



Understanding planning gain

What works?

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Executive summary

Recent Government statements suggest that providing affordable housing through planning gain will be increasingly important. This report from Jon Watson examined the outcomes from Section 106 schemes in eight sites across two case study areas of Leeds and York considering value for money, building standards and quality; as well as identifying lessons from the s106 procurement process. The study suggests a number of impediments to the successful operation of planning gain policy:

- RSLs and new tenants reported high levels of satisfaction with accommodation but this could be masking longer term problems.
- The majority of schemes comprised 'off the shelf' purchases of completed dwellings without SHG. Consequently RSLs did not attempt to achieve usual standards or check standards against Housing Corporation Scheme Development Standards (SDS).
- In other respects too there was concern about the quality of some of the housing produced, in terms of poor standards of design detailing and workmanship, which may well lead to problems in the future, although it should be noted that some of the housing produced was of good quality.
- Where space standards were not met by the housebuilder the general policy of RSLs was to under-let.
- All parties concerned want certainty in negotiation parameters. This is important to housebuilders when framing their land bids whereas RSLs wanted a 'level playing field' in relation to space standards and performance. Inclusion of space standards or a requirement to comply with SDS within affordable housing policy statements could achieve this.
- RSLs were in a weak negotiating position as a result of differences in culture and negotiating styles between housebuilders and the public/non-profit sectors. The robust negotiating style of the housebuilders also included a certain amount of 'disinformation', for example misrepresenting RSL views to the local authority to suggest the RSL wanted a higher proportion of discounted sale rather than social renting in the scheme.
- Lack of continuity of private sector personnel involved in transactions was an issue, as a result of merger and acquisition activity in the housebuilding industry and because of the practice on industrial sites of agreeing the site brief and Section 106 agreement prior to the involvement of the housebuilder and RSL.
- Doubts were expressed about the delivery of higher percentages of 30 to 50 per cent affordable housing now being required by Supplementary Planning Guidance. Housebuilders in these areas claimed that the deals do not 'stack up'.
- The case study areas had not adopted the policy of making Social Housing Grant available to fund affordable housing provision above a certain threshold percentage, which has been adopted in Harrogate and a number of London boroughs.
- The threshold of 25 dwellings or 1 hectare is too high in higher value areas where site releases tend to be relatively small. This issue is not currently reflected in national planning policy.
- The evidence is that housebuilders, as well as RSLs, are now happy with the 'pepper-potting' approach to mixing tenure.

1 Aims

1.1 The aim of this research project was to understand the process of achieving affordable housing through planning gain by an analysis of 'what works' at a very practical level. The study had two components:

- examination of the outcomes from Section 106 schemes in terms of both value for money and building standards and quality;
- identifying lessons from the procurement process, which could form the basis of good practice guidance.

2 Methodology

2.1 The study covered a range of schemes across eight development sites in two local authority case study areas of Leeds and York. The sites were chosen to exclude particularly high or low value sites and land where the local authority was the vendor. It was intended that sites would include a mix of brown and greenfield development sites that formed parts of larger sites of between 25 and 250 dwellings. Development sites had completion dates over the last three years.

2.2 As well as interviews with staff from both local authorities, two RSLs and housebuilders the study involved an outcomes survey targeted at RSLs. The survey method involved preparing a questionnaire to collect information from the RSLs on both the product and the process. It was envisaged that they would hold some of the information themselves and would be able to access other data from housebuilders they had worked with on the schemes. A copy of the survey form distributed to the RSLs is attached at Appendix 1.

2.3 It was not possible to restrict the sample to two housebuilders. Three of the sites were larger than 250 dwellings and all but one of the sites were brownfield. In total the sites included 1,883 dwellings, of which 219 were affordable homes. These comprised 139 social rent, 42 key worker/sub-market rent and 38 discounted sale.



Inadequate door specification and poor workmanship led to maintenance problems after only two to three years.

- 2.4 The building and cost data were analysed by Hall & Partners, Quantity Surveyors and cost consultants, with considerable experience in both RSL and housebuilder developments. It was not possible to obtain the desired degree of detailed cost analysis as a result of the procurement method used in the schemes. All but one of the transactions involved 'off the shelf' completed schemes, purchased by the RSLs from housebuilders at an agreed net price. There was no separate land transaction or building contract to enable building cost analysis. However, it was possible to compare the transactions with Total Cost Indicators (TCI) and to make assumptions about build costs for the dwellings, in order to estimate the residual land cost in the total package deal price.
- 2.5 It was not possible to hold round-table discussions involving representatives from the housebuilders, alongside local authority and RSL staff, owing to high staff turnover among most of the housebuilders, which meant that many employees involved in the transactions had moved on to different jobs. Therefore, the round-table interviews were supplemented by telephone interviews with a number of former employees of the housebuilders concerned, despite the fact they were now in different employment.
- 2.6 In addition to the desk-top exercises and interviews, site visits were carried out to all of the sample schemes. These examined standards of design, detailing and workmanship and assessed how the schemes were performing in practice.

3 Policy context

Housing Corporation

- 3.1 In Leeds regeneration schemes are the investment priority for The Housing Corporation North East Regional Office. In practice this means that no priority is given to supporting the provision of affordable housing through planning gain deals. Meanwhile in York, a specific policy between York City Council and The Housing Corporation is in place, which ensures that no Social Housing Grant (SHG) is available to support planning gain deals. Therefore, the practical effect in both local authorities is that no SHG is available for such deals. This policy is applied consistently across the two authorities and is recognised in the development industry, or at least amongst the 'regular players' – i.e. volume housebuilders and surveyors active in the two cities.
- 3.2 However, the Housing Corporation policy is not applied consistently across the region and is entirely inconsistent with other regions. This is because the Corporation's policy of pursuing 'additionality' – with the aim of delivering more homes from the fixed National Affordable Housing Programme (NAHP) – is driving SHG into affordable housing planning gain deals in other regions. This is the case even in the North East Region where the evidence is that SHG is used to increase affordable housing percentages in planning gain deals in Harrogate. But the extent to which housebuilders factor this into the pricing of affordable housing deals – and therefore into residual valuations when bidding for sites – is unclear. Nonetheless, based on the comments of housebuilders active in Leeds and York it seems likely that some 'leakage' does occur – in other words the presence of SHG does lead to inflation in package deal prices to RSLs, which in turn may increase housebuilder profit margins or land values.

Local authorities

- 3.3 The land market in York is very tight, creating consistently high demand and prices for new housing. York City Council has well-developed policy and practice teams, led by specialists from the Housing and Planning Departments, who are involved in all applications for affordable housing planning gain deals. This policy expertise is backed up by the Council's Supplementary Planning Guidance on affordable housing which was adopted in September 2000 and revised in June 2005. There is also high

member interest in this policy area. As a result there is consistency, a high level of expertise amongst officers and backing from elected members. This is recognised in the housebuilding industry in York. Site briefs, which include affordable housing requirements, are produced for all significant sites in York.

- 3.4 The market context in Leeds is very different. In the late 1990s there were significant problems of low demand which led to the abandonment of private sector dwellings and voids in local authority and RSL stock. Therefore, at that time, it was difficult to argue for additional affordable housing through planning gain deals. However, over the last ten years the housing boom in Leeds has transformed the situation, particularly in relation to voids in local authority and RSL stock. But the city still contains a number of different housing markets with very different price levels and consequently different priorities for housing investment and provision.
- 3.5 Leeds City Council has made significant progress in the development of its affordable housing policies over the last few years and again this has attracted high levels of interest and support from elected members. The Council's first Supplementary Planning Guidance was published in 1997 and contained low affordable housing targets, in part as a result of the 'low demand' problems being experienced at that time. But this Guidance was revised in 2003 and a further Annex was adopted in July 2005, to take account of changing market conditions. As in York, a key group of officers has developed an expertise in the planning and housing aspects of providing affordable housing through planning gain deals. But unlike York, because of the size of the Planning and Housing Departments, the direct involvement of these expert staff in planning gain deals is dependent on the referral of cases from area development control staff.
- 3.6 Furthermore, in contrast to York, the housebuilding sector includes a larger number of 'regular players', with the consequence that familiarity with policies and practice is less consistent amongst housebuilders. As a result of all of these factors, there is less consistency in interpretation and practice in Leeds, compared with York.
- 3.7 The affordable housing policy in Leeds has moved from one which defined the price of affordable housing as a percentage of market value, to one based on a £ per m² rate. This rate is based on the views of RSLs active in the city as to what is affordable to them in relation to borrowings – for social renting, key worker renting – and discounted sale. The Supplementary Planning Guidance requires the provision of the highest percentages of affordable housing in the highest value areas – i.e. where the problem of affordability is greatest – and the lowest percentages in areas where the priority is regeneration – i.e. where additional supply may reduce demand for existing stock.
- 3.8 York adopts a different approach, setting outputs in terms of rent levels or the selling prices of affordable housing. It is then up to the RSLs to negotiate within those parameters with the housebuilders.
- 3.9 Both local authorities have increased their targets for affordable housing provision. The target is now 50 per cent in York and 30 per cent in defined areas of Leeds.
- 3.10 York City has specific policies to achieve a high degree of pepper-potting of affordable housing around sites, while policy in Leeds is more general, stating: "Affordable Housing should be suitably integrated in to housing developments". Among the schemes surveyed affordable housing was clustered in groups of between 2 and 12 dwellings. Newer schemes were more integrated than older ones but were still usually clustered in smaller groups, i.e. 4–5 rather than the 10–12 found in the older schemes.

- 3.11 Both local authorities maintain preferred panels of partner RSLs for planning gain deals. There appear to be no issues amongst housebuilders about the selection of development partners from these panels. In all cases the housebuilder selected the RSL they wished to work with, usually by a competitive bidding process amongst RSLs on the panel.

4 Policy consequences

50 per cent affordable housing target

- 4.1 The clear message from discussions with housebuilders is that site offers requiring a 50 per cent affordable housing component do not 'stack up' and therefore they are unable to agree terms with potential vendors. Consequently, housebuilders are now looking at mixed use developments with high value components to compensate for this but are concerned for future provision.
- 4.2 Concern was also expressed in discussions with the RSLs and local authorities about the impact of these higher targets. The concern is that they are leading to higher densities, smaller dwellings and a general intensification of development.
- 4.3 As a result of these policy changes there is much less flexibility with regard to the levels of affordable housing required through planning gain deals than there was in the late 1990s. Reductions are only considered where a housebuilder can demonstrate unforeseeable costs such as changes to legislation or requirements in relation to remediation, or contamination/ground conditions that could not reasonably have been foreseen. Only two cases were identified where this had happened and one led to a reduction in the affordable housing provision, whereas the other resulted in an increase in density.



Poor rainwater detailing, leading to leaks, dampness and staining.

4.4 In this context it could be of value to examine the approach adopted in a number of London Boroughs, where Social Housing Grant is available to fund provision above a benchmark percentage (usually 25 per cent), thus allowing target percentages of 50 per cent to be achieved. This overcomes the problem of site valuations being too low to persuade vendors to sell, but it does run the risk of 'leakage' of Social Housing Grant into either enhanced values or enhanced profit margins in the benchmark proportion. Social Housing Grant is similarly used to stretch provision in Harrogate in this way.

Thresholds

4.5 In Leeds the policy laid out in the Supplementary Planning Guidance, of providing the highest percentages of housing in the highest value areas, is being frustrated because the majority of sites coming forward in these high value areas are below the threshold of 25 units or 1 hectare. A proposal by Leeds City to reduce the threshold was rejected by ODPM and as a result the policy is frustrated significantly.

Integration of affordable housing

4.6 Both of the RSLs surveyed were keen to achieve integration and raised no issues about ease of management in this context. The only exception was in relation to flats with common stairs and this was largely driven by issues around the control of service charges. Interestingly, evidence emerged that housebuilders are moving towards favouring pepper-potting. Three factors may be driving this:

- If the affordable housing provision is grouped separately it advertises the fact that the housing is 'different' and could reduce sales values in the adjoining properties.
- The increased activity amongst buy-to-let investors means that there is a mix of rent and sale anyway.
- As the market has slowed, housebuilders are keen to see dwellings occupied to make potential purchasers more confident that the development is 'selling'. If the RSL stock is tenanted quickly but is not concentrated the whole scheme then looks more occupied. On one scheme the housebuilder complained that the RSL was not letting the properties quickly enough to achieve this objective.

5 Product

Standards

5.1 All but one of the schemes in the sample surveyed comprised 'off the shelf' purchases of completed dwellings. In these circumstances neither RSL attempted to achieve their usual standards, nor even checked standards against Housing Corporation Scheme Development Standards (SDS). This is a worrying development, suggesting that 'doing the deal' is more important than protecting the long-term sustainability of the dwellings produced.

5.2 One RSL responded (and in discussion the other expressed a similar view) that: "The scheme was PPG3 and not HC funded. Consequently we had no input in design and the units were not assessed against HC, SAP, EcoHomes or Lifetime Homes. In terms of areas of non-compliance for SDS, they do not meet space standards, lockable outdoor storage or disabled parking standards."

5.3 The space standards of the dwellings in the sample schemes were compared with those which one would expect in RSLs' own developments. These expected dwelling sizes were derived from anticipated occupancy of dwellings in the TCI tables, plus experience of recent development schemes.

Dwelling floor space	One bedroom house	Two bedroom house	Three bedroom house	Four bedroom house	One bedroom flat	Two bedroom flat	% expected floor space
Scheme 1	-	75	85	-	-	56	96
Scheme 2	-	66	-	107	49	67	93
Scheme 3	-	-	-	-	45	55	83
Scheme 4	-	-	-	-	45	60	87
Scheme 5	-	-	-	-	46	58	86
Scheme 6	-	65	80	105	55	65	94
Scheme 7	-	63	76	-	49	52	86
Scheme 8	63	73	101	-	51	71	106
Average	63	68	86	106	49	61	-
Expected	60	72	86	116	55	66	-
% of expected floor space	105	95	99	91	88	92	95

Overall, the floor space of the dwellings produced was 5 per cent smaller than would be expected for the dwelling occupancy to SDS standards. However, that relatively small shortfall masks very significant differences between:

- dwelling types;
- schemes.

Flats were consistently smaller than expected, at 88–92 per cent of expected size. Similarly, four-bedroom houses were consistently small, at 91 per cent of expected size.

Scheme 8 was unique in that the average dwelling size was 6 per cent larger than the expected size. On the other hand, schemes 5 and 7 were 14 per cent below expected space standards.

Given that, within the sample, schemes 7 and 8 were the most recently built and that both included a mixture of houses and flats there can be no explanation for this in relation to mix or age of the schemes. Scheme 5 was all flats.

5.4 Neither RSL was able to provide information on:

- SAP energy ratings. It can only be assumed that the SAP energy ratings for the dwellings would conform to the minimum required by Building Regulations, i.e. in the range 85–90 compared with 100–105 to meet the SDS requirement of EcoHomes Good or Very Good ratings for a two-bedroom mid-terrace house.
- Data on comparison with SDS essential or recommended standards. Similarly, it can only be assumed that neither was achieved fully.
- EcoHomes standards achieved. It is not possible to establish even whether the ‘pass’ standard was achieved. It seems likely that it was not.
- Lifetime Homes standard. From the comments regarding space and disabled parking, plus observations on site, it is obvious that they did not achieve LTH.

If it is accepted that SDS sets standards which aim to support long-term sustainability of dwellings, such as tenant requirements, tenant running costs, RSL maintenance costs and letability, then this could have significant, long-term implications in these areas.

- 5.5 Differences in standards between the market housing and affordable housing within a scheme varied on a scheme by scheme basis and appeared to depend on the housebuilder involved. For instance, in scheme 6 the affordable housing dwelling types are different from those for market sale and built to lower standards. In schemes 1, 2 and 7 they are different but the standards are comparable except for garaging provision on one of the schemes. In schemes 3, 4, 5 and 8 the same dwelling types are used.
- 5.6 Similarly, there was no consistency of approach in relation to specification. The specification in schemes 5 and 8 was absolutely consistent. In scheme 8 very high standards of kitchen and bathroom equipment had been provided. In schemes 3 and 6, en suite shower rooms were provided. In most schemes, specification and fittings tended to be different rather than inferior, in order to meet RSL maintenance preferences. However, one housebuilder appeared to be 'playing the game', by omitting standard items from the market value properties in their offer to the RSLs, where they knew that those elements were of value to the RSL. An example of this is the provision of showers. The RSL then had to pay extra to re-introduce them. In most schemes kitchen storage volumes were well below SDS.
- 5.7 Where space standards were below SDS and TCI assumptions the general policy of the RSLs was to under-let. For example, a three-bed five-person house would be let to a four-person household. This may disguise inferior value for money.
- 5.8 In all cases external materials and specification were identical in the market sale and affordable housing portions of schemes. Several comments were made about the need for dwellings to be 'tenure invisible' and this was seen as requiring the adoption of housebuilder house types, in terms of design, as well as materials and specification. Using the same house types, as opposed to materials and specification, appears an unnecessary step.

Negotiations on product

- 5.9 One of the RSLs negotiates on the basis of what is offered by the housebuilder, which means that the negotiation is limited to price and mix. They have no influence on standards. They feel they have to take this position because they cannot push too hard in a competitive environment between RSLs. However, they have managed to negotiate enhancements in return for earlier completion to meet housebuilder year-end targets, which reveals that there is room for negotiation, where the housebuilder is willing.
- 5.10 The other RSL adopted this approach in the past but now takes a more structured approach and has a predetermined set of standards to aim towards in negotiations, although sometimes compromises are agreed in order to secure a deal. This RSL also maintains a small fund to finance enhancements to specification where these cannot be achieved within the deal. These enhancements are of limited cost and focus on affordability improvements for tenants and therefore sustainability of demand for the product. They include turf for front and back gardens, provision of showers, curtains/blinds in the larger rooms etc.

Workmanship

- 5.11 With one exception, RSLs reported only minor problems of workmanship and defects following completion. One scheme suffered deformation of floating floors, the replacement of which required the tenants to move out during the remedial works. However, a consistent problem on all the schemes was the difficulty of getting the housebuilder to attend to identified defects. As a result of this one of the RSLs now holds a fund to rectify any such defects, rather than attempting to make the housebuilder return. Neither RSL withholds any retention percentage at completion of purchase. On one scheme the ongoing relationship between the RSL and housebuilder had broken down because of this. On another, which was handed over in 2003, roads and footpaths have still not been completed or adopted.
- 5.12 Different approaches to quality control were adopted during construction. One of the RSLs employs technically based Project Managers who are responsible both for overall project management and quality control. That RSL experienced no problems with the 'acceptance' of quality control inspections during the construction period. The other RSL has a more traditional structure, employing a Development Officer and Clerk of Works. The Clerk of Works has no contractual power and it is down to the housebuilder as to whether any role is accepted for the Clerk of Works. In one case the housebuilder relied entirely on the National House Building Council/Council of Mortgage Lenders protocol, insisting that the RSL had no quality control function and that the sole determinant of acceptability was acceptance by the NHBC Site Inspector. This housebuilder refused to accept any inspection or snagging list from the RSL. As this was included in the contractual documentation between the housebuilder and the RSL, the RSL had no power to change it.
- 5.13 In conclusion, both RSLs seemed generally happy with the design, detailing and workmanship of the dwellings, a view that does not appear to be borne out by the evidence in all cases. Some of the schemes were very well designed and built, but some were frankly poor, storing up problems for the future. The fact that the RSLs did not recognise this is a cause for concern. On one of the schemes there are already significant maintenance problems which the RSL is not addressing. Problems relate to both design and workmanship and include:
- dwellings with no private open space whatsoever, or even internal privacy, with large windows opening off very tight mews courts;
 - inadequate external storage leading to bin stores being used for storage and bins then left on the pavement in front of the dwellings;
 - gardens so steep as to be unusable and causing problems of surface water run-off;
 - inadequate parking provision leading to congestion and competition for available spaces;
 - poor detailing and high-maintenance materials. It is patently obvious that some of the details were 'worked out on site' to keep initial costs to a minimum, irrespective of maintenance implications;
 - inadequate specification. On at least two of the schemes the PVCu windows were of poor quality and will undoubtedly require replacement within a short period of time as they are already showing signs of damage from misuse;
 - poor workmanship. Some of this was cosmetic but in several cases it was significant and likely to lead to maintenance problems in the future;
 - external works detailing and fencing on several of the sites was frankly appalling;
 - incomplete external works, even after three years.



Inadequate detailing and poor workmanship to external works, and lack of bin stores.

Tenant and RSL satisfaction

5.14 To quote one RSL: “the tenants love it”, and one RSL tenant: “It’s a fantastic house in a lovely area, it doesn’t look like a HA property and fits in well with the other properties”. There is no doubt that moving into a new home, often in an aspirational location which is part of a new private scheme, has huge benefits in terms of tenant satisfaction and far outweighs concerns about internal space and layout. Although it has only been possible to see the results of one tenant satisfaction survey from all the sample schemes so far, overall satisfaction on that was high at 90 per cent. Meanwhile, satisfaction with individual room sizes was also high (83 per cent kitchen, 83 per cent bedroom, 100 per cent living room) although only 50 per cent were satisfied with the internal planning of their new home. The general feedback to management staff from residents has been good and there appear to be no issues relating to standards or quality. But it is unclear how much this relates to the ‘newness factor’ as only limited management problems have become apparent since handover. Any management problems identified were a function of tenant behaviour and neighbour disputes as opposed to characteristics of the buildings, standards or layout. Both RSLs feel the need for particularly sensitive management of these schemes, although it does seem questionable as to why greater sensitivity is required in mixed tenure schemes rather than single tenure.

5.15 Similarly, satisfaction amongst RSL staff was high, except in relation to rectification of defects. In large measure this appeared to be due to:

- obtaining additional affordable housing in popular areas;
- to quote: “Away from the mud and bullets of estate management”.

Value for money

- 5.16 Both RSLs see planning gain deals as a means of increasing the supply of affordable housing beyond the levels which can be achieved through Housing Corporation NAHP funding. In the older schemes both RSLs subsidised their activity through reserves inputs or Recycled Capital Grant Fund. They no longer do this, although one RSL has a small fund to finance enhancements to specification and another RSL has a fund for rectifying defects.
- 5.17 Both RSLs let the social housing at Housing Corporation rent harmonisation levels. However, one adds any scheme-specific service charges to rents payable, whilst the other treats this as a management cost. This is a significant issue for tenants on at least one scheme where service charges are of the order of £10–15 per week, on top of rents of £50–60 per week.
- 5.18 Study of the value for money of the deals themselves generated some interesting but contradictory results. Because of the absence of build cost information it has only been possible to compare the package deal prices against open market vacant possession (OMVP) values and TCIs. From this it is possible to estimate the contribution to land value in the deals.

Scheme Percentage	TCI Percentage	OMVP Percentage	Land Contribution £k
1	77.0	50.4	-16.4
2	56.4	28.8	-920.9
3	78.1	39.6	+57.4
4	96.6	45.8	+129.8
5	91.1	50.7	+234.1
6	40.1	20.9	-1210.0
7	76.9	39.9	-234.7
8	78.2	29.2	-391.0

- 5.19 The TCI percentage comparison is a 'like for like' comparison of the package deal price and TCI element net of on-costs. This illustrates that all of the package deal prices were below TCI, but some of them were surprisingly high bearing in mind no Social Housing Grant was provided. In a normal scheme at 100 per cent of TCI and norm grant in these authorities, the RSL would be servicing debt equal to 55–60 per cent of TCI on social rented dwellings and higher percentages on key worker rent and discounted sales. Therefore, all of these percentages look surprisingly high for the mix generated.
- 5.20 On the other hand, the percentages of open market vacant possession value for which the package deals were acquired are low. In the majority of cases the price was below the likely build cost of the dwellings, as a result of which the contribution to land value was either modest or negative. In the absence of more detailed data, a realistic build cost was calculated, which reflected location, construction date, dwelling mix, fees and charges, etc. That was then compared with the acquisition price of the package deal from the housebuilder. That in turn then generated the likely contribution to land values shown in the third column in the above table. Where the figures are positive this illustrates a positive residual land value. Where the figures are negative this illustrates that the deals required cross-subsidy from the market value elements of the scheme. In this sample it reveals a net cross-subsidy totalling £2.35m, which demonstrates that these planning gain deals generated significant, additional subsidy into the provision of affordable housing.

6 Process

Continuity of personnel

- 6.1 In terms of negotiation and delivery there are two main routes by which sites, and in particular brownfield sites, are brought forward for development:
- The housebuilder takes the initiative and is involved from the outset. However, housebuilders will often package up the development and then sell on all or part to others. In addition, because of the significant merger and acquisition activity in the industry over the last few years the original developer can get taken over, merged or restructured during the course of the development process.
 - Where the site is surplus industrial land the vendor sometimes obtains planning permission prior to marketing it to potential developers. In these circumstances the site brief and Section 106 Agreement are in place before the housebuilder is identified.
- 6.2 Either of these scenarios can lead to a loss of continuity and the reopening of old decisions. This position is exacerbated when a developer becomes involved who is unfamiliar with the policies and practices of that local authority. Several of the sample schemes fall into this category. The housebuilders who 'knew the ropes', in York in particular, factored in the costs of affordable housing planning gain deals into their offers, prior to acquisition of the site, but housebuilders who were not familiar with the policy tended to over-bid. Therefore, the only way they could close the viability gap and reduce the impact on profit margins was by:
- an extremely aggressive negotiating stance, aimed at reducing or eliminating the affordable housing provision. Two examples fell in to this category;
 - increasing density. One example fell into this category.
- 6.3 This issue may have been more important to the developers had it not been for the rapid increase in sales values during the development periods of most of the sample schemes.
- 6.4 In all of the cases surveyed, outline planning permission had been obtained and Section 106 Agreements executed, prior to the involvement of any RSL. In all cases the housebuilder selected the RSL or its commercial subsidiary from a 'preferred partners panel' established by the local planning authority. In several cases bids were invited from up to four RSLs on the panel on the basis of very precise documentation relating to standards, design and process, against which the RSLs had no leverage with which to negotiate. In one case the housebuilder stated that the bids received from the RSLs were in excess of the values which they had assigned to the affordable housing in their project appraisal prior to bidding for the site. In other words, they had *increased* their profit margin.
- 6.5 In one case the original RSL withdrew or was dismissed by the housebuilder. This appears to be because that RSL had entered into an agreement which they were unable to deliver because they had taken an over-optimistic view of loan security values. The substitute RSL was not on the local authority panel but was active in the city and the local authority was happy to add them to the panel. In that case the terms of the deal had to change for the scheme to become viable, but this was agreed by all three parties.
- 6.6 On the part of the housebuilder, interviews identified a problem in terms of loss of continuity following changes in personnel within one RSL.

The nature of the deal

- 6.7 The nature of planning gain deals may change during the negotiation process. This happened in the majority of the cases surveyed and was a reflection of factors such as:
- detailed design development changes the mix available;
 - changes in market conditions;
 - changes in identified housing needs;
 - RSL requirements in relation to mix or design/detailing.
- 6.8 Appendix 2 rates the various schemes in terms of their perceived success, as against the objectives outlined at the commencement of the negotiating process. It also demonstrates that earlier schemes generated significantly fewer homes than targets anticipated. However, it should be noted that those targets were not founded in clear policy or housing demand studies. As policies became more sophisticated and the housing needs justification more robust there was less argument (and thus change) in this area. This supports the view that in the later schemes cost implications were being factored into site acquisition prices by housebuilders, rather than them being at the expense of their profit margins.
- 6.9 The firm backing of elected members of the position taken by officers was also an important factor determining the successful outcome of negotiations. In other words, a prerequisite to successful achievement of targets was a clear affordable housing policy, the development of which had raised the profile of the issue with elected members and therefore secured their backing. The higher profile of this issue following PPG3 and associated circulars has undoubtedly been valuable and it is hoped that this will be reinforced by PPS3.
- 6.10 The conclusion that can be drawn from this is that officers appear to value relatively tight negotiating parameters, rather than being able to exercise discretion. Where policy was looser, negotiations were longer and more challenging for officers.

Differences in negotiating styles

- 6.11 The views of local authorities and RSLs in this respect are set out in Appendix 2. In all cases negotiations were long and complex and, at times, challenging. The normal, commercial negotiating style adopted by housebuilders was seen by the local authority officers as aggressive or confrontational. This was less the case amongst the RSLs. This suggests a need for enhanced skills and training for key local authority officers in this area.
- 6.12 The interviews with housebuilders identified a perception of a lack of commercial reality amongst some of the RSL staff, which exasperated the housebuilder. Earlier agreements were ignored, additional requirements were introduced for no apparent reason and considerable time and effort was wasted as a result. In one case a good working relationship between the RSL and housebuilder, which had continued through several schemes, was lost. This suggests a need for enhanced commercial awareness and negotiating skills amongst RSL staff.
- 6.13 As might be expected housebuilders adopted a robust negotiating style. This included a certain amount of 'disinformation'. For example:
- playing RSLs off against each other to generate competition. This was reflected in the perception by one RSL that they felt they could not push too hard in relation to standards or the housebuilder would go to a competitor RSL;

- misrepresenting RSL views to the local authority to suggest that the RSL would favour a mix which would generate a higher value. An example of this was suggesting that the RSL wanted a higher proportion of discounted sale rather than social rented in the scheme.

6.14 Both the local authority and RSL representatives stressed the importance of good relationships between them and the value of ‘singing from the same hymn sheet’. This implied the local authority and RSL representatives saw themselves as ‘on the same side’ with the housebuilder as ‘the opposition’. The housebuilders recognised this position but did not seem particularly concerned about it.

Satisfaction with outcomes

- 6.15 The satisfaction of the local authority and RSL interviewees with the outcomes from the negotiation process are set out in Appendix 2. In all cases either the local authority or RSL, or both, were satisfied with the outcome. In three cases there was a positive view expressed by both the local authority and the RSL. Therefore, in all cases it was felt that the negotiations were worth the effort. For instance, the view of one RSL can be summarised as: “Housing need met, product ok, location and image popular; but no quality control, not to SDS, need to fit in at the price of achieving normal standards”.
- 6.16 Without exception, all of the housebuilders interviewed saw planning gain deals as part of ‘the landscape’ and accepted that RSLs were an inevitable part of that. In some cases they were happy to discharge their obligations, transferring the properties to the RSLs at prices which were consistent with their land bids. In others it was undoubtedly irksome and an additional or unnecessary complication. In some cases the housebuilder’s opinion of the RSL staff involved was poor. However, housebuilders recognised the need to maintain working relationships with both local authorities and RSLs and chose to live with that as the price for continuing business.

7 Conclusions and recommendations

- 7.1 The overriding conclusion is that all parties want certainty, particularly in terms of local authority and Housing Corporation policy:
- Local authority officers welcome a clear and robust policy context grounded in data on housing need, which carries with it member support. There is undoubted value in very close cross-departmental working within local authorities, both for mutual support and consistency of practice.
 - RSLs welcome a clear Housing Corporation policy about Social Housing Grant, and a clear local authority policy in relation to affordable housing through planning gain deals. There is less certainty in relation to standards and RSLs would welcome a ‘level playing field’ in relation to space, performance, etc.
 - Housebuilders are able to factor the anticipated costs of affordable housing requirements into land bids prior to site acquisition, thus avoiding nasty surprises which could affect their profit margins. Consistency of approach by RSLs would help.
- 7.2 Inclusion of space standards, or a requirement to comply with SDS within affordable housing policy statements, would be a way of achieving the level playing field sought by RSLs. Alternatively, all ‘partner RSLs’ in a local authority could agree to a ‘Section 106 brief’ which would set out their common requirements when invited to tender by housebuilders. That could set out standards such as SDS compliance. However, the Housing Corporation’s policy of establishing sub-regional partners working across several local authorities militates against the existing arrangements which operate in Leeds and York.

- 7.3 There are doubts about the delivery of the higher percentages of affordable housing now being required through Supplementary Planning Guidance, particularly in the context of a quieter housing market generally and in higher value locations in particular. Local authority officers had noted that supply had 'dried up' since the introduction of the increased requirements. Housebuilder land managers expressed a concern that they could not 'stack up' viable land offers at those levels. This illustrates clearly the risks of depending on the market for such provision. If it is seen as additional to HC funded programmes that may be fair enough, but where it is the sole source of additional affordable housing, then it becomes a real concern. However, flexing policy to reflect variations in market conditions would defeat all parties' desire for certainty.
- 7.4 The clear Housing Corporation policy of no Social Housing Grant inputs to planning gain deals in Leeds and York worked well at the target percentages set until the latest increases. There is much to commend a national policy approach, of requiring no Social Housing Grant inputs to planning gain deals, up to the prescribed percentage of affordable housing set in the Supplementary Planning Guidance. Grant could then be used only to stretch provision, as is the case in Harrogate. A similar approach is adopted in a number of London boroughs, where Social Housing Grant is available to fund provision above a benchmark percentage (usually 25 per cent), thus allowing target percentages of 50 per cent to be achieved. This overcomes the problem of site valuations being too low to persuade vendors to sell, but runs the risk of 'leakage' of Social Housing Grant, into either enhanced values or enhanced profit margins in the benchmark proportion.
- 7.5 Affordable Housing policies which set out £ per m² rates for transfers to RSLs are preferable to discounts below market value. This is because discount below market value is of limited value to an RSL at a time of rapidly increasing house prices, as the RSL is unable to recoup the cost as a result of rent harmonisation policies and affordability targets. Simply defining outputs, in terms of rent or selling price, seems to lead to over-bidding amongst RSLs, which merely benefits the housebuilders.
- 7.6 Whilst neither of the local authorities in this sample has adopted the approach, experience in other authorities suggests that there is considerable benefit in setting the affordable housing percentage in terms of floor space rather than units. This would counteract the emphasis on flats and the pressures on space standards. Within the generated floor space, the local authority and RSL could then identify the optimum mix of houses and flats to meet local housing needs.
- 7.7 A threshold of 25 dwellings or 1 hectare is too high in the context of declining site size. This is particularly true in higher value areas where land availability is most limited and therefore where site releases tend to be relatively small.
- 7.8 A number of local authority officers expressed unease about conducting commercial negotiations. There seemed to be limited skills in this area and where there are such skills, they have either been picked up 'on the job' or at an officer's own initiative. To a certain extent this can be addressed by better cross-departmental working, bringing together the skills within local authorities. Nonetheless, training to equip 'front line' officers in these areas would be time and money well spent.
- 7.9 Feedback from the housebuilders suggests that there is a need for greater commercial awareness and negotiating skills amongst RSL staff. Some were described as naïve. This is evidenced by the fact that their demands appear arbitrary, but at the same time they do not exploit their negotiating power. They should be maximising their position to reflect the fact that:

- without them housebuilders cannot proceed with larger developments (and thus sales);
- they are purchasing large portfolios, often worth several million pounds, but are accepting purchase terms applicable to individual purchasers.

Again, training to instil a greater commercial awareness and improved negotiating skills amongst RSL staff would be valuable.

7.10 Local authorities are at very different positions in terms of development of policy and practice. Those interviewed were quite clear on the value of sharing experience between local authorities and the publication of Good Practice Guidance. The activities of the Northern Affordable Housing Group of local authorities and the publication of the Golden Triangle Affordable Housing Project are both very helpful in this respect.

7.11 Poor standards of design detailing and workmanship were apparent in a number of schemes surveyed which may well lead to problems in the future. In part that reflected a lack of attention to these factors by the RSL concerned and in part it reflected the weak negotiating position in which the RSLs found themselves, albeit that they were players of importance to the housebuilder. That suggests that RSLs need to devote greater attention to briefing, defining their requirements and to quality control. It also suggests that, consistent with the previous point, RSLs should take a tougher position on payment terms linked to defects by demanding a retention percentage until the end of a defects period.

7.12 In all of the schemes surveyed, the RSL became involved after the Section 106 agreement was signed. This had three consequences:

- In some circumstances the terms of the original agreement had to be changed to enable financing of the affordable housing element by the selected RSL.
- In some schemes the affordable housing target was not achievable.
- In all, it reduced the strength of the RSLs' negotiating position compared with that of the housebuilder.

It would be much 'cleaner' for all concerned if the RSL were selected before and became a signatory to the original Section 106 agreement.

7.13 A high degree of pepper-potting of the affordable housing element appears desirable and is acceptable to RSLs, despite the conventional wisdom that it leads to management inefficiencies. It also appears that housebuilders recognise the advantages, particularly in periods of slow sales. This should be exploited.

7.14 The initial popularity of Social Housing Grant-free Section 106 schemes to RSLs, in terms of new, additional stock, and to tenants in terms of providing new homes on a 'private estate', may be masking longer term issues regarding standards and running costs. A more rigorous approach to the client function, whilst uncomfortable at first, is necessary to protect the long-term interests of RSLs and their tenants.

Appendix 1

Sample survey form

Project identification			
RSL	Any HA		
Project name	Any street	Local authority	Any town
Start on site date	01/04/2004	Completion date	31/01/2005

Procurement method: please tick box below	Total project mix including house-builder and RSL units	
Design & Build*		Number
Land, Design & Build Package	Market value sale	182
Bills of Quantities*	Social rent	8
Plan & Specification*	Key worker rent	5
Off the shelf/turnkey x	Shared ownership	5
Other (specify)	Discounted sale	
	Other	
* separate land transaction	Total	200

Mix of affordable dwellings including Gross Internal Floor Area (m2)				
Dwelling type	Number of Units	Unit Area m ²	Total Area m ²	Needs Category
Bungalows				
1 bedroom	0	0	0	
2 bedrooms	1	60	60	AP rent
Houses				
1 bedroom	2	50	100	GN rent
2 bedrooms	3	65	195	GN rent
3 bedrooms	2	80	160	GN rent
4+ bedrooms	0		0	
Flats				
1 bedroom	0		0	
2 bedrooms	10	50	500	SO/KW
3+ bedrooms	0		0	
Total	18		1015	

Design criteria		
SDS compliance: list any areas of non-compliance	Kitchens; mobility access; SAP rating	
SAP rating		
HC SDS SAP essential items	Achieved	
HC SDS SAP recommended items		Not achieved
EcoHomes standard achieved	Pass	
Lifetime Homes Standard		Not achieved

PLEASE COMPLETE ONE OF THE NEXT TWO SECTIONS ONLY

Financial analysis: Design & build cost data if applicable				
Cost heading				
<i>Dwellings</i>	Bungalows £	Houses £	Flats £	Total £
Substructures: aggregate				0
Superstructures: aggregate				0
Plot specific external works: aggregate				0
<i>General site costs</i>				
Demolitions				
Site reclamation				
Site abnormalities				
Site works e.g. roads, sewers, non-plot specific external works				
Contractor on-costs applicable to D&B e.g. professional fees, statutory charges				
Preliminaries				
Total building contract sum	0			
Land price				

Other costs to developer associated with s106 agreement e.g. schools, playing fields, off-site road works, transport, etc.				
RSL fees & on-costs				
Total other costs	0			
Total Scheme Cost	0			
Scheme TCI including procurement method adjustment				
TCI per cent				

Financial analysis: Turnkey cost data if applicable				
Cost heading				
<i>Dwellings</i>	Bungalows £	Houses £	Flats £	Total £
Acquisition: aggregate	144,000	976,500	1,350,000	2,470,500
Open market value: aggregate	160,000	1,085,000	1,500,000	2,745,000
<i>Total turnkey price</i>	2,470,500			
Other costs to developer associated with s106 agreement e.g. schools, playing fields, off-site road works, transport, etc.	75,000			
RSL fees & on-costs	25,000			
Total other costs	100,000			
Total Scheme Cost	2,570,500			
Scheme TCI including procurement method adjustment	1,540,000			
TCI per cent	166.9155844			

Process issues: to be explored in interview between RSL, LA and housebuilder
To what extent was the deal determined by the policy of the council?
Were officers able to implement this policy 'on the ground'?
To what extent were officers able to exercise discretion in their negotiations?
How successful was the process in achieving maximum planning gain within the constraints of the developer's requirement for profit and competitiveness in the land market?
What discount below unencumbered open market value was achieved in the land price?
How was the RSL selected by the housebuilder?
How was the decision made on whether or not SHG was applied to the deal?
If no SHG was obtained, was there any input from RSL reserves or recycled grant funds held by the RSL?
How were relationships between the local authority, housebuilder and RSL through the negotiation period, and did they change during the period?
Did the terms of the 'deal' change through the negotiating process; and reasons for those changes?
Were there any problems in relation to standards, design, specification or workmanship during the design, construction or post-completion phases of the development? Have these been resolved?
Have there been any problems re lettings, management or maintenance of the rented dwellings following occupation? Have any problems led to issues re sales of later phases by the housebuilder?
Were the parties satisfied with the process and outcomes: local authority, RSL and housebuilder perspectives? Will the relationship continue on future projects?

Appendix 2

Summary of Sample Schemes

Scheme no	RSL	Local authority	Outline planning permission	Start on site*	Practical completion*	Total dwellings	Affordable target*	Affordable actual*	Satisfaction**			Satisfaction***			Mix****		
									Deal	Negotiating process	Outcome	Deal	Negotiating process	Outcome	Social rent	Key worker rent	Discounted sale
1	B	Leeds	1999	2001	2002	124	31	24	2	1	2	1	2	2	14	10	0
2	A	York	1995	2002	2003	250	45	45	2	2	3	NA	NA	NA	45	0	0
3	B	York	2002	2003	2003	92	23	23	3	2	3	NA	NA	NA	16	0	7
4	A	Leeds	1999	2003	2004	350	60	20	0	0	1	3	3	3	0	20	0
5	B	Leeds	2001	2003	2005	404	73	22	1	2	2	NA	NA	NA	10	12	0
6	B	York	2001	2003	2005	280	70	70	2	3	3	3	3	2	21	0	9
7	A	York	2002	2005	2005	278	70	70	2	3	3	3	3	3	22	0	10
8	A	Leeds	2002	2005	2005	105	23	23	3	3	3	3	1	0	11	0	12

* Dates for start on site/practical completion relate to the Affordable Housing elements surveyed: start on site for the site as a whole or for earlier phases of Affordable Housing may be earlier. Affordable target/actual for whole site, including other phases not surveyed.

** Satisfaction rating for the RSL and LA. Satisfaction scores: 0 = little/poor; 3 = completely/positive.

*** Satisfaction rating for housebuilder: 0 = little/poor; 3 = completely/positive.

**** Mix relates to the Affordable Housing elements surveyed as opposed to total Affordable Housing provision on the larger scheme: in a number of sites, another RSL was working with either the same developer or another developer.

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