlands	£99,009,392	£58,589,861	£157,599,253	
East of England	£297,515,991	£161,766,324	£459,282,316	
Greater London	£1,324,270,333	£302,605,210	£1,626,875,543	
South East	£312,184,049	£274,729,043	£586,913,092	
South West	£187,803,639	£170,063,685	£357,867,325	
Total	£2,614,403,249	£1,338,529,464	£3,952,932,714	
	<i>Total 2005-06</i>	<i>Total 2007-08</i>	<i>Difference</i>	<i>% change</i>
North East	£38,083,831	£41,995,513	£3,911,682	10
North West	£77,124,743	£340,312,812	£263,188,069	341
Yorks and Humber	£137,096,996	£216,078,555	£78,981,559	58
West Midlands	£83,987,296	£166,008,306	£82,021,010	98
East Midlands	£173,263,914	£157,599,253	-15,664,661	-9
East of England	£422,023,911	£459,282,316	£37,258,405	9
Greater London	£1,227,891,171	£1,626,875,543	£398,984,372	32
South East	£443,655,797	£586,913,092	£143,257,295	32
South West	£240,265,716	£357,867,325	£117,601,609	49
Total	£2,843,393,375	£3,952,932,714	£1,109,539,339	39
Source: grossed up sample				

Figure 3.2 Total value of planning obligations by region in 2007-08



3.2 Changes in total value since 2003-04

Table 3.3 Total value of obligations by survey years (excluding land contributions and county councils)

Type of obligation	2003-04	2005-06	2007-08	Change 2003-04 to 2007-08	Change 2005-06 to 2007-08
Total Non Affordable Housing Obligations	£700 m	£970 m	£1,350 m	93%	39%
Affordable Housing (rounded)	£1,200 m	£2,000 m	£2,600 m	117%	30%
Total	£1,900 m	£2,970 m	£3,950 m	108%	33%

Source: grossed up sample

As far as the increased value between 2005-06 and 2007-08 is concerned it is the value of affordable housing contributions that has risen the least (30%) compared with the value of all other contributions that increased by 39%, this difference being a reflection of the less significant rise in the value of housing land between the two years compared with the experience in the previous period.

3.3 Direct Payment Planning Obligations

Table 3.4 shows the number and value of each category of direct payment planning obligations agreed in 2007-08. Payments agreed in 2007-08 were an average of £61,000 per obligation (Table 3.5) and £3.554m per authority (Table 3.6). Tables 3.5 and 3.6 also compare the results with the 2003-04 and 2005-06

surveys. They show that although there was only a slight increase in the average value of each of these obligations between 2005-06 and 2007-08 (see also Figure 3.3) because there was a big increase in the numbers of direct payment obligations (as discussed above in Chapter 2) these changes resulted in a 33% increase in the total value of direct payment planning obligations agreed per authority.

Table 3.4 The Number and Value of Direct Payment Obligations

	<i>Direct Payment Obligations</i>			<i>Per Authority</i>	
	No. of Obligations	Total value of direct payments	Average Value per Obligation 2007-08	Average number of Obligations	Average Value of Direct Payment Obligations
1. Affordable Housing					
(a) On-Site provision	–	–	–	–	–
(b) Off-site provision	–	–	–	–	–
(c) On-site provision of land only	–	–	–	–	–
(d) Off-site provision of free or discounted land only.	–	–	–	–	–
(e) Commuted sum: payment of a sum in lieu of actual provision of units.	135	£79,913,124	£591,949	1	£579,081
Total	135	£79,913,124	£591,949	1	£579,081

Table 3.4 (cont) The Number and Value of Direct Payment Obligations

	<i>Direct Payment Obligations</i>			<i>Per Authority</i>	
	No. of Obligations	Total value of direct payments	Average Value per Obligation 2007-08	Average number of Obligations	Average Value of Direct Payment Obligations
2. Open Space and the Environment					
(a) Provision of open space either within a development or via a direct payment to the LPA.	1098	£32,451,056	£29,555	8	£235,153
(b) General environmental improvements including landscaping.	186	£16,444,946	£88,414	1.3	£119,166
(c) Ecology and nature conservation, countryside management and community forests.	197	£4,802,889	£24,380	1.4	£34,804
(d) Allotments.	4	£80,976	£20,244	0	£587
(e) Sport facilities: sports fields, club houses etc.	339	£7,576,068	£22,348	2.5	£54,899
(f) Pollution and Waste Management.	45	£252,951	£5,621	0.3	£1,833
(g) Archaeology.	6	£201,000	£33,500	0	£1,457
(h) Maintenance of open space (total contribution e.g. capitalised annual contribution figure).	257	£9,377,806	£36,490	1.9	£67,955
(i) Other					
Total	2,132	£71,187,693	£33,390	15.4	£515,853

Table 3.4 (cont) The Number and Value of Direct Payment Obligations

	<i>Direct Payment Obligations</i>		<i>Per Authority</i>		
	No. of Obligations	Total value of direct payments	Average Value per Obligation 2007-08	Average number of Obligations	Average Value of Direct Payment Obligations
3. Transport and Travel					
(a) Traffic/highway works, temporary or permanent.	627	£68,119,469	£108,643	4.5	£493,619
(b) Traffic management/calming.	130	£6,307,299	£48,518	0.9	£45,705
(c) Parking: management or parking restrictions, car restrictions and car free areas provision of parking areas.	257	£2,655,692	£10,333	1.9	£19,244
(d) Green transport/travel plans.	105	£2,417,606	£23,025	0.8	£17,519
(e) Public and local transport improvements.	398	£44,140,419	£110,906	2.9	£319,858
(f) Pedestrian crossings, pedestrianisation, street lighting.	114	£4,327,513	£37,961	0.8	£31,359
(g) Provision or improvement of footpaths or pathways etc.	103	£6,749,475	£65,529	0.7	£48,909
(h) Cycle routes, management, safety etc.	101	£3,203,283	£31,716	0.7	£23,212
Total	1,835	£137,920,756	£75,161	13.3	£999,426

Table 3.4 (cont) The Number and Value of Direct Payment Obligations

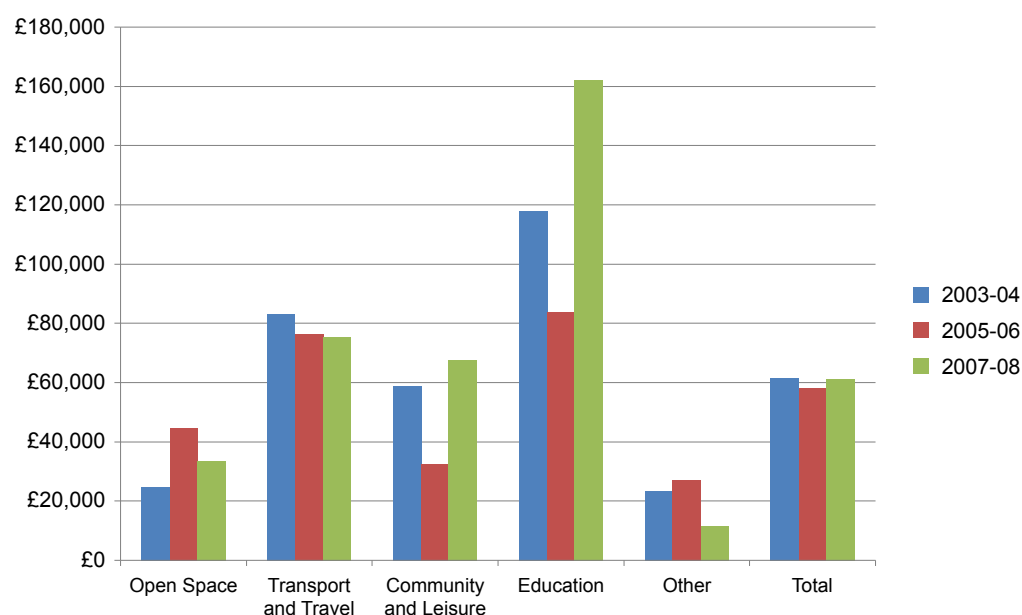
	<i>Direct Payment Obligations</i>			<i>Per Authority</i>	
	No. of Obligations	Total value of direct payments	Average Value per Obligation 2007-08	Average number of Obligations	Average Value of Direct Payment Obligations
4. Community Works and Leisure					
(a) Community centres: construction, funding, improvement etc.	76	£6,271,696	£82,522	0.6	£45,447
(b) Community/cultural/public art.	124	£9,335,708	£75,288	0.9	£67,650
(c) Town centre improvement/management.	37	£2,499,002	£67,541	0.3	£18,109
(d) Library, museum and theatre works/funding.	290	£7,738,838	£26,686	2.1	£56,079
(e) Childcare/crèche facilities, provision and funding.	8	£107,688	£13,461	0.1	£780
(f) Public toilets.	1	£5,000	£5,000	0	£36
(g) General Community Facilities.	90	£9,686,237	£107,625	0.7	£70,190
(h) Health services: community healthcare, construction of surgeries etc, healthcare funding.	102	£13,126,043	£128,687	0.7	£95,116
(i) CCTV and security measures.	31	£1,445,977	£46,644	0.2	£10,478
(j) Waste and recycling facilities.	50	£193,876	£3,878	0.4	£1,405
(k) Religious worship facilities.	5	£713,367	£142,673	0	£5,169
(l) Employment and training.	85	£10,118,386	£119,040	0.6	£73,322
(m) Local regeneration initiatives.	9	£183,793	£20,421	0.1	£1,332
Total	908	£61,425,611	£67,649	6.6	£445,113

Table 3.4 (cont) The Number and Value of Direct Payment Obligations

	<i>Direct Payment Obligations</i>		<i>Per Authority</i>		
	No. of Obligations	Total value of direct payments	Average Value per Obligation 2007-08	Average number of Obligations	Average Value of Direct Payment Obligations
5. Education					
(a) Physical development or funding for education at all levels; nursery, primary, secondary schools, higher education facilities etc.	702	£113,889,702	£162,236	5.1	£825,288
(b) Other					
Sub Total	702	£113,889,702	£162,236	5.1	£825,288
6. Other Obligations (please describe obligation)					
a) General development restrictions.	0	£0	£0	0	£0
b) Administration and/or legal fees for S106 negotiations.	976	£1,604,251	£1,644	7.1	£11,625
c) S106 monitoring fees.	1203	£1,689,419	£1,404	8.7	£12,242
d) Others	125	£22,885,589	£183,085	0.9	£165,838
Sub Total	2304	£26,179,260	£11,363	16.7	£189,705
TOTAL	8,016	490,516,145	£61,192	53.1	£3,554,465
Source: survey sample					

Table 3.5 Average Value of Each Direct Payment Obligation

<i>Type of obligation</i>	<i>2003-04</i>	<i>2005-06</i>	<i>2007-08</i>	<i>Difference 2007-08 and 2005-06</i>
Affordable Housing	£249,314	£370,232	£591,949	£221,717
Open Space	£24,731	£44,647	£33,390	-£11,257
Transport and Travel	£83,125	£76,223	£75,161	-£1,062
Community and Leisure	£58,811	£32,428	£67,649	£35,221
Education	£117,732	£83,687	£162,236	£78,549
Other	£23,159	£27,025	£11,363	-£15,662
Total	£61,534	£58,180	£61,192	£3,012
Source: survey sample				

Figure 3.3 Average Value per Direct Payment Planning Obligation in 2003-04, 2005-06 and 2007-08

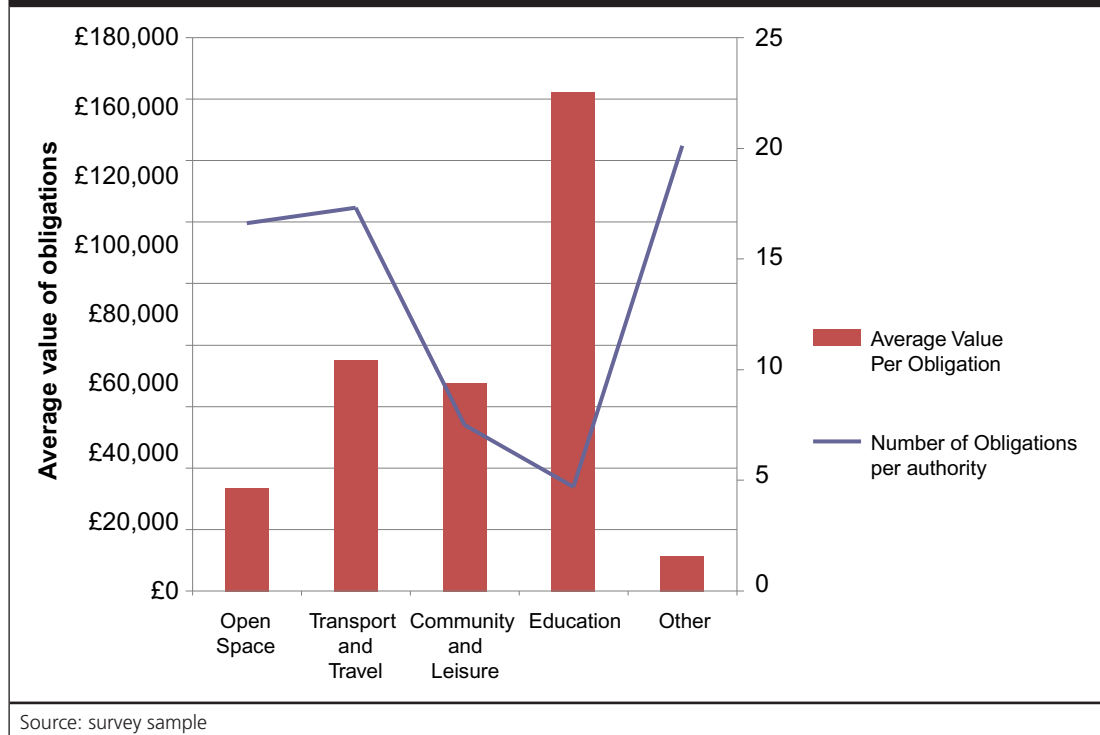
Source: survey sample

The average value of each type of direct payment obligation varies considerably. There were also changes over the two survey years (Figure 3.3). Between 2005-06 and 2007-08 there were increases in Affordable Housing, Community and Leisure and Education. 'Other obligations' include legal and administrative fees (the vast majority) and fire and rescue. Figure 3.4 shows the average value of each planning obligation per authority and the average number each authority has of each type of direct payment obligation. Because the numbers of obligations rose (as discussed in detail in Chapter 2 above) the average value per planning authority of almost all types of direct payment obligations rose between 2005-06 and 2007-08 (Table 3.6)

Table 3.6 Average Total Value of Direct Payment Planning Obligations per Authority in 2003-04, 2005-06 and 2007-08

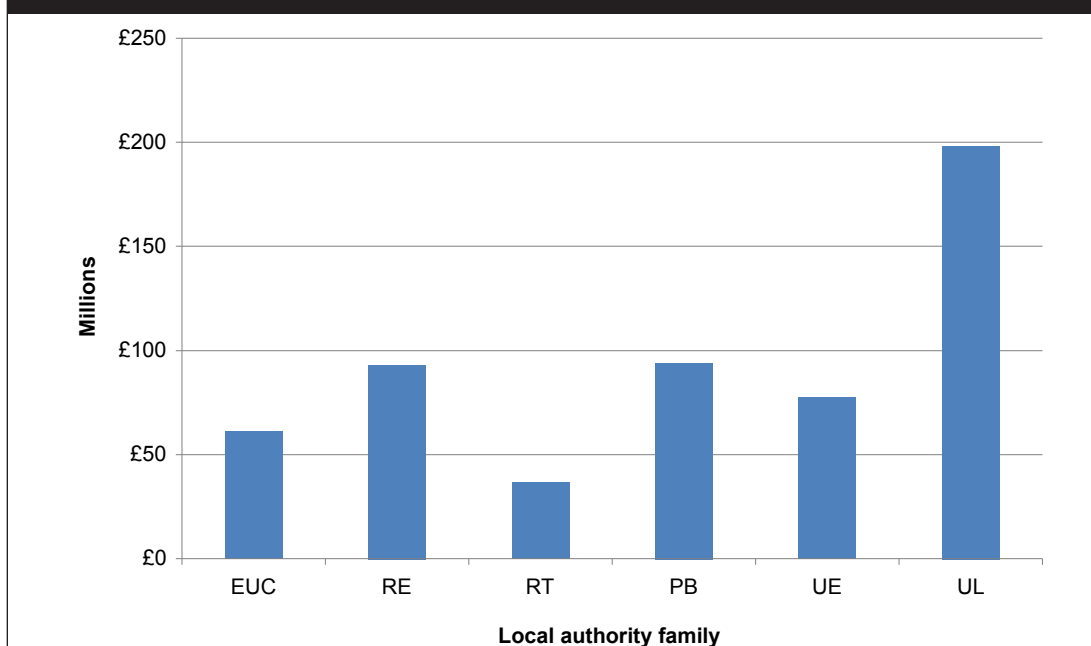
Type of obligation	2003-04	2005-06	2007-08	Difference 2007-08 and 2005-06
Affordable Housing	£178,430	£326,156	£579,081	£252,925
Open Space	£273,499	£559,511	£515,853	£-43,658
Transport and Travel	£607,139	£898,345	£999,426	£101,081
Community and Leisure	£175,856	£197,141	£445,113	£247,972
Education	£290,867	£435,038	£825,288	£390,250
Other	£57,898	£255,024	£189,705	£-65,319
Total	£1,542,435	£2,671,215	£3,554,465	£883,250

Source: survey sample

Figure 3.4 Number and value of planning obligations 2007-08

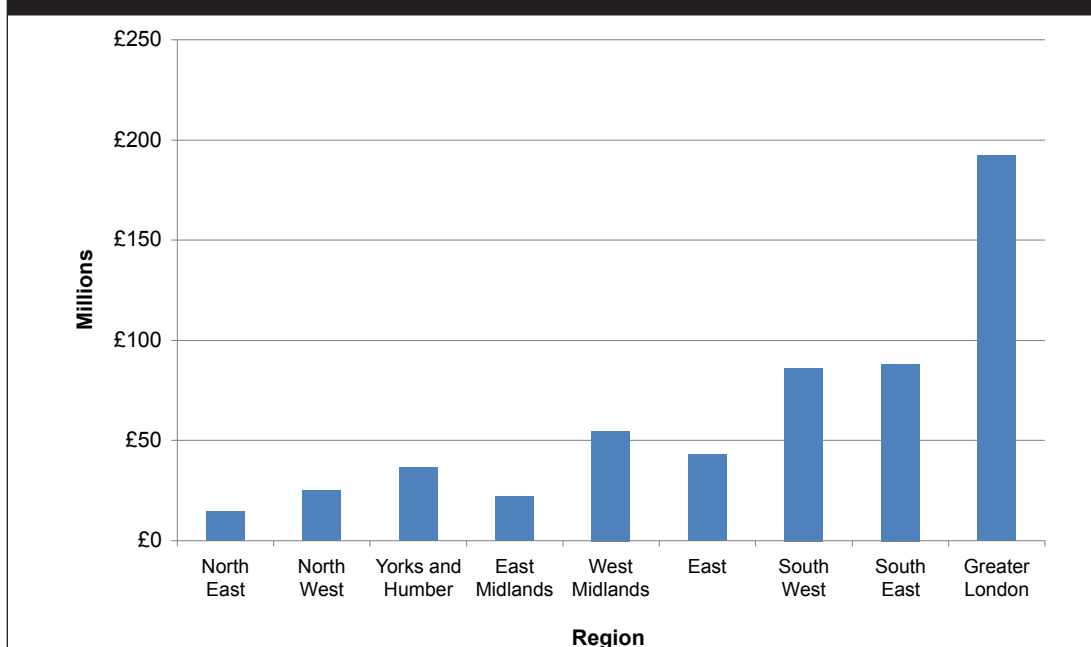
There are significant variations in the value of direct payment obligations between planning authorities. The detail is summarised in Figures 3.5 and 3.6. Authorities in Rural England, Prosperous Britain and Urban London families have the highest average total of direct payments, as do planning authorities in the South West, South East and Greater London regions.

Figure 3.5 Total value of direct payment planning obligations by local authority family in 2007-08



Source: survey sample

Figure 3.6 Total value of direct payment planning obligations by region in 2007-08



Source: survey sample

3.4 In-kind Planning Obligations

As Chapter 2 discussed there has been an increase in both the number of obligations as well as agreements and a change in the proportion of direct payment and in-kind obligations. Whereas the proportion of in-kind fell between 2003-04 and 2005-06, it rose between the latter year and 2007-08 so that there has been an increase in the proportion of in-kind obligations, compared with direct payment obligations (Table 3.7).

Table 3.7 Comparison by Type of Obligation and Year

	Year			Difference 2007-08 and 2005-06	
	2003-04	2005-06	2007-08	Value	%
Number of Direct Payments	2,545	5,785	8,016	2,231	38.6
Number in-kind	1,395	1,887	3,260	1,373	72.8
Total Obligations	3,940	7,672	11,276	3,604	47.0
Proportion in-kind	35%	25%	41%	16 percentage points	64.0

Note: 2007-08 includes an increasing number of development restrictions which have zero value
Source: survey sample

Despite this change in proportion the number of direct payment obligations has risen more (214%) than in-kind obligations (133%) over the three survey years. This is consistent with greater use of standard charging and the further development of the policy framework for planning obligations set out for example in Circular 5/05 (see Chapter 1). A large proportion of in-kind planning obligations are for affordable housing and transport and travel (Table 3.8).

Table 3.8 Number of In-Kind Obligations

<i>Obligation Types</i>	<i>Number of In-Kind Obligations</i>	<i>Estimate of the Value of In-Kind Obligations</i>
1. Affordable Housing		
(a) On-site provision of various affordable tenures.	1082	See Affordable Housing (section 3.5)
(b) Off-site provision: development and transfer of units on another site owned by the developer/landowner.	8	
(c) On-site provision of land only: land transferred to a RSL or LPA for free or at a rate below the market value.	30	
(d) Off-site provision of free or discounted land only.	0	
(e) Commuted sum: payment of a sum in lieu of actual provision of units.		
(f) Rural Exception Policy Agreements.	18	
(g) Other affordable housing contributions.	8	
Sub Total	1,146	

Table 3.8 (cont) Number of In-Kind Obligations

<i>Obligation Types</i>	<i>Number of In-Kind Obligations</i>	<i>Estimate of the Value of In-Kind Obligations</i>
2. Open Space and the Environment		
(a) Provision of open space either within a development or via a direct payment to the LPA.	163	£5,683,593
(b) General environmental improvements including landscaping.	88	£11,364,386
(c) Ecology and nature conservation, countryside management and community forests.	37	£1,955,008
(d) Allotments.	2	£1,872
(e) Sport facilities: sports fields, club houses etc.	31	£1,216,157
(f) Pollution and Waste Management.	28	£372,836
(g) Archaeology.	3	£201,000
(h) Maintenance of open space (total contribution e.g. capitalised annual contribution figure).	25	£864,612
(i) Other		
Sub Total	377	£21,659,464
3. Transport and Travel		
(a) Traffic/highway works, temporary or permanent.	178	£16,164,205
(b) Traffic management/calming.	27	£2,104,187
(c) Parking: management or parking restrictions, car restrictions and car free areas provision of parking areas.	202	£11,351,842
(d) Green transport/travel plans.	166	£4,932,229
(e) Public and local transport improvements.	46	£4,319,491
(f) Pedestrian crossings, pedestrianisation, street lighting.	23	£921,258
(g) Provision or improvement of footpaths or pathways etc.	91	£4,648,077
(h) Cycle routes, management, safety etc.	44	£1,482,215
(i) Other		
Sub Total	777	£45,923,504

Table 3.8 (cont) Number of In-Kind Obligations

<i>Obligation Types</i>	<i>Number of In-Kind Obligations</i>	<i>Estimate of the Value of In-Kind Obligations</i>
4. Community Works and Leisure		
(a) Community centres: construction, funding, improvement etc.	21	£1,676,126
(b) Community/cultural/public art.	55	£2,532,449
(c) Town centre improvement/management.	3	£228,874
(d) Library, museum and theatre works/funding.	3	£54,512
(e) Childcare/crèche facilities, provision and funding.	6	£113,229
(f) Public toilets.	3	£15,000
(g) General Community Facilities.	10	£585,501
(h) Health services: community healthcare, construction of surgeries etc, healthcare funding.	15	£1,574,808
(i) CCTV and security measures.	10	£622,946
(j) Waste and recycling facilities.	16	£163,000
(k) Religious worship facilities.	4	£536,857
(l) Employment and training.	68	£5,949,816
(m) Local regeneration initiatives.	4	£52,214
(n) Other		
Sub Total	218	£14,105,331
5. Education		
a) Physical development or funding for education at all levels; nursery, primary, secondary schools, higher education facilities etc.	7	£816,786
(b) Other		
Sub Total	7	£816,786
6. Other Obligations		
Sub Total	735	£62,024,495
TOTAL – all obligation types		
TOTAL	3,260	£144,529,580
Source: survey sample		

The value of in-kind planning obligations (other than for affordable housing – see below) was determined by: (i) taking the average value of direct payment obligations of that type, by family or region; and (ii) multiplying that figure by the number of in-kind obligations by type and by family or region.

The estimated total value of in-kind obligations for responding authorities was £144.5m (Table 3.9).

Table 3.9 The Value of In-Kind Obligations by Local Authority Family 2007-08

	<i>Open Space</i>	<i>Transport and Travel</i>	<i>Community and Leisure</i>	<i>Education</i>	<i>Other</i>	<i>All Obligations (Excl AH)</i>
EUC	£263,544	£1,038,516	£1,992,265	£119,618	£103,210	£3,517,153
L	£950,851	£9,119,074	£2,626,237	£0	£54,615,000	£67,311,161
PB	£9,857,748	£11,085,349	£3,591,815	£452,351	£3,473,097	£28,460,360
RE	£4,269,227	£6,554,685	£4,120,394	£41,820	£1,134,262	£16,120,387
RT	£4,615,000	£13,902,295	£1,422,100	£0	£2,496,144	£22,435,539
UE	£1,703,094	£4,223,585	£352,520	£202,997	£202,783	£6,684,979
Total	£21,659,464	£45,923,504	£14,105,331	£816,786	£62,024,495	£144,529,580

Source: survey sample

3.5 Affordable Housing Planning Obligations

To ensure that the estimate of the value of affordable housing planning obligations in 2007-08 is directly comparable to that for 2003-04 and 2005-06, the same methodology was applied using assumptions about construction costs, land supply and grant levels including data available in the HSSA statistics. The data for land prices was taken from the Valuation Office Agency's figures on recorded transactions.

Table 3.10 Affordable Units Granted Permission by Region

<i>Region</i>	<i>2003-04</i>	<i>2005-06</i>	<i>2007-08</i>	<i>Change 2005-06 and 2007-08</i>
North East	388	791	992	25%
North West	1,242	1,817	2,699	49%
Yorks & the Humber	1,427	1,914	1,980	3%
East Midlands	1,653	2,888	3,956	37%
West Midlands	3,242	2,933	3,264	11%
East of England	5,008	5,696	5,362	-6%
London	9,374	14,061	14,376	2%
South East	6,223	7,951	9,977	25%
South West	3,078	5,326	5,539	4%
All	31,635	43,377	48,145	11%

Source: HSSA.

Table 3.10 shows the change in the number of affordable units secured through S106 planning obligations. There was an increase of 11% in England between 2005-06 and 2007-08, with the biggest proportionate increases in the North East, North West, East Midlands and South East (see also Figure 3.7). As Figure 3.7 illustrates the largest proportion of units was in London and the

two southern regions of South East and South West, which secured nearly two thirds, 62%, of all units agreed in England, a similar proportion (61%) to that secured in 2005-06.

Figure 3.7 The Number of Affordable Units Agreed

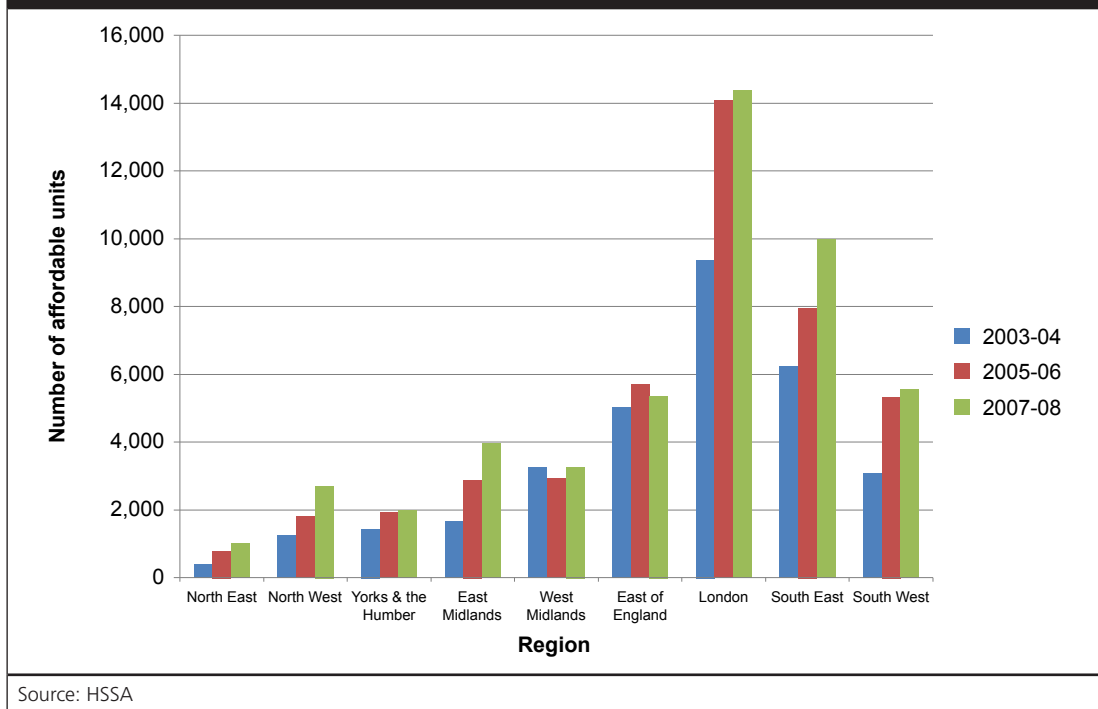


Table 3.11 relates the number of units granted permission with land values and planning agreements.

Table 3.11 Affordable Housing Agreements

Region	Affordable units granted permission	Affordable Units Completed	Land Value £ (000's)	Estimated Number of Dwelling Agreements	Permissioned Units per agreement
North East	992	450	2,180	30	33.1
North West	2,699	998	2,289	122	22.1
Yorks & Humber	1,980	1,009	2,580	172	11.5
East Midlands	3,956	2,605	1,890	82	48.2
West Midlands	3,264	1,950	2,407	231	14.1
East of England	5,362	4,236	3,785	605	8.9
London	14,376	6,774	10,890	505	28.5
South East	9,977	5,884	4,110	743	13.4
South West	5,539	3,204	3,060	470	11.8
Correlation: units granted permission × land value:			0.90		
Correlation: Units granted permission × no. of agreements:			0.74		
Source: survey sample and HSSA.					

There is a very strong statistical correlation between the number of units granted permission and average land value for a region. This partly reflects need but is also related to the ability of the land value to sustain affordable housing contributions. There was a weaker association between the number of planning agreements and the number of units granted. In London there were 28.5 units secured, on average, in 2007-08 within each agreement. This number falls to 8.9 in the East of England. For England as a whole it is 11.8 units per agreement, an increase on the figures of 6.7 units per agreement secured in 2005-06, probably an outcome of the greater focus by LPAs on securing agreements on the largest sites (see Chapter 2 above).

Table 3.12 shows the estimate of the value of affordable housing obligations agreed in 2007-08. This equates to a contribution of around £54,000 per unit (it was £45,000 in 2005-06). This is a mid range estimate using the 2003-04 methodology and may underestimate the value of contributions in London and the South East, given the results of related work on affordable contributions carried out by the research team. The total value secured represented a 37% increase on the amount secured in 2005-06 (the lower percentage of 31% shown in Table 3.1 above is a result of rounding in the earlier table).

Table 3.12 The Value of Affordable Housing Agreed

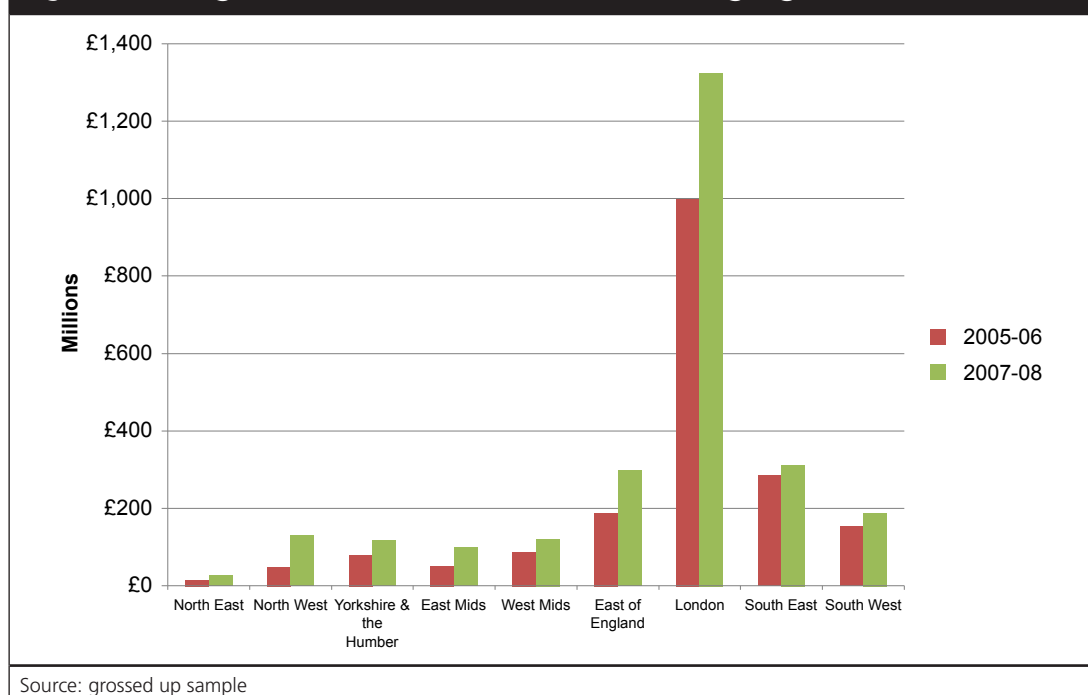
	Value of affordable housing agreed (£)			Difference 2007-08 and 2005-06	
	2003-04	2005-06	2007-08	£	%
Rented Units, No funding 80% free land contribution	£267,043,307	£634,602,799	£722,705,042	£88,102,243	14
Shared Ownership, No funding, 60% contribution	£265,707,364	£250,973,659	£334,102,142	£83,128,483	33
Rented Units, Funded, 25% free land	£282,327,250	£476,468,321	£634,287,034	£157,818,713	33
Rented Units, Funded	£96,013,224	£145,806,359	£248,992,512	£103,186,153	71
Rented units not funded	£64,663,553	£92,477,281	£124,007,776	£31,530,495	34
Shared Ownership units not funded	£34,375,321	£30,211,652	£54,505,021	£24,293,369	80
Other Tenures or Tenure not Stated	£36,193,824	£65,506,774	£138,916,768	£73,409,995	112
Direct Payments	£126,134,586	£211,465,006	£356,886,954	£145,421,948	69
Total	£1,172,458,428	£1,907,511,852	£2,614,403,249	£706,891,397	37
Source: grossed up sample					

Table 3.13 Regional Value of Affordable Housing Planning Obligations Agreed

Region	Value of affordable housing agreed (£)		Difference 2007-08 and 2005-06	
	2005-06	2007-08	£	%
North East	£14,701,610	£26,580,369	£11,878,759	81
North West	£49,285,913	£129,887,191	£80,601,278	164
Yorkshire & the Humber	£78,803,258	£116,347,225	£37,543,968	48
East Midlands	£51,106,989	£99,009,392	£47,902,403	94
West Midlands	£87,801,463	£120,805,060	£33,003,596	38
East of England	£187,947,753	£297,515,991	£109,568,238	58
London	£999,028,487	£1,324,270,333	£325,241,846	33
South East	£284,749,164	£312,184,049	£27,434,885	10
South West	£154,087,215	£187,803,639	£33,716,424	22
Total	£1,907,511,852	£2,614,403,249	£706,891,397	37

Source: grossed up sample

Not unexpectedly the East of England and the southern regions, including Greater London dominate (Table 3.13 and Figure 3.8), accounting for 81% (84% in 2005-06) of the total value of affordable housing agreed in planning obligations throughout England (although the largest increases are in the two northern regions and in the East Midlands, as Table 3.13 shows).

Figure 3.8 Regional Value of Affordable Housing Agreed

3.6 Comparative Results for Respondents to both the 2005-06 and 2007-08 surveys

Fifty LPAs responded to both the 2005-06 and 2007-08 surveys. Considering the changes in agreements over the two years for these LPAs alone enables us to treat this sub sample as a panel and to check if the changes experienced by this 'panel' match those for our whole samples for the two years. If they do, this suggests that our wider comparison of the two cross sections of LPAs gives a true picture of the trends.

The comparisons confirm that the changes experienced by the 'panel' are very similar to the two samples as a whole. So for, example, the number of agreements per LPA rose from 27.7 to 32.3 between 2005-06 and 2007-8 in the panel LPAs compared with a rise from 24.9 to 29.8 in the sample as a whole. For major dwellings, agreements per LPA fell from 12.1 to 10.7 in the panel compared with 11.0 to 9.5 for the sample as a whole. For minor dwellings agreements per LPA rose from 8.4 to 13.3 in the panel and from 8.9 to 12.7 in the sample as a whole. Looking at the total value of obligations secured, this rose 25.4% in the panel LPAs between 2005-06 and 2007-08, compared with 24.1% for the two samples as a whole.

Chapter 4

Policy and Practice: Variations between local Planning Authorities

Introduction and key findings

In the 2003-04 study there was no clear pattern in the variation between local planning authorities (LPAs) in the numbers of planning agreements and the value of planning obligations agreed. Market factors did not appear to explain the differences, so that the variability in individual LPA policy and practice seemed to be behind the differences, including the use of standard charging, for example.

After 2003-04 more guidance on good practice and policy was published and planning authorities were encouraged to develop standard charging approaches. These changes might be expected to yield more planning agreements and greater values from the planning obligations secured.

By 2005-06 there was more evidence to suggest that the formalisation of policy in development plans allied to changing market factors were both key to the increases there had been in the numbers and value of agreements and that these explained more of the variation between LPAs than had been the case in 2003-04. Nonetheless, the evidence in 2005-06 showed that there was still much variation between LPAs and that much of this variation could not be explained by market factors, confirming that discretionary policy exercised by each LPA was still a key factor explaining these variations.

Chapters 2 and 3 have shown that there have been some significant changes between 2003-04 and 2007-08. In particular, planning authorities are entering into more planning agreements with developers, especially on the largest developments and are agreeing to more planning obligations with them. Since 2005-06 LPAs also appear to have increased the proportion of minor developments on which they seek developer contributions. The value of obligations has risen substantially from under £2bn in 2003-04 to just under £5bn in 2007-08.

This chapter examines what might explain these changes and also the extent to which variations between planning authorities (which are still pronounced, as Figure 2.1 in Chapter 2 confirms) are still explained by discretionary policy and

practice within LPAs and not by underlying market factors, such as variations in development pressure and land value, factors which might be expected to be key matters explaining the differences.

The key findings are that:

- almost all planning authorities now have approved policies and/or supplementary guidance in place covering planning agreements and the obligations required;
- a large proportion of LPAs are undertaking infrastructure planning;
- standard charging is now more widely used, especially for open space and education;
- only a small minority of planning authorities have staff dedicated to negotiating planning agreements, although most have someone dedicated to monitoring;
- changes to land and property values and the introduction of dedicated S106 staff were seen as the two most important 'drivers' of changes in the numbers of planning agreements negotiated and the value of planning obligations obtained;
- the existence of formal policy and the adoption of good practice, such as standard charging is statistically related to achieving more planning agreements and higher value obligations;
- statistical models of inter-authority variations in the numbers of planning agreements and the value of obligations show that development pressure and land values have become more significant determinants of outcomes in 2007-08 and 2005-06 than they were in 2003-04.

4.1 Planning Agreement and Obligations Policy

The survey asked respondents to record whether their policy documents were adopted or emerging. Table 4.1 shows that, whilst only a small proportion of LPAs now have their policies set out in new development plan documents (for example only 13% as part of their adopted core strategy), only 7% of LPAs have no formally adopted policy on planning agreements and obligations. And although two thirds have their adopted policies in saved local or unitary development plans, already 5 and 24% respectively have adopted policies in development plan or supplementary planning documents under the new, 2004, plan regime. Moreover 38% have policies in emerging core strategies under the new plans regime, especially in Urban England (55%) and Urban London (69%).

Table 4.1 LPA policy on the use of Planning Agreements and Obligations

	<i>Adopted</i>		<i>Emerging</i>	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
Core strategy	19	13	58	38
Other development plan documents	7	5	21	14
LDF Supplementary planning documents	36	24	32	21
Saved local or unitary development plans adopted under previous plans regime	100	66	10	7
Supplementary planning guidance approved under previous plans regime	60	40	13	9
No formally adopted (emerging) policy	11	7	16	11

Source: survey sample

Given the importance now attached to undertaking infrastructure planning to underpin local development plans as well as to developing CILs, it should be noted that only 23% of LPAs were not doing any of this work. Of the remaining 76% who were, 6% had already completed the work. There were no significant variations between local authority families, or between regions.

Comparisons between the three surveys on the use of standard charging and formulae in Table 4.2, shows that there had, by 2007-08, been a quite substantial adoption of this approach. With the exception of community and leisure obligations over half of LPAs had adopted this approach for all other obligations: affordable housing, open space, transport and education. Indeed the most widespread use of standard charging was for open space and for education.

Table 4.2 Percentage of LPAs using standard charging or formulae to calculate obligations

	<i>2003-04</i>	<i>2005-06</i>	<i>2007-08</i>
Affordable Housing	51%	66%	62%
Open Space and the Environment	65%	62%	81%
Community and Leisure	28%	21%	45%
Transport and Travel	29%	40%	57%
Education	55%	52%	75%

Source: survey sample

Some LPAs are now using a defined alternative approach to standard charging such as 'tariff style' agreements or 'grouped standard charges' which cover all types of obligations (such as the Milton Keynes, so called, 'roof tax'). Almost all these authorities are in Greater London or the South East region and together they constitute 12% of all LPAs in England.

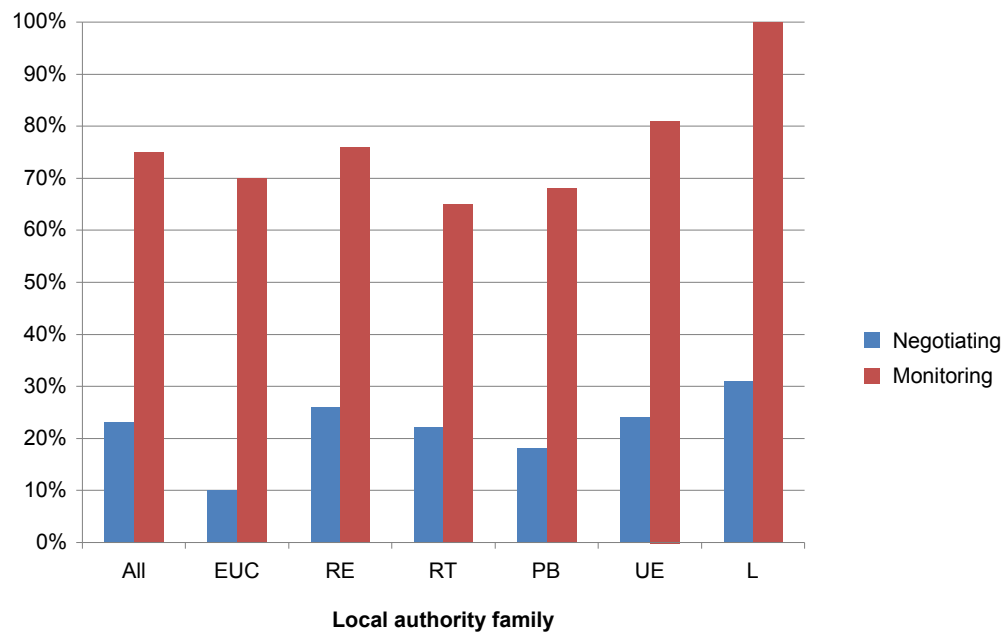
Compared with the now fairly widespread use of standard charges there is less widespread use of standard heads of terms or model agreements. Only 16% of LPAs use them in all cases, 24% in only some cases and although 47% use them as a starting point they modify them in relation to specific requirements for each negotiation. Only 12% make no use of them at all.

Pooling of contributions (whether via standard charges or via negotiated agreements) is commonplace (although questions about this were not asked in the previous surveys). Only 14% of LPAs do not pool contributions. Seventy% pool within the LPA alone whilst 3% pool contributions within the authority but also within the sub-region, whilst 3% contribute only to a sub-regional pool.

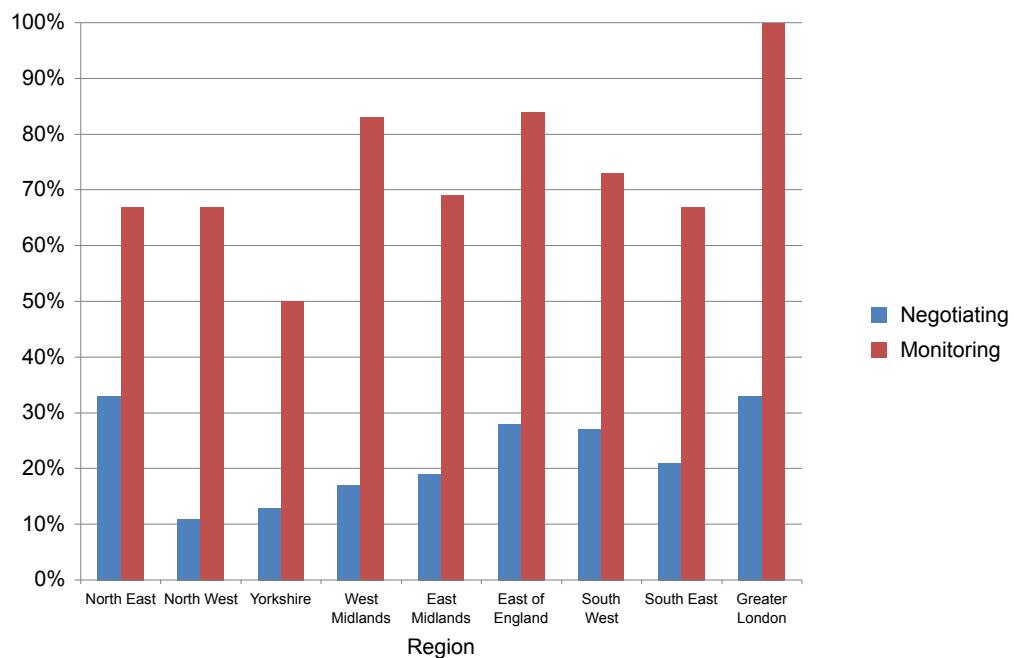
Three quarters of authorities now employ a S106 officer to monitor planning agreements but in only 23% of authorities does an officer lead negotiations (Table 4.3). There were some family and regional variations, which are shown in Figures 4.1 and 4.2.

Table 4.3 Use of an officer(s) dedicated to negotiating or monitoring agreements

<i>LA Family/Region</i>	<i>Negotiating</i>		<i>Monitoring</i>	
	<i>2005-06</i>	<i>2007-08</i>	<i>2005-06</i>	<i>2007-08</i>
All	15%	23%	64%	75%
EUC	8%	10%	50%	70%
RE	20%	26%	50%	76%
RT	16%	22%	79%	65%
PB	5%	18%	65%	68%
UE	29%	24%	71%	81%
L	18%	31%	82%	100%
North East	0%	33%	20%	67%
North West	8%	11%	50%	67%
Yorkshire	17%	13%	83%	50%
West Midlands	7%	17%	60%	83%
East Midlands	19%	19%	69%	69%
East of England	8%	28%	75%	84%
South West	14%	27%	57%	73%
South East	19%	21%	64%	67%
Greater London	24%	33%	76%	100%
Source: survey sample				

Figure 4.1 Percentage of local authorities with a S106 officer by local authority family

Source: survey sample

Figure 4.2 Percentage of local authorities with a S106 officer by region

Source: survey sample

As Table 4.4 shows there was little change in the proportion of authorities using a database to record details of planning agreements with over three quarters using such systems.

Table 4.4 The use of electronic databases to record the details of planning agreements

	2003-04	2005-06	2007-08
Proportion of local authorities	75%	71%	79%
Source: survey sample			

4.2 Main reasons for changes in numbers of planning agreements and value of planning obligations

Planning authorities were asked to rank eight factors in importance that might have been behind changes to the numbers and value of planning obligations agreed between 2005-06 and 2007-08 (listed in Table 4.5) and they were also asked whether each factor had a positive or negative effect

The results show that three factors dominate and are ranked in order of importance in the table. The first ranked is change to land and property values. This did not always have a positive impact, with a third of LPAs saying this factor had a negative effect, indicating an early impact of the fall in land values discussed briefly in Chapter 1 and in more detail in Appendix 1. The second most important factor was the employment of staff dedicated to S106 work, with nearly two third of LPAs saying, not surprisingly, this has a positive impact, although just over a third felt it had a neutral impact. The third factor was the introduction of standard charges and formulae, with 54% of LPAs saying this had a positive impact.

It is interesting to note that the two most important factors in 2005-06, the introduction of new policy and changes in the skills of LPA staff, were of considerably less importance in 2007-08, suggesting that these were now 'bedded in' and that other changes were of now greater significance. That is not to say that these were of no significance since 66% of LPAs regarded having new policy as having a positive effect as did 50% of LPAs with respect to changes in staff skills and experiences. These results chime with other research (Audit Commission, 2006; Monk et al, 2006) which has shown the importance of having clear policy on developer contributions and an appropriate skill set amongst planning and other local authority staff.

Finally it should be noted that as well as changes in land values having a negative effect in a third of LPAs, the two other factors where a negative effect was mentioned by more than a handful of LPAs were changes in the skills and experience of developers' staff and changing attitudes of developers and landowners towards S106 contributions. These negative effects are likely to be evidence of the downturn in the property market towards the end of 2007-08 indicating the greater difficulty facing LPAs in negotiating contributions.

Table 4.5 Ranking of the main reasons for any changes between 2005-06 and 2007-08 in the number and value of planning agreements

<i>Reason</i>	<i>Rank 2005-06^(a)</i>	<i>Percentage Ranking Factor as the Most Important 2007-08^(b)</i>	<i>Rank 2007-08^(a)</i>	<i>Percent Positive Effect</i>	<i>Percent Negative Effect</i>
a) Changes to land values and property prices	5	45%	1	41	33
f) Employment of a local authority S106 Officer	8	27%	2	64	3
b) Introduction of standard charges and formulae as set out in Circular 05/05 "Planning Obligations"	4	10%	3	54	6
g) Introduction of new policy or supplementary guidance within your authority	2	7%	4	66	5
e) Changes in the skill and experience of developers, landowners and their agents	7	2%	5	38	23
d) Changes in the skill and experience of local authority staff	1	2%	6	50	6
c) Other Government guidance such as the Planning Obligations Practice Guide and model agreements	6	7%	7	63	4
h) Changing developer/landowner attitudes towards S106 contributions	3	0%	8	50	18
Notes: (a) Overall rank determined by the average rating over all respondents; (b) Percentage of respondents that ranked reason as the most important. Some respondents chose more than one reason as the most important so percentage exceeds 100. Source: survey sample.					

LPA's have been provided with a wide range of advice to help them interpret policy and adopt best practice. Table 4.6 suggests that most of this advice has been found important with the exception of advice on third parties and that the most important advice has been on the clarification of the broad principles and policy tests set out in Circular 5/05 and advice on standard charging and formulae (also to be found in Circular 5/05), the latter being the third ranked factor in Table 4.5 in explaining changes to the numbers of agreements and value of obligations.

Table 4.6 The importance of advice in changing practice

<i>Advice</i>	<i>Crucial</i>	<i>Very important</i>	<i>Important</i>	<i>Quite Important</i>	<i>Not at all important</i>
a) Clarification of legal framework (%)	6	17	32	32	13
b) Clarification of broad principles and policy tests (%)	3	27	34	26	10
c) Clarification of types of contributions and of pooling (%)	4	17	37	29	13
d) Advice on placing policies in published local development framework documents (%)	6	19	31	26	19
e) Advice on formulae and standard charges (%)	7	27	32	23	11
f) Standard heads of terms/ model agreements (%)	8	20	34	28	10
g) Advice on third parties (%)	2	6	25	38	30
h) Other advice (%)	0	5	20	38	37

Source: survey sample.

This assessment by LPAs is further confirmed by an analysis of the statistical relationships between specific policies and specific practices in each planning authority on the one hand and the numbers of agreements, obligations and their value on the other hand. Table 4.7 shows that, compared with the average for all authorities, LPAs with 'tariffs' had more agreements and obligations, more direct payments delivered, although a lower value agreed in 2007-08. Having a negotiating officer produced significantly more agreements and delivery of direct payment obligations, although fewer obligations in number and value. Monitoring officers had a positive impact across agreements and delivery, with more agreements, more direct payment obligations with greater value and more being delivered. Having databases and being recipients of unilateral undertakings had similar effects.

Few LPAs had already adopted S106 policy within their core strategies and although those who had, tended to have fewer agreements and obligations and lower values of these, the significance of having formally adopted policy is clearly shown by the fact that those with no formally adopted policy (or no policy at all) had fewer agreements, obligations, and lower values across the board. LPAs who are advanced in preparing infrastructure plans also had more agreements and direct payment obligations.

Table 4.7 also reveals the significance of having standard charging policies. LPAs with charges for all types of obligations generally also had more agreements and direct payment obligations with greater value which were also delivered. There is an inverse relationship with the numbers and values of in-kind obligations as might be expected.

Table 4.8 confirms LPAs' statements about the impact of land value and property price changes on what they were able to negotiate and what was subsequently delivered. Where LPAs stated that these changes had a positive impact on changes in what they had been able to achieve, this is associated with above average numbers of agreements, obligations and values and with above average values being delivered.

Table 4.7 Relationship between local authority polices and numbers of agreements, obligations and their value

[illegible]

Table 4.8 Relationship between local authority outcomes and numbers of agreements, obligations and their value

	Number of LPAs	% of LPAs	Number Major Agreements per LPA	Number Minor Agreements per LPA	Number Agreements per LPA	Value of DP Delivered per LPA	Number of DP Obligations per LPA	Value of DP Obligations per LPA	Number in-kind Obligations per LPA	Average value per obligation
Land value and property price changes:										
Positive impact	51	34	21	30	51	£2,586,358	61	£4,804,430	19	£78,610
Negative impact	43	28	12	19	31	£663,622	47	£2,450,423	16	£52,500
Neutral impact	44	29	12	18	31	£726,853	46	£2,401,335	16	£52,540
Proportion of direct payment obligations received:										
90% or greater	28	19	9	17	25	£1,998,305	62	£4,308,040	18	£69,485
50% or less	50	33	18	21	39	£2,026,429	61	£4,082,554	17	£67,236
Base: survey sample	151	100	13	16	30	£1,587,550	53	£3,554,465	22	£61,192

4.3 Modelling the Number and Average Value of Planning Obligations

An alternative method of examining the factors behind the variations in the total number of obligations and the value of these obligations is to use a quantitative modelling approach. This approach, using the statistical technique of regression analysis, is based on the assumption that there will be a stable, systematic relationship between the number and average value of planning obligations and a variety of local contextual factors including demand side variables such as the value of land and housing, local social and economic conditions, and supply side variables like the number of planning permissions granted and the performance of the planning authority. The exercise combines the results of the LPA survey with secondary data drawn from the Census of Population, HM Land Registry, VOA, ONS as well as PS2 and Best Value returns.

Two separate regression models are developed. The first seeks to explain the variable number of planning obligations in the LPAs who responded to the survey. This uses secondary data sources that are available for all LPA areas. The second model applies the same logic to examine variations in the average value of obligations.

The detailed statistical results are shown in the annex to this chapter (to found after Chapter 7).

They show, first, that the number of obligations secured by LPAs is determined by the number of households in the LPA and the recent rate of growth in the number of households, suggesting that market size and the degree of development pressure are key factors in securing agreements. Significantly factors like the number of planning applications processed within target times are no longer significant factors in the way that they were in the two previous studies, a finding consistent with the evidence discussed in Chapter 2 of a greater number of agreements for small developments and the use of standard charging to facilitate this trend (target times for determining planning applications were a factor preventing agreements being reached on smaller sites in previous surveys). Second, the results show that the value of the obligations secured in LPAs is statistically related to average land values. Whilst the relationship is not as strong as in the previous two studies, land values were the most significant 'driver' of the value secured in both previous studies.

Taken together these results are consistent with the pattern emerging in the two previous studies. In 2003-04 the number of applications processed within Best Value targets (which might be expected to act as a proxy for the efficiency planning departments) and the proportion of planning applications granted exerted a positive influence on the value secured. By 2005-06 these factors were no longer important. At that point the volume of agreements had a statistically significant and positive relationship with average land values, the rate of household growth in the previous fifteen years, and the number of major planning applications processed. This implies that more agreements were secured where development pressure was greatest and more applications

were granted. Land values and the number of major planning decisions had become important in determining the value of planning obligations. Overall these findings were taken to imply that the explanation for the number and value of obligations appears to be more 'rational' than before and that, as good practice became more widespread, market conditions were more influential in determining the value of obligations than LPA practice and processes. The current estimates for 2007-08 continue to underline the importance of market size, development pressure and high land values in explaining the variation between LPAs in the numbers of obligations and the value of the obligations secured.

Chapter 5

Delivering Obligations – Evidence from Questionnaire Survey

Introduction and Key findings

The previous study of 2005-06 had confirmed that it was difficult for local planning authorities (LPAs) to provide accurate quantitative evidence of the delivery of all kinds of obligations, especially of in-kind obligations, although it was possible to make estimates of the value of affordable housing obligations delivered.

In the current study an alternative approach was adopted but collected only limited information. LPAs were asked to estimate the value of all direct payments received in the survey year irrespective of the year in which these had been agreed. They were also asked to estimate the proportion of direct payments agreed in 2005-06 which had been received by 2007-08 and the proportion of permissions with agreements signed in each of the three survey years that had been subsequently modified. In addition an estimate has been made of the value of affordable housing delivered in 2007-08.

The key findings are:

- £560m of direct payments was received by LPAs in England in 2007-08;
- Over a third of LPAs estimate that three quarters or more of direct payments agreed in 2005-06 had been delivered by 2007-08;
- Less than one in ten planning agreements are renegotiated;
- £1.3bn worth of new affordable housing was delivered in 2007-08.

5.1 Direct payment obligations received

The survey asked LPAs to estimate the proportion of direct payment obligations agreed in 2005-06 which had been received by 2007-08. As Table 5.1 shows just over a fifth had received over 90% and over a third had received three quarters or more.

Table 5.1 The proportion of direct payment planning obligations agreed in 2005-06 for which money has been subsequently received from developers by the end of 2007-08

	<i>Number of responses</i>	<i>% of responses</i>
Over 90%	28	22%
Between 75% and 90%	18	14%
Between 50% and 75%	28	22%
Between 25% and 50%	21	16%
Less than 25%	10	8%
Unable to estimate	25	19%
Base	130	
Source: survey sample		

In addition LPAs were also asked to estimate the extent to which, since 2003-04, developers had failed to pay in full by the end of 2007-08 the direct payment obligations that had been agreed and that had been triggered by the development taking place. One in eight (12%) said this had never occurred and just over one in four (27%) said that this happened only occasionally, but just over half (52%) said it happened frequently (and 9% were unable to estimate).

The survey also asked LPAs to estimate the value of direct payment obligations delivered within each authority in 2007-08, regardless of the year in which they had been originally agreed. Table 5.2 shows that LPAs estimated that £560m in payments had been received. Table 5.3 shows that this amounted to an average of £1.6m per LPA, but with significant variations between authorities with those in the Urban London family receiving £7.6m on average in 2007-08 in direct payments.

Table 5.2 The Total Value of Delivered Direct Payment Obligations in England

<i>LPA family</i>	<i>Value</i>	<i>Region</i>	<i>Value</i>
EUC	£60,935,756	North East	£14,488,360
RE	£92,916,684	North West	£25,031,711
RT	£36,738,993	Yorks and Humber	£36,533,314
PB	£94,116,998	East Midlands	£21,924,291
UE	£77,535,424	West Midlands	£54,735,473
L	£198,259,786	East	£42,820,489
		South West	£86,149,878
		South East	£88,194,740
		Greater London	£192,114,491
England Total	£560,503,641	England Total	£561,992,748

Source: grossed up sample
Note: the marginally different totals arise because one is grossed by on the basis of the sample LPA family and the other by LPA region.

Table 5.3 Average Direct Payment Delivered per Authority by LPA Family and region

<i>LPA family</i>	<i>Value</i>	<i>Region</i>	<i>Value</i>
EUC	£2,031,192	North East	£629,929
RE	£780,812	North West	£582,133
RT	£644,544	Yorks and Humber	£1,660,605
PB	£1,238,382	East Midlands	£562,161
UE	£1,685,553	West Midlands	£1,658,651
L	£7,625,376	East	£873,888
		South West	£1,914,442
		South East	£1,316,339
		Greater London	£5,821,651
England average	£1,587,550	England average	£1,587,550

Source: grossed up sample

5.2 The value of affordable housing delivered in 2007-08

Table 5.4 shows that just under £1.3bn worth of affordable housing was delivered in 2007-08, an increase of 37% compared with 2005-06, but with large regional variations in the percentage changes.

Table 5.4 The value of affordable housing delivered in 2007-08

	2007-08	Value 2005-06	2003-04	Difference 2007-08 and 2005-06	
				£	%
Rented Units, No funding 80% free land contribution	£221,717,640	£167,572,989	£159,016,267	£54,144,651	32
Shared Ownership, No funding, 60% contribution	£178,891,967	£109,628,899	£86,894,560	£69,263,068	63
Rented Units, Funded, 25% free land	£352,071,354	£268,541,678	£157,385,650	£83,529,676	31
Rented Units, Funded	£138,600,000	£83,503,000	£55,699,000	£55,097,000	66
Rented units not funded	£55,858,000	£32,578,000	£38,710,000	£23,280,000	71
Shared Ownership units not funded	£35,002,000	£17,241,000	£10,381,000	£17,761,000	103
Other Tenures or Tenure not Stated	£63,051,811	£40,016,462	£23,259,592	£23,035,349	58
Direct Payments	£238,874,000	£219,497,294	£69,091,000	£19,376,706	9
Total	£1,284,066,773	£938,579,322	£600,437,069	£345,487,451	37
	2007-08	Value 2005-06**		Difference 2007-08 and 2005-06	
				£	%
North East	£10,494,842	£7,233,835		£3,261,007	45
North West	£31,100,219	£24,250,824		£6,849,395	28
Yorkshire & the Humber	£55,683,979	£38,774,648		£16,909,331	44
East Midlands	£56,556,171	£25,146,873		£31,409,298	125
West Midlands	£78,232,791	£43,202,159		£35,030,632	81
East of England*	£224,952,768	£92,478,512		£132,474,256	143
London	£496,812,385	£491,565,695		£5,246,690	1
South East	£198,163,603	£140,109,039		£58,054,564	41
South West	£132,444,014	£75,817,647		£56,626,367	75
Total	£1,284,066,773	£938,579,322		£345,487,451	37
Notes:					
* includes a number of high value land contributions and 450 units in the very high value location of Three Rivers with no government funding.					
** 2005-06 figures produced using a methodology based on agreed units. 2007-08 adopts a more reliable approach based on units actually delivered. For an explanation of this, see the Annex to Chapter 1 where the method used to calculate the value of affordable housing agreed and delivered is described in detail.					
Source: grossed up sample					

5.3 Renegotiations of planning agreements

LPAs were also asked to provide an estimate of the proportions of planning agreements that were subsequently modified after being formally signed. As Table 5.5 shows about 1 in 12 of all agreements are subsequently modified, with no increase being estimated between the three survey years.

Table 5.5
 The proportion of permissions with planning agreements where the agreements have subsequently been modified after they have been signed and planning permission granted

Year	%
2003-04	8.0
2005-06	9.8
2007-08	8.5
Source: survey sample.	

The reasons for this small proportion and the context where changes are sought and agreed are discussed in detail in the next chapter. In addition, LPAs offered a range of reasons in their questionnaire responses. These confirm the evidence derived from the case studies described in the next chapter. Many of the renegotiations relate to the timing of payments, to the substitution of an existing agreement to a new planning permission where the latter has superseded the original permission, to changes in the details of the affordable housing to be provided on a site, often with an increase in rented units in place of units in intermediate tenures or (more rarely) agreements by the LPA to receive commuted payments instead of on-site provision of affordable homes and also ‘switching’ from direct to in-kind payments for the same obligation (and vice versa).

Chapter 6

Delivering Obligations: Evidence from Case Study Planning Authorities

Key findings

The last chapter looked at the evidence on delivery that derived from the postal questionnaires. The questionnaire was able to collect detailed information only on direct payment obligations. This chapter covers all types of obligation and draws on the more qualitative evidence from the 24 case study authorities. It looks at the evidence from discussions with local authority staff based on the topic guide included in Appendix 5 and the general issues emerging from the 96 case study sites. The annex to this chapter looks at the detailed evidence from these sites, drawing on documents, interviews and site visits.

The key findings are:

- Most planning permissions for more than 15 dwelling units had a S106 agreement attached but this was less common for permissions on schemes of less than 15 units. Many of these would be major developments, defined as 10 units or more.
- Monitoring the delivery of agreed contributions is not an easy or straightforward task and requires the commitment of resources.
- Where S106 contributions are monitored, they are generally delivered, particularly financial contributions where monitoring appears to make a significant difference.
- Monitoring in-kind contributions such as affordable housing is more difficult.
- On 76 of the 96 case study sites (78%) where agreements had been made in 2003-04 and 2005-06, the obligations were delivered as agreed or with only minor variations.
- Only a proportion of planning permissions with S106 agreements proceed as originally negotiated, but in practice what was agreed usually does go ahead because the original scheme is superseded by a new planning permission and a new, but usually very similar, S106.

- The economic downturn has increased the number of breached agreements and many LPAs are agreeing to amend the original payment schedules for financial contributions but, for the most part, not the total amounts. Nor are they generally amending the quantities of in-kind contributions.

6.1 Planning permissions with agreements

The proportion of planning permissions that have planning agreements attached

The proportion of planning permissions that have planning agreements attached varied between the case study LPAs, as shown in the Table 6.1 below. Broadly, the proportion of permissions with agreements was higher in the East, London, South East and South West regions than in the East and West Midlands, the North East and North West and the Yorkshire and Humber regions. In the more pressured southern regions the use of S106 has been longer established than in the Midlands and North so policy and practice is more established.

In general, most permissions for more than 16 dwellings had agreements attached, but this was less likely for schemes of less than 16 dwellings. However, in some of the case study LPAs all planning permissions for residential development have a S106 agreement of some kind.

To recap, the questionnaire data showed that the percentage of all permissions with agreements has risen slightly from 6.4% in 2005-06 to 7.2% in 2007-08. Major dwelling permissions (those of ten or more units) have also witnessed a slight increase from 48% of permissions in 2005-06 to 51% in 2007-08. Although there was a higher proportion of major dwelling agreements there were also fewer major dwelling permissions in total as a result of the decline in major applications and permissions. Similarly there was a bigger increase in the number of minor dwelling permissions from 7.2% in 2005-06 to 9.4% in 2007-08. The survey data also showed that the proportion of residential permissions with agreements rose systematically with the size of the scheme and this is reflected in the data collected for the case study LPAs (those that were able to provide this information) shown in Table 6.1. The case study discussions focused on the larger schemes to which agreements are attached.

Table 6.1 The percentage of residential permissions with agreements in each case study LPA by size of development

Case study	Region	0-15 units	16-24 units	25-49 units	50-99 units	100-999 units	1,000+ units
1	East	90%	100%	100%	100%	100%	–
2	East	100%	100%	–	–	–	–
3	East	1-9 units = 3.4%	10+ units = 58.3%				
4	East	12%	100%	100%	100%	100%	100%
5	London	90%	100%	100%	100%	100%	100%
6	London	66% on all schemes over 10 units					
7	London	12%	100%	50%	100%	75%	
8	South East	Almost 100% on 4+ units					
9	South East	20-30% across all unit sizes					
10	South East	6+ houses = 100%	100%	100%	100%	100%	100%
11	South East	100% from 1 dwelling and above					
12	South West	100%	100%	100%	100%	100%	100%
13	South West	50%	100%	100%	100%	100%	100%
14	South West	90%	100%	100%	100%	100%	100%
15	South West	8%	100%	100%	100%	100%	
16	East Midlands	10%	100%	100%	100%	100%	100%
17	East Midlands	5%	0	0	0	33%	–
18	West Midlands	5%	100%	0	0	100%	–
19	West Midlands	less than 1%	–	–	–	–	–
20	Yorks & Humber	33%	100%	100%	100%	100%	100%
21	North East	There are approximately 2,500 minor applications of which very few would have an obligation attached	There are 50-70 major applications per annum of which the majority would have an obligation attached				
22	North West	5% have an S106 or commuted sum. All new residential developments have a commuted sum payment or an obligation	Major developments would have the commuted sum payment included in the S106, so all residential majors have an S106				

Source: case studies

The proportion of planning permissions with agreements that goes ahead

Before the economic downturn, the proportion of planning permissions with agreements that actually went ahead varied between 50 and 100% in the case study authorities (see Table 6.2). In about half of the LPAs, before the downturn, over 80% would normally proceed. Since the downturn, all LPAs reported a considerable decrease in the proportion of planning permissions with agreements that actually go ahead.

Table 6.2 below shows the responses to the survey questionnaire from the case study LPAs (those that were able to provide this information) giving an estimate of the proportion of permissions with planning agreements signed in each of the years 2005-06, 2006-07 and 2007-08 that had since been started.

Table 6.2 The percentage of residential permissions started by year of permission				
No.	Region	Permissions started – signed in 2005-06	Permissions started – signed in 2006-07	Permissions started – signed in 2007-08
1	East	75%	53%	55%
2	East	69%	68%	56%
3	East	100%	87%	67%
4	London	80%	80%	70%
5	London	50%	–	–
6	London	42%	73%	71%
7	London	62% average across all years		
8	South East	n/a	95%	75%
9	South East	88%	68%	43%
10	South West	41%	56%	86%
11	South West	90%	80%	70%
12	South West	82%	77%	63%
13	East Midlands	60%	45%	20%
14	East Midlands	100%	71%	10%
15	West Midlands	92%	90%	50%
16	West Midlands	Very high – nearly all large developments do go ahead		
17	Yorks & Humber	90%	90%	70%
18	North East	57%	32%	17%
Source: case studies				

The most common reason why planning permissions with agreements do not go ahead is because the agreement is superseded by a new agreement for the same site, usually because the plans for the site change and a new

permission and/or agreement is required. LPA officers reported that sites often change hands and the new developers want to alter the developments. For example, they may want to change the mix or size of units to be built, so a new permission and agreement is negotiated. Some landowners secure a planning permission purely in order to get a valuation of the land with no intention of going ahead with the scheme. For example, one case study LPA explained why planning permissions with S106 agreements do not go ahead as follows:

The 20% that don't go ahead are because someone gets outline consent on a site just to determine the value. Or the site is sold on to a new developer and they start a new [Section] 106. If there is a [Section] 106 on a site and the owner just wants to make minor changes we alter the [Section] 106 with a deed of variation. But if there are major changes to a site then they have to have a new [Section] 106. This leaves the first unimplemented even though the scheme goes ahead. I cannot see the difference from the database, only by going through the files. So [Section] 106s that are unimplemented tend to have been superseded and in reality most of the developments went ahead. (LPA in South West)

Another reason why an S106 agreement may not be implemented is when a local authority refuses a unilateral undertaking submitted by a developer and wins at appeal. The scheme is then not built but the agreement remains on the database.

Almost all LPAs said that the recent economic downturn had led to fewer planning permissions with agreements going ahead. LPAs said that since the economic downturn developers are revising the housing mix on schemes, which has led to more S106 agreements being superseded by new agreements. The interviews suggested that all development had slowed down since the downturn, not just those with planning obligations attached.

The normal timescale for the completion of different types of obligation

Some LPAs have a standard policy about when obligations have to be paid but others negotiate payment triggers on a case-by-case basis. Many LPAs would prefer payment on commencement and try to negotiate this. Most LPAs require developers to notify them of commencement, but few developers actually do this. As a result, LPA officers have to spend time visiting sites to check if development has commenced. For example:

They are supposed to inform us in writing of commencement but only one has ever told us. I do a lot of house counting, site visits, counting how many are started, finished and occupied. I visit sales offices pretending to be interested in buying and ask how many are finished etc. (LPA in South West)

On some sites, particularly large developments taking place over a number of years, payment of direct payments and the provision of in-kind contributions is linked to agreed trigger points, such as the occupation of a proportion of the market units, rather than all on commencement, as this allows the developer to better manage its cash flow.

It can take a long time for some contributions to be triggered and delivered. After an agreement is signed, it may be up to two years before the developer begins work on site and the payments are triggered. It can take years on large and complex schemes for all contributions to be triggered and delivered. For example, highways and landscaping may not be completed until a scheme is almost finished, which may be several years after the agreement was signed and development commenced. Some contributions may take a long time to be delivered if contributions are being pooled across a number of sites, such as payments towards community facilities.

Most LPAs reported that developers have recently been requesting later trigger points for payment, for example, on occupation of a greater proportion of units, to help manage cash flow as sales have slowed significantly since the downturn. This is resulting in amendments to existing agreements. Very few LPAs are considering allowing developers to renegotiate lower contributions but many are being flexible over payment schedules.

6.2 Modification of agreements

The extent to which S106 agreements get modified or renegotiated after they have been signed

Until the last twelve months it was relatively rare for agreements to be modified after they had been signed. Very few were renegotiated after signing. It is far more usual for any changes to lead to a new application and a new agreement. As described above, this may happen when a new developer takes over a site and changes the plans for it or when market conditions change and the developer wants to build something different, leading to a new application, permission and a new agreement.

Many LPAs said that they were unable to tell from their database whether a scheme had not been implemented, or whether instead it had been superseded by a new agreement on the same site.

In a few cases there were minor changes that were made through deeds of variation or supplementary agreements.

More recently many LPAs have been approached by developers seeking to change the agreed payment schedule for the obligations because falling house sales have created cash flow problems. Some developers have been asking to renegotiate lower contributions, saying that the overall finances do not 'stack up' in the current economic climate, but this has only been permitted on one development out of the 96 sites in the 24 case studies. Most LPAs are

refusing to reduce the agreed obligations, arguing that they are necessary if the development is to go ahead, but are offering flexibility over trigger points for delivering the contributions, for example, allowing a developer to make payments in instalments.

Procedures for modification or re-negotiation of agreements

Most LPAs do not have a formal procedure in place for modifying agreements, as it is not something that has really been necessary until lately. The normal procedure for any changes to a scheme is for a new application to be made and a new agreement negotiated through the usual S106 process.

Most LPAs modify agreements on a case-by-case basis but some LPAs have begun to put formal procedures in place. For example, if a developer tells the LPA that they cannot meet the contributions agreed in the S106 some LPAs are now requiring developers to produce a viability appraisal at their expense and to pay the LPAs' costs in reassessing the viability. If an LPA agrees that that a scheme is no longer viable, the developer may submit a new planning application and negotiate a new S106 agreement. If the problem is one of cash flow, the LPA may amend the payment threshold by a deed of variation.

What is normally changed if agreements are modified

As we have seen, historically very few agreements have been modified after signing. It is more normal that a developer will make a new application and so there will be a new agreement as the scheme has changed. More recently it has been the schedule for delivery of obligations that has been altered as developers have requested later triggers for delivering contributions in order to help their cash flow.

Only one LPA reported a loss of contributions through renegotiation, and then only on one site. Most said that they have not seen any reduction in financial contributions. All LPAs said that they had not seen a loss of affordable housing in any agreement and would be very reluctant to accept this.

Some LPAs have seen increased amounts of affordable housing delivered as developers sell whole developments to RSLs since the downturn. For example:

Some schemes have changed from the normal 30% affordable housing to 100%. We have a developer building a scheme but now it is for an RSL, the whole lot has been sold to the RSL so we are getting more affordable housing. On other sites the affordable is being built first, not delayed as normal. The affordable gives the developer some cash flow before the market is done. (LPA in South East)

Changes in tenure have been very few. There have been a few instances of reducing the amount of shared ownership units as these have become more difficult to sell recently and instead increasing the amount of social rent, or exploring 'Rent to Buy'¹³.

Some of those interviewed said that on the planning side they were not particularly concerned about tenure related issues. For example:

If the developer wants to change the tenure, for example to reduce the shared ownership as they won't now sell, then from a planning point of view we don't care. All we care about is the proportion of affordable housing we secure. We don't care about the tenure, type etc. (LPA in South West)

Any changes, such as increasing or reducing housing density, would generally require a new application and a new agreement. A few LPAs said that they believed that developers were now showing a preference for larger family units since the downturn in the market.

No LPAs reported being aware that any third party such as the Homes and Communities Agency had ever created a need for renegotiating a S106, for example in relation to grant availability, but most of the interviewees were not directly involved in negotiations.

6.3 Monitoring

How the delivery of planning obligations is monitored

The LPA officers interviewed had a range of job titles but were all generally responsible for monitoring the delivery of planning obligations. Some were qualified planners but some had no planning background. Very few of those responsible for monitoring were also involved in negotiating agreements, although some officers had a role in policy or other work beyond S106 and some were brought into the negotiations where there were appeals or in particularly complex cases. It is mainly case officers who are involved in negotiations.

Monitoring varies between LPAs. Some have an officer dedicated to monitoring, but in others the responsibility for monitoring is not always clear.

Monitoring the delivery of contributions begins for most officers at the signing of an agreement. Many councils have databases to help monitoring, but these were new in some cases and yet to be fully implemented. Where used, a scheme will be entered into the database after the S106 has been signed. Some LPA officers send a summary of the obligations, triggers and details of contacts at the council to the developer, with a reminder that the developer is obliged to contact the LPA on commencement of the development. All LPAs said that

¹³ 'Rent to Buy' is a government scheme whereby eligible households can rent a newly built property at 80% of the market rent for up to five years before buying it, allowing time to save a deposit. The idea has been copied by several national house builders who are currently having difficulty selling their units.

developers are obliged to tell the council when they have commenced work on a scheme, but in practice this rarely happens. This is clearly a flaw in the monitoring process.

A common trigger for payment of financial contributions is on commencement of the development, although these may be part payments. As most developers do not inform the council, the LPA officer has to try and find out which schemes have commenced and therefore triggered a payment. The officers may do this by asking other officers and by visiting the site. It is not always easy to know whether a development has commenced, particularly in rural LPAs where sites are far apart and in LPAs where there are large numbers of S106 agreements. One officer from a large rural LPA said that they were sure that there would be schemes that had commenced that they did not know about and so had not invoiced the developer, but most LPAs felt that whilst it was not an easy process, they did eventually know that the development had commenced and were able to begin invoicing the developer.

On housing development, other triggers for payment are often at different stages of completion or occupation. The only way to monitor this is by visiting the sites. As one LPA officer said, they “go out checking for curtains”. One officer said that they often visit sites and count the properties to assess whether triggers have been reached. All said that monitoring the trigger points is a time intensive process.

Most of the officers interviewed were responsible for raising invoices and for chasing overdue payments. This process may be quite informal, writing to the developer and telephoning them. If there is a very overdue payment, the monitoring officer may decide to refer the case to the LPA legal team to begin court proceedings to recover the debt. However, this was rare, as written reminders usually produced the desired results.

Many of the LPA officers interviewed said that whilst monitoring had improved in recent years, there was still scope for improvement. For example:

Our monitoring is reactive, unless the developer tells us it is not on our system. We put monies in the database when received. Unless we know about it, we don't chase it. (LPA in London)

Monitoring varies in terms of how sophisticated the system is. In some LPAs it is very well developed, with comprehensive databases that record all information, provide automatic prompts on triggers and track spending at all stages. In other LPAs it is not as advanced.

Many LPAs said that they focus on monitoring the receipt of direct payments rather than the delivery of in-kind contributions, as these are more difficult to check. However, as most of the in-kind contributions (other than affordable housing) tend to be fundamental to the scheme, such as access roads and other highway works, LPAs were confident that those would have been delivered as agreed. The financial payments are more problematic because payment may

depend on the developer's cash flow or access to loan finance. Once payments have been received, most LPAs also monitor how the monies are spent by the council.

However, monitoring spending is still an emerging practice in some LPAs and some officers said that relationships with other departments did not make this an easy process. Most said that they were hoping to improve monitoring in this area.

Monitoring is time and resource intensive and most LPAs feel they are doing what they can within resource constraints. Improvements are being worked towards in most LPAs. Monitoring systems vary in how sophisticated and comprehensive they are in different LPAs. A couple of case study LPAs had attended a demonstration of another LPA's database for monitoring S106 and had found this very useful.

Procedure for breach of agreement by the developer or if direct payments are not received on time

Dealing with breaches of agreements has not been a significant issue until recently. Most LPAs have a procedure to chase payments, although it may be informal. For example:

We have a procedure on paper to chase payments but do it more unofficially. We send letters, make phone calls, start legal proceedings. But this is the first time we have had to start legal proceedings. We have not had any cases of a developer going bust and not paying. But there has been a case in the county when the authority pushed for the obligations and as a result the developer went bust. But the money has been agreed and promised, we cannot just say that the local authority will do without. (LPA in East of England)

A number of LPAs found it useful to put a note on the land charges register if there was an outstanding contribution on a site, to try and ensure that the obligation can be pursued if the site is sold on.

The economic downturn has led to far more breaches of agreements by developers. A number of LPAs said that they were pursuing late payments through legal channels, often for the first time. Some are also using land charges for the first time to try and ensure payment. For example:

In seven years I never had to revert to legal services. But this year I have had to use legal services on seven occasions. We use the small claims court for smaller amounts and the magistrates for larger debt collection and land charges. If the developer comes in to talk to us and says they can't pay now but can pay in instalments then we are now flexible. But some never reply to the letters, it gives us no

option if they ignore us. It is the small scale developers that are the problem. The big developers come in with their agents and solicitors to discuss changing the payment schedule. (LPA in South West)

6.4 Impacts of the downturn

Impact of the economic downturn on delivery of planning permissions that have gone ahead

As a result of the downturn, some developments have stalled, and on some that are still going ahead the developer has asked to change the triggers for the delivery of the agreed contributions. For example:

Currently schemes are quite polarised – they are either going ahead and the developer is talking about payment on occupation rather than prior to commencement (as it says in the S106), or they are stopped or have not started. (LPA in South East)

More payments are overdue and LPAs are having to spend more time chasing payments. Many LPAs reported fewer planning applications and fewer commencements. For example:

The number of applications has gone down. It had been increasing year on year. Now less is being granted and of what is granted, less is commencing, this is something we have only seen over the last 5/6 months. It is particularly on large scale developments. But the developments of 7 or 8 units are still going on, they need to finish and sell, for example, if they have a mortgage. But the bigger stuff, for example, where they have an option to buy, they are waiting until it picks up. (LPA in South West)

On developments where the delivery of contributions was due to be triggered on the occupation of a certain number of units, payments are delayed because the housing has not sold, so the trigger points have not been reached. On phased developments, LPAs said that the later phases had been delayed. A number of LPAs said that developers were trying various tactics to delay payments. For example:

They are changing the payment timing, for example, to pay in instalments. But some still don't pay even then and we are taking more to court. I have been chasing developers, hand delivering invoices to make sure they get them. When I phone they always say I need to speak to someone who is not there. (LPA in South West)

A few LPAs have experienced developers going into administration, which severely delays payments. For example:

One of the sites went bust. They should have paid on commencement. When it went bust it was sold on. I had to work very hard to get the money in but did get it in the end. However, the county council collect their own money and they have not had theirs. (LPA in South East)

Increases in the renegotiation of existing S106s this year compared to previous years, for agreements signed in 2003-04 and 2005-06

There has been an increase in renegotiating S106s this year compared to previous agreements, mainly related to the timing of payments which may be done through a deed of variation. Many LPAs are in discussion with developers to alter the payment schedule, but hardly any are considering allowing a reduction in the agreed obligations. In cases where developers have not paid their contributions, some LPAs have allowed them to pay in instalments.

Whether the financial crisis of 2007 and the recession of 2008 has resulted in sites with planning permission not going ahead/being delayed

Many LPAs said that the downturn had resulted in sites with planning permission not going ahead or being delayed. The later phases on large developments have often been delayed. This has implications for what obligations will be delivered as triggers are not being reached.

6.5 Analysis of site specific data

The site-specific interviews and documentary evidence generated a great deal of detail for each site. The information was standardised for each site in a pro-forma (see Appendix 5). A case study summary was written for each site and examples are given in the annex to this chapter to reflect the range of sites and delivery outcomes.

Table 6.3 summarises the information about obligations for the sites where available, showing the number of different categories of obligations within the agreements by each type of site. For example, all education contributions have been counted as one obligation, all open space requirements as one obligation etc. The table also shows the average number of obligations for each type of site, the range in the number of obligations and the range in the proportion of affordable housing agreed.

Table 6.3 Numbers of obligations on case study sites

	<i>Direct payments</i>		<i>In-kind</i>		<i>Affordable housing</i>				
	<i>Average no.</i>	<i>Range</i>	<i>Average no.</i>	<i>Range</i>	<i>0-10%</i>	<i>11-20%</i>	<i>21-30%</i>	<i>31-40%</i>	<i>41%+</i>
Major residential 50 units plus	5	2 to 12	2.5	0 to 10+	3	4	7	1	2
Major residential less than 50 units	3	1 to 8	0.67	0 to 4	10	2	2	2	4
Minor residential	3.5	1 to 7	0.5	0 to 4	7	0	1	0	2
Mixed use	4.6	0 to 10+	1.25	0 to 5	9	2	8	2	0
Commercial	2.9	1 to 15	0.75	0 to 4	24	1	1	0	0
Source: case studies									

The case study sites show that agreements attached to commercial sites contained fewer obligations than for residential and mixed use sites. All of the major residential sites with 50 or more units had an affordable housing requirement. This varied widely between free land only and 10% affordable housing, to one site with 81% affordable housing. Most major residential sites with 50 units or more had a requirement for between 20 and 30% affordable housing. For all types of sites there were more direct contributions than in-kind contributions.

6.6 Delivery of obligations

As part of the analysis, a delivery typology was created to categorise the outcome of each case study agreement in terms of the delivery of the agreed obligations. The categories included a range of possible outcomes, from all the contributions being delivered in line with the S106 agreement, to a clear breach where the obligations specified in the agreement had not been fulfilled. The delivery outcomes and the number of sites that fall into each category are shown below.

The majority of the case study agreements, 51%, were cases where the contributions agreed in the S106 were delivered in line with S106 and to expectations, although 5% of these required much effort by the LPAs to get them delivered. LPAs expect another 20% to be delivered in full. 10% of cases were delivered, but with agreed changes. In 13% of cases the obligations were not delivered as had been agreed. In 6% of cases the outcome was unknown.

Table 6.4 Delivery on the 96 case study sites

Delivery Outcome	Description	Number of sites	Proportion of sites
1	The contributions listed in the S106 are delivered in full and as expected by all parties. This will normally be the desired outcome of the S106 process – the contract is fully specified and delivered.	44	46%
1a	The contributions were delivered but they were late and the LPA had to chase hard to get them when they were overdue.	5	5%
2	The contributions have not yet been fully delivered for legitimate reasons (e.g. triggers not reached) and they are expected to be delivered in full.	19	20%
3	The contributions were delivered but with formally agreed changes (i.e. there is a deed of variation, a new S106 agreement or a new planning permission).	6	6%
4	The contributions were delivered but with informally agreed changes (e.g. to the payment schedule). All parties agreed that a formal variation was not required.	2	2%
5	The output is different from what was expected but is still consistent with the S106 agreement. One or more parties did not achieve what they expected but the relevant elements had not been fully specified in the S106 agreement.	2	2%
6	The developer implements the planning permission but fails to comply with the delivery of contributions as agreed in the S106, either wholly or in part. This type is the only one where the S106 agreement is actually breached.	5	5%
6a	The contributions were not fully delivered, so the developer is technically in breach, but delivery is expected in the near future.	8	8%
7	Outcome unknown. It was not clear whether the S106 contributions were delivered in full because the outcome had not been monitored.	6	6%
Source: case studies			

6.7 Conclusions

Whilst the findings detailed above are based on only a sample of LPAs, a number of conclusions can be drawn.

Planning permissions with agreements attached

In about half of the LPAs, before the economic downturn, over 80% of planning permissions with agreements would normally go ahead. Where agreements are not implemented it is usually because they are superseded by new applications, leading to new S106 agreements on the same site, but the original S106 stays in the database and therefore the LPA may not know whether the S106 has been superseded by another, or whether it has simply not been implemented. Most changes to a development lead to a new application, a new planning permission and a new S106 agreement rather than modifications to an existing agreement.

Monitoring

Monitoring the delivery of agreed contributions is not an easy or straightforward task. One major issue is that developers do not inform the LPA when they start work on the site to which an agreement is attached, or when other payment triggers are reached. It requires a lot of time and effort by LPA officers to try and keep track of starts and of progress towards other triggers. Monitoring practice is improving. It is relatively sophisticated in some LPAs but more haphazard in others, mainly in the more northern regions. Databases are new in some LPAs and are not always used. Most LPAs felt that they do what they can within their resource constraints but also felt that there was room for improvement in monitoring. Recently some LPAs have begun to include a monitoring fee in agreements.

Affordable housing is commonly monitored separately by the Housing department and it is assumed by the planners that they check that it is delivered as agreed.

Most LPAs reported that they focus on ensuring that direct contributions are delivered and spend less time on monitoring the delivery of in-kind contributions. There has also been a recent focus on monitoring the spending of contributions, to ensure they are spent on time and on the correct works.

A few LPAs were asked to participate as case studies but declined. The main reason given was a lack of time and resources either to participate or to find the information required. A couple of LPAs approached said that they did not monitor delivery closely enough to be able to answer the questions. A couple could not take part because of staff turnover, staff were either very new or had been made redundant as a result of the downturn because their salary was paid out of fees paid by developers, which had reduced as there were fewer planning applications and hence S106 agreements since the downturn.

Overall, the research shows that where S106 contributions are monitored, they are generally delivered as specified in the agreement.

Variations in practice between LPAs

Practice in dealing with S106 is more developed in the South, where LPAs have been securing agreements for longer, than in the North, where they are now explaining S106 to developers so that they know what contributions to expect. Amongst the northern LPAs, urban authorities had better or more established practice and monitoring than rural authorities. The role of individual LPA officers is crucial to understanding why practice varies. It is also easier to monitor in LPAs that do not have many agreements and obligations. Some LPAs get spurious or speculative planning applications as the landowner just wants to see the value, without intending to implement the scheme.

Delivery

If S106 contributions are monitored, they are generally delivered. Monitoring, of itself, appears to have an independent impact on outcomes as monitored schemes are more likely to deliver obligations in full.

Of the sample of sites where agreements were signed in 2003-04 and 2005-06, in the majority of the case study agreements (51%), the obligations were fully delivered in line with S106 and to expectations, although 5% required much effort by the LPAs to get them delivered. LPAs expect another 20% to be delivered in full. 10% of cases were delivered, but with agreed changes. In 13% of cases the obligations were not delivered as had been agreed. In 6% of cases the outcome was unknown.

Impact of the downturn on delivery

In the last 12 months as a result of the property and economic downturn, LPAs have had to threaten developers with legal proceedings because they are increasingly failing to pay their contributions on time. LPA officers are spending more time chasing payments and there are more breached agreements.

Many LPAs have renegotiated payment schedules for financial contributions both formally and informally since the downturn, often moving triggers from early stages such as on commencement to later stages in the development. Developers have asked to renegotiate lower contributions on existing agreements, arguing that schemes are no longer viable since the downturn. In only one case has the LPA accepted a lower contribution. Most said that they are “taking a hard line” and refusing to reduce contributions. Any renegotiation would require developers to submit viability studies at their own cost and also to pay for the LPA’s due diligence on their submitted study.

Many schemes with planning permission with S106 agreements attached that were due to start recently are simply are not going ahead at all, or where they have started, are slowing down so that triggers are not reached.

Some schemes that had a proportion, e.g. 30%, of the housing agreed to be affordable in the S106 are being sold to RSLs so in fact they will be 100% affordable. Some developers are building the affordable housing first to help their cash flow.

Many LPAs said the bigger national developers are better at paying their contributions than the smaller developers, but some LPAs are more lenient about late payment with small, local developers.

Chapter 7

Summary and Conclusions

Introduction

The aims of this Chapter are to:

- summarise the principal evidence from the questionnaire survey and LPA case studies;
- interpret the key trends revealed by this evidence, drawing upon the feedback from participating LPAs who attended the seminars where the preliminary findings were presented and discussed;
- draw the key conclusions that can be derived from the evidence.

7.1 Summary

The study year of 2007-08 was similar in many key respects to those of the two previous study years, 2003-04 and 2005-06. Pressure for development was very similar in all three years. Planning permissions were running at approximately the same level in terms of the overall numbers of non householder applications permitted, although there had been a reduction in the number of permissions for major dwelling applications and an increase in those for minor ones. Land values continued to rise throughout the period between the three study years, although they have subsequently fallen.

The average numbers of S106 agreements made by LPAs rose in 2007-08, including in Rural England, having remained the same between 2003-04 and 2005-06. Although the numbers of agreements related to major residential permissions fell (and this is consistent with the fall in the numbers of permissions for these applications) there was a continued rise in the proportion of such permissions that had agreements. A significant proportion of permissions that were below the threshold size for negotiating affordable homes had agreements and almost all large scale residential developments had agreements. There was a significant increase in the number of minor permissions with agreements, reversing the pattern in the two previous studies. Southern LPAs continued to have more agreements per LPA than those in other regions and the number of agreements in southern LPAs rose in 2007-08.

The increase in the number of obligations within each agreement observed between 2003-04 and 2005-06 continued in 2007-08 and the increase was especially pronounced in rural LPAs and those in the northern regions. Direct payment obligations dominated the numbers of obligations, although in-kind obligations rose proportionately more.

The value of the obligations secured in 2007-08 was worth nearly £5bn, an increase of just under a quarter in money terms since 2005-06. About half the total was for affordable housing and this represented an increase of 37% compared with 2005-06. Over two thirds of the total value of all obligations secured was in London, the East and South East. Direct payment obligations accounted for a fifth of the total of all obligations secured and LPAs in Rural England, Prosperous Britain and Urban London had the highest average value of direct payment obligations per LPA.

The significant variation between individual LPAs in numbers of agreements, obligations and the value secured that had been observed in the previous two studies was also observed in the current study. The differences now appear to be much more related to differences in development pressure and in land values than in previous years where variations in LPA policy and practice were more important as explanations of these differences. At the same time the evidence confirms that LPA policy and practice has developed further. Almost all LPAs have relevant policies in place and a large majority are undertaking infrastructure planning. Standard charging is now more widely used. Changes to land values as well as the appointment of staff working on S106, were seen by LPAs as the two key 'drivers' of changes since 2005-06. The existence of formally adopted policy and the adoption of good practice, such as the use of standard charging, and the appointment of dedicated staff working on negotiations and, especially, monitoring are statistically related to the achievement by LPAs of more agreements and a higher value of obligations.

Monitoring faces LPAs with many challenges, especially for in-kind contributions, and requires the commitment of considerable resources. The evidence shows that obligations in agreements are mostly honoured once development gets underway except in those cases where new planning applications are made for the sites concerned and replacement agreements are struck in relation to any new permission granted. In other cases, the detailed case study evidence showed that agreements signed in 2003-04 and 2005-06 were fully implemented, albeit some with minor variations, in nearly eight in ten cases. Effective monitoring appears to be important in ensuring compliance. More recently, as a result of the economic downturn, LPAs have been willing to renegotiate payment and delivery schedules but not to renegotiate the substance of the obligations.

7.2 Interpretation and feedback from LPAs

The evidence suggests that the further development of LPA policy since the previous two surveys, including the presence of dedicated S106 staff and the increased use of standard charging, had enabled LPAs to increase the proportion of planning permissions with S106 agreements in 2007-08, compared with the two earlier survey years. This was particularly the case for minor permissions but also on major development sites as well. This, together with the generally stable flow of new permissions and a still rising land market in 2007-08, enabled LPAs to secure more obligations as well as more agreements, resulting in the increase of a quarter in the value of these obligations.

The 'buoyancy' of the market also meant that agreements signed in 2003-04 and 2005-06 were largely delivered as originally agreed. Now, however, the economic downturn experienced since 2007-08 is leading to requests from developers to renegotiate their obligations, something to which LPAs appear – at the time of this study – prepared to respond only with respect to timing of delivery and not with respect to the obligations themselves.

It also suggests that in 2007-08 LPAs may have reached the position of agreeing the maximum possible contributions of affordable homes that are possible. The numbers of new homes agreed for 2007-08 were only 11% more than in 2005-06 whilst the latter were 37% more than in 2003-04. The value of what was agreed rose 37% and 63% over the two latter respective time periods. Thus whilst significant increases in financial contributions were still being achieved, the increases in the numbers of new homes agreed now appears to have begun to 'tail off' compared with the more significant annual increases in previous years. This suggests that LPAs are close to extracting the maximum affordable contributions from developers given that the number of planning permissions has remained relatively stable. Whilst developers' financial contributions have been increasing, the numbers of new homes agreed has been rising much less, suggesting a bigger contribution per new home but far fewer increases in the numbers secured.

This interpretation was 'tested' in the feedback seminars held with the LPAs who had participated in the surveys and case studies. They considered that the findings confirmed their own experience and that the interpretation was sound. They particularly endorsed the significance of having dedicated staff and of having formally adopted policy on standard charging. This had increased their ability to reach agreements on smaller sites without prejudicing time limits on dealing with planning applications and also their ability to agree more obligations on all sites with agreements. They reported that standard charging had also resulted in more unilateral undertakings being submitted by developers and that elected members were now keener than before to see S106 used to secure more funds for mitigating the costs of new development. All of these factors had contributed to their ability to secure increased contributions in 2007-08

They made a number of additional observations:

1. The very low proportion of permissions with agreements identified in surveys in the 1990s was thought to be, in part, a result of the very poor databases then existing. Some LPAs thought there had, in reality, been higher proportions in those years. The fact that they now had better databases for S106 agreements had been driven by the greater demands for more transparency and accountability as well as by the development of better practice in electronic record keeping.
2. The fact that the survey evidence suggested that there were some large sites without agreements caused some surprise, especially amongst LPAs from Greater London who stated that all large sites in their boroughs were covered by agreements. Elsewhere it was accepted that a few

large sites did not have agreements, especially if they were regeneration sites where obligations might affect viability. Other reasons included: covering the need through conditions on the sale of publicly owned land; making permissions conditional upon signing an agreement before commencement so that the agreement is not made in the year of the permission (LPAs had received different advice from their legal teams on this matter); and using conditions on permission so that agreements become unnecessary.

3. There was often a tension between LPAs and public service providers, both within and outside the local authority (Primary Care Trusts were often mentioned), where these providers did not understand that planning obligations could only be sought to mitigate the consequences of new development and thus needed to conform to policy set out in Circular 5/05. Many LPAs referred to organisations that saw S106 as a possible source of additional capital or revenue funding for them to help to meet gaps in existing provision, and had little appreciation of the fact that planning agreements could only be used to mitigate the consequences of new development.
4. LPAs also reported tensions between themselves and elected members who sometimes sought spending from S106 accounts for matters that were not covered in the agreements. The growing demands for transparency and an increasing use of Freedom of Information requests about the use of S106 monies mean that record keeping is being tightened up on spending as well as on receipts of direct payment obligations.
5. Several LPAs thought better training of service providers and members was needed to address the issues identified in (3) and (4) above.
6. Monitoring was very challenging and required a cross departmental approach, including their own planning enforcement teams as well as other council departments, such as those responsible for council tax and housing. Electronic databases of agreements were proving helpful in facilitating monitoring with timetables automatically generating diary entries to check delivery on site. Many LPA staff reporting carrying case loads of 150 agreements being monitored at any one time. Some LPAs charge a monitoring fee upon execution of the S106 agreement.
7. Many LPAs are now preparing payment plans as part of the agreements. Many also reported a greater willingness to take developers to court if they breached payment agreements. Some were now going back to schemes completed as long ago as the 1990s to secure payments where developers have overlooked making their contributions.
8. Although planning applications and land values had both declined since the 2007-08 survey, the development of more formally adopted policy and the better practice that had taken place in recent years would not necessarily lead to a commensurate fall in agreements and obligations

negotiated. Policy and practice development had given developers more certainty about what was required of them. The near universal adoption of policy amongst neighbouring LPAs meant that developers were now much less able to 'play one authority off against another' during negotiations on competing sites in different authorities. The emergence of more unitary LPAs had also contributed to this, leading to more uniformity in policy and practice across what were once neighbours with different approaches. The ability of LPAs, however, to continue to seek agreements would be hindered by a loss of dedicated staff to the extent that these were now being funded from S106 payments. In general negotiations over agreements for new planning applications had become tougher with an increased focus on questions of viability, not the least in the light of recent appeal and High Court judgements on viability, as well as the impact of the economic downturn.

7.3 Key conclusions

LPAs continued to take advantage of a still buoyant housing and property market in negotiating S106 agreements, at least in the early part of 2007-08. Thereafter there is some evidence that agreements were becoming harder to negotiate once the economic downturn had set in. About £5bn worth of obligations was agreed in 2007-08.

LPAs were maintaining the focus on larger development sites but more agreements were being struck on smaller sites especially for housing and in rural areas with the great use of standard charging being an important factor in enabling securing agreements on smaller sites.

Although monitoring was on the whole less well developed than negotiations, it appeared that most obligations agreed in 2003-04 and 2005-06 were being delivered in full. For later agreements developers were attempting to renegotiate obligations but LPAs were resisting this, albeit with a willingness to renegotiate dates for delivery.

Annex to Chapter 4

Results of Regression Analysis to Model the Number and Value of Planning Obligations

The results reported in Annex Table 1.1 below summarise the regression equations that provide the best fit and imply plausible (in terms of the signs on the coefficients) relationships between the independent and dependent variables.

Annex Table 1.1 Model of Number of Planning obligations by local planning authority							
Model	R	R ²	Adjusted R ²	Std. Error of the Estimate			
1	.646	.417	.408	13.86			
			Unstandardized Coefficients	Standardized Coefficients			
Model			B	Std. Error	Beta	T	Sig.
	Constant		-1.560	2.069		-.754	.452
	No of Households		.000	.000	.560	7.746	.000
	Household Growth		.004	.002	.166	2.297	.023
Note: Dependent Variable: Total number of planning obligations							

The model of the number of obligations has a relatively high explanatory power (adjusted $R^2=0.417$, see Annex Table 1.1) when compared to the previous studies. It appears that the number of obligations secured is determined by the number of households and the rate of household growth in the recent past. These variables would appear to be proxies for market size and the degree of development pressure. Land values, the rate of house price inflation, and the number of planning applications processed within Best Value (8 and 13 weeks for minor and major applications respectively) target times, which have been significant in previous models, are not now. Similarly, there is no evidence of a meaningful relationship between factors such as socio-economic conditions (as measured by the Index of Multiple Deprivation, unemployment rates and levels of economic activity) and the number of obligations obtained.

Annex Table 1.2 Model of Average Value of Planning Obligations by LPA

<i>Model</i>	<i>R</i>	<i>R²</i>	<i>Adjusted R²</i>	<i>Std. Error of the Estimate</i>		
1	.148	.022	.014	321190.919		
		<i>Unstandardized Coefficients</i>		<i>Standardized Coefficients</i>		
<i>Model</i>		<i>B</i>	<i>Std. Error</i>	<i>Beta</i>	<i>T</i>	<i>Sig.</i>
1	Constant	144471.0	30164.055		4.790	.000
	Average Land Value	.011	.007	.148	1.662	.099

Note: Dependent Variable: Average Value of Obligations

As seen in Annex Table 1.2, the model of the average value of obligations has a much lower explanatory power (adjusted $R^2 = 0.014$). The model suggests that land values are the only significant (at the 10% level) determinant of the average value of obligations. Land values were also the most significant driver of the value of obligations in the two previous studies.

Annex to Chapter 6

Delivering Obligations – Detailed evidence from Case Study sites

This annex provides ‘pen sketches’ of example case study sites grouped by the different outcomes that were listed in Table 6.4 in Chapter 6.

The site-specific interviews and documentary evidence generated a lot of detail for each site. The information was standardised for each site in a pro-forma (see Appendix 5). A case study summary was written for each site and examples are given below to reflect the range of sites and delivery outcomes.

Key points

- The majority of the case study agreements had all obligations delivered;
- Some may have been late, and therefore technically in breach, or required persistent chasing by the LPA officer, but eventually the agreed contributions were delivered;
- There were a minority of cases where the developer was in breach of the agreement;
- There were other cases where the agreement had been technically breached but the LPA was confident they would soon receive all agreed contributions;
- In a minority of cases the monitoring system of the LPA did not enable them to know if contributions had been delivered as agreed.

A6.1 Outcome 1: full compliance

The majority of the agreements for the case study sites were fulfilled; contributions were delivered or are expected to be delivered. For example:

Case Study A

Large, multi phase residential development. The original S106 was signed in December 2005 with five subsequent permissions signed in 2006 and 2007. Changes to the original permission related to the relocation of a club house and two additional units. Direct payments were agreed for affordable housing and footpath/cycleway contributions. The site is complete and monies were received at the correct time. The received payments were affordable housing at £255,000 (index linked) and £24,000 for additional units(index linked), £40,000 (index linked) for footpath/cycleway provision and art provision on site to a value of £30,000.

Some agreements in this category are simple and straightforward. For example:

Case Study B

The S106 was signed in September 2006. The site comprises 20 one bedroom flats above a shop unit. Only one contribution was agreed, £20,429 to the Primary Care Trust, and the money was received in April 2007.

A6.2 Outcome 1a: full compliance after LPA pressure

There were five cases where the contributions were eventually delivered, but only after the LPA had chased the developer hard to ensure the obligations were met.

For example:

Case Study C

Large mixed use site comprising:

- Area 1 – detached 4 storey self-storage unit
- Area 2 – 3 storey town houses, a part 3, part 4 storey block of flats and two larger blocks of flats varying in heights from 4 to 7 storeys (including affordable housing) with both over and underground car parking
- Area 3 – Health centre, retail units with apartments above, health (fitness) club, hotel with apartments over, nursing home and nursery

The S106 agreement was signed in 2003 and included:

- Contribution to open space – £2,472 per residential unit. Contribution to children's play space – £985 per residential unit of 2 or more bedrooms
- Refurbishment of clock tower (cost unknown)
- Job brokerage scheme (to promote local employment) (value unknown)
- 30% affordable housing in the form of 31 rented units (7 x 1 bed, 19 x 2 bed, 5 x 3 bed) and 15 shared ownership units (7 x 1 bed, 8 x 2 bed)
- Contribution to primary education – £116,000 to County Council
- Contribution to childcare facilities – £15,000 to County
- Contribution to youth facilities – £20,955 to County
- Contribution to technology college – £75,000 to County
- Contribution to library – £140 per residential unit plus £22,540 on completion of last residential unit
- Passenger transport measures – £500 per 1 or 2 bed unit and £750 per 3 or 4 bed unit plus £40,000 on completion of last residential unit plus a further £40,000 per year for four years
- Contribution to cycle strategy – £97 per residential unit
- Highway works (in-kind, to include new access to the site etc.)
- Traffic regulation orders re parking control zones – bears a charge
- Archaeological report
- Fire hydrants (details to be confirmed but at no cost to council)
- Green Travel Plan – a package of measure that will lead to agreed targets of promoting more sustainable modes of transport prior to occupation of the development. Includes car pooling and flexible working hours.
- The financial contributions were due to be paid in phases, triggered by completion of the different parts of the development. They were sometimes paid late but had all been delivered in full by the end of April 2006. The contributions in-kind have also been delivered as agreed, although not always exactly to time. The planning authority is very pleased with the final development although the complexity of the S106 obligations made it a complex and time-consuming scheme as the developers had to be reminded when each set of contributions were due.

A6.3 Outcome 2: full compliance, but with changed timing

There were 18 agreements for which the contributions had not yet been fully delivered, but for legitimate reasons (e.g. triggers not reached), and they are expected to be fully delivered in accordance with the S106 agreement. Payments that have already been triggered have been delivered.

For example:

Case Study D

Redevelopment of a car parking facility and a community facility in the town centre. The S106 was signed in 2006 and the scheme will provide 214 new apartments, a multi-storey car park to replace the previous town centre parking and a community facility. The S106 contributions include replacing the car park and the community facility, 24 on-site affordable housing units (in a separate block) plus financial contributions to off-site affordable housing (£1m) and transport and recreation. To date three blocks have been completed with two more in the process of construction, but the development has been hit by the recession and only one block of market housing has been sold.

An affordable housing provider has been put in place but the transfer of the units (which are also complete) has not yet taken place because the trigger of 152 occupied market dwellings has not been reached. The car park and community facility are both complete and operational, but none of the financial contributions have been paid because they were triggered by the occupation of 75 market homes and only 50 have been sold. Therefore this scheme is not technically in breach of the S106 agreement but it may be a long time before the contributions can be paid.

Case Study E

This large brownfield site comprises 574 residential units in total of which 203 affordable are – 145 social rent and 58 shared equity. Negotiations took a long time and the site went to Appeal because elected members of the council thought the scheme was too large. But the Appeal was lost because these were not planning grounds for refusal. The result was a unilateral undertaking proposed as part of the Appeal under which the council conceded the proposed community facilities. The unilateral undertaking was signed in 2006. All financial contributions are to be spent by the council within three years of receipt. Receipts are phased with half the health on commencement, the rest on the second anniversary.

Education contributions are in three instalments ending in December 2011 – these are earmarked for primary education expansion. Not all contributions have been paid in full as yet but the same developer is now developing an adjacent site so the council expects that contributions will continue (including those on a new S106 agreement). The contributions in-kind, which comprised a new access road and parking facilities at no cost to the council, are all complete.

Case Study F

Large mixed use development situated on a site formally containing one farm house surrounded by farm land. The farm house has grade II listed status and will be converted into a community centre. The S106 was signed in December 2004. The site density is 680-765 units on 16.5 hectares (ha). The scheme comprises 765 homes of which 30 percent (230) are affordable housing. The permission included a primary school via a 1.2 ha land contribution and an urban park at 6 ha. Phase 1 was completed in 2005 and the school has been built. Phase 2 of the site is currently under construction although because of the current economic climate only the affordable housing build is going ahead.

To date, 174 affordable housing units have been delivered and 56 are outstanding as trigger points have not been reached. Various direct payments were agreed including £82,000 towards the laying out and equipping of three play areas and £64,000 towards the maintenance of the play areas. These will be payable on completion of a 12 month maintenance period of the urban park.

The S106 included a contribution for on and off site sports and community facilities:

- £958 per dwelling up to 150sqm gross external floor area
- £1,436 per dwelling 150-200sqm gross external floor area
- £1,916 per dwelling 200+sqm external floor area

This is payable in stages:

- £80,000 within 14 days of commencement
- £15,800 prior to occupation of 100th dwelling.
- £191,600 prior to occupation of the 300th dwelling.
- £191,600 prior to occupation of 500th dwelling.
- £143,700 prior to occupation of the 650th dwelling
- £110,170 prior to occupation of the penultimate dwelling or within five years of commencement of development

(Total £732,870 – based on 765 units all of which are less than 150sqm)

To date £83,137.26 was paid in 2006 and £18,071.90 was paid in 2008. The remainder will be paid at the appropriate trigger.

There was a £253,000 integrated transport contribution, and £265,054.13 has been paid. There was also a £564,000 contribution for the provision of bus services, and £586,117.65 of this has been paid.

A further contribution of £2,268,448 was agreed, towards the new primary school. Triggers were agreed as:

- £567,121 on commencement of the school works
- £567,121 on completion of the works to the school roof
- £567,121 on issue of the completions certificate of the school
- £567,121 on the commencement of the schools use

Or in any event prior to the occupation of the 500th dwelling.

A6.4 Outcome 3: formally agreed variations

There were six case study sites where the contributions were delivered, but there had been formally agreed changes to the agreement, for example, the S106 was revised with a deed of variation.

For example:

Case Study G

Large mixed use scheme in a rural authority. In this case the contributions in the original agreement of 2006 were amended after negotiation, leading to a modification agreement in June 2008.

After agreeing the S106 in 2006, the developer recently renegotiated a reduced level of contributions. For example, the original open space contribution was £698,584 but was negotiated down to £169,392 and the original crime prevention contribution was £64,000 but was reduced to £10,000. The developer said the original application was no longer viable due to declining economic circumstances. Although concerned that it would set a precedent, the LPA agreed to considerably lower contributions as they felt that the local economy and community needed the development, particularly during the economic downturn. The lower contributions agreed in the modification agreement were paid on commencement of development; the site is still only at ground level.

A6.5 Outcome 4: informally agreed changes

There were two cases in which the contributions were delivered but with informal changes to the original S106 agreement. For example, the LPA agreed informally with the developer to accept payment at different trigger points to those agreed in the S106 agreement.

For example:

Case Study H

This was a mixed use development of 540 dwellings, 5,000 sqm retail and a tertiary education college. The S106 obliges the developer to pay highways contributions (£360,000), provide public open space and transfer 75% of 135 affordable dwellings to an RSL and sell 25% on a shared ownership basis. The development is not complete yet, but the developer has agreed informally with the county council to delay the first payment of the highways contributions until the college is occupied. The city council offered the developer a new S106 agreement, but the developer had already agreed these changes informally with the county council.

A6.6 Outcome 5: output different but still consistent with agreement

There are only two cases where the output is different from the expectation of the LPA but is consistent with the S106.

These were:

Case Study I

Large residential development. A number of contributions were agreed including open space, play space, a cycle and pedestrian way, highways works and a new bridge. The agreement also included an affordable housing requirement. The site is being built in four phases, with a separate agreement for each phase. There will be 260 residential flats in a series of buildings ranging from 4 to 8 storeys, 81 of these are affordable. These are to be built by the developer, with a free land contribution and the RSL to pay agreed build costs. However, the developer did not provide enough affordable housing in the first phase so the council added it to second, but the developer did not provide enough in the second phase either. Now the developer wants to push the affordable housing onto the fourth phase but council want it in the third as they are concerned about all the affordable being together at the end which is not good for achieving a mixed community, and they are worried that the developer may simply not build the final phase. They do not regard the developer as being in breach of the agreement, but the developer is not delivering the affordable housing in the way they had hoped.

Case Study J

A large mixed use development on a former building yard and vacant site. The developer built 232 residential units and 425 sqm retail. The following direct payments were agreed:

- £500,000 – transport and environmental management (pooled payments)
- £250,000 – social and community fund account (S&CFA)
- Payment to the Environmental Inspectorate

The following in kind obligations were agreed:

- Childcare facility
- Digital Learning Centre
- Highways works
- Environmental Improvements
- Affordable units (22 x 1-bed, 57 x 2-bed) (63 Social Rented, 16 Shared ownership)

All the financial contributions were delivered in full. However, the digital learning centre was specified as required by a particular organisation who subsequently decided they did not want it. The centre was built and fitted out as per the agreement but is unoccupied. The childcare facility was also built and fitted out but remains unoccupied. The agreement did not specify what the rent of the childcare facility was to be, it is very expensive and the developer refuses to reduce the rent to enable a childcare use. The developer is pressing to be able to change the use of the facility. This was an older agreement and the local authority said that it was “a learning curve”.

A6.7 Outcome 6: agreements breached

There were five cases where the agreement had clearly been breached.

For example:

Case Study K

A major commercial development in an urban fringe location. The site of almost 30 acres was given permission for warehouses and distribution uses and the site has been completed and is fully occupied. In the S106 agreement the developer agreed to contribute £60,000 towards traffic management, pay a £15,000 commuted sum for traffic light maintenance, to spend £30,000 on the commissioning of an artist to provide public art and to spend £40,000 towards recreational facilities in the area. All of these contributions were delivered.

However the developer is in breach of the agreement as other obligations have not been met. The S106 specified the provision of two rugby pitches to good standard and the updating of existing changing facilities. However, the rugby pitches still require works such as stone picking, seeding and weeding to make them usable by the local club, who were a signatory to the S106 agreement. The developer agreed to improve and update the existing changing facilities, but instead they have demolished them and are arguing that demolition constitutes an 'improvement'.

The Council hold a £50,000 Bond for Sports Facilities Works which the developer is trying to get back. The LPA is currently putting a case together involving the sports development officers, the rugby promotion officer and the council to force compliance with the agreement through legal channels. The LPA will insist on provision of a changing facility or they will cash the Bond. Whilst £50,000 is not enough to pay for a new changing room (minimum £200,000) the Council could get a second hand portacabin for £30,000 upwards. All the other contributions had already been made and the LPA officer felt that the recent economic downturn has led them to argue over a relatively small sum, but that the LPA would pursue them for full delivery of the contributions, or keep the Bond.

A6.8 Outcome 6a: agreement breached but compliance expected

There were a further eight cases where the agreement is currently in breach but where the LPA expected delivery of the agreed contributions in the near future.

For example:

Case Study L

Brownfield site. This case is an example of how complex delivering obligations can be. This agreement has had some contributions paid, although not always on time, a deed of variation, a new S106 to pull older agreements together when new plans were made, and has many outstanding and overdue contributions that have not been paid. Although in breach of the agreement, the LPA thinks that the developer will eventually deliver the contributions, although this is perhaps optimistic given the complexity and history of the delivery of contributions on this site.

The site, with planning permission for medical facilities, is currently undeveloped. It belongs to a teaching hospital which has recently redeveloped adjacent sites to provide a completely new hospital under a private finance initiative (PFI). An S106 agreement dated 1998 attached to that development included contributions to transport and parking, highway alterations, affordable housing for hospital staff (key worker housing) and community health facilities. The financial contributions for transport and highways were paid in full although not on time, and some of the parking has been provided on site. The other contributions – potentially worth far more in value but to be provided in-kind – were not delivered. Therefore when an application was made for the case study site, also owned by the hospital trust, the planning authority decided to amalgamate all the previous outstanding contributions plus new obligations for the new site into a single S106 agreement dated 2004.

As development has not yet gone ahead on this site, none of these contributions are yet due. The planning authority is in regular contact with the hospital trust and remains reasonably confident that the obligations will eventually be delivered, not least because there are other sites in the area with applications for housing from a joint venture that includes the hospital trust. The LPA has placed a land charge on all these sites so that if the joint venture decides to sell on, the new owner will have to deliver the S106 contributions. The 2004 agreement includes obligations relating to these housing sites.

Case Study M

A major residential development where 42 dwellings were granted permission with a subsequent S106 agreement signed in 2005. There were three separate direct contributions for healthcare, education and open space. The S106 was signed by one developer, but the site was sold on to a second developer, a major national house building company, in late 2005. The site was completed in late 2008. None of the contributions have been paid, and the second developer is now refusing to pay the contribution, as they argue that they are not implicated in the S106 and that the first developer is the debtor. This argument began in 2006 with a letter from the first developer explaining that the second developer owns the obligation. The monitoring officer believes that the second developer will eventually pay the agreed contributions, but is delaying.

Case Study N

The S106 agreement was signed in May 2006. The first phase is complete. The second phase has been held up because of the current economic climate. A fresh planning application has been submitted for a re-design to get a net gain of six dwellings. The permission allowed for 20 percent affordable housing all of which has been delivered (51 units). All monies owed have been paid apart from one contribution of £74,000 for the maintenance of on site open space. Although payment is not expected yet because the land has yet to transfer, the applicant in this case has implied they cannot pay. The council are currently looking into this.

A6.9 Outcome 7: outcomes unknown

There were five cases in which it was not known whether the contributions had been delivered in line with the S106. This was because of a lack of monitoring.

For example:

Case Study O

The S106 agreement was signed in 2006, although an extra 10 units were added to the application two weeks later. The site comprises 240 flats – 25 percent affordable housing (60 units) with an ancillary gym. The following contributions were agreed:

- £88,500 for off site highway works and associated improvement within existing public highway
- Affordable car parking spaces – including 43 for the affordable housing and three for a car club
- A local public transport contribution of £25,000 will be made available to provide a Countdown system for bus stops
- £25,000 to improve local transport
- Alteration of curb line, provision of regular entry treatment with granite curbs at the top and bottom of ramps, bollards and drainage at base profile.

However, because of a lack of monitoring the LPA could not say whether or not any of the contributions have been delivered or paid.

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Appendix 1

Research Methods

The Methods Used

Questionnaire survey

Primary data was collected through a self-completion questionnaire sent to all English local planning authorities (LPAs). The survey questionnaire used for the 2005-06 study (which was a modification of the 2003-04 one) was used again but with some changes and additional questions. Information was collected about policy and practice, the numbers of planning agreements and planning obligations, types of obligations, including affordable housing, financial information on direct payment obligations, on the delivery of direct payment obligations and new affordable homes and on the extent to which existing agreements were renegotiated. A small expert panel of S106 officers from LPAs was convened to help pilot the draft questionnaire.

The questionnaire was distributed by email (with a downloadable version also on the dedicated web site set up by the research team which all LPAs could access). The questionnaire was designed to enable electronic completion, followed by email return to the survey team. Details were collated in advance of sending out the questionnaire from a wide range of sources to enable identification of the member of staff in each LPA who was responsible for S106 matters and the questionnaire was sent to that person. In addition the Chief Planner of Communities and Local Government wrote to all LPA Chief Planning Officers (or equivalents) encouraging them to ensure there was a reply to the questionnaire and also asking them to notify CLG of the officer in the LPA responsible for S106 matters. Once the questionnaires had been distributed, there was a 'help line' staffed by a member of the research team so that LPAs could seek clarification. Two reminders were sent out to those who had not responded. Details of response rates are shown below.

Secondary data

Secondary data used included a wide variety of information about the socio-economic characteristics of each planning authority including population statistics, information about house prices (Land Registry) and land values in each planning authority (Valuation Office Agency), and about aspects of local authority service delivery, for example planning delivery grant. All this information was used to estimate the value of obligations and also to model inter-authority variations in planning agreements, planning obligations and their value (see Chapter 4). Information was also collected from CLG's HSSA

statistics and used to calculate the value of affordable housing obligations. Basic information about the numbers of planning permissions was taken from CLG's PS2 statistics.

Delivery case studies

In addition to sending questionnaires to each LPA the research team selected 24 LPAs to investigate the delivery of obligations in more detail. In each of the 24 authorities, four case study sites were chosen for detailed investigation.

A shortlist of LPAs was selected, chosen to provide regional coverage, broadly reflecting the regional distribution of new development. There were a number of other considerations in choosing the sample. Almost all of the 24 chosen are LPAs that had responded to the 2003-04 and 2005-06 surveys. This narrowed down the LPAs that were suitable. A few of the chosen LPAs did not respond in one of the previous survey years but were included because there were insufficient appropriate respondents for these regions. HSSA data was checked to ensure that the LPAs chosen had sufficient numbers of affordable housing units delivered through the planning system to serve as case studies for the delivery of obligations on housing developments. The case studies were selected to reflect a range of different strengths of policy and practice, of house price to income ratios, of urban and rural areas and a range of local authority families (see below for the definition of 'families').

Four schemes were identified in each LPA to illustrate a range of planning permissions and S106 agreements (to cover housing, commercial and mixed use) that were signed in 2003-04 and 2005-06. It was decided to select one simple housing scheme, one complex housing scheme, one mixed-use development and one non-residential development in each of the 24 LPAs. The case study agreements were chosen by the LPA officer interviewed in line with these categories and in discussion with the research team. Some LPAs were constrained in their choice of sites, for example, some LPAs have very few commercial sites with S106 agreements attached. As a result there were a total of 96 case study sites.

Face to face interviews were conducted with the relevant LPA officers in each of the 24 LPAs. The first part of the interview covered general questions to explore broad issues relating to the delivery of planning obligations. The second part of the interview covered site-specific questions to discuss each of the four sites in every case study LPA (see Appendix 5 for the interview topic guide). Planning files were consulted to find the details required for each site. The research team also visited the sites to identify the nature of the in-kind obligations and the extent to which they had been implemented as agreed.

Direct payment and in-kind obligations

The study collected information on those types of obligation that do not involve developers making financial or in-kind contributions but did not place a valuation on these. The latter can include such obligations as restrictions on the development process itself (such as limitations on the number of hours each day

during which construction work may be done) or restrictions on the use of a development (such as limiting the occupants to those not owning or having the use of a private car, an obligation often used when granting permission for a dwelling to be used as a House in Multiple Occupation).

There are two types of planning obligations involving developer financial contributions within planning agreements: direct payment and in-kind. Direct payment obligations are financial payments specified in the planning agreement, such as the payment of a sum of money so that the planning authority can provide open space for a development. Information about direct payments is relatively easy to collect as most planning authorities will have records of the details and this information can be collected in questionnaires sent to planning authorities.

In-kind planning obligations are much more problematic to value because the agreement specifies that the developer will provide the facility or undertake the identified works. The financial commitment tied up in this sort of obligation is not specified in the agreement. Hence it is necessary to place a value on it. The approach to calculating values used in both the 2003-04 and 2005-06 studies was also adopted in this third one. This assumes there is a 1 to 1 relationship between direct payments for specified works or facilities and in-kind obligations. This assumption was backed up by the results of extensive casework in the first study. Although data for this was not always easy to find, the available evidence suggested that this relationship was a reasonable one to assume. Moreover, although over a third of all obligations were in-kind in the first study, almost all of these were for affordable housing whose value was assessed differently. Hence this method of assuming a linear financial relationship between direct payment and in-kind obligations was used to value only a small proportion of all obligations. As the results of this survey confirmed, direct payment obligations are a large proportion of all obligations, making the estimate of the total value of obligations less dependent on the robustness of the assumption that there is a linear relationship between in-kind and direct payment obligations.

Affordable housing

The calculation of the value of planning obligations relating to affordable housing poses particular problems. Previous work by members of the research team (Whitehead et al, 2005) failed to establish the extent of developer contributions for affordable housing for the majority of a large number of case study sites. Research to establish accurately the value of affordable housing contributions would require much longer, more intensive case study-based analysis with extensive co-operation from developers and registered social landlords (RSLs). Resource constraints did not permit this for this or for the earlier studies. Consequently, the estimation of the value of affordable housing obligations was approached in an alternative manner. Instead of data being collected on specific obligations, secondary data were utilised. These data on land values, on house prices and on affordable housing completions associated with planning agreements provided an estimate of the value of affordable

housing. The specific approach adopted for the 2003-04 study was also adopted for the both the 2005-06 and the current study (for details see Crook et al, 2006, Chapter 3).

The assumptions used are based on other work undertaken by the research team (for example, see Monk et al, 2005, 2006, 2008, Whitehead et al, 2005). The annex to this appendix describes the approach taken.

Planning obligation typology

In policy terms it is important to split developer contributions in planning obligations between the main types. This allows the value of obligations to be estimated separately for transport, affordable housing, education etc. as well as estimating a figure for all obligations for England as a whole. The typology of planning obligations developed for the 2003-04 was adopted for both the 2005-06 and this study enabling the collection of data on detailed planning obligation contributions. The expert LPA panel for the pilot of this study confirmed its continued validity. It is important to note that a planning agreement can contain a number of planning obligations. For example, one agreement may contain affordable housing, open space and transport obligations. It is also possible for there to be more than one obligation under each general planning obligation heading. The obligation typology consists of six main headings:

- Affordable Housing
- Open Space and the Environment
- Transport and Travel Schemes
- Community Works and Leisure
- Education
- Other.

Within these 6 main headings are more detailed contribution types, shown in Appendix Table 1.1 below.

Appendix Table 1.1 Typology of planning obligations

Affordable Housing

- a. On-site provision of various tenures: social rented, shared ownership, key worker etc. Units developed and transferred to RSL: revenue from transfer depends upon agreement.
- b. Off-site provision: development and transfer of units on another site owned by the developer/landowner.
- c. On-site provision of land only: land transferred to a RSL or LA for free or at a rate below the market value.
- d. Off-site provision of land only.
- e. Commuted sum: payment of a sum in lieu of actual provision of units.
- f. Other affordable housing contributions.

Open Space and the Environment

- a. Provision of open space either within a development or as a direct payment to the LA. Landscaping. General environmental improvements.
- b. Ecology and nature conservation, countryside management and community forests.
- c. Allotments.
- d. Sport facilities: sport fields, clubhouses etc.

Transport and Travel Schemes

- a. Traffic/highway works, temporary or permanent.
- b. Traffic management/calming.
- c. Parking: management or parking restrictions, car restrictions and car free areas, provision of parking areas.
- d. Green transport/travel plans.
- e. Public and local transport improvements.
- f. Pedestrian crossings, pedestrianisation, street lighting
- g. Provision or improvement of footpaths or pathways etc.
- h. Cycle routes, management, safety.

Community Works and Leisure

- a. Community centres: construction, funding, improvement etc.
- b. Community/cultural/public art.
- c. Town centre improvement/management.
- d. Library, museum and theatre works/funding.
- e. Childcare/crèche facilities, provision and funding.
- f. Public toilets.
- g. Opening hours or noise restrictions.
- h. Health services: Community healthcare, construction of surgeries etc, healthcare funding.
- i. CCTV and security measures.
- j. Waste and recycling facilities.
- k. Religious worship facilities.
- l. Employment and training.
- m. Local regeneration initiatives.

Education

- a. Schools: development or funding for education at all levels: nursery, primary, secondary, higher etc.

Other

- b. Legal Fees.
- c. Restrictions on use.

Calculations of national figures and planning authority typology

Few surveys of sub-national bodies, like planning authorities, produce 100% response rates. It is necessary to 'gross up' the sample results – on the basis that the sample is a representative cross-section of all planning authorities – by the reciprocal of the sample fraction. However, to do this on the basis of the response rate for the country as a whole is likely to yield an incorrect result especially if (as is likely) there are very different results for different parts of the

country. In the case of this survey, as in the case of the original 2003-04 and the 2005-06 surveys, a typology of local authorities was used that reflected the varying socio-economic circumstances of different 'families' of authorities. Grossing up took place within each family and region and the national figures are the sum of the family figures.

An amendment of the typology produced by Vickers and his colleagues in 2003 for the Office of National Statistics was used as a basis for analysing the results, for reporting on differences between types of LPA and for grossing up to give the national picture (Vickers et al., 2003).

This typology creates groups (or families) of local authorities that are similar in terms of the characteristics of their residents. Consequently, the members of each family do not need to be geographically contiguous. They reflect the urban/rural character and socio-economic profile of the local authorities. The main source of data is the Census of Population and the clusters are derived using cluster analysis. On the basis of data on 129 key variables (which are initially collapsed using Principal Components Analysis), this approach partitions the 434 UK local authorities into a pre-determined number of clusters. Each cluster contains the local authorities that are most alike. The approach does not assign equal numbers of authorities to each cluster.

At the broadest level of analysis, five 'families' are identified. These are subdivided into a total of 13 groups. As in the 2003-04 and 2005-06 studies an amended selection was used in this study. This is shown in Appendix Table 1.2, which also indicates the number of local authorities in each 'family' in England as at 2007-08 (prior to the creation of several new unitary authorities which absorbed several of these into fewer authorities and which came into formal existence in 2009).

Appendix Table 1.2 Local Authority Families in England used in the study as at 2007-08

<i>Local Authority Family</i>	<i>Number of LAs</i>
Established Urban Centres (EUC)	30
Rural England (RE)	119
Rural Towns (RT)	57
Prosperous Britain (PB)	76
Urban England (UE)	46
Urban London (UL)	26
Total	354
Note: excludes National Park Authorities	

Established urban centres cover the former (mainly) northern and midlands manufacturing authorities, many undergoing significant regeneration and diversification. Urban England includes the old mining and heavy manufacturing towns, regional centres, and some young and vibrant cities. Rural towns, including coastal towns, cover the main towns outside the above two families and also towns that are neither wholly urban nor rural. Rural England covers

the less densely populated but geographically extensive authorities. Prosperous Britain covers those areas in England that are in the commuter belts of the major cities and smaller historic cities. Urban London includes many of the London Boroughs and some of their satellites.

Feedback seminars

The preliminary findings of the questionnaire survey and the LPA case studies were presented to participating LPAs at a series of seminars held in Bristol, Leeds and London in September 2009. The 45 LPA officers attending these seminars were drawn from a cross section of LPAs. They were asked to comment on the findings and on the research team's interpretation of these.

The Study Year

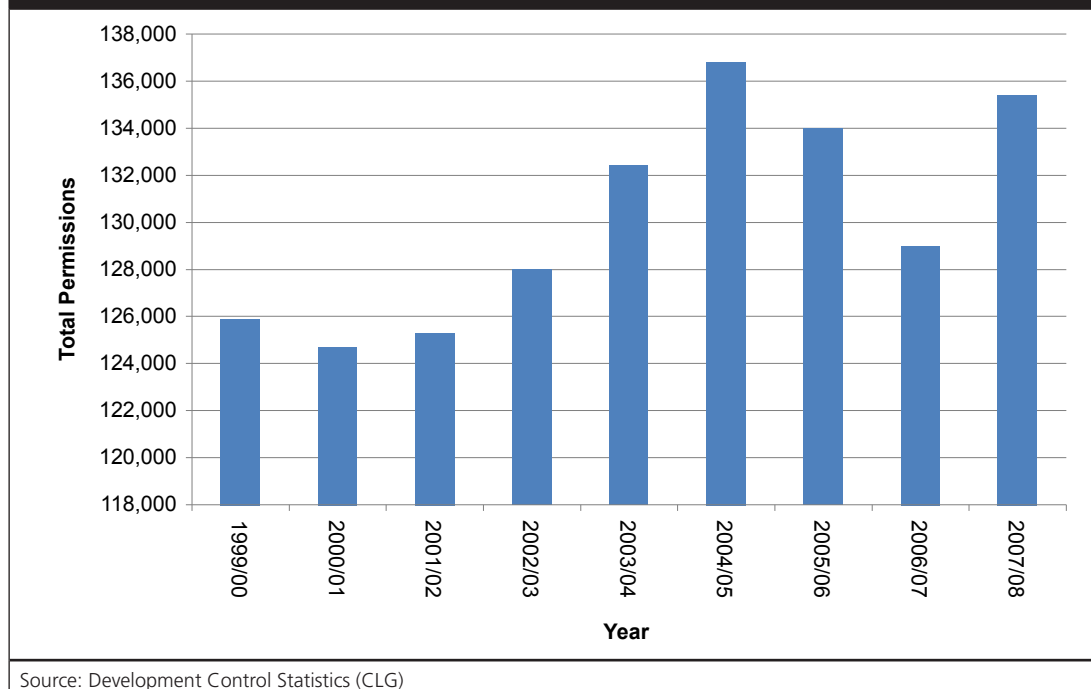
The survey was conducted with respect to activity in 2007-08. This year was chosen rather than 2008-09, as it was the most recent year after 2005-06 for which all the necessary information was available, especially from secondary sources such as the HSSA data.

The values reported (and hence the national estimates made through the grossing up procedure) were not adjusted for inflation. Hence nominal prices are reported and the valuation comparisons between 2003-04, 2005-06 and 2007-08 make no allowance for inflation between the years.

It is important to place the study year of 2007-08 (and the preceding studies of 2003-04 and 2005-06) in context. Appendix Figure 1.1 shows the aggregate number of (non-householder) permissions granted by all English planning authorities. It reveals a slightly rising trend in this century up to and including 2004-05 with a small fall to 2006-07 and a subsequent small increase to 2007-08¹⁴. The figures also show that each of the three study years (2003-04, 2005-06, and 2007-08) all had very similar numbers of permissions granted. Analysis of total applications received also reveals a similar pattern (674,000 in 2003-04, 643,000 in 2005-06, and 649,000 in 2007-08, compared with 542,000 in 2000-01). This suggests there was no greater (or lesser) opportunity for planning authorities to seek contributions from developers via planning agreements in 2007-08 than there was in 2003-04 and in 2005-06.

¹⁴ Information on permissions for the following year, 2008-09, have not been published at the time of drafting this report.

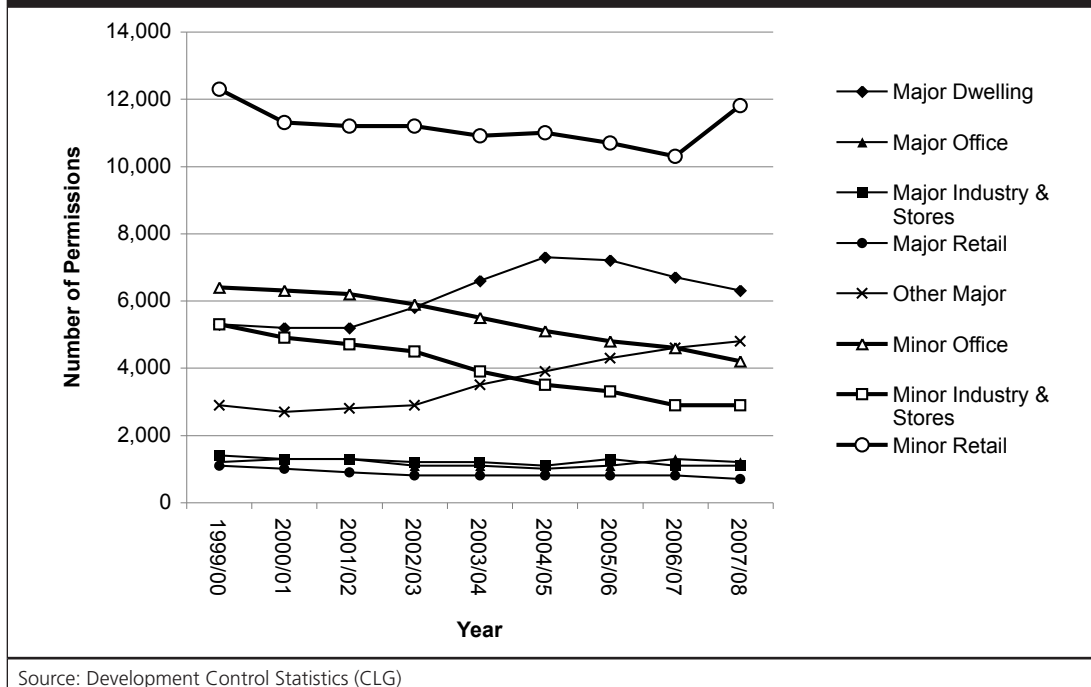
Appendix Figure 1.1 Total number of non-householder permissions given by planning authorities in England, 1999-00 to 2007-08



Appendix Figure 1.2 breaks down the trends in total permissions granted into component parts, both in terms of type of development and whether the development was 'major' or 'minor'¹⁵. It shows a decline over the three study years in minor office, industry and retail permissions, with increases in major residential development (until 2007-08 when it fell) and most other major permissions (and although not shown on the Figure, there was also an increase in minor residential permissions).

¹⁵ Permissions for major development are those for 10 or more dwellings or 1,000 sq metres or more of commercial floor space.

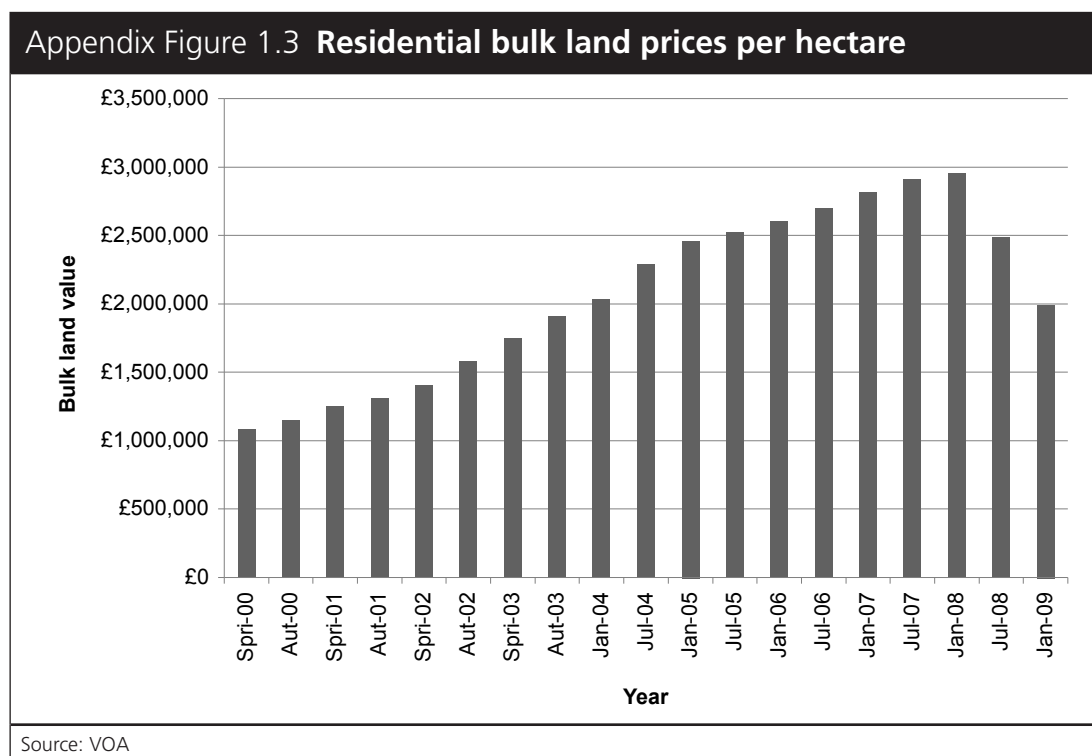
Appendix Figure 1.2 Number of non-householder permissions given by planning authorities in England, 1999-00 to 2007-08 by type and size of development



Nor was the period between the three survey years distinctive in terms of land price inflation, although 2007-08 showed evidence of a marked falling off in the rate of price increases compared with what had occurred in the previous years. In the period between Autumn 2001 and Autumn 2003, average prices of 'bulk' residential land for England as a whole outside London had risen by 46%. Average prices rose by 32% between Autumn 2003 and July 2005. The rate of increase between January 2006 and January 2008 was, however, significantly less, with average prices, again for England outside London, rising by only 13% over the two years. By then however evidence suggests that the market had 'turned' and that by January 2009 prices had fallen by 32% within the year so that by that month prices were equivalent to the prices paid in January 2004.

As Appendix Figure 1.3 confirms, the survey period was not untypical of the latter part of the first decade of this century. The survey year of 2007-08 thus presented local planning authorities with no significantly greater opportunity to take advantage of rising land prices than in the previous survey year of 2005-06 but much greater opportunities than in the year 2003-04. That is not to say that the increased land prices in 2007-08 did not contribute to the larger total value of all the contributions negotiated by planning authorities in England. This will have been a factor, but as the results described in the preceding chapters showed, new policies and practices were also important factors contributing to the larger total value of contributions obtained. This suggests that the more recent fall in recorded land prices since January 2008 (and also shown on Appendix Figure 1.3) does not mean that the value of planning obligations will

now fall on a commensurate basis as developing policy and practice is also a factor in the amount of contributions obtained, as the preceding chapters in this report have demonstrated.



This all suggests that none of the three study years was unrepresentative of the recent past and some certainty that all appear to be very similar in terms of aggregate numbers and types of permission granted and recent changes in land prices.

Response to the questionnaire survey

Appendix Map 1 below locates the responding authorities. It suggests a response that covers all types and sizes of authorities with good coverage everywhere.

The overall response rate was 43%, higher than for both 2005-06, when it was 36%, and in 2003-04, when it was 31%. The survey achieved response rates of 33% or more for all local authority families in the typology – and 40% and more in most (Appendix Table 1.3).

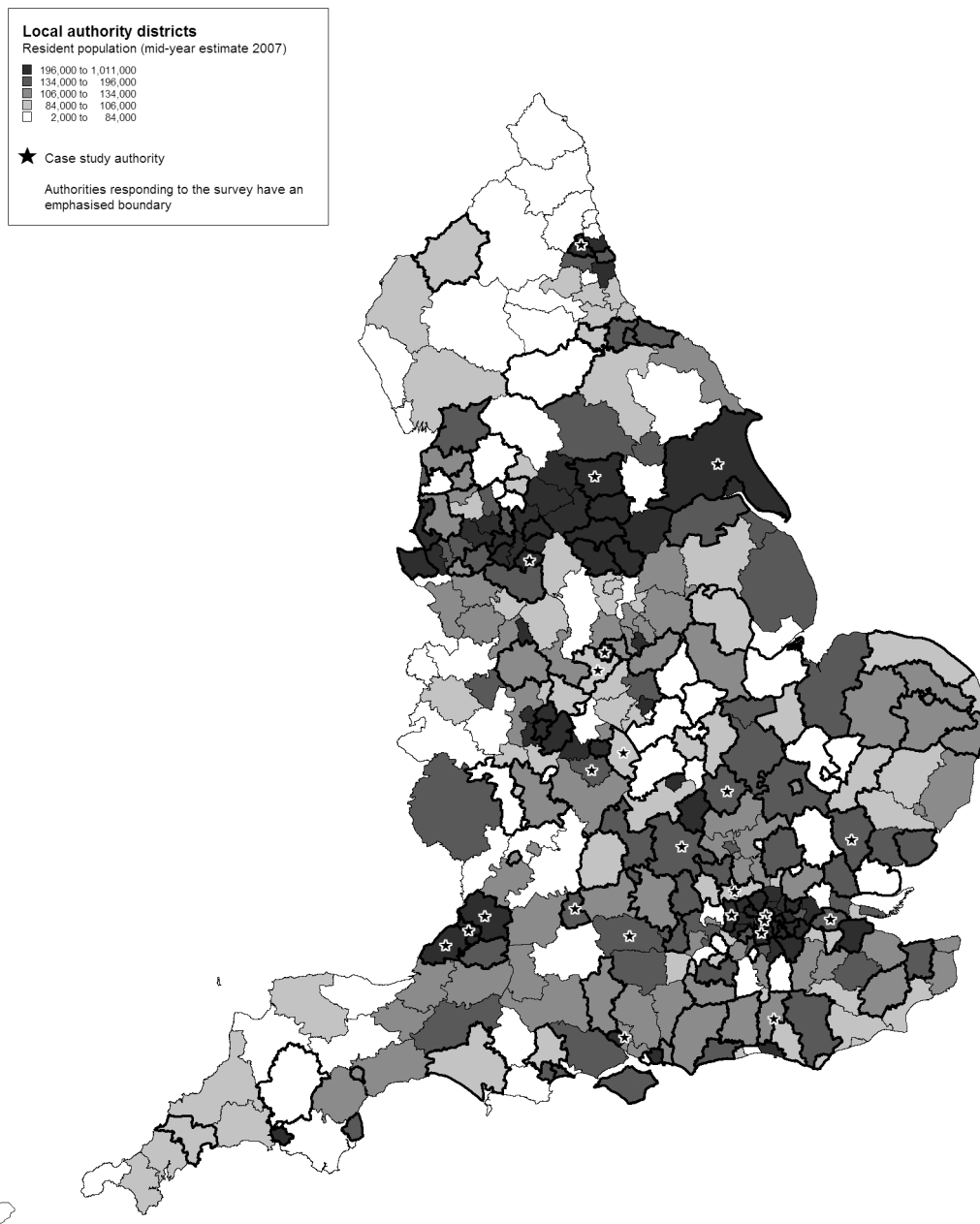
Appendix Table 1.3 **Response Rate by Local Authority Families**

Local Authority Family		2003-04		2005-06		2007-08	
No. of LAs		Responses	Rate	Responses	Rate	Responses	Rate
EUC	30	8	27%	12	40%	10	33%
RE	119	33	28%	30	25%	46	39%
RT	57	15	26%	19	33%	23	40%
PB	76	29	38%	37	49%	38	50%
UE	46	16	35%	17	37%	21	46%
UL	26	8	31%	11	42%	13	50%
Total	354	109	31%	126	36%	151	43%

Source: 2003-04, 2005-06 and 2007-08 surveys.

Appendix Map 1 Location of respondents and size of population of local authorities

Local planning authorities participating in the 2007/08 study



Source: Map boundaries derived from Ordnance Survey data. © Crown Copyright/database right 2009. An Ordnance Survey/EDINA supplied service)

Appendix Table 1.4 Response Rate: Regions							
Region	No. of LAs	2003-04		2005-06		2007-08	
		Responses	Rate	Responses	Rate	Responses	Rate
North East	23	7	30%	5	22%	6	26%
North West	43	10	23%	12	28%	18	42%
Yorkshire and the Humber	22	7	32%	6	27%	8	36%
East Midlands	39	14	36%	16	41%	16	41%
West Midlands	33	16	48%	15	45%	12	36%
East	49	13	27%	12	24%	25	51%
South West	45	10	22%	7	16%	15	33%
South East	67	22	33%	36	54%	33	49%
Greater London	33	10	30%	17	52%	18	55%
Total	354	109	31%	126	36%	151	43%
Source: 2003-04, 2005-06 and 2007-08 surveys.							

Regional response rates were much more varied, with those for the South East, Greater London and the East being close to or over 50% with the remaining regions varying from between 26% and 42% (Appendix Table 1.4).

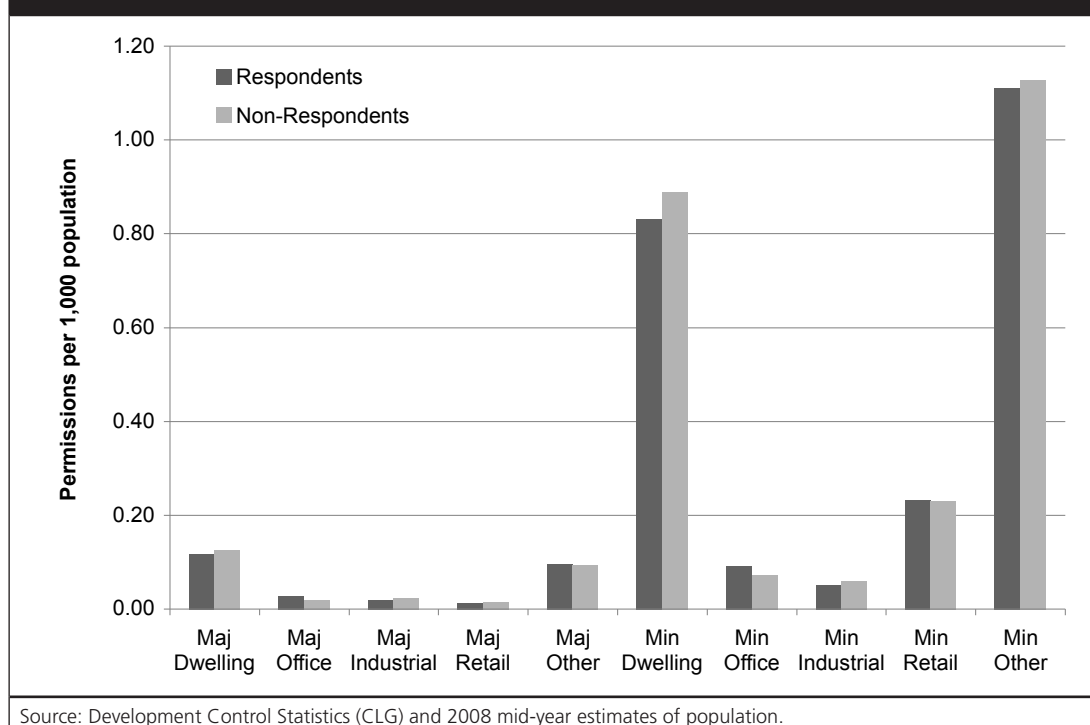
Great care was taken to maximise the survey response. The survey questionnaire was piloted through a roundtable discussion with an expert group of S106 officers drawn from a range of LPAs. Lists were compiled of planning authority contacts involved in planning agreement work, using several sources. Before the survey was sent out to them, the Chief Planner at CLG wrote to all Chief Planning Officers in LPAs informing them about the survey, encouraging them to take part and asking for information about the officers responsible for S106 matters in their authority. The questionnaire was emailed to these contacts at the beginning of April 2009 whilst at the same time a further letter was also sent by CLG to the Chief Executives of all planning authorities. Those to whom the questionnaire was emailed but who did not respond were contacted several times over the six weeks that followed. Reasons for non-response varied but the two main reasons related either to a lack of time to deal with the survey or to the fact that their records did not make it easy for planning authorities to provide the information needed. No planning authority failed to return a questionnaire because it explicitly said it had no agreements and hence was not taking part for that reason. Nor did any LPA return a questionnaire saying that it had no planning agreements in 2005-06.

In order to check for any statistical bias in the types of authority that responded a comparison has been made between those who responded and those who did not on two criteria. First, population size (2008 mid-year estimates) and second, pressure for development using planning permissions per thousand population as a proxy.

These criteria were selected to check if respondents were more likely to come from larger authorities and from those with greatest development pressure. *Prima facie* this might be expected given that such authorities might have more experience of handling planning agreements and more opportunities to seek planning obligations by virtue of both the scale of the authority and the pressure for development. The evidence shows that this was only partly the case. Larger authorities were somewhat more likely to respond than smaller ones. The average population size for responding authorities was 160,000 and that for non-respondents was 133,000. This difference was in fact most pronounced amongst LPAs in the Urban England category of local authorities (respondents: 246,000; non respondents: 125,000) whereas differences amongst responding and non responding authorities in all the other families were significantly less.

By contrast, the responding authorities granted slightly fewer permissions per thousand population than the non-respondents. In 2007-08 the responding authorities granted an average of 0.27 major applications per thousand population compared with 0.28 for the non-respondents. For minor applications responding authorities granted 2.32 applications per thousand population compared with 2.38 for non responding authorities. Appendix Figure 1.4 shows the differences for all types of development granted permission in that year.

Appendix Figure 1.4 Permissions per 1000 population for all types of developments by responding and non-responding authorities 2007-08



This check on the hypothesis that smaller authorities under less development pressure were least likely to respond has not been verified. There is a tendency in fact for the sample to consist of larger authorities, but not those giving the largest number of permissions taking their population size into account. It is

reasonable to conclude therefore that the sample is not biased towards those planning authorities that may be most active in seeking agreements when granting permissions.

Response to the case studies

The LPAs were contacted initially by email to explain the research and what participation as a case study would involve for them. The LPA officer to be interviewed was telephoned to explain the research in more detail, to arrange a convenient time for the research team to visit and to discuss the selection of site examples. Interview topic guides were sent to participants before the interview.

Five LPAs declined to take part in the research, principally due to a lack of time and resources either to participate or to find the information required. These were replaced by other LPAs and the replacements were selected to match those LPAs that had declined to take part. The final list of LPAs is shown in Appendix 3 and their locations are shown on Appendix Map 1 (above).

The sample of planning authorities and, within the case studies, of the actual sites, was not fully representative. In the first place, the sample comprised mostly LPAs that had returned completed email surveys. The sample was partly determined by the authorities that were willing to take part. These may well have been authorities with better monitoring systems as this implies there was less additional work for them to do in actually helping the research team with its enquiries. It may also have been the case that those authorities that had not been very successful in monitoring and ensuring delivery were reluctant to take part.

Individual sites selected for detailed study are also unlikely to be wholly representative of the totality. This is because the study required completed schemes in order to check that what had been agreed was in fact delivered, or if not, the reasons for this. Many schemes, particularly the larger and more complex developments, take years from the signing of the S106 agreement to completion. The fact that completed schemes were required placed a constraint on the choice of sites. It is also the case that where authorities were not very good at monitoring, the sites chosen were ones that the officers knew most about. Some officers noted that they lacked full information about all the schemes where the S106 was signed in 2003-04 or 2005-06.

The evidence should therefore be viewed as a set of representative case studies. It cannot be taken to represent what has been happening across the country as a whole. Nor should the detailed information on delivery be scaled up to provide a national picture. Rather the case studies highlight a number of important aspects of practice on the ground, including monitoring issues.

Grossing up

The main assumptions in grossing up the survey results to give national estimates of the total value of planning obligations were: (i) that the survey respondents are representative of the population of local authorities as a whole; and (ii) that the value of in-kind obligations, by type and local authority family, are similar to the value of direct payment obligations. The latter assumption is necessary in the absence of extensive data on the value of individual in-kind obligations.

The estimate uses survey evidence on the number and value of direct payments and the balance between direct payments and in-kind contributions to calculate the total value of planning obligations in England for 2007-08. It is important to note that the analysis assumes that the value of in-kind obligations are directly related to direct payment obligations. For example, suppose the average value of an Open Space obligation is £30,000 per authority then each in-kind obligation in the same family was also assigned a value of £30,000.

The grossing up method applied calculates the average value for each obligation within each local authority family. For example, using data from the 2005-06 survey the average value of the "Provision of Open Space" obligation for Established Urban Centre was just over £46,000. There were six "Provision of Open Space" in-kind obligations within Established Urban Centres. The value of the in-kind "provision of Open Space" was therefore 6 x £46,000. This gave a total for the responding authorities of £276,000. To gross up this figure it was necessary to assume that the EUC respondents were representative of the whole EUC local authority population. 27% of all local authorities categorised as EUC authorities responded to the survey. To gross up £276,000 was multiplied by $1/0.27$. This assumes that the number and value of "Provision of Open Space" obligations was replicated in all other EUC authorities. The total value of the "Provision of Open Space" obligation for EUC was thus just over £1m. This method was repeated for all individual obligation types within all local authority families. As a check for accuracy the method was repeated using Regions as the base for the grossing up exercise. The difference was 1.5%.

Annex to Appendix 1

Method used to value Affordable Housing Contributions

The method adopted to estimate the value of affordable housing contributions in 2007-08 is taken from the 2003-04 study. The affordable unit tenure and level of government subsidy have a direct impact on the financial contribution required from the developer/landowner to deliver that affordable unit. This method uses affordable housing outcomes; number of units (completed and delivered) and funding mechanisms, to calculate the developer subsidy required to deliver different unit tenures. The subsidy stems from the land contribution and any discount on the cost of constructing the unit. Data on land values and house prices for each local authority are used to calculate the subsidy on an authority by authority basis. The contributions are then collated to generate an overall figure for the value of affordable housing in England with figures also presented by region and local authority family.

The method adopted for 2005-06 and 2007-08 uses the following data:

- The number of affordable units agreed through the planning system (HSSA data Section N) for each LPA.
- The number of affordable units completed through the planning system (HSSA data Section N) for each LPA.
- Affordable units include social rented, intermediate rented, local authority, shared ownership and 'other' tenures.
- HSSA data on the number of units funded through NAHP, developer contributions and a mixture of the two.
- Financial contributions (commuted sums) for delivered affordable housing and direct payment survey data for agreed affordable housing.
- Residential and industrial land prices for each local authority from the Valuation Office Agency.
- Median price of a 3-bedroom house from Land Registry data.
- Cost of constructing a typical affordable unit.

- The method makes a number of assumptions. These assumptions were valid for the original study given the evidence gathered by the research team from other work undertaken at the same time. Retaining these assumptions ensures that the results for 2007-08 are directly comparable to the previous two studies to allow direct comparisons.

The density of development is between 40 and 60 units per hectare. From this, it is possible to calculate the amount of the land contribution for the total amount of affordable housing agreed and completed. For example, an authority-wide obligation of 50 affordable units at a density of 50 units per hectare is a contribution of 1 hectare of land.

- Land contributions are assumed to be the market value of residential land. If there were no planning agreement the registered social landlord (RSL) assumed to be the purchaser of the affordable homes would have to purchase land elsewhere in the LPA area at market value.
- There is a wide variation in affordable housing contributions. Land is often transferred to RSLs for free but there are also agreements where the land is discounted, and even cases where RSLs have to pay market price for the land. It is assumed that where there is no public subsidy, land is transferred for free in a specified percentage of agreements.
- For funded rented units land is also contributed by developers for free in a specified percentage of cases (25%). For shared ownership units with funding there is no land contribution assumed as these units are purchased from the developer by RSLs at cost (including land).
- The physical cost of constructing an affordable unit (excluding land) is assumed to be the same in all LPA areas at £110,000 (for 2007-08). The land cost will vary significantly but there are relatively small variations in labour and material costs throughout England (perhaps up to 20%).
- Where there is no public subsidy for social rented units, developers contribute 20% of the construction cost. The figure is 10% for shared ownership units with no funding.
- Where public subsidy is available there is no developer subsidy on shared ownership units but a 10% construction cost subsidy on social rented units.
- The data and assumptions outlined above have remained consistent across all of the three studies. The only changes made have been to reflect changing market data and improved data on the number of units funded through National Affordable Housing Programme and developer contributions. The funding balance had to be estimated in the previous two studies but for 2007-08 it could be established more accurately from the HSSA data.

The model derives data for each LPA on the number of units in each tenure. This is taken from the HSSA data. Social rented units with no public subsidy deliver the maximum contribution. First, the land contribution for rented units with no subsidy is calculated. This is the number of hectares of land necessary to deliver the agreed or completed number of affordable units at the specified density multiplied by the residential land value per hectare for each LPA area. For example an authority negotiates 100 units with developers in S106 agreements. Assuming a density of 50 units per hectare this is two hectares of land at, say, £3m per hectare giving a land contribution of £6m. It is assumed for rented units with no public funding that 80% of the land is transferred for free making the actual contribution £4.8m (i.e. 80% of £6m). A contribution of 20% of the total cost of construction of each affordable unit is assumed for rented units with no subsidy. This is an assumption to balance out units transferred for free, units transferred at cost and units transferred at a discount on cost. For example 10 units with a 20% cost subsidy would be a contribution of £220,000.

For rented units with subsidy (i.e. SHG) it is assumed that the subsidy helps fund a proportion of land purchase. 25% of the total land contribution for rented units with a subsidy is transferred for free, therefore producing a much smaller contribution than for units receiving no subsidy. There is also a 10% construction cost contribution from developers for these units.

For shared ownership units with public funding (i.e. no SHG) it is assumed that the land is purchased from the developer and the units are transferred at cost so there is no direct contribution. Overall this methodology calculates direct contributions and does not take into account the reduction in the market value of the development resulting from the affordable housing contribution. For shared ownership with no funding it is assumed that there is a 60% free land contribution (lower than the 80% for rented units). For every 1 hectare of land transferred for shared ownership units not funded by subsidy, 60% is transferred for free.

For other units where the tenure is unknown it is assumed that the contribution is based on a 20% discount on the median price of a 3-bedroom house in the LPA area. There are only a small number of units falling into this category. This is used to ensure consistency with the significant discounted open market value tenure that was prevalent in the 2003-04 study.

Actual financial contributions are added to the total either from the value of sums delivered (HSSA) or from the direct payment data derived from the survey when of assessing the value of agreed units. The HSSA data also provides information on the amount of free/discounted land transferred to the local authority. This is valued using VOA data.

The method is consistent across all three studies so permits a direct comparison of the value of affordable housing agreed. The data for affordable housing delivered is now much improved on previous years and allows a more accurate estimation of funding patterns within the model so the estimate for 2007-08 is the most reliable to date.

The 2003-04 study used three methods for calculating the value of affordable housing contributions but two of them were not used in the 2005-06 study, or in the current study, due to their perceived weaknesses. One, the percentage of gross development value (GDV) was rejected due to the difficulty of estimating the number of units completed with planning agreements attached but more importantly due to the outdated figure of 5% of GDV used as the basis for estimation, which was based on previous work examining the value for money of using S106 to deliver affordable homes (Whitehead et al, 2005). The other method that was rejected was based on the assumption of an average contribution per affordable unit. The method assumed a standard contribution per unit and ignored the impact of public subsidy (that is, Social Housing Grant) on the contribution.

Appendix 2

Planning Authorities responding to 2007-08 survey

Note: an asterisk (*) denotes a local planning authority that also responded to the 2005-06 survey.

- *Arun District Council
- Ashford Borough Council
- *Aylesbury Vale District Council
- Barnsley Metropolitan Borough Council
- Bath & North East Somerset Council
- *Bedford Borough Council
- *Birmingham City Council
- Bournemouth Borough Council
- *Borough of Poole Council
- *Braintree District Council
- Breckland Council
- Bristol City Council
- Broadland District Council
- Buckinghamshire County Council
- Burnley Borough Council
- *Bury Metropolitan Borough Council
- Canterbury City Council
- *Carlisle City Council
- Chelmsford Borough Council
- Cherwell District Council
- Chichester District Council
- *Chiltern District Council
- *City of Lincoln Council
- *City of London Corporation
- *City of Westminster

*Corby Borough Council
Cornwall Council (Former Restormel Borough Council)
*Coventry City Council
Dacorum Borough Council
Darlington Borough Council
Dartmoor National Park Authority
Daventry District Council
*Derby City Council
East Cambridgeshire District Council
East Dorset District Council
East Hertfordshire District Council
East Northamptonshire Council
Eastbourne Borough Council
*Epping Forest District Council
*Epsom & Ewell Borough Council
Erewash Borough Council
Essex County Council
Exeter City Council
*Fenland District Council
Forest Heath District Council
Fylde Borough Council
Gloucester City Council
*Gosport Borough Council
Gravesham Borough Council
*Guildford Borough Council
Halton Borough Council
Hampshire County Council
*Harborough District Council
Havant Borough Council
Hertsmere Borough Council
*Horsham District Council
*Isle of Wight Council
Kettering Borough Council

Lancaster City Council
*Leeds City Council
Leicestershire County Council
*Lewes District Council
Lichfield District Council
London Borough of Barnet
*London Borough of Bexley
London Borough of Brent
London Borough of Bromley
*London Borough of Camden
*London Borough of Greenwich
*London Borough of Hillingdon
London Borough of Islington
*London Borough of Lambeth
*London Borough of Lewisham
London Borough of Merton
London Borough of Redbridge
*London Borough of Richmond
London Borough of Tower Hamlets
London Thames Gateway Development Corporation
Macclesfield Borough Council (now part of Cheshire East Borough Council)
Maldon District Council
Malvern Hills District Council
Medway Council
Melton Borough Council
*Mid Sussex District Council
Middlesbrough Council
*Milton Keynes Council
*Newcastle Upon Tyne City Council
Norfolk County Council
*North Kesteven District Council
North Lincolnshire Council
North Norfolk District Council

North Northamptonshire Joint Planning Unit

*North Somerset Council

Norwich City Council

Nottinghamshire County Council

*Oldham Metropolitan Borough Council

*Oxford City Council

*Plymouth City Council

*Portsmouth City Council

Preston City Council

*Royal Borough of Kensington & Chelsea

Redcar Cleveland

Redditch Borough Council

Ribble Valley Borough Council

Richmondshire District Council

Rossendale Borough Council

*Rotherham Metropolitan Borough Council

*Rugby Borough Council

*Runnymede Borough Council

*Rushcliffe Borough Council

Rushmoor Borough Council

Rutland County Council

Salford City Council

*Sandwell Metropolitan Borough Council

Sefton Metropolitan Borough Council

*Sheffield City Council

Shropshire Council

Somerset County Council

South Cambridgeshire District Council

*South Derbyshire District Council

*South Gloucestershire Council

*South Holland District Council

South Kesteven District Council

*South Norfolk District Council

South Oxfordshire District Council
*South Tyneside Council
*Southampton City Council
St Edmundsbury Borough Council
Stafford Borough Council
Stevenage Borough Council
*Stockport Metropolitan Borough Council
*Stockton Borough Council
Surrey County Council
Swindon Borough Council
*Tamworth Borough Council
*Tandridge District Council
Tendring District Council
*Test Valley Borough Council
Three Rivers District Council
*Thurrock Council
Thurrock Thames Gateway Development Corp
Torbay Council
Uttlesford District Council
Wakefield Metropolitan District Council
*Walsall Council
*Warrington Borough Council
Warwickshire County Council
*Watford Borough Council
Waveney District Council
Waverley Borough Council
Wealden District Council
*West Devon Borough Council
West Dorset District Council
*West Lancashire District Council
*West Oxfordshire District Council
Wirral Metropolitan Borough Council
*Woking Borough Council

*Wokingham Borough Council

Wychavon District Council

*Wycombe District Council

*Wyre Borough Council

Yorkshire Dales National Park Authority

Appendix 3

Local Planning Authorities taking part in the Delivery Study

Aylesbury Vale
Bedford
Braintree
Bristol
Camden
Derby City
East Riding of Yorkshire
Eastleigh
Hillingdon
Leeds
Mid Sussex
Newcastle
North Somerset
Rugby
South Derbyshire
South Gloucestershire
Stockport
Swindon
Thurrock
Wandsworth
Warwick
Watford
West Berkshire
Westminster

Appendix 4

Questionnaire



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Dear Chief Planning Officer / Section 106 Officer

Valuing Planning Obligations in England – 2007/08 Study

Communities and Local Government has commissioned the University of Sheffield and the University of Cambridge to carry out research into the extent and value of planning obligations entered into in England in the year 2007/08. The aim of the research is to gain a better understanding of the nature and scale of developer contributions under section 106 of the 1990 Town and Country Planning Act and section 278 of the 1980 Highways Act.

The findings of this study will not only contribute more to our knowledge and understanding of trends in s106 contributions but will be a key element of the background for the continuing policy considerations about the future of s106 and about the Community Infrastructure Levy. It is important that future decisions are based on robust information and it is for that reason that I do hope you will help us and the research team to ensure we have the most accurate data possible.

This work will build upon previous studies undertaken for 2003/04 and 2005/06, the results of which can be found on the Communities and Local Government website¹. It is intended that the new data collected will assist in the identification of trends in the nature and application of planning obligations. In addition a new strand of this study will seek to better understand what proportion of planning obligations is delivered in practice.

Part of the research consists of this questionnaire. The questionnaire asks for details of all planning agreements signed by your local authority (or unilateral undertakings made by developers) between 1 April 2007 and 31 March 2008. As the questionnaire also requests information relating to affordable housing and planning obligations entered into under s278 of the 1980 Highways Act, it may be necessary for staff responsible for housing and highways also to be involved in the compilation of data.

It is important that the response to the survey is as full and detailed as possible in order to build up an accurate picture of recent trends. This includes capturing nil returns if your authority has not entered into any agreements in 2007/08.

I would like to strongly encourage all local authorities to participate in this important research. We would like to thank local authorities that have taken part in the previous studies and to encourage them again to take part in this new research, as well as to encourage those authorities yet to participate to provide a return to reflect the circumstances in their area and help achieve a better picture across the country and improve the robustness of our evidence base.

The research team looks forward to receiving your authority's response.

Yours faithfully,

Steve Quartermain
Chief Planner
Communities and Local Government

¹ CLG Planning obligations research:
<http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/planningobligations/>

The Use and Value of Planning Obligations in England - 2007/08 Study

Communities and Local Government have commissioned the University of Sheffield and Cambridge University to undertake a study on the use, frequency and value of planning obligations agreed in England in the year 2007/08. This study will update earlier work which examined the use of planning obligations for the years 2003/04 and 2005/06.

[Click here to read the 2003/04 report](#)

[Click here to read the 2005/06 report](#)

The survey focuses on 2007/08 since that is the latest year for which a full set of data are available.

Definitions and Scope of Study

For the purposes of this study, “planning agreements” are defined as legal agreements signed by your Local Planning Authority under section 106 or section 299A of the Town and Country Planning Act 1990 and by your Local Highways Authority under section 278 of the Highways Act 1980 between 1st April 2007 and 31st March 2008 that relate to outline and full planning permissions. Planning agreements relating to reserved matters permissions should only be recorded if they contain new items not covered in the planning agreement attached to the 'parent' outline permission.

Unilateral undertakings are also considered to be “planning agreements” for this study although are not strictly agreed or signed by the Local Planning Authority.

A “planning agreement” falls into the survey period (1st April 2007 to 31st March 2008) if it has been signed by all relevant parties between those dates. “Planning obligations” are the requirements set out within individual “planning agreements”. There may be more than one planning obligation within a planning agreement.

To complete the questionnaire you will need the following data:

- The number of planning agreements signed between 1st April 2007 and 31st March 2008;
- Information on the individual obligations, including value, contained within each planning agreement, including the type of planning obligation (categorised under the following general headings: Affordable Housing; Open Space and the Environment; Community and Leisure; Transport and Travel; and Education);
- Whether obligations were direct payments or in-kind contributions by developers;
- Information on delivery of obligations.

We appreciate, where an electronic recording system is not available, that obtaining copies of each planning agreement and analysing the planning obligations within them may take some time. However, we are keen to ensure that we reflect your authority's experience in using planning obligations in this study and would be very grateful if you could provide a submission for your authority. The previous studies have been hugely valuable in supporting policy and practice development at both the national and local level.

Please complete as much of the questionnaire as you can and return it to **Richard Dunning** at r.dunning@sheffield.ac.uk (tel. 0114 222 7129) **by 30 April 2009**. Please also contact Richard if you need help with or clarification of any part of the survey. **Please respond even if your authority has not signed any agreements between 1 April 2007 and 31 March 2008 as this is vital information for the study.** A partially completed questionnaire is also valuable to us if you do not have all the information requested.

Professor Tony Crook
Department of Town and Regional Planning
University of Sheffield, Sheffield S10 2TN

Professor Christine Whitehead
Department of Land Economy
University of Cambridge, Cambridge CB3 9EP



GENERAL INFORMATION

Name of Local Planning Authority:	
Name of Respondent(s):	
Job Title(s):	
Contact Telephone Number:	
Contact E-mail(s):	

END OF SECTION. PLEASE PROCEED TO SECTION 1



SECTION 1: NUMBER OF PLANNING AGREEMENTS

Q1. Please complete the following table to record the number of planning agreements signed in 2007/08 and which relate to full and outline planning permissions.

Enter the number of planning agreements signed between 1 April 2007 and 31 March 2008 and which relate to full and outline planning permissions for each type of development.
Details of agreements relating to reserved matters permissions should only be recorded if they contain planning obligation(s) not covered in the planning agreement attached to the 'parent' outline permission.
The developments categories are defined in the PS2 data return.

No Planning Agreements were signed in 2007/08

☐ Click for Yes

	Number of Planning Agreements		Number of Planning Agreements
Major Developments		Minor Developments	
Dwellings		Dwellings	
Offices / R&D / light industry		Offices / R&D / light industry	
General industry / storage /		General industry / storage / warehousing	
Retail, distribution and servicing		Retail, distribution and servicing	
Waste Disposal		Waste Disposal	
Minerals		Minerals	
All other major development		All other minor developments	
Total	0	Total	0

Q2. For residential developments please indicate, if possible, the number of AGREEMENTS under each development size category listed below.

Size of Residential development	Number of Agreements
0-15 Units	
16-24 Units	
25-49 Units	
50-99 Units	
100-999 Units	
Over 1,000 Units	
Total	0

Q3: What percentage of planning permissions for each of the residential development size categories will have a planning agreement attached?

Size of Residential development	Percentage of developments with an agreement
0-15 Units	
16-24 Units	
25-49 Units	
50 - 99 Units	
100-999 Units	
Over 1,000 Units	

Q4. Please provide a typical example of a residential development, a commercial development and a mixed use development that had a planning agreement attached in 2007/08.

	Details of development	Nature of Planning Obligations
Example	Residential development, 100 units	30% Affordable housing, Traffic/Highways works, Parking Restrictons
Residential		
Commercial		
Mixed Use		

END OF SECTION. PLEASE PROCEED TO SECTION 2

SECTION 2: POLICY AND PRACTICE

Q1. Does your planning authority have a formally ADOPTED policy on the use of planning obligations in any of the following documents:


(Please enter 1 in all boxes that apply.) Enter 1 for yes

LDF Core Strategy	
Other LDF development plan documents	
LDF Supplementary planning documents	
Saved local or unitary development plans adopted under previous plans regime	
Supplementary planning guidance approved under previous plans regime	
No formally adopted policy covering s106	
Other (Please specify)	

Q1a. Does your planning authority have other detailed policy on planning obligations set out in any of the following documents that have NOT (YET) BEEN FORMALLY ADOPTED:

(Please enter 1 in all boxes that apply) Enter 1 for yes

LDF Core Strategy	
Other LDF development plan documents	
LDF Supplementary planning documents	
Local or unitary development plans under previous plans regime	
Supplementary planning guidance under previous regime	
No policy covering s106	
Other (Please specify)	

Q2. Have you undertaken infrastructure planning¹ to provide evidence to underpin local development strategies? 

1. Infrastructure planning provides evidence about planned infrastructure, its cost, timing and likely sources of funding to underpin local development strategies.

Q3. Do you (or your County Council) use standard charging or formulae to calculate obligation payments for:

(Please enter 1 in all boxes that apply) Enter 1 for yes

Affordable Housing	
Open Space and the Environment	
Community and Leisure	
Transport and Travel	
Education	
Other (please provide details below)	

Q4. Do you use a defined alternative approach to standard charges such as "tariff-style agreements" or grouped standard charges? ☐ Click for Yes

If yes please provide brief details below.

Q5. Do you pool direct payment obligations from several planning agreements to fund specific infrastructure requirements excluding affordable housing? 

Q6a. Do you have an officer(s) within your Local Authority with specific responsibility to NEGOTIATE planning agreements? ☐ Click for Yes

Q6b. Do you have an officer(s) within your Local Authority with specific responsibility to MONITOR planning agreements? ☐ Click for Yes

Q6c. If you answered NO to either 6a or 6b then please briefly describe who negotiates and/or monitors planning agreements in your authority.

Q7. Did you use an electronic database to record the details of planning agreements signed by your authority in 2007/08? ☐ Click for Yes

Q8. Do you use standard Heads of Terms or model agreements? 

Q9. Do you receive unilateral undertaking agreements? ☐ Click for Yes

Q9a. If so, how many did you receive in 2007/08?

Q10. This study will be used to examine changes in the use and value of planning obligations since 2005/06. Below are eight factors which may have had an impact on the number and value of planning obligations negotiated by your authority between 2005/06 and 2007/08

Please rank these factors in order of importance, 1 being the most important.

If you believe the factor had a positive impact on the number and value of obligations enter "+" in the impact column or if it had a negative impact enter "-".

- a) Changes to Land Values and Property Prices
- b) Introduction of standard charges and formulae as set out in Circular 05/05 "Planning Obligations"
- c) Other Government guidance such as the Planning Obligations Practice Guide and model agreements
- d) Changes in the skill and experience of local authority staff
- e) Changes in the skill and experience of developers, landowners and their agents
- f) Employment of a local authority s106 Officer
- g) Introduction of new policy or supplementary guidance within your authority
- h) Changing developer/landowner attitudes towards s106 contributions

Rank	Impact
	a
	b
	c
	d
	e
	f
	g
	h

Please Rank 1-8 Enter + for a positive impact
Enter - for a negative impact

Q10a. If there are any other factors that have been important, please list them here.

Please also indicate if they have had a positive or negative impact.

Impact
a)
b)
c)

Enter + for a positive impact
Enter - for a negative impact

Q11. How important have each of the following been in changing your practice?

(please select an option from the drop down menu)

- a) Clarification of the legal framework
- b) Clarification of the broad principles and policy tests
- c) Clarification of the types of contributions including the pooling of contributions
- d) Advice on placing policies in published Local Development Framework documents;
- e) Advice on formulae and standard charging
- f) Standard heads of terms/model agreements;
- g) Advice on third parties
- h) Other advice

Q12. Please estimate the total value of money actually received for direct payment planning obligations² in 2007/08, regardless of the year in which they were originally agreed.

2. Direct payment planning obligations are those planning obligations where the developer agrees to pay a defined monetary sum to the local authority, either for use by that authority or for transfer onto another body such as the Local Education Authority.

Q13. For agreements signed in the year 2005/06 please estimate the proportion of direct payment planning obligations for which money has been subsequently received from developers by the end of 2007/08.

(e.g. if you estimate that direct payment planning obligations totalled £1m in 2005/06 and you have received £910k by the end of 2007/08 then select Over 90%).

Q14. Since 2003/04, how often have developers failed to pay in full by the end of 2007/08 the direct payment planning obligations triggered by the development?

Q15. Please estimate the proportion of permissions with planning agreements where the agreements have subsequently been modified after they have been signed and planning permission granted.

Percentage of permissions that were later modified	
2003/04	
2005/06	
2007/08	

Q16. What are the main reasons why these agreements were modified?

END OF SECTION. PLEASE PROCEED TO SECTION 3

SECTION 3: THE NUMBER, TYPE AND VALUE OF PLANNING OBLIGATIONS

Q1. Please record the details of individual planning obligations relating to ALL developments agreed in 2007/08.

Please record in the table below the type and number of direct payment and in-kind planning obligations agreed between 1st April 2007 and 31st March 2008. Direct payment planning obligations are those planning obligations where the developer agrees to pay a defined monetary sum to the local authority (either for use by that authority or for transfer onto another body such as the Local Education Authority).

In-kind planning obligations are those obligations where the developer agrees to undertake specified works, or to provide defined facilities or services themselves, or to follow some other similar action.

Please remember that a planning agreement can contain a number of planning obligations. The planning agreement may contain either direct payment or in-kind obligations or both (e.g. open space (1a) can be provided through direct payments to local authorities and/or by developers setting aside open space within developments - in-kind contributions).

For each type of planning obligation record:

- (i) the total number of direct payment planning obligations agreed under each obligation type;
- (ii) the total value of direct payments agreed (e.g. if there were 4 Education planning obligation contributions, each of £100,000, for Education enter 4 in column (i) and £400,000 in column (ii)); and
- (iii) the number of in-kind planning obligations agreed (e.g. if there were 2 obligations involving actual traffic works then enter 2 in column 3a iii).
- (iv) if there are planning obligations where free land is transferred to the Local Planning Authority or a Registered Social Landlord as part of an in-kind planning obligation then record the amount of land in hectares in column iv. For example, 200m² of land is transferred to the local authority for the provision of open space. In this case enter 0.2 in 2a iv). This is still an in-kind contribution so you would enter 1 in the number of in-kind planning obligations column. Shaded boxes indicate that it is not necessary to record data in the box. For example, there is no need to record the amount of free land transferred under affordable housing agreements. This is estimated separately.

1 April 2007 - 31 March 2008	Direct Payment Obligations		In-Kind Obligations	Land Contributions
Obligation Types	(i) Number of Obligations	(ii) Total value of direct payments	(iii) Number of Obligations	(iv) Amount of Free land (Hectares)

1. Affordable Housing				
(a) On-site provision of various affordable tenures.				
(b) Off-site provision: development and transfer of units on another site owned by the developer/landowner.				
(c) On-site provision of land only: land transferred to a RSL or LPA for free or at a rate below the market value.				
(d) Off-site provision of free or discounted land only.				
(e) Commuted sum: payment of a sum in lieu of actual provision of units.				
(f) Rural Exception Policy Agreements.				
(g) Other affordable housing contributions.				
Total	0	£0	0	0

2. Open Space and the Environment				
(a) Provision of open space either within a development or via a direct payment to the LPA.				
(b) General environmental improvements including landscaping.				
(c) Ecology and nature conservation, countryside management and community forests.				
(d) Allotments.				
(e) Sport facilities: sports fields, club houses etc.				
(f) Pollution and Waste Management.				
(g) Archaeology.				
(h) Maintenance of open space (total contribution e.g. capitalised annual contribution figure).				
(i) Other (specify below):				
Total	0	£0	0	0

1 April 2007 - 31 March 2008	Direct Payment Obligations		In-Kind Obligations	Land Contributions
Obligation Types	(i) Number of Obligations	(ii) Total value of direct payments	(iii) Number of Obligations	(iv) Amount of Free land (Hectares)

3. Transport and Travel				
(a) Traffic/highway works, temporary or permanent.				
(b) Traffic management/calming.				
(c) Parking: management or parking restrictions, car restrictions and car free areas provision of parking areas.				
(d) Green transport/travel plans.				
(e) Public and local transport improvements.				
(f) Pedestrian crossings, pedestrianisation, street lighting.				
(g) Provision or improvement of footpaths or pathways etc.				
(h) Cycle routes, management, safety etc.				
(i) Other (specify below):				
Total	0	£0	0	0

4. Community Works and Leisure				
(a) Community centres: construction, funding, improvement etc.				
(b) Community/cultural/public art.				
(c) Town centre improvement/management.				
(d) Library, museum and theatre works/funding.				
(e) Childcare/crèche facilities, provision and funding.				
(f) Public toilets.				
(g) General Community Facilities.				
(h) Health services: community healthcare, construction of surgeries etc, healthcare funding.				
(i) CCTV and security measures.				
(j) Waste and recycling facilities.				
(k) Religious worship facilities.				
(l) Employment and training.				
(m) Local regeneration initiatives.				
(n) Other (specify below):				
Total	0	£0	0	0

5. Education				
a) Physical development or funding for education at all levels; nursery, primary, secondary schools, higher education facilities etc.				
(b) Other (specify below):				
Total	0	£0	0	0

6. Other Obligations (please describe obligation)				
a) General development restrictions.				
b) Administration and/or legal fees for S106 negotiations.				
c) S106 monitoring fees.				
d)				
e)				
f)				
g)				
Total	0	£0	0	0

END OF SECTION. PLEASE PROCEED TO SECTION 4

SECTION 4: DELIVERY OF OBLIGATIONS

Please complete this section if you are able to. We appreciate that collecting this information may be difficult. Estimates are acceptable.

Q1. Please estimate the proportion of permissions with planning agreements signed in each of the following years that have since been started.	Year Agreement Signed	Percentage
	2003/04	
2005/06		
2007/08		

Q2. Please estimate the proportion of permissions with planning agreements signed in each of the following years that have since been completed.	Year Agreement Signed	Percentage
	2003/04	
2005/06		
2007/08		

Q3. Please estimate the proportion of the affordable housing specified in the S106 agreements signed in 2005-06 that has been delivered to date.	Percentage

Q4. Do you expect all of the affordable housing specified in the S106 agreements signed in 2005-06 to be delivered?	
	<input type="button" value="▼"/>

END OF SECTION. QUESTIONS END. GO TO NEXT PAGE.





Thank you for completing this survey. The results will be used by Communities and Local Government to inform policy decision making. Your contribution is very important to ensure a robust estimate of the use and value of planning obligations in England.

For any help please contact Richard Dunning on 0114 222 7129 or use the e-mail address shown below.

Please e-mail the completed document to Richard Dunning at r.dunning@sheffield.ac.uk

We will send you a copy of our findings when the project has been completed.

Appendix 5

Topic guide for Delivery Study

Introduction

The aim of the interview is to understand in general terms how the system has been working in your local authority, concentrating particularly on planning agreements from 2003-04 and 2005-06. It is also to obtain the details of the four sites that were given planning permission in 2003-04 or 2005-06 that have been identified for the case study – which should be either fully or partially complete. The interview will be in two parts: general; and site specific.

General interview topics

These topics relate to the experience in your local authority across all developments that have planning obligations.

- The proportion of planning permissions with S106 agreements that actually go ahead and where they do not, the reasons for this.
- Whether the planning agreements that were 'lost' in this way were in-kind or direct payments.
- Whether the proportion going ahead varies with the type/extent of planning obligation, or the type of development (housing, commercial, mixed use) or size of scheme.
- The extent to which S106 agreements are modified or re-negotiated after they have been signed and whether there are procedures for modification or re-negotiation.
- If agreements do get modified, the relevant aspects including reduced financial contributions as well as the extent to which any of the in-kind obligations such as affordable housing are lost or reduced through this process.
- The likely timescale for completion for different types of obligation.
- How the delivery of planning obligations is monitored.
- Any impacts on renegotiation and delivery of developments with planning obligations negotiated in 2003-04 and 2005-06 arising from the financial crisis of 2007 and the recession of 2008, for example through changes in phasing.

Site specific topics

These questions relate to up to four sites where the development has been completed or phases have been completed.

- Permission details:
 - Developer(s)
 - RSL(s)
 - Number and type of units
 - Tenure
 - Phasing
 - Cascade agreements
 - Whether development is fully completed
 - If not, phases which have been completed, timing of next phases
 - Whether original or a new developer is implementing the agreement
- Changes to the consent and/or to the agreement(s)
 - Nature of changes
 - When agreed
 - Why made
- Delivery on completion or the completion of phase of development:
 - For cash payments/direct payments:*
 - The amount of the direct payment agreed
 - Whether all relevant direct payments have been made (including any contribution to administrative costs)
 - Amount received and when; whether more is due; and if so when
 - If a phased development – the timeline for future payments
 - How funds were accounted for
 - Whether funds were allocated to specific projects

Any planning obligations for other organisations (e.g. county councils for education or transport in lower tier authorities; utility companies)

For planning obligations in kind:

What was agreed to be delivered in kind

What has been delivered and when

How much, if anything, is outstanding

Whether this is expected to be received and when

Any other organisations involved – RSLs etc

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