Ministry of Housing,
Communities &
Local Government

The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2016-17

Dr Alex Lord, Dr Richard Dunning and Dr Bertie Dockerill
The University of Liverpool

Dr Gemma Burgess
The University of Cambridge

Dr Adrian Carro
The University of Oxford

And

Professor Tony Crook and Professor Craig Watkins
The University of Sheffield

Professor Christine Whitehead
London School of Economics

March 2018
Ministry of Housing, Communities and Local Government

This document/publication is also available on our website at www.gov.uk/mhclg

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

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: https://twitter.com/mhclg

March, 2018

ISBN: 978-1-4098-5175-2

Contents

Executive Summary

Introduction

Developer contributions have long been an element of planning policy in England. The scope and remit of these exactions from the development process have been determined at various moments by important pieces of legislation including the Town and Country Planning Act's Development Charge (1947), the Land Commission Act (1967), the Community Land Act (1975) and the Development Land Tax Act (1976).

The environment that prevails in 2016/17 is set by two pieces of legislation. The 1990 Town and Country Planning Act provides Local Planning Authorities with the right to negotiate obligatory contributions - hence 'planning obligations' - with developers on a case-by-case basis. The developer contributions agreed represent the necessary conditions to make the proposed development acceptable in planning terms. As it is section 106 of the Act that makes this provision, the shorthand 'S106 agreement' has come to be common parlance for this form of planning obligation. More recently the S106 system has been supplemented by the Community Infrastructure levy (CIL), which was introduced through the Planning Act 2008 and brought into effect through the CIL regulations of 2010. CIL is a locally determined fixed charge on development which usually takes a relative form, such as '£X per square metre of new development'.

Together, negotiated S106 planning obligations and CIL make up the system of developer contributions used to secure funding towards mitigating the social and environmental effects of development.

This study examines the use of developer contributions in England during the financial year 2016/17. In so doing we present an account of the value, incidence and delivery of both S106 planning obligations and CIL. This is the first occasion on which both these measures have been valued together since the introduction of CIL.

Background and Previous Studies

This current study follows four previous studies of the value and incidence of planning obligations (although they were all restricted to just S106 negotiated settlements) in 2003/04, 2005/06, 2007/08 and 2011/12.

The first three studies coincided with a period of uninterrupted economic growth in England and reported important findings on the growth in planning obligations, their geographic variation and differences in approach to implementation between Local Planning Authorities. By contrast the 2011/12 study described the operation of planning obligations during the global economic downturn of 2008 onwards. It reported a decline in the value of planning agreements signed as a result of the

broader depression in the construction industry and set out case study findings directed to the specific issue of stalled sites.

In this fifth iteration of *Valuing Planning Obligations* we seek to explore four areas in the context of a macroeconomic climate widely understood to be in recovery. Our aims in this study were to:

- Update the evidence on the current value and incidence of planning obligations
- Investigate the relationship between CIL and S106
- Understand negotiation processes and delays to the planning process
- Explore the monitoring and transparency of developer contributions

Summary of Key Findings

Evidence on the current value and incidence of planning obligations

- The number of planning agreements has decreased since 2011/12 although the number of obligations per agreement has risen for England as a whole from 2.06 in 2011/12 to 2.56 in 2016/17. This growth suggests a return to the higher number of obligations experienced in earlier studies, which showed an upward trend from 2003/04 to 2007/08. This interpretation of a general return to an earlier trend must bear the caveat that the number of authorities charging CIL between 2011/12 and 2016/17 has increased and that some of these planning permissions will bear both a S106 planning agreement and CIL.

- There has been an increase in the aggregate value of planning obligations agreed and CIL levied since 2011/12, up 61% from £3.7bn to £6.0bn in 2016/17 (50% after adjusting for inflation). However, this is in the context of an increase in the number of dwellings given planning permission in 2016-17 compared to 2011-12, which, all other things equal, would be expected to result in an increase in the value of planning obligations and CIL levied.

- Despite the introduction of CIL in 2010 our survey results clearly illustrate that the majority of the value of planning obligations agreed and CIL levied in England comes from negotiated S106 agreements (85%). It is worth noting that at the end of 2016-17, 133 authorities out of a possible 339 were charging CIL (39%).

- There has been significant growth in the value of affordable housing in both absolute terms and as a proportion of the total value of planning obligations agreed and CIL levied. Affordable housing contributions have grown as a proportion of total planning obligations, from 53% in 2007/8 and 62% in 2011/12 to 68% in 2016/17.

There are, however, significant regional variations in the value of affordable housing obligations.

- The value of some other planning agreements has declined - for example, planning obligations signed on 'transport and travel' have fallen since 2011/12 and whilst 'open space and environment' is marginally greater than the value in 2011/12 it is less than half the value recorded in 2007/08.

The relationship between CIL and S106

- Where CIL has been adopted the value of levies has been significant, with £945m levied in aggregate during 2016/17.

- We estimate that in 2016/17 there were 4000 applications granted permission with planning agreements (permissions with only planning agreements and those with agreements and CIL) and 6,500 with CIL charge liable only.

- Our findings point to CIL proving most effective on small, uncomplicated sites in areas of high demand. Outside these high demand contexts there remains a strong residual preference for S106. A large part of this is related to the site-specific association between development and the planning obligation agreed to make it acceptable. When considered in isolation CIL breaks this connection. Furthermore, because it takes time for LPAs to accumulate sufficient CIL proceeds to fund infrastructure investment a corresponding impression that CIL payments are being accumulated over sustained periods rather than spent in a timely fashion can develop.

- Where the scale of development is significant or the site was complex and/or occupied a strategically significant location, CIL was rarely adequate to mitigate site-specific issues, and was often accompanied by a tandem S106 agreement. There is widespread variation in the negotiation of planning obligations in CIL charging authorities, and in some cases it was suggested by the development industry that the introduction of CIL has made these negotiations more complex.

Negotiation processes and delays to the planning process

- There is evidence that negotiations relating to S106 agreements, including agreeing viability, can add delays to the planning process, although these negotiations are in many cases necessary to ensure that the permission is policy compliant.

- The reasons for these delays can be wide-ranging. The aggregate of findings from across this study point to delays resulting from the very fine-grained, site-specific nature of negotiation.

- The qualitative aspects of this study point to delay being best understood as an outcome of a discretionary planning system where developer contributions are intimately bound up with site-specific context, mitigation and development viability.

Monitoring and transparency of developer contributions

- Survey results show that 75% of LPAs employ a dedicated monitoring officer. This represents an increase when compared with 2011/12 and a return to the levels recorded in 2007/08.

- Case study findings provide evidence of the variability in approaches to monitoring between LPAs. Some LPAs reported challenges with regard to how monitoring officers' posts are funded following case law findings that limit their right to levy monitoring and administration charges via section 106 planning agreements. Authorities are able to keep up to 5% of CIL receipts for administration costs.

- There is strong evidence that the proceeds of planning obligations policies are not clearly communicated to the public. We found no consistent, transparent or systematic communication between LPAs and communities on this issue.

Structure of the Report

The report has eight chapters and six appendices. Chapter 1 considers the research context and rationale for updating the valuation of planning obligations and CIL in England, and the research methods used in the study. Chapters 2 to 5 mostly draw on evidence from the LPA survey. The second chapter explores the number of planning permission applications and number with CIL or planning obligations agreed, as well as highlighting the differences between the valuation for 2016/17 and those undertaken previously. The value of these contributions is explained in Chapter 3. Variation in the policy and practice of LPAs is considered in detail in Chapter 4. The fifth chapter identifies how the delivery of planning obligations and CIL differs from the number and amount of contributions agreed in the planning application process. Chapter 6 and 7 draw on separate components of the study methods. The core issues identified in the LPA case studies are detailed in Chapter 6 before a summary of the roundtable discussions held with representatives of the development industry is provided in Chapter 7. Chapter 8 looks across all methods of the study and draws together the conclusions. The appendices largely focus on the research methods used in the study, with detailed explanations of the survey and valuation methods as well as the questions raised in the case studies.

Acknowledgements

We are grateful to the many planning officers who participated in this research on behalf of their planning authority. Their timely responses to the survey at short notice and fulsome support in providing detailed and wide ranging information about the number and value of obligations and CIL, as well as the monitoring, delivery and expenditure of obligations and CIL were vital for this research. Our special thanks must go to those who supported the case studies through collating records and answering detailed questions.

We are also grateful to the representatives of the development industry who contributed through roundtable discussions and interviews to the evidence of the relationship between development practices and the operation of planning obligations and CIL.

We also wish to thank the team at the Ministry of Housing, Communities and Local Government (MHCLG) who were responsible for commissioning and handling this research, in particular Charlotte Woodacre, Robert Mills and Shreya Nanda for their support. We are also grateful to those in MHCLG who commented on the research methods and findings.

About the research team

- Dr Gemma Burgess is Senior Research Associate at the Cambridge Centre for Housing and Planning Research
- Dr Adrian Carro is Postdoctoral Research Officer at the Institute for New Economic Thinking, University of Oxford
- Professor Tony Crook is Professor Emeritus of Town and Regional Planning at the University of Sheffield
- Dr Bertie Dockerill is a doctoral researcher at the University of Liverpool
- Dr Richard Dunning is Lecturer in Planning at the University of Liverpool
- Dr Alex Lord is Reader in Geography and Planning at the University of Liverpool
- Professor Craig Watkins is Professor of Town and Regional Planning at the University of Sheffield
- Professor Christine Whitehead is Emeritus Professor of Housing Economics at the London School of Economics and Political Science

Glossary

Affordable Housing:

Affordable housing includes a range of non-market tenures including social rented, affordable rented and intermediate rented housing. Whilst it may be developed directly by registered providers or the private sector, for the purposes of this study it is only housing that is agreed through a planning obligation.

CIL – Community Infrastructure Levy:

A levy allowing local authorities to raise funds from owners or developers of land undertaking new building projects in their areas.The Community Infrastructure Levy is a tool for local authorities to help deliver infrastructure to support the development of their area.

LAHS – Local Authority Housing Statistics:

The LAHS is an annual data collection covering all local authorities and covers a wide range of housing topics; for the purposes of this study the survey collects data on the supply of affordable housing.

LPA – Local Planning Authority:

Local planning authorities are the public authority whose duty it it to carry out specific planning functions in a particular area. The planning system includes three tiers of local government in England, but in this instance the focus is on district councils and London borough councils (whether two tier or unitary authorities) as Local Planning Authorities (county councils, Broads authority, national park authorities and the Greater London Authority are identified separately).

PA – Planning Agreement

A legal agreement between local planning authority and developer, which sets out the individual obligations that have been agreed.

PO - Planning Obligation:

A legally enforceable obligation within a planning agreement, normally entered into under section 106 of the Town and Counrty Planing Act 1990, to mitigate the impacts of a development proposal.

PDR - Permitted Development Right:

A national grant of planning permission. The rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Permitted development rights for the change of use to residential are subject to prior approval by the local planning authority.

S106 – Section 106 agreement:

Section 106 of the Town and Country Planning Act 1990. This is the primary legislation under which local planning authroties are able to secure planning obligations as a signed agreement between the developer and the LPA. The Act was amended in 2013; where referred to in relation to 2016/17 the amendment to the Act is assumed.

Chapter 1: Introduction

Scope of the Research

1.1 Planning obligations and the Community Infrastructure Levy (CIL) represent significant contributions towards the social and environmental mitigation of development for local planning authorities (LPAs) and the provision of affordable housing and infrastructure. As contributions from the development process planning obligations and CIL are sometimes seen as having similar impacts upon planning and development, yet their remit, incidence, value and expenditure are distinct.

1.2 Planning agreements have been permitted between applicants for planning permission and the granting LPA since the Town and Country Planning Act 1971. These legally binding agreements now fall under the Town and Country Planning Act 1990 (as amended) and are most often referred to as S106 obligations, in relation to that Act. Since then planning obligations have been used to assist in mitigating the impact of otherwise unacceptable development in planning terms. By the early 2000s planning obligations were in practice being used to compensate third parties for externalities and as an informal betterment tax (Corkindale, 2004), which led to calls to separate the two economic functions into direct mitigation and affordable housing contributions and a planning gain supplement charged to provide wider infrastructure (Barker, 2004; Crook et al., 2006) Planning agreements are a result of the specific location and planning application and as such are negotiated and agreed through the planning application process. Since 1990 case law has defined the parameters and precedents of S106 regulations.

1.3 The Community Infrastructure Levy (CIL) is a planning charge introduced in the Planning Act (2008) before coming into force through the Community Infrastructure Levy Regulations in 2010. It is a planning charge which LPAs in England have the right, but not the obligation, to adopt. In settings where it has been adopted CIL is usually chargeable on new development that adds a minimum of 100 square meters or a new dwelling. As the name implies the proceeds of the levy are designed to support LPAs make an association between a charge on new development and the delivery of new infrastructure. CIL is chargeable by a range of regulating authorities (including the Mayor of London and national park authorities) where such eligible agencies choose to adopt it. The rate of CIL is determined and published by the LPA, and hence is a known cost of development. The charge is applicable on development and, therefore, is applied regardless of the form of permission (Lawful Development Certificate, General Permitted Development Order, local planning order etc).

1.4 Planning is a devolved matter in the UK and, therefore, there are differences in the approaches undertaken in Northern Ireland, Scotland, Wales and England towards development and developer contributions. The focus of this research is upon England alone. Whilst this simplifies the planning system within which LPAs plan for, control and seek contributions from development, there is significant variation in the approach adopted between LPAs, most notably between those that have and those that have not adopted CIL.

1.5 This parallel approach, whereby some LPAs have adopted CIL whilst others have not, presents a specific set of issues with respect to valuing developer contributions in aggregate. In this research, *Valuing Planning Obligations 2016/17,* we have collected a range of data, through both secondary data sources and a primary survey of LPAs, which presents a comprehensive account of the value of developer contributions agreed in England over the financial year 2016/17. In addition we have also conducted primary research across 20 case studies (details in Appendices 4 and 5) and in 3 roundtable sessions with the development industry on the operation of S106 and CIL in practice.

1.6 This study aims to understand the incidence and value of agreed planning obligations and CIL in England in 2016/17. The four objectives of the study are to:

a) Update the evidence on the current value and incidence of planning obligations

b) Investigate the relationship between CIL and S106

c) Understand negotiation processes and delays to the planning process associated with developer contributions

d) Explore the monitoring and transparency of developer contributions

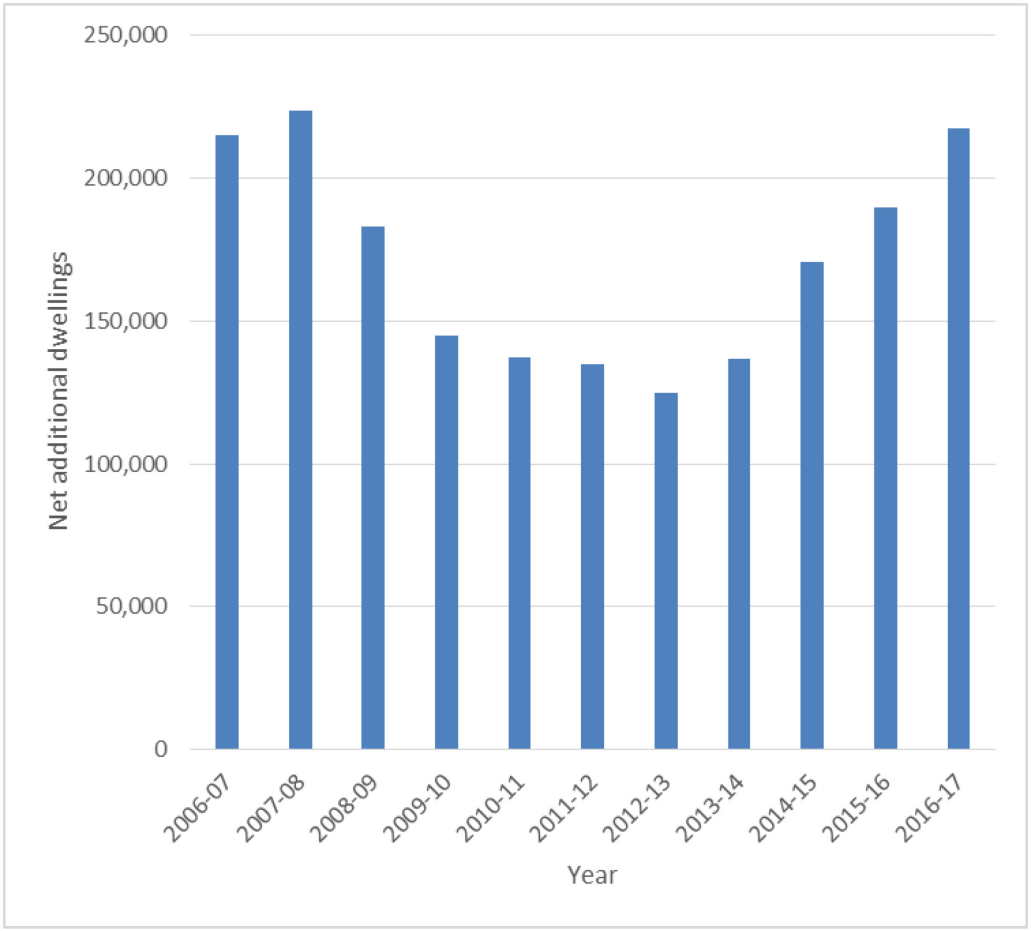
Research context

1.7 This iteration of *Valuing Planning Obligations* is the fifth valuation study commissioned by MHCLG with previous studies in 2003/04, 2005/06, 2007/08 and 2011/12 (Crook et al., 2006, 2008; University of Reading et al., 2014). Throughout this period there has been significant change in national and regional development activity and changes in the national and local political and policy environment have occurred. Each of the previous studies provided estimates of the number of planning permissions with agreements attached and the value of these agreements, yet all occurred prior to the widespread use of CIL and hence inevitably focussed on obligations. This research is therefore conducted with a slightly broader remit, to quantify the number and value of both planning obligations and CIL levied, as well as to consider the relationship between the two contribution mechanisms. In this sense the research seeks to be both comparable to the previous studies, commenting on the relative scale and composition of contributions, and to frame those contributions in light of contemporary policy and development activity.

1.8 When considered as a set the previous iterations of *Valuing Planning Obligations* can be understood as falling into two distinct periods. The first three studies (2003/04, 2005/06, 2007/08) were conducted over a decade after the amendments made to planning obligations in the Town and Country Planning Act 1990 and during a period of sustained economic growth and a peak in economic activity in England. By contrast, the 2011/12 study has to be understood in the wake of the global financial crisis of 2008 onwards and shortly after the introduction of CIL in 2010.

1.9 This broader macro economic climate is highly significant to the incidence and value of planning obligations. Evidence suggests that the development industry remained depressed for a sustained period following the global economic downturn. For example, although the number of net additional dwellings rose each year between 2012/13 and 2016/17, the number remained below the peak experienced in 2007/08, prior to the economic downturn. In 2016/17 there were 217,350 net additional dwellings, which is 97% of the peak number in 2007/08.

Figure 1.1 Net additional dwellings 2006/07 to 2016/17



Source: MHCLG, Live Table 120

1.10 *Valuing Planning Obligations 2016/17* was commissioned in spring 2017 at a time when the context for development was complicated by an uncertain macroeconomic situation and a period of political upheaval. More specifically to planning obligations policy, by 2017 CIL has been in operation for seven years and so there is now a well-established pattern of its adoption and practice on which we can now produce evidence.

Research Approach

1.11 In this fifth iteration of *Valuing Planning Obligations* the value and incidence of CIL has been measured for the first time. This research follows a similar multi-methods approach to that adopted in the previous four studies, given the significance of updating the previous research, and then extends this to consider counterfactual possibilities for modelling development in alternative S106/CIL formats. The research covered three primary data collection methods, including both qualitative and quantitative research methods, which combined with secondary data provides a foundational evidence base for the valuation and explanation of the incidence of contributions. The primary data collection methods were: a survey of all LPAs, County Councils and National Park Authorities; 20 case studies of LPAs; and 3 roundtable discussions with representatives of the development industry.

1.12 A self-completion questionnaire was distributed via email to all English planning authorities. The survey focussed on the number and value of contributions, their operation and expenditure. The overall response rate to the survey was 46% (previous iterations of the survey achieved between 31% and 43%). The survey respondents were responsible for granting permission for 48% of the total number of residential dwellings granted permission in 2016/17 (according to ABI Barbour data). The responding authorities are listed in the appendix with further details of the response rate.

1.13 Secondary data were collected from a range of data sources, including planning application statistics collated in MHCLG's live tables, ABI Barbour data, land valuation data from the Valuation Office Agency and house price data from the Land Registry and Nationwide Building Society.

1.14 Primary data were collected on the delivery of S106 and CIL in the 20 case study LPAs including site specific details for up to four sites in each of these authorities. The case studies were undertaken through both desk-based analysis and in-depth interviews with planning officers and development industry professionals.

1.15 Three roundtable sessions were undertaken with 25 experts from the development industry. These roundtable sessions were used to elicit attitudes and behavioural insights into the various effects of different approaches to handling planning obligations on the development process.

1.16 The typology of planning obligations used in previous studies covering affordable housing, open space and the environment, transport, community works, employment and other, was used in this study as well, although it was evidently updated to include CIL. The method employed to calculate values follows that used in previous iterations of the research. The calculation for the value of CIL and direct payment S106 agreements is contingent upon accurate recording by responding authorities. The calculation for in-kind contributions is more complex and is contingent upon extrapolation of the type of direct contributions. The method for calculating the value of affordable housing uses secondary data, cross-checked against the survey to undertake a discounted market valuation.

Local Planning Authority Families

1.17 Local planning authorities are grouped together into families for this valuation. This grouping both enables the reporting of research findings at a sub-national scale without breaching the confidentiality of research participants and allows for extrapolation to non-participating authorities at a more appropriate scale than the national.

1.18 The creation of the LPA families used in the previous iterations of the research has been described in some detail in Crook et al (2006) and builds upon the work done by Vickers et al. (2003) on the household characteristics of local authorities. The original families created by Vickers et al (2003) were (numbers of member authorities in brackets): Established Urban Centres (30); Urban England (46); Rural Towns (119); Rural England (57); Prosperous Britain (76); and Urban London (26). Prosperous Britain was re-named ‘Commuter Belt’ in the 2011/12 study.

1.19 In 2009 there was a restructuring of local authorities in England. Whilst the majority of authorities remained unaltered, some new unitary authorities were created to merge previous two tier systems of county and district organisation. This resulted in a reduction in the total number of local authorities. This raises a question about the attribution of new authorities to the existing families. Two possibilities emerge: either use existing secondary data to compare the contemporary characteristics of the local authority families and the new authorities in order to allocate them or create a new local authority typology. The primary advantage of attributing new authorities to the existing framework of families is in continuing the historic link with previous iterations of the research and in understanding how family activity is changing over time. The primary advantage of creating a new typology is that the families reflect most accurately the contemporary distribution of family characteristics and minimise within group variation.

1.20 The majority of new authorities contained previous authorities that were almost entirely within the same LPA family (for example Shropshire comprised five

previous authorities, all of which were classified as 'Rural England') and as such were included in those families. Where the classification was potentially unclear (for example Cheshire East included three previous authorities with three different LPA families) the authority was attributed to the largest previous authority. The veracity of these selections was tested through expert review and comparison to contemporary planning and housing statistics for the families. The expert review included analysts within MHCLG, planning officers and an internal academic review. No response suggested that the authorities had been misclassified. The statistics for new authorities were visually compared to boxplots for the families according to the number of planning applications received in 2016; the proportion of planning applications approved in 2016; the number of dwellings started 2015-16; and residential land values per hectare in 2015. No reclassification was necessary.

1.21 The following tables show the LPA membership (and whether the authority was a CIL charging authority in 2016/17) according to Urban England, Established Urban Centres, Rural Towns, London, Commuter Belt and Rural England. The names refer to the family characteristics and may not therefore describe each member authority. This process led to the distribution of authorities to families as shown in Table 1.1, the full membership list may be found in Appendix 6, and the geographic relationship of families as shown in Figure 1.6.

Table 1.1 The number of LPAs within each LPA family and the number charging CIL in 2016/17

	CIL		No CIL		Total	
LA Family	No.	%	No.	%	No.	%
Urban England	11	8%	27	14%	38	12%
Rural Towns	18	14%	37	19%	55	17%
London	23	17%	3	2%	26	8%
Rural England	40	30%	63	33%	103	32%
Established Urban Centre	7	5%	23	12%	30	9%
Commuter Belt	33	25%	39	20%	72	22%

1.22 As can be seen in Table 1.1 LPAs are not equally distributed across the different families, with Rural England containing nearly four times the number of authorities in London. However, in previous studies the distribution of the incidence and value of obligations has not been related to the number of authorities, rather their scale, location, market conditions and LPA activity.

Fig. 1.2 A map of English Local Planning Authorities by family

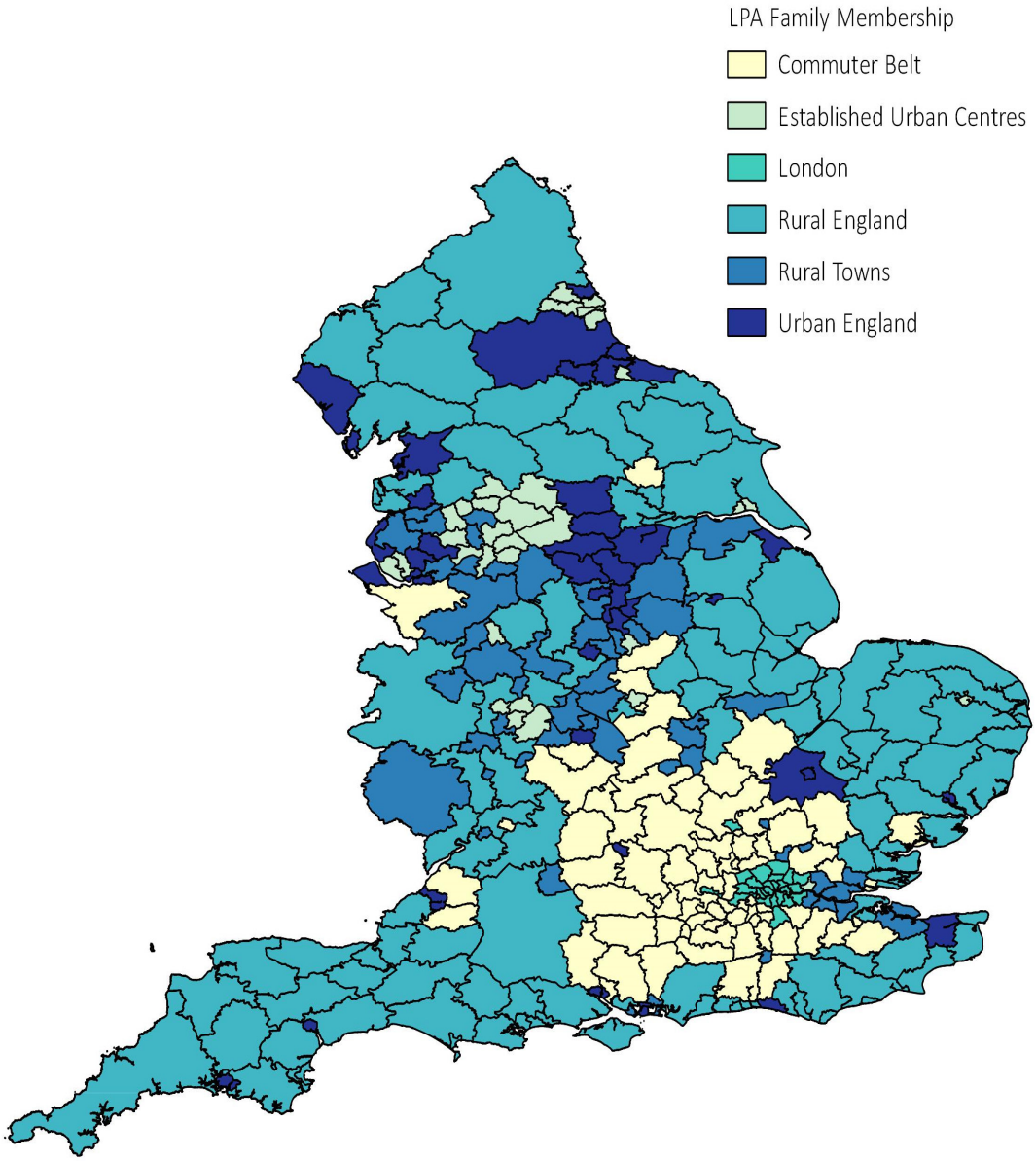
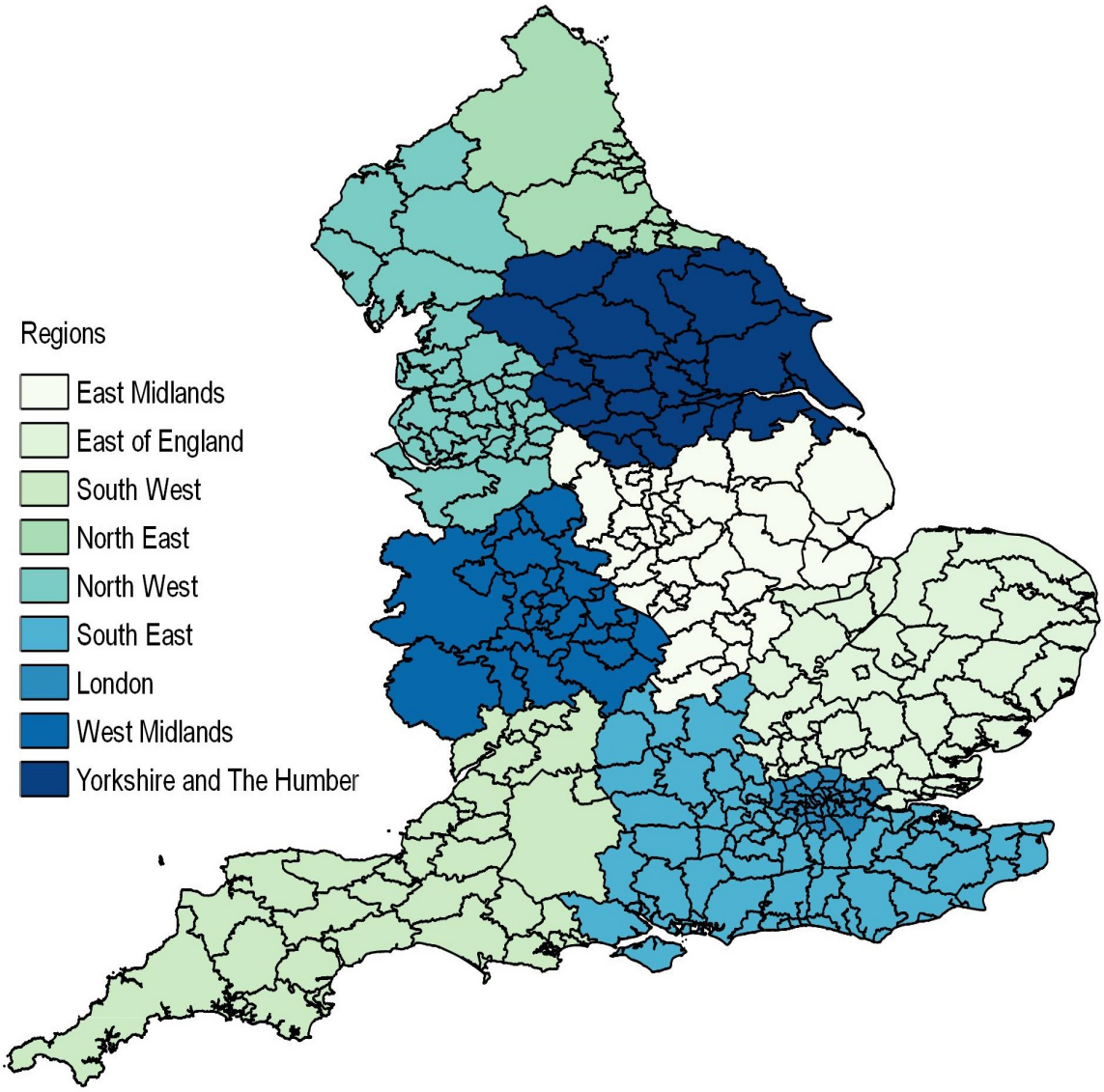


Table 1.2 The number of CIL and non-CIL charging authorities per region in 2016/17

	CIL		No CIL		Total	
Region	No.	%	No.	%	No.	%
East	18	14%	29	15%	47	14%
East Midlands	8	6%	32	16%	40	12%
London	30	23%	3	2%	33	10%
North East	2	2%	10	5%	12	4%
North West	5	4%	33	17%	38	12%
South East	34	26%	33	17%	67	21%
South West	20	15%	17	9%	37	11%
West Midlands	7	5%	23	12%	30	9%
Yorkshire & Humber	7	5%	14	7%	21	6%

1.23 In addition to analysis according to LPA families, this study frequently considers the regional distribution of the statistics. Of particular significance for these statistics is the distribution of CIL adoption, which is summarised in Table 1.2

Fig 1.3 A map of English Local Planning Authorities by region



Chapter 2: The number of Planning Agreements, Obligations and Community Infrastructure Levies

Introduction

2.1 This chapter situates the value and incidence of developer contributions within the context of the number of planning permissions received and accepted with contributions attached. It largely reports on the local planning authority survey which relates to the number of planning agreements, obligations and permissions liable for the Community Infrastructure Levy. These data are explored with reference to the national number, regional and LPA family types.

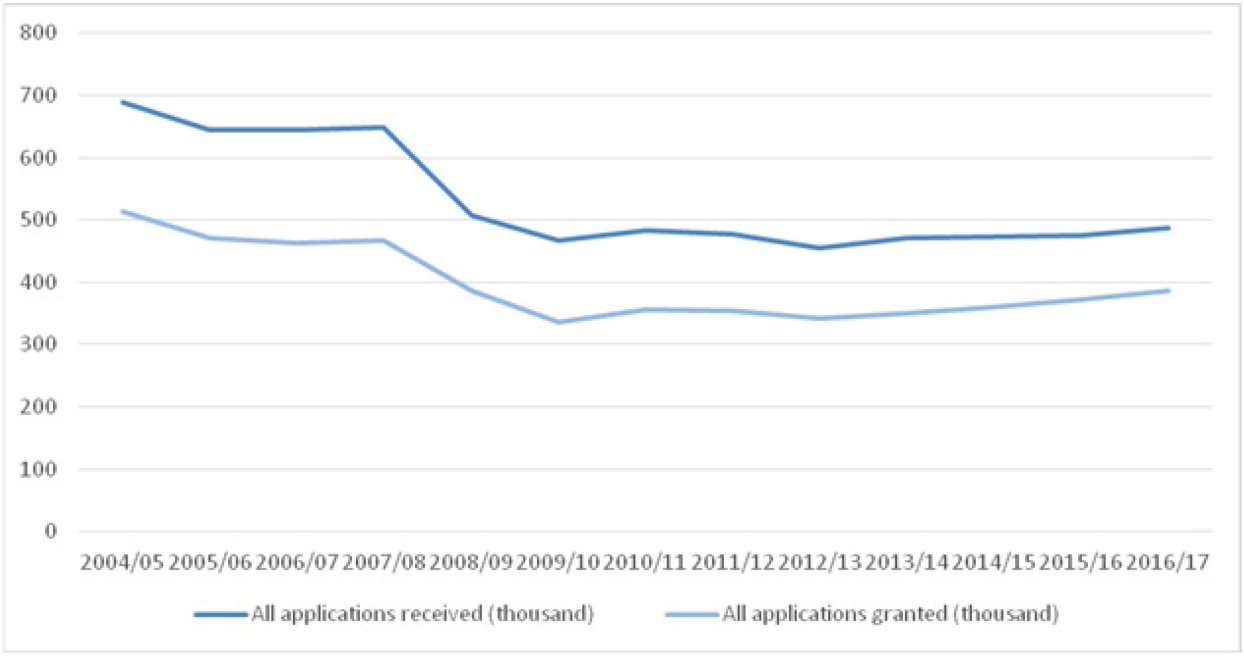
Key Findings

- We estimate that in 2016/17 there were 4,000 applications granted permission with planning agreements (permissions with only planning agreements and those with agreements and CIL) and 6,500 only liable for a CIL charge.
- There is significant variation within regions with respect to the number of planning applications, both absolutely and per 1000 population
- In that year, on average each LPA agreed planning obligations on 12 planning applications and permitted 20 applications which were liable for CIL charges
- Most residential planning applications had neither a CIL charge nor planning agreement. However, where a contribution applied smaller applications were more likely to be liable for CIL whilst the majority of larger applications had a planning agreement.
- There is widespread regional variation in the proportion of permissions with CIL. 88% of non-householder planning applications in London were liable for CIL (54% without an agreement and 34% with an agreement), over twice the proportion of any other region.
- There is also variation in the proportion of permissions with planning agreements, although, outside London there is less variation between regions (between 10% and 28% of applications).
- On average each planning agreement contained 2.6 obligations.

The overall number of permissions, planning agreements and Community Infrastructure Levies

2.2 The number of planning applications received by LPAs in 2016/17 increased from the previous year but has only increased by 9,000 applications since 2011/12, as shown in Figure 2.1. The number of both applications and applications granted permission remained relatively stable, although lower than the historic levels experienced in the early 2000s, with 162,000 fewer applications in 2016/17 than in 2007/08. There has been a relatively consistent increase in the proportion of planning applications granted each year since 2009/10.

Figure 2.1 Number of planning applications received and applications granted by district planning authorities in England since 2004/05 (thousands)



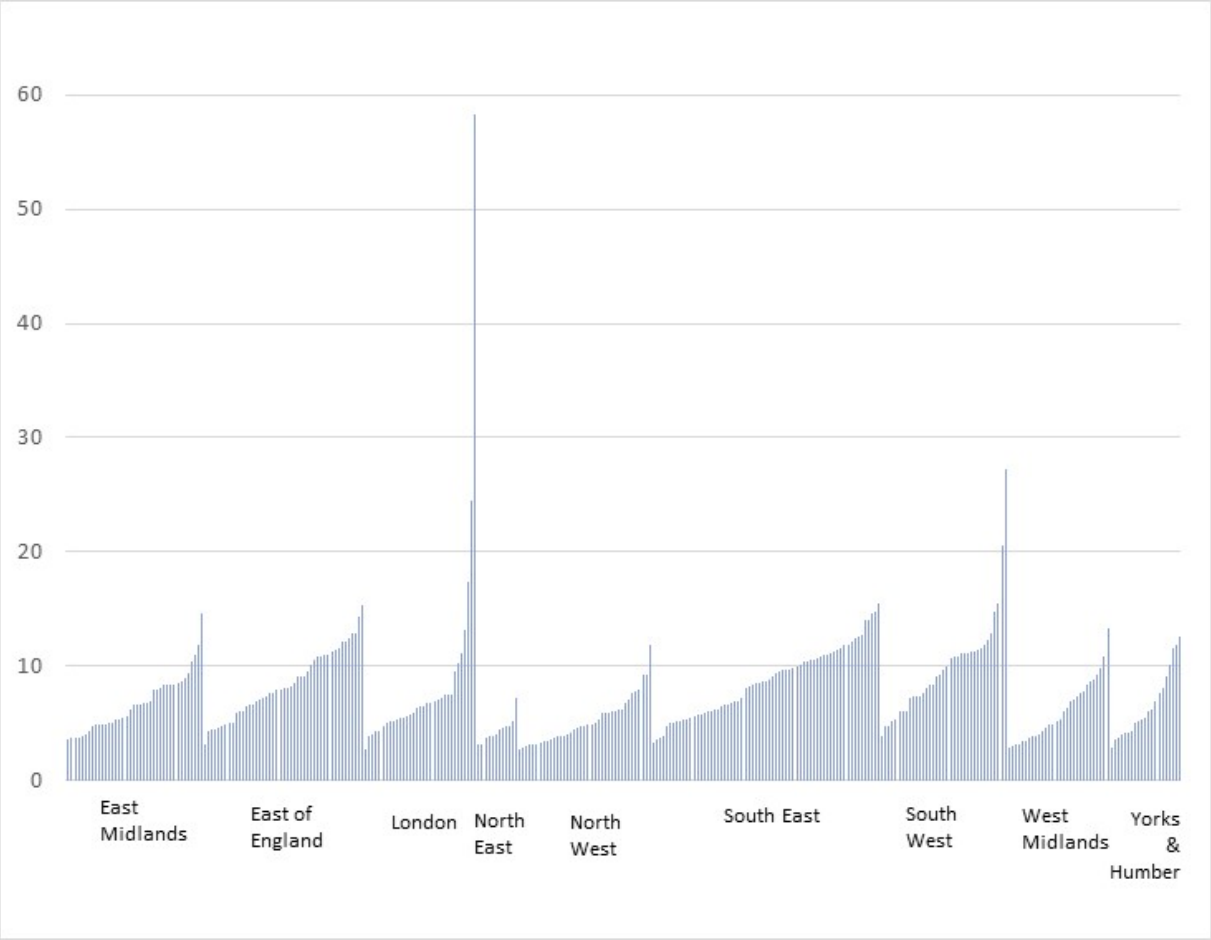
Source: MHCLG, Live Table P120

2.3 The distribution of applications is inherently spatially uneven. As developer contributions are largely charged on granted planning permissions the distribution per 1000 population gives an indication of the different permission contexts between LPAs. Figure 2.2 shows the distribution of planning permissions granted per 1000 population across the eight regions of England in 2016/17. It shows that whilst some regions, such as the South East and East Midlands, have larger numbers of permission granted per 1000 than other regions, such as the North East, there is sizeable variation within these regions with each region having authorities with significantly greater and fewer permissions than the median of 7 applications granted per 1000 population per authority.

2.4 Not all planning permissions included a developer contribution. Planning authorities responding to the survey in 2016/17 indicated that the average planning authority agreed eight planning permissions with planning agreements alone, 20 permissions liable for CIL charge only and 4 with both a planning agreements and CIL charge

liable. In total the average planning authority agreed 32 applications with developer contributions (see Table 2.1).

Figure 2.2 The total number of planning permissions granted in 2016/17 per 1000 population per authority (by region), each bar represents one LPA



Source: MHCLG Live Table P132 and ONS Mid-Year Population Estimate 2016 Local Authority

Table 2.1 Mean number of planning applications granted per authority with contributions (by LPA Families) for planning agreements alone, CIL alone and both

LPA Family	Planning Agreements (only)	CIL (only)	CIL and Planning Agreements
Established Urban Centre	4.6	8.2	0.8
Rural England	7.1	39.3	3.5
Rural Towns	7.9	10.6	0.5
Commuter Belt	13.4	6.1	3.7
Urban England	10.6	15.0	2.3
London	0.6	37.4	28.5
Total	8.4	20.0	3.9

Source: LPA survey

2.5 This average authority is assumed to be CIL charging, although there is evidently differences in practice between CIL and no-CIL charging authorities and between regions. When comparing the LPA families Urban London (66 per authority) and Rural England (50 per authority) had the highest total number of obligations per authority, whilst lower numbers were evident in Established Urban Centres (14 per authority) and in Rural Towns (19 per authority). This largely reflects the average distribution of planning permissions with CIL charges liable, which are more numerous than planning permissions with planning agreements in all families except the Commuter Belt.

2.6 Comparing these numbers to previous iterations of *Valuing Planning Obligations* is not straightforward given the expansion in the number of CIL charging authorities since 2011/12. Table 2.3 shows the average number of agreements per authority for the previous studies (by family) and compares them to the average number of permissions with a planning agreement (whether or not CIL also applies) and the number of permissions with a planning agreement and/or CIL charge. From this it is clear that there has been a decrease in the average number of planning agreements per authority since 2011/12 across every LPA family. Where CIL is included in the number of planning applications granted with a developer contribution agreed there has still been a decrease since 2011/12 in Established Urban Centre, Rural Town and Commuter Belt families, but an increase in the other families.

Table 2.2 Number of non-householder applications with planning agreement per authority (for 2016/17 this includes planning agreement only applications and those with CIL and planning agreement)

LPA Family	2003/04	2005/06	2007/08	2011/12	2016/17	
	Planning agreements only				Planning agreements only	Agreement and / or CIL
Established Urban Centre	26.9	13.8	36.2	15.4	7.7	21.0
Rural England	15.1	17.1	12.9	18.3	16.9	46.6
Rural Towns	19.3	35.1	29.5	21.4	11.2	24.8
Commuter Belt	33.9	28.3	27.6	25.6	27.9	42.5
Urban England	13.8	25.5	25.0	14.7	21.4	24.9
London	25.9	41.0	47.5	34.6	41.0	83.6

2.7 There is widespread regional variation in the mean number of planning permissions with agreements, CIL only and combined.

Table 2.3 Mean number of non-householder planning permissions with contributions per authority (by region)

LPA Family	Planning agreements only	CIL only	CIL and planning agreements
East	11.6	43.6	2.3
East Midlands	7.4	2.1	0.1
London	0.6	33.2	25.3
North East	14.3	1.6	0.2
North West	3.2	5.3	0.4
South East	10.7	17.1	6.5
South West	8.6	30.3	3.7
West Midlands	6.7	6.6	0.4
Yorkshire & Humber	13.3	76.9	2.9
Total	8.4	20.0	3.9

Source: LPA survey

Table 2.4 Average number of residential units and non-residential floorspace granted permission in 2016-17 (LPA families)

	Average number of units and floorspace granted in 2016-17	
LPA Family	Residential Units	Floorspace of non-residential m^2
Established Urban Centre	2941	35318
Rural England	678	5542
Rural Towns	737	37775
Commuter Belt	921	23570
Urban England	810	10210
London	816	19341
All	896	19163

Source: LPA Survey

Table 2.5 Average number of residential units and non-residential floorspace granted permission in 2016-17 (region)

	Average number of units and floorspace granted in 2016-17	
LPA Family	Residential Units	Floorspace of non-residential m^2
East	932	28492
East Midlands	514	26081
London	714	16578
North East	692	11318
North West	1614	18625
South East	1105	17173
South West	232	889
West Midlands	678	23560
Yorkshire & Humber	1281	19589
All	896	19163

Source: LPA Survey

2.8 The number of planning applications permitted with contributions varies widely between different types of development, application type and contribution type. Both major and minor development applications may variously be required to contribute agreements only, CIL only or agreements and CIL depending upon the local charging scenario and development characteristics. As evidenced in Table 2.5 the Commuter Belt family is responsible for the largest number of applications with contributions of nearly all development types.

2.9 There were approximately 4,000 major development permissions granted with contributions in England in 2016/17[1]. 55% of these permissions had planning agreements only attached to them, with a further 22% having both an agreement and CIL charge. Variation in practice occurs between the LPA families, with 70% of major planning applications granted in Urban London having both a planning agreement and CIL charge, whilst only 7% of permissions in the Commuter Belt had CIL and an agreement. This variation in behaviour is largely attributable to the presence or absence of CIL rather that of an agreement, where by six of the seven families use agreements for in the region of 80% of permissions with contributions. Only Rural England has a lower proportion of planning agreements for major planning applications granted with contributions at 67%.

Table 2.6 Total number of planning applications permitted with contributions (by LPA family) for England

	Major Development			Minor Development			Permitted Development Rights
LPA Family	Agreement only	CIL only	Agreement & CIL	Agreement only	CIL only	Agreement & CIL	CIL only
Established Urban Centre	270	71	27	25	322	3	0
Rural England	429	391	376	333	3822	101	61
Rural Town	414	53	46	281	435	11	9
Commuter Belt	855	239	77	578	1415	785	297
Urban England	221	26	29	349	62	5	5
London	34	105	318	61	1920	284	23
England	2222	884	873	1627	7976	1189	395

Source: LPA Survey

[1] Residential minor developments are fewer than 10 units (unless floorspace exceeds 1,000sq m or 0.5ha), for land uses other than dwellings a minor development is where the floorspace is less than 1,000sq m or where the site area is less than 1ha, all other developments are major.

2.10 At approximately 10,800 permissions there are over twice as many minor permissions granted with either planning obligations or CIL levied than for major permissions granted. 74% of minor permissions with a contribution have a CIL charge only (no planning agreement) in stark contrast to the picture of agreements for major applications. This finding that CIL is most often found on minor developments and that it is unusual for major developments not to have a planning agreement attached was also confirmed widely in the development roundtable discussions and the case studies.

2.11 Permitted development rights account for a small proportion of the overall number of permissions with contributions in England in 2016/17 and by definition do not have planning agreements (and in the cases where there is no net additional floorspace will also be exempt from CIL). The majority of these applications occurred in the Commuter Belt family, although 61 permissions also occurred in Rural England. The survey response rate to this question was below average and is likely to under-represent the number of permitted developments with CIL levied in London, as MHCLG Live Table PDR1 shows that 38% of the granted PDRs were in London and, therefore, we would expect a higher number with CIL than 23. They were uncommon in all other families.

Proportion of planning permissions with contributions

2.12 There is variation between permissions with planning obligations or CIL Levied for residential and non-residential applications. The proportion of residential planning permissions with contributions corresponds clearly to the size of the development. Householder applications (0 units) in 96% of permissions do not have a contribution attached, whereas only 7% of 1000+ applications have no planning agreement or CIL attached to them. It is perhaps surprising that not all permissions in the largest two categories (100-999 and 1000+ units) have contributions attached to them. A similar finding occurred in the 2007/08 study where 7% and 4% respectively of permissions for these two categories did not have planning agreements attached to them. The reason for this was suggested that local authorities may have attached conditions to the sale of local authority land that would otherwise have required a planning agreement. However, the proportion in the 100-999 category without a contribution has increased since then. More than 50% of permissions for each development size above 10 units have a contribution attached to them. The use of CIL without a planning agreement occurs most frequently (as a proportion of permissions) within the 1-9 unit category and then less frequently on larger developments as the proportion of planning agreement only permissions increases.

Table 2.7 The proportion of planning permissions with contributions by residential development size

	Residential Units							
Type of contribution	0 units	1 to 9	10 to 24	25-49	50-99	100-999	1000+	ALL
No contribution	96%	64%	45%	28%	26%	26%	7%	89%
Agreement (only)	2%	6%	35%	48%	52%	53%	76%	3%
CIL (only)	2%	24%	10%	5%	5%	4%	0%	7%
CIL & Agreement	0%	6%	10%	19%	17%	17%	17%	1%

Source: LPA Survey

2.13 Permissions for non-householder residential developments (i.e. those applications for one or more dwelling) are much more likely to have a contribution attached to them in London and the South East than in any other region in England. Only 11% of permissions in London did not have CIL or an agreement whilst 86% of permissions in the East Midlands did not. 88% of permissions in London attracted CIL in contrast to only 2% in the North East and East Midlands. However, the distribution has greater geographical nuance than a simplistic north-south divide, with variations in proportions of permissions with contributions between regions within a northern and southern classification.

Table 2.8 The proportion of non-householder residential development permissions with contributions by region

All Non-Householder Residential Development	East	East Midlands	London	North East	North West	South East	South West	West Midlands	Yorks & Humber
No CIL or Agreement	65%	86%	11%	74%	74%	48%	59%	77%	59%
Agreement (only)	8%	12%	1%	24%	16%	15%	12%	9%	23%
CIL (only)	26%	2%	54%	2%	10%	25%	26%	13%	16%
CIL & Agreement	2%	0%	34%	0%	0%	13%	4%	1%	3%

Source: LPA Survey

2.14 More than 9 out of 10 non-residential planning applications do not have a contribution attached to them, whether CIL or planning agreements. Office developments have the highest proportion of permissions with a contribution with 19% having CIL only and a further 11% having a planning agreement (with or without CIL).

Table 2.9 The proportion of planning permissions with contributions by development type (non-residential)

	Office, R&D, Light Industry	General Industry, Warehouse, Storage	Retail & Service	All other	Total
No CIL or Agreement	70%	86%	88%	92%	92%
Agreement (only)	6%	7%	4%	4%	3%
CIL (only)	19%	6%	4%	4%	5%
CIL & Agreement	5%	1%	4%	0%	1%

Source: LPA Survey

2.15 Regionally there is sizeable variation in the proportion of commercial planning permissions that have contributions attached (see Table 2.10). In London only 29% of permissions do not have a contribution attached to them in comparison to the West and East Midlands which do not have contributions for around 95% of permissions. From the data the North West has a high proportion of permissions with planning agreements (mainly CIL), however this is based on a much smaller number of planning permissions than each of the other regions and therefore may not represent a difference in practice within planning authorities or the market.

Table 2.10 The proportion of commercial planning permissions with contributions by region (Office, Research & Design, Light Industry, General Industry, Warehousing, Storage, Retail and Service)

All Commercial	East	East Midlands	London	North East	North West	South East	South West	West Midlands	Yorkshire & Humber
No CIL or Agreement	81%	94%	29%	92%	25%	89%	85%	95%	86%
Agreement (only)	5%	6%	8%	8%	3%	6%	3%	3%	6%
CIL (only)	14%	0%	26%	0%	67%	2%	10%	1%	8%
CIL & Agreement	0%	0%	36%	0%	6%	3%	2%	1%	1%

Source: LPA survey

Numbers of Obligations

2.16 Whilst the number of planning agreements has fallen since 2011/12, the number of obligations per agreement has risen slightly for England as a whole from 2.06 to 2.56 per agreement. This growth suggests a return to the higher number of obligations experienced in earlier studies, which showed an upward trend from 2003/04 to 2007/08, as shown in Table 2.11.

Table 2.11 Average number of obligations per permission with planning agreement per region

	Average number of planning obligations per agreement				
	2003/04	2005/06	2007/08	2011/12*	2016/17
East	2.65	2.94	3.22	-	2.49
East Midlands	2.13	2.25	1.48	-	2.05
London	1.81	2.25	1.68	-	0.74
North East	1.7	2.7	4.2	-	0.90
North West	1.5	2.09	9.1	-	1.52
South East	1.39	2.83	3.3	-	4.63
South West	1.16	2.75	2.55	-	1.25
West Midlands	1.55	2.51	5.36	-	2.88
Yorkshire & Humber	0.52	1.57	2.01	-	1.43
Total	1.45	2.44	2.96	2.06	2.56

Source: LPA survey, 2007/08 report, 2011/12 report *2011/12 data is not available by region

2.17 This growth, whilst fitting with longer term numbers, is perhaps counter-intuitive given that since 2011/12 the number of authorities charging CIL has increased and some of these planning permissions will have both planning agreements and CIL attached, indicating that the number of variables included in the negotiation of an agreement has increased since the introduction of CIL. However, as Table 2.11 shows, there is significant variation in the number of obligations per agreement in different regions with London and the North East having less than one obligation per agreement, perhaps reflecting non-financial obligations such as restrictions on parking within these agreements. The South East continued its trajectory from 2007/08 of increasing the number of obligations per agreement to 4.6 making it the highest ranking region.

Direct and In-Kind Obligations

2.18 The number of direct payment obligations has decreased significantly since 2011/12 (and is at the lowest level recorded) at only 21.5 obligations per authority. The reduction in the number of obligations occurs across all categories (besides 'other') except affordable housing, which has stayed consistent at 0.9 obligations per authority since 2005/06. Transport, education and community based direct payment obligations fell by over 50% from their previous level.

Table 2.12 The average number of direct payment obligations per authority

	2003/04	2005/06	2007/08	2011/12	2016/17
Affordable Housing	0.7	0.9	0.9	0.9	0.9
Open Space	11.1	12.5	14.1	13.4	6.1
Transport and Travel	7.3	12.0	12.2	9.0	3.6
Community and Leisure	3.0	6.1	6.0	9.2	2.6
Education	2.5	5.2	4.6	4.1	1.9
Other	0.4	9.4	15.3	1.3	6.3
All	25.0	46.0	53.1	37.8	21.5

Source: LPA survey, 2007/08 report, 2011/12 report

2.19 The decrease may be attributed to the introduction of CIL. For open space, community, education and 'other' obligations non-CIL charging authorities have much higher average numbers of direct payment obligations than CIL charging authorities. However, the average number of affordable housing and transport direct payment obligations is higher for CIL charging authorities than non-CIL charging authorities.

Table 2.13 The average number of direct payment obligations per authority for CIL and non-CIL charging authorities

	CIL charging authority	Non-CIL charging authority
Affordable Housing	0.98	0.80
Open Space	2.70	8.48
Transport and Travel	4.18	2.94
Community and Leisure	1.07	3.85
Education	0.67	2.77
Other	2.26	9.30

Source: LPA survey

2.20 Whilst the use of CIL may have an impact upon the number of direct payment obligations per authority it is not the only variable. The LPA families and regions show large variations in the number of direct payment obligations. Some of this variation corresponds to the more widespread adoption of CIL in some regions.

Table 2.14 The average number of in-kind obligations per authority

	2003/04	2005/06	2007/08	2011/12	2016/17
Affordable Housing	3.1	5.6	7.6	3.4	15.1
Open Space	2.2	1.8	2.5	0.7	0.7
Transport	4.1	4.2	5.1	2.1	0.9
Community	0.9	0.8	1.4	1.0	0.5
Education	0.1	0.1	0.0	0.0	0.0
Other	2.3	2.6	4.9	0.0	1.0
All	12.8	14.9	21.6	7.4	18.1

Source: LPA survey, 2007/08 report, 2011/12 report

2.21 The number of in-kind obligations follows a similar decrease to that of direct obligations for all categories except affordable housing, which sees a significant increase. The increase in affordable housing in-kind contributions is largely the reason for the overall increase in obligations in 2016/17 but is attributable to a small number of authorities with large numbers of obligations.

Chapter 3: The value of Planning Obligations and Community Infrastructure Levies

Introduction

3.1 Chapter 3 considers the value of planning obligations and Community Infrastructure Levy in detail. It outlines the total value of contributions for 2016/17 in the context of the previous valuations before outlining the contributions by type according to geographical and typological variation.

Key Findings

- The estimated value of planning obligations agreed and CIL levied in 2016/17 was £6.0 billion. This central valuation is premised upon the assumptions identified in the appendix, corresponding to survey validity, respondent representation and the distribution of values.
- When adjusted to reflect inflation the total value of developer obligations in real terms is almost identical to the peak recorded in 2007/08 (£6.0 billion), but significantly higher than in 2011/12 (£3.9 billion). These changes conincide with changes in the number of dwellings granted planning permission over time.
- 68% of the value of agreed developer obligations was for the provision of affordable housing, at £4.0 billion. 50,000 affordable housing dwellings were agreed in planning obligations in 2016/17.
- The value of CIL levied by LPAs was £771 million in 2016/17, with a further £174 million levied by the Mayor of London.
- The geographic distribution of planning obligations and CIL is weighted heavily towards the south of England. The South East and London regions account for 58% of the total value.
- Direct payment contributions continue to provide a large proportion of the total contribution value for non-affordable housing obligations

The value of planning obligations and CIL

3.2 The survey of LPAs was distributed in August 2017 and covered questions relating to the value of planning obligations that had been agreed during the 2016/17 financial year. The analysis here uses both the survey responses and secondary data, such as LAHS to identify the number of affordable housing and Nationwide

Building Society house price data for the valuation of affordable housing. To allow for longitudinal analysis the 2016/17 survey repeated some of the questions asked in previous studies of the value and incidence of planning obligations and introduced further questions to reflect the introduction of CIL.

3.3 There has been a significant increase in the overall value of developer contributions between 2011/12 and 2016/17 (see Table 3.1). This is in the context of an increase in the number of dwellings granted permission between 2011/12 and 2016/17. Affordable housing, which has accounted for the predominant share of developer contributions in both 2007/8 and 2011/12, has grown and now represents around 68% of the total (compared to 53% in 2007/8 and 62% in 2011/12). Figure 3.1 provides evidence on the distribution of the value of agreed obligations by category and clearly illustrates the growth in affordable housing when compared to 2011/12 and previous iterations of this work.

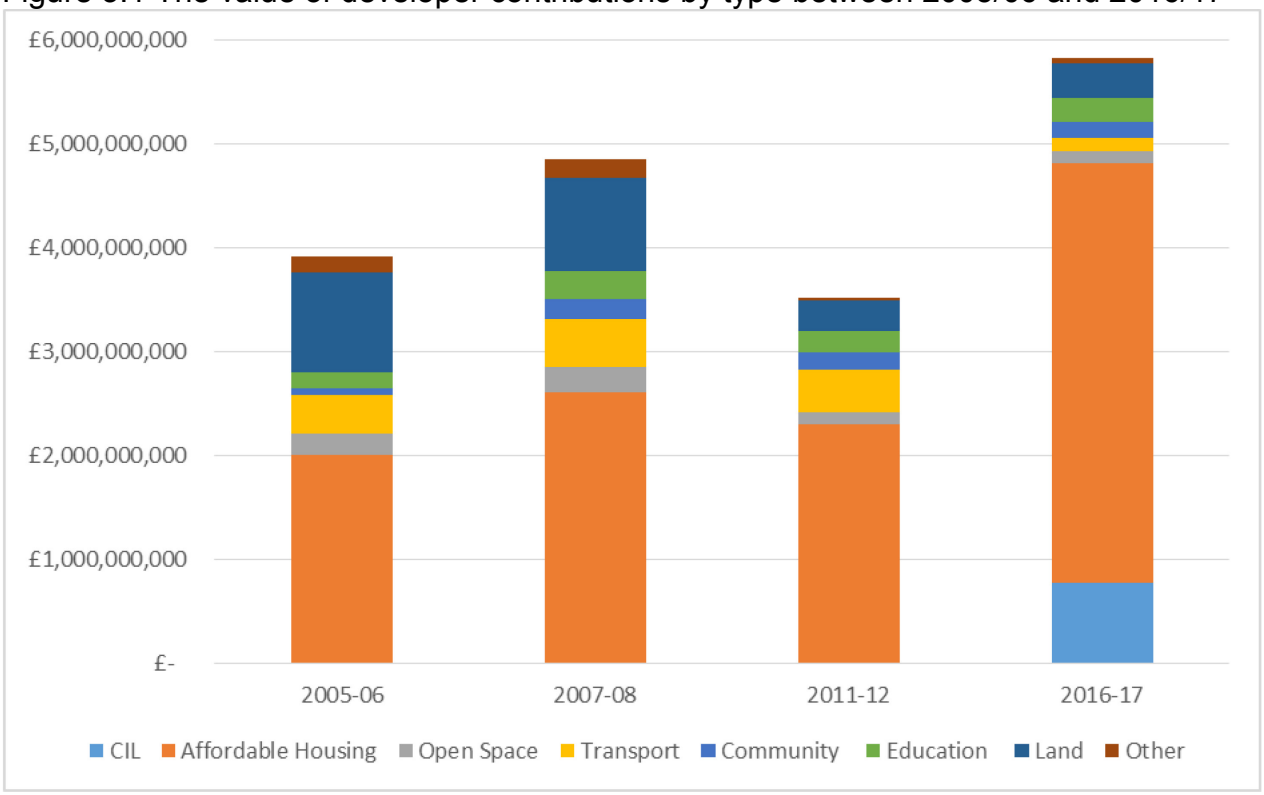
Table 3.1 The value of developer contributions in 2016/17, in millions (£)

Contribution Type	2005-06	2007-08	2011-12*	2016-17
CIL	-	-	-	£771
Mayoral CIL	-	-	-	£174
Affordable Housing	£2,000	£2,614	£2,300	£4,047**
Open Space & Environment	£215	£234	£113	£115
Transport & Travel	£361	£462	£420	£131
Community Works	£75	£192	£159	£146
Education	£154	£270	£203	£241
Land Contribution	£960	£900	£300	£330***
Other Obligations	£149	£183	£30	£50
Total Value	£3,927	£4,874	£3,700	£6,007

Source: grossed up sample * 2011-12 values are calculated for combined in-kind and direct payment values, County Council data were not reported separately ** this includes the affordable housing commuted sum ***the Land Contribution value was not calculable from the survey data and has been estimated from previous reports.

3.4 When considered in geographical context the value of agreed planning obligations is clearly very variable. Table 3.2 illustrates that the majority of the value of planning obligations agreed and CIL value levied are in southern England, with London and the South East regions combining to account for 58% of the total value for England as a whole. By contrast the North East and North West in combination account for only 5% of the total value. This overall pattern is heavily dependent upon the distribution of the value of affordardable housing, in which London and the South East account for 53% of the total affordable housing value and the North East and North West combining to account for 6% of the total. The picture for non-affrodable housing planning obligations and CIL is similar, but with a greater emphasis on the value being focussed on London (at 52%).

Figure 3.1 The value of developer contributions by type between 2005/06 and 2016/17



Source: grossed up sample * 2011-12 values are calculated for combined in-kind and direct payment values, County Council data were not reported separately **the Land Contribution value was not calculable from the survey data and has been estimated from previous reports.

Table 3.2 The value of planning obligations by regions

	Total value of in-kind affordable housing		Total value of (non-in kind affordable housing) planning obligations and CIL		Total value of planning obligations (including affordable housing) and CIL	
	Value (£million)	%	Value (£million)	%	Value (£million)	%
East	£513.9	13%	£324.0	16%	£837.9	14%
East Midlands	£232.4	6%	£35.7	2%	£268.1	4%
London	£1,211.6	31%	£1,083.8	54%	£2,295.4	38%
North East	£77.5	2%	£28.1	1%	£105.6	2%
North West	£156.5	4%	£26.3	1%	£182.8	3%
South East	£876.3	22%	£314.0	16%	£1,190.3	20%
South West	£449.7	11%	£114.2	6%	£563.9	9%
West Midlands	£283.4	7%	£42.8	2%	£326.2	5%
Yorkshire & Humber	£170.4	4%	£67.1	3%	£237.5	4%
TOTAL	£3,971.7*	100%	£2,036.1	100%	£6,007.4	100%

*This aggregate total does not include affordable housing commuted sum (direct payment) in lieu of in-kind provisions, which amounts to £75.4 million nationally. This value is included in the *Total value of (non-in kind affordable housing) planning obligations and CIL*

3.4 The value of planning obligations from previous studies is not reported with an adjustment for inflation in most sections of this report. However, an inflation adjustment is applied to each of the components of developer contributions in Table 3.3. It shows that the apparent uplift to 2016/17 values is partly driven through inflation. The real 2016/17 value is almost identical to that in 2007/08 when adjusted for inflation, but significantly greater than in 2011/12. The adjustment uses the Consumer Price Index produced by the Office of National Statistics. This inflation rate is a general rate for consumer goods and services and as such it may underestimate the inflation of land prices (and therefore land contributions and affordable housing).

Table 3.3 The 'real' value of developer contributions (£ million)

Contribution Type	2005-06	2007-08	2011-12	2016-17
CIL	-	-	-	£945.2
Affordable Housing	£2,578.9	£3,221.3	£2,479.5	£4,047.1*
Open Space	£278.1	£289.4	£121.8	£115.6
Transport & Travel	£466.7	£569.6	£452.8	£131.6
Community	£97.3	£237.3	£171.4	£146.1
Education	£198.6	£333.5	£218.8	£241.2
Land Contribution	£1,237.9	£1,108.9	£323.4	£330.0
Other Obligations	£193.3	£226.2	£32.3	£50.6
Total Value	£5,063.8	£6,006.0	£3,988.7	£6,007.4

Source: 2007/08 report, 2011/12 report, LPA survey grossed up sample, CPI inflation adjusted using October to October rates

*This includes the affordable housing commuted sum (direct payment in lieu of in-kind).

3.5 The survey results show that £771,000,000 (rounded) was levied through Community Infrastructure Levy in 2016/17 for LPAs. In addition in London, Mayoral CIL is levied above the LPA CIL rate. £136 million was reported in the 2016/17 Mayor of London CIL Annual Return. However, this figure is based upon CIL received rather than levied (the levied amount is not recorded) and reflects the fact that CIL is levied when a permission is granted, not all permissions are built out and CIL is often paid in instalments which makes it difficult to link to a specific output measure in any given year.To provide an estimate we have aggregated up to the total number of permissions granted giving a total for CIL of £945 million (rounded) in 2016/17. The geography of CIL is clearly very varied. Over half (56%) of CIL levied value was from authorities in the urban London family. By extension commuter belt and rural England - both families that in some instances have strong functional connections to Greater London represent settings where CIL levies have been an important contributor to planning obligations in general. By contrast, CIL levies from Urban England represent less than 2% of the total.

3.6 Data from case study testimony supports the statistical impression that the circumstances under which CIL provided the largest financial contribution were

largely confined to Greater London and the South East of England. Outside these settings CIL has not been widely adopted. Evidence from the case studies suggests that some LPAs in the North and Midlands have explored the possibility of introducing CIL before concluding that it is not a suitable instrument in locations typified by weaker market demand.

Table 3.4 The value of CIL levies

	Average CIL per authority	Total Estimate for family
Established Urban Centre	£1,174,000	£8,218,000
Rural England	£2,686,000	£169,202,000
Rural Towns	£2,094,000	£37,699,000
Commuter Belt	£3,257,000	£107,492,000
Urban England	£1,309,000	£14,404,000
London	£18,091,000	£434,174,000
Mayoral CIL	£4,000,000	£174,000,000
Total	£28,612,000	£945,189,000

Source: LPA Survey and Mayor of London CIL report 2016/17

3.7 On all measures London and the South East dominate. The proportion of CIL contributions generated in this part of England reflects the very significant South East/other division between CIL/non-CIL charging authorities. However, it is also worth noting that receipts generated under S106 regulations are also disproportionately generated in Greater London and the South East. The statistics point to market demand for housing and residential values being the most significant determinant of the scale of contribution from planning obligations and CIL.

Table 3.5 The number of affordable units in planning agreements in 2016/17

	Social Rent	Affordable Rent	Intermediate Rent	Affordable Home Ownership	Starter Homes	Unknown	Total
Commuter Belt	1532	5938	372	3449	139	1034	12464
Established Urban Centre	227	765	28	145	6	164	1335
London	2356	2977	650	1955	0	527	8465
Rural England	1513	6541	497	3977	36	2532	15096
Rural Towns	828	2597	88	1645	284	1363	6488
Urban England	1401	1684	810	970	0	911	5776
TOTAL	7857	20502	2445	12141	465	6531	49624

Source: Local Authority Housing Statistics

3.8 The use of Local Authority Housing Statistics (LAHS) data continues the heritage within this series of valuations using LPA housing statistics (previously HSSA). The LAHS data was, however, cross-checked against the survey results which produced

almost identical overall numbers of affordable housing although with some variation between the two numbers for some authorities. Given that the LAHS data held a more complete picture of the affordable housing permitted in 2016-17 and, therefore, required less interpolation the LAHS data was used.

3.9 There has been a sizeable increase in the number of affordable housing units contracted in 2016/17 from 2011/12, with an increase of nearly 10,000 units. This increase is one of the major reasons for the increase in the value of developer contributions between the two periods (see Table 3.2 for the estimated value of affordable housing contributions). A second reason for the increase in the value is the 15% increase in house prices nationally (with sizeable regional variation).

3.10 Since 2011/12 there have been some changes to the definitions of affordable housing and the introduction of new tenures such as Starter Homes, making direct comparison of the total numbers difficult. In addition the 2011/12 report provided figures for the grossed up LPA survey by LPA family rather than LAHS data, although they found that the survey corresponded closely to the LAHS data. There is however some divergence in the number and proportion of affordable dwellings agreed across the different LPA families between the two studies. London accounted for 52% of dwellings agreed in 2011/12 and only 17% in 2016/17, whilst the Commuter Belt increased from 7% to 25% between the two studies, and Rural Towns increased from 5% to 13%.

Table 3.6 Number of affordable housing dwellings agreed

	2011/12		2016/17	
Affordable Housing Contributions	No.	%	No.	%
Commuter Belt	2240	7%	12464	25%
Established Urban Centre	385	1%	1335	3%
London	16725	52%	8465	17%
Rural England	6856	21%	15096	30%
Rural Towns	1451	5%	6488	13%
Urban England	4544	14%	5776	12%
TOTAL	32201	100%	49624	100%

Source: for 2011/12 LPA Survey grossed up reported in 2011/12 report; for 2016/17 LAHS data

3.11 Table 3.6 shows that the largest affordable housing contributions were in London and in the Commuter Belt LPA families, relating to higher house prices in these areas (contrast with rural England, which produced more units but some with a sizeable difference in house price).

3.12 The notional contribution a developer makes towards affordable housing as a proportion of either the cost of development or the open market value of the housing varies widely. Whilst there is widespread variation in house prices and affordable housing rents and prices there is also variation in the price as a proportion of open market value that registered providers are willing to pay in

different contexts. The actual contribution proportion is, therefore, determined on a case by case basis. For the purposes of this analysis we have used the following developer contributions, derived from those used in published reports (*Valuing Planning Obligations 2011/12* report), market knowledge and development industry interviews.

Table 3.7 The value of in-kind developer contributions towards affordable housing 2016/17 by region (£ million)

	Social Rent	Affordable Rent	Intermediate Rent	Affordable Home Ownership	Starter Homes	Unknown	Total
East Midlands	£38.6m	£91.5m	£13.0m	£33.5m	£0.9m	£54.9m	£232.4m
East of England	£82.3m	£272.8m	£1.2m	£98.7m	£0.9m	£58.1m	£513.9m
London	£441.4m	£408.4m	£80.6m	£217.6m	£2.9m	£60.7m	£1,211.6m
North East	£10.4m	£41.1m	£0.8m	£17.5m	£ -	£7.5m	£77.5m
North West	£16.0m	£50.2m	£2.0m	£29.9m	£3.1m	£55.2m	£156.5m
South East	£144.4m	£436.5m	£7.0m	£230.6m	£5.5m	£52.4m	£876.3m
South West	£111.8m	£198.9m	£4.8m	£123.7m	£0.4m	£10.0m	£449.7m
West Midlands	£105.1m	£81.1m	£4.0m	£42.4m	£ -	£50.8m	£283.4m
Yorks. & Humber	£48.5m	£53.3m	£39.4m	£16.3m	£0.1m	£12.8m	£170.4m
Total	£998.5m	£1,633.9m	£152.9m	£810.3m	£13.7m	£362.3m	£3,971.7m *

Source: Local Authority Housing Statistics and Nationwide Building Society
*This does not include the affordable housing direct payment commuted sum, at a total value of £75.4m.

3.13 Explaining the statistics presented in Tables 3.6 and 3.7 is perhaps best accomplished by cross-reference to the findings of the case studies and developer roundtables reported in Chapters 6 and 7 respectively. These data provides evidence of variation in how successfully planning obligations policy delivers affordable housing.

3.14 There is evidence from several case studies that private developers, particularly those operating outside Greater London, are often reluctant to provide on-site affordable housing as they believe it negatively affect development viability. Despite this, case study evidence would suggest that many LPAs are rigorously enforcing affordable housing provision, usually on-site, through the S106 system. Testimony from our developer roundtables suggested that, particularly in the north of England, this may be compromising developments that are being brought forward especially in areas of weaker demand.

3.15 By contrast, in Greater London and South East England there is a broader question about the degree to which the widespread adoption of CIL crowds out on site affordable housing. For some interviewees in the South East one of the consequences of introducing CIL was the severance of a connection between

developer contributions and the site of development itself. Anecdotally, the result may be a diminished capacity to add S106 obligations to proposals to deliver on-site affordable housing. Generally the weight of evidence would point to LPAs with higher values and sites with fewer viability issues - such as greenfield, large-scale residential development - tending to be policy compliant with the affordable housing requirement.

Figure 3.2 The value of developer contributions towards affordable housing by region

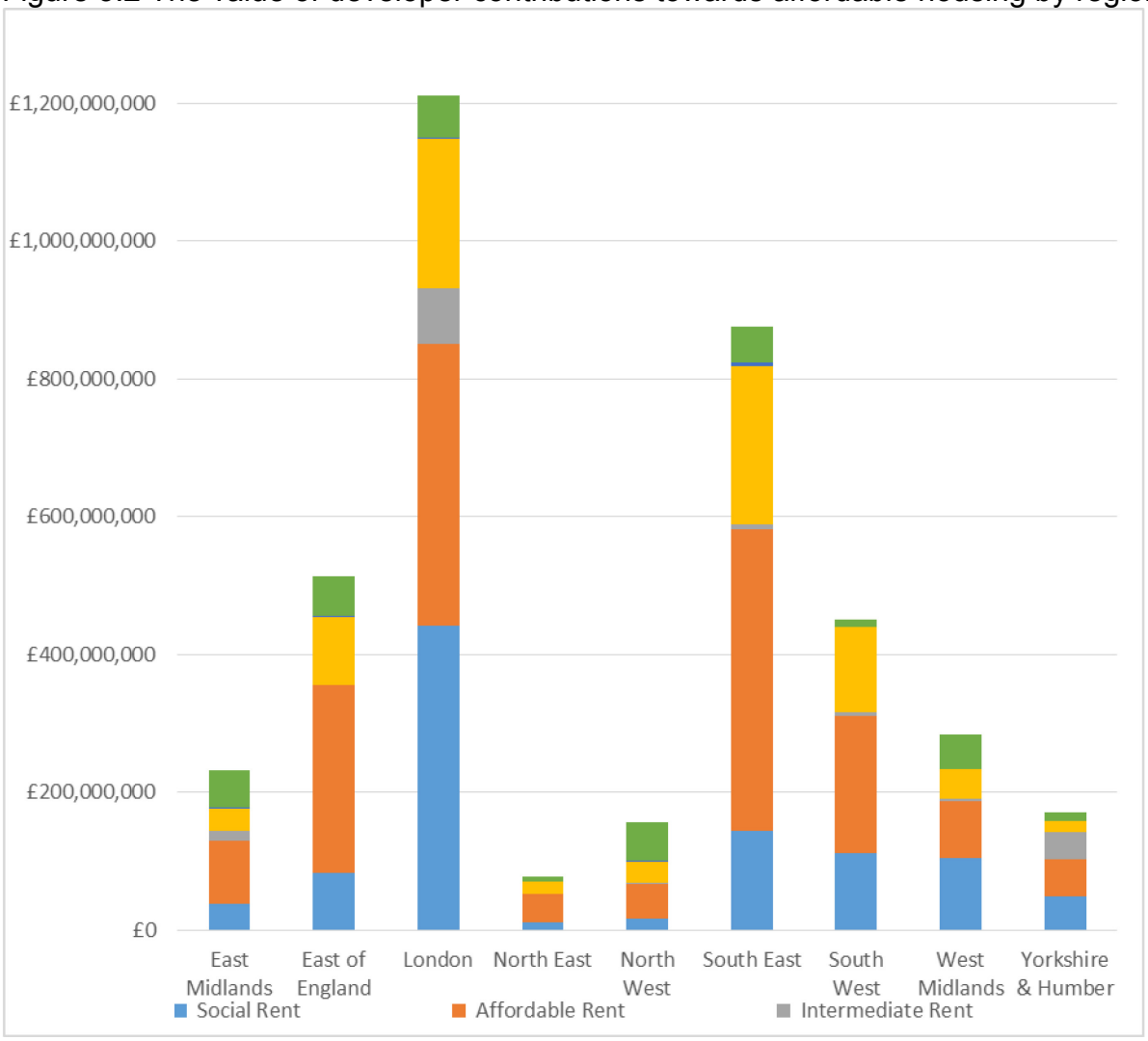


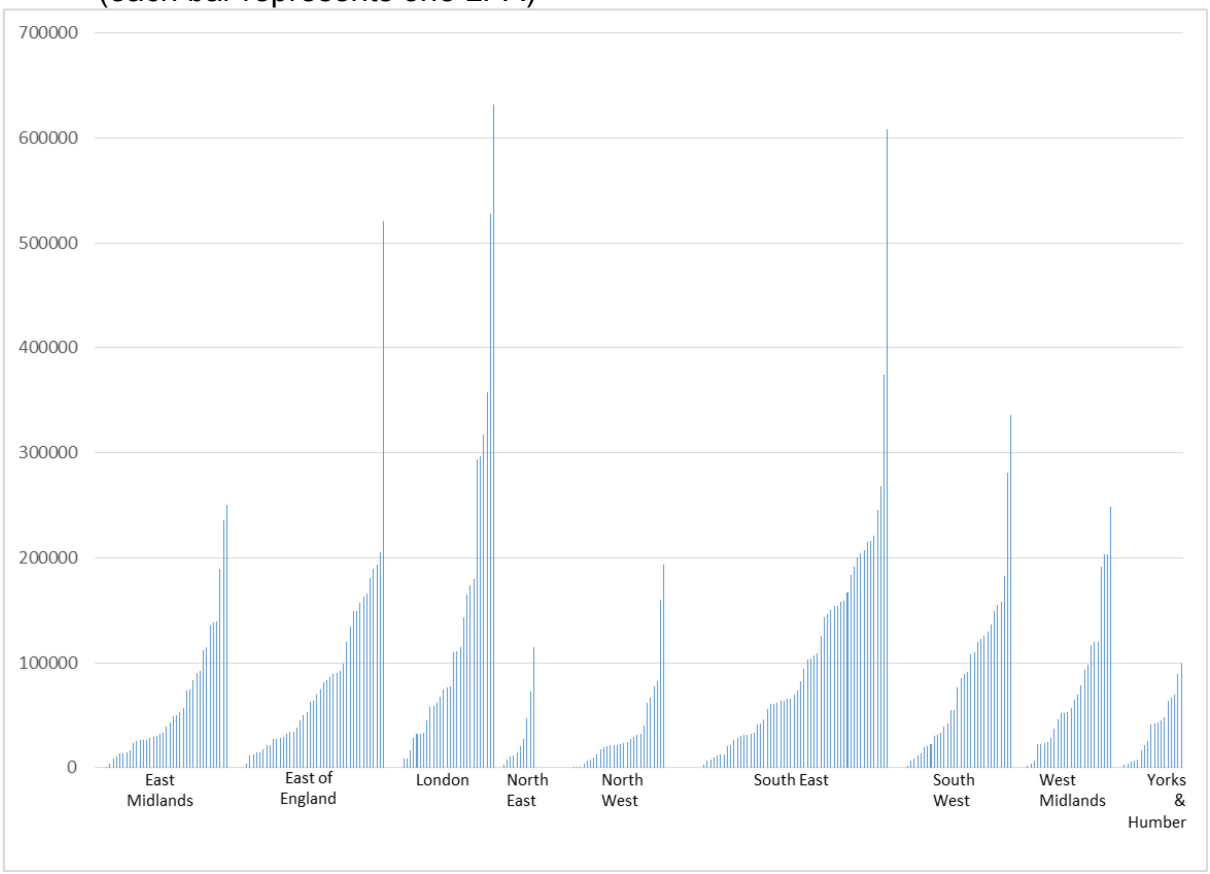
Table 3.8 Assumptions for affordable housing developer contribution

Affordable housing type	Development industry contribution
Social Rent	55%
Affordable Rent	35%
Intermediate Rent	27.5%
Affordable Home Ownership	27.5%
Starter Homes	20%
Unknown affordable	30%

Source: Development industry insights from interviews, market insights and published reports

3.16 In 2016-17 the value of affordable housing in planning agreements in London was £1.2bn. Whilst this is 31% of the total value of affordable housing agreed in planning obligations, it is a smaller proportion than the total value in 2005-06 or 2007-08 (the value of affordable housing by region was not included in the 2011/12 report), in which London accounted for more than 50% of the total value of affordable housing agreed. As considered in paragraph 3.6 the number of affordable housing dwellings in planning agreements in London is significantly lower in 2016/17 than previously, although this is for the LPA family rather than the region there is considerable coincidence between the two. Issues of viability were raised repeatedly in case studies that have had an impact on the number and type of affordable housing units agreed.

Figure 3.3 The value of affordable housing contributions per 1000 population by region (each bar represents one LPA)



Source: Local Authority Housing Statistics and Nationwide regional price data

Table 3.9 The value of in-kind affordable housing in planning obligations by region (£ million)

	2005-06		2007-08		2016-17	
	£	%	£	%	£	%
East Midlands	£51.1m	3%	£99.0m	4%	£232.4m	6%
East of England	£187.9m	10%	£297.5m	11%	£513.9m	13%
London	£999.0m	52%	£1,324.3m	51%	£1,211.6m	31%
North East	£14.7m	1%	£26.6m	1%	£77.5m	2%
North West	£49.3m	3%	£129.9m	5%	£156.5m	4%
South East	£284.7m	15%	£312.2m	12%	£876.3m	22%
South West	£154.0m	8%	£187.8m	7%	£449.7m	11%
West Midlands	£87.8m	5%	£120.8m	5%	£283.4m	7%
Yorks & Humber	£78.8m	4%	£116.3m	4%	£170.4m	4%
Total	£1,907.5m	100	£2,614.4m	100	£3,971.7*m	100

Source: LPA Survey and 2007/08 report

* This does not include the affordable housing direct payment commuted sum, not available by regional breakdown, at a total value of £75.4m

3.17 The average value of affordable housing in planning agreements is different for CIL and non-CIL LPAs (see table 3.10). Non CIL LPAs agreed £4 million less than CIL charging LPAs, with a lower value of affordable housing agreed per dwelling granted permission. This reflects the variation in house prices between CIL and non-CIL LPAs as much as any difference in policy and practice by the LPAs.

Table 3.10 The total value of affordable housing for CIL and non-CIL LPAs, by total, average and per dwelling granted permission

	Total value of affordable housing (£ million)	Average value of affordable housing per LPA (£ million)	Total number of dwellings agreed	Value of AH per dwelling granted permission
Non CIL LPA	£1,950.2	£10.2	144892	£13,500
CIL LPA	£1,923.1	£14.5	129308	£14,900

Sources: LAHS, LPA Survey, Nationwide, ABI Barbour

3.18 In addition to the in-kind contributions of affordable housing paid by developers, planning obligations may also make provision for commuted sums in lieu of the direct provision of affordable housing. Table 3.10 provides an estimate of the total value of this commuted sum.

Table 3.11 Affordable Housing Commuted Sum

	No. of Obligations	Total estimate value for family (£ million)
Established Urban Centre	11	£11.6
Rural England	87	£18.7
Rural Towns	20	£3.0
Commuter Belt	66	£19.6
Urban England	22	£10.7
London	21	£11.7
Total	227	£75.4

Source: LPA Survey

Non-Affordable housing obligations

Table 3.12 The value of non-affordable housing planning obligations by obligation typology

	Open Space and the Environment	Transport and Travel	Community Works and Leisure	Education	Other
Established Urban Centre	£9.0m	£14.2m	£1.2m	£34.5m	£11.8m
Rural England	£19.9m	£14.4m	£6.2m	£36.7m	£1.9m
Rural Towns	£8.4m	£9.5m	£0.8m	£27.4m	£11.2m
Commuter Belt	£57.3m	£55.2m	£78.0m	£113,.5m	£17.5m
Urban England	£17.8m	£20.2m	£12.5m	£21.1m	£7.0m
London	£3.4m	£15.2m	£47.4m	£7.9m	£1.3m
Total	£115.6m	£131.6m	£146.1m	£241.2m	£50.6m

Source: LPA survey

Overall in-kind and direct contributions, excluding affordable housing and land

3.19 In previous iterations of *Valuing Planning Obligations* there has been quite significant variation in the proportion of developer contributions that came as an in-kind benefit. In 2011/12 the figure of £0.1bn represented a fall of 67% on the level recorded in 2007/08 (£0.3bn). The value of direct contributions remains significantly higher than the in-kind contributions in 2016/17 at nine times the total value.

Table 3.13 Total value of In-kind and direct planning obligations by LPA family (£ million), excluding affordable housing and land contributions

	Total Direct Contribution	Total In-Kind Contributions
Established Urban Centre	£70.7m	£0.0m
Rural England	£72.6m	£6.4m
Rural Towns	£55.9m	£1.5m
Commuter Belt	£296.6m	£24.7m
Urban England	£50.7m	£27.8m
London	£66.6m	£8.7m
Total	£613.1m	£72.1m

Source: LPA survey

Proportion of residential development contributions on Greenfield and Brownfield sites

3.20 The value of planning obligations and CIL for residential developments is differentially distributed according to greenfield and brownfield developments. Table 3.14 reveals that more than 80% of the total value of CIL was considered by 82% of LPAs to be on brownfield land in contrast to 58% of LPAs for planning agreements. This suggests that a greater proportion of the total value of CIL is on brownfield land, whereas planning agreement value is marginally more likely to derive from greenfield land than CIL value. This may be due to the higher planning agreement values occurring on larger greenfield sites.

Table 3.14 The proportion of CIL and planning obligation value on greenfield land

Greenfield / Brownfield split	CIL	Planning Agreements
10% / 90%	65%	36%
20% / 80%	18%	22%
50% / 50%	6%	19%
80% / 20%	6%	8%
90% / 10%	6%	14%
Total	100%	100%

Source: LPA survey

Proportion of residential contribution value agreed on different size developments

3.21 The survey asked LPAs to provide information on the value of CIL and planning obligations agreed on residential planning applications for different development sizes. From the responses it is clear that CIL value was most frequently agreed on

smaller sites, typically of less than 10 units, as can be seen in Table 3.15. In contrast, planning obligation value was most frequently delivered on considerably larger scale developments with over 35% of the total value agreed on sites of more than 100 dwellings. There is a restriction on the use of S106 obligations on sites with less than 10 units, hence there is a limit to its use in addition to the potentially lower level of obligations that are negotiable and required for smaller developments.

Table 3.15 Mean percentage of residential developer contribution value agreed on different sized residential developments

Size of development	Proportion of Residential CIL Value	Proportion of Residential Planning Obligations Value
Householder Development	6%	0%
1 to 9 units	42%	8%
10 to 24 units	9%	15%
25 to 49 units	9%	10%
50 to 98 units	7%	17%
100 to 999 units	14%	31%
1000 plus units	5%	6%

Source: LPA Survey *NB proportions do not add up to 100% due to being a mean of proportions

Proportion of developer contribution value agreed on different development types

3.22 According to the survey respondents on average 93% of the value of CIL for LPAs was levied on residential developments, with 3% on office and 3% on retail developments, see table 3.16. Similarly, for planning obligations (excluding affordable housing) on average 95% of the value for LPAs was on residential development. These values exclude affordable housing. From the survey over 99% of the number of affordable housing units were agreed on residential developments and, therefore, when included the total value of obligations on residential developments increases to above 99%. On average nearly all of the value of planning obligations and CIL levied by LPAs is on residential developments.

Table 3.16 Average proportion of CIL and planning obligations value per LPA agreed on different development types (excluding affordable housing)

Development Type	Average proportion of CIL value	Average proportion of planning obligations Value (excl. affordable housing)
Residential Value	92.5%	94.9%
Office	3.2%	2.6%
Industrial	0.0%	0.2%
Retail	2.8%	0.9%
Traveller	0.0%	0.0%
All Other	1.5%	1.4%
Total	100.0%	100.0%

Source: LPA survey

Views on the number and value of contributions

3.23 In addition to recording the value of planning obligations and CIL agreed in 2016/17, the survey included attitudinal questions to respondents about the relationship between current values, those for the previous two years' and, where appropriate, the introduction of CIL. There was a clear growth in the number and value of CIL charges (for CIL charging authorities only), with 81% of authorities indicating that the number and value in 2016/17 was greater than in the previous two years. This contrasts somewhat to planning obligations, with 10% of CIL-charging authorities indicating that the number and value was greater in 2016/17 than the previous two years and 57% indicating that it was less. For all authorities (CIL and non-CIL charging authorities) 20% indicated that the 2016-17 number and value of planning obligations was greater than previously and 43% indicated it was less.

Table 3.17 Percentage of LPAs with the number and value of 'contribution type' on planning permissions granted in 2016/17 similar to the previous two years

	Greater Than	Similar To	Less Than
CIL charges liable (CIL charging authorities only)	81%	14%	5%
Planning obligations (CIL authorities only)	10%	33%	57%
Planning obligations (Non CIL charging authorities only)	30%	42%	28%
Planning obligations (all authorities)	20%	37%	43%

Source: LPA survey

3.24 The extent to which the change in the number and value of CIL and planning obligations is caused by the introduction of CIL is complex to assess. The survey used an attitudinal question to CIL charging planning authority respondents to indicate their perceptions of the introduction of CIL on the overall value of developer contributions (see Table 3.18). Nearly 50% of responding authorities agreed that CIL had resulted in an increase in overall developer contributions, whilst 27% agreed that CIL had resulted in an overall decrease in value, and only 4% agreed that the introduction of CIL had made no net change on the value. This suggests that respondents view the introduction of CIL as having a localised impact on the overall level of developer contributions.

Table 3.18 Respondent views on the impact of CIL on developer contributions
To what extent do you agree that CIL has resulted in an increase/decrease/no net change in the total value of developer contributions? (Percentage)

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree
Increase	12%	45%	12%	25%	6%
Decrease	4%	27%	13%	46%	10%
No net change	2%	2%	17%	66%	13%

Source: LPA Survey

3.25 Factors that may have had an impact on the number and value of planning obligations and CIL levied in local authorities since 2011/12 are extremely variable. Table 3.19, below lists survey respondents views on eight factors which may have had an impact on the number and value of obligations or CIL charges agreed within LPAs between 2011/11 and 2016/17.

Table 3.19 Please indicate if the factors listed below have had an impact on the number and value of planning obligations agreed

	Positive		Negative	
	Yes	No	Yes	No
Changes to land values & property prices	50%	50%	65%	35%
Introduction of the Community Infrastructure Levy	41%	59%	47%	53%
Changes in skill & experience of LPA staff	65%	35%	23%	77%
Changes in skill & experience of developers, landowners & their agents	20%	80%	58%	42%
Introduction of a new policy or supplementary guidance (other than the introduction of CIL, where applicable) within LPA	47%	53%	13%	87%
Changing developer/landowner attitudes toward S106 contributions	28%	72%	65%	35%
Changing developer/landowner attitudes toward CIL	30%	70%	24%	76%
Changes to the types of permission awarded in the authority (e.g. greater use of PDR)	13%	88%	61%	39%
Other…please specify below	30%	70%	75%	25%

Source: LPA survey

3.26 In addition to the survey options LPAs specified a wide range of other factors that have had a positive and negative impact on the number and value of planning obligations. Some of the most frequently cited comments include the change in guidance to only allow S106 (affordable housing) obligations on permissions with more than ten dwellings, the increasing prevalence of viability testing on planning obligations (as a material planning matter) and the exemption of self-build dwellings from CIL. All of the comments suggested a negative impact.

Chapter 4: Policy and Practice

Introduction

4.1 The policy and practice environment for granting permission with S106 developer contributions attached is broadly comparable to that which prevailed when planning obligations were valued in 2011/12. However, since 2011/12 the adoption of CIL has been undertaken by some authorities throughout England. This chapter draws from information provided in the LPA survey, the case studies and development industry roundtables.

Key Findings

- Planning obligations remain a core aspect of planning practice: over 95% of LPAs have attached a planning obligation to a proposal in 2016/17 – although CIL was used by fewer than 50% of LPAs over this same period.

- The proportion of LPAs who employ a monitoring officer has risen to levels last recorded in 2007/08 (75%). For the 25% of LPAs who do not employ a monitoring officer this duty is shared between core planning staff.

- Delays associated with agreeing planning obligations are understood by many LPAs and some developers to be a systemic part of the process under discretionary planning. The reasons for delay are multi-faceted and can result from either the LPA or the developer or both.

CIL and Planning Obligations Policy and Practice

4.2 The implementation of CIL charging and agreeing planning obligations is undertaken by LPAs within national planning policy parameters. Both CIL and planning obligations are in effect voluntary mechanisms enacted by LPAs within these parameters. Therefore, there is variation between local authorities' policies and practice.

4.3 The CIL review suggested that the adoption of CIL by LPAs is approaching saturation (CIL review, 2017). To understand the changes to policy and practice that took place in 2016/17 the LPA survey asked authorities to identify where they had made CIL charges, provided permissions for development that are CIL liable, signed a planning agreement and otherwise changed their practice or policy in 2016-17.

Table 4.1 LPA CIL and Planning Obligation Practice

	Percentage of authorities that in 2016-17…			
LPA Family	…charged a development as a CIL collecting authority	…provided permission for a development that is liable for CIL	…signed one or more planning agreements	…changed their practice or policy on CIL or planning obligations
Established Urban Centre	40%	40%	90%	20%
Rural England	48%	52%	98%	26%
Rural Towns	37%	37%	93%	25%
Commuter Belt	38%	38%	100%	15%
Urban England	19%	19%	100%	25%
London	100%	100%	100%	0%
Total	43%	45%	96%	21%

Source: LPA Survey

4.4 Table 4.1 shows that whilst fewer than half of the LPAs surveyed either collected a CIL charge or provided a CIL liable planning permission, over 95% of authorities signed a planning agreement during 2016-17. The policy and practice of operating CIL and planning obligations, whilst perhaps reaching saturation, has not reached universal homogeneity. One fifth of authorities changed their policy or practice during the year, rising to one quarter of authorities in three LPA families. The majority of these changes were the introduction of CIL charges, changes to planning obligation supplementary planning documents or amendments to the Regulation 123 Infrastructure List (the identified priority list for CIL receipt expenditure). In contrast, none of the responding authorities in London indicated a change to their practice of policy.

4.5 Surveyed LPAs used a range of policies to define planning obligations, ranging from Developer Contribution Supplementary Planning Documents to Local Plans, Cores Strategies and Affordable Housing Supplementary Planning Guidance. A total of 73% of LPA's had an adopted policy for planning obligations and a further 6% of authorities had other detailed policies that had not yet been formally adopted on planning obligations. Thus 79% of LPAs had either an adopted or emerging policy on planning obligations.

Table 4.2 LPA Policy on the use of Planning Obligations

	Adopted	Emerging
Established Urban Centre	100%	11%
Rural England	58%	22%
Rural Towns	78%	26%
Commuter Belt	77%	30%
Urban England	82%	50%
London	86%	25%
Total	73%	28%

Source: LPA Survey

4.6 Table 4.2 shows that there is some variation in policy adoption between LPA families, with 100% of established Urban Centre respondent authorities having an adopted policy compared to 58% of Rural England respondent authorities. This contrasts with the 2007-08 research, which found a higher overall proportion of LPAs with policies (primarily in existing unitary development plans or supplementary planning guidance) and no variation between families. We found no significant variation in policy adoption between CIL charging and non-CIL charging authorities in 2016-17.

4.7 The survey asked LPAs whether they had a designated officer to negotiate planning obligations and/or CIL and a designated monitoring officer. Whilst CIL charges may be calculated in a relatively straightforward manner the negotiation and monitoring of planning obligations is a complex process which requires significant knowledge of the legal, planning and development contexts. As discussed in Chapter 3 there is a high incidence of CIL charging LPAs also signing planning agreements, therefore, the negotiation and monitoring process for obligations remains a relevant consideration within CIL charging contexts.

4.8 There was no sizeable change between 2011/12 and 2016/17 in the proportion of LPAs employing a designated negotiating officer (at approximately one quarter of LPAs). This level has been steady since 2007/08 at the national scale, but some redistribution between LPA families. 33% of CIL charging authorities had a negotiating officer compared to only 17% of non-CIL charging authorities.

Table 4.3 LPA employment of designated negotiating and monitoring officers

	Negotiating				Monitoring			
	05/06	07/08	11/12	16/17	05/06	07/08	11/12	16/17
Established Urban Centre	8%	10%	5%	30%	50%	70%	57%	70%
Rural England	20%	26%	26%	28%	50%	76%	56%	70%
Rural Towns	16%	22%	27%	19%	79%	65%	59%	63%
Commuter Belt	5%	18%	12%	22%	65%	68%	50%	81%
Urban England	29%	24%	12%	27%	71%	81%	71%	87%
London	18%	31%	75%	22%	82%	70%	100%	100%
Total	15%	23%	24%	25%	64%	75%	61%	75%

Source: LPA Survey

4.9 Where an LPA did not have a designated negotiating officer (three quarters of LPAs) the responsibility for negotiating agreements was almost universally negotiated by planning case officers. Only in some instances was responsibility for negotiation a legal team or individual solicitor's responsibility.

4.10 At the national scale, there was an increase of survey respondents with designated monitoring officers, returning to the 2007/08 level of 75%. Where possible (i.e. outside London) each LPA family increased the proportion of respondents with dedicated monitoring officers since 2011/12. This may reflect a reversal in the trend, suggested in the 2011/12 report that post 2007/08 there had been a large reduction in planning staff in councils, indicating that the negotiating and monitoring roles have returned to the historic maximums.

Table 4.4 LPA employment of designated negotiating and monitoring officers by region

	Negotiating	Monitoring
East	37%	72%
East Midlands	19.%	68%
London	20%	100%
North East	30%	100%
North West	25%	77%
South East	20%	83%
South West	31%	69%
West Midlands	6%	47%
Yorkshire and Humber	50%	88%

Source: LPA survey

4.11 For the quarter of LPAs without a dedicated monitoring officer responsibility for monitoring was distributed amongst planning officers, infrastructure teams and enforcement officers.

Table 4.5 The place of planning obligations / CIL in delay in granting planning permission

To what extent do you agree with the following statements (%)	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
Negotiating S106 **creates a delay** in granting planning permission	19%	62%	11%	7%	2%
Negotiating S106 **does not create a delay** in granting planning permission	5%	12%	1%	65%	18%
Negotiating S106 **creates an increase** in the time from application submitted to development completion	13%	50%	21%	15%	1%
Negotiating S106 **does not create an increase** in the time from application submitted to development completion	2%	15%	23%	51%	9%
CIL **reduces the time** from application submitted to development completion when compared to S106	11%	39%	30%	20%	0%
CIL **does not reduce the time** from application submitted to development completion when compared to S106	0%	23%	36%	31%	10%

Source: LPA survey

4.12 The statistics set out in Table 4.6 illustrates a general acceptance that negotiating S106 agreements adds delay to granting permission and to completion of a development. However, where planning agreements ensure that the permission is compliant with the Local Plan, the time taken for negotiation may itself be part of the time required to ensure that the planning application is itself acceptable. In addition it is important to note that evidence from case studies would suggest that such delays can result from either side of the negotiation: sometimes it may be the legal process within an LPA; sometimes it may be the developer seeking to synchronise the process to reflect supply chain delays in building materials. Case study findings, survey responses and material from the three developer roundtables point to the fact that delays associated with S106 agreements are related to the very fine-grained, site-specific nature of the negotiation. From this perspective this form of delay is a systemic outcome of a negotiated process that should in theory result in obligations that are bespoke to the individual impact and requirements of individual developments.

4.13 This point – that delays associated with negotiation are a systemic part of a discretionary approach to planning - was made pithily in free text responses collated from the LPA survey: "The use of S106s enable unacceptable development to become acceptable in planning terms, without the negotiation of the agreements permission could not be granted." Similar sentiment was expressed by other respondents in more extensive terms:

> "The Council considers that S106 Obligations are an important element of the development process, enabling site-specific mitigation. Although it appears that the legal process following determination can lead to delays for the development industry, the Council makes every effort to agree the terms in a timely manner. Most S106 delays are caused by applicants not accepting standard templates / terms and wanting to negotiate revised terms. If standard terms [were] accepted and all parties have their 'paperwork' in order than there is no reason for a delay. The completion of developments is outside Council control."

4.14 Furthermore, although Table 4.6 makes a clear case for CIL to be seen as speeding up the planning process this should be measured against case study evidence that this is probably most true in cases where a site is small and subject to a comparatively straightforward development. Data from case study interviews and the developer roundtables point to an LPA's adoption of CIL as not necessarily always resulting in a more rapid process. For example, several developers at the roundtable sessions pointed to their experience of delivering larger, strategically-important developments that were necessarily subject to both CIL and S106 as CIL alone could not deliver all the obligations necessary to make the development acceptable in planning terms. In these circumstances it was argued that the presence of CIL with S106 actually added delay to the process. Similarly smaller

developments that might not have been liable to a S106 agreement previously but which are now CIL-liable may be slower to come forward. Again these points are corroborated in the free text responses in the survey of LPAs:

> "CIL has not necessarily reduced the time spent on a major application as there is often still a S106 requirement relating to affordable housing and commuted sums for open spaces."

Table 4.6 The use of CIL in delivering infrastructure

To what extent do you agree that CIL receipts have been used to provide infrastructure?	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
All CIL authorities	11%	32%	25%	23%	9%

Source: LPA Survey

4.15 CIL is collected by charging authorities and is then spent once a level of funding has been reached to provide the infrastructure stipulated by the authority. 32% of CIL charging authorities disagree that CIL receipts have been used to provide infrastructure. This highlights that there may be a time gap between delivery of the financial payment from development and the delivery of infrastructure that the financial payment is due to support.

4.16 This finding is significant as it corresponds closely with the report from the case studies and developer roundtables (Chapters 6 and 7 respectively). In these qualitative aspects of this study one of the principal negative observations about CIL was the perception that contributions were being accumulated but not spent. For the development industry this complaint was closely related to the severance of a conspicuous connection between the site of development and the corresponding delivery of infrastructure entailed by CIL. However, case study evidence would suggest an alternative interpretation is that LPAs where CIL has been adopted may be refocusing on larger scale infrastructure investment that requires a scale of investment supported by CIL receipts aggregated over time. Consequently, there may be a lag between a site-specific CIL contribution and the delivery of infrastructure that it, as part of a larger aggregated fund, ultimately finances. As CIL has only been in operation for a relatively short time in many contexts it is too soon to present any clear evidence on the effects of this lag on development or what the broader implications of larger scale investment by LPAs on the basis of aggregated CIL receipts might be.

Chapter 5: The delivery of planning obligations and CIL

Introduction

5.1 There is a distinction between the value of planning obligations and CIL that an LPA agrees (and was not renegotiated) and that is actually delivered. LPA receipts for planning obligations a reflection of the time taken to deliver the initially agreed planning permission in full (and as such represent a lag from negotiation to receipt), the renegotiation of obligations, changes to planning applications, the proportion of applications not then developed and any shortfall in the amount agreed where development takes place but is not delivered..

5.2 This chapter considers the amount of planning obligations received in both absolute and relative terms as a proportion of the amount agreed and considers the extent of the renegotiation of planning agreements. Furthermore, the chapter considers the expenditure of CIL.

Key Findings

- 73% of LPAs had received more than 50% of the total value of direct payment planning obligations agreed in 2011/12 by 31st March 2017 and 65% had received the same proportion from agreements sign in 2014/15

- This, however, also indicates that many local authorities have not yet received half of the obligations agreed in 2011/12 (which was estimated at £3.7bn)

- £375 million was received as direct and in-direct contributions for non-affordable housing planning obligations in 2016/17

- 65% of planning authorities renegotiated a planning agreement in 2016/17 with changes to the type or amount of affordable housing agreed one of the most common renegotiations recorded

The delivery of planning obligations and CIL

5.3 The survey asked LPAs to estimate the total value of direct payment money and in-kind contribution value that was received in 2016/17 regardless of the year in which it was agreed. Calculating the value of in-kind contributions is very complex and some LPAs indicated that they were unable to estimate the value. £333 million was received in 2016/17 for direct payment non-affordable housing planning obligations and a further £42 million for in-kind contributions, giving a total of £375 million.

Table 5.1 provides an estimate of the total value, whilst table 5.2 and 5.3 below give further information about affordable housing and the proportion of value delivered for different years and the extent of renegotiation of planning agreements.

Table 5.1 Estimate of the total delivery of planning obligations received in 2016/17, excluding affordable housing (regardless of the year in which they were agreed)

England	Total money received for all non affordable housing planning obligations
Total Direct	£333,000,000
Total in kind	£42,000,000
Total (Direct and in kind)	£375,000,000

Source: LPA Survey

5.4 Given that there can be a considerable time gap between signing a planning agreement and the delivery of any payment or in-kind contributions the survey asked LPA officers about the proportion of payments received by 31st March 2017 for agreements signed in 2011/12 and 2014/15. The response rate to this question was below the average for the survey.

5.5 55% of responding authorities estimated that they received more than 75% of the total value of direct payment planning obligations signed in 2011/12 by 31st March 2017 and 39% from 2014/15. The picture is similar for Affordable housing delivery albeit with a higher proportion of LPAs estimating a higher proportion of delivery. Although there was a relatively small difference between the proportion of authorities receiving under 25% of the amount agreed in 2011/12 (16%) and in 2014/15 (19%) the figure for 2014/15 might be expected to be lower than that recorded in 2011-12 due to the fact that it may take a significant period for large sites to be build out. More generally, this limited delivery of existing planning obligations could be the result of the particular agreements signed at the time or the wider economic conditions within these LPAs which may have prevented significant delivery. The small number of survey responses precludes detailed analysis at the sub-national scale.

Table 5.2 Estimates of the proportion of payments completed

Please estimate the proportion of…		Under 25%	25% - 50%	50% - 75%	75% - 90%	Over 90%
…**direct payment** planning obligations for which money was received by 31st March 2017	signed in **2011/12**	16%	11%	18%	20%	35%
	signed in **2014/15**	19%	17%	26%	20%	19%
… **affordable housing** in S106 agreements that was delivered by 31st March 2017…	signed in **2011/12**	14%	0%	12%	26%	49%
	signed in **2014/15**	20%	7%	27%	13%	33%

Source: LPA survey

5.6 The survey statistics clearly point to a discrepancy between what is agreed and what is delivered in practice. Survey evidence and case study findings would suggest that this discrepancy has neither a clear geographic pattern nor any clear association with whether an authority has adopted CIL or not. Table 5.3 illustrates that CIL-charging authorities are actually somewhat more likely to receive a lower proportion of direct payments in 2016/17 than non-CIL LPAs.

5.7 The relative consistency amongst LPAs, irrespective of whether they are CIL or non-CIL adopting authorities, in receiving less than has been agreed is borne out through case study evidence. For example, some interviewees from both CIL and non-CIL charging authorities argued that it was part of the "game" for developers to deliver only a proportion of what has been agreed in practice. However, it was also argued that verifying this was difficult as quantifying the proportion of development that delivered less than had been agreed in any S106 agreement was problematised by the significant share of negotiated settlements that include in-kind contributions. Verifying and enforcing the terms of a S106 can be difficult to monitor particularly in the context of large LPA areas and with fewer planning staff than in previous years.

Table 5.3 The proportion of LPAs that had under 25%, 25-50%, 50-75%, 75-90% or over 90% of the value of direct payment and affordable housing delivered by 2016/17

	The proportion of LPAs with XXX proportion of...							
Proportion of amount agreed delivered by 2016/17	...direct payment signed in 2011/12		...direct payment signed in 2014/15		...affordable housing signed in 2011/12		... affordable housing signed in 2014/15	
	CIL	Non-CIL	CIL	Non-CIL	CIL	Non-CIL	CIL	Non-CIL
Under 25%	24%	12%	30%	12%	24%	8%	29%	15%
Between 25% & 50%	14%	9%	10%	21%	0%	0%	6%	7%
Between 50% & 75%	19%	18%	20%	30%	6%	16%	18%	33%
Between 75% & 90%	19%	21%	25%	15%	29%	24%	18%	7%
Over 90%	24%	39%	15%	21%	41%	52%	29%	37%
Total	100%	100%	100%	100%	100%	100%	100%	100%

Source: LPA Survey

Renegotiation of agreements

5.8 The previous iterations of the research have variously asked questions about amendments to planning agreements and the renegotiation process. Between 2003/04 and 2007/08 approximately 9% of planning agreements were subsequently modified after being signed and permission granted. The 2007/08 report concluded that the majority of reasons for making changes were in relation to new planning

applications or detailed alterations to the timing of payment or the relative proportion of affordable housing units (changes between tenure types within the affordable housing classification). Only one example was identified from the 2007/08 case studies of a renegotiated decrease in the value of contributions. By the 2011/12 research 36% of LPAs negotiated a change to at least one planning agreement, with only 6% of requests to renegotiate a planning agreement rejected by LPAs. That research found that renegotiation often resulted in a reduced level of overall contribution, reduction in the affordable housing provided and alterations to the terms of direct payments (University of Reading et al., 2014).

5.9 This time 65% of responding authorities renegotiated a planning agreement (see Table 5.4). Yet, these requests were not always agreed by LPAs. 15% of authorities received a request to renegotiate a planning agreement which did not result in a change to a planning agreement. Most authorities only received a small number of requests (three or fewer) to alter an agreement, but 6% of all authorities received ten or more requests.

5.10 Evidence from the case studies would support the view that renegotiation became a more common feature of planning practice in the immediate aftermath of the 2008 downturn usually relating to the question of revised development viability. In 2016/17 reportage from the case studies would suggest that development viability remains a common reason for variation (see 6.59-6.63). However, in some cases renegotiation can reflect a qualitative response on the part of a developer to market demand. Testimony from one LPA interviewee summarises this point neatly:

> "We do get variations but they tend to be a developer coming in after the event seeking to vary it rather than it being written into the agreement in the first instance. If you go back to when the financial crisis hit, we had developers seeking adjustments because, quite clearly, the financial picture had changed quite significantly and government introduced an ability to allow them to do that for a set period. We had some developers going bust with sites partly built so quite clearly we weren't going to be enforcing those agreements in those circumstances.
>
> [Now] we still get variations coming in but generally it isn't about the principle or the quantum that you have agreed it is more about 'we have changed our mind and we want to vary house type'. So if they have been very successful at selling a particular 4 bedroom house they might want to say 'that one is selling much better than this other design and we want to change it'. So you inevitably end up with a variation on the 106 to cover that." (LPA 20)

5.11 In some cases LPAs reported that renegotiation was a more common feature of more complex sites and, to some extent could be predicted. In these

circumstances some LPAs choose to include a deed of variation as part of the planning obligation.

Table 5.4 Renegotiation of existing agreements in 2016/17

Did your authority…	Yes	No
...renegotiate any changes to previous planning agreements?	65%	35%
...receive any requests to renegotiate any changes to previous planning agreements that did not result in changes?	15%	85%

Source: LPA survey

5.12 The survey asked LPAs to provide examples of the renegotiations to agreements. The responses most frequently related to:

- Reduction in affordable housing contribution, particularly where planning permission was agreed on smaller sites (10 units or less)
- Alteration to the mix of tenures within the affordable housing contribution
- Alteration to the definitions and terms of repossession to enable the bank to repossess and sell as affordable housing if needed in the future
- Change in the named party liable for delivery of infrastructure

5.13 Whilst most LPAs did receive a request to alter a planning agreement, in some cases the LPA refused the developer's request. The most frequent reasons given in the LPA survey for rejecting a request to changes related to:

- Lack of information to support the viability assessment
- Independent assessment of viability supported the original agreement
- Amendment would have impacted on other amenity provision (e.g. on street parking)
- Demonstration that the 'need' for the agreement was still present (e.g. contribution towards education)

5.14 The case studies found corroborating evidence for the reasons for renegotiation, but found that small modifications most often occurred in relation to small sites or where a new party (e.g. a housing association) was identified. More substantial changes were likely to occur, not as a result of small changes to the planning application or actors involved, but because of changes in market conditions. The case studies also found that there was variation in the response of LPAs to these requests from pragmatic acceptance to principled objection.

Chapter 6: Planning Obligations: Evidence from Case Study Local Planning Authorities

Introduction

6.1 Chapter 6 of the report explores the case study findings thematically. Twenty case studies were undertaken between June and October 2017 across England. The case studies included interviews with LPA planning officers and developers and considered both the overall picture of planning obligations and CIL as well as considering detailed, specific planning applications and agreements.

Key findings:

- There is considerable variation in practice between LPAs in how they secure developer contributions.
- A commonality is that the pooling restrictions[2] are not supported by LPAs or developers. They are felt to have added unnecessary complexity and have prevented planning obligations from being secured in some cases. They are particularly a problem for LPAs where low levels of viability have precluded the introduction of CIL and where S106 has historically been used successfully to secure contributions.
- A key distinction is between areas with strong development pressures and high land values and those with lower pressures and low values. CIL has most frequently been introduced in areas with higher values, but many LPAs in lower value areas reported that whilst they historically used S106 successfully, viability assessments for introducing CIL were not positive.
- Delays can be caused by all parties involved in the negotiation of planning agreements. LPAs can lack the resources to respond quickly, but equally delays can be caused by developers where it may not suit them to secure permission or commence on site quickly. Legal delays are frequently cited as an issue that slows the process down.
- CIL does not prevent delays where there is also a need for on-site mitigation, such as highways and affordable housing, because negotiation is still required.
- Monitoring the delivery of planning obligations is time consuming, resource intensive and can be difficult. But equally, most LPAs use index-linking planning agreements and conduct a yearly census of development which enables invoicing to be updated where developers have not fulfilled their obligation to inform the LPA when a payment trigger has been reached.

[2] With effect from 6 April 2015, the CIL regulations restricted the use of S106 agreements by prohibiting the pooling of contributions from five or more sources.

- The extent of communication with local communities is very limited and there was a clear absence of communication with the public about what developer contributions have paid for.

Policy on planning obligations

6.1 A general observation since the 2007/8 and 2011/12 study is that it is easier to locate LPA planning policies and there are more specific policies on developer contributions in the public domain. There are still issues for LPAs where local plans and five-year land supplies are not up to date. For some LPAs this has led to an increase in appeals which are costly and time consuming.

> "We are affected by our increased vulnerability to speculative development because we don't have a five-year land supply. There have been more appeals. This generates huge additional costs for the authority to bear at about £40,000 per public inquiry". (LPA 2)

6.2 The view of developers was that they had reasonable knowledge in advance of what level of planning obligations would be required, but this varies between LPAs depending on how up to date and thorough their policies are.

> "A number of boroughs have SPDs set out and we prefer that. [London boroughs] have a very set method of calculating contributions of £x per unit or vehicle movement. This helps us to get a good idea of what S106 requirements will be from the start. Other boroughs seem to put a finger in the air but we have no power to challenge them on that". (Developer 4)

CIL uptake

6.3 Some of the LPAs without CIL had considered it and had commissioned viability assessments to determine what CIL rates would be feasible. However, many were reluctant to adopt CIL because the evidence the LPAs in question had accumulated illustrated that the market conditions were not sufficiently robust to support a flat levy on development. This was not limited to the majority of cases from the Midlands and North, but also some LPAs in the East and South East. In the majority of cases from across the North the general view was that CIL would prevent development in areas where it was least viable anyway and so they were unlikely to consider adopting CIL.

6.4 Some LPAs found this a frustrating process because the viability assessments tended to find that only a very low (or zero) CIL rate would be viable despite a long track record of successfully delivering planning obligations through S106. Their view was that if they had adopted CIL instead of S106 they would have been at risk of securing fewer developer contributions. This reflects how CIL charges need to be

set at the lowest commom denominator to ensure the overall charge is viable, so CIL may not be viable but LPAs are able to secure funds through S106.

> "We have done two viability assessments recently to see if CIL was a viable option. The first in 2013 showed we couldn't charge anything through CIL, but we had been negotiating millions of pounds through S106 during that period so that can't be right. The second assessment in 2016 showed some possibility of charging CIL but at £25 per m^2. CIL would generate less than we would get on one 250 unit scheme through S106 than we would get through CIL over the next 5 years…. This has to be a failing of the way CIL is looked at because we have been successfully securing planning obligations way in excess of what the assessments showed was viable." (LPA 12)

6.5 In these areas there was little appetite from officers or elected members to revisit viability assessments and reconsider the possibility of introducing a CIL charge. Amongst these LPAs there was often a strong view that the S106 system worked well in their area and they were frustrated with the restrictions associated with pooling S106 planning obligations that were introduced alongside CIL. This view from the case studies was strongly corroborated by free text responses returned with the survey. For example:

> "The pooling arrangements for S106 agreements make it difficult for developers to fund significant infrastructure projects and can hold back development." (Survey response)

6.6 Introducing a CIL charge was regarded as less of an issue in areas with high values, high demand and strong local growth. It was also regarded as more suitable where most development is smaller urban infill. Some areas that had introduced CIL reported lower income levels for infrastructure through CIL than they had secured through S106.

> "By the time we have made the parish payments, deducted the administrative costs and used CIL receipts for the repayment of the Revolving Infrastructure Fund, in future we will have approximately £500k per annum to spend on infrastructure. If you consider last year we received £12.5m in S106 receipts, CIL does not compare favourably". (LPA 10)

Delivery of infrastructure without CIL receipts

6.7 For the LPAs without a CIL charge, infrastructure is delivered using S106 receipts as they have done in the past, but taking into account the pooling restrictions. LPAs pointed out that for large scale infrastructure, planning obligations are often an additional funding source, rather than the primary funding source. However, the pooling restrictions have limited the extent to which LPAs can bring forward large

and non-site-specific pieces of infrastructure, yet contributions towards education, highways and open space continue to be secured through S106.

> "It does mean the infrastructure happens piecemeal and restricts our ability to bring forward a comprehensive package of infrastructure because you can only get the infrastructure related to the development". (LPA 7)

Impact of the pooling restriction on housing delivery

6.8 Most LPAs pointed to the negative impact that pooling restrictions have had on the process of agreeing developer contributions. They felt that the restriction was damaging and made the process longer, slower and more difficult than before. One view was that this is a means to force LPAs to introduce a CIL charge. However, as many LPAs reported that they had already conducted viability assessments and found a levy to be unviable, the move to CIL may mean losing the planning obligations they would usually manage to secure through S106. An example of practice was that LPAs have developed ways to work with and around the pooling restrictions, such as always using S278 obligations for highways, rather than S106. The pooling restrictions require LPAs to be very strategic about infrastructure, but in some areas they have encountered problems in delivering the required infrastructure when they have reached the limit.

> "So we do get schemes that don't adequately cover their costs and provision because of the pooling restrictions. It is disappointing that education have to turn away a sum that is needed. The education authority in particular lose out. Where we have secondary school infrastructure, we are going to need more than five schemes to achieve the level of funding needed. So we have to be picky and rely on the bigger schemes, but this means having to wait longer for delivery". (LPA 2)

6.9 By extension some LPAs felt this has placed additional strain on already stretched council budgets.

> "We haven't had to refuse permission because of a lack of infrastructure, for example, we haven't refused anything on the basis of the lack of education provision. But we are building up a deficit over time". (LPA 7)

6.10 Another view from one LPA was that the pooling restrictions had actually allowed developers to use these regulations to their advantage in effectively 'gaming' the process. A typical strategy in this regard would be where a developer exhausts the process up to the point where the pooling restriction is met. LPA 18 explained how developers might sometimes use the pooling restrictions to their advantage. A developer may apply for permission for a residential scheme that requires them to make a financial contribution towards open space. Under the pooling restrictions,

the LPA can only record five such open space contributions. The developer may then apply to change an aspect of the permission, such as the house types. This requires a new S106. If this process is repeated, there may be five open space contributions recorded and the pooling limit is reached. In reality there is only one development and one actual contribution towards open space. But the LPA cannot seek any further open space contributions, e.g. on subsequent phases of the development.

Impact on attracting and securing new development

6.11 The impact of CIL and planning obligations on attracting new development was discussed with LPAs. However, they felt that generally what was secured through planning obligations was not the key issue, securing new development is more related to local growth and demand.

> "In large parts of the LPA area development pressure is very low…. What follows is a vicious circle where low development pressure results in low levels of investment in infrastructure, which reinforces the tendency towards low levels of development pressure". (LPA 16)

6.12 Nevertheless, there was at least one example of a LPA making the local political decision to spend all of their CIL receipts on one key piece of rail infrastructure. This approach may be justified whilst there are still S106 receipts still to draw down for other infrastructure requirements, but the LPA officer had concerns that this approach may create problems for the delivery of wider infrastructure once the historical funds secured through S106 funds have been depleted.

Difference CIL has made

6.13 CIL is a clearer formula-based approach which means that the approximate amount a developer will have to pay can easily be calculated, although previously many obligations through S106 were also formula based.

> "It's more honest and transparent as the developer or agent can calculate the CIL charge before they make a planning application. The public and members know how the amount paid is arrived at…. CIL is fairer, everyone pays an amount proportionate to what they are building". (LPA 11)

6.14 However, there was consensus across LPAs that CIL had not sped up the process of securing planning obligations because there was still a negotiated element for the on-site infrastructure. This on-site infrastructure is generally seen as necessary and appropriate and not suitable for delivery through a formula based approach. An example of practice in some CIL charging LPAs is to exempt large strategic

developments from CIL charges and to seek contributions through S106 instead. This is to ensure the appropriate infrastructure for the site can be delivered at the right time, which is difficult under CIL. Many CIL adopting LPAs in the case studies and in the free text responses to the survey commented on the time it takes to accumulate sufficient CIL receipts to fund infrastructure.

> "To date CIL receipts have been relatively low due to the time-lag between adoption of CIL, the commencement of development and the triggering of payments. Any CIL due over £35k comes in four instalments and could in theory be paid over three financial years…. On strategic large sites CIL is a problem because you need major infrastructure up front. It could take years to build up a big enough CIL pot." (LPA 10)

> "Whilst the Council implemented CIL almost 3 years ago, it does take a while for CIL liable developments to commence and for cumulative, significant receipts to be built up. The Council have begun to spend a relatively small amount of collected CIL on infrastructure projects within the Borough but need to balance this short-term delivery with those larger, costlier schemes which it needs to deliver in the future and which will inevitably take a longer time to increase available revenue. Thus, it is not a case that the Council are not spending CIL receipts, but are waiting to build up larger receipts for costlier projects". (Survey response)

6.15 One of the most significant objections made by the development industry on CIL is that the connection between a development and the contribution is severed. It was expressed several times that developers like to be able to see that their contributions are going towards site enhancement rather than aggregated with other contributions and spent (or not spent yet) on something unrelated.

> "CIL hasn't reduced the burden, it has multiplied it. Plus, there is the political angle. Our development control committee is familiar with S106s and are very involved in decisions. S106 ties the money to specific areas. With that loss members are disgruntled, they can't guarantee to the people who come to look at the planning application that the money will be spent on their community. It is two steps removed and goes into the general pot". (LPA 10)

Use of S106 agreements

6.16 The principal objections to S106 by the development industry were the variability of practice and lack of consistency and the jeopardy of being 'last man standing'. Several developers noted that there was experience of piecemeal development of contiguous sites over a period of years resulting in a cumulative case for a contribution. That is, the first developer creates a comparatively small case for an obligation being required; the last carries the burden of paying for an obligation that

has been necessitated by waves of unrelated development. CIL would clearly be a response to this but most developers seemed to still prefer S106 in the north, and in some of the case study LPAs across all areas except for London.

Affordable housing provision

6.17 Several LPAs felt that developers do not want to provide affordable housing on sites in northern towns and cities as they believe it affects development viability. Their experience was that developers may use the planning process to diminish this – through manipulation of pooling restrictions; through viability arguments; through renegotiation. This said, where it is strongly articulated as a fundamental aspect of gaining consent some developers will comply. Where S106 prevails the development industry may sometimes try to negotiate away affordable housing. One view was that changes in national policy provide leverage to reduce affordable housing.

> "The main improvement would be some stability in national and local policy. For example, the national policy on affordable housing has changed several times in the last two years and is in conflict with our otherwise NPPF compliant development plan. Schemes that have already been agreed come back in these circumstances to reduce obligations as national policy changes". (LPA 10)

6.18 Some LPAs with CIL in place find that developers almost always attempt to reduce the proportion of affordable housing and disagreements about viability are frequent. LPAs with higher values and sites with fewer viability issues, such as greenfield, large-scale residential development, reported that development tends to be policy compliant with the affordable housing requirement.

6.19 Overall, the total proportion of planning permissions with planning obligations attached are small. The typical scale and size of application above which a planning agreement is usually required varies by LPA.

6.20 For example, one LPA seeks 30-40% affordable housing from developments of 15 units or more. The proportion of affordable housing that is actually negotiated may be lower than the policy requirement because of viability issues that are market or site related.

> "We don't achieve this on a regular basis. The larger sites where we are able to seek affordable housing currently average about 20%. It has been as low as 9% in 2012/13…. A lot of stuff comes forward that is unallocated. It often has an existing use, is on a brownfield site, it might be contaminated on an inner city site, so it is more difficult to get affordable housing. Then you have to go through the viability charade". (LPA 11)

6.21 In another example, an LPA did not introduce CIL and seeks 40% affordable housing in rural areas and 30% in urban areas. They reported that 2-3% of all planning permissions have a S106 agreement attached, which in 2016 resulted in 25 permissions with a S106 and in most cases provision met the affordable housing policy targets.

6.22 The proportion of affordable housing secured on sites with agreements can vary considerably between different sites and does not always meet the policy target.

> "Mainly we get what we ask for, but there are some exceptions due to viability where the target has to be reduced…. We have some sites where the affordable housing has been reduced to 5% on viability grounds. We didn't want to stall the development and would rather let the development go ahead and get it built". (LPA 14)

6.23 The variation in how much affordable housing is secured comes down to viability, which is largely dependent on the nature of the development and site-specific issues.

> "At the moment, we are looking at two major developments. The two sites are very similar but only one will deliver full policy compliant infrastructure. The other is not be able to meet the obligations because of the particular constraints on the site in terms of dealing with flooding, the amount of road infrastructure needed, the amount of fill the site needs to provide the road infrastructure. Literally these sites are side by side. But one is viable to deliver policy compliant obligations, one is not". (LPA 5)

6.24 The approach LPAs take to developer requests to reduce the affordable housing contribution because of market changes varies. Some see themselves as pragmatic and want to bring forward development, others do not see paying too much for land as a good reason to reduce the affordable housing requirement.

Example site – reducing the affordable housing

Application: A large mixed use scheme for 3000 dwellings, with employment uses, a district centre, two combined schools, a secondary school, public open space and recreation facilities and a park and ride.

The developer was about to commence on site in 2008 when the downturn hit. They sought a loan from the Local Enterprise Partnership and decided to build out the affordable housing first to help with cash flow on the first phase of 235 dwellings. The developer renegotiated the affordable housing requirement which was reduced

from 30% to 10% for the remainder of the development. The LPA included review points in the renegotiated S106 and hopes that they will be able to increase the amount of affordable housing when the main phases of the site come forward.

The scheme is also a good example of how it can take a long time to bring a large site forward. This was the LPA's first very large development with an affordable housing provider and a consortium of developers. In the middle of negotiations around the S106 agreement, a developer lost their option to the parcel of land in the centre of the site. The LPA had to take legal advice on how to deal with this and it took a year to resolve. The site was complicated legally and had a large number of developers and landowners involved. Once agreed, it took several months just to get the agreement signed by all landowners.

6.25 Other than affordable housing, most key obligations still secured through S106 are calculated based on a formula which, therefore, determines how they vary between sites depending on the nature of the development. One LPA described how the level of contributions that are sought are carefully balanced against existing provision in the borough e.g. the need for education contributions is determined by existing school capacity.

Preference for securing in-kind contributions over commuted sums

6.26 There is a general preference for securing in-kind contributions over commuted sums for affordable housing. Other obligations tend to be formula based and a cash contribution where appropriate, with some on-site in-kind provision as necessary. For example, a development may have an on-site play area as a contribution to the open space requirement, but also contribute a cash sum towards wider open space needs related to the development.

6.27 Although there is a preference for on-site affordable housing delivery, LPAs are pragmatic about developments where this is not appropriate. For example, if the housing is on a development that a Housing Association would be reluctant to manage, such as on a relatively rural site where the roads and open space would not be adopted by the LPA and where service charges would apply, or in flatted developments where the affordable housing units were small in number and did not cover a complete floor. Many LPAs include review points in S106 agreements to reconsider the level of affordable housing if the market improves, but any increase would likely be delivered as a commuted sum.

Impact of Permitted Development Rights

6.28 The impact of the introduction of Permitted Development Rights very much depends on the nature of the existing development in the LPA. Some have seen little impact of conversion of office development to residential. Others have seen large volumes of residential development brought forward through office conversions that have no planning contributions attached, leaving the LPA to find funding for necessary infrastructure such as education provision.

> "Conversion of offices to residential has had a big impact on our planning obligation income and our ability to mitigate a scheme's impacts and secure affordable housing. We have had substantial concerns about large numbers of additional residents in the city centre with no contributions to improve sustainable transport, education, health facilities, public realm etc. We have also lost many opportunities to gain additional affordable rented properties in the city". (LPA 12)

6.29 There were also concerns about the long term sustainability of such development without the provision of wider infrastructure such as open space.

> "We have had about 1060 dwellings created from offices since PDR was introduced. If they were all one beds, but they are usually one or two beds, then looking at the lost sports and leisure contribution, it could be we that lost about £1.5 million, but it could be £3 to 3.5 million if they had been three beds". (LPA, 5)

Negotiation:Proportion of planning permissions with agreements that go ahead

6.30 LPAs were confident that most planning permissions with agreements attached do eventually go ahead and get built out. A general observation is that this has improved since the 2007/8 study when the effects of the market downturn were beginning to be felt.

6.31 There are numerous reasons why planning permissions with agreements attached do not go ahead. For example, a site may change hands and the new developer wants to change some details of the development, requiring a new permission. Even where a site does not change hands, the developer may eventually negotiate a new agreement as the local market conditions and local demand changes. When sites move from the outline stage to detailed permission stage they sometimes generate a new S106 agreement.

Negotiating agreements and use of standard templates

6.32 There appears to be significant variation in the process by which S106 contributions are negotiated. Practice can vary in terms of who leads negotiation and whether internal or external legal support is used, it may be a case officer or it might be a member of a legal team. Some LPAs seek external advice and reliance on support from legal departments is variable with some heavily dependent whereas others prefer to lead the process. The use of standard templates varies, with some LPAs happy to accept agreements drawn up by a developer's legal team, whilst others insist that their own standard template is used and not deviated from.

> "We have no standard template. We use two or three contracted solicitors and each of them has their own template which sometimes gives us problems….You get into lots of lawyer to lawyer debate over the detail where it would be better if we had a standard wording, for example, for triggers or the affordable housing delivery route. They all want to do something slightly different. The developer picks up the cost because they cover the legal costs but it potentially causes delay". (LPA 2)

6.33 The use of pre-application discussions varies and the point in this process when negotiation takes place can vary. An example of practice is where LPAs prefer to discuss contributions in some detail during the pre-application process, meaning that once a formal application has been made the content of the S106 is largely known. Another example of practice is to accept signed broader heads of terms, on the understanding that the details will be negotiated later in the process. This is common when an outline permission is submitted and the details of the scheme will not be known until the detailed permission has been submitted.

6.34 The individual approach and attitude of the LPA and the case officer can make a difference and the personal nature of the process is a recurring theme across the interviews. This is also reflected in variations in policy and preferences amongst LPAs. This does mean that the process is highly contextual and tied to the geography of LPA control. A developer working in one LPA would do well to offer in-kind contributions through the provision of affordable housing directly; in other locations they would be best placed to offer a commuted sum. Understanding these highly local preferences is all part of market knowledge but it could conceivably act as a barrier to entry for new and/or smaller developers. Developers felt that the overall culture of the LPA makes a difference to the process.

> "You'll get quick and easy decisions out of some councils but not others. It is about the culture of councils and the culture tends to come from the officers at the top. You might get a really good proactive officer who does not want to get in the way. Some councils see their job to stop development and others to assist you to develop". (Developer 1)

6.35 The main issue that arises in negotiations about planning obligations is problems with viability, where developers argue that the site is not sufficiently viable to provide all of the obligations the LPA seeks. This is predominantly focused on negotiations about the level of affordable housing that is required. The interviews suggest that a relatively standard approach is taken in terms of the methodology used for viability assessments, but LPAs and developers are more likely to have disagreements about the costs and potential sales values developers have used in their viability assessments.

6.36 Viability arguments can be frequent and they can be complex. Developers reported that a lot of information is required to be submitted to some LPAs to negotiate on viability grounds, but again practice varies. The experience and expertise within LPAs to engage with viability discussion varies.

> "Viability appraisal is an area where the officer expertise is limited… Developers see this as an opportunity to bamboozle the local authority. To me it wasn't clear even the Inspector understood it at an appeal I attended. This was unfortunate as we lost but I didn't feel they had their heads round it… We know the bulk of appeal decisions went in the developers' favour. This is bread and butter for them. But it is only one of a number of issues that planners have to deal with". (LPA 2)

6.37 Viability assessments are not a hard science. The quote below, from a developing Housing Association, implicitly points to the degree of leeway that might be possible within viability negotiations.

> "Every scheme is delayed but the length of time delayed depends on the complexity of the scheme and whether you're willing to give in". (Developer 5)

6.38 The time taken to get agreements signed for different types of sites varies. It can be related to the nature of the site, but not always. The causes of perceived delay are discussed in the next section.

Delay

6.39 The interviews with LPAs and developers explored how S106 negotiations affect the time for sites to work their way through the planning system, and in developers starting on site once agreements are signed. It is apparent that delays are caused by multiple factors.

> "Delay is caused by difficult developers or landowners, unrealistic expectations of land values, viability issues, political decisions at planning

control, solicitors redrafting for the sake of it, developers holding up negotiations or drafts. Delays can come into the planning process due to inaccurate or poor quality reports and submissions, changes to the scheme during the application, lack of resources, high numbers of applications at certain times of year, deferrals at committee, or having highly complex schemes". (LPA 12)

6.40 A lack of resources, skills and experience in LPA planning departments can constrain the speed at which a LPA planning or legal department can respond to developers.

> "Sometimes we haven't responded because of the sheer volume of work pressure, we have limited resources and there is a lack of professional expertise out there. We have tried to recruit but we can't fill the places. This has implications on our ability to react in a timely way". (LPA 7)

6.41 The lack of resources and ability to get hold of LPA officers in relation to planning agreements is a source of frustration for developers, but practice does vary between LPAs.

> "The negotiation process varies between local authorities. Sometimes it is down to local authority resources and lack of officer time. We always cover their legal fees but it can be hard to get hold of them. Lots of local authorities have shared legal services and that can be problematic. It is hard to get responses…. We don't get our planning permission until the S106 is signed by the local authority and we have experienced a lot of delays in the past waiting for staff members to come back to us." (Developer 2)

6.42 There were frustrations amongst developers that they have to push LPAs to go faster, although they were sympathetic to the resource constraints faced by LPAs. Some developers used Planning Performance Agreements if they were very keen to get on site as quickly as possible and saw the cost as a worthwhile investment. Delays in the process can increase developer costs.

> "The major problem is a lack of resourcing and not enough bums on seats. The process isn't perfect, but it gets the job done. It's how they're implementing the process that's broken. There is a lack of accountability for these boroughs. When a determination period of 18 weeks slips to 32 weeks it can lead to thousands of pounds of interest, especially if we bought the site on the assumption that we would be able to develop it quickly. It doesn't cost them any money if it slips". (Developer 4)

6.43 Human error and forgetfulness on both sides, LPA and developer, was frequently cited as being a cause of delay. The use of external legal support in negotiating and

signing agreements was mentioned as a source of delay, with both LPAs and developers feeling that it is in the financial interests of external legal teams to make the process longer than strictly necessary.

> "In terms of the legal process, sometimes they deal with it internally or sometimes externally. But it takes too long and it is the same everywhere. Some internal lawyers are good, but often they are not. A problem is external lawyers who seem to take a long time so they get a big fee and we always cover the council's fees". (Developer 1)

6.44 The process of negotiating and signing an agreement can be very slow on large, complex sites. This can be because of the nature of the site, the nature of the landowner, or because there are many different landowners involved.

> "One agreement took two years to negotiate because there were a number of different landowners all with their own solicitors. Once it was agreed there were so many of them it took three or four months just to get all of the signatures". (LPA 7)

Site example – complicated site that took years to come forward

Application: A mixed use development of almost 29ha, built out by a major developer with a Housing Association and the HCA. There are 680 residential units plus offices and retail units across two planning applications. There are 190 affordable units and contributions towards community centres, highways, libraries, primary and secondary education. 177 residential units were complete as of April 2017.

The site was allocated in the Local Plan over 20 years ago and a Supplementary Planning Document for the site was prepared 18 years ago. Despite this, the planning permission took six years and negotiations on the two S106s took place on and off during those six years.

The long time to bring the site forward was for a combination of reasons. The land assembly was very complicated and the HCA was involved to help this process. Part of the site was Health Authority land and there were uncertainties over when the authority would release the land. It was a very complex site with both fire training and ambulance provision on site with technical difficulties about combining residential development with aspects such as the fire station. The site is at the junction of two major roads and required highway works, but had to coordinate with a larger scale highways upgrade scheme.

The LPA started to discuss the site in earnest with the developer when the market crashed around 2008. There were changes in the personnel negotiating at the

developer and the HCA. Both factors slowed the negotiation process down.

There was originally an outline application for the whole site with 700 houses. But the process was taking too long so the LPA and developer carved out a first phase of 100 houses as a full planning application which received permission. This left an outline for 600 units. This became an outline for 580 units because agreement with the landowner could not be reached on one part of the site.

The developers estimate they will build around 75 units a year, so it will take nine years for the development to be fully built out. The LPA are very happy that the site has come forward and with the specifics of the development. They feel it is successful in terms of sustainability, layout and architecture and has been well received locally.

6.45 Even where viability is not an issue and the market is very buoyant, it can still be a slow process to get agreements in place when sites are very large and there are many landowners.

> "We have full employment so there is strong housing demand, housing is selling off plan. They can't throw them up quick enough. We don't have much viability pressure as we have flat green fields…. Our problem is getting housing developments forward quick enough because they are on a big scale. The bigger the scheme the slower it is. When you need a consortium between land owners and you need 20 signatures on all the legal agreements, it all moves slower at this scale". (LPA 14)

6.46 Third parties can slow the process down. This could be Housing Associations coming on board late in the discussions and requiring changes to the agreement or might relate to the landowner type, such as large public sector bodies which have their own internal processes.

6.47 Every LPA pointed out that delay in the process is always described as being the fault of local government when in practice the developer is often equally culpable. LPAs felt that when a site is in a local market that is very buoyant, developers are keen to get permission and commence on site as quickly as possible. But most interviewees point to the development industry taking their time beginning developments if it is not in their interest to begin immediately. Once the LPA has sent out the draft agreement, there is little they can or will do until the developer gets back in touch with the LPA.

> "The timing depends on how quickly the developer wants to move the site forward. If a developer comes in at the pre app stage they might not come back for a year with an actual planning application. Others can be very quick. It is difficult to determine as developers run the timetable at their pace. S106

heads of terms can go out in a day, but if the developer sits on it for a year, we can't move it forward". (LPA 12)

6.48 This could be the case in contexts where development pressures are generally lower, but might also be the case if the developer has other ongoing developments close by and wants to finish building those out first.

> "The nature of the S106 does not seem to be the key determinant, more the motivation and urgency with which developers aim to get on site". (LPA 2)

6.49 In terms of wider delays, both LPAs and developers could cite frustrations at the responses of elected members to planning applications, particularly in high value areas where there is a local of local opposition to development.

> "These are really difficult authorities that tend to be member led and not officer led. This makes a real difference. There are local authorities that really take on board what their officers say, and others that don't give a toss what their officers say if the locals are up in arms". (Developer 1)

6.50 The discharging of conditions was also frequently mentioned as a source of delay as it is not necessarily priority for LPAs given their limited resources, although it does not necessarily stop developers commencing on site.

6.51 However, in terms of the speed of completing and negotiating S106 agreements, both developers and LPAs said that there is no standard appropriate time and it is very dependent on many factors, including the nature of the site.

6.52 Both LPAs and developers were unanimous in the view that the build out rate of sites once work has commenced is determined by local market sales. House builders will only complete units at a rate that they can be sold without having a negative impact on the price that can be achieved.

> "Once you start on site the speed you build out is determined by a number of things. The number of people, on site labour, weather, quality of sub-contractors. But the key is you don't want to build quicker than the sales rate, as the last thing you want is stock plots that are finished but not sold. On every site the construction team asks the MD to release plots to build. He will only release units if the site is selling. There is no point having work in progress if you can't sell". (Developer 1)

> "The volume house builders don't want too many sites going on at the same time, so they may choose to delay development as they don't want to saturate the market". (LPA 11)

6.53 There was a view amongst some LPAs that it is better to take time and work with developers to secure a good scheme, than to agree to anything quickly and risk a poor scheme coming forward.

> "Developments have to be right; they will be in the city for a hundred years. You can't shoehorn it through in 13 weeks if it is rubbish. Having unsuccessful and unsustainable developments will not support sustainable growth, but they will build in problems for the future". (LPA 12)

Costs

6.54 The case studies explored the costs of negotiating agreements and of procuring external advice. Many LPAs could not provide specific data about this. The costs of negotiating agreements are not calculated specifically because they are done mostly by salaried LPA staff. Indications of the cost of procuring external advice was given.

> "We don't procure external advice on negotiation, we have years of experience in house. The only outside input comes from the district valuer on any viability assessments that are submitted. These can cost anything between £2000 and £12,000 but the applicants cover this cost. Very occasionally we go to outside solicitors to draft the agreements but developers pay those costs too". (LPA 12)

6.55 Practice varies between LPAs, some use only internal legal teams but some pay for external legal support, similarly, whilst some carry out viability assessments in house, others use external valuers or consultants. These costs may be borne by the applicants.

> "External consultants have been used in relation to arguments about site viability. The cost can be £5,000 to £10,000. We have started to insist that the developer funds the consultancy costs, particularly where the issue has been identified in pre application discussion". (LPA 2)

Completion and modification

6.56 The policy for the usual timescales for the completion of different types of obligation varies between LPAs, but many are pragmatic and are willing to negotiate, for example, so that triggers are on occupation rather than commencement. The timing of the actual delivery of on-site infrastructure may not be known by LPAs as this is difficult to monitor.

6.57 Many LPAs have built in review points in agreements for larger developments to give them the opportunity to secure additional contributions if the market improves. However, in one LPA the market is very buoyant and they do not want to use review points as they feel the local 'bubble' may burst and then they risk having made it easy to reduce contributions. Although there were many LPAs building review points into agreements, few had been triggered.

6.58 All of the case study LPAs use some form of index linking for agreed planning obligations. The type of obligation that is index linked, the timing of the index linking, and the particular index used can varies between LPAs. A planning agreement may have several different indexes for different types of contributions within one LPA.

> "The Retail Prices Index is used by the District Council. The County Council often use the Public Sector Building Non-Housing PUBSEC Index for education contributions and the Business Innovation and Skills Price Adjustment Formulae Indices (Civil Engineering) Series 2 BIS index for highways related contributions". (LPA 2)

6.59 One LPA commented that it was better now they were using a consistent approach to index linking.

> "We uplift contributions by a percentage. It is better now we have one consistent approach and use one index". (LPA 7)

6.60 Index linking may start from the date of the agreement, or there may be a grace period after which index linking begins.

> "All financial contributions are index linked to RPI from the time the figures are agreed to the date of payment. We do give the developers a six month grace period, so if the sums are paid within six months of them being agreed, we do not index link". (LPA 12)

6.61 This does mean that once an agreement is signed if building of the site does not commence quickly, the developer will eventually pay more. It also means perhaps that monitoring can be a relatively low priority because the LPA knows that eventually the developer will pay and obligations are index linked so the longer the developers waits to pay, the more they pay. There were examples of developers forgetting that obligations were overdue and index-linked and getting a 'nasty shock' when receiving invoices, although they were aware it was their responsibility to notify LPAs of triggers being reached and to pay on time, and had not done so.

Modification and re-negotiated

6.62 No LPAs had any specific data on the proportion of agreements that are modified or re-negotiated after they have been signed. Full renegotiation is less common than smaller modifications.

6.63 Small modifications can be common. This might take place, for example, when a Housing Association comes on board and they want to change the type or the mix of the affordable housing. Developers themselves may need to modify the agreement as they change the details of the development. This is particularly common on larger developments that take a longer time to build out. Modifications can cause delays and again LPA practice in dealing with amendments varies.

> "Once you have the S106 in place and you want to amend anything it is better to try to steer away from this as even minor amendments can take six months plus. But it depends on which local authority and which officer". (Developer 2)

6.64 More substantial renegotiation may occur if there is a change in market conditions. Some sites that were acquired pre-2008 have been renegotiated and the amount of affordable housing reduced to make the site viable. The recovery since the downturn has been variable, and the stance of LPAs on this varies. Some are pragmatic and are keen to see development come forward sooner rather than later, and so are willing to renegotiate lower contributions if it means the site will commence. Others take a harder line and will not reduce the agreed contributions, although a developer did comment that this had resulted in sites being stalled for over five years.

> "If a developer has paid over the odds for a site, our argument is that it is bad luck and doesn't mean the scheme isn't viable". (LPA 2)

6.65 Negotiating around site viability has polarised views. LPAs tend to feel that developers are 'trying it on' when they argue that they cannot meet obligation requirements such as affordable housing because a site is not viable. On the other hand, developers felt frustrated that LPAs are not pragmatic enough about bringing stalled sites forward when the local market has changed the viability of the site.

> "If we could make a site viable we would, as developers we don't want a site sitting on our books forever. 'Developers landbank to increase the value' is the most annoying comment I hear. We do not land bank. We can't afford to, if you can make the scheme work you will build it". (Developer 1)

6.66 However, LPAs felt that it had become much more common in the last few years for developers to claim from the offset that a site could not be policy compliant on

viability grounds, even in growth areas where the market is buoyant. Changes in national policy were felt by some LPAs to have given developers a greater licence to argue that contributions cannot be met on viability grounds and had increased the amount of time spent in negotiations.

> "We are spending loads more time in negotiations since we got CIL. Development is no less viable since the NPPF and is not less viable than ten years ago. In 2004/6, it was rare to see a viability appraisal, now they pretty much all come in with a viability appraisal. Is very time consuming, unproductive and slows applications down. In 2012/13, the Government wanted to get developers building again, but Britain has got building again and while developments are no less viable than they were ten years ago, developers now have opportunity to say it isn't viable. It just ratchets up land values….People are claiming land values in excess of what would have been tolerated previously. It is a constant battle to stop land prices going up". (LPA 11)

Monitoring planning obligations

6.67 The monitoring of the delivery of planning contributions varies, although systems seemed to be more developed since the 2011/12 study. Monitoring is quite time consuming and therefore resource intensive.

6.68 Developers do not always notify LPAs when triggers, such as commencement or first occupation, are reached, and not all LPAs chase at these points. Even for developers, keeping track of all live sites to identify trigger points can be difficult. It is the responsibility of the developer to inform the LPA when a trigger for payment is reached.

> "We often phone the council and say we've occupied this many dwellings and ask for an invoice to be issued. You have to be proactive in flagging it up to the council, otherwise you get hit with interest…. But when you have 30-odd sites with lots of obligations for each, it is a lot to keep on top of". (Developer 2)

6.69 Identifying when triggers have been reached is complicated and requires cross checking and cross monitoring with other data, such as going through council tax records to determine if properties have been occupied and seeing if building regulations information has been received to suggest commencement.

> "Developers never tell us that they have started…. When a developer puts in an application for new road names I get a copy, I put them into the system to check council tax records and can see how many people are paying, so I can

see how many units are occupied, then I send the developer an invoice". (LPA 14)

6.70 A once a year census with site visits is a useful way for many LPAs to determine the status of development on a site and therefore which payments have been triggered. Some LPA officers notice triggers have been reached from site visits, sometimes for this purpose. One LPA described taking photographs of sites at intervals to have supporting evidence for the issuing of CIL charge notices.

6.71 Some LPAs charge developers a monitoring fee. This is despite the High Court declaration in the unsuccessful legal challenge by Oxfordshire County Council against an appeal decision, that there is nothing in national planning policy which gives LPAs the right to levy monitoring and administration charges as a general rule.

> "The legal position is that we shouldn't charge monitoring fees in the S106 agreement. We do charge if the developer is agreeable, but if we were challenged on this would have to concede". (LPA 2)

6.72 For some LPAs monitoring is not priority because resources are lacking, and because indexing means that the LPA is unlikely to be out of pocket when they do receive the funds. The volume of agreements on a system can make monitoring specific trigger points difficult. Whilst payments may be late, there were few examples of outright non-payment and LPAs rarely get as far as having to take court action against developers who are in breach of agreements, as they did during the housing market downturn from 2008.

6.73 Some LPAs pointed out that in practice not all planning obligations would be met on new developments and that this was largely unenforceable, and a lack of resources makes monitoring difficult.

> "We didn't have a S106 officer for six years. Recently we looked through historical agreements and are now doing debt recovery on the ones that had started and have not paid. We were relying on the developer to contact us on commencement but we didn't have the resources to check or chase this". (LPA 1)

6.74 LPAs vary in their capacity to monitor incoming payments from developers and the spending of obligations within the LPA.

> "It is currently not always clear how the sum that comes in to the finance office is linked to a specific planning application". (LPA 16)

Communication with local communities

6.75 The extent of communication with local communities is very limited and this is clearly an under developed area. In all LPA interviews there was a clear absence of communication with the public about what developer contributions have paid for. No LPA described any systematic way through which communities have been informed that some 'positive' feature (transport infrastructure, green space) of their neighbourhood has been funded through developer contributions. If information is provided by a LPA it is passive e.g. within a document on a website.

6.76 However, whilst some LPAs could see some possible benefits in doing more to communicate with local communities about what was secured through the planning system, most lacked resources to do more.

> "Opposition is deep-seated but there are people who jump on the band wagon, and if they saw they would benefit from a new cycle route, or road, or lighting, they would be swayed more and would perhaps agree that maybe [LPA] needs this and would be appeased". (LPA 1)

6.77 Sometimes developers may use information about what will be provided if a development goes ahead when engaging with communities. Most developers do some form of community engagement.

> "We get involved with parish councils who are locally led. They will often engage with us, and vice versa, if they are in need of a skate park or play area. We work with local parish councils to enhance local amenities…. Communities do appreciate us approaching them and introducing ourselves. We are not always popular. Nine out of ten communities appreciate this and we want to engage locally. Once we have communication links it makes life easier further down the planning application". (Developer 2)

Chapter 7: Developers and Planning Obligations: Industry Insights

Introduction

7.1 A vitally important aspect of how planning obligations work in practice is how the development industry reacts to them. How developers respond to variations in local planning authorities' obligations policies and how these variations impact developer decision making are fundamental to the equivalent variation in built environment outcomes. For this reason, in *Valuing Planning Obligations 2016/17,* we have deliberately sought to investigate this issue through work that explicitly seeks to engage with the development industry and learn how they perceive planning obligations and CIL.

7.2 As part of this project we conducted a series of interviews and three roundtable sessions, two in London and one in Liverpool, with representatives from the development industry. The purpose of this work was to gain a fuller understanding of how developers understand and respond to planning obligations policies and to elicit some behavioural insights into varying approaches to managing planning obligations across the sector.

7.3 In the course of conducting this work we spoke to a broad cross section of the development industry: large scale housebuilders, smaller developers, planning consultants, land buyers and housing associations. Through the three roundtables we were able to establish open dialogue between different participants in the development industry to explore variations in views and practices. The results establish some clear messages regarding how planning obligations policies are perceived and the degree to which variations in policy affect developer behaviour.

Key Findings

- Developers describe the lack of certainty as a hallmark of the system in England. Variations in how LPAs use planning obligations can contribute to this uncertainty across a heterogeneous development context and with a variety of developer responses.
- Having greeted the introduction of CIL in 2010 enthusiastically, some from the development industry now articulate reservations about CIL's suitability for purpose. The questions raised about CIL are multi-faceted but largely relate to perceptions of CIL's inflexibility, the lack of capacity to deliver infrastructure and the disconnection between developer contributions and the site of delivery.

- Developers argue that planning obligations create delays. The introduction of CIL has not generally reduced these delays, especially as LPAs must use planning obligations and CIL in tandem.
- LPAs are seen as lacking the capacity to deal effectively with planning obligations. The regulations which govern planning obligations and CIL can be complex. Developers point to planning departments that have seen declines in staffing and experience as lacking the capacity to understand development viability, negotiate effectively and manage the process by which planning obligations policies are administered.
- The uncertainties that are said to characterise the planning obligations policies in England may affect large and smaller developers differently. We present some evidence that some smaller developers may find it harder to engage effectively with planning obligations policies in comparison to larger developers.

Uncertainty in 'the' development industry

7.4 The developer workshops provided evidence of the diversity of business practices and heterogeneity of development models across the industry: there is no standard developer. There are important distinctions that must be made between developers of different types and the behaviours that characterise these typologies. In this respect there are distinctions between large and small; those which have varying geographical footprints - national, regional and local; those which are equity-financed and those which depend on leverage; those which are PLCs and those which are privately owned; those that treat risk at the organisation level contrast with those that understand risk at the site-by-site scale; those that work primarily in markets characterised by high demand versus those that have become specialised in undertaking development in weaker market conditions. Although some points of continuity and contrast in approach can be discerned between the behaviour of developers of similar 'types', each business has an individual response to the nexus of development contribution regimes and market contexts. Even developers of similar size and type seem to have an individual ethos and habituated practices which impact on their perceptions of planning obligations and CIL.

7.5 The only area where there was clear consensus amongst developers of all types was in relation to what was understood to be the principal negative aspect of planning obligations and CIL - uncertainty.

7.6 The issue of uncertainty regarding the costs of delivery has widely felt implications that feed back through the chain of actors involved in the development process. Land owners, agents, buyers and assembly specialists as well as planning consultancies were identified as some actors further down the chain who are

potentially affected by uncertainty over the scale of developer contributions. Across the development industry the argument was made that the cost of developer contributions would sometimes be passed on to the land owner market. It would then be up to land owners to determine whether and when to release land for development. The implication being that when there are changes in market conditions that increase uncertainty developers reflect this in more conservative budgeting – often a growth in the cost of 'contingencies'. This in turn has an effect on development viability and may disincentivise a risk-averse land market from making sites available for development.

7.7 On the balance of primary evidence gathered in this research the development industry is best thought of as highly differentiated and heterogeneous, with differentiated development models and practices. However a consensual view could be discerned on the uncertainty inherent in negotiated planning obligations and the effects this risk has on budgets and behaviour.

CIL's perceived limitations

7.8 A recurring message from all three developer roundtables, which was reinforced by interview testimony from across the case studies, was that developers have found CIL to have more limitations than first expected. Having initially welcomed the introduction of a levy-based arrangement as a tool that would enhance transparency and certainty in 2010, many developers pointed to the subsequent experience of working with CIL as frustrating.

7.9 The most frequent arguments made by developers include:

- **CIL's inflexibility**. As a fixed tariff it was argued by some that CIL cannot be easily attuned to the very fine-grained geography of market conditions. It was for this reason that CIL was described by one interviewee as a "blunt tool" – a view which was corroborated repeatedly during developer roundtables in both London and Liverpool.

- **CIL quickly becomes dated**. Charging schedules are agreed over a negotiated and political process whereby evidence can be submitted and scrutinised. However, once the level is set the schedule may become dated quite quickly as market conditions change. Some developers argued that rates should be reviewed more regularly.

- **CIL leaves room for uncertainty**. Several developers argued that there is general uncertainty regarding the rhythm at which CIL rates will be reviewed and consequently modified. This uncertainty about whether an LPA will adjust its rates in the future is said to be particularly relevant for sizeable developments with phased delivery which are likely to take place over a term long enough to encompass CIL reviews. As the timing and likely changes to CIL are unknown

this can introduce uncertainty about the magnitude of the contribution for which the development will ultimately be liable.

- **CIL receipts may remain unspent for some time.** Developers report that in many cases where CIL has been adopted LPAs have sought to accumulate receipts over a period of time. This has resulted in the perception that CIL is doing little to bring forward infrastructure investment in a timely manner as there is a lag between a LPAs accumulation of CIL proceeds sufficient to finance infrastructure and individual CIL contributions made by the development industry.

- **CIL misaligned with adopted plans**. Some developers report that charging schedules are determined separately to the process by which plans are adopted. As a result it may be that there is no clear relationship between the two. Developer opinion that we canvassed was strongly in favour of these two processes being aligned to instate the consonance between CIL and delivery/plans which was intended when CIL was originally proposed.

7.10 The majority of representatives of the development industry expressed negative opinions about CIL. Some argued that its lack of geographic variation encouraged LPAs to operationalise it as a *de facto* land use policy, which is not the intended use of CIL. As such it might be expected that developers would have a general preference for planning obligation agreements but this implication is only partly true: many developers re-articulated long held misgivings about a negotiated process guaranteeing a consistent framework.

Negotiated planning obligations are sometimes inconsistent

7.11 Although there was a general consensus that CIL has limitations amongst those who attended the developer roundtables there was also critique of planning obligations. One of the most strident criticisms of the negotiated approach that underpins Section 106 agreements was said to be the variation in approach that this allowed between LPAs. Some developers argued that this variation was even sometimes specific to individual planning officers.

7.12 The implication of developer testimony points to the possibility that what is delivered in one LPA area under planning obligations policy might potentially be very different to what would occur in a contiguous and comparable neighbouring LPA.

7.13 Given this critique it might be expected that the transparent Community Infrastructure Levy would be considered more favourably. However, as already noted, the opposite is true: in our roundtables most developers favoured negotiated planning obligations over transparent CIL.

7.14 Although a few developers argued that CIL has made a more equal playing field for different developers, it was noted that some developments are subject to *both* a S106 obligation and a CIL charge and accordingly there was only greater transparency in one part of the contribution. There was a general preference amongst developers for the continuation of negotiated planning obligations despite its capacity for inconsistency. Possible explanations include industry-wide familiarity with the long-established negotiated planning obligations process; a preference for a personalised form of planning amongst developers who have accumulated tacit understandings of how to create profitable developments under S106 and general favour for a system that is highly contextual and able to respond on a case-by-case/site-by-site basis to market circumstances.

7.15 When asked to compare S106 and CIL, developers questioned what CIL was financing, pointing to evidence, published earlier in 2017, that CIL receipts had been accumulated but remained unspent in some locations (Geoghegan, 2017). In this regard CIL was viewed as breaking the connection between the specific obligations (whether cash/commuted payment or in-kind contribution) and the site of development. Furthermore, developers often pointed to the flexibility of S106 in contrast to CIL which was described as "rigid" and, in some circumstances, set at levels that added costs to the development process that made otherwise viable sites unviable - particularly in those locations where development pressure is weakest.

7.16 On this evidence there may be some dissonance between developers' demand for consistency and the generally expressed preference for the S106 system which is inherently bespoke to context and, therefore, inevitably and intentionally inconsistent.

7.17 Given the evidence presented in Chapter 3 it is clear that the combined performance of CIL and planning obligations has resulted in a large increase in developer contributions since 2011/12. Whilst a proportion of this may be attributed to changes in market conditions, this value has been reached within the context of the hybrid system of CIL and S106. Utilising CIL in parts of the country where development pressures and competition for sites are greatest may provide the development industry with transparency and consistency. Conversely, in areas of lower demand S106 may provide LPAs with the latitude to procure development and in-kind benefits in settings where it might otherwise not occur if CIL were uniformly applied.

Delay

7.18 One of the principal reasons for the introduction of CIL was the argument that negotiation of S106 agreements was time consuming and added complexity to a process which is already prone to delays.

7.19 In some circumstances – particularly smaller developments that are relatively straightforward – there is some evidence that CIL's transparency and uniformity encourages a prompt form of consent and delivery. However, development industry representatives suggested that few larger sites are sufficiently straightforward to be adequately covered by CIL alone. On larger sites where a LPA has adopted CIL, a separate planning obligation is often also required in addition to the CIL charge. In many cases the presence of CIL does not result in a shorter negotiation period; on the contrary some testimony would suggest that operating the two systems in parallel actually *adds* complexity and delay. The general view expressed in the developer roundtables we conducted was that on large scale developments CIL has not led to expedited permissions.

7.20 It is in relation to these larger, strategic scale developments that the combination of CIL and S106 was seen as particularly problematic. For example, at this larger scale the negotiation of planning obligations will often require working with multiple authorities on specific issues (e.g. highways, two-tier authorities) which can act as a brake on development permissions even where an LPA is largely enthusiastic about the application. For any developers seeking to operate at this larger scale the aggregation of CIL and S106 was said to introduce a greater degree of complexity that made delivering these larger developments slower. One specific example of this was said to be the pooling restrictions which prevent the aggregation of S106 for more than 6 sites (even where there is no CIL). Some argued that this prevents infrastructure from being delivered in a contractually certain environment, i.e. the same sum for CIL may not be spent by the LPA or the money may be spent on another piece of infrastructure. Removing the restrictions around the pooling of S106 obligations would give developers greater certainty that the LPA will be able to deliver required infrastructure.

7.21 For the developers who attended the roundtable sessions there was a general preference for a CIL-like tariff for small sites and to use negotiated S106 agreements on larger sites where flexibility to adjust obligations in relation to changing market conditions might be more necessary. From this perspective the delays associated with planning obligations as applied to larger, strategic sites may be a systemic and unavoidable aspect of the development process in these contexts.

Impact on smaller developers

7.22 Evidence from the developer roundtable sessions would suggest that the highly variable manner in which planning obligations are handled between LPAs has different implications for large and small developers. Some roundtable participants argued that the inherently personal, negotiated aspect of the S106 system

privileged larger developers because of their detailed understanding, accumulated over years of operation, of variations in how LPAs approach S106 negotiations. If this is an accurate account of the personal nature of how planning obligations are determined in practice it would suggest the possibility of a barrier to entry to new/smaller developers less familiar with the behavioural characteristics of the geographically variable negotiated planning obligations process.

7.23 These findings relate strongly to the issue of uncertainty and how this is differentially experienced by developers of different sizes. For some roundtable participants uncertainty was presented as an unwelcome cost of doing business that, particularly amongst smaller developers, was understood intuitively and may not be part of a formal cost projection. Amongst larger developers, particularly those with a national footprint, the risk of uncertainty and its cost may be formally modelled at the scale of the organisation.

7.24 For the smallest developers, who may historically have been unaccustomed to meeting S106 obligations, operating in locations where CIL had been adopted has in some cases introduced previously unexperienced costs to their development model. Evidence from the case studies makes this point quite clearly:

"CIL has been very difficult for small developers. They are not even used to S106; they are just building one or two houses. But they buy land, get planning permission, pay agents and legal fees, pay for materials and labour then all of a sudden need to find an extra £20,000 for CIL. They are presented with a large CIL bill to be paid 60 days into the build. This is a time when they do not have any income. This is a real issue for small developers". (LPA 10)

Lack of capacity in LPAs

7.25 Several developers identified reductions in planning department staffing as having negatively affected the ability of LPAs to deal with planning applications that have obligations attached to them. This point was made repeatedly and in nuanced ways. Some developers pointed to diminishing head count in some planning departments which has resulted in it becoming more difficult to have sustained and meaningful engagement with the LPA in question. Others pointed to a loss of expertise as some of the most experienced planners have moved to the private sector with the attendant effect that some LPA's are said to be now both under-staffed and lacking specialist knowledge regarding the regulations that should apply *vis a vis* developer contributions. Finally, some developers also argued that most planners have actually had little practical experience of the development process and consequently lack an intimate understanding of how best to use developer contributions to meet local needs. Although there may be some element of caricature in the depictions of planning departments and LPA planners in the

roundtable testimony there is a clear point of tangency between this account and what is represented in the broader case study work reported in Chapter 6: LPA's themselves identify a loss of staff and expertise as hallmarks of planning departments in many contexts.

7.26 It was widely acknowledged in the developer workshops that this broader context for how developer contributions are managed in practice is not efficient for meeting private business requirements or public goods: many in the development industry argued that they need well-trained planners who are able to manage this important aspect of the development process effectively. Across all three developer roundtables there was widespread support for enhancing the resources of planning authorities.

7.27 This point has a wider relevance. Several participants in the roundtable sessions argued that, important though obligations policy is, the impact of developer contributions including whether CIL has been introduced or not rarely determines the general appetite for development activity. In contrast other behavioural features were more important - the 'planning culture' (including an LPA's openness to development, its transparency in negotiation and timely agreement of permissions) – were said to be more important in identifying those LPAs with whom a productive working relationship could be forged. From this perspective the question of where to develop becomes as much about the capacity, competency and general ethos of LPAs as it does about market conditions and specific costs such as S106 and CIL. For example, it was argued by some at the developer roundtables that there could be contiguous authorities with identical market demand but very different policies and styles of implementing them. These variations were seen by some as more important to a developer's general decision making and the initial act of site identification than policies on CIL and S106.

Chapter 8: Conclusions

Introduction

8.1 The objectives of this study were to:

- Update the evidence on the current value and incidence of planning obligations
- Investigate the relationship between CIL and S106
- Understand negotiation processes and delays to the planning process
- Explore the monitoring and transparency of developer contributions

8.2 In this chapter we collate and summarise findings against these four criteria.

The Value and Incidence of Planning Obligations

8.3 The headline figures in this report point to a significant increase in the value of developer contributions agreed over the period since the last valuation in 2011/12: up 61% from £3.7bn to £6.0bn (50% after being adjusted for inflation). This is in the context of the number of dwellings granted planning permission increasing between 2011/12 and 2016/17.

8.4 The growth in planning obligations agreed and CIL levied to £6.0bn illustrates their scale and significance. For context, research by the Institute for Fiscal Studies on revenue raised through other sources by the UK government during 2016/17 places the aggregate total for agreed developer contributions as comparable to vehicle excise duty (£5.5bn) and in excess of other important sources of government income such as the climate change levy (£2.1bn), stamp duty on shares (£3.0bn) and Air Passenger Duty (£3.2bn) (Miller and Pope, 2017).

8.5 When thought of in the context of the broader public finances, developer contributions make a significant contribution both through direct payments (through both CIL and S106) and as a provider of public goods (through S106). Moreover, as a specific instrument that affects the development industry, policies on developer contributions clearly have profound effects on the kinds of outcomes in the built environment that are encouraged. This is a particularly relevant point given that there are two parallel systems available to LPAs to determine the specific nature and value of developer contributions on a case-by-case basis. The interaction of

these systems over a very uneven economic geography provides a context that reflects variations in the value and spatial incidence of developer contributions.

8.6 Survey evidence from Chapter 3 illustrates some aspects of the geographic variation in developer contributions. For example, there has been a significant growth in the value of affordable housing provided overall, but with differentiated regional attributes. Although affordable housing has represented a simple majority of all planning obligations agreed in previous studies (53% in 2007/8; 62% in 2011/12) it has grown in 2016/17 to 68%. However, Figure 3.3 illustrates that the value of the affordable housing provided is highly variable within regions that might superficially appear to be typified by quite similar market conditions.

8.7 It is also important to consider variation in the makeup of planning obligations. Whilst developer contributions associated with affordable housing have grown significantly it is important to note that some categories have shows marked declines. Contributions agreed towards 'transport and travel' have fallen 69% since 2011/12 and are down 71% on the high recorded in 2007/08. Similarly, 'open space and environment' is marginally up on 2011/12 values but is just 49% of the value recorded in 2007/08. Evidence from the qualitative aspects of this study would corroborate this survey evidence and point to a shift in the type of developer contributions sought by LPAs towards affordable housing as the principal priority.

8.8 More generally, there is evidence presented in this report that the development industry is sensitive to policies on developer contributions and variations in their enactment effects developer decision making. Evidence from the developer roundtables would suggest that whilst most developers accept that developer contributions are a necessary cost of doing business there was a general consensus that these specific costs could be unpredictable and vary significantly even between neighbouring LPAs.

8.9 This point actually goes further than developer contributions. Many developers we canvassed articulated the view that a LPA's general 'planning culture' was a significant determinant of where they chose to do business. In this respect how planning obligations were handled – openness, willingness to consider proposals and viability assessments, manner of engagement, transparency of negotiating practices – were understood by some as a good test of the climate in an LPA and how easy it might be to do business in that area.

8.10 All of this points to some important behavioural considerations which are clearly very relevant when such a large proportion of developer contributions still come through the negotiated S106 process: the valuation component of this report illustrates that S106 accounts for 85% of developer contributions. Further work on these questions would be welcome. For example, it may be that some LPAs areas characterised by weaker market conditions are doing disproportionately well at

securing developer contributions because they have successfully set a climate conducive to development and used the mechanims available to them effectively.

The relationship between CIL and S106

8.11 We estimate that in 2016/17 there were 4000 applications granted permission with planning agreements (permissions with only planning agreements and those with agreements and CIL) and 6,500 with CIL charge liable only. Despite the growth of CIL since its introduction in 2010 that this implies, the survey results reported in Chapter 3 clearly illustrate that the majority of the developer contributions signed in England still come from negotiated S106 agreements. There is evidence in Chapters 6 and 7 that CIL has proven most effective on small, uncomplicated sites in south east England but outside this geography there is a strong residual preference amongst both LPAs and the development industry to use S106 to ensure a close connection between development and in situ contributions.

8.12 A large part of the favourable testimony for S106 recorded in Chapters 6 and 7 relates to the site-specific association between the development itself and the developer contributions agreed to make it acceptable in planning terms. When considered in isolation CIL severs this connection and, because it takes time for LPAs to accumulate sufficient CIL proceeds to fund infrastructure investment, can result in the impression that CIL payments are being accumulated over sustained periods rather than spent in a timely fashion.

8.13 As CIL has only been in operation for a relatively short period in many LPAs it is too soon to say if the majority of adopting authorities are seeking to aggregate CIL contributions over time in order to fund larger scale infrastructure projects. Further research in due course would be welcome on the degree to which CIL adopting authorities are able to focus on larger scale investment and what effects this might have on development.

8.14 When the evidence presented in this report is taken in aggregate the operation of CIL and S106 together in parallel may have been effective in providing LPAs with a set of tools that can be operationalised according to local circumstances. Those authorities for which CIL represents a useful instrument have, in many cases, adopted it. Evidence suggests that this is particularly true in Greater London where development pressures, competition for sites and the presence of existing infrastructure have contributed to sizeable CIL levies. Outside these contexts S106 continues to provide LPAs and developers with the flexibility to deal with planning obligations on a case-by-case basis and encourage development to come forward in settings typified by weaker market conditions.

8.15 An extension of this interpretation of the evidence is that providing LPAs with the freedom to match how developer contributions are implemented to local circumstances potentially reinforces existing patterns of development.

8.16 The aggregate of CIL receipts and S106 contributions in Greater London and South East England represents a very significant proportion of the total value of all planning obligations in England as a whole (58%) in stark contrast to other parts of England (the North East and North West when combined only represent 5%). Over time, there is the potential that these trends could amplify prevailing market conditions and create a 'virtuous circle' in areas of high demand to match the "vicious circle" identified by one interviewee in Chapter 6 (LPA 16; 6.11, Chapter 6) as a hallmark of weaker market conditions. To spell this out further, in those areas characterised by the most buoyant market conditions a significant scale of developer contributions that finances large scale infrastructure investment may in turn create enhanced development pressure *et cetera*. Conversely, in large parts of the rest of England where development pressures are lower (and CIL is far less commonly adopted) there exists the opposite possibility of development permitted with planning obligations that are just sufficient to make the development itself acceptable, far less acting as a spur to improved market conditions more widely.

8.17 More work is required on these questions. The research presented here points to the possibility of these outcomes *over time*. This means the question is inherently longitudinal and we will need more data in the future to explore the degree to which developer contributions as currently enacted reinforce the existing geography of market conditions.

Understanding negotiation processes and delays to the planning process

8.18 Evidence presented in Chapter 4 supports the view that the negotiations that underpin the S106 process add delay to the planning process. However, the reasons for delay can be multi-faceted. The range of explanations for why delay might prevail includes the legal process of specifying what are often complex agreements to protracted negotiation over developers' viability assessments. Case study findings, survey responses and material from the three developer roundtables point to the fact that delays associated with S106 agreements are related to the very fine-grained, site-specific nature of the negotiation. Consequently, delay may be best thought of as a systemic outcome of a negotiated process that is an attendant aspect of a discretionary planning system. For those, both LPAs and developers, who made the case in favour of this approach in case study testimony, free text responses in the survey and at the developer roundtables, the benefits of negotiated S106 is that it may take longer but should result in obligations that are bespoke to context.

8.18 Where CIL has been adopted there is limited evidence from the survey that this has led to a more rapid process - although we could not produce survey evidence on whether this was geographically variable between CIL authorities. However, evidence from the case studies would point to those circumstances where CIL may have sped up the process being cases where a site is small and subject to a comparatively straightforward development in an area of high demand. The aggregate of data from case study interviews and the developer roundtables point to an LPA's adoption of CIL as not necessarily always resulting in a more rapid process. This is particularly true of those larger, strategically important sites where CIL alone is insufficient to deliver all the site-specific obligations necessary to make the development acceptable in planning terms. In these circumstances it was argued by LPAs and developers alike that the presence of CIL with S106 together could actually add delay to the process.

The monitoring and transparency of developer contributions

8.19 In those authorities where it has been adopted CIL has provided a level of transparency that allows developers to understand *prima facie* the starting point for the level of developer contribution that will be required for a specific proposal. However, the weight of survey and case study evidence points to the fact that the majority of strategically significant, larger scale developments are also subject to a S106 agreement. Consequently, whilst CIL has gone some way to providing a baseline of transparency this is most significant on smaller scale proposals in CIL adopting authorities.

8.20 In relation to the monitoring and audit of planning obligations survey evidence from this report points to an increase in the number of monitoring officers employed in English local planning authorities when compared with *Valuing Planning Obligations 2011/12*. However, when placed in broader chronological context the number of monitoring officers employed in England has returned to levels consistent with those recorded in 2007/08.

8.21 The monitoring function is a very important aspect of the process by which developer contributions are managed and recorded. The weight of evidence presented in the report of case study findings in Chapter 6 would suggest that monitoring arrangements are variable across England. Moreover, there are specific challenges for LPAs relating to how monitoring officers' posts are funded following the unsuccessful legal challenge by Oxfordshire County Council against an appeal decision on the right of LPAs to levy monitoring and administration charges.

8.22 Finally, one aspect of practice which appears to be common across England is the very limited degree to which the proceeds of planning obligations policies are

transparent and communicated to the public. In the case studies no LPA reported systematic communication with communities. The result is that there is likely to be very limited public awareness of the community benefits that result from planning obligations - although further research on the degree of public awareness would be desirable.

8.23 This is an important conclusion as better communication may influence public attitudes to development, particularly where it is seen in negative terms. It could also go some way towards correcting the impression that planning is a brake on development: the aggregate of evidence collated in this report is that planning is an important aspect of creating the conditions for development and, through policies on developer contributions, can harness the power of the development industry to produce stable and sustainable communities.

References

CIH (2015) UK Housing Review. CIH: London. Available at: http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/UKHR%20Briefing%202015.pdf

Corkindale, J. (2004) *The land use planning system: evaluating options for reform.* (Discussion Paper). Institute of Economic Affairs: London, UK.

Crook, A., Henneberry, J., Rowley, S., Watkins, C. and Wells, J. (2006) Valuing Planning Obligations in England, Final Report, London: Ministry of Housing, Communities and Local Government

Crook, A., Henneberry, J., Rowley, S., Smith, R and Watkins, C. (2008) Valuing Planning Obligations in England Update Study for 2005-06, London: Ministry of Housing, Communities and Local Government

Crook, A., Henneberry, J. and Whitehead, C. (2016) *Planning Gain: providing infrastructure and affordable housing*. Wiley: London.

Geoghegan, J. (2017) How much Community Infrastructure Levy money have councils actually spent. *Planning Resource, 18th August 2017. Available at: http://www.planningresource.co.uk/article/1442173/community-infrastructure-levy-money-councils-actually-spent#disqus_thread*

University of Reading, Three Dragons, Hives Planning, David Lock Associates and DLA Piper LLP (2014), *Section 106 Planning Obligations in England, 2011-12*, London: Ministry of Housing, Communities and Local Government https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314066/Section_106_Planning_Obligations_in_England_2011-12_-_Report_of_study.pdf

University of Sheffield, Curtin University (2008) *Valuing planning obligations in England: update study for 2005-06.* London: Ministry of Housing, Communities and Local Government , Available at: http://webarchive.nationalarchives.gov.uk/20120919230617/http://www.communities.gov.uk/documents/planningandbuilding/pdf/obligationsupdatestudy.pdf

University of Sheffield, University of Cambridge, Curtin University (2010) The incidence, value and delivery of planning obligations in England 2007-08. London: Ministry of Housing, Communities and Local Government
Available at:
http://webarchive.nationalarchives.gov.uk/20120919230617/http://www.communities.gov.uk/documents/planningandbuilding/pdf/obligationsupdatestudy.pdf

Pope, T. and Waters, T. (2017) A survey of the UK Tax System. Institute for Fiscal Studies. Available at: https://www.ifs.org.uk/bns/bn09.pdf

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

Appendix 1: Research Methods

Introduction

1.1 The incidence and value of planning obligations and CIL are inherently spatial and quantitative. Therefore the research includes a large component of numeric information retrieved variously from secondary sources (such as population statistics) and primary sources, including a large scale survey of local authorities. However, in order to understand the numbers and to explain something of the rationale behind their variation it is necessary to explore in much greater detail than numbers allow the story behind. Twenty case studies were used to explore these narratives and are used to illustrate the potential meanings behind some of the numbers. In addition to the survey administration and case studies the research team also conducted roundtable discussions with representatives of the development industry and undertook a programme of exploratory agent based modelling to explore how this tool might be used to understand developer contributions. The research methods seek to balance the requirements within the research specifications to be both comparable to previous iterations of the planning obligations valuation and the extension of the research remit to consider CIL and its expenditure and delivery. The four methods provide complimentary perspectives on the research questions and their findings need to be synthesised in order to provide a comprehensive picture of CIL and planning obligations.

Survey

2.1 The objectives of the research as described in the Statement of Requirements are:

- Update evidence on the current incidence and value of planning obligations;
- Understand more fully the relationship between CIL and S106; and
- Provide a more detailed picture of the negotiation process and delays due to S106 and how this differs between smaller and larger sites, with a view to inform how the process may be streamlined.

2.2 Primary data was collected through a self-completion survey sent to every local planning authority and county council in England in July-September 2017.

2.3 The survey was created as an excel spreadsheet, comprising of six question areas: General Information (e.g. LPA name); Permissions (e.g. number); Policy and Practice (e.g. who negotiates planning agreements); Number and Type of Contributions (e.g. total chargeable floorspace liable for CIL); Delivery (e.g. proportion of direct payments received); and CIL Outcomes (e.g. expenditure). A version of the survey can be found in Appendix 1. The survey was extended and

significantly adapted from the 2007/08 research to incorporate the greater complexity in accounting for both planning obligations and CIL and to include new research questions on CIL expenditure.

2.4 A database of key contacts at every planning authority, with responsibility for completing the survey, was created. This was derived from the responses to: an email to every Chief Planning Officer in England, distributed on 18th July 2017; an extensive web search of planning officers contact details; and follow up individual phone contact with non-respondent local authorities. In most cases the key contact was a planning officer, but in some case it was a designated S106 officer or other officer linked to planning.

2.5 The survey was distributed as an attachment via email to planning officers on 25th July 2017. The email included a letter from Steve Quartermain, Chief Planner at MHCLG and an introduction from the research team. A bespoke address was created to distribute the emails and to respond to enquiries, alongside this a 'help line' was staffed during office hours for the duration of the survey to provide LPAs with immediate support in completion of the survey.

2.6 Completion of the survey was also supported in MHCLG's regular newsletter for Chief Planners and kindly supported by the Local Government Association in their regular bulletin in July 2017 for finance officers.

2.7 An email reminder was sent out to those who had not responded on 21st August 2017 and an individualised email providing an extension to the research deadline was distributed to non-respondent authorities on 29th August 2017. LPAs also received telephone calls from the research team at a regular basis throughout, which for non-respondent LPAs meant upwards of five telephone calls before the final deadline on 7th September 2017. Details of the response rate are detailed below

Secondary Data

3.1 The research draws on a range of secondary data sources to help answer the range of questions. The use of secondary data can be broadly attributed to two different components; the selection and representation of authorities within 'types' or 'families' and as direct inputs in to the valuation of different developer contributions. For the former, a wide range of statistics are used to create and corroborate the LPA families (see Chapter 1 of the report and sections 7 and 9 of the appendix) such as the number of planning permissions per authority (MHCLG planning statistics) and average house prices (Land Registry). For the valuation secondary data such as average house prices (nationwide) are used. Where possible we have used the same data sources as previous iterations of the research in order to facilitate comparable evidence, however this is not possible in

all cases, for example MHCLG no longer produces table 563 on residential development land values.

The valuation of developer contributions

4.1 The total value of developer contributions through CIL and planning obligations is the sum of five separate components: CIL; Direct Payment Contributions; In-Kind contributions; Affordable Housing contributions; and Land contributions. The accuracy of these five components is likely to vary substantially, from a small number of assumptions to value CIL and direct payment contributions, through to the large number of assumptions in the valuation of affordable housing contributions. This valuation complexity has been repeatedly acknowledged in all of the previous iterations of the research, and has resulted in four different methodologies discussed across those studies. The first study considered three approaches, but the approach settled upon was then also used virtually synonymous in the following two studies. The previous iteration of the research provided a critique of this approach (depreciated replacement cost) and made some different assumptions in the valuation process than had been used previously.

4.2 In-kind contributions are inevitably the most difficult to value. They are works undertaken by the landowner or developer (or other third party) that would have required a monetary payment (for the authority to carry out) if not undertaken. The value of the in-kind contribution is, however, rarely calculated by the authority, and as such is not data that is directly available for valuation at the national scale. This study uses the same method as previous iterations, in which the value of direct payments and in-kind contributions are considered to be equivalent per obligation for each obligation type. This enables valuation using the average value of direct payment obligations multiplied by the number of in-kind obligations per obligation type.

4.3 Over the course of the studies the approaches to subsidising affordable housing and its definition have undergone significant changes. Therefore it is not appropriate to simply replicate the assumptions that were considered in detail in, particular, the first three studies.

Community Infrastructure Levy

4.4 Community Infrastructure Levy is by its nature a monetary charge (even where nil) on development by charging authorities and therefore is relatively straightforward to value. For this research we use the survey to understand how much CIL respondent local authorities received in 2016-17 and use these responses as the basis to gross up to the national scale. The accuracy of the valuation is therefore contingent upon two variables; the accuracy of the LPA records of CIL collection (as represented in

the survey response) and the representativeness of the survey respondents to the population of CIL charging authorities as a whole.

4.5 There are two broad possibilities for grossing up CIL to the national scale. First, it is possible to create an average value of CIL receipt per respondent authority (within each LPA family) and attribute these values to non-respondent authorities within each family, before grossing up to the national scale. Second, to create an average value of CIL per permission granted within each LPA family, before using secondary data to multiply the average value by the total number of planning permissions granted (by permission type) per LPA family and then gross up to the national scale.

4.6 Both methods for valuing CIL at the national scale are recorded below and the variation between the two methods explored.

The valuation of the financial and non-financial obligations

4.7 As with the previous iterations of the research, we attempt to collect information on obligations that do not make a monetary contribution to the LPA as a charging authority as well as those that do. There are many different types of non-financial obligation that might occur in a planning agreement, such as restrictions on usage or operation of the use. Whilst these types of obligation may have a wider financial impact, they are not considered to make a direct contribution to the LPA as a charging authority (whether as a direct payment or an in-kind contribution) and as such these types of obligation are not valued here. This section discusses the issues to do with valuing each obligation, the method for grossing up these obligations to the national scale is described in greater detail in section 8 of the appendix.

4.8 Planning agreements may include direct payment obligations, where by the developer makes a financial contribution to the LPA (or other body) in order that a particular object may be supplied by the authority (for example open space, or a school built by the local education authority). These contributions are financially calculated and the number are recorded within the planning agreements, as such they are relatively straightforward for local authorities to collect information on. This information is directly reported in the questionnaire according to five different types of obligation, they are:

Open space and the environment (nine categories)
Transport and travel (nine categories)
Community works and leisure (fourteen categories)
Education (two categories)
Other obligations (four categories)

4.9 As well as direct payment contributions, planning agreements may also specify non-financial contributions, such as the provision of land for open space or the inclusion of public works of art or highways adjustments. The obligation is to provide the object rather than the finance to support the provision of the object and as such the actual cost is contingent upon the developer's approach to providing that obligation (rather than the charging authority's estimate for providing that object, as with a direct payment). These contributions are described as 'in-kind' contributions. In-kind obligations may include the provision of affordable housing and free land, for the purposes of this research we deal with the valuation of affordable housing and land separately from the remaining in-kind contributions, the valuation method for which is considered next. In in-kind obligation cases, planning agreements do not specify the financial value and as such they are very difficult to calculate directly from the agreement. To act as a proxy, the average direct payment contributions for each obligation type per agreement is used. This enables calculation of the in-kind contributions by type for each LPA, but is premised upon the assumption that there is a like for like relationship between direct payments and in-kind contributions. The previous iterations of the research used this approach, and justify it in relation to case study evidence discovered in the first iteration of the research. In-kind contributions are captured in the survey using the same classifications as previous studies, against affordable housing; open space and the environment; transport and travel; community works and leisure; education; and other. The last iteration also included 'Infrastructure' as a category, but zero obligations were recorded in this category.

4.10 The provision of affordable housing has been the single largest contributor to the value of planning obligations in previous iterations of the research. Yet, it is also a contested obligation to value, as data are sparse and can include sizeable differences according to the type of affordable housing and the location of the development. Over the course of the studies the approaches to subsidising affordable housing and its definition have undergone significant changes. Therefore it is not appropriate to simply replicate the assumptions that were utilised in the previous studies

4.11 The definitions of affordable housing have changed over the duration of the studies, with new forms of tenure emerging. This reflects the changing nature of affordable housing and the absence of a formal statutory definition (House of Commons Library, 2017). This iteration of the research considers obligations according to four categories; which were delineated in the survey and analysis but not defined, definitions are provided here for conceptual clarity:

> *Affordable rent*: housing rented to eligible households by local authorities or registered providers at a rent no more than 80% of market rent.
> *Social rent*: housing rented to eligible households by local authorities or registered providers at guideline rents determined by the Government

Affordable home ownership, intermediate rent and shared ownership: discounted sale or rent below market levels (but normally above social rents) to eligible households within income guidelines
Starter Homes: dwellings for sale at 80% (or less) of market prices with restrictions on purchase to first time buyers with income restrictions

4.11 The affordable housing contribution can be estimated using a range of valuation approaches. In previous iterations of the research depreciated replacement cost and discounted market valuation methods have been used and capitalised net income was considered in the 2011/12 version. The first three studies largely used the depreciated replacement cost, however, whilst theoretically robust there are practical limitations in operationalising this approach given the paucity of data on residential land values and variation in development costs. The capitalised net income approach was rejected in 2011/12 due to the difficulty of obtaining appropriate capitalisation rates. The discounted market value approach provides a transparent method to analyse the value of developer contributions and limits the number of variables that may introduce inaccuracy by relying on only two key assumptions: the value of open market housing and the deduction of open market value paid by the purchaser (most frequently a Registered Provider but in the case of Starter Homes this may be direct to the consumer). In the 2011/12 report the depreciated replacement cost (when more appropriate land value data was available) and discounted market value approaches produced similar results.

4.12 Two data sources are available to identify the number of affordable housing units within a planning obligation, they are the LPA survey and Local Authority Housing Statistics collected by MHCLG. When grossed up to families the LPA survey data showed a very similar number of dwellings to the provisions LAHS data supplied by MHCLG for 2016/17. The LAHS data was selected in order to support the use of non-family based statistics. Nationwide house price data was used to identify regional house prices for new build only dwellings in Q3 2016 (the mid-point of the study period). A 10% reduction to this price was applied to reflect the proportionally lower number of affordable housing units when compared to large market units.

4.13 A range of data sources were utilised to determine the proportion of open market value paid by purchasers and therefore the amount of developer contribution. These sources include, the previous research reports, market knowledge, development industry insights derived from the developer workshops and interviews. The assumptions utilised in the research are found in the Table Appendix 5.1.

Table Appendix 5.1 The developer's contribution as a proportion of open market value

Affordable housing type	Development industry contribution
Social Rent	55%
Affordable Rent	35%

Intermediate Rent	27.5%
Affordable Home Ownership	27.5%
Starter Homes	20%
Unknown affordable	30%

Source: Development industry insights from interviews

4.14 The most complex component to value is the provision of free land as an obligation. There are two difficulties in valuing this contribution: first, in gathering data on the market price of land; and second, determining an appropriate land use from which to derive the market price. There is sizeable variation in the price of land according to region, but equally variation in price is contingent upon use. The research does not attempt to precisely locate the land and therefore within authority variation is not considered to influence the value. Previous iterations of the research have used a national average land value (£2.5 million per hectare in 2011/12) rather than within region or authority estimates. The 2011/12 research continued the same approach as utilised previously, in that residential land values are assumed for the land, which include within them a recognition that open space, infrastructure and community facilities etc. will contribute towards the land use (and hence residential land is considered the gross developable area). Previously MHCLG Live Table 563 was used to provide residential land with planning permission values. Over the previous three research reports the value of land contributions has decreased significantly in real, nominal and proportionate terms.

Table Appendix 5.2 The value of land contributions and as a proportion of total value

Study period	Value (Nominal)	As proportion of total value
2005/06	£960,000,000	32%
2007/08	£900,000,000	23%
2011/12	£300,000,000	9%

4.15 The survey provided very little useable data on the number and value of land contributions. Missing and non-response analysis revealed no clear pattern that could be used to infer values and as such it was not possible to extrapolate from the limited survey data up to the overall land contribution. The reason for this is unclear and may relate to either the complexity of completing the survey for LPAs or in relation to the limited number of land contributions within planning obligations.

4.16 Where a County Council is a joint signatory to a planning agreement for a permission that is decided by a lower tier authority then the value of the obligations is incorporated in the LPA survey and as such is included in the main contributions for each of the categories. However for county matters, such as minerals and waste applications then the value is not captured in the LPA survey and as such a separate survey is utilised to understand these values. According to MHCLG Table P146 and P147 the number of county matters waste and mineral planning applications in 2016/17 was the lowest in since 2007/08, when applications were 40% higher (the number of applications was similar in 2007/08 and 2011/12). The survey responses showed very low receipts for county councils, received a small

response rate and in some cases responses referred to all planning applications rather than those signed regarding waste and minerals. As such, it was not possible to value county council contributions directly from the survey. It is likely that given the significant fall in applications that the 2016/17 value of obligations is less than the previous iterations of the research.

Response to the questionnaire

5.1 The questionnaire for this iteration of the research received significant support from local authorities, resulting in good geographic and LPA type coverage. The overall response rate, at 46%, is the highest response rate to date for the survey. The response rate is relatively surprising given the wider context of the research, the timing of the survey (summer) and the increasing complexity of the survey (to include a large number of questions on CIL in addition to planning obligations). The research team largely the response rate to an increase in pro-active contact from the research team to local authorities, including regular email and telephone correspondence.

Table Appendix 5.1 Number and proportion of respondents by LPA family

LA Family	No. of LAs (2016-17)	2003-04*		2005-06*		2007-08*		2011-12*		2016-17	
		Resp.	Rate	Resp.	Rate	Resp.	Rate	Resp.	Rate	Resp.	Rate
EUC	30	8	27%	12	40%	10	33%	14	47%	11	37%
RE	103	33	28%	30	25%	46	39%	39	38%	51	50%
RT	55	15	26%	19	33%	23	40%	22	40%	28	51%
CB	72	29	38%	37	49%	38	50%	26	36%	34	47%
UE	38	16	35%	17	37%	21	46%	17	45%	16	42%
UL	27	8	31%	11	42%	13	50%	8	30%	9	33%
Total	325	109	31%	126	36%	151	43%	126	39%	149	46%

Source: 2003-04, 2005-06, 2007-8, 2011-12 reports * Some LAs changed between surveys, 'Rates' refer to the response rate for LAs during the survey in question

5.2 The survey achieved a reasonable response rate across all of the LPA family types (see Table Appendix 7.1), from 33% in Urban London to 51% in Rural Town authorities. All of the preceding four iterations of the research represented the situation using within authority type response rates of 33% or lower. The highest and lowest responding authority types are not consistent across the studies, Urban London, the lowest response rate in this iteration was the joint highest in 2007-08 yet only mid ranking in the other iterations. Rural England and Rural Towns returned much higher proportions of surveys than previously, although changes to combine some local authorities since 2011-12 have reduced the overall number of authorities in these categories.

5.3 CIL has been introduced in a patchwork framework across England, with some geographic differences, but no universal distinction between CIL charging and not within the existing LPA families. Even Urban London as a group within the typology includes some non-CIL charging authorities (the typology includes authorities outside of the GLA and mayoral CIL). Table Appendix 7.2 shows the response rate for the LPA family types according to CIL and non-CIL charging authorities. The small number of authorities per sub-category means that there is a greater variation in the response rate than at the aggregate family level. As such, there is a spread

from 0% (Urban London non CIL charging) to 65% (Rural England non CIL charging), with an overall weighting towards responses from non-CIL charging authorities.

Table Appendix 5.2 Number and proportion of CIL and non-CIL charging local authorities by family

LA Family	No. of LAs	CIL charging LAs			No. of non CIL charging LAs		
		No. in LA	Resp.	Rate	No. in LA	Resp.	Rate
EUC	30	7	4	57%	23	7	30%
RE	103	63	25	40%	40	26	65%
RT	55	18	10	56%	37	18	49%
CB	72	33	13	39%	39	20	51%
UE	38	11	3	27%	27	13	48%
UL	27	24	9	38%	3	0	0%
Total	325	156	64	41%	169	84	50%

Source: Survey responses

5.4 The response rate by region when contrasted to the previous iterations of the research suggests that we can have greater confidence in the geographic coverage of the survey, see Appendix Table 7.3. Whilst there is a variation from 30% to 58% between regions in the 2016-17 response rate, the lowest response rate is higher than previously and there has been a reduction in the range, therefore this iteration achieved a more even geographic distribution of responses.

Appendix Table 5.3 Number and proportion of respondents by region

LA Family	No. of Las	2003-04		2005-06		2007-08		2011-12		2016-17	
		Resp.	Rate	Resp.	Rate	Resp.	Rate	Resp.	Rate	Resp.	Rate
North East	12	7	30%	5	22%	6	26%	-	-	6	50%
North West	39	10	23%	12	28%	18	42%	-	-	15	38%
Yorks & Humber	21	7	32%	6	27%	8	36%	-	-	9	43%
East Midlands	40	14	36%	16	41%	16	41%	-	-	23	58%
West Midlands	30	16	48%	15	45%	12	36%	-	-	17	57%
East	47	13	27%	12	24%	25	51%	-	-	20	43%
South West	37	10	22%	7	16%	15	33%	-	-	16	43%
South East	67	22	33%	6	54%	33	49%	-	-	33	49%
Greater London	33	10	30%	17	52%	18	55%	-	-	10	30%
Total	326	109	31%	126	36%	151	43%	-	-	149	46%

Source: 2003-04, 2005-06, 2007-8 reports. Not covered in 2011-12 report.

5.5 In addition to comparing the response rate per group, the respondent population was also contrasted to the non-respondent population in relation to population size (mid-year estimate for 2016) and planning applications (per thousand population), as an indicator of both the size of authority and the level of planning activity.

5.6 Respondent authorities were more frequently represented by smaller population authorities than non-respondent authorities (see Table Appendix 7.4). In particular the very largest populations were not well represented with only three of the fifteen largest population authorities responding to the survey. This is in contrast to some of the previous iterations of the research which found a higher response rate amongst larger authorities. The 2016 mid-year estimates were taken from ONS population estimates.

Table Appendix 5.4 2016 mid-year estimates of population of responding and non-responding authorities

Respondent authorities?	Number	Minimum	Maximum	Mean	Std Deviation
Non-respondent	177	9401	1124569	178919	135322
Respondent	149	2308	575424	158386	89222

Source: ONS Population estimates 2016

5.7 The greater proportion of smaller population authorities completing the survey is mirrored by respondent authorities undertaking fewer planning permission decisions in 2016-17 than non-respondent authorities. The mean number of decisions made by non-responding authorities was 1,379 and 1,248 for responding authorities (for 2016-17). This relationship was evident for all types of planning decision, with respondent planning authorities making fewer decisions.

5.8 However, when planning decisions are considered per 1000 population there is minimal variation between respondent and non-respondent authorities (see Appendix Figure 7.1). Dwellings (major and minor) and householder development are slightly fewer for non-respondent authorities than respondent, whilst are slightly more for office, retail, industrial and change of use decisions. This analysis was used in 2007-08 to test whether the sample was biased towards more active planning authorities. For 2016-17 we conclude that there is no significant activity bias, although respondent authorities tended to be smaller, their activity when measured as a proportion of their population indicated that they had similar levels of activity.

Table Appendix 5.5 Number of planning decisions by planning authority and type of development for responding and non-responding authorities

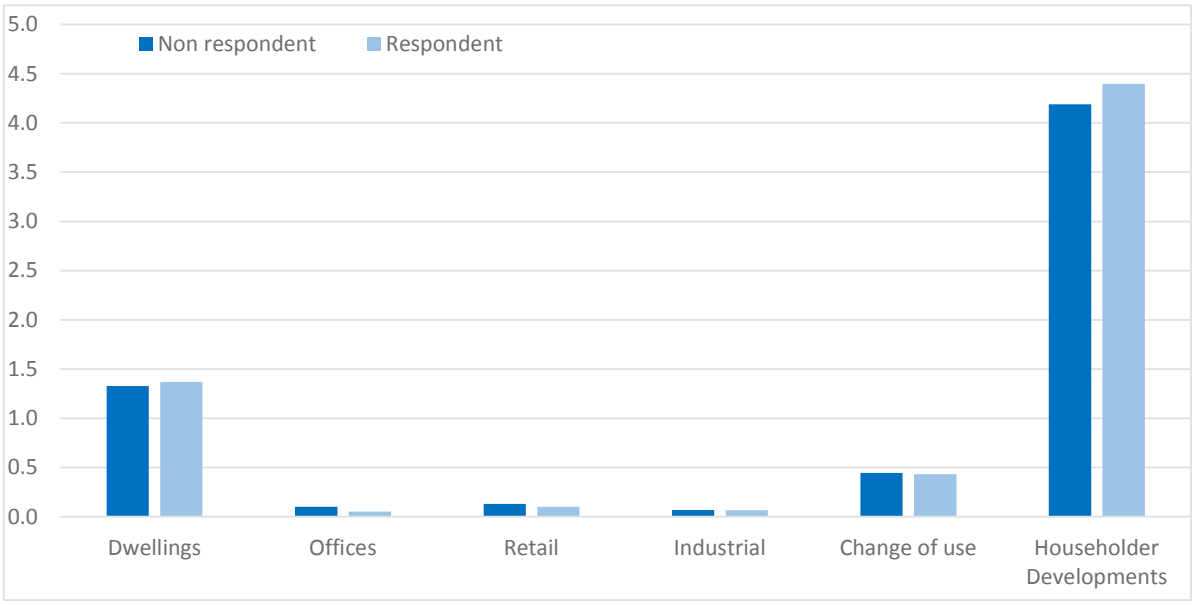
Respondent authorities?		N	Minimum	Maximum	Mean	Std. Deviation
Non-respondent	Dwellings Major and Minor	177	4	2207	211	215
	All other major and minor developments	177	26	2239	208	226
	Change of use	177	11	404	69	58
	Householder developments	176	112	2774	682	464
	Advertisements	177	8	1091	74	102
	Listed building consents (to alter/ extend)	177	1	2009	96	179
	Total	177	267	7292	1379	1018
Respondent	Dwellings Major and Minor	149	7	1237	196	154
	All other major and minor developments	149	17	952	172	121
	Change of use	149	5	333	64	43
	Householder developments	149	29	2708	643	422
	Advertisements	149	1	244	59	45
	Listed building consents (to alter/ extend)	148	3	696	83	87
	Total	149	67	5326	1248	726

Source: MHCLG planning statistics

5.9 These figures suggest that the survey respondents are a reasonable approximation of the overall population of authorities and that there is no large scale skew in the data according to the size of authority, planning permissions granted or planning permission per 1000 population

5.10 The research team discussed many of the requests and reasons for response or non-response with authorities during the regular contact process. Not every non-respondent authority provided a reason for not returning the survey, but some of the common reasons for non-response are discussed further. A majority of smaller authorities responded quickly on the basis that they had comparatively fewer planning obligations and a majority had not adopted CIL. Urban authorities in some locations cited issues of time and staff costs as the primary reasons for non-completion. Some authorities expressed negative attitudes towards completing surveys for universities or for MHCLG. The timing of the survey in the middle of the summer holiday was a significant factor for more than 10% of non-response reasons. The level of detail required also provide prohibitive for some authorities, with some not holding the required level of detail, whilst for others it was not held in a format that was readily transferable to the survey. Some authorities indicated that they require more than one month's notice to prioritise workloads and as such were not able to respond fully to the survey request without additional support. A further reason provided related to the political position of completing research on CIL and planning obligations, with concern about anonymity and representation.

Figure Appendix 5.1 Decisions per 1000 population for all types of developments by responding and non-responding authorities 2016-17



Source: Survey, MHCLG 2017 planning statistics, ONS 2016 mid-year estimates

5.11 Whilst the overall response rate is very high in comparison to other surveys of LPAs. However, as with most surveys there is a lower response rate at the individual question level, whether because of respondent error, irrelevance or inability to answer the question. For example, only 24 of the 64 CIL charging authorities responding to the survey indicated the total number of dwellings permitted that are liable for CIL. Some respondents said that they were unable to compute this value as their database did not hold these data.

Grossing up

6.1 Two assumptions are made to enable grossing up from the survey response to estimate the national picture of planning obligations and CIL. First, as discussed above, on the basis that the survey responses are broadly representative of the national picture of populations per authority, the number of planning decisions made and decisions made per 1,000 population, we assume that the respondent planning authorities are not skewed towards particular pressures within the planning system and as such are representative of the national picture. Second, the value of in-kind contributions are similar by type and LPA family to those of direct contributions. This assumption permits the use of survey data which would otherwise be unknown to local authorities and too complex to collect at large scale to be aggregated and estimated.

Appendix 2: The survey of Local Planning Authorities

A. General Information

1. Local Planning Authority	
2. Name of respondent(s)	
3. Job Title	

We will only contact you with questions or clarifications regarding your submission to this study and your details will not be passed on to anyone outside of the research team.

4. Telephone Number	
5. Email address	

6. During 1st April 2016 to 31st May 2017 did your local authority….		Yes / No
a) Charge a development as a CIL collecting authority?		
b) Provide permission for a development that is liable for CIL?		
c) Sign one or more planning agreement?		
d) Change its policy or practice on charging CIL or negotiating S106?		
If 'Yes' to d), how?		

End of section. Please proceed to the next worksheet.

B. Permissions

1. Were any permissions granted with planning agreements in 2016/17?	
2. Were any permissions granted that are liable for CIL charges in 2016/17?	

3. Number of…		Dwellings	Residential & Design / light…	Industry / storage / warehousi…	Retail and service	Travellers caravan pitches	All others	Total
…**Major** Development permissions granted with…	…planning agreements (but no CIL)							
	…CIL charge liable (but no separate planning agreement)							
	…CIL charge AND separate planning agreement							
…**Minor** Development permissions granted with…	…planning agreements (but no CIL)							
	…CIL charge liable (but no separate planning agreement)							
	…CIL charge AND separate planning agreement							
…**Permitted Developments** commenced…	… liable for CIL charges							

…**Local Development Order / Neighbourhood Development Order/ Community Right to Build Order** developments (approved/granted) with…	…planning agreements offered by landowner/developer (but no CIL)							
	…CIL charge liable (but no separate planning agreement)							
	…CIL charge AND separate planning agreement offered by landowner/developer							

4. Please indicate the total number of residential units and non-residential floorspace granted permission in 2016/17 in your authority

What is the total number of residential units granted permission in 2016/17?	
What is the total floorspace (sqm) of non-residential development granted permission in 2016/17?	

5. Please indicate the number of applications approved in 2016/17 for each development and charge type

	Number of applications permitted…				
Type of development	Total number of permissions	**…without** planning agreement or CIL	…with **planning agreements** (no CIL)	…liable for **CIL charge** (but no planning agreement)	…liable for **CIL charge AND planning agreement**
0 residential units (i.e. household development)					
1-9 residential units					
10-24 residential units					
25-49 residential units					
50-99 residential units					
100-999 residential units					
1,000 or more residential					

units					
All residential developments					
Offices / R & D / light industry					
General Industry / storage / warehousing					
Retail and service					
Traveller caravan pitches					
All other major/minor developments					
All non-residential developments					
Total (all developments)					

End of section. Please proceed to the next worksheet.

C. Policy and Practice

1. Does your planning authority have a formally adopted policy on the use of planning obligations?		
	If yes, what are the titles of the relevant documents in which the policy(s) reside?	
	If yes, what year was the policy adopted?	

2. Does your planning authority have other detailed policy(s) on planning obligations that has **not (yet)** been formally adopted?	

3. Do you have an officer(s) within your authority dedicated to **negotiating** CIL and/or planning agreements?			
	If you answered NO then please describe who negotiates planning agreements within your authority		
4. Do you have an officer(s) within your authority dedicated to **monitoring** CIL and/or planning agreements?			
	If you answered NO then please describe who monitors planning agreements within your authority		

5. Was the number and value of CIL charges liable on planning permissions granted in 2016/17 similar to the previous two years?	
6. Was the number and value of planning agreements on planning permissions granted in 2016/17 similar to the previous two years?	

The following section considers changes in the value of planning agreements and CIL charges since 2011/12

	Positive Impact		Negative Impact	
7. Below are eight factors which may have had an impact on the number and value of obligations or CIL charges agreed with your authority between 2011/11 and 2016/17. Please indicate if the factors have had an impact and rank the most important three (if any)	Yes / No / Don't Know	Rank most important three (1 being most	Yes / No / Don't Know	Rank most important three (1 being most

			important)		important)
	Changes to land values and property prices				
	Introduction of the Community Infrastructure Levy				
	Changes in the skill and experience of local authority staff				
	Changes in the skill and experience of developers, landowners and their agents				
	Introduction of a new policy or supplementary guidance (other than the introduction of CIL, where applicable) within your authority				
	Changing developer/landowner attitudes toward S106 contributions				
	Changing developer/landowner attitudes toward Community Infrastructure Levy				
	Changes to the types of permission awarded in the authority (e.g. greater use of permitted development)				
	Other…please specify below				
Other:					

The following section considers the negotiation of S106 and CIL

8. To what extent do you agree with the following statements		Strongly Agree, to Strongly Disagree
	Negotiating S106 **creates a delay** in granting planning permission	
	Negotiating S106 **does not create a delay** in granting planning permission	
	Negotiating S106 **creates an increase** in the time from application submitted to development completion	
	Negotiating S106 **does not create an increase** in the time from application submitted to development completion	
	CIL **reduces the time** from application submitted to development completion when compared to S106	
	CIL **does not reduce the time** from application submitted to development completion when compared to S106	

9. Please write a brief description about whether (and how, if applicable) CIL and S106 impact upon the time taken for	

development in your local authority	

The following section considers the contribution of CIL to infrastructure and further development

10. To what extent do you agree with the following statement(s)?		Strongly Agree, to Strongly Disagree
	CIL receipts have been used to provide infrastructure	
	If *Strongly agree* or *Agree* to the above, this infrastructure has enabled further planning permissions to be granted or development to take place that otherwise would not have occurred	

11. Please write a brief description about whether (and how) CIL receipts have been used to enable further development in your authority	

12. To what extent do you agree with the following statements in relation to your authority in 2016/17?		Strongly Agree, to Strongly Disagree
CIL charging authority	The introduction of CIL has resulted in an **increase** in the total value of developer contributions (CIL plus obligations) from the position CIL had not been introduced	
	The introduction of CIL has resulted in a **decrease** in the total value of developer contributions (CIL plus obligations) from the position CIL had not been introduced	
	The introduction of CIL has resulted in a **no net change** in the total value of developer contributions (CIL plus obligations) from the position CIL had not been introduced	
Non-CIL Charging Authority	If CIL had been introduced it would have resulted in an **increase** in the total value of developer contributions (CIL plus obligations)	
	If CIL had been introduced it would have resulted in a **decrease** in the total value of developer contributions (CIL plus obligations)	
	If CIL had been introduced it would have resulted in **no net change** in the total value of developer contributions (CIL plus obligations)	

13. Have there been any positive, negative or unintended consequences from your authority's charging / non-charging of CIL in 2016-17? (if so, please describe them)	

End of section. Please proceed to the next worksheet.

UNIVERSITY OF LIVERPOOL

D. Number and Type of Contributions

Please record in the table below the number of residential dwellings, total floorspace for non-residential developments and the value of CIL and planning obligations for different planning application types. If the development is mixed use, but there is a dominant land use then please include the data under that land use, where there is no dominant use please include it in 'All other major/minor developments'

1. Number of dwellings and non-residential floorspace permitted with CIL charge or Planning Obligations in 2016/17

Type of development		Community Infrastructure Levy			Planning Obligations (e.g. S106)				
		Total number of dwellings permitted liable for CIL	Total chargeable floorspace permitted (sqm) liable for CIL	Total value of charges for permissions granted	Total number of obligations (some planning agreements contain multiple obligations)	Total number of dwellings permitted with planning agreement attached	Total floorspace for permissions granted (sqm) with planning agreement attached	Total value of planning obligations on permissions granted (including direct payments, in-kind and land)	Total number of affordable housing dwellings included in permissions with planning agreements
Dwelling units	0 units (i.e. household development)								
	1-9 units								
	10-24 units								
	25-49 units								
	50-99 units								
	100-999 units								
	Over 1,000 units								
Offices / R & D / light industry									
General Industry / storage / warehousing									
Retail and service									
Traveller caravan pitches									
All other major/minor developments									
Total									

Please record in the tables below the type, number and value of Community Infrastructure Levies, direct payment and in-kind planning obligations agreed between 1st April 2016 and 31st March 2017. Direct payment planning obligations are those where the developer agrees to pay a defined monetary sum to the authority (either for use by that authority or for transfer onto another body such as the Local Education Authority). In-kind planning

obligations are those where the developer agrees to undertake specified works, or to provide defined facilities or services themselves, or to follow some other similar action. Please remember that a planning agreement may contain multiple obligations and may include both in-kind and direct payment obligations.

i) Number of obligations [Direct Payment Obligations]
ii) Total value of direct payment (£)
iii) Number of obligations [In-Kind]
iv) Total Value of on-kind obligations (£)
v) Amount of Free Land
vi) Total Value of Free Land

2. Number and value of planning obligations agreed in 2016/17

1 April 2016 - 31 March 2017		**Direct Payment Obligations**		**In-Kind Obligations**		**Land Contributions**	
Obligation Types		i)	ii)	iii)	iv)	v)	vi)
i. Affordable Housing		i)	ii)	iii)	iv)	v))	vi)
a) Total on-site provision of all affordable tenures							
	i) On-site provision of affordable rent						
	ii) On-site provision of social rent						
	iii) On-site provision of affordable home ownership (not Starter Homes), intermediate rent and shared ownership						
	iv) On-site provision of Starter Homes						
b) Total off-site provision: development and transfer of units on another site owned by the developer/landowner.							
	i) Off-site provision of affordable rent						
	ii) Off-site provision of social rent						
	iii) Off-site provision of affordable home ownership (not Starter Homes), intermediate rent and shared ownership						
	iv) Off-site provision of Starter Homes						
c) On-site provision of land only: land transferred to RSL or LPA for free or at a rate below market value.							
d) Off-site provision of free or discounted land only.							

e) Commuted sum: payment of a sum in lieu of actual provision of units.						
f) Rural Exception Policy Agreements.						
g) Other affordable housing contributions.						
Total	**0**	**£0**	**0**	**£0**	**0**	**£0**

ii. Open Space and the Environment	i)	ii)	iii)	iv)	v))	vi)
a) Provision of open space either within a development or via a direct payment to the LPA.						
b) General environmental improvements including landscaping.						
c) Ecology and nature conservation, countryside management and community forests.						
d) Allotments.						
e) Sport facilities: sports fields, club houses etc.						
f) Pollution and Waste Management.						
g) Archaeology.						
h) Maintenance of open space (total contribution e.g. capitalised annual contribution figure).						
i) Other (specify below):						
Total	**0**	**£0**	**0**	**£0**	**0**	**£0**

iii. Transport and Travel	i)	ii)	iii)	iv)	v))	vi)
a) Traffic/highway works, temporary or permanent.						
b) Traffic management/calming.						
c) Parking: management or parking restrictions, car restrictions and car free areas provision of parking areas.						
d) Green transport/travel plans.						
e) Public and local transport improvements.						
f) Pedestrian crossings, pedestrianisation, street lighting.						
g) Provision or improvement of footpaths or pathways etc.						
h) Cycle routes, management, safety etc.						
i) Other (specify below):						
Total	**0**	**£0**	**0**	**£0**	**0**	**£0**

iv. Community Works and Leisure	i)	ii)	iii)	iv)	v))	vi)
a) Community centres: construction, funding, improvement etc.						
b) Community/cultural/public art.						
c) Town centre improvement/management.						
d) Library, museum and theatre works/funding.						
e) Childcare/crèche facilities, provision and funding.						
f) Public toilets.						
g) General Community Facilities.						
h) Health services: community healthcare, construction of surgeries etc, healthcare funding.						
i) CCTV and security measures.						
j) Waste and recycling facilities.						
k) Religious worship facilities.						
l) Employment and training.						
m) Local regeneration initiatives.						
n) Other (specify below):						
Total	**0**	**£0**	**0**	**£0**	**0**	**£0**

v. Education	i)	ii)	iii)	iv)	v))	vi)
a) Physical development or funding for education at all levels; nursery, primary, secondary schools, higher education facilities etc.						
b) Other (specify below):						
Total	**0**	**£0**	**0**	**£0**	**0**	**£0**

vi. Other Obligations (please describe obligation)	i)	ii)	iii)	iv)	v))	vi)
a) General development restrictions.						
b) Administration and/or legal fees for S106 negotiations.						
c) S106 monitoring fees.						
d) (insert type here)						
e) (insert type here)						
f) (insert type here)						
g) (insert type here)						
Total	**0**	**£0**	**0**	**£0**	**0**	**£0**

These questions ask about the proportion of the total value of CIL and S106/278 that was attributed to greenfield and brownfield sites for permissions granted in 2016/17

	...Greenfield Sites	...Brownfield Sites
3. For all **residential** permissions, what proportion of the value of **CIL** was on….		
4. For all **residential** permissions, what proportion of the value of **S106/s278** was on…		
5. For all **residential** permissions, what proportion of the number of dwellings was on…		

End of section. Please proceed to the next worksheet.

UNIVERSITY OF LIVERPOOL

E. Delivery

This section variously asks for information about the granting and delivery of permissions from three years 2014/15, 2015/16 and 2016/17.

1. Please estimate the total value of money actually received for **direct payment planning obligations in 2016/17**, regardless of the year in which they were originally agreed. (Direct payment planning obligations are those planning obligations where the developer agrees to pay a defined monetary sum to the authority, either for use by that authority or for transfer onto another body such as the Local Education Authority)	**TOTAL**	
	Affordable Housing Only	
	All Other Only	
2. Please estimate the total value of actually delivered **in-kind (including free land) planning obligations in 2016/17**, regardless of the year in which they were originally agreed. (In-kind contributions may include affordable housing, free land, public works, public art etc).	**TOTAL**	
	Affordable Housing Only	
	All Other Only	
Please estimate the proportion of **direct payment** planning obligations for which money was received by 31st March 2017 (e.g. if you estimate that direct payment obligations totalled £1m in 2014/15 and you have received £910k by the end of 2016.17 then select Over 90%)	3. For planning agreements signed in the year **2011/12**	
	4. For planning agreements signed in the year **2014/15**	
Please estimate the proportion of affordable housing specified in S106 agreements that was delivered by 31st March 2017…	5. For planning agreements signed in the year **2011/12**	
	6. For planning agreements signed in the year **2014/15**	
7. Do you expect all of the affordable housing specified in the S106 agreements signed in **2016/17** to be delivered?		
8. In **2016-2017** did your authority renegotiate any changes to previous planning agreements?		

	If yes, how many?	
	If yes, please provide descriptions of up to three renegotiations, e.g. concessions made such as alterations to the mix of affordable housing	

9. In **2016-17** did your authority receive any requests to renegotiate previous planning agreements that did not result in changed agreement(s)?		
	If yes, how many?	
	If yes, please provide descriptions of up to three occurrences, explaining what the request was and why the agreement was not changed	

End of section. Please proceed to the next worksheet.

UNIVERSITY OF LIVERPOOL

F. CIL Outcomes

Only complete section F if your authority charged CIL in 2016/17.

1. How much CIL income was spent on each of these categories in 2016/17?	
Roads and other transport facilities	
Flood defences	
Schools and other educational facilities	
Medical facilities/ Emergency Services	
Social care facilities	
Sporting and recreational facilities	
Open/Green spaces	
Proportion given to town/parish councils	
Public realm improvements	
Utilities	
Employment projects	
Environmental projects	
Energy	

Other…please specify below	
Other -	

2. In 2016/17, which methods were used to publicly report CIL…	...receipts?	...expenditure?
Local authority / Parish website		
Other website		
Newspaper		
Social Media		
Direct mail (email or postal)		
Community / Parish notice boards		
Other…please specify below		
Other -		

End of section. Please proceed to the next worksheet.

UNIVERSITY OF LIVERPOOL

Thank you

Thank you for completing this survey. The results will be used by the Department for Communities and Local Government to inform policy decisions. Your contribution it very important to ensure a robust estimate of the value of planning obligations in England.

For help in completing or submitting this survey, please contact the research team at VPO2016@liverpool.ac.uk.

Please select 'Yes' if you would like to receive a copy of the final report

Please select 'Yes' if you are willing to be contacted by a member of the research team to discuss the value of planning obligations and CIL in England

Please email your completed survey to VPO2016@liverpool.ac.uk

Appendix 3: Planning Authorities responding to the 2016-17 survey

Allerdale
Amber Valley
Arun
Ashfield
Ashford
Babergh
Barnsley
Basingstoke and Deane
Blaby
Blackburn with Darwen
Bolsover
Brighton and Hove
Broadland
Bromsgrove
Broxtowe
Cambridge
Cambridgeshire County Council
Carlisle
Castle Point
Central Bedfordshire
Chelmsford
Cheltenham
Cheshire East
Cheshire West and Chester
Chichester
Chorley
Christchurch
Crawley
Dartford
Daventry
Derby
Derbyshire Dales
Doncaster
Dudley
East Dorset
East Hampshire
East Lindsey
East Northamptonshire
East Staffordshire
Eastbourne
Elmbridge
Epping Forest
Fenland
Forest of Dean
Gateshead
Gedling
Gloucestershire County Council
Great Yarmouth
Greenwich
Guildford
Hampshire County Council
Haringey
Harrow
Hartlepool
Havant
Herefordshire
Hinckley and Bosworth
Horsham
Hyndburn
Isles of Scilly
Islington
Kettering
King's Lynn and West Norfolk
Kingston upon Hull
Lake District National Park Authority
Lancaster
Leicester
Leicestershire County Council
Lewes
Lichfield
Lincoln
Maidstone
Melton
Milton Keynes
Mole Valley
New Forest
Newcastle upon Tyne
Newcastle-under-Lyme
Newham
Norfolk County Council
North Devon
North Dorset
North East Derbyshire
North Lincolnshire
North Somerset
North West Leicestershire
North York Moors National Park Authority
Northumberland
Norwich
Nottingham
Oadby and Wigston
Peterborough
Plymouth
Purbeck
Reading
Redbridge
Redcar & Cleveland
Redditch
Reigate and Banstead
Ribble Valley
Richmond upon Thames
Richmondshire
Rochford
Rossendale
Rotherham
Rugby
Runnymede
Salford
Sandwell
Scarborough
Sedgemoor
Selby
Sheffield
Shepway
Solihull
South Cambridgeshire
South Downs National Park Authority
South Kesteven
South Lakeland
South Norfolk
South Northamptonshire
Southampton
Southend-on-Sea
St Albans
Stafford
Stockton-on-Tees
Stoke-on-Trent
Stratford-on-Avon
Stroud
Suffolk Coastal
Tamworth
Tandridge
Taunton Deane
Thanet
Tonbridge and Malling
Tower Hamlets
Trafford Metropolitan Borough Council
Uttlesford
Vale of White Horse
Waltham Forest
Wandsworth
Warrington
Warwick
Waverley
Wealden
Welwyn Hatfield
West Dorset
West Lancashire
West Lindsey
West Suffolk District Council
Weymouth and Portland
Wiltshire
Winchester
Windsor and Maidenhead
Wokingham
Worcester
Worcestershire County Council
Wychavon
Wycombe

Appendix 4: The topic guide for case studies

Interview Formats

CIL charging authorities: Introduction

The aim of the interview is to understand in general terms how the system has been working in your local authority, then to concentrate particularly on four specific planning agreements. The interview will be in two parts: general; and site-specific.

A) General interview Policy:

1. Job title/role of interviewee(s)?
2. Is there a published planning obligations policy (dates and details)?
3. Details of CIL introduction dates and charges
4. What changes were made to existing planning obligations policy with the introduction of CIL and to what is sought through S106?
5. What has been secured through CIL to date?

Nature of agreements:

6. What proportion of planning permissions have planning obligations attached?
7. Is there a typical scale / size of application above which is a planning agreement is usually required? (if so what)
8. What has been the impact of PDR (number of sites/units)? Additional sites or lost potential income from planning obligations?
9. What proportion of affordable housing is secured on sites with agreements?
10. Does this meet the policy target? How and why does it vary between sites?
11. How and why do other planning obligations vary between sites?
12. Why do agreements sometimes deviate from published policy requirements, for example, why does the amount negotiated deviate from (and is typically lower than) policy?
13. Is there a preference for securing in-kind contributions over cash/commuted sums? If so, why is this the case?
14. Has the introduction of CIL had any impact on what is secured through S106, overall levels of planning obligations achieved, and what is delivered on site/authority-wide?
15. What impact have CIL receipts had on enabling infrastructure delivery?
16. What impact does this have on attracting and securing further new development?
17. Has the pooling restriction had any impact on housing delivery, including any instances where permission has not been granted because the pooling restriction prevented the LPA from securing the mitigation required to make the development acceptable?

Negotiations:

18. What proportion of planning permissions with agreements actually go ahead?
19. Where they do not go ahead, what are the reasons for this?
20. Who leads on negotiating agreements and do you use a standard approach/template?
21. Do you ever procure external advice on negotiation S106 agreements? If so, who and how much does it cost?
22. What are the main issues that arise in negotiations and how are they dealt with e.g. viability issues?

23. What methodology do you use for viability assessments?
24. Is the methodology consistent with that used by developers in their viability appraisals?
25. How long does it take to get agreements signed for different types of sites?

Delay:

26. How much do S106 negotiations affect the time for sites to work their way through the planning system, and in developers starting on site once agreements are signed?
27. What are the usual causes of delay in negotiating agreements, getting sites through the planning system, and in developers starting on site once agreements are signed?
28. What is the cost attached to negotiating S106 agreements?
29. Has the introduction of CIL made any difference to the time it takes for sites to work their way through the planning system, and in developers starting on site once agreements are signed?
30. What might improve the negotiation process, or more generally the process for securing planning obligations?

Completion and modification:

31. What is the normal timescale for the completion of different types of obligation?
32. To what extent do S106 agreements get modified or re-negotiated after they have been signed?
33. What proportion of agreements are modified/re-negotiated?
34. Why are agreements modified?
35. Are there procedures for modification or re-negotiation?
36. If agreements do get modified, what normally gets changed?

    For example:

    a. To what extent do any of the in-kind obligations such as affordable housing get lost or reduced through this process?
    b. Any changes in tenure of affordable housing?
    c. Any changes in densities of market or affordable housing?
    d. How far do third parties create any need for re-negotiating?

37. In what circumstances are obligations re-negotiated and reduced (e.g. change in market conditions, unexpected build/site costs)?
38. Have you secured any additional contributions when markets have gone up (e.g. through built in trigger points)?
39. Do you ever link an obligation to indexation – if so, please give an example?
40. What was the impact on delivery (on planning permissions that have gone ahead) of the financial and housing market downturn that started in 2008, for example, through changes in phasing, and how has this recovered?
41. Has/did re-negotiating of existing S106s increase(d) compared to previous years?
42. Has/did it result(ed) in sites with planning permission not going ahead/being delayed?

Monitoring:

43. How is the delivery of planning obligations monitored?
44. How much officer time is spent on monitoring developer contributions?
45. What is the procedure if there is a breach of agreement by the developer or if direct payments are not received on time?
46. How common is this?

Community:

47. To what extent you communicate with local communities about what is delivered through the planning obligation process?
48. Do you feed into the Authority Monitoring Report process and, if so, what information do you provide? (This question should pick up methods as well as extent).
49. When do the community first hear about what is proposed in the S106
50. Do the community get to comment on this and, if so, how?
51. Does the developer liaise directly with the community about the provisions in the S106 (and, if so, how does the LPA monitor / evaluate this?)
52. How are any changes to the S106 fed back to the local community?

Developers:
As part of the research we have agreed with DCLG that we will interview developers/house builders. Can you suggest some that are active in your area?

B) Site-specific interview

These questions relate to up to four sites where the development has been completed or has phases that have been completed. The sites will be selected in advance by the local authority. Ideally these will include:
One simple housing scheme; One more complex housing scheme; One non-residential scheme; One mixed use scheme
You will probably want to choose sites that you are familiar with and/or have data to hand for.

For each site

1) Permission details:

Location; Size e.g. in ha; Developer(s); RSL(s); Number and type of units/floorspace (residential, office, hotel, health facility, cafe, retail, warehouse, workshops etc); Housing density; Tenure mix - market/affordable (social rented/LCHO); Has the development been fully completed?; If not, which phases have been completed, and what is the timing of the next phases?; Is the original or a new developer implementing the agreement?

2) S106/CIL details:

Affordable housing agreed and any grant arrangements; Phasing; Cascade agreements; Commuted payments for affordable housing; What direct payments were agreed?; What was agreed to be delivered in kind?; CIL charges; To what extent is the agreement in line with policy e.g. proportion of affordable housing agreed?

3) Timings:

How long did planning permission take?; How long did it take to agree and sign the S106 agreement?; How long did it take for the developer to start on site?; How long until first (market) sales?; How long until full completion?; Were there any delays at any point in the process?

4) Have there been any changes to the consent and/or to the agreement(s)?

What are the nature of the changes; When were they agreed?; Why were they made?

5) For CIL and cash payments/direct payments:

Have all relevant direct payments been made (including any contribution to administrative costs)?; What amounts received and when?; Is any more is due?; If so, when?; If this is a phased development, what is the timeline for future payments?; How were the funds accounted for?; Were funds allocated to specific projects?; Were there any planning obligations for other organisations (e.g. county councils for education or transport in lower tier authorities; utility companies)?

6) For planning obligations in kind:

What has been delivered and when?; How much, if anything, is outstanding?; Is this expected to be received and when?; Are any other organisations involved (e.g. RSLs etc)?

Non-CIL charging authorities

Introduction

The aim of the interview is to understand in general terms how the system has been working in your local authority, then to concentrate particularly on four specific planning agreements. The interview will be in two parts: general; and site-specific.

A) General interview

Policy:

1. Job title/role of interviewee(s)?
2. Is there a published planning obligations policy (dates and details)?
3. Why has a CIL not been introduced?
4. Without CIL receipts, how is infrastructure delivery enabled?
5. What impact does this have on attracting and securing further new development?

Nature of agreements:

6. What proportion of planning permissions have planning obligations attached?
7. Is there a typical scale / size of application above which is a planning agreement is usually required? (if so what).
8. What has been the impact of PDR (number of sites/units)? Additional sites or lost potential income from planning obligations?
9. What proportion of affordable housing is secured on sites with agreements?
10. Does this meet the policy target? How and why does it vary between sites?
11. How and why do other planning obligations vary between sites?
12. Why do agreements sometimes deviate from published policy requirements, for example, why does the amount negotiated deviate from (and is typically lower than) policy?
13. Is there a preference for securing in-kind contributions over cash/commuted sums? If so, why is this the case?
14. Has the pooling restriction had any impact on housing delivery, including any instances where permission has not been granted because the pooling restriction prevented the LPA from securing the mitigation required to make the development acceptable?

Negotiation:

15. What proportion of planning permissions with agreements actually go ahead?
16. Where they do not go ahead, what are the reasons for this?
17. Who leads on negotiating agreements and do you use a standard approach/template?
18. Do you ever procure external advice on negotiation S106 agreements? If so, who and how much does it cost?
19. What are the main issues that arise in negotiations and how are they dealt with e.g. viability issues?
20. What methodology do you use for viability assessments?
21. Is the methodology consistent with that used by developers in their viability appraisals?
22. How long does it take to get agreements signed for different types of sites?

Delay:

23. How much do S106 negotiations affect the time for sites to work their way through the planning system, and in developers starting on site once agreements are signed?
24. What are the usual causes of delay in negotiating agreements, getting sites through the planning system, and in developers starting on site once agreements are signed?
25. What is the cost attached to negotiating S106 agreements?
26. What might improve the negotiation process, or more generally the process for securing planning obligations?

Completion and modification:

27. What is the normal timescale for the completion of different types of obligation?
28. To what extent do S106 agreements get modified or re-negotiated after they have been signed?
29. What proportion of agreements are modified/re-negotiated?
30. Why are agreements modified?
31. Are there procedures for modification or re-negotiation?
32. If agreements do get modified, what normally gets changed?

For example:

a. To what extent do any of the in-kind obligations such as affordable housing get lost or reduced through this process?
b. Any changes in tenure of affordable housing?
c. Any changes in densities of market or affordable housing?
d. How far do third parties create any need for re-negotiating?

33. In what circumstances are obligations re-negotiated and reduced (e.g. change in market conditions, unexpected build/site costs)?
34. Have you secured any additional contributions when markets have gone up (e.g. through built in trigger points)?
35. Do you ever link an obligation to indexation – if so, please give an example?
36. What was the impact on delivery (on planning permissions that have gone ahead) of the financial and housing market downturn that started in 2008, for example, through changes in phasing, and how has this recovered?
37. Has/did re-negotiating of existing S106s increase(d) compared to previous years?
38. Has/did it result(ed) in sites with planning permission not going ahead/being delayed?

Monitoring:

39. How is the delivery of planning obligations monitored?
40. How much officer time is spent on monitoring developer contributions?
41. What is the procedure if there is a breach of agreement by the developer or if direct payments are not received on time?
42. How common is this?

Community:

43. To what extent you communicate with local communities about what is delivered through the planning obligation process?
44. Do you feed into the Authority Monitoring Report process and, if so, what information do you provide? (This question should pick up methods as well as extent).
45. When do the community first hear about what is proposed in the S106
46. Do the community get to comment on this and, if so, how?
47. Does the developer liaise directly with the community about the provisions in the S106 (and, if so, how does the LPA monitor / evaluate this?)

48. How are any changes to the S106 fed back to the local community?

Developers:

As part of the research we have agreed with DCLG that we will interview developers/house builders. Can you suggest some that are active in your area?

B) Site-specific interview

These questions relate to up to four sites where the development has been completed or has phases that have been completed. The sites will be selected in advance by the local authority. Ideally these will include:

One simple housing scheme; One more complex housing scheme; One non-residential scheme; One mixed use scheme

You will probably want to choose sites that you are familiar with and/or have data to hand for.

For each site

1) Permission details:

Location; Size e.g. in ha; Developer(s); RSL(s); Number and type of units/floorspace (residential, office, hotel, health facility, cafe, retail, warehouse, workshops etc); Housing density; Tenure mix - market/affordable (social rented/LCHO); Has the development been fully completed?; If not, which phases have been completed, and what is the timing of the next phases?; Is the original or a new developer implementing the agreement?

2) S106/CIL details:

Affordable housing agreed and any grant arrangements; Phasing; Cascade agreements; Commuted payments for affordable housing; What direct payments were agreed?; What was agreed to be delivered in kind?; CIL charges; To what extent is the agreement in line with policy e.g. proportion of affordable housing agreed?

3) Timings:

How long did planning permission take?; How long did it take to agree and sign the S106 agreement?; How long did it take for the developer to start on site?; How long until first (market) sales?; How long until full completion?; Were there any delays at any point in the process?

4) Have there been any changes to the consent and/or to the agreement(s)?

What are the nature of the changes?; When were they agreed?; Why were they made?

5) For CIL and cash payments/direct payments:

Have all relevant direct payments been made (including any contribution to administrative costs)?; What amounts received and when?; Is any more is due?; If so, when?; If this is a phased development, what is the timeline for future payments?; How were the funds accounted for?; Were funds allocated to specific projects?; Were there any planning obligations for other organisations (e.g. county councils for education or transport in lower tier authorities; utility companies)?

6) For planning obligations in kind:

What has been delivered and when?; How much, if anything, is outstanding?; Is this expected to be received and when?; Are any other organisations involved (e.g. RSLs etc)?

Appendix 5: The case study authorities

List of case studies

No.	Region	LPA	CIL	LPA Family
1.	East	Watford	Y	Commuter Belt
2.	East	Braintree	N	Rural England
3.	East	Peterborough	Y	Rural towns
4.	London	Islington	Y	London
5.	London	Hillingdon	Y	London
6.	London	Westminster	Y	London
7.	South East	Aylesbury Vale	N	Commuter Belt
8.	South East	Horsham	N	Commuter Belt
9.	South East	Reading	Y	Commuter Belt
10.	South West	South Gloucestershire	Y	Commuter Belt
11.	South West	Bristol	Y	Urban England
12.	East Midlands	Derby City	N	Urban England
13.	East Midlands	North West Leicestershire	N	Rural Towns
14.	West Midlands	Rugby	N	Rural Towns
15.	West Midlands	Warwick	N	Commuter Belt
16.	Yorks & Humber	East Riding of Yorkshire	N	Rural England
17.	Yorks & Humber	Leeds	Y	Urban England
18.	North East	Newcastle	Y	Established Urban Centres
19	North West	Chorley	Y	Rural Towns
20	East	Norwich	N	Established Urban Centres

Appendix 6: Membership of the LPA Families and CIL charging in 2016/17

Urban England

LA Name	CIL 16/17?	LA Name	CIL 16/17?	LA Name	CIL 16/17?
Ashfield	No	Derby	No	Portsmouth	Yes
Barnsley	No	Doncaster	No	Preston	Yes
Barrow-in-Furness	No	Exeter	Yes	Redcar and Cleveland	No
Bolsover	No	Hartlepool	No	Rotherham	No
Brighton & Hove	No	Ipswich	No	Sefton	No
Bristol	Yes	Lancaster	No	Sheffield	Yes
Cambridge	No	Leeds	Yes	Southampton	Yes
Canterbury	No	Lincoln	No	St Helens	No
Chesterfield	Yes	Mansfield	No	Stockton-on-Tees	No
Copeland	No	North East Lincolnshire	No	Wakefield	Yes
County Durham	No	North Tyneside	No	Wigan	No
Coventry	No	Oxford	Yes	Wirral	No
Darlington	No	Plymouth	Yes		

Established Urban Centres

LA Name	CIL 16/17?	LA Name	CIL 16/17?	LA Name	CIL 16/17?
Barking and Dagenham	Yes	Kirklees	No	Pendle	No
Birmingham	Yes	Knowsley	No	Rochdale	No
Blackburn with Darwen	No	Leicester	No	Salford	No
Bolton	No	Liverpool	No	Sandwell	Yes
Bradford	Yes	Manchester	No	South Tyneside	No
Burnley	No	Middlesbrough	No	Stoke-on-Trent	No
Calderdale	No	Newcastle upon Tyne	Yes	Sunderland	No
Gateshead	Yes	Norwich	Yes	Tameside	No
Hyndburn	No	Nottingham	No	Walsall	No
Kingston upon Hull	No	Oldham	No	Wolverhampton	No

Rural Towns

LA Name	CIL 16/17?	LA Name	CIL 16/17?	LA Name	CIL 16/17?
Amber Valley	No	Gravesham	No	Rossendale	No
Basildon	No	Harlow	No	Rugby	No
Bassetlaw	Yes	Havant	Yes	Solihull	Yes
Bexley	Yes	Havering	No	South Ribble	Yes
Broxbourne	No	Herefordshire	No	Stafford	No
Broxtowe	No	High Peak	No	Stevenage	No
Bury	No	Hinckley and Bosworth	No	Stockport	No
Cannock Chase	Yes	Kettering	No	Swale	No
Cheshire East	No	Newcastle-under-Lyme	No	Swindon	Yes
Chorley	Yes	Newark & Sherward	Yes	Tamworth	No
Corby	No	North East Derbyshire	No	The Wrekin	No
Crawley	Yes	North Lincolnshire	No	Thurrock	No
Dartford	Yes	North Warwickshire	No	Trafford	Yes
Dudley	Yes	North West Leicester	No	Warrington	No
East Staffordshire	No	Northampton	Yes	Wellingborough	No

Erewash	No	Nuneaton and Bedworth	No	West Lancashire	Yes
Gedling	Yes	Peterborough	Yes	Worcester	No
Gloucester	No	Redditch	No	Wyre Forest	No
Gosport	Yes				

London

LA Name	CIL 16/17?	LA Name	CIL 16/17?	LA Name	CIL 16/17?
Barnet	Yes	Hammersmith and Fulham	Yes	Newham	Yes
Brent	Yes	Haringey	Yes	Redbridge	Yes
Camden	Yes	Harrow	Yes	Slough	No
City of London	Yes	Hounslow	Yes	Southwark	Yes
Croydon	Yes	Islington	Yes	Tower Hamlets	Yes
Ealing	No	Kensington and Chelsea	Yes	Waltham Forest	Yes
Enfield	Yes	Lambeth	Yes	Wandsworth	Yes
Greenwich	Yes	Lewisham	Yes	Westminster	Yes
Hackney	Yes	Luton	No		

Commuter Belt

LA Name	CIL 16/17?	LA Name	CIL 16/17?	LA Name	CIL 16/17?
Aylesbury Vale	No	Harborough	No	South Oxfordshire	Yes
Basingstoke and Dean	No	Hart	No	Spelthorne	Yes
Bath & N.E. Somerset	Yes	Hertsmere	Yes	St Albans	No
Bedford	Yes	Hillingdon	Yes	Stratford-on-Avon	No
Bracknell Forest	Yes	Horsham	No	Surrey Heath	Yes
Brentwood	No	Huntingdonshire	Yes	Sutton	Yes
Bromley	No	Kingston upon Thames	Yes	Tandridge	Yes
Castle Point	No	Maidstone	No	Test Valley	Yes
Central Bedfordshire	No	Merton	Yes	Three Rivers	Yes
Charnwood	No	Mid Sussex	No	Tonbridge & Malling	No
Cheltenham	No	Milton Keynes	No	Uttlesford	No
Cherwell	No	Mole Valley	Yes	Vale of White Horse	No
Cheshire West & Chester	No	North Hertfordshire	No	Warwick	No
Chiltern	No	Oadby & Wigston	No	Watford	Yes
Colchester	No	Reading	Yes	Waverley	No
Dacorum	Yes	Reigate & Banstead	Yes	Welwyn Hatfield	No
Daventry	Yes	Richmond upon Thames	Yes	West Berkshire	Yes
East Hampshire	Yes	Runnymede	No	West Oxfordshire	No
East Hertfordshire	No	Rushcliffe	No	Winchester	Yes
Eastleigh	No	Rushmoor	No	Windsor & Maidenhead	Yes
Elmbridge	Yes	Sevenoaks	Yes	Woking	Yes
Epping Forest	No	South Bucks	No	Wokingham	Yes
Epsom and Ewell	Yes	South Gloucestershire	Yes	Wycombe	No
Guildford	No	South Northamptonshire	Yes	York	No

Rural England

LA Name	CIL 16/17?	LA Name	CIL 16/17	LA Name	CIL 16/17?
Adur	No	Great Yarmouth	No	Shropshire	Yes
Allerdale	No	Hambleton	Yes	South Derbyshire	No
Arun	No	Harrogate	No	South Hams	No
Ashford	No	Hastings	No	South Holland	No
Babergh	Yes	Isle of Wight	No	South Kesteven	No
Blaby	No	Isles of Scilly	No	South Lakeland	Yes
Blackpool	No	Kings Lynn & West	Yes	South Norfolk	Yes
Boston	No	Lewes	Yes	South Somerset	Yes
Bournemouth	Yes	Lichfield	Yes	South Staffordshire	No
Braintree	No	Maldon	No	Southend-on-Sea	Yes
Breckland	No	Malvern Hills	No	St Edmundsbury	No
Broadland	Yes	Melton	No	Staffordshire Moorlands	No
Bromsgrove	No	Mendip	No	Stroud	No
Carlisle	No	Mid Devon	No	Suffolk Coastal	Yes
Chelmsford	Yes	Mid Suffolk	Yes	Taunton Deane	Yes
Chichester	Yes	New Forest	Yes	Teignbridge	Yes
Christchurch	Yes	North Devon	No	Tendring	No
Cornwall	No	North Dorset	No	Tewkesbury	No
Cotswold	No	North Kesteven	No	Thanet	No
Craven	No	North Norfolk	No	The Medway Towns	No
Derbyshire Dales	No	North Somerset	No	Torbay	Yes
Dover	No	Northumberland	No	Torridge	No
East Cambridgeshire	Yes	Poole	Yes	Tunbridge Wells	No
East Devon	Yes	Purbeck	Yes	Waveney	Yes
East Dorset	Yes	Ribble Valley	No	Wealden	Yes
East Lindsey	No	Richmondshire	No	West Devon	No
East Northamptonshire	No	Rochford	No	West Dorset	Yes
East Riding of Yorkshire	No	Rother	Yes	West Lindsey	No
Eastbourne	Yes	Rutland	Yes	West Somerset	No
Eden	No	Ryedale	Yes	Weymouth & Portland	Yes
Fareham	Yes	Scarborough	No	Wiltshire	Yes
Fenland	No	Sedgemoor	Yes	Worthing	Yes
Forest Heath	No	Selby	Yes	Wychavon	No
Forest of Dean	No	Shepway	Yes	Wyre	No
Fylde	No				