

# **Housing Delivery Clause Technical Note**

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# Housing Delivery Clause Technical Note

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Example Section 106 Agreement Extract

## 1. Purpose of the Document

- 1.1 The Council is committed to providing everyone with the opportunity to live in a suitable home and to planning for suitable housing to meet identified need. This technical note sets out the Council's approach to securing the delivery of new homes on consented sites within the first five years, through the use of section 106 agreements (see section 3).
- 1.2 These agreements have already been used successfully in Central Bedfordshire, but the aim of this note is to provide a policy framework with a clearly defined, consistent and transparent approach to dealing with s106 agreements, which include these clauses specifying rates of housing delivery.
- 1.3 This guidance applies to all deliverable housing developments (developments that are capable of delivery in years 1-5 of the rolling plan period) and any others where it is considered that delivery should be specifically stipulated in a legal agreement.

## 2. Summary of Approach

- 2.1 For any applicable site, the Council will seek a delivery timetable to be put forward by the site promoter (see example at Appendix A) which will then form part of the accompanying section 106 agreement. Ideally this should be submitted as early in the process as possible at pre-application stage or planning application stage, as it will be a material consideration in decision making that will be weighed up in the overall planning balance.
- 2.2 The delivery schedule (for both market and affordable housing) should ensure the timely delivery of the balance of homes that it is considered can be realistically delivered within the first five years following the signing of the agreement.
- 2.3 This approach supports the expedient delivery of new homes and allows the local planning authority (LPA) to exercise some degree of control, where largely the role of the LPA in contrast to that of the developer, is to determine applications for housing development and issue permissions, rather than to directly influence the timing of delivery.
- 2.4 However, as the performance of LPAs is measured in relation to the completion of new homes and now specifically in relation to the Housing Delivery Test (see paragraph 4.6), it is absolutely critical that the Council ensures that permissions are implemented swiftly; both to ensure an appropriate supply of new homes to meet local need, and to maintain a rolling five-year housing land supply. Best practice in relation to section 106 agreements has historically been to set out the timing and provision of affordable housing, so is now appropriate in this context of increasing

scrutiny of delivery rates, that all tenures are subject to direction with regard to the timing of delivery where appropriate.

### 3. Section 106

- 3.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. S106 agreements are often referred to as 'developer contributions'.
- 3.2 The common uses of planning obligations are to secure affordable housing, and to specify the type and timing of this housing; and to secure financial contributions to provide infrastructure or affordable housing. However, in their widest sense, s106 obligations have the scope to:
- restrict the development or use of the land in any specified way
  - require specified operations or activities to be carried out in, on, under or over the land
  - require the land to be used in any specified way; or
  - require a sum or sums to be paid to the authority (or, to the Greater London Authority) on a specified date or dates or periodically.
- 3.3 Specifying the timing of the delivery of all tenure types of housing is therefore permissible under section 106.

### 4. National Policy Context

- 4.1 There are a number of references in the National Planning Policy Framework (July 2018) and in the NPPG which support the timely delivery of new homes. Paragraph 59 of the NPPF states that *“To support the Government’s objective of significantly boosting the supply of homes, it is important that....land with permission is developed without unnecessary delay.”*
- 4.2 In addition, the use of Section 106 as set out in this note, also supports the Council’s ability to maintain a five year housing land supply which is required by national policy at paragraph 73. *“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing...”*.
- 4.4 An assessment of reasonable delivery rates is also supported in national policy; LPAs are asked to *“make a realistic assessment of likely rates of delivery, given the lead-in times....”* (NPPF, Paragraph 72). The clauses therefore may reflect a lead-in time to progress through the planning application process and to start on site before any dwellings are completed.

- 4.5 The NPPG also stipulates in the housing and economic land availability assessment section that local authorities need clear evidence on deliverability and so signed section 106 agreements appropriately meet this requirement.

*“In order to demonstrate 5 years’ worth of deliverable housing sites, strategic policy-making authorities will need to provide robust, up to date evidence to support plan preparation. Their judgments on deliverability of housing sites, including windfall sites, will need to be clearly and transparently set out”.*

#### **Housing Delivery Test**

- 4.6 The Housing Delivery Test is an annual measurement of housing delivery in the area of relevant plan-making authorities.
- 4.7 The Housing Delivery Test is a percentage measurement of the number of net new homes delivered against the number of homes required, as set out in the relevant strategic policies for the areas covered by the Housing Delivery Test, over a rolling three year period.
- 4.8 It is therefore the case, that LPAs are measured in relation to delivery, with the consequences ranging from a requirement to produce an action plan to increased buffers, and most severely, the triggering of the presumption in favour of sustainable development. This therefore makes it necessary for LPAs to do everything that is possible to ensure timely delivery of consented new homes.

### **5. Local Policy Background**

- 5.1 Central Bedfordshire Council is a unitary authority that is comprised of two legacy district councils. These were Mid Bedfordshire and South Bedfordshire District Council; the two adopted development plans for each legacy authority comprise the local development plan. However, there is now a submitted Local Plan for the whole of Central Bedfordshire. While this is at Examination it has limited weight, but when adopted, will replace both previous development plans.
- 5.2 The submission Local Plan (January 2018) notes that the *‘delivery rates of housing commitments are set out within the housing trajectory in the Strategic Housing Land Availability Assessment (SHLAA)’*.
- 5.3 The trajectory is continually and rigorously monitored taking into account annual housing completions and the supply of housing land on at least an annual basis, (though in recent years it has been undertaken on a quarterly basis) to determine if delivery requirements are being met and whether a five-year supply of housing land is being maintained.

## 6. Approach to Agreements

- 6.1 It is accepted that there is a time lag between the signing of an agreement and the any dwellings being built on site. The rates stipulated in the Section 106 will therefore make reasonable assumptions to determine the likely delivery of particular development sites factoring in; competing sites, likely commencement, and any enabling works that need to be undertaken in advance of development.
- 6.2 The Section 106 will outline the number of houses expected to be built year on year, over a five year period. The developer will agree these annual targets with the Council. An example of a Section 106 agreement using this approach can be seen in Appendix A.
- 6.3 This approach has already been tried and tested; Table 1 below sets out the number of dwellings already subject to these Section 106 agreements and the resulting completions to date.

<b>S106 Agreements with Delivery Clauses</b>	
<b>Number of proposed dwellings subject to S106 agreements with delivery clauses</b>	948
<b>Number of dwellings already built subject to S106 agreements with delivery clauses</b>	120
<b>Total Completions (Affordable)</b>	32
<b>Total Completions (Market)</b>	88

*Table 1 – Data accurate at 1<sup>st</sup> October 2018*

## 7. Further Information

- 7.1 Further information regarding the overall planning application process in Central Bedfordshire, and how to get in contact can be found on the Council's website at the link below:

<http://www.centralbedfordshire.gov.uk/planning/application/advice-developers.aspx>

## Appendix A – Example Extract from Section 106 Agreement

Residential development for 24 dwellings, Gravenhurst, Bedfordshire

### Build Rate

4.1 To comply with the Build Rate Timetable and to ensure that by the end of each relevant year the minimum number of dwellings shown in the third column of the build rate timetable have been completed and for the avoidance of doubt nothing in this paragraph restricts the number of dwellings which are able to be completed and/or occupied.

### Build Rate Timetable

Year 1  
date of S106 issue - 12 months after  
0 dwellings  
Year 2  
12 - 24 months after date of S106  
0 dwellings  
Year 3  
24 - 36 months after date of S106  
0 dwellings  
Year 4  
36 - 48 months after date of S106  
0 dwellings  
Year 5  
48 - 60 months after date of S106  
24 dwellings



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