

All Pain, No Gain? Finding the Balance

Delivering affordable housing through
the planning system in Scotland



A Report for the CIH in Scotland
by

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research

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The Chartered Institute of Housing

The CIH is the professional body for people in housing and related fields. The Institute has over 20,000 members in the UK and internationally. Our purpose is to maximise the contribution that housing professionals make to the well-being of communities. There are more than 2,000 members in Scotland working in local authorities, housing associations, housing co-operatives, Communities Scotland, voluntary organisations, the private sector, educational institutions and the Rent Registration Service. The CIH aims to ensure members are equipped to do their job by working to improve practice and delivery. We also represent the interests of our members in the development of strategic and national housing policy.



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The Chartered Institute of Housing in Scotland commissioned Newhaven Research to review progress in relation to the delivery of Affordable Housing Policies (AHPs) across Scotland. The aim was to draw out lessons for central and local government in relation to the factors that have contributed towards or hindered the delivery of AHPs. The report discusses the findings of this research and the recommendations that emerged from the analysis of the data.

The study involved a number of key research methods:

- An in depth literature review of existing policy documents,
- An examination of current Scottish local authority AHPs,
- An online survey with representation from planning and housing staff in all local authorities, developers, and registered social landlords (RSLs),
- Interviews and discussions with elected members, civil servants, developers, professional bodies and other key informants.

Context

Since 2000, and more particularly since 2005, Scottish local authorities have, in increasing numbers, sought to introduce and implement AHPs. Where a planning authority has adopted an AHP, developers are expected to contribute to the delivery of affordable housing through negotiated planning agreements as part of the land development process. That is, development planning is being used to extract 'planning gain' for the purpose of meeting social policy objectives with respect to housing.

Scottish planning authorities derive their power to negotiate contractual planning agreements for this purpose from Section 75 of the Town and Country Planning (Scotland) Act 1997. Guidance from the Scottish Government to assist local authorities in securing these contributions is available in the form of Scottish Planning Policy 3 (SPP3), and Planning Advice Note 74 (PAN74). The Scottish Government's recently published housing consultation document *Firm Foundations* may also influence the way in which affordable housing policies are developed and implemented in future.

In a UK context, the UK Government has also looked at augmenting the 'affordable housing policy' approach by the introduction of an additional tax for funding infrastructure development called a 'planning gain supplement'. While the UK Government no longer favours this course of action, it is likely, based on past experience and perceived need, that the current approach to funding infrastructure investment and affordable housing through planning agreements will be subject to further amendment in future.

Where the UK Government's planning policies are making a significant impact is in the spatial location of new social housing; as the units are being delivered in areas where the cost of land is such that new social housing development would be otherwise impossible. While many interpret this as the successful delivery of 'mixed communities', others suggest this concept has no clear operational content, and may even be fundamentally misplaced.

The affordable housing policy approach continues to be criticised by some in terms of its ethics and legality. It has been suggested that the policy creates incentives for local authorities to promote development in areas that are low priority (because these are high value areas and there is therefore more gain to be extracted).

The policy expectation is that landowners bear the cost of the policy in the form of a lower price for land than could otherwise be achieved, but depending on local circumstances it might be the case in practice that developers bear the cost through reduced profits, or house purchasers through having to pay higher prices. It could also involve some combination of all three.

The report suggests the planning policy approach involves large hidden costs, with respect to justifying and defending affordable housing policies and negotiating individual S75 agreements. Both the public and the private sector have to bear these costs. It also demands specific analytical and strategic skills of local authority planning and housing staff. Evidence suggests that these staff often lack these skills.

The development of affordable housing policies in Scotland since the turn of the century has proved traumatic, and few believe the approach has provided value for money. Scottish delivery to date using affordable housing policies appears to have been extremely modest. This research sought to determine where there are barriers in the delivery of affordable housing, and revealed interesting opinions and experiences of working within the policy framework.

Key Findings

The key findings of the report are as follows:

The context of AHPs

- 4 out of 5 responding local authority staff report that the housing market that operates across their area is pressured or somewhat pressured,
- The shortfall in affordable housing has increased in the last 3-5 years,
- Local authority staff that operate in a stable or non-pressured housing market mostly fall within the urban core of the Clyde Valley.

Reasons for a shortfall in affordable housing provision

- Infrastructure constraints,
- Sites available are expensive and difficult to develop,
- Landowners perceived value for their land exceeds realistic or achievable sums,
- Few planning officers feel that new affordable housing provision has been hampered by a lack of land or sites becoming available,
- Majority of planning officers, housing officers and RSLs perceive land banking as a contributing factor.

Objectives of AHPs

- 6 out of 10 planning and housing officers indicate the most important objective of AHPs is contributing to mixed and sustainable communities,
- Few respondents feel that 'pepper potting' contributes to mixed communities,
- Most local authority staff think a mixed community means the inclusion of a proportion of affordable housing built on all sites, or a mix of tenure in a small area such as a primary school catchment area.

Links between local plans and Local Housing Strategies (LHS)

- Conflicting time frames for the LHS and local plans have hindered joining-up of the two,
- Not all local authorities have yet adopted realistic and deliverable affordable housing provision targets in their LHS that account for land and funding availability,
- Some structure plans do not reflect the most recent housing need findings in their calculation of land requirements.

Housing needs assessment

- The link between newly arising need and projected household growth is unclear, and household income data is of a poor/unverified quality,

- 25% of RSLs and 66% of developers do not believe that reasonable steps are always taken to validate findings by comparing outputs with evidence from other data sources,
- 37% of RSLs and 100% of developers think the link between newly arising need and projected household growth and the planned release of land is unclear.

Funding availability

- 80% stated their existing or emerging AHP reflects the availability of development funding from the Scottish Government,
- 50% of planning authorities with an adopted/emerging AHP framework, that does not take account of development funding, are rural authorities,
- Over half of all RSLs and developers feel that current AHPs do not take appropriate account of the level of development funding likely to be made available.

Land valuations

- Most housing officers (71%), developers (89%), and RSLs (62%) feel land valuations have contributed to delays in securing individual Section 75 agreements,
- There is a lack of detailed and unambiguous national guidance on valuing land for affordable housing that has been subject to detailed consultation,
- There are some doubts as to the reliability of District Valuer (DV) land valuations, and belief that these valuations bear little relationship to the prices required to be paid for land.

Impact of affordable housing policies to date

- An increasing proportion of developers accept that they must contribute towards affordable housing provision,
- Over half of all survey respondents feel that the main benefit of AHPs to date has been to secure land for new RSL affordable housing provision,
- The majority of planning officers, housing officers, RSLs, and developers believe Section 75 agreements have created long delays in the planning process,
- Opinions are divided as to whether unreasonably high demands for affordable housing are making it unprofitable to develop sites. Most private developers (89%) believe that this is the case, as do over a third of planning officers and RSLs.

Possible measures to improve the current national policy framework

- There is strong support for the Scottish Government to publish more and detailed guidance on many of the more technical and complex dimensions of the AHP process,
- There is widespread support amongst planning officers and housing officers for most, but not all, of the suggested measures that might improve joint working and collaboration,
- There is a more varied range of opinions in terms of the actions that would help to improve delivery of affordable housing policy at the regional or local level.

Conclusions and Recommendations

The issues that arise from the analysis of the research indicate that there is room for changes in the current frameworks if housing is to be delivered at the rate needed. The following recommendations are made in the report as methods to help remove some of the tension, difficulties, and delays that surround the delivery of affordable housing procured through the planning system:

- The Scottish Government should explore whether it would be feasible to introduce a national dispute resolution system, and consider what form it might take,
- There is a need to improve good practice guidance, for example through the development of a model Section 75 agreement,
- There is a need for monitoring of AHP implementation to ensure compliance, and in the longer term to ensure that information is available to assess the impact of the AHP approach,
- Some form of mandatory tariff system could potentially offer a fairer, more efficient, and more effective means to securing affordable housing than the current AHP approach,
- It would be desirable in the longer term for the Scottish Government to undertake an economic appraisal of alternative policy approaches to delivering affordable housing.

The report says it is unclear as to which would be the 'best' policy approach to adopt. However, the report findings suggest a system can be achieved that can generate far more gain for far less pain than the present policy framework currently delivers or looks set to deliver.

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1 Introduction

Context

In March 2005 the Scottish Executive published Planning Advice Note (PAN) 74 on Affordable Housing (Scottish Executive, 2005a). The purpose of PAN 74 was to clarify the role of the planning system in supporting the delivery of new affordable housing in Scotland, and to provide guidance on embedding affordable housing policies (AHP) within development plans. Its publication followed on from a review of evidence on housing affordability (Scottish Executive, 2004) and independent estimates of housing need (Bramley, 2004).

Publication of PAN 74 had been keenly awaited, reflecting a growing interest in the use of the planning system to augment affordable housing provision in Scotland – an approach that had already been pursued in England for some time. Most Scottish local authorities have now moved to introduce and implement AHPs, although the process has proved controversial in some parts of the country.

PAN 74 is not the end of the policy process. In the wake of the Barker review of housing supply (Barker, 2004), the UK Government explored the possibility of introducing a planning-gain supplement (PGS) that would in effect constitute a levy on the granting of planning permission. It was proposed that PGS revenues would be used for a variety of purposes, including the provision of additional affordable housing supply. Although the Chancellor's pre-budget statement of 9 October 2007 announced that the PGS proposal would not go ahead, it confirmed an intention to introduce legislation to allow local authorities in England to levy charges on developments for the purpose of funding infrastructure investment (HM Treasury, 2007b).

In Scotland, a Housing Supply Taskforce has been established by the Scottish Government to explore how to overcome barriers to the provision of more new housing. At the end of October 2007 the Scottish Government also published a housing discussion paper – 'Firm Foundations: The Future of Housing in Scotland'. This document set out proposals to increase the total housing stock across all tenures, to provide more housing choice for lower income households, to ensure housing developments contribute to the creation of sustainable, mixed communities and to secure better value for public housing expenditure. Amongst its wide-ranging proposals was a reaffirmation that Scottish Planning Policy 3 (SPP3) would be reviewed, with the intention of producing a stronger policy position on affordable housing.

Study objectives and approach

The aim of this study was to look at how the affordable housing policy embodied in PAN 74 is bedding down, and whether there are lessons to be learned for the Scottish Government and local authorities.

The specific objectives were to:

- Review the existing and emerging policy framework,
- Benchmark what Scottish local authorities have achieved so far in the development and implementation of development plan based affordable housing policies,
- Compare and contrast the position in Scotland with that in England,
- Establish the views of key stakeholders in Scotland regarding the strengths and weaknesses of the current Scottish Government affordable housing policy approach as well as the proposals for a planning gain supplement,
- Draw out lessons for central and local government.

To achieve these objectives, the study involved a number of elements:

- A review of national policy documents, and of the literature that has recently developed in connection with the implementation and outcomes of affordable housing policies in England and Scotland,
- An examination of current Scottish local authority affordable housing policies,
- An online survey of housing and planning staff in all local authorities to establish where they are in terms of implementation, their perceptions of how successful the policy has been, and their thoughts on what factors are contributing to or impeding successful implementation,
- An online survey of developers and RSLs, to seek their views on the policy framework, and the manner in which it is being implemented,
- Interviews and discussions with elected members, civil servants, developers, and professional bodies.

We are very grateful to all who took the time to contribute to this study.

2 Affordable Housing Policy in England

Introduction

The central purpose of an affordable housing policy is to extract planning gain (that is, the increase in land values related to development sanctioned through the planning process) in order to meet social policy objectives with respect to housing.¹ The mechanism for achieving this is a private contractual planning 'agreement' between developers and planning authorities.

The roots of the current Scottish affordable housing policy framework lie in developments in English planning policy and practice in the 1990s.²

The evolution of affordable housing policy in England

Planning agreements in England are currently negotiated under Section 106 of the Town & Country Planning Act 1990,³ but the current framework has been subject to a complex process of constant policy evolution.

Initially, implementation of the planning agreement approach to affordable housing provision was promoted through planning Circular 7/91 (DoE, 1991), which highlighted the ability of local planning authorities to negotiate a proportion of affordable housing on larger sites. However, as Crook and Whitehead (2002) note, it was the publication of Planning Policy Guidance Note 3 (PPG3) in 1992 (DE, 1992) that made it possible for local authorities in England to develop formal planning policies for affordable housing. Of particular significance was the fact that PPG3 identified a community's need for affordable housing as a material planning consideration.

The policy position was then reinforced with publication of Circular 6/98 (DETR, 1998), which emphasised the link between on-site provision of affordable housing and government policies on social inclusion, mixed communities, and urban renaissance.

PPG3 was revised in 2000 (DTLR, 2000), which strengthened the policy position further by stating that planning permission could be refused if affordable housing was not provided. Under this revision, PPG3 created 'a presumption in favour of both 'mixed and balanced communities' and the active use of [affordable housing] policies where needs justified them' (Bramley, 2003).

PPG3 was in turn replaced by 'Planning Policy Statement 3 (PPS3) in November 2006, (DCLG, 2006a). PPS3 states that local planning authorities should:

- Set an area-wide target for the amount of affordable housing to be provided, reflecting the likely levels of finance available, including public subsidy and the level of developer contribution that can reasonably be secured,
- Set separate targets for social-rented and intermediate affordable housing where appropriate,
- Specify the size and type of affordable housing that is likely to be needed,

¹ Cullingworth and Nadin (2002) note that 'the term planning gain is popularly used, but with two different meanings. The term can denote the provision of facilities which are an integral part of a development, but it can also mean "benefits" which have little or no relationship to the development, and which the local authority requires as the price of the planning permission'.

² Prior to this, the established orthodoxy was that the 'affordability' of housing was not a legitimate concern of the land use planning system (Bramley, 2003).

³ As substituted by Section 12 of the Planning and Compensation Act 1991.

- Set out the approach to seeking developer contributions, with a presumption that affordable housing will be provided 'on site',
- Consider allocating and releasing sites solely for affordable housing, including using an exception site policy in rural areas.

PPS3 was accompanied by an associated policy statement *Delivering Affordable Housing* (DCLG, 2006e), which exhorts local authorities to greater efforts in the achievement of planning gain for affordable housing:

Where housing commands much higher prices there is greater scope for securing affordable housing through developer contributions...In traditional high value areas, local planning authorities already have strong experience of negotiating planning obligations...But there is now a need for local authorities in other areas to raise their game.

Delivering Affordable Housing also emphasised the government's view that more affordable housing than is currently the case should be being secured through the planning system without the need for a public funding contribution.

PPS3 and *Delivering Affordable Housing* together represent current national affordable housing policy in England. However, planning obligations and agreements cover far more than affordable housing (Barker, 2006a). For example planning obligations negotiated under Section 106 agreements can, amongst other things, include provision for:

- Improved community and transport facilities, such as provision of educational facilities and road alterations or improvements,
- Measures to mitigate impact on a local area, such as landscaping.

Circular 05/05,⁴ (ODPM, 2005a) encourages local authorities to set out standard approaches to planning obligations in order to provide developers with greater clarity about likely contributions. Moreover, Circular 05/05 states the 'basic rules' of obligations policy. These are that a planning obligation must be:

- Relevant to planning,
- Necessary to make the proposed development acceptable in planning terms,
- Directly related to the proposed development,
- Fairly and reasonably related in scale and kind to the proposed development,
- Reasonable in all other respects.⁵

Planning gain supplement

Proposals for a planning gain supplement

Crook, A. et al (2006) have pointed out that the way in which planning policy has evolved in England has meant that planning obligations now perform two different economic roles: 'as a vehicle for compensating third parties for the negative externalities arising from development and as an informal tax of land betterment'.

⁴ This replaced Circular 1/97, which should not be confused with the above noted Circular 7/91 concerning planning and affordable housing (DoE, 1991).

⁵ The Circular was followed by practical guidance on the development, negotiation and implementation of Section 106 agreements in July 2006 (DCLG 2006b) and a 'model' Section 106 agreement in August 2006 (DCLG, 2006c).

Barker (2004) argued that these roles should be separated, and therefore recommended that:

- Section 106 planning agreements should be restricted to dealing with mitigation of development impact and affordable housing contributions,
- A new tax – a planning gain supplement (PGS) – should be used to extract separately other planning gain, with the revenue this generates returned to local authorities to finance infrastructure investment.

The Barker recommendations emerged within an already dynamic policy development context, and have contributed to what subsequently became a complex, confusing and divided policy debate.⁶

As far back as 2001, the Department of Transport, Local Government and the Regions (DTLR, 2001a; 2001b) had proposed the replacement of negotiated contributions by standard authority-wide financial tariffs. The attractions of this approach appeared to have receded when, in July 2002, the Deputy Prime Minister announced that legislation to introduce such tariffs would not proceed (DTZ Pleda, 2002). However, in October 2003 the Office of the Deputy Prime Minister (ODPM, 2003) proposed a new optional planning charge, which applicants could choose to pay in place of a negotiated planning obligation. The intention, as explained in a subsequent draft Circular (ODPM, 2004), was 'to introduce more speed, certainty and transparency into the process, not to enlarge the scope of planning obligations beyond current practice'.

The proposed optional planning charge was in turn overtaken by the Barker recommendation in March 2004 to introduce PGS, with the Chancellor in his 2004 Budget Report affirming this would be considered.

Subsequently, no less than four documents have been released in two rounds of PGS related consultation.

The first consultation document (HM Treasury et al 2005) indicated that the intention of PGS, which would not be introduced before 2008, would be to:

- Capture a 'modest portion' of the increase in land value that occurs when full planning permission is granted,
- Be 'mostly recycled' to the local level, with the remainder used to fund major infrastructure such as transport improvements,
- See planning obligations scaled back and Section 106 applied solely to items directly related to a development site (such as an access road), and affordable housing,
- Apply UK-wide on both residential and non-residential developments,
- Be payable under a self-assessment regime administered by HM Revenue and Customs at the commencement of development.

The proposal involved PGS being charged on the difference between the market value of land with full planning permission – 'planning value' (PV), and the market value of land in its current use assuming no development potential – 'current use value' (CUV). The tax would be calculated in two steps:

First, determine the uplift in value = PV - CUV
Second, establish tax liability = PGS tax rate x uplift in value

A factsheet published to accompany the consultation document noted that the PGS differed from the previously proposed tariff and 'optional planning charge' 'because it is proportionate to the increase in land value, not infrastructure need' (ODPM, 2005b).

6 For more background on this, see Barclay et al (2007).

The Chancellor launched the second round of consultation on PGS in the Pre-Budget Statement of December 2006. He emphasised that the Government believed PGS, alongside scaled-back Section 106 agreements (which would still include the provision of affordable housing), represented 'a fairer and more effective means of releasing land value to help finance infrastructure' (HM Treasury, 2006).⁷ The Pre-Budget Statement also advised:

PGS will apply across the UK but because it is essentially a local measure, all PGS revenues generated in the Devolved Administrations would be returned to the country in which they were generated. The use of PGS funds in the Devolved Administrations would be determined by the administrations and would not be subject to many of the conventions prescribed for the use of PGS revenues in England, although it is proposed that PGS revenues should be dedicated to infrastructure throughout the UK.

Two of the three consultation documents published in this second round related to important technical issues – valuing planning gain and paying PGS (HMRC, 2006a; 2006b). The third document set out proposals for how planning obligations should be changed to co-exist with PGS. In particular, it made the following somewhat remarkable comments with respect to affordable housing:

Some of the problems experienced by developers and local authorities during negotiations for affordable housing contributions are understood to arise because these arrangements have evolved over time as an offshoot of the planning obligations system. Policy has largely followed practice, rather than vice versa...In designing new arrangements, the Government is keen to create a clear and explicit basis for the delivery of affordable housing through the planning system. In practice, this means reviewing whether improvements could be made to the current legal basis for planning obligations, to make clearer the intended use of planning obligations for affordable housing contributions. It will also entail the production of clear policy statements on the provision of affordable housing through planning obligations, to complement Planning Policy Statement 3 (Housing). In particular, the new arrangements would need to make clear in Local Development Frameworks the link between housing need, planning policies and the developer contribution being made – a relationship that has not always been clear in the past...We would expect to consult further on how this link should be made explicit when putting forward draft regulations and Circulars for implementing the new arrangements for planning obligations. (DCLG, 2006d)

The consultation document also went on to say of current and proposed future arrangements:

The lack of clarity for a developer approaching a negotiation as to what value of contribution is likely to be sought can result in protracted discussions with the local planning authority and complex negotiations with landowners over the costs of development. The Government is therefore proposing the introduction of a common starting point in negotiations for the value of developer contributions to affordable housing to be implemented through Local Development Frameworks...A range of options has been considered for the common starting point for the value of

⁷ He also announced that PGS would not be introduced earlier than 2009. Shortly after this statement, a Planning Gain Supplement (Preparations) Bill was introduced to permit HM Revenue and Customs to spend monies to develop the systems necessary to administer PGS. More details regarding the Planning Gain Supplement Bill (now enacted) can be found in Barclay (2007) who quotes Colin Breed (Lib Dem MP for South East Cornwall) as stating that he 'doubted whether the taxpayer had ever been asked to fund so little of substance for so much money with so poor a chance of a positive outcome'.

contributions through a brief survey of the current practices...and taking account of existing policies in English and Scottish local authorities. For example Scottish Executive's policy in Planning Advice Note 74 (para 38) uses discounted serviced land as a common currency for affordable housing negotiations. Consideration of these examples would suggest that a

contribution by the developer in the form of, or equivalent to the value of, the land necessary to support the required number of affordable units on the development site would represent a reasonable starting point for negotiations. However, the Government would like to seek the views of stakeholders on the best common starting point for the value of contributions towards affordable housing. (DCLG, 2006d)

The draft UK legislative programme published in July 2007 contained provision for a PGS Bill, but the Housing Green Paper published in July 2007 indicated that the Government was not irrevocably committed to this approach (DCLG, 2007). Indeed in presenting the draft legislative programme to the House of Commons on 17 July 2007, the Prime Minister said:

The planning gain supplement Bill – to ensure that the public benefit from planning gain – is provisional, because if, prior to the pre-Budget report, a better way is identified of ensuring that local communities receive significantly more of the benefit from planning gain, including to invest in necessary infrastructure and transport, and it is demonstrated that it is a better alternative, the Government will be prepared to defer next session's legislation...The Government are offering a deal; we would be prepared to withdraw the planning gain supplement Bill if we could find a means of extracting more planning gain for local communities as new housing and new infrastructure are built. (HC Deb 2006–7 462, Col. 1449)

It was therefore not entirely surprising that in the pre-budget speech on 6 October 2007 the Chancellor stated that the PGS Bill would not be introduced.

Reactions to the PGS proposals in England

The reason for this change in policy direction is not hard to fathom. It reflects near universal criticism of the content of the PGS proposals, – and in important instances the absence of detailed content – as well as concerns regarding how the PGS proposals would have interacted with other elements of the planning system.⁸

Barclay et al (2007) report that the head of planning for CB Ellis called the proposals 'barking mad', while Mark Francois (Conservative MP for Rayleigh) summed up the position in a House of Commons parliamentary debate on 20 February 2007 thus:

To remind the Minister, the Confederation of British Industry does not want it. The Institute of Directors does not want it. The British Property Federation does not want it. The Scottish Property Federation does not want it. The Royal Institution of Chartered Surveyors does not want it. The Royal Town Planning Institute does not want it. The Chartered Institute of Taxation does not want it. The House Builders Federation does not want it. The National Housing Federation wants it, but only if it does not apply to the federation. The Scottish Executive might want it, but only if it does not apply in Scotland. The Labour Housing Group does not want it if it applies to Cornwall, Cumbria, Derbyshire, or Yorkshire. The right hon. Member for

⁸ Many of these concerns were discussed in the House of Commons on 20 February 2007 (HC Deb (2006–7) 457, Col 133).

Greenwich and Woolwich [Nick Raynsford] does not want it to apply anywhere at all, and nor does my right hon. Friend the Member for Suffolk, Coastal (Mr. Gummer) – he would not want it even if it applied only to Protestants. No one wants it except the Treasury, and even the Treasury is not sure whether it wants it at all. (HC Deb (2006–7) 457, Col 194)

In less florid terms, Crook, T. et al (2006) expressed concern that a 'PGS and scaled back planning agreements' approach would undermine the achievements of Section 106 in securing access to land in high value areas and delivering mixed communities. In particular, depending on the rate at which PGS was levied, Crook et al argued that it would reduce the amount of affordable housing secured through planning policy.

Research by Knight Frank (2006) on behalf of a consortium of the British Property Federation, the Confederation of British Industry, The Home Builders Federation, and the Royal Institution of Chartered Surveyors concluded:

- PGS would create blockages in the planning system, make development more costly, and reduce housing supply.⁹ In particular, the proposed complex valuation procedures would create lengthy disputes,
- The additional costs of collecting and redistributing the tax would be high,
- PGS would threaten the economic viability of much development as payment would be required before the value of planning permission had been realised,
- It is unclear who would have to bear the cost,
- PGS would be unsuitable for some types of development such as brownfield sites,
- It would remove the link between the developer, the development and direct community benefit,
- It could result in significant cross-subsidisation of development between different regions.

Knight Frank (2006) also reported that a case study based on comparison of the potential yields available from the proposed PGS and existing arrangements indicated that a PGS plus scaled back Section 106 system might not generate sufficient additional tax revenue for local and strategic infrastructure to support housing growth.

Reactions to the PGS proposals in Scotland

Homes for Scotland (2006 and 2007) also expressed reservations, indicating that PGS would be 'unworkable and ineffective' in Scotland and in a Scottish context could:

- Have an inflationary impact on house prices and inhibit land release in rural areas and with respect to brownfield sites,
- Involve delays in infrastructure investment dependent on the recycling and use of PSG revenues,
- generate a situation involving double taxation of gain if used in conjunction with continued Section 75 agreements,
- Lead to reduction in infrastructure investment, because the UK government would have no power to direct the Scottish Government on how to use PSG revenues recycled to it, and in turn the Scottish Government would have limited power to ensure local authorities use these revenues in specific ways.

⁹ (Muellbauer 2004) also argues that if introduced PSG could restrict supply.

Homes for Scotland (2007) argued that resolving the PGS question was a matter of immediate consequence:

Uncertainty over these matters is already creating problems for developers obtaining contracts over land. While both the rate of PGS and what items of infrastructure it will cover are unknown it is already proving extremely difficult...In pressurised markets where developers are bidding against each other, all these uncertainties create a highly inflationary situation and until they are resolved, there could be a falling off in housing production which defeats the government's aim of stepping up house production with a view to stabilising housing markets.

More remarkable than the views of Homes for Scotland are those of the former Scottish Executive (Scottish Executive, 2006). The previous administration articulated in strongly worded terms three main areas of concern:

- A 'misconceived final design of the planning gain supplement might constrain rather than support development and regeneration,
- Tensions will arise from divergent planning systems,
- A lack of clarity in the proposed distribution of PGS revenue: 'At present, the [revenue recycling] proposals have caused considerable confusion and concern over how the resources to be allocated would be calculated, and the mechanisms for implementing those allocations'.

The Executive also expressed concern about additional burdens that the administration and enforcement of PGS could place on local authorities and emphasised that there was a strong risk that PGS could adversely affect development activity in Scotland:

If the net effect is to act as a brake on development in most areas of the UK, it will be particularly acutely felt in Scotland, given the different nature of the market and prevailing land values.

There is, of course, the general risk that the imposition of planning gain supplement would depress land values to the extent that landowners change their willingness to release land for development, instead of waiting in anticipation of a change in policy...We expect that landowners would be less willing to release land for development in Scotland and other areas where the marginal effects of planning gain supplement are likely to be highest.

If this tax is combined with the continuing need for developers to provide infrastructure up-front to allow developments to take place, the effect could be to stifle active development.

Thought needs to be given to the micro-economic effect of the supplement – in other words, how to ensure that investment and development would not be deterred by the supplement's impact on cash-flow, viability, and profitability of individual projects.

Echoing the views of the Chartered Institute of Housing (2006), the Scottish Executive also argued that there would be a strong case to exempt public bodies and registered social landlords from liability for PGS, particularly if the land in question were to be developed solely for the provision of affordable housing. In addition, Scottish Executive comments were consistent with the Royal Town Planners Institute (RTPI) view that the housing market conditions that gave rise to PGS proposals in England do not equally apply in Scotland:

Much of the experience upon which the PGS proposals are based is not applicable in Scotland where the issues arising from regional overheating and from the expanding application of developer contributions have not been experienced to the same extent as in England. (RTPI and Halliwells, 2007)

Future reform?

Although PGS has now been abandoned, the pre-budget speech in October 2007 confirmed, as already noted, that the Westminster Government intends to prepare legislation to introduce a planning charge. Another possible reform could involve implementation of Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004, which give the Secretary of State for Communities and Local Government a currently unused power to make regulations in England to replace Section 106.¹⁰

What these possible reforms will look like in detail only time will tell. However they may signal further changes in the context in which affordable housing contributions are sought from developers under S106 in England, and have implications for the equivalent agreements in Scotland.

¹⁰ There may also be impacts from wider changes to the English planning system set out in the White Paper published in May 2007 (DCLG et al, 2007) but these proposals do not bear directly on the affordable housing issue.

3 The Scottish Policy Framework

Introduction

Scottish planning authorities derive their power to negotiate contractual planning agreements from Section 75 of the Town and Country Planning (Scotland) Act 1997. The chapter looks both at the current policy framework in Scotland for using the land development process in Scotland to deliver affordable housing, and at proposals for further reform as set out in Firm Foundations (Scottish Government, 2007).

The current policy framework

During the 1990s Scottish local authorities did not use the planning system to secure affordable housing, and official policy guidance on the extent and ways in which local authorities could use the land planning system to secure new affordable housing was unclear. However by the end of the decade some local authorities had begun to express interest in the use of S75 agreements to secure affordable housing provision, especially in Edinburgh and rural areas where a build up of affordable housing pressures were evident (Pawson and Hayhurst, 2002). In addition, a study undertaken for the Scottish Executive in 2001 recommended it encourage authorities to include affordable housing policies within local development plans (School of Planning and Housing, 2001).

Subsequently, Scottish planning policy has firmly moved in this direction. Scottish Executive planning policy positions are contained in SPP Statements and PAN publications. SPP3,¹¹ which was published in 2003, deals with housing, whilst as noted earlier, PAN 74, which was published in March 2005, provides guidance on affordable housing policies.

SPP3

SPP3 established the provision of affordable housing as a legitimate planning concern in Scotland (RTPI in Scotland, 2006). From an affordable housing perspective, the key points made in SPP3 are that:

- A shortage of affordable housing identified within a current local housing strategy (LHS) on the basis of a current housing needs assessment is a material consideration in planning processes, and should be addressed 'as the opportunity arises' through reviews of structure and local plans,
- Where a planning authority believes the planning system has a role to play in the provision of affordable housing it should state this as soon as possible in the development plan with an indication of what will be expected from developers,
- Where land values are sufficiently high to support an affordable housing policy based on planning agreements, the development plan should include such a policy if there is need for one, after consultation with house builders,
- Planning authorities should liaise with Communities Scotland and housing colleagues over affordable housing delivery – specifically where public funding will be required,
- Planning authorities should keep the appropriateness of the policy, and progress with implementation under review,
- An applicant's need for planning permission should not be used to obtain a benefit unrelated in nature, scale, or kind to the proposed development.

Importantly, in the regulatory impact assessment accompanying SPP3 (Scottish Executive Development Department (2003), the Scottish Executive warned more generally of the dangers of misuse of affordable housing policies by planning authorities:

11 As discussed in more detail below, SPP3 is currently being revised.

It would clearly be a cost to society if the new requirements of SPP3 meant that in certain areas development could not be achieved at a fair margin to house builders, given prevailing final property prices in an area, for any land value... This is clearly not the intention of SPP3 and it is for the local planning authorities to operate the new policy with due proportionality to ensure that problems of this nature do not occur.

PAN 74

PAN 74 indicates how the planning system can play the supporting role in affordable housing provision envisaged in SPP3, and develops much of the advice first offered in the earlier document. PAN 74 identifies 5 types of affordable housing:

- Social rented,
- Shared ownership,
- Shared equity,
- Discounted low cost sale,
- Housing without subsidy.

It asserts that a local authority's LHS will provide evidence of the relative balance of requirement for each category, as well as the proportions of households of different type in need.

PAN 74 confirms that where an authority intends to introduce an affordable housing policy that seeks a contribution of affordable housing on private housing sites:

- Any such requirement must be justified by the LHS, based on a housing needs assessment,
- The LHS and the development plan must be consistent with each other,
- The local plan must set out the affordable housing policy in clear terms,
- Affordable housing policies should be developed in full consultation with stakeholders, including the development industry; and there is an onus on the planning authority to ensure a common and shared understanding of the policy amongst all interested parties,
- Developers should be in a position to take the cost implications of the affordable housing policy into account at the time of site purchase,
- Supplementary planning guidance covering issues such as an authority's approach to negotiating planning agreements, off-site provision and commuted sums can be used to augment a policy within a local plan, but this should also be subject to consultation before adoption.

PAN 74 attempts to pre-empt situations involving protracted negotiations by identifying a benchmark contribution through an affordable housing policy:

Policies in local plans may seek affordable housing contributions as part of housing development proposals, with the inclusion of a percentage figure. The benchmark figure is that each site should contribute 25% of the total number of units as affordable housing... As a guide, for sites in urban areas local authorities should seek to achieve on-site provision for developments of 20 or more units, but on smaller sites allow for off-site provision or commuted sums. In rural areas where the general scale of development is smaller, a lower threshold for on-site provision may be appropriate in order to make affordable housing available in a range of locations.

Moreover, PAN 74 is also explicit on the scale of contribution to be sought:

The contribution required by the local authority from the developers of a market housing site should normally be the provision of serviced land i.e. a proportion of the site which can be developed by or for an RSL. Such land should be transferred either at a value relating to its end use for affordable housing or, by agreement between

the developer and the RSL, at a lower value. In any event it should be transferred at less than the value for mainstream housing for sale. The value should be determined by the District Valuer or a chartered valuation surveyor suitably experienced in the type of property and the locality and appointed by mutual agreement between the parties, failing which the chairman of the RICS in Scotland.

PAN 74 notes that sites will not always fall within areas that will secure development funding from Communities Scotland, and that this may necessitate an alternative type of developer contribution, such as market housing at discounted prices, houses for social rent or shared equity ownership or (exceptionally) land elsewhere or a commuted payment, all of which should be of a value equal to the cost of providing the percentage of serviced land required by the policy. In this context PAN 74 clearly states 'It will not be appropriate to introduce a policy that requires developers to construct new houses to be handed over free to a local authority or an RSL...In each scenario it would be expected that the developer makes the same effective level of contribution, but potentially in different forms'.

PAN 74 is also clear that the need to negotiate a planning agreement for affordable housing should not be allowed to significantly delay approval of market housing or other development elsewhere on a site, suggesting negotiations on planning agreements should be concluded within four months after agreement has been reached on other detailed elements of a planning application.

On matters of site design and layout issues, PAN 74 states:

The affordable housing component should be well integrated into the overall development, and have good linkages to surrounding services including public transport. Concentrating affordable housing for rent in small groups rather than 'pepper potting' individual houses will ease the subsequent management of the homes by an RSL...Affordable housing should wherever possible be indistinguishable from the general mix of other houses on the site in terms of architectural quality and detail.

Finally, PAN 74 recommends other measures that planning authorities should consider to increase affordable housing provision, including:

- Allocating new sites in local plans specifically for affordable housing, 'in particular small sites within or adjoining existing villages to provide for local needs in perpetuity',
- Identifying plots for self build dwellings,
- Using compulsory purchase powers to support the delivery of social rented housing,
- Working with major landowners to identify opportunities to convert surplus properties.

The guidance stresses the importance of regular monitoring by local authorities of progress in policy implementation and urges them to publish regular progress reports recording how many units of affordable housing of different sizes and types have been delivered, the number of market housing units delivered, the transfer value of sites and grant payable.

Ongoing policy developments

Review of SPP3

A recent survey found that 68% of local planning authorities felt that the current powers and advice provided by SPP3 and PAN74 were sufficient to deliver affordable housing in their areas (Chartered Institute of Housing in Scotland, 2006), although the survey also highlighted concerns regarding the implementation of affordable housing policies.

The current review of SPP3 may address these concerns. In welcoming the review of SPP3, the Royal Town Planning Institute in Scotland called for a more 'comprehensive raft of policy and guidance' (RTPI in Scotland, 2006) including:

- Revision of the SPP3 policy context to include the operation of the 25% benchmark,
- Revision of PAN 74 to provide further guidance on housing needs assessments, the valuation of land for affordable housing, the definition of low cost home ownership, and the use of model policies,
- New mechanisms for maintaining availability of social rented homes as 'affordable' in the longer term,
- New guidance on joint working between LHS and development plans,
- New training initiatives to address skills requirements in planning and housing departments,
- Detailed guidance on practice and delivery in partnership with housing, community, local government finance and developer interests.

These views are consistent with the finding that almost 90% of those responding to a survey of Homes for Scotland member firms believe the provision of new affordable housing in Scotland is not being well planned or delivered (McGrigors, 2006).

Firm Foundations

The Royal Town Planning Institute in Scotland's views also appear to have resonated with the Scottish Government, which, on 31 October 2007, published *Firm Foundations: The Future of Housing in Scotland*. This document includes a range of proposals to strengthen strategic planning for housing, and to improve the link between planning and housing related strategies. The most important proposals are:

- New guidance for local authorities on the assessment of housing markets and housing need to inform both LHS and development plans,
- Further guidance setting out how local authorities should play a greater strategic role in shaping the housing system in their areas,
- Completion of the revision of SPP3 by 2008 to ensure there is sufficient land for housing and to support the creation of quality residential environments,
- The establishment of a specialist national function 'to bring a long-term perspective on the operation of regional housing markets in Scotland...through the provision of strategic information on trends and requirements, and to provide advice to support local government in the drive to improve the functioning of housing markets',
- The introduction of a presumption that will allow planning permission to be granted for developments in advance of land being designated in a development plan in areas where there is evidence of a shortfall of housing,
- A new role for the Scottish Government in the acquisition and assembly of land for development with a more balanced mix of housing in pressured markets,
- A revised consent regime to allow local authorities to dispose of land at less than market value where this will contribute to community wellbeing or offer significant community benefits. This builds on recent consultations on Regulations for the disposal of land by local authorities,
- New stand-alone settlements in some (unspecified) parts of Scotland.

Firm Foundations also affirmed that a Housing Supply Task Force established in summer 2007 and chaired by the Minister for Communities and Sport will identify further actions to remove barriers to the provision of more new market and affordable housing.

The policy document also notes that the future development of local authority affordable housing policies will be influenced by the implementation of the Planning etc (Scotland) Act 2006, which introduced the most fundamental changes to the Scottish Planning system since 1947. The implementation of this Act, which will continue until 2009, is intended to strengthen community involvement in planning, speed up decision making, and accelerate the supply of new housing.

Among the diverse range of changes the Act introduces are:

- Replacement of the current Scotland-wide system of Structure Plans with establishment of four Strategic Development Plan Authorities that will cover Scotland's four City Regions,
- Introduction of Local Development Plans (LDP) in place of Local Plans. LDPs will have to be updated every five years,
- A reduction in the duration of planning consent from five years to three years.

4 How Much Housing has Section 106 And Section 75 Delivered?

Introduction

Adams and Watkins (2002) point out that by giving the planning system a central role in the provision of affordable housing, the UK affordable housing policy framework effectively operates on the basis of bargaining and negotiation. While this has allowed flexibility in interpreting the public interest, it has also created maximum uncertainty (Cullingworth and Nadin, 2002).

Many commentators agree that delivery under this policy framework has yet to match expectations, although the yield has been growing over time. This chapter reviews available evidence on what is being secured through the policy in England and Scotland.

England: Section 106

Barlow et al (1994) estimated that between 1991 and 1994 around 10–12,000 dwellings were delivered through Section 106 agreements. According to Crook and Whitehead (2002) government estimates were of around 15,000 dwellings in 1998/9 and 1999/2000, although this figure related to commitments rather than completions. Crook and Whitehead also suggested that 15,000 per annum was likely to be the maximum achievable amount at the then current overall levels of output.¹²

Crook et al (2002) reported that, in the year 2000, a maximum of 10% of all completions in England were affordable homes secured through Section 106 – approximately 12,000 units. This research also found that 75% of the sites on which these units were being provided involved social housing grant, and the majority of the units were being provided in London and the South East. The overall conclusion offered by the authors was that

the current system produces remarkably little additional housing. Moreover, it does so at significant administrative cost while posing delays in the flow of development land with planning permission and the potential for reducing the amounts of private housing provided. On the positive side, planning gain has probably changed the geography of social rented housing, providing more affordable homes in areas of high house and land prices and growing employment opportunities, and has fostered more mixed communities.

Despite these partially pessimistic comments, Crook et al (2003) advised the Barker Review of housing supply not to take an overly negative view of the existing framework:

Although these results might suggest a very disappointing outcome, we must stress that the policy has produced significant numbers of new affordable homes in mixed communities in areas where until now there have been only limited numbers of affordable homes. In addition, numbers have been increasing as the current system 'beds down' and there is scope for increasing numbers within the current system.

By 2005, affordable housing delivered through the planning system was accounting for over 40% of all affordable housing completions (Whitehead et al, 2005). However, the evidence also showed that at the same time as Section 106 unit totals were increasing, overall affordable provision was falling.

12 A figure subsequently increased to 25,000 (Crook, T. et al, 2006).

Wilson and Anseau (2006) note the number of social rented houses completed in England fell from around 38,500 in 1994/5 to around 17,100 in 2002/3, despite increased expenditure over the same period. Table 4.1 shows the change over the period from 1999/2000 to 2002/3 in more detail.

Table 4.1: Total completions, total affordable completions and Section 106 affordable completions, England				
	1999/2000	2000/2001	2001/2002	2002/2003
Total completions	140,000	133,700	129,900	137,700
Total affordable completions	44,226	44,971	32,210	28,835
Section 106 permissions	15,529	14,768	18,480	23,727
Section 106 completions	9,244	9,297	10,303	12,592
<i>Source: Whitehead et al, 2005, Table 1, p. 9</i>				

Moreover, as table 4.2 confirms, public subsidy remained a key element of the provision of Section 106 affordable housing.

Table 4.2: Funding of affordable units secured through planning policy, England		
	Public subsidy	No subsidy
2000/2001	79%	21%
2001/2002	76%	24%
2002/2003	82%	18%
<i>Source: Whitehead et al, 2005, Table 8, p. 16</i>		

Whitehead et al (2005) estimated that over 15,000 affordable units could be delivered via Section 106 in 2005/6, but they also pointed out that:

Local authorities are not always calculating the proportion of affordable units properly, so they are in fact getting less than they say. Instead of taking the affordable units as a proportion of total units, they are taking the affordable as a proportion of the market units. For example they may appear to be meeting their targets of 25 percent affordable whereas in fact they are only getting 17 percent affordable. (Whitehead et al, 2005)

Other research has confirmed that limited additionality is being derived from Section 106 agreements in England. Pointing out that Section 106 developments require substantial amounts of Social Housing Grant (SHG) to make them viable, Monk et al (2005) note a 'worst case scenario' would be one where:

Many traditional sites are transferring into the Section 106 strand with the proportions being procured obviously less than 100 per cent; Section 106 sites are more expensive and so use up available SHG; and negotiations, etc constrain the capacity of HAs to take up opportunities. In this case, even though the Section 106 policy alone might appear successful, total numbers would fall because of the reduction in output from traditional sites.

They found the evidence to show that in fact:

both the proportions and the total of homes produced in the traditional, non-Section 106 route are declining. It is clear that Section 106 is becoming more important and that there has been a significant element of substitution between the two mechanisms for providing new affordable housing. This has been associated with an overall decline in the output of affordable homes...If the system were able to produce the numbers of affordable homes through the planning system that are currently projected in planning permissions, lack of SHG is likely to become an increasing constraint in many areas. Currently this is being addressed (at least rhetorically) by increasing the number of Section 106 units provided with no SHG, often in the form of low-cost home ownership or discounted market housing as well as by building smaller units. But proportions of Section 106 dwellings requiring SHG to make them financially viable are still rising and there is also evidence of a clear trade-off between scale of grant and numbers achieved.

Monk et al (2005) also noted that while the policy has allowed housing associations to develop in areas and on sites that they had not previously been able to afford, the increasing reliance on Section 106 agreements has made affordable housing provision more vulnerable to economic cycles.

In a subsequent study, Monk et al (2006) reported that the numbers of affordable housing completions delivered through Section 106 agreements in 2004/5 had risen to over 18,000, equivalent to around 12% of total housing output.¹³

However, they also found that completions were increasing more slowly than permissions, and that developers might not always be delivering what was agreed in terms of property (floorspace) size, density, or (estate) layout. They concluded that implementing Section 106 affordable housing agreements is by no means straightforward.

Finally, looking at affordable housing policy potential and delivery in monetary terms, Whitehead et al (2005) concluded that local authorities could secure affordable housing contributions of at least 5% of gross development value of a scheme through developer contributions in higher demand areas.¹⁴

There is considerable variability in the value of what is being secured through Section 106 agreements by different local planning authorities. On a hypothetical development proposal, the Audit Commission (2006b) found the likely value of developer contributions including affordable housing could range from £500 to over £30,000 per dwelling across a number of local authority areas. It concluded that in some cases this variation would be a valid reflection of local or site circumstances, but in other instances it would be due to factors within the control of local authorities.¹⁵ Crook, A. et al (2006) found that 'in the vast majority of cases, those authorities using standard charging secured more planning obligations than those that did not'.

¹³ Some 55% of all affordable housing completions in England in that year.

¹⁴ The Audit Commission (2006b) concluded the value of planning obligations typically does not exceed 10% of development value, and is often much less. Crook, A. et al (2006) provide a tentative estimate for the value of affordable housing actually delivered through planning obligations in 2003/4 of £600 million. They also report that, in addition, approximately £32 million of commuted sum payments were negotiated.

¹⁵ Specifically, weaknesses in the clarity of an authority's policy base, reliability of its procedures and the skills of its officers were found to introduce delays and reduce the value of secured developer contributions. To help address these problems, the Audit Commission has produced a number of self help practical guides for local planning authorities to use (Audit Commission 2006c; 2006d; 2006e).

The available evidence therefore suggests that the policy framework is certainly delivering something in England, and its impact is growing. At the same time, there are a number of indications that what is being delivered may not necessarily be what is sought, agreed, or indeed what is most required. Moreover, the amount of additional housing being secured is comparatively modest. Nevertheless, Crook, A. et al (2006) have recently advised the House of Commons Communities and Local Government Committee that the Section 106 policy has now been successfully established. While some would no doubt disagree with this it is worth pointing out that, if true, it has taken 18 years to achieve this.

Scotland: Section 75

Bramley (2003) estimated that affordable housing policies in Scotland might generate up to 1,500 affordable homes in addition to those funded by Communities Scotland through Housing Association Grant (HAG). However, Bramley et al (2007) reported that the planning system has been slow to deliver new affordable housing in Scotland, and that this is becoming a source of concern.

Interviews for the present study indicate that a small minority of authorities feel their affordable housing policies are beginning to deliver a reasonable number of affordable housing units, but it was not possible to quantify this. Shiel et al (2007) also found it difficult to establish how many units have been delivered to date in Scotland, how many are currently anticipated under confirmed Section 75 agreements, and how many might be anticipated to be in the development plan pipeline. However, they report that the council with the most 'mature' affordable housing policy in Scotland¹⁶ had, by late 2006, secured just 150 units through that policy, albeit with more 'in the pipeline'. These authors suggest that no significant delivery in Scotland as a whole can be expected before 2008.

Nonetheless, Shiel et al (2007) argue that other potential planning mechanisms for delivering affordable housing¹⁷ are either inappropriate or likely to contribute only limited amounts of additional housing. They therefore conclude that policies based on a quota requirement (such as the benchmark requirement for 25% provision of affordable housing in PAN 74) should continue to be seen as the 'backbone' of affordable housing land supply in Scotland, as they will deliver 'mixed communities' as well as additional new housing units.

One reason why it is difficult to quantify what is being delivered through affordable housing policies in Scotland is that most authorities with affordable housing policies have no comprehensive monitoring system in place, in spite of the monitoring requirements set out within PAN 74.¹⁸ The Scottish Government has acknowledged this problem, and has recently engaged with local authorities to address it through the annual housing land audit process.

Recent efforts to monitor progress in Scotland suggest that by late autumn 2006 around three quarters of Scottish local planning authorities had adopted some form of affordable housing policy (CIH in Scotland, 2006; Gordon, 2006).

Table 4.3 summarises where individual planning authorities in Scotland are in the development of affordable housing policies. It indicates that, as of September 2007:

- Most Scottish local authorities had decided to pursue the implementation of affordable housing policies, but interest is lower amongst authorities covering the urban core of the Clyde Valley,

¹⁶ City of Edinburgh Council, which introduced its policy in the year 2000.

¹⁷ such as land allocations specifically for affordable housing; introduction of an affordable housing land use class; exceptions policies for affordable housing provision; and use of compulsory purchase powers.

¹⁸ This issue is by no means unique to Scotland. Monk et al (2006) found that systems for monitoring of Section 106 outputs in England were typically poor.

- The two national park authorities are currently working within the affordable housing policies of the local authorities whose administrative areas fall within park boundaries,
- There is considerable variation in the core dimensions of adopted affordable housing policies across authorities, with significant differences in both the quotas sought and the size of site on which they are applicable.

Table 4.3: Summary position on affordable housing policies in Scotland, September 2007

Planning Authority	AHP	Quota	Threshold	Notes
Aberdeen	Yet to be adopted	25%	20 properties	To be equally applied throughout city
Aberdeenshire	Yes	35%	No	Contribution decided on a site by site basis
Angus	Yes	20–40%	10 properties/ 0.5 hectares	Contribution sought varies by HMA
Argyle & Bute	Yes	25%	8 properties	100% to be sought on some sites
Cairngorms NP	No			Working with the policies from the four relevant authorities Local Plan under preparation will contain an AHP and likely to prepare Supplementary Planning Guidance
Clackmannanshire	Yes	25%	30 properties	Quota can be varied
Dumfries & Galloway	Yes	No target quota	5 properties (in priority settlements)	Adopted Local Plan contains an AHP and preparing supplementary planning guidance. No official quota but have sought up to 25% in priority settlements
Dundee	No			Commissioning study to inform further consideration of need for AHP
East Ayrshire	Draft	25% quota under consideration	4/5 properties for commuted payments and 40 plus for affordable housing provision	A draft AHP has been prepared for the consultative draft Local Plan. Also considering preparation of supplementary planning guidance Policy intended to apply to pressured areas

Table 4.3: Summary position on affordable housing policies in Scotland, September 2007

Planning Authority	AHP	Quota	Threshold	Notes
East Dunbartonshire	Yes	20–40%	15 properties (0.75 hectares)	Contribution sought varies by town; emphasis is on social rented provision
East Lothian	Yes	25%	5 properties	Have AHP and Supplementary Planning Guidance
East Renfrewshire	Yes	25%	4 properties	Will not accept commuted payments in lieu of on-site provision on sites exceeding 20 units
Edinburgh	Yes	25%	12 properties	Normally provision should be on site where development is 20 or more dwellings. The proportion of family housing included within the affordable element should match the proportion of family housing on the wider site
Eilean Siar	Yes	25%	16 properties	Authority will negotiate on site by site basis where development is less than 16 properties
Falkirk	Yes	15%	100 properties	In specific settlement areas require 25% on sites exceeding 60 properties
Fife	Yes	10–30%	Variable	Supplementary Guidance defines categories of affordable housing sought and target prices by LHS area
Glasgow	No			No plans to develop one. Recent demand study indicates no shortfall at city wide level
Highland	Yes	25%	10 properties	Threshold is under review – likely to fall to four
Inverclyde	No			No plans to develop one. Housing study provides no evidence that there is a shortfall of affordable housing
Loch Lomond & the Trossachs NP	No			Currently working with AHP policies of the four relevant authorities Preparing a Local Plan that will contain an AHP. Considering four units in pressurised settlements and variable targets from 20% upwards

Table 4.3: Summary position on affordable housing policies in Scotland, September 2007

Planning Authority	AHP	Quota	Threshold	Notes
Midlothian	Yes	5–20%	50 properties on non-allocated sites	Working towards seeking higher contributions – 25% on sites of 15 properties/0.5 hectares (but first 14 properties remain exempt where development totals 15–49 properties)
Moray	Yes	10-20%	10 properties	Requirement is one property where a development involves 10–14 properties; two where the development is 15–19 properties in total, and 20% on 20+ property developments. Current policy likely to be reviewed in near future
North Ayrshire	No			Policy position under active review
North Lanarkshire	draft stage	25%	20 properties	Undertaking public consultation on proposals. Applicable in Cumbernauld sub-area only. On developments of 5–20 units a commuted sum equal to provision of 25% affordable housing is required. On site provision expected to be in the ratio 80:20 social renting: LCHO
Orkney	No			Policy position under active review
Perth & Kinross	Yes	25%	5 properties	A 50% contribution is sought within the Perth city area
Renfrewshire	No			Due to commission, housing needs assessment in new year to inform future consideration of need for AHP
Scottish Borders	Yes	15–25%	5 properties	A financial contribution is sought from developers of small sites (involving two to four properties)

Table 4.3: Summary position on affordable housing policies in Scotland, September 2007

Planning Authority	AHP	Quota	Threshold	Notes
Shetland	Yes	Negotiable	4 properties	Partnership work to promote the provision of affordable housing is seen as being more acceptable in the short term than having a prescriptive planning policy
South Ayrshire	Yes	25%	15 properties/ 0.6 hectares	
South Lanarkshire	Yes	25%	20 properties	Policy applies in any housing market area (HMA) where need exists
Stirling	Yes	25%	20 properties	Policy (including the meaning of 'affordable') is applied flexibly on a site by site basis
West Dunbartonshire	No			No plans to develop one
West Lothian	Yes	15%	5 properties	On sites of less than 20 properties 15% of site value can be transferred as a commuted payment Developments within structure plan core development areas are expected to make an additional contribution equal to 10% fully completed affordable houses

Source: Local Authority websites; Scottish Government documents, survey respondent answers.

5 A Broader Look at The Policy Approach

Introduction

The evolution of affordable housing policies has constituted a fundamental shift in approach by government, and one that not everyone is comfortable with. This chapter therefore focuses on the general and specific aspects of the current policy approach to the provision of affordable housing that have been the subjects of debate.

Ethical and legal issues

Some commentators have questioned the approach on legal grounds (Ross, 2004). Others see it as introducing inequities and arbitrariness into the delivery of affordable housing: 'The ethics of bargaining are debatable; there is scope for unjustifiable coercion; and equal treatment as between applicants can be abandoned in favour of charging what the market will bear at any particular time' (Cullingworth & Nadin, 2002).

These concerns were acknowledged by Barker (2004), who noted that some local authorities may misuse Section 106 and that the value of contributions achieved under the policy can (as we have seen) vary considerably between areas, and even between sites.

In a recent joint paper The Chartered Institute of Housing and the Royal Town Planning Institute, appeared to conclude that government was abrogating its responsibility by relying on planning agreements for the provision of affordable housing:

Overall, the two Institutes believe that housing for those who are unable to compete in the market should be provided through funding provided ultimately by central government rather than by a levy on particular types of housing development in particular areas. While there is a strong case for developer contributions towards community needs arising from development it could be argued that they should be applied more widely. Housing is a public good and it is not therefore reasonable to expect it to be provided piecemeal by certain sections of the private sector... The current system of seeking planning gain on a site-by-site basis could be seen to be a tax on the increase in land and property values ('betterment'). It could be argued that a clearer and more equitable approach would be to tax increases in land values across the board. (Chartered Institute of Housing and Royal Town Planning Institute, 2003)

However, others have suggested that such ethical reservations are fundamentally misplaced:

Affordable housing policies are fully justifiable – contrary to the opinion of some who believe it is simply an unfair tax on development aimed at avoiding the need for public subsidy. It is, after all, the community itself that 'creates' land value by its aspiration for housing. (Lainton, 2003).

What benefits do mixed communities generate, and how?

Some commentators have expressed concern that planning agreements have focused attention too much on the number of homes required (and/or delivered), and placed too little emphasis on outcomes in terms of the communities being created (Royal Institution of Chartered Surveyors, 2006; Places for People, 2006).

Others have stressed that the evidence on policy delivery shows that mixed community outcomes have been more important than the actual number of units delivered to date, with the policy securing access to land in areas that would previously have been prohibitively expensive for RSLs to purchase on the open market.

The achievement of mixed income communities is a central policy objective of both the UK and Scottish Governments. For example, in evidence to the Communities and Local Government Select Committee inquiry into its PGS proposals, it was affirmed that it was important to ensure affordable housing is retained within the scope of Section 106 agreements because:

If affordable housing was removed, it would prove very difficult to create the sort of communities which the Government seeks. The Minister for Housing said that the Government 'made the decision to keep affordable housing within the Section 106 approach because in practice you really want it to be considered as an on site delivery. If you are going to deliver mixed communities, you want affordable housing to be built into the developer's attitude and conception of the site from the beginning.' (HC 1024-I Session 2005–6, para 63, quoted in Barclay et al, 2007)

Scottish policy under the previous administration and the recently elected Scottish Government are both consistent with the UK Government in this respect:

We need to give people everywhere the opportunity of a home that meets their needs in a thriving mixed community. (Scottish Executive, 2005b)

Our vision (is for) a housing system that delivers more houses: which meets higher environmental standards; offers more choice of housing that is affordable; contributes to the creation of sustainable mixed communities, and achieves better value for public expenditure. (Scottish Government, 2007)

The creation of mixed communities is in fact a long-standing policy aspiration across the UK, with the achievement of 'social balance' a key ingredient of the town planning movement from its earliest days (Hall, 2002; Cheshire, 2007).

Berube (2005) suggests there are three broad reasons why government thinks mixed communities are a good thing. They:

- Avoid the creation and assist in the eradication of existing concentrations of deprivation,
- Provide a route to achieving other important policy goals more effectively – for example improving the performance of individual schools,
- Are more consistent with 'sustainability'. 'More mixed places, the theory goes, may avoid entering a 'cycle of decline' that requires Government to invest in their regeneration down the line, or an upward price spiral that effectively limits neighbourhood options for lower-income households. These communities might also be more 'sustainable' from the household level if they offer a range of housing options for individuals and families as they age, as their household size changes and as their income increases or decreases'.

Bailey et al (2006) believe there to be a strong philosophical argument based on social equity for the intermixing of residents with different socioeconomic characteristics. They argue the potential benefits of mixed income developments can be summarised as:

- Creation of the opportunity for residents 'of all ages, ethnic groups, household sizes and social classes' to interact,
- Reduction of negative area effects, such as low educational attainment and low-level crime,

- Ability for local schools to attract pupils from a wide range of backgrounds,
- Ability of areas to attract and support a higher level of local services, leisure activities, shops and related facilities,
- Enhanced possibilities for households to stay in an area and maintain social and family networks as personal circumstances change,
- A possibility of higher average levels of disposable income creating additional employment opportunities for local residents.

Kynaston (2007), however, points out that survey evidence, including survey evidence from the north of England from as early as 1944, demonstrates a 'socially mixed 24/7' is not necessarily what any stratum of society wants, and that the idea that neighbourhood units as 'a microcosm of the whole community' are automatically to be seen as a good policy to pursue may be fundamentally incorrect. This position is strongly supported by Cheshire (2007), who sees the sorting of households into relatively homogenous groups as a natural outcome of the expression of preference across the income distribution. Cheshire argues that policies to promote mixing are misplaced (addressing a symptom, and not the ultimate cause, which is income inequality), inefficient, and potentially damaging to urban and regional economic growth.

More recently, international literature has begun to challenge directly the current basis for the mixed community policy objective. Schwartz and Tajbakhsh (1997) argue that in reality little is known about the actual social costs or benefits of mixed income housing, and that advocacy of mixed income housing in the US in the 1990s was based largely on 'faith' and 'dissatisfaction with the previous thrust of housing policy'. In an Australian context, Arthurson (2002) has found no evidence that a balanced social mix is a necessary condition for building inclusive communities and suggests policy makers are over-emphasising the extent to which social mix assists regeneration.

At the operational level what 'mixed communities' actually means in practice remains fundamentally unclear (Berube, 2005). Some would equate this to 'pepper-potting' the residential location of low-income households and affordable housing within those of higher income households, and argue that concentrating new affordable housing provision within new estates constitutes a lack of true integration, possibly even a form of micro-exclusion.¹⁹

Monk et al (2005) also caution that truly mixed communities can sometimes be achieved more easily at neighbourhood level than at an individual site level.

Overall therefore, it appears that neither the benefits that arise under planning based affordable housing policies from mixed community development nor the mechanisms by which they arise are clearly specified or understood, whatever the received wisdom might have us believe.

Are there perverse incentive effects?

Turning to more a more specific concern surrounding the implementation and delivery of affordable housing policies, Adams and Watkins (2002) suggest that it has the potential for introducing perverse incentives that generate policy conflicts for authorities. In particular,

the more local authorities become dependent on planning gain (or whatever alternative method is preferred to enable them to share in development value) then

¹⁹ In this context Whitehead et al (2005) note that in the sites they examined, developers tended to prefer placing affordable housing in one block 'in the least desirable part of the site' or 'in the back corner' (and that in some cases the design and size of the affordable units were inferior to the market ones, making them stand out from the rest).

the stronger will be the pressure on them to favour new development where that value is at its greatest.

A contradiction may therefore exist between local political resistance to greenfield encroachment and an authority's financial interest in maximising the potential for planning gain by allocating large greenfield sites for development.

Barker (2006b) also acknowledges this could be a problem.²⁰

Who pays for planning agreements?

The underlying intention and expectation is that uplift in land value created by planning permission is 'clawed back' by a planning agreement, leaving the landowner to enjoy less than 100% of the increase. Technically, economists would say what is involved is a transfer of economic rent and as such there need be no impact on new housing costs, output, or price (Crook & Whitehead, 2002).

In practice, it is not necessarily the case that the incidence of planning agreements will always fall or just fall on the landowner. Other possibilities include:

- Developers being forced to meet part of the cost of a planning agreement from normal profit, either directly or indirectly, for example by having to bear higher administration (negotiation) costs, or having to accept lower prices than would otherwise be achievable on the 'non-affordable housing' parts of a development,
- Planning agreement costs being met in part by reduced product quality,
- Purchasers of unsubsidised owner occupier housing having to pay higher prices than they otherwise would due to supply restrictions caused by the operation of the affordable housing policy (Masterman, 2003).

Crook and Whitehead (2002) argue that in practice, the planning gain approach to providing affordable housing is:

likely to be both inefficient and inequitable because of (a) the costs of negotiation; (b) lack of information about the extent of economic rent available in each case; (c) the extent of uncertainty in determining land prices between landowner and developer; (d) varying negotiation skills of planners; and (e) who actually pays...It can be argued that there must be simpler and better ways of funding the new affordable housing that is required as well as achieving social inclusion and urban renaissance goals.

Evans and Hartwich (2005a) are also critical of the view that planning agreements involve a surgical excision of economic rent, leaving economic fundamentals essentially undisturbed:

People seem to believe that planning constraints are costless, but there are serious economic consequences to restricting development. By ignoring the role of supply in determining house prices, planners have created a system that has led not only to higher house prices but also a highly volatile housing market.²¹

²⁰ Barclay et al (2007) note a further incentive issue arising from PSG proposals in that some authorities might be moved to maximise PSG revenue as opposed to maximising the provision of affordable housing via Section 106 agreements.

²¹ Further discussion of incidence related issues can be found in Evans (2004a,b). Evans and Hartwich (2005a; 2005b; 2006) suggest incidence is as much about how planning constraints are implemented as their existence per se.

Administration and implementation related costs

Affordable housing policy has to be justified (through housing needs assessment), implemented through negotiations, and subsequently monitored. While it is reasonable to assume housing needs assessments should be being conducted anyway, as part of the local authority strategic housing function, the other costs arise uniquely as part of the policy framework.

Crook et al (2002) suggest that Section 106 negotiations generate problems for several reasons:

- The necessary involvement of many interested parties,
- Tension within local authorities over the amounts of affordable housing to seek, and the balance between housing and non-housing types of contribution,
- Lack of negotiating skills on the part of local authorities and RSLs.

Several others have also picked up on aspects of these issues. For example, Watson (2006), exploring the position in York and Leeds notes:

In all cases negotiations were long and complex and, at times, challenging. The normal, commercial negotiating style adopted by housebuilders was seen by the local authority officers as aggressive or confrontational. This was less the case amongst the RSLs. This suggests a need for enhanced skills and training for key local authority officers in this area.

Echoing this last point, the Audit Commission has recently commented: 'None of the stakeholders we interviewed felt that councils needed additional powers to deliver against the government's [housing] agenda. But almost all qualified this by adding that councils needed the skills to implement those powers' (Audit Commission, 2006a).

Interestingly, although a more general point, the Audit Commission (2006a) also went on to say that:

As councils move away from narrow land use planning, planners increasingly have to interact with other professionals in order to plan for the inter-relationships that happen in mixed communities. This poses challenges for established planners who may not have the relevant skills. It is no longer sufficient to ensure that new housing has adequate drains and is physically accessible. Planners need to assess social impact: where will the people shop? Who will look after them when they are ill? Where will the children go to school? These considerations mean that planners need to talk to a broad range of disciplines, estimated by Egan as more than 100, ranging from property investors to neighbourhood wardens. In this process it is softer skills, such as the ability to negotiate and communicate, not technical skills that are at a premium. There is a general lack of people with the appropriate skills to fill this role.

Thus it is not simply the challenge of affordable housing policy itself that local authorities must wrestle with, but delivery of a complex policy as part of an even more complex public policy framework that they must address.

Delivery problems

Delivery problems have arisen with respect to:

- What is being delivered (relative to what was either sought or agreed through a Section 106/75 agreement),
- Timing of delivery,
- Whether delivery occurs at all.

Aside from a general lack of negotiating skills, protracted negotiations and a range of other factors all contribute to delivery problems.

Barker (2006b) highlights that asymmetries in negotiating expertise can lead to unsatisfactory outcomes under Section 106 agreements, and that negotiation can cause delay and frustration. She cites the experience of a major housing developer that large applications now take around 14 months to process, compared to 12 weeks 25 years previously. Monk et al (2005) also cite the example of a 26-unit site where three separate Section 106 agreements had to be negotiated with different public bodies, leading to disproportionate time and legal costs. The National Audit Office indicate that the time taken to negotiate Section 106 agreements can vary from six to 67 weeks (National Audit Office and Audit Commission, 2005), noting the speed with which local authorities grant planning permission can push up costs, and that confusing signals from local authorities can lead developers to waste time on proposals that will not be acceptable.

Entec (2002) found that local authorities seldom have a clear view on what is economically realistic when conducting negotiations. Watson (2006) also reports that affordable housing targets of up to 50% have produced a marked decline in the numbers of sites being brought forward for development in York and Leeds.

More generally, Watson (2006) records that Section 106 agreements have resulted in the development of smaller dwellings of lower quality at higher densities than would otherwise be the case. Watson therefore contends that availability of social housing grant for development on Section 106 sites has inflated costs, leading to increased housebuilder profit margins or land values.

Other policy related costs are also conceivable. In the Scottish context, Shiel et al (2007) found some evidence that once affordable housing policies are introduced, rural landowners that would previously have sold sites at reduced cost to RSLs become less willing to do so. They also identify a number of other delivery related issues:

- Relatively little coordination between the development of planning and housing policies, stemming from 'the different timescales over which the plans and strategies are developed, and the different basis on which affordable and open market housing requirements are calculated',
- Housing needs assessments that lack robustness in some instances,
- Difficulties with respect to agreeing a valuation for land for affordable housing,
- Concerns of a stigmatising effect of affordable housing policy requirements on the value of private housing,
- Problems of managing development funding arising from uncertain development schedules.

6 Is There A Better Way?

Introduction

A number of possible options to improve the existing affordable housing policy (AHP) framework are raised in subsequent chapters, on the assumption that the Scottish Government remains committed to the current approach. However, a number of more radical solutions have also been proposed that merit consideration.

More radical changes to the overall framework

In England, the Town and Country Planning Association (TCPA) has argued that a 'roof tax' provides a suitable way of funding infrastructure investment. Specifically, TCPA (2007) propose that:

- Local authorities set out a 'shopping list' of infrastructure (e.g. transport links, schools, social housing and forms of low cost homeownership) which is costed against planned future development for an area,
- The cost of the infrastructure is then allocated across the planned development on a pro rata basis, giving a set amount per dwelling or per square metre of commercial/industrial/retail space,
- Infrastructure required before development occurs is forward funded by a 'banker', that is guaranteed repayment from future roof tax payments,
- As development takes place, developers then pay the set tariff, rather than negotiating a Section 106 agreement.

TCPA, supported by the British Property Federation (BPF) argue that this approach:

- Maintains links between developers and local authorities,
- Encourages development by creating certainty over both infrastructure funding requirements, and infrastructure provision.

However, they conclude that tariffs may not always be appropriate, and that finding an appropriate 'banker' may be a problem.

These recommendations build on recent developments in Milton Keynes, where Section 106 agreements have been converted into flat-rate developer contributions. Developers pay £18,000 for each house completed. The Milton Keynes arrangements currently apply to some 15,000 dwellings being built at an annual rate of around 3,000, with English Partnerships acting as the 'banker'.

The Royal Town Planning Institute similarly favours policy evolution along the lines being pioneered in Milton Keynes (RTPI & Halliwells, 2007), although it advises a need for significant further option appraisal work before such an approach is wholeheartedly adopted, which would include evaluating its suitability in situations such as in complex inner city localities, declining industrial locations and rural/remote areas.

Evans and Hartwich (2006) see a 'roof tax' approach as an improvement on the status quo, but are concerned at the degree of central control implicit in the way TCPA and RTPI link mandatory tariffs to plan led development. They are of the view that:

In relation to the supply of housing, the British planning system is to all intents and purposes a Soviet style central planning system in which targets or production norms are laid down centrally for the nation and then reallocated down to the regions and local planning authorities. It has evolved to mediate between demographic need, as perceived by central government, and the reluctance of most local authorities to

allow or encourage enough development. What is usually overlooked is that centrally determined targets would be completely unnecessary if local planning were more responsive to local demand. It is unresponsive because of the lack of incentives local communities, planners, and politicians face. Whether they engage in planning or not will hardly affect their local budgets as about three-quarters of a typical local budget depends on grants from central government.

In an ideal world, Evans and Hartwich (2006) would terminate current policy to extract planning gain, and introduce a radical shake up of the local government finance system with the explicit goal of incentivising local authorities to promote residential and other forms of development. Included within their recommendations for change are proposals to:

- Abolish the primacy of plan-led development,
- Introduce the presumption of a right to develop, so that local authorities must show why any proposed development is undesirable.

As an interim stage on the way to their ideal, however, Evans and Hartwich suggest a 'social cost tariff' set at a maximum of £500,000 per hectare,²² but variable downwards 'for contaminated brown field land or if councils wanted to "go for growth"'. They recommend that:

- All other existing charges associated with development, such as Section 106 agreements be removed,
- Local authorities are set minimum building targets by central government,
- Local authority grant income be reduced by the amount they will raise if they achieve the minimum build targets (so they are penalised if they fail to achieve the target),
- All revenues generated be entirely retained by local councils (so they have an incentive to build more than the minimum target, as they thereby secure net income),
- The same system be applied to commercial and industrial development.

The Evans and Hartwich agenda is clearly broad and highly controversial. However, while travelling from a different direction to the RTPI and TCPA, the end point itself is quite similar – a mandatory tariff on all development that local authorities retain locally and can use for infrastructure investment (including social housing), as a replacement for negotiated planning agreements.

The inclusion of a 'banker' in the TCPA proposals clearly has the potential to facilitate faster development, and as the Milton Keynes experiment has shown, the idea is clearly a practical one.

One criticism that can be made of this approach is that it does not directly address the policy objective of securing 'mixed communities'. However, as we have seen, nobody is actually clear on what these are in practice anyway, so we cannot be sure the current framework is in reality doing any better.

22 or about £17,000 per dwelling at current average development densities; Evans and Hartwich (2006) recommend the social cost tariff be specified on an area basis (per hectare) rather than a dwelling basis, to avoid creation of an incentive to allow development of large numbers of small dwellings crammed together at high density.

7 Perceptions of Stakeholders

Introduction

This chapter reports the views of stakeholders on a range of issues related to affordable housing planning and provision. Survey findings reported are based on responses from 52 respondents to an online survey, which included local authority planning and housing officers, RSLs, and private developers. The survey findings are complemented by results from a range of face-to-face and telephone interviews conducted with chairs of local authority committees with responsibility for affordable housing policies, and representatives of Homes for Scotland, Communities Scotland, Scottish Federation of Housing Associations (SFHA), the Royal Institution of Chartered Surveyors, and the Royal Town Planning Institute in Scotland. In addition COSLA provided written comments.

The context in which affordable housing policies have been developed

Table 7.1 indicates that four out of five responding local authority staff (planning officers and housing officers) reported that the housing market that operates across their administrative area is pressured or somewhat pressured. A similar proportion also reports that the shortfall in affordable housing in their local authority area has increased in the last three to five years. In keeping with the findings of table 4.3, most local authority staff that indicated they operate in a stable or non-pressured housing market are based in the urban core of Clyde Valley.

A pressured housing market – evidence of a need for additional affordable housing throughout the administrative area	50
A somewhat pressured housing market – evidence of a need for additional affordable housing in several but not all places	30
A stable housing market – general housing need can be met through turnover of affordable housing and pressure for affordable housing is limited to a few places	14
A non pressured housing market – the main requirement is to improve/thin-out existing affordable housing (although there may be a need to increase affordable housing supply in one or two localities)	6
Total	100
Responses: 35	

The text boxes in this chapter are transcripts of comments offered through the survey and interview work, reported on an anonymous basis.

‘There is a shortfall of affordable housing in many but not all parts of Scotland and the severity of the shortfall is likely to moderate over the next few years as market conditions ease. The problem is that the policy response is only now catching up with what’s been happening in the housing market.’

The views of planning officers and housing officers from the same planning authority are very similar, but RSLs do not always share these views. In particular RSLs are more inclined to suggest there is a shortfall in areas where local authority staff do not think this is the case.

Reasons for a shortfall in affordable housing provision

A diverse range of factors is perceived to be contributing to a shortfall in affordable housing, as Table 7.2 shows. Planning officers, housing officers, RSLs, and developers have similar views on what are some of the most significant factors. At least 70% of all survey respondents agree that the following factors are contributing to a shortfall in affordable housing supply:

- Infrastructure constraints,
- Sites available for housing that are expensive and difficult to develop – although planning officers tend to place slightly less emphasis on this issue,
- Landowners’ perceived value for their land exceeding what is realistic or achievable.

Table 7.2: Factors contributing to a shortfall in new affordable housing provision (% of respondents saying very or slightly important)				
	Planning officers	Housing officers	Developers	RSLs
Infrastructure constraints (water supply, drainage and roads)	70	86	89	100
Sites available for housing are expensive and difficult to redevelop	64	100	78	88
Landowners perceived value for their land is in excess of what is realistic or achievable	85	75	89	100
A general shortfall of land available for housing coming through the planning system	36	70	89	88
Not enough sites for housing are coming onto the market for sale	31	79	78	63
RSLs lack financial resources to develop new affordable housing	57	56	55	63
Land banking by developers	57	57	0	63
Public opposition to the development of new affordable housing (nimbyism)	64	53	63	50
Uncertainty regarding future development funding likely to be available for new affordable housing	64	50	77	29
Skills shortages in the construction sector	46	69	89	43
Responses: 52				

There are however some important differences of opinion:

- Comparatively few planning officers feel that new affordable housing provision has been hampered by a lack of land or a lack of sites coming onto the market. Only 36% of planning officers believe a general shortfall in residential land has been a contributing factor compared to 70% or more of housing officers, developers and RSLs,

- The majority of planning officers, housing officers and RSLs perceive land banking by developers to be a contributory factor. By contrast, developers tend to emphasise that an increasing length of time required to complete the planning process is an issue.

'There is a belief that if we release greenbelt lands we'll get lots of affordable housing, but it doesn't work like that. For example, in (area X) we need Scottish Water to put in millions of pounds worth of infrastructure. There are other issues too.'

'Increasing house prices and problems securing sites have contributed but there are national and local policy issues too.'

'Developers do land bank – but only up to a point. Some are looking to sell on the land to make a profit. Others are holding onto land as insurance that they will still have a business in the future. Local developers are rarely in a financial position to

Are affordable housing policies built on firm foundations?

Objectives of affordable housing policies

The survey asked local authority staff to identify what they consider to be the more important policy objective of an affordable housing policy:

- Increasing the volume of new affordable housing available, or
- Establishing a mix of housing that contributes to mixed communities.

The views of planning officers and housing officers were very similar, with six out of 10 indicating that the most important objective was contributing to mixed and sustainable communities.

The survey also asked local authority staff what the term 'mixed community' means in practice. Few believe the term should be interpreted as meaning that houses of different tenures should be pepper-potted side by side in the same street. Developers also have reservations with a 'pepper-potting' approach to mixing tenure. Most local authority staff felt the term means either:

- Inclusion of a proportion of affordable housing built on all sites, or
- A mix of tenures in a small area such as a primary school catchment area but not necessarily at site or estate level.

'The mixed community objective is more important than securing additional affordable housing units ...we've tried just pumping money into these (deprived) areas for 40 years with little effect. That's why we feel the mixed communities' objective is the most important.'

'To date, more emphasis has been placed on securing land and the resources needed to boost new affordable housing provision, but this is changing. There is increasing recognition that these two objectives are two sides of the same coin.'

Housing officers tended to favour the latter definition. RSLs that completed the survey also favoured the latter definition. Interviewees explained that small developments involving only a handful of units are generally not attractive to social landlords or Communities Scotland due to the higher costs and added complexity of developing and managing dispersed stock. Nonetheless, housing officers, planning officers and RSLs also stressed that decisions regarding the spatial spread and tenure mix of new affordable housing provision should reflect local conditions.

'Are mixed communities a good thing? Good question. They should be, but I don't know. Concentrations of poverty are bad. We haven't yet defined the parameters of a mixed community.'

'It depends on the nature of the development, the scale of development, the type of housing planned, the nature of the community and existing social networks and infrastructure.'

'It depends on various community and site-specific circumstances that cannot be reduced down to a single set of rules that can be generally applied.'

Links between local plans and local housing strategies

Table 7.3 suggests that in many areas local housing strategies and local plans are not yet consistent with each other.

Most local authorities have yet to agree a single clear set of priorities in relation to the numbers and timing of affordable housing to be sought. Moreover, there are differences of opinion between housing officers and planning officers in relation to the required spatial distribution of new affordable homes. Six out of 10 housing officers feel LHS priorities are consistent with where land is available or is scheduled to be released for residential development compared to just a third of local planners.

Table 7.3: Local authority staff perceptions of the consistency between local plans and housing strategies (%)

	Agree	Neither	Disagree	DK
The definitions of affordable housing used in the LHS, local plan, AHP and supplementary guidance are consistent	82	3	15	0
LHS targets with regard to the numbers and timing of new affordable homes are consistent with the phased release of land set out in the local plan	40	10	47	3
LHS priorities regarding the spatial distribution of new affordable homes are consistent with the places where land is available to be released for residential development	50	19	31	0
There are tensions between planning and housing regarding the amounts of affordable housing to seek	26	3	71	0
There are tensions within the LA regarding the balance between housing and non-housing types of contribution (such as roads, schools, etc) to be sought	47	13	37	3
Responses: 31				

Interviewees also told us:

- Some structure and local plans were adopted at a time when the need for affordable housing was less apparent and do not reflect recent housing needs findings in their calculation of land requirements,
- Not all local authorities have yet adopted realistic and deliverable new affordable housing provision targets in their LHS that take account of likely land and funding availability,
- Conflicting time frameworks for the LHS and local plans have hindered joining up of the two planning processes.

'The links between LHS and local plans are not clear. Local plans don't reflect backlog need or housing market conditions and often simply rely on household projections to determine land requirements. On the other hand, LHS tend to exaggerate the requirement for new affordable housing provision, and don't think enough about housing market trends and alternative means of addressing some of the shortfall.'

'Once bedded down, SHIPs should lead to a more coherent and systematic approach to what can realistically be secured and delivered through affordable housing policies given the level of resources likely to be available.'

Several interviewees were optimistic that two national policy developments would provide a further impetus for the land planning and housing strategy processes to become more closely aligned in the future. The first is the replacement of local plans by local development plans (LDPs) and a new statutory requirement to update LDPs every five years. The second is the new strategic investment framework proposed by Communities Scotland, and the associated requirement for local authorities to prepare strategic housing investment plans (SHIPs), which must show how the affordable housing investment priorities expressed in LHS will be delivered in practice, including the timetable for delivery and indicative delivery costs.

Corporate and political leadership and commitment

Although there is scope to improve effective working between housing and planning within Scottish local authorities, the bigger challenge may be absence of a clear steer from local politicians and senior authority staff on the appropriate priority that should be given to the provision of affordable housing relative to other infrastructure contributions. This can place authority staff in a weak negotiating position. This problem is probably more acute than the responses to questions about intra-authority tensions, arising from seeking planning gain and reported in Table 7.3, suggest:

- Respondents working for planning authorities with experience of negotiating affordable housing provision through the planning system are more inclined to agree that there are tensions within their local authority regarding the balance between housing and non-housing types of contribution to be sought than staff with no such experience,
- Developers and RSLs survey respondents almost universally report that local authorities do not have a clear and consistent approach to negotiating community facilities, infrastructure, and affordable housing policy contributions,
- Similarly, consultees highlighted tensions within authorities, and between authorities and other public agencies about the balance of contributions to be secured.

'There are good working relationships on the ground but this is not always reflected at senior level.'

'It's easy to blame officers but it's often the politicians that say they want more new affordable housing but won't agree to release land.'

'Some planners unofficially admit they are ambivalent about the use of planning obligations to secure affordable housing provision because it is not a community need that stems directly from new housing development, unlike roads, water infrastructure and schools.'

'Too many public services are seeking to feed off planning gain – and now we are seeing requirements for new health facilities. In reality, affordable housing provision is well down the pecking order.'

'It's not about new policy initiatives – it's about leadership. Do we need more guidance? Model agreements? You can write anything you want – it won't make any difference if there is no political will. That's the big issue. It's about who is in charge here.'

Housing needs assessment (HNA)

PAN 74 emphasises that policies seeking affordable housing provision through the planning system must be underpinned by robust evidence of housing need. The survey highlights that at least half of the local authorities in Scotland believe their housing need assessments have some weaknesses, including 14 that have or are pursuing the introduction of an affordable housing policy.

The most commonly cited weaknesses are that sub-area findings are less robust than local authority wide figures (57%) and that an assessment is out of date (35%). However, planning officers and housing officers also highlight concerns about the transparency and quality of findings and in particular that:

- The link between newly arising need and projected household growth is unclear,
- Household income data is of a poor/unverified quality.

RSLs and developers also point out that HNAs are of a variable standard and express reservations about the robustness of housing need projections at local authority and sub-area level. In addition:

- 25% of RSLs and 66% of developers do not believe that reasonable steps are always taken to validate findings by comparing outputs with evidence from other data sources,
- 37% of RSLs and 100% of developers think the link between newly arising need and projected household growth and the planned release of land is unclear.

To ensure resource allocation and planning decisions are based on sound evidence it is essential that HNAs be regularly updated. Table 7.4 indicates how well-placed local authority officers perceive their organisation to be in terms of maintaining and regularly updating their housing needs assessments. The findings suggest that most local authorities continue to lack the capacity to maintain and update their assessment of housing need. These findings confirm that the current requirement for systematic and comprehensive guidance on the assessment of housing need goes beyond simply explaining the basic housing needs model.

Table 7.4: Capacity of local authorities to maintain housing needs assessments (%)

	Agree	Neither	Disagree	DK
My local authority has the resources to keep our HNA up to date	39	9	52	0
My local authority has the skills required to keep our HNA up to date	56	19	22	3
Existing data sources, including the housing register, are sufficiently comprehensive and up to date to allow my LA to keep its HNA up to date	45	15	27	13
There is a rolling programme in place to update our housing needs assessment as new evidence emerges	22	22	47	9
Reponses: 33				

‘Stating that the affordable housing policy must build on a housing needs assessment is fine in principle but in practical terms translating housing needs outputs into policy is very problematic.’

‘Developers are reluctant to accept housing needs findings but it’s the proposed policy that leads developers to dispute the findings.’

‘There should be a standard methodology for estimating housing need, but if we are satisfied there has been a genuine attempt to assess need then that’s OK. More often it’s the method chosen for responding to need that we will challenge. The issue has always been that authorities don’t think hard enough about the nature of the appropriate response mechanism.’

Translating housing needs assessments into affordable housing policy

Translating the findings from an HNA into an affordable housing policy is not a straightforward exercise. Other factors must be taken into account in order to produce a policy suited to the needs of an area. More specifically it is important to:

- Establish what policy options other than new housing provision exist to address need, such as making better use of existing private and social rented stock,
- Assess the extent of the risk that a proposed affordable housing policy could restrict the viability of housing development,
- Consider the resources (funding and staff inputs) required relative to those likely to be available to support the delivery of new affordable housing.

Due to space and time limitations, we were not able to explore the extent to which local authorities have taken other possible options for addressing housing need into consideration in the development of affordable housing policies. However, the survey responses did contain some evidence in relation to the other two issues noted above.

Risk assessment

Risk assessment of the affordable housing policy as a whole

Local authority staff were asked what steps they had taken to assess the risk that their affordable housing policy framework per se might restrict housing development viability, or the numbers of sites coming forward for development.

'As part of the current process of developing our affordable housing policy we are exploring the impact of various thresholds on development viability.'

'Having an ambitious target may be what elected members would like but experience has taught us to be pragmatic. Over-ambitious policies don't deliver – put simply 40% of nothing is nothing.'

'If a developer or landowner can demonstrate to the satisfaction of the Council that the application of the affordable housing policy is threatening the viability of a site then the Council would be prepared to reduce or waive the affordable housing policy requirement.'

'Our affordable housing policy is being finalised so it is too early to establish if it will have any impact on release of sites. Within the scope of the affordable housing policy there will be formal dialogue and agreements with developers to deal with potential issues.'

'No assessment due to critical need for affordable housing.'

A few authorities indicated that they had conducted (or planned to conduct) such a risk assessment, but most indicated that their approach is to only consider development viability on a site-by-site basis. Other factors confirming that authorities do not typically assess the overall risks associated with an affordable housing policy prior to adoption were that:

- A couple of authorities indicated that it would only be possible to assess development viability risks once the affordable housing policy is implemented,
- Following publication of PAN 74 there has been a trend for local authorities to simply base their affordable housing policy on the 25% benchmark,
- More than one respondent felt that in the absence of information on the infrastructure requirements of other local authority departments and other public sector agencies it is just not possible to assess the potential risks of the affordable housing policy as a whole.

The lack of whole-policy risk assessment probably explains why developers' state that they are rarely or never consulted on whether affordable housing policy proposals could unduly restrict housing development viability and reduce the number of sites coming forward. It may also partly explain why developers generally feel that local authorities give insufficient attention to the viability of housing development.

Site level risk assessment

At present most affordable housing policy negotiations occur on a site-by-site basis. This approach is perceived to offer flexibility to allow for individual site circumstances. However, the downside is that this often leads to protracted negotiations and lack of clarity for all parties. Of particular significance in this context are:

- Failure to agree what the local authority's requirements are in terms of the overall package and relative weighting to be given to the contributions sought at the start of the negotiation process,

- The identification of additional infrastructure contribution requirements after site negotiations have begun. In some instances this was ascribed to 'opportunistic bidding' by other authority departments or other public agencies,
- A perceived reluctance by development control staff in some planning authorities to prioritise the requirement for some form of affordable housing contribution,
- Limited appraisal of development viability and a tendency not to seek advice from economic development staff, RSLs or other external advisors as to what constitutes a reasonable requirement and what would deter housing development,
- A failure to appreciate that smaller private developers often have smaller profit margins and tighter cash flows that limit their capacity to absorb extra costs, which thus increases the risk that smaller projects will not be viable.

'It can be very frustrating when new demands for an additional community facility appear in the middle of negotiations; it can lead to everything sitting dead in the water for months.'

'In spite of what's written on paper there have been occasions where the affordable housing policy has been blatantly ignored and no affordable housing has been secured on ideally situated sites.'

'It's not clear where affordable housing policies sit in the hierarchy of planning gain; it's a bit hit and miss what development control pursue and where.'

'The problems keep coming back to certainty and consistency. Sometimes developers don't actually know what they are being asked for when they are going into key meetings with authorities.'

Funding availability

Survey findings suggest that at least 85% of adopted or developing affordable housing policies will depend heavily on access to development funding. Table 7.5 shows the proportion of planning authorities with an adopted or emerging affordable housing policy that responded to this survey and state that their policy framework takes into account the amount of development funding likely to be available. It shows that:

- Four out of five stated their existing affordable housing policy (25%) or emerging affordable housing policy (55%) does reflect the availability of development funding from the Scottish Government,
- Two of four planning authorities with an adopted/emerging affordable housing policy framework that does not take account of development funding are rural authorities.

By contrast, over half of all RSLs and developers feel that current affordable housing policies do not take appropriate account of the level of development funding likely to be made available. One possible reason for this difference in opinion may be timing, with RSLs and developers putting more weight on past negotiations and authority staff placing more emphasis on very recent or ongoing policy developments. However, not all local authorities had consulted Communities Scotland regarding the availability of development funding when their affordable housing policy was initially drafted.

Communities Scotland staff were generally of the view that access to funding has not in fact been a widespread constraint on the delivery of affordable housing negotiated through the planning system over the last couple of years. Indeed, more generally, some respondents to the survey expressed a view that a plentiful recent supply of HAG funding has helped inflate the cost of affordable housing provision, while others argued that it has done little to encourage local authorities to maximise developer contributions.

Table 7.5: Does the AHP take into account the amount of development funding likely to be available (local authority officers %)?

Adopted policy/supplementary guidance takes funding into consideration	25
Emerging policy /supplementary guidance will take funding into consideration	55
No/no plans to do so	20
Total	100
LA responses: 20 (cross referenced planning officers and housing officers)	

However, aspects of the development funding process are perceived to have contributed to difficulties and delays in securing individual Section 75 agreements. Moreover, many also believe that funding difficulties will become apparent once more affordable housing negotiated through the planning system moves into the development phase.

‘The annual nature of HAG makes it difficult to confirm funding with a developer at the time an S75 agreement is drawn up. For this reason we have to include a back-up clause in case public subsidy is not available. When asked about start dates the developer can’t give you these as it depends on when they receive planning permission and planning permission depends on whether the S75 can be agreed and the correct house types and sizes are in the planning application.’

‘Communities Scotland’s priorities are community regeneration and achieving unit targets. Thus development funding locally is directed to low land value areas. Our affordable housing policy priorities are outwith these areas but because Communities Scotland currently controls the administration of HAG it means that our priority areas are not always considered for funding.’

‘Developers and Communities Scotland would prefer us to focus on Homestake or some other form of equity sharing but often the discounted market value does not reduce need because the price is still higher than the price of existing homes at the lower end of the market.’

Land valuations

One element of the development funding process that most housing officers (71%), developers (89%), and RSLs (62%) feel has contributed to delays in securing individual Section 75 agreements has been land valuation.

Table 7.6: Does the valuation of land for affordable housing cause significant difficulties or delays? (%)

	Planning officers	Housing officers	Developers	RSLs
Yes	41	71	89	62
No	29	24	11	25
Don’t know	30	5	0	13
Responses: 50				

In particular survey respondents and interviewees commented that:

- Some landowners are unwilling to sell land at less than full market value,
- There is a lack of detailed and unambiguous national guidance on valuing land for affordable housing that has been subject to detailed consultation,²³
- There are some doubts as to the reliability of District Valuer (DV) land valuations, and belief that these valuations bear little relationship to the prices required to be paid for land.

'Another instance of a lack of clarity. There are unusual valuations and variances across the country and valuations don't always reflect the price paid for land.'

'DV valuation takes a long time and frequently it is set at a level too low to allow development to proceed. Developers have difficulty in accepting affordable housing valuations. We also have concerns about the credibility of DV valuations.'

'We have large areas where landowners won't release land. Some get a big shock when they find out what their land is worth (with an affordable housing policy in place).'

'The DV is instructed by Communities Scotland on how to value and the value is always low.'

Collaboration between and engagement of key players

Securing the delivery of affordable housing through the planning process requires effective communication and engagement across a range of players at strategic and operational levels during both the policy formulation and policy implementation stages.

Staff resources, skills and expertise

In order to collaborate effectively, authorities need sufficient and suitably skilled staff. Table 7.7 shows that most planning and housing officers are confident that their authority has the skills to negotiate with the private sector. The majority of RSLs also feel this is the case. However, planning staff are much less convinced that they have the detailed understanding of development economics and the commercial mindset needed to appraise deals and make prompt decisions. This is perhaps not surprising. Only two out of five authority staff reported that there has been training for housing, planning and other officers involved in the development and delivery of affordable housing policies.

²³ Communities Scotland published guidance on the calculation of residual land values for HAG funding purposes in late November 2007. However, it is not clear that it will ease delays and disagreements on the issue of residual land values.

Table 7.7: Proportion of respondents agreeing or somewhat agreeing with the following statements in terms of skills of planning authority staff (%)

	Planning officers	Housing officers	Developers	RSLs
LA staff have the skills to pursue potential collaborations and negotiate with private sector partners	71	83	11	62
LA staff have the skills needed to appraise the effect of required contributions on the economic viability of a site's development	41	53	0	25
LA staff are commercially minded and have the delegated authority and confidence to make decisions quickly	24	41	29	25
Responses: 50				

'Planning authority staff skills to negotiate Section 75 agreements for affordable housing are fairly weak. There is little history of assessing development viability.'

'It's not always appreciated how few strategy staff many authorities have. They often have to lead on affordable housing policies on top of other demanding workloads. Perhaps there's an argument for neighbouring local authorities to share staff to ensure there is access to expertise.'

'Local authorities don't understand how value is created – or destroyed. The uplift in value to achieve what they want is fundamentally different when we are talking about five bedroom and two bedroom properties on a site.'

Developers and RSLs believe that most authorities do not have staff with the necessary skills. Some interviewees also said:

- Smaller authorities often have very few staff to carry out the strategic housing role and are therefore at a particular disadvantage,
- Skill shortages partly reflect wider problems in filling vacancies in both housing strategy and planning departments.

Collaboration between planning authorities and the private sector

Early involvement of all interested parties is key to the preparation of an effective policy. Survey results indicate that while local authorities do consult developers on their affordable housing policies it is sometimes very late in the process. Unlike RSLs for example, developers are not routinely asked to comment on the objectives and policy implications of HNAs. As a result, developers often feel they have little real opportunity to shape affordable housing policies.

'To date our affordable housing policy has been developed jointly between planning and housing, with comment from RSLs, Communities Scotland and neighbouring authorities. We've had tentative discussions with developers, but proper consultation is planned.'

'Local authorities don't engage in genuine consultation with developers – they go through the motions. Often developers will be consulted on a policy position and oppose it, and the subsequent committee paper will say something like 'by and large consultees supported the proposal'. I can't think of a single example where a proposed policy has been changed because of developer comments. At best its 'we don't agree with your concerns, but we will monitor the situation'.'

'Local authorities ask for open book accounting, but that is hard to do, and anyway it works both ways. What if we want to challenge how much they say is needed to achieve something? Once you sign up for it it's also about re-engineering cost control on both sides.'

On the other hand, some authorities have demonstrated a clear commitment to engage private developers, a fact acknowledged by several developer and RSL survey participants.

'Homes for Scotland participated in the steering group that prepared the affordable housing policy but their members' support for it has not been universal.'

'We have created an Affordable Housing Forum which includes RSLs, Homes for Scotland, Communities Scotland, and local authority representatives'

'We meet with builders' representatives every six weeks. There are a couple of requirements – affordable housing on the same site as unsubsidised housing and making the affordable housing visually the same as the rest – that they would like to wriggle out of, but in overall terms they are quite prepared to do business with us.'

'Some LAs are better than others at involving us from the start and explaining the reasons for the decisions they take.'

'Working with the private sector can be very demanding; builders are calling local authorities professional extortionists because of planning gain.'

'I don't think that affordable housing policy has to be conflictive. The private sector knows it has to use some of its cash, and it can all be factored in to a deal at the front end.'

In spite of this, table 7.8 highlights that most private developers still find it difficult to work with local planning authorities and equally many planning authorities still find it difficult to work with private developers.

Table 7.8: Percentage of survey respondents that find it easy to work with planning authorities and other partners (%)

	LA views on working with developers	LA views on working with RSLs	Developers views on working with LAs	Developers views on working with RSLs	RSL views of LAs	RSL views on working with developers
Always/ most of the time	42	88	11	75	72	38
Sometimes	48	12	22	25	38	62
Rarely/ Never	10	0	67	0	0	0
Responses: 49						

Collaboration between planning authorities and RSLs

Both parties generally consider working relationships to be positive between planning authorities and RSLs. Table 7.8 highlights that most RSLs and planning authorities find it easy to work with each other most or all of the time, although some RSLs do sometimes find it more difficult to work with development control.

‘We have a positive working relationship with local authority colleagues from planning and housing strategy as well as a good working relationship with Communities Scotland. There is a strong history and ethos of partnership working, collective responsibility and trust.’

‘Housing departments are proactive in supplying information and assisting with the affordable housing policy process. Planning departments are not always as helpful and planning committees sometimes have a poor understanding of affordable housing policy.’

Collaboration between private developers and RSLs

Table 7.8 also suggests that private developers and RSLs have reasonably constructive working relationships, although consultees suggest these relationships can sometimes be tested during negotiations on the release of land for affordable housing provision.

‘Mostly developers are straightforward in that they require a return. It is often the case that they need an ‘affordable’ element and recognise that RSLs have the expertise in that field.’

‘RSLs are open with ideas and designs and want to get on and deliver units. They understand our issues too.’

‘There is sometimes a lack of understanding of the motivating factors on both sides. Both RSLs and developers need to forge stronger links and understanding of each other’s positions.’

Collaboration with Neighbouring Authorities

Finally findings suggest that there continue to be barriers to effective collaboration and co-operation between local authorities whose boundaries fall with a single major housing market area. Interviewees indicated that:

- There is a continuing tendency for some local authorities, and in particular elected members, to regard increasing the supply of housing to meet the housing demands and needs evident elsewhere in the HMA as taking on other local authorities problems,
- Changes in the political make up of an administration can lead to joint approaches worked out over several years being overturned, thus causing further uncertainty and delay in the development of housing.

Impact of affordable housing policies to date

Survey respondents were asked to indicate what the introduction of affordable housing policies and the use of Section 75 agreements have achieved to date. A summary of responses is set out in table 7.9.

Acceptability of the affordable housing policy approach

Table 7.9 suggests that an increasing share of developers accept that they must contribute towards affordable housing provision. There are also signs that some developers are becoming more willing to share site-specific financial information to assist planning authorities understand and assess land values and viability.

However, discussions suggest that there are still considerable numbers of developers, not just small developers, who remain resistant to the imposition of affordable housing policies.

‘Developers are used to the policy now it is in place – we had a difficult time with them a couple of years ago. It still takes some of the smaller ones by surprise.’

‘Developers should not be required to subsidise affordable housing in any way, particularly if planning charges for infrastructure are introduced.’

‘The message that affordable housing is a requirement is now increasingly accepted by the industry. However, developers still try to find ways round the requirement.’

‘Every business likes certainty, but developers often don’t know what is expected of them, or they get different answers from different people. They would almost prefer bad policy consistently applied than good policy inconsistently applied – because at least then you can plan.’

Although there has been much discussion around anecdotal evidence that land is being held off the market because of the introduction of affordable housing policies, our survey findings suggest most respondents do not think that this has happened to any significant extent so far.

Table 7.9: Respondents that strongly agree or agree with the following statements (%)

	Planning officers	Housing officers	Developers	RSLs
Developers now accept that they should contribute towards affordable housing provision	80	56	56	67
AHPs have reduced the number of sites coming forward for planning permission	13	0	22	0
AHPs have ensured RSLs have been able to secure land for new housing	53	36	56	74
AHPs have increased the numbers of affordable housing units built	40	30	44	62
Unreasonably high demands for affordable housing makes it unprofitable to develop sites	33	17	89	38
S75 negotiations have created long delays in the planning process	57	64	100	67
AHPs have reduced the numbers of new housing units being constructed (market and affordable)	14	0	66	12
Affordable housing units provided through our AHP are of a higher density than other new affordable housing units	7	6	22	12
AHP secured affordable housing units are smaller in size than other new affordable housing units	7	0	0	12
AHP is substituting for traditional new affordable housing provision	0	12	44	50
The benefits delivered through AHP will outweigh the costs associated with securing them	53	36	0	75
All things considered AHPs are securing value for money (VFM) for the public purse	46	24	0	38
Responses: 51				

What benefits have affordable housing policies achieved?

Over half of all survey respondents feel that the main benefit to date has been to secure land for new RSL affordable housing provision. In addition, around four out of 10 survey respondents believe that affordable housing policies have increased the numbers of affordable housing units built. However, housing officers are less convinced about these benefits than other survey respondents. This perhaps reflects growing concerns in parts of the country that permissions may not necessarily translate into developments.

Perverse incentives and delivery problems

The majority of planning officers, housing officers, RSLs, and developers believe Section 75 agreements have created long delays in the planning process but:

- Opinion is divided as to whether this has curtailed rates of new housing construction, with private developers (66%) stating that it has and other survey respondents suggesting otherwise.²⁴
- Opinion is also divided as to whether unreasonably high demands for affordable housing are making it unprofitable to develop sites. Most private developers (89%) believe that this is the case, as do over a third of planning officers and RSLs.

In contrast to England there is little evidence of concern at present that affordable housing provision secured through affordable housing policies are of smaller or higher density than other new RSL units.

Table 7.10: Who in your opinion bears any of the cost of S75 agreements? (%)				
	Planning officers	Housing officers	Developers	RSLs
Landowner	47	88	56	75
House builder	18	65	67	62
Purchasers of unsubsidised new housing	6	35	56	38
Local authority	6	29	11	25
RSLs	6	35	11	38
Responses: 49				

Table 7.11: Who in your opinion bears the bulk of the cost of S75 agreements? (%)				
	Planning officers	Housing officers	Developers	RSLs
Landowner	47	47	33	63
House builder	29	29	33	0
Purchasers of unsubsidised new housing	18	12	22	12
Local authority	0	0	0	0
RSLs	0	0	0	0
Other/don't know	6	12	12	25
Responses: 50				

²⁴ In an interesting apparent echo of experience in England where, as we have seen, the implementation of affordable housing policies has occurred in a context of falling total affordable housing supply, recent analysis by the Scottish Government appears to demonstrate that the responsiveness of new housing supply to market conditions has fallen since 2000. Whereas over previous decades Scotland had exhibited significantly lower trend real house price growth than England and 'a key part of this story was the greater responsiveness of housing supply in the Scottish market relative to the rest of the UK', that advantage appears to have now disappeared: 'there have been significant increases in demand and prices with very little or no evidence of a supply response at the national level' (Scottish Government, 2007). It is however not necessarily the case that this is related to the introduction of the affordable housing policy framework.

Who bears the cost?

Survey respondents were asked who bears the cost of Section 75 agreements. Tables 7.10 and 7.11 show that:

- All four groups of respondents feel that a range of parties, and not simply landowners, carry the costs of Section 75 agreements.
- Developers are divided on whether landowners or themselves carry the bulk of the costs.
- Other respondents have a stronger perception that landowners bear the bulk of the cost, although three out of 10 planning authority staff believe developers currently absorb most of the cost.

The findings also suggest that the resource implications for planning authorities in developing and delivering affordable housing policies may be being overlooked.

'I guess every initiative of this sort has consequences. My feeling is it goes on the price of housing somewhere.'

'My gut feeling is that in the early days of the policy landowners took the hit. That's not the case any more though. Land shortage has given landowners market power, and they are operating (effectively) as cartels. Developers are taking the hit now.'

'Who bears the cost of S75? It's a factor in the inflation of house prices. The developers just put the price of a regular house up a bit.'

'Developers are probably still paying above the market rate for land and this is not solely down to landowners charging over the odds; developers are also engaged in the trading of sites and consents with each other.'

'Who bears the cost of our affordable housing policy? Landowners, developers, and households – they all bear it in part, but it varies from place to place, and we don't know how.'

Value for money to date and alternative approaches

RSL survey respondents and to a lesser extent planning officers are optimistic that the benefits that will eventually be delivered through affordable housing policies and Section 75 agreements will outweigh the costs so far incurred in securing them. Nonetheless, the majority of survey respondents do not feel that affordable housing policies secure VFM for the public purse.

In terms of alternative policy options, survey respondents and interviewees had little confidence that the UK Government's planning gain supplement would work. Most felt it was more likely to reduce rather than increase new affordable housing provision. Turning to some form of tariff system, many were not sufficiently familiar with either option to offer a firm view on the possible advantages and disadvantages of voluntary or mandatory tariffs. A few of those who offered a view queried whether a tariff system would ensure RSLs had access to land in pressured areas.

'I think some form of affordable housing policy is needed, but I don't think we have sussed out how to use them properly.'

'The benefits being achieved through the affordable housing policy approach most certainly do not outweigh the costs!'

'It is generally accepted that things have to be paid for. If it's not this way then how?'

Do the benefits of affordable housing policies outweigh the costs? I don't know the answer to that – but it should be properly looked at.

'It's hard to say if the affordable housing policy approach provides value for money. It's a way of extracting money. What are the alternatives – direct and indirect taxation...these might be more effective, but I don't know.'

'Affordable housing policies and Section 75 agreements will not solve the affordable housing shortfall in my lifetime. There are lots of uncertainties with Section 75 agreements but things would be worse without them unless we can find a better option to ensure RSLs and other social providers can secure access to land.'

'The affordable housing policy framework is negatively affecting affordable housing supply in Scotland. Communities Scotland's statistics suggest affordable housing is getting built – but is it in the right places? Numbers procured are going down in Edinburgh, and other areas of high requirement. The biggest constraint on

Possible measures to improve the current national policy framework

As part of the survey we asked respondents to indicate what might help to bring about a more transparent, consistent and effective approach to securing affordable housing under the existing policy framework. The findings are set out in tables 7.12 to 7.14 inclusive. In general:

- There is strong support for the Scottish Government to publish more and detailed guidance on many of the more technical and complex dimensions of the affordable housing policy process,
- There is widespread support amongst planning officers and housing officers for most, but not all, of the suggested measures that might improve joint working and collaboration,
- There is a more varied range of opinions in terms of the actions that would help to improve delivery of affordable housing policy at the regional or local level.

'Is there a need for government to prepare model policies, agreements, and additional guidance? Given the amount of inconsistency in evidence now the answer has to be yes – a big yes!'

'I am moving to the point where I feel that lightness of touch in terms of policy control by the Scottish Government is just wrong. Too many local authorities don't know how to deliver, or have inappropriately simplistic views on how markets work. If the objective of policy is to deliver additional investment it is just naïve.'

Table 7.12: Respondents that strongly agree or agree with actions that the Scottish Executive should take to improve the delivery of affordable housing policies (%)

	Planning officers	Housing officers	Developers	RSLs
Scottish Government should issue guidance on housing needs assessment	87	88	100	87
Scottish Government should issue guidance on using housing need outputs to determine the amount and nature of affordable housing sought via AHPs	75	82	88	87
Scottish Government should issue guidance on how to appraise the risk of S75 agreements on development viability	69	83	77	88
Scottish Government should prepare model S75 agreements	69	71	89	50
Scottish Government should set a single consistent approach to valuing the price of land for affordable housing	75	82	89	76
Scottish Government should create a panel of specialist advisors on development appraisal and affordable housing available to local authorities on a consultancy basis	47	53	77	24
Scottish Government should require LAs to offer pre-application discussions to enable RSLs and developers to have a clearer idea of conditions and priorities at an early stage.	73	94	100	100
Responses: 49				

Table 7.13: Respondents that strongly agree or agree the following actions would improve joint working between housing and planning (%)

	Planning officers	Housing officers
Secondments between housing and planning departments	31	53
A single 'housing development strategy document', that both housing and planning committees formally sign up to	50	88

Joint protocols setting out what housing and planning departments should expect in terms of input from the other	62	89
Joint scoping and pre/outline application discussions and negotiations with developers and RSLs	93	100
A training programme for housing and planning professionals to gain a better understanding of each others' functions and planning processes	81	94
Collaborate on research into housing related matters and develop a shared evidence base	87	89
Run joint workshops and consultations for developers, RSLs and others involved in delivering housing	74	77
Joint briefing sessions for members	94	83
Responses: 32		

Table 7.14: Percentage of respondents that believe the following actions would help to improve delivery of affordable housing policies across Scotland (%)

	Planning officers	Housing officers	Developers	RSLs
Each local authority should have a single point of contact for applicants	40	71	100	87
Each local authority should have a dedicated S75/planning gain officer	53	65	88	75
Increase the supply of land with planning consent for homes	40	71	100	74
Negotiation of S75 agreements in parallel with processing the planning application	73	94	100	100
Professional bodies take action to enhance the development appraisal skills of planning and housing officers	60	88	89	63
Developers asked to collaborate on housing needs assessments and other aspects of the evidence base	36	59	100	75
Developers invited to collaborate with LAs and RSLs to design appropriate planning briefs for larger sites.	60	76	100	87
Responses: 50				

In addition, respondents offered a number of other suggestions.

'Affordable housing could be secured as part of a community infrastructure fund.'

'Allow RSLs to purchase subsidised housing off the shelf from developers providing it represents best value and is built to appropriate standards. Agreeing a standard unit cost that Scottish Government would be willing to fund would assist this.'

'Being clearer at national level on definitions of affordable housing.'

'Make building standards the same as the standards used by Communities Scotland in relation to HAG funded units. Many developers do not understand why there has to be two different standards depending on which tenure you are dealing with.'

'Scottish Government guidance is required on valuation of land for affordable housing in public ownership.'

'Extend use of compulsory purchase powers to acquire sites for affordable housing.'

'Designate sites for affordable housing in more development plans.'

The impact of the Scottish Government's *Firm Foundations*

Finally, it is of interest to note that there are signs that Firm Foundations may currently be contributing uncertainty to the development process, as local authorities defer policy and planning decisions pending consideration of the proposals set out in the document.

In the longer term it will be interesting to see what impact some of the measures, if adopted, will have on land release for housing and the supply of both subsidised and unsubsidised housing. In particular if the numbers of local authorities opting to pursue council house building increase, it will be interesting to see what impact this has on the pursuit of Section 75 agreements.

'Proposed changes in national policy add to the climate of uncertainty. One local authority has now suspended all land transfers until it has made a decision on whether to proceed with its own new build programme.'

'Local authorities would be more likely to pursue effective affordable housing policies if they got the houses rather than RSLs.'

8 Conclusions and Recommendations

In this final chapter we summarise the main findings, draw a number of conclusions, and make some recommendations on how to improve the existing framework while also suggesting the need for a wider debate on a more long-term sustainable and effective approach to securing the provision of affordable housing.

Much pain – what gain?

With the publication of PAN 74 in 2005, the planning system in Scotland was given a pivotal role in the provision of affordable housing. Most Scottish planning authorities have or are in the process of putting in place an affordable housing policy. Almost all of the planning authorities that have yet to develop an affordable housing policy are situated in the core urban area of the Clyde Valley. The main reason local authorities give for not having an affordable housing policy is lack of identified need for additional affordable housing.

So far the evidence suggests that affordable housing policies have made no significant positive contribution to the alleviation of housing need in Scotland. Indeed there is a possibility that in the last three years the policy framework may have exacerbated unmet need by slowing down the rate at which housing supply responds to changing demand, thereby adding to upward pressure on prices.

The numbers of completed units likely to be secured in Scotland through affordable housing policies is unclear. However, the process of obtaining affordable housing through the planning system is still bedding down and it is likely that the policy will deliver very modest levels of affordable housing completions for at least the next three to five years, and we suspect probably for much longer.

Application of affordable housing policies and Section 75 agreements do appear from the evidence in England to have the potential to play a role in ameliorating the residential segregation that can result from the operation of market forces. However, it is not clear that this policy objective is currently well specified, or even that it is necessarily a good thing:

That the disadvantaged are concentrated in poor neighbourhoods does not demonstrate that poor neighbourhoods are a cause of disadvantage. If that is the case, the conclusion for policy is to reduce income inequality in society not build 'mixed neighbourhoods' or improve the built environment in such neighbourhoods. Mixed neighbourhood policies may divert attention from the need for effective income redistribution. Policies should help people and people who are effectively helped have an increased probability of moving away from the poor neighbourhoods in which they currently live. (Cheshire, 2007)

As in England, it appears that most new affordable housing secured through Section 75 agreements in Scotland will require (unless there are significant changes in national policy) substantial public subsidy.

In terms of who pays the (effective) costs of implementing the policy framework, it is disturbing that there is no robust evidence on this to be found. There are differing opinions as to the answer, but it is generally acknowledged that no one knows, and few seem particularly concerned that no one knows.

What is known is that Section 75 negotiations are typically complex and drawn-out affairs. There are many reasons for this. There have been difficulties translating housing needs study outputs into realistic policy objectives. There have been difficulties in agreeing a valuation for land for affordable housing. There have been difficulties in agreeing the level of developer contribution, particularly for sites where there have been tensions regarding the appropriate balance between housing, infrastructure, and other types of developer contribution. Resolving these difficulties all involve costs

for both the public and private sector. When these costs are added to those arising from development per se, it is difficult to see how a case can be made for the affordable housing framework in Scotland to be seen as effective or efficient.

‘The need for planning agreements can lengthen the time taken to progress market housing. Partly it’s our fault that securing S75 agreements can be protracted (due to staffing shortage issues). Sometimes, it is just the inherent complexity of the agreement being negotiated.’

‘Our local planning inquiry will cost the Council around £150,000 in direct costs – plus time and QC costs. Costs tot up with builders employing £2,000-a-day QCs.’

‘Is there a better way to secure affordable housing? What was wrong with using the traditional tax system and funding approaches? The state has a responsibility to house its people. We just lost sight of the fact.’

Many stakeholders surveyed believe that the costs associated with the development and implementation of affordable housing policies outweigh or will in the near future outweigh the benefits. Some remain optimistic that the benefits that will arise in time from the numbers of affordable housing delivered through affordable housing policies will justify the associated costs. However, most stakeholders remain to be convinced that the affordable housing policy approach represents value for money for the taxpayer.

More generally, there are questions as to whether local authorities and others involved in Section 75 negotiations have the skills, understanding, and outlook to engage and collaborate with developers. While most local authority staff genuinely believe they are committed to engaging and collaborating with private developers, it is also evident that many private developers remain sceptical about this.

Effective engagement and collaboration require a sense of shared objectives, time for relationships to develop and continuity of representation on all sides. Greater emphasis on informal face-to-face communication between planning authorities and private developers may help to build greater trust and confidence between both parties over time. Ultimately however, effective strategic leadership and unity of purpose on the part of senior officers and elected members within authorities will be required.

There is some expectation that the introduction of ‘strategic housing investment plans’ will lead to a more realistic assessment by local authorities of the availability and the timing of development funding. However, securing affordable housing provision through the planning system is ultimately a market led process. Neither local authorities nor RSLs have overall control of the pace of development delivery. There is therefore a distinct possibility that authorities will be unable to plan with any degree of certainty when funding will actually be required to support the delivery of affordable housing secured through the planning system.

Overall the current policy framework seems badly flawed. It has emerged (and is still emerging) incrementally in order to secure poorly articulated and ill thought through policy objectives. The economically inefficient, convoluted and downright tortuous process embodied in this policy framework is currently delivering comparatively little in Scotland at considerable cost in terms of time and money for both the public and private sectors. Having taken nearly two decades to become established in England, the policy framework seems to be adding little to the stock of available affordable housing there, while delivering mixed community benefits of dubious value. It is a policy system that seems designed to generate maximum pain for minimum gain.

Recommendations for improving the current policy framework

Accepting that the current framework may remain in place for some time, we believe that the Scottish Government should look at the possibility of acting on some of the suggestions contained in table 7.12, and encouraging the actions noted in tables 7.13 and 7.14.

In addition to this, the following actions would help to remove some of the tension, difficulties and delays that surround the delivery of affordable housing procured through the planning system.

Dispute resolution system

In the absence of some recognised and accepted form of dispute resolution system, implementation of affordable housing policies and Section 75 agreements will continue to be characterised by very lengthy delays. We would therefore suggest that the Scottish Government explore whether it would be feasible to introduce a national dispute resolution system, and consider what form it might take.

Improving good practice guidance

There would be merit in the Scottish Government preparing a Model Section 75 agreement, perhaps drawing on the model S106 agreement (which has been accompanied by good practice checklists and case studies to assist local authorities in negotiating planning agreements) prepared in England by the Department of Communities and Local Government.

On saying that, written documentation does not always provides the most effective means of sharing and promoting best practice. We therefore suggest that any model agreement or additional guidance developed should be accompanied by a series of roadshows, possibly under the aegis of the CIH in Scotland and RTPI in Scotland. Thereafter, there would be value in there being an annual event to allow housing officers, planners, developers, RSLs and other interested parties to come to together to identify areas of common concern and highlight or identify good practice to improve the delivery of affordable housing policies. The findings of this annual workshop could in turn be used to inform updates to the model S75 agreement and associated guidance.

We believe a similar approach could be adopted towards other key guidance that survey respondents would like to see prepared. This includes the housing needs assessment guidance that the Scottish Government has committed in *Firm Foundations* to provide.

Monitoring affordable housing policy implementation

The implementation of S75 agreements will require careful monitoring to ensure that they are complied with, and in the longer term to ensure that information is available to assess the impact of the affordable housing policy approach.

The Scottish Government is currently working towards the collection of better information on affordable housing consents and completions. Although most housing officers apparently believe it will be easy to provide this information, by and large their planning colleagues do not share this view.

We believe local authorities with an affordable housing policy would be best advised to identify a nominated officer with formal responsibility for monitoring it as soon as possible, and that the Scottish Government should take steps to require this now, if it ever hopes to demonstrate robustly at some future point the effects of the policy framework.

Is there a way to achieve more gain with less pain?

More fundamentally, we think on the evidence presented that there is a case for a more root and branch approach to improving the current state of affairs in Scotland.

In this context, it appears to us that no attempt has ever been made by any UK administration to undertake a cost–benefit analysis of alternative policy approaches to securing affordable housing. The relative advantages and disadvantages of going down the affordable housing policy route as compared to the more traditional approach of allocating a sufficient proportion of tax revenues for this purpose²⁵ have never to our knowledge been subject to formal economic appraisal. Governments have seemed to see the affordable housing approach as self-evidently the best one to adopt. This is clearly a questionable conclusion.

A possible third policy approach, as discussed in Chapter 6, would be some form of mandatory tariff system. This approach is advocated by some, and could potentially offer a fairer, more efficient and more effective means of securing affordable housing than the current affordable housing policy approach.

However, we do not believe the attractions of a mandatory tariff system make it self-evidently superior to the current policy approach, or a more traditional approach. That would be to make the same mistake for which we have just criticised Government. Rather, we believe this approach warrants further discussion and consideration for Scotland, but in the context of a proper economic appraisal of a mandatory tariff regime vis-à-vis the current policy framework (what might be called the ‘do nothing’ option!) and a more traditional funding approach.

Until such time as this work is done, no one can be certain which would be the ‘best’ policy approach to adopt. However, we cannot and do not believe it is beyond the wit of Scottish stakeholders to devise a system that can generate far more gain for far less pain than the present policy framework currently delivers or looks set to deliver for many years to come.

25 or supplemented by private financial borrowing by social landlords.

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