

housing and planning: what makes the difference?

a Smith Institute survey and
discussion paper on the relationship
between councils and house builders

By Andrew Heywood





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Foreword

Paul Hackett, Director of the Smith Institute

This discussion paper and survey is the latest in a series of Smith Institute reports on housing and growth. Our focus is on what can be done to boost housing supply, provide more affordable homes and create better places. This paper makes an important contribution to that debate, not least in highlighting the evolving relationships between councils and developers. As the report makes clear, getting that relationship right is critical to addressing the nation's housing crisis.

There is historical data available on planning applications and the performance of local planning authorities (LPAs), as well as plenty of technical guidance issued by the Planning Advisory Service and others. However, there is little academic research on the planning process and its outcomes, and even less on best practice and "what works". This review and survey of councils and developers is intended to help address that information gap and provide some new insights into how individual LPAs and developers shape local housing markets. The paper does not claim to be an authoritative guide to the rights and wrongs of the council/developer relationship, but hopefully does capture the experience and opinions of those involved.

The project would not have been completed without the participation and assistance of a number of key stakeholders. Thanks are due to those local authority councillors and officers and developers who gave up their time to consider the issues and to submit to in-depth interviews. Similarly, the institute would like to thank the experts and other stakeholders, including London Councils and the Home Builders Federation, that gave freely of their time and expertise.

Special thanks are due to Barratt Developments, which had the breadth of vision to look beyond the round of day-to-day activity in order to sponsor research that aims to benefit both the house-building industry as a whole and the implementation of public planning policy.

Finally, we would like to thank the author, Andrew Heywood, whose work on housing and planning issues has been ground breaking and widely influential.

Executive summary

Executive summary

This discussion paper and survey seeks to provide a better understanding of the relationship between developers or house builders and local authorities. As the paper explains, that relationship is critical to the delivery of housing supply and great place making. Through a process of desk research and in-depth interviews the paper attempts to capture and analyse the key issues (and best practice) surrounding the relationship between developers and local planning authorities (LPAs).

Lessons for the future

Almost all interview respondents believed that good LPA/developer relations must be based on good personal relationships, which in turn should be built on mutual trust and transparency. According to interviewees, the key components of such a relationship are:

- Policy alignment*

All parties were clear that without a common alignment of development policies between LPAs and developers, any relationship was ultimately doomed to be frustrating and unproductive. Developers saw some local authorities as inherently "anti-development", while LPAs pointed to the actions of some developers in ignoring the local plan (including affordable housing requirements) and submitting schemes that were "off the shelf".
- Early engagement*

LPAs were clear that the pre-application stage was a crucial opportunity to resolve issues early and to build relationships. However, there was a perception that some developers did not take this stage seriously and simply went through the motions if they engaged at all. Developers suggested that LPAs could be rigid and refuse to listen, making the pre-application stage simply a further hoop for the developer to jump through.

Recommendation 1: LPAs and developers need to work together to ensure that their policies and underlying attitudes to development are aligned and that when schemes are considered there is an attitude of listening and a willingness to respond to the requirements and constraints faced by the other party.

Recommendation 2: Early engagement at pre-application stage is important to build relationships and resolve issues prior to formal submission. However, such engagement should be genuine on both sides; developers should be prepared to submit timely, accurate information and LPAs should ensure that they are offering value in terms of flexibility and a desire to resolve issues, rather than simply prolong the process.

Local planning authority resources

Both developers and LPAs expressed the view that in the current climate of fiscal austerity there was a risk that planning departments would become under-resourced and that this could delay and undermine the planning process.

There was a consensus between interviewed LPAs and developers that LPAs should be resourced adequately to enable them to give

full attention to the progress of a scheme through the planning process. Such resourcing should involve the provision of dedicated staff with appropriate training and seniority, particularly for larger schemes.

It was noted that some LPAs made use of consultants to supplement in-house resources. It was felt that on occasion consultants could slow the planning process because they were under less time pressure than the planning staff themselves.

It appears that some LPAs successfully charge higher fees in order to fund the provision of dedicated high-quality staff for larger development schemes. However, developer representatives did not support full cost recovery charging in the absence of competition between planning departments.

Recommendation 3: In spite of the current climate of fiscal austerity, LPAs should ensure that planning departments have adequate resources to enable them to offer dedicated and suitably qualified staff to facilitate smooth progress of development schemes through the planning process.

Recommendation 4: Where consultants are used by LPAs to supplement in-house resources, appropriate performance targets might be set and enforced to ensure that the progress of applications is not unnecessarily impeded.

Recommendation 5: LPAs may wish to consider charging enhanced fees for larger development schemes to ensure that such schemes are considered by dedicated and appropriately qualified staff. Full cost recovery by LPAs should not be introduced without broader consideration of whether there are sufficient drivers in place to ensure that fees represent best value for services provided.

Importance of leadership

There was agreement among the majority of LPAs that they should exercise leadership in the planning process. For most, this meant proactively seeking development that was appropriate and which met local requirements as expressed through the local plan, where that had been finalised.

Recommendation 6: LPAs might consider whether they are offering sufficient leadership in the planning process, and in particular whether they are proactively seeking appropriate new development rather than simply responding to pressure from developers.

Recommendation 7: The political leadership of councils and planning officers should consider whether elected members are receiving sufficient support and information to enable them to respond positively to development needs within their local areas.

Community infrastructure levy: a bridge too far?

It is believed that the number of CILs in use nationally is still very small. Although there was support for community infrastructure levy among LPAs and developers, previous research and feedback

from interviews suggests that retention of the section 106 requirement (imposing planning obligations), primarily for affordable housing, may create complications and uncertainty for developers about costs and contributions – at least in the short term, even if community infrastructure levy eventually works well.

Recommendation 8: Following the introduction of their community infrastructure levy, LPAs should work to ensure that potential problems of delay in ascertaining the overall level of developer contributions are minimised. LPAs and the DCLG should monitor the progress of CIL as it is implemented to ascertain whether the combination of the new levy and section 106 is leading to excessive complexity within the planning process.

Section 106 issues

Feedback from LPA interviewees suggests that they are willing to renegotiate to take account of changed market conditions. One LPA pointed out that this need not mean reducing the affordable housing contribution; if market conditions had improved the renegotiation could be used to increase the affordable housing contribution.

LPA feedback suggests that there is a perception that some developers are less than transparent about the information they provide around the question of scheme viability. Developers had doubts about the degree of flexibility that LPAs were prepared to exercise and questioned their competence to assess viability.

Recommendation 9: In order to avoid generating cynicism and distrust within planning departments, developers should provide accurate information supporting viability assessments in a transparent way.

Recommendation 10: LPAs should consider discussing with developers their methodology and competence in relation to viability assessments in order to build confidence. Such discussions could be held when negotiations on viability with the developer concerned are not pending, if this is possible.

National Planning Policy Framework implications

A minority of interviewed LPAs considered that they had been "pro-development" prior to the introduction of the National Planning Policy Framework, so that its impact had been limited. Nevertheless the majority, along with the interviewed developers, believed that the NPPF had ushered in a change in both attitude and practice.

Overall, the NPPF appears to have tipped the balance of power in favour of developers, who have strong grounds to appeal against a negative planning decision where a strong local plan and/or a realistic allocation of land is not in place.

Recommendation 11: The DCLG should maintain a monitoring overview of LPA/developer relationships in the wake of the implementation of the NPPF. In the meantime, individual planning departments themselves should ensure that there is a realistic understanding of the implications of the NPPF among the political leadership and among elected members.

Implications of neighbourhood planning and community empowerment

It is not yet clear what the extent of the take-up of these measures is at grass-roots level. There is uncertainty among both LPAs and developers about whether neighbourhood planning could be used to focus opposition to development schemes, or whether, paradoxically, it could be used to make unrealistic demands of developers which could threaten the viability of schemes. It was suggested that a strong local plan could mitigate these potential effects, but it does appear that neighbourhood planning could complicate the LPA/developer relationship and might even divert much-needed funds of local planning departments from aspects of the planning process.

Recommendation 12: In the light of uncertainty about the implications of neighbourhood planning and other community empowerment measures, the DCLG should monitor activity carefully and commission further research in order to ascertain whether these local measures are making a positive contribution to local planning and whether they are using an appropriate proportion of the resources of local planning departments.

The planning system: needing further improvement?

The interviewed LPAs were clear that the planning system itself is not an obstacle to development – only to inappropriate development. While developers were more ambivalent, their comments tended to suggest that the system could work given a positive and flexible attitude on the part of LPAs.

There were various suggestions for improving the planning system. These included a belief that the timeframe within which LPAs can be subjected to judicial review should be shortened, and a suggestion that LPAs should be required to process planning conditions more quickly. However, the suggestion that received most widespread support was for action to ensure that LPAs and developers engage in the pre-application process earlier and more fully.

Recommendation 13: The DCLG should consult on whether there is scope to alter the planning process to provide a stronger incentive or a clearer requirement on LPAs and developers to use the pre-application stage earlier and more fully.

Use of local authority land in order to promote residential development

Interviews with LPAs suggested that most have used their own land to encourage or facilitate new development and that almost all intend to do so in the future. However, LPAs operate under a number of constraints. Some have limited holdings of suitable land. In addition, there can be competing demands for land – to build new schools or to provide other infrastructure or community amenities. There was some evidence that developers did not always appreciate the constraints that a local authority may face.

Recommendation 14: As a part of building strong relationships, LPAs should make efforts to communicate the extent and nature of their land holdings to developers and other stakeholders with the aim of ensuring that the competing demands for land and the constraints on disposal that exist are understood externally.

Recommendation 15: LPAs whose authority has a development programme could use the opportunity to gain access to an internal "consumer perspective" on the planning process as it operates in their area. This could offer useful additional user feedback on the local planning experience.

Recommendation 16: The Local Government Association and London Councils should ensure that examples of innovative practice by LPAs, particularly in the field of good communication, are shared as widely as possible.

Good communication, trust and shared objectives

The importance of three interrelated factors ran through the interviews:

- good communication initiated at an early stage in the planning process;
- trust and transparency between the parties to planning negotiations; and
- shared objectives for new and appropriate development.

Introduction

Introduction

This discussion paper and survey seeks to identify and debate collaboration between developers or house builders and local authorities (and specifically the authority's local planning authority, whose duty it is to carry out specific planning functions for a particular area). The aim has been in part to analyse the dynamics of that relationship and the factors that have an impact upon it. Through a process of desk research and interviews, the paper has attempted to identify and analyse the components of a successful relationship between developer and local planning authority from the earliest discussions about a possible scheme through to completion of the development itself.

At a time when there is a desperate need to boost the new supply of homes, getting the LPA/developer relationship right is crucial. In addition, some commentators have drawn attention to the diminished market share of smaller developers and have claimed that increasing their activity could be one way to boost new supply. Since the successful implementation of such a strategy would inevitably mean some proliferation in the number of LPA/developer relationships, the importance of maintaining those relationships on a sound footing would be significantly increased.¹

In identifying and analysing what makes a successful relationship that meets the objectives of both parties the research has examined a range of factors, including:

- attitudinal and behavioural factors affecting the relationship, such as the need for trust, openness and sound communication;
- the need for physical and financial resources to support the planning process;
- the impact of the planning process itself, including recent changes;
- the effect of local development policy on decision making;
- the impact of various stakeholders, including elected members and voters on the process; and
- a range of other financial, legal and institutional factors.

The research, contained in section one, has involved a study of existing policy and academic literature on planning and development. This in turn has underpinned qualitative fieldwork, which is detailed and discussed in section two. The fieldwork involved semi-structured interviews with local authorities of different sizes and reflecting urban/rural differences and other challenges. Interviews have also been conducted with selected developers and with other stakeholders that have an interest in, or knowledge of, the planning process.

The conclusions of the research take the form of an analysis of the feedback from the above fieldwork in order to set out clearly the key elements that make relationships between developers and LPAs work better for the benefit of both parties. These conclusions are intended to help developers and LPAs build effective relationships. They are also intended to inform the policy activity of government and other stakeholders in working to support such relationships across a broader canvas.

¹ Lurna Robertson "Reynolds Announces Measures to Help Labour Reach 200,000 Homes a Year Target" in *Inside Housing*, 14 January 2014 (<http://www.insidehousing.co.uk/reynolds-announces-measures-to-help-labour-reach-200000-homes-a-year-target/7001609.article>)

Part one: Housing and planning – the key issues

Housing and planning – the key issues

*The planning system shapes our future. We need to see sustainable, responsible, careful growth; not just new houses, but new homes, in communities that work, where people are pleased to come home at night and happy to raise their children. The country must build not to turn a quick profit, but to create a legacy that lasts for generations to come. This is what our reforms are designed to deliver, and what we are determined to achieve.*²

– Eric Pickles

This speech by the secretary of state for communities and local government, Eric Pickles, introducing many of the government's planning reforms, illustrates that planning and the planning process are profoundly important for the development of sustainable communities. In broad terms, the sentiments contained in the quoted paragraph above would be widely shared.

What are less widely shared are visions as to what constitutes "sustainable communities" and how the planning process for residential development should work to further their creation. The planning process shapes the interface between the developer and the local planning authority and is grounded in rules and guidance that are themselves legally underpinned to varying degrees. As will be seen, those rules and guidance have been the subject of major changes over the past half-decade with the emergence of the National Policy Planning Framework (NPPF) and a range of other reforms that have altered the relationship between local authorities and developers and between both those parties and the national and local stakeholders that intervene in, and frequently contest, the outcomes of planning decisions.

The planning process

The planning process creates the framework within which a relationship functions between LPAs and developers. Increasingly that relationship evolves from the earliest discussions about possible future residential development schemes, through pre-application stage discussions, to the formal submission of a planning application to the LPA, its decision and beyond. Yet that relationship does not exist in a vacuum.

Compared with the local authority, the developer may be perceived as having a relatively uncluttered agenda. Ultimately a developer wishes to invest in new homes on a site and intends that those homes will be sold (or sometimes let), and that this activity will produce a reasonable financial return. Nevertheless, developers are certainly not immune to other influences, such as the popularity of a particular development scheme in a local area where they may wish to operate in the future. There are also reputational issues that may arise in relation to the quality of the homes themselves and the viability of the communities to which they may contribute. However, in the end the developer has a clear interest in seeing a submitted scheme accepted without excessive modifications that could prove troublesome, or threaten scheme viability.

² Eric Pickles "A Democratic Design for the Future of Britain's Communities" in *The Guardian*, 14 September 2011 (<http://www.theguardian.com/commentisfree/2011/sep/14/democratic-design-communities-planning>)

- The position of local authorities is more complex. The attitude to particular applications will be shaped by a range of interests and constraints that may cohere, but which can also conflict. These include the following:
 - First, the nationally determined planning policy objectives as embodied in the NPPF and other prescriptive government interventions. Successive governments have had a strong interest in enhancing housing supply and in increasing the amount of new affordable housing that is completed. Government intervention can include measures to alter the balance of incentives in favour of new development, such as the £1 billion New Homes Bonus scheme introduced in 2011.³
 - Second, the requirements of the authority's own local plan, in terms of the amount of housing required, the land available and the necessary level of provision of affordable homes.
 - Third, the professional views of planners themselves on what constitutes a successful development.
 - Fourth, the attitude of local voters and council tax payers to new development, particularly where a specific development proposal can be seen as having an impact on existing residents. Often crudely characterised as "nimbyism", such attitudes can often be shaped by a complex set of perceptions, including fears about the future value of existing homes, the impact on amenities such as schools, and the spatial impact of new development. With the government currently piloting a scheme aimed at "passing a share of the benefits of development directly to individual households", the potential of local attitudes to derail both national and local objectives is widely recognised.⁴
 - Finally, the policy on new development held by the political leadership of a local authority and the views of individual elected members. Clearly these will be influenced by local attitudes as well as by perceptions of statutory duties and overall community benefit.

Planning for housing

In 2012/13, LPAs received 455,000 planning applications, and made 419,000 decisions. In 87 percent of cases those applications were granted. However, the majority of decisions do not relate to housing. During the year to September 2013, LPAs took 52,515 decisions in relation to dwellings, out of a total of 422,022 decisions.⁵ Given the numbers of planning decisions and their significance as the gateway to new housing, it is not surprising

³ Wilson, W *The New Homes Bonus Scheme* (House of Commons Library, 2014)

⁴ HM Treasury *National Infrastructure Plan 2013* (2013) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263159/national_infrastructure_plan_2013.pdf)

⁵ DCLG "Live Tables on Planning Statistics", 2014 (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>)

that the planning process receives significant attention at the level of housing strategy. The government's housing report *Laying the Foundations: A Housing Strategy for England*⁶ devotes considerable space to analysis of planning and to a series of proposals to improve performance in the context of an overall shortage of new housing supply (see below). *Homes for London: The Draft London Housing Strategy*,⁷ with its ambitious target to build 42,000 new homes a year in the capital, states:

This will include revisiting some historical planning agreements and working with developers and boroughs to consider what interventions could unlock sites.

"Planning" is thus widely perceived as relating to a set of issues that are crucial to the resolution of the chronic undersupply of new homes. This view is well illustrated by the current independent housing review headed by Sir Michael Lyons. The review has been commissioned by the Labour Party to map out how Labour can achieve its commitment to deliver 200,000 new homes a year by 2020. The review will focus in part on planning issues, including the land market, co-operation between adjoining local authorities over planning, and sharing the benefits of development with local communities.⁸

Recognising the importance of the planning process for new supply, the government, in addition to implementing reforms to the planning process outlined below, has moved to alter the balance of incentives in relation to new development and thus to influence the outcomes of that process. In particular the government introduced the New Homes Bonus scheme in 2011. The scheme rewards local authorities with a sum equivalent to six additional years of council tax (based on national averages of tax bands) for each additional home built. At the time of writing, the government has been undertaking a further consultation on enhancing the effectiveness of those rewards. Some £3.3 billion has been committed to the bonus scheme for the period 2013–2018 alone.⁹ In addition, the government is currently undertaking a pilot cash incentive scheme whereby neighbourhoods that take a proactive approach by drawing up a neighbourhood development plan, and securing the consent of local people in a referendum, will receive 25 percent of the revenues from the community infrastructure levy arising from the development that they choose to accept.¹⁰ According to the planning minister, Nick Boles, the government is:

*... determined to persuade communities to accept more house-building by giving them a tangible share of the benefits it brings. By undertaking a neighbourhood plan that makes space for new development, communities can secure revenues to make the community more attractive for everyone.*¹¹

6 DCLG *Laying the Foundations: A Housing Strategy for England* (2011) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7532/2033676.pdf)

7 Greater London Authority *Homes for London: The Draft London Housing Strategy 2013* (2013) (http://www.london.gov.uk/sites/default/files/London%20Housing%20Strategy%20consultation%20version_0.pdf)

8 *The Lyons Housing Review Call for Evidence* (2014) (<http://www.yourbritain.org.uk/agenda-2015/policy-review/policy-review/lyons-housing-review>)

9 Wilson, op cit (2014)

10 HM Treasury, op cit

11 DCLG "Giving Communities More Power in Planning Local Development", 2014 (<https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>)

Local housing markets

This research is concerned primarily with the relationship between LPAs and developers and with the performance of LPAs in terms of their strategic and planning roles. As such, it looks at how those relationships evolve and how LPAs discharge their duties in relation to the planning process, and how that in turn influences the level of new housing supply. That influence might be seen in terms of development numbers and the degree to which the type of provision (house type and size, amount of affordable housing and so forth) meets local need.

In assessing the performance of LPAs it is important to remember that they operate within widely differing local housing markets. Different housing markets will be characterised by variations in prices, levels of house price inflation/deflation, and strength and source of demand. Such factors will influence the levels of housing starts and completions and the number of planning applications submitted and processed, regardless of how an individual LPA may approach its role. Indeed, the government has itself recognised the influence of a downturn in economic and market conditions in respect of section 106 planning agreements and the need to renegotiate planning obligations in some cases.¹²

House prices and house-price inflation

Housing markets vary widely at both regional and local level. At a regional level, for example, England has a series of submarkets. A regional breakdown of house prices and house price rises bears this out:

Table 1: Average house prices and annual rate of house price change in English regions

	Average price at Dec 2013 (£)	Annual price rise (fall) to Dec 2013 (%)
East Anglia	180,690	5.2
East Midlands	126,939	4.1
London	403,792	11.2
North East	97,596	(-0.1)
North West	110,008	1.7
South East	220,509	5.9
South West	176,783	3.6
West Midlands	131,800	3.2
Yorkshire & Humber	116,012	0.5
England and Wales	167,353	4.4

Source: Land Registry

As can be seen, the variation in both house price inflation and in average prices is very wide, with the highest priced regions tending to achieve the highest price inflation. In these respects London stands on its own. However, London is not a single, homogeneous market – as the next table illustrates.

12 DCLG *Laying the Foundations: A Housing Strategy for England* (2011) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7532/2033676.pdf)

Table 2: Average house prices and price rises for selected London boroughs

	Average price at Dec 2013 (£)	Annual price rise to Dec 2013 (%)
Barking & Dagenham	228,199	10.4
Barnet	391,693	7.8
City of Westminster	863,496	12.3
Kensington & Chelsea	1,191,239	10.4
Southwark	445,589	12.4
Wandsworth	489,206	16.4
London	403,792	11.2

Source: Land Registry

Barking & Dagenham, traditionally the lowest priced borough, has an average house price less than 20 percent of that in Kensington and Chelsea, which has the highest prices. As a number of commentators have noted, London is characterised by a contrast between the higher priced inner London boroughs and the cheaper outer boroughs, which not only have lower prices but until recently were experiencing stagnating or in some cases falling prices, while prices in inner London increased very rapidly.¹³

A key characteristic of the London housing market is overseas investment. Now running at over £7 billion per year (a sum equivalent to around 39 percent of the annual total of all mortgage loans in the capital), overseas investment has contributed to high levels of demand and rapidly rising prices. It has been estimated that over 70 percent of new-build homes in central London are being purchased by overseas investors.¹⁴

While London is a special case in terms of overall house prices and price rises, local housing markets in the English regions also exhibit significant variations within a region and even within quite small areas. The West Midlands provides a useful example (see table 3).

Clearly, local housing markets will have an impact on the willingness of developers to make applications and on the type of applications made. Similarly, LPAs will find both their strategic and planning roles influenced by their local markets. An inner London borough and its developer partner building flats that will in many cases be bought off-plan for cash by overseas investors, who may be interested in rental income as well as capital appreciation, will inevitably plan for different outcomes than will a Northern local authority struggling to attract residential development into a relatively depressed housing market. Demand in the latter market will be constrained and shaped by lower median household incomes and by other factors such as high benefit dependency and unemployment.

13 Hackett, P and Heywood, A *The Case for a Property Speculation Tax* (Smith Institute, 2013) (<http://www.smith-institute.org.uk/file/The%20Case%20for%20a%20Property%20Speculation%20Tax.pdf>)

14 Heywood, A *London for Sale?* (Smith Institute/Future of London, 2012) (<http://www.smith-institute.org.uk/file/London%20for%20Sale.pdf>)

Table 3: Average house prices and house price increases in the West Midlands region, West Midlands county, and selected boroughs within West Midlands County

	Average price at Dec 2013 (£)	Annual price rise to Dec 2013 (%)
West Midlands region	131,800	3.2
West Midlands county	116,196	2.9
Birmingham	114,625	3.9
Sandwell	95,071	3.0
Solihull	196,300	2.6

Source: Land Registry

Housing starts

The scale of new housing activity over which different local authorities preside varies widely, as the next table, which includes the local authorities interviewed for this study, suggests:

Table 4: Dwellings started in selected boroughs, by tenure, 2012/13

	Dwellings started			
	Private enterprise	Housing association	Local authority	All
Barnet	400	450	0	850
Birmingham	550	100	30	680
Dartford	-	-	-	-
Forest of Dean	150	80	0	230
Gateshead	550	0	10	560
South Northants	180	60	0	240
Southwark	550	290	20	860
York	130	30	0	160
England	80,710	19,360	1,610	101,670

Source: DCLG

This data highlights how housing starts and completions can vary across different local authorities. Starts in London averaged 519 per local authority in 2012/13, whereas in the West Midlands they averaged 1,170. Clearly, some local authorities will require a higher level of resource devoted to planning than do others. The data is also a reminder of the degree to which current house-building levels lag behind the increase in the number of households, which are swelling by 232,000 each year, according to the government.¹⁵ This in turn is a reminder of why local authority efforts to promote and facilitate new supply are important.

15 DCLG, op cit (2011)

Table 5: Dwellings completed in selected boroughs, by tenure, 2012/13

	Dwellings completed			
	Private enterprise	Housing association	Local authority	All
Barnet	1,200	520	0	1,720
Birmingham	610	110	10	730
Dartford	-	-	-	-
Forest of Dean	120	60	0	180
Gateshead	370	0	30	400
South Northants	130	30	0	160
Southwark	280	200	0	480
York	210	40	0	250
England	84,420	22,030	1,360	107,820

Source DCLG

The reasons why new supply varies so much between authorities are complex but will probably include:

- the population covered by the local authority area;
- the unmet demand for housing;
- the supply of available land for residential development;
- the effectiveness of the local authority in identifying local need;
- the local authority's attitude to new development; and
- the capacity of the local authority to engage positively with proposals for new residential development.

It is the last four points that will be dealt with in more detail later in the paper.

Local authorities and planning applications

The Department for Communities & Local Government has been collecting data to judge the performance of local authorities in terms of the speed and quality of decision making in respect of planning applications.

The government has been collecting data for two years on the speed with which individual local authorities deal with major decisions, with the intention of designating certain authorities as underperforming.¹⁶ The criterion for underperformance is that less than 30 percent of major decisions are taken within 13 weeks or within a timescale agreed between the local authority and the applicant. The average for local authorities as a whole currently stands at 62 percent (54 percent for dwellings) for the year ending September 2013.¹⁷ Although the full two-year dataset is not yet available, the interim data is available, and paints a varied picture. Data for those authorities interviewed for this paper is set out below:

¹⁶ DCLG *Improving Planning Performance* (2013) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204771/Improving_planning_performance_-_Criteria_for_designation.pdf)

¹⁷ DCLG "Live Tables on Planning Statistics", 2014 (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>)

Table 6: Major decisions taken by selected local planning authorities (district level) and speed of decisions, July 2011–March 2013*Interim data*

	Number of decisions	Percentage made within 13 weeks or within agreed time (%)
Barnet	84	29.8
Birmingham	317	79.9
Dartford	46	56.5
Forest of Dean	46	58.7
Gateshead	77	62.3
South Northants	112	70.5
Southwark	152	60.8
York	77	71.4

Source: DCLG

The data suggests a wide variation between authorities in terms of speed of decision making. The reasons for this vary and may in part be due to the volume of applications. Developers interviewed for this study, for example, suggested that decision making in London, with its two levels of community infrastructure levy, other complexities and relatively high volume of applications, may necessarily take longer than elsewhere.

Nevertheless, the quality of decision making has been measured by the DCLG in terms of the percentage of major decisions overturned on appeal.

Table 7: Percentage of decisions overturned on appeal, October 2010–September 2012

	Percentage overturned (%)
Barnet	4
Birmingham	1
Dartford	0
Forest of Dean	4
Gateshead	0
South Northants	6
Southwark	2
York	6

Source: DCLG

All the authorities listed in this table had 6 percent or less of decisions overturned. By way of comparison, the three worst-performing authorities by this measure were Daventry, Ribble Valley and Rochford, each with 13 percent of decisions overturned on appeal.

An important issue raised by the above is resource. Some local authorities clearly handle far more major planning decisions than others. This suggests that certain local authorities with a large

throughput will find it easier to recruit and retain experienced staff than others. According to some commentators, these LPAs will find it makes more sense to ensure that staff have high-quality facilities in terms of training, equipment and IT. The importance of adequate resourcing will be investigated later in the paper.

Recently published research by the Cambridge Centre for Housing & Planning Research suggests that the NPPF can, on occasion, create "perverse incentives" such as local authorities rejecting planning applications simply to enable them to make a decision within the statutory period. It may be that the imposition of targets in relation to the rate of acceptances and speed of applications does not help in practice. Indeed, the paper raises the possibility that the quality of decision making and related work by local planning authorities may be unrelated to externally imposed targets.¹⁸ In light of the report, the DCLG select committee launched an inquiry into the operation of the NPPF in April 2014.

The changing planning environment and the role of section 106

The period after 2007 saw rapid changes to the planning regime operated by local authorities. These changes affected LPAs and developers alike and in many cases continue to have an impact on the relationship between the parties.

First introduced by the Town and Country Planning Act 1990, section 106 had by the beginning of the new millennium begun to assume growing importance for the supply of affordable housing. According to Burgess et al, who surveyed all LPAs, only 6 percent of planning permissions granted by LPAs imposed planning obligations in the form of developer contributions. However, the scale of those contributions was significant, rising from £2 billion in 2003/04 to £5 billion in 2007/08.¹⁹ According to the same source, there were an average of 30 section 106 agreements per LPA each year. It was calculated that £561 million was paid to LPAs in direct payment obligations in 2007/08. The amount varied widely between regions, with an average of £582,000 per LPA in the North West and £5.8 million in London.²⁰ The authors put this difference down in part to the longer experience of signing section 106 agreements among LPAs in the South. They found that all major sites of 50 or more homes were subject to affordable housing requirements, with the latter being by far the commonest obligation, followed by open space and then highways obligations.

Interestingly, the above research discovered that while 80 percent of section 106 obligations were delivered as originally agreed, or with agreed changes, 20 percent were either not delivered or the outcome was not known. It was suggested that the quality of monitoring by LPAs regarding delivery of planning obligations varies significantly between authorities. The research noted a

fall-off in section 106 schemes actually going ahead after the downturn of 2008, and also noted that delivery trigger points had in many cases been pushed back. This suggests a degree of flexibility on the part of many LPAs.

The research was also clear about the importance of both certainty and good communication in fostering effective relationships between developers and LPAs:

On the other hand, developers continue to look for certainty in terms of local policy and practice in addition to straightforward viability and saleability.... Good practice shows that those local authorities who regularly consult both the private house building industry and local affordable housing providers are best placed to protect their policy targets while enabling new developments to take place.²¹

Earlier research by Burgess and Monk²² had noted the importance of certainty for developers:

Developers are happy because it provides certainty even before they have acquired the land, so they can build it into their calculations.

– LPA interviewee

However, they also identified cultural issues that can impede communication and cause difficulties. As one LPA representative put it:

It is easier to believe a developer and their legion of staff with their sharp suits and nice spreadsheets and presentations than your own officers. In most section 106 negotiations it will be me sat against three or four developer staff who won't be on less than £70,000 salary and there is an expertise and a manner that comes with that. It can be difficult for members to stand up against that.

The importance of LPAs and developers building relationships of mutual respect and based on sound communication will be followed up later in the paper, as will the stance of elected members.

The housing market downturn that began in late 2007 precipitated a decline in new development activity, including a slowdown of activity on sites where section 106 provisions for affordable housing had already been agreed. Housing completions in England dropped from 176,650 in 2007 to 106,720 in 2010.²³ This led to intervention by the Homes & Communities Agency in the form of a good practice note, *HCA Investment and Planning Obligations: Responding to the Downturn*.²⁴ Among its recommendations were two that anticipated later developments and have a direct bearing on developer/LPA relationships. The first was recognition that:

²¹ Ibid

²² Burgess, G and Monk, S *How Local Planning Authorities Are Delivering Policies for Affordable Housing* (Joseph Rowntree Foundation, 2007) (<http://www.jrf.org.uk/publications/how-local-planning-authorities-are-delivering-policies-affordable-housing>)

²³ DCLG "Live Tables on House Building" (2013) (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-house-building>)

²⁴ Homes & Communities Agency *Investment and Planning Obligations* (2009) (<http://www.homesandcommunities.co.uk/investment-and-planning-obligations>)

¹⁸ Burgess, G, Monk, S, Jones, M and Crook, T *Final Report on the Nature of Planning Constraints* (Cambridge Centre for Housing & Planning Research, 2014) (<http://www.cchpr.landecon.cam.ac.uk/Projects/Start-Year/2014/Research-on-the-nature-of-planning-constraints/Project-Report>)

¹⁹ Burgess, G et al *Valuing Planning Obligations in England 2007/08* (Cambridge Centre for Housing & Planning Research, 2011)

²⁰ Ibid

... where previously achievable affordable housing obligations cannot be supported in today's market, a flexible approach to developments in the housing supply pipeline will be needed.

The second urged local authorities to:

... identify principles for a transparent approach to modelling financial viabilities that can assist collaborative working between stakeholders seeking to progress development on strategic sites where development periods are likely to fall within a future market recovery cycle.

The degree to which local authorities have embraced flexibility to renegotiate section 106 agreements and have developed financial viability modelling are contentious issues and are explored further in the interviews within this paper. However, in 2012 the Local Government Association conducted a survey of its members focused on planning issues. Some 80 percent of LPA respondents claimed to be willing to renegotiate section 106 agreements where this was likely to help restart development schemes. Also councils stated their willingness to accept a level of affordable housing (under planning obligations) around a third lower, on average, than that stated in their local plan. Interestingly, 57 percent of respondents claimed to have released some of their own land for residential development during the last five years and 87 percent stated that they planned to do so over the next five years.²⁵

The LGA findings imply some flexibility and recognition of the importance of scheme viability by local authorities and receive some support from research undertaken for Shelter in 2011. This found that local authorities were sceptical about the value of strategic housing market assessments, indicating that in the end "housing targets were based on deliverability", and most took the view that "the proportion of affordable housing is determined by viability, not need". However, two-thirds of local authorities said that the localism agenda and abolition of regional spatial strategies had not affected them. They suggested the need for more consistency across local authorities in assessing need but greater flexibility in responding to local circumstances.²⁶

Community infrastructure levy

A major change in the scope of the section 106 regime was introduced in April 2010 when the community infrastructure levy came into force via the Community Infrastructure Levy Regulations 2010, which had been provided for under the Planning Act 2008.²⁷ The CIL was intended to simplify the planning obligations position by setting up a schedule of charges that would offer greater certainty to developers and be less dependent on the vicissitudes of market conditions and individual section 106 agreements. Under the new regime, section 106 agreements

were to be narrowed in scope to focus on affordable housing provision and matters not covered by the CIL.

Despite the downturn, in 2009/10 almost three-fifths of affordable housing was delivered via section 106 agreements.²⁸ The use of the CIL was intended to avoid the lengthy negotiations associated with section 106 agreements, a matter examined later in this paper. The above research found that most local authorities were planning to introduce a CIL within three years. However, feedback from developers suggests that progress has, in many cases, been slow, with many CIL schemes not yet approved. Monk and Burgess noted that the majority of LPAs reported that so far (2012) the incidence of section 106 agreements had not decreased as a result of the introduction of CILs.²⁹ In 2013 further research³⁰ identified significant uncertainty among local authorities in respect of CIL:

The main finding of this research was that, whilst seen as a positive change, there was still a lot of uncertainty about the CIL – how to develop the evidence base, how to determine an appropriate charging schedule, how to use Section 106 alongside the CIL and how to collect the CIL funds.

– Crook, A *The Changing Delivery of Planning Gain through Section 106 and the Community Infrastructure Levy* (Cambridge Centre for Housing & Planning Research, 2013)

A 2012 survey of local authorities in London found that 50 percent thought that the CIL would prove "very" or "extremely" useful, while a further 45 percent considered that it "may be useful".³¹

A further change to the regime of planning obligations was the announcement in the government's Housing Strategy that it intended to offer developers the option to have section 106 obligations in respect of affordable housing reassessed by LPAs on grounds of viability and to appeal if necessary.³² The proposals were enacted in the Growth and Infrastructure Act 2013. Originally intended to apply to agreements made before April 2010, the proposal was widened to apply to any section 106 scheme, although any altered conditions would apply only for three years, after which they would revert to the previous requirements unless renegotiated again.³³ The extent to which this measure has made a difference to LPA practice has yet to be fully assessed. However, while it clearly represents an opportunity for developers, it also implies interaction between developers and LPAs on issues that are contentious. These will require mutual sensitivity to the requirements of both parties, plus a willingness to be flexible, if an endless series of appeals is to be avoided.

The National Planning Policy Framework

The NPPF (introduced in 2012) sets out planning policies for England and how they are expected to be applied. It provides guidance for local planning authorities and decision takers,

25 Vincent, M *Unlocking and Stimulating Housing Development: A Survey* (Local Government Association, 2012) (http://www.local.gov.uk/research-housing/-/journal_content/56/10180/3750535/ARTICLE)

26 Monk, S, Clarke, A and Lyal Grant, F *Providing the Evidence Base for Housing Needs and Demand Assessments* (Cambridge Centre for Housing & Planning Research, 2011) (http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/providing_the_evidence_base_for_local_housing_need_and_demand_assessments)

27 DCLG *Community Infrastructure Levy – Guidance* (2013) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197687/Community_Infrastructure_Levy_2013.pdf)

28 Monk, S and Burgess, D *Capturing Planning Gain – The Transition from Section 106 to the Community Infrastructure Levy* (Royal Institution of Chartered Surveyors, 2012)

29 Ibid

30 Crook, A *The Changing Delivery of Planning Gain through Section 106 and the Community Infrastructure Levy* (Cambridge Centre for Housing & Planning Research, 2013)

31 Turley, A and Wilson, J *Localism in London: The Implications for Planning and Regeneration in the Capital* (Future of London, 2012) (<http://www.futureoflondon.org.uk/futureoflondon/wp-content/uploads/downloads/2013/05/Localism-in-London-for-web.pdf>)

32 DCLG, op cit (2011)

33 DCLG *Section 106 Affordable Housing Requirements – Review and Appeal* (2013)

both in drawing up plans and making decisions about planning applications. The framework is also intended to speed up the planning approval process, in part by simplifying planning guidance.

Underlying the NPPF guidance is a "presumption in favour of sustainable development". This is intended to mean that local authorities should positively seek opportunities to meet the development needs of their area, with local plans being constructed to meet those needs, unless the adverse impacts of doing so would demonstrably outweigh the benefits. The NPPF aims that within this context development proposals should be approved in accord with the local development plan without delay and that decisions not adequately covered by the plan should normally involve granting permission.³⁴

The NPPF also takes further the principle of evidence-based and plan-based decision making that can be discerned in earlier guidance. The NPPF guidance states:

To boost significantly the supply of housing, local planning authorities should:

- *use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;*
- *identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;*
- *identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;*
- *for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and*
- *set out their own approach to housing density to reflect local circumstances.*³⁵

The guidance is specific in saying: "Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable land."

³⁴ DCLG "Delivering a Wide Choice of High Quality Homes" in *National Planning Practice Guidance* (2013) (<http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/>)

³⁵ Ibid

As illustrated in our survey, the presumption in favour of sustainable development is seen by developers and representatives as key to improving relationships with LPAs. In addition, the requirement that decisions be plan-led is seen as implying a degree of objectivity and recognition by local authorities that there are needs to be met. Interviews with developers suggested that the requirement to allocate five years' land supply is also welcome in the context of bringing schemes forward for submission, as well as a valuable lever if proposals are overturned in the absence of adequate land allocation by a local authority. These matters will be dealt with in more detail later in the paper.

The NPPF has spawned a new collection of secondary guidance and advice. Such material has included helpful and detailed material on plan making by the Planning Advisory Service.³⁶ Although advice is usually aimed at LPAs, this is not always the case. The GLA's formalised pre-planning application advice service is aimed at developers and has the aim of speeding up the planning process for both applicant and LPA.³⁷

Other measures

A number of other planning measures designed to encourage local development initiatives were referred to in the government's Housing Strategy.³⁸ These included:

- *Community right to build*
This right is designed to give local communities who set themselves up as a corporate body "freedom to build new homes, shops, businesses or facilities where they want them without going through the normal planning application process". Any proposal must have the support of 50 percent of voters in a referendum and must meet some minimum requirements in terms of national planning policies and strategic elements of the local plan.³⁹
- *Neighbourhood planning*
Communities can choose where they want new houses, shops and offices and grant planning permission for these. However, these proposals must be incorporated into neighbourhood plans drawn up by parish or town councils, or neighbourhood forums, with the support of the LPA. These plans must themselves be subject to independent examination and a referendum.⁴⁰
- *Community right to reclaim land*
In respect of land owned by local authorities and certain other bodies, anyone can send a request to the secretary of state claiming that the land or property is underused or vacant, that there are no suitable plans for its use and that it should be disposed of to bring it back into use. The

³⁶ Planning Advisory Service website, 2014 (www.pas.gov.uk)

³⁷ Mayor of London *Guidance Note for Developers Requesting Pre-planning Application Advice* (Greater London Authority, 2013) ([https://www.london.gov.uk/sites/default/files/Guidance%20note_V7%20\(3\).pdf](https://www.london.gov.uk/sites/default/files/Guidance%20note_V7%20(3).pdf))

³⁸ DCLG, op cit (2011)

³⁹ DCLG "Community Right to Build", 2014 (<https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-build>)

⁴⁰ DCLG "Neighbourhood Planning", 2014 (<https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/neighbourhood-planning--2>)

secretary of state will assess the request and can issue a disposal notice on the owning body requiring disposal of that land.⁴¹

These measures are clearly less significant than the major changes discussed earlier. As "rights" they are also limited by various external requirements, such as the need for a referendum, or the right of the secretary of state to make an assessment. Nevertheless, they could, arguably, undermine a straightforward one-to-one LPA/developer relationship in some situations, by adding other stakeholders with more localised or partial interests. It is interesting to note that according to Turley and Wilson,⁴² the majority of boroughs in London did not like either the neighbourhood agenda or the community empowerment measures arising out of the localism agenda. The significance of these measures for the developer/LPA relationship is discussed later in the paper in the context of the feedback from interviews with local authorities.

Council officers and elected members

Local authorities are not internally undifferentiated bodies, representing a homogeneous and uncomplicated set of interests to the outside world. A key differentiation that comes out in literature and appears in the interviews with developers and local authorities is the distinction between officers and elected members.

Officers have a professional responsibility to facilitate the planning process subject to the law and to the views of elected members. Building external relationships with developers may not always come naturally but could be achievable in principle.

For elected members the position can be much more difficult. Working in partnership with external agencies raises fundamental issues about the democratic mandate that a councillor has. He or she has, after all, been elected and is expected to represent the views of his or her electorate. This can raise difficult issues where the views and aspirations of electors may not be consistent with the aims of "partners" or even with legal responsibilities such as the "presumption in favour of sustainable development" within the NPPF. A parliamentary briefing paper puts the different positions of councillors and officers very well:

Councillors and officers have different but complimentary roles. Both serve the public but councillors are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual councillors. It follows that instructions can only be given to officers through a decision of the Council, or of its executive or a committee. Any other system which develops is open to question. A successful relationship between councillors and officers can only be based upon mutual trust and understanding of each other's positions. This relationship and the trust which underlies it must never be abused or compromised.⁴³

41 DCLG "Community Right to Reclaim Land", 2014 (<https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-reclaim-land>)

42 Turley and Wilson, op cit

43 Barclay, C. *Do Councillors Have to Follow the Advice of Officers in Taking Planning Decisions?* (House of Commons Library, 2012)

The briefing paper indicates that the precise circumstances in which councillors should ignore officer advice in planning matters are not always clear and that significant doubt exists. However, the paper quotes Local Government Association advice to the effect that:

The courts have expressed the view that the [planning] committee's reasons should be clear and convincing. The personal circumstances of an applicant, or any material or non-material considerations which might cause controversy, will rarely provide such grounds.⁴⁴

What is clear is that decisions that are taken by councillors that run contrary to the NPPF or to contractual obligations may be challenged. Nevertheless, the briefing paper cited above also suggests that the new NPPF framework may offer more scope for councillors to take independent decisions than was previously the case. In terms of behavioural standards, many councils publish advice for councillors setting out the standards to be observed at both pre-application and post-application stages, in relation to voicing of personal opinions and such matters as lobbying.⁴⁵

Research in 2002⁴⁶ raised a number of issues for councillors involved in partnership working which have relevance for those engaged in planning work involving relationships with developers:

- a lack of training in some cases, leading to an imbalance in knowledge between councillors and partners;
- lack of time (councillors are not full-time players);
- a sense of being undervalued relative to external partners in terms of lack of remuneration; and
- a sense that partners do not understand the importance of the electoral mandate, and therefore see opposition or objections as obstructive.

Briefing material on planning matters is made available to councillors by the Planning Advisory Service in England⁴⁷ and by local providers. However, such briefings admit that decisions can be "difficult" and involve "balancing economic, social and environmental needs". Arguably, the issues are political rather than technical, although technical training is seen as important and for a variety of reasons not always as available in practice as it might be.⁴⁸

The issues facing elected members and questions of resolving them in favour of best practice are discussed in the context of the developer and local authority interviews.

Key issues and observations

This review has identified a number of issues and questions that are relevant in terms of developer/LPA relationships and which figure later in the paper in the context of interviews with developers and local authorities and subsequent analysis. These are set out briefly below:

44 Ibid

45 Redcar & Cleveland Borough Council *Local Guidance for Councillors and Officers Dealing with Planning Matters* (2009) ([http://www.redcar-cleveland.gov.uk/rbcweb.nsf/88F2349B8683BD4380256C7E00325474/\\$File/Local%20Guidance%20for%20Councillors%20and%20Officers.pdf](http://www.redcar-cleveland.gov.uk/rbcweb.nsf/88F2349B8683BD4380256C7E00325474/$File/Local%20Guidance%20for%20Councillors%20and%20Officers.pdf))

46 Wilkinson, M and Craig, G *New Roles for Old: Local Authority Members and Partnership Working* (Joseph Rowntree Foundation, 2002) (<http://www.jrf.org.uk/sites/files/jrf/1842631101.pdf>)

47 Planning Advisory Service website, 2014 (www.pas.gov.uk)

48 Wilkinson and Craig, op cit

- Individual LPAs operate in very different housing markets in terms of prices, price rises, and underlying demand. Housing markets vary at a regional level, but also within localised areas, for example the West Midlands county. There is also a noticeable contrast between London, with its high and rising prices supported by overseas investment, and much of the rest of England. All this means that individual LPAs may be faced with very different market contexts within which to take planning decisions, and this could in turn affect the way in which decisions are taken and the criteria used.
- The scale of residential new-build activity as measured by housing starts and completions varies significantly between individual LPAs. This must in turn imply significantly differing workloads in terms of planning decisions. This is in fact borne out by DCLG data showing large variations in the number of major planning decisions taken within individual local authority areas. This raises issues about the level of resource that local authorities can afford to maintain in respect of planning departments. Authorities with a low throughput of decisions may find it harder to recruit and keep the requisite level of staffing than do other authorities, and may find the costs of training and facilities more difficult to justify, particularly where there are issues about charging for full cost recovery.
- According to DCLG data, LPAs vary widely in terms of the speed at which decisions are taken. While this is only one measure of best practice, and may in any case need to be qualified to take into account such factors as the more complex climate in London, it nevertheless raises questions about what does contribute to speedy decision taking and how best practice in this respect can be fostered.
- Quality of decision making is a key issue. This review has examined the DCLG data on the percentage of decisions overturned on appeal. It has been suggested that this is in part a political question, with negative decisions sometimes taken to reflect local anti-development sentiment while knowing that such a decision may ultimately be no more than a delaying tactic. Whatever the reasons in individual cases, consistency of decision making is clearly a virtue from both a planning and a developer perspective and deserves more attention.
- The degree to which developers can have certainty about local planning policy has emerged as an issue that is seen as an important criterion of best practice.
- While certainty in general is judged as important by developers, flexibility is also seen as important in the context of negotiating and renegotiating planning obligations under section 106 agreements. This involves a willingness to engage with developers under changing market conditions. It also requires the ability to undertake an objective analysis of the viability of schemes. Modelling of viability by LPAs emerges as an issue in its own right in interviews with developers. The majority of LPAs do claim to be flexible and objective in these respects.
- The introduction of the community infrastructure levy has raised questions about the degree to which it simplifies, or indeed complicates, the LPA/developer relationship. In addition, there are questions about the extent to which LPAs have fully introduced CIL and whether clarity and consistency of approach has been achieved.
- The extent to which LPAs have embraced the new NPPF framework and in particular the presumption in favour of sustainable development, along with the requirement for a local plan and the requirement to identify five years of land supply, have emerged as key issues to be explored further.
- Finally, the potential for successful resolution of tensions between elected members of local authorities and planning officers and the need to involve elected members positively in the planning process is a critical issue for all stakeholders.

Part two: What do councils and developers think?

What do councils and developers think?

The qualitative research for this project involved the use of semi-structured interviews with developers, local authorities and other representatives.

A key aim of the research was to ascertain the views of local authorities. To this end eight local authorities were identified:

- London Borough of Barnet;
- Birmingham City Council;
- Dartford Borough Council;
- Forest of Dean District Council;
- Gateshead Council;
- South Northamptonshire (Northants) Council;
- London Borough of Southwark; and
- City of York Council.

Interviews were conducted with senior staff with either a planning or a development remit. The aim in selecting the above authorities was to achieve a balance between large and small, urban and rural, Northern and Southern authorities.

To offer a contrasting perspective, three developers were interviewed on a non-attributable basis: one developer drawn from the 10 largest house builders, one medium-sized developer, and one large London housing association with a significant development programme of affordable and market housing for sale and rent.

In addition, representatives from the Home Builders Federation and London Councils were interviewed to provide a broader viewpoint.

The interviews were conducted between 1 February and 17 April 2014.

During the course of the interviews, a set of themes emerged in terms of interviewee attitudes on the key factors contributing to a successful LPA/developer relationship, and on what were the important issues with an impact on that relationship. In this there was significant correlation between the views of LPAs, developers and additional stakeholders.

What matters most?

Respondents were asked to identify the key, overarching factors making for a sound LPA/developer relationship. The most important factors to be identified by almost all LPA respondents were good personal relationships based on trust, and transparency in providing information and in communication:

The key is early communication and a good idea of the issues from both sides.

– Dartford

I think the most important thing is being able to trust each other and the information each provides. For example, information the

developer provides over viability issues.

– South Northants

One LPA identified a risk of a "them and us" relationship between authorities and developers:

If an LA produces a plan then the developer tends to say it's wrong as a knee-jerk reaction.

– Birmingham

Another LPA respondent highlighted the importance of "political alignment" in relation to basic issues such as the attitude to new development. If there was no alignment then the relationship would fail, "however nice they are to each other".

The importance of a sound relationship built on trust, and good communication, was summed up by the respondent from Birmingham City Council:

We need developers as much as they need us, and the key to success is being proactive and listening carefully to each other.

These views were echoed by developer respondents. They stressed the importance of working to shared objectives and delivering what had been promised:

A sense of both sides working to an agreed objective and then always doing what they say they will do.

– Developer

It's about a desire by the local authority to make development happen as opposed to trying not to.

– Developer

In the view of the above developer, too often local authorities had no political will to make things happen, so that there were no shared objectives, since the local authority was, in effect, using the planning process to prevent development.

Early engagement between LPAs and developers was seen as crucial to an effective relationship by both LPAs and developers. The respondent from York City Council was clear that "early engagement in the life cycle of a development" was the key element in a successful relationship. All other LPA respondents put a strong emphasis on the pre-application process and the importance of developers taking this seriously:

What we aspire to is to have planning applications submitted that respond to the issues and can speed their way through the planning process. Pre-application discussions are an obvious way to achieve this, but there must be a willingness to listen and to compromise on both sides.

– Birmingham

There was some suggestion from LPAs that developers did not always take the pre-application process seriously. One authority

respondent commented that they had had the "annoying" experience of developers "trying it on", for instance over the level of affordable housing that a scheme could support, when it was quite obvious to the authority that their assertions were not supported by the facts. Another commented: "A bad experience for us is getting information at the 11th hour." Another LPA respondent put their requirements more positively:

Willingness to listen and being prepared to be open to change and respond to comments received.

– Southwark

While the LPA respondents placed higher emphasis on the pre-application procedure, both sides of the LPA/developer relationship recognised the importance of genuine engagement and effective communication. However, one developer did suggest that for some local authorities the pre-application stage was seen as a "profit centre" rather than an opportunity for genuine negotiations, and that engagement was therefore less than useful. Local authorities may wish to bear this in mind and ensure that an understandable desire for additional fee income does not lead to a form of tokenism in terms of pre-application discussions. Clearly, cynicism among developers about the pre-application process would be an undesirable outcome.

What do local authorities look for?

Local authorities placed great stress on early engagement by developers and on submission of schemes that they considered to be appropriate:

We look for mixed, well-balanced schemes that fit city ambitions.

– York

Respect for a council's affordable housing policies was seen as particularly important:

We have policies on affordable housing and we expect developers to know these and take account of them.

– Gateshead

Schemes that had been designed with a sense of place were considered very important. LPAs were not impressed by schemes that appeared to be off-the-peg and by plans that did not respect the community:

We don't want rabbit hutches or places people won't want to live in in five years' time.

– Barnet

In addition to well-planned schemes, LPAs also wanted to feel that discussions were genuine, involving "responsiveness and flexibility" and that developers were not just going through the motions or ticking boxes:

We want them to engage and really take discussions on board.

– South Northants

One LPA commented that they had relatively few schemes

submitted that initially met their requirements and that failure to do so could "spark off difficult negotiations and delays".

Local planning authority resources

One area where there was consensus between developers and LPAs was over the need for local planning departments to be adequately resourced. One developer described adequate resourcing as "absolutely vital" and another said it was "crucial". The latter developer also referred to cuts and cost savings by local authorities as creating a situation where some planning departments could not give adequate attention even to major schemes. Another developer indicated that the use of external consultants by local authorities was acceptable in principle but that it could lead to delays in the process where such agents were not under the same time constraints/targets as planning officers themselves.

There was support for proper resourcing from LPAs and some agreement that cuts in expenditure could cause problems:

It does seem to me that one of the problems of austerity is that the capacity of planning departments is being cut severely back.

– LPA respondent

There was some support from developers for funding planning departments as part of the cost of a planning application. One developer claimed success in providing funding for LPAs to deal with particular planning applications, which enabled those planning departments to dedicate skilled staff to the schemes. The importance of dedicated staff for schemes was also highlighted by local authorities to facilitate good communication and smooth progress. It is worth noting in this context that the Home Builders Federation, while recognising the importance of well-resourced local authorities, also expressed some reservations about LPAs charging fees to achieve full cost recovery in a situation where there was insufficient competition between individual planning authorities to ensure that enhanced fees would represent value for money.

Leadership

The majority of LPAs and developers felt that LPAs should exercise leadership in the development process. Nevertheless, there was some divergence between local authorities as to whether they were leaders. While the majority believed that they exercised leadership, one saw their role differently:

We don't see ourselves as a leader; we are a small authority but we develop 100-plus units a year and thus punch above our weight...

We do like to engage early and are always willing to talk.

– Forest of Dean

One authority was equivocal, describing themselves as "one of the front runners, certainly". Another drew attention to their leadership and servicing roles.

Among the majority who saw themselves in a leadership role, there was some difference in view as to what leadership implied. To some, leadership implied early engagement with developers but with the developer providing the initial impetus to develop:

I do see us as leaders in the development process and not just reactive. We have a well received pre-app service which is well used and for which we receive positive feedback. This has helped us deliver a number of key sites.

– LPA respondent

However, most saw leadership as taking a proactive stance in promoting development:

Birmingham engages proactively with developers. The development plan is a key tool for change: the aim is to encourage developers to come up with schemes inspired by the plan.

– Birmingham

On occasions we do engage developers prior to any particular scheme being brought forward when we want a particular type of development.

– Gateshead

The developers were divided in their view as to whether LPAs should be leaders:

No, they should not. They are not resourced to lead.... Councils can demonstrate leadership by facilitating the planning process in a timely way.

– Housing association developer

The same developer drew attention to the political agenda that local authorities could have as a further reason for severely circumscribing any leadership role. The medium-sized developer did not believe that local authorities could realistically engage with developers without a scheme being on the table. However, the largest developer interviewed was of the view that a proactive leadership role for local authorities in seeking new schemes was important and should be encouraged. The Home Builders Federation concurred in this view but also pointed out that the large majority of LPA planning departments were still called "building control departments" rather than "planning development departments".

Further research might usefully enquire into the degree to which different developer perspectives are coloured by their own roles. As one respondent commented, housing associations, for example, tend to be more negative about local authority leadership because affordable housing development is intrinsically more "political", with contentious issues arising on difficult matters such as allocation policies and affordable rent levels.

A related issue was that of the importance of political leadership. The LPAs were unanimous in believing that strong political leadership was a precondition for successfully facilitating the planning process itself and even more for proactively promoting development within their boundaries.

Strong political leadership is really important.

– Barnet

Strong political leadership is a good thing. Local authorities tend to be more successful when there is strong leadership and a clear

sense of direction.

– Birmingham

Strong political leadership is very important in terms of prioritising development.

– Dartford

However, there was also an appreciation of the pressures faced by elected members and the need for professional planners to offer guidance. One LPA commented that elections tended to create a "silly season" in terms of political opposition to new development. The same authority also commented:

If officers don't put a compelling case for growth, members won't necessarily get it.

– LPA respondent

Officers did demonstrate understanding of the local pressures that members could face. One commented that the public did not usually understand the financial arguments supporting new development (such as access to the New Homes Bonus scheme) and tended to make judgments based on a "what's in it for me?" approach. In this connection, respondents linked the ability of an LPA to be "pro-development" with strong political leadership.

Perhaps understandably, individual developers did not seek to address the issue of political leadership in any detail and were if anything somewhat suspicious of the "political" role of local authorities, seeing this as potentially interfering with the objective assessment of individual planning applications. The Home Builders Federation respondent also expressed the view that LPA officers were often not confident enough in the attitude of their members to be "positive" in their own approach to new development. One developer pointed to situations where political leaders were pro-development but where their stance was undermined by individual elected members responding to anti-development sentiments among their electors.

The planning system – an obstacle to development?

The interviews tended to focus on the workings of the planning system itself and on the pros and cons of the recent reforms (discussed in section one).

Asked if the planning system itself was an obstacle to new development and hence to a positive relationship with developers, the LPA respondents were unequivocal:

It's not an obstacle. It is an obstacle to poor-quality development, and we prevent that.

– Southwark

The same authority pointed out that they had approved applications for over 10,000 new homes during the previous four years. Other LPAs were similarly confident that the system was not of itself an obstacle:

I don't think it's an obstacle; it's a process that can help development work better. It's about finding solutions.... Flexibility

is important – every site has different issues.

– Gateshead

Another LPA respondent couched their answer in terms of making the system work effectively, stressing the importance of getting people from the planning, housing and leisure teams all in one room at the same time:

In my experience the biggest thing you can do is to get all the elements in one place.

– York

Make sure policy priorities (jobs and growth) are ingrained in officers.... [It is about] jumping the hurdles before they become one.

– York

The developers interviewed were less positive. While the largest developer commented that planning could obstruct inappropriate development, they also felt that there was insufficient emphasis on making appropriate development happen in a proactive way. The housing association developer felt that the system was an obstacle, although their reservations tended to focus on the actions of individual local authorities in failing to allocate sufficient land rather than on the system itself, which they conceded could work flexibly on occasion. The other developer stressed the importance of political will, since rules and policies could be interpreted in different ways depending on whether the underlying aim was to promote or frustrate development, and indicated that too often LPAs were in fact anti-development.

The difference in perspective between LPA and developer interviewees in relation to the planning system is probably explicable in terms of the difference between an authority protecting the public interest and a developer seeking to make a particular development happen. It may be that such tensions are to some extent inevitable. However, the LPAs interviewed were clear that the process could work to the advantage of all parties and that there was a willingness within LPAs to make this happen in practice. The developers who were interviewed were more equivocal. Both LPAs and developers were keen to make the system work better.

Community infrastructure levy – good or bad?

As was noted above, questions have been raised by commentators about the impact of the community infrastructure levy. There have been suggestions that while CIL was intended to clarify and add certainty to the process of apportioning the benefits of development, it could have added a further element of complexity. This was a view voiced by one developer who suggested that failure to include affordable housing within the CIL had created "the worst of both worlds".

Of the eight local authorities approached for interview, only one (Barnet) reported that its CIL was in place. The majority expected theirs to be introduced by late 2014 or during 2015. This position coheres with reports from developers that many local authorities have not yet introduced their CIL. According to the Home Builders Federation, only around 20 authorities had one in place in February 2014.

An important feature of the post-CIL environment will be that section 106 agreements will continue to have a role for the provision of affordable housing and in some cases for funding additional items. The only interviewed authority to have its CIL in place (Barnet) commented that this could make it more difficult for members to understand which contributions came from which source. In addition, several LPAs indicated that the position would be more complicated, at least in the short term:

It will be very complicated; section 106 will remain. There will be issues about developers needing certainty from both the CIL and section 106 sides.

– Gateshead

I think there will be a bedding-in period and some problems initially.

– Forest of Dean

Another authority commented that there could be more issues concerning scheme viability in the early stages of CIL because contributions would be higher than under section 106 currently. However, the authority believed that land values would adjust over time to reflect the higher levels of contribution. Not all were convinced that CIL would make much difference to the level of contributions, in that a new business environment would dictate contribution levels:

CIL was conceived during the boom years when there was a perception that more funds for infrastructure would be available than is likely to be the case now.

– Birmingham

In spite of potential short-term problems, a number of authorities believed that CIL would ultimately create a more transparent system of funding that would benefit both LPAs and developers. The respondent from York suggested that it did not make sense to fund major infrastructure needs such as transport through a series of ad hoc section 106 agreements and that CIL would allow for city-wide ambition in terms of infrastructure provision. However, the respondent was clear that CIL "must demonstrate value for money in developers' eyes".

Interviewed developers were positive about CIL. The housing association developer operating in London was clear:

CIL has made it less complicated. I think it's a good thing.

– Developer

Given that CIL is, arguably, more complex in London than elsewhere because of the combination of the borough and GLA levies, this view is encouraging. Another developer indicated that CIL should not be abandoned in spite of the risk of complexity, on the basis that it was consistent with European practice and that it was too early to make sound judgements.

Overall, it is clear from both existing research and interview respondents that CIL has the potential to create some uncertainty for developers in the short term with regard to contribution levels, and that in some cases CIL contribution levels will have

to be monitored carefully to ensure that they do not render potential developments unviable. It may be that LPAs will wish to work to ensure that there is as smooth a transition to CIL as possible and that developers are kept informed about the likely implications for current and future schemes. The DCLG may also wish to monitor carefully the transition arrangements of LPAs to ensure that development levels are not adversely affected in the short term.

Renegotiation of section 106 agreements

Even after authorities have their CIL in place, it is clear that section 106 will still maintain an importance, although more in terms of affordable housing provision. The role of section 106 agreements has also been affected by the recession and government cuts in local authority funding. According to a BBC poll early in 2014, councils in England are holding on to £1.5 billion of unspent "community money" given to them by developers during planning talks.

An important issue was the willingness of LPAs to renegotiate section 106 agreements where changed financial or economic conditions had raised questions about the viability of a particular development scheme and hence its ability to provide a previously agreed level of affordable housing. The housing market downturn of 2008 to 2013 raised these questions in a number of cases, and, as has already been noted, the government has provided developers with the right to appeal against section 106 contributions on grounds of viability. Given previously cited evidence from the Local Government Association that most authorities do renegotiate section 106 agreements, it is perhaps not surprising that LPAs interviewed were also unanimous in expressing their willingness to renegotiate where appropriate.⁴⁹ York claimed it was always ready to renegotiate to achieve...

... a balance between things we aspire to and the economic viability of the scheme.

– York

The same authority indicated that its stipulated affordable housing targets for development schemes tended to be couched in flexible terms in any case, rather than as an immovable figure. Other authorities indicated that such negotiations were usually successful:

No particular issues so long as the developer provides us with robust information and has a realistic and co-operative attitude.

– Forest of Dean

It was clear that transparency of information provided by developers and the ability to rely on it was, in some cases, "a thorny issue". Indeed the perceived unwillingness of certain developers to engage effectively in negotiations and to provide accurate or full information was a recurring theme in the LPA interviews. Nevertheless, LPAs appeared to appreciate the link between maintaining flexibility over affordable housing levels and the ability of a scheme to move forwards where viability would otherwise be threatened:

We are flexible about negotiating the level of affordable housing and hence we are able to deliver on the ground.

– South Northants

However, two LPAs pointed out that negotiations need not always be about reducing affordable housing levels within schemes. Dartford indicated that they also negotiated affordable housing levels upwards where conditions improved. Southwark was equally very firm:

We haven't had a renegotiation to reduce the affordable housing commitment. We have reviews built in but only upward reviews.

– Southwark

It may be that the difference in emphasis between these authorities represents, in part, the relative priority given to affordable housing provision within the two authorities. Overall "flexibility on both sides" was seen as key to successful negotiations.

The developers were less confident about the willingness of LPAs to be flexible. Asked whether they expected LPAs to renegotiate, one developer replied:

Yes, but they often take a draconian approach.

Another developer described LPAs as "reluctantly flexible". It is clear that both LPAs and developers recognise the importance of flexibility, but that neither are entirely confident in the willingness of the other party to exercise it. There is clearly room for improvement in the LPA/developer relationship in this key respect.

Another LPA made the point that renegotiation, while sometimes necessitated by changed external circumstances, was not an ideal procedure for either party, and that issues about the level of affordable housing were better settled at the pre-application stage or, failing that, the application stage. Given the value of certainty for developers, one suspects that this is a view with which they would concur.

Assessing scheme viability

The issues around developers providing transparent and accurate information have already been referred to above. However, a central issue for both LPAs and developers appears to be the methodology employed by LPAs to assess viability.

Interviews with developers suggested that in their view LPA methodology for assessing scheme viability was not always sufficiently robust. One developer commented that performance was variable but improving:

I can think of five or six who knew nothing about testing viability two or three years ago but are now getting better.

– Developer

Another developer said of LPA methodology: "I'd always question it." They added the suggestion that LPAs should be more collaborative with developers in relation to viability assessments.

⁴⁹ Vincent, op cit

Interviewed LPAs did not appear complacent about their methodology or approach to assessing viability. Two always used external consultants, while one did so for larger schemes. The district valuers service was used by three of the authorities. One LPA was explicit about their reasons for using consultants:

We seek independent advice – we don't do these in-house as we are not confident we have the necessary skills.

– Dartford

On methodology and outcomes, another LPA commented:

You can argue about it... One would hope that there is some integrity... We try to be fair.

Another authority (York) indicated that there was always an element of "healthy negotiations" in relation to viability assessments. The respondent suggested that the key components of such negotiations were the aspirations of the authority, the ability of the scheme to go ahead, and the desire on both sides to build long-term relationships with each other. Another authority indicated that it preferred negotiations to a formal appeal by the developer, but that it had never lost an appeal on grounds of scheme viability.

Overall, it would appear that viability is a contentious area but that best practice implies the provision of full information in a transparent way by the developer. In addition, the willingness of LPAs to employ assessment methods that can command confidence, and to negotiate where calculation cannot be exact in practice, can assist in building mutual confidence and in reinforcing relationships that have an on-going value to both parties.

Effect of the NPPF

The impact of the National Planning Policy Framework, with its presumption in favour of sustainable development and requirements for councils to have a development plan and five years' allocated land supply, were judged to be significant by the interviewed developers and by the Home Builders Federation:

A positive effect. NPPF is driving a cultural/political change.

– Developer

Another developer considered the presumption in favour of sustainable development important in driving a more positive stance by LPAs, but suggested that some LPAs now refused to accept sustainable schemes as sustainable – instead they remained obstructive in relation to development.

The interviewed LPAs themselves appeared divided in their attitude to the NPPF. Some considered that it had encouraged them to be more positive about development and/or to engage more proactively with developers:

What NPPF has done is to encourage LAs to work hard on deliverability and viability and to take a proactive stance with developers.

– York

The York respondent pointed to increased pre-applications, more building control inspections and increased starts and completions as evidence of a positive change. However, those who considered themselves to have been "pro-development" before the introduction of the NPPF felt its impact had been more limited:

Barnet already had a pro-development perspective... It's your attitude rather than the rules.

– Barnet

We were a very pro-development authority before NPPF and still are now. In that respect NPPF didn't really make much difference.

– Southwark

The NPPF had some quite radical ideas when in draft form, but these were ironed out as it went through. In many ways it's a short summary of what we had before.

– Birmingham

When questioned more specifically about the requirement to have a local plan and five years' land allocation, LPAs were generally clear that a significant change had taken place:

The implications of five years' land supply will be very significant.

– Gateshead

[Land supply is] absolutely critical, otherwise we run the risk of appeals, judicial review, unwanted and inappropriate development, etc.

– South Northants

[Land allocation is] very important – otherwise authorities struggle to control what comes forward or to influence quality and design.

– Forest of Dean

Five years of development land is very important, but it has to be in the context of longer-term strategy [the local plan].

– York

Overall the key changes introduced by the NPPF do seem to have created an opportunity to foster stronger relationships between developers and LPAs, particularly where the latter are prepared to initiate more proactive relationships and to see the requirement to plan and to allocate land as a positive change rather than an imposition to be fought. Nevertheless, the ability of planners to take such a stance will depend on supportive political leadership. In the absence of such leadership there could be a risk of increased litigation and conflict, as developers seek to take advantage of what they see as a shift in the balance of the planning system towards sustainable development, with some LPAs resisting that change under pressure from their political leadership or local elected member opposition to specific development schemes.

The extent to which opportunities for stronger relationships will be positively taken up is not yet obvious, since a number of local authorities are still in the process of finalising their local plans. One developer commented that the lack of strong local plans on the ground was leading to "an excess of planning appeals". It was

commented that LPAs may wish to consider whether this is the case and whether action to expedite or strengthen local plans is feasible.

Neighbourhood planning and community empowerment

The introduction of a number of "rights" for local communities was discussed in section one (including the community right to build, neighbourhood planning and the community right to reclaim land).

Existing survey evidence suggests that local authorities are in general wary of the above measures.⁵⁰ The LPA interviewees for this research also showed significant equivocation about both the potential and impacts of these community empowerment measures.

There is certainly an appetite to produce neighbourhood plans. We've seen a few communities take this up so far; it could potentially snowball and it is one possible way to help defray cutbacks in capability within LAs... Will they be used to promote or frustrate growth?

– Birmingham

Neighbourhood planning has not been a very good process for us.... We are nowhere near having any neighbourhood plans.

– Southwark

We haven't had much of that in Gateshead. There are raised expectations about local involvement but nothing beyond that so far.

– Gateshead

LPA respondents appeared unsure whether community empowerment would be used to focus local opposition to development or whether it could, paradoxically, lead to unrealistic demands (for increased accommodation for the elderly, for instance) that would risk the viability of development schemes. The Forest of Dean respondent highlighted this as a risk, but also opined that the local plan could be a limiting factor on such initiatives. Similarly, the Barnet respondent suggested that developers would not be damaged by community empowerment as long as a sound local plan was in place.

No LPAs or developers had evidence of activity in relation to the community right to build, or the community right to reclaim land. Given the stringent requirements placed on those wishing to use these measures this is not, perhaps, surprising.

One of the developers interviewed suggested that fellow developers should "roll up their sleeves and get involved with communities" and that their firm had won a planning application in spite of officer opposition through getting involvement with the local community affected by the proposed scheme. Laudable as such community engagement may be, it nevertheless does appear that the government's community empowerment measures could, in some circumstances, complicate the LPA/developer relationship and even be used to focus opposition to

new development; a point made by another developer. It has also been suggested that they could divert significant resources of developers and of LPAs when the latter are already in many cases finding that their capacity is limited following cost-saving measures.

Further changes to the planning system?

LPAs were asked whether there were any further changes to the planning system that would enable them to better manage relationships with developers. Four LPAs responded by suggesting that developers should be further encouraged to undertake pre-application discussions, and one authority suggested that they should be obliged to do so. LPA respondents were clearly of the view that issues could, and should, be resolved before applications were formally submitted and relationships established early in the planning process. These responses are consistent with the strong commitment to pre-application engagement noted earlier. This may encourage developers who do not currently use pre-application discussions to do so, and may reassure those supporting pre-application discussions that there is some corresponding commitment from the LPA side.

It is interesting to note that the Home Builders Federation responded by also suggesting that more emphasis be placed on pre-application discussions. They added the further suggestion that developers could, and would, pay more for fuller informal consideration of a scheme at pre-application stage, although they were careful to avoid a commitment to full cost recovery by planning departments through enhanced fees.

The respondent from Birmingham was concerned that resources available to planning departments were being eroded in the current climate of austerity:

It does seem to me that one of the problems of austerity is that the capacity of planning departments is being cut severely back... The planning process could be a big brake on development if it is not resourced properly.

– Birmingham

Some LPAs were calling on the DCLG to monitor whether local planning departments have borne a disproportionate share of cost-saving measures, or whether their capacity has been unreasonably impaired.

One LPA (Barnet), was of the view that the judicial review period for decisions on planning applications should be shortened from six weeks at present to a month: "Judicial review can be used as a way of trying to reset policy that a segment of the community or even an individual does not like." The respondent felt that there was already a full process (including an appeal process) in place in respect of applications and that judicial review should be about the decision-making process and not about reopening planning policy decisions.

One developer suggested that LPAs should be obliged to deal with planning conditions (such as requirements for landscaping or use of specific materials) more quickly. The developer suggested that having granted planning permission within the prescribed

⁵⁰ Ibid

deadlines, LPAs would sometimes then "sit on" developer plans to discharge planning conditions. This meant further delays in starting on site for the developer. LPAs may wish to reassure themselves that performance targets are not distorting activity by shifting delays onto areas that are under less scrutiny.

Use of local authority land

It has already been noted that a large number of LPAs claim to have made their own land available to encourage, or facilitate, new development schemes, and that most intend to do so in the future.⁵¹

The interviews with LPAs were consistent with the above evidence. All those responding on the question of use of land for development, with the exception of one authority, did use land where they believed it would facilitate schemes to be brought forward and implemented.

It depends on the sites and locations and our plans for that area. We have plans to deliver 19 sites that otherwise wouldn't be developed. This is via a joint venture – we provide the land but receive profit (after the developer has taken their profit) to plough back into future development.

– Gateshead

Yes, we do that. I think we always have and are always looking for innovative solutions.

– Birmingham

York confirmed that it used much of its land for new social housing, but that additional land was used for land swaps to add value and get schemes started.

It was clear that LPAs were constrained by how much land they had available, and that this varied widely between authorities. Southwark confirmed that it was, comparatively, one of the biggest local authority landowners, but Forest of Dean indicated that it tended to have only small parcels of land that were of limited interest to developers.

Two of the interviewed developers were aware of local authorities making land available – although not always at discounted prices, even for affordable housing, which was a source of frustration to the housing association developer. The LPAs themselves were conscious of the need to manage important assets properly. One developer offered an overall appraisal of the pressures on LPAs in general:

It's variable, and they are required to get best value by law, so they can end up gaming the market and missing the boat. They should focus instead on getting land out for development. However, I accept that in some areas there are competing claims – e.g. schools – and they cannot simply depreciate their assets.

It does appear that use of local authority land to foster new development is one area where fruitful co-operation between LPAs and developers can, and does, occur. Frustrations may occur

on the developer side when LPAs do not release land as cheaply as the developer would wish. However, as one LPA commented, clear communication on the legal obligations concerning best value and on the need to manage scarce assets responsibly for the long term may diffuse those frustrations.

With local authorities arguably now more able to undertake prudential borrowing and to initiate their own housing development plans, effective asset management has become more important for many. It may be that as more authorities become developers in their own right, tensions with commercial developers over land use become more frequent. Mutual understanding and communication about the pressures and motivations experienced by both sides will be important if such tensions are to be managed effectively.

Local authorities as developers

A significant number of local authorities are committed to developing homes in their own right – a recent survey suggests that 78 local authorities will build more than 15,630 homes over a period of up to 30 years.⁵² In this context the question of whether the experience of a local authority as a developer can contribute to the management of relationships with commercial developers is a relevant one.

Of the LPAs interviewed, six out of eight were either already implementing a development programme or intending to do so shortly. In three cases this was via a joint venture with a private-sector partner.

The scale of LPA development activity varied significantly, with one authority reporting a programme of 11,000 homes over a 30-year period but other LPA programmes being on a more modest scale.

There was a consensus that implementing one's own development programme could be of positive value in assisting the LPA in understanding the pressures and constraints developers face in relation to the supply of labour and materials, as well as time constraints and the costs of participation in the planning process itself:

We appreciate the constraints developers work under.

– York

Only one interviewed developer (the housing association) was aware of the scale and implications of LPA development programmes. That developer, who deals with 34 different local authorities, was sceptical that such activity by a local authority made any difference in relation to the planning process. In their view, the scale of local authority development activity was usually small and normally involved the authority using its own land, so that the parallels with commercial development were limited.

Overall, it seems that possession of a development programme does offer an LPA the opportunity to become more aware of

51 Ibid

52 Kate Youde "Councils to Build 15,000 Homes" in *Inside Housing*, 17 April 2014 (<http://www.insidehousing.co.uk/development/councils-to-build-15000-homes/7003291>).
article?utm_medium=email&utm_source=Ocean+Media+&utm_campaign=4005361_IH-development-170414-LR&utm_j=1HH2,2DUK1,7UMP3C,8NPN1,1)

some of the issues facing commercial developers, notably over the planning process itself. The importance of this "consumer perspective" should not be overrated. Nevertheless, some LPA respondents wanted to take the opportunity to inform their management of the planning process with feedback from development colleagues, and to use that feedback to gain a broader understanding of the pressures faced by their developer clients.

'Cutting-edge' practice by LPAs

LPAs were asked to give examples of their practice that they considered to be "innovative" or "cutting-edge". It is interesting that more than half of the various examples of cutting-edge practice put forward by LPAs focused on facilitating better LPA/developer communication. This appears to reinforce the perception of both LPAs and developers that good communication is a key element of an effective working relationship.

York has evolved a "development team approach". This involves bringing the various council departments with an interest in the planning process (such as planning, housing and leisure) together "in one room" and ensuring that there is one effective point of contact. Forest of Dean has used the South West Design Review Panel to examine a scheme that had reached an impasse between planners and developer. The SWDRP is managed by Creating Excellence and is one of eight such panels affiliated to the Commission for Architecture & the Built Environment. The LPA claimed that the intervention of the SWDRP had resulted in a better-designed scheme and proved much cheaper and more productive than going to appeal.

Gateshead was again focused on good communication:

We pride ourselves on our good relationships with developers. We have biannual user groups of people who use the service regularly. These highlight changes of policy or approach and enable us to consult quickly on new ideas/proposals.

South Northants has established "member sounding boards" – a group of lead councillors who involve themselves with developers at pre-application stage and beyond. These have been very positively welcomed by developers, but are also indicative of the good relationship that exists between officers and members.

Not all examples of innovative practice were directly concerned with communication. Southwark believed that its approach to regeneration had been innovative:

The regeneration arm we have has done all sorts of things – notably partnerships with developers and registered social landlords. We tried a number of models for these. We also have some good practice in planning performance agreements.

Birmingham has reacted to the climate of austerity and limited resources by involving developers on a "collaborative responsibility" basis. The occasion has been the development of a strategic spatial plan for the local enterprise partnership. Developers had been fully involved in the working groups for the project, including chairing some groups. The LPA believes that

involving developers in a collaborative approach has increased understanding and led to more positive relations.

Barnet has established a joint venture (with Capita) to outsource planning and regulatory services and claims that this approach has allowed for significantly higher investment in the planning process than would have been possible from limited council funds.

The examples offered by interviewed LPAs do not of course exhaust the range and depth of innovative practice by the authorities. Nevertheless, among the interviewed local authorities at least, there is a genuine belief that good communication is important in fostering sound and productive relationships between themselves and developers. Common practice included using new forums for making communications across departments, or involving both members and officers, easier. Other LPAs established new or used existing bodies (including bodies independent of the authority itself, such as the SWDRP) in order to resolve contentious issues and avoid the planning appeal process or litigation.

Cross-boundary working

LPAs, developers and other stakeholders were asked what issues were raised by schemes that involved working across local authority boundaries and whether such working was a common occurrence. The Home Builders Federation commented in general terms that since the abolition of regional spatial strategies, local authorities had become more insular. One developer had experienced difficult situations where local authority attitudes to a development scheme did not cohere and commented:

They all need to understand the objectives of the scheme and set aside their baggage.

– Developer

However, overall, interviewed developers gave the impression that cross-boundary working was rare and that it therefore did not feature highly among the factors that have an impact on the LPA/developer relationship. Similarly, the majority of LPAs indicated that this was not a frequent occurrence.

The LPAs felt that they had adequate processes in place underpinned by the statutory "duty to co-operate". Such processes included signing "cross-boundary planning performance agreements". These covered timetables, consultation, member involvement and other issues. One authority commented that relations between authorities were usually positive but that they were made easier when there was a "shared vision". Another indicated the importance of the policies of the different LPAs being "aligned".

One authority indicated that a potential pitfall was the temptation of "pushing your rubbish over the border". The interviewee was referring to a tendency among some authorities to try to keep the benefits of new development (such as increased council tax) while shifting the costs or disbenefits onto the neighbouring authority. The HBF referred to this practice in similar terms. It is perhaps not surprising that no LPA admitted to such proclivities.

Overall, the interview responses suggested that in some instances the failure of local authorities to achieve a common stance on a particular scheme could create issues that complicated the LPA/developer relationship. However, the impression given by both local authorities and developers were that cross-boundary working is relatively rare and that relationships between authorities are successfully managed in the majority of instances. The key attributes of successful relationships appear to be good communication, flexibility, and shared approaches to particular schemes.

External agencies

In the context of improving LPA/developer relations, the interviewees were asked how relations with external agencies like the Greater London Authority and the Homes & Communities Agency could be improved. Respondents chose in the main to focus on these agencies. LPAs and developers were generally positive about both (though not all had experience of both). Overall, the GLA was probably seen more positively:

The GLA are excellent: a breath of fresh air.

– Developer

We have really good relationships with the GLA.

– Barnet

Attitudes to the HCA were more measured but generally favourable. The difference in attitude may in part be accounted for by the broad strategic role of the GLA in promoting new supply across London and by its ability to intervene to secure development in situations where relations between planners and developers have reached deadlock on major schemes. However, intervention to overturn LPA opposition to development would not be guaranteed to make the GLA popular with that authority. In contrast, the role of the HCA is more circumscribed and focused on affordable housing, and therefore less likely to excite strong feelings or controversy.

There was little sense from respondents that either agency had much of a direct impact on LPA/developer relations, although one London authority did opine:

The fact that developers need to negotiate with the mayor's office as well as us can cause complications. It doesn't usually turn into a major problem, but there is always the risk of confusion.

– Southwark

Overall, respondents gave the impression that while relations between themselves and the two agencies were important in themselves, their impact on LPA/developer relations was usually limited.

Conclusions and recommendations

Conclusions and recommendations

The conclusions and recommendations that follow have been developed from the interviews with the LPAs, developers and other stakeholders as set out above. They are intended to be succinct and practical, spanning a wide range of LPA/developer relationships. Clearly, no single piece of research based on a limited number of interviews can offer definitive recommendations. LPA/developer relations are complex and no one set of relationships between a developer and a particular LPA is going to be identical to any other. Local housing markets also vary significantly, as do the operating environments for developers. In addition, developers themselves vary in terms of size, market orientation and geographical coverage. However, the interviews do offer some common experience and some interesting insights.

As has been seen, different LPAs can have very different workloads, while the local politics and attitude of members, electors and officers to development will also be specific to each authority. Nevertheless, LPA/developer relationships do exist within a common legal framework and are informed by common national planning guidance. They are usually concentrated on a particular development scheme (or possible scheme) and all are ultimately concerned with key questions about the suitability and desirability of the proposed development. To that extent these relationships do have similarities, and some general lessons can be drawn from the experience of the parties involved when those experiences are contextualised by pre-existing research and data.

Lessons for the future

Almost all interview respondents believed that good LPA/developer relations must be based on good personal relationships, which in turn should be built on mutual trust and transparency. The alternative would be a "them and us" relationship, characterised by negativity and lack of confidence.

According to interviewees, the key components of such a relationship are:

- *Policy alignment*
All parties were clear that without a common alignment of development policies any relationship was ultimately doomed to be frustrating and unproductive for both parties. Developers saw some local authorities as inherently "anti-development" and LPAs pointed to the actions of some developers in ignoring the requirements of the local plan (including affordable housing requirements) and submitting schemes that were essentially "off the shelf".
- *Early engagement*
LPAs were clear that the pre-application stage was a crucial opportunity to resolve issues early and to build relationships before a scheme was formally submitted. However, there was a perception that some developers did not take this stage seriously and simply went through the motions if they engaged at all. Information was provided late or could not be relied upon by the LPA. Developers, on the other hand, suggested that LPAs could be rigid and refuse to listen, making the pre-application stage simply

a further hoop for the developer to jump through. It was even suggested that some LPAs saw the pre-application stage as a useful source of additional revenue rather than as a way to make the planning process run more smoothly.

Recommendation 1: LPAs and developers need to work together to ensure that their policies and underlying attitudes to development are aligned and that when schemes are considered there is an attitude of listening and a willingness to respond to the requirements and constraints faced by the other party.

Recommendation 2: Early engagement at pre-application stage is important to build relationships and resolve issues prior to formal submission. However, such engagement should be genuine on both sides; developers should be prepared to submit timely, accurate information and LPAs should ensure that they are offering value in terms of flexibility and a desire to resolve issues, rather than simply prolong the process.

Local planning authority resources

Both developers and LPAs expressed the view that in the current climate of fiscal austerity, there was a risk that planning departments would become under-resourced and that this could delay and undermine the planning process.

There was a consensus between interviewed LPAs and developers that LPAs should be resourced adequately to enable them to give full attention to the progress of a scheme through the planning process. Such resourcing should involve the provision of dedicated staff with appropriate training and seniority, particularly for larger schemes.

It was noted that some LPAs made increased use of consultants to supplement in-house resources. It was felt that on occasion consultants could slow the planning process because they were under less time pressure than the planning staff themselves.

It appears that some LPAs successfully charge higher fees in order to fund the provision of dedicated high-quality staff for larger development schemes. The issue of LPAs charging for applications on the basis of full cost recovery was discussed. However, it was felt by developer representatives that there was currently an absence of competition between planning departments and that this would make it impossible to ensure value for money.

Recommendation 3: In spite of the current climate of fiscal austerity, LPAs should ensure that planning departments have adequate resources to enable them to offer dedicated and suitably qualified staff to facilitate smooth progress of development schemes through the planning process.

Recommendation 4: Where consultants are used by LPAs to supplement in-house resources, appropriate performance targets might be set and enforced to ensure that the progress of applications is not unnecessarily impeded.

Recommendation 5: LPAs may wish to consider charging enhanced fees for larger development schemes to ensure that such schemes are considered by dedicated and appropriately qualified staff. Full cost recovery by LPAs should not be introduced without broader consideration of whether there are sufficient drivers in place to ensure that fees represent best value for services provided.

Importance of leadership

There was agreement among the majority of LPAs that they should exercise leadership in the planning process. For most, this meant proactively seeking development that was appropriate and which met local requirements as expressed through the local plan, where that had been finalised. A number of LPAs claimed already to exercise leadership in this sense. Developers were divided; there was concern that local authorities were too "political" and not qualified to be leaders. The interviews suggest that with the introduction of the presumption in favour of sustainable development and related measures under the National Planning Policy Framework, LPAs may need to exercise proactive leadership if they wish to retain an element of control over the development process.

There was an understanding both among LPAs and developers that strong political leadership with a "pro-development" stance was vital for the authority to engage positively in the planning process. Existing research has identified the pressures that elected members may face from their electorate, who could be in opposition to development within their neighbourhoods. There was an understanding among interviewees that elected members frequently needed the support of the political leadership, and support plus information from officers if they were to accept the case for new development.

Recommendation 6: LPAs might consider whether they are offering sufficient leadership in the planning process, and in particular whether they are proactively seeking appropriate new development rather than simply responding to pressure from developers.

Recommendation 7: The political leadership of councils and planning officers should consider whether elected members are receiving sufficient support and information to enable them to respond positively to development needs within their local areas.

Community infrastructure levy: a bridge too far?

At the time of writing, only one interviewed LPA had its community infrastructure levy in place, and it seems that the number in use nationally is still very small. There was support for CIL among both LPAs and developers; it was seen as potentially bringing clarity for all parties and as providing a more predictable source of funding for infrastructure. Nevertheless, previous research and feedback from interviews suggests that although there is support for the new levy in principle, the retention of section 106, primarily for affordable housing, may create complications and uncertainty for developers about costs and contributions – at least in the short term, even if community infrastructure levy eventually works well after a period of "bedding in".

Recommendation 8: Following the introduction of their community infrastructure levy, LPAs should work to ensure that potential problems of delay in ascertaining the overall level of developer contributions are minimised. LPAs and the DCLG should monitor the progress of CIL as it is implemented to ascertain whether the combination of the new levy and section 106 is leading to excessive complexity within the planning process.

Section 106 issues

Section 106 agreements remain important, with an average of more than 30 such agreements made for each LPA every year. Existing survey evidence has already suggested that most LPAs are prepared to renegotiate section 106 agreements on grounds of viability (and there is now an obligation to do so). Feedback from LPA interviewees suggests that they are indeed willing to renegotiate to take account of changed market conditions, although one LPA pointed out that this need not mean reducing the affordable housing contribution; if market conditions had improved rather than deteriorated then the renegotiation could arguably be used to increase the affordable housing contribution.

There were some concerns expressed about the conduct of these negotiations. LPA feedback suggested that there is a perception that some developers are less than transparent about the information they provide around the question of scheme viability. Developers had doubts about the degree of flexibility LPAs were prepared to exercise and questioned their competence to assess viability, although the majority of interviewed LPAs made use of external consultants to assess viability because of the complexity of such assessments. There is clearly room for improvement in this aspect of the LPA/developer relationship.

Recommendation 9: In order to avoid generating cynicism and distrust within planning departments, developers should provide accurate information supporting viability assessments in a transparent way.

Recommendation 10: LPAs should consider discussing with developers their methodology and competence in relation to viability assessments in order to build confidence. Such discussions could be held when negotiations on viability with the developer concerned are not pending, if this is possible.

National Planning Policy Framework implications

A minority of interviewed LPAs considered that they had been "pro-development" prior to the introduction of the National Planning Policy Framework, so that its impact had been limited. Nevertheless the majority, along with the interviewed developers, believed that the NPPF had ushered in a change in both attitude and practice.

The key elements cited were:

- the presumption in favour of sustainable development;
- the requirements in relation to the local plan; and
- the requirement to allocate five years' supply of land.

Overall, the NPPF appears to have tipped the balance of power in favour of developers, who have strong grounds to appeal against a negative planning decision where a strong local plan and/or

a realistic allocation of land is not in place – provided that the proposed development meets the tests of sustainability as set down in the NPPF.

It appears that many local plans have not yet been finalised, so the extent of any change in the nature of the LPA/developer relationship is not yet fully apparent. Nevertheless, it does seem that a better relationship can be formed between an LPA which recognises that it cannot simply thwart development without triggering appeals, with the attendant risk of losing control over what is brought forward, and developers which can understand the policy context of LPA thinking on a particular development by reference to a robust local plan. This is not to deny that lack of strong political leadership in favour of appropriate development and local or member-driven opposition to particular developments may still cause problems.

Recommendation 11: The DCLG should maintain a monitoring overview of LPA/developer relationships in the wake of the implementation of the NPPF. In the meantime, individual planning departments themselves should ensure that there is a realistic understanding of the implications of the NPPF among the political leadership and among elected members.

Implications of neighbourhood planning and community empowerment

It is not yet clear what the extent of the take-up of these measures is at grass-roots level. Interviewed LPAs pointed to some interest in neighbourhood planning, but noted variable progress in establishing such plans. Interviews with LPAs and developers produced no positive evidence of take-up of the other community empowerment measures.

There is uncertainty among both LPAs and developers about whether neighbourhood planning could be used to focus opposition to development schemes, or whether, paradoxically, it could be used to make unrealistic demands of developers that could threaten the viability of schemes. It was suggested that a strong local plan could mitigate these potential effects, although it does appear that neighbourhood planning could complicate the LPA/developer relationship and might even divert much-needed funds of local planning departments from aspects of the planning process.

Recommendation 12: In the light of uncertainty about the implications of neighbourhood planning and other community empowerment measures, the DCLG should monitor activity carefully and commission further research in order to ascertain whether these local measures are making a positive contribution to local planning and whether they are using an appropriate proportion of the resources of local planning departments.

The planning system: needing further improvement?

The interviewed LPAs were clear that the planning system itself is not an obstacle to development – only to inappropriate development. While developers were more ambivalent, their comments tended to suggest that the system could work given a positive and flexible attitude on the part of LPAs. They also recognised that a planning system was necessary to prevent inappropriate development.

In spite of the above, there were various ideas for improving the system. These included a belief that the timeframe within which LPAs can be subjected to judicial review should be shortened and a suggestion that LPAs should be required to process planning conditions more quickly. However, the suggestion that received most widespread support was for action to ensure that LPAs and developers engage in the pre-application process earlier and more fully. This view ties in with the previously noted perception of some LPAs that developers do not always engage fully with the pre-application stage.

Recommendation 13: The DCLG should consult on whether there is scope to alter the planning process to provide a stronger incentive or a clearer requirement on LPAs and developers to use the pre-application stage earlier and more fully.

Use of local authority land in order to promote residential development

Interviews with LPAs confirmed the results of previous research, which suggested that most have used their own land to encourage, or facilitate, new development, and that almost all intend to do so in the future. However, LPAs operate under a number of constraints. Some have limited land holdings, and not all land will be suitable for residential development. In addition, there can be competing demands for land – to build new schools or provide other infrastructure or community amenities.

It should also not be forgotten that local authorities have a duty to obtain best value for their assets, and that depreciating their assets may not represent sensible corporate strategy. In the wake of the Housing Revenue Account settlement, and with a number of local authorities embarking on their own development programmes, sound asset management will contribute to an authority's prudential borrowing capacity. There was some evidence that developers did not always appreciate the constraints that a local authority may face.

Recommendation 14: As a part of building strong relationships, LPAs should make efforts to communicate the extent and nature of their land holdings to developers and other stakeholders with the aim of ensuring that the competing demands for land and the constraints on disposal that exist are understood externally.

Local authorities as developers

Local authorities are not major developers. Only 1,360 homes were completed by local authorities in 2012/13 – just 6 percent of the number completed by housing associations in the same year. Nevertheless, a significant number of authorities now have development programmes, and that number is likely to grow in the wake of the Housing Revenue Account settlement. Of the LPAs interviewed for this survey, six out of eight were either implementing a programme or intending to do so.

As one developer pointed out, local authorities do not develop on anything like the scale of medium-sized and large commercial developers and tend to focus on affordable housing using their own land, rather than building on purchased sites for the open market. Because local authorities tend to give a higher priority to applications on their own land, there is of course not the

same consumer experience as for private-sector applications. Nevertheless, running a development programme does provide a local authority development team with a "consumer perspective" on the planning process, even though the perspectives of a local authority with a modest development programme and of a commercial developer are by no means identical.

Recommendation 15: LPAs whose authority has a development programme could use the opportunity to gain access to an internal "consumer perspective" on the planning process as it operates in their area. This could offer useful additional user feedback on the local planning experience.

'Cutting-edge' practice by LPAs: the potential to share innovation

It is significant that when asked about innovative or "cutting-edge" practice, LPAs tended to focus on measures to improve communications with developers and other stakeholders. There was clearly a perception among these LPAs that improved communication could contribute towards the establishment of better relationships with developers. The variety of innovative practice was such as to raise the question as to the extent to which new ideas can be shared between different planning authorities.

Recommendation 16: The Local Government Association and London Councils should ensure that examples of innovative practice by LPAs, particularly in the field of good communication, are shared as widely as possible.

Good communication, trust and shared objectives

This research has identified a wide range of factors that can work to further, or detract, from the quality of the LPA/developer relationship. These have been incorporated into the recommendations above, and it is hoped that planning departments and the developers who deal with them will find something of use in them.

Nevertheless, in spite of the breadth of recommendations, three interrelated factors ran through the interviews with all stakeholders:

- good communications initiated at an early stage in the planning process;
- trust and transparency between the parties to planning negotiations; and
- shared objectives as to the desirability of new development and about what constitutes appropriate development.

If these three factors and nothing else were subjected to thorough review by LPAs and developers as a result of this paper, then something of value would be achieved. The importance of taking these factors seriously is aptly summed up by an LPA interviewee:

We need developers as badly as developers need us, and the key to success is being proactive and listening carefully to each other.

References

References

- Barclay, C *Do Councillors Have to Follow the Advice of Officers in Taking Planning Decisions?* (House of Commons Library, 2012)
- Burgess, G et al *Valuing Planning Obligations in England 2007/08* (Cambridge Centre for Housing & Planning Research, 2011)
- Burgess, G and Monk, S *How Local Planning Authorities Are Delivering Policies for Affordable Housing* (Joseph Rowntree Foundation, 2007) (<http://www.jrf.org.uk/publications/how-local-planning-authorities-are-delivering-policies-affordable-housing>)
- Burgess, G, Monk, S, Jones, M and Crook, T *Final Report on the Nature of Planning Constraints* (Cambridge Centre for Housing & Planning Research, 2014) (<http://www.cchpr.landecon.cam.ac.uk/Projects/Start-Year/2014/Research-on-the-nature-of-planning-constraints/Project-Report>)
- Crook, A *The Changing Delivery of Planning Gain through Section 106 and the Community Infrastructure Levy* (Cambridge Centre for Housing & Planning Research, 2013)
- DCLG "Case Study: Wokingham" on Gov.uk, 2013 (<https://www.gov.uk/government/case-studies/wokingham>)
- DCLG *Community Infrastructure Levy: An Overview* (2010)
- DCLG *Community Infrastructure Levy – Guidance* (2013) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197687/Community_Infrastructure_Levy_2013.pdf)
- DCLG "Community Right to Build", 2014 (<https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-build>)
- DCLG "Community Right to Reclaim Land", 2014 (<https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-reclaim-land>)
- DCLG "Delivering a Wide Choice of High Quality Homes" in *National Planning Practice Guidance* (2013) (<http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/6-delivering-a-wide-choice-of-high-quality-homes/>)
- DCLG "Giving Communities More Power in Planning Local Development", 2013 (<https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>)
- DCLG *Improving Planning Performance* (2013) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204771/Improving_planning_performance_-_Criteria_for_designation.pdf)
- DCLG *Laying the Foundations: A Housing Strategy for England* (2011) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7532/2033676.pdf)
- DCLG "Live Tables on House Building" (2013) (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-house-building>)
- DCLG "Live Tables on Planning Statistics", 2014 (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>)
- DCLG "Neighbourhood Planning", 2014 (<https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/neighbourhood-planning--2>)
- DCLG *Section 106 Affordable Housing Requirements – Review and Appeal* (2013)
- Greater London Authority *Homes for London: The Draft London Housing Strategy 2013* (2013) (http://www.london.gov.uk/sites/default/files/London%20Housing%20Strategy%20consultation%20version_0.pdf)
- Hackett, P and Heywood, A *The Case for a Property Speculation Tax* (Smith Institute, 2013) (<http://www.smith-institute.org.uk/file/The%20Case%20for%20a%20Property%20Speculation%20Tax.pdf>)
- Heywood, A *London for Sale?* (Smith Institute/Future of London, 2012) (<http://www.smith-institute.org.uk/file/London%20for%20Sale.pdf>)
- HM Treasury *National Infrastructure Plan 2013* (2013) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263159/national_infrastructure_plan_2013.pdf)
- Homes & Communities Agency *Investment and Planning Obligations* (2009) (<http://www.homesandcommunities.co.uk/investment-and-planning-obligations>)
- Improvement Service *Elected Member Briefing Note No 16: National Planning Framework 3* (2013)
- Land Registry *House Price Index 2013* (2013) (<http://www.landregistry.gov.uk/public/house-prices-and-sales>)

- London Councils *Connecting Councillors with Strategic Planning Applications – A Good Practice Guide for London* (2007) (<http://www.londoncouncils.gov.uk/policylobbying/planning/publications/councillorsplanning.htm>)
- Lyons Housing Review *The Lyons Housing Review Call for Evidence* (2014) (<http://www.yourbritain.org.uk/agenda-2015/policy-review/policy-review/lyons-housing-review>)
- Mayor of London *Guidance Note for Developers Requesting Pre-planning Application Advice* (Greater London Authority, 2013) ([https://www.london.gov.uk/sites/default/files/Guidance%20note_V7%20\(3\).pdf](https://www.london.gov.uk/sites/default/files/Guidance%20note_V7%20(3).pdf))
- Molior London *Barriers to Housing Delivery* (Greater London Authority, 2012)
- Monk, S and Burgess, D *Capturing Planning Gain – The Transition from Section 106 to the Community Infrastructure Levy* (Royal Institution of Chartered Surveyors, 2012)
- Monk, S, Clarke, A and Lyal Grant, F *Providing the Evidence Base for Housing Needs and Demand Assessments* (Cambridge Centre for Housing & Planning Research, 2011) (http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/providing_the_evidence_base_for_local_housing_need_and_demand_assessments)
- Eric Pickles "A Democratic Design for the Future of Britain's Communities" in *The Guardian*, 14 September 2011 (<http://www.theguardian.com/commentisfree/2011/sep/14/democratic-design-communities-planning>)
- Planning Advisory Service website, 2014 (www.pas.gov.uk)
- Redcar & Cleveland Borough Council *Local Guidance for Councillors and Officers Dealing with Planning Matters* (2009) ([http://www.redcar-cleveland.gov.uk/rcbcweb.nsf/88F2349B8683BD4380256C7E00325474/\\$File/Local%20Guidance%20for%20Councillors%20and%20Officers.pdf](http://www.redcar-cleveland.gov.uk/rcbcweb.nsf/88F2349B8683BD4380256C7E00325474/$File/Local%20Guidance%20for%20Councillors%20and%20Officers.pdf))
- Laurina Robertson "Reynolds Announces Measures to Help Labour Reach 200,000 Homes a Year Target" in *Inside Housing*, 14 January 2014 (<http://www.insidehousing.co.uk/reynolds-announces-measures-to-help-labour-reach-200000-homes-a-year-target/7001609.article>)
- Turley, A and Wilson, J *Localism in London: The Implications for Planning and Regeneration in the Capital* (Future of London, 2012) (<http://www.futureoflondon.org.uk/futureoflondon/wp-content/uploads/downloads/2013/05/Localism-in-London-for-web.pdf>)
- Vincent, M *Unlocking and Stimulating Housing Development: A Survey* (Local Government Association, 2012) (http://www.local.gov.uk/research-housing/-/journal_content/56/10180/3750535/ARTICLE)
- Wilkinson, M and Craig, G *New Roles for Old: Local Authority Members and Partnership Working* (Joseph Rowntree Foundation, 2002) (<http://www.jrf.org.uk/sites/files/jrf/1842631101.pdf>)
- Wilson, W *The New Homes Bonus Scheme* (House of Commons Library, 2014)
- Kate Youde "Councils to Build 15,000 Homes" in *Inside Housing*, 17 April 2014 (http://www.insidehousing.co.uk/development/councils-to-build-15000-homes/7003291.article?utm_medium=email&utm_source=Ocean+Media+&utm_campaign=4005361_IH-development-170414-LR&utm_i=1HH2,2DUK1,7UMP3C,8NPNN,1)

Appendix: Interview questions

Appendix: Interview questions

It should be noted that the semi-structured interview questions for LPAs and developers were designed to be as far as possible a "mirror image" of each other so that both sides of the relationship focused on the same issues, although from their own perspectives. The interview questions were generated to reflect issues that emerged from the review of data and existing research and were further refined and expanded following informal discussions with local authority and developer representatives.

Interview questions addressed to LPAs

Barratt Homes has commissioned the Smith Institute to undertake a project to identify best practice among local authorities in terms of their role as promoters of new development within their areas. As part of the project, a series of semi-structured interviews is being arranged with senior representatives within local authorities.

The interviews will be on an attributable basis in relation to the local authority though not the individual representative. However, interviewees can also offer non-attributable comments should they wish to do so, provided they indicate clearly that a particular comment or statement is offered on a non-attributable basis.

Interview questions for local authorities:

1. In broad terms, what do you see as the key attributes of a successful relationship between developers and local authorities?
 - a. How would you rank these attributes?
2. As a local planning authority, what do you look for from a developer in terms of:
 - a. The type of scheme (for instance the level of affordable housing provision)?
 - b. How the developer approaches you before, during and after submission?
 - c. Their attitude to the constraints imposed by the planning process/planning obligations/community infrastructure levy [CIL] requirements/council policy?
3. Do you see your local authority as a leader in the development process?
 - a. For instance do you proactively seek to engage developers prior to consideration of any particular scheme?
 - b. In what ways can local authorities exercise leadership to the benefit of the development under consideration?
 - c. How important is strong political leadership?
 - d. Does leadership involve winning the case for more housing among members and the public? Do good design and consultation play a part here?
4. How much of an obstacle to development is the planning system?
 - a. Can it be made workable for all stakeholders including developers and if so how?
5. Following the introduction of the CIL, how important do section 106 obligations remain and how can a process involving a combination of consents, section 106 and the CIL best be managed from both the local authority and developer perspectives?
 - a. How important is flexibility and in what ways can a local authority exercise flexibility?
6. Have you exercised flexibility in terms of renegotiation in relation to section 106 obligations in the context of scheme viability?
 - a. What are the key issues here?
7. How robust is your methodology for calculating scheme viability and how does this assist in terms of the CIL?
8. In what key respects has the introduction of the National Planning Policy Framework [NPPF] had an impact on your relations with developers and management of schemes?
9. How important is it to have a strong local plan and identified land for future development (such as five years ahead under the NPPF) in terms of your ability to manage the planning process while promoting appropriate development?
10. What further changes would you like to see to the planning process that would help you better manage relationships with developers?
11. Do the neighbourhood planning and community empowerment measures arising from the localism agenda have implications for the developer/LPA relationship – if so, what implications?
12. Does your authority offer its own land to promote development and does it intend to do so over the next five years?
 - a. In what circumstances and for what purposes?
 - b. How much does the ability to offer land assist in promoting development?
13. Does your local authority have its own development plan?
 - a. If so, how does your experience as a developing local authority contribute to the way you deal with commercial developers and housing associations?
 - b. Can your role as developer create tensions with your role as local planning authority – if so how can these best be managed?
14. What aspects of your practice would you consider innovative or "cutting-edge"?
 - a. How have these assisted in managing schemes and/or building relations with developers?
15. Do you often face issues of having to work across local

authority boundaries?

- a. If so, what are the opportunities and potential pitfalls?
- b. How can these best be managed?

16. How could relations with external agencies such as the GLA and HCA be improved in the context of working successfully with developers?

17. Finally, if you had to sum up in one sentence the key to your success in dealing with developers what would you say?

Interview questions addressed to developers and to other stakeholders

Barratt Homes has commissioned the Smith Institute to undertake a project to identify best practice among local authorities in terms of their role as promoters of new development within their areas. As part of the project, a series of semi-structured interviews is being arranged with senior representatives of significant developers.

The interviews will be on a non-attributable basis. This means that interviewees will not be named, nor will their organisation be identified.

Interview questions for developers:

1. In broad terms, what do you see as the key attributes of a successful relationship between developers and local authorities?
 - a. How would you rank these attributes?
2. How important is it that local authorities are well resourced in terms of skills, expertise and facilities?
 - a. What particular skills, expertise and facilities do you consider most important?
3. Should local authorities be leaders in the development process?
 - a. For instance should they proactively seek to engage developers prior to consideration of any particular scheme?
 - b. In what ways can local authorities exercise leadership to the benefit of the development under consideration?
 - c. Is political leadership important?
 - d. Does leadership include winning the case for more housing with members and the public? Are good design and proper consultation important here?
4. How much of an obstacle to development is the planning system?
 - a. Can it be made workable for all stakeholders including developers and if so how?
 - b. How important is flexibility and in what ways should a local authority exercise flexibility?
5. Following the introduction of the CIL, how important do section 106 obligations remain and how can a process involving a combination of consents, section 106 and the CIL best be managed from both the local authority and developer perspectives?
6. Do you expect local authorities to exercise flexibility in terms of renegotiation in relation to section 106 obligations in the context of scheme viability?
 - a. What are the key issues here?
 - b. How do local authorities perform in practice?
7. How robust is typical local authority methodology for calculating scheme viability and how does this affect developers in terms of the CIL?
 - a. How can local authorities improve their approach to the CIL?
8. In what key respects has the introduction of the National Planning Policy Framework [NPPF] had an impact on your relations with local authorities and the management of schemes?
9. How important is it that local authorities have a strong local plan and identify sufficient land for future development (such as five years ahead under the NPPF) in terms of their ability to manage the planning process while meeting your needs?
10. What further changes would you like to see to the planning process itself that would help you better manage relationships with local authorities?
11. Do neighbourhood planning and the community empowerment measures associated with the localism agenda have implications for the LPA/developer relationship? If so, what implications?
12. Do most local authorities offer their own land to promote development in your experience?
 - a. In what circumstances and for what purposes?
 - b. How much does the ability to offer land assist in promoting development?
13. Do you notice any difference between local authorities who have their own development programme and those who do not?
 - a. If so, how do developing local authorities perform better in dealing with commercial developers and housing associations compared to non-developing authorities?
 - b. Can the local authority role as developer create tensions with you as a developer when the authority acts as the local planning authority – if so how can these best be managed?
14. Have you come across aspects of local authority practice that you would consider innovative or "cutting-edge"?
 - a. If so, how have these assisted in managing schemes and/or building relations with developers?
15. Do you often face issues of having to work across local

authority boundaries?

- a. If so, what are the opportunities and potential pitfalls?
- b. How can these best be managed from the developer perspective?

16. How could relations between local authorities/developers and external agencies such as the GLA and HCA be

improved in the context of successful co-operation between local authorities and developers?

17. Finally, if you had to sum up in one sentence what makes a successful relationship with a local authority what would you say?

The Smith Institute

The Smith Institute is an independent think tank which provides a high-level forum for thought leadership and debate on public policy and politics. It seeks to engage politicians, senior decision makers, practitioners, academia, opinion formers and commentators on promoting policies for a fairer society.

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