Southern Housing Response to HCLG Committee Inquiry on Land Value Capture

About Us

Southern Housing is one of the largest housing associations in the UK. We were formed through the merger of Optivo and Southern Housing Group in December 2022. We own and manage almost 80,000, mostly affordable homes across London, the Midlands and the southeast of England.

Southern Housing is a not-for-profit social landlord with charitable status regulated by the Regulator of Social Housing. The Regulator has recently awarded us its top grade (G1) for Governance. And its second highest (V2 & C2) grades for our performance against its Viability and Consumer standards.

We reinvest every penny we receive from rent, service charges and sales into delivering services to our residents, maintaining our existing homes and building new ones. Our vision is to create communities where everyone has a safe home in a place where they're proud to live.

We welcome the opportunity to supply written evidence to the Committee and are happy to supply further evidence/thoughts/opinions as part of the inquiry.

1. **How effective and efficient are current mechanisms of land value capture in England?**

Evidence provided to the Committee's previous inquiry suggested anywhere between 25% and 50%[1] of the uplift in land values generated by the granting of planning permission is captured by the state. This compares with 90% or more in Germany, France and the Netherlands[2] suggesting there is scope to capture considerably more value for the public purse. Much of the uplift captured by the state is secured through section 106 planning obligations. Government estimates suggest these generated a total of £7bn in 2018/19[3]. Despite some deficiencies (more on which below), these obligations have proved a highly effective and reliable means of securing affordable housing. They contributed just under 50% of all affordable completions in 2023-24[4] and have been the single largest method of delivering affordable homes in England every year since 2015-16, accounting for at least 40% of affordable supply every year[5]. Such contributions also account for a significant share of overall new home delivery - they

[1] Land Value Capture - Housing, Communities and Local Government Committee - House of Commons
[2] https://neweconomics.org/uploads/files/The-foundations-of-the-housing-crisis-FINAL.pdf
[3] Planning for the future - GOV.UK
[4] Live_Table_1000.ods
[5] https://pdf.euro.savills.co.uk/uk/residential---other/the-challenges-of-unlocking-section-106-delivery---july-2024..pdf

were responsible for 12% of net additions to dwelling stock last year[6]. Importantly, s106 obligations reduce the cost to the state of delivering affordable housing since most homes delivered through this route are ineligible for grant finance, and are instead subsidised by private development activity.

The efficacy of s106 planning obligations in delivering affordable homes is attributable to a number of factors:

- They are negotiated on a site-by-site basis, enabling varying circumstances with respect to viability to be addressed. Changes to viability guidance in 2018 mean these discussions are now far more transparent and balanced than previously with local authorities much better placed to hold out for their specified proportion of affordable homes
- Unlike other forms of tax which have the effect of capturing land value, s106 (like CIL) is a hypothecated tax with contributions made by developers captured and spent locally. Affordable housing is typically delivered on-site, which accelerates build-out rates and promotes mixed communities
- They give a high priority to affordable housing. 78% of Section 106 funds were spent on affordable housing in 2018/19, according to MHCLG[7].

Nevertheless, there is still room for improvement:

- Historically, developers have used viability assessments to reduce the number of homes built on site. Research by Shelter in 2017[8] showed that use of such assessments in 2016/17 led to the provision of 80% fewer affordable homes than would otherwise have been delivered had developers provided policy-compliant levels of affordable housing. Developers' scope to water down their affordable housing obligations is now much-reduced following changes to viability guidance in 2018. But negotiation is still a key element of the process and local authorities sometimes lack the resources and expertise to secure their specified levels of affordable housing (especially when negotiating with the largest, most well-resourced housebuilders). By contrast, the need to negotiate can act as a barrier to entry for smaller SME builders, which runs counter to Government efforts to diversify the housebuilding industry
- While viability assessments must now be made public, negotiations are still regarded as opaque with local communities unsure about the level of affordable housing or infrastructure new development will bring. This uncertainty can fuel local opposition to new development, which is a key consideration in Government's mission to build 1.5 million homes
- Negotiations can be protracted. Government's Planning for the Future consultation reported that over 80% of local authorities believe s106

[6] https://pdf.euro.savills.co.uk/uk/residential---other/the-challenges-of-unlocking-section-106-delivery---july-2024..pdf

[7] http://housing.org.uk/globalassets/files/nhf-letter-to-michael-gove-on-proposed-infrastructure-levy.pdf

[8] 80% of affordable homes lost due to legal loophole exploited by developers - Shelter England

negotiations create delay, despite planning applications being acceptable in principle[9]

- The process and template for applying for s106 homes varies considerably by local authority causing difficulties for registered providers looking to acquire homes this way
- Some local authorities can be slow to spend sums generated through s106 planning obligations. A recent study by the Home Builders Federation (HBF)[10] estimated around £6bn raised through s106 agreements is currently unspent, while £2bn has not been used from funds raised through the Community Infrastructure Levy. We appreciate spending funds captured through land value uplift can be a complex process, subject to a variety of conditions and considerations. But there should arguably be more scrutiny to ensure sums are being allocated as promptly as possible
- Case study evidence also shows new affordable homes acquired through planning obligations require more on-going maintenance than those built and designed by housing associations[11]. Thus, while s106 has proved effective in securing high numbers of affordable homes, quality has not always been guaranteed (although this has been less of an issue in recent years). Concerns over quality are one of several factors behind the current reduction in housing association demand for homes delivered via s106. We pick up on this issue further in response to question five.

As a housing association, our experience with the Community Infrastructure Levy (CIL) is much more limited since affordable housing developments are generally exempt from the charge. But, at a general level, our observation is that the advantages and drawbacks of the CIL are the mirror image of those of s106 planning obligations. Being a flat-rate, non-negotiable tariff, CIL offers local authorities and developers greater certainty, transparency and predictability over the value of charges to be levied. Developers can factor in the value of CIL contributions when bidding for land and the fact charges are not subject to negotiation speeds up the planning process. CIL also serves as a complementary charge to s106 planning obligations in that receipts can be put towards infrastructure provision across a broader geographic area, rather than serving solely to mitigate the impact of development at a specific site.

But these attributes also have several drawbacks. Rates have to be set to ensure the 'strategic viability' of various forms of development across a relatively large area. This means charging authorities tend to set lower rates, which in turn means they capture a smaller proportion of the uplift in land values associated with development than would be the case with a more targeted charge. This issue is compounded by the fact CIL is inflexible to changing market conditions. Payment is set at the point planning permission is granted but due once development commences, by which point land values may have increased. The implementation of CIL has also been very patchy, with just under half of local authorities in England having introduced the charge at 2018[12]. CIL has been widely adopted in high demand areas, most of all in London where all boroughs have introduced their own levies. But it has been used much more sparingly in

[9] Planning for the future - GOV.UK
[10] Unspent developer contributions
[11] https://thinkhouse.org.uk/site/assets/files/1325/cache0120.pdf
[12] LVC0084 - Evidence on Land Value Capture

areas of lower land values (such as Hastings in which we have a large number of homes) due to concerns about deterring development by (further) compromising viability, impinging on the delivery of affordable housing through s106 or the potential for administration and collection costs to exceed CIL receipts. Again, this means missed opportunities to capture uplifts in land value as some developments are spared levy payments even though they could afford to contribute.

2. **What alternative methods of land value capture might be most suitable for England?**

Not answered.

3. **What are the economic and practical opportunities and challenges of pursuing land value capture policies in England?**

Capturing a greater proportion of land value uplift would help towards two key Government objectives. Firstly, it would significantly cut the cost of delivering the 1.5 million homes Government has ambitiously targeted over the course of this Parliament, as well as the biggest boost to affordable housebuilding in a generation promised by the Secretary of State.

There is a growing consensus – including from this Committee – about the need to build 90,000 social homes in England each year to meet demand. Recent analysis by the New Economics Foundation showed the cost to Government of doing so could be reduced by £2.8bn if it were to reform the Land Compensation Act 1961 to entitle landowners to Existing Use Value plus 50% rather than the inflated "hope value" to which they are entitled now. The grant requirement could be reduced by a further £1.7bn – to a total of saving of £4.5bn or 23% – if this reform were accompanied by tweaks to s106 planning obligations to maximise developer contributions[13].

Since housing construction is a tried and tested growth catalyst, reform to land value capture policies would also make a significant contribution to Government's growth agenda. Research by the Centre for Economics and Business Research in 2024 showed building 90,000 social homes a year in England would create an estimated net benefit of £51.2bn to the economy[14].

While the potential benefits are substantial, there would also be considerable challenges associated with reforming our approach to land value capture. First and foremost is the complexity. The National Housing Federation has observed that attempts to reform land value capture have often produced "underwhelming outcomes."[15] We have seen those most recently in the previous Government's attempt to replace s106 and CIL with the Infrastructure Levy. Despite multiple rounds of consultation, the Government was never able to offer convincing evidence this would offer an improvement on the existing regime. In particular, it was difficult to see how the new levy could deliver at least as much on-site affordable housing as the current system even with the addition of a 'right

[13] https://neweconomics.org/uploads/files/Building-Hope-web.pdf
[14] https://neweconomics.org/uploads/files/The-foundations-of-the-housing-crisis-FINAL.pdf
[15] https://www.housing.org.uk/globalassets/files/resource-files/planning-for-the-future-consultations-nhf-briefing.pdf

to require'. The proposed ten-year national roll-out felt very much like an admission of defeat. We expand more on this issue in our response to question five.

There is also the specific risk of discouraging landowners from selling land if they expect any change to compensation rules will be merely temporary. This would pose a substantial risk to Government's housebuilding ambitions if it were to slow the rate at which land comes forward for development (see also our response to question 7). For that reason, any reforms will need cross-party support if they are to be successful.

4. **What mechanisms of land value capture have been effective internationally?**

Germany and the Netherlands have been especially effective at compulsorily purchasing land without the added premium of 'hope value'. Local municipalities can acquire land at a value – determined by an independent expert panel – that offsets the cost of providing the infrastructure and services necessary to make a development viable.

Both countries also use land pooling as a means of assembling land, capturing uplift in land values and encouraging development. The UK Collaborative Centre for Housing Evidence's 'Capturing Increases in Land Value' report from 2020[16] contains useful details on how this is achieved in practice. These systems for land pooling and compensation for compulsory purchase go some way to explaining why Germany and the Netherlands are able to capture 90% or more of the land value uplift from development for the public sector.

5. **Should reforms to land value capture be pursued through changes to the current section 106/Community Infrastructure Levy regime, or by introducing a new mechanism?**

    a) **What changes to planning law and guidance would be needed to introduce a new mechanism of land value capture?**
    b) **Would new methods of land value capture be compatible with human rights legislation, regarding property rights?**

Recent experience with the abandoned Infrastructure Levy suggests it could take many years to introduce a new mechanism. After multiple rounds of consultation, the Conservative Government proposed a decade-long national roll-out, effectively conceding defeat on any hopes of replacing the current regime. The episode revealed that, though imperfect, s106 and – to a lesser extent – CIL are working reasonably effectively and that replacing these mechanisms is not at all straightforward.
For that reason, we suggest Government's focus should be on further reforming s106 and CIL to increase their efficacy in capturing increases in land value.

For s106, this should include:

- Ensuring local authority planning and legal departments have the necessary resources, skills and expertise to negotiate planning obligations with developers.

[16] https://thinkhouse.org.uk/site/assets/files/1325/cache0120.pdf

This should be a priority since research by the UK Collaborative Centre for Housing Evidence[17] suggests best practice (i.e., local planning authority practice) can be "*at least as important a driver of contributions as local land, housing market and economic conditions*"

- More widespread adoption of 'fast-track routes' to incentivise the provision of a minimum percentage of affordable homes. In London, schemes comprising at least 35 per cent affordable homes on sites without public subsidy (or 50 per cent on public land or industrial sites), are eligible for a fast-track route not subject to detailed viability analysis. Besides incentivising the delivery of higher levels of affordable housing, this approach provides greater certainty to developers when purchasing land, speeds up the planning process and embeds the requirement for affordable housing into land values.
- Standardising the approach and template for applications since there is significant variation across local authorities and standardisation would help streamline the process
- Greater scrutiny of local authority spending to ensure funds generated through s106 (and CIL) are being allocated as promptly as possible.

These measures focus on supply – the securing of affordable homes through planning obligations. But demand-side measures are just as important to reduce the growing backlog of permissioned affordable homes awaiting registered provider buyers (17,000 according to the Home Builders Federation[18]). Housing associations' ability to purchase s106 homes has been much reduced over recent years by a range of financial challenges that have weighed heavily on our financial capacity. Government could boost housing associations' financial capacity – and with it our appetite to acquire homes through s106 – by:

- Introducing a long-term, index-linked rent settlement, reinstating rent convergence
- Widening access to the Building Safety Fund so housing associations can access funding for homes regardless of tenure
- Increasing funding for upgrading existing homes to higher standards of decency and sustainability.

As Savills have advocated[19], some grant funding to support s106 acquisition may also be helpful in supporting demand in the short-term. Government could also foster greater 'upstream' negotiation between housebuilders and registered providers so homes delivered through s106 meet expected space, build and sustainability standards.

These demand-side measures are important not only to the supply of affordable housing, but also to Government's 1.5 million home target more generally. That's because some planning obligations require affordable homes to be occupied before private homes can be completed and before starting construction on new phases of a

[17] https://thinkhouse.org.uk/site/assets/files/1325/cache0120.pdf
[18] 17,000 Affordable Homes stalled by lack of bids from Housing Associations
[19] https://pdf.euro.savills.co.uk/uk/residential---other/the-challenges-of-unlocking-section-106-delivery---july-2024..pdf

scheme. In some instances, private developers cannot access development finance, progress on site, or even complete a land deal without a s106 partner in place.

For CIL, one possible reform might be to require all authorities to introduce a levy, but with local discretion to set rates in relation to the local land market (i.e. on a more granular basis than currently). That could include a zero rate where necessary if charging authorities believe there is a risk of deterring development. This should enable local authorities to capture more value than the current 'lowest common denominator' system, which creates a bias towards setting low rates.

In the interests of transparency, it would be helpful if all local authorities published revised charging schedules each year to reflect the fact levies are index-linked. And, in the interests of simplicity, it would be helpful if the additional charge levied to compensate for the environmental damage caused by development in Special Protection Areas (SPAs) and Special Areas of Conservation (SAC) was universally incorporated into CIL (for those authorities where this type of mitigation is required). Currently, it is only incorporated into CIL in a minority of local authorities. This approach would reduce the number of payments required and provide greater certainty to developers. It would also be beneficial if local authorities published charges for SPA/SAC mitigation alongside CIL charges, so that developers know exactly what charges they need to pay for new development. Currently, these types of charges are not well publicised on local authority websites.

6. **How could different mechanisms of land value capture complement the Government's ongoing planning reform agenda, including delivery of New Towns and the release of 'grey belt' land for development?**

Reform of the Land Compensation Act 1961 is crucial if Government is to deliver a further generation of New Towns. As the Committee has previously heard, our success in developing the original generation of New Towns owed much to the ability of Development Corporations to acquire land at, or near to existing use value, and capture the uplift in land value to invest in new infrastructure. Doing so now is much more difficult because the Land Compensation Act 1961 specifies that the price paid for land compulsorily-purchased by the state must reflect any prospective use to which it could be put – hence the "hope value" to which landowners are currently entitled in most circumstances. This poses an especial problem for development of further New Towns given the extent and fragmented ownership of land likely to need to be purchased through Compulsory Purchase Orders (CPOs). But it also distorts the land market more generally by inflating prices, thereby limiting local authorities' ability to capture land value uplift through s106 and CIL.

The previous Government took a welcome step towards remedying this issue by enabling the Secretary of State to scrap the application of hope value on a case-by-case basis through the Levelling Up and Regeneration Act 2023. But the need for Secretary of State approval means the new provision is unlikely to be used widely and introduces a further level of bureaucracy into the CPO process. Therefore, we believe Government should reform the Land Compensation Act to enable local authorities to compulsorily purchase land at a fair market value absent of any "hope" value associated with the prospective granting of planning permission.

There is a need for some pragmatism on the proportion of land value uplift that can be captured on grey belt sites. Government has specified schemes delivered on Green Belt land should deliver 15% more affordable housing than specified in the current local plan, capped at 50%. While this is a welcome relaxation of the original policy (a universal expectation for 50% affordable housing), some extra flexibility may be needed to accommodate for higher construction costs on grey belt sites (for instance, those associated with site decontamination). One solution might be to exempt all previously developed land from both s106 and CIL contributions. This would potentially lead to a large increase in developments coming forward, while also supporting Government's brownfield-first ambitions.

7. **Overall, would reforming land value capture support or distract from the Government's target of delivering 1.5 million new homes by the end of this Parliament?**

A complete overhaul of our systems of land value capture – akin to the introduction of the Infrastructure Levy – would probably serve as a distraction to Government's short-term housebuilding ambitions. Without careful design and cross-party support, it could lead to a reduction in land supply if landowners believe the change will be repealed by a future Government. Although imperfect, s106 planning obligations are a tried-and-tested mechanism for capturing increases in land value and have become more effective following changes to viability guidance accompanying the 2018 edition of the NPPF. In our view, Government's immediate priorities should be to:

- Reform the Land Compensation Act 1961 to enable local authorities to compulsorily purchase land without the premium of hope value. Besides laying the foundations for the development of New Towns, this would also boost housebuilding more generally by lowering land values
- Increase the efficiency of s106 planning obligations. As discussed in relation to question five, measures will need to focus as much on demand as on supply, given the importance of registered provider acquisition to the overall speed of housing delivery
- Provide additional funding and resources for local authority planning departments to ensure decisions are made within/as close as possible to statutory time limits
- Press ahead with streamlining planning committees (as set out in the Planning and Infrastructure Bill)
- Standardise local authorities' approaches to planning decisions. For example, by introducing standard validation lists, standard consultation procedures, and standard schemes of delegation regarding delegated powers and members' ability to "call-in" planning applications.