

# **Wales Planning Conference 2011**

## **Workshop Report:**

### **Shifting Sands – Site Viability, S106 and CIL**

**Workshop Facilitators:** Gareth Williams, NLP, and Victoria Abraham, The Vale of Glamorgan Council

This seminar was presented by Vicky Abraham from the Vale of Glamorgan Council and Gareth Williams Director at NLP Planning highlighting the various factors which can affect the viability and deliverability of development proposals, in particular focusing upon residential developments.

The session was split into two parts, a twenty-minute presentation covering the main issues surrounding site viability and a ten-minute group discussion exercise which focused on site viability from the various stakeholders points of view i.e. Developer, Landowner and the Local Planning Authority [LPA]. The below provides a summary of the presentation on viability and the main discussion points from the informative stakeholder exercise.

#### **Section 106 Agreements (s106)**

Section 106 of the Town and Country Planning Act (as amended) enables Local Authorities and developers to agree to planning obligations to require operations or activities to be carried out on land (*in-kind obligations*) or require payments to be made (*financial obligations*), to mitigate any unacceptable impacts of development proposals. In determining large residential developments for example most LPAs will seek planning obligations for affordable housing, education facilities, community facilities, public open space, recreational facilities, sustainable transport provisions and public art.

#### **The Community Infrastructure Levy (CIL) 2010 Regulations**

The CIL Regulations repeat the policy tests previously contained within planning guidance (e.g. Welsh Office Circular 13/97) and state that a planning obligation (under s106) may only legally constitute a reason for granting planning permission if it is:

- i. necessary to make the development acceptable in planning terms;
- ii. directly related to the development; and
- iii. fairly and reasonably related in scale and kind to the development.

[CIL Regulation 122: Limitations on the use of planning obligations]

The CIL regulations enables LPAs to adopt a local infrastructure 'roof tax' to be applied to each new building in order to fund local infrastructure requirements for the area although this excludes affordable housing provision. From the 6th April 2014 the regulations state that no more than five S106 agreements can be used to contribute towards or fund infrastructure projects meaning that CIL will become the main mechanism for local infrastructure delivery.

In order to adopt a Community Infrastructure Levy LPAs will need to undergo an Examination in Public of their scheme. The proposed levy rates need to be supported by evidence including an assessment of local infrastructure needs and economic viability testing to ensure development sites and local infrastructure can realistically be delivered.

#### **Development Viability**

In delivering local infrastructure and affordable housing through Section 106 agreements and in progressing CIL the viability of development has become a key material consideration when considering planning applications. In particular, Lord Justice Keene in the 2008 Blythe Valley judgement highlighted its importance finding

that: “an informal assessment of viability... is a central feature of PPS3 policy on affordable housing. It is not peripheral, optional or cosmetic. It is patently a crucial requirement of policy”.

In setting a Community Infrastructure Levy it was noted that LPAs need to strike a balance between the desirability of funding local infrastructure requirements, in order to support the development of the area, and the effects of CIL on the economic viability of development sites. Differential CIL rates can be set however these must be justified and economic viable for the differing development types within the local area. CIL charges have been seen to vary significantly depending upon the local infrastructure requirements and local market conditions, for example, Shropshire Council is proposing a CIL of £8,000 per dwelling in rural areas but only requiring £4,000 per dwelling within the town of Shrewsbury.

### **Development Viability Appraisals**

Viability Appraisals can be undertaken using **policy testing toolkits** such as the Three Dragons Model which contains default values for costs and values and is useful for generic appraisals and policy development (e.g. in order to test affordable housing policy requirements within differing sub housing market areas).

**Site-specific appraisal** can also be undertaken using methods set out by Royal Institution of Chartered Surveyors (RICS) guidelines by valuation experts such the District Valuer for which site specific inputs are required from the developer which provides more accurate appraisal of the site and proposed development.

The **Economic Appraisal Tool** (EAT) produced by the Homes and Communities Agency can also be used to inform discussions with LPAs regarding the level of affordable housing and other s106 contributions that can be provided (with or without Social Housing Grants). Inputs required to inform the EAT include costs, development time periods, S106 contributions, site abnormalities and site income streams (e.g. rent of affordable housing, commercial uses, dwelling prices and any housing grants/contributions).

An example Viability Assessment was given for a 1 Ha site providing 35 three bedroom dwelling units under different development circumstance and levels of planning obligations. This resulted in residual valuations ranging from £1.96m to as little as £475,000 for the same site, which could prevent development of the site if the valuation is significantly below the price of the landowner is expecting land (which may have already been negotiated). This highlighted the sensitivity of development viability to these cost factors. It was considered there are two key issues for LPAs in a volatile and uncertain market: (i) how to be convinced that the scheme is unviable and, (ii) what to do once they are convinced.

### **Factors Affecting Viability**

The various factors which affect site viability were considered and included (i) the availability of funding such as Social Housing Grant (SHG); (ii) site-specific constraints e.g. land contamination; (iii) local housing markets and expected land values, and (iv) build cost fluctuations. However, it was considered there are a number of other key viability factors which the LPA can negotiate which include:

- **Affordable Housing provisions:** overall percentage of affordable housing, tenure split: social rented to intermediate, phasing of delivery, off site contributions.
- **Other s106 contributions:** overall amount sought, trigger points for payments, and other delivery mechanisms for infrastructure provision e.g. it may be cheaper for the developer to build / provide certain facilities directly rather than providing local authorities financial contributions to procure them
- **Other matters:** Design, layout, specification of materials, development density and sustainability credentials etc.

## **Viability Group Exercise**

The site in question was a 2 Ha brownfield, currently occupying a factory, with potential for up to 60 dwellings. It was assumed the local authority does not have a 5 year residential land supply and development of the brownfield site would assist in its regeneration objectives. In the case study the developer has an option to purchase the site on grant of planning permission subject to a minimum valuation of £1.8m.

The Existing Use Value of the site is approximately £500,000 and the LPA requires 30% affordable housing provision and £1.85m for various S106 contributions. The developer is seeking a 20% gross profit and has presented a viability assessment which concludes the scheme, together with the full planning obligations, would not meet the existing use value and has asked the LPA to negotiate so that the scheme can proceed.

Each group discussed the site viability issues from the point of view of each of the stakeholders, being the Landlord, Local Planning Authority and Developer. Their suggestions were varied and sometimes conflicting in their approach towards reaching a solution in bringing the site forward for development. Four key questions were considered: (i) the key priorities for renegotiation, (ii) possible mechanisms to improve site viability without diluting policy aspirations, (iii) the conditions attached to any planning permission, and (iv) the different approaches possible if the site were larger. The three main concerns are summarised below:

### **The LPA:**

- As the Council does not have a five-year land supply, the proposed site being brownfield and meeting regeneration objectives is welcomed.
- Sustainable transport, public art and off-site highway contributions may not be considered essential, but planning obligations for affordable housing and educational facilities may be more essential.
- Reduction in affordable housing is unlikely to be first priority to make development viable, although it was noted this may not always be the case.

### **The Land Owner:**

- Minimum land value aspirations – knowledge of historic local land sales.
- The short term Vs long term options available to the land owner in their individual circumstances e.g. need to dispose of land, age, financial situation and long term market trends.
- Understanding of the planning and development process which will impact upon realistic and achievable profits and / or land values – would the land owner want to renegotiate minimum land values with developers?

### **The Developer:**

- The development is not the main concern - the developer could walk away if risk is too high or reward is not enough. A 20% profit margin is seen as a minimum with finance companies potentially requiring high margins.
- Developer could provide the infrastructure cheaper or be flexible in design details and / or phasing of the development.
- Developer could choose lodge an appeal or renegotiate with the landowner.

## **Concluding Discussion Points**

It was concluded that there are many factors can affect site viability and that there are a range of important assumptions which each of the stakeholders involved are likely to have a differing view or interest in (i.e. Landowner, LPA and Developer).

It was considered that in a situation where the developer considers there is a high level of planning obligations and / or together with 'high' assumed uplift values the realistic and achievable residual land values within a depressed housing market may

not be high enough to satisfy landowners in order to sell the site. In such circumstances, these viability issues can deter developers in promoting the land or in taking the risk to develop the site as minimum profit margins of around 20% are generally required, or in some cases higher returns may be required by financial backers for more risky proposals. This was considered more likely to be an issue in the context of increasing costs and falling / low property values resulting from the general economic downturn.

This scenario is likely to result in the slowing down of land release just when the development planning process is trying to ensure delivery of housing and other key local infrastructure. Although it is expected that reducing planning obligations will improve release rates and generate higher overall housing construction it is important to consider that this policy option would inevitably impact upon the scope and scale of local infrastructure provision, which will be an important and evolving issue for emerging CIL schemes as the prevailing general economic circumstances change.

In order to release and make developing the site more likely it was considered the various development options need to be revised with an element of flexibility from one or, more likely, all three of the main stakeholders involved in the development process. In this respect it was noted that development viability is only one material consideration amongst a number and stakeholders need to be realistic, flexible and open about to the range of development options which may be required if 'unviable' land is to be successfully developed for all concerned.

This report was produced by Gamma M Prasad, a student at Glasgow University and John A Raine of the Vale of Glamorgan Council

*This paper is a report of proceedings of the workshop and does not necessarily reflect the views of the author, their employer or that of any individual attending the workshop, including the facilitators, or the RTPI.*