



DEVELOPER CONTRIBUTIONS IN THE DELIVERY OF SOCIAL AND AFFORDABLE HOUSING

This Research Paper examines the effectiveness of developer contributions in the delivery of social and affordable housing in England, Wales, Scotland and the Republic of Ireland. It also highlights issues that could possibly be used to inform the introduction of developer contributions in Northern Ireland.

SUMMARY OF KEY POINTS

Developer contributions have been used for the delivery of social and affordable housing in Great Britain (GB) and the Republic of Ireland (RoI) for some years. This Research Paper examines the issues that have been identified in these jurisdictions as developer contributions are set to enter the arena for affordable housing delivery in Northern Ireland.

The Minister for Social Development has proposed a 20% developer contribution to address the shortage of social and affordable housing in Northern Ireland. Overall developer contributions in GB have been largely successful in providing affordable housing and delivering on a policy framework to create mixed tenure communities.

In England particularly, developer contributions have taken place against a backdrop of continuing policy change and this has led to uncertainty within the housing sector. Evidence examined in this paper shows that a clear policy framework will play an important role in establishing developer contributions as a key element in delivering affordable housing for Northern Ireland.

Some key findings from case studies and evaluations in GB and RoI that are examined in more detail in this paper include the need for:

- ❑ a clear policy framework that provides consistency;
- ❑ a housing needs analysis;
- ❑ a dedicated trained skills team to take part in negotiations with developers;
- ❑ a model that provides a framework for negotiation that provides all parties with an understanding of what is to be achieved in individual negotiations;
- ❑ housing associations to be involved from the start of the process; and
- ❑ effective monitoring systems to ensure that agreements are being delivered; and
- ❑ A more pro-active approach to procuring developer contributions by local authorities.

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INTRODUCTION

Developer contributions are used to deliver affordable housing in England, Wales, Scotland and the Republic of Ireland (RoI). This Research Paper looks at the legislation and policy in place that governs developer contributions in these jurisdictions. Developer contributions are currently proposed by the Minister for Social Development as one of the means to address the shortage of affordable housing in Northern Ireland.

DEVELOPER CONTRIBUTIONS

ENGLAND AND WALES

The legislation used for securing developer contributions in England and Wales¹ is Section 106 of the [Town and Country Planning Act 1990](#) (as amended)². This is usually known as a 'Section 106 Agreement' (S106 agreement), but can also be referred to as planning gain, planning benefit, community benefit or planning obligation.

There are currently two main ways of delivering new affordable housing in England and Wales:

- S106 agreements delivering affordable homes as part of the planning agreement for a private development ('S106 provision'); or
- Acquisition of sites by housing associations to build affordable homes through public subsidy (Social Housing Grant – SHG) which formerly was the most common mechanism ('non-S106 provision').

The term 'affordable housing' is used by the Government in two ways; to broadly describe publicly subsidised social sector housing or to describe social and intermediate housing through S106 agreements in private housing developments.

Provision of affordable housing on individual sites is determined by three factors³:

- The site threshold above which affordable housing is required (e.g. above 15 dwellings);
- The proportion of units (or bed spaces) which should be provided as affordable units (e.g. 25% of units in a scheme);
- The availability of Social Housing Grant (SHG) either to the Registered Social Landlord (RSL), usually a housing association, or directly to the developer.

¹ A new housing strategy for Wales is being developed with a publication date of spring 2009.

² Town and Country planning Act 1990 Chapter 8 available at:
http://www.opsi.gov.uk/acts/acts1990/UKpga_19900008_en_1.htm

³ 'Expanding Choice Increasing The Supply of Affordable Housing: A Report by the HBF Affordable Housing Policy Group (July 2007) at:
http://www.hbf.co.uk/fileadmin/documents/Policy/Affordable_Housing/AHPG_Report_Version_8_FINAL_10_July_2007.pdf

Intermediate affordable housing is housing at prices and rents that are above those of social rents, but below market prices or rents. These can include shared equity homes, but not low cost market housing.

EVALUATION OF SECTION 106 AGREEMENTS

S.106 agreements allow local authorities to negotiate with developers for a contribution towards the cost of a new development before planning permission is granted. Local authorities establish a policy base that sets targets for affordable housing providing a threshold limit for the unit numbers that will trigger a development obligation. This can take the form of providing a percentage of social and affordable housing at a negotiated cost to a housing association or local authority, necessary infrastructure, community facilities or a cash payment. Negotiations with developers involve planning authorities, local councils and housing associations.

S.106 agreements have been used increasingly in England and Wales to address the shortage of social and affordable housing. S106 was described by the National Audit Office in 2005 as an “*increasingly important lever*” in the affordable housing delivery chain⁴. Since 2002, S.106 has been kept under review leading to uncertainty among local authorities, housing associations and developers.

In January 2004, following a consultation on planning obligation policy, the Government found that there was almost universal criticism of S106. The subsequent [Planning and Compulsory Purchase Act 2004](#)⁵ s.46 and s.47 gives powers to the Secretary of State in England and the Welsh Assembly to make regulations to replace S106 with a fixed charge rather than a negotiated agreement. However, these powers have never been used⁶.

Ongoing evaluation on the implementation and impact of S.106 has been undertaken by researchers from the University of Cambridge and the University of Sheffield since 2002. Over that five year period a buoyant private market was providing planning applications, land for development and the opportunity for the negotiation of S106 agreements. Housing Associations reported that for many of them the rationale for S106 was to secure land. One report⁷ warned that *‘in a downturn, this could rapidly reverse and, unless more non-S106 sites came forward, output levels of affordable housing would also decline’*.

Research found that once an S.106 agreement was in place, in the majority of cases it delivered what had been negotiated⁸. Where this did not happen it was often because the development of a large site could take so long to complete that the market had changed. As developers rely on the sale of the market housing to finance affordable housing, if the market housing cannot be sold then the affordable housing cannot be delivered. Many S.106 agreements now include a clause where it is the occupation of the market housing that triggers the delivery of the affordable housing.

⁴ ‘Building more affordable homes: improving the delivery of affordable housing in areas of high demand’ Joint National Audit Office and Audit Commission report, HC 459 Session 2005 – 06, December 2005.

⁵ Planning and Compulsory Purchase Act 2004 available at: http://www.opsi.gov.uk/acts/acts2004/ukpga_20040005_en_1

⁶ ‘The Planning - gain Supplement (Preparations) Bill (Bill 37 of 2006-7) Research Paper 07/04 10 January 2007: House of Commons Library.

⁷ ‘Land and finance for affordable housing’ (2005) Monk, S. et al; Joseph Rowntree Foundation and Housing Corporation (p54). Available at: <https://www.jrf.org.uk/bookshop/eBooks/1859353061.pdf>

⁸ ‘Delivering Affordable Housing Through Section 106: Outputs and outcomes’ (May 2006) available at: <http://www.jrf.org.uk/bookshop/ebooks/9781859354698.pdf>

It is pointed out that developments consisting of all market or all social housing can be completed in less time. Therefore the move toward mixed tenure housing means completion can take longer as the housing is built in phases. *'Linking affordable housing directly to market development therefore inherently slows down the process of achieving the required output.'*⁹

The need for certainty and a clear understanding of the terms for negotiation were highlighted by cases where developers had negotiated on predicted profits on completion, while the planning authority was basing their negotiations on land and property valuations at the time of negotiation. This illustrates the need for a clear understanding of the basis for negotiation by all parties.

Attention to the wording of S.106 agreements can also ensure that where a developer's contribution consists of a percentage of dwellings rather than a specified number, if the density is increased the local authority will also benefit.

Overall, while studies show that local planning authorities have continued to improve the implementation of S.106 to deliver affordable housing, key points to emerge from a report in 2007¹⁰ and a 2008 update¹¹ show that:

- There is no consensus among local planning authorities as to their role in negotiations between housing associations and landlords with some concerned only with how many units are ultimately delivered.
- Some local planning authorities are concerned with meeting a percentage target for affordable housing, while others are more concerned with the type of house that meets their requirements or the mix of tenure within a development. At times wider considerations such as regeneration led to less affordable housing being sought in an area.
- Due to arguments from developers that the number of affordable houses in a development is not viable, or to address perceived inequalities in negotiations with developers, some local authorities have felt it necessary to conduct financial viability assessments which have added to their workload.
- Increasing requirements for developer contributions to infrastructure has led to affordable housing being squeezed out in the negotiation process.
- Tenure has become a major negotiating point for developers. Although now accepting the need for affordable housing, they see a higher proportion of shared ownership as a means of reducing their financial commitment.
- Housing associations are often brought into negotiations too late to contribute effectively although they will be responsible for delivering the affordable housing. In cases where housing associations have been brought in too late it has proven difficult to find an appropriate housing association to appoint.

⁹ ibid

¹⁰ Burgess, G. and Monk, S. 'How local planning authorities are delivering policies for affordable housing' (December 2007) University of Cambridge. Summary available at: <http://www.jrf.org.uk/knowledge/findings/housing/pdf/2171.pdf>

¹¹ Burgess, G. et al. 'The provision of affordable housing through section 106: an update: Final report to the Joseph Rowntree Foundation (January 2008) available at: <http://www.dataspring.org.uk/Downloads/JRF%20Report%202008.pdf>

- ❑ Even where negotiations begin at the same starting point, the affordable housing outcome will vary as each site and scheme has its own characteristics shaping what can be achieved. Depending on the economics of individual schemes it is not always possible to meet targets for affordable housing.
- ❑ All the authorities involved in the case studies were concerned that further changes in policy may adversely affect their capacity to meet affordable housing objectives.

SECTION 106 AGREEMENTS – KEY POINTS

A key issue that emerged from evaluating S106 agreements showed that trained dedicated negotiation teams in local planning authorities, local councils and housing associations were vital in securing planning obligations. Developers have legal and planning expertise within their teams that gives them an advantage in negotiations. There is a need for training of personnel in local authorities and housing associations to gain expertise in negotiation skills for securing developer contributions.

It was found¹² that more obligations were secured when local authorities used standard charging based on a formula; for example payment per bedroom for providing open space. Monitoring of planning obligations was found to be poor and problematic. A Welsh study¹³ provided some reasoning for why this may be the case as follows. There are two elements to planning obligations that can be measured; agreed and delivered. However, planning obligations agreed will not necessarily correspond with those delivered. Measurement of delivered obligations is problematic for the following reasons:

- ❑ Agreed obligations may not be delivered due to the abandonment of the scheme;
- ❑ Agreed obligations may be altered through changes in the development;
- ❑ Projects may be phased and obligations or parts of them may be triggered at various stages of the development. Therefore they may take a number of years to deliver. Unless monitoring allows identification of exactly when an obligation has been delivered, calculating their value will be complicated and require more resources.

[The Home Builders Federation \(HBF\) report](#) in July 2007¹⁴ gives a developer perspective on some of the key issues already identified. Their report makes the argument that, since Housing Corporation guidance directs that S106 affordable housing should be assessed on the assumption that SHG will not be available, the financial impact on land values in S106 agreements is rising. Therefore, they argue, current policy could actually reduce the supply of affordable housing. They make the following points:

- ❑ With the growing demands for other S106 obligations on infrastructure and renewable energy etc. some schemes will no longer be financially viable;

¹² 'The Use and Value of Planning Obligations in Wales: A Report to the Welsh Assembly Government (August 2007) available at:

<http://new.wales.gov.uk/topics/planning/planningresearch/publishedresearch/1847126/?lang=en>

¹³ *ibid*

¹⁴ 'Expanding Choice Increasing The Supply of Affordable Housing: A Report by the HBF Affordable Housing Policy Group (July 2007) at:

http://www.hbf.co.uk/fileadmin/documents/Policy/Affordable_Housing/AHPG_Report_Version_8_FINAL_10_July_2007.pdf

- Even where schemes are still viable after all these costs are taken into account, residual land value of some schemes will fall to a point where landowners will refuse to sell their land for residential development;
- The difference between residential land value which forms the net cost of all S106 agreements may fall below either the current use value or value for alternative use. Therefore some land may not come forward for residential development solely because of S106 demands.

The HBF report claims that S106 negotiations delay schemes and create uncertainty about the final impact of affordability on a scheme with the possibility of even making the scheme unviable. Where uncertainty exists it impacts particularly on smaller residential schemes:

... RSLs are often reluctant to take on the management of small numbers of scattered dwellings, any extension of Affordable Housing demands to smaller residential must be applied flexibly, including accepting financial contributions ('commuted sums') towards provision of Affordable Housing elsewhere.

Under the heading 'Why should development pay for infrastructure?' the [Community Infrastructure Levy](#) document¹⁵ appears to endorse this view:

Research shows that local authorities tend only to negotiate planning obligations alongside consents for larger developments, partly because affordable housing requirements (which often apply to developments over a certain size) trigger a planning obligation, but also because the time and costs involved do not always make it worthwhile negotiating on smaller developments.

COMMUNITY INFRASTRUCTURE LEVY

[The Planning Reform Bill](#)¹⁶ currently before Parliament provides the legislative framework to introduce a Community Infrastructure Levy (CIL). This is in place of plans to introduce a Planning-gain Supplement as recommended in Kate Barker's Review of Housing Supply in 2004¹⁷. Planning-gain Supplement had been intended to operate with a scaled-back S106 in the form of a levy to capture windfall gains made by landowners when the granting of planning permission increased the value of their land.

A CIL¹⁸ is now the Government's preferred option to harness the value of planning permission in order to generate additional infrastructure funding for new housing developments. CIL will be a standard charge decided by designated charging authorities. It may, for example, be levied as a certain amount per dwelling and while it is not intended to meet the full costs of infrastructure for a new development, it is intended to make a sizable contribution.

¹⁵ Community Infrastructure Levy available at:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/674479.pdf>

¹⁶ Planning Bill 2007 Draft Legislation 2007-08 available at:

<http://www.commonleader.gov.uk/output/page2036.asp>

¹⁷ Review of Housing Supply: Final Report and Recommendations (2004) available at: http://www.hm-treasury.gov.uk/media/E/4/barker_review_execsum_91.pdf

¹⁸ Community Infrastructure Levy document available at:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/674479.pdf>

CIL is based on the 'Milton Keynes Model'¹⁹ which seeks to minimize infrastructure provision, whilst minimizing S106 negotiations. It proposes a tariff of a cash contribution from developers of £18,500 per dwelling on 15,000 homes to be built by 2016. There will be a further £33.46 million contribution from employment development to support the requisite infrastructure. These figures are in addition to developer contributions of 'free land and works in kind and affordable housing quotas.' The total contribution is therefore approximately 75% of the total cost of infrastructure directly relating to developments.

As CIL will be a fixed charge for developers towards infrastructure and it is hard to predict its impact on S106 negotiations. Given that it was found that affordable housing was often squeezed out when contributions towards infrastructure formed part of S106 negotiations²⁰, CIL may have a negative effect on affordable housing delivery. Alternatively, if a developer knows in advance the fixed amount they will have to make for infrastructure, S106 negotiations will be able to focus on delivering affordable housing.

POLICY CONTEXT

S.106 has operated in a changing policy context. Planning Policy Guidance 3: Housing²¹ (PPG3) published in March 2000 was cancelled and replaced by [Planning Policy Statement 3: Housing](#)²² (PPS3) in November 2006 which was to be read in conjunction with [Delivering Affordable Housing \(2006\)](#)²³. The main thrust of PPS3 is to address environmental issues and transport provision etc. and there is therefore an emphasis on community amenities rather than affordable housing.

PPS3 does specifically refer to developer contributions in paragraph 29:

In local Development Documents, Local Planning Authorities should: - Set an overall (i.e. plan-wide) target for the amount of affordable housing to be provided. The target should reflect the new definitions of affordable housing in this PPS. It should also reflect an assessment of the likely economic viability of land for housing within the area, taking account of risks to delivery and drawing on informed assessments of the likely levels of finance available for affordable housing, including public subsidy and the level of developer contribution that can reasonably be secured. Local Planning Authorities should aim to ensure that provision of affordable housing meets the needs of both current and future occupiers, taking into account information from the Strategic market housing Assessment.

PPS3 was welcomed as it makes two important changes to the delivery of affordable housing. Firstly it provides a definition of affordable housing that includes both social and intermediate housing, but excludes 'low cost' market housing. Secondly, it gives autonomy to Local Planning Authorities to lower the minimum threshold above which affordable housing has to form a

¹⁹ Milton Keynes Council website at:

<http://www.miltonkeynes.gov.uk/mkgrowth/DisplayArticle.asp?ID=33407>

²⁰ Burgess, G. et al. 'The provision of affordable housing through section 106: an update: Final report to the Joseph Rowntree Foundation (January 2008)

²¹ Planning Policy Guidance 3: Housing (March 2000) (Cancelled) available at:

<http://www.communities.gov.uk/archived/publications/planningandbuilding/planningpolicyguidance>

²² Planning Policy Statement 3: Housing (November 2006) available at:

<http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicystatements/pps3/>

²³ Delivering Affordable housing available at:

<http://www.communities.gov.uk/publications/housing/deliveringaffordablehousing>

proportion of a housing development, providing it is viable to do so. The national indicative site minimum threshold had previously been set at 15 dwellings.

PPS3 also requires local authorities to identify at least a fifteen year land supply for housing in their plans, including a continuous five year supply of sites for housing.

PPS 3 has taken steps to improve the monitoring of planning obligations. Lack of monitoring was criticised in a 2006 report on S106²⁴ where it was argued that it would be easy to implement a monitoring system, with reference to the original agreement, in order for all parties involved to check compliance. An alternative would be to have housing associations ensure that what was in the agreement was being delivered to them. However, this highlighted the problem of housing associations becoming involved in negotiations at too late a stage and not being familiar with what had been agreed.

[The Housing Green Paper](#)²⁵ (2007) was described by the Housing Minister as “the biggest house building programme in decades”. It concentrated on increasing the supply of housing and making it more affordable. It promised more funding for social housing and a new approach to ensuring land availability through the planning system, with authorities linking housing policy with planning policy.

A submission on behalf of the Joseph Rowntree Foundation²⁶ on the Housing Green Paper makes the point that Registered Social Landlords are already using their reserves to make S106 schemes viable and expanding programmes without allowing rents to rise will put further pressure on their finances. As S106 has depended on market output, increased shared ownership raises questions about financial viability in an economic downturn.

RECENT MEASURES

Immediate measures to ensure the delivery of new affordable housing and counteract the credit crunch were announced in July 2008²⁷. They included a further £270 million to deliver an additional 3,800 homes for social rent and 1,500 shared ownership homes over the next three years.

It was announced that a national clearing house was to be set up for developers to approach the Housing Corporation with proposals to sell their unsold stock for social housing.

Flexibility has been introduced to allow providers of affordable housing to submit proposals to the Housing Corporation at any time, rather than waiting for the quarterly bidding round. This is

²⁴ Monk, S. et al ‘Delivering Affordable Housing through Section 106: Outputs and Outcomes’ (May 2006) Joseph Rowntree Foundation available at:

<http://www.jrf.org.uk/bookshop/eBooks/9781859354698.pdf>

²⁵ Homes for the future: more affordable, more sustainable Housing Green Paper (July 2007) available at: <http://www.communities.gov.uk/publications/housing/homesforfuture>

²⁶ The Cambridge Centre for Housing and Planning Research submitted a response to the Government on the Housing Green Paper on behalf of the Joseph Rowntree Foundation (2008). The submission is available at: <http://www.cchpr.landecon.cam.ac.uk/projects/detail.asp?ProjectID=107>

²⁷ “Flint outlines plan to ‘ensure delivery’ of new affordable housing” Wednesday 2 July 2008 at: <http://www.24dash.com/news/housing/2008-07-02-Flint-outlines-action-plan-to-ensure-delivery-of-new-affordable-housing>

intended to increase the pace of approvals to deliver affordable housing and support developers.

Increased funding flexibility is also to be introduced so that Housing Corporation payments can be made to housing associations and other developers at the start of social and affordable housing schemes to improve cash flow, encourage new starts and stimulate the market.

LOCAL HOUSING COMPANIES

A pilot programme was launched in 2007 by English Partnerships working with 14 local authorities to develop the 'Local Housing Company' model. The model works where local authorities create companies with private sector organisations where all parties have a share. The combination of local authority land and private sector investment is used to create housing. In this way local authorities are not selling land for a one-off payment, but are retaining an interest that allows them to benefit from increases in land values and sales of market housing.

The first four authorities involved are announcing plans to establish their local Housing Companies which Government claims have the potential to deliver up to 10,000 new homes with work on site expected to start in 2009. In addition to the 14 involved in the pilot, a further 18 local authorities have expressed an interest²⁸.

SCOTLAND

Affordable Housing Policies introduced in 2000 have increasingly been implemented by local authorities across Scotland since 2005. Local authorities with AHPs in place expect developers to make a contribution to the delivery of affordable housing. The power to secure developer contributions derives from Section 75 of the [Town and Country Planning \(Scotland\) Act 1997](#)²⁹, corresponding to S106 in England and Wales. Guidance is provided in [Scottish Planning Policy 3](#)³⁰ (SPP3) and [Planning Advice Note 74](#)³¹ (PAN74).

The Scottish Government released statistics on the number of planning consents given for affordable housing based on responses from 31 of Scotland's 34 Planning Authorities³². This showed that 78 per cent (9,526) of the units granted planning consent were to be publicly funded with no direct contribution from developers. The remaining 22 per cent represents a variety of provisions including private developers having agreed to contribute land or units for affordable housing to housing associations (or other bodies) at a price allowing provision of affordable housing, or discounted units being sold privately at a below market rate.

²⁸ 'Facing the Housing Challenge: Action today, innovation for tomorrow' (July 2008), Department for Communities and Local Government: London available at:

<http://www.communities.gov.uk/publications/housing/facinghousingchallenge>

²⁹ Town and Country Planning (Scotland) Act 1997 Section 75 available at:

http://www.opsi.gov.uk/acts/acts1997/ukpga_19970008_en_1

³⁰ Planning Policy 3 currently being revised. Draft version for consultation available at:

<http://www.scotland.gov.uk/Publications/2008/01/07141036/0>

³¹ Planning Advice Note 74 available at: <http://www.scotland.gov.uk/Publications/2005/03/20796/54073>

³² 'Affordable Housing Securing Planning Consent, 2005 – 2007' (April 2008) available at: <http://www.scotland.gov.uk/Resource/Doc/221329/0059514.pdf>

A [report by the Chartered Institute of Housing \(CIH\) in Scotland](#) in January 2008 under the heading 'Much pain – what gain?'³³ argues that, based on evidence in England, Section 75 agreements in Scotland have a potential role to play in '*ameliorating the residential segregation that can result from the operation of market forces*'. However the report goes on to state:

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 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.

Recommendations to emerge from the report are:

- 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 Affordable Housing Policy implementation to ensure compliance, and in the longer term to ensure that information is available to assess the impact of the Affordable Housing Policy 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 Affordable Housing Policy 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.

In light of the Social Development Minister's proposal to reduce the grant to housing associations by 10% per dwelling to lever in more private finance³⁴ it is interesting to note a [Chartered Institute of Housing Scotland Policy Briefing](#)³⁵ (July 2008) highlighting that in Scotland a number of major builders are shedding staff and it is predicted that building output may be down by 10 – 20% this year (2008). Under the heading "Emerging issues from the 'Credit Crunch'" the briefing states:

³³ 'All Pain, No Gain? Finding the Balance: Delivering affordable housing through the planning system in Scotland' January 2008, CIH Scotland (p61) available at: <http://www.cih.org/scotland/policy/All-Pain-no-gain.pdf>

³⁴ Ministerial Statement 'Outcome of Affordability Review' Official Report (Hansard) 26 February 2008 available on Assembly website.

³⁵ 'Stacking up Housing Supply: The Scottish Government's Delivering Plans and the Credit Crunch' July 2008; Chartered Institute of Housing Scotland available at: <http://www.cih.org/scotland/policy/Housing-Supply-July2008.pdf>

At the same time lenders are facing challenges which are leading to less lending to RSLs³⁶ and, where lending does occur, less generous interest rates for RSLs. 5 of the 7 main lenders have withdrawn from the market and housing associations are being devalued as safe housing bets. Combined with the tightening HAG³⁷ funding from the Scottish Government this poses both short and medium term challenges in upping the delivery of affordable rented housing.

And

There is growing evidence, mainly from England at this stage, that the use of 'planning gain' such as section 75 agreements and affordable housing quotas, are beginning to deliver significantly less affordable housing as private developers either stop building or seek to re-negotiate agreements as their profit margins are squeezed.

CIH (Scotland) is seeking the views of its members on plans the Scottish Government has to address the affordable housing crisis. The following points raised are pertinent to this research paper:

- ❑ As developers slow down or even stop their development programmes how can social housing providers or enablers be encouraged to buy surplus land that they may be banking? Can they take over and complete partly developed sites?
- ❑ How willing may developers be to work more closely with RSLs and local authorities to build new homes at lower costs? Will this help them remain in the market, protect their share prices and prevent them having to sanction job losses?³⁸

[A study published in May 2008](#)³⁹ to assist development of policy in Scotland concluded that there was 'much to be done to develop a system for developer contributions that is fit for purpose'. The report emphasises the following recommendations:

- ❑ The need for an agreed and consistent methodology for valuing contributions in all common categories of benefits;
- ❑ The need to identify the most common modes of contribution and establish consistent conventions for processing them, especially for affordable housing;
- ❑ The need for consistent recording and monitoring of key data concerning the use of planning or other forms of statutory agreements for developer contributions;
- ❑ The need to ensure that planning authorities have effective systems for monitoring and accounting for due payments under agreements and for the co-ordination of their use in the implementation of the relevant projects;
- ❑ The need to consider means to assess the value of contributions which are the result of suspensive [sic] planning conditions or are not the subject of legal agreements; and
- ❑ The need for an effective exchange of practice among planning authorities in the negotiation of developer contributions, both in the policy for their use and in the approach to assessing their value.⁴⁰

³⁶ Registered Social Landlords, usually local authorities or housing associations.

³⁷ Housing Association Grant.

³⁸ 'Stacking up Housing Supply: The Scottish Government's Delivering Plans and the Credit Crunch' July 2008; Chartered Institute of Housing Scotland.

³⁹ 'An Assessment of the Value of Planning Agreements in Scotland' – Report (May 2008) available at: <http://openscotland.gov.uk/Publications/2008/03/05114332/0>

REPUBLIC OF IRELAND

[Part V of the Planning and Development Acts 2000 \(Part V obligations\)](#) requires up to 20% of land zoned for residential developments or for a mix of residential and other uses be reserved to meet social and affordable housing needs. Under an amendment to the Act in 2002 a developer may provide a sum of money or plot of land of the equivalent value.

Options are available if the developer and local authority agree. Although not the preferred option for the local authority, a developer can provide social and affordable housing on site or off-site. The developer can also pay the local authority a sum equivalent to the difference between the existing use value of the 20% and its development value.

There has been evidence in RoI that rural local authorities were more in favour of accepting monetary contributions toward social housing provision than taking a proportion of the housing in a development. This was not the case in Dublin where the transfer of dwellings for social and affordable housing was favoured; in 2004, 70 per cent of social and affordable housing delivered under Part V was in Dublin⁴¹. [Circular AHS 4/06 \(November 2006\)](#)⁴² specifies that financial payments instead of housing should only be accepted in Part V obligations under exceptional circumstances.

As with the other jurisdictions in this paper, the delivery of affordable housing in the RoI has taken place against a backdrop of legislative and policy changes. In 1991 the Shared Ownership Scheme was introduced followed by the Affordable Housing Scheme (1999), Part V (2000) and the Affordable Housing Initiative (AHI) (2003).

No one agency is responsible for affordable housing, but in 2005 the Affordable Homes Partnership was established to 'drive and coordinate the provision of affordable housing in the Greater Dublin area'⁴³. They published a [report](#) suggesting that as Part V depends on land as a driver and, since until recently social and affordable housing procurement relied heavily on public sector land, Part V as a procurement route has yet to reach its full potential in RoI. However, over a four year period delivery has increased from less than 100 units in 2002 to over 2,000 in 2006⁴⁴.

The Affordable Homes Partnership report concludes that many concerns point to a more general issue of a lack of skills and resources required to negotiate successfully on Part V obligations. The report also states that there have been a number of legal disputes regarding the interpretation of Part V which may require changes to be made in the legislation in the future.

⁴⁰ Directly quoted from: 'An Assessment of the Value of Planning Agreements in Scotland' – Report (May 2008).

⁴¹ 'Housing Affordability in the Republic of Ireland: Is Planning the Cause or Cure?' Michelle Norris and Patrick Shiels; Housing Studies, Volume 22, Number 1, January 2007 pp. 45-62 available at: <http://www.borg.hi.is/enhr2005iceland/ppr/Norris-Shiels.pdf>

⁴² Circular AHS 4/06 (November 2006) Department of Environment, Heritage and Local Government available at:

<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,1769,en.pdf>

⁴³ 'Increasing Affordable Housing Supply' (October 2007) Affordable Homes Partnership available at: <http://www.environ.ie/en/DevelopmentandHousing/Housing/PublicationsDocuments/FileDownload,17193,en.pdf>

⁴⁴ Affordability Review Advisory Panel Report to the Minister for Social Development, 20 December 2007.

At the end of July 2008 it was reported⁴⁵ that developers had handed over 766 units (73%) as part of Part V obligations with a further 5,753 units in progress. However, in Dublin a developer pulled out of a 600 million euros Public Private Partnership (PPP) deal with Dublin City Council to deliver social and affordable housing in various parts of the city with the developer citing 'substantial changes in the market' as the reason. Dublin City Council said that the projects were 'unviable' from the private partner's perspective as the deal was partly based on the sale of private units to fund the cost of the social and affordable units being provided⁴⁶.

The Urban Forum, an organisation in Rol of five bodies representing professionals in the construction industry issued a document in 2007⁴⁷ where they called for transparency and a more consistent methodology and approach between local authorities in Rol. They claim that while some local authorities are pro-active, others take little action themselves and do not enforce Part V obligations.

The measures they claim need to be taken include the provision of dwellings rather than payments where feasible. They also cite the current exemption of one-off houses and small sites on un-zoned land as inequitable and call for changes in legislation make all residential planning permissions subject to Part V legislation.

NORTHERN IRELAND

Proposals to introduce developer contributions in Northern Ireland were announced by the Social Development Minister in February 2007. The intended use of Article 40 agreements⁴⁸ will require a revised version of Planning Policy Statement 12 (PPS12) Housing in Settlements⁴⁹ to be adopted. Article 40 has rarely been used and when it has it has been used for developer contributions to infrastructure or community amenities. The proposed requirement is for developers to provide 20% of each development of five units or more for social and affordable housing. It is the current intention that social and affordable housing will be 'pepper potted' among private sector dwellings⁵⁰.

CIH in Northern Ireland have identified some key principles they feel can help to get it right⁵¹. Those that address some of the issues highlighted in this paper are summarised below:

- The intent of any policy framework must be based on the desired outcome and reflected in the model used for delivery.
- A time limited working group could be established to ensure that key players have an input to policy development.

⁴⁵ Independent Newspaper Business Section, 'Number of new homes lowest level for five years' Thursday July 31 2008.

⁴⁶ Independent Newspaper, 'Developer quits €600m social housing project' Tuesday May 20 2008.

⁴⁷ 'A Better Quality of Life For All: Proposals for creating a more sustainable built environment' (February 2007) Urban Forum available at: <http://www.engineersireland.ie/home/docs/ABetterQualityOfLifeForAll-UrbanForum.pdf>

⁴⁸ Article 40 of the Planning (Amendment) (Northern Ireland) Order 2003 available at: <http://www.opsi.gov.uk/si/si2003/20030430.htm>

⁴⁹ PPS12 available at:

http://www.planningni.gov.uk/AreaPlans_Policy/PPS/pps12/pps12_publication.htm

⁵⁰ Affordability Review Advisory Panel Report to the Minister for Social Development, 20 December 2007.

⁵¹ Presentation to the Social Development Committee 23 June 2008 on the introduction of developer contributions in Northern Ireland.

- ❑ A model needs to be developed that is flexible enough to withstand cyclical changes in the housing market.
- ❑ Information has to be available to allow the level of contribution sought from each developer to be based on a robust assessment of the scale and type of housing required for a particular area.
- ❑ Resources are needed to provide additional skilled staff in the housing and planning sectors with the necessary expertise to negotiate with developers.
- ❑ Developer contributions need to form part of the planning application process.
- ❑ Tools need to be designed to monitor how Article 40 is working as a vehicle to deliver social and affordable housing and ensure that agreements are not breached.

CONCLUSION

Developer contributions will not be able to provide a 'quick fix' solution to the affordable housing shortage. The Affordability Review Advisory Panel acknowledges that the introduction of developer contributions can have a lead in time of up to five years based on evidence from S106 in England⁵².

One suggestion⁵³ to speed up the process has been to take a phased approach. Amendments to PPS12 would allow Article 40 to be used in agreements between planners and developers for on and off site delivery of social and affordable units in the short term. The legislative change needed in wider planning reform could then be addressed in the medium term to enable developers to negotiate to make commuted payments in place of housing units. CIH in Northern Ireland point out that, allowing developers to make commuted payments instead of providing units will not be effective in fulfilling a policy intention to increase the supply of social and affordable housing.

Developer contributions are a new concept in Northern Ireland and their introduction can benefit from experience gained in GB and RoI. The current affordable housing crisis, stagnation in the housing market and the 'credit crunch' may mean that their introduction meets with less opposition than might have been the case in the past.

⁵² Affordability Review Advisory Panel Report to the Minister for Social Development, 20 December 2007.

⁵³ Presentation to the Social Development Committee 23 June 2008 on the introduction of developer contributions in Northern Ireland.