Department for Communities and Local Government

Section 106 Planning Obligations in England, 2011-12

Report of study

May 2014
University of Reading and Three Dragons
In association with Hives Planning, David Lock Associates and DLA Piper LLP

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Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

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The team for the study included the following organisations and people:
Reading University: Prof Pat McAllister (subsequently at UCL), Dr Emma Street, Prof Pete Wyatt
Three Dragons: Sheila Cooper, Lin Cousins, Paul Dunnell, Kathleen Dunmore, Kate Kirkland
Hives Planning: Rebecca McAllister, Jon Sebbage
David Lock Associates: Heather Pugh, Joseph Thomas
DLA Piper LLP: Ian Green, Amy Truman

Executive Summary

1. Over the last decade the Department for Communities and Local Government has commissioned a series of studies that seek to estimate the quantity and financial value of planning obligations negotiated between landowners, developers and local planning authorities. In 2003-4, it was estimated that planning obligations worth £1.9 billion had been secured. Partially due to growth in house and land values, by 2005-6, this had increased to an estimated £4 billion. In 2007-8, the value of planning obligations was estimated at £4.9 billion. This study, which covers 2011/12, is an update of the previous studies. The study estimates that the total value of planning obligations agreed during the year 2011/12 was £3.7bn.

2. The scope of the 2011/12 research has broadened to evaluate the on-going role of planning obligations in the context of the shift to the new regime for planning obligations created by the introduction of the Community Infrastructure Levy. It also investigates the extent to which planning obligations can affect development viability and stall potential development sites. As in previous years, the study included a survey of local planning authorities in England and achieved a response rate of 40%.

3. The other main findings of the study are as follows:-

   - A reduction in the level of development activity since the previous study was a recurring theme. This is illustrated by data on new housing starts in England which were 38% lower in 2011/12 than in 2007/08 and new orders for industrial and commercial development[1] which were down by 51% over the same period. Whilst neither housing starts nor new orders are exact proxies for section 106 agreements, this data does indicate the scale of the fall in construction activity between the last study and the current update.
   - There was a drop of approximately one third in the number of planning agreements per local authority compared to 2007-8.
   - In total, a nominal fall in the value of planning obligations of approximately 23% since 2007-8 is estimated. This is mainly due to large drops in the value of in-kind and land contributions. The values of agreed affordable housing (£2.3bn in 2011/12) and direct payments (£1bn in 2011/12) are broadly comparable with 2007/08. It is unlikely that the decline in in-kind and land value contributions can be attributed to deteriorating market conditions.
   - It was estimated that approximately 32,000 affordable homes were agreed through section 106 agreements. This compares to over 48,000 in 2007-8; a 33% reduction.
   - It was estimated that just over £1bn of direct payments were agreed with education and transport accounting for nearly 60% of the total direct payments; payments for education contributions were broadly unchanged from 2007/08, whereas contributions to transport and travel had increased.

[1] At 2005 prices

Contributions to community facilities fell, but there was a big increase in contributions to infrastructure/other.

- The value of land contributions was estimated at approximately £307m. Over 70% of it is land for open space and affordable housing. This is a substantial decrease from previous studies but this seems to be due to the fact that a much larger proportion of land contributions in previous studies were made in London boroughs with high land values.
- Onsite affordable housing provision secured through planning obligations in 2011/12 has been concentrated in London, which accounts for 52% of all units agreed. London also had the highest number of affordable housing units in 2007/08 (just under 30% of the total), but the difference between London and the rest of the country was not as pronounced as it is in 2011/12.
- From across the country, there are examples of schemes that have 'stalled' i.e. been granted planning permission and then not progressed. Drawing on nationally available data, stalled developments are found to be concentrated in high density schemes of which a substantial majority were brownfield. Most stalled residential development sites were located in the lower land value areas.
- At the other end of the development spectrum, large-scale Greenfield urban extensions can also become stalled and, although few in number, can represent a high proportion of planned new housing supply in some locations (particularly the former growth areas and growth points).
- In-depth analysis of stalled sites supports the view that changing market conditions have been a major determinant of the slow-down in their progress but disagreements amongst consortia of landowners and difficulties in securing development finance are also factors contributing to delays.
- The interaction of changes in both costs and values since 2007/08 has not been uniform across the country or across development types. Viability analysis suggests that high value locations, such as London, have bounced back better from the fall in market values in 2007/08 and are more able to absorb recent increases in build costs. There is therefore less reason for sites to remain stalled in these locations. Medium and low value areas, where house prices are still below 2007/08 levels and build costs have recently started to rise again, are likely to have experienced continued problems with sites that have been stalled for some time.
- Early indications are that the introduction of the Community Infrastructure Levy will run alongside significantly scaled back section 106 payments but the degree to which this is happening varies between authorities. With the levy in place, the overall funding available for infrastructure may be higher as all dwellings contribute to the levy, whereas section 106 planning contributions have tended to be for larger schemes. Given the newness of the levy, these findings are tentative and very preliminary. This is a topic that the Department for Communities and Local Government may wish to return in a year or so to assess the scale of the changes tentatively indicated in this report.

- In terms of the type of infrastructure that local authorities are identifying for Community Infrastructure Levy funding, as set out in their ‘Regulation 123 list’, education and transport are the most common elements of early lists but with considerable local variation thereafter, depending on assessments of local need.

1 Introduction

Scope of the Research

1.1 Three previous studies have tracked the scale and main sources of planning obligations collected by local authorities[2]. The studies have all provided estimates of the number and proportion of planning permissions that attract section 106 agreements and the value of such obligations including an analysis of the type of obligation collected (e.g. for affordable housing, transport, open space). The most recent study was published in 2010 and, as with those published in 2006 and 2008, relied on a research approach which combined a survey of all English local planning authorities, case study work with a sample of local authorities and analysis of planning and housing data collected by Central Government.

1.2 This latest study has collected comparable information about the scale and composition of planning obligations. This has been supplemented with additional collection and analysis of primary and secondary data to address a range of related issues about the challenges and trends in setting planning obligations and Community Infrastructure Levy charges.

1.3 The objectives of the study are to:

a) update evidence on the number and value of planning obligations for 2011/12;

b) gather evidence on the impact of section 106 agreements on development viability;

c) explore, in particular, the value and impact of affordable housing delivered through section 106;

d) consider the likely impact of the Community Infrastructure Levy on section 106 benefits, and the relationship between the Community Infrastructure Levy and section 106.

We set out below some of the key contextual matters that have shaped our approach to the study.

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[2] Crook ADH, Henneberry, JM, Rowley S, & Watkins CA with the Halcrow Group (2006), *Valuing Planning Obligations in England* London Communities & Local Government.
http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/archived/publications/planningandbuilding/valuing-planning
Crook ADH, Henneberry, JM, Rowley S, Smith RS, & Watkins CA (2008), *Valuing Planning Obligations in England; Update Study for 2005-06,* London Communities & Local Government.
http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/obligationsupdatestudy.pdf
Crook ADH, Dunning R, Ferrari ET, Henneberry, JM, Rowley S, Watkins CA, Burgess G, Lyall-Grant F, Monk S, & Whitehead CME (2010), *The Incidence, Value and Delivery of Planning Obligations in England in 2007-08,* London, Communities & Local Government.
http://www.cchpr.landecon.cam.ac.uk/Downloads/VPO3%20final%20report.pdf

Research Context

1.4 For the last four decades, under section 52 of the Town and County Planning Act 1971, applicants and local planning authorities have been able to enter into legally binding planning agreements as a condition of the grant of planning permission. Following the enactment of the Town and Country Planning Act 1990 (as amended), these agreements were replaced by similar agreements but referred to as planning obligations under section 106 of that Act. These obligations can include:

- on-site and off-site provision of affordable housing and/or land for affordable housing;
- provision of open space, environmental improvements, ecology, nature conservation, allotments and countryside management;
- provision of sports and community facilities e.g. public toilets, public art, employment and training *inter alia;*
- temporary and permanent highway works, provision or improvement of footpaths and/or cycle routes, traffic and parking management, green transport and travel plans, public transport improvements;
- provision of schools or improvements to schools;
- Payments in lieu of the above.

1.5 Planning agreements are contractual arrangements between local planning authorities and developers/landowners that are related to a planning permission. A single planning agreement can include a number of planning obligations.

1.6 In the last decade, it has become common for local planning authorities to set tariffs or standard charges for planning obligations. These, it is argued, introduce a degree of certainty into the planning obligation estimation process and remove the need for negotiations but, if fixed at too high a level, can cause potential development to be financially unviable, particularly in low value and/or high cost locations and following market downturns.

1.7 The tariffs that some local authorities have introduced can be regarded as a step towards the Community Infrastructure Levy introduced by the Planning Act 2008. The Community Infrastructure Levy came into force on the 6 April 2010 and is a new local levy that local authorities can choose to introduce to help fund infrastructure in their area. The levy is a standard charge that provides funding for strategic infrastructure to run alongside scaled back section 106 obligations which are intended to relate only to site-related mitigation and affordable housing. *Community infrastructure levy rates should not "put at risk the delivery of the relevant Plan[3]".* Charging authorities*, "must aim to strike what appears to the charging authority to be an appropriate balance between* the desirability of funding

[3] Department for Communities and Local Government, Community Infrastructure Levy Guidance, December 2012

infrastructure from the levy and *'the potential effects' (taken as a whole) of the imposition of community infrastructure levy on the economic viability of development across its area*" (Regulation 14).

1.8 An additional matter concerns the way in which the Community Infrastructure Levy operates in relation to remaining section 106 requirements (and other calls on development such as through section 278) to deal with measures for site-specific mitigation. Pursuant to Regulation 122 of the Community Infrastructure Levy Regulations 2010, there is now a statutory test for planning obligations. This requires that, for such obligations to be a material consideration in making a planning decision, they must be:

a) necessary to make the development acceptable;

b) directly related to the development;

c) fairly and reasonably related in scale and kind to the development.

1.9 An important change in the regime regarding planning obligations in the last decade has been the use of development viability modelling to provide an evidence base for both site-specific negotiations between local planning authorities and developers, and the formation of policies regarding land allocations, planning obligations and, increasingly, levels of Community Infrastructure Levy. The National Planning Policy Framework (2012) reinforced the importance of viability in plan making and stated that planning authorities should pay "careful attention to viability". Echoing standard definitions of the market value of real estate assets, it states that:

"[T]o ensure viability, the costs of any requirements….such as requirements for affordable housing, standards, infrastructure provision and other requirements should… provide competitive returns to a willing landowner and a willing developer to enable development to be deliverable" (Department for Communities and Local Government, 2012, 41).

Clearly, development viability modelling is likely to remain central to the setting levels of the Community Infrastructure Levy and other planning obligations.

1.10 Previous studies on the incidence, value and delivery of planning obligations were undertaken in an environment of significant economic growth which saw the increasing use of planning obligations. An important aspect of this research is methodological continuity with these previous studies. However, it is worth pointing out that previous studies reflected changes in development markets and policy, and the legal context in which planning obligations operated at the time of the study. Important contextual changes for the current study include reduced levels of public subsidy for affordable housing, new forms of affordable housing tenure, the impact on development costs of changes in costs with the change to Part L of the Building Regulations in 2010 and the new direction for planning signalled by the National Planning Policy Framework and the Localism Act.

1.11 The most recent study of planning obligations relates to 2007-2008. Since then, there has been a significant downturn in housing sales values, a consequent reduction in land values and a slow-down in house-building. As house prices fall, viability is weakened and the scale of obligations that may have been acceptable in the past could make a scheme unviable in current market conditions. The

Department of Communities and Local Government has recognised the impact of changed market conditions on development viability and encourages local authorities to be proactive in renegotiating section 106 agreements where viability concerns are perceived to be holding back development. The Growth and Infrastructure Act (25 April 2013) inserts a new section 106BA, BB and BC into the 1990 Town and Country Planning Act which introduces new procedures (including a right of appeal to the Secretary of State) for the review of planning obligations relating to the provision of affordable housing.

1.12 Previous research found that affordable housing accounted for approximately half of the value of all planning obligations. The wide range of viability appraisals undertaken by this research team (at both site-specific and local authority level), indicate that the introduction of affordable housing will tend to have a bigger impact on viability than the other planning obligations sought by a local authority. Since the last study there have been two important changes to the affordable housing 'regime'. The first has been the reduction in grants available for mixed tenure or section 106 schemes (although in many parts of the country this has been the case for a number of years). The second has been the introduction of Affordable Rent. Affordable Rent can be set at up to 80% of average market rents (net of service charges) and provides a greater level of scheme revenue than equivalent dwellings let at social rent levels.

1.13 Since 2008, a body of work has been produced analysing how the planning system and planning obligations have been operating following the recession of 2008. The Homes and Communities Agency (2009) recognised that the continued downturn in the housing and commercial property markets had significantly reduced the scope for achieving viable developer contributions for affordable housing via planning permissions. A key issue has been that a number of developments with planning conditions or obligations agreed before the market downturn are no longer viable and are currently undeliverable in their consented form.

1.14 In research for the Department for Communities and Local Government, Ball (2010, 71) identified "a general feeling that the overall costs of regulation were too high and growing". It was argued that higher costs brought on by regulation make fewer sites viable and that simplification of regulatory requirements would reduce uncertainty, time and costs; all of which improve site viability. Builders reported reluctance on the part of some local authorities to renegotiate section 106 agreements in light of changed market circumstances. It was suggested that areas resistant to new development have a particular incentive to keep section 106 requirements high and that there is a danger that high levels of section 106 on land with current planning permission may sterilise residential development land. It was also pointed out that local authorities still expected section 106 payments upfront – often a long time before developers receive revenue from the site which was especially burdensome given house builders' new financial constraints.

An Overview of Research Methods

1.15 Given the range of objectives outlined above, it is perhaps to be expected that a multi-method approach is used to address the various strands of the research. To

provide context to the research, we first undertook a detailed literature review which helped shape the research methods employed.

1.16 Given that one of the objectives of the research is to provide an update to previous studies for the years 2003/04, 2005/06 and 2007/08, the study adopts the methods and assumptions that were used in previous studies. The research, therefore, involves primary and secondary data collection and a blend of qualitative and quantitative research methods.

1.17 Primary data collection takes the form of a survey of all local planning authorities in England (this figure includes National Parks and London Thames Gateway Urban Development Corporation in a manner that updates previous surveys but also elicits additional information relevant to current market conditions and policy context. The overall response rate was 40% - very similar to that of previous surveys.

1.18 In terms of secondary data, we analysed published data sets including those referred to in earlier studies, i.e. the Local Authority Housing Strategy[4] for data on affordable housing and planning statistics for data on planning applications and decisions, Valuation Office Agency data on land prices and Land Registry data on house prices at local level.

1.19 In order to gather evidence on the impact of section 106 agreements on development viability across a range of different development types and sizes, section 106 agreements' impact on developer or landowner returns and the impact of affordable housing 'asks' on development, the approach comprises desk-based analysis of development viability alongside a sample of case study schemes. For the analysis of viability we used a model that conceptualises the relationships between the main input variables in the development process to show the impacts of different market conditions.

1.20 The investigation of the causes of stalled sites and the trends in the adoption of the Community Infrastructure Levy uses case studies to understand how decisions are made about taking development forward. Case study research is particularly useful for providing an understanding of a complex issue or problem as it tends to put emphasis on detailed contextual analysis. It is particularly useful as an exploratory tool where there is limited previous research on topics.

1.21 For in-depth interviews, the literature suggests that saturation is commonly achieved after approximately 6-12 interviews (see Gubrium and Holstein, 2001; Guest, Bunce and Johnson, 2006). The interviews are expected to provide grounded insights into the fundamental causes of 'stalled' sites. Acknowledging that controlling most of the interview agenda will involve a potential compromise between the ability to generalise and discovery, the purpose of the interviews is to explore the relative contribution of planning obligations relative to other factors in stalling sites and to explore other factors inhibiting the development of sites.

[4] In previous years this was called the Housing Strategy Statistical Appendix (Housing Strategy Statistical Appendix).

1.22 A different set of case studies are used to provide a provisional insight into the way the introduction of the Community Infrastructure Levy is interacting with the use of planning obligations and how far section 106 agreements are being scaled back. For this analysis, we have also reviewed a number of viability studies supporting the charging schedules proposed by local authorities (sourced from the web) to give an overview of the scale of planning obligations anticipated when an authority has the levy in place.

1.23 The study has also employed the use of expert workshops to explore qualitative issues with leading practitioners.

Structure of the Report

1.24 The report is divided into two main parts. Part A described the results from the local planning authority survey, including extrapolations of the value of planning obligations. The second part (Part B) discusses issues around scheme viability and the reasons for schemes becoming stalled. Part B also includes a review of the early implications of the implementation of the Community Infrastructure Levy.

1.25 The study conclusions are drawn together in the final Chapter of the report.

Part A: Survey of local planning authorities

2. Planning Agreements: Numbers, Policies and Practices

Introduction

2.1 This chapter reports on the results of the local planning authority survey which relate to the policies and practices around the use of section 106 agreements, the Community Infrastructure Levy and infrastructure provision. The survey questionnaire was used to investigate whether there had been significant changes to the policies and practices of local planning authorities in the light of the downturn in economic and property market activity and the introduction of new policies such as the Community Infrastructure Levy.

2.2 The remainder of the chapter provides data on the numbers of planning agreements, the scale of policies on affordable housing, local authority policies regarding re-negotiation of section 106 agreements and progress on the implementation of the Community Infrastructure Levy. The latter issues are linked to more in-depth analyses presented later in the report on stalled sites and the effects of the levy on development viability

Key Findings

- In total, respondents reported 2,516 planning agreements. Over three quarters of planning agreements related to residential schemes. Planning authorities responding to the survey in 2011-12 entered into just under 20 agreements per authority. This represents a drop of approximately one third compared to the 2007-8 study which reported 30 agreements per authority.

- Approximately half of schemes with planning agreements signed in the period 2008-2011 have started.

- 87% of local authorities have an affordable housing policy.

- 45 (36%) local authorities had renegotiated section 106 planning agreements during the 2011/12 financial year. Nearly all requests to renegotiate section 106 agreements in 2011/12 led to a change in the planning agreement.

- When the survey was conducted, four (3%) local authorities had an adopted Community Infrastructure Levy policy, 70 (56%) were in the process of preparing a levy policy but had yet to publish a preliminary draft, 16 (13%) had a draft schedule and 28 (23%) were not preparing a schedule (as at 31 March 2012).

Planning agreements

Staffing

2.3 Respondents were asked whether they had officers who negotiated and monitored planning agreements. Indicating no significant change from the 2007-8 study, the survey results suggest that 24% of local authorities employ a dedicated officer to negotiate planning agreements. In over half (54%) of cases, this is undertaken by case officers and in many others it is a combination of case officers and other, usually more senior, staff from planning, legal, economic development/regeneration and finance sections. In one case the legal team negotiates and monitoring is undertaken by a Senior Planning Officer and in three cases there were dedicated Planning Obligations/Contributions Officers to provide advice to the case officers.

2.4 Table 2.1 provides a breakdown of the results from the latest survey by local authority family[5] and compares them to the previous two surveys. Local authorities in Urban England, Commuter Belt[6] and Existing Urban Centres have shed dedicated negotiating staff since 2007/08 whereas as London has increased its number considerably. Rural Towns have also increased their number of dedicated negotiating staff but to a much lesser extent. Apart from London, there has also been a significant reduction in dedicated monitoring staff, largely back to the levels seen in 2005/06.

Table 2.1: Use of an officer(s) dedicated to (a) negotiating and (b) monitoring planning agreements

Local authority family	(a) Negotiating			(b) Monitoring		
	2005/06	2007/08	2011/12	2005/06	2007/08	2011/12
Rural England	20%	26%	26%	50%	76%	56%
Rural Towns	16%	22%	27%	79%	65%	59%
Urban England	29%	24%	12%	71%	81%	71%
Commuter Belt	5%	18%	12%	65%	68%	50%
Existing Urban Centres	8%	10%	5%	50%	70%	57%
London	18%	31%	75%	82%	100%	100%

[65] Local authority 'families' were defined in the 2006 edition of this study (op cit) and these definitions were, in turn, an amended version of a local authority typology developed by Vickers et al (2003). The numbers of local authorities in each family are as follows (a full listing is included as an appendix to the 2006 report):

Established Urban Centres	30
Urban England	46
Rural Towns	119
Rural England	57
Commuter Belt	76
Urban London	26.

[6] This replaces the term 'Prosperous Britain' that was found in previous surveys. It was felt that ''Commuter Belt' was a better descriptor.

2.5 Monitoring of planning agreements is undertaken by dedicated staff in the majority (61%) of local authorities and these may be dedicated section 106 or Planning Enforcement Officers, staff from the legal section or other teams such as Economic Development, Business Improvement or Sustainable Development. This is lower than the levels observed in 2005-6 (64%) and 2007-8 (75%). It may reflect local authority expenditure cutbacks and/or a lower workload. Rarely (in 9% of cases) is the same person responsible for both negotiation and enforcement.

Number and content of planning agreements

2.6 Table 2.2 shows the average number of planning agreements per local authority classified by local authority family. London authorities have the highest average followed, some way behind, by Commuter Belt. Existing Urban Centres and Rural England have the lowest average. For comparison over time the results from the previous three surveys are also included in the table. Apart from London, which has the highest average in all but the first survey, there does not appear to be a discernible pattern. Rural England fluctuated considerably; Existing Urban Centres had high averages in the two middle surveys as did Urban England, perhaps due to a surge in apartment building during that time. A breakdown of the results by local authority family is shown in Figure 2.1 with supporting data in Table 2.2

Figure 2.1: Average number of planning agreements per local authority classified by local authority family

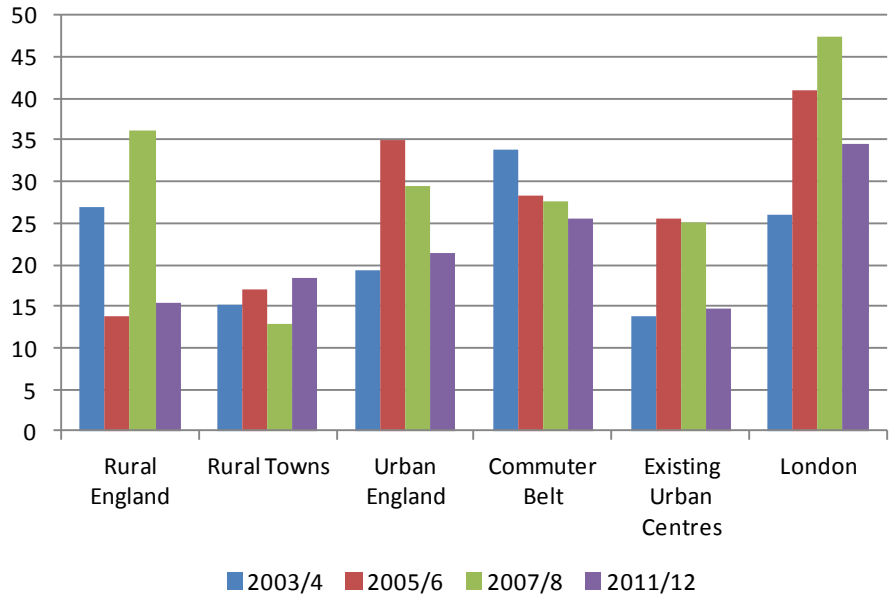


Table 2.2: Average number of planning agreements per local authority classified by local authority family

Local authority family	No. authorities	2003/04	2005/06	2007/08	2011/12
Rural England	39	26.9	13.8	36.2	15.4
Rural Towns	22	15.1	17.1	12.9	18.3
Urban England	17	19.3	35.1	29.5	21.4
Commuter Belt	26	33.9	28.3	27.6	25.6
Existing Urban Centres	14	13.8	25.5	25.0	14.7
London	8	25.9	41.0	47.5	34.6
ENGLAND	126				20.0

2.7 Table 2.3 also shows the average number of planning agreements per local authority but this time classified by type of application. The decline in agreements for residential developments in the most recent survey can be seen, particularly in the case of major schemes. Overall, the average number of planning agreements is at its lowest level since the surveys began in 2003/04.

Table 2.3: Average number of planning agreements per local authority classified by type of planning application

Application type	2003/04	2005/06	2007/08	2011/12
Minor dwellings	10.2	8.9	12.7	9.6
Major dwellings	8.1	11.0	9.5	5.7
All dwellings	17.6	19.9	22.2	15.3
Major commercial	1.9	2.3	1.8	1.8
Other major	1.0	1.9	2.1	1.18
ALL	25.0	25.7	29.8	20.0

2.8 The number of planning agreements signed between 1/4/11 and 31/3/12 which relate to full and outline planning permissions for dwellings is shown in Figure 2.2 below and in Table 2.4, together with the number of dwellings associated with them. Figure 2.2 highlights the importance of smaller schemes in terms of total number of agreements. But Table 2.4 also shows that most of the dwellings included in the planning agreements are found in larger schemes (at around 72% of dwellings in schemes of 100 or more dwellings).

Figure 2.2: Planning agreements signed between 1/4/11 and 31/3/12 (full and outline planning permissions) by size of development (numbers of dwellings)

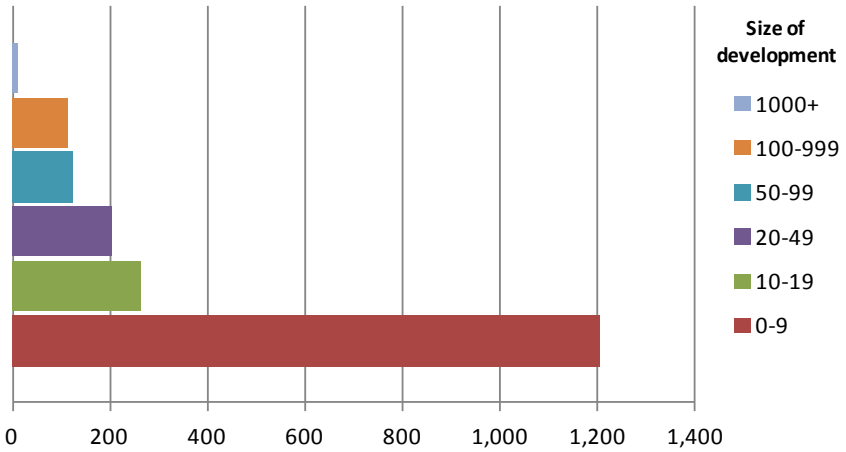


Table 2.4: Planning agreements signed between 1/4/11 and 31/3/12 which relate to full and outline planning permissions for dwellings

Size of development (by number of dwellings)	Number of agreements	Number of dwellings in agreements
0-9	1,204	3,080
10-19	263	3,258
20-49	202	5,919
50-99	124	8,431
100-999	114	27,762
1000+	11	24,418
TOTAL	1,924	72,868

2.9 For land uses other than residential most planning agreements related to major schemes and, in terms of floorspace, were fairly evenly distributed between commercial, industrial and retail. Table 2.5 shows that the amount of floorspace per agreement was much higher for industrial and storage uses than for office and retail schemes. In five cases, planning agreements related to developments where the floor space was not given; these were a holiday unit on a pier, three hotels and a nursing home. Only in one local authority were no planning agreements signed in the 2011/12 financial year.

Table 2.5: Planning agreements signed between 1/4/11 and 31/3/12 which relate to full and outline planning permissions for other land uses

	Number of agreements	Total floorspace (sqm)
Offices/ Research & Development/ Light Industrial		
Major	74	1,268,985
Minor	33	53,593
General Ind./Storage/Warehousing		
Major	39	1,349,747
Minor	14	7,448
Retail/Distribution and Servicing		
Major	109	1,089,575
Minor	58	15,421
Other		
Major	149	909,185
Minor	116	210,896
TOTAL	592	4,904,850

2.10 In total, respondents reported 2,516 planning agreements. Over three quarters of planning agreements related to residential schemes. Small residential schemes (fewer than 20 dwellings) accounted for nearly 60% of all planning agreements and schemes with fewer than 10 dwellings accounting for almost half of all agreements. Planning authorities responding to the survey in 2011-12 entered into just under 20 agreements per authority. This represents a drop of approximately one third compared to the 2007-8 study. It also represents a drop from the 25 planning agreements per local authority reported in the 2003-4 and 2005-6 studies. Table 2.6 shows the breakdown by local authority family.

2.11 Although there has been a substantial drop in the number of planning agreements per local authority, there has been little change in the number of planning agreements per local authority relating to small residential schemes. In 2007-8, there were 12.7 agreements per authority (based on category 'minor dwellings', i.e. less than 10 units). In 2011-2012, the figure for residential developments under 20 dwellings was 11.6. Given the substantial drop in planning agreements per local authority overall, this is consistent with a significant increase in the proportion of small schemes being the subject of planning agreements.

Table 2.6: Planning agreements signed between 1/4/11 and 31/3/12 which relate to full and outline planning permissions for other land uses, classified by local authority family

		Units	Rural England	Rural Towns	Urban England	Commuter Belt	Existing Urban Centres	London	England
DWELLINGS	Number of Agreements	0-9	301	189	124	416	67	107	1,204
		10-19	72	40	40	69	30	12	263
		20-49	60	28	37	33	22	22	202
		50-99	36	19	26	16	11	16	124
		100-999	14	20	19	18	15	28	114
		1000+	3	1	1	7	0	5	17
		TOTAL	486	297	247	559	145	190	1,924
	Number of Dwellings in Agreements	0-9	798	457	346	864	262	353	3,080
		10-19	938	506	528	721	402	163	3,258
		20-49	1,727	845	1,121	784	718	724	5,919
		50-99	2,397	1,349	2,174	589	784	1,138	8,431
		100-999	2,882	4,611	4,259	3,354	2,772	9,884	27,762
		1000+	5,533	3,150	1,245	3,300	0	11,190	24,418
		TOTAL	14,275	10,918	9,673	9,612	4,938	23,452	72,868
Offices, research & development, light industrial	Number of Agreements	Major	6	8	15	10	5	30	74
		Minor	9	4	4	9	2	5	33
General industrial, storage, warehousing	Number of Agreements	Major	10	14	6	4	5	0	39
		Minor	2	2	4	6	0	0	14
Retail, distribution, servicing	Number of Agreements	Major	20	17	28	15	23	6	109
		Minor	5	11	16	14	2	10	58
Other	Number of Agreements	Major	28	34	26	27	17	17	149
		Minor	35	15	18	22	7	19	116

Conversion of agreements to completions

2.12 Table 2.7 shows the numbers of planning agreements, proportions of planning agreements that have started and completed over the past three years broken down by local authority family. Apart from rural areas, the number of signed planning agreements has increased in 2011/12 compared to previous years, in London and Commuter Belt quite substantially.

2.13 Approximately half of schemes with planning agreements signed in the period 2008-2011 have started. Whilst there are some variations between local authority families, there are also sometimes substantial differences over time and it is not possible to identify a clear pattern. Similarly for schemes completed, the data seem inconclusive in this respect. The only noticeable, albeit expected, pattern is that a lower proportion of schemes with planning agreements made in 2010-11 have started when compared to schemes with planning agreements made in 2008-9. Only in Commuter Belt and in Existing Urban Centres was this not the case.

2.14 In terms of numbers of affordable housing units delivered a quarter of completions were in Commuter Belt in 2011/12, an increase over previous years. In London the proportion has declined from 27% to 17%.

Table 2.7: Proportion of planning agreements completed since 2008/9

	Number of agreements signed	% started	% completed	Affordable housing completions	% of England total
ENGLAND					
2008/09	2,078	51%	45%	6,852	-
2009/10	2,029	53%	36%	7,508	-
2010/11	2,327	48%	28%	7,584	-
Rural England					
2008/09	781	48%	42%	1,414	21%
2009/10	758	46%	37%	1,306	17%
2010/11	749	43%	23%	1,497	20%
Rural Towns					
2008/09	187	43%	34%	1,023	15%
2009/10	272	47%	50%	1,245	17%
2010/11	266	43%	25%	956	13%
Urban England					
2008/09	250	53%	51%	739	11%
2009/10	278	63%	48%	992	13%
2010/11	343	55%	34%	1,164	15%
Commuter Belt					
2008/09	479	58%	63%	1,432	21%
2009/10	395	49%	50%	1,451	19%
2010/11	543	52%	50%	1,902	25%
Existing Urban Centres					
2008/09	131	43%	41%	776	11%
2009/10	119	48%	28%	518	7%
2010/11	152	44%	29%	805	11%
London					
2008/09	250	67%	52%	1,468	21%
2009/10	207	61%	47%	1,996	27%
2010/11	274	62%	33%	1,260	17%

2.15 Turning to the content of planning agreements, Table 2.8 shows the average number of planning obligations per agreement classified by local authority family. All families follow the national trend; an increased number of obligations reported in the 2005/06 and 2007/08 surveys followed by a decline in the latest survey. Local authorities in London secured, on average, nearly twice as many obligations as the national average.

Table 2.8: Average number of planning obligations per agreement Classified by local authority family

Local authority family	2003/04	2005/06	2007/08	2011/12
Rural England	1.00	1.59	3.22	1.62
Rural Towns	1.68	2.28	4.51	2.08
Urban England	1.96	2.50	2.84	1.38
Commuter Belt	1.57	2.80	3.24	2.16
Existing Urban Centres	1.38	1.99	2.52	1.65
London	1.84	2.26	1.62	3.99
ENGLAND	1.45	2.44	2.96	2.06

2.16 Following a now familiar trend, Table 2.9 shows that the average number of direct payment obligations per authority has declined in the 2011/12 survey following a peak in the 2005/06 and 2007/08 surveys, but the decline is not substantial. Interestingly affordable housing obligations have remained constant over the sequence of surveys and community and leisure obligations have increased. It is the transport and travel and, to a lesser extent, the open space obligations that have declined.

Table 2.9: Average number of direct payment obligations per authority classified by type of obligation

Obligation type	2003/04	2005/06	2007/08	2011/12
Affordable housing	0.7	0.9	0.9	0.9
Open space	11.1	12.5	14.1	13.4
Transport and travel	7.3	12.0	12.2	9.0
Community and leisure	3.0	6.1	6.0	9.2
Education	2.5	5.2	4.6	4.1
Other	0.4	9.4	15.3	1.3
All	25.0	46.0	53.1	37.8

2.17 In-kind obligations, contrastingly, have declined significantly in the 2011/12 survey compared to all previous surveys. Table 2.10 shows that Affordable housing in-kind obligations were less than half their average in 2007/08 and the declines in other obligations are far greater than that. In total this has led to a reduction in average in-kind obligations per authority of two thirds from the 2007/08 survey.

Table 2.10: Average number of in-kind obligations per authority classified by type of obligation

Obligation type	2003/04	2005/06	2007/08	2011/12
Affordable housing	3.1	5.6	7.6	3.4
Open space	2.2	1.8	2.5	0.7
Transport and travel	4.1	4.2	5.1	2.1
Community and leisure	0.9	0.8	1.4	1.0
Education	0.1	0.1	0	0.0
Other	2.3	2.6	4.9	0.0
All	12.8	15.0	21.6	7.4

Use of standard section 106 agreements

2.18 Respondents were asked whether they used standard heads of terms or model agreements for section 106 negotiations. The responses were fairly evenly split; 56% do use them, 44% do not. One local authority stated that it does not publish its own standard terms but refers to the Law Society Heads of Terms instead. For those local authorities that do publish their own, the standard terms are generally published on the web. The 2007-8 study asked local authorities whether they used standard heads of terms or model agreements for planning agreements. It found that 16% of local authorities used these in all cases, 24% used them in some cases and 42% used them as a starting point.

Planning obligations

Approaches

1.24 The vast majority (79%) of local authorities have a 'policy' on the use of planning obligations either as a specific policy within their local development plan and/or as supplementary guidance. Most policies have been introduced since 2007. For those authorities with a policy, their status is shown in Table 2.11 and frequency of update in Table 2.12. The results suggest little change from the 2007/08 study which found that only 7% of local planning authorities had no formally adopted policy on planning obligations

Table 2.11: Status of Policy

	%
Development plan policy (but no Supplementary Planning Document)	29%
Supplementary Planning Document specifically for planning obligations (may also have a development plan policy)	51%
Supplementary Planning Documents for individual topics e.g. open space, affordable housing	12%
Other guidance (maybe formally adopted by local authority e.g. guide for developers)	8%

Table 2.12: Frequency of Update

	%
Annually or bi-annually	14%
Every 2-5 Years	36%
Every 5 years or more	30%
Not Stated	20%

1.25 The survey results suggest that updating takes place fairly infrequently with 66% of respondents updating their approach every two years or more. It is not possible to assess the extent to which policy obsolescence is likely to be an issue given the lack of detailed information on whether policies set relative or absolute requirements in terms of planning obligations.

Standard charges

1.26 A number of authorities make use of standard charges or formulae to guide the calculation of planning obligations. Table 2.13 shows the percentage of authorities with planning obligation policies (whatever their status) which use standard charges or formulae for different types of planning obligation. The table shows that standard charges are most likely for open space/environment and least likely for transport and travel.

Table 2.13: Proportion of policies that include standard charging or formulae for specific planning obligations

Type of planning obligation	% using standard charges or formulae
Affordable housing	62%
Open Space and the environment	79%
Community and leisure	46%
Transport and travel	43%
Education	53%

2.22 There is a range of other items for which some authorities operate standard charges or formulae. Examples of these include:

a) public realm
b) libraries
c) employment and training
d) art
e) waste and recycling
f) health and social care
g) town centre management
h) drainage, flood prevention
i) monitoring (construction)

Affordable Housing Policies

2.23 87% of local authorities have a policy for the provision of affordable housing but Table 2.14 shows that Rural Towns and Existing Urban Centres are less likely than other local authority 'families' to have such a policy. 64% of affordable housing policies are published in core strategies, local or other adopted plans and 32% in supplementary planning documents or guidance**.**

Table 2.14: Local authorities with policies on affordable housing

Local authority family	Yes	No
Rural England	36	3
Rural Towns	17	5
Urban England	16	1
Commuter Belt	24	2
Existing Urban Centres	11	3
London	7	1
ENGLAND	111	15

2.24 107 (86%) local authorities specify a threshold number of dwellings above which planning obligations in respect of affordable housing are required. 91 of these 107 authorities provided details of the thresholds and these are shown in Figure 2.3 and Table 2.15 below. The table includes area based thresholds but the chart only includes thresholds expressed in terms of number of dwellings.

Figure 2.3: Thresholds for affordable housing requirement – by number of dwellings and location

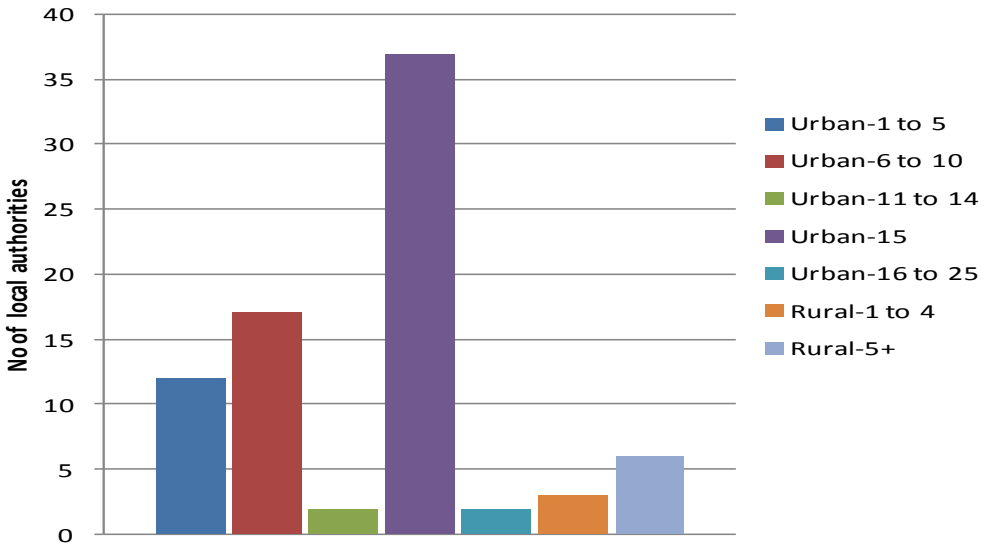


Table 2.15: Thresholds for affordable housing requirement

	Threshold (no. dwellings)	TOTAL
Urban	1 to 5	12
	6 to 10	17
	11 to 14	2
	15	37
	16 to 25	2
Rural	1 to 4	3
	5+	6
By area (rural and urban combined)	0.1 to 0.4 ha	2
	0.5 ha	9
	0.6 to 0.9 ha	0
	1+ ha	1

2.25 The 12 authorities in the survey that expressed the affordable housing threshold in terms of site area combined this with a threshold that related to a number of dwellings. In no case did a local authority set a threshold purely in terms of area.

2.26 For developments where the total number of dwellings exceeded the threshold, the proportion of affordable housing sought ranged from 15% to 50%.

2.27 Just over half (57%) of the sample of local authorities have a uniform affordable housing policy that is used across the whole of their area. 38 authorities (30%)[76] have a target for affordable housing provision that varies according to certain criteria. The types of criteria identified are listed below:

a) Number of dwellings in a scheme
b) Population of settlement
c) Brownfield/greenfield sites
d) Different parts of the council area including:
    - On the basis of Housing Market Areas / parishes
    - Between rural/urban and sustainable urban extension sites
    - Location generally (normally distinguishing between main urban areas and elsewhere)

Renegotiation of section 106 Agreements

2.28 In order to assess the extent to which local authorities were being flexible on section 106 agreements in response to the downturn, respondents were asked about the numbers of section 106 agreements being renegotiated. 45 (36%) of local authorities had renegotiated section 106 planning agreements during the 2011-12 financial year. The breakdown by local authority family is shown in Table 2.16.

[7] The remaining 13% did not state whether their policy varied or not

Table 2.16: Number of local authorities renegotiating one or more planning agreements during 2011/12

Local authority family	No.	%
Rural England	18	40%
Rural Towns	6	13%
Urban England	5	11%
Commuter Belt	8	18%
Existing Urban Centres	5	11%
London	3	7%
ENGLAND	45	36%

2.29 The respondents were asked to provide brief details of three renegotiations that had taken place during the 2011/12 financial year. There was a wide range of responses and the main examples are summarised below, grouping similar responses where possible:

a) Reduced level of overall contribution;
b) Reductions in the amount of affordable housing provision and in the amount of commuted sum payments in lieu of affordable housing. In one case the affordable housing requirement was removed altogether;
c) Introduction of staged payments (or postponement of staged payments that had already been agreed);
d) Introduction of a claw-back mechanism (i.e. reduce planning obligations subject to an increase provision should viability improve within a specified time period);
e) Change of affordable housing tenure (e.g. from social rented to affordable rent);
f) Switch from affordable housing provision to commuted payment;
g) Extension of time limit for implementation of permission;
h) Change of clause relating to status of purchasers of affordable housing.

2.30 Nearly all requests to renegotiate section 106 agreements in 2011/12 led to a change in the planning agreement. Only 6% of respondents (seven local authorities) stated that requests did not lead to a change. The number of sites involved was also seven, and four of these were in London. From the comments provided in the questionnaire responses, renegotiations appeared to be on-going with regard to either changing the affordable housing mix to introduce Affordable Rent or change the timing of the provision of affordable housing. The reasons given were as follows:

a) Housing site nearing completion but at considerable loss. Variation of section 106 agreement sought to remove contribution to education and public open space. Request refused by the planning committee as they considered that the developer knew it would be a difficult site to develop and that money was needed for the community;
b) The developer sought to reduce the amount of affordable housing. Viability was examined and a change to the tenure mix was agreed instead;

c) The developer requested a change in affordable tenure. Given the site's location in the Development Plan Amendment, the request was refused;
d) The developer could not provide sufficient viability grounds to renegotiate section 106;
e) A request to remove the obligation to provide on-site affordable housing was refused.

2.31 Local authorities were also asked, as at 1 April 2012, how many section 106 agreements were in the process of being renegotiated. A breakdown of the results by local authority family is shown in Figure 2.4 with supporting data in Table 2.17. Over two thirds of renegotiations were taking place in rural areas. There were relatively low numbers of renegotiations taking place in London.

Figure 2.4: Number of section 106 planning agreements that were in the process of being renegotiated on 1 April 2012

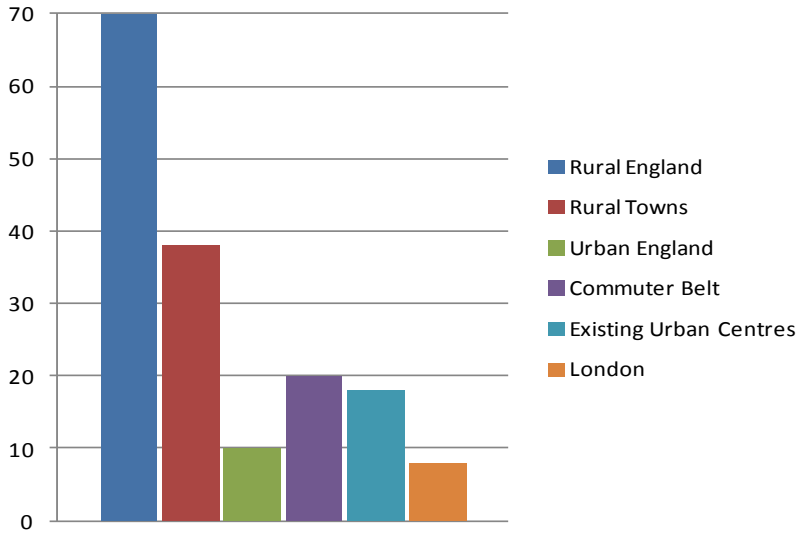


Table 2.17: Number of section 106 planning agreements that were in the process of being renegotiated on 1 April 2012

Local authority family	Total
Rural England	70
Rural Towns	38
Urban England	10
Commuter Belt	20
Existing Urban Centres	18
London	8
ENGLAND	164

2.32 Respondents were also asked a number of questions about re-negotiations. This is shown in Figure 2.5 with supporting data in Table 2.18. It shows that approximately half (61 authorities[8] or 48%) of the 126 responding local authorities had agreed to a reduced level of contribution towards affordable housing on the grounds of viability during the 2011/12 financial year. The majority of these had been agreed in Rural England. Local authorities commented that these reductions were agreed on a case-by-case basis and based on viability plus size and tenure of properties being offered.

Figure 2.5: Local authorities that had agreed to a reduced level of affordable housing on viability grounds in 2011/12

Local authority family	Number of responding local authorities	% of responding local authorities	No. of reduced contributions
Rural England	21	34%	129
Rural Towns	9	15%	15
Urban England	8	13%	6
Commuter Belt	10	16%	20
Existing Urban Centres	8	13%	28
London	5	6%	34
ENGLAND	61		232

2.33 The final question in the survey asked about stalled sites which are 'shovel ready', in other words where planning permission has been granted and planning obligations agreed. In an open-ended form, respondents were asked to suggest reasons why, in relevant cases, development had not yet started. The responses can be summarised under five headings:

- Economic cycle
  - Planning permissions granted for high density schemes often on brownfield sites in the boom years
  - The developer does not wish to bring the site forward until the economy improves
- Lack of access to finance
  - Mortgages
  - Development finance
- Lack of demand
  - For commercial space
- Planning
  - Submission of revised planning application
  - section 106 renegotiations
- Site issues

[8] This figure is more than the total number of authorities that said that they had renegotiated a planning agreement in 2011-12 – see para 2.28. It appears that survey respondents may have been interpreting the questions differently and may have included schemes yet to secure a section 106 agreement in answer to the question about reduced levels of affordable housing.

- Changes in ownership
- Unforeseen abnormal costs and constraints
- Legal issues between the landowners, developer, registered providers, etc.

3. The Incidence and Value of Planning Obligations

Introduction

3.1 The local planning authority survey asked authorities to provide information relating to the number and value of planning obligations that they had agreed with landowners and developers during the 2011-12 financial year.

3.2 In order to identify changes over time, the 2011/12 survey repeated a number of the questions asked in previous studies.

Key Findings

- The total value of planning obligations agreed in the year 2011/12 is estimated at £3.7 billion.
- Three data sources were used to estimate the numbers of affordable dwellings agreed in planning agreements. All produced estimates between 31,000 and 33,000. The total value of the dwellings was estimated at £2.3billion.
- It is estimated that just over £1 billon of direct payments were agreed. Education and transport accounted for nearly 60% of the total direct payments. Compared to estimated average direct payments per obligation of circa £250,000 in £2003/04, £370,000 in 2005/06 and £592,000 in 2007/08, the average direct payment for affordable housing in 2011/12 is estimated at close to £470,000.
- For in-kind contributions, using the approach taken in previous studies, it is estimated that total number of obligations is in the region of 1300-1500 with a value of £80 million. (But this is likely to be an underestimation as the case also with previous studies).
- The value of land contributions is estimated at approximately £307 million. Over 70% of it is land for open space and affordable housing. This is a substantial decrease from previous studies.[9]
- The estimated average value of planning obligations is £272,000 (including affordable housing, other direct payments and in-kind contributions).[10]

[9] See para 3.18 to 3.19 for an explanation of why the reasons for the underestimation
[10] That is 13,600 planning obligations totalling £3.7bn

Extrapolation Procedure

3.3 As in previous studies, the estimates for the number and value of planning obligations contained are based on extrapolations from the sample survey results responses from the questionnaire survey which have been 'grossed up' to provide estimates for the whole population of local authorities. The information provided through the survey is detailed but, if it is to be regarded as a national-level evidence base for policy purposes, the process of extrapolation from survey sample to whole population should be clear and rational.

3.4 To ensure continuity with previous studies and to assist longitudinal comparison, we adopted the local authority 'family' method for categorising local authorities. Details of this method can be found in Crook et al (2006). Because this method of categorisation is an adapted version of an approach devised ten years ago (Vickers et al, 2003)[11] , we devised another approach as a robustness check. This took the form of a local authority categorisation that was based on levels of house prices and housing supply in local authorities– both indicators that are closely aligned to land development activity and are regularly updated data series that are published by Government. It was reassuring that their estimates were broadly consistent.

The Estimated Value of All Planning Obligations

3.5 In summary, we estimate the value of all planning obligations as follows:

Table 3.1: The Estimated Value of All Planning Obligations*

	2011-12	2007-8	Change
Affordable housing	£2.3bn	£2.6bn	-11.5%
Direct payments	£1bn	£1bn	0%
In-kind	£0.1bn	£0.3bn	-67%
Land contributions	£0.3bn	£0.9bn	-66%
Total	£3.7bn	£4.8bn	-23%

*Rounded to nearest £0.1bn

3.6 In total, we estimate a nominal fall in the value of planning obligations of approximately 23% since 2007-8. This is mainly due to large drops in the value of in-kind and land contributions. The values of agreed affordable housing and direct payments have remained fairly stable between the two periods. It is unlikely that the drops in these two areas can be attributed to deteriorating market conditions. The land contribution figures in 2007/08 were particularly high due to the fact that there was a high concentration of land contributions in high value Camden. This was not repeated in 2011/12.

[11] Vickers, D., Rees, P. and Birkin, M. (2003) A new classification of UK local authorities using 2001 census key statistics. Working Paper 03-03, School of Geography, University of Leeds

The Estimated Number and Value of Affordable Housing Units

3.7 We have two possible sources of data on affordable housing agreed through planning obligations; the local authority housing survey and the survey sample. Reassuringly both sources are fairly consistent in terms of the aggregate numbers. As we can see in Table 3.2, the survey sample, extrapolated by local authority family, estimates the agreed provision of 32,201 dwellings onsite. With 303 offsite dwellings, this gives a total estimate of 32,504 dwellings. The comparable figures for the value-activity categorisation are 31,082 onsite and 113 offsite, giving a total estimate of 31,195. The local authority housing survey reports a similar number of agreed affordable dwellings 32,753. The different approaches then produce estimates of 96-101 affordable dwellings agreed per local authority in the study period.

3.8 Figure 3.1 and Table 3.2 together highlight the concentration of affordable housing agreed in London as well as in the local authority 'family' classified as 'rural'.

Figure 3.1: Number of on-site affordable housing agreed by Local Authority Family

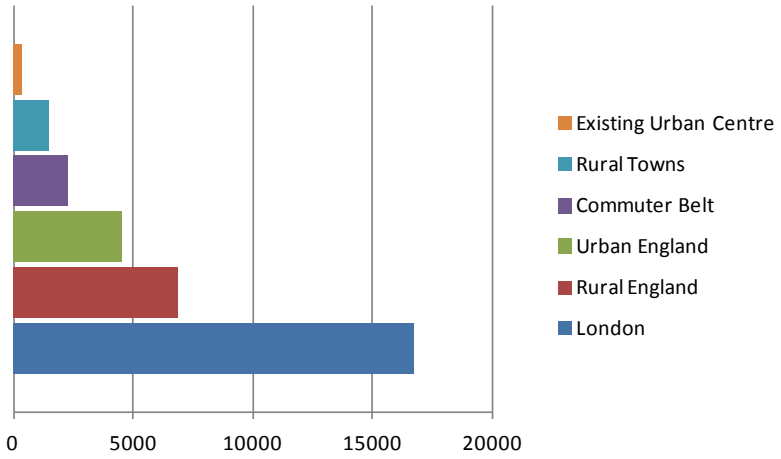


Table 3.2: Number of onsite affordable dwellings agreed

	Total sample	Mean per LA	Population Estimate
Rural England	2596	67	6856
Rural Towns	560	25	1451
Urban England	1088	64	4544
Commuter Belt	1456	56	2240
Existing Urban Centre	186	13	385
London	5146	643	16725
TOTAL	11032		32201

Source: Extrapolated survey sample – Local Authority Family method

3.9 The provision of affordable housing represents a significant proportion of agreed planning obligations. It is also the most significant planning obligation in terms of value. There are a wide range of possible approaches to estimating the value of the agreed affordable dwellings and, typically, two approaches are used in development viability appraisals:

a) Discounted Market Value

This is based on the amount paid by Registered Providers to developers. For example, assume that a socially rented dwelling has a value of £200,000. Assuming that Registered Providers pay 60% of Market Value to developers, the gain from the planning obligation is £80,000 (Market Value of £200,000 received minus £120,000 payment to developer). The key inputs are the Market Value of the dwellings and the ratio of Market Value paid by Registered Providers for the dwellings.

b) Capitalised Net Income

Another common approach is to apply a capitalisation rate to the estimated rental income that might be charged to the occupiers of the affordable dwelling. The key inputs are the capitalisation rate, the gross rent and appropriate deductions for voids, bad debts, maintenance and management. This clearly requires more inputs and the key input – the capitalisation rate – is difficult to observe from market transactions. This is essentially an income approach to valuation.

3.10 The three previous studies used a range of approaches to value the affordable housing transferred. However, the single common approach used in all studies was to value the land and add the cost the construction of affordable housing units. In valuation terms, this method is essentially a (depreciated) replacement cost approach. The approach relies on numerous generalised assumptions applied at national level. For example, a development density of 50 dwellings per hectare was assumed across all schemes in both urban and rural areas in order to calculate the amount of the land contributed. The value of land was then obtained from valuation office agency. The cost of constructing an affordable unit (excluding land) was assumed to be £110,000 (for the 2007/08 study period) for all local authorities in England. Land and construction cost were then adjusted depending on whether there was funding available for the affordable dwellings. For instance, one permutation was that for social rented units with no public subsidy, 80% of land was assumed to be contributed for free, with developers contributing 20% towards construction cost. For shared ownership units, 60% of land was contributed for free, with developers contributing 10% towards construction cost. Since 2009 there have been a number of changes to the affordable housing market that meant the approach used in the last survey was no longer directly applicable:

- New tenures, notably Affordable Rent have been introduced;
- Since the Housing Strategy Statistical Appendix became the Local Authority Survey of Housing, there is no detailed information on funding arrangements for affordable housing completions;

- The regime for public subsidy for acquisition of affordable housing has changed dramatically.

3.11 We have used cost and market value approaches to estimate the value of affordable housing contributions. The key assumptions made are:

- House prices for new-build private dwellings - These were obtained from the Nationwide's website and disaggregated to regional level. Data related to the third quarter of 2011, the mid-point of the 2011/12 time-period of the study;

- Proportion of Market Value paid by Registered Provider - These were estimated by the research team based upon knowledge and experience of market norms. It was assumed that no subsidy is available.

- Land values - These were obtained from the Property Market Report of the Valuation Office Agency (at the regional and town level) and from the Department for Communities and Local Government (at local authority level);

- Construction cost per square metre - This was obtained from Building Cost Information Service (BCIS) data with regional weightings (median five year values with an additional 20% for external works and fees);
- Residential density and dwelling size - These were estimated by the research team based upon knowledge and experience of market norms.

3.12 The results for the discounted market value approach are presented in Table 3.3 (below).

Table 3.3: The Estimated Value of Affordable Housing: Discounted Market Value Approach

Tenure	Estimated Value
Social Rent	£1.16bn
Affordable Rent	£440m
Intermediate rent	£110m
Affordable Home Ownership	£460m
Unknown	£140m
Total	£2.31bn

3.13 To check these results, we also reviewed the cost approach. It is reassuring that the both methods produce very similar estimates of the total value of affordable housing at £2.3 billion. This represents a relatively small decrease from a total of £2.6 billion in 2007-8. However, the comparable figure for the number of dwellings given planning consent in 2007-8 was over 48,000 compared to circa 32,000 in 2011-12. Therefore, between 2007-8 and 2011-12, there was a drop of approximately 11% in the value of the planning obligations and a reduction of around one third in the

number of dwellings. Whilst this might seem unexpected, we would point to two possible explanations. Firstly, a substantial majority of affordable housing units were in London and the south-east of England where there has either been an increase in prices for new properties or the fall has been less pronounced than elsewhere in England. Second, an assumption of zero grant was made.

The Estimated Number and Value of Direct Payment Planning Obligations

3.14 Since they are in cash terms, the estimation of the value of direct payment planning obligations poses no similar valuation problems. Figure 3.2 and Table 3.4 set out the estimated total value of direct payment obligations. In total, using the survey sample extrapolated by local authority family, it is estimated that just over £1 billion of direct payments were received. The value-activity approach to extrapolation provides a very similar overall figure. Comparable figures were not produced in previous studies. Education and transport accounted for nearly 60% of the total direct payments. Direct payments for affordable housing accounted for nearly £150 million or around 15% of the total. In 2011-12, direct payments per local authority were just over £3 million which is a drop in comparison with 2007/08 (at £3.5 million per local authority) but is higher than in 2003/04 at around £1.5 million and £2.7 million per local authority in 2005/06.

Figure 3.2: Distribution of Direct Payments by local authority family

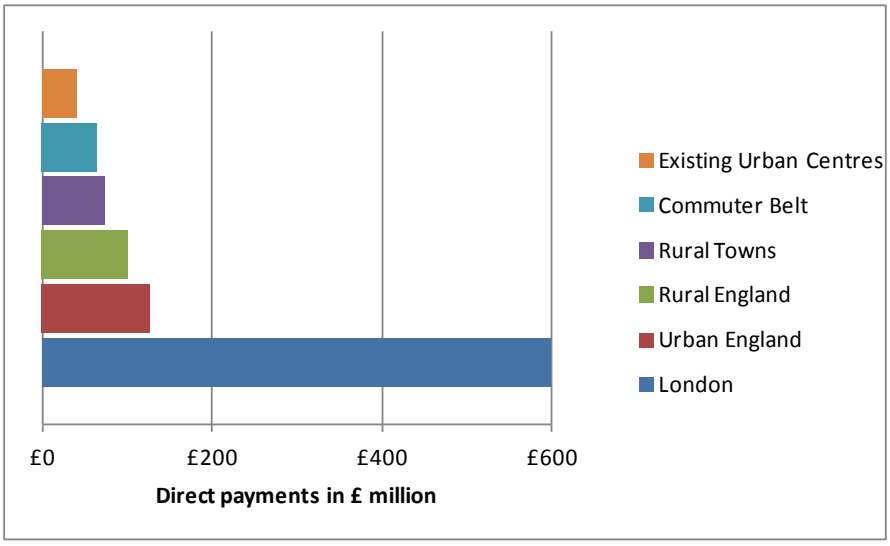


Table 3.4: Distribution of direct payments by local authority family

	Estimated amount (£ million)	% of total direct payments	% of local authorities
Rural England	£101	10.1%	31.6%
Rural Towns	£73	7.3%	17.5%
Urban England	£126	12.6%	21.8%
Commuter Belt	£63	6.2%	12.3%
Existing Urban Centres	£41	4.1%	8.9%
London	£598	59.7%	8.0%

Source: Extrapolated survey sample by local authority family.

3.15 The average values of planning obligations by direct payment are broadly consistent with previous studies. Compared to estimated average direct payments per obligation of circa £250,000 in £2003/04, £370,000 in 2005/06 and £592,000 in 2007/08, the average direct payment for affordable housing in 2011/12 is estimated at close to £470,000. This is consistent with a pattern of progressive increases in the value of individual planning obligations prior to the financial crash which was associated with increasing land and house prices. This was followed by a downturn in both market activity and prices and a fall in the average value of direct payment planning obligations. A change in the structure of the survey questionnaire in this research introduced a separate category for infrastructure. The large average figures for infrastructure reflect a fairly small number of large direct payments.

3.16 Figure 3.3 and Table 3.5 which follows highlights the dominance of the contribution made by affordable housing. The significant increase infrastructure payments in 2011/12 reflect a very limited number of local authority responses with high individual contribution figures. This may not be representative of any wider trend in contributions.

Figure 3.3: Type of Direct Contribution by Average Value 2003/04 to 2011/12

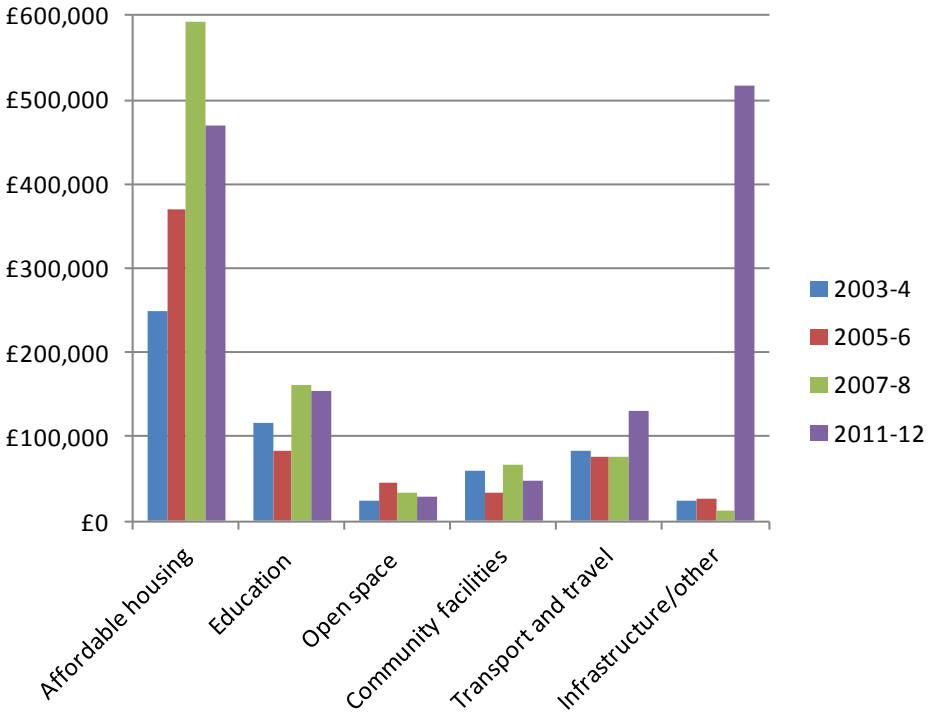


Table 3.5: The Number and Value of Direct Payment Obligations

	2003-4	2005-6	2007-8	2011-12		
	Average Value	Average Value	Average Value	Number of Obligations	Total Value (£ million)	Average Value
Affordable housing	£249,314	£370,232	£591,949	319	£150	£470,000
Education	£117,132	£83,687	£162,236	1,302	£201	£154,000
Open space and environment	£24,731	£44,647	£33,390	3,632	£108	£30,000
Community facilities	£58,811	£32,428	£67,649	2,752	£133	£48,000
Transport and travel	£83,125	£76,223	£75,161	2,887	£380	£132,000
Infrastructure	n/a	n/a	n/a	126	£39	£310,000
Other	£23,159	£27,025	£11,363	150	£30	£200,000
TOTAL				11,167	£1,041	£93,000

Source: Extrapolated survey sample by local authority family and Department for Communities and Local Government (2005, 2007, 2010)

The Estimated Number and Value of In-Kind Planning Obligations

3.17 In-kind planning obligations are essentially direct provision of facilities and services by the developer. By far the largest source of in-kind planning obligations – affordable housing – has been discussed above. In this section we focus on other types of in-kind provision. Table 3.6 presents the estimates for the number and value of other in-kind planning obligations. Both methods of extrapolating from the questionnaire survey data produce an estimate of value in the region of £80 million and an estimate of the total number of obligations in the region of 1300-1500. In line with previous studies, the method used to estimate the value of the individual planning obligations was to assume that an in-kind planning obligation had the same value as the comparable average direct payment obligation. Hence, for the extrapolation by local authority family of education, the total value of £1,730,484 is the product of 11 obligations multiplied by the mean value of a direct payment for education which was £162,802.

3.18 It should be acknowledged that there is a potential bias towards underestimation in this approach. In-kind obligations are more likely to be provided by a developer in large-scale schemes where the size of the development justifies the direct provision of a road, school, health centre etc. In turn, smaller schemes are more likely to involve direct payments since it is not usually practicable to physically provide part of a school or a leisure centre etc. However, in the absence of detailed information about the nature of the in-kind obligations, it is difficult to assess the scale of the buildings and land that was gained through the planning obligations.

3.19 Table 3.6 displays the estimates of the number and value of in-kind planning obligations based on the two methods of extrapolation from the sample. Transport and travel account for approximately half of the number and value of planning obligations. Within this category, the revenue is also highly concentrated. Approximately 65% of the revenue is for temporary or permanent highway or traffic works.

Table 3.6: The Number and Value of Non-Affordable Housing In-Kind Contributions

	Extrapolated by local authority family		Extrapolated by value-activity cluster	
	Estimated no. of obligations	Estimated value (£ million)	Estimated no. of obligations	Estimated value (£ million)
Education	11	£2	9	£1
Open space and environment	199	£5	228	£6
Community facilities	380	£26	423	£31
Transport and Travel	714	£40	805	£41
Infrastructure	0	£0	0	£0
Miscellaneous	45	£6	45	£6
TOTAL	1349	£78	1510	£85

Source: Extrapolated survey data

3.20 The only other large concentration of revenue is in the 'Employment and Training' sub-category of 'community facilities' accounting for around three quarters of all revenue in this category.

3.21 In comparison to the period 2007/08, the total value of in-kind contributions for responding authorities alone was nearly £145 million in 2007. This is also consistent with a major decrease in the total number of planning obligations. Again, the 'raw' survey result for the 2007/08 study was 3,260 individual planning obligations from responding authorities for in-kind contributions compared to an estimated 1,300 to 1,500 obligations in 2011-12. The extent of this decline is notable when it is pointed out that a 'raw' survey result of 3,260 would have been grossed up to a figure between 8,000-11,000 in-kind planning obligations in the 2007/08 survey.

3.22 Table 3.7 displays the estimates of the number and value of in-kind planning obligations when disaggregated by local authority family. They are consistent with the findings of high concentrations of planning obligations in London. It is estimated that over 63% of in-kind planning obligations by number and value were received in London.

Table 3.7: The Value of In-Kind Planning Obligations

Local authority family	Proportion of obligations	Estimated value (£m)
Rural England	5%	£4
Rural Towns	21%	£17
Urban England	1%	£1
Commuter Belt	7%	£6
Existing Urban Centre	2%	£1
London	63%	£49
TOTAL	100%	£78

Source: Extrapolated survey sample by local authority family

The Estimated Quantity and Value of Land Contributions

3.23 In terms of the valuation of land contributions, a crucial assumption concerns the estimated value of land. This is typically a function of its use. For instance, agricultural land currently sells for approximately £15,000 per hectare in England. Whilst there are large regional variations, residential land can sell for well over £2 million per hectare in the south of England and for substantially more in many areas of London. A key issue is what use this land should be allocated for purposes of valuation.

3.24 In the previous study for 2007/08, it was assumed that the land contribution should be considered as residential land – albeit 15% was assumed to be commercial. Although it is not made explicit in the report, there is a strong rationale for this approach. In essence, it is that residential land prices per acre/hectare are based on the price paid per acre/hectare of gross developable area. Since the gross developable area includes open space, community facilities, roads and footpaths, such areas should be classified as residential land. In this study, it has been assumed that the land contributions are valued at £2.5 million per hectare[12].

Table 3.8: The Quantity and Value of Land Contributions

	Extrapolated by local authority family		Extrapolated by value-activity cluster	
	Hectares	Estimated value (£ million)	Hectares	Estimated value (£ million)
Affordable Housing	35	£87	35	£87
Education	9	£244	7	£19
Open space and environment	48	£120	53	£133
Community facilities	24	£59	18	£45
Transport and Travel	8	£21	9	£234
Infrastructure	0	£0	0	£0
TOTAL	124	£311	123	£307

[12] According to DCLG Live Table 563 Housing market: Average valuations of residential building land with outline planning permission, the weighted average value for 2009 was £2,700,537 per hectare and in 2010 it was £2,367,980 per hectare. No data are available beyond 2010.

3.25 In previous studies in 2007/08 and 2005/06, the values of land contributions were estimated at £900m and £960m respectively. Although they accounted for 18% and 24% of the value of agreed planning obligations in 2007/08 and 2005/06, no detailed breakdown was provided for these figures. The higher 2005/06 figure was a function of 88 hectares of "recorded" free land. It was stated that this was grossed up and a value of £4 million per hectare applied.

3.26 The relatively small figure for land contribution for affordable housing is surprising. It is based on only one positive response. It is at odds with the local authority housing statistics (LAHS). The local authority housing statistics record 35 hectares of free or discounted land for affordable housing generated by 11 local authorities. The comparable figure for 2010/11 was 33 hectares. The 2011/12 local authority housing statistics figure seems more plausible. Given that the local authority housing statistics and the questionnaire survey provide similar overall estimates for the number of affordable dwellings, and that previous studies based the valuation of affordable housing on Housing Strategy Statistical Appendix (HSSA) figures, it seems appropriate to base the valuation of the land for affordable housing on the local authority housing statistics result.

3.27 A substantial majority of free or discounted land is provided from "Open Space", "Community Facilities" and for affordable housing development with relatively small amounts estimated for education and transport. Given that the estimated values in previous studies appear to have been based upon a relatively small number of obligations in extremely high value areas, the marked drop in the estimated value of free or discounted land for 2011/12 is to be expected. It would be surprising if a significant proportion of the value of planning obligations were to be generated by free or discounted land given the small numbers of obligations that have this type of contribution.

Part B: Issues in development

4. Viability, Development and Planning Obligations

Introduction

4.1 This chapter investigates the impact of section 106 agreements on development viability across a range of different development types and sizes. It explores the impact of affordable housing 'asks' on development along with other section 106 requirements and considers how this has changed over recent years.

Key findings

- There is an increased emphasis on viability in development planning (crystallised in the National Planning Policy Framework) and with it, greater attention is paid to viability testing within the planning system.
- The basis of most viability testing is to identify a scheme's residual value (i.e. revenue less costs) and to compare this with a threshold land value which represents the price at which a willing seller will sell their land.
- Reflecting a complex relationship between market values and development costs over the last five years, the viability modelling simulations undertaken for the study do not suggest that scheme viability deteriorated between 2007 and 2010. However, some sites which were viable in 2010 may not be now as build costs have started to rise.
- Various factors such as increased finance costs and an extended development/sales period will have a negative impact on viability. These can be expected to vary from scheme to scheme with some developers needing to borrow all the development finance and others having access to equity/cash. Longer sales periods need not have a negative impact on scheme viability if units do not need to be developed before they are sold. This is likely to be more of a problem on flatted schemes.
- Urban extensions have substantial additional costs which can make it difficult to achieve a viable scheme. Removing affordable housing obligations will not always turn a non-viable scheme into a viable one.

The Basis of Development Viability in Real Estate Markets

4.2 Development viability appraisal and its methods are based on the premise that the value of a development project or site is taken as the monetary surplus (sometime called a residual surplus) available once a site has been developed. This monetary surplus is a product of the difference between the value of the assets created by development and the cost of creating the assets. A development opportunity is viable if the projected revenues from a development scheme are sufficient to justify incurring the costs of development. Ignoring planning obligations for the moment, these costs typically include:

- a sufficient **return to site owners** to incentivise them to release their sites for development (normally expressed as a residual land value);
- a range of **development costs** (site preparation, construction, professional fees, stamp duty, marketing and leasing etc.);
- a sufficient **return to developers** to provide an incentive for them to undertake development.

In a contested real estate development market, any expected monetary surplus remaining after expected costs of development, including a sufficient return to the developer, should flow to the landowner. In short:

Site Value = Expected Development Revenues – (Expected Development Costs + Required Return to Developer)

4.3 If the monetary surplus of revenue versus costs is sufficient to provide an incentive for the landowner to sell a site then the development is viable. In most contexts the appropriate benchmark will be the amount that the landowner could exchange a site for in its current or likely alternative use. As explored further below, planning obligations can affect two of the crucial determinants of viability; costs and revenues.

Previous Research: A Brief Review

4.4 There has been some published research on the way in which planning obligations may affect development viability. Nearly two decades ago, Healey, Ennis and Purdue (1995)[13] pointed out that policies on planning obligations were likely to have variable impacts on development viability both over space and time. Healey et al (1995) inferred that projects more likely to be viable at significant levels of planning obligations are likely to display the following characteristics:

- standardised development (e.g. housing units)
- large sites
- few site problems (e.g. greenfield, cleared site)

[13] Healey, P. Purdue, M. and Ennis, F. (1996) Negotiating development: planning gain and mitigating impacts, Journal of Property Research, 13, 143-160

- low current use value
- strong market conditions
- large developer with ready access to capital

It was argued that more marginal sites will display:

- complex development (e.g. mixed use)
- high and unpredictable costs
- site problems (e.g. topography, pollution, existing buildings)
- weak market conditions
- small developer with limited financial backing

4.5 Recent research by Crosby, McAllister and Wyatt (2013)[14] and Coleman, McAllister and Wyatt (forthcoming)[15] has identified a number of problems with development viability modelling and its particular application in the English planning system. The research argues that a fundamental problem is that development viability models test whether policies regarding planning obligations that will be implemented in the future, on actual schemes on actual sites, are viable at present using hypothetical schemes on hypothetical sites. They stress the importance in such models of the assumption of the level of, what is termed, Threshold Land Value – the price at which it is assumed sites will be released for development by their owners.

4.6 One of the key terms in the National Planning Policy Framework was a 'competitive return to a willing landowner' – this is essentially Threshold Land Value. In terms of defining a willing landowner, Leunig (2011)[16] highlighted the heterogeneity of site owners' circumstances on a spectrum from owners who will not sell at any price, to distressed sellers who will sell at a small margin above value in current use. Complications can arise where landowners are set on achieving (higher) historic site prices and identify their required return accordingly. Some landowners' expectations regarding levels of return will have been formed in a specific set of market and regulatory conditions. In many cases in the past these conditions have created substantial value uplifts when planning permissions are granted. In particular, landowners may prone to loss aversion. Whilst outside the scope of this report, it has been found in housing markets that property owners are less willing or able to accept market prices in the down part of a cycle resulting in drops in market turnover and trading volume.

4.7 A willing seller is defined by the International Valuation Standards Council as: *"...neither an over eager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. The willing seller is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing, whatever that price may be.*

[14] Crosby, N., McAllister, P. and Wyatt, P. (2013) Fit For Planning? An Evaluation of the Application of Development Viability Appraisal in the UK, Environment and Planning B, **40**, 1, 3-22
[15] Coleman, C., McAllister, P. and Wyatt, P.(2013) Fit for Policy? Some Evidence on the Application of Development Viability Modelling in the UK Planning System, Town Planning Review, **84**, 495-521
[16] Leunig, T. (2011) Community Land Auctions: Working Towards Implementation, CentreForum, London.

The factual circumstances of the actual owner are not a part of this consideration because the willing seller is a hypothetical owner"[17]

4.8 In the context of the land market there are many imperfections that challenge the concept of a willing seller. Landowners are monopoly owners (each site is unique) of a scarce resource and many are able to benefit from increasing asset values without the need to realise the gains. Landowners that are engaged in development are able to benefit from this investment activity as well as realise profits from development activity. The land market is, essentially, able to produce reward in two ways: through land investment or speculation (from simple land holding and land banking through to option activity) and through development activity. The economic drivers and motivations behind these activities are complex and exacerbated by shifting regulatory policy but, in a market where prices are rising, it can make sense to develop, and when prices are falling it can make sense to wait. This has the effect of accentuating the swings in land prices.

4.9 Putting aside the significant uncertainty about required return to landowner, at a given point in time the other inputs to a viability assessment can be estimated with a reasonable degree of rigour, but still with a degree of uncertainty. However, since planning obligations are paid for from the difference between development values and costs, it is clear that, because of large variation in potential development revenues and the extent of abnormal development costs on sites, the potential of development to generate land value uplifts can vary. Consequently the ability of sites to generate planning obligations can vary substantially between sites, neighbourhoods, towns, cities and parts of the country. Furthermore the viability of a site will change as expected development costs and revenues change over time.

Simulation of viability models

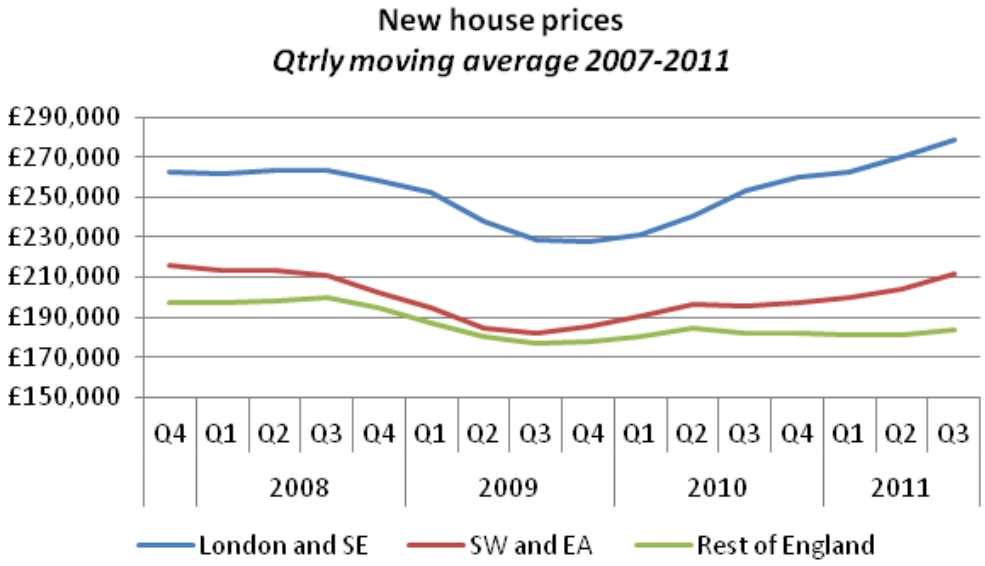
4.10 To illustrate the viability issues outlined above, we looked in more detail at a number of simulations of development viability. We explored how the market downturn of 2008/09 and subsequent changes in costs and prices have affected the viability of different types and densities of development across a range of locations. We then used this information to help explain how, in different locations and housing markets, planning obligations have a differing ability to impact on the willingness of developers to make progress with their developments and landowners to bring forward their land.

4.11 The analysis uses two notional one-hectare development sites of 35 and 55 units and examines viability in high, medium and low-value areas in England and in one London Borough. Tunbridge Wells, Tewkesbury, Coventry and Brent were selected as representative of their respective price bands. A 3,000 unit large-scale strategic greenfield site in Tewkesbury (the medium-value area) was also modelled.

[17] IVSC (2011) International Valuation Standards 2011, International Valuation Standards CounCommunity Infrastructure Levy, p21

4.12 House prices and build costs have changed since the housing market peak of 2007/08. As shown in Figure 4.1, house prices have moved at different rates in different regions. House prices in London and the South East in the third quarter of 2011 were above their fourth quarter 2007 level, in the South West and East of England they were broadly comparable with their fourth quarter 2007 levels and in all other regions house prices were lower in 2011 than in the fourth quarter of 2007.

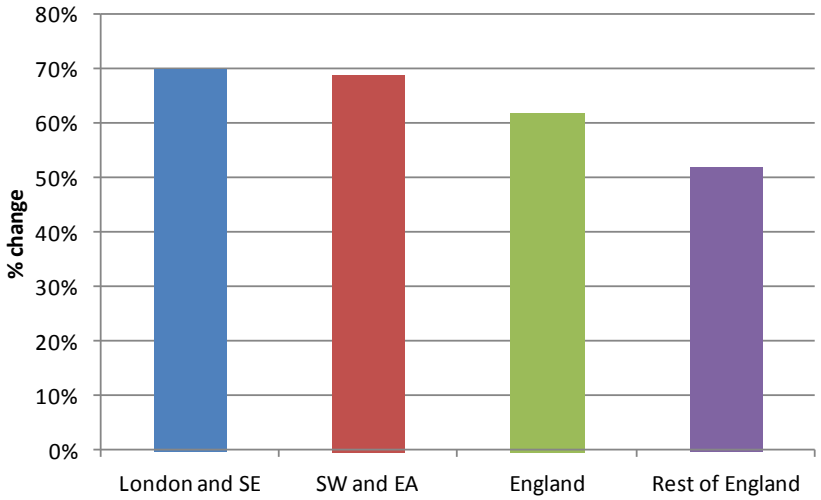
Figure 4.1: House price change 2007-111



Source: Based on DCLG live table 506

4.13 Focusing on housing starts in 2011/12 compared with 2007/08 it would appear that there is some relationship (though not necessarily causal) between house price change and house building activity. Figure 4.2 shows total housing starts in 2007/08 compared with 2011/12. Those areas where house prices in 2011 were below house prices in 2007 had experienced the greatest fall in new house building in 2011/12. Nationally housing starts were down by 40% but in London and South East, and South West and East of England housing starts fell by 30% whereas in the Rest of England housing starts fell by 48%.

Figure 4.2: Housing starts 2011/12 compared with 2007/08



Source DCLG live table 231

4.14 We have used Land Registry data at County level to derive 2012 house prices for the specimen local authorities. In Tunbridge Wells house prices rose from 2007 to 2010. In Brent they were stable and in Tewkesbury and Coventry they fell. Comparing 2012 with 2007 in Brent house prices in 2012 were 9% higher than in 2007, in Tunbridge Wells they were the same in both years and in Tewkesbury and Coventry house prices in 2012 were 6% lower than in 2007.

Table 4.1: House price change 2007 to 2012 (median house prices)

£000	2007	2010	2011	2012
Brent	280	280	300	306
Tunbridge Wells	242	253	238	240
Tewkesbury	197	190	184	185
Coventry	130	122	122	123

Source DCLG live table 582 2007 to 2011 and Land Registry 2012

4.15 According to the Building Cost Information Service Tender Price Indices, build costs nationally fell by 13% between 2007 and 2010 and have since risen by 2%. The Tender Price Indices does not identify separate price changes at local level although it does recognise that prices vary by location. In 2012 base build cost per square metre for a house was £941 in Tunbridge Wells, £923 in Brent, £855 in Coventry and £821 in Tewkesbury[18].

4.16 There is no apparent correlation between house prices and build costs. Comparing our two representative high value areas, Brent and Tunbridge Wells, house prices

[18] Based on Q2 2012, general estate housing, median results from the last five years. No allowance for external works in the figures quoted above. For modelling purposes base build costs have been uplifted by 15% to allow for external works.

are higher in Brent but build costs are lower. A similar comparison between low value Coventry and medium value Tewkesbury shows that house prices are higher in Tewkesbury but build costs are lower.

4.17 Other changes which might be expected to affect viability include changes in interest rates and profit margins expected by banks before they will lend and changes in rate of sale. In the base model a profit margin of 20% of gross development value and an interest rate of 7.5% per annum are assumed but the impact of a lower profit margin (17% of gross development value and interest rate (6% per annum) for 2007 were tested. Also in the base model, it was assumed that both the 55-unit and 35-unit schemes are developed and sold in one year. As a sensitivity check the impact of a slower sales rate on the 55-unit scheme was tested (i.e. assuming that it would take two years to sell in 2012).

4.18 The affordable housing target for each local authority was taken from relevant development plans or supporting documents. These targets varied from 50% in Brent, 40% in Tunbridge Wells, 30% in Tewkesbury and 25% in Coventry. We assumed a mix of affordable rented and low-cost home ownership housing as specified in the local plan; ranging from two thirds to three quarters rent with the highest proportion of low cost home ownership (one third) in Coventry. In each case, 2012 affordable rents were modelled as specified on the local authority website.

4.19 Affordable rent was not relevant before 2011; the rental tenure was social rent, and at much lower rental levels. Therefore, the results for 2007 and 2010 would seem to overstate rental income (and hence residual value per hectare). However, at that time, grant was far more likely to be available, thus raising residual values. We have therefore taken the view that modelling affordable rent pre and post-2011 provides results on a broadly similar basis.

Results of viability modelling

4.20 Tables 4.2 and 4.3 show the results of the base modelling on the one-hectare site on a 55-unit and 35-unit basis in the four specimen local authorities in 2007, 2010 and 2012. The main assumptions used in the viability modelling were:

- Expected development values: aggregates of market house prices (based on average Land Registry prices) and capitalised net affordable rents for affordable housing (based on Valuation Office Agency data).

- Expected development costs: build costs (based on building cost information service 5-year median values for each location) and a standard set of other development cost assumptions.

- Required return to developer: for market housing 20% of gross development value and for affordable housing a 6% contractor's return.

- Required return to site owner: modelling identifies the residual value for each scheme but does not attempt to compare with a threshold land value.

- Level of planning obligations: policy compliant % of affordable housing and a notional £7,500 section 106 contributions and/or equivalent Community Infrastructure Levy payment assumed.

4.21 The impact on scheme viability from changes in the two key variables of build costs and market values between 2007 and 2012 are shown in tables 4.2 and 4.3 and illustrated in figures 4.3 and 4.4.

Table 4.2: Results of viability modelling 55-unit site on base assumptions (residual land value per hectare)

	2007	2010	2012
Brent	£5.6m	£6.4m	£7m
Tunbridge Wells	£2.5m	£3.7m	£3.3m
Tewkesbury	£0.3m	£0.8m	£0.6m
Coventry	£-1.8m	£-1.2m	£-1.3m

Figure 4.3: 55 dwellings per hectare site – Residual land value per hectare 2007-12

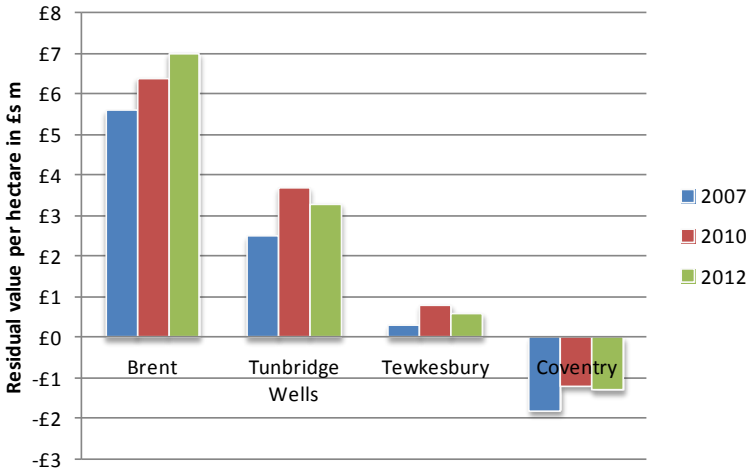
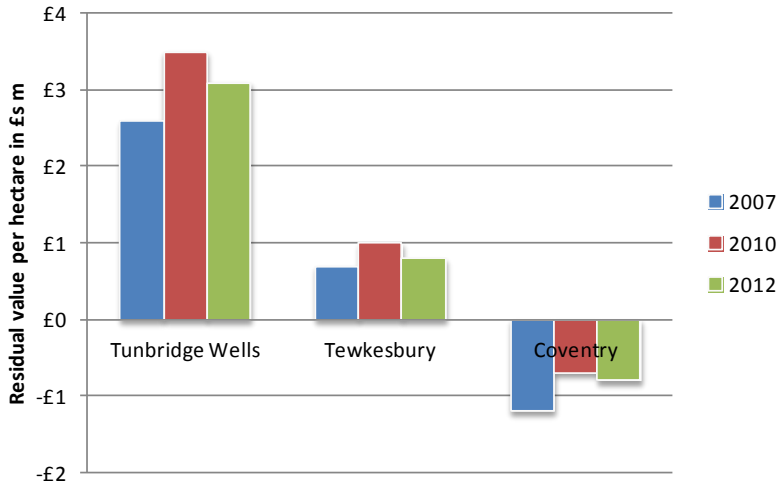


Table 4.3: Results of viability modelling 35 dwellings per hectare site base assumptions (residual land value per hectare)

	2007	2010	2012
Brent	na	na	na
Tunbridge Wells	£2.6m	£3.5m	£3.1m
Tewkesbury	£0.7m	£1m	£0.8m
Coventry	£-1.2m	£-0.7m	£-0.8m

Note: 35-unit scheme not modelled in Brent

Figure 4.4: 35 dwellings per hectare site - Residual land value per ha 2007-2012



4.22 The following key points are demonstrated in tables 4.2 and 4.3 and figures 4.3 and 4.4:

- In Brent residual land value was higher in 2012 than in 2010 and in 2010 than in 2007.
- In Tunbridge Wells and Tewkesbury residual land values peaked in 2010.
- In Coventry residual land values were negative for both mixes in all three years with 25% affordable housing but they produce a more favourable result in 2010 and 2012 than in 2007.

4.23 These results are not surprising given that, in all three locations, build costs fell between 2007 and 2010 and that, where house prices fell over the same period, the fall was less than the fall in build costs. House prices fell between 2010 and 2012 in all locations except Brent and there was a marginal increase in build costs. Hence the deterioration in residual land values since 2010.

Changes in profit margins and interest rates

4.24 Developers have argued that banks now seek higher profit margins and lend at higher interest rates than they did during the house price boom. We therefore modelled the impact on viability of the 55-unit scheme, of reducing interest rates to 6% per annum and profit margin on market housing to 17% of gross development value for 2007 only. This more closely approximates to the conditions prevailing prior to the 2008 banking crisis. The impact on viability is to raise residual land values in 2007 by around £300,000 per hectare. (e.g. for Tunbridge Wells residual land value in 2007 rises to £2.8m which is still lower than the £3.7m which the site would have achieved in 2010, for Tewkesbury residual value rises to £0.6m which is still lower than the £0.8m which the site would have achieved in 2010).

Changes in development period

4.25 We also tested the impact of a slower pace of development, again focussing on the 55-unit scheme, taking Tewkesbury as an example and assuming that the scheme could be built out and sold in one year in 2007, but takes two years in 2012. Much depends on the assumption made about the proportion of units that are built in one year and sold in the following year. If half the units are built and sold in year one and half are built and sold in year two viability is broadly unchanged but if 30 units are built in year one and only 18 are sold then residual land value for the Tewkesbury scheme in 2012 is reduced by £55,000 per ha from £600,000 to £545,000.

Predominantly flatted schemes

4.26 Flatted schemes figure prominently in the Glenigan stalled sites data (see Chapter 5 for details), accounting for two thirds of all stalled sites. It is not possible to tell from the Glenigan data whether such schemes are predominantly flatted or simply contain flats. In order to test if predominantly flatted schemes are less viable than schemes of the same density which contain a higher proportion of terraced units we modelled a 55-unit scheme which is predominantly (60%) flats. We modelled this scheme in Tunbridge Wells and Tewkesbury. The results are shown in table 4.4 (which can be compared with Table 4.2 above).

Table 4.4: 55-unit predominantly flatted (residual land value per hectare)

	2007	**2010**	**2012**
Tunbridge Wells	£2.4m	£3.4m	£3.0m
Tewkesbury	£0.9m	£1.3m	£1.0m

- In Tunbridge Wells residual values for the 55-unit predominantly flatted scheme are lower than for the 55-unit scheme which is predominantly terraced.

- In Tewkesbury residual values are higher for the predominantly flatted scheme than for the predominantly terraced scheme

Modelling a Large-scale Urban Extension

4.27 Large-scale (greenfield) developments (typically coming forward as urban extensions) have additional costs that can affect viability. To test this, a notional scheme of 3,000 units in Tewkesbury (a medium value area) was modelled, using the following assumptions:

- Large urban extensions have significant site opening up costs when compared with smaller urban and edge of settlement sites. We model these at £15,000 per dwelling. Opening up costs are also front loaded which impacts on cash flow because substantial costs are incurred before revenue comes in thereby increasing interest charges. We model total site opening

up costs in the first two years of the scheme although we sensitivity test a phased development with half the opening up costs occurring later in the scheme.

- Large-scale strategic sites also tend to have greater requirements for infrastructure (on and/or off site) than smaller sites and these may be provided through section 106 agreements, via Community Infrastructure Levy funding or through additional development costs. To reflect this, we have modelled the urban extension with section 106 obligations of £15,000 per dwelling.

- The net-to-gross ratio for developable land is lower for large-scale developments than for smaller sites. We assume a net to gross ratio of 65%.

- We assumed £795 per dwelling for the proposed changes to the building regulations post 2013.

- We assume a 10-year development period with 6 developers on site.

4.28 The combined effect of these changes is a significant reduction in residual land value. At 30% affordable housing the 3,000 unit urban extension in Tewkesbury produces a negative residual land value of between £40m and £60m depending on the development period and discount rate assumed. With zero affordable housing residual value is £0 to -£20m.

4.29 We tested the effect of phasing site opening up costs and allocating half the site opening up costs to year five. This reduces the negative residual value with 100% market housing to -£12m but does not generate a surplus.

4.30 This analysis highlights the point that the relationship between house price and build cost change is different in different locations and between different types and densities of development. Various other factors such as increased finance costs are common to all types of development and will have a negative impact on viability. Longer sales periods need not have a negative impact on viability if units do not need to be built before they are sold. This is less likely to be the case with flatted schemes. Urban extensions have substantial additional costs which can make it difficult to achieve a viable scheme.

5. Planning Obligations and Stalled Sites

Introduction

5.1 As stated in Chapter 2, the research found that 45 (36%) local authorities had renegotiated section 106 planning agreements during 2011-12. This indicates there is a degree of flexibility among local authorities, with nearly all requests to renegotiate section 106 agreements in this period leading to a change in the planning agreement.

5.2 This Chapter addresses the question 'What is the relative importance of planning obligations in stalling development?' and considers, in detail, the reasons why sites have stalled and the ways in which (re)negotiation may help to bring sites forward.

5.3 In order to address this research question, the Chapter draws upon two main data sources (and is structured to report on the findings from each):

- Glenigan's national database of construction projects
- a case study analysis of stalled sites

Key Findings

- There are a number of potential approaches to defining stalled sites. In this study, a stalled site is defined as a site with planning permission for a scheme or a resolution to grant planning permission that has not been implemented for at least a year.
- Data from Glenigan shows that:
  - stalled residential developments account for 94% of stalled sites
  - approximately two thirds of stalled residential schemes are apartment-led developments
  - the majority of stalled sites are brownfield, are located in urban areas and are in low value areas
- However, 71% of stalled dwellings in case studies put forward for this study were in urban extensions.
- The case study analysis suggests that the reasons for sites stalling are often complex and it is difficult to identify a single reason that stalls sites. It would be an oversimplification to assume that a significant cause of development delay was intransigence on either the part of the planning authority or the applicant.

Defining stalled sites

5.4 Defining what is meant by a 'stalled site' is an important first stage in investigating the contribution of planning obligations to causing their lack of headway in the development process. The definition of a stalled site has guided the research on where to 'shine the torch' in terms of identifying causation.

5.5 It is important to recognise, when explaining why a development scheme is stalled, that certain factors may have different levels of significance at different stages in the site supply 'pipeline'. For instance, otherwise suitable sites (in planning terms) may not be promoted through the planning system because the level of planning obligations set out in Development Plan policies renders them financially unviable. Later in the planning 'pipeline', a site about which the local planning authority and developer cannot settle the Heads of Terms of the section 106 agreement at pre-application, may mean that an application fails to be submitted. Alternatively, a site that seems to be stalled relatively soon after the developer has signed a section 106 agreement is more likely to be failing to progress to construction for reasons unrelated to the section 106 agreement.

5.6 The Get Britain Building definition of a stalled site is clear:
"Stalled sites (which could be a standalone phase within a wider scheme) will be defined as those where there has been no construction activity on the relevant phase since 1 September 2011 (excluding site clearance / remediation, affordable housing delivery construction where it has been possible to progress this in advance of other elements of the site and / or limited activity to implement or maintain a planning permission)."

5.7 Whilst the specific date (1 September 2011) is included in this definition for operational reasons, the key point to note is that a site should be inactive but 'shovel ready', with planning permission, including a section 106 agreement, in place. In essence, a stalled site is defined broadly as a scheme with planning permission that is NOT being implemented.

5.8 Whilst acknowledging that the definition is contestable, for the purposes of this study we have closely followed the Get Britain Building definition and defined a stalled site as a site with planning permission for a scheme or a resolution to grant planning permission that has not been implemented for about a year or more.

Numbers, Location and Types of Stalled Sites – The Glenigan Dataset

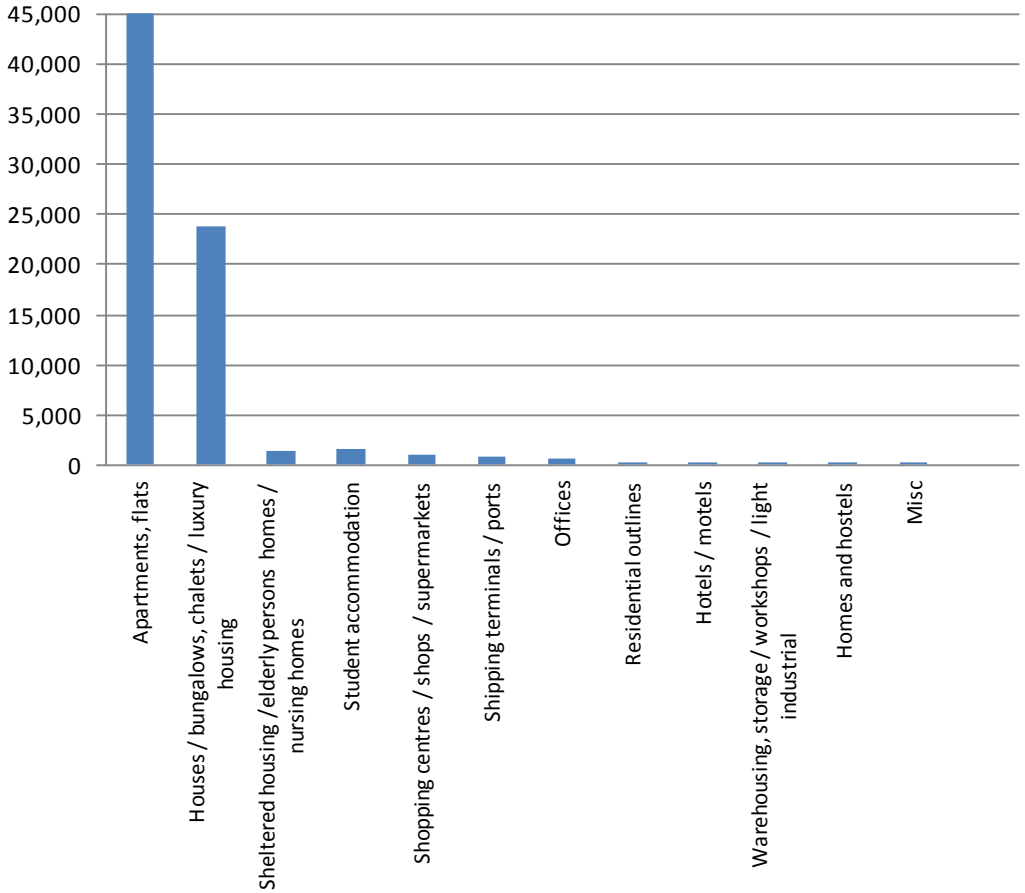
The dataset

5.9 A data set of stalled sites was obtained from Glenigan. It comprises 1,411 sites totalling 75,534 units and an estimated £8,959m of gross development value as at

July 2012 (Source: Glenigan).[19] Of the 1,411 sites, the majority (1,217) involve new developments. Of the remainder, 46 were extensions and 148 were refurbishments. The dates of the planning applications relevant to the schemes ranged from August 2000 to the March 2012, a time period of 11.5 years. All were classified as 'large' by Glenigan; meaning that they related to developments other than changes of use and minor works such as extensions. Permission dates ranged from 06/07/01 to 29/05/12 (4 records without permission dates).

5.10 The vast majority of stalled developments were residential-led (either apartments or houses) and these are the focus of subsequent analysis. Stalled residential developments accounted for 94% of the sites and 95% of the units. Figure 5.1 and Table 5.1 show that two thirds of stalled residential schemes were apartment-led developments.

Figure 5.1: Number of stalled units by type of scheme – July 2012



[19] Glenigan is a private sector provider of development market information including planning applications, permissions, construction tenders, contracts and completions. For the purposes of this project Glenigan supplied a snapshot of data that described the nature, scale and location of 'stalled' development schemes as at July 2012.

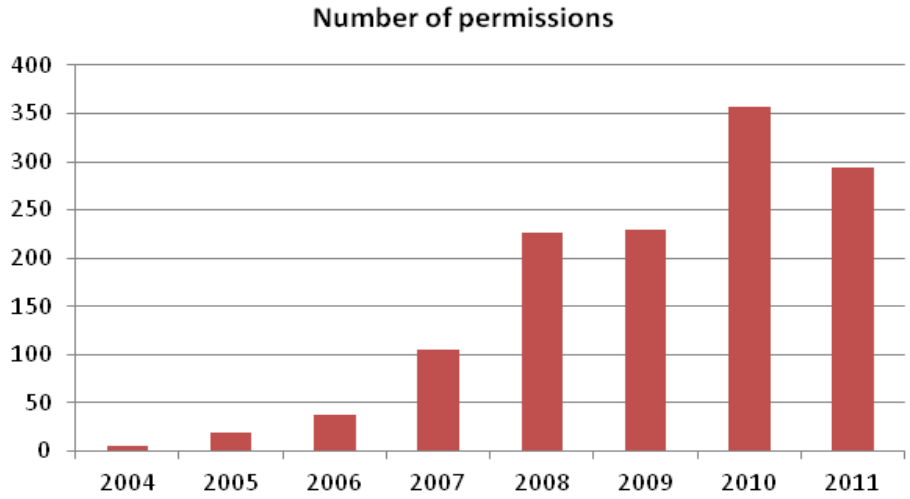
Table 5.1: Number of stalled sites and units, classified by type of scheme – July 2012

Predominant use	Number of sites	Number of units		Ave units per site
RESIDENTIAL:				
Apartments, flats	735	44,972	*63%*	61
Houses / bungalows, chalets / luxury housing	499	23,771	*33%*	48
Sheltered housing /elderly persons homes / nursing homes	57	1,399	*2%*	25
Student accommodation	40	1,679	*2%*	42
TOTAL[20]	1,331	71,821	*100%*	
COMMERCIAL, INDUSTRIAL AND OTHER:				
Shopping centres / shops / supermarkets	13	1,011		
Shipping terminals / ports	1	774		
Offices	8	736		
Residential outlines	2	364		
Hotels / motels	7	283		
Warehousing, storage / workshops / light industrial	6	213		
Homes and hostels	6	96		
Misc	37	190		
TOTAL	80	3,667		
TOTAL	**1,411**	**75,488**		

5.11 Figure 5.2 shows the numbers of stalled schemes categorised by the date of planning permission. Not unexpectedly, a small proportion of stalled sites (in July 2012) were granted planning permission in the pre-crisis period. In 2008-9, there was a significant increase in the numbers of sites stalled that were granted permission in these years. This shift continued for 2010 and 2011. However, given that the planning permissions were relatively recent, a proportion of the non-implemented planning permissions may have been due to 'normal' delays in construction procurement, execution of sales to house builders etc., rather than any fundamental problems with the schemes. It is also possible that a proportion of planning permissions granted in 2010 and 2011 were renewals or changes to existing schemes.

[20] Includes conversions and refurbishments. Of the 1,331 sites, 1217 sites relate to new development.

Figure 5.2: Unimplemented Planning Permissions - July 2012 (Categorised by year panning permission granted)



5.12 Residential sites were linked to the UK Postcode Directory using the postcode as the common identifier. Not all sites had a valid postcode (there were 128 mismatches). Table 5.2 shows that the vast majority of the stalled sites were located within urban settlements with a population of 10,000 or more and in a less sparsely populated hinterland. This rather vague definition comes from the UK Postcode Directory and is based on an Ordnance Survey classification but it illustrates that the majority were located on brownfield sites. Because such sites typically attract a higher existing use value than greenfield sites and are more likely to have some kind of abnormal development cost, they tend to be more marginal in terms of financial viability. It is therefore not surprising that most of the stalled sites were brownfield.

Table 5.2: Stalled Sites by Settlement Type – July 2012

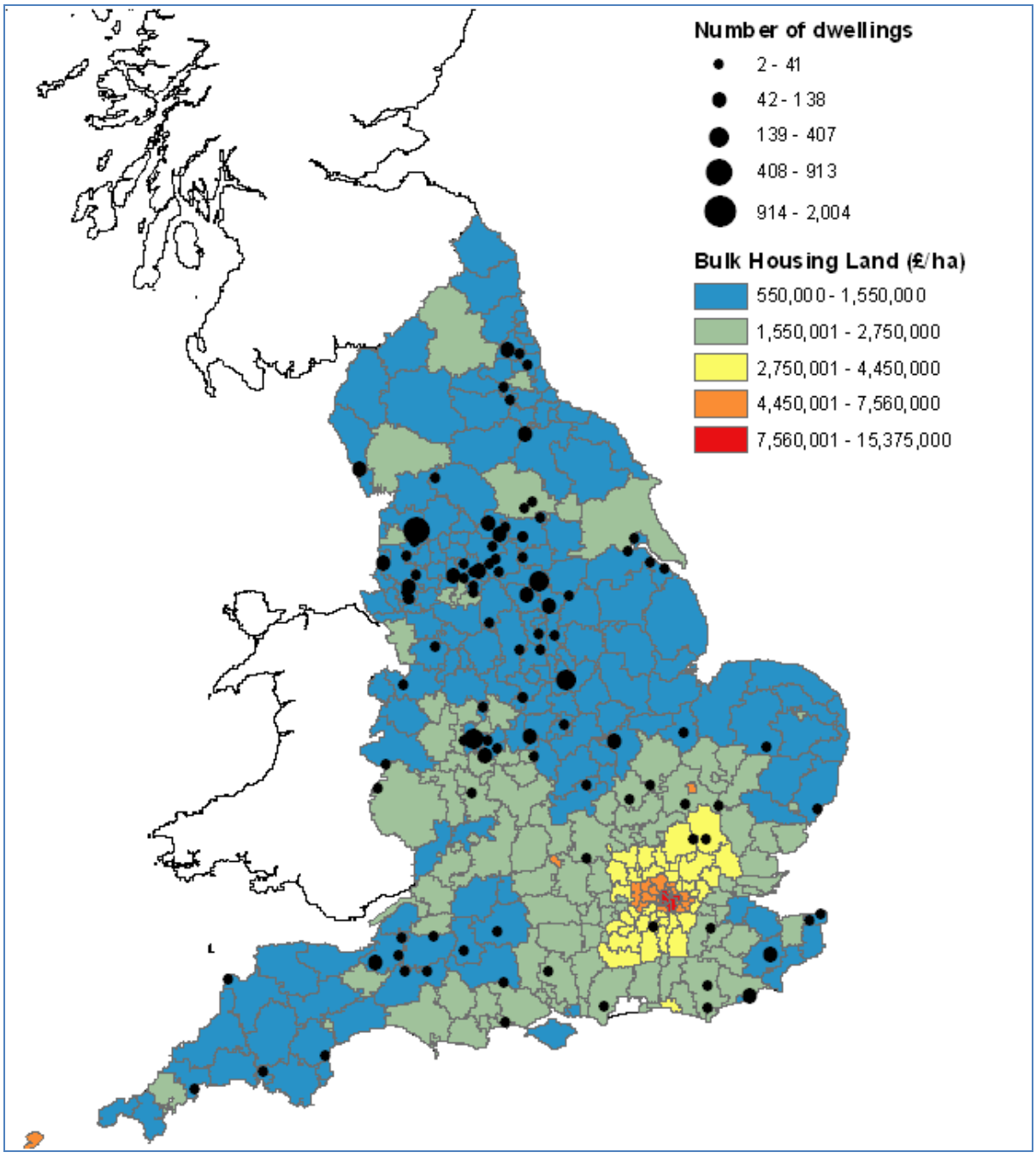
Geographical location	Units		Sites	
Urban settlements with a population of 10,000 or more and the wider surrounding area is *sparsely* populated	50	*0%*	4	*0%*
Small town and fringe areas category and the wider surrounding area is *sparsely* populated	93	*0%*	7	*1%*
Village and the wider surrounding area is *sparsely* populated	199	*0%*	11	*1%*
Hamlet or isolated dwelling and the wider surrounding area is *sparsely* populated	86	*0%*	5	*0%*
Urban settlements with a population of 10,000 or more and the wider surrounding area is less *sparsely* populated	51,519	*72%*	969	*73%*
Small town and fringe areas and the wider surrounding area is *less sparsely* populated	2433	*3%*	91	*7%*
Village and the wider surrounding area is *less sparsely* populated	2,450	*3%*	68	*5%*
Hamlet or isolated dwelling and the wider surrounding area is *less sparsely* populated	1,076	*1%*	38	*3%*
Scotland/NI/Channel Is/IoM	919	*1%*	10	*1%*
No information available	13,040	*18%*	128	*10%*
Grand Total	**71,865**		**1,331**	

5.13 Figure 5.3 shows the location of the Glenigan-recorded stalled sites (the red circles). The size of the circles is proportionate to the number of units proposed at each site. Underneath the circles is a choropleth map showing the price per hectare of 'bulk' housing land (land parcels in excess of two hectares) as estimated by the Valuation Office Agency (2010 values). The map overlay reveals how the vast majority of stalled residential development sites are located in the low land value areas.

5.14 Of the 1,331 residential sites that were stalled, 735 were apartment developments. 23 of these have not been assigned to a specific region by Glenigan. Of the 712 that have been allocated to a region, the split is as follows:

High value areas (London and the South East)	32%
Medium value areas (East of England and the South West)	23%
Rest of England	45%

Figure 5.3: Location of stalled sites in relation to the value of housing land – July 2012



Case studies

5.15 The purpose of the case study investigation was to examine in-depth the factors that cause sites to be stalled.

Sampling and Method

5.16 It was anticipated that 18-20 case studies would provide an adequate sample to obtain evidence of the factors that can stall development. However, it is important to point out that the aim of the research is to provide an in-depth evaluation of each site rather than to generate a sample that could be used to make inferences regarding significant differences between different categories of site. Whilst an attempt was made to cover a range of value areas and size of schemes, it is not possible to make any inferences about differences in the role of planning obligations between the categories of site. Put simply, the case studies will not provide answers to questions such as "Are planning obligations having different types of impact in large/low value/mixed use sites, etc?"

The Initial Sample

5.17 The sample of stalled sites was generated from a combination of sites suggested by local planning authorities, developers, the research project advisory group and personal knowledge of the research team. It needs to be recognised that the composition of the sample was not based on random sampling but reflected the willingness of individuals to put forward examples.

5.18 The sample of stalled sites was separate from the Glenigan dataset and was constructed for the purposes of this study only.

5.19 The definition used for the case studies was based on the Get Britain Building definition of stalled sites but also included sites with a resolution to grant panning permission but a delay in finalising the section 106 agreement. The full definition for the case study sites was:

Stalled sites (which could be a standalone phase within a wider scheme) are defined as either:

- Sites with planning permission and section 106 in place, where there has been no construction activity on the relevant phase since 1 September 2011 (excluding site clearance / remediation, and / or limited activity to implement or maintain a planning permission).
- Sites where there is a resolution to grant permission but a delay in finalising the section 106 (say of a year or more).

5.20 The case study sample is summarised in the table below with a short commentary about the characteristics of the sample. We divided the country into three broad value areas:

- ‘High’ – London, South East
- ‘Medium’ – South West and East of England
- ‘Low’ – rest of England

However, as each case study was submitted, we reviewed whether it was within a local authority which was either of a much higher or lower value than the majority of local authorities in the value band. If this was the case, and using judgement, we allocated the case study to a more appropriate value band. Schemes were defined as being either large (100 dwellings or more) or small (less than 100 dwellings).

5.21 Table 5.3 shows the total number of dwellings in case study schemes for each house price band, in three types of location; urban, suburban and urban extensions (the latter typically large-scale greenfield developments on the edge of an existing settlement). For each value band and location type (e.g. urban in the high house price band), the table shows the number of case study schemes in the sample.

Table 5.3: Possible Case Studies by Location and Value Area (*number of dwellings in italics)*

	Urban	Suburban	Urban extension	**Total schemes**	***Total dwellings***
High house price	*3,600*	*1,600*	*10,500*	**43**	***15,700***
Large	9	2	4	15	
Small	18 (in 6 LAs)	10 (in 3 LAs)		28	
Medium house price	*3,500*	*2,400*	*15,000*	**36**	***20,900***
Large	7	1	9	17	
Small	8	11 (in 5 LAs)		19	
Low house price	*3,900*	*700*	*13,500*	**59**	***18,100***
Large	12	2	7	21	
Small	26	12		38	
Total schemes	80	38	20	138	
Total dwellings	*11,000*	*4,700*	*39,000*		*54,700*

5.22 The initial sample of stalled sites had the following characteristics:

- 43% were in low house price areas compared to 31% in high price areas and 26% in medium price areas.

- However, the incidence of dwellings in stalled sites was slightly different with fewer dwellings (33%) in the low price areas and more dwellings (38%) in the medium price area.

- Urban extensions accounted for 15% of all sites but 71% of all dwellings and ranged in size from under 1,000 units to more than 4,000 units. This is a very different picture from that drawn from the Glenigan data and may reflect the bias and interest of those who responded to the ‘call for sites’.

- 28% of all dwellings in stalled sites were located in suburban areas, 58% were in urban areas.

- Few examples of stalled sites in London were put forward as potential case studies.

- There were 11 non-residential stalled schemes; six of these were in high price areas, four in medium value areas and only one in low value areas.

Case Study Selection and Interview

5.23 From the initial sample of 138 suggested case studies, 18 were selected for more detailed assessment. They were selected to represent a spread of location types (urban, suburban, greenfield/urban extension) within each of the three broad value areas.

5.24 For the vast majority of the selected case studies, both the local planning authority and site promoter (developer/landowner) were interviewed. In some cases developers or landowners declined to be interviewed and these case studies were replaced with a similar alternative case study from the sample. In the event, there remained a couple of case studies where interviews with both local planning authority and scheme promoter were not possible but the research team felt they had sufficient and balanced information to proceed.

5.25 The interviews were conducted by telephone (or in a very small number of cases, face to face) during October and November 2012 using a semi structured agenda. Two researchers were present at most of the interviews which were informal and exploratory. Given issues of commercial and negotiating sensitivity, all interviewees were assured that they would remain anonymous and no site or individual would be identifiable when the results were reported.

Detailed Case Study Results

The Sites

5.26 A broad range of sites in terms of location and size were selected, including large, urban extensions, incorporating community and commercial facilities as well as large residential elements. The largest schemes had over 3,000 dwellings.

5.27 The size of schemes by number of dwellings is shown in Table 5.4.

Table 5.4: Number of Dwellings in Case Study Schemes

Number of dwellings	Number of case studies
Less than 50	4
50 – 99	2
100 – 499	4
500 – 999	4
1,000 or more	4

5.28 Schemes were selected from across the three value bands (low, medium, high) – broadly representative of their proportions in the sample of 138 schemes:

- 7 high value areas
- 4 medium value areas
- 7 low value areas

Site characteristics

5.29 When selecting the case studies for interview, we could not identify the setting or site type (e.g. urban regeneration scheme, edge of market town greenfield site)[21]. In the event, the 18 case studies fell into the following broad categories (the definitions have been devised for this study):

- Large-scale strategic greenfield development (1,000 or more dwellings) 4
- Significant greenfield scheme with 100 or more dwellings 4
- Small greenfield scheme (99 or fewer dwellings) 2
- Large urban redevelopment/regeneration site (100+ dwellings) 3
- Small urban redevelopment/ regeneration site (99 or fewer dwellings) 4
- Urban infill – 'clean site' 1

5.30 The greenfield schemes are similar in character; housing developments adjoining an existing settlement. Depending on their scale, they include different types/levels of provision of transport, community and other facilities as well as dedicated open space.

5.31 The previously developed sites are more diverse in character. They include heavily contaminated and difficult to develop former factory sites in densely urban (city centre) locations. There are also examples of small (e.g. for 50 dwellings) redevelopment schemes where demolition of the existing building (e.g. a former pub or hotel) is part of the planning permission and of urban infill schemes where little is required to bring the site forward for development and development conditions are benign.

[21] The exception was the large scale strategic sites readily identified by the dwelling numbers.

Scheme Histories and Reasons for Delays

5.32 It is not possible to provide a simple analysis of the dates when the case studies were first 'promoted' for development since some schemes were allocated in a development plan and others were 'windfall sites' (and so the first time they are identified to the planning authority is as a planning application is being made). There can also be complications where the extant planning permission is not the first permission granted on the site. However, Table 5.5 gives an indication of the length of time since the case studies first secured planning permission and when the case study interviews were undertaken (2012).

Table 5.5: Length of time since (outline) planning permission [22]

Number of years	Number of case studies
Less than 2	3
3 to 5	8
6 or more	3
Not yet permitted[23]	3

5.33 The majority of the case studies had been granted planning permission within the last five years but three had 'older' planning permissions. It is important to bear in mind that some planning permissions that were granted relatively recently may relate to an application first submitted several years before.

Reasons for stalled schemes

5.34 Reasons put forward (by the developer/landowner and/or local planning authority for sites becoming stalled varied between schemes and there were only a limited number of patterns that emerged to explain and categorise sites. The exception to this is the importance placed on 'changed market conditions' as a reason for sites becoming stalled. However, it is not the only reason and there is usually a combination of factors determining whether a site is stalled or progressing. Table 5.6 sets out the main reasons put forward for delays. (Note that there could be more than one reason for each case study).

[22] One case study was a series of small schemes with variable planning histories. This case study is not included in the table

[23] In all these cases, there was a resolution to grant permission but the section 106 agreement was still being negotiated.

Table 5.6: Reasons for Case Study Schemes Becoming Stalled

Reasons mentioned (one or more reasons could be mentioned for each case study)	No of mentions
Market conditions:	
Market values have fallen/sales rates generally down	10
Development finance difficult to secure	1
Low sales rates/ market change means that need a different mix of dwellings (e.g. replace apartments with houses)	3
General viability issues	
Generally a difficult scheme to make work (e.g. high abnormal costs/low values)	4
'Over-paid' for the site	2
Ownership issues	
Change of owners (and could lead to a completely new scheme)	2
Third parties with control over part of site/ consortium of developers and/or landowners failing to agree/ change in personal circumstances of landowner	3
Developer not actively pursuing development	
Waiting for upturn in market, have a better scheme nearby	6
Sought policy compliant permission but anticipated would not be viable	2
Other issues	
Third party actions e.g. unforeseen intervention by a utility	1
Complex scheme with long lead in times (usually, but not exclusively, large scale schemes)	4

5.35 Changing market conditions underlie most schemes that become stalled. Market values have fallen ('house prices have dropped through the floor') and price reductions of circa 15% were quoted by developers. But rates of sales have also fallen, for example one interviewee indicated that current sale rates were about 50% of predicted rates pre- downturn.

5.36 Clearly deterioration in market conditions can reduce viability. One developer of a larger greenfield site pointed out that "…the agreement was fair and policy compliant but it was assessed in a rising housing market…." When the developer/landowner is faced with the changed market circumstances they have to decide whether to proceed or wait until market conditions improve. Their decision can be affected by other house-building in the area and/or if the same developer is trying to promote two or more schemes in a slow market.

5.37 Putting aside the general issues of time taken to progress large-scale developments, the other reason that leads to some sites stalling is around land ownership. This can involve a third party with control over a vital piece of land and/or issues to be resolved within a developer and/or landowner consortium.

5.38 The scale of section 106 requirements associated with a development were not specifically highlighted as a reason for sites becoming stalled but when the process

of renegotiation is considered later in this chapter, it is section 106 requirements (and especially affordable housing) that becomes more of the focus.

Scale and Nature of Planning Obligations

5.39 Across the case studies a diverse range of planning obligations had been agreed. For affordable housing, only one scheme above the local site size threshold had an agreed 0% affordable housing provision and this was on viability grounds. Where affordable housing was sought the amount varied, although perhaps not as much as might have been expected given the range of market values and development conditions found in the case studies.

5.40 Sample sizes are too small to draw robust conclusions but, whereas in the high and medium value areas a requirement for 20% to 30% was the 'norm', in the low value areas 20 to 25% was more typical.

5.41 Other obligations agreed were scheme-specific and depended on measures required to mitigate the impact of the development including, for example, highways, education, renewable energy and play areas.

5.42 As well as variety in the make-up of the contributions required, the case studies varied in the amount of contribution per dwelling, as the following examples illustrate:

• Small scheme/high value area (no affordable housing – below threshold)	£3,700 per dwelling
• Large scheme/medium value area affordable housing	£13,000 + 30%
• Large scheme/high value area	£2,800 + 35% using
• Small scheme/low value area affordable housing	£3,000 + 25%
• Large scheme/low value area affordable housing	£1,800 + 0%

The Renegotiation Process

5.43 The case studies support the view that local planning authorities will usually renegotiate a scheme if viability is raised as an issue. There is little commonality in the way (re)negotiations take place. The survey did not find evidence of any systematic pattern of inflexible local authorities that were unprepared or unwilling to renegotiate. Where developers complained about the (re)negotiation process, the cause for this is usually that evidence presented on scheme viability is not perceived to be given sufficient weight by the local planning authority.

5.44 Inexperience of the negotiation process by developer or local planning officers were cited as a reason for a slow and difficult negotiation. This is compounded where the planning (or highway) authority's requirements change midway through the process and further exacerbated if there is a landowner with unrealistic and inflexible expectations.

5.45 Mostly renegotiations focused around the amount of affordable housing but this was not always the case. In a couple of examples, the developer indicated that affordable housing was a helpful element of the scheme, providing 'risk free' revenue at a difficult time. However, the type of affordable housing can result in some debate since differences in tenure (social rented, affordable rent, affordable home ownership) affect development viability.

5.46 Negotiating affordable housing invariably means that the local authority housing departments become involved and there is a three-way relationship between the applicant, planning and housing officers. This can cause tensions where the housing officer is attempting to secure housing to meet an identified need and the planning officer is looking across the development as a whole.

5.47 Other planning requirements cause issues in negotiations. For example, where an authority uses a formula to calculate payments for a particular item (e.g. highway or education contribution) and this leads to inflexibility in the negotiation process.

5.48 For very large schemes, major infrastructure requirements necessary early in the development were identified as having an adverse impact on scheme viability and re-timing their provision was seen to be necessary to bring the scheme forward. This, though, could cause the local planning authority considerable difficulty if the item was seen as an 'early win' from the scale of development permitted.

5.49 We found examples of negotiations that had gone smoothly and resolved a series of outstanding issues:
'The renegotiated agreement was approached realistically by the local authority. They showed willingness to renegotiate, were cooperative, sensible and not obstructive.'
'The local authority wants to get delivery and is prepared to negotiate.'

Dealing with Viability Issues

5.50 Assessing scheme viability has been shown to be integral to the negotiation and renegotiation of section 106 agreements. The way this is approached from both developers and local authority officers was mixed and we found few examples of published protocols to explain how each local planning authority deals with viability issues.

5.51 Below is a list of the different ways in which evidence about viability was dealt with:

- Local planning authority relies on a generic study of viability (e.g. in support of the Local Plan or community infrastructure levy charging schedule);

- Local planning authority undertakes its own viability assessment of stalled sites in its area to assess viability issues;

- Local planning authority employs an expert to negotiate with the developer and/or employs the District Valuer as an 'impartial advisor';

- Developer submits a viability study to the local planning authority which reviews its contents (this can be followed by a series of questions/responses), following which the local planning authority may or may not be persuaded by the viability study;

- Developer required to submit a completed model with information about the scheme (e.g. the Homes and Communities Agency Economic Appraisal Toolkit).

5.52 Whichever approach was taken, there can still be lengthy disputes about assumptions used in a viability appraisal (whether undertaken by the local planning authority or developer). Even the involvement of a third party such as the District Valuer does not necessarily lead to an agreed position on viability. Viability assessments are normally commercially sensitive and this can add to difficulties in resolving issues and the matter of transparency for the local planning authority about the reasons for accepting a reduced planning requirement on one scheme rather than another.

Potential implications of the case studies

5.53 The case studies have identified a need for greater consistency and transparency in approaches to negotiation, both in terms of the negotiation process itself and in the evidence that is required to take negotiations forward when scheme viability is an issue. Possible approaches to this are already available, e.g. through the use of Planning Performance Agreements as well as other advice and guidance produced by a range of organisations. Nevertheless, the importance of the way in which negotiations are undertaken (and tailored to individual schemes) has been highlighted as a key issue in research, such that the Department for Communities and Local Government could consider exploring this further as well as the potential for fresh approaches to enhance negotiating skills and practice.

6. Community Infrastructure Levy and Section 106 Agreements

Introduction

6.1 The Community Infrastructure Levy is a new planning charge that came into force on 6 April 2010. The levy allows local authorities in England and Wales to choose to raise contributions from developers to fund infrastructure that is needed as a result of new development. It applies to most new buildings and charges are based on the size and type of the new development. Community Infrastructure Levy rates for their areas are to be expressed as pounds (£) per square metre (sq m).

6.2 It was never the intention to undertake a full review of the operation of the Community Infrastructure Levy as part of this study; the arrangements are simply too new and there is too little practical experience for a robust investigation. Nevertheless, this study provides an opportunity to highlight any early trends in practice and to flag any major issues that may be arising. The study brief therefore included a limited review of the operation of the Community Infrastructure Levy and had two research objectives; to consider the likely impact of the levy on section 106 benefits, and the future relationship between the levy and section 106.

Key findings

- The majority of local planning authorities are in the process of introducing the Community Infrastructure Levy but there is a small minority (around a quarter) that are yet to decide whether they will take up this option.
- Section 106 contributions will still be collected but the degree to which they are likely to be scaled back varies between authorities.
- The level of specification of infrastructure items to be paid for by the Community Infrastructure Levy varies greatly between local planning authorities and infrastructure type - for example, one infrastructure list may include “school places” and another, a list of schools by name.
- While section 106 agreements are still necessary to deliver affordable housing, the introduction of the Community Infrastructure Levy will likely lead to a reduction in the number of schemes requiring section 106 agreements for other (site specific) measures. But at the same time, there is the potential for achieving higher incomes for funding infrastructure than from section 106 alone in the pre-levy world.

Research approach

6.3 This strand of the research is based on a combination of published information from local authorities which are either implementing the Community Infrastructure Levy or are in the process of adopting it, and short interviews/questionnaire with five local authorities which have implemented the levy during 2012.

6.4 The local authority questionnaire survey (see Chapter 2) showed that, as at 31 March 2012, the majority of local authorities either had a Community Iinfrastructure Levy already adopted, or were in different stages of its preparation. Only 28% of local planning authorities either said they were not preparing a charging schedule or did not say what they were doing about the levy.

6.5 In order to review how the Community Infrastructure Levy is likely to impact on planning obligations we examined published information for 23 local authorities that could be described as being 'the most advanced' in adopting the levy. They included the charging authorities that have either implemented or adopted the levy or are at Examination/ published Draft Charging schedule stages (as at October 31st 2012). The information collected was taken from their websites and includes:

- stage in the 'Community Infrastructure Levy process' (implemented, adopted, pre/post examination, draft charging schedule);
- levy rates by use;
- date of viability assessment;
- assumptions regarding section 106 used in viability assessment;
- any evidence regarding historic levels of section 106 contributions;
- the list of stated infrastructure to be paid for by the levy, as set out in a Regulation 123 schedule (where available).

6.6 Five local authorities with an adopted charging schedule were contacted to obtain information via a telephone interview or by completing a short questionnaire with the following questions:

- What motivated the local authority to proceed with the levy and how far was this decision driven by the changes to section 106 pooled contributions from 2014?
- How is the system operating and where is the line drawn between the levy and section 106?
- Are there early indications that the amount collected from the levy and section 106 from developments is different from that collected under the previous section 106 regime?

- How many section 106 agreements have been signed since the local planning authority started charging in 2011/2012 and what were they for? How does this compare with the pre-levy world?

- What happens when viability concerns are raised and to what extent does the negotiation become a discussion about affordable housing?

Analysis of Local Authority views on scaled back section 106

6.7 Where a local authority decides to introduce the Community Insfrastructure Levy, and in order to ensure that developments are not charged twice for the same items, it publishes a list of infrastructure projects or types of infrastructure that it intends to be wholly or partly funded by the levy. Infrastructure schemes are defined in section 216 of the Planning Act 2008 as including:

a) roads and other transport facilities
b) flood defences
c) schools and other educational facilities
d) medical facilities
e) sporting and recreational facilities
f) open spaces

6.8 We reviewed Regulation 123 lists of nine local authorities which had either adopted the levy or were in final draft stage to assess the range and type of infrastructure being funded by the levy. From our initial sample of 23 authorities, these were the authorities which, from the web search, had a Regulation 123 list that we could easily analyse. The key points to emerge were:

- Transport schemes (mainly identified as specific projects) were included by all nine authorities. Whilst highway schemes accounted for the majority (new roads, improvements/upgrading, intersections, etc.) other forms of transport were listed such as cycle/pedestrian routes, public transport, rail connections, etc. Some of the earlier charging authorities listed 20+ schemes but later ones had much shorter lists of projects.

- All authorities listed education as a key beneficiary of funding, mainly of a generic nature rather than specific establishments.

- About two thirds of the authorities had projects or types of infrastructure under the headings of ‘open space’, ‘sport and recreation’ and ‘flood schemes’ in a mixture of generic and specific schemes.

- About a third or less had listed schemes under ‘community facilities’, ‘health’ and ‘public realm’.

- Two London boroughs’ lists were generic in nature rather than lists of specific projects.

6.9 These key points highlight the strategic nature of the infrastructure provision to be funded as intended, with a mixture of generic and specific projects in the lists.

Table 6.1: Types of Infrastructure in Regulation 123 Lists

Types of Infrastructure (Regulation 123 list)	No. of LOCAL PLANNING AUTHORITIESs (9)[24]
Transport	9
Education	9
Open Space	6
Sport /Recreation	5
Other (Mainly flood defences)	5
Health	4
Community facilities	3
Public Realm	2

6.10 In order to investigate how section 106 benefits were likely to be treated under the Community Infrastructure Levy regime, we examined 23 viability assessments which had been prepared and published as evidence for the levy charge and which were/are to be subject to examination. We focused on the part of the assessment where viability was modelled for residential schemes across an area and on what assumptions regarding the scale of section 106 benefits were used in the model (excluding affordable housing).

6.11 The initial viability assessments for nine local authorities which had either adopted or approved the levy before 31st October 2012 showed that over half (five) had assumed a low amount for section 106 i.e. £500 - £1,000 per dwelling. The rest had used assumptions of £3,000 and £5,000 per unit. Two authorities had also assumed a figure of £15,000 per unit for large strategic sites (but £1,000 or £5,000 for other sites in their area).

6.12 For 14 authorities, where preparation of the levy was still in progress, their viability evidence was based on a range of assumptions about the likely level of section 106 to be charged (rather than a flat rate). For three authorities it appears that no residual section 106 payments were assumed. The remaining authorities were in the following groups:

- Six used flat rates of a relatively low amount i.e. £500 - £1,000 per unit – these authorities might also have a much higher figure for their large strategic sites (and up to as much as £23,000 per dwelling);

[24] Authorities which had either adopted the levy or were in final draft stage winter 2012

- Two authorities used a range depending on development type, e.g. £1,000 to £4,000 per dwelling, distinguishing small brownfield sites and larger greenfield sites to test viability;

- The remaining two used a flat rate figure of around £8,000 to £10,000 per dwelling.

6.13 Overall, but with exceptions for much larger sites requiring extensive site related infrastructure, assumptions tended to be at the lower end for residual seciton 106 site related benefits. It is an important early (and we must acknowledge provisional) conclusion that local authorities do not generally see the Community Infrastructure Levy as a mechanism for funding the infrastructure needed for large-scale development. The infrastructure may be of such a scale as can legitimately be described as 'strategic' but if it serves a single development (however large) authorities are tending to treat this as a site specific requirement and look to a section 106 agreement for its provision. On the other hand, smaller items of infrastructure that serve a number of sites will be seen as suitable for funding from levy receipts (and inclusion in Regulation 123 lists).

Case study evidence of Local Authorities with Community infrastructure levy in operation

6.14 Five local authorities were asked a short list of questions about their operation of the levy and its impact on section 106. The key points under each question are as follows:

6.15 *Q1 What motivated the local authority to proceed with the levy and how far was the decision driven by the changes to section 106 pooled contributions from 2014?*

- The change (post April 2014) in limiting the 'pooling' of section 106 contributions was a key motivator for introducing the levy for some, but not all, of the authorities. Other factors included, the capture of small contributions from a much wider range of developments (often where it had not been realistic to negotiate planning contributions previously), the reduction of previously available funding pots, and the ability in these early stages of the Community Infrastructure Levy to demonstrate that funding would be in place to support growth alongside a new local plan. The levy was seen to be capable of speeding up the process for securing payments from sites (especially smaller schemes) where previously there would need to be a negotiation to arrive at a section 106 agreement. Again, this advantage focused on the process for smaller schemes.

6.16 *Q2 How is the system operating and where is the line drawn between the levy and section 106?*

- How the line is drawn between strategic infrastructure to support growth and site specific/local infrastructure is a matter of judgement (but recognising that the authority must not seek section 106 contributions for something that is

levy-funded). Two authorities also prepared "Developer Contributions" Supplementary Planning Documents alongside Community Infrastructure Levy preparation to provide clarity and to identify those obligations still required for large strategic sites. An interesting comment was that in reviewing its Regulation 123 list, one authority said that it was likely to refocus the list on their top priorities.

- Authorities operating the levy are very aware of the importance of the way their Regulation 123 list is drawn up and that items excluded from the list are capable of being delivered by section 106 agreements for schemes.

6.17 *Q3 Are there early indications that the amount collected from the levy and section 106 from developments is different than from under the previous section 106 regime?*

- Where authorities report an uplift of income since implementing the levy, it is not because they are collecting more from each scheme but because the levy applies to (nearly) all development. Getting income from smaller sites was cited as being a fairer system than before as these sites would not previously have attracted a section 106 contribution;

- But not all the local planning authorities in the (very small) sample reported an immediate sign of an uplift in money collected - two authorities stated that it was difficult to say due to low amounts actually paid to date (although a significant number of liability notices have been issued) and large sites were being treated the same as pre-levy with regard to obligations required.

- Low actual income to date outside of London/south east was attributed to the wider financial climate.

6.18 *Q4a How many section 106 agreements have been signed since the local authority started charging in 2012 and what were they for?*

Q4b How does this compare with the pre-levy world?

- The number of section 106s negotiated and signed has reduced for the sample of authorities since the levy was introduced; in some cases, the fall has been dramatic. It is difficult to say whether this is due to the introduction of the levy and a period of transition for the authority, or due to a slowing down of development due to the wider financial climate. A couple of authorities, for example, had signed around ten section 106 agreements in the past year compared with more than 50 per annum in pre-levy days. These first signs of the impact of the levy suggest a potential scaling back of seciton 106 negotiations and could be the start of a longer term trend. This is an aspect that the Department for Communities and Local Government can keep under review as the levy is more widely implemented – it could, for example, be readily picked up in a future study of the type undertaken in 2011/12.

- Affordable housing was the majority component of section 106s that were used, which is not unexpected as it is excluded from levy funding.

6.19 *Q5 What happens when viability concerns are raised and to what extent does the negotiation become a discussion about affordable housing?*

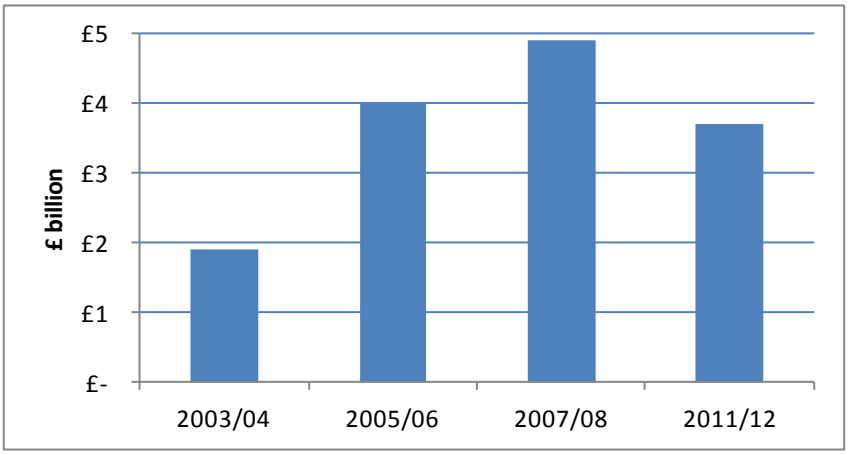
- When questions of viability are raised, the key issue is almost always affordable housing and this is also the element with most flexibility in any agreement. However, one authority said that other contributions such as education, open space, etc. could be affected as well.

7. Conclusions

7.1 A drop in the level of activity since 2007/8 was a recurring theme across the study and it is no surprise that the number of planning agreements per local authority had fallen by a third between 2007/8 and 2011/12.

7.2 As shown in Figure 7.1, the total value of planning obligations agreed during the financial year 2011/12 was estimated at £3.7bn. This compares to £1.9 billion in 2003/4, £4 billion in 2005/6 and £4.9 billion in 2007/8. The difficult market conditions post-2008 and the consequent fall in development activity almost certainly explain the reduction in obligations between 2007/08 and 2011/12.

Figure 7.1: Total value of planning obligations in £ billion – 2003/04 to 2011/12



7.3 As in previous studies, affordable housing is the single largest component of the value of agreed planning obligations – with an estimated contribution of £2.3bn (62% of the total). The number of affordable dwellings generated by planning agreement in 2011/12 is between 31,000 and 33,000. This compares to over 48,000 in 2007/08, a 33% reduction. A significant element of provision in 2011/12 was concentrated in London (52% of all units agreed) which is significantly higher than in 2007/08 (at just under 30%). The shift towards affordable housing delivery in London may be a short term effect but it will be important to identify and understand any longer term trends.

7.4 The make-up of the remaining planning contributions in 2011/12 shows the relative importance of direct payments as opposed to in-kind and land contributions:

- Just over £1 billion of direct payments were agreed with education and transport accounting for nearly 60% of this total.
- Land contributions were about £307 million with over 70% of these being for open space and affordable housing
- The value of in-kind contributions was at least £80 million .

7.5 The second part of the research addressed the issue of stalled schemes and the effect that scheme viability has on the delivery of development. Modelling of hypothetical development sites suggests that, far from a simple picture of worsening viability since 2007/08, the interaction of changes in both costs and values means that changes in viability have varied between locations and development types. High value locations such as London have bounced back better from the fall in market values between 2007/08 and 2011/12 and are more able to absorb recent increases in build costs. There is therefore less reason for sites becoming or remaining stalled in these locations. However, medium and low value areas, where house prices are still below 2007/08 levels and build costs have recently started to rise again, are likely to have experienced continued problems with stalled sites.

7.6 These themes were borne out by the Glenigan national database of stalled sites. This showed a concentration of stalled sites in low land value areas. But the Glenigan data also showed that approximately two thirds of stalled residential units were in apartment-led developments, a substantial majority of which were brownfield.

7.7 At the other end of the development spectrum, the call for case studies of stalled sites produced a disproportionate number of large-scale greenfield urban extensions in medium and low value areas, accounting for 15% of all sites but 71% of all dwellings.

7.8 The in-depth analysis of the case studies strongly supports the view that changing market conditions are the major determinant of development schemes becoming stalled and that schemes in medium and lower value areas (again particularly higher density schemes on brownfield sites and large-scale greenfield sites) have been more affected by deteriorating viability. Beyond this central finding, the case study analysis showed multiple causes for sites becoming stalled including strategic behaviour by developers and house builders, and disagreements or temporary problems with development partners or site owners. While the impact of section 106 agreements on viability did play a role in some case studies, this was not a universal feature explaining site delivery difficulties.

7.9 Both the local planning authority survey and the case studies indicate that local authorities and developers are generally flexible in re-negotiating planning agreements. But the case studies highlighted that practice in the way renegotiations are undertaken varies considerably. Where the debate between local planning authority and applicant turned on viability issues, there is no single approach to the use of evidence to ‘prove’ a case. There is an apparent need for greater consistency and transparency in approaches to negotiation – in the evidence that is required to take negotiations forward and in the planning mechanisms that can be used to improve viability. While much has already been done to provide advice and guidance around these issues, the Department for Communities and Local Government could consider this further and explore the potential for fresh approaches to enhance negotiating skills and practice.

7.10 Finally, the research focussed on the use of section 106 agreements and the implementation of the Community Infrastructure Levy – recognising that, at the time of the research, implementation of the levy was still very new. Early indications are

that the levy will run alongside significantly scaled back section 106 payments but local planning authorities are taking different views on the level of section 106 payments relevant to their area and the rate of Community Infrastructure Levy to be sought. With the introduction of the levy, local planning authorities can be in a position to increase the funding available for new infrastructure to support development in their area (because they collect funds from a wider range of development than hitherto), while reducing the number of section 106 agreements that are needed.

7.11 Given the subdued macro-economic and development market context that form the backdrop to this study, a number of specific issues emerge, which may be worthy of further investigation:

- Firstly, there may be a widening disparity between agreed and delivered planning obligations, particularly outside London

- Secondly, the relatively low levels of affordable housing supply provided through this mechanism in areas with weak to medium value housing markets, has wider policy implications that merit further investigation.

- Thirdly, the study has provided some very early indications of the way the Community Infrastructure Levy and section 106 contributions are interacting, reflecting the intentions that lie behind the levy. The Department for Communities and Local Government will no doubt want to revisit this when the levy is more firmly established. Any future update of this study should incorporate, as a central element of the work, a focused review of the way the levy is evolving and its impact on the scale and type of planning obligations collected.

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Barnsley MBC
Basingstoke and Deane Borough Council
Bath and North East Somerset Council
Bedford Borough Council
Birmingham City Council
Blaby District Council
Blackburn With Darwen Borough Council
Bolton Council
Borough Council of King's Lynn and West Norfolk
Borough of Broxbourne
Bournemouth Borough Council
Bracknell Forest Borough Council
Brighton and Hove City Council
Broadland District Council
Burnley Borough Council
Bury Council
Calderdale Metropolitan Borough Council
Cambridgeshire County Council
Carlisle City Council
Castle Point Borough Council
Chelmsford City Council
Cheshire East Borough Council
Chesterfield Borough Council
Chichester District Council
Chiltern District Council
City of London Corporation
Cotswold District Council
Crawley Borough Council
Daventry District Council
Dorset County Council
Dudley Council
East Cambridgeshire District Council
East Lindsey District Council
East Northants Council
East Riding of Yorkshire Council
London Thames Gateway
Mansfield District Council
Medway Council
Mendip District Council
Middlesbrough Council
Mid-Sussex Council
Newark and Sherwood District Council
Norfolk County Council
North Somerset Council
North Dorset District Council
North Lincolnshire Council
North Tyneside Council
North Warwickshire BC
North York Moors NPA
Norwich City Council
Nottinghamshire County Council
Nuneaton and Bedworth Borough Council
Oxford City Council
Peterborough City Council
Purbeck District Council
Richmond District Council
Royal Borough of Kingston upon Thames
Rugby Borough Council
Runnymede Borough Council
Salford City Council
Sandwell MBC
Scarborough Borough Council
Sefton MBC
Shropshire Council
Somerset County Council
South Gloucestershire Council
South Oxfordshire District Council
South Staffordshire Council
South Tyneside Metropolitan Borough Council
Southend Borough Council
St Helens Metropolitan Borough Council
Stafford borough Council

East Staffordshire Borough Council
East Sussex County Council
Eastbourne Borough Council
Eden District Council
Elmbridge Borough Council
Exeter City Council
Fareham Borough Council
Forest of Dean District Council
Gosport Borough Council
Guildford Borough Council
Hampshire County Council
Harborough District Council
Harlow District Council
Hartlepool
Hinckley & Bosworth Borough Council
Hull City Council
Isle of Wight Council
Ipswich Borough Council
London Borough of Islington
Knowsley Metropolitan Borough Council
Lake District
Lancaster City Council
Leeds City Council
Lewes District Council
Lichfield District Council
London Borough of Bexley
London Borough of Hammersmith and Fulham
London Borough of Havering
London Borough of Lewisham
London Borough of Redbridge
London Borough of Southwark
London Borough of Sutton
London Borough of Tower Hamlets
Stockton on Tees Borough Council
Suffolk Coastal District Council
Surrey Heath Borough Council
Tameside MBC
Tamworth Borough Council
Tandridge District Council
Teignbridge District Council
Three Rivers District Council
Thurrock Council
Tonbridge and Malling Borough Council
Trafford District Council
Tunbridge Wells Borough Council
Uttlesford District Council
Walsall Council
Wandsworth Council
Watford Council
Waveney
Waverley Borough Council
Wealden District Council
Welwyn Hatfield Borough Council
West Dorset District Council
West Lancashire Borough Council
West Lindsey District Council
West Northamptonshire District Council
West Somerset District Council
Wigan Metropolitan Borough Council
Wirral Council
Wokingham Borough Council
Worcester City Council
Wycombe District Council