



## Cambridge Sub-Region

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### Abridged Report

## Improving the use of Section 106 Agreements to Deliver Affordable Housing

March 2009

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## 1. BACKGROUND

The Cambridge housing sub-region is experiencing significant growth in the provision of new homes.

The sub-region is made up of seven districts in total, five of which are within the county of Cambridgeshire and two of which are actually located within Suffolk but have housing markets which are substantially influenced by the economic pull of Cambridge.

Cambridge is a sizeable urban centre; the remainder of the districts are predominantly rural. There is a fair degree of variance in the planning policy framework across the sub-region.

Current housing market conditions are hampering the progress of schemes as forecasts for sales values and rates have been downgraded substantially and many landowners or developers have decided to delay the development of sites until conditions improve, or at least become clearer and more stable. This is of particular concern to many of the authorities in the Cambridge sub-region as there is high dependency for affordable housing supply on a very limited number of large projects.

The use of Section 106 agreements is governed by the Town & Country Planning Act 1990 as amended by the Planning and Compensation Act 1991. Circular 5/05 'Planning Obligations' provides specific guidance on the deployment of Section 106 Agreements.

In response to Circular 5/05 and as a result of experience arising from negotiations on agreements most local authorities now operate some standardisation in forms of Section 106 agreement.

Because of reliance on large scale market development sites for supply of affordable housing going forward, because of the diversity of policy and practice in the Cambridge sub-region and because of the need to pool the growing relevant experience of the various authorities, it was decided to commission a consultancy assignment to capture good practice and improve consistency.

## 2. BRIEF & METHODOLOGY

The authorities asked that the appointed consultant reflect good practice recommendations, made in the East of England Regional Assembly guide 'Delivery of Affordable Housing through Section 106 Agreements'. It was acknowledged that some authorities individually are already working on improving their forms of Section 106 agreements but there is a collective desire to knit together these threads of improvement to maximise the benefits for all.

The proposed Section 106 clauses to be developed should offer a comprehensive framework for negotiation locally. Ideally, authorities should be able to select those clauses which are most appropriate to the particular circumstances of each scheme, described in the brief as a 'pick and mix' approach.

### 3. THE POLICY & MARKET CONTEXT

Cambridgeshire is one of the fastest growing counties in the UK. It is expected that the population of the County will have grown to 665,000 by 2021. The sub-regional population is expected to have grown from 706,000 in 2001 to 840,000 by 2021, virtually a 20% growth.

The economy of the sub-region is driving growth, particularly the high technology industries located in the City of Cambridge and in South Cambridgeshire.

A significant aim within both the Regional Economic Strategy and the Regional Spatial Strategy is to reduce the need to commute to work, hence the emphasis for new building in the City of Cambridge and South Cambridgeshire where employment opportunities are concentrated.

Regional planning policy envisaged a total of around 90,000 new homes being provided in the sub-region between 2001 and 2021. There remains around 70,000 still to be provided and over 40% of these are expected to be contributed by larger strategic sites. The expectation is that, across the region as a whole, some 35% of housing completions will be affordable over the RSS plan period.

In May 2008, a report was published as the culmination of a Strategic Housing Market Assessment (SHMA) for the Cambridgeshire sub-region. This has helped to define the local housing market, gauge affordability issues and estimate the degree of need and demand likely to be generated for affordable housing during the plan period. The SHMA highlighted some of the regional disparities. For example, the City of Cambridge had house prices which were 135% of the sub-regional average whereas prices in Fenland District were 73% of the average. There were also average earnings disparities.

Recent housing market dynamics are likely to have improved the affordability ratios and prices will have returned close to their early 2006 levels. However, the inaccessibility of mortgage finance on terms comparable to 2006 means that affordability gaps for first time buyers are effectively as bad if not worse than ever.

The annual need for new affordable homes across the 5 Cambridgeshire districts is 5,574. Based on committed new supply in 2006, only 958 of this annual target could be identified as due to come on stream, leaving an annual shortfall of 4,616.

If the need for new affordable homes is presented as a proportion of the new housing planned overall within the RSS then the following picture emerges:

|   | City   | East Cambs | Fenland | Hunts  | South Cambs |
|---|--------|------------|---------|--------|-------------|
| Need for new affordable homes projected over 2006 to 2021 (excluding commitments) | 10,865 | 6,945      | 4,405   | 11,365 | 12,470      |
| Draft RSS target for all homes 2006 to 2021                                       | 16,700 | 5,360      | 7,760   | 8,310  | 19,980      |
| % affordable represents of target   | 65%    | 130%       | 57%     | 137%   | 62%         |

### Status of Local Planning Policy

There is, not surprisingly, considerable variation in the nature and depth of local planning policy for affordable housing provision across the sub-region. Only three of the seven authorities appear to have produced supplementary planning documents to describe in greater detail how their affordable housing planning policies will be applied.

Recommendations we make on improving and standardising policy, process and Section 106 affordable housing clauses can only be implemented across the sub-region within the context of established planning policy. For some authorities with recently adopted or advanced drafts of supplementary planning documents, any change of requirement or emphasis in policy may have to await redrafting and adoption of a revised SPD in due course. Nevertheless it should be possible for supporting guidance to be produced which begins to implement any appropriate changes, albeit this will not have the force of a statutory plan.

For those authorities which have a very limited policy framework relating to affordable housing planning obligations, whilst there is a good deal of 'catching up' to do, the policy vacuum lends itself to comprehensive new supplementary planning documents being produced which adopt current thinking and good practice guidance.

As a 'next step' for the various authorities within the sub-region, once an agreed collective position is achieved on which Ark recommendations should be adopted in policy and practice, it will be important to formulate a convergence plan which is sensitive to the timing and status of each authority's Local Development Scheme.

## 4. AFFORDABLE HOUSING PLANNING PRACTICE IN THE SUB REGION

### OUTCOMES FROM INTERVIEWS WITH LOCAL AUTHORITY AND CAMBRIDGESHIRE HORIZON'S PERSONNEL

In order to better understand the local arrangements for the delivery of Section 106 schemes, Ark arranged to interview teams from the seven authorities plus representatives from Cambridgeshire Horizons.

#### Current Local Practice

*Enablers as consultees* - In two of the authorities, enablers have the same consultation status as Highways and Environment departments, this ensures that the enablers are clearly bolted into the planning approvals process.

*Affordable housing SPDs* - The formulation of SPDs, that fully articulate the affordable housing requirements, is regarded as an important element in the planning document matrix. It is seen as beneficial by planners and enablers alike.

*Affordable housing definitions* - It was noted that not all authorities fully adopt the definitions from PPS3. The definition of affordable housing in line with PPS3 is strongly recommended.

The following points have emerged as good practice and are viewed as straightforward to implement:

- the greater the clarity with regard to overall contributions the more likely it is that targets will be achieved,
- most authorities have had some experience of working with a Section 106 agreement first drafted by a developer. We feel that all Section 106 agreements should emanate from the relevant local authorities themselves.

#### Emerging Issues & Potential Best Practice Solutions

Our view is that the development control committees should be given as much detail as possible to approve. Suggested report headings include:

- Total number of homes and the number and percentage which are affordable
- Tenure split between rent/intermediate by percentage and number
- Property types to be provided (number of bedrooms by houses/flats/bungalows)
- Property types by tenure split
- Grant requirement (if any)
- Review provisions (if any)

We understand that five authorities are routinely receiving grant funding that is supporting the achievement of policy positions rather than delivering homes additional to the policy target or any other enhancements.

Certainly, it would be desirable for the criteria and framework for requiring public subsidy to be harmonised.

There is a clear view that viability assessments will have a greater role going forward. Experience to date is that developers generally have accepted the targets and have not entered negotiations or brought viability into the equation. This situation has now changed and all but one authority has reported recent negotiations with developers regarding viability.

We see a clear requirement for the authorities to build expertise in this area. There would be benefits in a consistent approach across the sub region: it would enable expertise to be shared between authorities possibly on a formal shared resource basis. By building expertise more widely, the viability assessment process will be more resilient in discussions with developers and more resilient to staff changes within authorities.

The interviews highlighted an emerging issue regarding the affordability of Homebuy products.

Authorities pointed to the difficulties of maintaining standard approaches to affordability during times of rapidly increasing house prices or decreasing incomes as barriers to utilising a standard approach. It is our contention that such barriers can be overcome using a series of simple indices linked to the PPS3 and SHMA guidance.

## REGIONAL GOOD PRACTICE GUIDANCE

In April 2008, the East of England Regional Assembly, with support from the East of England Development Agency, launched a good practice guide *Delivery of Affordable Housing through Section 106 Agreements*. The report was authored by the Cambridge Centre for Housing and Planning Research and Three Dragons. This guide seeks to offer 'a compendium of good practice in the application of Section 106 Agreements to affordable housing'.

The guidance in the report places emphasis on the need for clear policies backed by robust financial viability testing. It is important for establishing a reliable test of viability that a grant free level of affordable housing contribution is established.

A recommendation within *Delivery of Affordable Housing through Section 106 Agreements* is that affordable housing targets within policy should be set so as to be financially achievable. Given recent downward movements in house prices and general development economics within the Cambridge sub-region, an affordable

housing target of 40%, or even 30%, would not enable schemes to produce adequate returns to developers, or land values sufficient to induce the development of sites for housing, without the benefit of some public subsidy. There is a need to consider the implications of affordable housing policy on the economic viability of housing development in an area and relate this to the anticipated availability of funding including, when relevant, grant funding.

Whilst it is important for an affordable housing planning policy to have been developed with the benefit of generalised viability assessment work, including examining the availability of public subsidy where appropriate, the application of policy to specific schemes must be supported by testing of the real economic dimensions of that project if a departure from policy is to be permitted.

*Delivery of Affordable Housing Through Section 106 Agreements* does highlight the importance of 'cascade' mechanisms in Section 106 Agreements to help resolve uncertainty on long term larger sites. Provision for review on such cascade mechanisms is also recommended.

## 5. EXPERIENCES & VIEWS OF AFFORDABLE HOUSING PROVIDERS

Ark arranged a focus group meeting with representatives from RSLs operating within the Cambridge Sub Region in order to gain a better understanding of the experiences and views of affordable housing providers.

There was particular unity with RSLs needing the local authorities to have a consistent approach, and to have more detail and clarity in respect of the tenure mix within the Section 106 as early as possible.

There was a general feeling that RSLs are becoming too exposed to market sales, and this extends to other tenures perceived as risky, such as shared ownership units required within a Section 106. This concern is exacerbated by the current downturn in the housing market.

RSLs were in full agreement that there was capacity to include more supported housing within Section 106 schemes.

One and two bedroom apartments were still deemed popular within Cambridge City Centre, however there was strong resistance to apartments outside the city centre, particularly in the more rural areas.

Generally speaking, RSLs enjoyed a good working relationship with the local developers. Typically, these organisations were smaller, friendlier and more flexible in delivering the affordable housing schemes than their national counterparts.

RSLs would like to be involved in Section 106 schemes at an earlier stage, where they can actually use their knowledge and expertise to add value to schemes.

All the RSLs felt that the economics for affordable housing in the region were generally sound. Demand exceeded supply, and more housing was required to meet that demand. The risk of reducing HCA grants was considered a real threat to the affordability of future housing.

On the subject of 'additionality', the RSLs were reluctant to give any views.

RSLs gave a positive response to the inclusion of cascade provisions within Section 106 agreements, particularly when the provision of affordable housing was linked to grant levels

## **6. NATIONAL GOOD PRACTICE GUIDANCE AND EXEMPLARS**

### **PLANNING OBLIGATIONS : PRACTICE GUIDANCE – DCLG JULY 2006**

This is the most important guidance available from Government on seeking and applying planning obligations.

Local planning authorities are advised to make available sufficient information on their planning obligation policies to enable applicants to understand the type and level of planning obligations sought from them.

The guidance document advocates standardisation of Section 106 provisions and for these to be included in the LDF so that they can be subject to formal consultation.

The guidance does emphasise that a local planning authority should keep its standardised documentation on planning obligations under review and update them as and when appropriate to keep pace with changing policy and circumstances.

### **COURT OF APPEAL JUDGEMENT. BLYTH VALLEY BOROUGH COUNCIL AND PERSIMMON HOMES, BARRATT HOMES AND MILLHOUSE DEVELOPMENTS LTD – JULY 2008**

This recent judgement has significant implications for the development of robust and defensible affordable housing planning policy.

The Council's draft Core Strategy became the subject of independent examination by a planning inspector in February 2007, only 2½ months after publication of PPS3. The Council submitted a PPS3 compliance statement to the planning inspector making no mention of the fact that it had not subjected its affordable housing target to an informed assessment of economic viability.

The inspector found that the Council's policy was consistent with a neighbouring authority within the same housing market area and that it was acceptable as a borough-wide target. If material considerations on individual applications suggested 30% was not achievable then these could be considered on their merits and a lower percentage applied.

The developers sought judicial review in the High Court to overturn the inspector's decision. The court found that the target must not be flawed by any deficiency in the process of arriving at it and that the Council had not met the PPS3 test of basing its target on an assessment of its economic viability. The judge quashed policy H4. That decision was challenged in the Court of Appeal by the Council.

The Court of Appeal dismissed the appeal. The Court found that an informed assessment of the viability of a policy target is 'not peripheral, optional or cosmetic. It is patently a crucial requirement of the policy'.

The key question for the Cambridge sub-regional authorities is the extent to which the adopted and emerging policy target of 40% affordable housing, to be applied consistently across the sub-region, is sound unless subject to a generalised assessment of its impact on the economic viability of residential development sites. There is a greater likelihood that schemes will be reliant on public subsidy in order to meet 40% targets in some local authority areas more so than in others. Nonetheless, of course, individual sites and schemes always have their unique constraints, attributes and potential and it is impossible to generalise satisfactorily about scheme economics across a local authority area just as it is across the sub-region as a whole.

Paragraph 29 in the Section of PPS3 dealing specifically with affordable housing is clear that an assessment of the likely economic viability of land for housing within an area should take account of the likely levels of finance available for affordable housing. So, if an authority has a reasonable expectation that Social Housing Grant will be available at levels which will enable a target of 40% affordable housing to be achievable whilst permitting schemes to secure sensible economic outturns for developers and landowners, then such an affordable housing policy should be regarded as sound.

It will be very important for an authority's policy framework to permit the testing of economic viability on a scheme/application specific basis because this is the only way in which an affordable housing policy can properly respond to the differing characteristics of each scheme. Nonetheless, in the light of the Blyth Valley appeal decision, it is essential that some more generalised testing is undertaken of the impact of a policy target for affordable housing provision, by reference to major allocated sites or hypothetical schemes displaying typical local cost and value characteristics perhaps by market 'zones'.

**CASCADES: IMPROVING CERTAINTY IN THE DELIVERY OF AFFORDABLE HOUSING FOR LARGE SCALE DEVELOPMENTS – ATLAS 2007**

This research report was published by ATLAS, English Partnership's 'Advisory Team for Large Scale Applications'. The team set out to consider to what extent the use of mechanisms such as cascades would assist in improving the delivery of affordable housing via planning obligations.

The report does recognise very clearly that an 'economic viability assessment must clearly identify what can be provided without grant, to form the baseline position'.

The report recommends that a Section 106 agreement should provide for an economic appraisal either by specifying the preferred methodology and/or providing for the appointment of an independent assessor.

## **SPECIFIC GOOD PRACTICE EXEMPLARS**

### **Adoption of model Section 106 clauses**

#### **Case study: The West of England Partnership**

The West of England is an amalgam of 4 unitary authorities making up what was previously the administrative county of Avon. The area is experiencing substantial economic and housing growth and this is scheduled to continue through to 2021 and probably beyond.

The authorities collaborate closely on housing strategy and form the bulk of a cohesive sub-regional housing market. There is increasing integration of planning policy. The four authorities have now agreed to produce a consistent series of model Section 106 clauses across the sub-region.

Ultimately the aim of the authorities is to adopt the model clauses within their respective Supplementary Planning Documents for affordable housing.

### **An approach to viability assessment**

#### **Case study: Cotswold District Council**

Cotswold District Council adopted an affordable housing SPD in February 2007. Although Cotswold District Council does not offer a particular template for undertaking an economic viability test, the SPD sets out the main factors affecting economic viability on specific schemes which the Council would expect to assess. It sets out the information it expects a developer/applicant to provide and the action which the Council will take to carry out the assessment.

### **Review of viability**

#### **Case study: Swindon Borough Council**

In 2005, Swindon Borough Council signed a Sec. 106 Agreement for affordable housing provision on 4,500 homes at the Southern Development Area.

The Council sought on the Southern Development Area project to future proof by agreeing to a phase by phase review of the scheme's potential to deliver affordable housing, accepting potential variance up or down from the level agreed at the

project's inception. To date the reviews have worked against the Council as market conditions have moved adversely.

### **Case study: Bath & North East Somerset Council**

Bath Western Riverside is a complex regeneration scheme located close to the centre of Bath. There will be an ongoing review process at the end of every phase comparing actual income and costs to estimated inputs in relation to a baseline viability appraisal. In the event that viability improves, then overage clauses apply that will result in the provision of additional affordable housing on the next phase of development until an upper limit is reached that equates to the Council's policy position.

### **Case study: Milton Keynes Council**

Milton Keynes Partnership, a grouping involving Milton Keynes Council, English Partnerships and a range of affordable housing providers, operates a review provision within its framework Section 106 agreement. The reviews relate to pro-rata contributions by developers to infrastructure development in the city or to any change which may have taken place in the Council's adopted affordable housing planning policy as a result of future assessment of housing need.

### **Securing an appropriate affordable housing provider**

#### **Case study: Bath & North East Somerset Council**

Acknowledging that planning policy and case law makes it unenforceable for a local planning authority to insist on the appointment of a preferred AHP by a developer, B&NES decided to define its expectations for housing management standards when negotiating a Section 106 Agreement with Crest Nicholson for the development of Bath Western Riverside. These housing management standards form an annex to the Section 106 Agreement.

### **Securing desirable design/specification standards**

#### **Case study: Tonbridge and Malling Borough Council**

Tonbridge and Malling BC adopted a new affordable housing SPD in July 2008. Section 5 is devoted to the design of affordable housing. The SPD includes an annex which sets out various design guidance and developers are asked to submit a Design Statement with planning applications.

For schemes funded with SHG from the 2008-11 NAHP, the SPD encompasses the need for compliance with the Homes and Communities Agency's Design and Quality Standards, including Housing Quality Indicator (HQI) targets and Building for Life criteria. The Council encourages developers to adopt these standards whether schemes benefit from SHG or not.

In particular, the SPD emphasises the need for decent size or space standards. It suggests that the Council will seek to exceed the minimum HQI scores relating to dwelling size, subject to viability. The Council in consultation with its preferred RSL partners has adopted indicative floor areas which exceed the minimum HQI scores.

### Cascade mechanisms

#### Case study: Worcester City Council

This is one of the case studies highlighted in the ATLAS report 'Cascades: Improving Certainty in the Delivery of Affordable Housing for Large Scale Developments'.

The scheme in question was the redevelopment and conversion of the Royal Worcester Porcelain Factory site. The Section 106 Agreement was signed in summer 2006 between Worcester City Council and Berkeley Homes.

Schedule 2, Section 6 of the Agreement deals with affordable housing provision. Section 6.4 describes the cascade arrangements and requires Berkeley to use reasonable endeavours to co-operate with the selected RSL in securing SHG. If the Council is satisfied that the owner and RSL have used reasonable endeavours to secure grant and that it has not been forthcoming then a revised quantum and mix is quoted.

In the event that SHG is forthcoming but for less than required to deliver 106 affordable dwellings, the obligation on the owner is to provide the number of affordable dwellings 'as calculated by the formula agreed between the City Council and the owner.

The formula includes a 'base appraisal' using agreed assumptions and the anticipated scheme costs. If grant is added, the balance between market dwellings and affordable dwellings can change in favour of the latter but none of the value or cost assumptions in the appraisal can change.

### Affordability of intermediate home ownership

#### Case study: The West of England authorities

The West of England authorities commissioned research on the affordability of intermediate home ownership across the sub-region. The research determined an appropriate earnings range for IHO in different value zones across the housing market area. The assessment of affordability assumed outgoings on mortgage and rent at no more than 25% of gross earnings as recommended in Government guidance on Strategic Housing Market Assessment and in PPS3.

## Off site contributions

### Case study: South Hams District Council

South Hams is a predominantly rural district in Devon immediately adjacent to Plymouth.

The Council adopted a comprehensive SPD on affordable housing in January 2008 which included detailed policies on securing off-site contributions.

The Council bases its affordable housing expectations on receiving free serviced land for affordable dwellings. It assesses its off-site contributions by equating the amount to the value of the free serviced land which has been foregone. There are 5 value bands quoted in the SPD to reflect variations in house prices across the district.

## Monitoring

### Case study: Carrick District Council

Carrick, in Cornwall, provides a grant-free intermediate home ownership product on Section 106 sites directly with developers. Because the Council is reliant on developers to deliver an appropriate physical product, without the intervention of an RSL or an AHP subject to other regulatory scrutiny from The Homes and Communities Agency, it has retained some active involvement in the sales process in part to ensure compliance with its expectations.

### Case study: Colchester Borough Council

Around four years ago the Council recruited to the post of Major Applications Support Manager, this role being created to monitor the output of S106 schemes across the authority.

Colchester is sponsored by CLG through the Planning Advisory Service to provide advice and support to other councils seeking to improve the monitoring and therefore quality of S106 outputs.

Colchester has been an early adopter of the PARSOL (Planning and Regulatory Services Online Project) online enforcement and S106 enquiry system. The system has assisted Colchester to develop sophisticated approaches to ensure that sites where S106 agreements apply deliver the intended outputs in terms of numbers, property types, tenures and quality standards.

## 7. CONSULTATION WITH HOMEBUILDERS AND DEVELOPERS

Ark agreed with the various authorities that it would be sensible to consult with homebuilders and developers once a draft report had been formulated. A workshop session was organised for 24<sup>th</sup> February 2009. 14 organisations confirmed attendance at the workshop and 10 actually attended on the day.

Discussion and debate at the workshop focused on the key policy recommendations drafted by Ark up to that stage of the assignment. Attendees were given a copy of the draft model Section 106 clauses and asked to provide any comments on these by 13<sup>th</sup> March.

The workshop session was extremely productive and all of the homebuilder and developer representatives had substantial relevant experience and interests and were able to challenge some of the draft recommendations in an effective and constructive way.

Some of the key observations and comments made were as follows:

- attendees felt that there was a tendency for too much fundamental policy information to only appear in SPDs and therefore not to be subject to independent examination,
- when considering generalised viability testing, there was a desire to see some of the larger allocated sites being subject to testing,
- it is important to recognise that most schemes include overage provisions in favour of landowners or investors and that there could be conflict between these and the proposed review clauses,
- generally there was concern about the whole future-proofing concept,
- there would be real practical difficulty in achieving additional affordable housing on later phases of larger schemes,
- there was concern that if affordable housing provision was subject to review then other Section 106 contributions might also be reviewed,
- there was a feeling that terminology and wording would have to be very carefully crafted,
- there is a concern that, at review, LPAs might seek more than the target applying at the time a Section 106 agreement was entered into,
- generally participants did not feel that it was realistic to expect Heads of Terms for Section 106 agreements to be agreed prior to registering applications.

## 8. RECOMMENDATIONS FOR POLICY IMPROVEMENT

### SPDs and other guidance to applicants

The City of Cambridge has a recently adopted SPD and South Cambridgeshire is at an advanced stage of drafting an SPD, which largely follows the form of the City of Cambridge document.

Huntingdonshire possesses a fairly developed form of SPD which is about one year post adoption. As with Cambridge and South Cambridgeshire, it will prove problematic for Huntingdonshire to attempt to revise this SPD.

Notwithstanding the challenges for the three authorities mentioned above, Ark recommends that all of the sub-regional districts aim to develop a comprehensive affordable housing SPD which embraces an updated series of model Section 106 clauses and incorporates the further recommendations being made in the remainder of this section of our report dealing with viability assessment, future proofing and the Section 106 negotiation process.

We further recommend that the forms of SPD should as far as practicable be consistent across the seven districts.

In order to secure maximum cohesion in affordable housing planning policy across the sub-region, a convergence plan between the seven authorities should be produced which identifies when policy improvements can expect to find their way into the statutory plan framework.

### Viability assessment

Establishing a sound and defensible affordable housing policy target will require some assessment of its impact on the viability of residential development. Although a somewhat theoretical exercise (because each individual scheme will have its own unique combination of value and cost factors) it would be sensible for the Cambridge sub-regional authorities to establish some indicative figures for the impact of policy targets on residual land values in their areas. One approach worthy of consideration would be to establish some hypothetical scheme types (archetypes) and a range of market 'zones' based on bands of house prices.

Typical assumptions could be determined for costs and values by zone and archetype and appraisals conducted to gauge the residual land values produced without public subsidy and the level of subsidy required to achieve values judged, with the benefit of expert advice, to represent reasonable returns to landowners.

An assessment exercise such as described above will only provide a backdrop for policy making and will need to be supplemented by a consideration of the availability

of Social Housing Grant, based on investment strategies going forward and on recent experience. The Homes & Communities Agency should be consulted directly as part of this process. Such generalised or hypothetical appraisals will be no substitute for assessment of the specific characteristics of individual schemes where there is a suggestion of departure from policy.

It is useful to provide applicants/developers with a template for assessing the economic viability of individual projects. However, this need only set out the various aspects of residential development economics which would need to be considered when conducting an appraisal and it need not be a specific spreadsheet based model. Applicants/developers could be alerted to the existence of the proprietary models.

As a guide, the following schedule highlights the main economic factors an authority should expect to assess:

- i) Site or building acquisition cost.
- ii) Construction costs.
- iii) Fees and other on-costs.
- iv) Projected sale prices for dwellings.
- v) Gross margin.
- vi) Other costs and receipts including how much the developer has allowed for any other contributions or costs, including planning gain contributions, and for receipts attributable to providing affordable housing.

### **Future Proofing**

By 'future proofing' we refer to mechanisms which will allow some review of the economic dimensions of a scheme over time where there is the likelihood of significant variance. Such reviews are only relevant when an authority has been asked to make a concession on its policy expectations.

The downturn in the housing market has certainly prompted many developers to seek more flexibility over time on re-examining whether planning obligations can be afforded. Also, for major schemes with a duration of more than three years there will inevitably be considerable variation over time in their costs and earnings and in the standards (regulatory and aspirational) which the development ought to be achieving. These changes cannot sensibly be anticipated at the outset of the scheme, particularly not for the later phases of development.

It should be regarded as reasonable that where an authority is not securing its policy position on affordable housing provision at the outset of a project then it should insist on periodic reviews to reflect changing market conditions. In most cases it will only be possible to secure Social Housing Grant for the first 3 years or so of the project so inevitably, even if it is only in relation to triggering a cascade, it will be important to carry out a review. However, Ark believes that the agreed baseline position should remain the baseline (the level of affordable housing achievable on a grant free basis) and that it should not be possible for the contribution to decrease below this as a result of future reviews. An authority may then agree to support bids for public subsidy in order to achieve 'additionality' such as more affordable housing beyond the baseline position.

No doubt developers will claim that such an approach is unreasonable because it only allows a one way review. Ark would counter that the authority has already been asked to make concessions so is, in effect, already losing out and so we are simply looking for safeguards to check that it remains appropriate for the authority to go on losing out in the long term. Moreover, developers are in the business of speculating on changes in market conditions with the risks that entails. The corollary to this is that improved returns should be the potential benefit of such speculation if things change for the better, just as reduced profitability would result from change for the worse.

Bearing in mind the points made above, Ark's recommendation would be to seek reviews on major schemes to coincide with each of the public funding phases. The review process would need to commence 6 months ahead of the intended completion of the funding phases in question.

Ark recommends further that the reviews be based on an agreed template or framework for inputs and outputs.

Whilst the reviews should be designed to allow variation only in the direction of improving affordable housing levels beyond the grant free baseline, it is recognised that this must be constrained within caps set by policy.

To reflect the speculative risk taken by the developer, Ark would suggest that increases in the level of affordable contributions should only apply if the developer achieves more than an agreed percentage of improvement in return from the scheme, perhaps more than a 10% improvement on the expected margin.

There will need to be cascade provisions in the Section 106 agreement to deal with the degree to which the affordable housing levels can reduce in the absence of some or all of the grant which may be agreed.

On multi-phased schemes careful thought will need to be given to how to treat a degree of variance from anticipated levels of affordable housing provision per phase. The aim should always be to return to equilibrium over the next phase.

In terms of deliverability and timescales, it is a real concern that planning approvals may be granted based on current viability and yet developers can sit on the approval for a long time until the market is more favourable. Ark would recommend that authorities include a review mechanism for any scheme where the affordable housing is not completed within 3 years of the planning decision.

### **Negotiating Section 106 Agreements**

Resolving complex Section 106 agreements place local planning authorities under extreme pressure in terms of determining planning applications within the Government's guideline 13 week period.

From discussions with the Cambridge sub-region authorities and others it is felt that determination of an application should include resolution of planning obligations and completion of the Section 106 agreement.

To offer any realistic prospect of achieving a consent within 13 weeks of registering applications, local planning authorities should seek to have agreed heads of terms for the planning obligations prior to registration.

Where the selection of an AHP is delayed and/or cannot be influenced by a local authority, Ark recommends that the Cambridge sub-regional authorities expect a series of housing management standards to be annexed to the Section 106 agreement, especially for larger applications.

### **Model Clauses for Section 106 Affordable Housing Provisions**

Ark's main report includes a lengthy final section, Section 8, which comprises a comprehensive series of model clauses which can be adopted in Section 106 agreements. The clauses deal with the various aspects to defining, controlling and implementing a Council's requirements on affordable housing provision. Not every clause will be relevant to every Section 106 agreement.

The model clauses reflect established good practice elsewhere and are drafted in a legalistic style. They have been subject to expert scrutiny by a firm of lawyers, Bevan Brittan, with a view to reinforcing their applicability. The model clauses can be issued as a separate document and are too detailed for inclusion in this abridged form of the report.

Ark recommends that the model clauses be adopted by the Cambridge sub-regional authorities, within SPDs where possible or other relevant planning guidance.