

Appendix J: Process for securing developer contributions

Overview

- J.1 In GB the planning systems attempt to capture a share of the ‘planning uplift’ in the form of developer contributions. When land is granted planning permission it receives a substantial uplift in value. The landowner therefore receives a significant positive benefit from the actions of public authorities. The planning systems aim to recapture some of this uplift in value to reinvest in local infrastructure, a policy approach known as land value capture.¹
- J.2 New residential development often puts strain on existing local infrastructure (such as hospitals and schools) to support the expanded population. This externality will not necessarily be addressed by housebuilders unless they are required to do so by the planning system. In addition, pressure on local infrastructure from new development is thought to be one of the main causes of local opposition to development in GB, which may influence housing delivery within a local area. Therefore, helping to ensure funding of local infrastructure through developer contributions is important function of the planning system.
- J.3 An analysis of the system of developer contributions must acknowledge its potential impact on land supply. Policies on developer contributions can potentially impact the land supply in a local area. As land for residential development is typically valued on a residual value basis in accordance with Royal Institute of Chartered Surveyors (RICS) guidance,² the costs of complying with the policies for developer contributions should typically be deducted from the land price. If the costs associated with these policies, in combination with other costs, reduce land prices below a level at which some landowners are willing to sell, then some land will not be brought forward for residential development.³
- J.4 In this appendix we present some analysis of how the systems for obtaining developer contributions in the nations of GB are working. This includes:
- (a) an overview of the system for securing developer contributions;
 - (b) the value of developer contributions that are obtained;
 - (c) the challenges faced by LPAs in securing developer contributions; and

¹ See: [Flyer-Land-Value-Capture.pdf \(oecd.org\)](#).

² See Section 6.1: [Valuation of development property \(rics.org\)](#).

³ In the impact assessment for the biodiversity net gain policy it states ‘The estimated direct cost is £199.0m per year (2017 prices). This falls to £19.9m, once a 90% pass-through of costs to landowners through land prices has been considered – as is anticipated on the basis of industry evidence and economic theory’, see: [Net gain impact assessment \(publishing.service.gov.uk\)](#).

- (d) proposed reform to the system for securing developer contributions in England.

Overview of the systems for securing developer contributions

- J.5 Developer contributions are secured through legal agreements to provide planning obligations (s106 agreements in England and Wales, s75 agreements in Scotland). Planning obligations are legal obligations entered into by the developer of a site with an LPA to mitigate the impacts of a development proposal to make it acceptable in planning terms.⁴ Planning obligations are generally made in the form of in kind or cash contributions towards categories of infrastructure such as affordable housing, highways, open space, education and health.
- J.6 Local plans and policies should set out the contributions expected from new developments. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure).⁵ Viability planning practice guidance states that these policies should not undermine the delivery of the plan.⁶
- J.7 Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it, including reasonable returns for housebuilders. The guidance states that assessment of site viability should primarily be undertaken at the plan making stage to ensure the plan is deliverable. Assessing the viability of plans does not require individual testing of the viability of every site identified as being suitable for development within a plan. Plan makers can use site typologies to determine viability at the plan making stage. Where up-to-date policies have set out the contributions expected from development, planning applications that fully comply with them should be assumed to be viable by decision makers. It is up to an applicant for planning permission to say why the particular circumstances of a site justify an adjustment to required developer contributions on viability grounds. In practice this involves the developer making a viability case to the LPA as part of the planning application process.
- J.8 In addition to planning obligations, in England some LPAs secure some developer contributions via the Community Infrastructure Levy (CIL). This is a locally set levy on new development charged based on the floor space of the development.⁷

⁴ See: [Planning obligations - GOV.UK \(www.gov.uk\)](http://www.gov.uk). Broadly, this means to ensure that it is compliant with all relevant national and local plans and policies.

⁵ Paragraph 34: [National Planning Policy Framework - 3. Plan-making - Guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

⁶ Paragraph 34: [National Planning Policy Framework - 3. Plan-making - Guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

⁷ [Community Infrastructure Levy - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

J.9 The systems for securing developer contributions and the viability assessment process in Scotland and Wales are broadly similar to that outlined above for England. However, there is no equivalent to the CIL currently operating in Scotland and Wales.

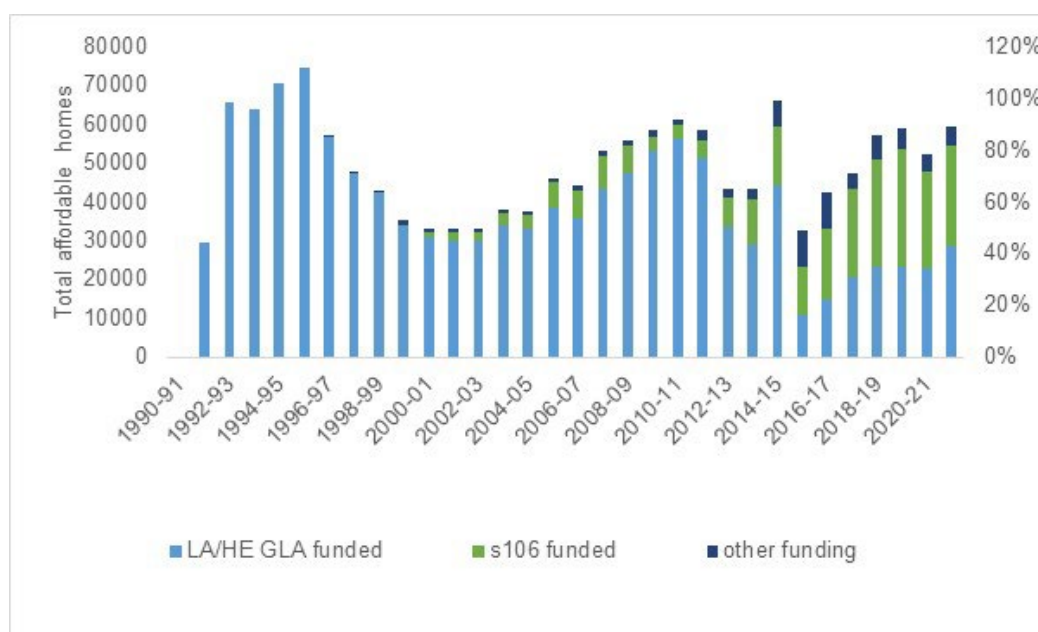
The value of developer contributions

J.10 In this section we set out information on the total amount of developer contributions and how this varies by area.

Total amount of contributions secured

J.11 Developer contributions in England were £7bn in 2018-19, with around two-thirds coming in the form of affordable housing.⁸ Developer contributions are a significant source of funding for affordable housing. As Figure J.1 below shows, in 2020-21 developer contributions secured via Section 106 agreements funded approximately half of all affordable housing provided in England. In Scotland in 2019-20 it was estimated that approximately £490 million worth of developer contributions were agreed, of which £310m was for affordable housing and £180m towards other infrastructure.⁹ We note that no similar recent analysis has been published for Wales.

Figure J.1 Affordable housing provision in England 1990-91 to 2020-21 by funding type



Source: CMA analysis of data from: [Live tables on affordable housing supply - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

⁸ Section 106 planning obligations and the Community Infrastructure Levy in England, 2018 to 2019: report of study (publishing.service.gov.uk)

⁹ See: 10. Annex 3: Analysis of Survey Data - Planning - the value, incidence and impact of developer contributions: research - [gov.scot \(www.gov.scot\)](http://www.gov.scot).

- J.12 Developer contributions represent significant sums to contribute to funding of local infrastructure. For context:
- (a) In England, if developer contributions were maintained at the level of 2018/19 (£7bn) in 2021, this would be equivalent to 46% of total expenditure by local government on housing and community development (£15.6bn in 2021) or almost twice the amount spent on housing alone (£3.6bn in 2021)¹⁰. Alternatively, it is approximately the same amount spent by local government on infrastructure in 2021.¹¹
 - (b) In Scotland if developer contributions were maintained at the level of 2019/20 (£490m) this would be equivalent to 34% of local government net expenditure on housing in 2021 (£1.4bn)¹².
- J.13 It is not possible to conclude from these comparisons how successful developer contributions are in mitigating the impact of new development. This is because there are differences in the types of expenditure included in the figures, and the fact that local government expenditure is mainly focused on the existing population rather than new development.
- J.14 It is also difficult to determine the extent to which contributions are successful in capturing a fair or reasonable share of the planning uplift in land value, while ensuring that sufficient supply of viable supply is maintained. Estimating the value of the planning uplift – and hence the share accounted for by developer contributions – would require detailed data on land prices (before and after planning permission is granted) in areas where development has taken place, which is not readily available. The impact of local policies on land supply as this will vary significantly from area to area. It will depend on a variety of a local factors such as the level at which local requirements for developer contributions are set, the availability and characteristics of the land and market conditions. We do note some housebuilder internal documents reveal concern that the scale of various policy related costs threatens the viability of some sites.

Variation in contributions by area

- J.15 The size of developer contributions varies significantly from area to area. In England, the South East, South West and London regions account for 61% of the total value.¹³ In Scotland the five largest contributing authorities, all in the central belt, accounted for about 43% of agreed contributions in 2019-20.

¹⁰ See: [Local government annual expenditure: ESA Table 11 - Office for National Statistics \(ons.gov.uk\)](#).

¹¹ £6.7bn, see: [Infrastructure in the UK, investment and net stocks - Office for National Statistics \(ons.gov.uk\)](#).

¹² CMA analysis of [Scottish Local Government Finance Statistics 2021-22](#)

¹³ [Section 106 planning obligations and the Community Infrastructure Levy in England, 2018 to 2019: report of study \(publishing.service.gov.uk\)](#)

- J.16 From our discussions with LPAs it is clear that the extent to which LPAs are able to secure developer contributions depends on local circumstances – in particular, the nature of the local housing market, and the volume and type of sites that are available for residential development in that area. Where the housing market is less buoyant and/or sites are more difficult to develop (often brownfield sites where, for example, ground contamination or site remediation is an issue) the financial viability of sites is much more of an issue and hence the contributions that can be achieved will be more limited. Several LPAs said their ability to raise developer contributions was severely restricted by local issues with brownfield sites and/or low land/house prices. For example, one said viability in its area is an ‘absolute killer’ due to a combinations of severe land supply constraint, brownfield sites and relatively low land prices.
- J.17 An LPA’s ability to raise contributions will reflect their local characteristics. However, these characteristics will not necessarily be reflecting the need for contributions at the local level. LPAs which have more limited ability to raise contributions may still have to fund significant levels of infrastructure provision.

Challenges faced by LPAs in securing developer contributions

- J.18 In this section we set out our analysis of the extent to which the process to secure developer contributions adds significant difficulty to the planning process, and how far LPAs struggle to secure developer contributions.

Delay to the planning application process

- J.19 As a starting point, we note that planning obligations are very common. Our analysis of data from the five largest housebuilders shows that of all planning applications they submitted in GB in 2020, 2021 and 2022, 84% of outline applications and 82% of detailed planning applications required negotiation of a S106 or S75 agreement.
- J.20 Negotiating legal agreements to secure developer contributions can cause significant delay to the planning application process, especially where developers challenge the level of contributions by submitting a site-specific viability assessment. This is backed up by survey evidence from English and Scottish LPAs. This evidence shows that 61% of 125 English LPAs surveyed agreed that negotiating a S106 creates a delay in the planning process whilst 20 strongly agreed.¹⁴ In addition, 46% of the 35 Scottish LPAs said that agreeing a S75

¹⁴ See from para 4.12 of [Section 106 planning obligations and the Community Infrastructure Levy in England, 2018 to 2019: report of study \(publishing.service.gov.uk\)](#)

affects planning delay a “moderate amount”, whilst 36% said it impacts it a “great deal”.¹⁵

- J.21 Even for small sites, negotiating a S106 agreement may take considerable time. Lichfields analysed the planning process for a sample of small sites in London. The sample is made up of 60 planning permissions for between 10 and 150 dwellings. The sample constitutes 2,666 homes including 485 affordable homes. Lichfields found that even once the decision to grant permission has been made at planning committee, with the S106 heads of terms as part of the committee report, it took a further 23 weeks (median) to finalise the S106 agreement and issue a planning permission.¹⁶

Viability challenges to the required developer contributions

- J.22 Historically, there have been some concerns that housebuilders can misrepresent the true viability of a site when submitting a site-specific viability assessment, which might allow them to suppress the level of contributions that are secured by LPAs. In addition it has been suggested that developers, particularly large developers, have a resourcing advantage when dealing with LPAs which makes it more difficult for LPAs to properly challenge site-specific viability assessments submitted by developers.¹⁷
- J.23 Housebuilders may be incentivised to ensure that planning applications are compliant with local policies on developer contributions to reduce the risk and delay of the planning process.
- J.24 Housebuilders’ internal documents show that they understand that ensuring that planning applications comply with all local plans and policies, including those on developer contributions, can increase the speed at which planning applications are processed. For example, one housebuilder’s 12 golden rules for ‘achieving smooth and speedy planning permissions’ refer to the need to ensure compliance with: ‘all necessary legal and policy requirements’; ‘the development plan’; and ‘section 106 and/or CIL Regulation 122/123’. In one housebuilder’s best practice guidance document for the pre-planning and planning stages of its development process it states that:

‘NPPF requires decision makers to approve planning applications that accord with an up-to-date development plan without delay.

¹⁵ See table 26: [Planning - the value, incidence and impact of developer contributions: research - gov.scot](https://www.gov.scot) (www.gov.scot)

¹⁶ See: (See Lichfield's : [small-sites-unlocking-housing-delivery_sep-2020.pdf](https://lichfields.uk) (lichfields.uk))

¹⁷ See, for example: [Research_Viability_and_the_Planning_System_Research_January_2017.pdf](https://towerhamlets.gov.uk) (towerhamlets.gov.uk); [Development viability assessment and the provision of affordable housing. A game of “pass the parcel”?](https://reading.ac.uk) - CentAUR (reading.ac.uk).

Our starting position must therefore consider whether the proposed development accords with the development plan and general development management policies within it.

Non-compliant schemes represent a greater risk in terms of time, costs and overall prospects of success of securing a satisfactory planning permission from the Local Planning Authority or, if necessary, at Appeal.’

- J.25 Our analysis did not indicate that there is a widespread problem with large developers attempting to suppress the level of contributions that they make by submitting site-specific viability assessments. For one thing, despite the high prevalence of S106/S75 agreements in our data from large housebuilders, the submission of site-specific viability assessments with planning applications was relatively rare. Our analysis of data from the 5 largest housebuilders suggest that they submitted viability assessments with less than 15% of the outline planning applications they submitted in GB in 2020, 2021 and 2022.
- J.26 In addition, our understanding from our discussions with LPAs is that it is common practice for an LPA to appoint external experts to review site-specific viability assessments and then recover the costs from a developer. The vast majority of the 17 LPAs we spoke to follow this practice, whilst some LPAs used the district valuer as a source of independent expert advice. This should, to some extent, level the playing field between LPAs and developers.
- J.27 We have found limited evidence that housebuilders are using the viability assessment process to suppress the level of contributions they make on a widespread basis. However, this is not the same as concluding that more contributions cannot be achieved, at least in certain circumstances. Indeed, the relatively low levels of challenges to required levels of contributions from housebuilders may be indicative that there is scope for some LPAs to ask for higher contributions. Depending on the local area and site characteristics there may be scope for LPAs to ask for, and achieve, higher levels of contributions in some cases.

Forthcoming reform to the system of developer contributions in England under the LURA

- J.28 The LURA seeks to replace the system of planning obligations and the CIL with a mandatory Infrastructure Levy (IL) charged against development value with the level of the levy set locally by LPAs.¹⁸ Key aspects of the changes include:

¹⁸ See: [Technical consultation on the Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/technical-consultation-on-the-infrastructure-levy).

- (a) The Act replaces the current system (CILs and section 106 agreements) with a new Infrastructure Levy.
- (b) s106s will continue for more complex and larger sites with the exact details of how this might work yet to be determined;
- (c) Affordable housing to be funded through the levy with the possibility that onsite provision can be offset against the levy;
- (d) Unlike the CIL system, the new Infrastructure Levy will be mandatory. Regulations will levy IL charges on all sites viable above a minimum £sqm locally set threshold – rates will be set as a percentage of gross development value and paid at the sale of the properties;
- (e) The rates and thresholds will be set and raised by LPAs, meaning that rates are tailored to local circumstances such as local plan policies for infrastructure and affordable housing and site viability considerations;
- (f) The Act will require local authorities to prepare infrastructure delivery strategies. These will set out a strategy for delivering local infrastructure and spending Levy proceeds; and
- (g) Levy to be introduced through a test and learn approach and rolled out gradually across LPAs over a number of years.

J.29 The stated intention of the reform is that the new levy will be a more efficient and transparent system. Efficiency should in theory be encouraged by removing the requirement to negotiate s106 planning obligations. Transparency should be improved because charging schedules will make the expected value of a contribution clear up-front. In addition, ‘The government is committed to the Levy securing at least as much affordable housing as developer contributions do now’.¹⁹

J.30 The UK government commissioned some research to look at the potential implications of introducing the IL.²⁰ This work concluded that although the proposal will remove some of the complexity from the process by removing the requirement to negotiate S106 developer contributions on a case-by-case basis, some complexity will remain. In particular, there will be significant new challenges for local authorities in making decisions about the levy, especially the rates and thresholds that are applied. The work also concluded that there is potential for the IL to raise more than the existing arrangements; whether this can be realised depends not just on rates and thresholds chosen locally but also on how market participants react, especially landowners, land promoters and developers.

¹⁹ See: [Technical consultation on the Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

²⁰ See: [Exploring the potential effects of the proposed Infrastructure Levy \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

J.31 One housebuilder told us that they were happy with making contributions either through Section 106 agreements or through the proposed infrastructure levy as long as the policies were clear and there was sufficient certainty for them about what the likely payments would be. When we spoke to LPA planning officers most had not had time to digest the technical consultation on the details of the levy and therefore were not in a position to comment upon it. However, we note the response from the Planning Officers Society (POS) to the government consultation. The POS favours making the current system work better over the proposed reform. POS criticisms of the proposed reform included that; a significant degree of complexity will remain in the system as it remain; setting the levy at a level that will ensure that developments remain viable may lead to rates being set at the lowest common denominator; the reforms shift risk to the LPA to forward fund infrastructure that is necessary to enable developments to proceed; and the reforms remove the ability for the current system to optimise the level of contribution on a site-by-site basis.

Conclusion

J.32 There are undoubtedly some imperfections in the current system, prior to changes in the LURA coming into effect, of developer contributions. In particular, it can be complex and time-consuming to agree the necessary legal agreements and negotiate any site-specific adjustments to developer contributions. However, it is fairly successful in securing large amounts of developer contributions, although the extent to which it does so varies substantially by area and not necessarily in relation to the need for investment in infrastructure.

J.33 It is very difficult to assess whether the current system secures a fair or reasonable proportion of the planning uplift, as this will depend on decisions and market conditions on an area by area and a site-by-site basis. It has not been feasible to go into this level of detail within the context of this Market Study. Even had we attempted to do so data limitations (particularly with regard to local land prices for different types of land) would likely undermine such analysis.

J.34 Our analysis did not indicate that there is a widespread problem with developers we had sought information from suppressing the level of contributions that they make by submitting site-specific viability assessments. GB-wide, the proportion of planning applications submitted by large developers that include a site-specific viability assessment is low and developers may have limited incentives to submit viability assessments. However, this does not mean that greater levels of contribution could not be achieved by some LPAs depending on the local and site level circumstances.

J.35 There are undoubtedly potential costs and benefits associated with the proposed reforms to the system in England. The extent to which the benefits outweigh the

costs, depends not just on rates and thresholds chosen locally but also on how market participants react to the changes.