

Rethinking planning obligations: balancing housing numbers and affordability

The update

March 2017

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Supported by
Joseph Rowntree Foundation

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Executive Summary

In July 2015 JRF published 'Rethinking planning obligations: balancing housing numbers and affordability' which reported on the decline in the delivery of affordable housing through S106 agreements and ways in which this could be addressed. Eighteen months on from this report the housing crisis in England has not gone away and there have been further changes in housing markets and policy. In particular with the publication of the Housing White Paper which is focused on housing delivery the argument for affordability not just numbers remains vital. JRF therefore requested that we revisit and update the original findings with data from 2014/15 and 2015/16. This report shows that the numbers delivered through S106 remain volatile and show no overall indication of increasing. However, S106 remains an important tool in ensuring affordable housing delivery, particularly in the South and East of the country. In terms of policy mechanisms a contradictory picture emerges with some local planning authorities using positive planning policies to maximise and enable effective s106 delivery. However, the national policy picture continues to erode the ability of planning to delivery affordable homes to those on lowest incomes. With further policy changes coming through the Housing White Paper and reforms to the NPPF, the role of planning obligations in delivering affordable housing needs to be protected and enhanced.

Our key findings are;

- Since 2013/14 S106 completions have remained volatile, ranging between 30% and 47% of all affordable homes. Nevertheless these 36,5000 homes remain significant in meeting housing need and in acting as a buffer against changes in grant regimes and other funding
- Over the 12 years covered by our data S106 has delivered a fraction under half (49%) of all affordable homes in England equating to almost 271,000 homes
- S106 remains significant but cannot on its own deliver all the affordable homes needed.
- Spatial variation in S106 completions continues and S106 remains a more powerful tool in areas with strong housing markets and planning regimes.
- Affordable rent is now the majority tenure delivered through S106 putting into question the ability to meet the needs of those on lowest incomes.
- National policy changes continue to undermine the ability of S106 to deliver. These include further changes to the definition of affordable housing in the NPPF, the introduction of starter homes and the continuing presumption in favour of housing numbers over affordability. The policy situation is extraordinarily complex and confusing and more clarity is required.
- However, innovative local planning authorities have introduced local policies to maximise s106 delivery through the use of supplementary planning guidance on viability and other measures. The sharing of good practice in some areas has also strengthened local delivery.
- The government's aspiration of delivering 1m homes by 2020 appears unrealistic given current delivery mechanisms and rates and there is insufficient emphasis on delivering affordable homes to those on lowest incomes within this.

- Our previous recommendations to strengthen s106 and allow for greater local autonomy in addressing housing needs are even more relevant in the current economic and political climate.

Context

Continued supply of affordable homes, particularly to those on the lowest incomes, is central to how housing policy can contribute more effectively to tackling poverty. Since 1990 planning obligations became a significant way to deliver affordable homes, despite questions about their ability to deliver sufficient numbers to meet needs in all areas. Since 2008 market and policy changes have eroded this delivery capacity. Our previous report concluded that;

- S106 remained important for delivering affordable homes, but performance was 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 could not meet affordability requirements but S106 could be made to work better, as case-study good practice showed.
- Changes to planning legislation made S106 the only negotiable element of planning obligations and increased developers' opportunities to reduce affordable provision through viability appraisals.
- Local delivery through S106 varied 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.
- 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.

This report considers whether there have been any changes in the highlighted trends in delivery numbers and assesses policy developments against our previous recommendations to strengthen s106 delivery.

Methods

For the recent two years' data (2014/15 and 2015/16), the same data sources used for the original report have been drawn on; namely CLG, GLA and HCA. To update the dynamics of affordable housing dynamics across England, these data was added to our comprehensive database at the local authority level. The statistics for 'total affordable housing' and 'S106 nil grant' are based on the CLG live table 1011. Total S106 delivery figures were obtained from the HCA (2011-15 Affordable Homes Programme) and Local Authority Housing Statistics (LAHS, new build affordable units not reported to the HCA) for England excluding London and the GLA for London. Again due to the nature of the data and time difference of data gathering, these data should be treated with care as best estimates. We have supplemented the statistical data with selected follow-up interviews with key actors nationally

and in our original case study areas and with a comprehensive policy review. At the time of writing the White Paper was yet to be published. We will add commentary of this when possible.

Housing Delivery through S106; The Numbers

Figure 1 and Table 1 show that trends in overall delivery of affordable housing through S106 has continued the volatility noted in the previous report, which reported on data to 2013/14. Since then numbers increased sharply in 2014/15 to the highest figure since 2010/11 only to decline again in 2015/16 to previous levels. The reason for this volatility is linked to a sharp rise in all affordable housing delivery linked to the end of the 2011-15 Affordable Homes Programme funding cycle. Part of this spike is a natural result of the building cycle from the start of the programme and part the need to complete to ensure grant compliance.

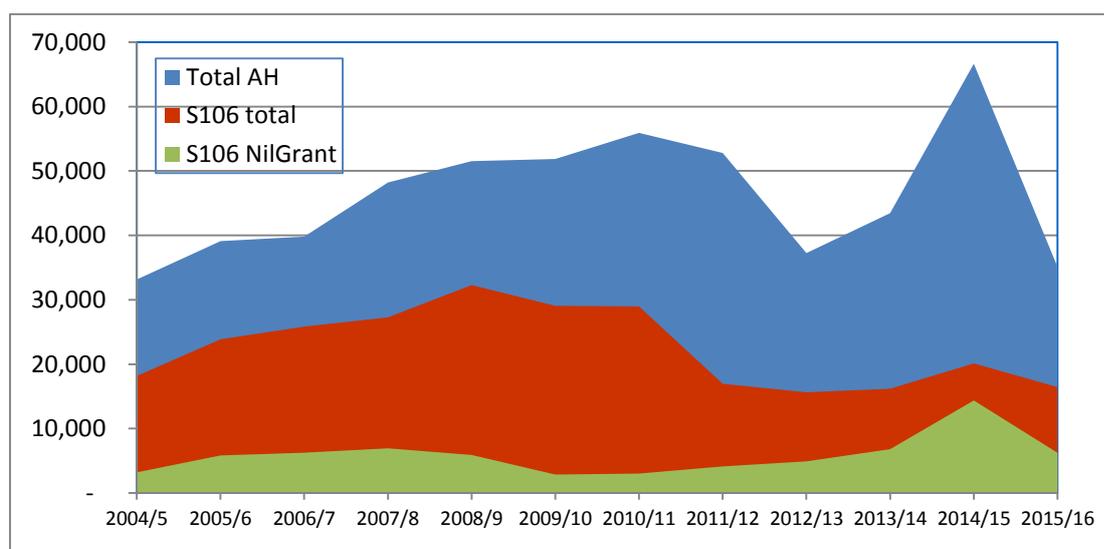


Figure 1: Trend of the delivery of affordable housing

Table 1: S 106 delivery in numbers and percentages

Year	TAH (A)	S106 Total (B)	S106_NilGrant (C)	% B/A	% C/B	% C/A
2004/5	33,154	18,175	3,219	55%	18%	10%
2005/6	39,108	23,869	5,839	61%	24%	15%
2006/7	39,808	25,838	6,264	65%	24%	16%
2007/8	48,208	27,273	6,947	57%	25%	14%
2008/9	51,525	32,286	5,912	63%	18%	11%
2009/10	51,858	29,065	2,873	56%	10%	6%
2010/11	55,909	28,972	3,026	52%	10%	5%
2011/12	52,790	16,963	4,138	32%	24%	8%
2012/13	37,250	15,645	4,921	42%	31%	13%
2013/14	43,451	16,193	6,814	37%	42%	16%
2014/15	66,639	20,125	14,374	30%	71%	22%
2015/16	35,103	16,452	6,253	47%	38%	18%
Total	554,803	270,856	70,580	49%	26%	13%

It is noteworthy that the numbers of S106 Nil Grant completions showed a similar sharp increase in 2014/15 followed by a decline in 2015/16 departing from previous trends where nil grant was lower at times when S106 provision increased. The direct reasons for this need to be the subject of further research however it is likely to be linked to influence of the grant regime on the building cycle.

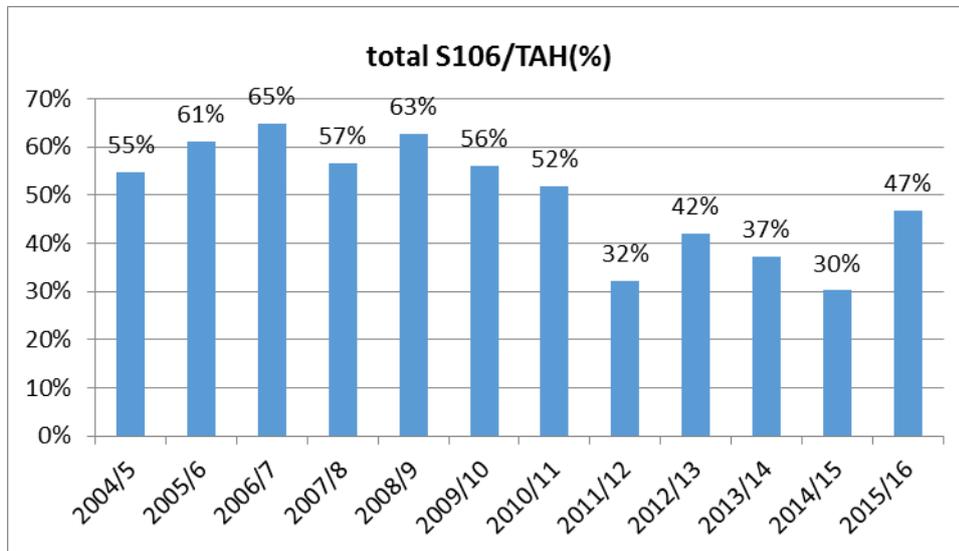


Figure 2: S106 as A Percentage of Total Affordable Housing Delivery

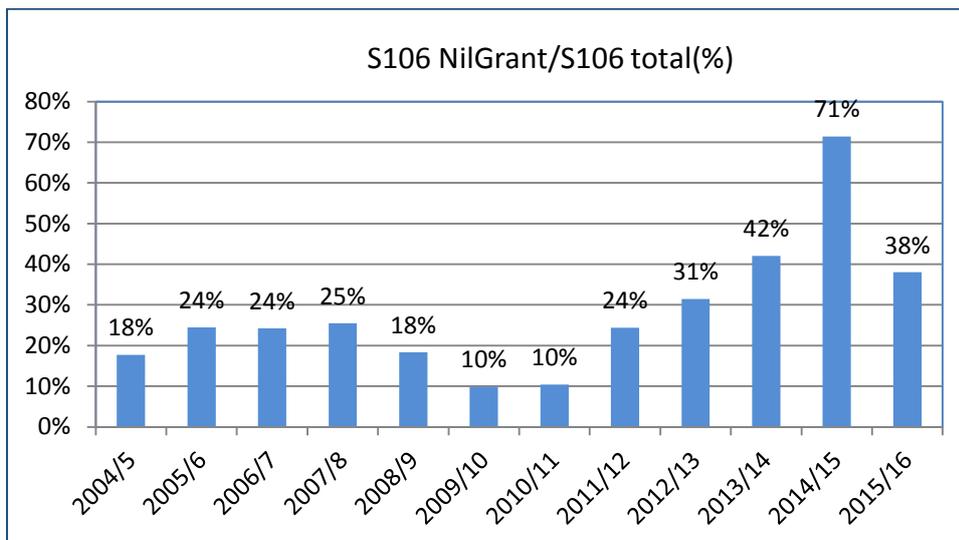


Figure 3: S106 Nil Grant as A Percentage of S106 Total

Table 1 and Fig 2, however, reveal a contradictory picture when comparing numbers with S106 as a percentage of affordable housing delivery. As numbers increased in 2014/15 the percentage of S106 declined. However, when overall numbers decreased in 2015/16 the percentage of S106 delivery increased to the highest in 6 years as changes in the Affordable Homes Programme resulted in the lowest level of affordable housing delivery in ten years. These trends underline our previous findings that s106 is a significant tool in delivering affordable housing and can provide a buffer in years when other sources decline. Fig 3 shows the increase in the contribution of S106 Nil Grant over time due to changes in grant regimes with a sharp increase to 71% of S106 total in 2014/15 as the Affordable Home Programme grant runs out. Schemes built with Nil grant, as the term suggests, do not use

other, usually grant funding, to secure delivery. It was a past criticism of s106 that it diverted grant to cross-subsidise schemes which may not be the most effective use of grant.

While it is true that S106 delivery is volatile nevertheless over the 12 years covered by our data S106 provided a fraction under a half of all affordable homes in England (49%). It is unlikely that these 271,000 affordable homes would have been delivered without s106 and even at its lowest S106 delivered 30% of affordable homes in that year . This does not undermine our previous conclusion that S106 cannot on its own provide sufficient affordable housing to meet demand but it underlines its continued significance in the absence of alternative mechanisms to deliver adequate numbers.

Local and Regional Variations

Our updated figures also confirm the picture of spatial variation in S106 delivery from our previous report. In that report we looked at typologies of housing market and policy areas namely; regional centres, prosperous England, London, Industrial centres, new and expanding towns and coast and countryside. Figure 4 shows that regional and industrial centres (largely located in the Midlands and North) continue to deliver relatively low percentages of affordable housing through S106. This is linked to issues of viability and housing demand. Prosperous England, new and growing towns (largely in the South and East of the country) and London continued to deliver higher percentages with coast and countryside in the middle.

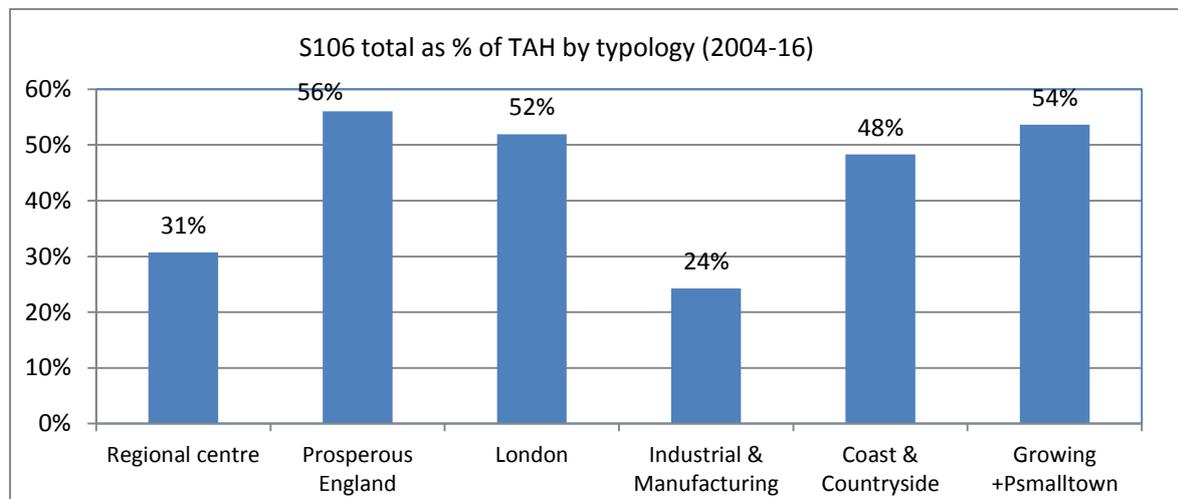


Figure 4 S106 completion as a percentage of total affordable housing

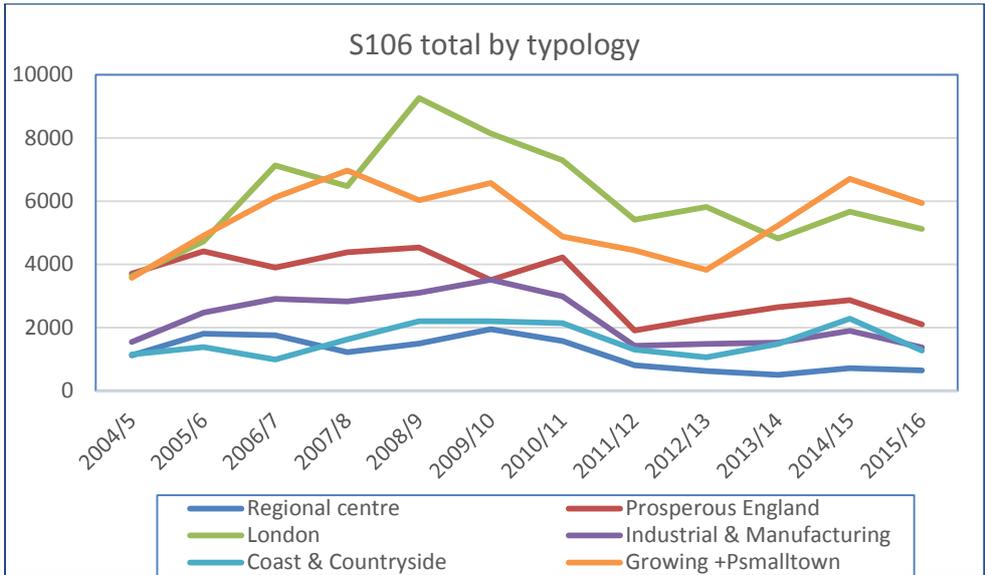


Figure 5 S106 total number completed by typology

This picture is broadly supported when looking at the numbers of S106 delivery, with London and New and Growing towns ranking the highest as well as being the most volatile, followed by Prosperous England. However it is notable that the numbers in London have been declining while the reverse is true for growing and small towns, reflecting the difficulties of providing affordable homes in the capital.

The numbers of S106 Nil Grant completions also shows an interesting picture with growing and small towns showing an outstanding increase particularly in 2014/15, followed by Prosperous England. This may be due to high demand of new housing and room to negotiate S106 agreement with developers especially in large extension sites, compared to the pressures in London.

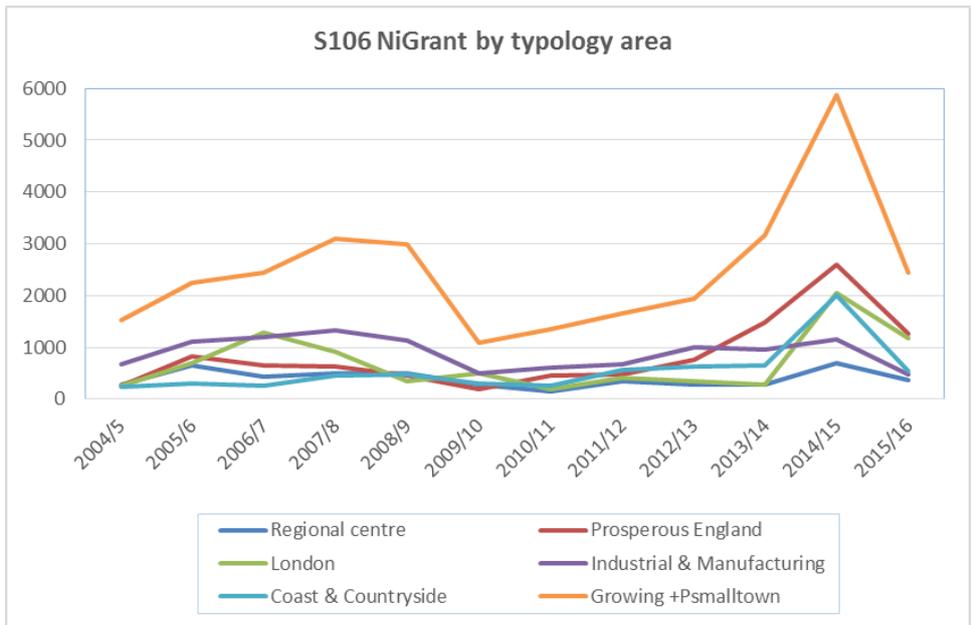


Figure 6 S106 Number Nil Grant completed by typology

This picture of spatial variation is confirmed by CLG regional data. Fig 7 shows that the south and East of the country continued to deliver the highest percentages of S106 as a proportion of all affordable housing.

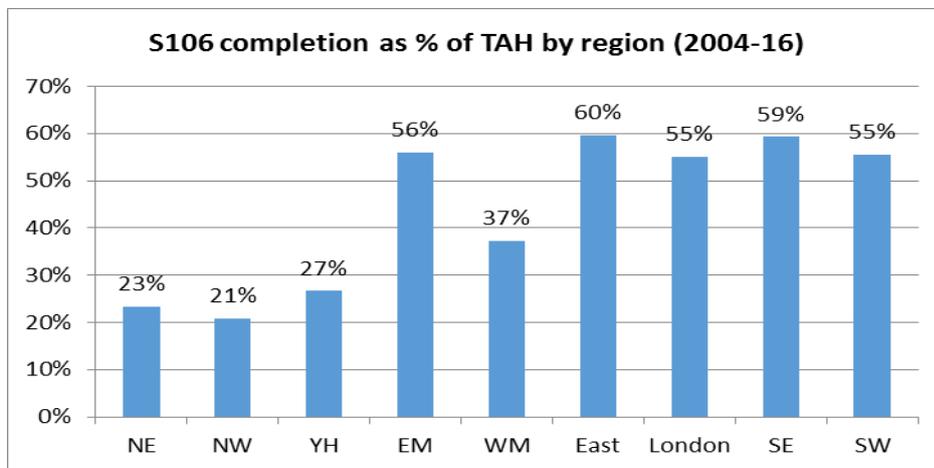


Figure 7. S106 Completions by Region

Although the trend in numbers remains the same, Fig 8 shows the dominance of delivery of S106 in London and the South East compared to the rest of the country when looked at by region rather than typology.

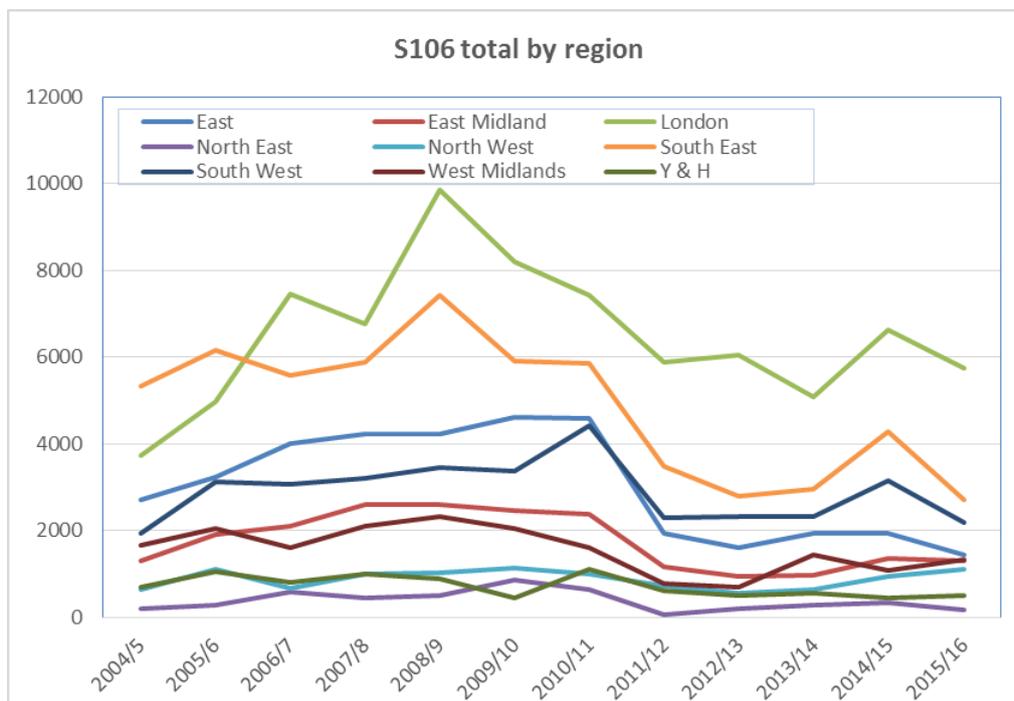


Figure 8 S106 total by region in number

Since 2013/14 the numbers of Nil Grant has become increasingly distinctive across the regions. The South East and South West keep the top two places, possibly where large-scale urban expansions with volume builders are more likely to be common than the pressured capital.

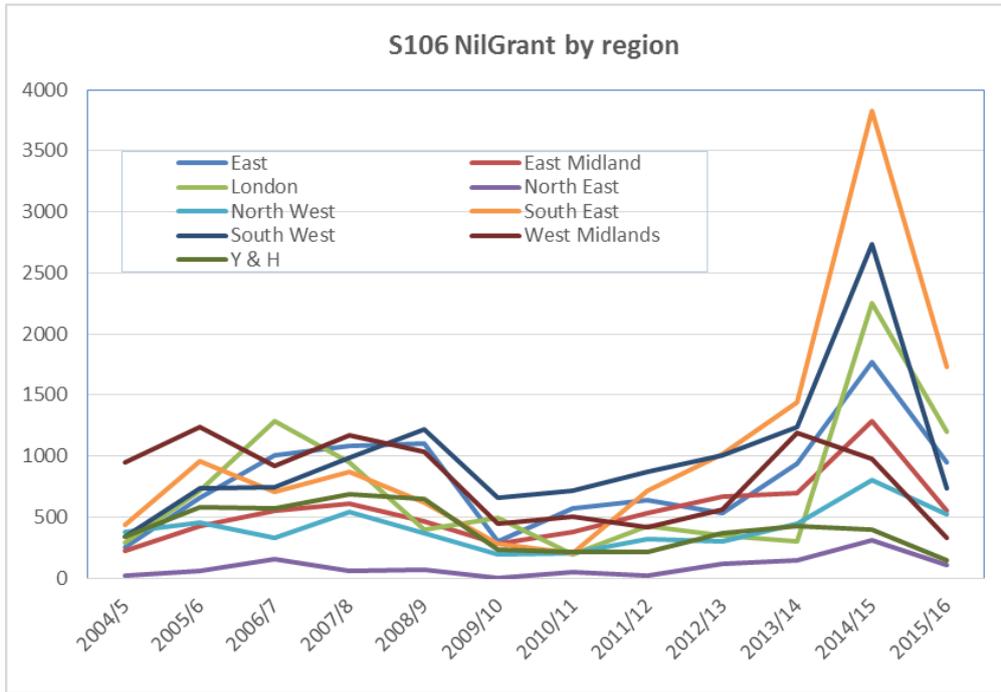


Figure 9 S106 Nil Grant by region in number

Our previous report concluded that these variations were due to a combination of differences in housing markets, planning policies and skills in negotiating S106 agreements and we consider these will still be crucial factors influencing the later data. Further information on the case study Local Planning Authorities within our typologies is provided in Appendix 2. Of note here is the fact that only one of our case studies, Oxfordshire (Prosperous England), did not follow the pattern of volatility noted in the national figures. Here numbers delivered through s106 increased in both 2014/15 and 2015/16 due to a strong housing market and robust use of planning policies.

Appendix 1: Changes to Planning and Housing Policy Affecting S106 Delivery

Since our previous research there have been two changes in government administrations with numerous associated developments in national housing and planning policy. At the time of writing a Housing White Paper is awaited which will focus on housebuilding and will therefore bring further changes. Four main messages emerged from our previous research in respect of policy around planning obligations. These were;

- Definitions of affordable housing in planning policy should be strengthened to reinstate the link with a household's ability to pay
- Mechanisms for securing S106 should be strengthened, particularly around viability
- Policy should focus on affordability to those on the lowest incomes and not just numbers
- Localism should mean localism; LPAs and others should be empowered to deliver localised strategies to meet their housing needs.

At the national level, policy has diverged from these recommendations, which in part explains the continuing decline in S106 delivery noted above. However, at the local level there have been some significant developments which support them. This is shown by the following policy developments.

1. Definitions of Affordable Housing

National Policy; Starter Homes

In our last report we urged the definition of affordable housing in the NPPF to be tightened and linked more clearly to ability to pay and targeted at those in greatest need. Recent changes have gone in the opposite direction to our recommendations. Prior to the 2016 Housing and Planning Act the definition of affordable housing in the NPPF excluded low market housing. By inserting a new Affordable Housing definition which includes these products into the Town and Country Planning Act 1990 the 2016 Act confirmed in legislation that initiatives such as starter homes and rent-to-buy will now count as 'affordable housing' in relation to the NPPF and therefore in s106 negotiations. The implications of this are that this will divert 'affordable provision' towards intermediary and low cost home-ownership models and away from those on lowest incomes. This is on top of our previous criticisms of the NPPF definition of affordable housing which removed references in previous policy to a households' ability to pay. Further through a combination of this policy and appeal hearings the default for rented housing in planning policy was established as the affordable rent model (as opposed to social rent) which puts rents at up to 80% of market value.

Starter Homes are a new form of Affordable Housing aimed at first time buyers between the ages of 23 and 40. The government states they will be sold at no more than 80% of open market value, capped at £450,000 in Greater London and £250,000 across the rest of England. The controversy over their inclusion as 'affordable' stems from three concerns: firstly that they are aimed at the 'squeezed middles' excluded from a hyper-inflationary housing market and not at those in greatest need; secondly, that as the discount is not recouped if the purchaser sells after 5 years, the requirement that public subsidy should be secured in perpetuity contained in previous definitions is not met. Finally, starter homes will replace S106 provision; the NPPG states that LPAs 'should not seek section 106 affordable housing contributions, including any tariff-based contributions to

general infrastructure pots, from developments of Starter Homes'. The regulations apply to sites over 10 units on which a minimum of 20% starter homes should be provided.

However new powers are given to the Secretary of State (SoS) in the Housing and Planning Act to issue a 'Compliance Direction' to ensure LPAs carry out the requirement for starter homes as opposed to their existing planning policies thereby undermining the principles of localism (Turley, 2016).

In Jan 2017 the government announced the first 30 schemes funded through the £1.2b Starter Home fund. These are largely on previously used industrial and commercial land not included in LPA 5 year land supplies i.e. exception/windfall sites. Despite some speculation that the May administration which came in in 2016 would refocus the Starter Homes initiative to include some affordable rent properties the first round of schemes were exclusively for low-cost home ownership. Precise numbers that will be delivered are also not currently stated by Government, suggesting the 200,000 homes per year to 2020 target will be difficult to meet.

The Housing White Paper published on 7th Feb 2017 contained some welcome modifications to these initial proposals. The repayment period was extended from 5-15 years, and the requirement for low cost homeownership on sites was reduced from 20% to 10%. Eligibility criteria for accessing starter homes has also been tightened and the emphasis shifted from starter homes alone to 'a wider range of affordable housing'. However lack of clarity remains over whether starter homes will count towards local plan affordable housing targets and whether Starter Homes will take precedence over other forms of affordable housing in the implementation of local plan policies. The White Paper merely states 'it will be for local areas to work with developers to agree an appropriate level of delivery of starter homes, alongside other affordable home ownership and rented tenures'. Nevertheless new powers are given to the Secretary of State (SoS) in the Housing and Planning Act to issue a 'Compliance Direction' to ensure LPAs carry out the requirement for starter homes as opposed to their existing planning policies thereby undermining the principles of localism (Turley, 2016).

Notwithstanding these changes the definition of affordable housing put forward for consultation in the White Paper contains some major changes, in part to accommodate Starter Homes.

The definition of affordable housing prior to these changes was

*Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision..... Homes that do not meet the above definition of affordable housing, such as "low cost market" housing, may not be considered as affordable housing for planning purposes.
(<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/annex-2-glossary/>)*

A revised definition was put forward in the Government's "National Planning Policy: consultation on proposed changes" in December 2015. Para 9 states

'We propose to amend the national planning policy definition of affordable housing so that it encompasses a fuller range of products that can support people to access home ownership. We propose that the definition will continue to include a range of affordable products for rent and for ownership for households whose needs are not met by the market, but without being unnecessarily constrained by the parameters of products that have been used in the past which risk stifling innovation. This would include products that are analogous to low cost market housing or intermediate rent, such as discount market sales or innovative rent to buy housing. Some of these products may not be subject to 'in perpetuity' restrictions or have recycled subsidy. We also propose to make clearer in policy the requirement to plan for the housing needs of those who aspire to home ownership alongside those whose needs are best met through rented homes, subject as now to the overall viability of individual sites.'

Further para 7 says; 'The provision of affordable housing is about supporting households to access home ownership, where that is their aspiration, as well as delivering homes for rent'. This suggests that the Conservative government which replaced the Coalition in 2015 sought to shift affordable housing definitions and funding towards home ownership despite the fact the government's own equalities statement on the consultation showed it would impact negatively on low income groups.

The Housing White Paper enshrines these proposals in a new definition which removes any reference to the link between incomes and house prices and also the 'in perpetuity' requirement for public subsidy.

Affordable housing: housing that is provided for sale or rent to those whose needs are not met by the market (this can include housing that provides a subsidised route to home ownership), and which meets the criteria for one of the models set out below.

Social rented and affordable rented housing: eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the Government's rent policy. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Starter homes is housing as defined in Sections 2 and 3 of the Housing and Planning Act 2016 and any subsequent secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute at the time of plan-preparation or decision-taking. Local planning authorities should also include income restrictions which limit a person's eligibility to purchase a starter home to those who have maximum household incomes of £80,000 a year or less (or £90,000 a year or less in Greater London).

Discounted market sales housing is housing that is sold at a discount of at least 20 per cent below local market value. Eligibility is determined with regard to local incomes and local house prices. It should include provisions to remain at a discount for future eligible households.

Affordable private rent housing is housing that is made available for rent at a level which is at least 20 per cent below local market rent. Eligibility is determined with regard to local incomes and local house prices. Provision should be made to ensure that affordable private rent housing remains available for rent at a discount for future eligible households or for alternative affordable housing provision to be made if

the discount is withdrawn. Affordable private rented housing is particularly suited to the provision of affordable housing as part of Build to Rent Schemes.

Intermediate housing is discount market sales and affordable private rent housing and other housing that meets the following criteria: housing that is provided for sale and rent at a cost above social rent, but below market levels. Eligibility is determined with regard to local incomes and local house prices. It should also include provisions to remain at an affordable price for future eligible households or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement. These can include Shared Ownership, equity loans, other low cost homes for sale and intermediate rent (including Rent to Buy housing).

This means that the only requirement for 'affordability' is that it is below market value, although there is a cap put on household incomes to be eligible. The definition in effect merely lists a range of affordable housing 'products' that can be delivered through planning and greatly restricts the possibility of planning policies being used positively to bring house prices and incomes more into line.

In summary changes in national planning policy definitions of affordable housing are likely to mean that s106 provision will be shifted towards low cost home ownership and away from households in greatest need.

Alternative Definitions of Affordable Housing

In contrast to national policy there have been policy developments in some local areas, notably London and Manchester which are seeking to establish a different definition of affordable housing. In our previous report we noted that some LPAs were setting rent levels through S106 and other planning and housing policies. This practice has become more explicit and wider definitions of affordable housing have been set. For example, Manchester City Council agreed an Affordable Housing Framework in Jan 2017 which defines affordability as 30% of an average household's gross income (Barnes 2017). The Council states that it will use this definition of affordability in planning and other policies, however precise details are not yet available. In support of this decision the report quotes practice in the US, the use of such a level by private lettings agencies in the NW and the standard of 4.5x income for mortgages which all equate to 30%. The council argue this will allow a multi-tenure approach to affordability as affordability is not defined by a type of housing but by its costs in relation to incomes. However the report also states that social rented housing will only normally be provided to replace units lost through RTB or to provide sheltered housing.

The GLA and some London boroughs have similarly recently introduced new affordability thresholds. In a recent policy document the GLA has initiated a London Living Rent which is set at 30% of the median income for a borough/ward (GLA 2016b). Initially this is to be applied to rent to buy schemes which provide a subsidised rent for 5 years enabling occupiers to save for a deposit. They have the option of buying all or part of the property at the end of that time. This is again therefore an intermediate product. Build to rent developments will be fast-tracked through the planning system and will not be subject to any further s106 agreement.

In addition the GLA has set affordable rent benchmarks for the size and location of properties which are below the 80% of market rent level referred to in government policy (GLA 2016b). These rent levels are expected to be met by bidders to the GLA's Homes for Londoners affordable housing scheme (check value). This reflects a growing trend of LAs seeking rent levels below the 80% market

rents suggested in the affordable rent model. Therefore even if a S106 allows a rent level of up to 80% market rent boroughs can negotiate a lower rent and/or registered providers who may be delivering the s106 affordable housing will have their own rent setting mechanisms.

Tower Hamlets has a similar Borough Framework rent, based on the Pod rents discussed in our previous report. This also takes 30% gross income as a threshold and varies by the size of property and by postcode area. Targets are then set for properties on the basis of a percentage of market rent e.g. 2 bed £202-253 in 15/16. The aim is to rent larger properties at social rent levels. However with the general rise in rents in the area there are concerns that this will result in increasingly higher rents. Therefore on s106 the policy is to 'explore the option to reduce Borough Framework rents to more affordable levels including social target rents taking into account impact on viability and possible reduction in overall affordable housing units' (LBTH 2016).

Intriguingly in her foreword to the Housing White Paper Theresa May refers to the fact that 'more than 2.2 million working households with below-average incomes spend a third or more of their disposable income on housing.' However this is not carried forward to its logical conclusion that the definition of affordability is changed to ensure that they don't i.e. that it is set at one third of disposable incomes. Therefore while national policy definitions would suggest that a) the affordable housing deliverable through S106 has shifted towards owner-occupation, b) across all affordable products the cost of this housing is assumed to be c80% of market rates and c) the requirement that subsidy be available in perpetuity is likely to be revised, local practice is showing that alternatives to this are possible.

2. Viability and Negotiating S106 agreements

A similar picture emerges when exploring the negotiation of S106 agreements, particularly around the issue of viability. Our previous report noted that the increasing reliance on viability within planning policy and practice was a key factor in reducing the ability of s106 to deliver affordable housing. This was because developers would argue that meeting policy requirements for affordable housing made a scheme unviable and would seek to negotiate lower percentages than stated in local plan policies. However our research also noted confusion and conflict over how viability was assessed, particularly in respect of threshold land values. In conjunction with other planning reforms this was contributing to the erosion of delivery through s106. There was also variable performance across LPAs linked to housing market conditions and in-house viability skills and the management of negotiations.

Nationally this picture has not changed significantly with no major changes to the guidance on viability; however, there is evidence that some LPAs have been developing stronger policy and practice. A number of, largely London-based, LPAs have issued supplementary planning documents on viability (LBI, 2016; LBTH, 2016; London Boroughs Viability Group 2016; GLA, 2016). These set out agreed procedures and parameters aimed at increasing the amount of planning obligations secured. They largely refer to the setting of threshold land values (a key issue in viability appraisals) at existing use value plus a return to the landowner to release the land. Other requirements such as transparency of documentation and the setting of break points/clawback agreements in phased developments are also often included.

One such council is Tower Hamlets who reported that they have been successfully using use value plus 20% in negotiations for some time. This then enables them to extract more of the uplift in land value for affordable housing (interview with LBTH viability officer). Tower Hamlets is a borough with the highest housing targets in London and a strong housing market which may contribute to their ability to secure such agreements. Most other councils with such SPDs are in inner London. A London Boroughs Viability Protocol has also been published and is being used/adopted across the capital (LBVG, 2016). Therefore there is evidence that skills in viability and negotiating are being developed within and across councils and planning authorities are developing policies to counteract the impact of viability on S106 delivery. However this is again patchy and linked to areas with strong housing markets where arguably profit levels allow for a higher level of value extraction. Evidence from some of our other case studies confirms that in areas with weaker housing market viability remains a key issue.

Another response has been to bypass viability entirely. The GLA has proposed a tariff of 35% affordable housing in response to a fast-track planning permission with no viability appraisal required (GLA, 2016a). The intent is to increase this to 50% once policy changes to the London Plan are made which would support such a level. A S106 would still be used, but this would be for a non-negotiable flat-rate.

Response to this has been varied. Interviews reveal that some boroughs feel it is too low, others too high and the development industry is similarly divided. However, 35% also represents the average level achieved on sites called in by the GLA over many years, including those when the target under the previous London Plan was 50%. As this tariff was only proposed in November 2016 it is too early to say how effective it may be and how many developers may choose to use this route rather than opting for a VA, nevertheless it represents an interesting response to the viability dilemma.

The Housing White Paper ignores the issues of how viability should be assessed. It does however make frequent references to the need to ensure that the viability of schemes is not adversely affected by any of its measures. As a result the current situation is likely to continue. More frustratingly the review of CIL published on the same day as the White Paper similarly fails to grapple with viability and in particular the way in which land values are calculated in VAs. It does however importantly reaffirm the importance of S106 as a way of providing affordable housing. Para 5.2.14 states 'We see no alternative, therefore, to affordable housing continuing to be negotiated as part of the Section 106 arrangements. Progress towards standardisation of Section 106 agreements would, however, expedite the process, as would local agreements on a fixed rate for affordable housing'. This is a welcome recognition of the importance of S106 by all sides (including the development industry). The proposals for Local and Strategic Infrastructure Funds to replace CIL and for S106s to be reintroduced to cover infrastructure as well as AH for complex, large sites could however impact on S106's ability to provide AH. The review recommends that the Chancellor's Autumn Statement should contain regulations and policies on a revised CIL/LIF/s106 regime. It is important therefore that representations are made to ensure this maximises affordable housing provision.

3. Numbers v Affordability

Starter Homes aside, the main thrust of housing policy since our last report has been to reinforce the priority of numbers over affordability. In September 2015 then housing Minister Brandon Lewis announced the government wanted to build 1m homes by 2020 (200,000 per year). As only 140,000 were built in the year 2015-16 this target looks ambitious. Nevertheless a variety of schemes have been introduced in an attempt to meet it. These include new garden towns and villages with a potential to deliver 200,000 (villages are for schemes between 1,500 and 10,000 homes and towns for 10,000+). 17 such settlements have been agreed to date. With local authorities bidding for schemes in return for a share of a £7.2m pot and relaxed planning powers (DCLG 2016). The government press release announcing these makes no mention of affordability; prospectuses imply the schemes will follow local plan policies; however, this will only be tested in implementation. This underlines the continuing importance of S106 in balancing affordability and numbers and the new 'planning freedoms' introduced will need to be closely monitored to ensure they do not undermine its potential to deliver.

In Nov 2016 Philip Hammond the incoming chancellor in the May administration announced a £2.3bn Housing Infrastructure Fund with the aim of providing 100,000 homes in areas of high demand available until 2020-21. This provides the potential for unblocking sites and removing the competition between using planning obligations to fund either infrastructure or affordable housing. In our previous report the Cambridgeshire case study revealed that using HCA infrastructure funding had a significant impact on affordable housing delivery, however, in the absence of clear statements about the delivery of affordable housing linked to such funds the impact on those in greatest need is questionable.

New schemes to diversify housing supply away from reliance on the largest housebuilders and towards community and self-builders have also been announced. These are to be welcomed as our previous report showed that moving provision away from volume house builders was likely to increase affordable provision. A £3b loan fund was announced in Nov 2016 to help SME builders deliver up to 25,000 homes by 2020. This consists of £1b for builders and £2bn for infrastructure. In April 2016 requirements for councils to keep a register of self-builders and to allocate land in local plans to address their needs was introduced. In March 2016 a new £60m fund for community-builders was announced funded through the receipts from the higher rates of Stamp Duty Land Tax on additional homes (i.e. Second Homes) that will come in on 1st April 2016. This money is made available to LAs to invest in community-led schemes. Allocations were announced in Dec 2016 ranging from £20m pa in the South West to £1.3m in the North East. This diversification of delivery may provide increased opportunities for affordable housing delivery; however, this remains to be seen.

Outside planning policies the Affordable Homes Programme continued the trend towards supporting low-cost home ownership with even affordable rents being excluded from bids for the 2016-19 funding rounds. Taken together these factors resulted in the numbers of affordable homes dropping to a 24 year low in 15-16 when only 32,110 were completed. Although the government claimed this was a result of the end of one Affordable Homes programme and the start of another it is perhaps indicative that our report's previous call to rebalance numbers and affordability has not been heeded.

The White Paper represents a further triumph of numbers over affordability for three reasons. Firstly there is the definition of affordability it proposes as already discussed above. The second reason, which has also been very well documented by Shelter and others, is that it fails to adequately address the issue of land and particularly land costs. It is not all bad news here. There are proposals to make information on land ownership more transparent and the confirmation that local authorities should seek best consideration and not best value for land disposals could also help providers currently outbid by commercial players and increase the supply of affordable homes. There is also encouragement for local New Town –type Development Corporations to be set up which would have enhanced land acquisition powers and a request for suggestions on whether there should be changes to Compulsory Purchase Orders powers. But, as already noted, an opportunity to address the issue of how land should be valued has been avoided both in the White paper and the review of planning obligations and the Community Infrastructure Levy. Valuing land at existing use value allows more of the uplift in value resulting from planning permission to be extracted to provide social and community benefits (including affordable housing). One of the biggest barriers to affordable housing provision is the way in which viability is calculated; viability allows developers to say they cannot meet the requirements in local plans to provide affordable homes because the costs to income calculation does not allow it. Current DCLG guidance favours market value over use value as the land costs to be used in these viability appraisals. As a result there is less uplift to extract, less affordable housing and less opportunity to turn numbers into genuinely affordable (ie one third of median incomes) housing.

So what is needed is for more powers to acquire or CPO land at use value by local authorities and other public or semi-public bodies. In addition the best consideration concession needs to be extended to charities not just public bodies. This would allow churches, universities and others to use their land holdings to contribute better to providing more affordable housing. Finally, the viability guidance needs to be modified to enshrine use value as the benchmark in appraisals.

The third reason is that there is still too much emphasis on the market in providing affordable homes, although there are attempts to modify the market through, for example ,requiring developers to build-out existing permissions and encourage SME builders. Once again the role of local authorities is restricted to that of identifying land for housing in local plans, with the market somehow miraculously providing enough numbers at low prices.

But it is well known that the only time this country ever built enough housing to meet needs in terms of both numbers and costs was when local authorities were major players. Once again there is some lifting of financial restrictions on LAs in the White Paper and Local Housing Companies are encouraged, but this is not enough. And the allegiance to markets remains with the definition of affordability, with the expectation that increasing housing numbers will lead to lower prices (when has housing ever been a perfect market!) and with the burgeoning housing benefit bill which grows alongside the inflation of rents.

This supply side focus the real issue is not numbers but whether those ‘hard working families’ will ever be able to access an ‘affordable home’. And addressing this issue is not as complex as government would have us believe. What is required is the political will to enable democratic and transparent organisations to acquire land at low cost, to develop this and to reinvest the uplift in land values into infrastructure and affordable housing pegged to one third of median incomes. If

that means breaking with the market so be it – because the market, as the government tells us, is already broken.

4. Localism

The contradictions in localism noted in our previous report continue. Government continues to erode the autonomy of LPAs to set policies to meet their local housing needs through the changes to national planning policy and guidance outlined above. However there is evidence in the operation of schemes such as Garden Villages that more of a partnership approach is being sought with LAs bidding for potential schemes to be included.

Nevertheless there are indications that local authorities are using financial and other powers to positively introduce measures to strengthen s106, challenge definitions of affordability and to deliver more affordable housing through initiatives such as Local Housing Companies. Regional governance such as through the GLA and the combined Greater Manchester Authority appear to offer particular opportunities for innovation. Again further indications of the direction of travel will be available in the Housing White Paper.

It is not the intention of this report to focus on these alternative delivery mechanisms. However, they suggest that another of our recommendations that local authorities and their partners be able to develop and deliver localised strategies to meet their particular ways are continuing to evolve.

5. Other Changes

The 2016 Housing and Planning Act introduced a number of measures which impacted on s106. Firstly, the introduction of starter homes was enshrined in legislation. Secondly, the possibility of achieving ‘permission in principle’ (PIP) for housing developments was introduced. This in effect shifts the UK discretionary planning system towards a US zoning system, meaning that if a site was zoned for housing in a plan planning permission would in effect be granted (subject to technical matters). This technical details consent (TDC) may include provision for planning obligations and CIL. However while s106’s would not be ruled out by PIP it is unclear as yet what the impact may be. One significant factor is that should a site be zoned for housing its existing use value is changed before planning permission is granted, resulting in less uplift to be extracted for community purposes. This could impact on S106 negotiations. Finally the act introduced a dispute resolution process for planning obligations. Under these sections of the Housing & Planning Act, the Secretary of State is permitted to make regulations which “may impose restrictions or conditions on the enforceability of planning obligations entered into with regard to the provision of (a) affordable housing; or (b) prescribed descriptions of affordable housing.” In effect this increases central government’s powers to intervene in disputes.

One apparent positive change was the decision not to extend the rights of developers to renegotiate s106 agreements under the 2013 Growth and Infrastructure Act. This expired in April 2016. However, there were decreasing numbers of cases being brought under this provision with most

other cases were resolved through the normal planning mechanisms. Therefore in effect this had little impact and is in effect superseded by the powers introduced in the HPA noted above.

Our previous research recommended that the removal of sites below 10 units from the requirement for a S106 announced in 2014 should be reversed. In August 2015 a legal challenge to this directive by West Berkshire and Reading Councils was successful only to be overturned itself in May 2016 when the Government appealed. However, the complications continue as it is still possible for councils with up to date plans for whom policies on small sites contributions are an essential tool in delivering their housing targets to levy them; in effect the argument being that an adopted plan is a greater material consideration in determining a planning application than a ministerial directive. There is no clear evidence available on whether these contributions are still being successfully negotiated and some authorities are not aware they still can. In addition the White Paper and the CIL review both confirm the 10 unit threshold.

Many LPAs have reported that restrictions on pooling s106 (a reduction in the number of agreements which could be combined) has presented major difficulties not just around housing but also in providing other support for new housing schemes such as open space and community facilities. It is therefore good to see that the CIL review strongly recommends lifting this restriction.

Our previous report also explored the impact of CIL on S106. Our initial conclusions that this was likely to be minimal given CIL would be taken into account when setting local plan policies appear to be supported over time. However the most significant issue with CIL appears to be that it is set too low to meet infrastructure costs in general. The CIL review broadly confirms both these findings and says there is no clear evidence on the impact of CIL in the ability of S106 to deliver affordable housing.

Conclusions

The current situation regarding s106 in many ways extends the trends confirmed in our previous report namely that s106 is still an important delivery mechanisms but it is under threat and its capacity to deliver is declining. While national planning policy continues to erode its powers, LPAs (largely in strong housing markets) have continued to assert a plan-led approach to delivering affordable housing and have in some cases strengthened their policies and practices to implement this. However, performance and delivery continues to be patchy across the country and the overall direction of travel is towards a more flexible and viability-based planning system. Where this will leave the provision of affordable housing within the 1m homes promised therefore remains to be seen and this issue needs to be higher up the agenda of all parties concerned.

There is some potential for alternative delivery mechanisms, particularly at the local level, to be strengthened within the changes that have occurred and are planned, but again how these will translate into numbers and affordability is currently unclear.

Overall the picture is confused and confusing with many practitioners not being aware of the actions they can take to ensure the delivery of affordable homes. The White Paper and the CIL review have made some welcome attempts to provide clarity, in particular the affirmation of the significance of s106 by the CIL review team is very much to be welcomed and the amendments to the Starter

Homes. However it is unlikely that the measures contained in the White Paper provide a basis for the rebalancing of numbers and affordability our original report called for,

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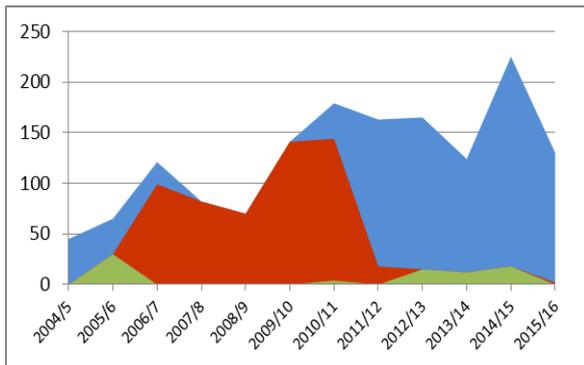
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Appendix 2: Total affordable housing completions by typology and case study areas 2004/05 to 2015/16

■ Total Affordable housing
 ■ S106 total
 ■ S106 Nil Grant

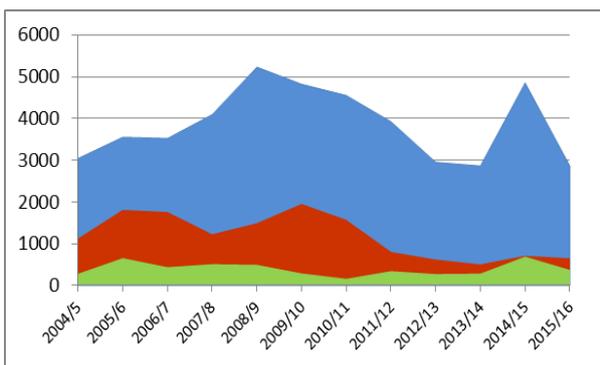
Case study area

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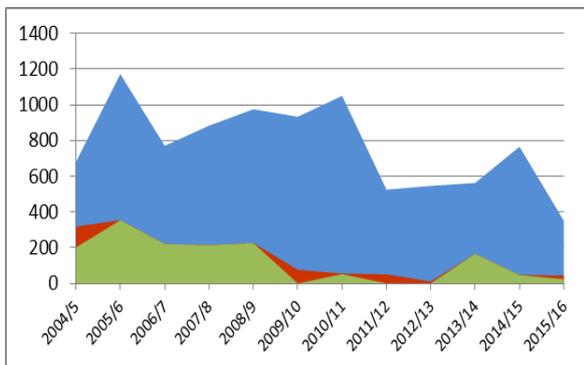


LA typology

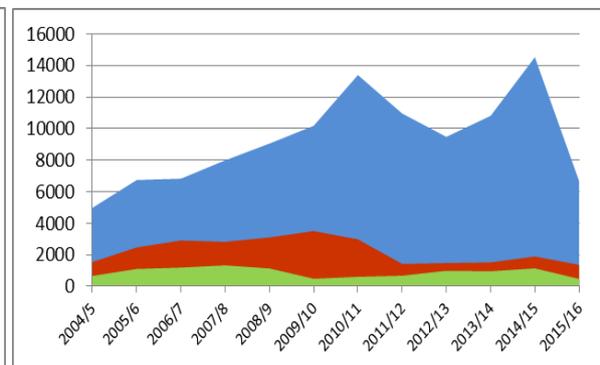
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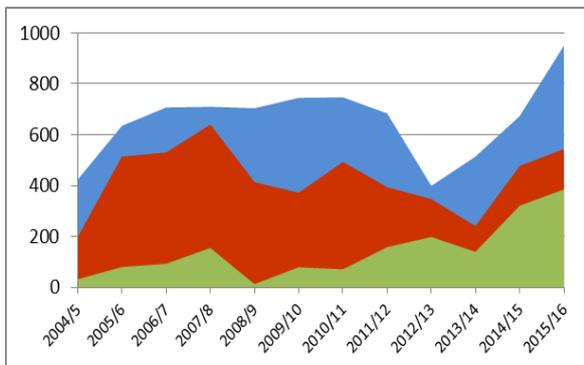
Birmingham



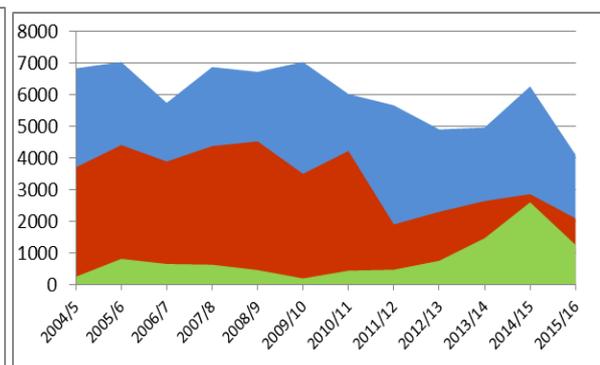
Industrial and manufacturing town



Oxfordshire



Prospering Southern England



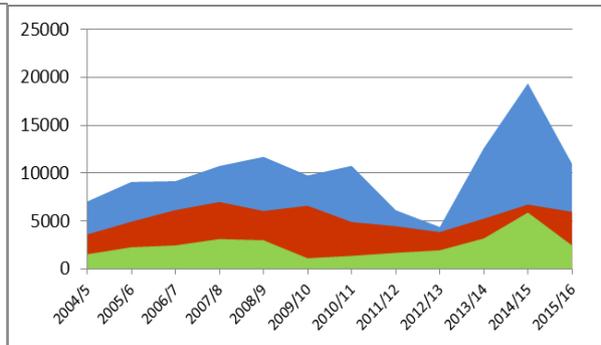
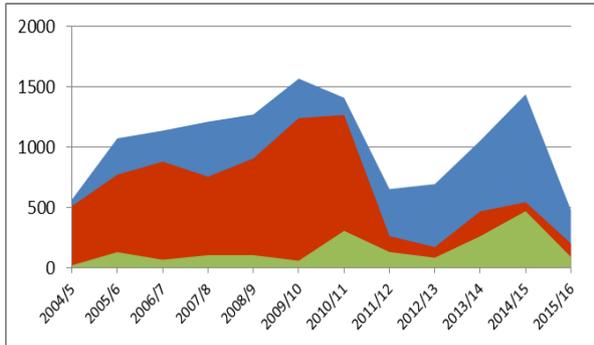


Case study area

LA typology

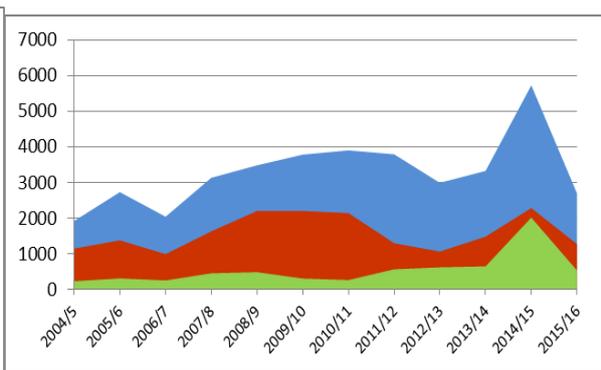
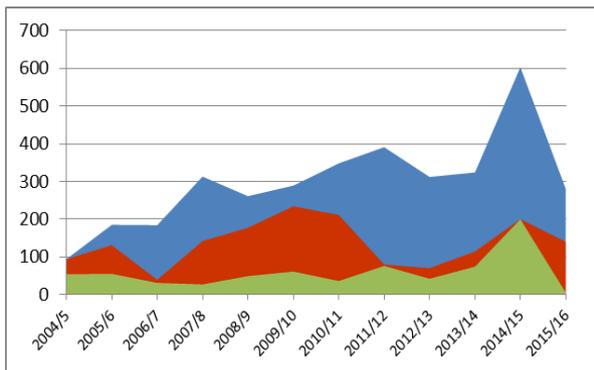
Cambridgeshire + Peterborough

New and Growing towns



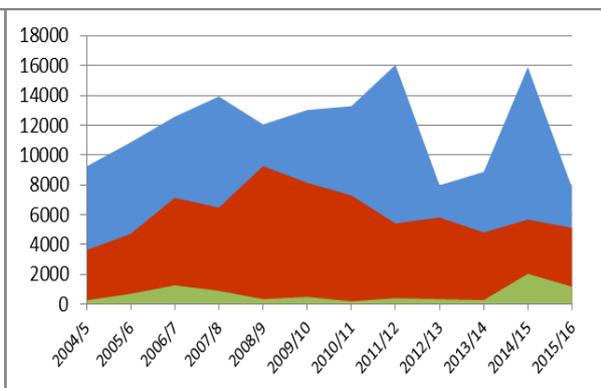
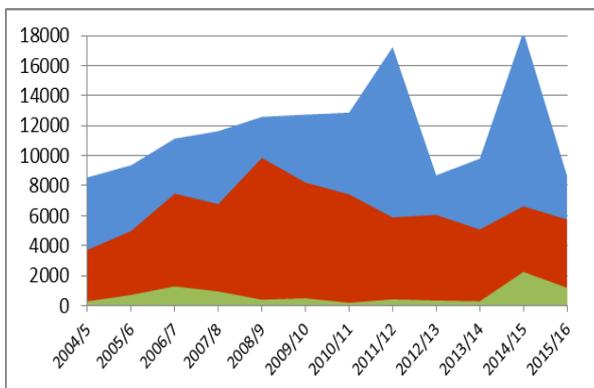
Cumbria

Coast and countryside



London

London¹



¹ Among 33 London boroughs, 3 boroughs are classified into different typology (Barking and Dagenham as Industrial and manufacturing, Bexley and Havering as Growing Towns)