RETHINKING PLANNING OBLIGATIONS: BALANCING HOUSING NUMBERS AND AFFORDABILITY

Planning obligations (S106) are agreements between local planning authorities and developers. While discussion about the numbers of new homes dominates debate, this research shows the importance of affordability. It examines how planning obligations in England operate, and what local mechanisms could improve provision of affordable housing.

Key points

• S106 remains important for delivering affordable homes, but policy change and volatile markets have made performance variable. In 2013–14, 16,193 homes in England were completed through S106 (37 per cent of all affordable homes) compared with over 32,000 in 2006–07 (65 per cent).

• With needs in the social sector of 83,000 homes a year, S106 alone cannot meet affordability requirements but S106 can be made to work better, as case-study good practice showed.

• Changes to planning legislation have made S106 the only negotiable element of planning obligations and increased developers’ opportunities to reduce affordable provision through viability appraisals.

• Local delivery through S106 varies because of market and policy conditions. Proportions of affordable housing delivered in 2012–13 in six case-study areas ranged from 2 to 87 per cent.

• Local mechanisms supplement S106, including partnerships with local developers; housing banks; cross-authority co-operation to deliver housing; and ethical trusts.

• A dual approach would better balance numbers and affordability, combining strengthening S106 operation with empowering local authorities and their partners to supplement S106 provision through local strategies.

• Key to strengthening S106 operation would be greater transparency in the viability process, clarifying the parameters used to ensure extracting an appropriate amount of the increase in land value, and changing the definition of affordability in planning legislation.

• Priorities for supplementing S106 are a ‘golden triangle’ of increasing access to land; finance, including devolving increased financial capacity locally; and strategic leadership.

The research
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Continued supply of affordable homes, particularly to those on the lowest incomes, is central to how housing policy can contribute more effectively in tackling poverty. Planning obligations have become a significant way to deliver affordable homes, despite questions about their ability to deliver sufficient numbers to meet needs in all areas. Further challenges have arisen through recent changes to housing and planning policy. This report examines the role of planning obligations and considers whether more locally effective ways could increase the supply of affordable housing.

Planning obligations

Planning obligations are legal agreements attached to planning application decisions. They are generally called Section 106 agreements (S106) after the section of the 1990 planning legislation formalising them. Planning obligations result from negotiations between the local planning authority and the developer, and are used to secure financial contributions for essential infrastructure such as affordable housing, transport and open space. They are widely used to fund affordable housing provision.

However, S106 ties provision to volatile housing markets, leading to great variation. In 2008–09, S106 provided close to 32,286 dwellings, or 63 per cent of all affordable housing completions. In 2011–12, when markets were weaker and after the Coalition Government’s policy changes, S106 delivered only 16,936 or 32 per cent of affordable homes and numbers have since declined further in 2013/2014 to 16,193 (37 per cent). In the study’s six varied case-study areas, S106 provided 2 to 87 per cent of affordable homes in 2012–13. Local housing markets, the strength of planning and other policies, and skills in negotiating agreements affected S106 effectiveness.

While welcome, the numbers delivered through S106 are insufficient to meet affordable housing needs. Research has shown that around 83,000 homes are needed annually in the social sector; planning obligations alone cannot deliver these numbers.

Not all housing provided through S106 is accessible to those on the lowest incomes. In some years, 40 per cent of such housing was for low-cost home ownership. While S106 delivers significantly in some areas with high concentrations of poverty (notably London), the ability of such housing to meet the needs of those on the lowest incomes is affected by local allocation policies and recently in some areas by the Affordable Rent Model, which sets social sector rents at up to 80 per cent of market rents.

Impact of planning system changes

Recent changes to the planning system have affected the operation of S106. They include: the National Planning Policy Framework (NPPF), introduced in 2012, which allows greater local flexibility in planning; and the 2011 Localism Act, which promotes community-led provision. These changes could support greater localised affordable housing provision. However, other changes are having more negative impacts, including:

- changing the NPPF’s definition of affordability to housing below market value rather than what households can afford;
- giving greater emphasis to schemes’ viability and developers’ ability to renegotiate agreements if they can show they make schemes unworkable. Interviewees reported that lack of transparency and agreed criteria in viability assessments sometimes made it more difficult to secure affordable housing, and suggested that developers were using reduced contributions to offset development risk;
- introduction of the Community Infrastructure Levy (CIL) as a flat-rate charge for all non-site specific infrastructure apart from affordable housing. This has made S106 the only negotiable element of planning obligations and could increase its vulnerability to viability assessments depending on how CIL levels are set;
- replacing regional planning with a duty to co-operate by neighbouring authorities. This study revealed a variable pattern of appropriate levels of strategic co-ordination to secure affordable housing.
Additional recent changes introduced after the fieldwork was completed include reducing the threshold for the number of units on sites requiring S106 and waiving obligations in some schemes in return for a £20,000 discount on market housing. These changes could further undermine the ability of planning obligations to deliver housing to those on the lowest incomes. They will also make it harder to achieve a balance between numbers and affordability in other government initiatives such as Garden Cities.

Maximising S106 provision

Within these constraints, the case-study areas demonstrated innovative practice in maximising provision of affordable homes through S106 by:

• ensuring that local planning policies prioritised affordable housing provision accessible to those on the lowest incomes;
• using specialised viability officers/teams in planning departments and additional training in viability for officers and members;
• taking a dynamic view of viability, with review mechanisms and agreements to enable greater levels of affordable housing in later phases of schemes if performance exceeds that set out in the original viability appraisal;
• using supplementary planning documents (SPDs) to set localised conditions and criteria for viability assessments and planning agreements;
• using SPDs and S106 within developments to specify levels of rents affordable to those on the lowest incomes. These often defined affordable as one-third of incomes rather than government definitions of up to 80 per cent of market value.

This good practice needs sharing and promoting, particularly given the constraints under which local planning authorities operate.

Additional mechanisms

S106 is important for delivering affordable homes in particular places at particular times, but even in areas with strong housing markets it cannot deliver enough homes to meet needs. It also cannot make up for reduced numbers through cuts to the Government’s Affordable Homes Programme. However, the case-study areas were using effective additional mechanisms and delivery models to increase the supply of affordable housing in local schemes within which S106 played a greater or lesser role. Key findings were the following:

• Special purpose vehicles (SPVs), often formed around the availability of publicly owned land, offered substantial opportunities for affordable housing development where S106 was not delivering. They comprised housing association subsidiaries, municipal housing companies and public/private partnerships. More widespread use of SPVs could deliver more affordable housing, particularly through a model specifically for housing at social rent levels.
• Greater freedoms for local authorities to finance their own programmes were proving effective, but numbers were small. Other forms of non-grant funding such as housing banks, revolving funds, institutional investment and ethical trusts were providing small but significant input.
• The localism agenda does not yet appear to be delivering significant housing numbers, although it could provide for specific need, especially in rural areas. City Deals and local economic partnerships (LEPs) are yet to fully realise their potential through including housing as a key strategic element in their plans.
• Strategic co-ordination of land assembly, housing and planning policy, particularly at sub-regional level, was variable. Where it worked well, strategic leadership provided effective delivery of numbers and affordability.
• Where sources other than S106 supplemented infrastructure funding on major sites, more of the planning obligations ‘cake’ went to affordable housing delivery.
Conclusion

Better balancing of numbers and affordability needs a dual approach. This would combine strengthening the operation of S106 with empowering local authorities and their partners to supplement S106 provision through locally driven strategies for affordable housing provision. This would need facilitating and enabling through national and local policy and investment strategies. Key to strengthening S106 operation would be:

- promoting existing good practice;
- re-aligning definitions of affordability in planning legislation to households’ ability to pay;
- reaffirming the priority given to achieving social sustainability through the planning system;
- reversing recent changes to national policy, which have relaxed the need for planning obligations on some schemes;
- introducing viability assessment guidelines, which ensure transparency and set parameters for building costs and land values, which allow for extracting an appropriate amount of the rise in land value resulting from granting planning permission (e.g. existing use value, not market value).

The case studies revealed that a ‘golden triangle’ of land availability, finance and local strategic leadership had the greatest potential to supplement and enable S106 provision. This could be scaled up by:

- promoting strategic leadership opportunities through an enhanced duty to co-operate and increased action by LEPs and City Deals to address housing;
- devolving increased financial capacity to local level through being able to borrow and access to national funds;
- enabling SPVs through public sector land assembly by lifting the requirement to dispose of public land at the highest price and using compulsory purchase orders.

About the project

The research drew on national data on S106 delivery and a literature review of the operation of planning obligations and their alternatives in the UK and internationally. It carried out national scoping interviews and investigated six case-study areas with different housing market and policy characteristics. Workshops in each area discussed various scenarios’ potential for delivering more affordable homes. A national stakeholder workshop fed back expert comments.

FOR FURTHER INFORMATION

The full report, Rethinking planning obligations: achieving a balance between housing numbers and affordability by Sue Brownill, Youngha Cho, Ramin Keivani, Ilir Nase, Lesley Downing, Dave Valler, Nicholas Whitehouse and Penny Bernstock, is available as a free download at www.jrf.org.uk

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