

Delivering affordable housing through Section 106: outputs and outcomes

Recent Government statements suggest that the Section 106 (S106) approach to providing affordable housing will be increasingly important. Research undertaken by the Universities of Cambridge and Sheffield, led by Sarah Monk, examined the effectiveness of the delivery stage of S106 sites – i.e. what happens once the S106 agreement has been signed. Based on detailed analysis of a range of evidence as well as a sample of sites, this found:

- Planning permissions for affordable homes provided through S106 agreements are increasing rapidly. However, there remains a large gap between existing permissions and completions.
- Much of this gap is due to delays, especially on large sites. The delays are intrinsic to private housing development, not to the specific policy of negotiating affordable homes through S106. In addition, a significant proportion of permissions do not go ahead. But there is very little formal monitoring, making it difficult to know exactly what happens in individual cases.
- Site-specific evidence shows that, where development is completed, most S106 agreements have been implemented as originally specified. Renegotiation or other changes occur only in a minority of cases.
- Where S106 agreements are renegotiated, this is usually because market circumstances and/or site ownership have changed: most do not involve the affordable housing element. Where they do, the renegotiations may sometimes produce fewer affordable homes, sometimes different mixes and sometimes more affordable units if densities increase.
- In some cases the final outcome is not what local authority or housing association staff expected: this is mainly because the S106 agreement was not sufficiently detailed or did not specify exactly how the affordable housing would be provided. Those involved in negotiations have learned from their experiences and such outcomes are less likely in the future.
- There is growing concern about the quality of the housing produced – but this applies across housing development as a whole and is not specific to affordable housing.
- Securing more affordable homes through S106 depends heavily on the buoyancy of the housing market – a strong market makes it both easier to agree the original S106 and to deliver the desired affordable output. A downturn in the market will present much greater challenges.



Background

Most new affordable housing will be delivered using S106 planning agreements: these ensure that developers contribute to providing affordable housing through the 'planning gain' associated with the development. Previous research has concluded that the S106 system was working reasonably well in delivering affordable housing and, in particular, helping to meet the 'mixed communities' agenda by providing affordable and market housing on the same sites. However, signing a S106 agreement is only the starting point. Not all planning permissions are built. Subsequent negotiations may modify what is delivered. Yet little work has been done on how far the delivery of affordable housing matches the expectations associated with granting planning permission. The number of S106 affordable homes given planning *permission* has risen much more steeply than S106 affordable *completions*. This suggests that the system may not be able to deliver the agreed levels of affordable housing in a timely fashion. This study aimed to assess the effectiveness of the delivery stage in meeting the needs for affordable housing in England.

Example 1: Large site delivered as agreed

This is a large development with permission for almost 2,000 homes. The development is phased with the S106 agreement divided between the 5 or 6 developers working there. At least four housing associations are also involved. The developer working with one association has three different elements of the site. From the association's point of view it is difficult to tell whether the S106 agreement is delivering the overall total of affordable housing originally agreed: their affordable housing is only a fraction of a much larger site. But on their fraction, the developer has delivered as originally agreed. The housing association finds that where the developers have had to re-negotiate with a local authority, it has always been over the phasing or other non-housing matters: "We have found that they always deliver the agreed S106."

Increasing use of S106

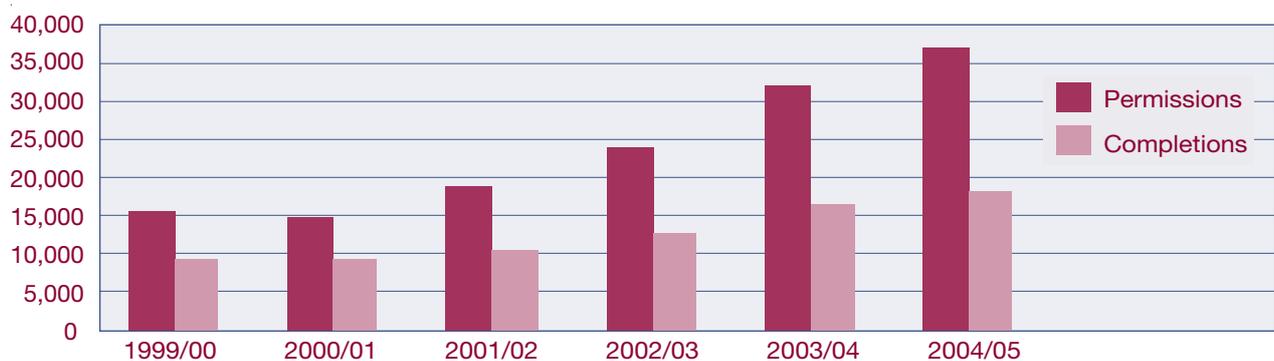
S106 completions are an increasing proportion of all new affordable housing. However, there may be a problem in ensuring that agreed levels of provision actually occur (see Figure 1). Interviews with a range of stakeholders confirmed these concerns, although many said that those involved did not necessarily perceive it as a problem.

Types of S106 outcomes

The researchers identified seven scenarios once the S106 agreement has been put in place. For a number, the outcome is unknown: the agreement was probably delivered as agreed but the data cannot be verified against records.

1. **The affordable housing element is delivered in line with the S106.** The agreement is fully specified and delivered.
2. **The S106 is revised and a deed of variation signed or a new S106 is negotiated and implemented.** This may be initiated by the developer, a new owner or the local authority, usually if circumstances change.
3. **Post-agreement negotiation alters the output (but no deed of variation).** All parties agree informally to changes in location, type, tenure, numbers, financial contribution.
4. **The output is different from expectation but is consistent with the S106.** One or more parties did not achieve what they expected but the relevant elements were not fully specified in the S106.
5. **The planning permission is not implemented.** This may be either as a result of the S106 or because of general changes in circumstance.
6. **The developer implements the permission but fails to comply with the S106 affordable housing obligation.** What was specified in the original S106 is *not* achieved and there is neither a deed of variation nor a post agreement negotiation to enable change.
7. **Outcome unknown.** The S106 was probably implemented but the outcome has not been monitored.

Figure 1: Planning permissions and completions for S106 affordable units



Example 2: Renegotiation of minor details

This example covers some minor renegotiations of the S106 but not of the affordable housing element. The total number of homes agreed was 385 of which 97 (or 25 per cent) were affordable. Of the affordable flats, 70 were for rent with the aid of social housing grant, while 27 were shared ownership which did not require grant. The two types of tenure were built in separate blocks of flats, but close to one another. The affordable housing was totally separate from the market housing: “Effectively there was a party wall between the two types of housing, almost making it two different sites.” The housing association was brought into the negotiations after the initial discussions but before the S106 was signed. The developer delivered both market and affordable housing as originally agreed. There was some renegotiation over the type of public art to be provided as part of the S106 but this did not affect the housing.

What was found on the ground

The research examined 39 sites to explore any differences between the outcome and the original S106 agreement and why these occurred. These sites had S106 agreements signed between 1998 and 2005 and were fully or partly completed.

For 24 sites all had been built as agreed. The only variations to S106 agreements related to non-housing matters with no changes to the numbers or sizes of homes produced. One RSL commented that the standard of the social rented houses was lower than expected.

On five sites, despite planning permission being granted prior to 2000, the site was still being developed at the end of 2005. These sites account for 576 of the 2,174 (27 per cent) of affordable homes in the research database granted planning permission prior to 2000 but still incomplete at the end of 2005. This suggests that, although long delays between permissions and completions may only affect a small proportion of sites, they often affect very large sites producing a high proportion of the total number of affordable housing units granted permission.

By far the most common outcome was that, where construction had started, **the S106 housing was delivered**, i.e. the S106 approach is working well. Some sites were still being built, but local authorities and housing associations confirmed that they expected that the full quota of affordable housing would be met.

A **deed of variation** was also fairly common, especially on larger sites. This may allow the local authority to increase the proportion or numbers of affordable housing

delivered. Deeds of variation often relate to changes in site phasing rather than to the delivery of affordable housing as a whole: research on specific sites found that most amendments to S106 agreements do not affect the affordable housing provision.

Renegotiation can produce fewer affordable homes. One S106 specified 30 per cent affordable homes scattered throughout the development. However, this was an up-market block of flats with access to a sports and pool complex: no social landlord would take on the high service charges. The developer negotiated a commuted sum and the on-site affordable homes were lost (although the commuted sum will go towards another development).

Sometimes renegotiation can deliver more affordable homes: for example, where it provides a higher number of units overall. In such cases, the numbers of affordable units (though not the proportion) may increase through higher densities.

Cases where all parties **accepted the change but no formal agreement** was felt necessary were relatively rare: most parties prefer to ensure official agreement. In one example, the affordable homes were specified as shared ownership in the S106 but, after handover, the housing association received additional funding and turned them into social rented homes. The developer was not involved in the decision.

Where one or more parties did not achieve what they expected, this was usually because the relevant elements were not fully specified in the S106. For example, one party may be disappointed with the quality of the homes provided or their precise location on the site.

It is difficult to assess the extent of cases where the **planning permission is not implemented**. Data obtained for other projects suggests that approximately 20 per cent of permissions are not taken forward. However, as these were pre-2004 permissions, there is a five-year delay before it can be stated with any certainty that the planning permission has expired and the units will not be built.

Cases where, having implemented the permission, **the developer fails to comply with the S106 affordable housing obligation** are extremely rare: although stakeholders talked about this, there was no evidence in the research database. Only one in five authorities consider failure by developers to deliver planning obligations (including affordable homes) to be a problem.

Of the 39 developments, in 10 cases both the RSL and the local authority were unable to identify the site from their records and **the outcome was unknown**. Some local authorities and housing associations seemed unable

to access any records which would tell them whether or not the S106 agreement was in fact delivered. Problems in retrieving data included: multiple names for each site; several sites to which information might have applied; staff turnover; poor record-keeping; and loss of records following office moves. Clearly, monitoring is a concern: better monitoring by local authorities and housing associations would reduce the incidence of cases where the outcome cannot be ascertained.

Conclusion

Once development starts on a site, in most cases, S106 pretty much delivers what was agreed. The two most important issues are:

- the general planning permission not going ahead; and
- delays associated with large, complex or brownfield sites which often involve renegotiation.

There remains an issue over whether the outputs are as good as the original stakeholders had expected.

However, this growth and compliance has occurred during a period of economic expansion. A downturn in the market might significantly change both attitudes and development behaviour.

About the project

The research was undertaken by Sarah Monk, Diane Lister, Roland Lovatt, Aoife Ni Luanaigh and Christine Whitehead from the Cambridge University with Tony Crook and Steven Rowley from Sheffield University. Evidence on quality issues is from a related study by Jon Watson.

After updating secondary data, a scoping survey of key stakeholders was used to develop a typology of possible

Example 3: A large complex site

A developer specialising in brownfield redevelopment bought a former hospital site. The development was in phases. Phase 1 was for 400 homes, of which 21 were affordable, 11 social rented and 10 low-cost home-ownership. Phase 1 delivered all that was originally agreed and is popular with all residents. However, after Phase 1, the developer divided the site and sold on parcels to other developers. As a result, the development has not progressed as quickly as planned. There is only one housing association on site. It is now involved with multiple developers who inherited the S106 agreement. It also bought one parcel which it has developed itself. The affordable housing is spread throughout the site, although it is described as “ ‘chunk pepper-potting’, because there were three different phases to it, but it is not all shoved in one corner”. The site is now in its third and final phase, which forms a demonstration project for the Urban Village Task Force. The housing association has taken over all the S106 affordable housing as well as its own development. The developers have all met their S106 obligations in terms of the numbers, but they did not produce homes of the same standard as those built by the housing association.

scenarios. Local authorities, housing associations and in some cases the developers involved in these sites were then telephoned to find out whether there were any differences between the outcome and the original S106 agreement and why these occurred. The site-specific analysis drew on earlier analyses together with a detailed re-examination of the team’s database of 39 sites. Six sites were then investigated in more detail to gain a better understanding of what happens after the original S106 agreement was negotiated.

For further information

The full report, **Delivering affordable housing through Section 106: Outputs and outcomes** by Sarah Monk, Tony Crook, Diane Lister, Roland Lovatt, Aoife Ni Luanaigh, Steven Rowley and Christine Whitehead, will be published by the Joseph Rowntree Foundation in May 2006.

Visit www.jrf.org.uk for: Jon Watson’s paper, **Understanding planning gain: What works?** (available online only).

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