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Stalled Sites and S106 Agreements

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This research was prepared for the Welsh Government by:

Hyder Consulting (UK) Limited | HCL House, Fortran Road, St Mellons Business Park,
St Mellons, Cardiff CF3 0EY, United Kingdom
enquiries: Tel: +44 (0)29 2092 6700 | Fax: +44 (0)29 2079 9275 |
www.hyderconsulting.com

E-mail: planning.directorate@wales.gsi.gov.uk
Planning web site: www.gov.wales/planning

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Introduction

Study Aims

Hyder Consulting Limited (now Arcadis) was appointed by the Welsh Government in February 2015 to undertake research into stalled sites and Section 106 (S.106) agreements. Arcadis were assisted in the research by Barton Willmore. The aim of the research is to *‘identify and quantify all sites that are stalled as a result of issues relating to a S.106 agreement, to examine the reasons why these are stalled and make recommendations to address these issues.’*

It is intended that the results of the research will inform work that is being taken forward as part of the Welsh Government’s *Positive Planning* proposals, which the then Minister for Housing and Regeneration has stated will be the *‘foundations of a resilient planning system that delivers the growth, jobs and infrastructure required by Welsh communities’* (taken from a speech to the RTPI Cymru Planning Conference 2014).

For the purposes of this research, stalled sites have been defined as sites either:

With planning permission and a S.106 agreement in place; or

A resolution to grant planning permission

that have not been implemented for at least a year.

Where a site has outline permission and a S.106 agreement in place, but has not been implemented on site within a year (whether or not reserved matters applications have come forward), these sites have also been included as ‘stalled’.

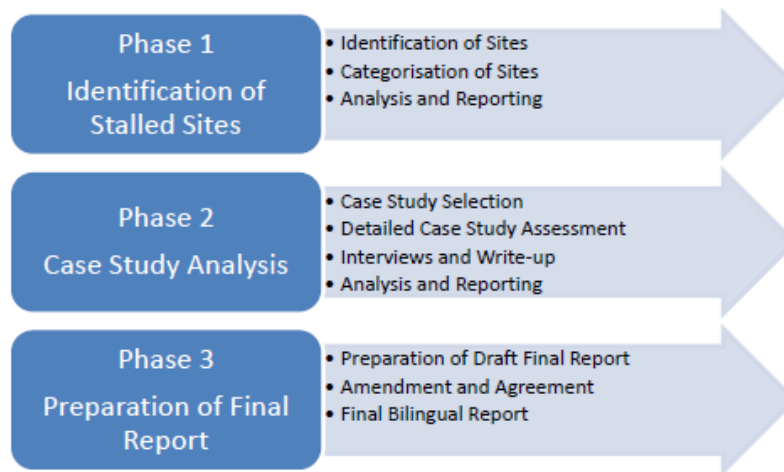
S.106 agreements are made under Section 106 of the Town and Country Planning Act 1990 and are legally binding private contracts between a developer (or number of interested parties) and a Local Planning Authority (LPA) that operates alongside a statutory planning permission¹.

Research Process

This research study has comprised three phases, which are summarised in **Figure 1.1** below. Phase 1 entailed the identification and categorisation of stalled sites across Wales, including an analysis of stalled sites for each LPA and an assessment of the relationship of stalled sites to S.106 agreements. Phase 2 involved a more detailed assessment, including the selection of twenty case studies within Wales, a process of interviews with relevant parties (to provide not only planning, but also legal and developer/agent perspectives) and subsequent analysis of findings. The final phase of the study brings the various elements of research together into this Final Report, identifying key themes and issues as well as conclusions and recommendations.

¹ Planning – Section 106 agreements, Quick Guide, National Assembly for Wales July 2015

Figure 1.1: Study Process



Policy and Research Context

The Welsh Government's policy on S.106 agreements is currently set out in Planning Policy Wales (section 3.7) with procedural advice set out in Welsh Office Circular 13/97 Planning Obligations (1997). The tests that S.106 agreements are required to comply with are set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Over time the scope, and range of S.106 contributions, has expanded significantly, with the application of the tests within the Circular which are not legally binding being "stretched". The stretching of S.106 requirements arose in a growing economy where developers invariably accepted these requirements in order to secure planning permission. Additionally, within the constantly improving economy and property value increases (pre-recession) many of these costs could be absorbed by development. However, with the recession in 2008 and the slow recovery since, S.106 requirements are a major issue for the delivery of development.

The Planning (Wales) Act 2015 and Positive Planning reform agenda is seeking to streamline the planning system and also facilitate a more positive, transparent and consistent system. In particular, Technical Advice Note 1 (TAN 1, January 2015) omits sites where S.106 agreements have been delayed by over a year from housing land supply figures as part of the Joint Housing Land Availability Study process. Accordingly, the effects of stalled sites will not only be felt by applicants, but also by LPAs.

The Community Infrastructure Levy (CIL) is a planning charge which came into force on 6th April 2010. CIL, which is non-devolved, allows LPAs in England and Wales to raise funds from developers undertaking new building projects in their area and the money can be used to fund a wide range of infrastructure needed as a result of development. The levy is considered to create a fairer system, as it will require all but the smallest building projects to make a contribution towards additional infrastructure (research in England identified that, under the current system of planning obligations, only 6% of all planning permissions contributed to the cost of supporting infrastructure)².

CIL is proposed to work alongside development specific planning obligations. For example, affordable housing cannot be funded through the levy, but should continue to be sought through S.106 agreements. Guidance produced by the Department for Communities and Local

² Sheffield Hallam University research

Government (DCLG)³ identifies that, in order to ensure that planning obligations and CIL can operate in a complementary way, limitations must be placed on the use of planning obligations. Guidance produced by Welsh Government states that 'whilst LPAs are not bound to introduce charging schedules and may continue to rely on planning obligations to provide necessary infrastructure, their ability to do so may be limited going forward'⁴; planning obligations designed to collect pooled contributions from five or more developments may not be used to provide infrastructure which could be funded from CIL. Three local authorities in Wales have a charging schedule in place (as at July 2015) which are Rhondda Cynon Taff, Merthyr and Caerphilly; Cardiff and Monmouthshire both have a preliminary draft charging schedule published for consultation.

In England, the DCLG are bringing forward proposals to speed up S.106 negotiations. In the Autumn Statement 2014 and the National Infrastructure Plan 2014 the former UK Government said that it would take further measures with respect to S.106 negotiations to speed up the end-to-end planning process in England⁵. Specifically this would include issuing revised guidance, consulting on a faster process for reaching agreement, considering how timescales for agreement could be introduced, and improving transparency on the use of S.106 funds.

A consultation, S.106 planning obligations - speeding up negotiations, was published on 20 February 2015. The consultation sought views on proposals on two issues:

Speeding up the negotiation and completion of S.106 planning obligations; and

Whether the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation.

The briefing note as referenced above identifies that proposals to speed up negotiation of S.106 obligations included:

setting clear time limits so S.106 negotiations are completed in line with the existing 8 to 13 week target for planning applications to be processed rather than letting them slow the whole planning process down;

requiring parties to start discussions at the beginning of the planning application process, rather than the current system where negotiations can often start towards the end;

a dispute resolution process where negotiations stall preventing development;

using standardised documents to avoid agreements being drafted from scratch for each and every application; and

potential legislation in the next Parliament.

The former UK Government responded to the consultation on 25th March 2015 and confirmed that it would make changes to the National Planning Practice Guidance (NPPG), to promote the use of standard clauses and promote greater use of pre-application engagement by all parties. This is now incorporated as Paragraph 25 of NPPG⁶. It said that responses indicated that the

³ <http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/other-developer-contributions/>

⁴ Community Infrastructure Levy – A Guide to the Production of a Charging Schedule (Welsh Government 2011)

⁵ <http://researchbriefings.files.parliament.uk/documents/SN06418/SN06418.pdf>

⁶ <http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>

Government should also consider further a basis for strengthening the legislative framework for resolving delays in negotiating S.106 agreements.

In the HM Treasury's July 2015 Productivity Plan, 'Fixing the Foundations: Creating a more Prosperous Nation', the Government announced its intention to introduce a dispute resolution mechanism for S.106 agreements, in order to "speed up negotiations and allow housing starts to proceed more quickly."

In Wales, findings of research undertaken into the planning permission process for housing (Welsh Government 2013) indicated that there are a number of common problems and barriers within the existing planning system that result in delays in the delivery of planning decisions for housing. Key findings from the report that relate to S.106 agreements and processes included that:

there is little evidence of S.106 Heads of Terms being discussed at the pre-application stage;

there is inconsistency over how S.106 requirements are applied, particularly for affordable housing schemes;

it is 'the norm' for S.106 Heads of Terms to be finalised following committee resolution to grant planning permission, which can involve lengthy negotiation; and

S.106 agreements often take many months to be agreed and signed.

Conclusions of the research in relation to S.106 agreements included that Heads of Terms for S.106 agreements should be provided with the application and that committee resolutions should only be made where clear Heads of Terms have been provided; and that applicants should pay a fee to process the S.106 agreement, with a strict timetable proposed for the signing of the agreement within three months of payment, or the Committee resolution would lapse.

Report Structure

This report is structured as follows:

Chapter 2 sets out the research methodology that has been used in more detail;

Chapter 3 provides an overview of stalled sites across Wales, including various approaches taken by individual LPAs and of the case studies;

Chapter 4 considers the reasons behind sites becoming stalled, focusing on a number of key themes that have emerged during the course of the research and making suggestions for consideration; and

Chapter 5 provides conclusions and a summary of considerations.

Research Methodology

This chapter describes the methodology that has been used to undertake each phase of the research.

Phase 1 - Identification of Stalled Sites

The aim of Phase 1 was to carry out desk-top research to identify all stalled sites in Wales and to categorise them by the type and size of development, location, whether on greenfield or brownfield land and whether in high, medium or low value areas.

Use of the Glenigan Database

In order to identify potential sites, the Glenigan database was used as a starting point. Glenigan is a private sector provider of development market information, tracking all UK planning applications through the decision-making process and to completion on site. Interrogation of the database provided initial details of potentially stalled projects by LPA across Wales.

Utilising the database had a number of advantages, not least that it circumvented the need for LPA officers to provide potentially time-consuming and complex amounts of data themselves. Previous pieces of research into planning obligations, such as that undertaken by David Lock Associates in May 2014⁷, revealed relatively low response rates from LPAs – in the case of the DLA research, all LPAs in England were surveyed with a response rate of only 40% achieved. Moreover, in previous research undertaken by Hyder for the Welsh Government into the consenting process for planning applications for renewable energy projects, delays to the research process were caused through the lengthy time required to request detailed data direct from LPAs. Use of the Glenigan database to create an initial list of potentially stalled projects within each LPA therefore provided information in a timely manner.

The search criteria for the Glenigan database included:

All planning applications in Wales granted between 05/03/2010 and 05/09/2014 (i.e. planning permissions which are over six months old), and excluding sites which are complete or that have commenced on site and

For a longer period of time (05/03/2000 - 05/09/2014) planning applications which have been reported to Committee but for which no planning permission has subsequently been granted.

The search for applications was not restricted to proposals for residential development.

The initial search identified a total of 595 potentially stalled sites across Wales. For each application, the database provided key information including LPA, planning application number, site address, development description, planning stage, anticipated construction start date and latest information (commentary by the Glenigan research team which is updated periodically). The initial list was then reviewed and any sites that did not fit with the stalled sites definition were deleted (for example where the commentary provided by the Glenigan research team revealed that construction on site had commenced).

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314066/Section_106_Planning_Obligations_in_England_2011-12_-_Report_of_study.pdf

Following this, more detailed information on individual planning applications was obtained using LPA websites. For each LPA the following information was gathered where available for each potentially stalled site:

Planning application number

Type of application (Full, Outline, Reserved Matters);

Full address (including postcode) and description of the development;

Whether on greenfield or brownfield land;

Validation date;

Decision date/ resolution to grant subject to S.106;

Whether the application was subject to a S.106;

Dates of draft Heads of Terms; and

Any other relevant information that may assist in understanding why the application may be stalled.

The availability of information from individual LPA websites was variable, with some providing full information and others being limited to only key dates.

Local Planning Authority Verification

A list of potentially stalled planning applications, including the detailed information outlined above, was then provided to each LPA for verification. LPAs were asked to check that individual lists corresponded with their own records of stalled sites, to confirm the details for each planning application where possible, to provide any additional information that they may be aware of on a site by site basis and to identify any stalled sites within their area that appeared to be missing from the list.

In order to maximise response rates, an initial letter was sent to each LPA by Welsh Government outlining the nature of the research, following which LPAs were contacted separately by members of the research team to provide more detailed information and to further explain the process.

All of the 25 Welsh LPAs responded positively to the request to verify and comment on the planning application data for potentially stalled sites. The planning officers were able to inform the study by noting the position with respect to S.106 agreements, known issues facing developers and/ or the process and where developments were now under construction and should therefore be removed from the list.

During the engagement with the LPAs, the following additional areas were covered in order to provide context to the data analysis and findings:

Staffing arrangements, for example whether the LPA has a dedicated S.106 Officer;

Procedures for interaction with the legal department;

Procedures relating to members/planning committees with regard to S.106 agreements (for example training of members);

Delegated authority arrangements to refuse planning permission if the S.106 agreement is not signed within a set time period;

Whether Heads of Terms are agreed before the date of the Planning Committee which will consider the application; and

Other issues that could inform best practice.

Categorisation of Sites

The verified data provided a list of stalled sites for further analysis, including details of those sites where S.106 agreements are applicable. From the verified data, any planning applications that were known to have been implemented or where construction had started on site, were removed from the long list. Furthermore, any sites that had not been implemented but where the length of time since the decision notice was less than one year, were also removed. The 31st March 2015 has been used as the reference point for the year.

The stalled sites were then categorised according to:

Type and size of development;

Whether the site is on greenfield or brownfield land;

Whether the site is in an urban or rural location.

Phase 2 – Case Study Selection and Analysis

Phase 2 involved the selection of a representative sample of schemes for further detailed analysis as to why they have stalled. Case studies were proposed to be taken from a small proportion of LPAs in Wales. This approach allows for a more in-depth exploration with officers as to the reasons behind sites becoming stalled, enabling an examination of where things have gone well in addition to where sites have not progressed as planned within the same LPA, together with the reasons why this may be the case. Table 2.1 sets out the LPAs within Wales against a range of criteria, namely:

Geographical spread (north, mid, south west or south east wales);

Predominantly urban or rural authorities;

LPAs with a dedicated S.106 Officer;

LPAs which have delegated authority or a set time period within which S.106 agreements must be signed;

The number of stalled sites within each LPA where a S.106 is relevant;

Stalled sites as a proportion of the total number of applications received per year (based on 2014 quarterly returns⁸);

The status of the Local Development Plan (LDP).

⁸ <http://gov.wales/topics/planning/planningstats/development-management-quarterly-survey/?lang=en>

Table 2.1: Analysis of Local Planning Authorities against Criteria for Selection as Case Studies

LPA	Geographical Spread (North/South West/ South East/ Mid)	Urban/ Rural	S.106 Officer (Yes/No)	Delegated Authority / Set-Time Period for signing S.106 agreements (Yes/No)	Number of Stalled Sites where S.106 is relevant	Stalled Sites as Proportion of Total Applications per Year	Status of Development Plan
Isle of Anglesey	N	R	No	No	13	1.75%	Post-Deposit
Blaenau Gwent	SE	U	No	No	2	1.30%	LDP adopted 2012
Brecon Beacons NPA	Mid	R	No	-	3	0.62%	LDP adopted 2013
Bridgend	SE	U	Yes	No	2	0.67%	LDP adopted 2013
Caerphilly	SE	U	No	No	17	1.99%	LDP adopted 2010
Cardiff	SE	U	-	-	20	1.36%	Examination
Carmarthenshire	SW	R	Yes	Yes	13	1.52%	LDP adopted 2014
Ceredigion	Mid	R	No	Yes	3	2.31%	LDP adopted 2013
Conwy	N	R	No	No	2	0.93%	LDP adopted 2013
Denbighshire	N	R	No	No	5	0.85%	LDP adopted 2013
Flintshire	N	U	No	Yes	13	2.04%	Pre-deposit
Gwynedd	N	R	No	No	7	1.93%	Post-deposit
Merthyr Tydfil	SE	U	No	No	2	2.74%	LDP adopted 2011
Monmouthshire	SE	R	No	No	4	0.57%	LDP adopted 2014
Neath Port Talbot	SW	U	No	Yes	2	0.72%	Post-Examination

LPA	Geographical Spread (North/South West/ South East/ Mid)	Urban/ Rural	S.106 Officer (Yes/No)	Delegated Authority / Set-Time Period for signing S.106 agreements (Yes/No)	Number of Stalled Sites where S.106 is relevant	Stalled Sites as Proportion of Total Applications per Year	Status of Development Plan
Newport	SE	U	Yes	Yes	11	1.72%	LDP adopted 2015
Pembrokeshire	SW	R	No	Yes	19	3.05%	LDP adopted 2013
Pembrokeshire Coast NPA	SW	R	No	-	6	3.64%	LDP adopted 2010
Powys	Mid	R	Yes	No	6	1.50%	2 nd Deposit
RCT	SE	U	No	No	14	1.65%	LDP adopted 2011
Snowdonia NPA	N	R	No	Yes	5	1.62%	LDP adopted 2011
Swansea	SW	U	No	No	4	1.01%	Pre-Deposit
Torfaen	SE	U	Yes	Yes	3	1.06%	LDP adopted 2013
Vale of Glamorgan	SE	R	Yes	No	4	1.20%	Post-Deposit
Wrexham	N	U	No	Yes	4	1.10%	Pre-Deposit

Selection of LPAs for Inclusion

It was determined that LPAs should be representative of the following:

An appropriate geographical spread across Wales (North, South West and South East and Mid Wales LPAs);

Inclusion of at least one National Park Authority;

Inclusion of both urban and rural LPAs;

Inclusion of LPAs that represent a variety of approaches to S.106 agreements (those with and without a S.106 Officer; those with and without either delegated authority/set time periods within which a S.106 must be signed);

Inclusion of LPAs at a variety of stages in the LDP process.

Seven LPAs were selected across Wales for inclusion in Phase 2. The reasons behind selection of individual LPAs within each of the Welsh regions is summarised below.

North Wales

In identifying one urban and one rural North Wales LPA for inclusion:

The two urban LPAs, Flintshire and Wrexham, have similar characteristics as shown in **Table 2.1**, in that neither LPA has an adopted LDP, neither LPA has a dedicated S.106 Officer and both LPAs have set time periods for signing S.106 agreements. **Flintshire** was proposed for inclusion as a case study LPA as a result of the slightly higher proportion of stalled sites.

Of the predominately rural LPAs in North Wales, **Conwy** was selected for inclusion for case study purposes. Conwy is one of the three North Wales LPAs with an adopted LDP; and whilst the County Borough does not have a dedicated S.106 Officer, there is an officer with general S.106 responsibilities within a wider role and in addition there is an active quarterly S.106 monitoring group. The number and proportion of stalled sites is relatively low, and case studies from the LPA could potentially identify if the procedures for dealing with S.106 agreements assist this.

Mid Wales

Of the two Mid Wales LPAs, Powys and Ceredigion, **Ceredigion** was selected for inclusion given that the LPA does not have a S.106 Officer in place and that the proportion of sites that are stalled is higher than for Powys.

South-West Wales

In identifying urban and rural South West Wales LPAs for inclusion, it was proposed to include **Pembrokeshire** by virtue of the fact that it is both a rural authority and has one of the highest proportions of stalled sites compared to the total number of applications per year (3.05%).

South-East Wales

The three large urban areas of Swansea, Cardiff and Newport each have a roughly similar proportion of stalled sites (1.01%, 1.36% and 1.72% respectively). Of the three, only Newport has an adopted LDP. **Newport** also has both a dedicated S.106 Officer and a set time period

for signing S.106 agreements, together with a reasonable number of potential case studies, hence its inclusion as a case study LPA.

In addition, it was considered potentially interesting to include an LPA both without a S.106 Officer and without a set time period for signing S.106 agreements. Of the South-East Wales LPAs, this relates to Blaenau Gwent and Caerphilly; **Caerphilly** has been selected as a case study LPA because, of the two authorities, it has the slightly higher proportion and higher actual number of stalled sites.

National Park Authorities

Given the inclusion of Pembrokeshire County Council as a case study LPA, it was not considered appropriate to also include the Pembrokeshire Coast NPA. Further, the Brecon Beacons NPA has a very small number and proportion of stalled sites. It was therefore proposed to include the **Snowdonia NPA** as a case study LPA.

Overview of Individual LPAs

Within each of the seven LPAs selected for inclusion, a meeting was held with relevant planning officers in order to obtain an overview of the following areas:

The planning and legal team resources and processes for dealing with S.106 agreements

Procedures for monitoring of progress

Use of standard drafts and approach to elements included in agreements

Viability assessments – how they are assessed by the LPA, training and knowledge, members involvement

Discussion around the key issues in the process that may hold up the signing of a S.106 agreement and/ or implementation on site

Use of set time periods and potential for fees and how might this be agreed and enforced

Identification of issues that could inform best practice

Case Studies

The study brief required around 20 case studies to be examined as part of the research and that these should include:

Eight examples where there has been a long delay between the resolution to grant planning permission and the signing of the S.106;

Eight examples of a medium delay; and

A further four examples where there has been no delay.

Individual case studies were selected from within each of the seven LPAs detailed above. Not all LPAs identify a stage of minded to grant approval and thus for many applications, the delay has been measured as the timescale between registration of the application and a decision notice.

The following timescales have been used to categorise the level of delay for the stalled sites based on the spread of timings in the applications identified:

Long delay – more than two years;

Medium delay – between nine months and two years;

Short delay – up to nine months.

It should be noted that a category of ‘no delay’ has not been used as this is difficult to define from readily available information on applications. Moreover, the terms are relative and an application with a ‘short delay’ of eight months may still have experienced significant issues in the signing of the S.106 agreement that may be of interest to this study.

The selection process has also taken into account:

Location/ LPA area – to ensure an appropriate spread across the seven LPAs;

Type of development – the majority of sites are to be residential in line with the study brief, but some could include mixed uses and non-residential schemes to provide a differing perspective; and

Size of development – residential sites have been categorised into large (more than 100 units), medium (21 to 100 units) or small (20 units or less). The size of development is not known for all applications.

In total 24 case studies were selected to explore further (this includes contingency applications, should full information not be acquired for a number of case studies) and a table presented to the Welsh Government team identifying the selection process.

For each case study, the following investigation was then undertaken where possible in order to provide a variety of perspectives and information concerning the application:

A review of the case file;

Discussion with the Case Officer or S.106 Officer;

Discussion with the Legal Officer of the LPA;

Discussion with the applicant or agent.

During the process of investigating case studies, five of the applications identified of the 24 could not be pursued further. This was due to a lack of information available on file in four of the cases and an on-going criminal prosecution relating to one development. As a result, 19 applications were investigated in-depth. **Table 2.2** overleaf shows the number of case studies investigated by each selection criteria. In a number of cases, the information for the selection criteria was not known until the detailed analysis took place thus some sites changed category.

It is considered that this number provides an adequate basis for the analysis and reporting as the brief required “around 20 case studies” and the individual application analysis has been supplemented by in-depth discussions with the seven LPAs, two validation workshops and a meeting with the Home Builders Federation (as discussed below).

HBF Meeting and Validation Workshops

The study team representatives attended a meeting of the Home Builders Federation in Cardiff on Monday 18th May 2015 whereby an open discussion took place on the issues and potential improvements for S.106 agreements from the perspective of the home building industry. The key issues raised in the meeting were in summary as follows:

The definition of stalled sites does not include sites which may have begun on site (such as infrastructure and/ or one or two units) but are then stalled due to viability issues which may be related to the commitments in the S106;

The lack of resources within some local authorities to deal with S106 is a significant issue, this can be both planning officers and legal teams. Legal advice is often out sourced and part time;

Knowledge/ appreciation of viability issues is lacking. It is considered that in particular the way that LPAs accept land values in the viability assessment is separate from the reality of land prices. There is considered to be an over reliance on particular advisors and methodologies. Estates departments do not seem to get involved. Members tend to take officer advice but understanding by officers is variable. Some LPAs begin with a good appreciation of what might be viable, with a tendency for these to be in the more challenging market areas. It was emphasised a number of times that viability is the key issue with S106;

The home builders often draft the S106 to aid the process. As such they have views on possibly being charged for the process in future;

Often it can take a long time just to get final minor amendments made to an agreement. There can be inconsistencies between approaches by different legal officers in the same authority;

Performance timetables/ agreements to get to the signed S106 could be welcomed but there would need to be some mechanism for enforcing them, possibly with penalties/ incentives;

There was discussion around unilateral undertakings and the possible benefits of an approach taken by one LPA where two agreements are signed, one for affordable housing and one for other S106. The non-affordable housing aspects could be picked up in a UU.

In addition, two validation workshops were held with stakeholders to consider the issues. These comprised housing industry representatives and legal and planning officers from LPAs not involved in the case studies. A workshop was held in North Wales on Wednesday 10th June 2015 in the Welsh Government's office in Llandudno Junction, and in South Wales on Tuesday 16th June in Hyder's office in Cardiff.

The key issues raised in the validation workshops were as follows:

Resources and process

Affordable housing clauses can cause issues with lenders and delays in agreements

Standardisation of agreements happens to an extent but was considered by some to be difficult across different Local Authorities given the different approaches to affordable housing; others commented that it should "not be rocket science" to find a solution across areas that meets lenders requirements

The knowledge and expertise of the applicant's agent in S.106 has a significant bearing on the efficiency of the process

Unilateral Undertakings could be used for financial contributions particularly for smaller developments, whilst noting that it doesn't allow the applicant to claw back the contribution if not spent

In the more rural LPAs it was suggested that there is not the volume of work to justify a dedicated S.106 officer

Land ownership and title plans often cause smaller developers significant problems and delays. It was suggested by a developer that this could be raised at validation stage with a view to it being resolved before the application gets to committee

Planning performance agreements including the S.106 would only really be relevant to larger sites, as would review mechanisms on viability

An agreed draft S.106 to the committee report would assist in speeding things up.

There is a need to set a timescale as things can drift on and on. This could be 12 months maximum in line with the Welsh Government standard for housing land availability.

Viability

Land values are based on current values not at acquisition. Developers commented that this impacts on viability where sites were bought prior to the recession

There are different approaches to viability assessment and where two different methodologies are compared this can lead to marked differences in approaches

Confidentiality of information can be an issue for Council Members to understand and viability is not understood by many committee members.

Review mechanisms for viability during the build out of the site would only really be relevant to the very large sites

Policy documents may set unrealistic requirements for affordable housing in areas where market values are low

Other issues and suggestions

More discussion and negotiation should take place before Committee to improve efficiency

Pre-application consultation can help identify issues including with viability

The S.106 agreement is seen as one part of a larger problem of site delivery, with site constraints and market conditions being significant factors

Where there are SPG's in place this makes it apparent to prospective applicant what is going to be required.

Phase 3

The final phase of the research has been to draw together the findings of the research undertaken and to make a series of conclusions and recommendations, as contained in this report.

Table 2.2: Analysis of Case Studies

Level of Delay of Signing S.106 or a decision	Size of Development	Caerphilly	Ceredigion	Conwy	Flintshire	Newport	Pembrokeshire	Snowdonia NPA	Total
Long (>2 years)	Large (>100 units)					1	1		2
	Medium (21-100 units)		1						1
	Small (20 or less)	1	1	1	2			1	6
	Total	1	2	1	2	1	1	1	9
Medium (9 months to 2 years)	Large (>100 units)								0
	Medium (21-100 units)				1		4		5
	Small (20 or less)			1	1			2	4
	Total	0	0	1	2	0	4	2	9
Short (under 9 months)	Large (>100 units)					1			1
	Medium (21-100 units)								0
	Small (20 or less)								0
	Total	0	0	0	0	1	0	0	1
LPA Total		1	2	2	4	2	5	3	19

Overview of Stalled Sites in Wales

Introduction

This chapter provides a summary of the data collected as part of the two phases of the research, beginning with an overview of stalled sites within Wales and followed by a summary of the findings from the analysis of case study LPAs and the case studies themselves. The data which is set out in this chapter has been used to identify key themes, areas of best practice and possible recommendations, which are described further in Chapter 4.

Findings from Phase 1 – Analysis Across Wales

Data from each of the LPAs within Wales was collated and analysed in accordance with the methodology described in the preceding chapter. The data showed a total of 402 sites across Wales which appear to be stalled. Of these, S.106 agreements are relevant to 183 sites or 46%. The number of stalled sites in total and those where a S.106 is relevant is shown by LPA in **Figure 3.1**.

Figure 3.1: Stalled Sites by LPA – Total Numbers and Numbers Where a S.106 is

Relevant

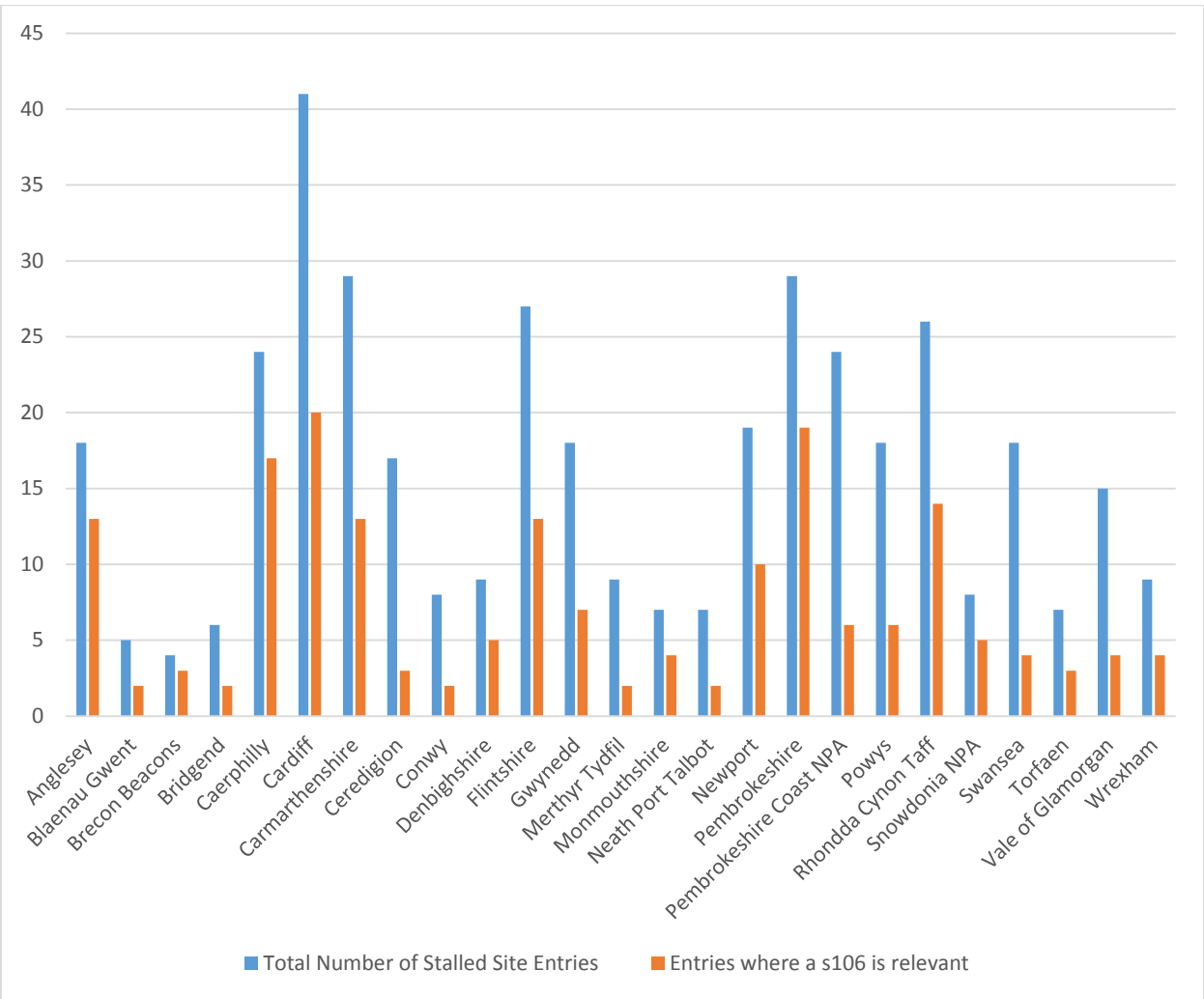
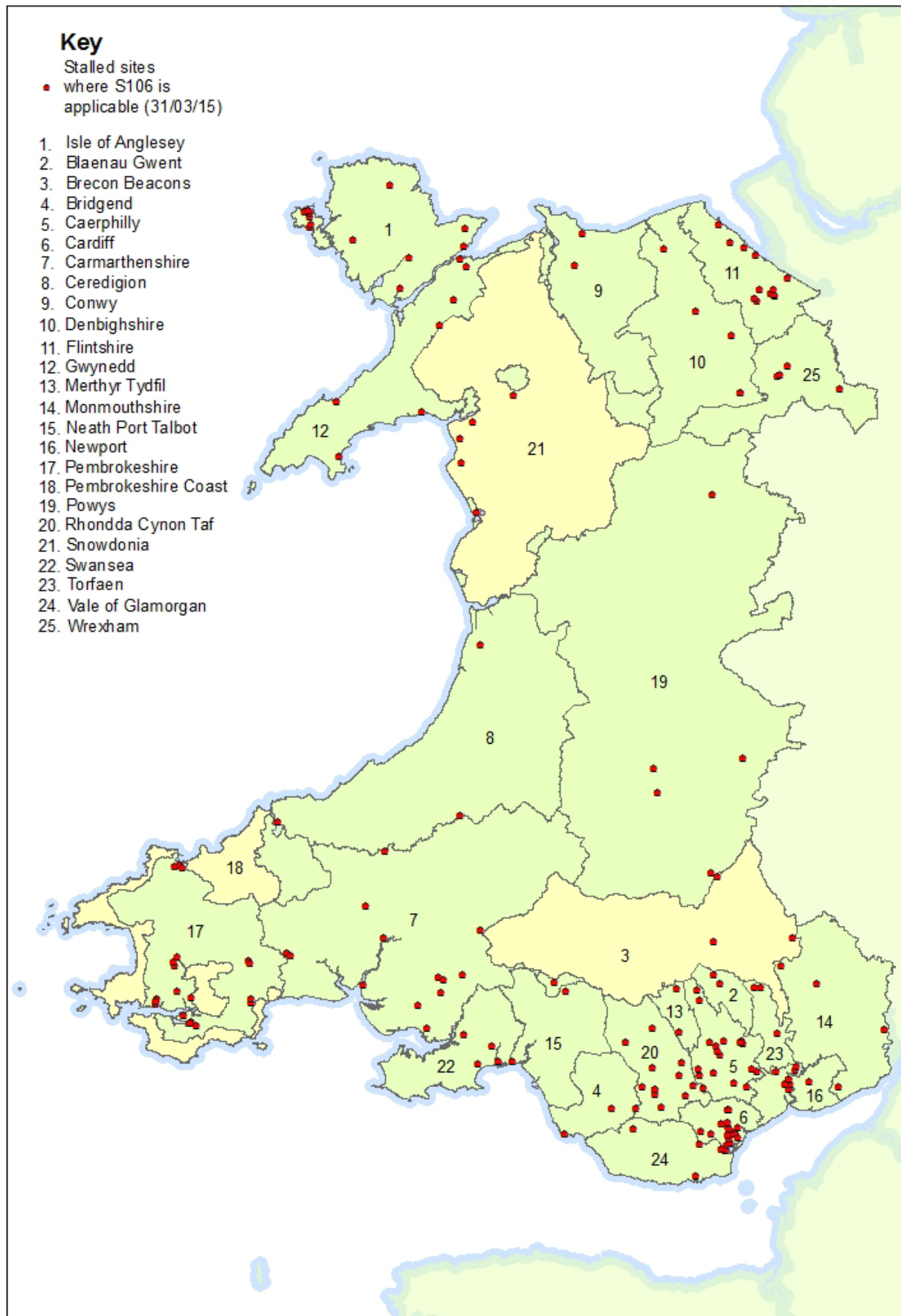


Figure 3.2 shows the spatial distribution across Wales of stalled sites where a S.106 agreement is applicable. These have been mapped based on application postcodes.

Figure 3.2: Spatial Distribution of Stalled Sites



The distribution of stalled sites across Wales shows a varied picture. On the one hand, there is an obvious cluster of stalled sites within the more urban areas of South Wales; this is likely to be in part due to the higher number of planning applications received within these areas (for example, although Cardiff Council shows a proportionately high number of stalled sites compared to other LPAs, this relates to only 1.36% of total applications received by the Authority each year).

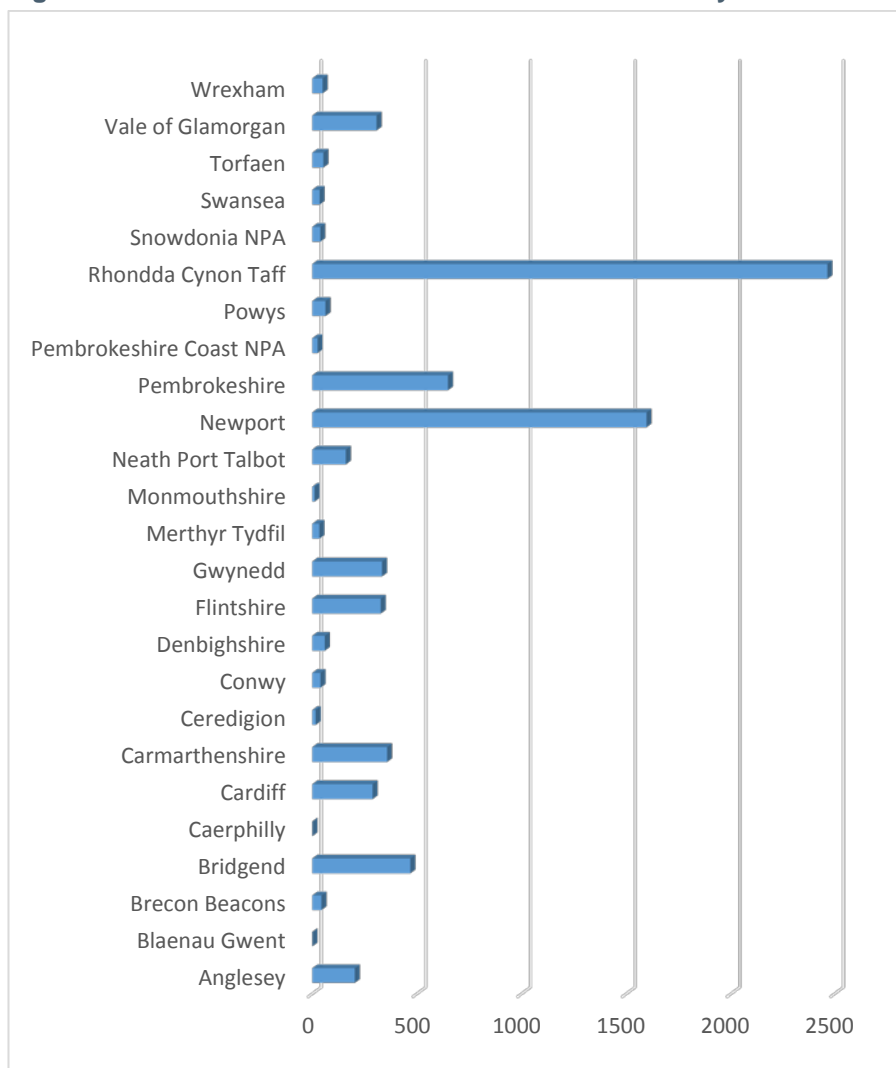
Other LPAs where there appear to be relatively high numbers of stalled sites include the rural authorities of Carmarthenshire and Pembrokeshire County, both authorities which cover large geographical areas and are rural in nature which may present issues relating to viability of schemes. The North Wales authority of Flintshire again exhibits a cluster of stalled sites; factors for further consideration here might include the planning policy framework. However, there is by no means a clear pattern across LPAs by simple virtue of their size or whether they are urban/rural in nature (for example there are both urban and geographically large LPAs with a relatively small proportion of stalled sites in their area). There are clearly a range of other factors at play therefore.

Composition of Stalled Sites Across Wales

Of the total 183 stalled sites requiring S.106 agreements, the vast majority (87%) include residential development. A further 13% were for commercial development and approximately 10% of sites being for both commercial and residential elements.

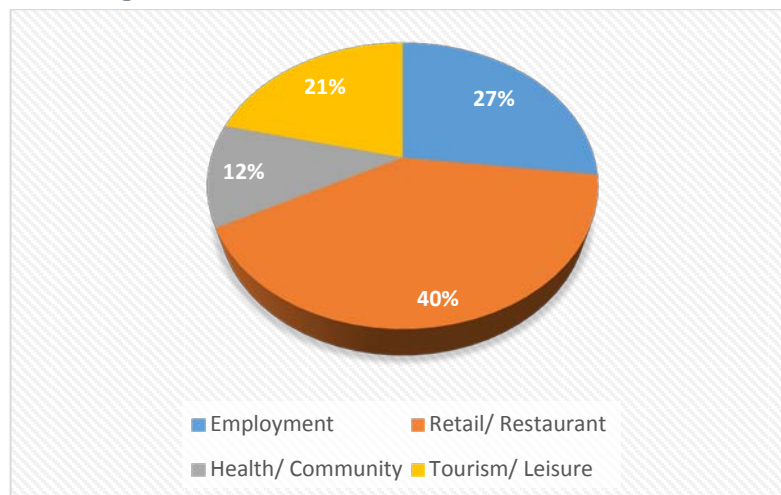
The number of homes potentially stalled within the sites has been estimated, although it should be noted that dwelling numbers are not available for all sites. At least 7,600 homes were involved in the stalled sites. **Figure 3.3** shows the number of homes by LPA. The larger numbers in Rhondda Cynon Taff are mainly accounted for by single large developments of more than 1,000 homes and it should be emphasised that these may not be stalled for reasons of S.106 but could be for other reasons such as site development costs.

Figure 3.3: Number of Homes involved in Stalled Sites by LPA



The composition of the non-residential uses is shown in **Figure 3.4**. The largest proportion of non-residential uses are retail, with proposals for a number of new or extended food stores and retail units currently stalled across the Welsh LPAs. The tourism and leisure uses are varied, and include for example tourist accommodation, marine leisure facilities and a motor racing circuit.

Figure 3.4: Non-residential Uses on Stalled Sites



The proportion of proposals which relate to greenfield and brownfield sites, and urban compared to rural, are shown in **Figures 3.5** and **3.6**. It can be seen that the majority of stalled sites within Wales are on brownfield land, but that there is a higher proportion of sites stalled in rural areas compared to urban. This may be due to how sites have been classified for the purposes of this analysis, with sites being defined as rural if they are located within small settlements (although this should not be taken to mean in an isolated location).

Figure 3.5: Brownfield/ Greenfield Proportion of Stalled Sites

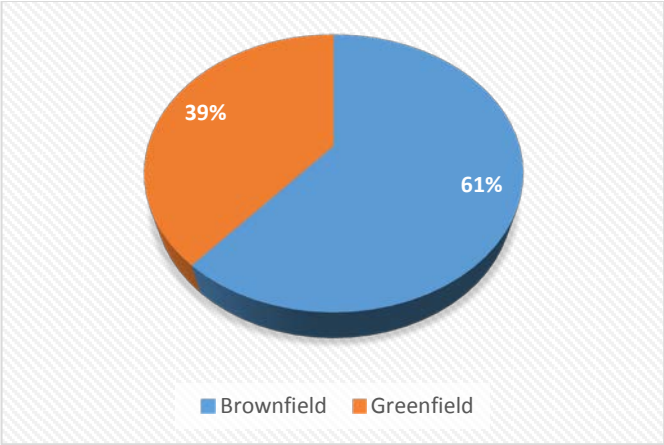
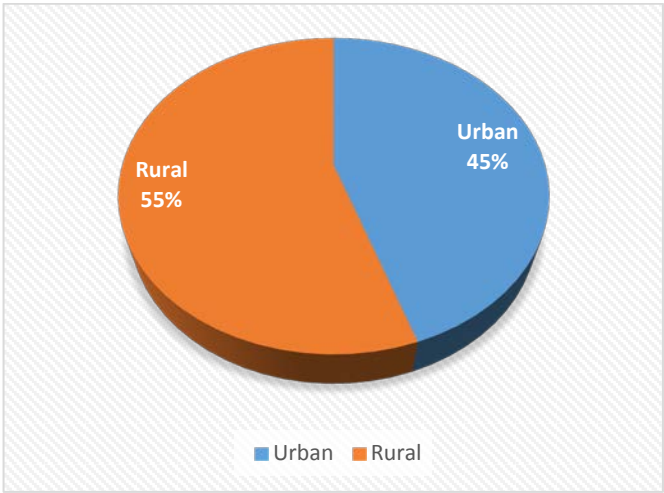


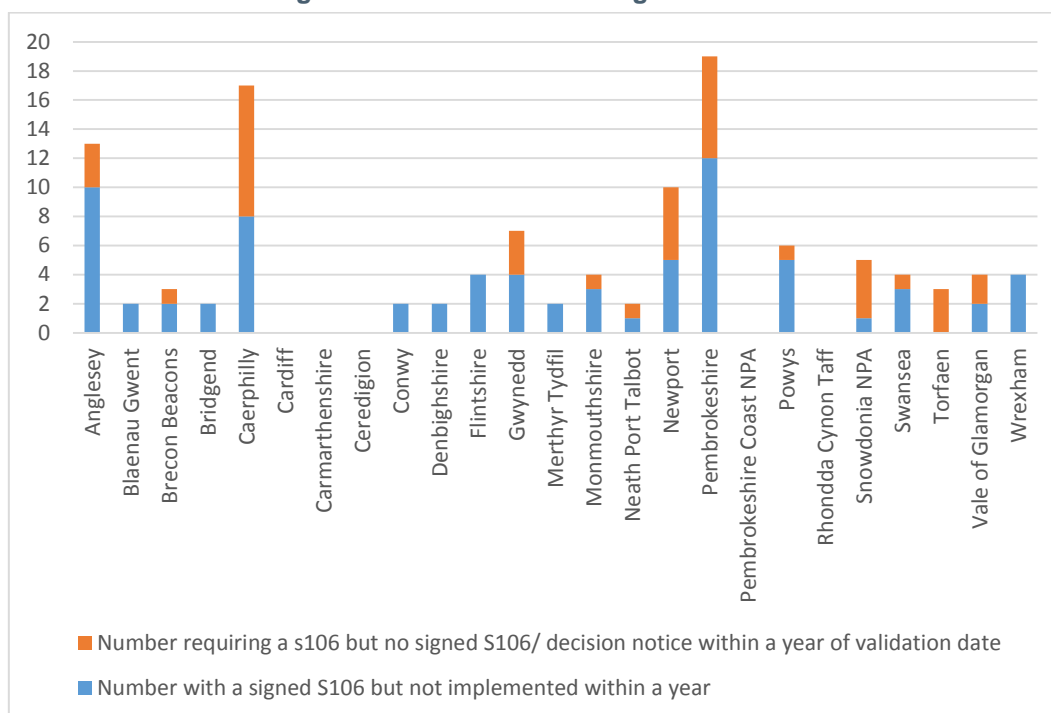
Figure 3.6: Urban/ Rural Proportion of Stalled Sites



Status of S.106 Agreements

Information is not completely available for all stalled sites within Wales regarding the status of S.106 agreements. **Figure 3.7** provides available information showing whether S.106 agreements on stalled sites have been signed more than 12 months before the 31st March 2015 by each LPA, or where agreements have not been signed for more than 12 months from the date of validation of the individual application. For those stalled sites where a S.106 agreement is relevant, approximately 40% have a signed agreement in place but the site has not been implemented, with a further 22% not having a signed S.106 in place. There were five LPAs where the data on the status of S.106 agreements was not available at this stage in the analysis, as shown in Figure 3.7.

Figure 3.7: Status of S.106 Agreements



Reasons for Stalling

The reasons why sites requiring S.106 may be stalled has been analysed across all the LPAs. It should be noted that at this stage in the research, information was based on LPA knowledge of each application rather than developer discussions (included in Phase 2 case studies). As such it may be anecdotal; further, for a large proportion of sites (70%), the reasons for stalling were either not provided by LPAs or were not known by the member of staff spoken to. For those sites where a reason for stalling was suggested, the main reasons can be summarised as:

land ownership issues or site sale (30% of stalled sites with a known reason);

S.106 issues or legal delays (22% of stalled sites with a known reason);

variations being sought in conditions or reserved matters applications (17% of stalled sites with a known reason);

site-specific constraints and issues (for example relating to highways, flooding, ecology, contamination) (13% of sites with a known reason).

Viability was identified as the reason for stalling for a small proportion of sites (1% of all sites and 6% of those with a known reason). However, reasons for sites becoming stalled were sought primarily from LPAs at this stage of the research and not developers or applicants for whom viability may be a much more pertinent factor. In addition, viability was mentioned in the context of market conditions for bringing a site forward which is a slightly different definition to viability in the context of the S.106 negotiation. The extent to which viability issues may be a contributory factor to sites becoming stalled has been explored further as part of Phase 2 of the research.

LPA Approaches

So far, the data has shown that there is no single reason behind sites becoming stalled, but that a variety of factors are likely to be at play. One such factor could be the approach taken by individual LPAs towards the S.106 process and procedures within the authority. A review of process and procedure within Welsh LPAs identified a variety of approaches that are taken, from staffing arrangements and resourcing through to procedures for delegated authority and the use of blanket time-limits in the post-decision stage. Key areas are discussed further below.

Resourcing

Four LPAs within Wales have a specialist S.106 Officer at present, with a further four LPAs having a member of staff primarily responsible for some element of the S.106 process (for example monitoring or contributions). In other LPAs, the case officer is responsible for dealing with S.106 agreements as necessary. Of those LPAs with a specialist S.106 Officer in post, the percentage of stalled sites as a proportion of the total number of applications per year is relatively low, ranging from 0.67% (Bridgend) to 1.72% (Newport) which might suggest that having a dedicated officer in place assists in taking sites forward. For both Bridgend and Powys, where there are dedicated S.106 officers, the majority of stalled sites have an agreement in place but have not been delivered, thus pointing to other stalling factors. Equally, however, there are LPAs where the responsibility for dealing with S.106 agreements lies with case officers, for which the proportions of stalled sites without a signed S.106 agreement within a year of the validation date are equally low/negligible. In summary whilst there appears to be some benefit in having a dedicated officer, the research is unable to ascertain if this is in itself reducing delays or is due to other factors in these LPAs.

Just over half of LPAs identified that training for Members had been undertaken with regard to relevant topics including either S.106 agreements specifically or for example, development viability and decision-making. One LPA highlighted that Members can be unsure of how much can be requested through a S.106 agreement, which may therefore lead to potential benefits being missed. It is not known whether this is related to lack of policy or limited awareness of policy.

Process and Procedures

Approximately half of LPAs in Wales were able to confirm that Heads of Terms for S.106 agreements were agreed at least in draft before the date of the Planning Committee which would consider the application. Discussions with planning officers in a number of LPAs identified that this was something that was taking place on an increasingly frequent basis, although typically the level of detail provided might vary on a site by site basis. For significant schemes, there was some evidence also of the S.106 agreement itself being drafted prior to Committee, although this appears to be the exception rather than the norm; other LPAs stated that that Heads of Terms were not usually drafted until after Planning Committee because of the risk that an application might either be deferred or refused, thereby resulting in abortive work.

For a number of those LPAs where Heads of Terms are not generally agreed prior to Committee, the proportion of stalled sites within the authority, together with the number of stalled sites for which no signed S.106 or decision notice has been issued within a year of the validation date would appear to be relatively high. This is not the case across the board, however.

The majority of LPAs in Wales do not operate set time-limits within which a S.106 must be signed or disposed of. Of those that do operate such time-limits, there is a variation in the length of time provided, ranging from four months (Ceredigion) to twelve months

(Carmarthenshire and Newport, although the latter plan to reduce this to six months in line with the authority's SPG on planning obligations). At least six LPAs have a six month time period after which time applications can be disposed of if no progress is being made on the S.106 agreement. It is interesting to note that, from the available data, the three LPAs shown in **Figure 3-7** with the highest proportions of stalled sites including a significant proportion of unsigned S.106 agreements (Pembrokeshire County, Caerphilly and Anglesey) either do not operate a time-limit for signing a S.106 during the post-decision stage or, in the case of Pembrokeshire County, do operate such a time-limit but from discussions with the LPA, rarely use it. LPAs without a set time-limit, such as Bridgend, Denbighshire and Merthyr Tydfil, however, exhibit small volumes of stalled sites within their areas.

There is variation also in terms of whether officers within LPAs have delegated powers to refuse planning permission if the S.106 agreement is not signed. Typically, if a resolution to approve planning permission was reached by Members at Committee, any amendments to applications or refusal as a result of non-progression, will be taken back to Committee. Several LPAs state that applications tend to be taken back to Committee even if the decision was made under delegated powers in the first instance. Exceptions include, for example Flintshire, where there is a caveat on all Committee Reports relating to S.106 agreements that if no progress is made within six months of the date of the Committee, then officers have delegated powers to refuse. Other LPAs such as Neath Port Talbot state that, although the LPA can dispose of applications, it would be on an individual case by case basis to decide if the matter needed to go back to Committee.

Summary

In summary, the findings from Phase 1 paint a varied picture both of stalled sites across Wales in terms of their location, characteristics and probable reasons for stalling, as well as of the approaches taken by LPAs in relation to S.106 agreements in terms of resources and procedures. There is no obvious pattern between particular approaches taken by LPAs and level of sites stalled within an area, suggesting that a variety of factors may be at play.

Phase 2 – Case Study Findings

The Phase 2 case study process involved detailed investigations of 19 applications, as discussed in Section 2 of this report. The detailed information for each case study can be found at Appendix 1. **Table 3.1** below summarises each of the case studies, followed by an overview of key findings.

Of the case studies analysed, they show a range of scales of site, with three of more than 100 dwellings, five of between 20 and 100 dwellings and 11 were small sites with less than 20 dwellings. In terms of stalling, nine of the sites have experienced a long delay in terms of delivery, a further nine a medium delay and one site a short delay.

Specifically in relation to the time taken for the S.106 from the 'minded to approve' date (although this includes some sites where the validation date to decision was used in the absence of other information):

Four were signed within six months or less;

Eight took seven to 12 months;

Four took more than a year; and

Three were not yet signed (two having taken a number of years).

In undertaking the case studies, it was not possible to ascertain the views of the applicant or agent in four of the cases. This was due in one case to the applicant not responding despite the study team leaving a number of messages, and in two cases there being a lack of agent details due to changes in companies or blanked out details (despite various attempts to trace them through case officers and internet searches). In one other case the personal circumstances of the applicant were such that they were not pursued. For all case studies Hyder has persevered in making contact with the various parties in order to ensure as full a picture as possible can be gained of the issues.

Table 3.1: Summary of Case Study Findings

Case Study	Site Characteristics – Size and Overall Stalling	Time between the resolution to grant or validation and signing of the S.106	S.106 Summary	Reasons for Stalling	Lessons Learnt
1	Small size, Long delay	More than 30 months, not yet signed	10% affordable housing Open space contribution	Covenant on land requires payment to Council to release covenant which has not been paid	Earlier legal scrutiny would have identified the issue prior to the Committee resolution
2	Medium size, Medium delay	11 months	10% affordable housing	Legalities of local authority being the landowner Viability negotiations The site has now been sold on to a developer who may be seeking to amend the scheme	UU may be good way of LA undertaking development Future review mechanisms can assist in addressing changes in viability
3	Medium size, Medium delay	12 months	5% affordable housing Education and transport contributions	Delays due to negotiations on transport contributions Adoption of the LDP Land negotiations to provide access Lack of market interest	A clear policy framework and pre-application process assisted the S.106 agreement
4	Medium size, Medium delay	12 months	10% affordable housing	Viability negotiations Ecological surveys and other site constraints Land sale/ value now stalling the site	Viability discussions can be protracted and complex for small developments.
5	Medium size, Medium delay	6 months	Commuted sum for affordable homes.	Delayed by policy discussions on homes for aged 55 plus Viability negotiations Now stalled due to market conditions	Pre-application discussions on S.106 contributions assist the process
6	Large size, Long delay	8 months	S.106 not yet signed	Transport infrastructure costs Market conditions	Stalling relates to non S.106 factors
7	Medium size, Long delay	9 months	36% affordable housing	Planning team drafting decision notice Process delays of agreeing plans Viability negotiations relating to phasing of affordable homes Lack of developer	Clear policy framework assists discussions Sometimes applicant impetus for signing is limited
8	Small size, Long delay	5 years	31% affordable housing	Technical issues of highways delayed decision. Viability of site with respect to phasing of affordable homes Procedural matters relating to provision of plans for the agreement Land ownership issues and difficult market conditions	The discussions around phasing appeared complex for this relatively small site and ways of simplification could be beneficial. Discussions at an earlier stage on S.106 requirements may have reduced procedural delays and negotiations

Case Study	Site Characteristics – Size and Overall Stalling	Time between the resolution to grant or validation and signing of the S.106	S.106 Summary	Reasons for Stalling	Lessons Learnt
9	Large size, Long delay	4 years 4 months	Education contribution Off-site affordable housing Leisure contribution	Off-site affordable housing provision and low cost homeownership issues Use of adjacent site and discussions over affordable housing percentage. Changing market circumstances following the decision-making process.	Provision of off-site affordable housing can add complexity to discussions. Delays in discussions can lead to a change in market conditions that impact on the viability.
10	Large size, Short delay	Not yet signed	15% affordable housing	Legalities of local authority being the landowner Developer bankruptcy and change of developer Discussions over content of S.106	Property involving local authority adds complexity to the S.106 process
11	Small size, Long delay (to prepare S.106)	31 months	No affordable housing. Provision of public open space	Legal queries over wording relating to open space and management of woodland and biodiversity Slow processing by applicant solicitor	Clearer timetable to progress S.106 could avoid long delays
12	Small size, Medium delay	7 months	Highway improvements	Family bereavement of applicant	The LPA monitor progress of S.106s on monthly basis but some do become protracted due to applicant issues. In this case it is felt that there is little the LPA can do in the circumstances.
13	Small size, Medium delay	9 months	46% affordable housing	Legalities of local authority being the landowner and transfer of land needed to take place Delays in responses from within the Local Authority	Applicants now asked for proof of title earlier in the determination process
14	Small size, Medium delay	2 months	30% affordable housing	Prompt processing but some delay from mapping issues Delays from negotiation with NRW over flood risk	Draft HoT and template S.106s sent early in the process
15	Small size, Long delay	More than 3 years, not yet signed	50% affordable housing	Delay in confirming mortgagee due to divorce of applicant Affordable housing contribution discussions	Draft HoT and template S.106s sent early in the process

Case Study	Site Characteristics – Size and Overall Stalling	Time between the resolution to grant or validation and signing of the S.106	S.106 Summary	Reasons for Stalling	Lessons Learnt
16	Small size, Long delay	15 months	Education and open space contributions	Issues relating to applicant understanding of the agreement and relationship to mortgagers Market interest and land values	Advising that the application would be recommended for refusal led the applicant to progress signing of the S.106 Applicant lack of knowledge of the processes of S.106 can cause delay.
17	Medium size, Medium delay	8 months	10% affordable housing Education, open space and transport contribution	Dispute over contributions and conditions Changed circumstances pertaining to the education contribution and CIL regulations.	Protracted discussions on S.106 contributions and conditions can end in refusal and appeal
18	Small size, Medium delay	4 months	Ecological mitigation contribution Open space/ play area contribution	A new application has been submitted by a different developer Issues around the new CIL regulations and the pooling of contributions	Changes to the regulations for S.106 are causing some delays as LPAs change approach Legal technicalities can cause delay
19	Small size, Long delay	6 months	Open space contribution	Stalling due to changes in developer organisation and market conditions	The S.106 process was straightforward as the Heads of Terms were carried over from the previous consent.

Reasons for Stalling

Table 3.2 sets out a summary of instances of various factors forming part of reasons for the delay in signing the S.106 and/or the stalling of the site. These give an indication of the frequency of issues being mentioned in the case studies. Of the known reasons for delay and stalling, a number are largely outside of the S.106 process, notably market conditions, land owner/ developer circumstances and site constraints/deliverability issues. These have been separated from those more directly related to the S.106 process in Table 3.2.

It can be highlighted that the issues of viability and contribution negotiations were the most prevalent of those related to S.106 followed by legal issues and minor procedural delays. Of other factors, land values not being considered high enough for the developer to proceed and/ or poor market conditions was the reason in the largest number of cases, followed by developer circumstances.

Table 3.2: Summary of Reasons for Stalling

Reasons involved in delays in the S.106 and Site Deliverability	Number of Case Studies	% of Case Studies
Reasons related to S.106		
Legal issues of land ownership or land negotiations	6	32
Minor procedural delays in the S.106	6	32
Viability and contribution negotiations	11	58
Other factors outside of the S.106 process		
Planning policy/ pooling of contributions	4	21
Land values and poor market conditions	9	47
Developer circumstances	5	26
Site technical deliverability issues	3	16

Consultations with Case Study LPAs and Validation Workshops

As discussed in Section 2, in addition to the information gained from the analysis of the 19 planning application case studies, a range of issues were raised in meetings with the LPAs, general discussions with legal officers and the validation workshops. These findings are interwoven into Chapter 4 alongside the findings from the case studies.

Summary

The Phase 1 analysis of the number and characteristics of stalled sites has been undertaken across all 25 LPAs and the main findings are set out above. The Phase 2 case study stage has included investigation of 19 planning applications as well as in-depth discussions with those

involved from all sides of the S.106 process. The following chapter draws together the analysis and research from the Phase 1 and 2 tasks by means of a series of themes.

Key Themes

Introduction

This chapter draws together the findings of the research into the relationship between stalled sites and S.106 agreements under the key themes that have emerged. It should be highlighted firstly that the themes are interrelated. Secondly, it is a finding from the research that the majority of the stalled sites have a signed S.106 agreement and planning consent in place and thus the reasons why the sites are currently stalled may be due to other factors than simply S.106 agreements. Nonetheless, the S.106 agreement forms a critical part of the overall planning process and whilst streamlining and improvements to the process may not prevent stalling of development they should make a positive contribution to that process.

Policy Framework

The planning policy framework within which local authorities operate is an important factor relating to the delivery of sites for development. There are two areas for consideration here, namely the development plan framework and supplementary planning guidance.

Local Development Plan Framework

Guidance on the use of planning obligations for Welsh local authorities produced by the Planning Officers Society for Wales notes the importance of including as much information as possible about the principles and use of planning obligations in LDPs as they are produced, in order that developers can predict as accurately as possible the financial implications for development projects. Areas that the document recommends should be covered within LDP policy relate to the circumstances in which planning obligations will be sought; the range of infrastructure, facilities and services for which contributions are likely to be sought for different types of development; and the types of contribution that will be sought (for example whether pooled or phased contributions). The status of the development plan within local authorities is therefore of importance in terms of being able to provide up-to-date and relevant information for developers to access in relation to the type and nature of planning obligations.

As at 31st March 2015, sixteen LPAs in Wales had adopted a Local Development Plan for their area. Of the remaining LPAs, a further two were due for adoption in 2015, five in 2016 and a further one LPA in 2018⁹. Of the case study local authorities used to inform this research, six out of the seven have an adopted LDP, with adoption dates ranging from 2010 through to January 2015. A review of how planning obligations are covered within each of these LDPs reveals that:

The level of detail provided in relation to planning obligations varies between local authorities, ranging from fairly general statements through to more specific information. At least three of the case study local authorities identified infrastructure priorities that new development would be expected to provide in addition to a more general list of potential requirements;

Two local authorities made reference within the supporting statements to viability matters and in particular how viability might be assessed (for example 'open book' appraisals and potentially independent third party analysis;

⁹ Progress Adopting Development Plans in Wales: Position at 31 March 2015 (Welsh Government Planning Division)

Local authorities that had more recently adopted LDPs were understandably able to provide additional information/guidance in relation to CIL, with one Council stating that a Pre-Draft Charging Schedule and Infrastructure Delivery Plan would be produced for consultation and adoption.

Consultations undertaken during the research did identify that an up-to-date LDP would assist with the process of identifying planning obligation issues and can help particularly with pre-application consultation; however it was acknowledged that this forms only one part of a much broader picture and that many of the issues arising as part of the S.106 process cannot always be foreseen.

Supplementary Planning Guidance

Supplementary Planning Guidance (SPGs) should build upon and provide more detailed advice or guidance on policies contained in the LDP. In relation to planning obligations, SPGs are able to provide further detail about the likely level and type of obligations sought, including information relating to standard charges and formulae to calculate levels of contributions as appropriate. The Planning Officers Society for Wales guidance states in relation to the publication of detailed methods for estimating contributions for different types of development that *'such transparency should help to inform developers about the costs of contributions when considering purchasing land, and help simplify and speed up the negotiation and agreement of obligations'*.

A review of LPAs in Wales identified that over two-thirds have SPG in place in relation to planning obligations. Several LPAs have SPG relating to specific types of development such as affordable housing, schools, or transport, within which information on developer contributions and S.106 agreements is provided. There is considerable variation in terms of how up-to-date SPGs are, with dates ranging from 2007 to 2014.

Consultation undertaken with representatives of the case study LPAs and the applicants and agents, together with discussions held as part of the validation workshops in North and South Wales, identified the role that SPGs can play in terms of:

Providing useful background information to developers at an early stage in the process, making it apparent to them what the prospective issues and requirements might be;

Key elements of the process can be enshrined in the SPG (for example those LPAs that operate a 'cut-off' time period within which a S.106 agreement must be signed before going back to committee may include this information in their SPG);

LPAs currently without a specific SPG relating to planning obligations did highlight a need for such guidance, for reasons of transparency and clarity already discussed;

SPG is useful to set out where the priorities of the local authorities lay (for example one rural Council specifies that their priority is to maximise affordable housing and that other contributions have less priority as a result).

There would be benefits in a consistent approach to SPGs in order to provide an up to date and transparent process for determining contributions. This would enable developers to easily access the relevant requirements at the pre-application stage. One case study applicant commented for example that the adoption of the LDP, together with clear guidance in the SPG made the process relatively straightforward. Good practice examples and guidance on contents could be provided to assist LPAs in preparing up to date SPGs. Examples from current LPAs show that a comprehensive approach of dealing with all planning obligations in one document,

including affordable housing and the relationship to CIL, provide a clear framework for applicants.

Possible Considerations for Welsh Government 1: Policy Framework

1A) It would be beneficial for all LPAs to produce Supplementary Planning Guidance specifically in relation to planning obligations, in order to provide prospective applicants with clarity surrounding the requirements of the process at an early stage.

1B) There would be benefits in a common approach and guidance on the contents in order to assist LPAs in preparing updated SPGs.

LPA Process and Resources

This section considers the various stages of the planning process from pre-application through to post-decision, identifying the key points during the process at which S.106 agreements are dealt with and where research findings have pointed to potential improvements that could be made. The section also highlights the variation across Wales in terms of local authority staff resources and the extent to which this may be a factor in terms of the overall management of the S.106 process.

LPA Process

The various stages of the planning application process under consideration include pre-application, determination and post-decision stages. Whilst the LPA decision-making process was not highlighted as a significant stand-alone reason for delay as part of the case study research, there are elements of the process that could either contribute to delay or where improvements could lead to a reduction in delay, for example through the tackling of other non-process issues earlier on. Some of these elements are evidently a source of frustration to applicants and their agents, with one case study agent commenting that the delays were in waiting for responses to letters from within the LPA over a relatively minor procedural issue. It is further acknowledged that, whilst there are benefits to a more standardised process across Welsh LPAs in relation to S.106 agreements, there are many site-specific and localised issues that may continue to cause delay. It is therefore acknowledged that changes to the planning application process would not overcome all issues, but may point to best practice for planning officers, applicants and agents alike.

Pre-Application

It is widely considered good practice for prospective applicants to engage with the LPA at an early stage in the planning application process in order to help define the parameters of a proposed development. The benefits of pre-application discussions, as set out in the Welsh Government Practice Guide¹⁰ include establishing the information required to support applications, identifying the relevant planning policy framework, identifying potentially difficult issues early and establishing timescales and administrative procedures. The Planning (Wales) Act 2015 will require local planning authorities to respond to requests for pre-application advice. In responding, the Welsh Government has proposed that the written response from the authority includes whether it is likely to seek any S.106 contributions, the scope of these contributions and the anticipated amount of any financial contributions. Pre-application discussions can

¹⁰ Realising the Potential of Pre-Application Discussions, Welsh Government Practice Guide 2012

thereby both improve the quality of an application and help applicants to understand the wider process. However, research into the planning application process for housing¹¹ revealed that the extent, take-up and quality of pre-application advice still varies significantly across Wales, for reasons including resourcing and priority. The research also identified that S.106 obligations are not given sufficient weight at the pre-application stage.

In relation to S.106 agreements, pre-application discussions can be used to identify the main areas for which contributions will be likely, highlight to applicants the type of information that will be provided during the process (for example the need for land titles to be proved), encourage awareness of the legal costs involved, and set out the process for dealing with various issues (for example viability). A vital component of pre-application discussions is in terms of providing clarity of expectations to prospective applicants early in the process.

Within the case study LPAs, all bar one currently make charges for pre-application advice (it should be noted that the introduction of charges for several of these LPAs has only taken place very recently, for example Flintshire County Council in July 2015). The level of information provided as part of advice typically includes requirements for contributions to infrastructure and community benefits and indicative Heads of Terms for S.106 agreements where applicable.

Discussion with officers within case study LPAs indicated that the level of detail that could be provided at the pre-application stage in relation to S.106s is often very similar to that provided for the application themselves. Within one case study LPA, a very clear process is identified with draft Heads of Terms that might be required as part of the S.106 agreement at the pre-application stage based on the information provided within the Council's Supplementary Planning Guidance.

The case study applications include at least one example for where a clear pre-application process, coupled with a clear policy framework, has assisted with a straightforward S.106 process. There are at least two further examples within the sample of case studies of applications where discussion at an earlier stage in the process could have reduced procedural delays and negotiations, for example by providing the applicant with knowledge of the S.106 process.

Possible Considerations for Welsh Government 2: Pre-Application Advice

LPAs to encourage prospective applicants to seek pre-application advice as a way of raising awareness of the S.106 process and providing clarity of expectations at an early stage in the process.

Determination

It is commonplace for a certain level of negotiation in relation to S.106 agreements to take place during the determination stage. The extent to which this happens varies between LPAs (for example some LPAs will identify what is broadly to be required, whereas others may go so far as to finalise the Heads of Terms). This level of variety is apparent within the case study LPAs. One LPA requires other Council departments to comment on the contributions that would be required as part of the initial application consultation responses, thus enabling early discussion to take place. Another LPA sends out draft requirements both to other service areas within the authority and to developers; it is interesting to note that approximately 10% of developers agree to the draft requirements straightaway (this relates predominantly to large retail developers), whereas there is likely to be a more protracted negotiation period with other types of developer (predominantly private sector house builders). There were concerns expressed by one case study agent that landowners would prefer to wait until a committee resolution prior to investing

¹¹ Evaluation of the Planning Permission Process for Housing, Arup 2013

time and cost in agreeing the S.106, however this view was not expressed by the majority of those interviewed.

A further case study LPA identified a recent change in approach to S.106 agreements, in terms of now sending out draft Heads of Terms and template agreements during the determination stage in an attempt to address delays. As this is a recent change it is not possible to discern what effect this may have on determination times as yet, however it is interesting to note that a need to 'shift' S.106 discussions earlier in the determination period was perceived.

One factor highlighted during the research relates to a general increase in the flexibility of other service areas over time with regard to S.106 requirements – as a result of funding cuts, S.106 agreements may be perceived as one of the main sources of funding for local authorities, so feedback / buy-in from the various service areas is perceived as increasingly important.

There is variation in the extent to which LPAs try to seek agreement on draft Heads of Terms prior to Planning Committee. Of the case study LPAs for example, one LPA estimates that there is agreement from 80% of applicants on draft Heads of Terms prior to Committee (the remaining 20% are considered to be complicated by factors such as other policy issues or design issues); another LPA will only draft Heads of Terms prior to Committee for straightforward applications, otherwise only the broad obligations likely to be required will be confirmed with the applicant prior to this time. Some authorities include the draft Heads of Terms in the Committee Report (Flintshire and Monmouthshire for example). The benefits of taking the draft Heads of Terms to Committee is that it ensures a level of discussion has already taken place at this stage in the process so that key issues that could stall the signing of the S.106 agreement will have already been raised. It thus reduces the risk of protracted discussions after a resolution to grant.

The evidence collated from case studies and wider research suggests that planning obligations should be discussed at as early a stage as possible within the planning application process in order to reduce procedural delays and protracted negotiations. This could begin with the submission of the Planning Statement that accompanies an application for planning permission which, although not a statutory requirement to produce, could nevertheless incorporate appropriate information.

Possible Considerations for Welsh Government 3: Determination

3A) The Welsh Government and LPAs should encourage prospective applicants to incorporate information relating to potential contributions and draft Heads of Terms within a Planning Obligations Statement or where appropriate, a Planning Statement, as a starting point for negotiations through good practice guidance on applications to facilitate early discussion and reduce later delays in the process

3B) LPAs should be encouraged to take Draft Heads of Terms to Planning Committee wherever possible.

Post-Decision

The post-decision stage is the principal time period during which S.106 agreements are drawn up, negotiated (re-negotiated) and ultimately signed within the majority of LPAs. The evaluation of the planning application process for housing (Arup 2013) identified that, although negotiation may take place between the LPA and the applicant during the determination stage, it is 'the norm' for Heads of Terms to be finalised after there is a resolution to grant permission, which can involve a lot of negotiation and remain a 'protracted' process.

This piece of research into stalled sites has shown case studies exhibiting periods ranging from 8 to 67 weeks between a 'minded to approve' decision and a signed S.106 agreement. At the other end of the spectrum, S.106 agreements have been signed very rapidly following a Committee decision (one case study showing a period of five days), however this is the exception rather than 'the norm'. On closer examination, the reasons behind the lengthy time periods between 'minded to approve' and signing of an agreement are extremely varied. The case studies show that factors relating to the LPA's process *per se* include liaison between different service areas over the type and nature of requirements (for example the appropriateness of providing off-site affordable housing); delays relating to the applicant's understanding of the process or to factual issues; delays relating to legal matters (discussed further within Section 4.3 below); and internal delays relating to the release of key documents such as the decision notice.

Discussions with case study LPAs and as part of the wider validation workshops highlighted the fact that, whilst there is a clear structure and timetable for planning applications up to the decision stage, there is a complete absence of any structure post-decision. This appears to have frustrations for both planning officers and applicants, with the former frequently feeling that matters are now 'out of their hands' and therefore control to a certain degree (this would appear to be particularly the case for LPAs where the legal officer plays a strong role in post-decision negotiations), and applicants (particularly smaller developers who may not be as familiar with the S.106 process) subject to prolonged delays.

A number of LPAs have introduced measures post-'resolution to grant' in order to make this part of the process more easy to negotiate for applicants and in an attempt to tighten a potentially protracted process. Measures include proactive monitoring of individual applications and the use of blanket time-limits within which the S.106 agreement must be signed (or otherwise the application will be disposed of by the LPA). It should also be noted that the Welsh Government requirement for Joint Housing Land Availability Studies is that sites are not included in the five year land supply if a S.106 agreement has not been signed within one year of the date of the resolution to grant planning permission.

In terms of monitoring, at least three of the case study LPAs have introduced a particularly proactive approach to the monitoring of individual applications accompanied by a S.106 agreement. This typically involves maintaining a comprehensive database of applications where planning permission is pending, subject to the signing of a S.106 agreement, with review of the database taking place on a monthly basis. Other LPAs report progress on individual S.106 applications to Planning Committee on a monthly or six-week basis. This has the effect of providing a degree of impetus to both the planning officer and applicant to resolve any outstanding matters.

Of the case study LPAs, time-limits of between three, four and six months post-decision to the signing of a S.106 agreement are in place. From discussion, the primary purpose of these time-limits is to provide developers with a known timescale within which the S.106 agreement can be signed and to provide LPAs with advanced warning where unreasonable causes for delay may occur. In practice, none of the case study LPAs appear to adhere rigidly to the time-limits. One LPA commented that the time-limit was rarely used because it detracted from the Council's priority of delivering affordable homes and the cause for any delay in the process was often difficult to determine (and therefore a cut-off period could be applied unfairly). Each of the case study LPAs that had adopted a blanket time-limit considered that it provided focus and reduced or prevented a backlog of applications. Discussion with further LPAs that do not currently operate a blanket time-limit for the completion of legal agreements considered that each case could be reviewed on its individual merits and that a blanket time-limit was not appropriate at present; one LPA suggested that market conditions were by far the biggest influence on implementation timescales and questioned whether mechanisms such as blanket time-limits

would actually be able to improve performance (interestingly, the same LPA has a relatively high proportion of unsigned S.106 agreements).

There are differing degrees as to the extent to which planning officers are actually involved during the post-decision phase. In an example of one case study LPA, planning officers consider they are rarely involved in the process following the Committee recommendation and subsequent instruction of the legal team (information relating to Heads of Terms may not even be present in the relevant planning files as a result). However, this would appear to be an exception rather than standard practice.

In considering re-negotiation from the perspective of LPA process, an important factor would appear to be whether the LPA has delegated powers. As with other factors, there is variation amongst the case study LPAs with several stating that where Heads of Terms have been reported to Planning Committee, any re-negotiated or amended Heads of Terms will also need to be reported (with associated issues relating to timescales and further delay). Other LPAs have stated that they have delegated powers to vary S.106 agreements via s73 applications.

Possible Considerations for Welsh Government 4: Post-Decision

4A) A post-decision timescale would be of use to both LPAs and applicants, to raise awareness and to provide a focus for action; this could be flexible to suit individual LPAs, but could include time periods for issuing of draft agreements to applicants and a timescale within which an applicant would be expected to return a signed agreement.

4B) The use of blanket time-limits is an area that should be further explored by LPAs.

LPA Resources

The guidance on the use of planning obligations for Welsh local authorities produced by the Planning Officers Society for Wales notes that a range of skills types are needed within LPAs as part of the planning obligations process, ranging from negotiation and project management skills through to communication, technical and legal skills. The level and type of staffing necessary to deal with S.106 applications varies between LPAs in Wales from case officers dealing with individual applications, through to specialist S.106 Officers within the planning department.

Only four LPAs in Wales currently have a specialist S.106 Officer at present, with a further four LPAs having a member of staff with S.106 responsibilities, but either subsumed within a wider role or focused more on monitoring/contributions. The benefits of having a specialist S.106 Officer include the day to day experience that an individual would be able to bring to bear on applications, together with a consistency of approach. Where a specialist S.106 Officer is in post, there would appear to be broadly fewer stalled sites; however this is not necessarily the case within every LPA and other factors may cause delay that are outside the control of the planning authority. Similarly, in LPAs where case officers deal with S.106 agreements as part of individual applications, there are both LPAs where the number of stalled sites is very low and those where it is relatively high. Discussions with case study LPAs revealed that the majority did not consider they had a sufficiently high volume of S.106 applications to justify a dedicated officer. The issue did not arise in the discussions with case study applicants and agents although local authority resources was raised as an issue in the meeting with the HBF.

With respect to levels of staffing in legal services departments, a recent report into the administrative costs of Welsh local authorities identified with respect to legal teams that *'except where justified by demand particular to an authority, or where demand on the service has*

*increased due to income generating activities, rationalisation of teams should be endorsed*¹². The report further recommends the standardisation of legal approaches across Wales.

Possible Considerations for Welsh Government 5: Skills and Training

The necessary skills to deal with S.106 applications is an area that LPAs, together with legal teams and professional bodies such as the RTPI should remain aware of, with training provided where skills gaps may be present and sharing of good practice between LPAs where necessary.

Legal Framework

Various legal issues have arisen in discussion on the individual case studies as well as legal officers in a number of LPAs focussed around:

Standardisation and examples of agreements

Land ownership issues and obtaining land titles

Clauses for affordable housing provision and the acceptability to mortgage lenders

The use of Unilateral Undertakings in place of bilateral agreements

Standardisation of Agreements

The simplification of the preparation of agreements and the clauses therein, is one means that could reduce the time and staff resources taken to prepare agreements, as well as provide earlier information to applicants on the likely contents.

Across the case study LPAs there were mixed views regarding the use of standardised agreements.

Most LPAs are able to provide examples to applicants of typical agreements and some provide standard agreements as examples to applicants on the authority's website, with the caveats that these are for illustration only. In other authorities (particularly from legal officers) it was commented that each application is different and the S.106 needs to be bespoke to reflect the circumstances of the development as well as the policy framework of the LPA.

The analysis of the content of S.106 agreements in the case studies highlights however that there are a relatively small number of elements included in S.106 agreements particularly when considered within a single local authority, with affordable housing, education, transport and open space contributions commonly included. This would suggest that a local authority standard agreement could be used for the majority of cases, with options to include a list of relevant clauses.

It is noted that in England the recently updated policy guidance in NPPG encourages LPAs to *'use and publish standard forms and templates to assist with the process of agreeing planning obligations. These could include model agreements and clauses (including those already published by other bodies), that could be made publically available to help with the planning application process'*.

Considering whether the approach could be extended to make standard agreements available on a Wales-wide basis, it is recognised that local authorities use varied approaches, particularly

¹² Welsh Local Authorities – Administrative Cost Review, KPMG/CIPFA (June 2015)

when considering affordable housing provision. One authority for example seeks only to include social rented properties for handover to a housing association or proportionate commuted sum in a Unilateral Undertaking, whereas others prescribe clauses for affordable homes to be offered as a percentage of market value. These approaches align with the policy framework of the LPA for affordable housing and the local housing needs. This can add complexity in the clauses required, but nonetheless, the number of permutations are still relatively few. There may be potential for sharing of standard agreements as good practice at the national level.

Possible Considerations for Welsh Government 6: Standard Agreements

6A) Each LPA to make standard agreements available to applicants online and provided at pre-application stage.

6B) Further collaboration at a Wales level to provide standard agreements and clauses.

Land Ownership and Title

A number of the case studies have been delayed in the completion of agreements due to issues of land ownership and in particular proving Land Title in order to complete the S.106.

The requirements for proving land ownership for S.106 appears not to have been fully understood by all applicants, and according to some case study agents have led to confusion in the LPA as well (on one occasion where the Local Authority owned the land) and there are also occasions when issues relating to land ownership and covenants have emerged subsequent to the “minded to approve subject to S.106” decision of the Planning Committee. This can then lead to delay in the S.106 as land issues are resolved.

Specific issues associated with the case studies have included complications where the local authority is the land owner. This has either necessitated the land being transferred to a developer who can sign the S.106 or confusion/ delay relating to the form of agreement that can be used. One LPA sought the views of Welsh Government on the issue and opted for a Unilateral Undertaking, others have transferred land to another owner.

There have also been cases where there has been a third party landowner or covenants associated with the development site that was not fully understood at submission of the planning application. This has led to planning issues regarding publicity and consultation as well as delays in providing confirmation of land interests. Obtaining title deeds can take time for landowners given that they may be held with banks/ mortgage companies. Delays have also occurred where no title deeds are available and the applicant needs to register their interests with the Land Registry before the S.106 can be progressed.

Highlighting to applicants in a SPG on planning contributions and at the pre-application stage that title deeds will be required in order to secure a planning permission could reduce delays later in the process. The inclusion of proof of title as a validation requirement could be a possible means of ensuring this issue does not happen, although in practice it could unduly discourage applicants and it is not strictly necessary for consideration of the planning merits of the application. Moreover, discussions indicate that many applicants (particularly local landowners seeking to gain outline consent to sell on the land) would be reluctant to spend further upfront legal costs to address land ownership issues prior to some reassurance of planning approval.

Possible Considerations for Welsh Government 7: Land Ownership and Title

7A) Applicants informed at pre-application stage of the requirements for proving Land Title.

7B) Guidance on approaches to S.106 agreements where the local authority is the land owner

Affordable Housing Clauses

The in-depth discussions in the validation workshops, with developers and with LPA officers (both planning and legal) have identified that the legal clauses regarding the provision of affordable housing can often lead to problems in obtaining loans for developers or mortgages by end purchasers. The concerns centre around the restrictions on sales of properties in the future to a prescribed area to meet local need at a reduced market value and the risk that this is considered to present to lenders in terms of repossessions. Whilst there have been past agreements with lenders on appropriate clauses, the situation fluctuates in accordance with financial industry views on risk. Developers have also expressed concern that there are a limited number of lenders who will invest in schemes involving affordable housing units and this can hinder site development. This issue was the source of significant debate in the Validation Workshops as well as in meetings with the case study LPAs.

In order to simplify this issue, one LPA has switched the requirements for affordable housing away from Low Cost Home Ownership towards social rented schemes (or other forms of tenure offered by Registered Social Landlords such as intermediate rent) as this enables either properties to be handed over to the local housing association on completion or commuted sums made in a Unilateral Undertaking which is used to support other local schemes. This approach avoids some of the issues regarding mortgages, but it is recognised that this is a shift in the type of affordable homes provision which may not be suitable in other authorities to meet housing need.

One case study LPA only seeks affordable housing contributions on developments of more than 24 dwellings which if replicated could potentially reduce the instances of complications. This would however be likely to have a significant impact on the provision of affordable homes for local people across Wales however, particularly in rural areas where the majority of homes are delivered on small sites. In addition it should be highlighted that this approach was introduced in the NPPG in England, with a threshold of 10 dwellings before affordable housing or other contributions could be sought but this has been recently removed following a successful High Court challenge by two local authorities given its impact on affordable housing provision.

Possible Considerations for Welsh Government 8: Affordable Housing Clauses

8A) Clauses for affordable housing re-negotiated at national level with mortgage lenders

8B) Sharing of Local Authority good practice on best routes to meeting affordable housing needs potentially through advice on the content of SPGs

Use of Unilateral Undertakings

A Unilateral Undertaking (UU) is prepared by the applicant as a simpler version of a planning agreement to the S.106 bilateral agreement. It is entered into solely by the landowner and any other party with a legal interest in the development site. A UU consists only of the payment of financial contributions rather than elements that require the involvement of the local authority to implement. As such they do not require the local authority to sign and are often managed by the planning officers without need of legal team support. In one LPA the legal officer confirmed that they are not involved in UU's as standard templates are available and those submitted are reviewed by the planning case officer.

Unilateral undertakings were noted as being used in two of the case studies, with one application granted on appeal following a dispute over contributions to be made and one where the local authority was the landowner (and considered it could not enter into a bilateral agreement with itself).

Whilst this was not evident in case studies, a UU can also be used by the applicant as a recourse from protracted negotiations. The consideration by LPAs of where UUs can be encouraged for simple financial contributions could assist in speeding up the agreement process. The use of UUs was mentioned by developers in the HBF meeting as one means of unlocking the process where negotiations are protracted.

It is noted that Welsh Office Circular 13/97 refers to UU's being used principally, but not solely at appeals. The Planning Officers Society for Wales' guidance on the use of S.106 obligations for local authorities highlighted various suggestions for LPAs¹³ and these remain of relevance to the findings of the stalled sites case studies. The considerations below thus take account of these previous recommendations.

Possible Considerations for Welsh Government 9: Unilateral Undertakings

9A) LPAs may wish to encourage developers to use Unilateral Undertakings by setting out within their LDP documentation as much detail as possible on the process applicants are expected to follow for providing unilateral undertakings.

9B) When encouraging unilateral undertakings, LPAs could ensure that their policies on planning obligations are sufficiently clear and detailed to enable applicants to be able to calculate the level, type and provision of obligations applicable for their particular proposed development.

9C) LPAs should make available standard templates to enable applicants to submit unilateral undertakings.

Viability

This is a topic and significant issue in its own right and has been subject to review and research by the Royal Institute of Chartered Surveyors (RICS) and the Royal Town Planning Institute (RTPI). Our research is focused on S.106's and why these have been delayed, resulting in the stalling of planning applications for development. Through our research the issue of viability arising from S.106 requests/requirements/agreements has arisen as an issue resulting in the delay and stalling of developments. Before reviewing the evidence and findings of the research it is necessary to identify what role viability plays in the delay of S.106's and the stalling of planning permissions or development.

Impact of S.106 on Viability

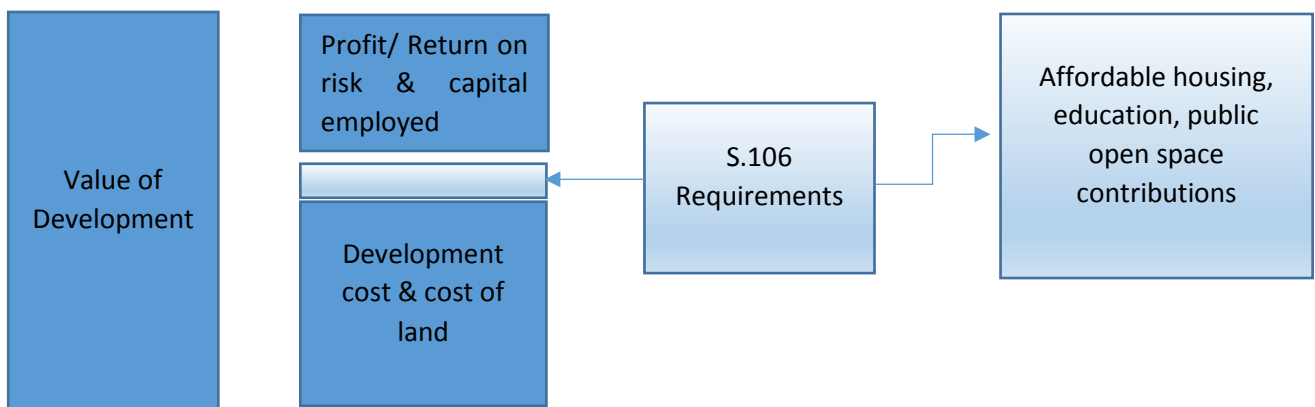
The impact of S.106 requirements on development viability arises not through a single policy requirement, for example affordable housing, but through the cumulative impact of policy. This is illustrated in the table below.

A

B

C

¹³ http://www.rtpi.org.uk/media/9477/Section_106_Guidance_English.pdf



Clearly for a development to be viable, its value as per column A, must be greater than or at least equal to column B and C combined. Whilst other inputs are key determinants in viability (and must also be reasonable), if the S.106 requirements (column C) introduced into column B result in overall costs exceeding the value of development, then the development would be unviable.

For this reason the key inputs of viability appraisals i.e. the value of development, development costs, land costs and other elements of project viability (professional fees, contingencies etc.) are closely scrutinised by LPA's and their advisors when viability is raised as an issue during the determination of planning applications. These inputs are beyond the areas of this research.

Accordingly, where an otherwise viable development is made unviable by the impact of S.106 or other requirements a viability appraisal is submitted by the applicants to LPAs. The purpose of the appraisal is to provide an objective financial viability analysis of the development project and to test its ability to meet its development and planning contribution costs, while ensuring a suitable land value for the landowner and a market risk adjusted return to the developer in delivering that project.

Viability appraisals therefore form the pinch point in planning applications where many key components of development viability including S.106 contributions are scrutinised acutely by applicants and LPA's.

Discussion with planning officers and the case study applicants and agents has identified that viability issues can be faced by applicants from small to large developments. Indeed, viability issues were raised by an agent for a site of only two homes. We have identified that with affordable housing thresholds generally being reduced within the emerging Local Development Plans of a number of LPAs to five or more homes, and indeed as low as one or two homes, viability may arise more frequently in the future.

Across the case studies however, the viability issues seem to have arisen more commonly on medium and large developments (20 homes plus) particularly those which require significant levels of affordable housing, alongside other requirements such as infrastructure (roads, schools, major transport improvements etc.). It is these applications where delays and the potential stalling of developments arise due to S.106 requirements and associated viability issues. The issue of viability appraisals and/ or the level of contributions from our research related to just over half of the case study planning applications and more than half of the homes given that these were the larger sites. Of course, our case studies have been tailored to cover a wide range of development scales and therefore do not fully reflect the sample that would be taken if research was specifically focused on viability issues.

Amongst the case study sites, there are large sites which have been included in LDPs and thus have been subject to confirmation of deliverability, yet at a later stage in the planning process emerge as having issues of viability that lead to stalling of the development. This is a critical issue to the five year housing supply and may warrant further investigation to understand the reasons.

When viability has been raised as an issue, our research has shown that an appraisal is generally prepared and submitted by the applicant. The appraisal is then typically submitted part way through the application process. This appears a logical approach as the developer needs to provide the inputs for their particular development in terms of build costs, likely market value, etc.

Our research has also found that when a project has a viability issue, in the majority of cases this is recognised early by the applicants who typically are either larger developers or are utilising experienced professionals.

We have identified that when a viability appraisal is received by an LPA there are three broad approaches, which are adopted to review and scrutinise them:

1. Their own in-house property department review the appraisal;
2. An arms, length independent company review the appraisal;
3. The District Valuer reviews the appraisal at the cost of the applicant or shared with the LPA.

We note that no LPAs seek to appoint an external independent professional practice or property agent to review the appraisal. The arms-length company, in point 2 above is a spin-off company from a Council department.

In all cases, the cost associated with the review is passed to the applicant, either in full or on a shared 50:50 basis. The costs of review vary from less than £500 using internal colleagues, to £3,000 if the District Valuer is required on a more complex and significant project.

The viability appraisals take the form of: paper statements for small projects; Excel Spreadsheets; the Three Dragons system; and specialist development appraisal software *Angus/Circle*. Excel spreadsheets are often used and these are considered to be open and transparent. The Three Dragons system is a “toolkit” system based on excel. Various LPAs use this system however, some Councils and applicants expressed views that the Three Dragons system is closed system with particular formulas and calculations hidden within locked cells and they also check the results with a bespoke spreadsheet. Finally, *Angus/Circle* is a specialist appraisal system used by the Surveyors and the District Valuer particularly for large and more complex applications.

In our research, one Council identified that through the District Valuer (typically using *Angus/Circle*) significant variances arise in values between this approach and the Three Dragons system, such that greater reliance is placed on the District Valuer. This situation was also identified in the meeting with the HBF and the validation workshops. One LPA is currently reviewing process with consideration of using the DV in future. A conclusion from the research is that toolkits can assist in viability assessments but need to have some flexibility to take account of bespoke site inputs and be transparent, in order that professional judgement can be used and both parties can understand and agree the outcome.

Given the nature and complexity of appraisals for larger schemes, negotiations and discussions can be protracted and this can delay determination of the application and result in protracted discussions.

The research has revealed that S.106 requirements often become a focus for negotiation when viability is raised as a planning issue, either due to their cumulative cost, individual requirements or the timing of payments or delivery of infrastructure.

Where viability issues were raised in case studies our research has identified that the level and mix of affordable housing is the key focus of negotiation. This is because the cost of affordable homes has to be borne by the developer of the site in the absence of any housing grant, whilst the price paid for the home does not cover the actual costs of building the property either. Accordingly, a key focus for negotiation is the percentage level of affordable housing, along with the precise mix and tenure of affordable homes to be provided.

However, other S.106 requirements are also raising viability issues, relating to funding for:

Education for example the provision of monies to expand schools to accommodate additional pupils arising from a development.

Transportation, for example contributions or provision of on site or off site strategic highway/public transport improvements.

Public open space, for example the provision of contributions to off-site sporting facilities such as football pitches and parks.

Leisure, for example contributions towards leisure centres.

In addition, it is not only the actual provision of monies or the particular element of infrastructure, but the timing and phasing of the above, as this can directly affect cash flow and project viability. If significant sums or infrastructure is required upfront in order to deliver a development, then this can significantly affect project viability, as such costs are very hard to recover through the build process. Accordingly, a significant level of discussions is also focused upon the phasing and staging of payments and delivery of infrastructure through the course of a development with this defined in the S.106 agreement, i.e. before occupation of the xth home, highway works of a particular nature defined on a plan will be provided, and by xth home, a further element. The same approach and negotiation is also undertaken for payment of monies for off-site contributions.

An issue which was raised at the workshops (South Wales and the HBF meeting), was that the S.106 contributions often employ tariff style contributions with a contribution sought per home from developers for the provision of education, public open space, highways and other contributions. This form of approach results in significant contributions sought for each home. However, this approach conflicts with the Community Infrastructure Levy Regulation (2010) Regulation 122 in that the contributions are not directly related in scale and kind to the proposed development and necessary for the development to proceed. Similarly, such generic tariff style contributions also raise issues with Regulation 123 preventing the collection of pooled contributions from five or more project and backdated to 6th April 2010. This particular issue is considered in the following Section.

When the viability appraisal findings have been reviewed, adjusted and agreed, then the S.106 heads of terms are finalised on the basis of the appraisal.

Following agreement of the viability appraisal, the applications are then reported to Committee with the report identifying that S.106 contributions have been negotiated to reflect the project's viability.

Our research identified that the commercially sensitive and therefore confidential nature of the viability appraisals has posed transparency issues with Planning Committees This is because,

Members of the Planning Committee have asked upon reading the Committee Report (at Committee) to see the viability appraisal and this has not been possible to provide due to the meeting being public. We have identified that a number of LPAs have carried out viability training with key officers and the Planning Committee.

Officers pointed out however that if Members wish to see the viability appraisal outside of the Committee Meeting then they can do so and officers have discussed and explained the appraisals and their implications to Members.

Some Councils seek to include overage clauses, to cover the potential situation where through market recovery and property value increases, a development becomes more viable over time. The overage clause then requires a reassessment of the S.106 and if improvement in viability and profit level has arisen, the Council and S.106 requires a sharing of the uplift. This approach whilst understandable is a contentious issue as it relies on review of development viability when a development is under construction. Development sites are heterogeneous, with many variables, including the market as well as labour and material costs and unforeseen abnormalities or problems. Accordingly, in this situation, for example should viability deteriorate post securing a S.106 on a reduced basis due to viability, a developer does not then have the ability to seek a further reduction in S.106 contributions. Accordingly overage for improved profitability does not balance against the risk that viability may deteriorate.

Finally, our research has identified that in some instances, applications can be delayed because applicants have not recognised the viability implications of S.106 requirements prior to committee. Accordingly, following a committee resolution to approve subject to S.106 heads of terms, reported to committee, the applicant has then realised the financial implications. At this point and in limited instances, re-negotiation of the S.106 has been undertaken. However, this then requires the application to be reported back to Committee with an explanation as to why the S.106 has been subject to renegotiation. Officers however advised that this situation typically only occurs when applicants are not familiar with S.106s and are not property developers or represented by professionals. As such, this situation typically only occurs on smaller scale projects.

Possible Considerations for Welsh Government 10: Viability

10A) Provision of a means of dispute resolution on viability issues

10B) Encourage good practice as toolkits using site specific information and valuation expertise, rather than approaches that lack flexibility to respond to site circumstances or transparency

10C) Viability discussions to take place prior to Committee resolution to grant

10D) Training in viability for Council Members to enhance committee knowledge of the process

10E) Research into the reasons for sites that are assessed as deliverable during the LDP process becoming stalled due to viability issues at later planning stages

Effect of CIL Regulation 122 and 123

Alongside the 'stretch' of S.106 requirements alluded to in earlier sections of this report, there has also been a gradual increase in the requirements and level of affordable housing to be delivered through policies of Development Plans. This has had a cumulative effect on the costs of development, which as previously identified have a significant bearing on development viability.

To address this issue, The Community Infrastructure Levy Regulations were prepared as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area through a standard charging regime to be applied to developments.

To date, three authorities (Caerphilly, Merthyr Tydfil and Rhondda Cynon Taff) have an adopted CIL charging regime in Wales. In the meantime, for those without a CIL the Regulations have an important bearing on the potential scope, use and limitations of planning obligations under S.106 of the Town and Country Planning Act 1990. This is because Regulation 122 of the CIL Regulations provides that a S.106 agreement may only constitute a reason for granting planning permission for a development if the relevant obligation is:

Necessary to make the development acceptable in planning terms;

Directly related to the development; and

Fairly and reasonably related in scale and kind to the development.

In addition, Regulation 123 introduced restrictions on the pooling of planning obligations. As of April 2015, Local Planning Authorities can no longer pool more than five S.106 planning obligations together (dating back to 6 April 2010) to pay for a single infrastructure project or type of infrastructure (and it is a type of infrastructure which is capable of being funded by the Levy).

Whilst Regulation 122 and 123 are legal requirements, the effect of the Regulations does not make any agreement unlawful if it does not comply with the tests. However it does mean that LPA's and the Planning Inspectorate cannot rely on any elements as a reason for granting planning permission if they do not comply with the tests. If such *ultra vires* contributions are attributed weight, then the permission is possibly challengeable.

There is however a significant legal issue currently arising over the effect of Regulation 123 and whether the pooling of restrictions can be offset by "salami slicing" larger scale projects with pooled contributions into smaller discrete elements specific to individual planning applications/development. In short, there appears to be no restriction within the Regulations, to prevent this.

It appears from our research that Regulation 122 and 123 is impacting on the negotiation of S.106 agreements and with consequential lengthening of the time to agree and resolve appropriate S.106 provisions. This appears to be the case as applicants are seeking further information on specific S.106 requests in accordance with Regulation 122 and 123.

The majority of case study authorities have adopted SPGs. However, some SPGs require tariff style contributions through S.106 contributions towards education, highways, public open space, leisure, regeneration, libraries, highway projects etc. Examples of such SPGs have been identified through this research and also through our general wider planning experience. Such tariff style S.106 SPGs require for example:

Education: the provision of £12,000 per pupil arising from each home for the provision of new education facilities (new build primary level) rising to £18,000 per pupil per home for post 16 level;

Waste management facilities: provision of various items at £70 per home; and

Public open space off site: provision at £1,000 per home and maintenance cost of £700 per home.

These forms or tariff are not however CIL 122 compliant. For example:

The education contribution does not identify that account must be taken of existing capacity within schools. Provision of a contribution where there is no need, is unnecessary and not related in scale and kind to the development.

Waste management facilities are non-specific and generic.

The public open space contribution requires a contribution to provide local areas for play, sports pitches and amenity grassland. However, it is not possible from a simple tariff sum, to identify what facilities need improvement in order for the development proposed to be acceptable. It is also not possible to relate the cost of provision to the delivery of specific and direct items of new play or sports facilities through a generic tariff figure.

In addition, these generic tariff contributions without specifying what deficiency exists, and what item needs to be improved in order for the development to proceed, fails CIL regulation 123, as the generic contribution is likely to be one which will be pooled with many other contributions, in excess of the five limit.

These issues have arisen within the case studies we have reviewed. The issues were also identified at the Home Builders Federation meeting. From our research it is evident that applicants are therefore seeking more evidence from Councils on what specific elements of infrastructure are necessary to be provided and where, along with the associated cost and whether the element of infrastructure has benefited from other contributions. This then provides surety against CIL Regulation 122 and 123.

Whilst this issue is subject to further refinement through appeals and court cases, the following appeal examples highlight the impact that CIL 122 and 123 are having to date:

Abermorddu, near Wrexham 16th June 2015	The scheme was refused by the Local Planning Authority for a single reason; the failure to make provision for financial payments towards the provision and improvement of local education facilities. The key issue was the lack of contributions towards a High School. The Inspector found that six obligations had been entered into since April 2010 which would provide contributions towards the High School. The request for contributions towards the High School failed the test of CIL Regulation 123, but the appeal was allowed despite not mitigating the impacts on the High School.
Plymouth Road, Vale of Glamorgan 9th June 2010	The scheme was refused for two reasons, one relating to the lack of contribution towards public open space contributions to improve a local park. However, no direct evidence could be substantiated to demonstrate why the improvement was necessary or to support the sum requested.

Whilst the impact of CIL Regulation 122 and 123 is not the focus of this research, it is evident that the requirements are affecting the negotiation of S.106 contributions. This issue also has an interface with the wider viability issues, and together result in some cases to the delay/extension of the time taken to agree S.106 contributions. It is likely that this is a transitional period whereby the changes are impacting on on-going discussions and LPAs are revising their approaches. There may be a case for good practice sharing and/ or guidance on the issue in order to expedite agreements delayed in the transitional phase.

Site Specific Matters and Other Issues

The case studies together with the in-depth meetings with the LPAs and other key stakeholders identified a general view that whilst S.106 agreements do add complication and delay to the development process, there are other issues at play which may be larger factors in the stalling of sites. These areas are outside of the brief for the commission, which is to specifically

examine the relationship between sites being stalled and S.106 agreements. We highlight these issues in order to present a rounded analysis of factors encountered through the research.

Site Specific Constraints: many of the sites have significant constraints such as ground conditions, flooding or drainage, biodiversity or transport access. These constraints have demonstrably led to delays during the planning process, such as additional ecology surveys becoming necessary prior to reporting the application to Committee, or continue to constrain the development from being taken forward due to the costs or agreements needed.

Infrastructure Phasing: in some of the case studies, it is evident that significant transport or other infrastructure is required in order to bring the development forward and this may be required at an early stage before homes are built and occupied. This can present significant cash flow and viability challenges for developers, particularly in areas of low market value. This issue is common across the UK, and in England the Homes and Communities Agency is providing some loans to housing developers to be paid back as units are sold, to counteract this problem for example.

Market Interest: the case studies and discussions confirmed the known situation that there are areas of Wales where there is limited market interest, particularly by the major house builders, despite significant housing need. This appeared to be the case in the west and rural LPAs interviewed. This relates to land values versus development costs, but also the operational issues of home building away from established centres.

Developer Circumstances: a number of sites were stalled due to reasons related to the developer. This included personal circumstances affecting local landowners such as bereavement, divorce or company changes. Many sites have a complex history of planning applications, with the developers and their proposals changing. These issues are unfortunate, but difficult to address.

Summary

This chapter has drawn together the findings of the research undertaken into the relationship between stalled sites and S.106 agreements. The various themes that have been explored here have arisen from in-depth discussions with case study LPAs, a review of specific case study applications and discussions held as part of validation workshops with representatives of planning and legal departments of LPAs and developers and a meeting with members of the HBF. The result has been a balanced view of the range of factors at play in the approach to S.106 agreements, from LPA process, the application of viability tests, through to very site and location specific factors such as ground conditions or developer circumstances. There is not considered to be a single 'catch-all' or improvement that could be made to the planning system to resolve all these factors, however much could be done to improve the transparency of the system, encourage greater awareness and knowledge of processes within it, thereby reducing some of the delays currently experienced. A range of areas for further consideration (by Welsh Government, LPAs and applicants) have therefore been highlighted within this chapter.

Conclusions

The purpose of this report has been to identify and quantify all sites that are stalled in Wales as a result of issues relating to a S.106 agreement; through case study analysis, to examine the reasons why sites are stalled; and to make a series of recommendations for how these issues could be addressed. The research has identified that just over 400 sites are currently stalled across Wales, of which nearly half involve a S.106 agreement. Stalled sites primarily relate to residential development, with at least 7,600 homes currently being tied up within sites across Wales, including a number of single large developments of more than 1,000 homes.

The research has involved discussions with planning and legal officers, developers and agents, in an attempt to discern the various factors at play in sites becoming stalled, from a variety of perspectives. It is clear that no single factor is responsible for the stalling of sites, although changing market conditions and associated viability concerns play an important part. Difficulties and delays in securing finance, resulting in a subsequent need for re-negotiation of S.106 agreements is a further area identified. However, there is also significant variation across the country in terms of procedure, approaches and resourcing of LPAs as applied to S.106 matters, site-specific factors that vary from application to application, and changing developer circumstances and general level of awareness of the S.106 process. The introduction of the Community Infrastructure Levy will introduce still further variation between authorities, with some already pursuing the levy and others not.

As stated in the previous section, there is not considered to be a single solution to the cause of delays to sites where S.106 agreements are involved, however a number of recommendations have been identified that might improve the transparency of the system, encourage greater awareness and knowledge of processes within it, and thereby reduce some of the delays currently experienced.

Recommendations to come out of the research are summarised in **Table 5-1** below.

Table 5-1 Summary of Recommendations

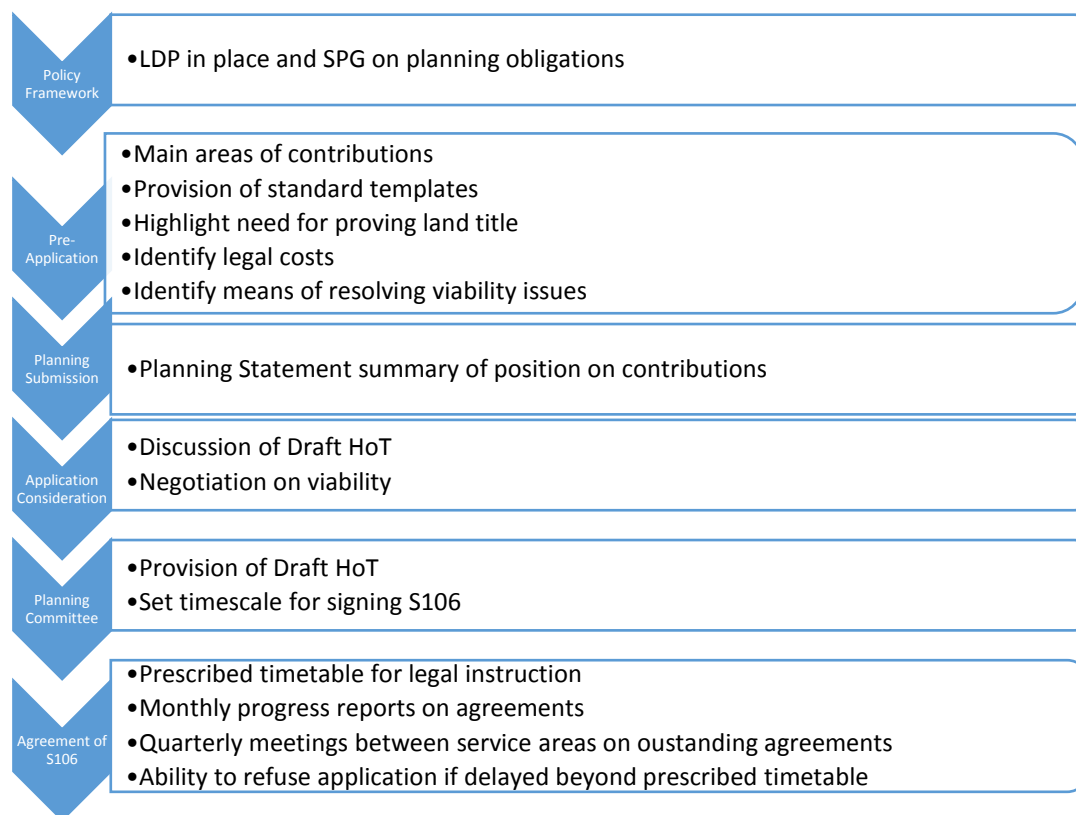
Area	Ref.	Recommendation	Responsibility
Policy Framework	1A	It would be useful for all LPAs to produce Supplementary Planning Guidance specifically in relation to planning obligations, in order to provide prospective applicants with clarity surrounding the process at an early stage.	Local Planning Authorities with Welsh Government guidance/ advice
Policy Framework	1B	There could be benefits in a common approach and guidance on the contents in order to assist LPAs in preparing updated SPGs.	Welsh Government
Pre-Application Advice	2	LPAs to encourage prospective applicants to seek pre-application advice as a way of raising awareness of the S.106 process and providing clarity of expectations at an early stage in the process.	Local Planning Authorities with Welsh Government guidance/ advice

Area	Ref.	Recommendation	Responsibility
Determination Stage	3A	The Welsh Government and LPAs should encourage prospective applicants to incorporate information relating to potential contributions and draft Heads of Terms within a Planning Obligations Statement or, where appropriate, a Planning Statement, as a starting point for negotiations.	Local Planning Authorities with Welsh Government guidance/ advice
Determination Stage	3B	LPAs should be encouraged to take Draft Heads of Terms to Planning Committee wherever possible.	Local Planning Authorities
Post-Decision	4A	A post-decision timescale would be of use to both LPAs and applicants, to raise awareness and to provide a focus for action; this could be flexible to suit individual LPAs, but could include time periods for issuing draft agreements to applicants and a timescale within which an applicant would be expected to return a signed agreement.	Local Planning Authorities
Post-Decision	4B	The use of blanket time-limits is an area that should be further explored by LPAs.	Local Planning Authorities
Skills and Training	5	The necessary skills to deal with S.106 applications is an area that LPAs should remain aware of, with training provided where skills gaps may be present and sharing of good practice between LPAs where necessary.	Local Planning Authorities with Welsh Government and professional body support
Standard Agreements	6A	Each LPA to make standard agreements available to applicants online and provided at pre-application stage.	Local Planning Authorities
Standard Agreements	6B	Collaboration at a Wales level to provide standard agreements and clauses.	Welsh Government with Local Planning Authorities
Land Ownership and Title	7A	Applicants informed at pre-application stage of the requirements for proving Land Title.	Local Planning Authorities
Land Ownership and Title	7B	Guidance on approaches to S.106 agreements where the local authority is the landowner.	Welsh Government
Affordable Housing	8A	Clauses for affordable housing re-negotiated at national level with	Welsh Government, HBF

Area	Ref.	Recommendation	Responsibility
Clauses		mortgage lenders.	
Affordable Housing Clauses	8B	Sharing of Local Authority good practice on best routes to meeting affordable housing needs potentially through advice on the content of SPGs	Local Planning Authorities with Welsh Government guidance/ advice
Unilateral Undertakings	9A	LPAs may wish to encourage developers to use unilateral undertakings by setting out within their LDP documentation as much detail as possible of the process that applicants are expected to follow for providing unilateral undertakings.	Local Planning Authorities with Welsh Government guidance/ advice
Unilateral Undertakings	9B	When encouraging unilateral undertakings, LPAS could ensure that their policies on planning obligations are sufficiently clear and detailed to enable applicants to be able to calculate the level, type and provision of obligations applicable for their particular proposal.	Local Planning Authorities with Welsh Government guidance/ advice
Unilateral Undertakings	9C	LPAs should make standard templates available to enable applicants to submit unilateral undertakings.	Local Planning Authorities
Viability	10A	Provision of a means of dispute resolution on viability issues.	Welsh Government
Viability	10B	Encourage good practice as toolkits using site specific information and valuation expertise, rather than approaches that lack flexibility to respond to site circumstances or transparency	Welsh Government
Viability	10C	Viability discussions to take place prior to Committee resolution to grant.	Local Planning Authorities
Viability	10D	Training in viability for Council Members to enhance committee knowledge of the process	Local Planning Authorities with Welsh Government and professional body support
Viability	10E	Research into the reasons for sites that are assessed as deliverable during the LDP process becoming stalled due to viability issues at later planning stages	Welsh Government

Finally, **Figure 5-1** summarises the various stages of the planning process in terms of how good practice could be incorporated to reduce delays with S.106 agreements.

Figure 5-1: Summary of Good Practice to Reach S.106 Agreement



Appendix 1

Case Study Summary Sheets

Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref:

1

Description of Development

Demolish existing farmhouse and farm buildings and construct new two-storey residential units

Number of housing units	9
Number of affordable homes	1
Other land uses	N

Applicant / Agent Perspective

The agent was contacted on numerous occasions but there was no response.

Local Planning Authority Perspective

Covenant on land in favour of Council requires payment to release covenant which applicant has not paid Council to date. Council chased progress and advised will refuse if S106 not progressed. The Council reports progress on S106s to Planning Committee every month. This instance is unique in that a covenant specific to the site has caused delays in negotiations with the applicant post resolution of the application.

Characteristics of Application

- ☒ Outline ☒ Housing only ☐ Major private homebuilder ☐ Approved with conditions and S106 ☐ Delegated
☐ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☒ Committee
☐ Reserved ☒ Local homebuilder ☐ Private householder

Key dates

Registration / validation	21/06/11
Minded to approve committee date	31/10/12
Any other committee dates	NA
Instruction to Legal Team	01/11/12
Draft Heads of Terms	NA
Draft S106	30/10/13 & 02/04/14
Signed S106	NA
Decision Date	NA

Summary of Reasons for Site Becoming Stalled

Covenant on land requires payment to Council to release covenant which applicant has not paid to date.

Over 2½ years after resolution date & S106 has not been resolved.

Total time for validation to decision (weeks)	NA
Total time from minded to approve to signed S106	NA
Total time from Decision Date to 31/3/15	NA

Legal Team Perspective

Covenant on land in favour of Council requires payment to release covenant which applicant has not paid Council to date. Council chased progress and advised will refuse if S106 not progressed.

Summary of S106

The S106 includes £900 per unit for open space & 10% affordable contribution (1 unit, 3 bed 5 person property @ value of £56,311).

Commentary on Lessons Learnt

The covenant was not revealed until after the Committee resolution was made which suggests that earlier legal scrutiny of the scheme would have raised the matter earlier in the process.



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref: 2

Description of Development:

Demolition of existing school and create a residential development

Number of housing units	32
Number of affordable homes	3
Other land uses	

Applicant / Agent Perspective

The applicant's view is that the application was relatively straightforward and the process works well using viability assessments. The site has been sold to a developer who may seek to alter the scheme.

Characteristics of Application

- ☒ Outline
☐ Full
☐ Reserved
☒ Housing only
☐ Mixed use scheme
☐ Major private homebuilder
☐ RSL
☐ Local homebuilder
☐ Private householder
☒ Approved with conditions and S106
☐ Allowed on appeal
☐ Delegated
☐ Committee

Local Planning Authority Perspective:

There were discussions around viability leading to a reduction in planning contributions in order to retain 10% affordable housing and for the site to be viable.

Legal Team Perspective:

A unilateral undertaking on affordable housing was used as the applicant is the Council. There were discussions with Welsh Government on the legal issues of S106 being enforced by the same authority. Where it is agreed that the scheme is not viable to contribute, a review mechanism is in place to ensure that contributions will be gained in future if the viability should change (after three years)

Key dates

Registration / validation	28/07/2010
Minded to approve committee date	
Any other committee dates	
Instruction to Legal Team	
Draft Heads of Terms	
Draft S106	
Signed S106	30/05/2013
Decision Date	30/05/2013
Total time for validation to decision (weeks)	148
Total time from minded to approve to signed S106	
Total time from Decision Date to 31/3/15	95

Summary of Reasons for Site Becoming Stalled

Some delay due to legalities of local authority agreements.

Negotiations over viability.

The site has now been sold to a developer who may seek to change the scheme.

Summary of S106 Requirements

10% affordable housing

Commentary on Lessons Learnt

Unilateral undertaking may be a good means of local authority undertaking development.

Review mechanisms can be used as a means of addressing concerns over changes in viability.



Description of Development:

Residential development

Number of housing units	93
Number of affordable	5
Other land uses	

Characteristics of Application

- ☒ Outline ☒ Housing only ☐ Major private homebuilder ☒ Approved with conditions and S106 ☐ Delegated
☐ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☒ Committee
☐ Reserved ☐ Local homebuilder ☐ Private householder

Applicant / Agent Perspective

The S106 process was relatively straightforward and was assisted by the adoption of the LDP with affordable housing policies, clear guidance in the SPG and pre-application discussions. The agent was encouraged to outline the main commitments of the S106 at application submission and this assisted the process. There were some discussions regarding the level of contributions on transport but agreement was reached on an appropriate level. The agent commented that the SPG is very helpful but can also be inflexible. The site has become stalled due to land negotiations to provide access and the lack of market interest from the volume house builders. The site is large for local based medium sized builders and small for volume house builders.

Key dates

Registration / validation	23/10/2012
Minded to approve committee date	16/04/2013
Any other committee dates	
Instruction to Legal Team	01/02/2013
Draft Heads of Terms	28/01/2013
Draft S106	
Signed S106	
Decision Date	08/11/2013
Total time for validation to decision (weeks)	53
Total time from minded to approve to signed S106	
Total time from Decision Date to 31/3/15	71

Summary of Reasons for Site Becoming Stalled

- During the planning process there were delays due to:
- incorrect address for the third party landowner
 - discussions regarding the alteration to the transportation contribution in the Section 106
 - adoption of the Local Development Plan during consideration

The site is stalled due to:

- land negotiations to provide access
- market interest in developing the site

Local Planning Authority Perspective:

There were discussions around transport contributions during the process of the agreement and as to whether the affordable housing contributions were adequate. Site access was a main issue. The main reasons for the site stalling are considered to be the limited number of home builders actively developing in the local authority area.

Legal Team Perspective:

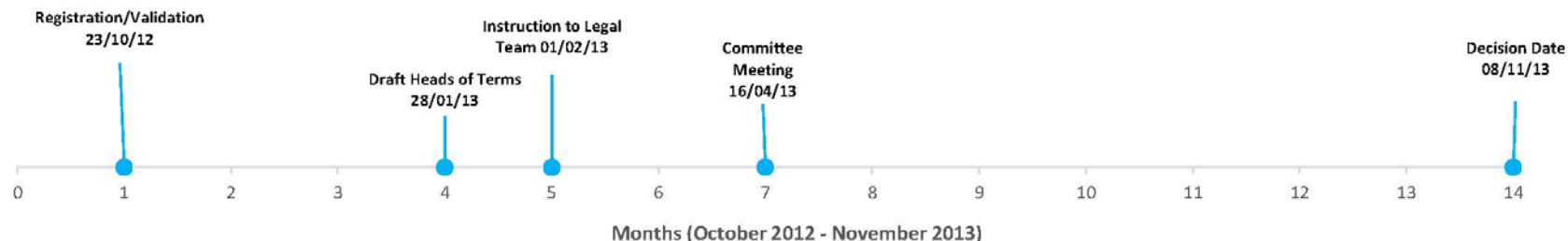
No issues with regards to the legal process were identified with this application by the legal team.

Summary of S106 Requirements

- Education and transport contributions
- 5.4% affordable homes

Commentary on Lessons Learnt

A clear policy framework and pre-application process relating to contributions assisted the S106 agreement



Description of Development:

Land west of Barley Park, New Road, Begally, Kilgetty

Number of housing units	28
Number of affordable	2
Other land uses	

Characteristics of Application

- ☒ Outline ☒ Housing only ☐ Major private homebuilder ☒ Approved with conditions and S106 ☒ Delegated
☐ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☐ Committee
☐ Reserved ☐ Local homebuilder ☐ Private householder

Key dates

Registration / validation	06/12/2012
Minded to approve committee date	26/02/2013
Any other committee dates	
Instruction to Legal Team	
Draft Heads of Terms	
Draft S106	
Signed S106	11/02/2014
Decision Date	01/04/2014
Total time for validation to decision (weeks)	68
Total time from minded to approve to signed S106	
Total time from Decision Date to 31/3/15	52

Summary of Reasons for Site Becoming Stalled

Delays in the planning decision and S106 were due to:

- Negotiations on the viability of affordable housing negotiations
- Ecological surveys and other site constraints

The site is now stalled due to difficulties in selling the land.

Applicant / Agent Perspective

The site has complex ecological, contamination, drainage and flood risk issues to resolve. It was approved in outline under the UDP but has now been removed from the LDP due to the deliverability issues. The S106 required viability negotiations given the development costs. Some delays were due to the need for additional ecological surveys post submission. The site has been placed on the market since consent and the land owner has not to date achieved the value they wish for in order to sell the site. Taking forward the development has required significant upfront costs from the landowner as well as a lot of work from the agent considering the policy context and viability. The LPA lacks resources to facilitate the complex development.

Local Planning Authority Perspective:

There is no file evidence on the reasons for the application taking a year for the signing of the S106 from the Committee. The application had issues regarding biodiversity and potential flood risk. Affordable housing contributions were set out in the Committee report as to be agreed subject to negotiation in relation to economic viability.

Legal Team Perspective:

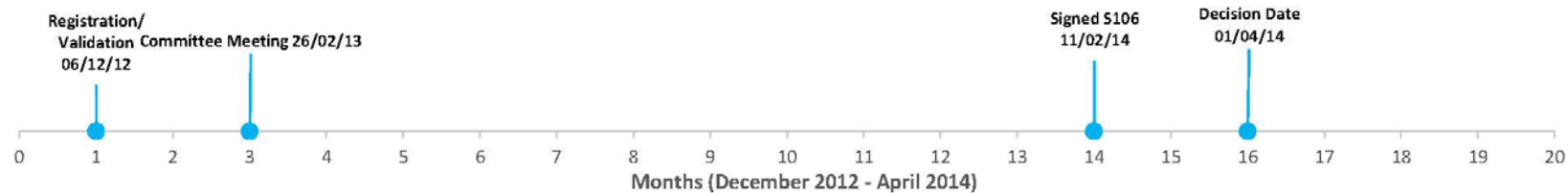
No issues with regards to the legal process were identified with this application by the legal team.

Summary of S106 Requirements

Affordable housing as percentage of market value

Commentary on Lessons Learnt

Viability discussions can be protracted and complex for relatively small developments. Other technical issues and land sales are key factors in whether a development is stalled.



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref: 5

Description of Development:

Redevelopment of former garage site for elderly persons housing

Number of housing units	58
Number of affordable	-
Other land uses	-

Characteristics of Application

- ☒ Outline
☐ Full
☐ Reserved
- ☒ Housing only
☐ Mixed use scheme
- ☐ Major private homebuilder
☐ RSL
☐ Local landowner
☐ Private householder
- ☒ Approved with conditions and S106
☐ Allowed on appeal
- ☒ Delegated
☐ Committee

Key dates

Registration / validation	12/01/2013
Minded to approve committee date	03/07/2013
Any other committee dates	
Instruction to Legal Team	26/04/2013
Draft Heads of Terms	
Draft S106	
Signed S106	
Decision Date	16/07/2013

Total time for validation to decision (weeks)	26
Total time from minded to approve to signed S106	
Total time from Decision Date to 31/3/15	89

Summary of Reasons for Site Becoming Stalled

Viability discussions over off site affordable housing provision and financial contributions

Policy discussions regarding older persons housing.

The reason for the site now being stalled is likely to be due to market conditions.

Applicant / Agent Perspective

The agent stated that the application was a long drawn out process but not specifically to do with the S.106. There were protracted policy discussions with the LPA regarding the over 55s housing provision on the site.

Local Planning Authority Perspective:

The process of discussion on the viability of the affordable housing contributions began at pre-application stage. Following submission there were viability assessments and negotiations undertaken prior to reaching agreement. The LPA consider the site is likely to be stalled due to market conditions.

Legal Team Perspective:

No issues with regards to the legal process were identified with this application by the legal team. The way that the authority undertake up front discussions on the S106 assists in the view of the legal officer in timely agreements.

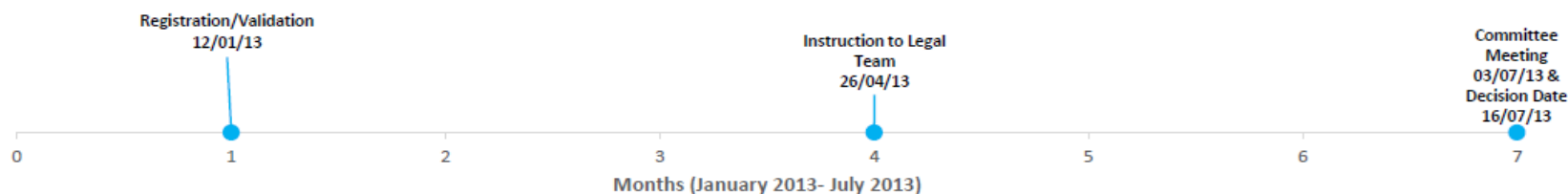
Summary of S106 Requirements

Off-site contribution to affordable housing (£5087.50 per unit). After 3 years, if development not commenced, development viability to be reassessed providing the following additional contributions if viability allows:

- Community facilities (£187 per unit)
- Education (lifelong learning places) (£309.10 per unit)

Commentary on Lessons Learnt

Pre-application discussions on S106 contributions assist the process.



Description of Development:

Residential Development

Number of housing units	239
Number of affordable homes	-
Other land uses	-

Applicant / Agent Perspective

The requirements for the roundabout junction are onerous and impact on the viability of the development.

The market conditions to take forward a site of this size and location are poor.

Characteristics of Application

- ☐ Outline ☒ Housing only ☐ Major private homebuilder ☒ Approved with conditions and S106 ☐ Delegated
☐ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☐ Committee
☒ Reserved ☐ Local homebuilder ☐ Private householder

Local Planning Authority Perspective:

S73 application considered for an extension of the time period for the submission of reserved matters and a new S106 is to be completed. However, the planning permission granted for the original application has now expired. Delay issues considered to relate to the costs of transport infrastructure and scale of the site in the market.

Key dates

Registration / validation	22/10/2008
Minded to approve committee date	
Any other committee dates	
Instruction to Legal Team	
Draft Heads of Terms	
Draft S106	
Signed S106	
Decision Date	18/06/2009

Summary of Reasons for Site Becoming Stalled

Market conditions

Viability of scheme with respect to transport infrastructure

Legal Team Perspective:

A new S106 is under preparation and is awaiting a response to the draft from the agent.

Summary of S106 Requirements

The S106 is not yet signed.

Commentary on Lessons Learnt

There are no specific S106 issues – the stalling relates to other factors.

Total time for validation to decision (weeks)	34
Total time from minded to approve to signed S106	
Total time from Decision Date to 31/3/15	301



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref:

7

Description of Development:

Residential development

Number of housing units	22
Number of affordable	8
Other land uses	-

Applicant / Agent Perspective

The agent stated the delays were due to arguments over affordable housing provision and timeframes with a view that the LPA did not fully consider the costs involved.

Local Planning Authority Perspective:

Site issues include highways and amenity space. The application was made prior to the LDP deposit and is now in the settlement boundary. There was a six month internal delay between the resolution to grant and the draft planning decision notice being sent to the legal team and applicant to progress the S106. There were issues with the land plans from the applicant which required queries and changes. The amenity space was offered to the Town Council who declined it. The land owner has tended to release sites one at a time and has not had a developer on board until recently, the housing association is now involved thus it is likely to progress to delivery. A reserved matter application was submitted to vary the phasing relative to affordable homes. The affordable housing element was a flat rate based on UDP.

Legal Team Perspective:

A response from the legal team has not been available. The team have introduced a process of issuing letters where S106 agreements have not yet been signed and now aim to deliver the S106 within four months of the minded to approve decision.

Summary of S106

Affordable homes at 70% of market value (36% of units)
Amenity space

Commentary on Lessons Learnt

Clear policy framework assists affordable housing discussions. Minor process issues with both LPA and applicant delayed signing of S106 and impetus for signing was limited.

Characteristics of Application

- | | | | | |
|---|--|---|---|---|
| <input checked="" type="checkbox"/> Outline | <input checked="" type="checkbox"/> Housing only | <input type="checkbox"/> Major private homebuilder | <input checked="" type="checkbox"/> Approved with conditions and S106 | <input type="checkbox"/> Delegated |
| <input type="checkbox"/> Full | <input type="checkbox"/> Mixed use scheme | <input type="checkbox"/> RSL | <input type="checkbox"/> Allowed on appeal | <input checked="" type="checkbox"/> Committee |
| <input type="checkbox"/> Reserved | | <input checked="" type="checkbox"/> Local landowner | | |
| | | <input type="checkbox"/> Private householder | | |

Key dates

Registration / validation	9/9/10
Minded to approve committee date	8/12/10
Any other committee dates	-
Instruction to Legal Team	3/2/11
Draft Heads of Terms	-
Draft S106	7/7/11
Signed S106	7/9/11
Decision Date	14/9/11

Summary of Reasons for Site Becoming Stalled

Internal planning department delays of releasing draft decision notice.

Process delays of agreeing land plans.

Variations relating to phasing of delivery of affordable homes

Delivery delays in relation to finding a developer to take forward

Total time for validation to decision (weeks)	52
Total time from minded to approve to signed S106	39
Total time from Decision Date to 31/3/15	184



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref: 8

Description of Development:

Residential development

Number of housing units	16
Number of affordable	5
Other land uses	-

Applicant / Agent Perspective

The former agent cited issues of land ownership and agreement amongst family members as hindering progression of the site, together with difficult market conditions.

Local Planning Authority Perspective:

This is one of two applications linked for the same site. The site was originally not allocated in the Local Plan but is now in the settlement boundary. An application was made to extend the time of the reserved matters. There were highways issues to address. The planning officers were not aware of the reasons for the protracted process of the S106, but review of correspondence identified that there were lengthy discussions around viability with respect to phasing of the site and the affordable housing provision. There were also issues of technicality of plans provided that took several months to be resented.

Characteristics of Application

- | | | | | |
|---|--|---|---|---|
| <input checked="" type="checkbox"/> Outline | <input checked="" type="checkbox"/> Housing only | <input type="checkbox"/> Major private homebuilder | <input checked="" type="checkbox"/> Approved with conditions and S106 | <input type="checkbox"/> Delegated |
| <input type="checkbox"/> Full | <input type="checkbox"/> Mixed use scheme | <input type="checkbox"/> RSL | <input type="checkbox"/> Allowed on appeal | <input checked="" type="checkbox"/> Committee |
| <input type="checkbox"/> Reserved | | <input checked="" type="checkbox"/> Local landowner | | |
| | | <input type="checkbox"/> Private householder | | |

Key dates

Registration / validation	21/9/06
Minded to approve committee date	15/1/08
Any other committee dates	
Instruction to Legal Team	
Draft Heads of Terms	
Draft S106	12/10/10
Signed S106	6/10/11 (est)
Decision Date	13/10/11

Summary of Reasons for Site Becoming Stalled

Technical issues of highways delayed decision.

Viability of site with respect to phasing of affordable homes

Procedural matters relating to provision of plans for the agreement

The site is now stalled due to land ownership issues and difficult market conditions

Total time for validation to decision (weeks)	264
Total time from minded to approve to signed S106	
Total time from Decision Date to 31/3/15	180

Legal Team Perspective:

Contact has been made with the legal team but no response has been received.

Summary of S106

- Affordable housing as 70% of market value
- Provision of play area

Commentary on Lessons Learnt

The discussions around phasing appeared complex for this relatively small site and ways of simplification could be beneficial.

Discussions at an earlier stage on S106 requirements may have reduced procedural delays and negotiations

Registration/
Validation
21/09/06

Committee Meeting
15/01/08

Draft S106
12/10/10

Signed S106 06/10/11
& Decision Date
13/10/11

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Months (September 2006 - October 2011)

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Description of Development:

Residential apartment development on brownfield site

Number of housing units	160
Number of affordable homes	
Other land uses	-

Characteristics of Application

- ☐ Outline ☒ Housing only ☐ Major private homebuilder ☒ Approved with conditions and S106 ☐ Delegated
☒ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☒ Committee
☐ Reserved ☒ Local homebuilder ☐ Private householder

Key dates

Registration / validation	15/01/2007
Minded to approve committee date	17/05/2011
Any other committee dates	
Instruction to Legal Team	
Draft Heads of Terms	
Draft S106	
Signed S106	12/05/2011
Decision Date	17/05/2011

Summary of Reasons for Site Becoming Stalled

Off-site affordable housing provision and low cost homeownership issues

Use of adjacent site and discussions over affordable housing percentage.

Changing market circumstances following the decision-making process.

Total time for validation to decision (weeks)	226
Total time from minded to approve to signed S106	5 days
Total time from Decision Date to 31/3/15	202

Applicant / Agent Perspective

The application took longer to get through the planning process than originally hoped; there was no particular reason for this, it is just a big site with a number of complicated issues that understandably took time. Unfortunately the lengthier application time meant that the site then ran into issues as a result of changing market circumstances. The developer considers there to be 'green shoots' of recovery now, which will hopefully mean the site can now be taken forward.

Local Planning Authority Perspective:

The application was lodged at the beginning of 2007 and there were several meetings with the applicant and agent to negotiate the Heads of Terms for planning contributions. It was agreed after lengthy discussions that the affordable housing would be provided off site as a separate application.

The application site also includes the provision of public open space and surfacing improvements to the adjacent Wharf. Carrying out this additional work has a significant cost to the applicant and this was taken into account in negotiations.

Legal Team Perspective:

There were no particular issues surrounding the section 106 agreement for this application; the main reasons for the site becoming stalled were wider events.

Summary of S106 Requirements:

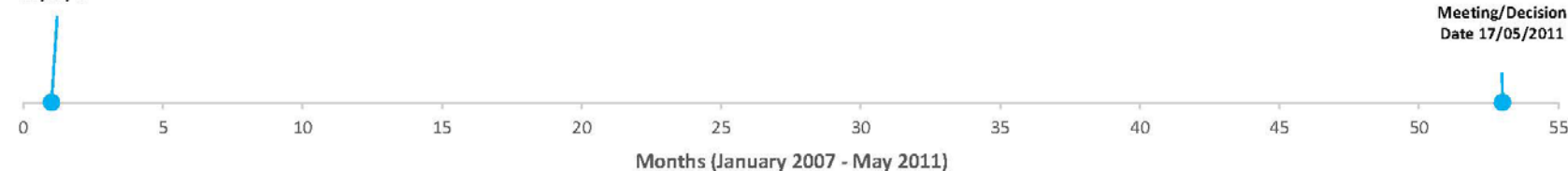
- Education contribution
- Provision of off-site affordable housing, to be transferred to a Registered Social Landlord
- Leisure contribution to be used for upgrading of outdoor play and leisure provision at the nearby leisure centre.

Commentary on Lessons Learnt

Provision of off-site affordable housing can add complexity to discussions. Delays in discussions can lead to a change in market conditions that impact on the viability.

Registration
/Validation
15/01/07

Signed S106 12/05/11
& Committee
Meeting/Decision
Date 17/05/2011



Description of Development:

Residential Development

Number of housing units	251
Number of affordable homes	38
Other land uses	

Applicant / Agent Perspective

The agent indicated that the scheme was complex because it was originally submitted by another applicant. They did not think the delays were particularly related to S.106.

Local Planning Authority Perspective:

The application was submitted on 16/12/13 but not registered until April the following year. The Committee minded to approve the development in September 2014. The S106 is not yet signed.

Characteristics of Application

- ☐ Outline ☒ Housing only ☒ Major private homebuilder ☐ Approved with conditions and S106 ☐ Delegated
☒ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☒ Committee
☐ Reserved ☐ Local homebuilder ☐ Private householder

Key dates

Registration / validation	23/04/2014
Minded to approve committee date	03/09/2014
Any other committee dates	
Instruction to Legal Team	25/09/2014
Draft Heads of Terms	17/07/2014
Draft S106 (last of 7 versions)	26/02/2015
Signed S106	
Decision Date	

Summary of Reasons for Site Becoming Stalled

Land ownership issues related to property transfer from the Council

Developer bankruptcy

Discussions over content of S106

Total time for validation to decision (weeks)

Total time from minded to approve to signed S106

Total time from Decision Date to 31/3/15

Legal Team Perspective:

Issues with this site included complexities over and above planning issues. For example, the developer went bankrupt at some stage during the process; the property arm of the Council are involved and want to maximise receipts to over which there has been a certain amount of to-ing and fro-ing (the property transaction alone has taken two years); because the Council cannot issue a section 106 agreement with itself, the introduction of a third party has been involved; the applicant has wanted to include things in the s106 that in actual fact they have had no money to complete. Seven drafts of the s106 but the Legal Officer did not seem to think this was anything particularly strange/unusual.

Summary of S106 Requirements:

Not known as not yet signed, but includes 38 units of affordable housing.

Commentary on Lessons Learnt

Property involving the local authority adds complexity to the S106 process



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref: 11

Description of Development: The application was in outline seeking permission for: demolition of existing derelict dwelling and outbuildings and proposed residential development of 15 homes, including road widening.

Number of housing units	15
Number of affordable homes	0
Other land uses	

Applicant / Agent Perspective:

The Agent details were not available despite various attempts to make contact.

Local Planning Authority Perspective

The LPA advised that the delay seemed to be due to the applicant. The LPA advised that they had to chase the applicant to push the S106 through to resolve issues and secure engrossment.

The LPA speculated that this might be because the market was not particularly strong at the time of the resolution to approve. Accordingly, the applicant had no urgency to obtain permission, as with issuing of the decision notice the three-year time limit for submission of reserved matters and implementation would commence. As such, the planning permission was effectively held in abeyance for 3 years following decision of the Committee. This has allowed the market to improve and effectively lengthened the time of the planning permission and avoided the need for a S73 application.

Legal Team Perspective:

The legal team has been contacted but there has been no response

Summary of S106

Provision of public open space and measures to protect woodland
No affordable housing requirement

Commentary on Lessons Learnt

Clear setting out of S106 Heads of Terms (HOTs) at Committee. The LPA also advise that when asked they provide details of S106 HOTs as part of the pre-application feedback process.

The LPA could chase the applicant more to progress the S106 against specified timescales in order to avoid prolonged delays.

Characteristics of Application

- | | | | | |
|---|---|---|--|---|
| <input checked="" type="checkbox"/> Outline | <input type="checkbox"/> Housing only | <input type="checkbox"/> Major private homebuilder | <input type="checkbox"/> Approved with conditions and S106 | <input type="checkbox"/> Delegated |
| <input type="checkbox"/> Full | <input type="checkbox"/> Mixed use scheme | <input type="checkbox"/> RSL | <input type="checkbox"/> Allowed on appeal | <input checked="" type="checkbox"/> Committee |
| <input type="checkbox"/> Reserved | | <input checked="" type="checkbox"/> Local homebuilder | | |
| | | <input type="checkbox"/> Private householder | | |

Key dates

Registration / validation	19/01/11.
Minded to approve committee date	09/11/11.
Any other committee dates	No
Instruction to Legal Team	16/11/11
Draft Heads of Terms	At Committee
Draft S106	28/05/12
Signed S106	21/03/14
Decision Date	19/06/14

Summary of Reasons for Site Becoming Stalled

The S106 was not complicated. The S106 delay in signing was due to legal queries over the wording relating to the provision of public open space, and measures to retain/protect woodland and biodiversity areas on the site.

The delay appears to relate to redrafting of the S106 agreement largely as a result of queries and slow processing of the S106 by the applicants solicitor.

Total time for validation to decision (weeks)	178
Total time from minded to approve to signed S106	123
Total time from Decision Date to 31/3/15	<12mths



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref: 12

Description of Development

Change of use of land from shooting ground to chalet park (10 chalets).

Number of housing units

N/A

Number of affordable homes

Other land uses

Applicant / Agent Perspective

Contact was unable to be made with the applicant and given the circumstances this was not pursued further.

Local Planning Authority Perspective

The applicant suffered a bereavement following approval of the application this was the sole reason for delay in signing the S106 agreement.

The delay in executing the S106 agreement solely related to a bereavement within the applicant's family. The LPA identified that this resulted in an understandable delay.

Broad heads of terms and requirements reported to Planning Committee.

Legal Team Perspective

Contact was unable to be made with the legal team.

Summary of S106

The S106 agreement required the provision of additional land to facilitate provision of acceptable visibility splays into the site and for these to be maintained in-perpetuity.

Commentary on Lessons Learnt

The LPA monitor progress of S106s on monthly basis but some do become protracted due to applicant issues. In this case it is felt that there is little the LPA can do in the circumstances.

Characteristics of Application

- ☐ Outline ☐ Housing only ☐ Major private homebuilder ☒ Approved with conditions and S106 ☐ Delegated
☒ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☒ Committee
☐ Reserved ☐ Other - Holiday Lodges ☐ Local homebuilder ☐ Private householder

Key dates

Registration / validation

26/04/12

Minded to approve committee date

12/12/12

Any other committee dates

No

Instruction to Legal Team

13/11/12

Draft Heads of Terms

Committee
Report

Draft S106

Signed S106

Decision Date

30/05/13

Summary of Reasons for Site Becoming Stalled

Family bereavement.

Total time for validation to decision (weeks)

56 weeks

Total time from minded to approve to signed S106

32 weeks

Total time from Decision Date to 31/03/15

95 weeks



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref: 13

Description of Development

Demolition of former residential home and construction of 13 dwellings, parking and access

Number of housing units	13
Number of affordable homes	6
Other land uses	NA

Characteristics of Application

- ☐ Outline ☒ Housing only ☐ Major private homebuilder ☒ Approved with conditions and S106 ☐ Delegated
☒ Full ☐ Mixed use scheme ☒ RSL ☐ Allowed on appeal ☒ Committee
☐ Reserved ☐ Local homebuilder ☐ Private householder

Key dates

Registration / validation	18/02/13
Minded to approve committee date	24/04/13
Any other committee dates	N/A
Instruction to Legal Team	21/02/13
Draft Heads of Terms	N/A
Draft S106	16/10/13 & 28/10/13
Signed S106	24/01/14
Decision Date	29/01/14

Summary of Reasons for Site Becoming Stalled

Response delays from the LPA

Delay caused by Land Registry in re-registering land ownership

Total time for validation to decision (weeks)	49
Total time from minded to approve to signed S106	39
Total time from Decision Date to 31/3/15	60

Applicant / Agent Perspective

The agent described in detail issues that arose relating to requests for land ownership information yet the Council were land owner, and delayed responses from the LPA. The amount of affordable housing the LPA request is very high. There would be a preference to agree the S.106 after the committee resolution once there was more certainty of approval to invest time and cost in it.

Local Planning Authority Perspective

Delay caused by re-registering land ownership from the council to the applicant via Land Registry as not possible to enter S106 with LPA. Scheme has now been implemented.

Legal Team Perspective

Delay caused by re-registering land ownership from the Council to applicant via Land Registry as not possible to enter S106 with LPA.

Summary of S106

Affordable housing (6 of 13 units. Passed to housing association)

Commentary on Lessons Learnt

Applicants are now requested for proof of title through the determination of the application in order to address this matter earlier in the process.



Description of Development

Residential Development

Number of housing units	10
Number of affordable homes	3
Other land uses	NA

Applicant / Agent Perspective

The agent confirmed that the legal agreement was completed relatively promptly (circa two months) but that the delay in the processing of the application (circa five months) was largely due to negotiations with NRW on flood risk matters.

Local Planning Authority Perspective

There was a delay in confirming with the applicant the boundary of the dwellings subject of the affordable obligation although planning consent was issued within two months of the resolution to grant date.

Legal Team Perspective

Delay in confirming boundary of dwellings subject of affordable obligation with the applicant. S106 negotiations were undertaken post minded to approve date.

Summary of S106

Affordable homes

Commentary on Lessons Learnt

Applicants are now sent draft Heads of Terms and template S106s through the determination of the application in order to address this matter earlier in the process.

Characteristics of Application

- | | | | | |
|--|--|---|---|---|
| <input type="checkbox"/> Outline | <input checked="" type="checkbox"/> Housing only | <input type="checkbox"/> Major private homebuilder | <input checked="" type="checkbox"/> Approved with conditions and S106 | <input checked="" type="checkbox"/> Delegated |
| <input checked="" type="checkbox"/> Full | <input type="checkbox"/> Mixed use scheme | <input type="checkbox"/> RSL | <input type="checkbox"/> Allowed on appeal | <input type="checkbox"/> Committee |
| <input type="checkbox"/> Reserved | | <input checked="" type="checkbox"/> Local homebuilder | | |
| | | <input type="checkbox"/> Private householder | | |

Key dates

Registration / validation	21/03/13
Minded to approve committee date	27/08/13 (Delegated)
Any other committee dates	NA
Instruction to Legal Team	06/09/13
Draft Heads of Terms	NA
Draft S106	06/09/13 & 12/09/13
Signed S106	15/10/13
Decision Date	22/10/13

Summary of Reasons for Site Becoming Stalled

Limited delay in confirming boundary of dwellings subject to affordable obligation with the applicant

Reasons for the site remaining stalled are not known

Total time for validation to decision (weeks)	31
Total time from minded to approve to signed S106	8
Total time from Decision Date to 31/3/15	75



Description of Development

Conversion of existing dwelling and disused shop into two dwellings

Number of housing units	2
Number of affordable homes	1
Other land uses	NA

Applicant / Agent Perspective

The agent stated that delays were due to the onerous amount of affordable housing required (50%) and that the applicant was not prepared to accept the loss of property value until they were forced.

Local Planning Authority Perspective

Delay in confirming mortgagee due to divorce of applicant. Council offered to dispose application on 25/06/13 but resurrected at request of applicant. Scheme has since been implemented.

Legal Team Perspective

S106 seeks to secure a single affordable unit within the scheme. Delay in confirming mortgagee due to divorce of applicant. Council offered to dispose application on 25/06/13 but resurrected at request of applicant.

Summary of S106

Provision of one affordable unit.

Commentary on Lessons Learnt

Applicants are now sent draft Heads of Terms and template S106s through the determination of the application in order to address this matter earlier in the process.

Characteristics of Application

- | | | | | |
|--|--|---|--|---|
| <input type="checkbox"/> Outline | <input checked="" type="checkbox"/> Housing only | <input type="checkbox"/> Major private homebuilder | <input type="checkbox"/> Approved with conditions and S106 | <input type="checkbox"/> Delegated |
| <input checked="" type="checkbox"/> Full | <input type="checkbox"/> Mixed use scheme | <input type="checkbox"/> RSL | <input type="checkbox"/> Allowed on appeal | <input checked="" type="checkbox"/> Committee |
| <input type="checkbox"/> Reserved | | <input type="checkbox"/> Local homebuilder | | |
| | | <input checked="" type="checkbox"/> Private householder | | |

Key dates

Registration / validation	07/10/11
Minded to approve committee date	25/04/12
Any other committee dates	NA
Instruction to Legal Team	06/12/12
Draft Heads of Terms	NA
Draft S106	23/01/13 & 01/12/14
Signed S106	NA
Decision Date	NA

Summary of Reasons for Site Becoming Stalled

Delay in confirming mortgagee due to divorce of applicant
Affordable housing contributions

Total time for validation to decision (weeks)	NA
Total time from minded to approve to signed S106	NA
Total time from Decision Date to 31/3/15	NA



Description of Development: Residential development

Number of housing units	14
Number of affordable homes	-
Other land uses	-

Characteristics of Application

- | | | | | |
|---|--|--|---|---|
| <input checked="" type="checkbox"/> Outline | <input checked="" type="checkbox"/> Housing only | <input type="checkbox"/> Major private homebuilder | <input checked="" type="checkbox"/> Approved with conditions and S106 | <input type="checkbox"/> Delegated |
| <input type="checkbox"/> Full | <input type="checkbox"/> Mixed use scheme | <input type="checkbox"/> RSL | <input type="checkbox"/> Allowed on appeal | <input checked="" type="checkbox"/> Committee |
| <input type="checkbox"/> Reserved | | <input type="checkbox"/> Local homebuilder | | |
| | | <input type="checkbox"/> Private householder | | |

Applicant / Agent Perspective

The planning process was very slow regarding the site. The applicant's intention was to get planning approval and then sell the site. Once approved, the land values have not been sufficient to sell the site and the leasehold business remains on the site.

Local Planning Authority Perspective:

There were delays in the applicant signing the S106 from being sent a draft. The applicant was advised after five months that if the application was not withdrawn or the S106 signed, then the application would be refused. The application was withdrawn to resubmit excluding a land parcel as there was confusion as to whether the S106 would need a mortgagor to be party to the agreement. Eventually the applicant proceeded with signing the S106 for the original application. The LPA did not know why the site is currently stalled following the consent.

Key dates

Registration / validation	14/10/2010
Minded to approve committee date	02/12/2011
Any other committee dates	07/12/2011
Instruction to Legal Team	08/12/2011
Draft Heads of Terms	
Draft S106	09/08/2012
Signed S106	19/03/2013
Decision Date	12/04/2013

Total time for validation to decision (weeks)	130
Total time from minded to approve to signed S106	67
Total time from Decision Date to 31/3/15	102

Summary of Reasons for Site Becoming Stalled

Issues relating to applicant understanding of the agreement and relationship to mortgagors

Market interest and land values

Legal Team Perspective:

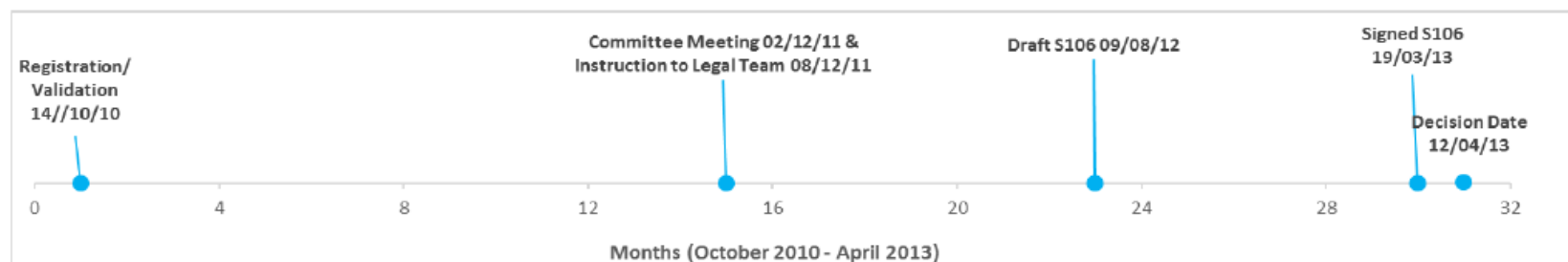
The legal officer considers that the process is straightforward within the LPA and the delays relate to the applicant's returning the agreements.

Summary of S106 Requirements

No affordable housing.
Commuted sum for education and open space provision.

Commentary on Lessons Learnt

Where there are delays in signing of the S106 agreement by the applicant, a timetable from the LPA with the threat of a refusal can expedite the agreement. Applicant lack of knowledge of the processes of S106 can cause delay.



Welsh Government – Stalled Sites and Section 106 Agreements

Case Study Ref: 17

Planning Reference Number: 51482

Description of Development: Residential Development

Number of housing units	35
Number of affordable homes	3
Other land uses	-

Characteristics of Application

- ☐ Outline ☒ Housing only ☐ Major private homebuilder ☐ Approved with conditions and S106 ☐ Delegated
☒ Full ☐ Mixed use scheme ☐ RSL ☒ Allowed on Appeal ☒ Committee
☐ Reserved ☒ Local homebuilder ☐ Private householder

Applicant / Agent Perspective

The development will be shortly starting on site as it has recently been purchased by a developer. The developer appealed against a condition on the permission which was won recently. During this time there was a change in the education contributions due to CIL regs but a compromise was agreed so it did not cause further delay.

Local Planning Authority Perspective:

File records show protracted discussions regarding the scale and need for educational and highway contributions. The application was then refused at planning committee on the basis that the development did not make adequate provision for the payment of an education contribution.

Legal Team Perspective: The legal officer considers that the process is straightforward within the LPA and the delays relate to the applicant's returning the agreements.

Summary of S106 Requirements (Unilateral Undertaking)

Educational contribution
 Three affordable homes
 Traffic speed signs
 Provision of play equipment and open space maintenance payment

Commentary on Lessons Learnt

Protracted discussions on S106 contributions and conditions can end in refusal and appeal.

Key dates

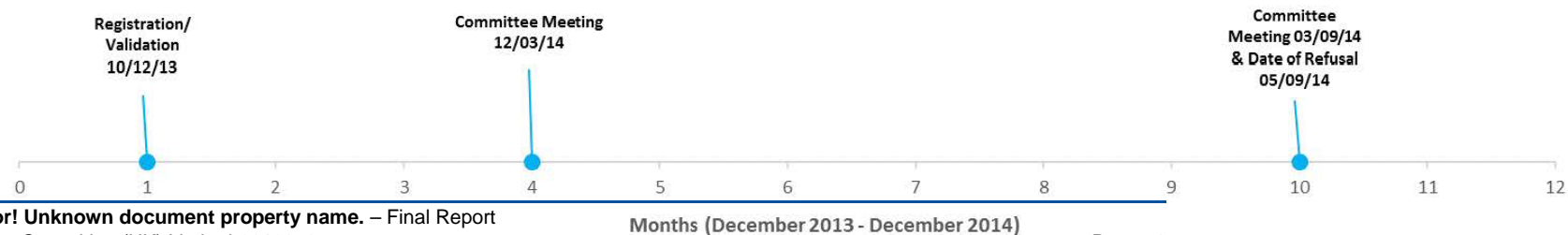
Registration / validation	10/12/2013
Minded to approve committee date	12/03/2014
Any other committee dates	03/09/2014
Instruction to Legal Team	
Draft Heads of Terms	
UU Statement of Common Ground	21/04/2015
Date of Refusal	05/09/2014
Appeal Decision	18/06/2015

Summary of Reasons for Site Becoming Stalled

Dispute over contributions and conditions.

Changed circumstances pertaining to the education contribution and CIL regulations.

Total time for validation to decision (weeks)	38
Total time from minded to approve to signed S106	-
Total time from Decision Date to 31/3/15	29



Description of Development:

Renewal of Outline Planning Permission ref: 041006.

Number of housing units	16
Number of affordable	-
Other land uses	

Characteristics of Application

- ☒ Outline ☐ Housing only ☐ Major private homebuilder ☒ Approved with conditions and S106 ☐ Delegated
☐ Full ☐ Mixed use scheme ☐ RSL ☐ Allowed on appeal ☒ Committee
☐ Reserved ☒ Local homebuilder ☐ Private householder

Applicant / Agent Perspective

A new application for the detailed development has been submitted by a new developer and the S106 is currently being negotiated. The applicant commented that there are significant frustrations in the process as although there is a previous S106 in place, the legal team are saying that the certifications have not been provided correctly and the site needs to be re-advertised due to land ownership issues.

Local Planning Authority Perspective:

The Committee resolved to grant permission for the new application. There are pending decisions on the contributions for recreation given the changes in CIL Regs which mean that the reason for the contribution must be specified.

Legal Team Perspective:

The legal officer considers that the process is straightforward within the LPA and the delays relate to the applicant's returning the agreements.

Summary of S106 Requirements

Ecological mitigation contribution
Recreation contribution (subject to discussion)

Commentary on Lessons Learnt

Changes to the regulations for S106 are causing some delays as LPAs change approach
Legal technicalities can cause delay

Key dates

Registration / validation	28/02/2012
Minded to approve committee date	12/03/2013
Any other committee dates	
Instruction to Legal Team	
Draft Heads of Terms	
Draft S106	
Signed S106	30/07/2013
Decision Date	28/08/2013

Summary of Reasons for Site Becoming Stalled

The site has changed developer and is subject to a detailed planning application.

Total time for validation to decision (weeks)	78
Total time from minded to approve to signed S106	20
Total time from Decision Date to 31/3/15	82



Description of Development: Residential Development

Number of housing units	10
Number of affordable	
Other land uses	

Applicant / Agent Perspective

The site has been sold to another developer and the agent is no longer involved. Despite numerous attempts it was not possible to contact the former applicant.

Characteristics of Application

- | | | | | |
|--|--|---|---|---|
| <input type="checkbox"/> Outline | <input checked="" type="checkbox"/> Housing only | <input type="checkbox"/> Major private homebuilder | <input checked="" type="checkbox"/> Approved with conditions and S106 | <input type="checkbox"/> Delegated |
| <input checked="" type="checkbox"/> Full | <input type="checkbox"/> Mixed use scheme | <input type="checkbox"/> RSL | <input type="checkbox"/> Allowed on appeal | <input checked="" type="checkbox"/> Committee |
| <input type="checkbox"/> Reserved | | <input checked="" type="checkbox"/> Local homebuilder | | |
| | | <input type="checkbox"/> Private householder | | |

Local Planning Authority Perspective:

The case officer is of the view that there weren't any problems with the s106 for this application, and that it went through quite quickly. The issue with the delay on the site was related to market conditions as well as internal changes within the applicant's organisation. The site has now been sold to another developer and is being progressed.

Legal Team Perspective:

The legal officer considers that the process is straightforward within the LPA and the delays relate to the applicant's returning the agreements.

Summary of S106 Requirements

Recreation contribution

Commentary on Lessons Learnt

The S106 process was straightforward as the Heads of Terms were carried over from the previous consent.

Key dates

Registration / validation	08/12/2011
Minded to approve committee date	14/03/2012
Any other committee dates	
Instruction to Legal Team	
Draft Heads of Terms	
Draft S106	
Signed S106	11/09/2012
Decision Date	16/10/2012

Summary of Reasons for Site Becoming Stalled

Market conditions

Changes in developer organisation

Total time for validation to decision (weeks)	44
Total time from minded to approve to signed S106	25
Total time from Decision Date to 31/3/15	128

