

MIXED COMMUNITIES EVALUATION

PROCESS STUDY ONE

NEGOTIATING MIX

Processes for, and constraints upon, negotiations on the affordability mix in new developments, and on how capital receipts are used.

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This process study has been carried out as part of the evaluation of the Mixed Communities Initiative Demonstration Projects, which is being undertaken for the Department of Communities and Local Government (CLG) by a team from the London School of Economics, Cambridge and Warwick Universities and Shared Intelligence. The findings in this report are those of the authors and do not necessarily represent those of the Department of Communities and Local Government.

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Executive Summary

The Mixed Communities Initiative (MCI) was announced by the Department for Communities and Local Government (CLG) in January 2005, as a new approach to tackling area disadvantage, bringing together housing and neighbourhood renewal strategies to reduce concentrations of deprivation, stimulate economic development and improve public services.

There are twelve demonstration projects in urban areas in England now participating in the MCI. An evaluation has been underway since 2006, and this phase of evaluation will run until 2009. The evaluation is being carried out by a consortium bringing together academic research centres with consultants. This report is part of the evaluation.

In most or all of the Mixed Communities Initiative Demonstration Projects (DPs), altering the mix of housing tenures and types is a central part of the regeneration approach. This short study looked at processes and outcomes of negotiations between the demonstration projects and developers on the specific mix of housing to be delivered. Three case study DPs were used: Canning Town, in Newham, London; North-East Coventry, in Coventry; and North Huyton, in Knowsley. These were selected to provide a spread of locations where negotiations were well enough advanced to provide sufficient case data. The fieldwork was carried out between November 2007 and February 2008 (i.e. when house prices were starting to fall but before the 'credit crunch' and the housing market downturn had taken hold).

Key Findings

- As well as the demonstration project and the developer, negotiations involved other parties such as social landlords, local authority officials, and regeneration bodies. The projects are using a variety of means to formalise the outcomes of negotiations, including Section 106 Agreements and Overarching Development Agreements.
- In all the case studies achieving a mix of affordable and market housing was a central goal of the programme. However, there could be tensions between the financial viability of the scheme for developers, the projects' intention to create a mix seen as socially sustainable, and public authorities' desire to maximise affordable housing
- The negotiations require local authorities to have a sound understanding of assessing the finance of development proposals. Though some developers were prepared to go "open book", most were reluctant to do so; the local authorities were increasingly making use of toolkits to get round this.

- Developers were pressing for more low-cost home-ownership dwellings within the new affordable housing provision. Local authorities believed such intermediate housing would be too expensive for the large majority of existing residents, and expected that such homes, if provided, would mostly go to incomers.
- Though it was too early to assess the final mix achieved, the case study project managers thought they would be able to get a mix they could 'live with', given the high proportion of market housing in the new developments, plus some combination of free land transfers and grant subsidy to achieve viability.

Learning Points – What works?

This process study suggests that the following are important factors for local authorities and their partners to negotiate outcomes that are affordable, sustainable and financially viable.

- Having and/or investing in the **skills and capacity** to evaluate the financial viability of development proposals before entering negotiations.
- Knowing where they can get **technical resources and appropriate advice and support** for masterplanning and negotiating.
- Working on a basis of **"open-book" negotiations** for developers involved in regeneration where land would be transferred to them either free or at a discounted price.
- Having supportive **political leadership** for a mixed communities approach to contribute to 'higher level' housing policy goals.
- Making specific reference to **objectives that support affordability, sustainability and financial viability within local plans** (e.g. Sustainable Community Strategy, Local Area Agreement and Local Development Framework).
- Being realistic about the extent to which **new low-cost home-ownership housing** will actually be affordable provision to meet the needs of existing residents on low incomes.

Introduction

This paper is one product of the evaluation of the Mixed Communities Initiative (MCI) in England. The evaluation is following the twelve pilot projects named by Communities and Local Government (CLG) in 2005 and 2007. All these demonstration projects are intended to exemplify the approach set out in the statement in Box 1, below¹. Although what is meant by a 'mixed community' varies widely between individuals, agencies and programmes, in most or all of the demonstration projects, a central dimension of the mix being pursued is a mix of housing tenures and types.

The Mixed Communities approach aims to radically transform deprived areas into mixed and sustainable communities. This involves aligning a mix of housing, regeneration and neighbourhood renewal interventions, the collective effort of public sector agencies, targeted and sustained investment in service delivery and capital infrastructure, long term arrangements with private sector partners and a tight focus on the areas of greatest disadvantage while also linked into wider physical and economic regeneration strategies.

In order to explore the Mixed Communities approach further, a number of mixed communities projects are currently being developed by local authorities and partners in co-operation with Communities and Local Government.

Increasing concentrations of deprivation have led to the physical polarisation of the poor and the affluent. The three drivers of area deprivation are a weak economic base, poor housing and local environment and poor performance of public services, but the physical polarisation is largely a function of the operation of housing markets and the inadvertent consequences of housing policy. There is evidence to suggest that the concentration of deprivation itself exacerbates the problems of those who live in deprived neighbourhoods. Thus to create more mixed and less polarised communities will build on what's already been achieved through the National Strategy for Neighbourhood Renewal in tackling the problems of our most deprived communities. The idea of creating more mixed communities is not new, but the government's announcement of a series of Mixed Community demonstration projects is designed to give the idea fresh impetus. Three demonstration projects were identified in 2005, and Communities and Local Government is now working with a further nine projects.

¹ Note that this statement from CLG and the fieldwork for this study relate to a housing market well after the introduction of the Mixed Communities initiative at the peak of housing market activity in 2006 but before the recent downturn had 'taken hold'.

(Box 1: The Mixed Community Initiative statement. Source: CLG at renewal.net accessed January 2008)

The current position and plans in the twelve demonstration projects (DPs) are described in detail in the baseline report for the evaluation (Lupton *et al*, 2009). The Baseline Report also distilled the views expressed by some key participants in the interventions into a "Theory of Change". This is a linked set of propositions about the underlying problems in the DP areas and how the measures being taken are intended to address them. This present study links together two of the central tenets of the MCI: that "physical polarisation of the poor and the affluent" is part of the problem and that "long term arrangements with private sector partners" is part of the answer.

The first phase of evaluation fieldwork in the DP areas found both differences and commonalities among them in their context, approach and stage of development. However, all foresee partnership with developers to undertake significant housing redevelopment as part of broader area regeneration. The research team, the DPs and CLG all felt that the processes by which partners negotiate the specific mix of housing to be developed merited further investigation by a short study.

This paper reports on this study of these negotiations about housing mix in the demonstration projects. The report looks specifically at how public authorities, developers and social landlords come to agreements about the proportions of different tenures which are to be included on each site. This study also looks at how capital receipts from the sale of land or properties to a developer or RSL are used.

Further information about the Mixed Communities Initiative, the Demonstration Projects and the Evaluation can be found in the baseline report (Lupton *et al*, 2009).

Background to the Study

Many of the demonstration projects' plans are large-scale, long-term and ambitious. As the Baseline Report set out, there is great variety among the projects in specific aims, leadership, governance and institutional arrangements. This is because the DPs are working in different contexts, and because some are more advanced than others, and because different areas have adopted different models. However, in most or all of the DPs, altering the existing mix of housing tenures is explicitly part of the goals of the programme, and may also underpin the financing of non-housing regeneration activities.

However, the actual mix must be agreed by multiple parties with differing priorities, and negotiations between the DPs, developers and other partners are typically complex and protracted. To better understand the negotiations and their results in terms of mix, it is worth distinguishing elements of the process. There are, firstly, multiple *stages* of negotiation between public authorities, developers and other partners; secondly, there are different *aspects of housing mix* which are negotiated; lastly, there are different *mechanisms* by which the agreements are formalised and guaranteed.

The *stages* of negotiation which contribute to any final agreement involve different partners at different times. Examples of significant stages include:

- Initial consultations with residents and others
- Pre-qualifying applications from potential developers
- Tendering for and selection of preferred RSL or developer partners
- Negotiations about sales of public land
- Formal planning applications being considered by the planning authority

This is not a linear process– some of these activities may occur at the same time – and not all will apply to all projects. However, the eventual mix that is agreed can be substantially altered by the outcome of any of these processes, and as such all are “negotiations” in a sense. They each involve different organisations and individuals. The developer, RSLs and the local authority will almost certainly be involved closely, but different departments of the local authority – housing, planning, and regeneration – may be engaged at different points. In some situations there are other major partners, for example a New Deal for Communities project, or a sub-regional development agency. And, whilst some of these stages of negotiations take place in the public arena, others may be considered commercially sensitive and are very much closed.

The principal *aspect of mix* that is under negotiation is the number or proportion of dwellings of each tenure to be built, refurbished or

demolished. The outcome of this aspect is the primary concern of this paper. In reaching a balance, the partners must overcome several tensions: between overall financial viability and getting as much affordable housing as possible, and between seeking to effect a radical change to an area, and minimising disruption and forced displacement. Aside from the proportions of different tenures, other important aspects of the housing mix that are subject to negotiation include the spatial distribution and integration of tenures; the mix of densities and dwelling types; and the phasing of development over time.

The successful outcome of the negotiations should be some sort of formal agreement which documents what has been decided, and gives the partners certainty that their reciprocal expectations will be fulfilled. Possible mechanisms for formalising agreements include:

- Section 106 planning agreements
- Overarching Development Agreements (ODA)
- Covenants upon land sold by public authorities
- The founding of a joint venture vehicle
- Other contracts let by public bodies to private companies for the provision of some kind of service

Some of these mechanisms are familiar. Housing PFI is another form of long-term public-private contract for the provision of services (Knox *et al* 2001; Hodges & Grubnic 2005). The planning system supports the provision of affordable housing through planning obligations on developers under Section 106 of the Town and Country Planning Act 1990. Indeed, these have become the primary mechanism by which new affordable housing is delivered (Crook *et al*, 2006), although the capacity to negotiate S106 agreements effectively varies between local authorities with different resources and skills (Crook *et al*, 2006, Burgess *et al*, 2007a)

However the role played by these familiar mechanisms within the MCI demonstration projects may be quite different. Under normal circumstances, a developer initiates Section 106 negotiations by indicating its intention to put in a planning application to build housing on land that it has acquired. In the DPs, the housing developments typically form part of a longer-term area plan and set of non-housing regeneration activities. Furthermore, the local planning authority is frequently the owner of the land that will be acquired to build on. Given this, any planning application and Section 106 agreements will typically fall towards the end of the process of getting a site to the construction phase. For these reasons the existing literature on Section 106 may not sufficiently explain how planning gain works as part of the mixed communities approach. This paper looks at other approaches that are being used alongside or instead of Section 106 when development is part of a longer-term partnership, possibly on public land.

One of these alternative approaches is an Overarching Development Agreement (ODA). Some of the DPs, including some of the case studies here, use an ODA as the legal framework for the schemes. An ODA is commonly used in large-scale regeneration project and forms the legal agreement between the developer and the public body. It details how they will work together on the scheme, and information about what will be delivered, including the mix of units.

Whatever the approach taken, developers test the market to assess demand and what is likely to sell in order to determine the mix of market housing. They consider the economics of the site and different mixes of the market units to decide what is financially optimum in terms of both profitability and what they can sell. If more than one developer expresses an interest in the site there will be a consultation and negotiation process to choose a developer. The developer chosen or the developer who owns the site will approach the local authority and begin pre-application discussions. Some local authorities specify protocols for S106 agreements. The developer and local authority (possibly including officers from the planning, housing and legal departments) will negotiate a mix of market and affordable housing that is acceptable to both before the application is taken to a committee of councillors for approval.

This paper now turns to the case studies to look at the issues which arise during these stages, and how they are resolved.

The Process Study: Aims and Methods

This process study aimed to:

- gain a greater understanding of how local authorities and partners determine the mix of tenure in new developments.
- explore what the outcomes of this process are.
- identify what can be learnt from this.

Research Questions

The study addressed the following questions:

- How do local authorities and partners come to a view about what kind of affordability mix they need in these developments, and how does the 'mixed community' imperative affect this over and above any local authority (LA) wide affordability targets (for example the need to fund social infrastructure)?
- What evidence is there of them getting the mix they want?
- What affects this?
- What are the consequences of potentially not getting the desired mix?
- How is 'affordability' determined? And what would have to change to make homes affordable in the context of expanding home ownership as opposed to social renting in order to achieve mixed communities?
- What are the assumptions about demand for renting, as compared to low cost home ownership (LCHO)?
- What consultation is there with local residents etc?
- What are the assumptions about turnover of residents, re-lets, LCHO sales, etc?

For the complete list of questions asked during interview, see Appendix A.

Methods

In this short study three demonstration projects (DPs) were selected as case studies. These were North Huyton, in Knowsley, Wood End, Henley Green and Manor Park (WEHM), in Coventry and Canning Town, in Newham. These three were selected because they are schemes where the development is at a more advanced stage relative to the other DPs, and where the affordable housing negotiations have been carried out or are underway.

The study included a day exploring matters arising from prior research with the DPs as part of the baseline study, and also examining policies for each DP. For each area, the relevant local planning authority planning and housing officers responsible for policy development, the conduct of negotiations and the monitoring of outcomes were interviewed. The interviews were followed up by email exchanges of key documents where relevant. Private developers and developing housing associations in each

case study area were interviewed specifically about negotiations. Canning Town was a 'light touch' case study, primarily using data already collected from the main evaluation fieldwork.

Background to the Case Study areas

Before turning to the findings, we give some brief details of the case studies, looking particularly at their housing plans; more detail can be found in the baseline report (Lupton *et al.* 2009). It is worth noting that all three are areas originally developed as public housing, and still have a high proportion of social-rented dwellings, and much land is publicly owned. All the projects are aiming to reduce the proportion – although not the absolute amount – of social housing in the area. Since 2001, North Huyton and Coventry have also both had New Deal for Communities (NDC) regeneration programmes in place. These features may be common to the case studies, but they are not common to all the twelve DPs in the Mixed Communities Initiative.

North Huyton is located in the district of Knowsley, on the eastern edge of Liverpool. The development of the area dates from the inter-war period, when it served to house those displaced by slum clearance in Liverpool. The housing is mainly good-quality block terraces, and is predominantly still social rented. Industrial decline since the 1970s means that there is a very high incidence of unemployment, low-income and ill-health in the area. Overall the population has been declining and the regional economic context remains weak. A partnership of the NDC, the Borough and Knowsley Housing Trust has carried out some demolition of existing stock, and is introducing new market-rate housing as well as improving existing stock. The intention is to reach a 50-50 split of market and social housing at the end of the phased development. The regeneration also involves major capital investment in employment, community and health facilities.

The Mixed Communities Project in Coventry encompasses four neighbourhoods at the north-eastern edge of the city: Wood End, Deedmore Road, Manor Farm and Henley Green (WEHM). These areas are predominantly council estates constructed in the 1950s and 1960s, with a mix of dwelling types, some of poor quality; most is still rented albeit now from a stock-transfer social landlord called Whitefriars. The decline of manufacturing in the city has led to high worklessness on the estates; this has been compounded by the allocation of social housing to vulnerable households. Resident satisfaction is low, the housing has been unpopular and there are high levels of transience. Whitefriars has already demolished several hundred homes. According to the project description, it aims over its life to provide nearly 4,000 new dwellings, the majority for private sale, to "dilute the overwhelming social aspect of the area". Land for this is being transferred from the council and the RSL to the developer(s) at nominal cost; this will generate funds for investment in

leisure, community and transport facilities which form part of the overall regeneration package.

In Newham, East London, the DP covers part of the Canning Town and Custom House neighbourhoods. These areas have a mixture of flats and houses in a wide variety of styles, built after the original Victorian housing was heavily bombed in the Second World War and then subject to local authority redevelopment. Council renting still predominates. Although historically a white working-class district linked to nearby docks, the docking industry has now disappeared, and in recent years the area has become increasingly ethnically diverse. The areas are near and well connected to employment centres such as the City of London and the Docklands, and are seen as having much potential. The DP, led by the borough council, is undertaking a programme of new housing development to change the tenure mix in the area; this is being done by new building of social, intermediate and market housing at substantially higher densities than the existing housing.

Findings

This section describes the main issues that emerged from the study relating to negotiating the mix successfully. Comments made during interviews have been used to highlight key points and provide examples.

Clear Policy and Aims

The stated public aims of the project, and the authority's wider policy provide the backdrop to any particular negotiation of mix with developers. Government guidance requires that policies such as Section 106 are embedded within the Local Plan/Local Development Framework and Supplementary Planning Guidance (CLG 2006). Having a clear policy supported by evidence may be important where there is tension between the aims of individual local authorities and wider regional objectives:

"Our position is that we want 35% affordable housing, split 50/50 between social rented and intermediate. However, the Greater London Authority (GLA) wants more – 50% affordable – as it sees East London more generally as a place to meet housing need across London." (Canning Town)

Without policies being in place, local authority requirements can be challenged:

"The SPG [Supplementary Planning Guidance] is an important tool because it provides a broad framework for a particular area and can be used as evidence to require planning applications to conform with the regeneration plans."

SPGs can become out of date relatively quickly, for example as the housing market changes, and thus may need revision to be useful:

"The SPG is currently being revised. The reason for this is that the current SPG is felt to be too prescriptive, and also they become outdated because of architectural progress. So the SPG comes not to reflect the current approach and preferences for design and regeneration." (Canning Town)

Wider research has shown that the development process can provide more certainty for developers if policy is clear and thorough (for example see Audit Commission 2006). This can also make negotiations faster as developers know what is expected and can factor this in to land negotiations.

Consultation

The interviewees stated that the outcome of consultations with existing residents are important in the DPs in deciding upon the type, location and

style of units to be provided as the councils work to transform the areas (see also Lupton et al, 2009). For example,

"We had consultation on the type of design. The community preferred traditional style units, not modern. We are happy with this, in [OTHER PROJECT] they built modern wood Swedish style units and they cannot sell them. The developers are happy as we are letting them build what they know will sell." (North Huyton)

Consultation can take different formats and involve a variety of groups:

"The consultation process on the Supplementary Planning Guidance has involved several steps. Firstly, workshops with key stakeholders such as council services (e.g. education), and with others." (Canning Town)

Consultation is important for getting local support for the development, and for meeting local needs and aspirations:

"There has been wide consultation with communities. Residents have voting rights on the partnership boards which include the council leader and housing trust, but the residents have the majority vote. We ran two consultations about the scheme and received 80% support." (North Huyton)

However, consultation can be problematic, both when only a few local people have a 'voice' in the planning, or when a large number of people are involved and consensus has to be achieved:

"Residents designed the plans which could sometimes be a nightmare....We received 80% support." (North Huyton)

Consultation mechanisms can be improved and lessons learnt from other areas:

"We are looking at different ways of working with tenants, ways which council members have now approved. The new consultation approach is based on a Charter, working on the basis of the seven development areas. It's intended to be a more positive way of working, employing a mix of consultation tools rather than being too reliant on a steering group. For example, it will involve Design Groups." (Canning Town)

The Appropriate Mix

In determining what the tenure mix on new developments should be, account had to be taken of the local context. The developer will research the market to determine what is most likely to sell in the area:

"In deciding the mix of the market units in Phase One we did a lot of market research to see what values we can achieve and to determine what the market needs. From this we developed a concept design and took the recommended mix to the client [the council, the NDC and the HA] to discuss it. Negotiation was minimal as the design is based on market need and what will sell." (Developer)

It therefore appears that there has been little need for a great deal of negotiation on the DP schemes. As one developer said:

"There was also minimal negotiation about the affordable units. The clients told us what they needed and what they can afford, and we designed the site around that. For example, they wanted their units to be pepper-potted." (Developer)

In some projects the goal may be to secure as much social housing as possible. In contrast, in the DP projects in this study the aim was to change the mix in order to increase home ownership because the areas were predominantly social housing:

"15% of the stock was our guide. We got 10.89%. We did not want lots of social and LCHO as we want to change the balance in the area. We are trying to change it to 50/50 so 90% of the units are for sale and the site is mainly market. The area was 80% social in 2000. We are looking for 50/50 by 2016 when the scheme is finished." (North Huyton)

"In terms of S106 contributions to affordable housing, Newham has a general policy of requiring 35% of new developments overall to be affordable. This 35% is typically split between 60% social rented and 40% shared ownership. However, in determining the contribution, planning officers have regard to the 'social specifics' of the existing area – so in Canning Town, where there is a lot of council housing, higher proportions of private and shared ownership will be looked for." (Canning Town)

Housing Needs Assessments and Strategic Housing Market Assessments should enable local authorities to assess what the most appropriate mix ought to be in different areas. Needs assessments must be capable of withstanding detailed scrutiny at a Public Inquiry. Government guidance

outlines appropriate methodologies for assessing housing need. Where possible, local needs assessments should be influential in determining the mix of affordable housing sought (CLG 2006). The adoption of policies with explicit guidance as to the type of affordable homes required can help avoid a proliferation of property types that do not address identified housing need. Needs assessments should also inform the tenure split of the affordable housing sought:

"The LDF [Local Development Framework] seeks 25% affordable housing except where it is mainly social rented in the area. The SPG shows for each area the balance between social rented and other affordable housing types that the council want in the area. The aim is that where there is a lot of social rented to get more LCHO and where there is no social rented to get more in order to achieve a balanced mix across the city." (Coventry)

The location and distribution of affordable homes, particularly on larger developments, is crucial. It is generally accepted that segregating affordable and private housing is not sustainable, and, as a result, many councils seek to have affordable homes pepper-potted across a site. It is important that approaches to pepper-potting are set out within planning guidance notes. One interviewee said:

"Tenure mixing is definitely something that should happen within sites – and architectural quality is important as a means to make tenures on the same site indistinguishable – in contrast to RSL or council housing which is usually easily identifiable as such." (Canning Town)

Notwithstanding the above, on flatted developments there can be benefits from locating the affordable homes in one block, provided that this allows the RSL to acquire the freehold, thereby controlling service and management charges to future tenants. These considerations need to be weighed against the impact on the overall level of pepper-potting, and the objective of social inclusion. As Housing Corporation standards have increased, the design quality of social rented units can be as good as, if not better, than that of the market units:

"The social homes have higher standards than the market units as grant has been used, so the social homes may look better." (North Huyton)

Other measures may be taken to influence the mix of units. Most notably, is a desire to increase ownership in these area where renting currently dominates. Councils therefore try to minimise the amount of housing that is purchased as Buy-to-Let. For example in the DP schemes:

"We have restricted the developers to not sell to Buy to Lets, they complained and said this is 20% of the market. What we don't want are private landlords renting units to people the council has thrown out of social housing. We have stipulated that one individual can buy no more than 3 units. If units are let, they have to be with one of 2 prescribed landlords. This is to stop people buying houses and leaving them empty and just waiting for their capital value to rise." (North Huyton)

"Normally in London developments around 70% of first sales are to Buy-to-Let. We have agreed a code of practice as part of the development agreement to avoid this and sell to owner-occupiers. Measures to be taken include screening of sales enquiries – for example, checking for duplicate addresses, and no sales to bulk investors or 'back-to-back' sales (bought and sold on within a short time period). These measures make things more difficult because it reduces the size of the market for the homes substantially – but the council recognises this and that there can't be an expectation of selling 300 homes a year." (Canning Town)

Within the affordable sector, the Housing Association has to decide on a mix that not only will provide the number of units they require but also what they can afford and what they believe they can let. For example, one HA representative said:

"We negotiated the mix around the numbers we needed and the square foot value. So it was based around need, our entitlement and what the management team thought they could let. We have not gone for either very large houses or one bed flats. Developers were fine with that." (North Huyton)

Financial modelling of different mixes can help to make a decision about what mix is viable. For example, one Housing Association said:

"We worked jointly with the council. Our main concerns were bungalows and larger end properties. We financially modelled different scenarios with different mixes meeting both our requirements and the city's to see how they differed. The council was happier with more bungalows than we wanted. It was difficult to model as it was all hypothetical, but we wanted to try and check the viability of different options. We found that although we wanted fewer land hungry bungalows, our mix was more expensive. So we decided to take to the developer's the council's preferred mix." (Coventry)

The developers have not been resistant to the mix preferred by the Housing Associations in the DP schemes. The greatest constraint is what the HA can afford, as one interviewee said:

"The developers were not worried about the mix we wanted. We could have put them under pressure but we used consultants to model their finances and everyone took a pragmatic view. The developers have not been an obstacle. Realistically, we couldn't afford a different mix." (Coventry)

Scheme Viability

The financial viability of a scheme affects what is delivered. The existing and alternative use-value of the site can make the whole scheme unviable for housing development. Viability also depends partly on the strength of the local housing market as well as developers' willingness to invest and the likely profit margin they are seeking to make. Achieving the desired mix can be a challenge given local market conditions. For example interviewees said:

"This mix is also challenging for the proportion of family homes. How many four-bed houses can we sell on the private market?" (Canning Town)

In all schemes, the scheme will not go ahead if the local authority requirements (including the affordable housing requirements) place too much financial strain on the site and make it unviable for the developer. Other planning obligations may include infrastructure, contributions to education, community services or open space in addition to the affordable housing.

Although the question was not addressed in detail in this study, it is important to recognise that there may also have to be negotiation over additional, unforeseen (or "abnormal") costs that were not picked up in the initial evaluation of site viability. Examples of abnormal costs include clearance, contamination, and exceptional ground conditions. These have to be met for development to go forward, and developers may give such costs as reasons why a particular mix of affordable and market housing is not viable on a particular site. Negotiations in respect of such abnormal costs can be another reason for delays in processing planning applications

Mechanisms for Developer Contributions

There are different mechanisms for securing developer contributions to affordable housing in the DPs, including Section 106 agreements, as used in the standard planning process. Interviewees were asked about these different mechanisms. Two of our case studies, North Huyton and Coventry – are examples where Section 106 is not applied, although we note that other DPs are using S106 agreements. Overarching

Development Agreements (ODAs) have been used as the legal framework for the schemes in this study. One developer commented that it is easier to negotiate around viability issues on the DP schemes that take place over a long period using an ODA:

"With a 106 we are told what is needed and what size units we have to provide. It is all very one-sided. Little can be done if there are viability issues; it is more difficult to negotiate. With an ODA, the long process and close partnership we have with the clients mean that all parties understand why certain things cannot be provided." (Developer)

Sometimes the mix the local authority and Housing Association would prefer is not financially viable; the HA cannot afford the mix. For example, one HA said:

"Viability was an issue so we had to compromise and there are no bungalows in Phase One." (Coventry)

The availability of public sector grant impacts upon the financing of a development and, through bridging the gap between costs and predicted income from sales, can make a scheme viable. It can also be used to achieve a tenure mix that is more suitable for local needs, for example by reducing the amount of shared ownership relative to the amount of social rented that otherwise could not be supported on S106 sites. On the DP schemes the input of grant would give the HA a more desirable mix. As one HA representative described:

"There is no subsidy. We are going to try for Housing Corporation grant to get a different mix. At the moment we have to try to make the scheme stack up from the land value and make this clear to residents." (Coventry)

The size of the scheme may impact upon what is delivered as large sites tend to get sold on or partitioned and sold, and then re-negotiated. Also as time passes the politics and priorities of the LA may change so they want to re-negotiate.

Using Capital Receipts to Influence Mix

Where the viability of a site did not appear to meet the other objectives, some DPs considered using receipts from land sales to influence the outcome of the negotiations. For example, in one case the sale of the land is being used to subsidise the new units and other related aspects of the development:

"The units are subsidised by the sale of the land, we have used £15 million to subsidise them. It has been a struggle to afford

the £140k a unit. We can only just afford it. The receipts from the land have been used to pay for the new social rented and LCHO units. We have to pay for infrastructure, to buy out 150 owner occupiers, decanting, clearing, project management, and a contribution to a new primary school. There is no government money. Over the past few years house prices have risen by over 200% so it has cost a lot to buy out the owner occupiers, but equally we have benefited from the increase in land value.” (North Huyton)

In another case the Housing Association (HA) gave its land to a developer and the properties it held were demolished, the council put in open space land for free and the developer built the whole scheme with about 3,700 of the units for market sale, returning the rest to the HA:

“The HA put the land in for free and the council put the open space land in for free. The existing HA properties will be demolished. All the land was given to a developer consortium who will build and sell all the units, giving 1000 to the HA for free. There will be negotiation with the Housing Corporation to see if they will put in grant to get a better property mix and have more larger family properties and maybe bungalows. So the scheme is self-funding and the mix may be enhanced by grant.” (Coventry)

Thus capital receipts are being used to subsidise the new social rented and intermediate units, or the land is provided free to the developer.

Affordability

This study raised a number of issues around the affordability of the units on new developments. ‘Affordability’ is a measure of whether housing may be afforded by certain groups of households (CLG 2006). The affordability mix relates to the cost of occupying different units on a scheme, and therefore the mix of households that will be able to afford to live there. It is closely related to the tenure mix. In a DP or S106 scheme there will be a mix of market and ‘affordable’ units.

In terms of user costs, the social rented and intermediate housing that constitute the affordable units are the most affordable as they are subsidised, with social rented housing being less expensive than intermediate products. In discussion with interviewees, the DPs are considering the “affordable” units as social rented and the “intermediate” housing as low cost home ownership (LCHO) in the form of either shared ownership or shared equity schemes. They are not considering either intermediate rent, or schemes offering market housing at a discount to local residents in ways other than shared equity or shared ownership.

Interviewees said that as incomes were very low in the area, the market units would be unaffordable to current tenants, but also said that affordability is an issue for the intermediate units, such as those for shared ownership or shared equity. In the DPs, these units are also not affordable for many of the people currently living in the area. The rent charged on shared ownership (in addition to mortgage repayments) can make the units unaffordable:

"When planning the project we researched shared ownership but the rent would be problematic. Many of the decants are little old ladies who would not be able to afford the rent."
(North Huyton)

Even when a share of 50% is to be offered, many local people are still unable to afford this. Whilst it is technically feasible to sell smaller shares such as 25% of the property, the rent and responsibility for repairs and maintenance can remove the benefits of this marginal home ownership:

"On the first phase no renters took up the low cost home ownership (LCHO) option. No one has changed tenure. There is an affordability problem, 50% of a £140k house is not affordable by most people here who have little money, sometimes no job, and often a poor credit history. I think we need 75/25. Even with the Right to Buy option, which is capped at [a discount of] £26k, they still cannot afford 50%. The scheme is good for moving people but not for home ownership or affordability." (North Huyton)

In Coventry, to avoid the affordability problems associated with paying the rent on the un-sold equity share of a shared ownership property, the 150 owner-occupiers being displaced will be able to purchase a share of a new house on a shared equity basis where no rent is charged on the un-sold share. On both schemes the LCHO products are aimed at current owner-occupiers.

People who are moving from a property that is demolished to a new one have to be provided with a property that is suitable for their household size and needs – though this may not be within the DP. DPs are often being treated as special cases where the standard policy targets, arising from Strategic Housing Market Assessment and the like, may not apply. The precise mix of market and affordable is tempered by the 'Mixed Community' imperative. Only with substantial increases in density – such as at Canning Town – is it possible to both increase the numbers of affordable units whilst at the same time add market housing to increase the tenure mix.

Local Planning Authority Practice

The complexity of the issues that were raised suggests that the skill set of the local authority, and of any consultants used, are important in negotiating the mix. Developers may put forward proposals that do not meet the expectations of the local authority, even if these are specified in policy. For example on the DP schemes:

"The main negotiating and arguing has been over the price per square foot they give us. We are horsetrading over £s per square foot. It is important as with such a large square footage a £1 either way can make a huge difference to the price." (North Huyton)

"At the time of the tender for developers, we specified that tenure integration was important. But an amazing number of developers came forward with proposals that involved separate entrances and different designs for different tenures." (Canning Town)

In other research, it has been suggested that toolkits have assisted in negotiating Section 106 agreements with confidence. An appraisal toolkit can provide information about the economics of residential development; show the impact of affordable housing and Section 106 requirements; provide help at different stages in planning process; and be an aid to decision making (Golland 2007). Examples include the toolkits developed by Three Dragons consultancy and Nottingham Trent University for the Greater London Assembly (GLA)² and by GVA Grimley for the Housing Corporation.³ The toolkit works as an economic model that uses a residual value approach; the residual is the total development value less the build costs and profit margin. The money left over – the residual – represents what is available to pay for the land. This allows developer margin to be modelled and assumes that the residual value is a 'pot' to be shared between several agencies. The aim is to end up knowing:

- the residual site value;
- the residual if the scheme was 100 per cent market housing;
- the revenue for a specified proportion of affordable housing; and
- the impact of wider planning obligations (Golland 2007).

The ability to understand the economics of development puts LPA officers in a stronger position to address any viability issues raised by developers who argue that a certain mix is not viable.

² www.london.gov.uk/mayor/planning/aff-housing/index.jsp

³ <http://www.housingcorp.gov.uk/server/show/nav.2319>

The relationship between the housing department and planning department is important in achieving the desired mix on the new developments. Rather than simply wanting to achieve the target number of units, planners must cooperate in getting the right mix of tenure, type, size of units etc. if local need is to be met.

"Housing and planning work closely together even though the scheme is being done by an Overarching Development Agreement not through planning. The head of planning is a representative on the steering group and is very good." (North Huyton)

Achieving the housing policy goals, including getting the most appropriate affordability mix, requires the political will and vision of elected members and corporate backing within the LPA. They must all be supportive of the housing goals, particularly when developers try to negotiate lesser requirements than the LPA would like to see implemented. For example interviewees reported:

"Our elected members are very supportive. Some want more than 25% affordable housing, but there is no evidence to support this." (Coventry)

"Our members would react strongly against any second-rate finishes or separate entrances for social housing within a mixed-tenure development." (Canning Town)

The negotiating and drafting of Section 106 agreements can be difficult and time consuming for all parties concerned (Monk *et al*, 2006). This is an area where previous research has shown that many authorities feel that there is considerable scope for improvement both in terms of developing a speedier process, and developing better understanding and expertise.

Conclusions and Learning Points

There can be an inherent tension between the goal of the local authority to achieve a relatively larger proportion of social rented units to meet local need, and the desire in most of the DPs to significantly increase the amount of home ownership and reduce the overall proportion of social rented units. This tension means that locally specific solutions are needed to balance these two aims. However, some common themes also emerged from the study:

- Negotiations between local authorities and their partners on the affordability mix in new developments take place in a number of steps, and different steps and partners are involved on different sites.
- The mix needed in different DPs is strongly influenced by the existing housing and population.
- Financial viability is the major factor constraining the mix in new developments. The primary goal of developers is to build the most profitable and saleable mix of units, whilst the local authority is seeking to deliver regeneration and meet local needs for affordable housing.
- Developers often argue that the planning authority's affordable housing requirements are not financially viable. Most developers are very reluctant to go 'open book' and show the LPA the finances on the scheme to prove that the requirements are not viable. Therefore negotiating viability issues requires that local authority officers have a sound understanding of development economics, possibly including the use of financial models themselves.
- LCHO was seen as contributing to broadening the mix of tenures, and hence incomes in the area, but it was not clear that there were any other assumptions about the balance between social renting and LCHO. Developers pressed for LCHO to help the scheme to stack up financially.
- The DPs – and local authorities more widely – do struggle with the affordability of low cost home ownership schemes (LCHO) to local people. Smaller shares might be more affordable, but tenants are still giving up important property rights, and taking on responsibilities and risks, such as maintenance. A change of tenure from social renting to home ownership by existing residents is not being achieved on the schemes at present. Even those with existing housing equity – for example, through the Right to Buy – often find LCHO hard to afford.
- Local authorities perceive that the overwhelming need is for social renting and so try to find ways of maintaining viability without compromising the numbers of social rented units too badly. This includes the use of grant and free land or other public contributions to a scheme.

- There is concern about investors purchasing units for Buy-to-Let, especially in London, although this may be mitigated by recent reductions in the availability of finance. Some DPs have taken specific steps to prevent Buy-to-Let in favour of owner-occupation.
- Apart from Buy-to-Let, there appeared to be no particular assumptions about turnover and hence the availability of relets in the social sector, other than the turnover rates in the authority as a whole, which have been falling in recent years, reducing the supply of relets.
- DPs have typically undertaken extensive and prolonged consultation with local residents on the programmes. Early consultation caused problems because local residents produced demands for the redesigning estates that proved difficult to implement. New approaches are being tried in some DPs, such as consultation with representatives, or consultations on detailed issues with small groups only. However, initial wide-ranging consultation may have a place in showing majority support for a general approach.
- Most schemes have not progressed sufficiently to assess whether or not they got the mix they want as plans for the whole schemes have not yet been finalised. However, the DP officers were confident that they would achieve a mix that they could “live with”, not least because the large proportion of market homes, together with grant subsidy or effectively free land, would provide sufficient profit for the developer.
- The early stage of the sites means that the consequences of getting the ‘wrong’ mix, in terms of housing tenure and type, cannot yet be assessed. In the long run, schemes may both ‘succeed’ and ‘fail’. This comes back to the central tension noted above. On the one hand they may achieve a substantially greater mix of income in the area, but at the cost of not meeting local need for affordable housing; on the other, they may provide much social housing, whilst not achieving the kind of ‘transformational’ change in the area that the DPs are seeking.

As noted in the introduction, this phase of the evaluation of the Mixed Communities Initiative is continuing into 2009, and further fieldwork will provide additional evidence on these questions and conclusions. This will inform the evaluation’s final report. In the meantime, it is possible to bring out some learning points from the experiences of the cases studies to assist partnerships in other areas using a mixed communities approach to regeneration.

This research was a study of ongoing processes in three case study demonstration projects in different contexts. Their approaches varied, and the ultimate results of the processes are as yet undetermined. Given this, it is not possible or appropriate to provide prescriptive recommendations about what types of affordability mix will be both socially sustainable and

financially viable, nor what form of agreement best secures delivery of the parties' mutual obligations. Nonetheless, several consistent themes emerged from the research, which have helped us learn about some of the processes that are more likely to lead to desired outcomes.

This process study suggests that the following are important factors for local authorities and their partners to negotiate outcomes that are affordable, sustainable and financially viable:

- Having and/or investing in the **skills and capacity** to evaluate the financial viability of development proposals before entering negotiations
- Knowing where they can get **technical resources and appropriate advice and support** for masterplanning and negotiating
- Working on a basis of **"open-book" negotiations** for developers involved in regeneration where public land would be transferred free or at a discounted price
- Having supportive **political leadership** for a mixed communities approach to contribute to 'higher level' housing policy goals
- Making specific reference to **objectives that support affordability, sustainability and financial viability within local plans** (e.g. Sustainable Community Strategy, Local Area Agreement and Local Development Framework).
- Being realistic about the extent to which **new low-cost home-ownership housing** will actually be affordable provision to meet the needs of existing residents on low incomes.

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Appendix A: Questions for Case Study Interviews

Scheme details – size, number of units?

Other planning obligations?

Other costs e.g. contamination?

What is the policy on tenure split/mixed communities/pepper-potting?

Where is the policy specified e.g. SPG?

How was this decided upon, what is the evidence?

Is this supported by all LPA departments and by councillors? Priority given to tenure mix?

What is the relationship between housing department and planning department – do planners just want to achieve the target numbers or are they able to cooperate in getting the right mix (tenure, type, size)?

Was there any consultation with local people?

Was the desired mix achieved?

Did developers try to negotiate/change the mix? On what grounds? Any viability issues?

Were negotiations/setting requirements difficult? What might make this easier?

How were demands for other planning obligations taken into account when negotiating the mix?

How important is it that the mix was achieved?

If the desired mix was not achieved, what might the impacts be?

How is 'affordability' determined?

Is LCHO successful at expanding home ownership?

Is it affordable? For which groups?

What are the assumptions about the turnover of residents, relets, LCHO sales?

How are capital receipts to be used?

How was this negotiated with developers? Any disagreements?

Which RSL is managing the units?

Equity share sold on the shared ownership units? % rent charged on the un-sold equity?