

Local jobs from local development

**The use of Planning Agreements to target
training and employment outcomes**

**Richard Macfarlane
with additional research by Community Consultants Ltd**

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Richard Macfarlane is an independent researcher and consultant specialising in community-based economic development and the involvement of local people in urban regeneration. Community Consultants Ltd is a survey company with extensive experience of urban regeneration matters.

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Summary

The policy rationale

This report examines the potential of using Planning Obligations and Agreements to make strong and formal links between new developments and the provision of employment opportunities of local residents. It is timely in a number of respects.

- The Government's Social Exclusion Unit is developing new proposals for tackling concentrations of social and economic exclusion, which will require improved co-ordination between policy areas (e.g. Planning and Employment).
- There is increased emphasis being given to reducing the environmental impact of new development.
- There is an increased priority being given to local community needs within the Local Plan and development control process.
- Planning matters are being devolved to new bodies that will provide opportunities for new policies and initiatives.
- There is an industry-wide debate on how best to deal with the off-site impacts of new development, with a Government discussion document promised in early 2000.
- As the economy expands and unemployment levels fall, employers are becoming more open to innovative training and recruitment initiatives.

In this context, it is clear that planning and development control is not simply about land-

use matters; the planning process must take into account a wider range of social, economic and environmental issues. The report argues that Planning Obligations and Agreements can provide a formal mechanism for ensuring that developers address the current policy priorities. In relation to social exclusion and sustainable development, Agreements can help ensure that:

- local people can compete for new job opportunities
- labour supply expands in line with the labour market
- the environmental impact of car-based access to the new development is minimised (by maximising local employment).

The use of development control powers in this way is important because every new development has to seek development approval, and this provides the Planning Authority (usually a local authority) with the opportunity to consider whether the inclusion of an Agreement covering employment matters is relevant. Other approaches (e.g. voluntary agreements) are unlikely to get the attention of key decision makers, will be less rigorously applied and are less likely to be taken seriously because they are not binding.

Current patterns of use

To extend the use of Planning Agreements in relation to targeted recruitment, it is necessary to change the existing culture and practice in many planning authorities. The survey (see Chapter 3) indicates that 13 per cent of authorities are using Agreements with relevant clauses. It is estimated that 85–90 relevant

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Agreements exist, which suggests that only 1–2 per cent of Agreements created each year include employment matters; this might increase to 5 per cent of Agreements on the developments which have the largest employment impacts. Of the 28 pioneer authorities, 71 per cent are in the South of England, with 48 per cent being London Boroughs.

The survey suggests two key reasons for the low level of activity (see Table 1): planning officers have not considered using development control powers in this way, and there is uncertainty about the legal position. If the use is to be extended then these issues need to be addressed by clarifying the legal position, promoting the concept and changing accepted practice.

Table 1 Reasons given for not using Agreements for training and employment

	% of respondents*
Never really thought about it	44
It would be beyond our powers	33
It could not be enforced	29
No recent relevant Planning Agreements	21
It is wrong to use Planning Agreements in this way	20
It might discourage investment	8
Employment is not a priority for this area	6
It is not in our Policy / Local Plan	3

* Respondents could select several responses

The legal position

The legal framework for Planning Agreements is set out in Section 106 of the Town and Country Planning Act (for England and Wales)

and Section 75 of the Town and Country Planning (Scotland) Act 1997. Two sets of criteria have been put forward to assess legality (see Chapter 2).

Current Government Guidance (Circular 1/97 in England, 12/96 in Scotland and 13/97 in Wales) suggests that Agreements should only be sought where all of the following tests are met:

- they are necessary to make the proposal acceptable
- they are ‘relevant to planning’
- they are directly related to the proposed site
- they are fair and reasonable in scale and kind to the proposed development
- they are reasonable in all other respects.

Notwithstanding the above ‘tests’, it is not unlawful for a Planning Agreement to include matters that are in excess of what is necessary, relevant and reasonable.

Court cases in the 1990s have clarified the relevance and meaning of the above tests. These have resulted in a position where legal advisers are suggesting that to be lawful a Planning Agreement need only:

- be for a ‘planning purpose’
- have some connection to the development site
- be *Wednesbury* reasonable (i.e. not so unreasonable as to defy logic).

If the Agreement is used to justify the granting of planning permission it must ‘fairly and reasonably’ relate to the development site.

The latter ‘tests’ are capable of being satisfied by Agreements related to employment matters, because these can make a measurable contribution towards reducing social exclusion

and achieving sustainable development, which are understood to be ‘planning matters’. In most cases the purpose of the Agreement will be directly related to employment on the development site. If support is being given for generalised training or pre-recruitment activity, this may still be regarded as having a connection to the site.

Of the government ‘tests’ the one that is most problematic is whether the employment matters are necessary to ‘make the proposal acceptable’, although even here there are circumstances where this would be the case, for example, reducing traffic volumes.

The study suggests that many local authorities seek to operate entirely within the Government Guidelines. This is in a context where the number of Agreements being negotiated may be small (so there is relatively little experience and confidence in their use), the transfer of information on the subject between local authorities is weak, and economic development strategies may be the responsibility of other professions and /or favour voluntary approaches.

If the Government (and the Scottish Parliament and National Assembly for Wales) wish to see Planning Agreements used to help tackle social exclusion and achieve ‘sustainable development’, then they should include local training and employment as ‘social considerations’ when they issue planning policy documents and Guidance. This would provide local authorities with increased confidence, and offer a stronger policy framework for their negotiations with developers.

The case studies

Four examples of the use of employment-related

clauses in Planning Agreements are included in the study.

In Southampton (see Chapter 4), the Agreement relating to the West Quay retail development shows the benefits of including a financial contribution for training. This was applied even though the development was stalled for a number of years, and the use has stimulated the formation of a powerful partnership between the developer, the local authority, a local college and Employment Services. This partnership is undertaking promotion and pre-recruitment training, and organising a single recruitment source for city retailers. The aim is to ensure that the city’s labour force expands in order to provide workers for the 3,000 new retail and maintenance jobs.

In the London Borough of Greenwich (see Chapter 5), Planning Agreements have been used systematically to help achieve the Local Plan objectives of ‘encouraging employment which provides jobs suited to local skills and needs’, and ‘increasing the extent to which the benefits of local development are targeted at the local community’. By late 1999, some 17 relevant Agreements had been negotiated, providing £1.7 million in funds for local training and recruitment activity. This is used to attract other public money. A dedicated agency has been established to link the employer’s requirements with local people and businesses, and through its work 2,100 local people and 200 local businesses have obtained training, and 1,500 local people and 118 local businesses have obtained jobs/contracts.

In rural Aberdeenshire (see Chapter 6), an Agreement on the extension of a gas-processing plant led to changes in the way the developer

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and the main contractor approached the work. They broke the civil engineering work into smaller packages that could be undertaken by local firms, and they ensured that all contractors sought to fill vacancies through the local Job Centres in the first instance. As a result, 19 subcontracts went to local firms, and 2,453 local people obtained work (59 per cent of the total construction workforce).

Despite many years of urban regeneration, the City of Newcastle upon Tyne (see Chapter 7) is just negotiating its first Planning Agreement with an employment-related clause. It appears that the lack of use arises from relative inexperience in using Planning Agreements, the involvement of other public agencies (which were assumed to be responsible for local economic benefits) in most developments and a view that 'any development is a bonus': questions about targeting were not raised. The policy rationale for use on the proposed development is derived from the Urban Development Plan (UDP) and the UDP Enquiry. In this context, the proposed employment and training elements of the Agreement could be considered too modest, too dependent on subsequent goodwill and too reliant on the future provision of public funding.

Good practice

The study suggests the following good practice.

- 1 The requirements must *provide the basis for ongoing co-operation* on employment and training matters. It is this 'partnership' that will deliver the required outcomes. Developers indicated that they take a commitment more seriously if it is included in a binding agreement.

- 2 *Include public sector developers* in the arrangements; codify their commitment in an obligation which will 'cascade' on to subsequent site occupiers.
- 3 *The local authority should make clear its intentions* in local plans and site-specific development briefs. Producing a Code of Practice on Targeted Recruitment could provide a useful explanation of what types of action are looked for and what kind of support is available to the developer.
- 4 *Include local employment matters in discussions with developers* from the earliest meetings. This indicates a serious commitment and allows the developer to accommodate this requirement in their planning.
- 5 Promote joint working between the local authority economic development team and the development control team. Share information on new developments. *Develop a system to ensure that employment matters are routinely included in proposed Agreements.* Develop a 'menu' of employment-related matters for consideration.
- 6 The outputs will depend on having *good labour supply and training infrastructure* available. For large programmes this may be a dedicated team. For smaller developments it will require good networking with specialist providers, for example, Employment Services, colleges, vocational training organisations, etc. The local authority must ensure this infrastructure is developed.

- 7 Clauses put into agreements must be *durable* so that delivery is not dependent on a particular development timetable. Good examples are a requirement to pay an agreed sum plus inflation, and/or a requirement to 'agree a local training and recruitment plan with the local authority'. The latter may be especially relevant where the viability of the development is considered marginal.
- 8 A requirement to provide *monitoring information* (as determined by the local authority) must be included in the Agreement. The authority must establish a procedure for progress chasing, verifying, aggregating and reporting on this information. This will require some resources. Failing to do this makes it difficult to evaluate the approach and may imply disinterest to the developer, and their contractors and end-users.

Conclusion

The report shows that:

- *there are sound planning rationales for using Planning Agreements to target the employment impacts of new developments*
- *the courts have provided an interpretation of current statutes and Guidance which does not seem to create an impediment to the use of Planning Agreements in relation to targeted training and recruitment*
- *the current use of Agreements in relation to employment matters is very limited; key explanations are the failure to consider the potential, and uncertainty about the legality and appropriateness of using development control powers in this way*
- *to extend the use of Planning Authority powers to tackle social exclusion and ensure sustainable development, the government planning bodies should include a reference to 'targeted training and employment' as a social consideration in future Planning Guidance documents; this will legitimise the activity in the eyes of both developers and planning practitioners.*

1 The use of Planning Agreements to achieve sustainable development

The current debates

The term Planning Agreement refers to a commitment made by a developer as a part of the process of seeking planning permission. Where the commitment is agreed with the Planning Authority (usually a local authority) it is written into a legally binding document called a Planning Agreement. In England and Wales, the developer can make a unilateral commitment (i.e. without agreement with the Planning Authority) which is called a Planning Obligation. For simplicity, the term Planning Agreement (or Agreement) will be used in this report, to cover both Obligations and Agreements.

The principal purpose of a Planning Agreement is to ensure that developers ‘... meet the cost of remediating the adverse impacts of their developments’ (Royal Institution of Chartered Surveyors). However, the agreement can include other matters: they are not limited to remediation.

Agreements differ from planning conditions in that they can apply to actions on or off the development site, and they can include the payment of money to a Planning Authority.

There is currently a debate within the ‘development industry’ about the future of Planning Agreements. This is centred on four issues.

- *Reasonableness*: some Planning Authorities appear to be using Agreements to seek benefits that are excessive and not related to the proposed development.
- *Certainty*: it is difficult for developers to anticipate what will be requested through

an Agreement, which has serious implications for their assessment of the viability of a proposed development.

- *Delays*: the negotiation of an Agreement can be drawn out and delays to a development can affect viability and coerce the developer.
- *Transparency*: the current arrangements are not sufficiently open to public scrutiny, which can bring the planning process into disrepute.

These issues have been widely discussed in the industry (RICS, 1998; Society for Advanced Legal Studies Planning and Environmental Law Reform Working Group, 1998; Punter, 1999), with the key debate focusing on the potential benefits of introducing a ‘tariff approach’ like the Impact Fees used in the USA. The DETR has promised a consultation paper on the issue (DETR, 1999c, p. 23).

This report focuses on the potential of using Planning Agreements to ensure that the employment impact of new developments (in both the construction and/or end-use phases) is targeted at populations who have the highest levels of unemployment and associated deprivation: the ‘socially excluded’. While this may be seen as an extension of the use beyond traditional land-use planning matters, it does not exacerbate any of the above concerns. It can fit within the principles of whatever system is used. The key issue is whether the targeting of the training and employment impacts of a development is a matter that should be a concern in the planning process. The rationale for this is discussed below.

Planning, employment and 'sustainable development'

In one form or another, Agreements have existed for many years, but it is only recently that there has emerged any systematic use in relation to employment matters. Even now, less than 5 per cent of all Planning Agreements on major developments include reference to these matters (see Chapter 3), yet all of these developments have major employment implications.

One explanation for the under-use is a narrow interpretation of the relevant powers. This has been influenced by Government Guidance that seemed to limit their use to the physical aspects of development, a position that has been undermined by legal precedents in the 1990s which created scope for wider use (see Chapter 2). As will be shown below, there are good reasons to change the Guidance and encourage the use of Agreements to target the employment impacts of major developments.

Another explanation for the under-use may be that local authority economic development work has historically been concerned with land use and area/site promotion (see Ward, 1990), and has assumed that the benefits would 'trickle down' to local people and the local economy. During the 1980s and 1990s, a more person-centred process of local economic development emerged, but this was in new teams, often located outside of Planning Departments.

The election of the Labour Government in 1997 introduced the challenge of 'joined up thinking'. In planning this translated into an increased commitment to 'sustainable development' (DETR, 1999c) and, as the discussion below will show, the use of Planning

Agreements to target the training and employment impacts of major developments can play a key part in realising this commitment.

Sustainable development is about ensuring a better quality of life for everyone, now and for generations to come. It provides the context within which the consideration of economic, social and environmental impacts are balanced and integrated. (The LGA and DETR Planning Concordat, LGA, 1999)

Reducing unemployment

Sustainable development requires action to absorb the unemployed back into the workforce. There are three arguments for this:

- social justice
- reducing the 'drag' of unemployment and related deprivation on the economy
- the avoidance of skill shortages and wage inflation as the economy expands.

The reduction in unemployment is often included as an element in a local authority's Local Plan and may be used to justify the use of Planning Agreements to target employment opportunities. However, these Plans have often been in place for several years without Planning Agreements being used, so it is useful to ask why practice is beginning to change.

The case studies suggest that political commitment has played a key part. This may be influenced by the perceived failure of earlier approaches to 'targeting', which have generated a demand for more certain methods of ensuring that local development does generate benefits for local people. In the London Borough of

Greenwich, this demand came from the Leader of the Council; in Aberdeenshire from the Scottish National Party whose leader was the local MP.

However, changes in government policy have also created an environment in which increased action on unemployment and social exclusion is encouraged, and where local authorities feel they can act with increased confidence. There are three clear elements to this changing context:

- the introduction of the Welfare to Work policies, especially the New Deal for Employment which has given a higher profile to tackling long-term unemployment
- the work of the Social Exclusion Unit (SEU) which has focused attention on 'pockets of intense deprivation' (SEU, 1998, p. 9)
- specific encouragement to local planning authorities to 'address issues of social exclusion through land use planning policies' (DETR Proposed Revisions to PPG12, p. 23).

There are two other factors that may encourage greater use of Agreements to create a formal commitment to local employment. First, there is a growing appreciation of the importance of 'employer links' in training and employment. In *Back to Work*, Sanderson *et al.* (1999) draw attention to the importance of encouraging employers to increase the recruitment of local unemployed people as one of the 'three key pillars of an integrated approach' (pp. 2–3). Second, the practice of including formal 'local labour clauses' in

construction contracts has become more widespread and more successful (see Macfarlane, 1998), prompting questions about how a similar approach could be applied to a wider range of developments and to end-user jobs. All of the case study examples include construction jobs as a major element.

Increasing 'value for money' (VfM) in employment programmes

As indicated above, there is a general case for using Planning Agreements to link new developments to the reduction of unemployment. As the case studies show, this arrangement is likely to lead to a much closer relationship between publicly funded training and employment programmes and the incoming employers. This has also been shown to yield better VfM for the public exchequer.

In the evaluation of training and employment initiatives, attention has to be given to the impact of 'dead-weight' and 'substitution'. Dead-weight refers to outcomes that would have happened anyway; where it is high, the value for money of an employment initiative tends to fall. Substitution occurs where a scheme participant gets a job but displaces another employee. Again, this reduces VfM. Where programmes are successful in placing people who were not job-ready into work then dead-weight falls, and substitution is less important since both the new employee and the person they displaced will now be 'employable'. Furthermore, in communities with high levels of unemployment each person returning to work becomes a positive role model (see Campbell *et al.*, 1998, p. 13).

The durability of new employment is also a

consideration in assessing the impact of employment initiatives. In their evaluation of relevant literature, Campbell *et al.* (1998) conclude that those schemes that have a 'labour market orientation' offer the best outcomes in terms of ongoing employment by participants. However, they also note that the people who are most disadvantaged in the labour market are also the least likely to participate in market-oriented schemes (pp. 20–4). Improved labour market orientation is achieved by schemes that are developed with employer participation and meet the employer's labour needs.

From the above it can be seen that the best value for money in local employment projects is achieved by schemes which target their recruitment at populations that would not otherwise be employed, and which work directly with employers. Planning Agreements can be used to develop a positive relationship with the employer(s); to target some of the new jobs at people currently outside of the labour force; and to obtain resources that will help get the most disadvantaged local people into work. They are therefore likely to maximise 'value for money', for both the employers and the public funding agencies involved.

Limiting the damage to existing businesses

If land for economic activities is used for inward investment that threatens the survival of existing businesses and jobs, then the net benefit of the development will clearly be reduced. The damage can occur because the new employer offers better terms and conditions, or higher prestige employment, than existing employers, and therefore attracts the skilled and experienced workforce that has been 'trained'

by these businesses. It effectively displaces the 'training costs' of the new development from the inward investor to the existing businesses, while the social welfare costs of any subsequent job losses fall on the public sector.

Planning Agreements can be used to reduce the risks to existing businesses by ensuring that:

- the new business contributes to the training of unemployed people who will then be available to work for it, or to replace 'lost' workers in other businesses
- new businesses recruit a proportion of their new employees from local unemployed people, reducing the impact on other local businesses.

Asking developers to contribute to the strengthening of the local labour market is in line with the current UK principles on who pays for training:

- the public sector is responsible for the provision of basic education, and for job preparation (e.g. for the unemployed); this may be extended to vocational training for school-leavers
- employers and individuals are responsible for vocational training.

Negotiating a Planning Agreement in relation to local training is not necessarily unwelcome by developers, especially where their financial input is matched with public funds and used to prepare people for employment in the site. There are three reasons for this:

- concern about local skill shortages; this concern rises as unemployment falls and

an increasing proportion of the unemployed are perceived as not being 'job-ready'

- an awareness that skill shortages will get worse unless all companies (in a sector) are required to contribute to training; this is a significant problem in the construction industry where a reliance on self-employed labour gangs, and fierce competition, have severely reduced training activity
- recognition that targeted recruitment is good public relations and (for retailers) makes good commercial sense.

Environmental sustainability

The final planning rationale for encouraging local recruitment relates to environmental sustainability. This has emerged as a key policy concern in the 1990s and is given significant weight in Government Guidance on Local Plans (DETR Revision of PPG12, pp. 20–1).

Increasing the levels of local employment is recognised as one way of '... minimising travel distances and encouraging modes of transport other than the car' (TCPA, 1997). As Hall and Ward (1998, pp. 142–6) have shown, there is a considerable body of academic work which shows that placing homes and employment in close proximity, along linear transport routes, reduces overall travel-to-work distances and increases the percentage of journeys which are taken on foot, by bicycle or on public transport. This is logical since the greater the travel-to-work distance the more difficult the journey becomes on public transport. This is especially true for orbital journeys (across or around urban

areas), and rural-to-urban journeys. This finding may be an issue in planning future land use, but it is also an argument for encouraging employers to recruit locally wherever possible.

Making 'sustainable development' a reality

The Planning Concordat statement expresses a fine sentiment, but if it is to be achieved there needs to be closer links between a local authority's planning activity and its local economic development activity. To achieve 'sustainable development', local authorities will need to be more resolute in ensuring that major developments do contribute to the development of the workforce they require and do play a part in enabling the 'socially excluded' to enter the labour market. But local authorities have a relatively weak basis for achieving this. They have few statutory powers and little organisational responsibility for local economic development; primary responsibility rests with independent colleges and training organisations, with government departments and agencies, and with the new Regional Development Agencies.

However, all developments have to go through the development control process and this allows the local authority to:

- scrutinise the labour market impacts and potential of each scheme
- develop a positive relationship (in respect of local employment and training) with the developers
- formalise any employment and training agreements reached with the developers through a Planning Agreement

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- obtain funding from the developers to help deliver local training and recruitment services.

It is not unreasonable to ask developers to work with the Planning Authority on these matters. Ultimately, the point of the policy of sustainable development is to ensure that their developments contribute to the Government's goal of '... protecting the environment and ... achieving and maintaining high and sustainable levels of economic growth and employment' (DETR, 1999c, p. 5). It is the developers that have the capability to deliver this, and a key role for Planning Authorities must be to encourage them to take this task seriously and to monitor the outcomes as a basis for guiding their future actions. As the case studies show, Planning Agreements can play a useful part in obtaining a developer's involvement in the development of the local labour market.

It has been argued that employment matters are best handled through partnerships and voluntary agreements with developers. The use of Planning Agreements alongside the development of partnerships is advantageous because:

- they can be applied to developments that are not covered by a partnership
- they add durability; the priority to be given to employment matters can be

sustained despite changing circumstances and ownership

- developers have said that they give more weight to formal commitments than voluntary commitments.

Furthermore, if a developer is prepared to make sustainable voluntary commitments, they should have no objection to seeing these formalised in a binding agreement.

So, although the use of Planning Agreements to achieve targeted employment and training outcomes may be stretching the intended use as set out in Circular 1/97, there are good policy rationales for this innovation. Planning needs to change to reflect current needs and demands, and the increased concern with social exclusion and sustainable development suggests that the Government Guidance on the use of Planning Agreements should permit their use in targeting the employment impacts of major developments.

Reference to 'targeted training and employment' in future Guidance will help legitimise the use of Planning Agreements in circumstances where this is a local priority. This will give 'local employment' parity with other 'social considerations' in policy documents. (See, for example, 4.12 in the PPG12 Consultation Draft, DETR, 1999b.)

2 Legal and policy issues

The statutes

The term 'Planning Obligation' was introduced into Section 106 of the Town and Country Planning Act 1990 (hence the term S.106 Agreement) by an amendment made by S.12(1) of the Planning and Compensation Act 1991. Although the term 'Planning Agreement' is still used, the term Obligation was used because the new section introduced the right for a developer to create an 'Obligation' by a 'unilateral undertaking', i.e. without the agreement of the Planning Authority. As discussed above, the term Planning Agreements will generally be used in this report to cover both Obligations and Agreements.

The above Acts only relate to England and Wales. In Scotland, the term Planning Agreement has continued to be used. Here the relevant provision is S.75 of the Town and Country Planning (Scotland) Act 1997.

According to the current statutes a Planning Agreement can be used to:

- restrict the development or use of the land, or require it to be used in a specified way
- require specified operations or activities to be carried out
- require a sum or sums to be paid.

A Planning Agreement is a legal document (a deed) which can be entered into by 'any person with an interest in the land' (e.g. the freeholder or leaseholder). This Agreement creates an obligation which (in England and Wales) is transferred with the title to the land (and is a land charge). In Scotland, the Agreement can be enforced against successors in title if it is registered in the traditional

Register of Sasines or in the Land Register of Scotland. However, a developer's obligations can be limited (in the document) to the time when they have an 'interest' in the property and arrangements may be included which identify when the obligations have been discharged.

The Planning Agreement is usually secured against the title of the development site for which planning permission is being granted, but the contents are not restricted to that site. Agreements typically relate to matters that are not on the site but which are necessary to make the development of the site acceptable (in planning terms), for example, works to access roads, off-site environmental improvements or public amenities. Government Guidance suggests that Obligations should not be used where matters can be dealt with via a planning condition. However, this is not a requirement imposed by law and there are advantages in the use of Agreements; they cannot be the subject of the normal appeals process for planning applications, and monies paid are not treated as a capital receipt under the Local Government and Housing Act 1989 (see Graham, 1995).

Government Guidance

The Government believes that planning agreements ... should only be sought where they are required to make a proposal acceptable in land use planning terms. Such agreements can be used to overcome obstacles to the grant of permission; in this way development can be allowed to proceed, the quality of development can be enhanced and potentially negative impacts on land use, the environment and infrastructure can be reduced, eliminated or compensated for. (Scottish Office, 1996, pp. 1-2)

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Guidance on the use of Planning Agreements is issued by the Secretary of State for the Environment, Transport and the Regions (for England), The National Assembly for Wales and The Scottish Executive.

The Guidance has some legal weight because the courts require that government policies should be taken into account when planning decisions are made (see DoE, 1997, p. 15). They are also used by the Secretary of State and the Planning Inspectorate in determining applications or appeals that come before them. However, the Guidance does not have to be slavishly followed (Mole, 1996, p. 188).

The current Guidelines relating to England, Scotland and Wales are very similar. They suggest that Agreements should only be sought where all of the following tests are met:

- they are necessary to make the proposal acceptable
- they are 'relevant to planning'
- they are directly related to the proposed site
- they are fair and reasonable in scale and kind to the proposed development
- they are reasonable in all other respects.

Notwithstanding the above 'tests', it is not unlawful for a Planning Agreement to include matters that are in excess of what is necessary, relevant and reasonable (see *Tesco v. Secretary of State* 1995). However, according to current Guidance, these additional benefits should not influence the decision on a planning application (DoE, 1997, p. 7).

This Guidance reflects two concerns that have arisen in relation to planning administration. First, the fear of corruption: that planning permissions will be 'bought and sold'

in exchange for (public) benefits. Second, the fear that S.106/S.75 powers are used to impose a form of 'betterment tax', whereby the Planning Authority seeks to obtain a proportion of the added value that property achieves through the granting of planning permission. There are continuing debates about whether a different system for ameliorating the impact of a development should be introduced (see RICS, 1998; Punter, 1999), but the current arrangements do not allow for this.

To guard against the above concerns, the Guidance suggests that the Local Plans should provide a framework for the negotiation of Agreements, and the process of negotiation should be open to public scrutiny. The former will give prospective developers 'advanced warning' that the Planning Authority may be seeking (for example) an Agreement relating to training and employment. The latter may be achieved by presenting the 'Heads of Agreement' to the relevant Planning Committee who (where appropriate) approve the granting of permission subject to the signing of an Agreement encompassing these matters.

The impact of case law

The interpretation of the statutes and the relevance of the Guidance is a matter for decision makers, supervised as to the law by the courts.

However, writing in the *Journal of Planning and Environment Law* (March 1996), David Mole QC suggests that:

... not very much is required to ensure that planning obligations are lawful ... they ... must be for a planning purpose and not an ulterior one and

they must not be Wednesbury unreasonable. In order to have a planning purpose the obligation must have a connection to the site that is more than de minimis, but it does not have to be proportionate nor ... overcome planning objections. (Mole, 1996, p. 191)

However, Mole distinguishes between what is required to make a Planning Agreement lawful, and what is required to make the granting of a planning permission lawful. Where a Planning Agreement is offered which 'fairly and reasonably' relates to the development, this must be taken into account in determining the planning application, notwithstanding that the relationships might be indirect. However, the Planning Authority can decide what weight to give to the Agreement (Mole, 1996, p. 192).

Although the case law referred to above relates to England and Wales, it has a 'persuasive effect' in Scotland.

Targeted training and employment commitments

The critical question for this report is the basis in law for including targeted training and employment matters in a Planning Agreement.

The word 'targeted' is important here. The award of planning permission for uses which create locations for employment (e.g. industrial or commercial development) is a traditional land-use matter. The provision of land for such development is typically included in Local Plans, and the employment outcomes may be a consideration in the award of planning permission. Traditionally, the planning process has not been concerned with who gets the jobs, perhaps because it was assumed that jobs and

wages will 'trickle down' to local people and the local economy. So any job-generating development is 'a good thing' in employment terms.

The introduction of 'targeting' might be seen as hardening up the assumed benefits to the local area. Alternatively, it might be seen as adding a new concern into the planning process. Mole's summary of the legal framework suggests that three tests need to be applied in respect of Agreements relating to targeted training and employment.

- Is this for a 'planning purpose'?
- Is there some connection to the development site?
- Is it *Wednesbury* unreasonable (i.e. so unreasonable that it defies logic)?

There is no known case law that reflects on these situations, but it is easy to postulate circumstances where these tests would be met.

First, in relation to 'a planning purpose', there are situations where targeted recruitment helps to overcome obstacles to the granting of planning permission. One example would be where a key traffic-planning concern is the volume of people that need to pass through a congested area (e.g. a city centre) in order to access the development site. The traffic problems will be reduced by the employment of local residents, because they don't have to travel through the area and they are less likely to use private cars. This approach could be broadened into a wider issue of environmental sustainability: local employment results in lower volumes of vehicle emissions related to accessing work.

Second, both 'sustainability' and 'social exclusion' are matters that the Government has

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said should be considered in developing Local Plans (DETR public consultation drafts on PPG11 and PPG12); they are ‘planning matters’ insofar as they relate to land use. Taking steps to increase the take-up of jobs on a development site by local residents, especially those who are socially excluded, will make a contribution to both of these concerns (see Chapter 1), and can therefore be considered to have ‘a planning purpose’. As the Newcastle case study illustrates, there may be developments where the policy justifications are particularly well founded and well documented.

As the case studies show, in most cases the objective is precisely to establish a connection between local people and jobs on the development site. However, if the Agreement required the payment of money that is used to support basic skills training and the remotivation of long-term unemployed people who may or may not proceed to employment on the development site, then the issue is less clear. The argument as to whether the obligation has more than a *de minimis* connection to the site might depend on local circumstances. However, a couple of examples illustrate potentially valid circumstances:

- programmes that increase the general pool of job-ready people from which the developer (or end-user firms) can recruit
- programmes that increase the pool of job-ready people in a particular sector, as a way of compensating for likely distortion of the labour market if planning permission is given.

We should also note that targeted recruitment and training requirements are often not a contentious matter for a developer.

Indeed, in a ‘tightening’ labour market, they may be welcomed by the developer. Since most Planning Agreements are the product of a negotiation process, the reality is that in many cases the inclusion of reasonable obligations will not be resisted by the developer, and will subsequently be honoured. In both the Southampton case, and one in the neighbouring Borough of Eastleigh, the ownership of the site has changed several times and the content of the S.106 has been renegotiated, but the local employment aspects were neither challenged nor changed.

Where the proposed Agreement ‘fairly and reasonably’ relates to the development site, then it should be a consideration in the planning decision, although the local authority can decide what weight to give it. If the Agreement doesn’t meet the three tests set out above then it should be disregarded in the planning decision.

The lawful scope of planning obligations is very wide under S.106. The only real constraint is that planning permission will not be valid if based on a non-material consideration such as a planning obligation that bears no relation to the permitted development. (Professor Malcolm Grant)

The Treaty of Rome

As a public body, a Local Planning Authority is bound by the provisions of the Treaty of Rome, in particular the Article that prohibits discrimination on the grounds of nationality. This means that in the exercise of its powers a Planning Authority should not discriminate, directly or indirectly, against firms or individuals from other EU Member States. It could be argued that seeking an Agreement to target training or employment could indirectly

discriminate against developers from other EU Member States (who would not necessarily have the same knowledge of the UK local labour market and recruitment procedures as a UK developer), and requiring action to target local people necessarily reduces the employment opportunities for residents of other EU Member States.

The issues of discrimination against non-UK companies can be dealt with in a number of ways.

- The local employment elements of the Agreement may be given a very low weighting in the determination of the planning application.
- The content of the Agreement could include only items that don't discriminate against non-UK developers (e.g. the payment of money), or targets that could be met from anywhere in Europe (e.g. 'unemployed people', 'young people', etc.), even though the hope would be that they would be met through local recruitment.
- Local facilities (e.g. local training and recruitment support) can be provided to any developer to help them meet the targets, thereby creating 'a level playing field'.

It is understood that a legal challenge to a local authority decision, based on The Treaty of Rome, would arise only where there was a cross-border element, for example, where there were several competing planning applications and the dissatisfied developer was not 'established' in the UK. These situations are likely to be very rare.

The basis for challenging an Agreement on the grounds that it would be discrimination against the employment of people from other EU States appears weak. There is little relevant case law, but, in unpublished Client Conference Notes (1995), James Goudie QC has argued that a proposal for a specific target labour scheme was unlikely to be challenged because of the following.

- The European Court has given different meanings to 'indirect or covert discrimination' under the Article which provides for the free movement of workers than some other Articles; these indicate that discrimination against nationals of other EU countries can be justified on the basis of 'objective reasons' (although there is little guidance on what the latter might be).
- A 'local recruitment' requirement would, in practice, result in more UK nationals being disadvantaged than nationals from other EU States; in *Fearon & Co v. Irish Land Commission* 1984, the European Court of Justice established that a residence requirement does not amount to discrimination in these circumstances.

In addition to the above, it seems likely that any potential problems could be avoided by the content and wording of the Agreement. There must not be an overt intention to discriminate on the grounds of nationality.

Equal opportunities and race discrimination

In considering Planning Agreement clauses related to employment targeting, it is important

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to take account of the Race Relations Act 1976 and equal opportunities legislation. There is the potential for indirect discrimination if the target population is dominated by people with a particular characteristic (e.g. race or gender). The wording of the Agreement may also be a consideration. Typically, Agreements with clauses relating to employment seek to establish a process that maximises take-up from the target group on an equal-opportunities basis, rather than setting fixed quotas that give the target group an unfair advantage.

Conclusion

The statutes and Guidance Circulars relating to Planning Agreements are subject to review, change and new interpretations, and Planning Authorities will need to seek their own legal advice on the grounds for including a commitment to target the training and

employment outcomes of a proposed development, in an Agreement. However, the current position appears to leave an opportunity for S.106/S.75 Agreements to include these matters and in many circumstances it may be valid to take them into account in determining a planning application.

As argued above, there are good policy grounds for the government planning bodies to explicitly permit the use of Planning Agreements to target training and employment opportunities where Planning Authorities deem this to be appropriate. The grounds would be the reduction of social exclusion and the achievement of sustainable development. This would be important in encouraging Planning Authorities to take practical and verifiable steps to link the land-use planning process with these new planning priorities. As the data in Chapter 3 show, few local authorities have considered this to date.

3 Current usage

Current patterns of use

To ascertain the current use of S.106/S.75 Agreements for training and employment matters, a postal questionnaire was sent to the Planning Authorities in England, Scotland and Wales (excluding the few that are not local authorities). An initial 51 per cent postal response rate was supplemented by 31 telephone responses from the larger urban authorities, London Boroughs and metropolitan authorities that had not responded. The result was an overall 58 per cent response rate, with a good spread across different types of local authority (LA) (see Table 2).

As can be seen from Table 3, there are examples of the use of relevant agreements in all types of authority. On average, 13 per cent of responding local authorities had used the approach or tried to use it, but this disguises

significant differences between types of authority. To some extent, this reflects the different patterns of development where this may be relevant, and different weight given to issues of employment. However, the marked difference between the London Boroughs and the Metropolitan Authorities suggests that there are other factors involved.

There is also a strong South of England bias; of the 28 local authorities that have experience, 20 (71 per cent) are in the South, three in the English Midlands, three in the North of England, and one each in Scotland and Wales. The telephone follow-up suggests that most of the major urban areas outside of the South of England have not sought to use this approach. Common reasons for non-use are set out in Table 4. This shows that nearly half of the non-users had never considered using Planning

Table 2 Response rate (postal and telephone interviews)

	Total number	Number returned	Response rate (%)
English County	33	21	64
London Borough	33	25	76
Metropolitan Borough	36	26	72
English District	280	146	52
Scotland	31	19	61
Wales	24	16	67
Total	437	253	58

Table 3 Number of authorities using relevant Planning Agreements by type of authority

	Total	English County		London Borough		Mets		English District		Scotland		Wales	
		No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	28	1	5	13	52	3	12	9	6	1	5	1	6
Tried	6	1	5	1	4	2	8	1	0	1	5	0	0
Not used	219	19	90	11	44	21	80	136	94	17	90	15	94
Base	253	21		25		26		146		19		16	

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Table 4 Reasons given for not using Agreements for training and employment

	% of respondents*
Never really thought about it	44
It would be beyond our powers	33
It could not be enforced	29
No recent relevant Planning Agreements	21
It is wrong to use Planning Agreements in this way	20
It might discourage investment	8
Employment is not a priority for this area	6
It is not in our Policy/Local Plan	3

* Respondents could select several responses

Agreements for this purpose, one-third thought there were problems in using the S.106/S.75 powers in this way, and one-fifth thought the approach would be wrong. Perhaps surprisingly, under 10 per cent felt it would discourage investment. A number of responding local authorities preferred to use other powers or (more frequently) voluntary agreements to achieve local employment outcomes.

The numbers and content of Agreements

As can be seen from Table 5, Planning Agreements containing targeted training and employment elements have been used across a wide range of types of development. However, it was not possible to accurately assess the total number of Agreements since some of the local authorities were unwilling to provide this level of detail. From the data available, it seems likely that 85–90 Agreements with relevant clauses have been signed or are in negotiation. While some Agreements in each type of development

(except private housing) have already been honoured, a significant number of Agreements are awaiting the result of a Planning Enquiry or the start of the development.

To put these figures in context, it should be noted that research by Campbell *et al.* (1999) suggests that about 4,000 Planning Obligations are agreed each year in England and Wales. This is only 1.5 per cent of all planning permissions issued, but 17.6 per cent of permissions for major developments. In Scotland, only 0.5 per cent of developments had S.75 Agreements attached (Scottish Office, 1999). Since the stock of Agreements with training and employment elements covers several years, it can be seen that these make up less than 1 per cent of the Planning Agreements created each year.

Only 15 of the 28 authorities that had negotiated a relevant Agreement had seen them completed. Only one authority had seen an Agreement start and then fail; this was because the developer became bankrupt. Twenty-two of the 28 local authorities had used S.106 Agreements to secure construction jobs and 27 had used Agreements to secure jobs with the end-users of the development.

Table 5 Use of Agreements for different types of development

Type of development	Number of authorities
Social housing	6
Private housing	1
Retail	7
Industrial	7
Office development	3
Hotel and/or leisure	3
Mixed development	8
Other	1

Table 6 indicates that 20 of the 28 Agreements involved payment of money, either as a contribution to training and employment initiatives for that site, or as a contribution to a general training fund.

Only one authority said they had to have further discussions with the developer to ensure compliance. Many authorities said they preferred the developer to make payments as this could be monitored easily. A number said they had detailed and sometimes protracted negotiations before the Agreement was signed, but, with the limited number of Agreements that have been seen through, non-compliance did not appear to be a major problem.

One authority said the problem had been that they had not set up procedures for spending the payment – the developer had made their payment and there was a delay in the local authority implementing its spend.

The policy background

Nine local authorities said they did have a specific policy for the use of Planning Agreements for employment matters, but others said it was *ad hoc*. Even where there was a

Table 6 Number of authorities seeking different types of provision in Planning Agreements

	Number of authorities
Payment of money	20
Provision of training	6
Targeted recruitment	9
On-site training facility	4
On-site recruitment facility	4
Other	5
Still being negotiated	4

policy, this did not necessarily include the content of the Agreement. Information from the survey indicates that in most areas the requirements were worked out on a case by case basis. Very few authorities had developed any benchmarks as the use of these Agreements is quite new. Most respondents said it was too early to carry out a review of effectiveness, either because there were no Agreements which had been completed or because the number of Agreements was very small.

Only a few authorities (like London Borough of Greenwich) had a sufficient number of developments to justify establishing a dedicated delivery process. As can be seen from Chapter 5, this resulted in a standard menu of items but a variable set of requirements.

It was generally thought that the use of Agreements would increase, but some authorities said this would depend on whether the scheme(s) currently going through had an impact or not. For many authorities this approach is still a learning process.

Developer resistance

Only six local authorities returned questionnaires saying that they had tried to negotiate S.106 Agreements and failed. This is a low 'rejection rate'; 17.6 per cent of authorities which tried the approach had experienced a failure. This affected perhaps 10 per cent of the developments where it was tried. Reasons for failure included the following.

- The developer thought such Agreements contravened European Employment Law regarding free movement of labour.
- The developer claimed it would infringe

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employment law and 'restrict the employer's freedom to use best practice'.

- The developer felt the requirement to be too onerous and the Planning Authority did not wish to impose this and risk losing the development.
- The developments did not go ahead because they were subject to a Planning Enquiry.
- The developers fear that it would put at risk a Private Finance Initiative scheme.

Conclusions

The survey shows that, although there are examples of the use of Planning Agreements for all types of development and across all types of local authority, the total scale of activity is small, affecting less than 1 per cent of all Planning Agreements established each year. This might increase to 5 per cent of the Planning Agreements on major schemes.

There are two patterns of use that stimulate further questions. First, why there is such a marked difference in use between the London Boroughs (52 per cent use) and the other Metropolitan Authorities (12 per cent use). Second, why there is such a marked geographical imbalance (71 per cent of examples in the South of England). Participants in the case study authorities suggested the following as possible explanations for these variances:

- much more demand for private sector development in London and the South of England
- higher land values in some areas; these generate a larger pool of surplus for the developer and this means that the local authority can seek an Agreement to cover not only essentials (like road access), but also 'desirables' (like local employment)
- greater reliance on public sector support for major developments outside of the South of England; in the Newcastle case study, it was noted that most major developments involved public regeneration agencies and the local authority assumed that these would deal with any employment targeting
- greater reliance on 'partnership working' to attract investment in some areas; voluntary agreements might be seen as more in keeping with this approach
- different levels of officer networking and job swapping; this could result in varying 'transfer rates' for ideas and experience between neighbouring local authorities.

The survey revealed considerable uncertainty about how the use of Planning Agreements for targeted training and employment matters related to the current legal position and Government Guidance, and also a desire for more information on current practice. Overall, 80 per cent of survey respondents were interested in receiving more information.

4 Southampton's West Quay development

The development

West Quay is a city centre retail development on land that was previously used for dockside factories. Much of the land was in the ownership of the City Council and they purchased other elements before leasing the whole site to a developer. As landowner, the City retains an interest in the success of the scheme.

The development has been undertaken in two phases. The first created a Retail Village of about 22,000 square metres; the second relates to a Shopping Centre of 74,500 square metres. Phase One was completed in 1998; Phase Two is due for completion in Summer 2000.

There have also been two developers. The initial work was undertaken by Imry, but their interest was then taken over by West Quay Shopping Centre Ltd (led by Hammerson UK Properties plc), the current developers of the Centre.

The Planning Agreement

The location and scale of the development led the Council to seek an S.106 Agreement. The site is between the existing city centre shops and the River Test. Its location has required extensive road improvements and a reshaping of the City's retail area. The total value of the S.106 Agreement was £5.37 million when it was signed in 1995. This sum is inflated in line with the Retail Price Index and is now approximately £6.0 million.

Item 10 in the Agreement required the developer:

... to pay the Council (or such other party as the Council shall direct in writing) the sum of £350,000 (as varied by the application of the index) for the provision of vocational training facilities.

The Agreement indicates that this sum should be paid at the rate of £3.62 per square metre within two months of the commencement of each phase. Inflation is added to the point where the payment is made. So far, £65,000 has been paid, but the balance is now due.

From the developer's perspective, the rationale for the provision of training money was the need for additional workers from within the City. The development will create 3,000–3,500 additional jobs and this scale of recruitment would cause unnecessary disruption for existing retailers unless pre-recruitment training was provided, and the total size of the retail workforce was increased.

From the City Council's perspective, a wider range of issues came into play. These included:

- concern about the impact of the large development on existing retailers and the 'health' of the existing city centre stores; these would be ameliorated by increasing the pool of suitable workers
- a desire to link the development with the Single Regeneration Budget (SRB) programme which is focused on two inner-city areas close to the development site; these have high levels of unemployment, especially amongst the 30 per cent ethnic minority population

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- concern that a failure to train local people would result in additional commuting to the site, increasing the traffic and resulting environmental impacts
- a perception amongst Councillors that the jobs benefit of earlier hotel developments had not accrued to the City, leading to a determination that the retail developments should produce local jobs.

The S.106 Agreement was drawn up for the Council by specialist consulting solicitors and they raised no issue about the legitimacy of the training element. It was a non-controversial commitment that the developer was prepared to make; a position that has been confirmed by the subsequent owners.

The use of the money – Phase One

The use of the funds in Phase One was decided by the Council's Training and Employment Initiatives Manager with Committee approval. The developer at that stage had limited interest in the activities.

The funding was used for two activities:

- the appointment of consultants to co-ordinate a training network and organise the recruitment and training of City residents – especially those in the SRB area – for retail and leisure industry work
- the funding of 'bolt-on' elements to the basic National Vocational Qualification (NVQ) in Customer Liaison and the basic computer literacy (CLAITS) courses which were provided by the City College and funded by the Further Education Funding Council.

The funding has also been counted as a private sector contribution to a variety of programmes, helping to attract additional training money to the City.

The consultants have had two primary roles. First, they have helped to target the recruitment and training at specific communities, especially the residents of the inner-city SRB area and (within this) at the ethnic minority population that are perceived as being under-represented in the City's retail sector. This has involved extensive outreach work, plus targeted marketing, for example, through a supplement in the local paper which was then delivered free to every household in the target area.

The second role was to approach the retail and leisure companies that moved into the Retail Village and offer a free recruitment and training service. The service was presented as something they were paying for through their rents, so they might as well utilise it. This led to two types of initiative:

- pre-recruitment training for a leisure operator offering 500 jobs; this maximised the recruitment of people from the target area and reduced subsequent labour turnover
- post-recruitment training for local 'work placements' in the stores in the Retail Village ('graduates' from the college courses).

The second approach was eventually abandoned because it became increasingly difficult to operate as store managers changed.

To date, there have been eight groups of trainees go through the dedicated customer care and CLAIT courses: 125 people in total. As well

as contributing to the consultants' time in helping to set up, recruit and organise job placements, the S.106 money paid for childcare provision and a Personal Development Programme. The latter is a 3.5-day course which aims to address issues of low self-esteem and related behavioural problems, for people who have been out of the labour market for a considerable time.

The courses were based on four weeks in college and then a 16-week work placement. During this time, the trainees retained their benefits (the 'under 16 hours' rule). This resulted in a 61 per cent job outcome rate, with 75 per cent of these jobs being with the work placement company.

Phase Two construction

The £295 million construction of Phase Two started in 1998 and will take two years to complete. There is no formal requirement for the contractor to target jobs at local people, but the developer and the contractor have co-operated with Southampton and Eastleigh Employment in Construction Partnership (SEECON).

Sir Robert McAlpine is the contractor but most of the work is being undertaken by subcontractors. When each new subcontractor is appointed, they are sent an introductory letter about SEECON by McAlpine, and the contact is passed to the SEECON officer. The latter then arranges to meet the new contractor and explain the services available. These include:

- a Construction Skills Register (operated in conjunction with Employment Services) and a free job-matching service
- the payment of some training fees.

To date, 71 people have been placed with seven contractors at West Quay, including 23 with the main contractor and 27 with the main groundwork subcontractor. Because there are no regular monitoring requirements, it is not possible to say what proportion this represents of all the labour used, but it is certainly less than 10 per cent. However, it is likely that additional local people have been recruited by subcontractors, most of whom are not local firms.

The 'local labour in construction' impact of West Quay would appear to be significantly less than that achieved in Greenwich or Aberdeenshire where this was a specific obligation under the Planning Agreement. However, a detailed comparison is not possible. The SEECON officer feels that outputs would have been better if there had been an on-site recruitment office where any local job-seeker could be registered and a more immediate service provided to the contractors.

SEECON is partly funded from the S.106 monies.

Phase Two retail recruitment

With the anticipated opening of the Shopping Centre just one year away, preparations are now under way for the training and recruitment of the new staff required. In recognition of the importance of the labour supply arrangements, Hammerson (who will remain as long-term operators of the Centre) are closely involved in the planning, and will be involved in implementation. They have recently been through a similar exercise for the Oracle Centre in Reading and are pleased that in this case there is a specific budget available.

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The involvement of Hammerson UK Properties is seen as critical; their trade knowledge will help design appropriate recruitment and training programmes, and the company is in the best position to get the co-operation of the 86 stores that will be based in the Centre. As each store is identified, Hammerson staff will make contact to introduce the recruitment arrangements that are available. This will operate through a Skills Register utilising a common application form; stores will be encouraged to recruit through the Register only.

On the labour supply side, a programme of activities is being developed. This includes:

- a recruitment roadshow using a promotional bus that will visit areas of high unemployment
- a high-profile launch of the Skills Register
- Job Fairs to provide information and start building up the Register
- NVQ training courses, plus short pre-recruitment training in customer care, first aid, security and police liaison
- the possible establishment of an on-site jobs information centre
- ongoing training in retail skills and the promotion of Investors in People.

The Skills Register will be operated by Employment Services using the experience gained by their counterparts in Reading. Temporary staff and additional computers will be brought in (funded by the S.106 money) to process the applications and provide the job-matching service.

A co-ordinator will be employed by the Council to manage the above programmes, using the S.106 funding. A total of £276,000 from the latter will be utilised in the Phase Two recruitment programme.

Issues arising

There are a number of issues that are illustrated by the Southampton example.

First, there is the underpinning 'planning' rationale for the inclusion of a training sum within the S.106 Agreement: to reduce the impact on other retail businesses. It could also be argued that increasing the pool of 'retail labour' reduces the commercial risk to the West Quay development that could arise if tenant companies were unable to recruit or retain staff, or if labour shortages forced up retail wages. In line with this, the primary use for the money has been to increase the pool of suitable labour that is available to both new stores and existing stores. In the retail and leisure sectors it is important that employees live relatively close to the site because wage levels will not support high travel costs and working hours may need to be flexible. Training unemployed local residents was therefore a key objective.

It is clear that the City had a wider range of economic development concerns (e.g. the need to target benefits at selected areas and populations) that it was able to address through the use of the S.106 monies. The latter were used directly (e.g. on the targeted recruitment and training programmes) and indirectly (by 'levering in' additional funding).

A second key issue is the importance of involving Hammerson, the site operator, in the planning and delivery of the programme. Their

development will benefit from a successful recruitment and training programme and the establishment of a common recruitment process for all retailers. Their involvement will ensure that this happens, and it will add to their corporate experience in a period when recruitment is becoming increasingly difficult.

In comparison with Greenwich and Aberdeenshire, the local employment impact of a very large construction programme is likely to be modest. Four additional elements in the S.106 could have helped secure better outcomes:

- a specific requirement to maximise the job and training opportunities for City residents, and business opportunities for City firms
- a requirement to monitor the total labour usage and the local labour usage
- a specific requirement to provide a number of training opportunities for

school leavers and/or long-term unemployed people

- a requirement to provide a serviced recruitment office on the site.

The above would also be useful in relation to the end-user jobs.

Finally, it is notable that the use of Planning Agreements to obtain targeted employment and training outputs has not been tried on other sites in the five years since this S.106 Agreement was developed. The Council's explanation for this is that there have been no major developments since West Quay which warranted the use of the mechanism. This assumes that the approach is only valid or worthwhile on very large developments, in contrast to Greenwich which has extended the use to the many smaller developments that are more typical of local development activity.

5 London Borough of Greenwich

The Council's policy

The origins of the Council's use of S.106 Agreements for training and employment lie in continuing high levels of unemployment; in 1998, the Borough was ranked twenty-first (in Britain) for numbers of long-term unemployed people, and eleventh for the percentage of the unemployed who are long-term unemployed (Campbell *et al.*, 1998, Appendices 1 and 3). This led to a determination that the employment impact of new developments (utilising the large volume of 'brown-field' and ex-Naval sites) must be targeted at Borough residents.

This priority is set out in the 1994 Local Plan which includes three relevant policies:

- encouraging employment which provides jobs suited to local needs and skills, and especially opportunities for the most disadvantaged groups
- encouraging an expansion of training provision, and specifically on-site training facilities
- increasing the extent to which the benefits of development are targeted at the local community (London Borough of Greenwich Local Plan, 1994, J8–J10).

The decision to use S.106 Agreements to help achieve these commitments was pushed for by the Leader of the Council in relation to the first of the large redevelopment sites: the Greenwich Peninsula site that now includes the site of the Millennium Dome and exhibition.

From the outset, the Borough recognised the importance of establishing good labour supply activities before asking developers and contractors to recruit locally. To deliver this they

developed a new partnership organisation called Greenwich Local Labour and Business (GLLaB). People seeking to develop major sites in the Borough are asked to support GLLaB and, where they agree, this commitment is written into the S.106 Agreement.

The S.106 Agreements

The training and employment elements of the S.106 Agreement are negotiated as part of an overall package of obligations. The process starts with each department putting forward its list of requirements for the site: the Council's Economic Development Team (through which GLLaB is managed) make proposals for training and employment. The Planning Department reconciles these demands and negotiates with the developer to agree 'heads of agreement'. Where the Council wishes to give planning permission, this is subject to the developer and the Director of Planning (who is given delegated powers) agreeing an S.106 Agreement in line with the heads of agreement. In most cases, this process results in an S.106 Agreement that contains some training and employment matters, but these may not be everything that was initially requested.

Over time, the Borough has identified a number of employment-related elements for possible inclusion in the S.106 Agreement. Developers are typically required to:

- endorse the activities of GLLaB and be fully committed 'to ensuring that local people and businesses are able to benefit directly (from the development)'; they have to agree to 'cascade' the above commitment to contractors and end-users

- give prior notice of local employment and business opportunities
- provide monthly monitoring information, including each worker's gender, ethnicity, any disability and area of residence
- provide a (serviced) on-site recruitment and/or training facility (on larger sites only)
- pay to the Council a training sum 'to support the recruitment, employment and skills development of potential employees for the development from the London Borough of Greenwich'.

In relation to the latter, the Borough provides regular reports on how the sum has been used.

Although the specific requirements will vary between developments, all major developers in the Borough are now formally required to work with GLLaB to maximise the opportunities for employment (either directly or through local suppliers) on the development site. Nurturing the involvement and commitment of the developer and their contractors/end-users is seen as more effective than setting percentage targets.

Between December 1996 and May 1999, the Council entered into 17 S.106 Agreements and was well advanced in negotiating another two. All of these had the basic commitment and monitoring requirements, ten (53 per cent) included provision of an on-site facility, and 16 (84 per cent) included the provision of a training sum. The latter varied in amount between £2,000 and £1 million. It is clear that no fixed formula is used; the amount reflects the scale of development and the other S.106 requirements that are being included. The total funds

currently raised for local recruitment and training exceed £1.7 million. This is 'private' money that can be used to match public sector funding, and it is largely without 'strings'.

Developments undertaken directly by the Council are not subject to S.106 Agreements. Here, opportunities for local construction jobs are achieved by introducing a Local Labour Method Statement to all tendering firms, and requiring them to submit a statement (with their tender) saying what action will be taken to comply with this. Their proposals are made a contract condition, and provide the platform for GLLaB to develop a working relationship and maximise local employment opportunities.

The GLLaB contribution

GLLaB is a partnership organisation led by the Council but including staff secondments from Employment Services and people funded by the local Enterprise Agency to do business support work. A total of 20 people are employed, including company/site liaison workers, recruitment workers, database and monitoring officers, a training co-ordinator, small business development workers, administrative and management workers. The annual budget of the organisation is over £1 million.

Key elements of GLLaB work are summarised in Table 7.

Funding for GLLaB comes from a wide variety of sources including the EU (an Adapt programme for local businesses), Single Regeneration Budget and the S.106 money. The latter is especially useful because it allows 'in-service' and 'quick response' customised training to enable local people and firms to access new opportunities.

Local jobs from local development

Table 7 Greenwich Local Labour and Business – list of services

GLLaB's services to local residents	GLLaB's services to local businesses	GLLaB's services to employers, developers and main contractors
Recruitment service: matching people to local job opportunities	Free recruitment service, matching skilled workers to business requirements	Access to local contractors and suppliers
Advice, guidance and skills assessment	Advice and information on contracting and tendering opportunities	Access to a skilled local workforce, backed up with customised training
Arranging and funding training	Referral of companies to developers and main contractors	Free recruitment service
Preparation for interviews	Business support to help local companies win contracts and meet quality standards Arranging training for new and existing employees	

Source: *Creating Local Jobs and Business Opportunities for the New Millennium* (GLLaB)

GLLaB is part of Jobnet, a network of local labour agencies (Greenwich and four neighbouring Boroughs) that share databases, and the Thames Gateway network of business support agencies (Greenwich and five neighbouring Boroughs). The policy is to offer opportunities to Greenwich people and firms first, then to others on the Jobnet and Thames Gateway lists, and then to others (via Employment Services). The aim is to meet every request for local labour/local suppliers.

The GLLaB outputs in the 28 months to October 1999 are summarised in Table 8.

The biggest project during 1997 and 1998 has been the construction of the Millennium Dome. The local labour outputs obtained in this period are set out in Table 9. This is based on weekly data obtained from up to 75 subcontractors at any one time. The total number of

Table 8 GLLaB's achievements to October 1999

Achievements	Number/amount
Local residents trained	2,100
Jobs filled by local residents	1,500
Residents receiving personal development interviews	1,850
Local residents registered with GLLaB	11,000
Local businesses registered with GLLaB	8,004
Businesses receiving business advice	200
Businesses winning contracts on the major developments	118
Total value of contracts won by local businesses	£9m

Source: London Borough of Greenwich Strategic Planning

Table 9 Jobs in the Millennium Dome construction, June 1997 to December 1998

	Greenwich residents		Other local residents		Total	
	No.	%	No.	%	No.	%
Construction weeks worked					37,600	
Local labour weeks	6,000	16	2,900	8	8,900	24
People placed in work by GLLaB	99		42		141	

Source: London Borough of Greenwich Strategic Planning

subcontractors involved in the Dome is likely to be about 800. Each of these will have been 'serviced' by the GLLaB team.

Operating the Dome has generated 5,000 new jobs. The operators have a policy of not targeting their recruitment at the local area (because the Millennium Exhibition is a national celebration), but they have been working with GLLaB and its partners in the delivery of a four-week Pre-employment Training Programme which will maximise the number of local people that have the skills required by the employers.

The importance of scale and timing

Relative to other areas, the London Borough of Greenwich has developed the most comprehensive approach to the use of S.106 Agreements to obtain opportunities for local people and local businesses. There are four elements of scale and timing that are important here:

- the scale of development which has provided a large number of opportunities for seeking S.106 Agreements
- the time pressure on developers (driven by the market or a fixed completion date) that has discouraged long negotiations over the S.106 Agreement

- the large number of job and business opportunities that are becoming available, which justifies the establishment of a large labour-supply and business-support agency
- the scale of public funding that was attracted to the area by the high levels of unemployment and the amount of vacant land and listed buildings.

In this context, it was possible to achieve some balance between the numbers of opportunities that became available, and the scale of the 'supply-side' activity that it was possible to fund. The S.106 Agreements had an important influence on both parts of this equation; they translated a general level of demand into a local demand (for labour and suppliers), and they provided resources that increased in line with the scale of development.

However, this scale of development is not a sufficient explanation for the sustained use of S.106 Agreements for training and employment. Other key factors are:

- the sustained commitment to ensuring that all development produces benefits for Greenwich people and businesses

- the development of a stable system for negotiating Planning Obligations that routinely includes the economic development officers
- the emergence of a 'menu' of economic development requirements that typically includes non-monetary items (e.g. commitment and monitoring) as standard and other items (e.g. money) as appropriate.

The response of developers

The Greenwich case represents the largest number of Planning Agreements including training and employment matters that have been undertaken in a single area. The LA has had no challenges to the approach from developers and has not had to take action to obtain compliance from any of the 13 developments that have started to date. This suggests that in most instances the developer will not resist the inclusion of training and employment matters in a Planning Agreement. It is certainly worth making the case.

Of particular interest is the response of English Partnerships, a public agency which is acting as the developer on a number of the relevant sites. Senior English Partnerships staff reported no difficulty with the principle of writing their commitment to local employment into an S.106 Agreement since this was just a formalisation of one of their own objectives and priorities. However, there was an important limitation; this was the requirement to pay money towards training on sites where the English Partnerships' task was to ameliorate negative land values. Here the funding merely reduced the sums available for land preparation

and made it more difficult to produce a 'package' that would attract a commercial investor. They argued that any financial contributions via the S.106 should be required from the latter investor when they sought planning permission. However, this could reduce the training/employment opportunities in the construction phase.

The negotiation of an S.106 Agreement with English Partnerships appears to have changed the latter's development practice on these sites. Because of the Agreement, English Partnerships included S.106 compliance in the tenders they sent out to contractors, for example:

In carrying out the works, the Contractor shall conform to the Conditions set out in the Section 106 agreement included in Appendix G.
(Employer's Requirements, Greenwich Yacht Club)

This is an important (but not necessarily unique) change to English Partnerships' procedures that was taken up by the operations teams.

On the Millennium Dome development, both the contractor's Head of Operations and the Director of the New Millennium Experience Company said that they would not have given the same weight to local employment if it hadn't been a legal obligation under the S.106. This indicates the importance of formalising the commitments made to local employment by regeneration bodies in the public sector as well as in the private sector. The obligations cascade through the development process and are given weight by the staff involved at each stage; it maintains local employment as a high priority.

Finally, it is important to emphasise the role of the labour supply activity. The highly

respected GLLaB has explained the S.106 requirements to each developer, contractor and subcontractor, organised the local training and job matching, identified and nurtured local suppliers, and undertaken the monitoring which ensures compliance and measures the outputs. This has allowed the commitment of the developers to be translated into opportunities for local people and firms.

6 The SAGE Terminal Extension, St Fergus, Aberdeenshire

The development

This case study focuses on the third phase of development of a gas-processing plant at St Fergus, a small village located six miles north of Peterhead in the north-east of Scotland. This phase was developed by Mobil North Sea Ltd in order to process North Sea gas for domestic use.

The site is in Aberdeenshire, a new unitary authority which covers a rural area including the fishing ports of Fraserburgh and Peterhead. The City of Aberdeen is about 35 miles to the south of the site and outside of Aberdeenshire.

The Planning Agreement related to a £60 million construction programme which commenced in February 1996 and was completed in April 1998. While the work included a volume of civil engineering and other building work, the largest part related to the fitting of equipment, specialist pipework and specialist wiring. The local area was quite well placed to supply the specialist skills needed; labour had been attracted to the area and had trained on the earlier phases of the plant, and in the oil supply industry.

The decision to include a Planning Agreement relating to the use of local labour was influenced by three factors:

- precedent: they had been used on each of the earlier phases
- political pressure: there had been complaints about the lack of opportunities for local people and local firms in the earlier phases, and both Councillors and the local MP were keen to see improvements in this phase

- concern about the impact of creating a large labour camp (for temporary workers) in the rural area: this had been a problem with the earlier phases.

The Planning Agreement

The Agreement was created under S.50 of the Town and Country Planning (Scotland) Act 1972. This has now been replaced by S.75 of the T&CP(S) Act and is the equivalent power to S.106 of the 1991 Act in England and Wales. The use of the clause is supported by the Banff and Buchan District Local Plan (1988) which has been adopted by Aberdeenshire Council. This states:

The District Council will encourage developers to give priority to local residents in relation to any new employment opportunities which arise.
(p. 27)

The clause used was very similar to the clauses used in the earlier phases of the SAGE plant (commencing 1993) and was modelled on clauses once used by Fifeshire. For Phase 3, the only variation was in the definition of local; there were three recruitment 'circles':

- people living within a 30-mile radius of the site
- people living in other areas of Aberdeenshire
- other (which included the City of Aberdeen).

The basic requirement of the S.50 Agreement was:

During the construction of the development, all factors being equal, full and fair employment opportunities must be given to local labour resident within a thirty mile radius of the site before advertising for labour outwith the area. In relation to each contract and sub-contract to be awarded, full and fair opportunity must be given to local businesses to supply the goods and provide the services.

To ensure that this intent was achieved a list of procedural requirements was then included:

- advise the Council of the goods and services for which local suppliers could tender
- provide advice to prospective (local) tenderers regarding contract procedures, standards and requirements
- provide the Council with monthly monitoring reports giving the total number of people employed by contractors, the number and percentage of local people, and a list of contractors working on site (including their base and the services they are providing)
- maintain regular contact with the Job Centres in Peterhead and Fraserburgh, and notify vacancies to them before placing adverts elsewhere
- advise local employees of other vacancies arising on the site when their initial contracts are coming to completion
- provide the Council with information to show that contractors are fully aware of the S.50 obligations.

The S.50 Agreement appears to satisfy most of

the 'tests' set out in the Scottish Office Guidance on the use of Planning Agreements (Scottish Office, 1996). The link to the Local Plan and to the use of land gives it a 'planning purpose' and a 'relationship to the proposed development', and the acceptability to the developer indicates that it is appropriate and reasonable. In strict terms it is probably not 'necessary to enable the development to go ahead'.

From the developer's perspective the use of an S.50 was expected (because they existed on the earlier phases) and legitimate. The legitimacy derives basically from the environmental impact that the creation of a processing facility has on an area. It is reasonable that if local people are asked to accept these impacts and risks they should at least reap some economic benefits through local employment and local procurement. The Project Managers were accustomed to local employment clauses; in many countries they encounter much more comprehensive clauses and requirements for more detailed monitoring information. They viewed the UK as rather lax in these matters, and the requirement in St Fergus as the result of strong nationalist feelings in the locality.

The Agreement related only to the construction phase. There are relatively few employees required to operate and maintain the plant, and most of these will be local or specialist contractors from Aberdeen.

The Mobil staff indicated that there would be limits to what would be accepted in a Planning Agreement. They would be concerned if local labour quotas rather than targets were set, and if the scale of the requirements was likely to have a significant impact on the development costs and/or timetables.

Implementation and outcomes

Mobil gave significant weight to the S.50 Agreement from the outset. From their perspective, this was a binding obligation and as a responsible company they expected to honour their agreements. They would therefore distinguish between a formal agreement and a more casual agreement to target local recruitment.

To meet their commitments, Mobil arranged to 'cascade' the obligations to their main contractor (Fluor Daniel Ltd) and their subcontractors. This was achieved by:

- introducing the S.50 at pre-tender and pre-contract meetings with all contractors
- including the S.50 as a part of each tender and including compliance as a contract condition
- making it clear to each contractor and their manager on site that compliance would be closely monitored and that 'they would get grief' if the commitment was not honoured.

While it was acknowledged that most contractors would not specifically seek to recruit 'local labour', there are financial benefits in doing so since they don't have to pay the employees' travel and subsistence (typically about £140 per week).

The main responsibility for implementation rested with Mobil project management staff and the main contractors. They took a professional approach to the task and did everything they could to make it work. This included:

- breaking down the civil engineering work into small packages that would be suitable for local contractors
- ensuring that non-local contractors did contact the Job Centres and did seek to maximise their local recruitment
- introducing daily and weekly monitoring forms which listed all of the labour on site, and the numbers who were 'local', 'Aberdeenshire' and 'travelling'
- producing monthly reports for Mobil and the Council
- meeting the Peterhead Job Centre manager each quarter to discuss the progress of the work and forthcoming subcontracts, and to identify labour requirements
- organising a meeting of local contractors and suppliers to discuss the potential of work from the contract, and building up a list of local subcontractors and suppliers that could subsequently be approached
- assisting local firms with the tendering process, and contract planning and management.

The inclusion of the requirements in the tender / contract is seen as crucial. It creates a 'level playing field' in the tendering process (all tenderers have to deliver to the same local labour specification), and adds contractual weight to the requirements.

Left to their own devices contractors would not take it seriously; you need some compulsion and some potential for enforcement. (Project Manager)

The labour supply activity was undertaken by Peterhead Job Centre which co-ordinated recruitment from the town and from Fraserburgh (15 miles north of St Fergus). In preparation for the recruitment, the Job Centre developed a specific St Fergus Skillsbank. Potential workers were asked to complete a form recording their contact details, their employment history, and their specific trade area and experience. When vacancies occurred, the Job Centre contacted the people listed in the Skillsbank as well as placing notices in the Job Centres. People who wished to be considered were referred to the contractor.

The monitoring reports indicate the number of local people employed each month, and the percentage this represents of all of the people employed. It was therefore a measure of people, not of time spent on site.

As can be seen from Table 10, over the duration of the contract, 2,453 local people obtained work. This represents 59 per cent of all employees. A higher percentage of the semi-skilled (69 per cent) and un-skilled (90 per cent) jobs went to local people, but these categories only made up 22 per cent of all jobs on site. These figures suggest that the local labour outcomes on the development were very good;

Mobil points to the lack of complaints in the press and by politicians, as corroboration.

It is suggested that there would always be limits to the percentage of local labour that can be achieved on specialist work. In the St Fergus site, limiting factors were:

- the use of specialist equipment: it is only economic to use the suppliers' specialist teams to install this
- labour availability: this varied through the contract depending on other employment opportunities.

On bigger plant installations, the percentage of local labour would probably drop because the volume of skilled employment would exceed the local labour supply. For example, each of the earlier phases was five times the size (and value) of Phase Three, and could only be constructed on time by setting up a workers' village to house 'travelling labour'.

Clearly, some of the local labour was already employed by local firms (i.e. these were not new jobs). However, an analysis prepared by the main contractor suggests that most of the subcontract and supply contracts went to non-local firms (see Table 11). Only 19 contracts went

Table 10 Local labour outcomes on Mobil's St Fergus Terminal, Phase Three

Area	Staff		Skilled		Semi-skilled		Unskilled		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Total	1,181		2,066		398		538		4,183	
Local (30 miles)	556	47	1,141	55	273	69	483	90	2,453	59
Aberdeenshire	210	18	302	15	55	14	51	9	618	15
Other	415	35	623	30	70	18	4	1	1,112	27

Source: Mobil SAGE Terminal Extension, Cumulative Local Labour Employment Return, January 1998

Note: Percentages subject to roundings

Local jobs from local development

Table 11 Analysis of subcontract and supply packages

	No.	%
Contracts by local firms	19	23
Contracts by non-local firms employing local people	16	19
Contracts by non-local firms bringing their own labour	49	58
Total contract packages	84	100

Source: Analysis by Fluor Daniel Ltd

to local firms. These were principally for civil engineering and landscape operations, although they did include steel finishes and some cable installation. It appears that less than half of the contractors employed a significant number of local people. This could be explained by the number of specialist suppliers required in plant assembly.

In addition to the above, Mobil sought to maximise the volume of their company purchasing that went through local firms. Examples of this were the purchase of staff travel through a local agent and the purchase of stationery from a Peterhead firm. This required the bypassing of national purchasing arrangements entered into by Mobil, which would have been difficult to justify without the legal obligation of the S.50 Agreement.

Key issues in the St Fergus case study

The St Fergus development shows that it is possible to use S.50 (and now S.75) Agreements to achieve targeted employment outcomes in Scotland. The case study may be considered to have some specific features that are not widely replicated:

- added 'leverage' because the developer needed to extend the current plant within a tight timetable
- sensitivities about the site which meant that the operator needed to maintain a good profile with the local population
- political pressure deriving from the leader of the Scottish National Party (the local MP) and SNP Councillors
- a multi-national company as developer; they were used to local labour requirements and understood the importance of the development for local people.

Nevertheless, these features are also likely to apply (to varying degrees) to many other sites and it appears that S.75 Agreements could be used to secure (or at least monitor) local benefits.

A key issue is the relationship between the local labour requirements and the local labour market. Peterhead is a relatively prosperous area with fairly low unemployment. The 'claimant count' when the contract commenced indicated 4.3 per cent 'unemployment' and the Job Centre reports that few 'skilled' people remain unemployed for long. In these circumstances it might have been useful to 'tune' the S.50 Agreement, for example, by including a requirement to train/employ long-term unemployed people.

The only direct criticism of the outcomes related to verification. The Council reported some concerns that many of the people recorded as local labour were in fact outsiders who had moved into the area. This implies that the real target was not local residents but the indigenous

population; natives of the area. To focus on this group would generate difficult definitional and identification problems, and would produce a much smaller pool of labour from which to job match. The reality is that the scheme was able to recruit a high proportion of local labour because the volume of oil- and gas-related installation work (over many years) had attracted people to the area (as well as providing opportunities for indigenous residents). Most of these 'incomers' are permanent residents (or may become so) and their incomes will help sustain the local economy.

The importance of placing the local labour requirements in formal agreements should be noted. Without this, the commitment of Mobil and Fluor Daniel would have been less, and, without the inclusion of the S.50 requirements in the tenders and contracts, the commitment of

the main employers would have been much weaker. Experience from the earlier phases allowed the local labour needs to be taken into account from early in the project design process; the achievement would have been less if the local labour requirement had been introduced only when the planning application was submitted.

Finally, a feature in this case is the Council's low level of involvement in the implementation of the Agreement. As indicated above, they appear to have done little to tune the Agreement to the needs of the labour market and little to help maximise the local benefits. However, this illustrates the potential of Planning Agreements to achieve very considerable local benefits even where the only active partners are the developer and contractors, and the local Job Centre.

7 Newcastle Northern Development Area

The development site

The Northern Development Area (NDA) is a major development site in former 'green-belt' land to the north of Newcastle upon Tyne. It will be used for housing (2,500 units of which 160 are for social housing) and business premises. The requirement of the Planning Brief is that the latter should include offices, high technology industry and research and development, and clean industrial processes.

The land has been allocated for the above purposes in the City's Unitary Development Plan (UDP) and the Council indicated that they were 'minded to grant' planning permission on an earlier Planning Application. At the time of writing, a new Planning Application has been submitted (under the name of Newcastle Great Park) and no planning decision has been made.

The development proposals are being brought forward by a consortium of two house-builders (Bryant Homes and Leech Homes) and an investment company (CIN La Salle).

In relation to the earlier Application, the Council and the developers negotiated a Section 106 Planning Agreement that covered a wide range of matters, including training.

The rationale for the training elements

The rationale for the training elements of the draft S.106 Agreement can be traced to the Council's Unitary Development Plan (UDP) and the Report of the UDP Public Inquiry (1994/95). In the latter, the Inspector wrote:

It is clear that unemployment is at an alarming level, and that the UDP is right in its general thrust of doing all that can reasonably be expected of a development plan to relieve it.
(Hollox, 1995, p. 49)

The Inspector recommended the retention of a clause on the use of Agreements for training. This is in the current Urban Development Plan:

The Council may seek to enter into Planning Obligations with Developers for a contribution towards meeting the cost of any training which is related to the development to be permitted and necessary to the grant of permission. (Newcastle City Council, 1998, p. 24)

The first of the above quotes establishes the legitimacy of including targeted employment measures in a Local Plan and the second the legitimacy of using S.106 Agreements to achieve training outcomes from developments.

In relation to the Northern Development Area, the justification is strengthened by both the Inspector's Report and the Developer's Environmental Statement. The Inspector justifies the use of the green-belt land in the following way:

Newcastle needs land to attract mobile job-creating enterprises that, rather than being forced into the urban area by green belt controls, would instead be more likely to locate elsewhere. (p. 48)

In the Developer's original Environmental Statement, a detailed analysis of the likely jobs impact of the NDA is put forward and a comparison made with the available job-seekers (although this is now very dated). The two most relevant points from this analysis are:

- the importance of maximising the recruitment and housing of existing City residents since one aim is to reduce the out-migration that is draining the City of its better qualified and more affluent people

- the importance of providing basic skills training to inner-city residents who experience the highest levels of unemployment and deprivation; without this they would not be able to access employment in the NDA.

The Developer's Statement justifies the inclusion of S.106 clauses that seek to maximise the employment of City residents in general and disadvantaged inner-city residents in particular. This could be seen as merely 'codifying' their commitment. However, since 'jobs for Newcastle residents' was the central justification for the redesignation of green-belt land, it is also reasonable to argue that the inclusion of targeted training and employment matters in the S.106 Agreement is 'necessary' for the granting of Planning Permission.

The above 'history' is brought together in the Planning Brief for the Northern Development Area. Section 6 relates to training and includes four objectives:

- tackling basic employability skills in the City
- construction training
- customised training to the occupiers' needs
- a partnership approach to achieve the above.

It is clear that in Newcastle targeted training and recruitment has been established as a 'planning matter', a position which is supported by the Planning Inspector's UDP Enquiry, the current UDP and the NDA Developer's Environmental Statement.

The proposed S.106 Agreement

The submission of a new Planning Application means that there is an opportunity to negotiate a new S.106 Agreement. However, it is anticipated that this will be based on the draft Agreement previously negotiated. This included a Training Schedule with four elements:

- payment to the Council of £125,000 over the initial five years to fund training programmes to prepare people for the jobs in the business sites
- a minimum of 72 construction apprenticeships directly through the developer/contractors, and best endeavours to secure a further 90 apprenticeships with other contractors and subcontractors over the 12-year development programme
- co-operation in the planning of specific training programmes once the end-users of the business sites are known
- provision of annual monitoring information on the construction apprenticeships, and joint working with the Council to plan, manage and monitor other activities.

It has been estimated that the construction training provisions, if fully achieved, would be valued at between £1.7 million and £3.8 million depending on how many apprentices are placed with 'other contractors'. This is between 6.3 per cent and 14 per cent of the total value of the S.106 package, although with CITB and other potential training grants the contractors would not incur all of the additional cost.

Local jobs from local development

The above measures are scheduled to commence as soon as the project starts, with a minimum of six construction apprenticeships in the first year. The apprenticeships are to be 'ring-fenced' for people from areas to be specified by the Council.

The original draft Agreement was the result of three negotiation processes. The first related to the overall financial impact of the planning conditions and the Planning Agreement. To obtain an overview of this the City Council engaged a consultant to advise on the likely development costs and incomes, and the viability of the scheme if it met the Council's planning requirements. The second process involved each Council Department setting out its own requirements for the site, for example, the number of new school places, retail and community facilities, public transport facilities, training sums, etc. This produced a draft list of items for the Agreement, for the developer's consideration. The third part involved negotiation between planning officers and the developers to agree the actual Agreement.

Key issues in the Newcastle case study

The proposed S.106 Agreement relating to the NDA has provided some insights into a number of key matters.

In relation to the planning justification for using S.106 Agreements to achieve targeted employment and training impacts, the case provides both a rationalisation and a Planning Inspector's endorsement of this rationalisation. The UDP Plan Enquiry established the principle that actions to reduce high unemployment are a legitimate matter for a Local Plan, and are therefore a 'planning matter'. This must justify

action to target the impact of any development at people who are unemployed or otherwise disadvantaged in the labour market; only this will ensure that the development helps tackle unemployment.

This goes beyond the traditional assumption that any land allocated for commercial or industrial use will have a beneficial impact on unemployment. It introduces three additional questions.

- Who will benefit from the jobs that will come to the site?
- What action will be taken to ensure that people who are in priority groups for the Local Plan get the job opportunities?
- What information will be produced to show that the development has contributed to ameliorating unemployment in the LA target areas?

A second key issue is why S.106 Agreements have not previously been used to ensure that developments did contribute to the Unitary Development Plan (UDP) goals of reducing unemployment, in a context where the UDP has incorporated the training clauses for at least four years. A number of suggestions have been put forward.

- Leverage: because former green-belt land is involved there is more external scrutiny and leverage on the developer than usual.
- Powers: other large sites have been the planning responsibility of the Tyne & Wear Development Corporation not the City.
- Discouraging investment: adding the cost of training and employment requirements

was seen as a potential disincentive to investment.

- Planners' priorities: most developments have involved other public bodies which have local employment as a key objective, and the planners assumed that they would ensure that targeted benefits were achieved.
- Training requirements: because this site is aiming to attract hi-tech jobs, there is a large 'skills gap' that needs to be tackled.
- Precedents: the officers involved were not aware of any precedents in other areas, had no 'model' to work from and lacked confidence in their power to enforce their 'training' requirements in the light of Circular 1/97.
- Tradition: the conventional wisdom is that any development is a bonus and questions are not asked about additionality and targeting.

Next, it is legitimate to consider the durability of the training and employment requirements set out in the draft S.106 Agreement. Specifically:

- there is a significant reliance on 'best intentions' and subsequent negotiations to achieve the intended outputs
- there is a heavy reliance on 'external' training funds.

This leads to the final consideration. In the draft S.106 Agreement, the guaranteed outcomes for training and local employment are modest in relation to the importance of the 'local employment' argument in allowing the NDA

development on green-belt land.

It has been suggested by the developers that this criticism fails to take account of:

- their commitment to partnership working on training and employment matters
- the expectation that they will make more resources available at a later date
- the negotiations that are under way to attract a range of high-tech employers and education facilities to the site
- the particular labour-market conditions that prevail in Tyne and Wear, where the overall jobs shortfall is projected to remain in excess of 64,000 throughout the next decade
- the potential of further S.106 Agreements being negotiated at the detailed planning stage when the requirements of the users can be identified.

Nevertheless, it could be argued that the training and employment activities did not fare well in the negotiation for S.106 resources, relative to the more traditional matters like roads, and 'sustainability' issues like public transport, social housing, education and community facilities. Three explanations have been suggested for this:

- the lack of a precedent for the inclusion of substantial training money in a Planning Agreement in Newcastle
- the developer's argument that (despite the planning history of the development) there was insufficient 'justification and reasoning' to make any additional

Local jobs from local development

training commitments reasonable under Circular 1/97

- the range of economic development goals that relate to the site; providing access to employment for existing Newcastle residents and unemployed people is just one priority.

However, it seems likely that the proposals in the current draft Agreement will deliver significant benefits for Newcastle residents, provided that a positive relationship develops between the developers and their end-users, and the employment and training organisations in the City.

8 Elements of good practice

Early days

As the survey has shown, the use of Planning Agreements to obtain targeted training and employment outputs is not widespread. A number of local authorities (e.g. Southampton and Aberdeenshire) have had a relevant Agreement in place for many years, but have not broadened the practice to other developments. Others (e.g. Newcastle) have only just initiated the practice and don't have enough examples to draw any conclusions on effectiveness. It seems that only some of the London Boroughs (like Greenwich) have started to use the approach in a systematic way. This means that most local authorities are at an early stage on 'the learning curve'.

In many areas it is likely that, without specific action to promote good practice, progress along the learning curve will be slow. Variations in the distribution of Planning Agreements between different authorities is likely to be significant, which means that many planning officers will have little experience (or confidence) in negotiating an Agreement. This will inhibit their ability to be innovative. Furthermore, it is clear that there is only limited exchange of information between officers on this subject (Campbell *et al.*, 1999, p. 39).

In this context, it is appropriate to set out the key elements of good practice, based on the experience of the 'pioneer' authorities. This experience suggests that a comprehensive approach is beneficial, but local authorities will need to consider what scale of 'systemisation' and infrastructure is relevant: local areas vary in the scale of development, the pressure for development, the needs of the labour market and the extent of social exclusion.

As has been made clear in the earlier chapters, there would be benefits in the government planning bodies issuing Guidance that would give more confidence to local authorities regarding the use of Planning Agreements to help address the new concerns of sustainable development and social exclusion. This would help overcome the inertia and reticence apparent within some Planning Departments (see Table 4 earlier in this report), and provide a stronger framework for negotiations with developers.

To aid the spread of information, the following elements of good practice have been identified.

Political and officer support

The use of Planning Agreements in targeting employment will be regarded as innovative, and possibly inappropriate, by the planning and legal professionals in many local authorities. There may be considerable resistance to allowing 'social policy' to impinge on 'land use policy', and concern about using S.106/S.75 powers in a way that is not explicitly covered in the Government Guidance. In these circumstances, it is important for the innovation to have powerful political and officer 'champions'. Without this it is likely that the proposals will be severely pruned in the negotiation of the Agreement and not extended beyond the pilot scheme.

The approach will work best where:

- there is a strong demand for action from local politicians and this is picked up by senior officers with a 'can do' approach to their work

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- there is good collaboration between planning and economic development staff, with a sharing of perspectives and a pooling of skills and experience.

Making clear the intention

Developers have emphasised the importance of early information about the local authority's expectations on training and employment. Where this is available the developer can take it into account in planning and budgeting. There are three suggestions of good practice to consider:

- include explicit reference to the needs of identified target communities, and the intention to link the proposed development with meeting these needs, within the Local Plan and any area-specific Development Plans or Briefs
- introduce a short Code of Practice that makes more explicit the targets and expectations, and make this available to developers at the earliest opportunity
- arrange an early meeting with developers and their contractors specifically to discuss the training and employment issues, requirements and delivery support.

An advantage of a Code of Practice is that it can be updated more regularly than a Local Plan, especially if this is contained in a loose-leaf folder. This is important in a context where the responsibility for training and recruitment, and the resources available, change fairly rapidly.

The use of a Planning Agreement should be

considered even where the developer is in the public sector (e.g. part of the Regional Development Agency or a Local Development Company), or is part of a regeneration partnership. It cannot be assumed that the priority given to targeted training and employment by public agencies and partnerships is the same as that of the local authority. In many cases, the public sector developer will include local jobs or tackling social exclusion in their objectives, and here the Planning Agreement is a useful way of formalising and detailing this commitment. The Agreement can also ensure that a share of the available resources is used to achieve this goal.

Content of a Code of Practice on targeted recruitment

Aims and targets

Provide a policy rationale referring to unemployment, labour market needs, social exclusion and environmental benefits.

Define local

Identify target areas or communities. If appropriate, indicate secondary areas of benefit (e.g. neighbouring Boroughs).

Identify what developers will be expected to provide

Indicate that developers will be asked to enter into a Planning Agreement covering:

- a commitment to co-operation
- the agreement of a 'training and recruitment plan' with the LA
- the early provision of information and contacts

- the provision of site services when requested
- the provision of money
- the provision of monitoring information.

What the LA and its partners will provide

Set out the management, support and monitoring arrangements that will be provided by the public sector, for example:

- the contact for more information
- training and recruitment services available
- local supplier networks and business support activities.

The monitoring and reporting arrangements

Identify the methods of measurement to be used, the forms to be completed and the feedback that will be provided.

Develop the supply-side infrastructure

Although there is evidence that developers take their S.106/S.75 commitments seriously, it should be recognised that their experience of targeted training and recruitment is likely to be slight. Furthermore, the public sector services that could help achieve the desired outcomes are often very fragmented. So, in most areas, it is likely that better outcomes will be achieved if a powerful 'supply-side' infrastructure is put in place. This will take time and needs to be started early.

Local circumstances will determine the range and scale of the supply-side services to be provided, and what local organisations need to be involved. Elements to consider are:

- pre-vocational and vocational training,

including customised training for the jobs on the development site

- job-search preparation, a skills register and a job-matching service
- a local supplier register and small business support (including business skills, technical skills and vocational training)
- developer/site liaison officers
- administration, including the processing of funding and monitoring information
- scheme management and promotion.

In an area with a large programme of development (e.g. Greenwich), there are clear benefits in bringing all of the above into a dedicated organisation. Where there is less development (e.g. in Aberdeenshire), the best approach may be to 'broker' a number of bilateral relationships between the developer and specialist providers (e.g. Employment Services or a local college).

There are benefits in networking with employment, training and business development agencies working in neighbouring areas, and possibly including those areas as 'secondary targets'. This can help to overcome boundary problems (unemployment and social exclusion occurring in adjacent Planning Authority areas), and improve the service to developers by providing a larger pool of labour and potential suppliers.

The developers' capacity to manage local training and recruitment programmes may change over time. The indications from areas where 'local labour in construction' requirements have routinely been imposed

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suggest that where contractors encounter repeated requests they will employ staff to manage the process. This may happen in large development firms and in development consultancies.

Systemise for ongoing success

To maximise the benefit from the approach it is important to establish a robust system for local authority implementation. Critical elements of this are:

- the provision of early information to the team responsible for local economic development so that they can decide which developments they wish to utilise for ‘targeted recruitment’
- a recognised and stable system for deciding the local authority’s proposals for the Planning Agreement (reconciling the demands of different departments) which provides an opportunity for the inclusion of training and employment matters
- the adoption of a standard menu; this should include some fixed elements (e.g. commitment, information, monitoring) and some variable elements (e.g. premises and money)
- the development of expertise and information to provide a sound rationale for the ‘variable’ elements of the proposals
- internal processes for holding and using any money received from developers, and accounting for its use

- procedures for formally reporting the outcomes on each development to both the Council and the developers, and signing-off the Planning Agreement when the obligations have been met.

Durability

The contents of the Planning Agreement need to be durable since the development timetable may well be uncertain. A requirement to ‘agree a local training and recruitment plan with the Planning Authority’, and the triggering of funding (plus inflation) at certain stages of development, are obligations that are not dependent on a particular development timetable, or the existence of a particular set of institutions. They are also easy to monitor.

On any scheme there are crucial points where some management intervention will help to ensure compliance. These are:

- as soon as a developer expresses interest in a key site
- just before the development starts
- when each main contractor or end-user is identified
- when the key staff of the developer, contractor or end-user change.

Consideration will need to be given to the point at which an Agreement is imposed or ‘triggered’. Where initial proposals are considered to have marginal viability it may be appropriate to include only a requirement to agree a training and recruitment plan. Alternatively, the obligation could be included at ‘detailed planning’ stage (e.g. with the end-users), although this may mean that initial land clearance and infrastructure works are excluded.

Commitment and co-operation

There is an ongoing debate about the usefulness of binding agreements in achieving target training and employment outcomes; the alternative is a form of voluntary or parallel agreement. However, all approaches share a need to obtain a commitment to ongoing co-operation from the developer. Interviews with developers suggest that they will take their commitment more seriously if this is included in a legally binding agreement; this provides a more robust platform for the partnership and co-operation that will deliver the benefits for the target communities.

The three operating case studies have shown the value of the developer's commitment.

- In Southampton's West Quay, Hammerson are taking the lead role in cascading the obligation to the store operators.
- In Greenwich, English Partnerships played a key role in cascading the obligation down to the New Millennium Experience Company, the McAlpine and Laing Joint Venture Company and other site occupiers like the Sainsbury's supermarket.

- In Aberdeenshire, Mobil Project Management and Fluor Daniel Ltd played the key role in ensuring that the commitments were met, even where this required overriding the company's national procurement arrangements.

In each case, the outcomes would have been more modest without the developers' active involvement.

So, at the very least, the use of S.106/S.75 Agreements is a way of building a constructive partnership with key developers in the local economy. These can be in either the public or the private sector. The goal must be to establish long-term relationships with them and their successors in title, as a key element in a strategy for:

- maximising the employment and training opportunities for the target communities
- minimising the damage to, and maximising the opportunities for, existing local businesses
- minimising the environmental impact associated with large-scale commuting to work.

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