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HOW PRIVATE DEVELOPERS GET OUT OF BUILDING AFFORDABLE HOUSING

Local authorities say how much affordable housing developers have to provide. So why isn't it getting built?

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Last month analysis from Rightmove found that private rents in Britain [are rising at their fastest rate](#) on record, making it ever harder for tenants to find housing at affordable rates. [Our recent analysis](#) with [Altair](#) looked at the planning system's ability to deliver affordable housing through a legal obligation for developers called section 106 (S106). We found that increases in build costs, either from new planning requirements or supply shortages, considerably reduce or annihilate parts of social housing construction in many regions. This is an alarming discovery, given the government's appetite for increasing the requirements within S106 agreements without protecting or prioritising their ability to deliver affordable housing.

S106 allows the planning department of local authorities to set certain conditions or financial contribution requirements that new building developments have to meet in order to get planning permission. These conditions can include things like investment into local schools or roads – but they can also require a certain proportion of affordable housing in residential developments. Through S106, [in 2018/19](#), local authorities got £7bn in developer contributions, with 90% of local planning authorities attaching conditions to planning permission for new developments. This is a significant way of delivering affordable housing in England, accounting for 47.7% of affordable housing built [in 2020/21](#), over 24,800 units.

Local planning authorities specify a percentage of affordable housing that developers have to provide. But these policies are not all-powerful: developers use measures called financial viability assessments (FVAs) to challenge them. FVAs evaluate the financial health of a development, ensuring that it will not lose the company money – ie, it will be 'viable' – when it fulfils its S106 contributions, by calculating the cost of a development against its income

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This calculation produces a 'residual land value' (RLV): the price that can be paid for the development's land. This is then compared to another figure, the 'benchmark land value' (BLV), set by the local planning authority as an appropriate value the private landowner should receive for

their land being used in the development. If the value from the developer's financial viability assessment (the RLV) is greater than the local planning authority's benchmark (the BLV), the local authority can use this surplus money for developer contributions – like affordable housing. If it is the opposite, where the BLV is greater than the RLV, the development will not generate a surplus, so the developer does not have to fulfil its S106 obligations.

When developers argue that their developments will be 'unviable', they primarily address this by trying to reduce the amount of affordable housing. This is because, unlike removing parking or green space, reducing affordable housing does not impact the value of the surrounding residential units. In essence, financial viability assessments provide a loophole for developers to escape their affordable housing obligations.

Developers push for less affordable housing when they submit their financial viability assessments alongside their planning application. Then, the local planning authority produces a different FVA, typically arguing that the development will cost less and make more than the developer thinks, so there is more surplus available for affordable housing. A negotiation ensues, with the local authority deciding the final composition of the S106 agreement. In theory this should mean local authorities can always make sure there is enough affordable housing– but this isn't often how it works out.

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Ubiquitous to all S106 negotiations is technical skill, with FVAs requiring complex financial modelling expertise. Many local authorities lack in-house capacity, limiting their ability in negotiations, so resort to external consultants. FVAs are also very detailed, making them incomprehensible to a non-technical audience – if they are publicly available at all. Local authorities often don't publish the results of negotiations and the associated FVAs. The process takes place behind closed doors, with limited democratic accountability.

With S106, affordable housing is delivered via the success of private housing developments. This means that the existence of affordable housing is tied to the market. For affordable housing to survive the viability assessment process, the housing market needs strong demand, incentivising the government to maintain house prices, and worsening unaffordability more widely. Because demand varies between areas, high demand areas with higher house prices can get bigger S106 contributions than areas with lower demand. This means the state of the market, not local need, determines where affordable housing is delivered. Of the £7bn secured in S106 developer contributions [in 2018/19](#), the majority were in the more affluent south of England. Affordable housing becomes part of a balancing act, where the government or local authority can only place [limited regulatory demands](#) on housing development without affordable housing being lost through the loophole.

Though the local planning authority holds the decision-making power, it is exposed to the whims of the market, especially where demand is weaker. FVAs underpin this power asymmetry. Developers can, for example, set a higher level of profit they expect to generate through developments. While [Planning Policy Guidance](#) states that profit can be between 15 – 20% of the development's value, most push for 20%, making it harder for affordable housing to survive the viability assessment. Developers can also renegotiate when a development looks like it may underperform, impacting its viability *after* the S106 agreement has been finalised.

Fortunately, there are localised solutions that can make FVAs a tool of local authority and public power, and reclaim the potential of S106 agreements for a better planning system. Stay tuned for part two of this series, where we'll be looking at solutions and campaigning around them.