

London Assembly

Planning and Spatial Development Committee

Who gains?

The operation of section 106 planning agreements in London

March 2008

The Planning and Spatial Development Committee

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Terms of reference

The London Assembly set up the Planning and Spatial Development Committee at its Annual Meeting on 11 May 2005. The terms of reference for the Committee are:

1. To examine and report from time to time on -
 - The strategies, policies and actions of the Mayor and the Functional Bodies
 - Matters of importance to Greater London as they relate to spatial development/planning and housing matters in London.
2. To examine and report to the Assembly from time to time on the Mayor's Spatial Development Strategy ('The London Plan'), particularly in respect of its implementation and revision.
3. When invited by the Mayor, to contribute to his consideration of major planning applications.
4. To monitor the Mayor's exercise of his statutory powers in regard to major planning applications referred by the local planning authorities, and to report to the Assembly with any proposal for submission to the Mayor for the improvement of the process.
5. To review UDPs submitted to the Mayor by the local planning authorities for consistency with his strategies overall, to prepare a response to the Mayor for consideration by the Assembly, and to monitor the Mayor's decisions with regard to UDPs.
6. To consider planning matters on request from another standing committee and report its opinion to that standing committee.
7. To take into account in its deliberations the cross cutting themes of: the health of persons in Greater London; the achievement of sustainable development in the United Kingdom; and the promotion of opportunity.
8. To respond on behalf of the Assembly to consultations and similar processes when within its terms of reference.
9. To consider, as necessary, strategic planning matters as set out in Statutory Instrument 2000, No. 1493 - The Town and Country Planning (Mayor of London) Order 2000 and to make recommendations as appropriate. (The Assembly itself has no powers in relation to any individual planning applications).

Terms of reference for this investigation

- To understand the different approaches undertaken by London boroughs and the Mayor to negotiating section 106 agreements;
- To review the effectiveness of monitoring and enforcing the implementation of these agreements;
- To assess the quality of outcomes in terms of benefits to the local community;
- To understand the potential impact of the Planning Gain Supplement and how this may affect future London borough and Mayoral policy on section 106.

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Chairman's foreword



Mitigation is the act of making something less harmful. In a crowded and ever changing London it is one of the cornerstones of the planning system and, without it, it would be impossible to juggle the demands for new development with the protection of the quality of life for existing communities.

The balancing act is possible because when a proposal gets planning permission two things happen. Firstly it will have an impact on the community and secondly the developer stands to make a profit. By using some of this profit to mitigate the impact it creates a developer can make his proposal acceptable in planning terms.

This is how the planning system operates in this country and by and large it makes use of section 106 of the Town and Country Planning Act 1990. This allows local authorities to negotiate agreements with developers that require them to make some form of financial commitment if planning permission is obtained.

Our report reviews how the section 106 system operates in London – and it operates with very different results depending on the opportunities for negotiation and the policies and skills possessed by the boroughs to extract this public value.

During the next decade London can expect to receive more than £1 billion in direct financial payments and many hundreds of millions more of benefits 'in kind' from developers to mitigate the effects of their proposals. In the last two years the amount of cash benefits individual boroughs have secured is between £155,000 and £35 million. We make no judgements about these figures, simply noting that they are a product of different approaches and opportunities.

From what we have seen it is clear that the performance of London boroughs in this area has improved, and is continuing to do so. Although they themselves acknowledge that there is still work to do in this area, and that performance varies between boroughs, it is encouraging that overall performance has improved rather than declined.

But we should not be complacent – far from it. We are concerned that the opportunities are taken to secure the maximum benefits for Londoners. We call for a concentrated effort by all the boroughs to raise their game and learn from the leaders in this area. To be as professional as the hard-headed developers in extracting the 'public's dividend' from these developments and, perhaps most important of all, to encourage greater civic involvement in making that happen.

Tony Arbour AM

Chairman of the London Assembly Planning and Spatial Development Committee

March 2008

Executive Summary - Section 106 in London

London is booming at a pace and scale of growth that has rarely been seen in the city's history. The Mayor's housing strategy projects at least 30,500 additional homes per annum and there are significant retail, transport and Olympic related developments under way. But all this development, and the extra demands and pressures put on existing services and the environment, creates real challenges for the effective planning of this growth.

New homes mean more demand for school places and doctor's surgeries. New supermarkets put pressure on the road system and public transport network. And even bigger and better football stadia mean more demand for policing and community safety measures.

The planning system is designed to balance this development with the economic, social and environmental effects on the wider community. And through section 106 (S106) of the Town and Country Planning Act 1990 in return for planning permission local authorities can require contributions from developers to both secure the infrastructure needed to support the new development and also to mitigate the impact of the development. These can be both financial contributions and also benefits in kind.

The scale of these contributions is huge. Direct financial payments to London boroughs could exceed **£1 billion in the next ten years** with hundreds of millions more in terms of 'in kind' benefits such as new affordable homes, improvements to the public transport network and new open spaces provided directly by developers themselves.

But are London boroughs being as effective and efficient in negotiating benefits for the community as they could be? Are they enforcing the agreements to ensure the benefits are actually delivered? Is the system transparent to councillors and the community so that they can get involved and scrutinise what benefits are being negotiated on their behalf?

Our report has investigated these and other issues related to the formulation, implementation and monitoring of S106 agreements across London. Our findings are based on a detailed survey of borough, developer and Registered Social Landlords' views of how this **arcane but very influential piece of planning policy** works in practice. Our **findings are wide ranging** and if implemented fully could lead to greater civic involvement in the shaping of the urban landscape at a time of great social and economic change.

Our review has found that developers generally support having to contribute to 'mitigate' the effects of their proposals. But they also need to be clear what is likely to be expected of them at an early stage of the process – and even before they apply for planning permission – to calculate whether their development can be viable.

Evidence shows that boroughs without detailed S106 policies in place secure substantially fewer community benefits. But only 13 of London's 33 boroughs have adopted a dedicated statement of their policies on S106. While 16 boroughs are developing such documents 4 boroughs remain without any formal guidance for developers setting out their expectations. All boroughs must review and adopt updated and coherent S106 policies and make them readily and easily available.

The **skills and resources of the local authorities** and their staff involved in negotiating S106 are hugely important. One third of boroughs do not think they have enough staff devoted to S106. And this is compounded by high staff turnover, which is increasing, and means that experience is lost to the organisation. Boroughs need to have not only staff with adequate skills to negotiate S106 – they need to have enough of them devoted to this particular aspect of the planning process.

Boroughs need to make having sufficient staff a priority and to ensure that opportunities exist for planners to learn from more experienced colleagues. We recommend that boroughs and universities set up some form of formal post qualification and training specifically aimed at improving S106 skills.

We also recommend the boroughs and Mayor think about pulling together those local authority planners, valuers and lawyers who already have the widest range of experience of the most complex planning agreements and making their skills available to the rest of London when they are needed.

All this would cost money. But it appears to the Committee that there would be merit in ring fencing some of the S106 monies to direct towards training for planning officers in negotiation skills. Ultimately this could be self-financing if better skilled staff were able to **lever in more S106 funds** as a result of better training and skills.

Outside the professionals there is an important role for the local councillor and the communities that they represent. They are the ones who should be aware of potential applications that may have negative impacts for their local area. They should also be involved in developing priorities for any money that S106 may generate and making sure that agreements are upheld and the money is spent.

Government guidance quite clearly states that **councillors and communities should be more involved** in devising policies for managing planning obligations through Statements of Community Involvement. However it is also quite clear that some boroughs take an alternative view.

Boroughs must do more to ensure that councillors and the community have sufficient knowledge of the S106 process and the available information about what is going on. There must be a policy that is in place and clearly communicated to the community that makes the process transparent and accessible for those who want to be involved.

There is no point in negotiating contributions from developers if the money is not provided or spent in line with the legal agreements and that the community sees no benefit – or worse, suffers unnecessary negative impacts. Three-quarters of London boroughs say that they monitor works undertaken directly by developers in all or most cases but just under a quarter of developers claim that works are never monitored.

Boroughs should prioritise the monitoring of S106 agreements. They should also make available, in a simple and accessible format, all details of signed S106 agreements along with the regular monitoring reports of how those agreements are being implemented. This will give confidence to all councillors and the community that their interests are being served and the benefits delivered.

From now on it is not just the boroughs in London that will decide planning applications and negotiate S106 agreements. The GLA Act 2007 gives the **Mayor new planning**

powers that will allow him to take over and determine small numbers of applications that have potential strategic importance for London. Details of these planning powers are still being finalised but it is expected that they will come into effect in April 2008.

While there has been no formal statement from the Mayor about exactly how he will exercise his new planning powers, including his policy and priorities for S106 negotiations, the Committee expects the Mayor to act in a way that reflects our calls for boroughs to increase transparency and accountability throughout the process.

In the same way as we have recommended that local authorities make the fullest amount of information on S106 agreements available to local councillors and the community so that they can scrutinise the process for delivering benefits to their borough from developments, so will the Assembly undertake to do what it can to hold the Mayor to account in the way that he deals with those applications he decides, so that Londoners feel the full benefits that S106 offers.

1 Introduction – section 106 agreements in London

- 1.1 In development terms London is booming. London is growing faster than any other European city. This is a scale and pace of development London has rarely seen in its history.
- 1.2 London's population could grow by 1.14 million and the net overall growth in jobs could be up to 912,000 by 2026.¹ The London Plan says that least 30,500 additional homes will be needed each year to house these new Londoners. There is set to be massive investment in expanding areas such as the Thames Gateway and Canary Wharf. Other significant developments include the 2012 Olympic and Paralympic Games, Crossrail and the controversial plans to expand Heathrow.
- 1.3 This investigation is a timely one since it seeks to understand how all this development can be managed, and yet at the same time, retain the quality of life and public services enjoyed by Londoners.
- 1.4 Since its creation in 1947 the modern planning system in Britain has sought to maintain a balance between economic development and environmental quality. More recent developments of the system have aimed to take into consideration the economic, environmental and social effects of a proposed development on the wider community.
- 1.5 It is on the way that these effects are assessed, and the efforts made to make a development needing planning permission acceptable in planning terms, that this report focuses.
- 1.6 The granting of planning permission often increases the value of land dramatically but the local community does not necessarily see much benefit from the disruption or loss of amenity that may result from this development. All of this new housing, employment expansion and transport infrastructure will place heavy demands on existing services and the quality of the environment as well as bringing massive disruption to Londoners as these developments go from mere plans to concrete reality.
- 1.7 In addition the local authority may find itself liable for increased infrastructure spending on things such as new roads or schools as a result of the development being granted planning permission.
- 1.8 Mechanisms do however exist to make the effects of this development more acceptable in planning terms and paid for out of some of the profits developers are making. One way of dealing with this is through securing planning obligations, which are more commonly referred to as planning gain or section 106 (S106) agreements.

¹ The London Plan Spatial Development Strategy for Greater London Consolidated with Alterations since 2004, Greater London Authority, February 2008. www.london.gov.uk/thelondonplan/thelondonplan.jsp

- 1.9 Section 106 of the Town and Country Planning Act 1990² allows local authorities to negotiate agreements with developers that require them to make some form of financial commitment if planning permission is obtained.
- 1.10 The scale of these commitments, in monetary terms, is huge. Nationally these yield an estimated £2.5 billion annually.³ Benefits to Londoners, through contributions from developers that have planning permission, are thought to be worth between £100 million and £200 million a year. This money is spent on affordable housing; new open space or environmental improvements; new roads and transport capacity and health and education facilities.⁴
- 1.11 While London Councils suggests that that borough performance in negotiating S106 has improved, and is continuing to do so,⁵ nevertheless there are concerns that the system is not working effectively across London.⁶ There are significant inconsistencies between different boroughs approach to S106 and what it delivers. Some councils may be missing opportunities to achieve more for their communities.
- 1.12 Additionally, more and more demands are being made on the funds levied from developers to provide an ever-increasing range of community benefits.
- 1.13 The Government is now considering the introduction of an upfront levy (Community Infrastructure Levy) to help pay for essential infrastructure needed to support new development which will bite into the amount of money the community can call on to make the impact of that development acceptable.
- 1.14 And finally the Mayor is about to assume new planning powers that will allow him to take over some of the largest, and in S106 terms the most lucrative, developments and negotiate the planning obligations.
- 1.15 All of this makes getting the most out of S106 a very high priority for Londoners.

A note on our consultant's research and report

- 1.16 We commissioned the British Urban Regeneration Association (BURA) to undertake a significant research project to assist the Committee in its understanding of the current operation of S106 in London. Their report 'Capital Gains? The Operation of Section 106 in London' has been published to accompany our Committee report.
- 1.17 The project consisted of a series of phases:

² Section 106 of the Town & Country Planning Act was later modified by the Planning and Compensation Act 1991 http://www.opsi.gov.uk/acts/acts1991/pdf/ukpga_19910034_en.pdf

³ <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmodpm/1024/1024we32.htm>

⁴ These are the main priorities in London, but this list is not exhaustive

⁵ London Councils, London Assembly Planning and Spatial Development Committee meeting, 5 September 2007

⁶ Paragraph 2.28 details some of these criticisms

- A review of academic literature and reports.
 - Interviews with 17 different individuals (planning officers, developers, planning lawyers, community development workers) to pilot the main primary research questions.
 - Three surveys – ⁷
 - > With planning officers in the 33 London boroughs;
 - > With 38 developers active in London and with extensive S106 experience;
 - > With 11 Registered Social Landlords (RSLs) that have development arms.
 - Five case studies.
- 1.18 The local authority survey saw full completion – the information from the boroughs is therefore not sample-based statistics but an account of the entire population of local authorities – however not all boroughs answered all the questions (for example two boroughs did not supply information relating to S106 income). The list of major developers, RSLs and interviewees that contributed to this research are set out in the BURA report in appendices 9 – 12.
- 1.19 We make a number of references to the BURA research and report here, and while the views and conclusions contained within the consultant’s report may not always accord with the Committee’s views, it is a useful, up-to-date and comprehensive summary of the current state of S106 in London.

⁷ The questionnaires used in this research are at Appendix 6 of this report

2 Section 106 – what is it, and is it delivering for London?

- 2.1 Nearly twenty years ago government formally recognised that developers receiving planning permission had an obligation to contribute to the local community through section 106 of the Town and Country Planning Act 1990, including the provision of affordable housing on top of traditional infrastructure expectations. Through this Act, planners were given the ability to deny planning permission for those developers unwilling to make adequate contributions. This chapter reviews available evidence as to the benefits that accrue to the boroughs from S106 agreements and what the monies are spent on.
- 2.2 Section 106 is ‘intended to make acceptable developments which would otherwise be unacceptable in planning terms’.⁸ As such it is a mechanism for overcoming grounds that might otherwise lead to a refusal of planning permission.
- 2.3 Section 106 agreements are also referred to as planning obligations to underline the binding nature of the legal framework and as planning contributions to include the possibility of both a financial and in-kind contribution.
- 2.4 There are limitations on the types of S106 agreements that can be negotiated and what can be included in them. The Secretary of State’s guidance sets out that a planning obligation can only be sought where it meets the following tests:
- It must be relevant to planning;
 - It must be necessary to make the proposed development acceptable in planning terms;
 - It must be directly related to the development;
 - It must be fairly and reasonably related in scale and kind to the proposed development;
 - It must be reasonable in all other aspects.
- 2.5 Section 106 agreements are used in two ways. The first is to mitigate potentially negative impacts of the development or to compensate for loss or damage caused by these impacts. Mitigation is deemed as necessary whenever new developments, be they residential or commercial, require additional or expanded facilities to function effectively without damaging existing and new users.
- 2.6 The planning obligations which are negotiated require the developer to contribute to the cost of offsetting the associated negative impacts, such as increased demand on services or increased pedestrian and vehicular traffic through provision of additional services in the form of roads or environmental improvements. Developers can carry out the work themselves, overseen by the local authority, or provide the funds for the local authority to undertake them.

⁸ DCLG Circular 05/05: Planning Obligations, 18 July 2005
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/147537>

- 2.7 The second way in which S106 is used is to cross-subsidise affordable housing.⁹ Affordable housing, which is rented homes under the management of housing associations, or alternatively, homes available for low-cost ownership, has long been required as part of planning obligations and such requirements now have strong underpinnings in planning policy at national, regional and local levels.¹⁰
- 2.8 Developers' affordable housing contributions occur in a variety of ways. The most common way is selling land or units to a Registered Social Landlord (RSL) at below market price. Developers may get RSLs to bid for the affordable units, which can be anything from 70-85 per cent of the market value. With low cost homes sold by the developer, S106 agreements often involve clauses restricting market sale for a number of years, or limiting sale to local residents or key workers.
- 2.9 Local authorities may also request or require additional infrastructure provision or contributions to support this additional housing provision.

How much does it raise?

- 2.10 The number and type of planning applications that are subject to S106 agreements has increased rapidly. Nationally, between April 1987 and March of 1990, planning agreements were involved in 0.5 per cent of decisions. Between 1993 and 1998 the number grew to 40 per cent.
- 2.11 As the use of S106 has grown it is now important for all development types but particularly residential development. It has been reported that 40 per cent of medium and large developments have S106 agreements – as do 10 per cent of minor consents.¹¹ In 2006 one third of new homes in England had S106 agreements, as did 21 per cent of retail developments and 12 per cent of industrial or warehousing developments.¹²
- 2.12 In London, S106 raises considerable sums annually. Sheffield University research for Department for Communities and Local Government (DCLG) estimated that in 2003/04 direct benefits worth £112 million were delivered in London.¹³ However London Councils estimated that planning obligations raised total benefits worth £230 million in 2005/06.¹⁴
- 2.13 The Planning and Spatial Development Committee's commissioned research, based on financial information obtained from 31 of the 33 London boroughs,¹⁵ indicates that in the last two financial years boroughs collected £ 193.3 million

⁹ For more details on affordable housing and the part played in meeting housing need in London see the Committee's report 'Unintended Outcomes?' June 2007

<http://www.london.gov.uk/assembly/reports/plansd/unintended-outcomes.pdf>

¹⁰ National guidance is set out in Planning Policy Statement 3: Housing (PPS3), November 2006 which replaced Planning Policy Guidance 3: Housing (PPG3) published in March 2000. Regional policy for London is contained in the London Plan and local policy is published in borough Development Plan Documents.

¹¹ Property Week, August 2005

¹² Building Design, May 2006

¹³ Valuing planning obligations in England, DCLG, 31 May 2006

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/145013>

¹⁴ The London Councils estimate was based on information received from 21 boroughs

<http://www.londoncouncils.gov.uk/doc.asp?doc=21857&cat=935>

¹⁵ Information on financial contributions was not received from the boroughs of Bexley and Enfield

with an average in excess of £6.2 million. This average hides significant variations with 14 (42 per cent) of the responding boroughs receiving below £4.5 million.

- 2.14 The average received payments for outer London boroughs were £4.4 million and so, under the assumption that the data for two boroughs which did not supply financial information have cashed payments in line with the above averages, these figures suggests that London could be receiving some £200 million every two years (Table 1 below) which is in line with the DCLG research figure but considerably below the London Council estimates.

Table 1: Estimated cash payments received as S106 contributions by boroughs in the last two financial years

Local Authority	106 cash received
City of London	Between 8,000,001 and 34,350,802 (incl.)
Brent	
Greenwich	
Islington	
Southwark	
Tower Hamlets	
Westminster	Between 4,500,001 and 8,000,000 (incl.)
Barking & Dagenham	
Barnet	
Camden	
Hammersmith and Fulham	
Hackney	
Haringey	
Hillingdon	
Hounslow	
Lewisham	
Redbridge	
Ealing	Between 2,808,559 and 4,500,000 (incl.)
Harrow	
Lambeth	
Merton	
Newham	
Richmond upon Thames	
Bromley	Between 154,929 and 2,808,557 (incl.)
Croydon	
Havering	
Sutton	
Waltham Forest	
Wandsworth	
Kensington and Chelsea	
Kingston upon Thames	

Source: 'Capital Gains?' A report by BURA for the London Assembly, December 2007

- 2.15 The Committee's research also highlights a discrepancy between what the boroughs say they receive and what the developers say they pay. The BURA report found that the 30 developers who responded to this part of the survey contributed £163 million in the same financial period. The total S106 figure for payments made to the boroughs would of course be much larger were the contributions of all the developers operating in London included.
- 2.16 This gap in S106 payments and receipts could be explained in a number of ways including different accounting practices or the recording of obligations as cash payments received by boroughs as opposed to developers recording other in-kind benefits. This is a reasonable assumption since research for DCLG found that London has the highest proportion of in-kind obligations in the country (70 per cent of agreements involve in-kind obligations).¹⁶ The figure reflects the large number of transport obligations, including car parking restrictions, coupled with a large number of 'reasonable legal cost' obligations.
- 2.17 If councillors and the community are to be clearer about what is negotiated and spent on their behalf then there should be better financial recording by boroughs. In particular, the BURA survey highlights developer concerns that not all boroughs are monitoring contributions, recording expenditure and pooling money in a general 'pot'. These are themes we will return to later in this report.
- 2.18 These figures represent the sums from S106 negotiated by boroughs in the last two years only. They range from less than £155,000 to over £34 million. It is however not a representation of the 'best' and the 'worst' boroughs in terms of performance.
- 2.19 A borough that has a low figure may be doing very well in terms of maximising contributions from limited opportunities. Boroughs can only negotiate large S106 contributions from applications for planning permission from large developments and large contributions can only be negotiated if there is a large enough profit for the developers to contribute some of this in S106 contributions.

Recommendation 1:

That all boroughs hold a central and easily accessible record of all section 106 agreements which detail the financial contributions, what community benefits are to be delivered and up-to-date monitoring information on the progress of implementing those agreements.

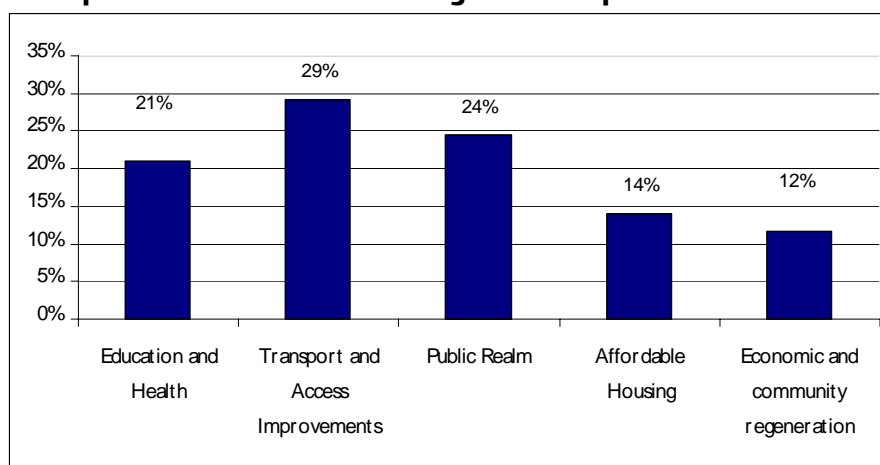
What is S106 being spent on?

- 2.21 The Committee's research, from planning officer information, identified the following areas of expenditure in London:
- Transport and access improvements (29 per cent of S106 expenditure)
 - Public realm, including streetscape and open space (24 per cent)
 - Education and health (21 per cent)

¹⁶ Valuing planning obligations in England, DCLG, 31 May 2006
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/145013>

- Affordable housing (14 per cent)
- Economic and community regeneration (12 per cent)

Principal areas of London borough S106 expenditure



Source: 'Capital Gains?' A report by BURA for the London Assembly, December 2007

2.22 Appendix 1 shows a listing of each London borough's top three S106 priorities.

Revenue spending

2.23 Far from all S106 spend is on capital. Using S106 monies for revenue funding means that consistent funding can be found for impacts that require continuous mitigation, such as additional policing and street cleaning.¹⁷

2.24 *'I think revenue contributions are great. Of course, you cannot have them when you have a residential scheme, or mixed-use with considerable residential in it. But for all leisure, office, hotels, car parks, all the developments that generate a revenue stream, a revenue S106 is excellent. It provides very useful money that can be used to alleviate impact in the immediate development'.*¹⁸

2.25 Not all developers are relaxed about this. Some are reluctant to enter into legally binding long-term revenue obligations that could lead to them being in default at some time in the future or that could be unattractive if trying to sell a development.¹⁹

Government policy, guidance and process

2.26 While national legislation sets out the general principals under which planning obligations can be acceptable,²⁰ it is the local authorities that are empowered to

¹⁷ Amongst the BURA case studies was a tourist attraction expected to increase the number of visitors to the area and put pressure on the use of existing public facilities. This, in turn meant that continuous funding to reduce the impacts of this sustained pressure was required. In this case the operating revenue stream of the leisure facility allowed for a funding mechanism in which the contribution would be either a fixed sum or a percentage of the development's turnover

¹⁸ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

¹⁹ Ben Denton, First Base, London Assembly Planning and Spatial Development Committee meeting 27 July 2007

²⁰ DCLG Circular 05/05: Planning Obligations, 18 July 2005 provides guidance on the use of planning obligations in England under section 106 of the Town and Country Planning Act 1990 as substituted by

interpret and apply S106. As a consequence of this there are different interpretations of this guidance that results in considerable policy variations between local authorities in London.

- 2.27 The variations in an authority's approach to S106 have led a number of commentators to raise concerns as to whether the community is getting the most out of these agreements.
- 2.28 Recent criticisms of the current system of negotiating planning obligations have included:
- The fact that agreements are difficult to enforce;²¹
 - There is often no coherent strategic approach to negotiating S106 agreements, and;
 - The community has little involvement in determining how it is used;²²
 - Councils cannot afford to hold 'big corporate players' to legal agreements;²³
 - Councils are often forced into renegotiation of legal agreements by large developers leading to a diminution of agreed community benefits;²⁴
 - Large developers use S106 agreements for 'unfair leverage' to influence council planning decisions.²⁵
- 2.29 The next section of the report examines the range of the policy approaches adopted by London boroughs and the practices adopted in the light of government guidance and what implications this has for the operation of S106 in London.

the Planning and Compensation Act 1991. The guidance is supplemented by practical tools and model agreements.

²¹ Derek Wyatt MP, House of Commons debate 20 October 2005, Hansard c1055

²² Paul Truswell MP, House of Commons debate 16 October 2006, Hansard cc705-6

²³ Jonathan Friedland, 'Winners, losers and broken promises', Evening Standard 18 May 2006

²⁴ Andrew Gilligan, 'How Arsenal 'bought' a borough', Evening Standard 3 July 2006

²⁵ Friends of the Earth, 'Calling the shots, How supermarkets get their way in planning decisions' January 2006

3 How it works: Local authority section 106 policies and practice

*'It is very important is that we give a degree of certainty to developers. I think that is a key word that every developer would want to hear.'*²⁶

- 3.1 The BURA survey finds that broadly, developers support contributing towards planning obligations. However in return developers appreciate a level of certainty as to how their payment will be worked out and ideally this is needed even before an application is submitted or negotiations on S106 even start. This chapter reviews the framework within which S106 agreements are set, the different methods of calculating the contribution and looks at where the monies are spent. The chapter concludes that greater transparency is needed in how S106 contributions are to be fixed and recommends that all boroughs adopt some kind of tariff or standardised charge as a starting point for negotiations with developers.
- 3.2 To assist the need for more certainty, the Audit Commission has recommended that local authorities develop detailed policies for S106 agreements and suggest this is best done through the production of Supplementary Planning Guidance.
- 3.3 Whilst in the past the majority of local authorities have had planning obligations policies in their Unitary Development Plans the transition to Local Development Frameworks means that not all local authorities currently have such documents.
- 3.4 Under the old development plan system, supplementary planning **guidance** is non-statutory local authority approved policy guidance, which is a material consideration in terms of determining planning applications. Under the new system, supplementary planning **documents** have statutory status but are not part of the statutory development plan.²⁷
- 3.5 The relevance of documentation on borough S106 approaches is several-fold. It assists developers by increasing the degree of certainty and predictability in the planning process and it assists Local authorities by providing them a sound basis on which to advance their requests to developers.²⁸
- 3.6 Thirteen London boroughs have already adopted a dedicated document and another 16 are at various stages in the process of developing one. Four boroughs remain without any formal guidance to developers setting out their expectations. Appendix 2 contains a listing of available borough policies on S106 agreements that are available online.
- 3.7 The situation in London is however in advance of some other parts of the country. Recent research has shown that in the South East only 30 per cent of

²⁶ Stuart Fraser, Deputy Chairman Policy and Resources Committee, City of London. London Assembly Planning and Spatial Development Committee meeting 5 September 2007

²⁷ Supplementary planning guidance will need to be replaced by supplementary planning documents when new development plan documents are adopted

<http://www.communities.gov.uk/planningandbuilding/planning/regionallocal/localdevelopmentframeworks/planningpolicystatement/localdevelopmentframeworks/229148/>

²⁸ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

local authorities have a Supplementary Planning Document (SPD) on planning obligations.²⁹

Identification of negative impacts

- 3.8 Section 106 agreements can only be negotiated where there are clearly going to be negative impacts for a proposed development. The five case studies that BURA reviewed (Appendix 3) revealed that deciding impacts is not an easy process, and requires a variety of skills. These include:
- The ability of the local authority to coordinate internally across departments and externally between stakeholders;
 - To have sound appraisal abilities and financial acumen;
 - Knowledge of useful precedents; and, not least,
 - An awareness of local issues and community needs.³⁰
- 3.9 It appears, at least from the five case studies, that these proficiencies have in many cases neither been available nor adequately sought after in local authorities, with the result that community benefits have not always been maximised. Ways to improve these shortcomings are discussed later in this report.

Borough guidance and policy approaches

- 3.10 As set out above it is recognised that clear guidance, close communication and strong corporate working approaches are key to the effectiveness of S106 negotiations.³¹
- 3.11 In relation to the type and quality of the dedicated S106 documentation that is available and in use the BURA research found that the content of these documents varies considerably from strategic guidance to detailed explanations of standard requirements and charges.
- 3.12 Two main approaches seem to have been adopted by boroughs – flat tariffs or, slightly more flexible formulae related to standard charges for specific impacts.

Flat tariffs

- 3.13 Tariffs are levies based on the volume of development as opposed to one based on the costs (standard charges). A leading proponent of this approach is Westminster council, which has proposed a tariff (£300 per square metre) on new developments exceeding 1,000 square metres. The tariff rate is based on previous contributions and the money is usually allocated towards ‘public realm’ improvements such as parks and gardens, with health and education allowances remaining under continued S106 arrangements.
- 3.14 The Corporation of London also appears to operate on a tariff basis, at least as a starting point for negotiations. The Committee heard that the Corporation has

²⁹ <http://www.regen.net/news/ByDiscipline/Development-Control/login/764247/>

³⁰ ‘Capital Gains?’ A report by BURA for the London Assembly, December 2007

³¹ Renewal.net

<http://www.renewal.net/Documents/RNET/Solving%20the%20Problem/Section106planning.doc>

*'guidance which goes out to developers, which sets out quite clearly what our expectations are. We put in it that we have a starting tariff, negotiation stance, of £70 per square metre extra floor space. We show that probably, in general terms, 50 per cent of the money will go to local community, 30 per cent will go to affordable housing, 15 per cent transport and 5 per cent to training and skills. Those are not set in stone but they give you an indication as to roughly where the money is going'.*³²

- 3.15 Tariffs have the advantage of providing a great degree of clarity and more certainty for developers especially prior to applications being submitted.
- 3.16 From one developers point of view they are certainly seeing a move towards tariffs. *'That is obviously a benefit, in one way, because it simplifies the whole system, simplifies the speed of agreements, but it does in practical terms move it closer towards a tax on development rather than necessarily making expenditure in a local area to offset the impact of development'.*³³
- 3.17 However, there are concerns about this approach, for example the Westminster Property Owners Association is worried that up front tariffs will stifle development in an area because, *'there are only so many layers of tax developers will take'.*³⁴

Standard charges

- 3.18 A variation of this system, one that looks to avoid the criticism of S106 as a tax rather than seeking to offset any negative impacts of a development, focuses on the impacts that any specific proposal may have on an area and the application of standard charges to mitigate those impacts.
- 3.19 If these standard approaches are available to developers online it makes the assessment of likely S106 requirements clear. Southwark, for example, supports developers in this way that sets out the calculation for a range of potential impacts such as the education, open space, health, community facilities and transport costs of a large housing development. The costs of each aspect of the proposal is set out in this example such as:
- £10,457 per school place;
 - £67 per person for open space;
 - £210 per person as a contribution towards strategic transport infrastructure.
- 3.20 Camden uses similar standard charges. The following tables show the calculation used to determine the educational contributions sought from residential developments according to the size of the housing units proposed.

³² Stuart Fraser, Deputy Chairman Policy and Resources Committee, City of London. London Assembly Planning and Spatial Development Committee meeting 5 September 2007

³³ Ben Denton, First Base, London Assembly Planning and Spatial Development Committee meeting 27 June 2007

³⁴ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

Size of Unit	Contribution (2006/2007)
2 bedroom	£3,148
3 bedroom	£7,572
4 bedroom	£13,679

- 3.21 The contribution is based on the (then) Department for Education and Skills established cost of education places in 2006/2007, and is subject to review or update as appropriate.

Primary	£12, 343
Secondary	£18, 859
Post-16	£20, 245

- 3.22 The contribution required from the development as a whole is calculated by multiplying the number of units of each size (excluding one bedroom units or units within the categories set out above), by the potential child yield and then the contribution required by each unit.³⁵

Case-by-case

- 3.23 A third approach is to rely on an entirely case-by-case approach to S106 without any detailed or specific policy in place. *‘While this approach is the most flexible, it gives rise to many of the traditional problems associated with planning obligations. One of the main drawbacks stems from the relatively weak position of the planning authority, which raises the likelihood of challenge by developers, thereby adding uncertainty and delay’.*³⁶
- 3.24 According to the BURA research up to a half of boroughs use a case-by-case approach.
- 3.25 **Whether a fixed tariff or standard charge approach is adopted the existence of one of these is clear in terms of the outcomes secured for the community. The Audit Commission study concluded that those councils without a detailed S106 policy secured substantially fewer community benefits than other councils in similar circumstances.**

Where should the money go?

- 3.26 In 2004 a study for London Councils (then the Association of London Government) found that all respondent boroughs reported that the S106 contributions they secured were always, or usually, used within close proximity to the development. Moreover all stated that the monies were never or rarely used outside the borough.³⁷

³⁵ <http://www.camden.gov.uk/ccm/content/environment/planning-and-built-environment/development-plans-and-policies/supplementary-planning-guidance/file-storage-items/camden-planning-guidance--consultation-draft.en>

³⁶ Audit Commission Securing Community Benefits through the Planning Process Improving performance on Section 106 agreements <http://www.audit-commission.gov.uk/reports/national-report.asp?categoryid=&prodid=19bbfe40-e554-4b64-b283-e32aea2c3f90§ionid=sect7#>

³⁷ Sharing the benefits – A good practice guide to how planning obligations can provide community benefits. Association of London Government July 2004

- 3.27 For developers this appears both legitimate and desirable. Additional expenditure on improving an area's environmental quality or public transport access for example will also raise the value or accessibility to customers of their own development. Indeed Tesco told the Committee that it wants 'to see the money focused locally because that tends to be where it is needed.'³⁸
- 3.28 Others, however, can see the logic in spreading the benefits outside the immediate area. *'There would be flexibility to be able to use the gains. You get into a crazy situation of giving the people that live next to a development gold lampposts yet for all boroughs there are certain areas of deprivation, which need the money but where the developer is not going'*.³⁹
- 3.29 Equally some boroughs seek to address wider strategic goals, such as linking local unemployment with major developments in a different employment opportunity area within the borough.
- 3.30 Whether this can be considered to be 'reasonably linked' to a development or is needed to mitigate negative local impacts is debateable. But the practice of 'pooling' does take place – and with the agreement of both developer and local authority.

Pooling contributions - within and between boroughs

- 3.31 In the UK, Sheffield City Council ring-fences its S106 contributions and directs them to green space. In Birmingham 70 per cent of S106 goes into a central pool and is applied across the city rather than just the neighbourhood from which the money comes.⁴⁰
- 3.32 Previous surveys found little evidence of pooling.⁴¹ However, in the BURA case studies, some boroughs now appear more enthusiastic about the idea of pooling contributions. In one case Planning Officers mentioned the plan to devise pooling mechanisms for the funding of education and health services. In another, they expressed interest in the use of pooled resources to finance strategic infrastructure.
- 3.33 As the Mayor takes on new planning powers and indeed takes over some strategic applications in London and negotiates the associated S106 agreements the issue of how and where he will be spending these monies will become a controversial one. This point is discussed in more detail later in chapter 7 this report.

Conclusions

- 3.34 It is clear that it is of benefit to all parties to a S106 agreement for there to be ready access to a set of clear borough policies on the starting point for likely

³⁸ Michael Dunton, Tesco, Head of Development in London, London Assembly Planning and Spatial Development Committee meeting 5 September 2007

³⁹ Stuart Fraser, London Assembly Planning and Spatial Development Committee meeting 5 September 2007

⁴⁰ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

⁴¹ Sharing the benefits – A good practice guide to how planning obligations can provide community benefits. Association of London Government July 2004

financial or in-kind benefits. These need to be easily accessible to developers even prior to application. This will provide the degree of certainty that developers seek as well as speeding up the negotiation process itself.

- 3.35 **Most boroughs have either already done this – or are in the process of doing so. But some have not and the Committee urges all boroughs to adopt coherent policies on S106 and publish them in the most accessible ways.**
- 3.36 Even those boroughs, which do have published supplementary planning guidance on S106, will need to ensure their policies comply with changing legislation to ensure they get the most benefits for their communities.

Recommendation 2:

That all boroughs review and adopt updated and coherent policies on section 106 and publish them in the most accessible ways. To further ensure that these documents are accessible to a broad public a guide or explanatory note in plain English should be produced.

- 3.37 The attraction of the tariff or standardised approach seems sensible as a starting point for further negotiations. Clearly, some councils prefer the flexibility of a case-by-case approach, however the Audit Commission believes that *‘in reality many of the supposed advantages are illusory, because they have a weak negotiating position that can easily be exploited by developers’*.⁴²
- 3.38 Similarly, our research showed that responses from all stakeholder groups highlighted the benefits of a tariff or standardised approach, particularly in terms of the increased certainty, simplification and potential for earlier resolution of the negotiation process it provides.⁴³

Recommendation 3:

That as part of their review and updating of section 106 policies boroughs should consider adopting either a tariff or standardised approaches as a starting point for negotiations to ensure a greater degree of transparency and to increase certainty for developers.

⁴² <http://www.audit-commission.gov.uk/reports/national-report.asp?categoryid=&prodid=19bbfe40-e554-4b64-b283-e32aea2c3f90§ionid=sect7#>

⁴³ ‘Capital Gains?’ A report by BURA for the London Assembly, December 2007

4 A level playing field? Have the boroughs sufficient resources to make the most of section 106?

- 4.1 This chapter examines whether boroughs dedicate sufficient resources to their planning departments to ensure that their communities get the best out of S106 agreements negotiated in their area. In particular, this chapter looks at staffing levels, skill levels within those teams and the availability of training and toolkits.

Staffing levels

- 4.2 In 2004 a London Councils survey found that the number of staff involved with the S106 process ranged from 1 in one borough to 35 in others. Those boroughs with high numbers of staff typically resulted from development control case officers holding responsibility for any negotiations arising from their own cases.
- 4.3 Other authorities, however, did employ a specific S106 officer to oversee negotiations and/or implement monitoring practices. Fifteen boroughs reported having a S106 position, although not every individual employed in these positions worked exclusively on S106.⁴⁴
- 4.4 The BURA survey results also indicate that while just over half of boroughs believe they have enough staff to deal with the range of S106 demands planning officers in 12 boroughs (36 per cent) believe their staff is insufficiently large.
- 4.5 The BURA case studies found that pressure on planning officers and lack of capacity in planning departments to deal with large developments constitute major barriers to effective negotiations in some boroughs. High staff turnover is understood to be a significant problem. This has meant that local authorities often suffer from a shortage of useful skills and experience, particularly when required to deal with large schemes.
- 4.6 A Planning Officer in one borough explained: *'we have tremendous turnover with case officers, I don't know half the Development Control officers working for us, many started in the last few weeks, they were fast-tracked in and we have 100 per cent turnover in 6 months. That's not a problem unique to this borough - that's a London-wide problem of turnover'*.⁴⁵
- 4.7 Several other officer and developer interviewees also point to issues with shortages and turnover.
- 4.8 If anything, staff turnover is getting worse. London Councils undertook research in 2006 on recruitment and retention of planners and found that 22 of the boroughs thought these problems had worsened in the last three years. The situation is exacerbated by the fact that London is going through a development

⁴⁴ Section 106 officers are, however, becoming more common-place, with the primary responsibility of the officers covering post agreement follow up rather than the actual negotiations. In addition, most authorities retain at least one Section 106 solicitor.

⁴⁵ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

boom and there is a great demand for planners.⁴⁶

- 4.9 But, while high staff turnover is a significant problem, where movement is between borough planning departments it is felt that this can facilitate the spread of good practice.
- 4.10 The private sector can also suffer from a general shortage of planning staff – as Tesco testified to the Committee. There is also wider evidence that new developers lack the expertise of older and larger developers in negotiating S106 agreements.⁴⁷
- 4.11 Boroughs have been addressing the level of resources needed to adequately staff S106 negotiations. The 2004 London Councils study found that, for example, Islington dedicates 5 per cent of the value of planning obligations to the costs of negotiating, preparing, monitoring and implementing S106, which independently provides funding for 2.5 positions.
- 4.12 More generally, the majority of respondent boroughs recovered all legal (but seldom staffing or monitoring) fees through the S106 agreement itself. Others have tried to tackle the structural issues that affect planning departments ability to negotiate S106 by tackling pay and grading for planners.⁴⁸

Staff skills

- 4.13 The BURA case study research suggests that local authority skills seem to be strongly improving, although pressure on planning officers and lack of capacity in planning departments to deal with large developments constitute major barriers to effective negotiations in some boroughs.
- 4.14 In terms of staff, 22 planning departments (67 per cent) generally appear to view themselves as skilled enough to undertake S106 negotiations. However, the fact that over a quarter of boroughs take the opposite view is not to be ignored.
- 4.15 Just 26 per cent of respondent developers feel that local authority S106 teams are skilled enough to undertake S106 negotiations all or most of the time. For respondent Developer RSLs the corresponding figure is 9 per cent.
- 4.16 Other researchers believe that *'the full potential of these agreements will never be realised unless council negotiators have the skills and confidence to achieve the best deals ... The government and local authorities must work together to ensure that tailored support and training is made available'*.⁴⁹
- 4.17 It is not just the absolute level of skills that a planning officer possesses which could affect the outcome of negotiations. The relative difference of skill levels between local authority and developer staff – planning and legal – have an

⁴⁶ Stephen Benton, London Councils, London Assembly Planning and Spatial Development Committee meeting 27 September 2007

⁴⁷ DCLG Circular 05/05: Planning Obligations, 18 July 2005

⁴⁸ Stuart Fraser, City of London, London Assembly Planning and Spatial Development Committee meeting 27 September 2007

⁴⁹ 'Valuing Planning Obligations in England', DCLG, May 2006

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/145013>

effect on the outcomes secured for the community.

- 4.18 At one of the Committee's meetings it was suggested that it is not necessarily the party with the best lawyers who have an advantage – but those with the most experience. Sadly, individual local authority planning officers, valuers or lawyers are unlikely to have the opportunity to gain sufficient experience with large and complex developments – unlike developers or their lawyers.
- 4.19 A classic example is the complex planning application and S106 negotiation for Stratford City. Stratford City will result in one of the largest mixed-use developments in the UK. Covering 73 hectares of largely derelict land, the project will see the creation of a £4 billion metropolitan centre, with more than 100 shops, three department stores, cafés, schools, hotels, parks and health centres. There will be a new commercial district and new leisure facilities and new urban districts will house 11,000 residents and 30,000 workers. It will also house most of the 2012 Olympic athletes.⁵⁰
- 4.20 The resultant S106 document is over 220 pages long and tremendously detailed and complicated. Whereas for developers, large projects of this scale may be relatively commonplace *'the [planning] officers in Stratford are only ever going to do one Stratford City in their entire lives'*.⁵¹
- 4.21 The knowledge that is captured within the local authority would be enormously valuable for the next local authority going through the same process. *'That is the issue at the end of the day; it is about the transferability of knowledge'*.⁵²
- 4.22 Compounding this, high staff turnover – and poaching from the private sector – make adequate procedures and retaining 'corporate memory' ever more important.
- 4.23 What is clear from our investigation is that there are plenty of skilled and experienced local authority staff – planners, valuers and lawyers – in London who have worked on large, complex and successful S106 negotiations that have delivered benefits to the community. **The issue appears to be that there are not enough of them and they are not always in the right place at the time they are needed.**
- 4.24 The Mayor himself is going to need to access staff if he is to take over and decide the largest and most strategic applications in London given his new planning powers. Equally, there will be, for most boroughs, occasions when a large and complex planning application turns up on their planners' desk. Poaching the best staff, as a way of fulfilling these needs, does not seem to be the best solution for London.
- 4.25 The Committee sees much merit in the best and most experienced staff being available for all boroughs to draw on in these occasions. Whether the most effective solution is by bringing expert staff together in one unit, or by setting

⁵⁰ <http://www.newham.gov.uk/Services/RegenerationProjects/AboutUs/stratfordcity.htm>

⁵¹ Ben Denton, First Base, London Assembly Planning and Spatial Development Committee meeting 27 June 2007

⁵² Ben Denton, First Base, London Assembly Planning and Spatial Development Committee meeting 27 June 2007

up an expert advisory group of officers from several boroughs who can be called upon to make available their expertise when needed by other boroughs, is a matter for the Mayor and the boroughs, probably by way of London Councils, to consider.

Recommendation 4:

That London Councils and the Mayor set up a pan-London unit skilled in complex section 106 negotiations or create an expert section 106 advisory group, making it available for use by all boroughs when the need arises – particularly for the largest and complex applications.

- 4.26 Local planning authorities and developers should also consider using independent expert mediators to help in the process of negotiating the detail of planning obligations for complex or major applications, or to help to facilitate in dispute resolution where disputes are unduly delaying negotiations.⁵³ Use of mediation can reduce the cost and length of the planning process.⁵⁴

Toolkits

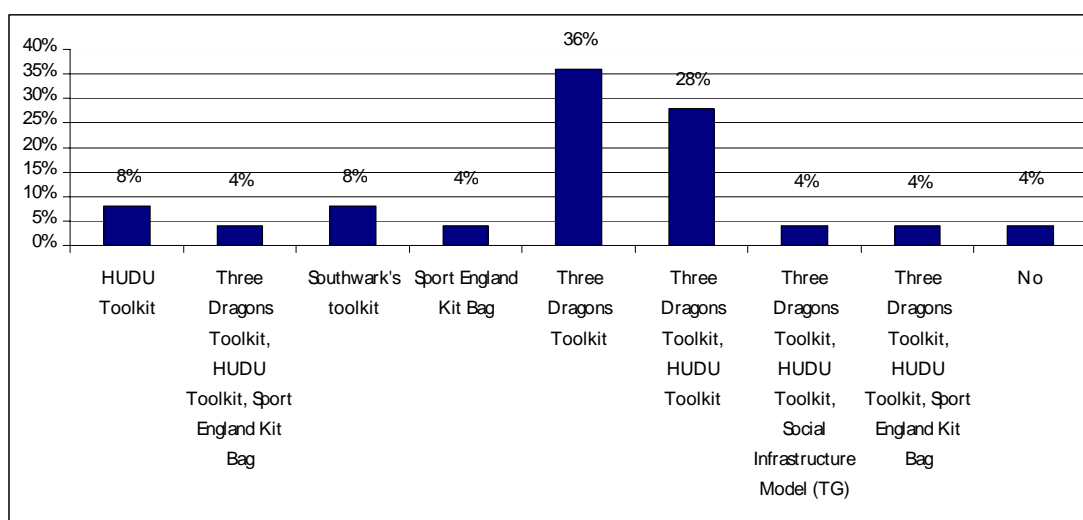
- 4.27 Various toolkits exist to assist local authority staff and developers alike to assess likely impacts of proposals and the economic viability of schemes and consequently the room for manoeuvre and negotiation in terms of S106 negotiations.
- 4.28 A sample and brief description of some of the available toolkits is set out in Appendix 4. The BURA survey found that:
- Twenty-five out of thirty three borough officers are aware of the existence of various toolkits that can be used to support them during the negotiation stage;
 - The GLA Three Dragon Toolkit is by far the most used and the graphic below illustrates that most of local authorities use more than one, including the Healthy Urban Development Unit (HUDU), Southwark's toolkit for developers and the Sport England Kit Bag;
 - Two-thirds of respondent developers claimed that there have been occasions when the GLA/Housing Corporation toolkit (gauging viability for affordable housing) has been useful, but nearly a quarter have never used them;
 - Less than half of respondent Developer RSLs have found the toolkit useful – but a third had never used one.

⁵³ The role of a mediator is to help identify the needs and concerns of all parties, clarify the issues and help explore with the parties solutions where agreement could be found.

⁵⁴ Recommended by DCLG

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/151363>

Planning officers' use of toolkits



Source: 'Capital Gains?' A report by BURA for the London Assembly, December 2007

- 4.29 As set out in chapter 2 above, Government advice also exists in the form of a planning obligations practice guide and a model S106 agreement. However the BURA research notes that these two documents received almost **no** mention from any of those interviewed throughout the project.

Other sources of training

- 4.30 Short of the 'hands on' experience that working on a large and complicated S106 negotiation gives, what other resources are available to local authority staff?
- 4.31 The Committee is aware of a commercial support service set up to help local authorities maximise the use of planning obligations. Local authorities can access advice on various aspects of the planning obligations process, including initial health checks, negotiation support, development appraisal analysis and technical support and advice. The joint venture is also developing a national database of planning obligations agreements. This is the first time a support service has been available for local authorities dealing with this difficult and complex area. Initial interest has been strong.⁵⁵
- 4.32 While the commercial sector has seen a gap in the market it seems that the public and academic sectors have been less nimble and, from the Committee's research, there is no evidence of either a prominently advertised source of Continuing Professional Development training in S106 or supplementary training being provided by those sectors.
- 4.33 Boroughs are working with the University of Westminster who have established the Planning Training Partnership. Members of this Partnership have agreed a list of subject areas that should be a priority for training and the boroughs are

⁵⁵ 'The planning gain is lost', Regeneration and Renewal, 20 October 2007
<http://www.regen.net/inDepth/ByDiscipline/Housing/login/748977/>

involved in the delivery of the courses. Section 106 however is not one of the issues identified so far by this Partnership as a priority area for training.⁵⁶

- 4.34 The importance of training is widely recognised – for example Tesco believes that *‘right at the bottom of the profession there is probably not as much training. There are not as many entries into the universities, into planning, at the moment, and maybe planning itself needs to make itself a bit more attractive to people at 18, when they are making those sorts of career choices’*.⁵⁷

Recommendation 5:

The boroughs, IDeA and London planning schools should develop a post-qualification for planners, as part of their Continuous Professional Development, in maximising section 106 negotiation skills.

A ‘training tariff’?

- 4.35 A number of conclusions are clear. Boroughs need to have not only staff with adequate skills to negotiate S106 – they need to have enough of them devoted to this particular aspect of the planning process.
- 4.36 Boroughs need to make this a priority and to ensure that opportunities exist for planners to learn from more experienced colleagues and also to have more formal post qualifications and training in S106 negotiations. This is why we recommend the consideration of pulling together those local authority planners, valuers and lawyers who already have the widest range of experience of the most complex planning agreements and making their skills available to the rest of London when they are needed.
- 4.37 All this would cost money. But it appears to the Committee that there could be a ‘training tariff’ to boost skill levels in planning teams across London. By ring-fencing a small fraction of some of the S106 monies to direct towards training for planning officers in negotiation skills boroughs could be more certain that they were going into the negotiations with experience private sector negotiators on a more level playing field. Ultimately this could be self-financing as better skilled staff would be able to lever in more S106 funds to the benefit of the their communities in particular and London as a whole.

⁵⁶ Training for and by Public Sector Planners, University of Westminster
<http://www.wmin.ac.uk/sabe/page-1015>

⁵⁷ Michael Dunton, Tesco, Head of Development in London, London Assembly Planning and Spatial Development Committee meeting 5 September 2007

5 Outside the professionals – the role of the councillor and the community

*‘As a local councillor involved in planning matters, whether as a member of your authority’s executive helping to draw up the spatial plan for your area, as a member of the planning committee deciding planning applications, or as a ward member, you have a crucial role to play in both making the new planning system work and ensuring the best possible outcomes for your community’.*⁵⁸

Councillor involvement in section 106

- 5.1 Securing the best possible outcomes for their community is a vital role of elected councillors and so this should be reflected in their involvement in the S106 process. But this is not always the case. London Councils jointly commissioned a project to study the extent of elected councillors’ involvement in planning and the training and support available to them. The guidance produced as part of this project seeks to clarify the role of elected members at all stages of the planning process and provide advice to members about their degree of involvement in planning applications at each stage of the process.⁵⁹
- 5.2 BURA found that there was widespread suggestion, at various stages of their research for the Committee, that councillors are not particularly engaged in S106 negotiations. One Councillor confirmed, *‘I sometimes never hear what actually happens to that money’.*⁶⁰
- 5.3 More worrying is the suggestion that ‘the professionals’, knowingly or otherwise, appear to exclude or hinder member involvement in the process.
- 5.4 *‘The attitude in so many boroughs to S106 and elected councillors is, ‘Oh you poor little dears do not worry your heads about this complicated legal stuff’. You just get very vague heads of terms – no specification of amounts, no specification where the money is going to and sooner or later a councillor is going to get done by the Standards board because they did not know a charity or something they were involved in was a beneficiary. So the starting point has to be making it very clear to the councillors. If it is very clear to the councillors in agendas what has been negotiated then it is clear to the community’.*⁶¹
- 5.5 In reality, councillors involved in the different aspects of planning must tread a fine line between participating in decision taking within a legal framework but also having to represent the interests of their community.⁶² Recognising this, most boroughs have formal and published guidance to councillors when participating in the planning process – but these rarely mention aspects of the S106 process.

⁵⁸ Connecting councillors with strategic planning applications: a good practice guide for London. London Councils, November 2007 <http://www.londoncouncils.gov.uk/doc.asp?docId=21299>

⁵⁹ London Councils, London Assembly Planning and Spatial Development Committee meeting 5 September 2007

⁶⁰ ‘Capital Gains?’ A report by BURA for the London Assembly, December 2007

⁶¹ Bill Ellison, Creekside Forum, Deptford, London Assembly Planning and Spatial Development Committee meeting 27 June 2007

⁶² Nolan Report – Third Report of the Committee on Standards in Public Life, 1997 <http://www.archive.official-documents.co.uk/document/cm37/3702/370202.pdf>

- 5.6 Local councillors have a number of useful roles in relation to S106 – from being aware of potential applications that may have negative impacts for their communities; to developing priorities for any money that S106 may generate; ensuring that the ‘heads of terms’⁶³ addresses local needs; and finally ensuring that the agreements are upheld and the money is spent.
- 5.7 The obvious starting point to improve this situation is better knowledge and training. Twenty-five of the 33 boroughs (76 per cent) interviewed by BURA welcomed the idea of councillors increasing their knowledge of the S106 process – as did the majority of developers.
- 5.8 We agree that while ‘*one can’t expect councillors to become planners*’⁶⁴ they should understand the decision making process, the planning policy framework and what is a material consideration.
- 5.9 **All boroughs must support councillors in their work on planning matters and should use the good practice guidance produced by London Councils. This should be, as a matter of urgency, given to all new councillors as part of their induction.**

Community involvement in section 106

- 5.10 The former Minister of State for Housing and Planning, Yvette Cooper MP, has said ‘*that it is not acceptable for so many developers to pay nothing towards infrastructure and affordable housing given that land values can rise dramatically with planning consent*’.⁶⁵ And this implies some sort of lack of equity towards communities.
- 5.11 To reinforce the role of the community, DCLG guidance⁶⁶ says that community involvement is one of the key principles at the heart of delivering sustainable development. In the context of planning obligations, the community (i.e. business, residents, voluntary sector and other stakeholder bodies), should be involved wherever possible and appropriate in the setting of planning obligations policies and the negotiation of planning obligations for individual applications.
- 5.12 What is more, the guidance states the community should be given access to all necessary information to help inform their involvement. And by involving the community in planning obligations, policy and practice it should lead to outcomes that better reflect the views and aspirations of the community and improve decisions by drawing in local knowledge and perspectives.
- 5.13 DCLG planning guidance circular 5/05⁶⁷ sets out specifically how this should be

⁶³ Heads of Terms are the key principles of the agreement. They are normally agreed during the application process, prior to them being incorporated in the report to the planning committee.

⁶⁴ Councillor involvement in planning. GOL, London Councils, London First. September 2007 <http://www.londoncouncils.gov.uk/upload/public/attachments/1277/Councillor%20involvement%20in%20planning%20background%20and%20research.doc>

⁶⁵ Property week, 25 August 2006 <http://www.propertyweek.com/story.asp?storyCode=3072308>

⁶⁶ DCLG Planning Obligations: Practice Guidance, August 2006

⁶⁷ Circular 05/05: Planning Obligations. DCLG. Published 18 July 2005 <http://www.communities.gov.uk/publications/planningandbuilding/circularplanningobligations>

done so as to improve the transparency of the negotiation and agreement of obligations: details of any planning obligations should be recorded in the authority's planning register and made available for inspection by members of the public.

- 5.14 **The circular cannot be much clearer as to the spirit with which community engagement in the process should be carried out 'and that the process is carried out in an open, transparent and accountable manner.'** But is it?
- 5.15 Many of the community groups interviewed for the BURA case studies felt that consultation processes were motivated more by bureaucratic necessity for boroughs or as a public relations exercise for developers rather than a genuine desire to engage effectively with local community issues.
- 5.16 Indeed, one community group felt that the local authority '*haven't got the tools to reach the heart of the community, in the way the community and voluntary sector can. ... theirs is a distant, paper exercise, ours is much more hands on. They are paper people, we are people people*'.⁶⁸
- 5.17 Another community group spokesperson complained that when people's views are not taken on board they increasingly lose interest in meetings.
- 5.18 Yet there were cases where community groups were central to the process, resulting in more attention being paid to their needs. In one case study the local authority refused to grant planning permission until the local community group were satisfied with the designs for the theatre they were to receive as part of the S106 negotiation for a large development taking place in the borough.⁶⁹

Support for local residents

- 5.19 The local resident, and even well organised and experienced groups, need support. While of course the local authority will have some resources to explain the process and help identify options and priorities other sources do exist such as Planning Aid for London (PAL).
- 5.20 PAL provides free and independent town planning advice to individuals and groups unable to afford professional consultants. But it is a small service that is delivered through 10 in house staff including 5 qualified planners and relies on over 100 volunteers to cover the whole of London.⁷⁰
- 5.21 Such resources are however limited. BURA was able to identify only one similar organisation that offers advice for community involvement and assistance in planning and regeneration matters.⁷¹
- 5.22 But should communities be dependent on this kind of voluntary assistance to help them get involved in the planning system as far as section S106 is concerned?

⁶⁸ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

⁶⁹ Appendix 3 – Case study 5: Southwark London Park Hotel

⁷⁰ <http://www.planningaidforlondon.org.uk/?idno=94>

⁷¹ The Willowbrook Centre in Southwark. <http://www.willowbrookcentre.org.uk/index.html>

Existing mechanisms for community engagement

- 5.23 Again Circular 05/05 is clear how local authorities should act.
- 5.24 A local authority's Statement of Community Involvement (SCI) should set out the processes to be used by the local authority in involving the community in the preparation, alteration and continuing review of all local development documents and development control decisions **including planning obligations policies** and their role in individual applications.⁷²
- 5.25 However, what appears to be clear government guidance seems to be open to interpretation. The BURA research found that:
- In Southwark the authority took the view that S106 and the tracking of planning contributions should not be a matter to refer to in the SCI;
 - In Camden the officer's report on S106 mentions 'the drafting of S106 agreements is not a matter for consultation'.
- 5.26 Boroughs may believe that there are better ways than using a SCI, because other examples did emerge of community engagement around S106.
- 5.27 In Kings Cross (Camden) there is a local authority-community interface known as the Kings Cross Development Forum. In Lewisham around the Convoys Wharf development proposals churches, businesses and community groups were encouraged to take part in a number of public meetings, discussing what sort of S106 agreement they wanted.
- 5.28 Developers too are taking it upon themselves to engage with community groups much earlier on in the process, before they necessarily even go to the borough to indicate their proposed development.⁷³

Innovations

- 5.29 From the BURA research, several other mechanisms were suggested for engaging community groups in S106 negotiations. These included public notices that an agreement was going to be negotiated and building up community groups' capacity to understand the calculations around S106.
- 5.30 The planning officer survey saw some interesting recommendations in regards to the community sector. Twenty boroughs suggested that community groups should increase their knowledge of the S106 process through bespoke networks or courses.
- 5.31 More than 20 boroughs were positive about an annual forum of communities, developers and officers, a proposal broadly supported by the majority developers and developer RSLs.
- 5.32 BURA also identified another promising way of engaging the community in S106. 'Project Banks' supply the local authorities with a clear view of

⁷² Circular 05/05: Planning Obligations. DCLG. Published 18 July 2005

⁷³ London Councils and Tesco, London Assembly Planning Committee meetings 27 June and 5 September 2007

community demands and are usually passed on to the developers for either direct delivery (as occurred with one of the case study developments) or for funding under the S106 agreement.⁷⁴

- 5.33 A local community group involved in the formation of a project bank in one borough explained that the projects underwent scrutiny even before reaching the planning office: *'the Project Bank is generated from planning officers reviewing the strategic documents from the consultation processes over the past 10 years and getting down to what are the community's needs, what are the community organisations doing and identifying these projects. This gets sent to the borough. They then have a tangible list of projects that they can refer to when discussing developments'*.⁷⁵
- 5.34 The planning officer then decides what to select from the project bank when it comes to an individual S106.

Conclusions

- 5.35 The greater involvement of elected councillors and the community they serve is one of the great challenges faced by the planning system. This involvement must start at the beginning of the process so that they can understand possible negative impacts of proposals and also have a say about what the priorities for their areas are to address the likely pressures caused by development. This local community involvement will help ensure acceptance of new developments and keep the pressure on developer and boroughs to deliver quality of life improvements at a time of great economic and social change.
- 5.36 Government guidance is that councillors and communities should be involved in devising policies for managing planning obligations through Statements of Community Involvement. Some boroughs take an alternative view.
- 5.37 We accept that some boroughs may believe there is a better way of informing and involving local councillors and the community. But there must be a policy that is in place and clearly communicated to the community that makes the process transparent and accessible for those who want to be involved.

Recommendation 6:

All boroughs should produce good practice guidance that can be used by councillors to support them in their work on planning matters. This documentation should be ready for all new councillors as part of their induction.

Recommendation 7:

All boroughs in London should have a specific policy for engaging the community in the section 106 process built in to their Local Development Documents, Statements of Community Involvement or other formally agreed procedures.

⁷⁴ <http://www.southwark.gov.uk/YourServices/planningandbuildingcontrol/S106/S106exp.html>

⁷⁵ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

Recommendation 8:

Boroughs should establish project banks that can be used when deciding how to spend section 106 monies. The consultation process around setting these up will, in and of itself, help increase the profile and level of knowledge about section 106 agreements.

- 5.38 With this knowledge it should be possible that expectations are realistic and planning obligations that really mitigate negative impacts are negotiated with the full knowledge of the community and their representatives. They will then be able to play a part in ensuring what has been negotiated on their behalf is actually delivered as agreed.
- 5.39 It is the monitoring of these agreements that is dealt with in the next section of this report.

6 Keeping to the agreement - ensuring the money is spent and contributions are monitored

- 6.1 Arsenal's new Emirates Stadium opened in July 2006 and is the largest club stadium in London with a capacity of 60,000. This is an increase of 22,000 on Arsenal's old stadium. Recent reports suggest the move to the new ground has increased Arsenal's annual turnover to over £200 million and that gate revenue at the stadium provides an income of £3.1 million on average for each match, more than double that of matches at their old stadium.⁷⁶
- 6.2 This would appear to be just the type of application where a S106 agreement was needed to mitigate negative impacts of such a significant development in the area.
- 6.3 *'There was to be a new sports centre... There would be major improvements to the local Tube stations... There would be a new waste treatment plant... There would be 'affordable housing'. And there would be parking underneath the stadium for supporters' coaches, saving the narrow residential streets around from being clogged.*
- 6.4 *All this was written in as legal conditions of the planning agreement. Gradually, however, the promised benefits have become rather less amazing'.⁷⁷*
- 6.5 There is no point in negotiating contributions from developers if the money is not provided or spent in line with the legal agreements and that the community sees no benefit – or worse, suffers unnecessary negative impacts. Yet monitoring the implementation of agreements is a task that is often neglected.⁷⁸
- 6.6 The BURA survey found most boroughs – 25 of the 33 (75 per cent) stating that they monitor works undertaken directly by developers in all or most cases. However, the officer survey is somewhat at odds with the picture painted by developers. Just under a quarter of developers claim that works are never monitored in their experience and only 42 per cent claim that all or most works are monitored.
- 6.7 For the respondent developer RSLs only one of them believed that their works are monitored all or most of the time. BURA is at pains to note in their report however that while there is evidence of less than rigorous monitoring of S106 agreements this does not mean that developers are simply downing tools when no one is looking.
- 6.8 Monitoring varies quite dramatically from borough to borough – with a key factor being the value of the S106.⁷⁹

⁷⁶ A Question of Sports Travel: a review of travel arrangements to and from London's sports stadiums. London Assembly October 2007

http://www.london.gov.uk/assembly/reports/transport/sports_travel.pdf

⁷⁷ How Arsenal 'bought' a borough. Evening Standard, 3 July 2006

⁷⁸ Sharing the benefits – A good practice guide to how planning obligations can provide community benefits. Association of London Government July 2004

⁷⁹ Deborah Ganley, formerly coordinator for London Councils' Section 106 group. 'Capital Gains?' A report by BURA for the London Assembly, December 2007

- 6.9 Monitoring, like anything, has to be resourced and so there needs to be some way to capture enough value that can support the borough in terms of monitoring. Twenty London boroughs (61 per cent) are now charging developers for monitoring fees. Charges are increasingly being introduced as the awareness of the relevance of monitoring grows.
- 6.10 One local authority has operated a fee system for charging developers for monitoring costs for the last few years, this allows a dedicated monitoring officer to be employed who can oversee all S106-funded projects in the locality: *'In the last 2-3 years we've been charging developers for monitoring costs, there's a fee. Because in section 106's the engineers fees are covered, legal fees are covered but planning fees aren't, so we have a monitoring officer and that gets paid through the 106'*.⁸⁰

Recommendation 9:

Boroughs should prioritise the monitoring of section 106 agreements and ensure they have enough staff, who are sufficiently skilled and experienced, to do it. We recommend all section 106 agreements contain clauses that allow boroughs to charge developers for monitoring their agreements.

- 6.11 As set out in the previous section, the Committee sees merit in involving local councillors having a role in checking that agreements are honoured. Some authorities do publish material on their S106s and do have regular reports – *'in places like the City of London there is lots of development going on, it is really important'*.⁸¹ Appendix 5 contains a sample of boroughs that have published S106 agreements and monitoring reports online.
- 6.12 In the City *'we track all of our section 106s. I think we have quarterly reports. They may be half yearly but certainly a full annual report on all the section 106 monies, when it has been spent and how it has been spent. You do have to bear in mind, when talking about tracking, that of course many of these agreed section 106s never take place because the development never takes place. The development might take place 10-15 years after permission had been granted'*.⁸²

Recommendation 10:

All boroughs should ensure that there are full and regular accounts of the receipt and spending of section 106 monies reported to Planning committee members and available to all other local councillors.

- 6.13 From the other side, developers will wish to see that the money they have paid is spent as agreed – for no other reason than it usually means the investment in

⁸⁰ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

⁸¹ Stephen Benton, Head of Policy, Transport, Environment and Planning, London Councils'. London Assembly Planning and Spatial Development Committee meeting 5 September 2007

⁸² Stuart Fraser, Corporation of London, London Assembly Planning and Spatial Development Committee meeting 5 September 2007

the area of the planning application will add value to the development (paragraph 3.27 above).

- 6.14 But direct reporting back to developers is not a common practice. Most boroughs claim that developers are not interested in this information but some obviously are. Tesco told the Committee that it was very interested in seeing how the money was spent.
- 6.15 *'From Tesco's point of view, we are very keen that they are monitored properly because we are putting large sums of money, generally, into escrow accounts. We do not just want to see the money sat there. We actually want to see it getting out, being used for the benefit of the general community in which our developments are sited. We think it is very necessary that this money is used effectively and in a timely manner. There are all too many examples where pots of money have gone off into different departments and sat there for five years, and because somebody's disappeared off the council has forgotten about it'.*⁸³
- 6.16 According to the BURA research, one developer and one community activist claimed that increasingly developer payments are going into a coffer and not being seen nor heard of again.⁸⁴ The London Tenants Federation and Haringey Federation of Residents Associations argued that all too often S106 contributions do not, or for want of available land, cannot, provide social and community infrastructure; funds are instead diverted into local authorities' general budgets.⁸⁵
- 6.17 The local community perhaps has the greatest interest in ensuring that not only are developers paying up, but also that the benefits that were negotiated are the ones that actually get delivered.
- 6.18 The example of Arsenal's new stadium is a good example of a project significantly large to merit the attention and scrutiny of London's Evening Standard. But what about the countless number of smaller developments in London which receive no such publicity from anyone?
- 6.19 **We have found that the public may not be aware that provisions exist to mitigate negative impacts of developments in their communities. We have seen that not all boroughs have formal statements of community involvement that explicitly allow residents or local businesses to participate in any negotiation and state their local priorities. We have also seen that it is not widespread practice to report spending, or even the changed content of the legal agreement, to councillors.**
- 6.20 The Committee believes that the community can play a useful role in monitoring what was negotiated is actually implemented. But to perform this scrutiny role effectively they need to have access to the relevant information.

⁸³ Michael Dunton, Tesco, Head of Development in London, London Assembly Planning and Spatial Development Committee meeting 5 September 2007

⁸⁴ 'Capital Gains?' A report by BURA for the London Assembly, December 2007

⁸⁵ Draft Further Alterations to the London Plan Examination In Public 18 June – 10 July 2007
<http://www.london.gov.uk/mayor/strategies/sds/eip-report07/panel-report-further-alt-s-eip.pdf>

- 6.21 The relevant legal requirement already exists. Boroughs must record details of planning obligations in both Parts I and II of the local planning authority's planning register.⁸⁶ But who, outside the professionals, is aware of the existence of the local authority planning register?
- 6.22 Appendix 5 contains a listing of boroughs which have some of this information available online. Below is a sample from the London Borough of Southwark's website detailing S106 information.

London borough of Southwark section 106 webpage

Current Section 106 agreement details

We produce quarterly reports on Section 106 expenditure by ward and community council area. It should be noted that not all the monies in this report will be paid to the council. If a developer decides not to implement or 'build' a planning permission, section 106 monies agreed for that site will not be paid to the council.

> View the  Section 106 balances report January 2008 (pdf 160kb)

The report includes the following information:

- Council corporate reference number
- Site or development address related to the agreement
- Agreement purposes. This details how negotiated funds can be spent
- Total negotiated sum. This is the total funds agreed between the developer and council
- Agreement breakdown. This shows how the negotiated funds are allocated to specific obligations/projects
- Spent or committed sums. The value of funds spent or committed against the specific obligation/project
- Amount received. The value of the sums received
- Outstanding sum. The difference between the total negotiated and the amount received
- Balance available. The amount currently available based on the difference between the amount received and the amount committed or spent

www.southwark.gov.uk/YourServices/planningandbuildingcontrol/S106/S106local.html

Recommendation 11:

Boroughs should make available, in a simple and accessible format, all details of signed section 106 agreements along with the regular monitoring reports of how those agreements are being implemented. This will give confidence to all councillors and the community that their interests are being served and the benefits delivered.

⁸⁶ The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2002 (Statutory Instrument 2002 no. 828),

7 Future role of the Mayor

- 7.1 The Mayor already enjoys significant S106 contributions – for example, through the Transport for London (TfL) requirements on large planning developments – indeed significant parts of Docklands Light Railway infrastructure are being funded through S106 payments.
- 7.2 TfL decide through transport assessments whether the development is liable to pay a contribution. In small cases where there is insufficient capacity a sum can be agreed to pay for improvements such as route extensions to bus services, in major schemes it can be in both the developer and the council's interest to consult TfL.
- 7.3 In other large proposals that are referred to the Mayor he has managed to secure other benefits such as an increase in the amount of affordable housing that makes up part of a scheme.⁸⁷

New Mayoral planning powers

- 7.4 On 23 October 2007, the GLA Act received Royal Assent. The Act gives the Mayor new planning powers in relation to London Boroughs' Local Development Schemes and also provides for the Mayor to take over and determine small numbers of applications that have potential strategic importance in place of the boroughs.⁸⁸
- 7.5 The Government believes that such a change will enable the Mayor to ensure the implementation of strategic planning policy in Greater London as set out in the London Plan and other strategic policy instruments.
- 7.6 While the exact thresholds that will define 'potential strategic importance' and trigger the Mayor's ability to take over and decide an application are still being finalised, it appears that he will be able to deal with some of the biggest applications in London including:
- Housing schemes with more than 150 units;
 - Developments within the City of London with a total floorspace of 100,000 square metres;
 - Developments within the City of London which are more than 150 metres high;⁸⁹
 - Buildings more than 25 metres high and are adjacent to the River Thames;
 - Buildings more than 150 metres high and are in the City of London;
 - Buildings more than 30 metres high and are outside the City of London.

⁸⁷ The Mayor's planning decisions and the associated planning reports are available online http://www.london.gov.uk/mayor/planning_decisions/index.jsp

⁸⁸ This is in addition to his existing power to direct refusal

⁸⁹ The current thresholds are 30,000 square metres and 75 metres high respectively.

- 7.7 It is estimated that the number of applications falling within these thresholds would be around 50 per annum.⁹⁰
- 7.8 Should the Mayor decide to take over any of these applications he will also negotiate the associated S106 agreements.
- 7.9 The London Plan already has policies on S106 which set out that *'affordable housing and public transport improvements should generally be given the highest importance with priority also given to tackling climate change, learning and skills and health facilities and services and childcare provisions. The Mayor when considering planning applications of potential strategic importance will take into account, among other issues, the content and existence of planning obligations'*.⁹¹
- 7.10 According to the BURA research RSL developers appear to support the fact that the Mayor will soon become 'lead party' for S106 agreements on major projects (73 per cent for - against 18 per cent saying no).
- 7.11 With developers the position is more divided – 45 per cent welcoming the change as opposed to 37 per cent taking the contrary view.
- 7.12 We raised the issue of pooling contributions earlier in this report (paragraph 3.31 above). The basis of asking for S106 contributions is to make a proposal, which may have negative local impacts, acceptable. And this is backed up with the Secretary of State's guidance that S106 must be 'directly related to the development'.
- 7.13 How will the Mayor approach the assessment of the possible impacts of the strategically important proposals that his new planning powers will allow him to take over? The Government has defined which type of applications may be strategically important to London but there has been no assessment of how far the negative impacts spread.
- 7.14 **Crucial questions remain. Will the local community, which suffers negative impact from some of the largest and most important developers in London, retain the benefit of any money negotiated to mitigate these impacts for their own areas? Will the local borough, which has to provide additional public services that these developments generate, receive the money as they do now?**
- 7.15 Or will the Mayor decide that strategic applications have strategic impacts and that the money can therefore be spent on a pan-London basis?
- 7.16 While there has been no formal statement from the Mayor about exactly how he will exercise his new planning powers, including his policy and priorities for S106 negotiations, the Committee expects the Mayor to act in a way that reflects our calls for transparency and accountability throughout the process.

⁹⁰ Giles Dolphin, Head of Planning Decisions, GLA. London Assembly Planning and Spatial Development Committee meeting 12 February 2008 <http://www.london.gov.uk/assembly/planning/index.jsp>

⁹¹ London Plan Policies 6A.4 and 6A.5 set a clear strategic steer regarding planning obligations. <http://www.london.gov.uk/mayor/strategies/sds/further-alts/docs/alts-all.pdf>

Recommendation 12:

We would expect the Mayor to:

- **Publish his policies on section 106 including the way he will determine the priority areas of spending**
- **Publish his policies relating to how section 106 monies will be spent - locally or across London**
- **Publish clear policies on how he will involve the community in the local area of the planning application in terms of determining priorities**
- **Publish details of the agreement and what is expected to be delivered from the section 106 agreement**
- **Publish at regular intervals details of what has been delivered.**

- 7.17 In the same way as we have recommended that local authorities make the fullest amount of information on S106 agreements available to local councillors and the community so that they can scrutinise the process for delivering benefits to their borough from developments, so will the Assembly should put in place a process to hold the Mayor to account in the way that he deals with those applications he decides, so that Londoners feel the full benefits of the S106 contributions.

8 List of recommendations

Recommendation 1: That all boroughs hold a central and easily accessible record of all section 106 agreements which detail the financial contributions, what community benefits are to be delivered and up-to-date monitoring information on the progress of implementing those agreements.

Recommendation 2: That all boroughs review and adopt updated and coherent policies on section 106 and publish them in the most accessible ways. To further ensure that these documents are accessible to a broad public a guide or explanatory note in plain English should be produced.

Recommendation 3: That as part of their review and updating of section 106 policies boroughs should consider adopting either a tariff or standardised approaches as a starting point for negotiations to ensure a greater degree of transparency and to increase certainty for developers.

Recommendation 4: That London Councils and the Mayor set up a pan-London unit skilled in complex section 106 negotiations or create an expert section 106 advisory group, making it available for use by all boroughs when the need arises – particularly for the largest and complex applications

Recommendation 5: The boroughs, IDeA and London planning schools should develop a post-qualification for planners, as part of their Continuous Professional Development, in maximising section 106 negotiation skills.

Recommendation 6: All boroughs should produce good practice guidance that can be used by councillors to support them in their work on planning matters. This documentation should be ready for all new councillors as part of their induction.

Recommendation 7: All boroughs in London should have a specific policy for engaging the community in the section 106 process built in to their Local Development Documents, Statements of Community Involvement or other formally agreed procedures.

Recommendation 8: Boroughs should establish project banks that can be used when deciding how to spend section 106 monies. The consultation process around setting these up will, in and of itself, help increase the profile and level of knowledge about section 106 agreements.

Recommendation 9: Boroughs should prioritise the monitoring of section 106 agreements and ensure they have enough staff, who are sufficiently skilled and experienced, to do it. We recommend all section 106 agreements contain clauses that allow boroughs to charge developers for monitoring their agreements.

Recommendation 10: All boroughs should ensure that there are full and regular accounts of the receipt and spending of section 106 monies reported to Planning committee members and available to all other local councillors.

Recommendation 11: Boroughs should make available, in a simple and accessible format, all details of signed section 106 agreements along with the regular monitoring reports of how those agreements are being implemented. This will give confidence to

all councillors and the community that their interests are being served and the benefits delivered.

Recommendation 12: We would expect the Mayor to:

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- Publish details of the agreement and what is expected to be delivered from the section 106 agreement
- Publish at regular intervals details of what has been delivered.

Appendix 1 – London borough section 106 priorities

Local Authority	Priority 1	Priority 2	Priority 3
City of London	Affordable Housing	Transport & Access Improvements	Public Realm
Barking & Dagenham	No Data	No Data	No Data
Barnet	Affordable Housing	Education & Health	Transport & Access Improvements
Bexley	Transport & Access Improvements	Affordable Housing	Public Realm
Brent	Education & Health	Transport & Access Improvements	Affordable Housing
Bromley	Economic & community regeneration	Affordable Housing	Education & Health
Camden	Public Realm	Public Realm	Education & Health
Croydon	Transport & Access Improvements	Public Realm	Economic & community regeneration
Ealing	No Data	No Data	No Data
Enfield	Transport & Access Improvements	Education & Health	Economic & community regeneration
Greenwich	Transport & Access Improvements	Education & Health	Economic & community regeneration
Hackney	Education & Health	Transport & Access Improvements	Economic & community regeneration
Hammersmith & Fulham	Public Realm	Transport & Access Improvements	Economic & community regeneration
Haringey	Transport & Access Improvements	Education & Health	Public Realm
Harrow	Affordable Housing	Transport & Access Improvements	Public Realm
Havering	Education & Health	Transport & Access Improvements	Nothing else
Hillingdon	Education & Health	Public realm	Economic & community regeneration
Hounslow	No Data	No Data	No Data
Islington	Transport & Access Improvements	Public Realm	Economic & community regeneration
Lambeth	Public Realm	Public Realm	Transport & Access Improvements
Lewisham	Affordable Housing	Transport & Access Improvements	Public Realm
Kensington & Chelsea	Affordable Housing	Education & Health	Public Realm
Kingston upon Thames	Transport & Access Improvements	Education & Health	Public Realm
Merton	Economic & community regeneration	Transport & Access Improvements	Education & Health
Newham	Public Realm	Transport & Access Improvements	Economic & community regeneration
Redbridge	Education & Health	Affordable Housing	Transport & Access Improvements
Richmond upon Thames	Education & Health	Transport & Access Improvements	Affordable Housing
Southwark	Public Realm	Affordable Housing	Education & Health
Sutton	Transport & Access Improvements	Education & Health	Public Realm

Tower Hamlets	No Data	No Data	No Data
Waltham Forest	Transport & Access Improvements	Education & Health	Public Realm
Wandsworth	Public Realm	Transport & Access Improvements	Transport & Access Improvements
Westminster	Affordable Housing	Transport & Access Improvements	Public Realm

Appendix 2 Borough online section 106 policy documents

Borough	Agreed policy or status	Web address
LB Haringey	Yes	http://harinet.haringey.gov.uk/index/housing_and_planning/planning-mainpage/udp-2/supporting_documents-3.htm
LB Barnet	Developing one	http://www.barnet.gov.uk/ldf-affordable-housing http://www.barnet.gov.uk/spd-contributions-education-mar07.pdf http://www.barnet.gov.uk/spd-contributions-libraries-mar07.pdf
LB Camden	Yes	http://www.camden.gov.uk/ccm/content/environment/planning-and-built-environment/development-plans-and-policies/supplementary-planning-guidance/file-storage-items/camden-planning-guidance--consultation-draft.en
City of London Corporations	Yes	http://www.cityoflondon.gov.uk/Corporation/our_services/development_planning/planning/udp/udp_supplementary_doc.htm
LB Croydon	Developing one	http://www.croydon.gov.uk/content/departments/570803/570946/pgn1.pdf
LB Hackney	Yes	http://www.hackney.gov.uk/planning-contributions-spd.htm
LB Hillingdon	Yes	http://www.hillingdon.gov.uk/environment/planning/spg05_obligation_strat.pdf http://www.hillingdon.gov.uk/environment/planning/spd/affordhse_spd.pdf http://www.hillingdon.gov.uk/environment/planning/spd/plan_oblig_afford_hsg.pdf
LB Islington	Yes	http://www.islington.gov.uk/Environment/Planning/PlanningPolicy/Planning_Obligations/s106_advice.asp
LB Hammersmith and Fulham	Developing one	http://www.lbhf.gov.uk/Images/FINALS106SPD271005_smaller_tcm21-43854.pdf
LB Merton	Yes	http://www.merton.gov.uk/planningobligationsspd.pdf
LB Redbridge	Yes	http://www.redbridge.gov.uk/cms/idoc.ashx?docid=3907fad0-0fd9-476d-bf62-a6730016a688&version=-1
LB Richmond upon Thames	Yes	http://www.richmond.gov.uk/spg_plg_obligations_strategy._as_published_nov_05.pdf
LB Southwark	Yes	http://www.southwark.gov.uk/S106/
LB Sutton	Yes	http://www.sutton.gov.uk/environment/suttondevelplan/planningobligationsspd.htm
LB Westminster	Yes	http://www3.westminster.gov.uk/docstore/publications_store/S10

		6_SPG.pdf
LB Brent	Yes	www.brent.gov/planning then under 'Planning Obligations'
LB Greenwich	Developing one	www.greenwich.gov.uk/spdconsultation

Source: 'Capital Gains?' A report by BURA for the London Assembly, December 2007

Appendix 3 Case studies

1) Greenwich: the Lovell's, Granite and Piper's Wharf regeneration scheme

The case study is a mixed-use development, including 667 residential units, 4,100 m² of office space, a 100 bedroom hotel, studio workshops, retail units, sports facilities and a health club on previously industrial land.

Negotiations

The case study provides an example of how early engagement and clarity of costs and benefits can support timely delivery of a major regeneration scheme.

Among the key features that facilitated the initial phase of the S106 negotiations was the timely introduction of key documents. These included an Environmental Impact Assessment study, a standard list of charges, and a draft S106 Strategic Planning Document (commissioned by the borough from a private consultancy). The documents provided clarification to developers and the RSL of the likely negative impacts to be addressed right at the beginning of the process.

The negotiation process was also speeded-up by having a public sector protocol in place. Under the protocol the public sector was always represented through the presence of a planning officer in negotiations the developers undertook regarding any issue (e.g. transport, housing, public realm). This ensured that heads of terms were not subject to major changes as negotiations progressed.

Finally, the presence of an index-linked mechanism was crucial. As it started from the point when the developer contributions were agreed, not when the negotiations were officially concluded with lawyers signing the agreement, it became in the developer's interest to conclude the negotiations and proceed with the payments quickly as possible, as the price increased with inflation. This mechanism also covered the local authority against rises in the costs of implementing their S106 requirements that could occur over time.

Outcomes

The scheme was successful in meeting mayoral targets for affordable housing, with 35 per cent affordable housing delivered with 70 per cent for social rent and 30 per cent for shared ownership. The size was consistent with the Parker Morris space standard and the quality met the design criteria. Also, the affordable housing was pepper-potted (spaced around the overall development rather than bunched together) with some overlooking the river.

Although the scheme is predominantly residential, the planning authority used the S106 agreement to introduce local employment in the existing retail units through their employment arm, Greenwich Local Labour and Business. The development also provided a community centre, library and swimming pool for local residents.

The implementation of the agreement was monitored through a S106 monitoring officer, funded through fees contributed by the developer. Furthermore, the borough

has a protocol on S106 spending according to which only three officers have spending power to ensure easier traceability of S106 monies.

2) Lambeth: British Airways London Eye

The case study is a famous leisure development on a previously unused public space on the South Bank. The major feature of the London Eye S106 agreement is its innovative financial structure as the British Airways London Eye (BALE) continues to contribute £310,000 (index-linked) or 1 per cent of its turnover, whichever is the greater, from the relevant preceding financial year for the London Eye operation.

Negotiations

The case study provides an example of the positive impact that revenue-based S106 contributions can make in revenue-generating redevelopments. Also it pinpoints the role of a cooperative and responsive planning environment in delivering regeneration through third sector involvement. Finally it highlights the relevance of spreading best practice and increasing cooperation across boroughs.

Founded to coordinate and assist in the delivery of services in the South Bank and Waterloo area, the Visitors Management Group (VMG) was involved with the identification of potential impacts from the development. The group comprises members from South Bank Employers Group, LB Lambeth, LB Southwark, LB Westminster, the MET Police, an NHS Foundation trust, as well as major private companies and cultural and higher education institutions.

The VMG assessed impacts through a consultation with another borough (Westminster) that they felt had greater experience in managing high tourist numbers. Due to the unique nature of the development, a revenue S106 was agreed upon, requiring revenue accrued from the Eye to be used initially to pay for ongoing measures (such as public realm and environmental management and maintenance as well as security) with monies left over being cascaded into the community.

In the case of Lambeth council, the limitations imposed by pressures on staff and the reported lack of strategic vision in S106 negotiations are currently being addressed through a draft SPD on S106. This was drafted after a study of those in place in Croydon, Merton and Southwark as well as from increasing interaction and coordination with adjacent boroughs (Southwark particularly).

Outcomes

The scheme has allowed for significant financial contributions to local development, as during the last financial year, BALE has contributed £385,530. The cascading mechanism that was devised for the spending required that the remaining of S106 proceeds which are not used for ongoing measures is transferred into a Community Chest and (currently) is allocated to approved projects in a project bank.

At the moment the project bank includes 39 projects, highlighting the importance of a partnership approach to gain full benefit from physical regeneration. In 2007 the Waterloo Community Development Group was hired to manage a £50,000 community chest pot.

The project bank system aims to reflect the aspiration of local stakeholders and the boroughs when deciding how to spend S106 proceeds. Among the core members are Lambeth and Southwark planning and environment departments.

The Visitor Management Group is in charge of monitoring spending, while the process has now been made easier thanks to an online database available through a local intranet developed in 2007.

3) Newham: Silvertown Quays Development

The regeneration of the Silvertown Quays former industrial area is led by a flagship mixed-use development involving the construction of 5,000 new homes, 7,800 m² of office space, 7,600 m² of flexible workspace, 8,000 m² of community facilities, 5,570 m² of restaurants and bars and 18,925 m² of leisure facilities

Negotiations

This case study outlines the relevance of partnership engagement in driving regeneration forward in large derelict former industrial sites. The owner of the land, the London Development Agency, supported the borough in identifying the potential for social and economic regeneration in the area. Together with Newham's experience acquired from previous S106 negotiations related to Stratford City, the support from the LDA helped the borough define the quantum and type of requests that could be asked of developers. The landowner's commitment coupled with the developer's recognition that holistic regeneration is preferable to pure physical redevelopment, helped to create a common-goal culture.

A crucial factor in the success of the negotiation was the strategic approach of the planning authority. Besides providing a list of issues that the negotiations would need to address, the borough also showed a flexible approach in defining the priorities on which the S106 proceeds should be spent while understanding that future changes may require these priorities to shift. Indeed, to maximise efficiency, the parties agreed that any money that goes unspent over the ten years would be paid back. While the complexity of the scheme resulted in some delays during the initial stages, the borough's index-linked mechanism (as Greenwich used in the Lovell's, Granite and Piper's Wharf study above) allowed the negotiations to proceed as quickly as possible.

Due to the high proportion of residential units and fear that buy-to-let practices could hinder the quality of life of future residents, the developer and borough set up a neighbourhood management system. This system ensures a long-term commitment from developers, as when they purchase parcels of land for development, they become shareholders in the management company. The phasing of construction also allows for incremental adjustments based on the evolution of the development.

Outcomes

The development is already benefiting the area by allowing a more efficient land use. Also, steps have been taken to ensure local employment benefits from the construction opportunities through the borough's Employment Charter for the site, a document that ensures local people access to employment once the construction phase is completed through an on-site job-shop.

Although further education and training benefits are envisaged, particularly arising from the Biota! Aquarium, a local community group nevertheless claims wider community engagement has yet to reach them. Geographical segregation and inadequate information dissemination is a source of concern in the area. Improvement in transport links between communities isolated by the physical barriers of the docks will play a part in rectifying this.

These problems are likely to be addressed through fortnightly meetings with the developer, planned to follow the whole building-horizon of fifteen years. These are seen as opportunities to increase knowledge on the effective delivery of sustainable communities in regeneration sites through long-term partnership arrangements.

4) Richmond: Brunel University Richmond Lock campus redevelopment

The redevelopment of Brunel University's Richmond Lock campus is for a mixed-use development, involving the construction of 168 new dwellings (69 affordable flats, 28 private flats and 72 houses) and the conversion of many of the existing historic buildings on the site. These include the conversion of the grade 2 star listed Gordon House, St Margaret's Lodge and the Orangery into residential use; the use of Clifton Lodge and Violet Needham Chapel for educational and nursery purposes; the provision of a new health care centre; the use of Gordon House Chapel for office purposes; and the alteration or creation of new vehicular, pedestrian and cycle access and car parking space.

Negotiations

This is an example of how high quality affordable housing provision can be integrated sensitively within a top-end residential development in a desirable location. The affordable housing will be constructed of the same high quality materials as the new build for private sale to provide a designer integrated look that enhances the surrounding area. Also it will be consolidated in one block for management purposes, rather than pepper-potted, at the request of the RSL.

One of the key features of good practice in this case was the establishment of clear objectives and good working relations early on between the Council, the developer and the RSL. The RSL was brought in early in the planning stage and allowed to build upon an agreed site rather than having the units constructed on their behalf by the developer, giving them a strong position in determining criteria such as unit types and sizes to their satisfaction. The strong position of the RSL also enabled the scheme to proceed without one party dominating, and ensured clear responsibilities and good working relations throughout the negotiation process.

The developer is credited for the long-term vision and regard for the surrounding area shown throughout the negotiation. A three-day community consultation was operated by the developer during which local people could voice their opinions and concerns about the project; and the removal of waste and construction traffic was operated in accordance with Council guidelines to minimise disruption to the local environment. There was also a sense of shared vision between all the actors as the developer subscribed to the view that investment in the surrounding area would enhance their product, allowing the S106 to proceed in a consensual rather than conflictual manner.

Outcomes

The S106 agreement for the scheme constitutes just above the 1 per cent of the Gross Development Value. This includes financial contributions as well as the various additional facilities subsidised by the developer.

The scheme achieved a good mix of social housing and sensitive preservation of the existing historic buildings in the conservation area. The affordable housing was responsive to local demand, with 2-3 bed units provided by the RSL rather than 1 bedroom flats, and reached 40 per cent of total build by numbers, exceeding Mayoral targets. Not only were the listed buildings restored but also many non-listed 'buildings of townscape merit' were also incorporated into the plans (rather than demolished) at the request of the Council.

In addition to compliance with the required educational supplement the developer also agreed to the allocation of S106 monies for a host of environmental improvement schemes. These included the provision and maintenance of public open space and public access through the site; traffic calming; a pedestrian crossing; improvements to the Thames promenade at Isleworth; and new road surfacing and the introduction of shared surfacing to aid pedestrian access to the site.

5) Southwark: London Park Hotel development

The London Park Hotel development in Southwark comprises a 44 storey (141.5m) centrepiece tower with a residential terrace, 07 storeys in height, extending north of the tower with a footprint similar to that of the existing London Park Hotel building. The development incorporates the construction of a new theatre space to the south west of the tower for local community theatre company, the Southwark Playhouse. In total the proposal will create 40,069 m² of floor space, with 35,069 m² of residential accommodation, 280 m² of retail/ marketing, a 1056 m² theatre space with 3488 m² of ancillary space. The residential component is made up of 470 residential units, comprising a mix of 235 one-bed flats, 207 two-bed flats and 28 three-bed flats.

Negotiations

The case is an example of the mutual benefits which can be accrued from incorporating a flagship culture project into a large redevelopment scheme and how a flexible approach by the local authority can maximise these benefits.

The borough has a highly formalised approach to S106 agreements, with a dedicated SPD as well as formulae and standard charges for specific services (such as education and health). The result of this was that clear requirements were presented to the developer, who was also asked to present a statement of planning contributions at the inception of negotiations. However planning officers also recognised that impacts are not always negative and were able to reward any positive impacts from the development and reduce their S106 demands accordingly.

In the case study area a local theatre was very active and in need of new premises. It was felt that the theatre offered a community benefit, with jobs and an education link within the theatre; and a developer benefit, as it would enhance the development overall by creating activity and raising the profile and desirability of the area. The

Council therefore awarded the developer a discount on the S106 requirement for the development in light of the positive impact the development has on the area.

The negotiation was aided by the Theatre group being made central to the planning application process. The Council's commitment to the Playhouse was underwritten by a 125-year lease being written into the S106 agreement and the withholding of planning permission until the Theatre organisation was satisfied with the design of their facility. This allowed the developer and the Southwark Playhouse a level playing field through which to have a real dialogue on the plans for the theatre auditorium, the specific education and community space, and the rehearsal room.

Outcomes

The S106 agreement for the scheme constitutes about the 20 per cent of the Total Development Cost (about £120 million). This includes financial and affordable housing contributions to the scheme.

The local authority made use of a number of good practices in order to maximise the benefit to the local area. A 'project bank' consisting of required projects identified by local community representatives was used to pinpoint areas of local need. In relation to affordable housing, key worker homes were allocated on cascade rather than pan-London basis, homes going initially to people in the immediate area, then to people in the local authority area, and following that to a first come first served basis. Also the scheme delivered a high absolute number of affordable units, refusing the temptation to produce a high percentage (such as can be achieved through low density schemes) but lower absolute number, thus maximising local benefit.

The Southwark Playhouse is expected to move into its new home in 2010.

Appendix 4 Summary of section 106 toolkits

Three Dragons 'Affordable Housing Development Control' toolkit developed by Three Dragons consultancy and Nottingham Trent University for the GLA and the Housing Corporation, and is used by the Mayor, London boroughs and the Housing Corporation to test the viability of residential schemes in relation to the Mayoral objective that 50 per cent of additional housing provision should be a form of affordable housing and whether any social housing grant is required to contribute to this output. The toolkit takes the form of a CD ROM computer model operating on Excel.

The **Southwark Toolkit** is a detailed tool for developers to estimate planning obligations they will be required to provide Southwark Council. This takes in: Onsite units of affordable housing contribution; Education contribution; Employment contribution (in the development and during construction); Open space, children and sports facilities; Transport (strategic, site-specific, Transport for London); Public realm; Archaeology; Health; Community facilities; Other; Administrative charge.

Economic Appraisal Tool (EAT) designed for the Housing Corporation by property consultants GVA Grimley and Bespoke Property Group. This aims to speed up negotiations to agree the amount of affordable housing built under S106 rules. The package is designed to help all parties reach agreement on viable levels of developer contributions to new affordable homes alongside Social Housing Grant (SHG).

London Healthy Urban Development Unit (HUDU). HUDUs Watch Out For Health toolkit has been devised to support health services operators in London in estimating the health needs that will arise from a new development. The Unit's Social Infrastructure Framework, specifically designed to support London Thames Gateway local authorities, is a tool that allows planning authorities to model the impact of changes in population to inform the service planners in the different social infrastructure providers (Education, Health and Social Care, Recreation and Leisure services, Emergency and Essential services).

Sport England's Planning Contributions Kitbag is a comprehensive tool for local authorities to put forward sports facilities needs arising from a new development.

Appendix 5 Borough online register of section 106 agreements

Borough	Hyperlink
Royal Borough of Kingston upon Thames	All our S106s are available on ISIS under the Planning Application Reference Number
Bromley	Available online in 2 months
Wandsworth	By address/application number at http://www.wandsworth.gov.uk/gis/search/Search.aspx
Lewisham	Located on each planning application file at http://acolnet.lewisham.gov.uk/lewis-xslpagesDC/acolnetcgi.exe
Haringey	http://harinet.haringey.gov.uk/index/housing_and_planning/planning-mainpage.htm
Hackney	http://idox.hackney.gov.uk/WAM/searchsubmit/performanceOption.do?action=search
Merton	http://planning.merton.gov.uk/MVM/Online/PL/ApplicationSearch.aspx
Barking & Dagenham	http://www.barking-dagenham.gov.uk/8-leisure-envir/planning/section-106-agreements.html
Camden	http://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment/planning-applications/search-for-and-comment-on-planning-applications/
Southwark	http://www.southwark.gov.uk/YourServices/planningandbuildingcontrol/S106/S106local.html
Tower Hamlets	http://www.towerhamlets.gov.uk/data/planning/data/planning-register/planning-obligation.cfm
Islington	https://www.islington.gov.uk/Environment/Planning/Online/Default.asp
Croydon	Located on each planning application file
Richmond upon Thames	Located on each planning application file
Newham	London Borough of Newham is currently investigating the legalities of posting potentially sensitive information included in agreements on-line
Lambeth	Not online but copies are available free by email on request

Source: 'Capital Gains?' A report by BURA for the London Assembly, December 2007

Appendix 6 - Research questionnaires

BURA Planning Officer's Survey on Section 106 in London

Details

First name

Last name

Email

Local Authority

Position in the Local Authority

Transparency and Documentation

1. Do you have some sort of check-list for identifying the development's potential impacts?

☐ Yes ☐ No ☐ Don't Know

2. Do you have methods for calculating the cost of [mitigating] these impacts?

☐ Yes ☐ No ☐ Don't Know

3. Are there other London Councils that are especially strong in terms of such methods?

☐ Yes ☐ No ☐ Don't Know

4. If so, could you please name 3 of them?

5. Are impacts prioritised in line with local planning/strategic documents?

☐ Yes ☐ No ☐ Don't Know

6. If so, could you please elaborate on this?

7. Do you have a document outlining your 106 approach (SPG, SPD etc.)

☐ Yes ☐ No ☐ Don't Know ☐ Developing one

8. If this is this available online please provide the address (URL)?

9. Do you operate a tariff system (standard charge) for any of the impacts of a development?

☐ Yes ☐ No ☐ Don't Know

106 Negotiations

10. Have you ever reduced your 106 demands to reward good design, open space provision etc?

☐ Yes ☐ No ☐ Don't Know

11. Do you reduce 106 requirements in regeneration areas within your borough?
☐ Yes ☐ No ☐ Don't Know
12. Are 106 agreements generally reached as quickly as they might be?
☐ Yes ☐ No ☐ Don't Know
13. Are there any other toolkits that you are aware of which address 106 negotiations?
☐ Yes ☐ No
14. If so, could you please name them?
15. If the completed 106s are available online, please provide the address (URL)?

Impacts and Benefits (Community)

16. Can you please estimate 106 cash payments by developers in the last 2 years? £
17. What are the main three types of activity this money is spent on?

18. What do you feel is the best 106 your borough has achieved in terms of community benefit?
19. Do you directly inform developers concerning the use of their 106 contributions?
☐ Yes ☐ No ☐ Don't Know
20. What is the largest item of infrastructure your borough has achieved through 106?

Impacts and Benefits (Affordable Housing)

21. Approximately how many affordable housing units have been provided through 106 in your borough [last 2 years]?
22. Over the same period, approximately what percentage of your overall unit provision is this?
 %
23. Approximately what affordable housing volume has been provided through 106 in your borough [last 2 years, square footage]?

24. Over the same period, approximately what percentage of your overall affordable housing volume provision is this?
%

25. Are 106 agreements helping to realise your desired social housing provision (as best they might)?

☐ Yes ☐ No ☐ Don't Know

26. Are 106's helping your desired shared ownership/low-cost market provision (as best they might)?

☐ Yes ☐ No ☐ Don't Know

27. What do you feel is the best 106 your borough has achieved in terms of affordable housing?

Monitoring

28. In how many developments do you monitor to see that 106 works (jobs, training, building etc.) are undertaken properly by developers?

☐ All ☐ Most ☐ Some ☐ None

29. In how many developments do you monitor the effectiveness of activities that you fund with s106 money?

☐ All ☐ Most ☐ Some ☐ None

30. Do you charge developers extra to support your monitoring of a 106 agreement?

☐ Yes ☐ No ☐ Don't Know

Staffing and Staff Skills

31. Do you feel your authority has a workforce skilled enough to undertake 106 negotiations?

☐ Yes ☐ No ☐ Don't Know

32. Do you feel your authority has a workforce large enough to undertake 106 negotiations?

☐ Yes ☐ No ☐ Don't Know

33. Is all 106 staff training done 'on the job'?

☐ Yes ☐ No ☐ Don't Know

Best/Good Practice and Innovation

34. Would you personally welcome (and where relevant get involved in) any of the following:

A compendium on London boroughs' 106 policies?

☐ Yes ☐ No

An independent assessment of borough performance on 106 negotiation?

☐ Yes ☐ No

A recognised 106 qualification for developers?

☐ Yes ☐ No

A recognised 106 qualification for your staff who deal with 106 negotiations?

☐ Yes ☐ No

A 106 network for developers to match the 106 Network for London Officers?

☐ Yes ☐ No

A 106 Network/course for Community Groups?

☐ Yes ☐ No

A 106 Network/course for Councillors?

☐ Yes ☐ No

An Annual 106 Forum for community, developers and local authorities?

☐ Yes ☐ No

AND FINALLY.....

Do you have any other comments on the subject areas of this survey?

Thank you for completing this survey

Contact: Dr. Gareth Potts, BURA Director of Research, Policy and Best Practice
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gareth@bura.org.uk

BURA Developers' Survey on Section 106 in London

Please answer what you think to be your organisation's position (as opposed to your own).

All questions relate to your company's experiences as developers in London (as opposed to other locations).

When discussing local authorities please refer to ones that you have recently [last two years] had dealings with directly.

In the event of a development conducted jointly with other developers please can you just estimate your company's contribution.

The British Urban Regeneration Association (BURA) realise that some companies are complex and international - please just give the figures for the division/region of the company you are responsible for.

Details

First name

Last name

Email

Organisation

Position in the Organisation

Approximate total square footage of development CONSENTED in the last 2 completed financial years? (Number)

Approximate total square footage of development COMPLETED in the last 2 completed financial years? (Number)

Annual Turnover

Does your company generally retain a long-term financial interest in your schemes?

☐ Yes ☐ No ☐ Don't Know

Approximately how many of the boroughs has your company been developing in [last 2 completed financial years]? (Number)

Negotiations in London

35. Are the S106 measures YOU SIGN UP TO in London generally 'reasonably linked' to the development?

☐ Yes ☐ No ☐ Don't Know

36. Which London councils (that you deal with) are best at insuring such links?
[Please write the names of up to 3 boroughs]?

37. Do boroughs generally have some sort of check-list for identifying the development's potential impacts? ☐ Yes ☐ No ☐ Don't Know

38. Which boroughs (that you deal with) have clear methods for identifying development impacts? [Please write the names of up to 3 boroughs]?

39. Do boroughs generally have methods for calculating the cost of [mitigating] these impacts? ☐ Yes ☐ No ☐ Don't Know

40. Which boroughs (that you deal with) have clear methods for costing development impacts? [Please write the names of up to 3 boroughs]?

41. Do boroughs generally prioritise which impacts should be mitigated in line with local planning/strategic documents? ☐ Yes ☐ No ☐ Don't Know

42. Have you recently [last 2 completed financial years] pulled an application due to slow 106 negotiations? ☐ Yes ☐ No ☐ Don't Know

43. Have you recently [last 2 completed financial years] pulled an application due to high 106 demands? ☐ Yes ☐ No ☐ Don't Know

44. In the last 2 years has your company appealed a Council's 106 requirement in London? ☐ Yes ☐ No ☐ Don't Know

45. In how many cases do you feel local authority 106 teams are skilled enough to undertake 106 negotiations? ☐ All ☐ Most ☐ Some ☐ None

Negotiations in general

46. Do you feel central Government does enough to audit/inspect 106 negotiations? ☐ Yes ☐ No ☐ Don't Know

47. Are you are aware of any good toolkits/best practice guides for facilitating 106 negotiations (e.g. Law Society guide) ☐ Yes ☐ No ☐ Don't Know

48. If so, which ones?

Assessing the community benefit

49. Can you estimate what you have paid in terms of 106 in London over the last 2 completed financial years? (please specify, e.g. 10k = 10,000 and 10m = 10,000,000)
£ K

50. Approximately what percentage of your overall turnover is this (e.g. 35.5)?

51. Approximately what percentage of your 106 payments (e.g. 35.5) goes in:

Revenue

Capital

52. Have your 106 obligations ever been reduced to reward good impacts (e.g. public realm improvements)? ☐ Yes ☐ No ☐ Don't Know

53. Have your 106 obligations ever been reduced because the development was in a regeneration area? ☐ Yes ☐ No ☐ Don't Know

54. In how many developments do you remain informed on what becomes of the 106 money you have paid? ☐ All ☐ Most ☐ Some ☐ None

55. In how many developments do the boroughs monitor to see whether your 106 works are undertaken properly? ☐ All ☐ Most ☐ Some ☐ None

56. Are there boroughs that are particularly effective at this monitoring [Please write the names of up to 3 boroughs]?

Affordable Housing

57. Do you support the concept of developers being required to supply / fund affordable housing? ☐ Yes ☐ No ☐ Don't Know

58. Is 106 the most appropriate mechanism for providing affordable housing? ☐ Yes ☐ No ☐ Don't Know

59. Have there been occasions when the GLA/Housing Corporation toolkit (gauging viability for affordable housing) has been useful? ☐ Yes ☐ No ☐ Don't Know

60. Can you estimate how many affordable housing UNITS you have provided as 106 in London over the last 2 completed financial years? (Number)

61. Approximately what percentage of your overall UNIT provision is this?
%

62. Can you estimate what affordable housing VOLUME you have provided as 106 over the last 2 completed financial years? (Square feet)

63. Approximately what percentage of your overall VOLUME provision is this?
%

New Mayoral powers

64. The Mayor will soon become 'lead party' for S106 agreements on major projects central to London Plan. Do you welcome this change in the Mayoral position (irrespective of the individual post-holder)? ☐ Yes ☐ No ☐ Don't Know

65. Would you welcome (and where relevant get involved in) any of the following?:

A compendium on London boroughs' 106 policies? ☐ Yes ☐ No ☐ Don't Know

An independent assessment of borough performance on 106 negotiation?
☐ Yes ☐ No ☐ Don't Know

An independent assessment of developers' performance on 106 negotiation?
☐ Yes ☐ No ☐ Don't Know

A 106 network for developers to match the 106 Network for London Officers?
☐ Yes ☐ No ☐ Don't Know

A 106 Network/course for Community Groups? ☐ Yes ☐ No ☐ Don't Know

A 106 Network/course for Councillors? ☐ Yes ☐ No ☐ Don't Know

An Annual 106 Forum for community, developers and local authorities?
☐ Yes ☐ No ☐ Don't Know

A 106 Advisory Unit or Arbitration Service that could mentor/facilitate 106 negotiations?
☐ Yes ☐ No ☐ Don't Know

Reform scenarios and the infrastructure funding gap

Until the CSR 2007 the Government has been considering the introduction of PGS to fund infrastructure necessary for additional housing. PGS has been deferred but not removed from the policy agenda.

66. Do you support the concept of developers being required to contribute to funding infrastructure necessary for additional housing:

At the sub-regional level ☐ Yes ☐ No

At the regional level ☐ Yes ☐ No

67. Is PGS the most appropriate mechanism to achieve this objective?

☐ Yes ☐ No ☐ Don't Know

68. Do you have an alternative in mind?

69. Which of the following do you think your company would like to see more of?

Standardised charges (based on the estimated cost of impact) ☐

Tariffs (based on the scale of development) ☐

PGS ☐

70. Which of the following do you think your company would prefer in case of a PGS approach?

70-30 PGS and 'scaled back' 106 ☐ (In England, at least 70% of PGS revenues would go directly to the Local Planning Authority and the remaining 30% would be returned to the region in which it was raised)

Lower rate PGS with 'lesser scale-back' of 106 ☐

All PGS and scrap 106 ☐

PGS limited to green-field sites (on average such sites experience higher 'plan generated value') ☐

Don't Know/No Firm Opinion ☐

71. Would you like to comment on this?

AND FINALLY.....

Would you be interested in discussing key findings with other developers at a BURA seminar in mid November?

☐ Yes ☐ No

Do you have any other comments about this survey or this subject area?

Thank you for completing this survey

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gareth@bura.org.uk

BURA Developer RSL's Survey on Section 106 in London

Please answer what you think your organisation's position to be (as opposed to your own views).

All questions relate to your company's experiences as developers in London (in one or more of the 33 boroughs, as opposed to other locations).

When discussing local authorities please refer to ones that you have recently [last two financial years] had dealings with directly.

In the event of a development conducted with other developers please just estimate your company's contribution.

Details

First name

Last name

Email

Organisation

Position in the Organisation

Approximate total square footage of development CONSENTED in the last 2 completed financial years? (both alone and in partnership, Number)

Approximate total square footage of development COMPLETED in the last 2 completed financial years? (both alone and in partnership, Number)

Annual Turnover (only for your development activity) £

Does your company generally retain a long-term financial interest in your schemes?
☐ Yes ☐ No ☐ Don't Know

Approximately how many of the boroughs has your company been developing in [last 2 completed financial years]? (Number)

Approximately, in the last 2 completed financial years, how many sites have you:

developed on your own (Number)

developed in partnership with a private developer (Number)

Negotiations in London

1. In the last 2 completed financial years, in how many of the sites you have developed has your company been directly involved in 106 negotiations or privy to the negotiations made by your development partners? [Number]
2. Are the S106 measures YOU SIGN UP TO in London generally 'reasonably linked' to the development? ☐ Yes ☐ No ☐ Don't Know
3. Which London councils (that you deal with) are best at insuring such links? [Please write the names of up to 3 boroughs]?
4. Do boroughs generally have some sort of check-list for identifying the development's potential impacts? ☐ Yes ☐ No ☐ Don't Know
5. Which boroughs (that you deal with) have clear methods for identifying development impacts? [Please write the names of up to 3 boroughs]?
6. Do boroughs generally have methods for calculating the cost of [mitigating] these impacts? ☐ Yes ☐ No ☐ Don't Know
7. Which boroughs (that you deal with) have clear methods for costing development impacts? [Please write the names of up to 3 boroughs]?
8. Do boroughs generally prioritise which impacts should be mitigated in line with local planning/strategic documents? ☐ Yes ☐ No ☐ Don't Know
9. Have you recently [last 2 completed financial years] pulled an application due to slow 106 negotiations? ☐ Yes ☐ No ☐ Don't Know
10. Have you recently [last 2 completed financial years] pulled an application due to high 106 demands? ☐ Yes ☐ No ☐ Don't Know
11. In the last 2 years has your company appealed a Council's 106 requirement in London? ☐ Yes ☐ No ☐ Don't Know

12. In how many cases do you feel local authority 106 teams are skilled enough to undertake 106 negotiations? ☐ All ☐ Most ☐ Some ☐ None

Negotiations in general

13. Do you feel central Government does enough to audit/inspect 106 negotiations? ☐ Yes ☐ No ☐ Don't Know
14. Are you are aware of any good toolkits/best practice guides for facilitating 106 negotiations (e.g. Law Society guide) ☐ Yes ☐ No ☐ Don't Know
15. If so, which ones?

Assessing the community benefit

16. Can you estimate what you have paid in terms of 106 in London over the last 2 completed financial years? (please specify, e.g. 10k = 10,000 and 10m = 10,000,000)

£ K

17. Approximately what percentage of your overall turnover is this (e.g. 35.5)?

18. Approximately what percentage of your 106 payments (e.g. 35.5) goes in:

Revenue

Capital

19. Have your 106 obligations ever been reduced to reward good impacts (e.g. public realm improvements)? ☐ Yes ☐ No ☐ Don't Know
20. Have your 106 obligations ever been reduced because the development was in a regeneration area? ☐ Yes ☐ No ☐ Don't Know
21. In how many developments do you remain informed on what becomes of the 106 money you have paid? ☐ All ☐ Most ☐ Some ☐ None
22. In how many developments do the boroughs monitor to see whether your 106 works are undertaken properly? ☐ All ☐ Most ☐ Some ☐ None
23. Are there boroughs that are particularly effective at this monitoring [Please write the names of up to 3 boroughs]?

Affordable Housing

24. Do you support the concept of RSL that develop for the private market being required to supply / fund affordable housing? ☐ Yes ☐ No ☐ Don't Know
25. Is 106 the most appropriate mechanism for providing affordable housing? ☐ Yes ☐ No ☐ Don't Know

26. Have there been occasions when the GLA/Housing Corporation toolkit (gauging viability for affordable housing) has been useful? ☐ Yes ☐ No ☐ Don't Know

27. Can you estimate how many affordable housing UNITS you have provided in London over the last 2 completed financial years, as a consequence of 106? (Number)

28. Approximately what percentage of your overall UNIT provision is this? %

29. Can you estimate what affordable housing VOLUME you have provided as 106 over the last 2 completed financial years, as a consequence of 106?? (Square feet)

30. Approximately what percentage of your overall VOLUME provision is this? %

New Mayoral powers

31. The Mayor will soon become 'lead party' for S106 agreements on major projects central to London Plan. Do you welcome this change in the Mayoral position (irrespective of the individual post-holder)? ☐ Yes ☐ No ☐ Don't Know

32. Would you welcome (and where relevant get involved in) any of the following?:

A compendium on London boroughs' 106 policies? ☐ Yes ☐ No ☐ Don't Know

An independent assessment of borough performance on 106 negotiation? ☐ Yes ☐ No ☐ Don't Know

An independent assessment of RSL developers' performance on 106 negotiation? ☐ Yes ☐ No ☐ Don't Know

A 106 network for developers to match the 106 Network for London Officers? ☐ Yes ☐ No ☐ Don't Know

A 106 Network/course for Community Groups? ☐ Yes ☐ No ☐ Don't Know

A 106 Network/course for Councillors? ☐ Yes ☐ No ☐ Don't Know

An Annual 106 Forum for community, developers and local authorities? ☐ Yes ☐ No ☐ Don't Know

A 106 Advisory Unit or Arbitration Service that could mentor/facilitate 106 negotiations? ☐ Yes ☐ No ☐ Don't Know

Reform scenarios and the infrastructure funding gap

Until the CSR 2007 the Government has been considering the introduction of PGS to fund infrastructure necessary for additional housing. PGS has been deferred but not removed from the policy agenda.

33. Do you support the concept of developers being required to contribute to funding infrastructure necessary for additional housing:

At the sub-regional level ☐ Yes ☐ No

At the regional level ☐ Yes ☐ No

34. Is PGS the most appropriate mechanism to achieve this objective?

☐ Yes ☐ No ☐ Don't Know

35. Do you have an alternative in mind?

36. Which of the following do you think your company would like to see more of?

Standardised charges (based on the estimated cost of impact) ☐

Tariffs (based on the scale of development) ☐

PGS ☐

37. Which of the following do you think your company would prefer in case of a PGS approach?

70-30 PGS and 'scaled back' 106 In England, at least 70% of PGS revenues would go directly to the Local Planning Authority and the remaining 30% would be returned to the region in which it was raised) ☐

Lower rate PGS with 'lesser scale-back' of 106 ☐

All PGS and scrap 106 ☐

PGS limited to green-field sites (on average such sites experience higher 'plan generated value') ☐

Don't Know/No Firm Opinion ☐

38. Would you like to comment on this?

AND FINALLY.....

Do you have any other comments about this survey or this subject area?

Thank you for completing this survey

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Appendix 7 Principles of London Assembly scrutiny

An aim for action

An Assembly scrutiny is not an end in itself. It aims for action to achieve improvement.

Independence

An Assembly scrutiny is conducted with objectivity; nothing should be done that could impair the independence of the process.

Holding the Mayor to account

The Assembly rigorously examines all aspects of the Mayor's strategies.

Inclusiveness

An Assembly scrutiny consults widely, having regard to issues of timeliness and cost.

Constructiveness

The Assembly conducts its scrutinies and investigations in a positive manner, recognising the need to work with stakeholders and the Mayor to achieve improvement.

Value for money

When conducting a scrutiny the Assembly is conscious of the need to spend public money effectively.

Appendix 8 Orders and translations

How to order

For further information on this report or to order a copy, please contact Bonnie Jones, Scrutiny Manager, on 020 7983 4250 or email Bonnie.Jones@london.gov.uk

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<http://www.london.gov.uk/assembly/reports>

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