

Affordable housing definitions and Section 106 contributions in England

Paul Greenhalgh, Simon Robson* and Steven Chapelhow**

ABSTRACT

This paper examines whether Local Planning Authority definitions of affordable housing provide adequate clarity with which to negotiate affordable housing contributions with private sector house builders. The paper updates Government research, *Delivering Affordable Housing through Planning Policy* (ODPM, 2002), by systematically interrogating the affordable housing definitions of 51 Local Planning Authorities in England. LPA housing and planning documents were scrutinised in respect of the local definition of affordable housing, whether it conformed to the Governments 'new' PPS3 definition, the thresholds set at which the requirement for affordable housing is triggered and the target level at which Section 106 contributions are set. The findings indicate that although Local Planning Authority definitions of affordable housing have improved in terms of their quality, precision and clarity, one in five LPAs still did not provide a concise definition of affordable housing.

Keywords: affordable housing, definition, local planning authority, planning policy statement 3, section 106 contribution.

**School of the Built Environment, Northumbria University, Ellison Building, Newcastle upon Tyne NE1 8ST
Email: paul.greenhalgh@northumbria.ac.uk*

INTRODUCTION

In 2002, ODPM published ‘Delivering Affordable Housing through Planning Policy’, which recorded significant variation in local definitions of affordable housing that are used to negotiate affordable housing contributions by private developers as part of Section 106 planning agreements. The Government has subsequently introduced a new definition of affordable housing in England (see Planning Policy Statement 3 Annex B, CLG 2006a) which also requires Local Planning Authorities to set out an overall, plan-wide target for the amount of affordable housing to be provided (see paragraph 29i.) and directs them to provide a range of circumstances in which affordable housing will be required.

A critical finding that emerged from the ODPM’s 2002 evaluation was that:

“because of the opaqueness of the process by which affordable housing is defined by local authorities, we have no real way of evaluating whether definitions of affordable housing are having the desired effect. We know that Circular 6/98 is working in so far that across the country there is variety of provision which reflects different market conditions. What we cannot accurately gauge, is whether differences in outcome are a precise reflection of differences in market conditions. If they are not, it is because local authorities are paying insufficient heed to the process by which needs are translated into a definition of affordable housing.”

(ODPM, 2002, Section 2.4.9)

This paper updates the ODPM’s research by systematically scrutinising the affordable housing definitions of Local Planning Authorities in England to determine, firstly, whether LPAs have adjusted their definitions in the light of changes made to the Government’s definition of affordable housing, and secondly, whether local definitions are more comprehensive and adequately evidenced than previously reported. Ultimately it seeks to assess how local affordable housing policy is articulated by LPAs in England, in terms of their definition of affordable housing, the thresholds set at which the requirement for affordable housing is triggered and the target level at which Section 106 contributions are set.

BACKGROUND AND CONTEXT

Acknowledging that an adequate supply of affordable housing in England would not be provided by market forces alone (HM Government 2007), the Government has adopted two main mechanisms for supplying affordable housing in England:

direct provision via the Homes and Communities Agency¹ and the not for profit sector (e.g. RSLs) through the planning system via Section 106 planning agreements with private house-builders.

According to the Government, in 2008, approximately 30% of all new homes built in England were affordable (Hansard 2009), of which just under a fifth were delivered by private house-builders via Section 106 planning agreements (CLG 2008b).

The Government recognises that one positive consequence of the increase in house prices in England over the last decade is that it has created opportunities to secure affordable housing through developer contributions or ‘planning obligations’. Planning obligations can thus be used to prescribe the mix of a development by requiring the inclusion of a given proportion of affordable housing (CLG 2006b)

“In traditional high value areas, local planning authorities already have strong experience of negotiating planning obligations to deliver both social rented and intermediate market housing. But there is now a need for local authorities in other areas to raise their game and to recognise that such obligations will increasingly be viable on new housing developments.”

(CLG 2006b page 2)

Construction of new affordable homes for low and moderate income households has been ‘piggy backed’ on private deals for potentially lucrative new developments. Most local development plans specify between

20–50% of new homes built on medium and large sites should be affordable, including social housing for rent, the remainder being market housing for owner occupation, however in recent years around 50% of all affordable housing, and up to 70% in the South East of England, has been delivered through this mechanism (Shostack and Houghton 2008).

The Government acknowledges that Ministers have got themselves into a significant dependence on S106 to meet housing need (CLG 2006c); the Barker review of housing supply (HM Treasury 2005) criticised the amount of time and resources that are required to complete S106 agreements and noted the long time lags between agreement and completion. Research by Monk et al (2005a and 2005b) confirmed that uncertain and conflicting planning policies have had a negative effect on the delivery of affordable housing. A survey by the Royal Institution of Chartered Surveyors (2007) that found that many local authority negotiators were not clear about whose responsibility it was to deal with S106 and affordable housing and were often unable to counter the argument that too stringent S106 commitments would derail the development.

In PPS3 (CLG 2006a), the Government commits itself to provide high quality housing for people who are unable to access or afford market housing as well as helping people make the step from social-rented housing to home ownership. However, the viability of development schemes should be considered, as should the requirement for Low Cost Market Housing (LCMH) as part of the housing mix (see Figure 2 below). A presumption towards obtaining developer contributions for affordable provision is outlined, along with guidance for ‘off-site’ provision where extenuating circumstances exist (CLG, 2006b).

PPS3 also introduced a new definition of affordable housing in England:

“Affordable housing includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. Affordable housing should:

Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices

Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.”

(CLG 2006a Annex B page 25)

The definition excludes low cost market housing (LCMH) which was previously included in the old definition of affordable housing (Circular 6/98 DETR, 1998). The new definition of affordable housing (CLG 2006a) allows Local Authorities to tailor their affordable housing policies to an appreciable extent, based on variables such as local housing markets and land values. This has led to different Local Authorities employing a range of definitions of affordable housing which provide a starting point when seeking to negotiate affordable housing contributions with developers.

In order to evaluate local definitions of affordable housing it is necessary to recognise the different types of housing provision that comprise the new definition of affordable housing. According to the Government (see CLG 2006a, 2008a, 2008b), total affordable housing supply comprises ‘social rent’ and ‘intermediate affordable housing’²; the latter of which includes ‘intermediate rent’ and ‘low cost home ownership’ (LCHO). LCHO includes shared ownership and shared equity schemes. It should be noted that ‘low cost home ownership’ is not the same as ‘low cost market housing’ where price is determined by the market. This potentially confusing arrangement may be better understood using a diagram to illustrate the hierarchical structure (see Figure 1).

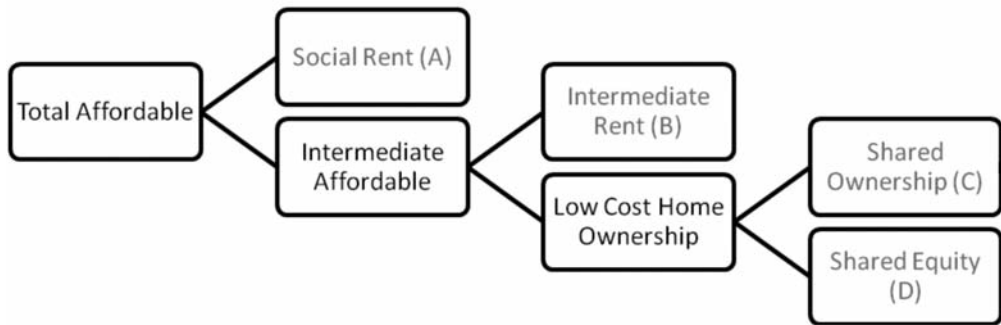


Figure 1 An Illustration of the Component Parts of Total Affordable Housing

Thus, Total Affordable Housing is calculated as follows:

$$\begin{array}{r}
 \text{Social Rent (A)} \\
 + \quad \text{Intermediate Rent (B)} \\
 + \quad \text{Shared Ownership (C)} \\
 + \quad \text{Shared Equity (D)} \\
 \hline
 \text{Total Affordable (E)}
 \end{array}$$

The above illustration is consistent with the PPS3 definition of affordable housing, including as it does social rented plus intermediate (rent and sale) but excluding LCMH. CLG (2008a) confirms that “all affordable housing is the sum of social rent, intermediate rent and low cost home ownership”. This is the basis on which Table 1 has been constructed¹.

The latest affordable housing supply figures for England (CLG 2008b) reveal that new build accounted for approximately 80% of all new affordable homes (allowing for acquisitions); the number of affordable homes supplied via S106 agreements has increased fourfold over the last five years, although its contribution to the new build total has varied little over the last three years, remaining around 20% or 1 in 5 units.

METHOD

The research updates the ODPM’s (2002) evaluation, of the way the definition of affordable housing was used by Local Planning Authorities in England, by systematically scrutinising the affordable housing definitions prepared by Local Planning Authorities in England in the light of the new (PPS3) definition of affordable housing and the renewed emphasis on encouraging the delivery of affordable housing via the use of affordable housing requirements and S106 agreements. The investigation is principally concerned with affordable housing, built by private housebuilders and the not for profit sector, for sale, comprising either ‘low cost home ownership’ (LCHO) or intermediate affordable housing including discounted sale, shared equity and shared ownership (see CLG 2006a definition); it is not immediately concerned with rented accommodation and does not consider the relative merits of different housing tenures. Nor does it explore the intricate operation of Section 106 agreements.

A random sample of 51 Local Planning Authorities in England was selected, their local development documents were scrutinised to identify the specific policies that had a bearing on the planning for, and supply of, affordable housing. The content and key components of the LPAs’ affordable housing policies and housing needs data were systematically analysed, with particular attention being paid to their

	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
Housing Corporation new build	23690	22430	19520	17300	17510	16590	16600	16560	17400	18180	21700
Housing Corporation Acquisitions	11770	10950	9120	8840	8140	6420	4290	2610	2410	2360	3390
other Housing Corporation Schemes								870	920	950	660
Local Authorities new build	320	180	60	180	60	200	190	100	300	250	310
S106 new build				750	1070	720	1580	1530	2550	2750	3130
Private Finance Initiative		20	100	20	40	30	0	10	60	240	180
social rent total (A)	35780	33580	28800	27090	26820	23960	22660	21680	23640	24730	29370
Housing Corporation new build							260	680	1370	1110	1050
Housing Corporation acquisitions							30	830	310	90	60
intermediate rent total (B)							290	1510	1680	1200	1110
Housing Corporation new build	4200	3930	2750	2260	2040	2330	3710	5570	7570	9210	12040
Housing Corporation acquisitions	7290	4820	2280	2380	2270	4550	8850	5800	7710	3050	3540
Other Housing Corporation Schemes									490	570	130
S106 new build				450	1060	1250	1550	1900	3810	4440	5090
Assisted Purchase Schemes	200	120	1270	990	840	830	1010	1020	1100	1360	2460
low cost home ownership total (C&D)	11690	8870	6300	6080	6210	8960	15120	14290	20680	18130	23260
All affordable (A+B+C+D)	47470	42450	35100	33170	33030	32920	38070	37480	46000	44560	53740

Table 1 – *Affordable Housing Supply, England, 1997–2008*

Housing Statistical Release, 12 June 2008 (CLG 2008a) and 18 December 2008 (CLG 2008b)

Sources: Housing Corporation, English Partnerships, Local Authorities, Private Developers

N.B. most of the totals in CLG (2008a & 2008b) on which this table is based, do not equal the sum of the figures. CLG indicate that their sub-totals are rounded to the nearest 10, but some of the totals are out by 20 or 30 units. The totals in this Table have been adjusted to equal the sum of their parts.

definition of affordable housing, the thresholds adopted and targets sets for affordable housing contributions. An appreciation was gained of how LPAs in England had responded to the new national planning guidance for housing (PPS3) and how they articulated their affordable housing policies.

RESULTS

The research recorded around one in five LPAs sampled still did not provide a concise definition of what ‘affordable housing’ means in their area, in direct contravention of Government guidance (PPS3, DCLG, 2006a), which calls for all LPA’s to provide a set of circumstances in which affordable housing will be sought.

Detailed scrutiny of the local affordable housing policies, for the random sample of LPAs across England, identified three common components:

wording – a concise explanation of the LPAs’ approach to identifying and addressing what ‘affordable housing’ means within their borough or district.

threshold – to specify the site size or number of units on a proposed site which will trigger affordable housing requirements.

target percentages – representing a percentage of housing which should be provided as affordable on individual sites

Figure 2 shows the incidence of the three component inputs within policy documents of the sample group. Also shown is the percentage of the sample that excluded LCMH from their definitions.

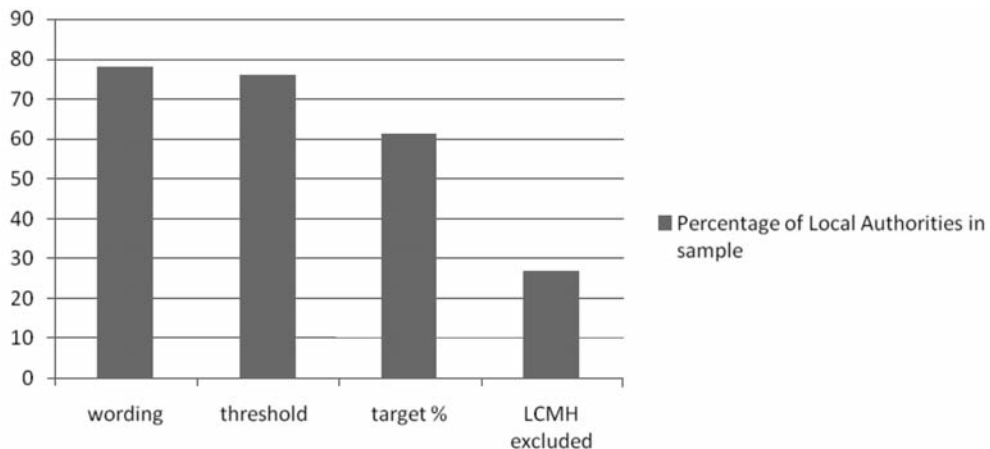


Figure 2 Components of Definitions of Affordable Housing

It can be seen that ‘wording’ (78%) and ‘thresholds’ (76%) are the most widely used components of how LPAs seek to articulate their local affordable housing strategy. The number of LPAs excluding LCMH from their definitions (27%) also appears significant; many LPA documents highlighted concern about the affordability of this category of housing and excluding it appears to be a growing trend.

Definitions may also be analysed by how many of the three components are contained in a local policy. Figure 3 shows the percentage of the sample which contained 1, 2 or 3 components, as well as those LPAs where definitions were not available.

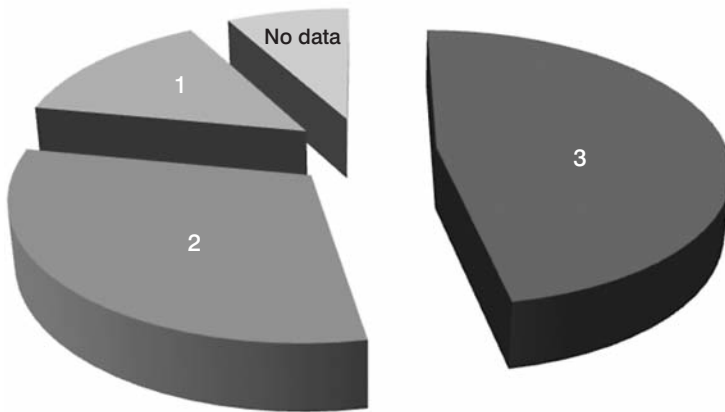


Figure 3 Number of components appearing in Definition of Affordable Housing

The analysis reveals that LPAs are willing to consider a range of criteria in ‘constructing’ their local definitions. Figure 3 illustrates that approximately half the LPAs in the sample use all three components when characterising affordable housing policy and approximately four in every five (78%) LPAs use at least two components in their definitions. It is notable that all but 3 LPAs in the sample had a Strategic Housing Market Assessment (SHMA) available, albeit presented in a variety of different formats. Where available, 28 of the assessments identify a specific local demand for LCMH, however only 16 of those assessments called for the provision of LCMH units on housing schemes.

Two of the six LPAs in the East of England specifically promoted ‘low cost home ownership’ (LCHO) as a theme within their local development documents. In contrast, LPAs in the South East were more pessimistic about the prospect of LCHO delivering affordable housing in their area. They also regarded LCMH as too expensive for purchasers to afford. As a result they relied on Housing Association rented housing to provide affordable solutions in their area.

LPAs are adopting the new PPS3 threshold, of 15 units or 0.5 ha, as a trigger to requesting affordable housing on sites. This is especially pertinent in London where, due to higher land values, smaller sites and higher densities, many schemes had in the past slipped through the net. Some regions, such as Yorkshire relied instead on ‘variable thresholds’ as a means of addressing the different affordable housing needs of urban and rural areas.

The ODPM’s (2002) research highlighted concern about the lack of local housing needs evidence bases, with only one LPA (out of 74) making direct reference to a Housing Needs Assessment being used to inform their definition of affordable housing. This research found that HNAs are now in more widespread use with all but three of the LPAs in the sample (94%) having a current assessment in force, and it appeared that some LPAs are adopting both departmental and external ‘partnership approaches’ to enhance their assessment of housing need. However, HNAs varied considerably in quality, some were out of date and many of the older documents detailed few specific recommendations concerning provision of affordable housing.

CONCLUSIONS

The study primarily focused on how local affordable housing definitions are articulated in local planning policies. There has been a significant increase, between 2002 and 2007, in the number of LPAs adopting local definitions, thresholds and targets, with which to articulate their affordable housing policy for their borough or district. There is a significant degree of variation in the way that LPAs have done this, both in terms of the defining of affordable housing, the threshold at which a requirement for affordable housing provision is triggered, and the level at which the S106 contribution is set. The research revealed that one in five LPAs still did not provide a concise definition of what ‘affordable housing’ means in their area, in contravention of Government guidance.

Some LPAs have adjusted their definitions in light of the revised national definition of affordable housing, by excluding Low Cost Market Housing. The use of Housing Needs Assessment to inform policy development is also now widespread.

Whilst the findings are robust and valid, due to the size of the sample adopted, the research does suffer from two limitations. The research was conducted in 2007, before the impact of the credit crunch and ensuing recession was felt in housing markets; the result of which is that many residential schemes have been put on hold or cancelled altogether; for those that survive, the private housebuilders are seeking to renegotiate the S106 contributions that were originally agreed when market conditions were more favourable. However, this limitation of study does reveal a potential opportunity for further research: an investigation of the renegotiation of Section 106 contributions by private housebuilders. In a similar vein, the Governments own model for affordable housing supply has been damaged, perhaps irrevocably, by the collapse of private sector housebuilding in the U.K. over the last two years. Inevitably, greater onus will be placed on the HCA and Housing Associations to make an increased contribution to the shortfall in the supply of affordable housing as a result of the adverse housing market conditions. Again, this reveals a opportunity for further study: the evaluation of the new housing supply models being adopted by the HCA and its partners.

ENDNOTES:

1. The Government has sought to improve organisational structure for delivering affordable housing by creating the Homes and Communities Agency, the national housing and regeneration agency (see Great Britain. *Housing and Regeneration Act 2008*). The HCA, launched on 1st December 2008, integrates the functions of the former national regeneration agency, English Partnerships, the investment functions of the Housing Corporation and the key housing and regeneration programmes delivered by the Department for Communities and Local Government. This new ‘super agency’ has a budget of over £5bn per annum and offers the prospect of a more coherent and proactive Government approach to improving housing supply in England, with a particular focus on affordable housing.
2. Intermediate affordable housing exists between market and social rented housing and comprises intermediate rented homes provided at rents above those of social but below private rented, discounted sale homes, shared equity including shared ownership (CLG 2006b). The S106 contribution to the supply of affordable housing is presented by CLG (2008a and 2008b) as comprising Low Cost Home Ownership and Social Rent units, but this is not the whole picture as the data used is from Housing Strategy Statistical Appendix (HSSA) returns and only includes units provided *solely* from developer contributions not recorded by the Housing Corporation. Some units with 100% developer contribution are included in the Housing Corporation figure and so are excluded from the HSSA figures to avoid double counting. Other S106 units, that receive mixed funding (e.g. less than 100% developer contribution) are also included in Housing Corporation figures (CLG 2008a and 2008b). Thus, the S106 figures are opaque and do not accurately represent how many units have been provided wholly or in part by private sector developers.

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LIST OF ACRONYMS AND ABBREVIATIONS

CLG	Communities and Local Government
HCA	Homes and Communities Agency
HM	Her Majesty’s
HNA	Housing Needs Assessment
LCHO	Low Cost Home Ownership
LCMH	Low Cost Market Housing
LPA	Local Planning Authority
NHBC	National House Building Council
ODPM	Office of the Deputy Prime Minister (now CLG)
PPS	Planning Policy Statement
RICS	Royal Institution of Chartered Surveyors
RSL	Registered Social Landlord (e.g. Housing Association)
S106	Section 106 (Planning Agreement)
SHMA	Strategic Housing Market Assessment