

1. Barriers to housing delivery

- a) This note sets out Berkeley Group's perspective on barriers to delivering housing in London based on our experience of delivering major developments in the capital. Our developments include major estate regeneration projects at Woodberry Down and Kidbrooke, town centre regeneration projects such as Dickens Yard in Ealing, and strategic regeneration projects such as Southall gas works, Beaufort Park in Colindale and the Royal Arsenal.
- b) About 27,000 new homes are delivered in London each year against a new target of 42,000 and demand estimated at 62,000. About 50,000 new homes are permitted each year. The difference between the level of permissions granted and delivery is due to a number of factors; some landowners obtain planning permission with no intention of building and many permissions are on large sites which will take years or decades to complete. One reason is that it can take a long time to convert planning permissions into development.
- c) Development in London is extremely complicated; 97% of development is on brownfield sites which often require decontamination and include existing buildings. Sites are constrained with complicated relationships with neighbouring properties. It can also take time to negotiate the final hurdles with the planning authority so the planning permission is implementable.

2. An implementable permission

a) Signing the S106 agreement

- i. Planning permissions are not implementable until the S106 is signed. Negotiating S106 agreements frequently takes too long and is started too late in the planning application process.
- ii. In our experience the reasons that S106 takes so long are; there is no incentive for authorities to conclude them in a timely manner; officers do not consider S106 until well into the application process; officers rarely mediate and advise between competing demands and priorities; and there is frequently poor legal resource which is engaged too late and takes too long to prepare/review draft documents.

- iii. The recently implemented changes to S106, stating that agreements should be dealt with within the statutory deadline and encouraging earlier engagement about the scope of section 106 agreements at the pre-application stage, should be beneficial, as should greater use of standardised clauses and increasing transparency about the raising and spending of S106 funds. As most large applications are managed through planning performance agreements (PPAs) the statutory deadline will not apply but it provides a helpful context.
- iv. The introduction of CIL has not speeded up S106 negotiations. Extensive S106 funds and other obligations are still sought from a number of parties, often not meeting the statutory tests, and agreement on affordable housing (the scale and type of provision) remains a significant area of negotiation. CIL tends to be treated as an additional requirement and internal and external consultees continue to seek extensive obligations from developments. The initial signs are that the removal of the ability to pool S106 from more than five developments in April 2015 will not change this as councils are seeking contributions to specific projects to circumvent the pooling limit.
- v. In all aspects of determining an application, the role of the planning officer should be to facilitate and manage the process, mediating between the competing interests and the perspectives of different internal and statutory consultees. This is also important for S106 agreements. Rather than simply pass on all requests, the officer should advise on what is a matter of priority for the authority. The officer should also ensure that requests are well considered and justified and meet the statutory tests.
- vi. A significant cause of delay is the legal resource within local authorities. Even where an outside lawyer is used, paid for by the applicant, there can still be considerable delay caused by the authority's lawyer reviewing the advice. One way to speed the process would be for the applicant's lawyer to provide the first draft of the S106 agreement. If this is not done automatically, it could be triggered if the authority fails to provide a draft within say four weeks of an application being submitted.

b) Discharge of pre commencement conditions

- i. Timely discharge of pre commencement conditions is critical to ensure that development can commence. Slow discharge can have a critical impact on construction, especially when there are long lead times on procurement of materials. Discharge can be a major delay to development as planning authorities take too long to determine conditions, or where statutory consultees are slow to respond. The concept of deemed consent is highly beneficial but does not apply to permissions where there is an EIA, ruling out most major developments in London.

- ii. Delays in discharge can be the result of a number of factors including constrained planning authority resource, with planning conditions being considered low priority, and slow responses from internal and external consultees. This may be due to planning conditions being considered to be low priority or consultees seeking to reopen the planning merits of the application rather than deal with the specifics of the condition.
- iii. Guidance on the importance of early discussion of conditions would be beneficial. On larger applications, where there have been extensive pre application discussions, there is no reason why conditions cannot be discussed once the application has been submitted.
- iv. Guidance on the importance of swift discharge of conditions to all consultees would also be beneficial, reiterating that they are to be assessed on their merits in the context of the permission having already been granted.

3. Rights of light

- a) The nature of development in London means that most developments will be close to existing buildings giving rise to consideration of rights of light. This is a highly complex area which can cause considerable cost and delay to development. The process to resolve rights of light is slow with no deadlines for when parties should respond. At the very least, it would be helpful to introduce timescales for parties to adhere to. It would also be useful to explore whether rights of light legislation remains appropriate and whether authorities should make greater use of their section 237 powers to speed up lengthy and costly negotiations and provide certainty to developers.

4. Finance

- a) Development finance remains constrained. Funders are wary of the cost and complexity of developing in London and will be concerned by practices and policies that increase risk and uncertainty. For example, the increased use of affordable housing review mechanisms represents a risk of future, often uncapped, additional costs. This can deter funders or increase the cost of funding.
- b) The greater the bureaucratic requirements imposed before a development can start, such as pre commencement conditions and S106 requirements, the more uncertainty that is created for funders and hence the less likely they are to fund and the more costly funding will be.

5. Third party land

- a) Assembling large sites will often involve acquiring third party interests which can be costly and time consuming. At its most simple it may be waiting for a lease expiry, or purchasing a freehold interest. This can give rise to ransom situations and cause delay where there is no time pressure on the vendor.

- b) The use of local authorities' CPO powers would speed up land assembly but authorities are reluctant to do so and the process is costly, lengthy and cumbersome. Where a site is in an area designated for development, such as an Opportunity Area, there should a presumption of using CPO powers and early commitment to do so.

6. Infrastructure provision

- a) Infrastructure provision can be critical to enable a development to go ahead, but delivery is not in the control of the developer.
- b) With the advent of CIL, developers are no longer able to deliver some infrastructure that they have previously. This can impact on when development can be delivered or occupied, or the quality of the place created. It is still relatively early in the life of CIL to know how effective delivery will be under the new regime.
- c) Delivery of utilities can delay development, especially in growth areas where there is a lot of new development. The issue tends to be one of capacity with delays to connection, but can be exacerbated by poor communication with providers.
- d) Delivery of more strategic infrastructure, such as transport, will be dependent on securing the funding, powers and delivery which can take years or decades but is critical to unlocking many strategic sites in London.

7. Skills and labour

- a) The complexity of major developments requires a wide range of highly technical skills, employed directly by developers and through consultants. The industry is highly cyclical and shrinks considerably in recession and struggles to recover as the market does. In a growing market development can be delayed as it takes time to recruit the right personnel and obtain technical advice and assessments. Likewise, recruiting sufficient labour in a buoyant market can be challenging. The industry needs to do more to promote careers in construction and development, including apprenticeship opportunities.

8. Increasing land for housing

- a) Despite the housing crisis and need for the public sector to raise funds, public sector land is not being released quickly enough for development. Public land should be urgently released to deliver new homes, including affordable homes. Disposals should value delivery and quality as much as price.
- b) To ensure that disposals are efficient for the authority and those tendering, especially smaller developers, authorities should be encouraged to use OJEU only where absolutely necessary and to avoid onerous, lengthy and expensive bidding processes that have the effect of limiting the number of interested parties.
- c) A fifth of the land within the Greater London boundary is green belt. Much of it is poor quality offering no visual or physical amenity. Only a fifth has public access and an environmental designation. 60% of the Green Belt is within 2km of an existing rail or tube station. Selective release of poor quality parts of the Green belt which benefit from good accessibility can play an important role in increasing land supply. The Mayor should consider establishing a Commission to advise how this can best be done.

9. Increasing affordable housing provision

- a) Boroughs can play an important role in the delivery of new affordable homes. Some boroughs are already looking to deliver affordable homes and establish housing companies.
- b) Affordable housing should not be required to be delivered on site where more homes could be delivered off-site or through payments in lieu. Delivery can be ensured through the requirement of a borough delivery plan and the penalty that funds will be transferred to the Mayor if they are not spent in a reasonable period.