The operation of s106 in England: a case study

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Abstract

Securing land and finance for additional affordable housing is a fundamental problem in all countries. This paper presents a case study of England where the s106 policy of delivering affordable housing through the planning system has been operating since 1990. It explores the role of the policy in meeting not only need for affordable housing but also in helping to create mixed, sustainable communities – a goal which is shared by many countries wishing to avoid the social exclusion and stigma associated with large mono-tenure public housing estates. The paper focuses on the distinctive nature of the planning system in England, how this has operated to produce affordable housing, what has been happening in the recent housing market downturn, and whether s106 has delivered government goals of mixed communities as well as additional affordable homes.

Background

This paper describes some of the key features of the s106 policy of securing additional affordable housing through the planning system. It forms a case study alongside other studies of inclusionary housing in other countries from which it is hoped that useful lessons may be learned. This paper, however, focuses on the distinctive nature of the English policy which gives national government, and local governments acting as their agents, the right to permit or reject new development in line with their development plan and any other material considerations (Crook and Whitehead, 2010 forthcoming). The policy also operates in Wales, Scotland and Northern Ireland but with important differences; England is used as an example here. In all of the UK the process of allowing or refusing new development brings forward land for development and at the same time also gives rise to an uplift in land value which is a windfall gain to the owner. The s106 policy is one way for the state to access some of that windfall gain for community benefit. In addition, the s106 policy has been used as a vehicle for meeting other policy goals, notable mixed communities, part of the government’s objective of creating sustainable communities where people will want to live.

The key aspects of the s016 policy that are particularly relevant are fourfold:

- The special nature of the planning system in England
- The requirement that all development, or change of use, must obtain planning permission
- The s106 policy is a legal agreement between developer and planning authority, separate from the planning permission itself
- The affordable housing is linked to the private development

Together these mean that developers who are reluctant to provide affordable housing will have their planning application refused. The planning consent is contingent on achieving an acceptable agreement with the developer in respect of affordable housing delivery – along with a range of other planning obligations that are also listed in the s106 agreement.

This paper looks in turn at the history of the policy, the basis for it in terms of the principles of how it works, the success of the policy in the sense of what has been
achieved to date, and problems arising from the housing market downturn. It then turns to a discussion of the role of s106 in achieving mixed communities. Finally, it draws some conclusions about s106.

Some history of s106

It is worth looking briefly at the history of the policy. It dates back to 1947 when the Town and Country Planning Act nationalised development rights in land. The land itself was not nationalised, private property was upheld, but the right to change the use of that land or to adapt any existing buildings now belonged to the State. This meant that planning applications could be refused or accepted. At first compensation was provided and the ‘betterment’ as it was then termed – the uplift in land value arising from obtaining planning consent – was taxed directly but gradually the tax was eroded over time – with several unsuccessful attempts to reintroduce it – until by the 1980s the developer or landowner retained most of the increased value.

Planning policy has long been concerned with housing as a land use, particularly in relation to the prevention of urban sprawl (Hall, 1973) and also the New Towns policies in the 1950s and urban renewal programmes in the 1960s and 1970s. But planning was not used directly to meet housing need until the late 1980s and 1990s. There was a clear separation of functions between housing and planning (Crook, 1996). Planning had the duty of estimating the overall requirements for new dwellings in relation to projections of future household growth, and to set out these requirements, including their broad location, in statutory plans and other policy documents at different spatial scales: national, regional, county and district. These estimated requirements were then tested in at public inquiries where developers and others could raise objections on planning grounds. In addition, planning policy had to ensure that provision was made for an adequate land supply to enable these dwellings to be built. This was done either by setting out policies with criteria for enabling housing development or by allocating land in development plans. Local authorities’ housing functions related to their role as public housing providers (council housing) and, as housing associations (not-for-profit independent housing providers), became more important, their strategic role as housing enablers.

In allocating land for housing, planners did not distinguish between market and affordable housing. They did not have the power to allocate land separately for market and for social and other affordable housing, except through density and building regulations. This meant that social landlords had to pay land prices that reflected market demand, based on what private sector house builders were prepared to pay to develop the land for market housing. Some of the development value that accrued to landowners was recovered at various times via betterment levies and through capital gains taxation. But none of this taxed gain was targeted on housing. Instead, the housing policy and finance system gave housing associations capital finance to compete in the land market and to ensure that the homes they built would be affordable. In the 1980s, this became the only way that new social rented housing could be delivered because local authorities lost the power to develop new housing themselves.

This separation of functions between planning and housing was implicit (Crook, 1996) and subject to strain. This was partly because of the impact that planning policy has on housing and land values, especially in areas of tight planning constraint and in areas where the flow of development land with planning permission has not been adequate (Gerald Eve, 1992). In these contexts, low income households tended to lose out. They could not afford access to market housing, or else were constrained to buy smaller homes on new estates at high densities. But their access
to the social sector became increasingly restricted as higher land prices and budget constraints on capital spending reduced output and increased costs to the taxpayer.

These problems were a major reason why, in the early 1980s, local authorities attempted to find ways of using the planning system to ensure that where development occurred in areas of tight constraint, it was targeted at meeting local housing needs. These early attempts usually consisted of restricting development to small units at higher densities in order to enable first time buyers to access market housing. This was then linked to using legal agreements negotiated along with planning consent as a way of restricting first and even subsequent sales to local low income households. The use of the planning system in this way was not supported by central government, and where formal policies were included in statutory development plans, these clauses were removed by (national) Planning Inspectors. Instead, local authorities started to use their discretionary powers to negotiate with developers to provide affordable housing, even though this was not enshrined in formal policy. These informal negotiations began to be used regularly by some authorities in the latter part of the 1980s for rural exception sites and for proposed new settlements. So-called rural exception sites allowed development to take place exceptionally provided it met local needs. By their nature such sites were ‘windfall’ or bonus sites as they would not have been previously identified in any local plan. This informal system looked set to undermine the authority of statutory development plans, and therefore a more coherent and consistent approach was seen to be required.

The 1990 Town and Country Planning Act provided the basis for such an approach. Where developers agreed to make contributions to affordable housing, these became binding when they entered into legal agreements with the planning authority under section 106 of the Act (hence the term s106 agreements). This section covered the general right of local authorities to require financial contributions from developers towards the mitigation of the costs of development, particularly those relating to external costs to third parties. It also appeared to allow the negotiation of contributions towards local community benefits including affordable housing. This clearly enabled planning authorities to negotiate affordable housing on large residential sites (Campbell et al., 2002).

During the 1980s planning obligations were increasingly used to contribute to wider community needs such as schools. The main impetus for this was increased government restrictions on local authority capital spending and borrowing (Healey et al., 1995; Campbell et al., 2001). In using planning obligations to secure infrastructure and community needs, government policy obliges planning authorities to ensure that:

- obligations are relevant to planning
- are necessary to make proposed developments acceptable in planning terms
- are directly related to the site and the development proposed
- are fair and related to the proposals
- and are reasonable in all other aspects

(OdPM, 2005).

The use of planning obligations gradually evolved to include affordable housing when planning authorities in areas of acute housing shortage used these private contracts in an experimental way. This was possible largely because of a boom in house prices making housing development extremely profitable and a shortage of sites, so that developers were willing to provide the additional contributions. In 1989 the government formalised this by allowing rural authorities to use ‘rural exception sites’ for affordable housing only. These were sites located within or on the edge of villages
where development of any kind was prohibited but could now ‘exceptionally’ be used for affordable housing.

The s106 policy itself took shape in the Town and Country Planning Act 1990, so that by 1991 policies to secure affordable housing on all larger developments were included in national legislation and have been part of planning policy ever since. Provided that a need for new affordable homes has been identified and that a policy for affordable housing delivery is set out in the development plan, local authorities can require developers to provide affordable housing as part of developments of more than 25 units – later reduced to 15 units and now reduced further if there is evidence that this is necessary in order to deliver the plan targets. Affordable housing is defined to include both social renting and intermediate housing – forms of low cost home ownership such as shared equity or shared ownership – but not low cost market housing unless it can be provided as such in perpetuity.

The policy is about negotiating a contract with the developer, so in practice the targets in local plans cannot be achieved or exceeded. Developers can negotiate to provide alternative land for affordable housing, or to provide cash or a discount on the land price, rather than completed units although the latter have proved more popular as local authorities are reluctant to accept cash in lieu of affordable housing. Sometimes it is inevitable, especially where local policies have reduced thresholds to one or two units.

In 1998 the policy was amended to reduce the site size thresholds and importantly, to link it closely to social inclusion. Mixed communities became the primary objective in all developments and s106 provided a way of achieving them for new build. This meant providing a mix of tenures as well as house types and sizes on any development above the threshold. Other policies also affected the outcomes from s106, such as increased density of development (efficient use of land) and 60% of new development on brownfield (previously used) land.

The basis of s016

The basis of s106 is not unique. In any regulated system, a permit to develop will raise the value of the land. S106 allows planners to secure developer contributions towards affordable housing from that uplift in land value. It also allows them to secure a range of other community contributions such as education, transport, health etc. in addition to any actions required to mitigate the impact of the development or that are essential for the scheme to go ahead such as a link road to the existing network. In the UK a developer’s unwillingness to provide affordable housing is a reason to refuse planning permission and this is a very powerful tool.

Land use planning is a regulatory mechanism which aims to increase the efficient use of land and ensure greater equity in that use (Hall, 1973; Whitehead, 2007). It can be enabling, such as by allocating land for housing, but at the same time it is constraining because housing can only be built on allocated land while other land uses are excluded. Effective planning tends to be negative – it can ensure that the market does not build houses on land that is not allocated for that use, but it cannot ensure that the market will build houses on the land that is so allocated unless the market sees it as worthwhile or additional incentives are provided. The role of the planning system can be said to be to constrain socially undesirable uses of land. The result of this constraint is that the price of land will rise for uses that are constrained (Whitehead, 2007).
A key efficiency aim of planning is to increase overall social values by taking direct account of externalities and other market failures and providing sufficient public goods. A planning system that is working well will therefore generate higher social welfare through its constraining effect on socially undesirable uses, and therefore higher land values because of better-organised urban areas. This means that the result of both increased values and increased constraints arising from good planning should be to increase the market price of land in general and to increase the relative price of land in constrained uses (Whitehead and Monk, 2006).

Planning gain is has been defined as ‘the achievement of a benefit to the community that was not part of the original [planning] application (and was therefore negotiated) and that was not of itself normally commercially advantageous to the developer’ (Jowell, 1977, cited in Keogh, 1985, p. 207). Keogh, writing about the economics of planning gain, accepts this definition with the proviso that it might not always have to be negotiated, if it was within a mixed use development for example, such as open space or public art, which developers often provide as part of the market scheme.

Contributions to affordable housing fall into the general category of ‘planning gain’ (see for example Healey et al, 1995) whereby planning authorities used S106 negotiations to extract some of the development value created by the granting of planning permission. In the past this planning gain was generally limited to securing developers’ contributions towards the specific externalities associated with the development. Today, S106 negotiations are used increasingly to make contributions to wider infrastructure and community needs, including affordable housing (Campbell et al, 2001; Crook, et al, 2006). The policy has not been without its critics, both in terms of the appropriateness of using developers’ contributions to meet needs previously funded through the public purse and in terms of the transparency and accountability of the policies used to legitimate this and the negotiating process itself.

The literature on planning gain and development tax gives the motivation for taxation as being a wish to capture that part of the increase in land values that can be ascribed to public works or land use planning schemes. More broadly, the perception is that land values arise predominantly through events and investments surrounding a particular location, and not from investment by the landowner on the site itself. The landowner is seen as receiving an ‘unearned’ economic rent and this can be fairly taxed. The Uthwatt Committee (1942) rejected this wider definition of what it termed ‘betterment’:

> While the term ‘betterment’ is not specifically defined in any general Act, it may now be taken, in its technical sense, to mean any increase in the value of land (including the buildings thereon) arising from central or local government action, whether positive e.g. by the execution of public works, or negative e.g. by the imposition of restrictions on the land. The term is not however generally understood to include enhancement of the value of property arising from general community influences, such as the growth of the urban population (para. 260).

Planning gain is defined by economists as the ‘economic rent’ paid to a factor of production (land, labour, capital) when its price is raised in order to increase its supply in response to demand pressures. If a rise in factor prices brings additional supply on to the market, the increased price takes the form of an economic rent to the supply that was already productive in the market. It is thus a windfall gain to the existing supply and as such can be taxed without a reduction in supply because it was already being supplied at a lower price.
However, taxes on economic rent, or betterment as planners have called it, have been generally unsuccessful in England and have resulted in development drying up. Previous instruments included not only the development charge introduced by the 1947 Act which lasted until 1952; but also a Betterment Levy introduced in the 1967 Land Commission Act which was repealed in 1970; and Development Land Tax introduced in the Development Land Tax Act 1976 and repealed in 1985. The s106 contributions may effectively be a form of taxation (although largely levied in kind for the affordable housing element), but they have been much more successful. Whether this is because until now they were levied in a period of unprecedented housing and land price increases, or whether it is because it is a local tax, or because the precise amount of the tax is negotiable is open to debate.

Before obtaining planning permission, the price of land is determined by its previous use – which in the limit may be its agricultural value, but increasingly with the brownfield policy it is an existing use value that is perceived to be lower – by a large enough margin – than its value when redeveloped for housing. This difference in price is the starting point for estimating the potential developer contribution. In practice there are other costs to be taken into account, including other community contributions, and the existing use value may turn out to be higher than anticipated. All these factors will affect the viability of the development. But the scale of the uplift in value arising from planning permission that has been experienced in the UK has been very large indeed, which has given considerable potential for providing land and finance for affordable housing through this mechanism (Monk et al, 2005).

The diagram below illustrates what is happening when developers are asked to contribute to affordable housing.

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The Impact of Planning Constraints on Land Prices

The early 1990s when s106 first came into force were marked by a recession in the housing market and it took time for land values to pick up sufficiently for development to recover. The crash was more of a soft landing as the house building industry took refuge in contracting to build social housing for housing associations, while the associations themselves were able to purchase housing land at reduced prices. As a result of the recession, local authorities were less involved in planning conditions or obligations that provided for affordable housing, partly because there was relatively little development and partly because where developments did take place, there was insufficient value to provide for contributions to affordable housing and remain viable.

As the housing market picked up during the later part of the 1990s, local authorities were able to use S106 for affordable housing, notably in the highest value areas such as parts of London and the south. In 1998 the policy was strengthened to reduce the site size thresholds above which developer contributions to affordable housing would normally be sought, and to link more closely with government’s increasing policy emphasis on social inclusion, mixed communities and urban renaissance by prioritising the on-site provision of affordable housing, side by side with market units (DETR, 1998). However, off-site provision or a financial contribution were also acceptable, although the policy emphasis showed a strong preference for on-site provision.

In 2003 the Treasury commissioned Kate Barker, an economist, to undertake a review of housing supply. An interim report was published towards the end of that year, with a final report in 2004. The review recommended a range of measures to improve the rate at which the land supply moved through the planning system, including the need for local authorities to ensure a five year supply of genuinely available land for housing, the establishment of regional housing and planning advice units to advise regional governments about housing affordability issues, and the introduction of a Planning-gain Supplement (a direct charge or tax on development that would be set nationally) to replace S106 planning obligations (although affordable housing through S106 was to be retained). The current position is that government has consulted on a Community Infrastructure Levy (CIL) and enacted legislation to enable such levies to be introduced by those local authorities who wish to do so. S106 would not be repealed but would be scaled down to cover only elements mitigating any adverse impacts of the development, and affordable housing. This is to be retained largely because it is seen as highly successful.

**The success of s106**

The policy took time before it started to work well and some local authorities were much slower than others to implement it. The numbers of affordable units produced in this way varied enormously between authorities, only partly explained by different local economic conditions. But both levels and proportions of schemes that include s106 agreements has rapidly increased and today over 90% of local planning authorities have affordable housing policies in place in their local plans. Most look for at least 20% of the new housing in developments above the threshold to be affordable, many have raised this target to 30% or 40% and in London and parts of the highly pressured South East the target is 50%. Site size thresholds above which the policy takes effect have fallen, so that in some cases all housing development, even a single family homes, must make a contribution. In the South East, non-residential developments must also contribute if they imply a need for additional housing e.g. if migrants take up the jobs in a commercial development they will add to pressure in the housing market so that a s106 contribution is warranted.
Overall numbers of affordable housing depend on two factors: the amount of government grant available and the level of activity in the housing market. During the late 1980s both of these declined and the amount of new affordable homes fell. However in the early 2000s both funds and market activity rose, enabling a turn around in the output of affordable housing.

To provide an idea of the scale of affordable housing developed in this way, Figure 1 first shows total housing completions and affordable housing completions, while Figure 2 shows s106 affordable housing completions as a proportion of total affordable housing completions. New affordable housing in total is a small proportion of total completions, but s106 affordable housing has risen rapidly and accounts for more than half of all new affordable housing. Planning permissions that involve a s106 agreement have grown even faster, although there is always a time lag between the granting of planning permission and the actual delivery of affordable housing.

**Figure 1 Housing completions in England**

Source: CLG live table 209, Housebuilding permanent dwellings completed by tenure and country
The main implication of these figures is that s106 has failed to maintain affordable housing provision against a background of falling grant levels (Crook et al, 2006). Only when the government decided to increase funds did output levels rise. This is particularly evident in Figure 2. While the proportion of affordable housing that was provided through s106 rose steeply, this on its own was not enough to ensure that affordable housing output increased in total. The output levels of the late 1990s were only matched when additional public resources were put in place in 2007. However, it should also be noted that the figures for s106 affordable housing relate to new building only, whereas the figures for the total amount of new affordable housing include acquisitions of existing market dwellings.
This raises the question of whether the affordable homes produced in this way are in fact additional, or whether they are substituting for traditionally-funded affordable housing, using capital grants to housing associations. The House of Commons Select Committee on the Office of the Deputy Prime Minister suggested in its final report that the output on s106 sites added little to the total number of new homes, but merely relocated on to private sector sites what would otherwise have been built by housing associations elsewhere. However, it did accept the important contribution that s106 was making to the development of mixed communities (House of Commons, 2003).

A study for the Joseph Rowntree Foundation (Monk et al, 2005) found evidence to support the view that s106 housing was not additional. In a survey of housing associations, data was collected on the changing pattern of their activity from the traditional route of purchasing land on the open market or from the public sector, to acquiring land and/or dwellings through s106. The survey showed that housing associations were increasingly finding it difficult and expensive to acquire sites, making s106 increasingly important to the delivery of new affordable homes.

One reason why land has become so problematic for housing associations is that the supply of surplus public sector land has declined. Instead housing associations have to resort to buying land from the private sector, and the sites available tend to be small, brownfield sites which are problematic and expensive to develop. There has been increasing competition for land from private developers as activity has become focused on inner-city and city-centre land developed at high densities.

The growth in planning consents involving s106 affordable housing (Figure 3) suggests that an increasing proportion of future completions will be through s106 agreements. But the main engine for this is the rise in government funding. The success of the policy thus depends critically not only on a buoyant private housing market but on an adequate supply of government finance.

The impact of the downturn

The credit crunch and housing market downturn has affected the whole economy, leading it into recession. However, the housing market suffered extremely rapidly from the credit crunch, as both private developers and prospective house purchasers faced increasing difficulty in accessing loans. The result was an immediate slowing down of development, with stalled sites and others not started. Planning authorities reported a collapse in s106 contributions as triggers in the s106 agreement were not met so that planners could not claim their money (for education, schools etc.). The number of new planning applications fell, with just a few coming in to check land values according to local planners. House prices and land values have fallen, so there is now very little uplift and schemes with planning permission and signed s106 agreements are no longer viable.

In the last recession, affordable housing completions increased, as housing associations were able to buy cheap land from developers in receivership, and the government provided additional funds. But the credit crunch has affected credit lines for housing associations just as it has developers, and the increase in national debt means that there is no additional funding in the pipeline. Planned funding has been brought forward to assist stalled schemes but there will be less funding in the future once that has been spent.
For planning authorities, there has been a loss of income because they charge administrative fees for planning applications. This is likely to affect jobs and contribute to a loss of skills and experience.

Developers have been coming forward to ask to renegotiate the s106 contributions to make their schemes viable, but this is problematic for planning authorities. Some are simply sticking to the original agreement, arguing that if a new school is required to meet the needs of the development, then it is still needed if the development goes ahead, and similarly with the affordable housing. Others are trying to be flexible, encouraged by appeal judgements in which planning inspectors have praised flexibility. However, there are some mixed messages coming from the planning inspectorate (aka the government). Some appeals have upheld the local authority position. A very recent example is the southern fringe development in Cambridge, where the developer wants to delay the provision of affordable housing until much later, building the market homes first. The appeal inspector said that this went against government as well as local policy and refused the appeal. Other inspectors have upheld a high target for affordable housing in the local plan because that is supposed to last for up to 20 years, so a target that relates to so-called ‘normal’ housing market conditions is reasonable, but in the short term they have encouraged reducing that target to meet a temporary market downturn.

Planning authorities feel that there is a danger that the developer will negotiate a reduced s106 contribution and then sit on the scheme without building it until the recession is over and house prices rise again. It is difficult to know how to prevent this from happening. One option is to insist that the developer ‘opens the books’ to prove that the s106 contributions are making the scheme unviable in current conditions. But even here there are problems, such as how to value the land? Should it reflect current low values, or the historic (high) value that was actually paid? Many developers hold options on the land rather than owning it outright, and if an ‘open book’ approach includes details of the option contract then the local authority can see what the land price will have to be and so whether the scheme is viable or not. If historic values are used then with today’s house prices schemes will certainly not be viable, but the Homes and Communities Agency is recommending using current land values regardless of what was actually paid.

Local authorities are considering, and in some cases implementing, a range of options for s106 once the housing market recovers. One is a claw-back arrangement, based on the prices the homes actually sell for – once they have reached a certain threshold, the reduced s106 contribution rises accordingly. What the authority does depends on its priorities. If the overarching priority is to get schemes going again, it is worth negotiating a reduction in contributions – and indeed some local authorities are going further to help the market. For example, Cambridgeshire Horizons, a housing delivery vehicle or partnership, has agreed to ‘lend’ the developer the funding for essential infrastructure although the ‘loan’ was actually part of the developer’s s106 contribution. Once the market picks up and the scheme becomes profitable, the required contributions will be made.

Other authorities are considering introducing time-limited planning permissions tied to activity on site. For example, a new permission with a reduced s106 might be granted for one year only, and if nothing – or not enough – has happened the planning permission expires and reverts to the original with the full s106 attached.

As might be expected, all this has led to criticisms that s106 can no longer work and cannot deliver the affordable housing that is required. However, the fundamentals of demographics and ageing suggest that underlying pressures of demand have not
changed. The s106 policy was always dependent on the market to provide affordable homes so it is inevitable that fewer will be provided in this way during – and for a while after – the downturn. But the downturn is short run – hopefully – and more homes will be needed and demanded in the long run. Planning policies are supposed to be in place for the long term, and increasingly planners are sticking to the policies in their local plans.

Importantly, s106 delivers other government objectives, not just affordable housing. These include increased densities, the use of brownfield sites, and mixed communities. In terms of social inclusions, the mixed communities policy has become increasingly important.

**Mixed communities through s106**

S106 contributes to mixed communities by ensuring that affordable housing is delivered on the same site as market housing. It stems from the idea that mixing tenure implies mixed incomes and enables social mixing between households from different social groups. This has become a very important policy goal as large mono-tenure social housing estates have become stigmatised and unpopular. As social housing has declined, partly through the Right to Buy, but also relative to the numbers of poorer households in need of such housing, these estates have increasingly housed the most deprived sections of the community.

For example, more than half of the lowest income group in Scotland live in the social rented sector; and this reflects the larger size of the sector (a quarter of the total housing stock) in Scotland. Wilcox et al., (2010, p.20) note that the degree of tenure related social polarisation is far less marked in Scotland than in the other three countries – England, Wales and Northern Ireland. Nevertheless, the Scottish government, like its counterparts in the rest of the UK, has recognised that areas in which there is a concentration of disadvantaged households will have a negative effect on people’s life chances. The creation of mixed communities has become a central objective of housing policy: the aim is to create neighbourhoods that are able to attract and retain households on a wide range of incomes and avoid segregation through providing a range of different housing types and tenures (Glossop, 2008).

Mixed communities have been found to reduce the stigma of a neighbourhood and lead to a reduction in crime, the provision of better services and amenities (supported by a wider range of incomes), increased neighbourhood satisfaction and quality of life (Tunstall and Fenton, 2006). Allen et al.’s (2005) study of three mature mixed tenure communities over 20 years reported that mixing tenures had produced ‘ordinary’ communities and countered tenure prejudice. Despite some deprivation associated with tenants of affordable housing, demand for housing in all tenures and all three localities remained high. The study concluded that some of the claims made for mixed tenure were probably exaggerated, and there was little evidence of transfer of know-how between neighbours or that owner occupiers acted as role models. But many of the children interviewed had friends from different backgrounds and others stressed that they had a broader outlook because of the mix of people they knew at school. This raises the question of whether it is school mixing, rather than simply tenure mixing, that makes the key difference. On the other hand, it is believed that by introducing owner occupation into deprived social housing estates, it would help to ‘thin’ indices of deprivation. In fact, Bramley and Morgan (2003) have found that new private building in Greater Glasgow has been quite successful at diversifying tenure in some sectors previously dominated by social housing, and hence at shifting middle-income residents into poor areas (p.468).
However, little evidence has been found to show that residents have improved their economic prospects merely by living in mixed communities. Using data from the Survey of English Housing, Bramley and Power (2009) examined the relationship between key aspects of urban form, density and housing type, and selected social sustainability outcomes, while taking account of other socio-demographic factors. The study found that more dense (compact) urban forms, and their associated housing types, tend to be associated with somewhat worse outcomes in relation to dissatisfaction with the neighbourhood and perhaps more strongly with the incidence of neighbourhood problems. It also confirms other work showing that neighbourhood concentrations of poverty, and social rented housing, are often more strongly associated with adverse social outcomes than urban form per se. In other words, who lives where within the urban form, and with what resources and choices, may be critical to making urban communities work (p.46).

Cheshire (2007) also finds surprisingly little evidence that living in poor neighbourhoods makes people poorer and erodes their life chances, independently of those factors that contribute to their poverty in the first place. There is evidence from the US that moving people from deprived neighbourhoods to more affluent ones does not improve their economic prospects. His review of the existing evidence strongly suggests that not only does mixing neighbourhoods not effectively help the poor but it also detracts from the welfare of the better-off because it makes it more difficult for them to find neighbourhoods populated by other compatible households with similar tastes and lifestyles (see also Watt’s (2009) analysis on middle-class disaffiliation in London’s eastern suburbs).

The benefits of social housing are that more poor people will be housed in affordable, good quality housing. However, addressing social mix and social exclusion at the local level by providing a mix of tenures involves a trade-off between housing the poorest households and housing those who are better off and so require fewer subsidies. The implication is that the local implementation of sustainable communities policy probably requires greater resources than simply providing market and social rented housing and hoping that people in the intermediate market are ‘priced back in’ to the market as affordability improves.

The question of whether tenure mix does actually contribute to reducing social exclusion and increasing social cohesion is inconclusive. It is clear that large council estates have benefited from being broken up into different tenures in a number of well-documented examples. The same is true in America where the HOPE VI programme has been very successful in breaking up some of the most severely distressed public housing estates with measurable impacts on incomes, education and crime. While tenure mix and hence social mix enhances an estate’s reputation and desirability as a place to live, there is no real evidence that lack of tenure mix or social mix in other contexts, for example, in gated communities and other enclaves of high and middle income groups, is not sustainable. The main argument for tenure mix in these situations appears to be social justice. There is an argument about reducing racial segregation, but it is not clear how this can be done except by social engineering. It is unlikely to be possible simply through providing mixed tenure developments although these may at least allow the possibility of racial mix in areas where ethnic minorities are in evidence and in need.

Providing social housing in mixed tenure developments also enables greater movement within the system, takes people out of unsatisfactory neighbourhoods (and improves those neighbourhoods) and improves people’s life chances. On balance therefore it seems clear that mixed tenure schemes are preferable to single tenure. And s106 clearly plays an important role in achieving this policy goal, as it
helps to produce mixed communities as well as producing additional affordable homes.

Conclusions

S106 agreements have been able to secure land for new affordable homes in areas of high housing pressure. To this extent, the policy is altering the geography of new social housing. But it has not added much to total affordable housing supply, and it has become very vulnerable to the housing market downturn. The increase in government funds for affordable housing over the last three years has been welcome, and the response to the downturn of bringing these funds forward may produce an increase in output of affordable homes, as it did in the previous recession of the early 1990s. But the recession has put great pressure on government debt, and it is unlikely that the levels set for 2007-11 will be repeated. Once the housing market starts to recover, s106 will again become the most important way for housing associations to deliver new affordable homes – but the way local authorities are responding to developer pressure to renegotiate the s106 contributions could reduce the potential. In sum, then, s106 has been successful but it has proved very vulnerable not only to market forces but also to government funding.

The area where s106 has probably been most successful is its contribution to social inclusion and mixed communities. This has come from the growing emphasis on providing the affordable housing on-site. This comes at a financial cost to housing associations, who find it more difficult to manage their stock when it is so scattered and diffuse. But the successful implementation of s106 and its gradual acceptance by developers has laid the foundation for securing mixed tenure and mixed incomes on large developments in the growth areas – something the government dearly wants to achieve. Without this framework, the need to concentrate affordable housing in the poorest locations would almost certainly replicate the problems of social segregation that the government is trying to avoid. It is not obvious what alternative policy could achieve this.

At the moment s106 is under threat. The current government has introduced legislation to enable those local authorities that wish to do so to charge a Community Infrastructure Levy (CIL), alongside a scaled down s106 which would only cover actions necessary to mitigate the adverse impacts of a development, and affordable housing. The fear is that if CIL is top-sliced, there will not be sufficient planning gain left for affordable housing. There are also concerns that the CIL, being much more obviously a tax on development than the negotiated agreement that is s106, will reduce the land supply as in previous development taxes. A new government may remove s106 altogether, although their Green Paper on planning is ambiguous. Whatever the outcome, it is clear that more land and finance are required if England is to provide the affordable housing that has been identified as needed.
References


