



# Securing community benefits through the planning process

Improving performance on Section 106 agreements

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**What?**

This guide helps councils to assess how cost-effectively they are using planning obligations via a series of questions. Its purpose is to encourage councils to look at the value for money (VFM) of the process, rather than the outputs and outcomes.

**Who?**

Aimed at planning departments which would like help in  
a) applying VFM concepts to their Section 106 processes and  
b) assessing their current performance.  
Of interest to heads of planning and other senior staff.



**What?**

This route map describes the steps that councils need to adopt to improve their approach to Section 106, and to address some common weaknesses.

**Who?**

Aimed at planning departments looking to improve their approach to Section 106.  
Of interest to heads of planning and other senior staff.



**What?**

This short checklist is aimed at raising awareness of the role and potential contribution of the Section 106 process among chief executives, leaders and other senior councillors and officers. The questions should be used to increase awareness and prompt thinking about how to better integrate Section 106 agreements into processes for delivering corporate objectives.

**Who?**

Aimed at chief executives, leaders and other senior councillors and officers involved in delivering the community strategy, and scrutiny panels.

## What are planning obligations?

As part of the planning process, a local planning authority and a developer may enter into a legal agreement to provide infrastructure and services on or off the development site where this is not possible through planning conditions. This agreement, known also as a Section 106 agreement,<sup>1</sup> is a delivery mechanism for the matters that are necessary to make a development acceptable in planning terms. Planning agreements have become increasingly important to the provision of public services including highways, recreational facilities, education, health and affordable housing.

The terms planning obligations, planning agreements and Section 106 agreements are often used interchangeably, as they are in this paper. But technically, a planning agreement or Section 106 agreement refers to the legal document which results from the planning obligations process.

It should be noted that planning obligations should only be sought if they meet the Secretary of State's policy tests – a planning obligation must be:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development;  
and
- (v) reasonable in all other respects.

For more information see the Office of the Deputy Prime Minister's Circular 05/2005 on Planning Obligations.

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<sup>1</sup> The legislative basis for planning obligations is Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the Planning and Compensation Act 1991. This can be viewed at [www.legislation.hmso.gov.uk](http://www.legislation.hmso.gov.uk).

## Introduction

- 1 Expectations of the planning system have changed substantially in recent years, and the government now sees planning as central to a council's work. Whereas the activity used to be seen as a relatively narrow, regulatory function, the focus has moved on to a new, more enabling role for planning. Spatial planning, as it has become known, is expected to play a key role by giving physical expression to the goals and objectives of councils and the aspirations of the communities that they serve. The vehicle for this is the local development framework (LDF) which is expected to link to the community strategy.

Planning must go 'beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they can function.'<sup>1</sup>

- 2 The effective use of planning obligations (Section 106 agreements) is a key part of this new agenda. They are essential to delivering the necessary infrastructure for creating sustainable communities. They can: improve social inclusion through mixed tenure developments; mitigate the impact of development on communities; compensate for loss or damage created by development; and support basic off-site infrastructure such as access roads.

## Purpose of the study

- 3 This report summarises the findings of Audit Commission research looking at how effectively councils use planning obligations to deliver sustainable development, and how they could improve their performance. Specifically, the project seeks to:
  - identify how councils decide what community benefits to secure through Section 106 agreements;
  - comment on how effectively councils are using the present system; and
  - help councils improve their performance in using Section 106 agreements more cost-effectively and more consistently.

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<sup>1</sup> Planning Policy Statement 1: Delivering Sustainable Development.

- 4 The research was based on site visits to a sample of 11 local authorities in different parts of the country, supplemented by input from a wide range of other stakeholders. Accompanying this summary report is a suite of products, which are described below and can be found at [www.audit-commission.gov.uk/planning](http://www.audit-commission.gov.uk/planning). The remainder of this report sets out the study's key findings and recommendations; suggests how the products should be used; and discusses the more detailed research results.

## Key findings

- 5 Overall the Commission found that:
- there is a wide variation in what councils secure under the Section 106 process – some are missing out on opportunities to secure benefits through the planning process;
  - those councils without a detailed policy on planning obligations secure substantially fewer community benefits, including affordable housing, than other councils in similar circumstances; and
  - councils that have improved have often done so in response to the government's recent focus on improving planning performance or other drivers such as involvement from their corporate centres<sup>I</sup> – chief executives, leaders, and portfolio holders.

## Recommendations

- 6 Councils should:
- put in place detailed policy in supplementary planning documents (SPDs), describing the developer contributions that will be expected through planning obligations;
  - engage chief executives, leaders and portfolio holders to integrate the current and potential contributions of planning obligations with the delivery of the community strategy<sup>II</sup>; and

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<sup>I</sup> The corporate centre refers to the parts of the council (and potentially partners) outside the planning department that are concerned with the delivery of community strategy objectives, for example leading members, chief officers, partner organisations such as primary care trusts, and so on.

<sup>II</sup> Principal local authorities have a duty to prepare community strategies under the Local Government Act 2000.

- ensure that the other building blocks are in place to improve performance on planning obligations:
    - test the potential impact of their policies on development viability;
    - set up a system to deal with planning obligations and ensure that an effective process is in place;
    - be clear about when and how communities are involved;
    - improve transparency by publicising the results and outcomes obtained through planning agreements;
    - manage the risks and monitor the outcomes to ensure that contributions are spent on what they were intended for in the agreed timescale; and
    - draw on the experience of other councils in similar circumstances.
- 7 Improving the way in which planning obligations are used will require an investment of time upfront but should result in a more efficient process. In order to help councils make these improvements, this summary report is accompanied by a suite of products. These are intended to be used in conjunction with recent publications by the Department for Communities and Local Government (DCLG).<sup>I</sup> The products are tailored to different audiences and have different purposes (see page 3).

## Detailed research findings

- 8 Planning obligations have been the subject of much criticism over the years, and the system has come under the spotlight recently because of the government's proposals to revise national policy and to introduce a planning gain supplement (PGS), with an associated scaling back of the Section 106 regime.<sup>II</sup> While there are some inherent difficulties in using planning obligations to secure community benefits,<sup>III</sup> many of the problems could be avoided if councils used planning obligations more consistently. The practical problems include:

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<sup>I</sup> Forthcoming Practice Guidance and Circular 05/05.

<sup>II</sup> The government is consulting on a new PGS to fund infrastructure required by new development. If the PGS is implemented, the Section 106 regime will be scaled back to cover only the immediate impacts of development and affordable housing. For more details see the government's PGS consultation paper at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).

<sup>III</sup> For example, their use can create delay in delivering infrastructure because councils may have to pool several contributions from different developments before they can afford to provide the facilities.

- variation in approach from one authority to another;
  - delay and uncertainty in the development control process;
  - lack of transparency;
  - non-compliance with government policy; and
  - obligations not being followed through in practice.
- 9 Many of these problems can be avoided by councils adopting clear and detailed policy, supported by reliable data about the infrastructure required for new development together with efficient administrative and monitoring processes – and this is what the Commission’s products aim to promote.

The remainder of this report sets out detailed findings under the following headings:

- i. Different policy approaches to planning obligations.
- ii. What community benefits do councils achieve through planning obligations?
- iii. What do councils secure in practice?
- iv. Performance management and administrative efficiency issues.
- v. Limitations of planning obligations.

## i) Different policy approaches to planning obligations

- 10 Our research has confirmed that while councils’ approaches to Section 106 are consistent with national policy guidance, they vary in terms of application, number and extent of obligations, albeit that practice is evolving quite quickly. Approaches to planning obligations fall into three main categories:
- detailed policy for specific services;
  - discretionary use of enabling power; and
  - fixed tariff systems.

### **Detailed service-based policy**

This is the most established approach, described in Circular 05/05. The basis of the approach is to develop detailed supplementary planning guidance (now supplementary planning documents) based on an assessment of the impact of new developments on different types of public infrastructure and services. The cost of impact mitigation, which forms the basis for negotiating the developer contribution, is determined on the basis of formulae and standard charges (for example, x houses creates the need for y school places), and varies according to the type of development and its location. In some cases, financial appraisal may be used to test the impact of policy requirements before negotiating and finalising the Section 106 agreement.

### **Discretionary**

Some councils rely on an entirely case-by-case approach to planning obligations whereby policy in the local plan enables them to secure developer contributions according to the nature of the development, but there is no detailed policy in place. While this approach is the most flexible, it gives rise to many of the traditional problems associated with planning obligations. One of the main drawbacks stems from the relatively weak position of the planning authority, which raises the likelihood of challenge by developers, thereby adding uncertainty and delays.

### **Fixed tariffs and formulae**

This method has been pioneered by the Milton Keynes Partnership, which has negotiated a fixed developer contribution per residential dwelling. The fixed tariff approach is similar to the service-based policy above, but in aggregate form. The total developer contribution is based on the impact of all the proposed developments in the relevant area, and shared between all of them. The developer contribution includes a sum towards the strategic infrastructure that is necessary to enable development to proceed. Such an approach is most applicable in growth areas where there is little or no existing infrastructure and land is likely to be owned and developed by few different owners/agencies. While the fixed tariff approach offers some advantages, its wider application has not yet been tested.

- 11 The three approaches are all variations on the same theme, and the most appropriate method will depend on local circumstances. By far the best and most efficient approach is to have a detailed service-based policy. Under this model, as much content as possible is covered by a detailed policy enshrined in supplementary planning documents, leaving less discretion at the development control stage. Having a detailed policy allows the council to clearly set out its position at the outset, minimising the scope for subsequent

negotiations. It will also take the local development environment into account, so that the number of occasions where a departure from policy is required is minimised. Those councils with a good policy and well-organised supporting processes will enjoy a number of benefits, including:

- the Section 106 process can be both quick and consistent;
- developers can be informed at an early stage what their contribution is likely to be; and
- the costs of development can be established accurately in advance, which will influence the market price of land.

- 12 Our research also found that councils that did not have such detailed policy secured substantially fewer community benefits than other councils in similar circumstances. However, there is clearly a balance to be struck because there are significant upfront costs involved in developing the policy and supporting procedures, and the advantages are more obvious in areas of high development pressure.
- 13 Those councils which follow the second approach and opt for a discretionary case-by-case approach hope for greater flexibility. But in reality they often find that many of the supposed advantages are illusory, because they have a weak negotiating position that can easily be exploited by developers.
- 14 The fixed tariff-based approach (similar to that proposed at Milton Keynes) is being investigated by some councils. This approach, or a variant, may prove to be advantageous in some areas to bring greater clarity, transparency and simplicity of operation to the process but may not be widely applicable, especially in existing built-up areas, and is still at an early stage of development.

## ii) What community benefits do councils achieve through planning obligations?

- 15 Examples of the type and range of facilities that councils have secured through planning obligations are shown in **Box A**.

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## Box A

### Examples of community benefits secured through planning obligations

- Affordable housing
- Affordable business space
- Flood defence
- Highways, transport and travel schemes
- Recreation
- Community centres
- Recycling
- Crime and disorder prevention
- Employment and training
- Mix of uses
- Archaeology and conservation
- Education
- Open space
- Libraries
- Healthcare
- Fire and rescue
- Town centre improvements
- Local environmental improvements

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- 16** In practice, what councils can secure will depend on the local development context, the infrastructure needs generated by the proposed development and how comprehensive their policy is.

### Councils with a comprehensive policy

- 17** A comprehensive policy will cover most of the key community needs, including infrastructure and services delivered by organisations outside the planning authority such as the county council, primary care trust or other local strategic partnership members. Once established, the advantage of an approach based on comprehensive policy is that the priority between different services can be addressed in an objective manner. This avoids the opportunistic bidding that can sometimes take place by departments or agencies in the absence of policy.

### Councils with patchy policy coverage

- 18** Some councils have very limited detailed policies, often covering only one or two service areas, commonly open space or education. Such policies may have been developed in response to a particular local issue, may have been copied from a neighbouring council or may simply be the result of action by a particularly enthusiastic individual who spotted an opportunity to obtain funding for a specific service. While it could be argued that there is a

clearer rationale to use Section 106 to support some services over others, having a policy covering only a few services may result in councils failing to make the best use of their Section 106 contributions for the wider community.

### Councils with no detailed policy

- 19 Where there is no specific policy, the council decides each application on its own merits and there is not a transparent process for prioritising which services will be funded. In practice, during the planning process, consultees such as the highways authority state what they want, and these sums may be negotiated downwards by the developer.
- 20 In our sample of councils, most had at least some detailed policy on planning obligations and affordable housing provision. But only 4 of the 11 councils had an approach that could be described as comprehensive, with detailed policy on all the most relevant mainstream services, and identified capital expenditure projects aimed at mitigating development impact. Our research found that it was only those councils with a comprehensive policy that secured a broad range of facilities.

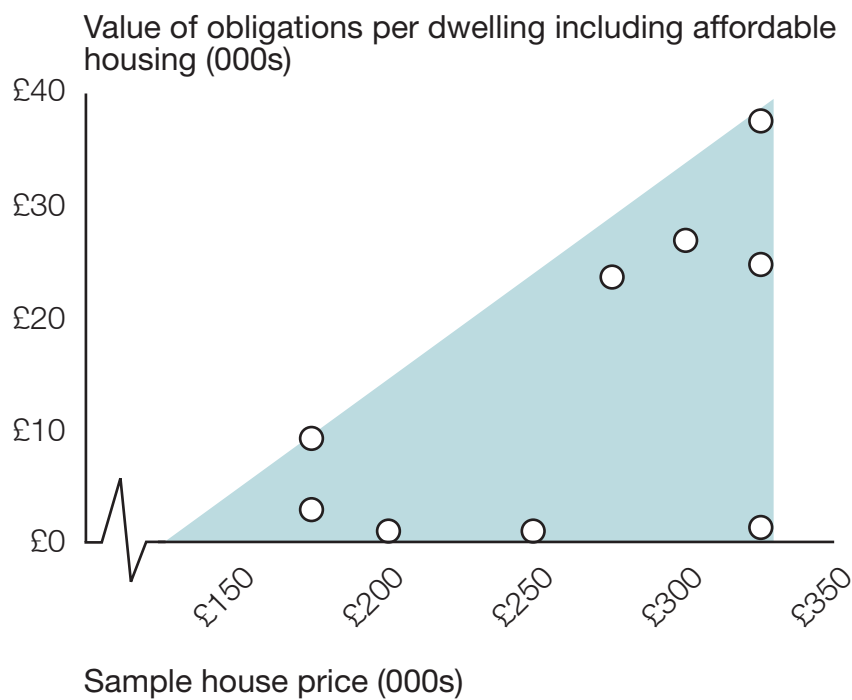
### iii) What do councils secure in practice?

- 21 One of the most striking characteristics of the Section 106 system is the degree of variation between councils in terms of the levels of contributions secured through planning obligations. In some cases, this variation is a valid reflection of local or site circumstances but in others it is due to factors within the councils' control.
- 22 To explore the extent of variation and the reasons behind it, each of our fieldwork sites was presented with the same hypothetical development proposal, in order to compare the contributions that would be likely to be obtained. The results indicated that the value of developer contributions ranged from around £500 to over £30,000 per dwelling, including affordable housing. **Exhibit 1** plots the levels of contributions against house prices for each of our fieldwork areas.
- 23 This relatively simple comparison shows that:
  - councils that obtain the highest value of facilities through planning obligations tend to be in higher-value areas;
  - the value of planning obligations typically does not exceed 10 per cent of the development value (house price) and is often much less; and

- there can be a wide variation in the value of facilities secured through planning obligations in areas with similar property prices.

**Exhibit 1**

**Estimated financial impact of planning obligations including affordable housing for a sample development in different council areas**



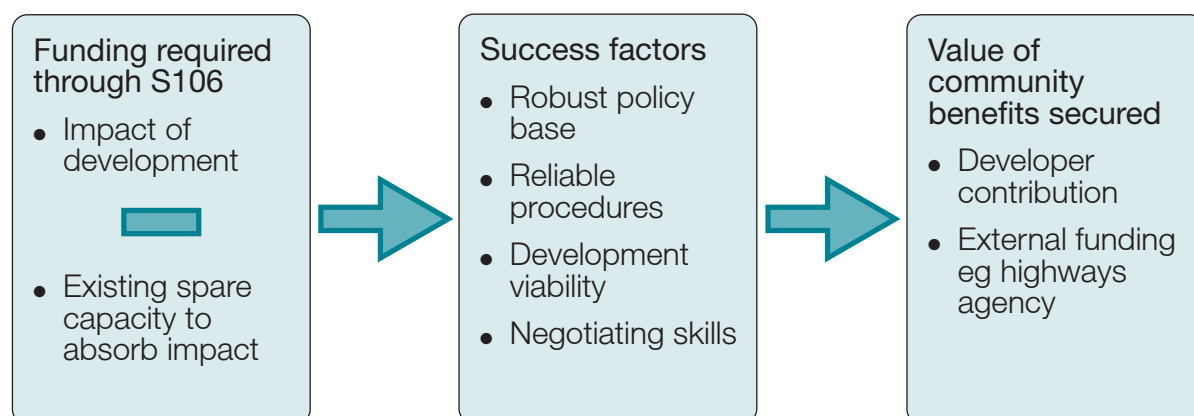
**Note:** For the purposes of this exercise the value of affordable housing was measured by its impact on the residual value of the development site. It was assumed that the affordable housing would be supported by social housing grant at a rate that would allow a housing association to finance the construction, which is not always the case in practice. This simple comparison shows that the impact of affordable housing can exceed that of the other planning obligations, especially in high land value areas.

- 24** The most significant reasons for the variance in the level of developer contributions were:
- property values;
  - absent or incomplete detailed policy and supporting processes; and
  - existing spare capacity in local services.

- 25 But these are not the only underlying causes. **Exhibit 2** illustrates the key factors that determine the total value of community benefits derived from a development. Not all of these variables present a problem: for example, if local infrastructure has spare capacity to absorb the effect of further development, there may be limited need to obtain developer contributions. Furthermore, some variables such as property values and availability of external funding may be largely outside of the councils' control. But three key factors, the policy base, reliability of procedures and the skills of officers, clearly are within the influence of the council. Weaknesses in these areas can introduce delays and reduce the value of developer contributions secured.

### Exhibit 2

#### Factors that determine the value of community benefits derived from development



- 26 Most of our fieldwork councils highlighted occasions when certain developers had exploited weaknesses in the council's policy or practices. The most common problem was developers avoiding making contributions by proposing schemes that were below the threshold for affordable housing<sup>1</sup>, or by proposing individual piecemeal developments that cumulatively exceed the threshold, for example a series of small developments in adjacent back gardens. The same issue applies to non-housing benefits where councils operate a threshold approach to planning obligations.

<sup>1</sup> Policy at the time of writing is described in DETR Circular 6/98: Planning and Affordable Housing. Affordable housing may only be sought on sites of 25 or more dwellings, or 15 or more dwellings in inner London and in areas where the council can demonstrate exceptional local constraints. Thresholds may be lower still in rural areas with populations of 3,000 or fewer.

## iv) Performance management and administrative efficiency issues

- 27 Performance management:** A vital part of an organised approach to planning obligations is monitoring of contributions and expenditure. Without a proper monitoring system, contributions can build up over time and organisations can literally forget what they are for. Some of our sample councils have started to address this problem by going back through completed obligations and manually calculating sums, but this is clearly not a very efficient approach. Similarly, if there is no proper monitoring system to track contributions, it is impractical to deal with the numerous small contributions which, between them, address the cumulative impact of development. This can represent a substantial missed opportunity to councils, and is not the fairest system for all developers.
- 28 Administrative issues:** Planning obligations have often been blamed for slowing down the development control process, but our fieldwork found many examples where this was not the case. With well-organised policy and procedures, planning obligations can be completed within the 8- and 13-week timescales for a straightforward planning application. Clearly this would not be the case for very large or controversial developments, but these are very much the minority of all developments. It is difficult to generalise about the causes of protracted negotiations, because there is always a combination of different issues, often specific to the site. Some councils try to deal with these problems using a team approach, so that all the council representatives with relevant expertise are available and empowered to make decisions in meetings with developers and landowners.
- 29** Few councils recorded the amount of time officers spent on planning obligations because the agreement was seen as integral to the planning process as a whole. However, most could identify the legal costs involved. For straightforward cases and where councils use model agreements and have clear policies, these costs can be very small compared with the developer's contribution. Sometimes it can be more efficient to use external solicitors to process planning agreements. Usually the cost of doing so (which is recoverable from the applicant anyway) is outweighed by the efficiency gains of such arrangements.
- 30** Developing a comprehensive set of policies and supporting procedures is likely to be the most expensive part of the process, but the rewards are recouped as the system is operated over the following years.

## v) Limitations of planning obligations

### Local issues

- 31** In some areas, circumstances do not readily lend themselves to using Section 106 to provide the necessary infrastructure, and to some extent this explains why some councils have not developed detailed policy on planning obligations. Two main factors explain why some councils do not use planning obligations to secure community benefits:
- the value of the site is inadequate to bear the cost of planning obligations; or
  - there is existing spare capacity in local infrastructure.

### Site values

- 32** In some areas development is not an economically attractive proposition and sometimes needs external subsidy to go ahead. Some councils are concerned that attempting to secure substantial developer contributions might deter development, or encourage it to take place elsewhere, for example in a neighbouring authority. This is more often the case in the north of England and explains why some councils there have less well-developed approaches to planning obligations. This also may apply to regeneration sites in higher-valued areas, where the cost of demolition or decontamination, for example, may impact on development viability.

### Spare capacity in local infrastructure

- 33** In some areas the issue may not be a shortage of infrastructure but one of quality. There may be an adequate amount of affordable housing, parks, open spaces and schools but the challenge is to improve the quality of local public services. The government's policy limitations on planning obligations mean that it is more difficult to use them to obtain community benefits for this purpose, although it is still possible. For example, some councils have negotiated developer contributions towards local environmental improvements and community safety initiatives, which have also helped the developer to market the new homes.

### National issues

- 34** Councils may also perceive limitations in what they can achieve through Section 106 in the changing national economic and policy environment. It is clear that future economic conditions and a range of proposed policy developments have potential implications for

councils’ approach to, and ability to secure, planning obligations. There are three current sources of uncertainty:

- the proposed PGS and associated scaling back of Section 106;
- the forthcoming White Paper on local government; and
- the future economic outlook for development.

**35** In this context, there is a risk that some councils will be reluctant to invest in their Section 106 processes, due to concerns about efforts being wasted. In fact, our evidence shows that there are clear benefits for councils acting now to improve their approaches to Section 106. Having a clear, detailed policy and good processes will improve the operation of the current, and any future, system and reduce delays. This is particularly important for those councils that are starting from a low base. Such improvements will not be in vain and will stand authorities in good stead for dealing with future developments **(Table 1)**.

**Table 1**

Possible development	Implications	How should councils respond?
Introduction of PGS	If PGS is introduced, the government is looking at scaling back the scope of planning obligations so that only those facilities directly connected to the site <sup>1</sup> can be required. In this case, some councils take the view that their detailed planning policies on Section 106 will be redundant.	<p>Much of the work put in by councils to set up good Section 106 policies and systems will still be relevant and valuable under the new regime. It is also likely that the background work for wider policy development will still be useful in a future system for the redistribution of PGS revenues.</p> <p>PGS, if it is introduced, will not be in operation until 2008 at the earliest. There is a pressing need for many councils to improve their use of planning obligations now to contribute to a more efficient, reformed planning system.</p>

<sup>1</sup> With the exception of affordable housing and public open space provided to compensate for loss of space as a consequence of the development.

Possible development	Implications	How should councils respond?
Potential issues raised by forthcoming White Paper on local government	In some areas there may be uncertainty surrounding the long-term administrative arrangements for councils. In some two-tier areas, district councils may be concerned that their policies on Section 106 will be superseded.	Given this uncertainty, it would make sense to coordinate planning obligations policy development across county or sub-regional areas or in conjunction with neighbouring districts, where possible. In some areas, county councils have taken a lead for districts to follow, although this has not always been successful.
Economic outlook for development	While the economic climate is always a source of uncertainty, it has particular relevance in this case because the ability of developers to contribute to community infrastructure depends ultimately on there being sufficient value in development. Current practice has evolved in a relatively benign development environment, with continuing expectations of high and rising property prices.	If current economic trends were reversed, councils might have to look to other sources of finance to meet the external costs of development (ie, the balance of contributions from developers and other sources of funding would need to be reviewed in line with guidance in Circular 05/05). The sustainability principles behind planning obligations policy need not be affected, but it would be a tougher environment in which to deliver them.

## Conclusions

- 36 Significant inconsistencies persist between councils in terms of approach to planning obligations and what they achieve. In some cases there are valid reasons for the value of developer contributions to be relatively small, but other councils are missing opportunities to achieve more for their communities simply because they are not using planning obligations as effectively as they could.

**37** Councils now have an opportunity to improve their performance in this key planning policy area by following a relatively well-trodden path. The councils we visited that have substantially improved their approach to Section 106 agreements all had detailed policy, strong corporate commitment, experienced staff in the planning department and were motivated to some extent by the potential financial rewards: the opportunity to secure contributions towards local capital projects and affordable housing and, for some, the prospect of a planning delivery grant. This is clearly a favourable environment, but it is hoped that the growing body of practice and guidance for councils to follow, coupled with the relatively high property and land values which now exist throughout the country, can provide the impetus for all councils to improve their practices and achieve a greater level of consistency.

# Appendix 1

## Advisory group members

Department for Communities and Local Government

Ashfords Solicitors

London Healthy Urban Development Unit

National Audit Office

Institute of Leisure and Amenity Management

Southampton City Council

University of Cambridge

National Housing Federation

Institution of Highways and Transport

Local Government Association

People for Places

Town and Country Planning Association

Independent Consultant

Planning Officers' Society

Planning Advisory Service

## Local authorities visited during the research

Ashford Borough Council

Bournemouth Borough Council

Durham City Council

London Borough of Harrow

Mid Sussex District Council

Newcastle City Council

Preston City Council

Sheffield City Council

South Kesteven District Council

Swindon Borough Council

London Borough of Tower Hamlets

West Berkshire Council

The Royal Borough of Windsor and Maidenhead





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