

Planning for a Better Future

Our planning manifesto for the government

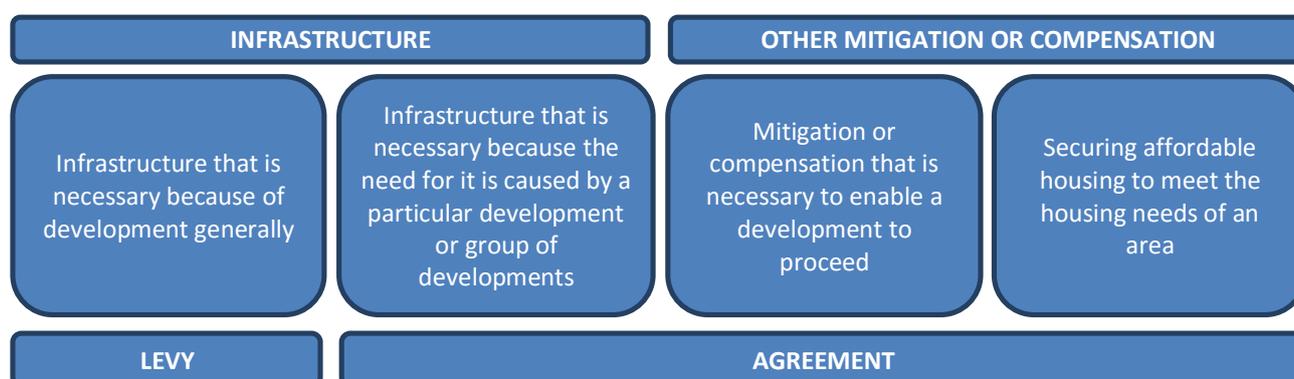
January 2016



Delivering Affordable Housing in a more effective way

1 Introduction

1.1 In our paper "[Funding infrastructure in a more effective way](#)", we set out an approach to CIL and S106 that we feel would optimise their effectiveness in delivering infrastructure. Those proposals combine the best of both current regimes in an integrated way that provides a transparent and flexible system for the funding of infrastructure through developer contributions, but in a way that enables development to proceed. We illustrated the new system with the following diagram:

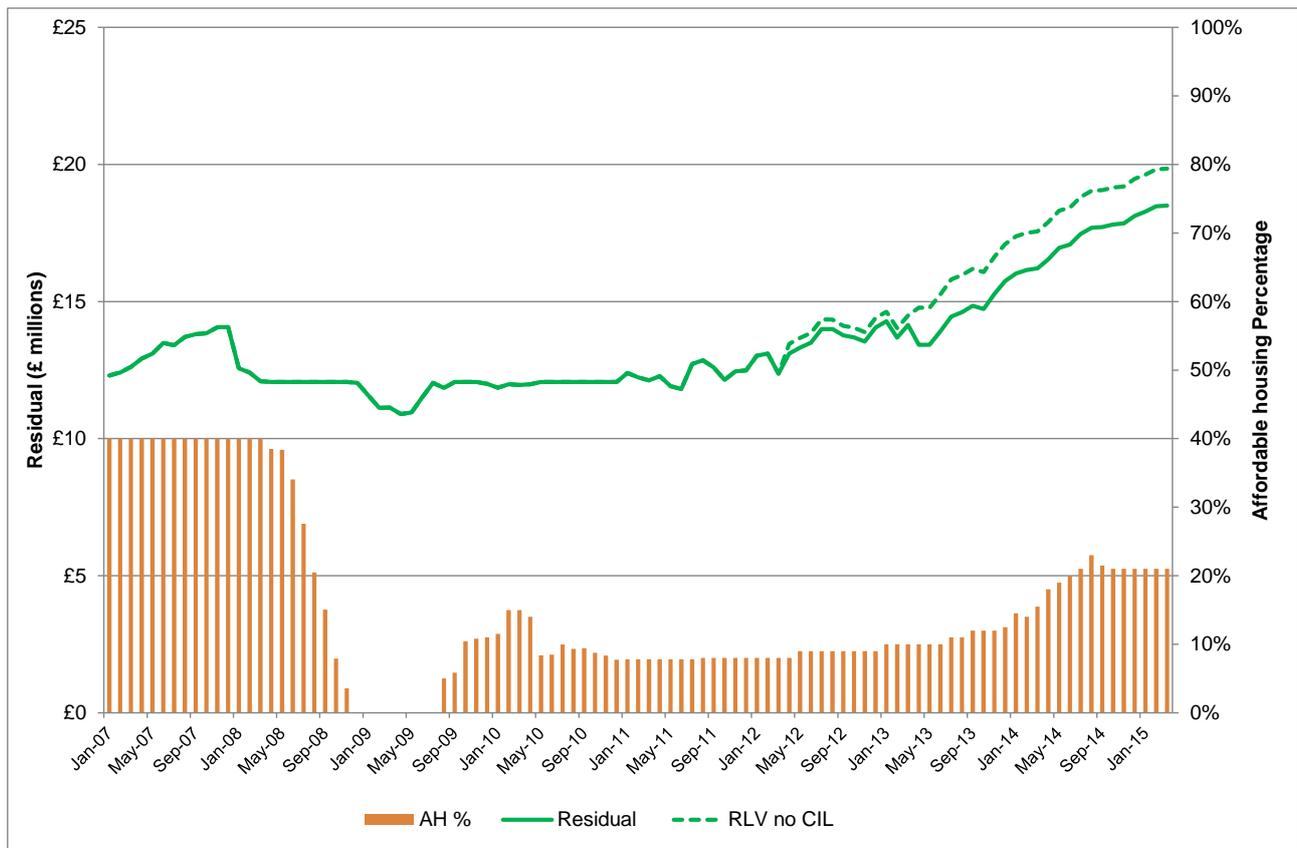


1.2 What is becoming increasingly clear since the publication of the National Planning Policy framework (NPPF) on 27 March 2012, is that in any viability negotiation, the provision of Affordable Housing is nearly always the casualty. Infrastructure is either funded through a fixed CIL payment or via s106. Other mitigation or compensation is usually secured through s106 where it is not an integral part of the development. These elements are *"necessary to make the development acceptable in planning terms"* (reg 122 of the CIL Regulations 2010) and *"the development should not be approved if the measures required cannot be secured through appropriate conditions or agreements"* (para 176 NPPF). So therefore if these measures are not delivered it usually results in a refusal of planning permission. It is the policy requirements (generally Affordable Housing) that are squeezed where a viability gap is claimed by a developer. This is as a result of the section "Ensuring viability and deliverability" (paras 173 to 177) in NPPF which requires that *"to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for Affordable Housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable"*. Infrastructure and mitigation are difficult for a developer to avoid for the reasons outlined above, so it is Affordable Housing that takes the hit in nearly all cases where viability is argued.

1.3 The difficulty is that this situation encourages arguments around viability that drive down Affordable Housing provision at the expense of land price inflation. We are in a housing crisis of both supply and affordability that must be tackled on all fronts. It is important to remember that the cost of building housing is affordable (a three bedroom house should cost around £160K to construct), it is the cost of the land that it is built on that makes it unaffordable to so many people. This paper looks at what can be done to deal with this particular part of the problem.

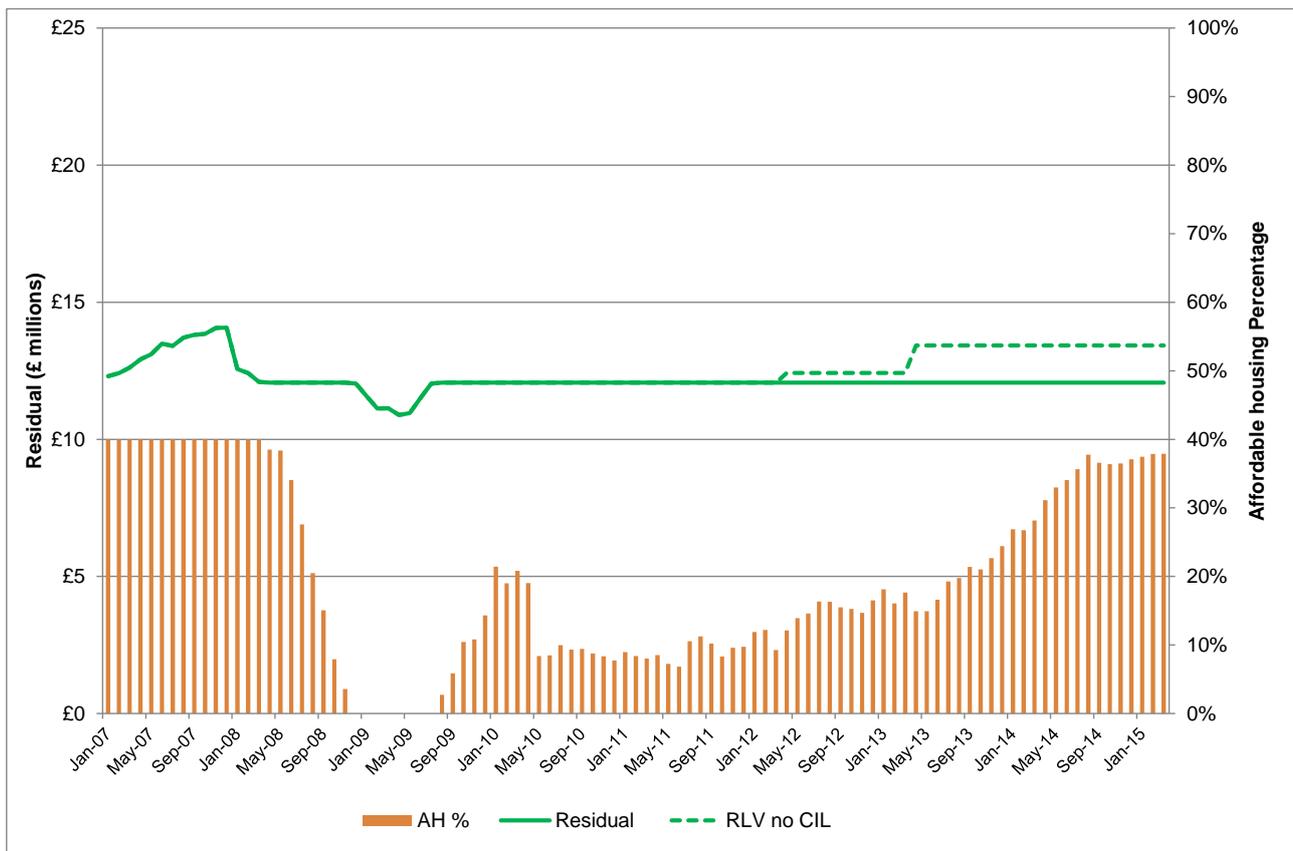
2 Land price inflation

- 2.1 The Secretary of State has gone on record (Planning Magazine 23 November 2015) stating that his "unambiguous policy position" is that land or site value "should reflect policy requirements". This was in response to a challenge by the London Borough of Islington after a recent appeal decision (DCS No 200-004-148) on the Parkhurst Road Territorial Army site in the borough. An inspector refused permission on amenity grounds, but accepted the developer's argument that only 14 % Affordable Housing was viable because of factors including the price paid for the land. The developer could not demonstrate that it had taken Islington's Affordable Housing policies into account when bidding for the site, so the borough issued a "letter before claim" to the Communities' Secretary, as the first step towards a potential judicial review. Maintaining that it was not appropriate for the council to bring a review claim in this case as the inspector had refused planning permission, the government issued the statement and directed the borough to argue its position in respect of viability in future applications. Islington's position was supported by London Mayor Boris Johnson and the Boroughs of Brent, Hackney, Merton, Southwark and Tower Hamlets, as well as homelessness charity Crisis.
- 2.2 There is unambiguous evidence that the industry does not take into account and reflect policy requirements when setting the price for land. The table below (from Dr Anthony Lee of BNP Paribas) shows how the economic recovery since the downturn has seen Affordable Housing provision within developments plateau at just over 20%, whereas land prices have increased by around 50% against their pre-recession values. Land owners have taken advantage of the opportunity created by the NPPF that allows prices to be paid for land that do not fully take into account the delivery of planning policy requirements because they know that the NPPF will allow them to make a successful viability argument.



- 2.3 The second table (also from Dr Anthony Lee) shows a theoretical position of Affordable Housing delivery in a world where land values have been constrained. It can be seen that in this scenario Affordable Housing provision recovers to pre-NPPF levels. You have to ask the question "whose

interests is the current system serving and what is the public policy benefit in prioritising land price inflation over optimising funding to meet housing need?”

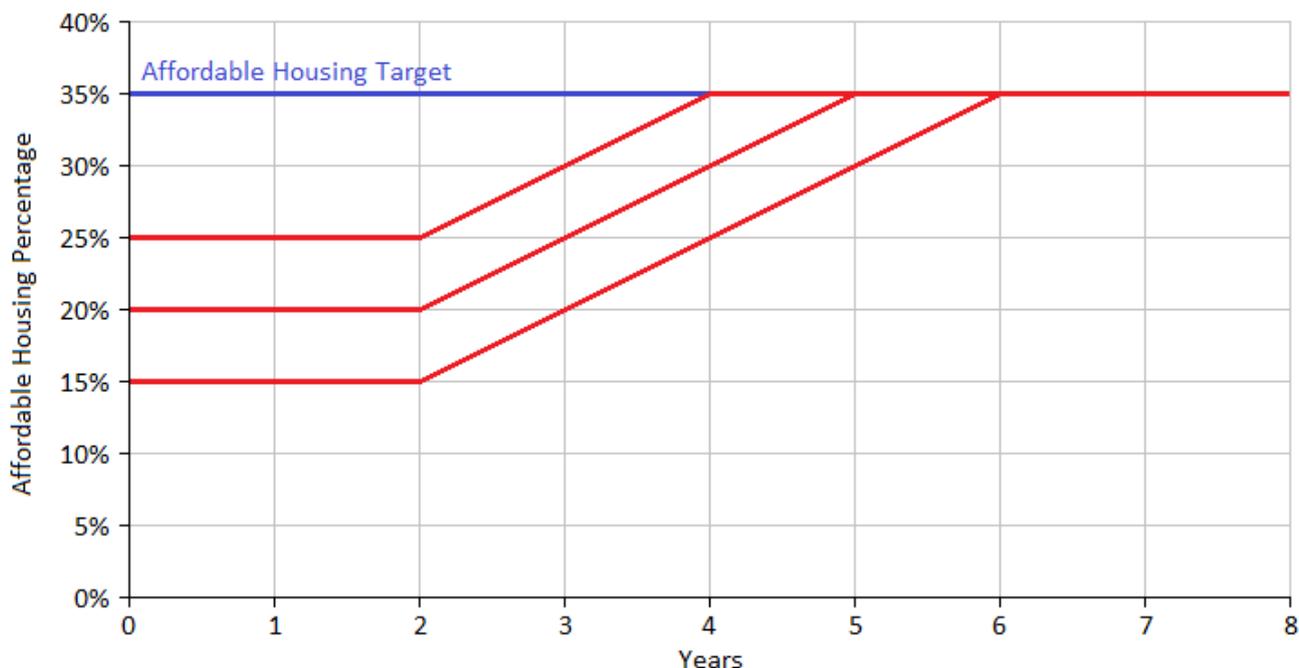


- 2.4 The challenge therefore is how we can create the conditions that result in the suppression of land price inflation so that the trade in land is reset at a level that both delivers the full gamut of planning policy contributions but also maintains a healthy supply of land for development.
- 2.5 POS believe that if there was a genuine political desire to do this it could be done in a way that would both deliver these aims and put an end to the wasteful viability gaming that is now a very unwelcome feature of Development Management negotiations. Viability should only be a feature of development plan making where it is done at a strategic level to ensure the planning policy framework for an area is deliverable. Its use in Development Management will always result in development industry gaming as they know the market can be manipulated to suppress Affordable Housing provision. Even the Royal Institution of Chartered Surveyors review (Financial Viability Appraisal in Planning Decisions: Theory and Practice: April 2015) of their own guidance (Financial Viability in Planning: August 2012) concluded that *“a correct application of market value (the land price measure that their guidance recommends) would protect the community from changes in market state and ensure that any site brought forward for development would be able to provide policy compliant planning obligations”*. It is clear that “market value” is not applied as it should be.
- 2.6 It is important that there is cross-party support for a public policy shift like this. Where we have secured such support in the past, the planning system has managed to achieve significant shifts in market behaviour. A prime example of this is the Town Centre First policy. When this was introduced in the early nineties, out-of-town retail centres, that were totally reliant on the private car, were causing significant harm to town centres. The policy response continued to be supported when the government changed from John Major’s Conservatives to Tony Blair’s Labour government in 1997, and has been supported ever since. This consistency in public policy support is the reason why the retail industry, who initially bitterly opposed the change in policy, eventually accepted that government was not going to change its mind. Even IKEA accepted that the world had changed and

produced a smaller “town centre” format of its retail offer, a real sign that public policy had won the argument! It is vital that the proposed shift in public policy recommended in this paper gains similar cross-party support so that the industry knows that it is the new normal.

3 A new approach

- 3.1 The Washington Post (20 August 2015) reported that New York City, in considering how to tackle similar problems, are moving towards a fixed Affordable Housing percentage for their housing zoned schemes. POS believes that a similar approach, adapted to suit the UK planning system, could be successfully introduced. It will be necessary to ensure that it is introduced in a way that enables the market to absorb it and adjust activity to comply with new rules without impacting on delivery.
- 3.2 The suggested approach starts with an empirically established position. For each area the starting Affordable Housing level would be the average Affordable Housing percentage secured in the years following the introduction of the NPPF in 2012, a period of just over three years. Once the new system was introduced that would become the fixed Affordable Housing rate for that area for a period of two years. After that, the Affordable Housing rate would increase by 5% per annum until it reached the Affordable Housing target for the area as set out in the Local Plan.
- 3.3 This would give the industry ample warning of the change so that they can adjust their behaviour: the run-in period where the policy is introduced, the two-year flat rate period and the modest 5% annual rise towards the policy set Affordable Housing target, all go towards enabling the change to be comfortably accommodated by the industry.
- 3.4 In the diagram below an Affordable Housing Local Plan target of 35% has been assumed. Three different scenarios of an existing average Affordable Housing provision of 15%, 20% and 25% have been set out to illustrate how the model would work. The areas takes 4, 5 and 6 years respectively to deliver full Affordable Housing provision.



- 3.5 It is recognised that there will be circumstances, even if this suggested approach is fully implemented and embedded, where legitimate viability concerns will arise. The policy should allow for this on an exceptional basis, in the same way that the sequential approach in the Town Centre First policy dealt with retail development where a town centre site was not available. It will be important that this does not create a chink in the policy to continue the existing abuse, but is a genuine process whereby real viability challenges are addressed and viability gaming is quashed. In places where house prices

are close to build costs, this will be a very different challenge and one that can only be addressed through development plan policy and regeneration initiatives.

- 3.6 In this paper reference has been made to Affordable Housing. No recommendations are made about what constitutes Affordable Housing. This is defined in NPPF and may be further amended as government policy changes. The specific tenure mix (including Starter homes) will be a matter for Local Plans to set. The model here just looks at how a proportion of the value created by a development can be efficiently “ring-fenced” to go towards the funding of Affordable Housing, recognising the reality that the planning system cannot meet all Affordable Housing needs through this mechanism. Similarly we have not sought to define how an Affordable Housing percentage is calculated: floorspace, bedrooms or units. These are currently matters for local determination through development plans and Development Management negotiations. Although if this policy is introduced, government should consider whether it would be helpful for a set methodology to be defined in its Planning Practice Guidance.

4 Conclusions

- 4.1 In this paper we have tried to develop public policy that ensures that the provision of Affordable Housing is optimised in a way that gives both market certainty, through a fixed percentage approach, and development deliverability, through a phased introduction. We have received many positive comments from developers that see the benefits in following this route. There are justifiable concerns that need to be fully and carefully considered, but maintaining the presumption in favour of inflating land prices, a feature of the current set up, should not be one of them.

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