

Public Accounts Committee

Inquiry into Effectiveness of Local Planning Authorities in Wales

Section 106 – Comments from Mark Harris, Planning & Policy Advisor Wales, Home Builders Federation (27 February 2020)

Following the evidence sessions held with the RTPI and WLGA on 10 February, Mr Harris (who attended the roundtable session on 27 January) has provided some points of clarification to a series of questions asked around Section 106 agreements.

- It is not just the Vale of Glamorgan who employ a S106 officer other Local Planning Authorities (LPAs) do including Cardiff and Bridgend to my knowledge.
- A Section 106 is a legal agreement so a developer is at risk of legal action if it does not comply with it. The resource issue here is with Councils legal teams not the planning department.
- The principle of the Section 106 agreements are set out both in National Guidance Welsh Office Circular 13/97: Planning Obligations, a Policy within the Local Development plan and often Supplementary Planning Guidance (SPG). In particular the SPG's often contained detailed information on how the Section 106 will be calculated [[link to Cardiff SPG](#) as an example]
- Section 106 agreements can be amended but this is unusual and normally linked to a revised application which might change for instance the number of houses proposed thus affecting the calculation of the Section 106. Negotiations over Section 106 requirements normally take place during the planning process with the Section 106 having to be agreed prior to determination of the planning application.
- All policy advise on Section 106 agreements includes the flexibility to consider viability, ultimately if the Council ask for too much and the schemes becomes unviable then the development will not take place at all.
- Large House builders make considerable contributions via Section 106 agreements by way of example Barratt Homes in 2019 spent £8 million

on physical works in the community to improve highways, local outdoor spaces and community facilities [A photo of Section 106 contributions on just one site of 263 homes in Cardiff is attached]



S106.pdf

- The issue with Affordable Housing and Section 106 is that it's not a direct requirement. So for example a development of a certain size will always generate a certain number of extra children and if the local school has no capacity for those children then the developer has to pay for the extra school capacity to make the development acceptable (not have a negative effect), another example would be a highway junction close to the site which is at capacity will have to be improved to take account of the extra traffic to make it safe. However, unlike the examples above new homes do not generate a need for affordable housing, the need already exists, asking developers to contribute to the affordable housing supply has just become an acceptable contribution were it is viable to do so. Nearly all affordable homes provided by private house builders are now provided without grant and the price paid for the home by the Register Social Landlord is less than the cost to build it so every affordable home has a negative impact on the viability of the scheme. This is why as part of Section 106 negotiations it is the affordable housing element which is unfortunately often reduced.
- Once the development starts developers cannot change their mind on the Section 106 agreement other than by reapply for a new planning application and amending the Section 106 agreement attached to, in the same way as the agreement was originally agreed. This very rarely happened but will be for a good reason as this process could take a considerable length of time.
- It is unfair to say developers 'bully' planning authorities, all that developers can do is play within the policy requirements of the LPA, if the LPA does not have strong and clear policies in place then there is a risk that they will find it harder to secure Section 106 payments.

- It also wasn't mentioned in any of the responses that many of the LPA's do charge a monitoring fee for the Section 106 so this should be available to fund the monitoring and enforcement of the agreements [taking the Vale of Glamorgan which was mentioned as an LPA who have a full time officer dealing with Section 106 they use the money raised by this monitoring fee to fund the post in financial year 2018-19 the Council secured £69,569.64 in total as a monitoring fee across 26 Section 106 agreements].