

Planning and Housing Practice Note (May 2026) - MHCLG Policy statement: a roadmap for Section 106 delivery in England

1. Introduction

- 1.1 Over the last ten years, the level of housing need in London has increased significantly. The number of households living in temporary accommodation arranged by London Boroughs has reached the highest figure on record whilst rough sleeping has increased 10 per cent in the last recorded year.¹ It is therefore a key priority for the Mayor to increase the supply of genuinely affordable homes for Londoners.
- 1.2 A key route to the delivery of affordable homes is through Section 106 (S106) agreements. In 2024-25, across England, S106 homes accounted for over a third (36 per cent) of all new affordable homes delivered.² However, in recent years there have been reported challenges in the continued delivery of S106 homes for developers and Registered Providers (RPs)³. These challenges include but are not limited to:
- Financial constraints: Following a period of rent caps, increased borrowing rates and increased emphasis on operational and regulatory compliance, RPs have had reduced financial headroom to acquire S106 homes.
 - Design and construction standards: Concerns among RPs that some S106 homes do not meet the quality and other standards required. Considering this, social landlords have in some cases focussed on other routes to development including land-led schemes supported by grant funding, where they have greater influence over specification and design.
 - Operational and management requirements: RPs seeking not to enter leasehold arrangements for S106 homes within blocks managed by an external managing agent or freeholders due to challenges relating to accountability and high service charges raising affordability pressures for tenants.
 - Agreement on pricing: An increased lack of ability for RPs and developers to agree on the pricing of S106 homes.
- 1.3 In light of the reported challenges in the s106 market, alongside these measures, the Government has also released a [Written Ministerial Statement](#) (WMS) alongside a [Policy Statement](#) (PS) to provide a simpler, more transparent and more resilient S106 system that will secure the supply and affordability outcomes we seek in the years ahead.
- 1.4 The WMS and PS is broken down into two key areas of focus as follows:

¹ [Housing in London 2025](#) (page 5)

² [Affordable housing supply in England: 2024 to 2025](#)

³ Registered Providers for the purposes of this document includes local authorities and not-for-profit and for-profit Registered Providers.

- a) Immediate action to unlock legacy uncontracted S106 homes – A time-limited, emergency measure intended to support LPAs to exercise their ability to renegotiate planning obligations.
 - b) Long-term reform to ‘reset’ the S106 market – An intention to work with LPAs, RPs and developers to deliver a series of measures that will provide for a simpler, more transparent and more resilient S106 system. These measures include publishing a template S106 agreement, setting clear sector expectations to guide S106 delivery and expanding financial capacity to revive the market for S106 homes.
- 1.5 Notwithstanding this reform Government has, as part of the NPPF consultation, re-stated its manifesto commitments to strengthen the existing developer contributions system and to deliver the biggest boost in social and affordable housebuilding in a generation. As part of the PS, Government has emphasised the importance of S106 agreements and stated that they will remain an essential mechanism for delivering social and affordable housing.

2. Purpose

- 2.1 This practice note acts as technical guidance supplementing the existing WMS and PS published by MHCLG. It seeks to facilitate the delivery of affordable housing within London by setting out an approach to developer engagement with RPs in relation to S106 homes and application of the time limited process set out by Government that can be applied consistently across London.
- 2.2 In recognition of the challenges currently facing S106 delivery in London in the short term, Local Planning Authorities (LPAs) and applicants are strongly encouraged to implement the approaches in this practice note when considering schemes that are seeking to follow the emergency measures set out within the WMS and PS.

3. Immediate action to unlock legacy uncontracted S106 homes - Application of Time Limited Process

- 3.1 As part of Government’s strategy to unlock uncontracted and unsold S106 units that are already built or very close to completion, a time limited process has been introduced for LPAs to utilise to renegotiate S106 agreements and allow the tenure of homes to be varied in order to secure a buyer.
- 3.2 The process aims to target sites that are genuinely ‘stalled’ and the PS sets out the conditions that LPAs should ensure are met, and the approach to negotiation they should take, when assessing requests for a deed of variation with developers holding uncontracted S106 units that have not found any suitable RP buyer.
- 3.3 As described in the PS, once developers have demonstrated that all reasonable endeavours to find an RP buyer have been carried out, the S106 opportunity must then be uploaded and marketed on the Homes England Clearing Service to give a final opportunity for RPs to bid to purchase these homes. Following a six week period of marketing on the Clearing Service platform with no reasonable offers from RPs being received, a deed of variation should be entered into to alter the tenure of the eligible homes and secure the affordable housing contribution through a Payment in Lieu of the on-site provision.

3.4 To support this, and to provide a consistent approach for London, the following summarises the time limited process and the approach that the Mayor expects should be followed to implement it.

Eligibility check

3.5 The S106 homes should be due for completion on or before 1 December 2027, to be eligible for this time-limited approach; completion is defined as when a home is ready for occupation or when a completion certificate is issued. Any S106 homes not due to complete during this period will not be eligible for the time limited process.

Assessment of reasonable endeavours

3.6 Prior to being able to access the time limited process developers must first demonstrate that they have exhausted all reasonable endeavours to find an RP buyer. This may include any requirements set out in the original S106 agreement.

3.7 It is expected that to demonstrate reasonable endeavours a 'S106 Marketing Report' should be provided to the LPA that evidences the marketing process that has been carried out to date. The S106 Marketing Report should demonstrate meaningful discussions with RPs and may include, but may not be limited to:

- Length of time marketed. S106 homes should have been consistently marketed prior to planning consent and commencement of works to attract RP interest in purchasing the homes and enable RP engagement to inform the design, layout and specification.
- Information provided to RPs. To enable RPs to make a reasonable assessment of a S106 opportunity key information must be provided to them as part of any marketing process. This may include location plan, planning summary, affordable housing plan, construction programme including forecast handovers, desired payment profile, proposed specification. The information provided should be confirmed in the S106 Marketing Report.
- List of RPs approached. The list should set out the name of each RP approached and include a range of RP types (size of RP by stockholding and registration type e.g. for-profit RPs). Specifically for small S106 opportunities, small local RPs should be approached. It is expected that where provided by Local Authorities, that developers should as a minimum have contacted all RPs on the Council's preferred affordable housing provider list (or equivalent). The list should detail the meaningful discussions held with each RP contacted.
- Where responses have been received, but RPs have confirmed they do not intend to bid, confirmation of reasons that a bid has not been provided.
- Where bids have been received, confirmation of the price(s) offered shown as a total value by tenure and on a £/sqft (NIA) basis.
- Evidence of discussions with the GLA's Housing & Land team regarding access to grant funding to enable the delivery of on-site affordable housing.

3.8 Alongside marketing the homes to local RPs, the developer should approach the Local Authority that the site is located within to enquire whether they may be interested in acquiring the S106 homes. Local Authority housing and development departments should review the potential to purchase and/or provide more affordable homes, through the use of subsidies such as grant and Right to Buy receipts. The Local Authority may also want to consider whether there are opportunities to purchase market homes within a scheme for the provision of additional affordable housing.

- 3.9 All of the above should inform the S106 Marketing Report and should be supported by reasonable evidence.
- 3.10 The GLA recognises that there may be circumstances, particularly in relation to small sites, where the LPA considers a PiL to be more appropriate than on-site delivery. In line with London Plan Policy H4, this may be acceptable where the LPA has satisfied itself that evidence to demonstrate that on-site affordable housing delivery is not practical, off-site options have been explored but are not acceptable and that accepting a cash in lieu contribution will not be detrimental to the delivery of mixed and inclusive communities.

Upload of S106 homes onto Clearing Service

- 3.11 In addition to the provision of the S106 Marketing Report as described above, the developer must also upload the uncontracted S106 homes onto the Homes England Clearing Service⁴ by 1 June 2026 to give a final opportunity for RPs to bid to purchase these homes. Any homes not uploaded onto the Clearing Service by this point will be outside of this process.
- 3.12 To successfully upload an opportunity onto the Clearing Service developers will have to provide key information about the homes, including but not limited to:
- Site location
 - Planning Status
 - Confirmation that attempts have already been made to identify a buyer for these S106 affordable homes
 - Number and size of each unit type
 - Confirmation of compliance with Nationally Described Space Standards
 - Confirmation of Heating Systems used
- 3.13 Homes should be live on the Clearing Service for a period of six weeks from the date of the unit(s) being uploaded (“the Clearing Service period”) in order to qualify for the short-term measures.

Local Authority assessment of bids received

- 3.14 Developers may have received bids from RPs to acquire the homes as part of their marketing of the S106 homes either prior to or during the Clearing Service period. Developers may not have accepted these bids based upon the price offered being considered to be too low.
- 3.15 Details of all bids should be provided to the LPA. LPAs should seek to assess the reasonableness of any bids received and any decision to reject these. To do this Local Authorities may look to compare the offers received against the values for the same tenure against benchmark data such as the affordable housing values used within their Local Plan Viability Assessment or recent Viability Assessments considered within the borough. LPAs should engage with the RP to understand if an independent Red Book Valuation was procured as part of their bid to determine if the S106 offer price aligned with the valuation. Alternatively, LPAs should seek to procure an independent Red Book Valuation to assess

⁴ The Clearing Service was launched in December 2024 to help facilitate and accelerate the sale of uncontracted and unsold affordable homes across England. The Service can be accessed by housebuilders, RPs and LAs - [Register to sell and buy Section 106 affordable homes guidance](#).

whether the S106 offer price aligns with market value, the cost of which should be borne by the applicant.

- 3.16 Should an offer be at or above the price determined by the Red Book Valuation then the time limited process should not be followed, and the S106 homes should be provided on-site.

Managing any disputes

- 3.17 The PS states that in instances where there is a dispute between the LPA and developer over whether bids received are reasonable, they may also wish to seek a third-party view to support a resolution, as per an existing Alternative Dispute Resolution (“ADR”) procedure.

Exploring change of tenure

- 3.18 Following provision of evidence of reasonable endeavours as outlined above, including that a sufficient period of marketing has been undertaken and that any bids received are below market value, LPAs are encouraged to explore increasing the level of social rented housing in the first instance, prior to accepting any variations that would remove the provision of onsite affordable housing. LPAs should refer to the [GLA Accelerating Housing Delivery Planning and Housing Practice Note \(December 2024\)](#) which encourages the conversion of intermediate homes to social rent to overcome any market demand challenges with intermediate housing.

Payment in Lieu if change of tenure is not feasible

- 3.19 In circumstances where a change of tenure is not feasible, LPAs should seek to secure a Payment in Lieu (PiL) of on-site affordable housing provision. Any PiL, in line with the London Plan, should provide no financial benefit to the applicant relative to on-site provision. To ensure this is the case the PiL should be calculated in line with the method set out within paragraph 2.62 of the Homes for Londoners Affordable Housing and Viability SPG (2017) which seeks to establish a financially neutral position to avoid incentivising loss of onsite delivery.
- 3.20 The approach sets out that the contribution should be based on the difference in Gross Development Value arising when the affordable units are changed to market units with reasonable deductions allowed for increased disposal and CIL costs incurred with the conversion to a market tenure. Appendix 1 provides a worked example.
- 3.21 When carrying out this assessment of the PiL the developer should provide an independent valuation to evidence the open market value (OMV) of the S106 homes and the affordable housing value of the same S106 homes. The LPA should appoint their own independent advisor to review the assessment with the cost borne by the applicant.

Scheme amendments / Deed of Variation

- 3.22 The PS states that LPAs should confirm their decision on proceeding to re-negotiate the S106 agreement as quickly as possible - with a guideline of no more than twelve weeks from the end of the six week period (assuming that a request to the LPA has already been submitted by then).
- 3.23 Any change in tenure is likely to require adaptations to floorplans consented as part of the original planning application. The required changes, and the legal mechanism (e.g. Section

73 or Section 96a) should be discussed with, and submitted to the LPA during the same period that the decision to re-negotiate the S106 is being made.

- 3.24 LPAs should include stipulations that make clear that if homes are not completed on time and by the deadline of 1 December 2027, schemes will revert to the tenure mix set out in the original S106 agreement. Renegotiated S106 agreements should provide for this without the need for a further deed of variation to be made.
- 3.25 When considering phased development, LPAs and developers should agree a tailored approach with regard to the circumstances of the specific phases i.e. if the first phase will be completed by 1 December 2027, then a deed of variation should be considered for that phase in line with the policy set out in the PS. However, where phases contain units that are not expected to complete by this point, the terms set out in the original s106 should continue to apply.

4. Long-term reform to 'reset' the s106 market

- 4.1 The WMS and PS released by Government also set out the primary focus of long-term reform to 'reset' the S106 market and support effective S106 delivery of social and affordable homes. The documents re-emphasise the importance of S106 agreements stating that they will remain an essential mechanism for delivering social and affordable housing.
- 4.2 Alongside this, it is noted that upfront provisions in S106 agreements to convert affordable homes from on-site to a Payment in Lieu (cascade mechanisms) should not be routinely adopted by LPAs. These mechanisms open the possibility of the loss of on-site delivery of affordable housing.
- 4.3 As part of this 'reset' the WMS and PS set out a series of measures to address the identified challenges. These measures include:
- Supporting Local Planning Authorities to negotiate S106 agreements
 - Setting clear sector expectations to guide S106 delivery
 - Expanding financial capacity to revive the market to deliver for S106 homes.
- 4.4 More information can be found on this within the [Policy Statement](#).

Appendix 1 – Payment in Lieu Worked Example

Item	No.	Rate	Total
Open Market Value of S106 homes	10	£500,000/pu	£5,000,000
Affordable Housing Value of S106 homes	10	£250,000/pu	£2,500,000
Value Difference	-		£2,500,000
Change in CIL Costs	10	£7,500/pu	£75,000
Change in Marketing, Sales Agent and Sales Legal Costs	-	-	£125,000
Total Additional Costs			£200,000
PiL (GDV difference minus total additional costs)			£2,300,000