



Report for Arun District Council

Affordable housing delivery

March 2025

Three Dragons



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EXECUTIVE SUMMARY

1. The need for affordable housing in Arun is significant, with a housing waiting list averaging 1,774 per annum over the three years 2022 to 2024. Delivery of affordable housing has not been keeping pace with this level of demand and in the three years 2021 to 2024, the average annual number of affordable housing homes completed was 181 which is well below the Local Plan requirement to provide a minimum of 30% affordable housing in residential developments of 11 or more units.
2. This study has addressed Arun District Council's (ADCs) concerns that the delivery of affordable housing in the district is being held back by an increasing unwillingness of Registered Providers (RPs) to take up the option of affordable housing provided through s106 agreements which has resulted in a number of developers requesting a Deed of Variation (DoV) to the affordable housing clauses. The study was specifically asked to provide advice about:
 - The length of time considered reasonable for a proposed DoV (relating to affordable housing) to be submitted to ADC
 - The evidence required to justify a DoV (including the type of information required)
 - The process by which DoVs should be assessed by ADC.
3. ADC also asked that for the range of options open to the council in (re)negotiating s106 agreements to be identified.
4. The study has confirmed the scale of the issue and that it has emerged over the last couple of years. Not all recent DoV applications relate to affordable housing but, of those that do, they typically seek a change of tenure to First Homes or switching to a financial payment. Other DoVs are to alter the timing of delivery of affordable housing and/or change other ways in which affordable housing is to be provided e.g. rent levels.
5. In addition to discussions with council housing and planning officers, the research undertaken to inform the study included desk based analysis of the delivery of affordable housing and submitted DoVs and interviews with a representative selection of RPs (6 in total) and developers (5 in total) – all active in Arun. This research was supported by a review of published research from elsewhere.
6. The research highlighted a number of issues which are, in summary, that:
 - Interest amongst RPs in taking up affordable housing delivered through s106 agreements has been reducing in the recent past and there may be none or very few prepared to bid for affordable housing available through this route. This has

major implications for the delivery of affordable housing and will put downward pressure on development viability. This is a national issue and ADC is not unique in identifying problems in engaging RPs in s106 affordable housing delivery

- Use of cascades in s106 agreements can be effective in providing clarity to developers (and RPs) about the options available where there are issues about RP engagement in the s106 process. Effective cascades will minimise the need for DoV
- Where a cascade is used which has a financial contribution as the final stage – there needs to be a clear and consistent mechanism for assessing the payment to be made. This will need to clarify how CIL payments are to be treated.

7. In making recommendations, the study concluded that the timing of a DoV is not critical (beyond planning ‘rules’ about timescales) – what matters is whether a DoV is justified. The study then set out the main options open to ADC in addressing requests to vary affordable housing required in developer led housing schemes. These are presented in the following table which assesses their potential impacts and benefits in ADC order of preference.

Preference	Description / reason	Potential impacts
1 - Changes to phasing of units on site	Option may improve viability through improved cashflow - or it may allow time to find an RP where none had previously expressed interest.	Where applicants are unable on viability grounds to meet policy requirement this approach may allow for a higher overall % of affordable housing up to the policy percentage requirement. On a large scheme taking several years to build out, delay to affordable delivery may be significant.
=2 - Switch some or all shared ownership units to First Homes	Option gives additional control to developer who can dispose of units without needing to find an RP to take the units on	Shared ownership is usually available to households on lower incomes than First Homes. Although both First Homes and shared ownership will help lower income households ‘get on the housing ladder’, shared ownership can reach a wider pool of potential purchasers. In terms of unit value, the value of both units types are similar.

Preference	Description / reason	Potential impacts
=2 - Switch some/all Affordable Rented units to shared ownership	Option will improve viability	Loss of rented homes available to households on the Housing Register. Has the effect of increasing value of affordable units to the developer (by around 20 percentage points).
=2 - Units 'gifted' to council	No RP willing to take units but wish to preserve an element of rented units	ADC is already a stock owning authority so could consider taking on and managing the units and thus preserving much needed rental homes for those on the Housing Register Applicant will receive no payment for affordable units therefore number of affordable units will be <u>significantly</u> reduced for viability reasons.
3 - Switch some or all affordable rented units to First Homes	Option gives additional control to developer who can dispose of units without needing to find an RP to take on the units	Loss of rented homes available to households on the Housing Register. Has the effect of increasing value of affordable units to the developer (by around 20 percentage points). If the reason for the change is not on viability grounds, the council could seek to agree an additional payment in compensation.

8. In determining which option to pursue and to provide clarity around the decision-making process, a stepped framework has been developed which has two linked but different 'pathways':
 - where there is no identified RP interest in a s106 development or
 - where RPs are prepared to make an offer for affordable housing in a s106 scheme but this is considered inadequate by the developer.
9. The framework includes information about timings and when to consider variations to tenure as outlined in the table above as well as purchasing units and commuted sums.
10. The framework requires further development by ADC, in conjunction with RP partners and developers, including agreeing the evidence required to confirm that no offer has been received from an RP and evidence required to demonstrate that any offer received by the

applicant is inadequate to deliver a viable scheme, consistent with the extant s106 agreement.

11. Further consideration is required by ADC about when the council would consider purchasing and holding affordable housing properties. As a last option ADC can consider the collection of a financial contribution, potentially to develop/acquire affordable housing units if it so chose. This approach is possible given that ADC already holds a HRA but does imply a significant scaling up of its capacity to deliver and manage affordable housing.
12. The adoption of a framework approach as outlined in this report would need to be supported by a review of internal decision-making processes and of the model s106 agreement used by ADC and the mechanism for assessing commuted sums to be collected.
13. ADC may also want to take up opportunities to strengthen relationships with the development industry active in Arun e.g. through re-instatement of the RP liaison group that operated previously and establishing a developer forum to complement the RP liaison group and also working with neighbouring authorities to benchmark proposed approaches in Arun.
14. There are some longer-term actions for ADC which are best dealt with in the next review of the local plan. These include:
 - Clarification of circumstances in which ADC would consider accepting financial contributions in lieu of on-site provision of affordable housing
 - Introducing greater flexibility in the dwelling type and tenure for affordable housing – rather than prescribing this in policy.

Chapter 1 Introduction

Context

- 1.1** The need for affordable housing in Arun is significant. The council reported in its [Homelessness and Rough Sleeping Strategy](#) that between 2020/21 and the end of quarter three 2023/24, the council had accepted 3,093 homeless applications. The [housing waiting list](#) stood at 2,274 in 2024, averaging 1,774 per annum over the three years 2022 to 2024. Delivery of affordable housing has not been keeping pace with this level of demand and, according to the council's AMR March 2024, in the three years 2021 to 2024, average annual number of affordable housing homes completed was 181 and is falling well below the Local Plan requirement to provide a minimum of 30% affordable housing with preference for on-site delivery. In implementing its policy, the council is concerned that delivery of affordable housing is increasingly being held back by a growing unwillingness of Registered Providers (RP's) to take up affordable housing that developers are to provide on mixed tenure sites.
- 1.2** The legal requirement to provide affordable housing is set out in s106 agreements and when a developer wishes to have this altered, a Deed of Variation (DoV) needs to be submitted. In the last year, ADC has received four DoV applications which directly impact on how affordable homes are delivered with informal approaches made by developers for another four schemes, indicating the developers' wish to vary the terms of the current s106.
- 1.3** The exact form of the requested DoV varies by scheme but common themes are that:
- There may be little or no interest amongst RPs to deliver the affordable housing to be provided through the s106 agreement and the developer is asking ADC to accept an alternative type and/or amount of affordable housing for the scheme
 - A preference amongst developers to meet their obligations through a form of affordable housing that does not involve an RP in its delivery – often this means a switch from affordable rented housing to First Homes (a type of low-cost sale product) and/or a request to meet the affordable housing obligation through a financial payment (a 'commuted sum'). With regards First Homes, it is relevant that the updated [National Planning Policy Guidance of December 2024](#) stated that "The requirement to deliver a minimum of 25% of affordable housing as First Homes, as set out in 'Affordable Homes Update' Written Ministerial Statement dated 24 May 2021, no longer applies. Delivery of First Homes can, however, continue where local planning authorities judge that they meet local need (see page 18, Footnote 31)"

- A request to amend the timing of delivery of affordable housing.

1.4 Further details of the DoVs being submitted to ADC (or where developers have asked to discuss s106 agreements with ADC) are set out in the next chapter of this report.

1.5 The reluctance of RPs to take up affordable housing units delivered through s106 agreements is emerging as a national issue, with local authorities facing similar issues to those being reported in Arun. This is explored further in Chapter 3.

Purpose of the study

1.6 The advice sought by ADC from this study is three-fold:

- The length of time considered reasonable for a proposed DoV (relating to affordable housing) to be submitted to ADC (The legal position is that DoV can be sought by developers up to 5 years after the date of the completion of the obligation or at any time, by agreement between the local authority and the person or persons against whom the obligation is enforceable. Therefore, ADC can consider an application for a DoV at any time, if it wishes to do so)
- The evidence required to justify a DoV (including the type of information required)
- The process by which DoVs should be assessed by ADC.

1.7 ADC also asks that the study identifies the range of options open to the council in (re)negotiating s106 agreements, where this involves affordable housing.

1.8 In addition to discussions with the housing and planning officers steering the work, the research undertaken to inform the study has included:

- A review of delivery of affordable housing in Arun generally
- A review of recent requests for a DoV to s106 agreements and of the original s106 agreements
- Interviews with ADC officers dealing with DoV on a day to day basis
- Interviews with a representative selection of RPs (6 in total) and developers (5 in total) – all active in Arun
- A review of published research of s106 agreements and RP involvement from elsewhere.

1.9 The lists of RPs and developers for interview were provided by council officers and were a mix of organisations with a regional/national area of activity and those more locally based. Organisations selected for interview were initially approached by council officers

with the Three Dragons team subsequently setting up and undertaking the meetings. Interviews followed a discussion agenda, previously agreed with ADC. Appendix 1 sets out these agendas.

1.10 It will be important that ADC is able to use the study findings to produce a publishable guide that sets out the process for bringing forward and determining DoV. The guide must have the support of members and be readily available to the development industry.

Research undertaken

1.11 In addition to discussions with the housing and planning officers steering the work, the research undertaken to inform the study has included:

- A review of delivery of affordable housing in Arun generally
- A review of recent requests for a DoV to s106 agreements and of the original s106 agreements
- Interviews with ADC officers dealing with DoV on a day to day basis
- Interviews with a representative selection of RPs (6 in total) and developers (5 in total) – all active in Arun
- A review of published research of s106 agreements and RP involvement from elsewhere.

1.12 The lists of RPs and developers for interview were provided by council officers and were a mix of organisations with a regional/national area of activity and those more locally based. Organisations selected for interview were initially approached by council officers with the Three Dragons team subsequently setting up and undertaking the meetings. Interviews followed a discussion agenda, previously agreed with ADC. Appendix 1 sets out these agendas.

1.13 In this report, and adopting the guidance in the glossary of the NPPF, affordable housing is defined as:

“.....housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers)...”

Under the umbrella heading of ‘Rented affordable housing’ Affordable Rent is defined as rented housing, “...at least 20% below local market rents (including service charges where applicable)”. Social Rent housing is at rent levels set in accordance with the Government’s rent policy for Social Rent and where the landlord is a registered provider

and includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision.

1.14 As is set out in the next chapter of the report, where affordable housing is delivered through planning policy, the council does not specify whether this should be Affordable Rent or Social Rent. Affordable Rent typically achieves higher payments to developers from RPs than Social Rent and therefore, as a general rule, has less of a negative impact on viability.

Chapter 2 Affordable housing policy context and delivery

Arun Local Plan

- 2.1** To advise ADC on how it could respond to Deeds of Variation to s106 agreements and delivery of affordable housing arising from such agreements in general, it is important to understand the local policy context.
- 2.2** The **Arun Local Plan** was adopted in July 2018 with the principal policy relating to affordable housing '[Policy AH SP2 Affordable Housing](#)'. This policy requires:
- All developments of 11 or more residential units to provide a minimum of 30% affordable housing with preference for on-site delivery
 - Where 30% is not viable ADC will consider a reduction either on or off site in 'very' exceptional circumstances and if supported by robust evidence
 - The starting point for tenure mix at 75% rent and 25% intermediate
 - Large groups of single tenure dwellings or property types to be avoided with a preference for small clusters throughout development schemes
 - A development mix of 35%-40% 1 bedroom, 35%-40% 2 bedrooms, 15%-20% 3 bedrooms and 5%-10% 4+ bedrooms (unless evidence indicates otherwise)
 - Affordable housing to be provided by either an Arun preferred Registered Partner, Affordable Housing Provider or the Council.
- 2.3** Whilst not within the policy, the supporting text, in para 12.3.7, states that in "negotiating for affordable housing, the Council will seek free, serviced land (this is land with utilities and roads provided by the developer at no extra cost to the Local Authority or Registered Provider)". And at 12.3.10, it promotes the use of Community Land Trusts in delivering a supply of affordable housing.
- 2.4** Another important consideration is 'Policy H DM1 Housing Mix' which requires:
- A balanced mix of market and affordable dwelling sizes based on the most up to date Housing Needs Evidence Review (HNER) recommendations
 - Tenure mix for development schemes shall be negotiated on a case-by-case basis taking any necessary viability considerations into account
 - Developers shall have regard to the most up to date version of HNER.
- 2.5** These policies provide a clear indication of preference for on-site delivery but do also allow for a reduction in the percentage of affordable housing if there is an evidenced

viability issue. However, they do not state that changing the tenure mix should be considered first and whilst there is a reference to ‘land in kind’ within the text, this is not offered up as a sequential approach to delivery options when viability is raised as an issue. It also does not consider that offsite delivery should be used as a mechanism to aid viability.

- 2.6** In terms of an appropriate development and tenure mix, there is a reliance on the figures within the policy and/or the latest HNER to inform both the developer and the decision maker. However, it is understood that the ‘latest’ HNER is from 2016, which was used to inform the current adopted Local Plan. Also, HNER (sometimes generally referred to as Strategic Housing Market Assessment or SHMA) are a starting point at best, as they are a district wide target, rather than to be relied on for individual development sites.

Interim Housing Statement

- 2.7** In response to a lack of 5 year housing land supply ADC published an ‘**Interim Housing Statement**’ in February 2021. It is understood that the statement still forms ADC policy and is therefore material in decision making. The statement includes a tick list rated red/amber/green to help assess which applications should be encouraged and likely to be determined positively” (section 6) and refers to all potential sites except existing allocations.

Interim Affordable Housing Policy to Accommodate First Homes Policy

- 2.8** Following the publication of a Written Ministerial Statement in May 2021 and subsequent changes to national policy and guidance requiring the provision of at 25% of the affordable housing units delivered by developers through planning obligation to be ‘First Homes’ (homes to be sold at discount to people who meet a local eligibility criteria), ADC introduced its ‘**Interim Affordable Housing Policy to Accommodate First Homes Policy**’ in January 2022. The policy sets out that delivery of the 30% affordable housing required by Local Plan policy AH SP2 will be expected to comprise the following:

- 33% ‘Intermediate Housing’ (25% is ‘First Homes’ and 8% other Intermediate ownership products) and
- 67% rent.

- 2.9** Whilst the government statements and this policy offers some explanation for decisions made on planning applications and Deeds of Variation since 2021/2022, moving forward it should be reconsidered by ADC. As noted earlier, its basis in national government policy no longer exists as the revised NPPF 2024 makes clear that the requirement to deliver a minimum of 25% of affordable housing as ‘First Homes’ no longer applies.

However, the NPPF also states that if a local authority consider that First Homes fulfil a need then they could still be part of the mix. ADC may decide that this would be best considered fully within a local plan review, with the benefit of a more up to date evidence base, rather than on an ad hoc basis but there is nothing in the updated NPPF to stop ADC adopting an interim policy if that is its preference as long as it can be demonstrated that First Homes meets a local need.

Delivery levels

2.10 The Housing Strategy 2024 – 2029 sets out that since 2011, 1,693 affordable homes have been completed in Arun, accounting for 22% of all new homes. In the past two years the AMR shows that this has improved to 28% (March 2023) and 27% (March 2024), suggesting some success in attracting grant led schemes as well as mixed tenure s106 delivery.

2.11 However, whilst delivery of affordable housing has improved in recent years, this is on the basis of agreements/contracts made several years ago and does not reflect what has happened over the past year. ADC anticipates, on the basis of anecdotal evidence from developers and registered providers, that affordable housing completions for 2024/25 and subsequent years will drop significantly.

Housing Revenue Account

2.12 ADC has a Housing Revenue Account (HRA) and has, in the past, both developed its own affordable housing as well as agreeing to purchase affordable housing units through the s106 process. Whilst this has only involved a handful of units in any year, it demonstrates that ADC has the ability to purchase or develop affordable homes and to manage stock. Alternatively, stock management could be undertaken in partnership with Registered Providers already operating in the area.

Chapter 3 S106 Agreements

Role of s106 agreements

3.1 S106 agreements are used to mitigate the impact of development by securing contributions or on-site provision for infrastructure such as affordable housing, healthcare, education, sports, community facilities, parks and protection of species. S106 can also set out timing of delivery of affordable housing (and infrastructure) so that it is not left to the end of the development period. ADC also levies a Community Infrastructure Levy (CIL) which is payable on new dwellings and extension or change of use that exceed 100 square metres. Certain types of dwelling such as affordable housing and some self and custom build developments are excluded from CIL as required by regulation / legislation: ADC also requires that all strategic development sites allocated within the Local Plan pay section 106 rather than CIL.

Template agreement

3.2 As would be expected, a review of recent signed s106 agreements and Unilateral Undertakings (UUs) shows a variety of wording and form. However, ADC has a template model s106 which includes an affordable housing schedule (schedule 2), a form of which is used in many (but not all) of the planning applications assessed as part of this study. Clearly not all clauses contained within the template will be applicable or useful for every site.

3.3 Within the model s106, ADC has set out cascades for agreements with First Homes and for agreements with other affordable housing tenures, therefore use of cascades is established practice in Arun. The cascade for affordable housing (excluding First Homes) is at 3 levels:

- First offer – a first offer to an Affordable Housing Provider (AHP) is open for a period of not less than two months
- Second offer – if no offers are secured then a second opportunity must be given (on the same terms but allowing for any inflation influences) – this is to be done after 1 month has passed after the expiry of the first offer period, which at a minimum would be 3 months and then a further 2 months are allowed as a minimum to reach an agreement
- Final - if after a minimum of 5 months has passed and no acceptable offers received then the final step is a commuted sum of £80,000 per affordable housing unit regardless of size or tenure of proposed affordable housing units (ADC has indicated that the figure of £80,000 will be removed from s106s in future): in

allowing a commuted sum ADC will need to be satisfied that the owners have provided satisfactory evidence of ‘reasonable endeavours’ to dispose of the affordable housing on site – noting that the definition of ‘reasonable endeavours’ within the model s106, offers little guidance as to what is expected and is therefore open to interpretation.

- Detail of evidence and notices are set out within the clauses.

3.4 As First Homes are marketed and sold directly by the developer in most cases, a separate provision for First Homes requires that provided the developer uses ‘reasonable endeavours’ to market the First Homes. The cascade is less clear than it is for other types of affordable housing, but one interpretation is that there is a preference for a local eligibility connection first and if after 3 months of active marketing, if an eligible purchaser is not found then the national eligibility criteria will apply. Then, after 6 months if an eligible purchaser still cannot be found, the home should

- Firstly be offered to ADC at its discounted price
- If ADC does not wish to purchase, then it will set out further steps to be taken to be taken by the developer, such as further marketing for a period of up to six months
- Finally ADC will confirm that the dwelling can be disposed of other than as a First Home and the developer, or a subsequent owner of the dwelling, must pay to ADC an ‘Additional First Home Contribution’ on receipt of proceeds of sale; the amount is effectively the lower of a) 30% of the proceeds of sales or b) the proceeds of sale less various charges as specified in the definitions.

3.5 We do not comment on the legal drafting of the model s106 agreement and affordable housing schedule but note that it encompasses the ‘usual’ clauses relating to development, phasing, disposal and occupation of the affordable units, Mortgagee in Possession (MiP) and Mortgagee Exclusion (for First Homes).

3.6 Regarding rent setting, the definitions appear to require rent levels which could be lower than national requirements. Whilst the definition of Affordable Rent requires “a minimum rent level up to 80% of local market rent (inclusive of service charge at the time of each letting)”, the definition of ‘Affordable Rented units’ specifies a “rent level up to 65% of local market rent” and for shared ownership the definition specifies that “rent on unsold equity is initially set at no more than 2.5%”.

3.7 A list of approved Registered Providers and ADC’s Nomination Agreement are appended to the model s106.

Deeds of Variation (DoV)

- 3.8** S106 agreements can be varied by DoV. As noted earlier, these can be sought by developers five years after the date of the completion of the obligation or at any time by agreement between the local authority and the person or persons against whom the obligation is enforceable.
- 3.9** Over the last year/18 months ADC has had an increase in the number of DoV applications seeking a change to the affordable housing requirement set out in the extant s106 agreement. Available information shows that, in 2023 there were three DoV rising to eleven in 2024. There were a number of reasons for the request, not all related to affordable housing, and these are summarised in an appended table.
- 3.10** The table within Appendix 3 sets out a summary of the DoV since 2023. The DoV from 2023/24 tend to be from recently permitted planning applications. The information contained within the table shows the reasoning for the DoV application varies between applications: three of the DoV are for non affordable housing matters, five of the DoV are in respect of changing the mortgage clauses only and five of the DoV reference desired changes to the affordable housing schedule (e.g. change of tenure of some or all units to First Homes, commuted sum payment) of which one also references mortgage clauses. There is also one DoV requesting a change in timing of delivering affordable housing as well changes to mortgage clauses.
- 3.11** ADC is also experiencing issues on some sites in respect of securing onsite policy compliant affordable housing with, we understand, further DoV pending. Given that a number of DoV have not yet been determined there is a pressing need to provide a consistent and efficient approach to determine these applications whilst maintaining delivery of appropriate affordable housing that best meets the identified needs on the housing waiting list.

Chapter 4 Local perspectives

Introduction

4.1 A key element of the research undertaken for this study was a series of interviews with council officers, housing associations (RPs) and developers active in and around Arun. Their views are summarised in this chapter of the report. The situation in Arun is set alongside other research undertaken nationally, that has explored the increasing trend for RPs not to accept affordable housing provided through s106 agreements.

Views of the housing associations (RPs)

- 4.2** The RPs reported a reduction in their interest in taking up affordable housing provided through s106 agreements. This trend is relatively recent and the approach of RPs has been seen to change over the last year or so. RPs are now focusing their activities on 'land-led' schemes, delivering 100% affordable housing on land controlled by the RP and attracting public subsidy from Homes England.
- 4.3** RPs described this change in approach as being financially driven; reflecting increased development costs that have been 'squeezing' RP budgets and the priority for funding increasingly given to upgrading existing stock and, for new builds, to meet higher standards e.g. early adoption of Future Homes standards.
- 4.4** The degree to which RPs have moved away from involvement in s106 schemes does vary between RPs. In line with the Savills findings discussed below, some RPs reported that their organisation has simply stopped any involvement in (new) s106 schemes while other RPs are reducing their involvement in s106 schemes and becoming much more selective about the schemes in which they will get involved. Where RPs are willing to purchase affordable housing units provided through s106 agreements, they are tending to reduce the amount they are willing to pay for the affordable housing – reductions of c10%-15% in the price paid to developers were quoted.
- 4.5** Some of those interviewed expected that the situation would ease with the next Affordable Homes Programme (AHP) from Homes England. The current AHP runs out in March 2026 and it is anticipated that the next round of funding will be announced later this year. Its announcement will clarify whether there is to be more money available for new developments and s106 schemes in particular.
- 4.6** The issues found through the interviews with RPs in Arun closely reflect issues identified through national research published over the last six months. The following is an extract

from a survey of housing associations undertaken by Savills last summer – the report of the survey was titled, [The Challenges of Unlocking Section 106 Delivery - July 2024](#)

Housing Associations face a perfect storm of mounting pressures from severely constrained financial capacity, higher costs of finance, rising building costs and commitments to remediate existing stock to meet building safety and decarbonisation requirements, all of which have reduced sector capacity to finance and develop new affordable homes. The biggest drop off in new affordable housing delivery will be through the scaling back of Section 106 acquisitions. Just over half of Housing Associations surveyed (53%) reported that they were either no longer intending to acquire Section 106 homes or had reduced their requirements for them. In contrast, 6% of Housing Associations surveyed reported increased requirements for Section 106 homes. With providers scaling back their requirements in general, the market for Section 106 homes has diminished significantly. There does remain some appetite, but notably from a limited pool of providers. (page 5)

- 4.7** Another report, from the Homebuilders Federation (HBF) confirmed the picture from the earlier Savills research set out above. The HBF report, [BID Farewell - An Examination of the Crisis in s106 Affordable Housing](#), surveyed 31 developers in October 2024 and found that, "At least 17,432 Section 106 affordable housing units with detailed planning permission remain uncontracted..." The HBF report identified that this figure represented almost two thirds (63%) of the total number of Affordable Homes funded through S106 agreements in 2023-24 and that the situation is worsening. Reasons for the reduced RP take-up of affordable housing in s106 schemes identified by the HBF survey were very similar to those explored in the Savills research quoted above.
- 4.8** Where RPs are willing, in principle, to acquire homes from developers through a s106 agreement, our interviews identified a range of other issues that can deter RPs from purchasing developer provided homes. The issues included:
- That the types of homes offered do not meet the needs of the RP; of particular concern for RPs were schemes with a high percentage of flats or even any flats, with flats seen as particularly inappropriate for shared ownership housing
 - Presence of gas boilers – this is increasingly a 'red line' for RPs
 - Other aspects of the specification of the properties available do not meet the standards of the RP e.g. carpets are not included as standard
 - RPs require independence to set their own rents and there can be difficulties where local authorities want to cap rents at levels below those set by Local Housing Allowance rates

- Other aspects of the way the s106 agreement is framed e.g. Mortgagee in Possession clauses and maximum share sizes for shared ownership properties - RPs argued that these problems can be overcome where agreements follow guidance provided by the National Housing Federation or in agreement with the RPs
- The latter two issues (on rent setting and detailed clauses in agreements) are issues where ADC has a direct role to play as a signatory to s106 agreements. This point is picked up in the next chapter of the report.

Views of developers

- 4.9** As with the RPs, the developers interviewed were mostly positive about their working relationships with ADC officers but there is a general recognition that both planning and housing teams are under pressure. The importance of the teams working effectively together was emphasised in dealing with DoV issues and in providing responses to applicants in a timely fashion.
- 4.10** Developer interviewees did not raise any concerns in principle about the Arun Local Plan policy, requiring schemes of 11 or more residential units to provide 30% of the new homes as affordable housing. ADC officers confirmed that viability issues have not generally been raised in relation to implementation of the 30% policy although concerns may now be ‘creeping in’. There is evidence that where RPs are prepared to bid for affordable housing from developers through s106 agreements, RPs are reducing the amount they are offering (i.e. the notional ‘transfer value’) and that this is impacting adversely on scheme viability. Officers commented that DoV applications have been more typical for larger schemes (say, 100 dwellings plus) but DoV are increasingly being sought on smaller schemes.
- 4.11** The approach taken to site purchase and s106 agreements can vary between developers, reflecting their different business models but typically, developers purchase sites when outline planning permission has been achieved and the developer then takes on securing (the detailed) reserved matters permission.
- 4.12** The developers confirmed that there are fewer RPs willing to bid for units provided through a s106 agreement – and, for example, that a developer ‘may be lucky’ to get more than one bid for s106 affordable housing properties. But developers have also found that between the time when RPs give an initial indication of their interest in a scheme and the amount they would be prepared to pay and the time when RPs are asked to finalise their offer, bids are being reduced or RPs are withdrawing altogether.

- 4.13** It will be at this point that developers will approach ADC to discuss their options and, if they choose to go down this route, submit their application for a DoV.
- 4.14** Two specific issues were explored with interviewees in more detail – the option of switching affordable housing units to First Homes (which will not require involvement of RPs) and of the use of ‘cascades’ in s106 agreements.
- 4.15** There were mixed views on the inclusion of more **First Homes** in s106 schemes. First Homes were said to be easy to operate with the advantage that the developer retains control of the affordable housing in a scheme. But First Homes are seen to add to the risk developers will face (as First Homes require developers to retain the housing until buyers are found) and the amount RPs will offer for the balance of affordable rented units will be reduced – because RPs are losing shared ownership units to First Homes and shared ownership increases the overall offer RPs can make. These views pre-date publication of the December 2024 NPPF which, as noted earlier, has negated any requirement to include First Homes in the mix of affordable housing provided.
- 4.16** Cascades in s106 agreements were said by interviewees to be commonplace and avoid the need for DoV but the argument was made that cascades in s106 agreements need to be considered on a scheme by scheme basis. Where cascades are included, they need clear timescales for each stage and the evidence required to justify a move to the next stage with the use of off-site (financial) contributions as the final stage, after consideration is given to changing the affordable housing mix and/or switching rented affordable housing to low cost home ownership e.g. shared ownership or discount market sale.
- 4.17** Some developers referred to the new [Section 106 Affordable Housing Clearing Service](#) launched by Homes England in December 2024. Essentially housebuilders can use the service to provide details of affordable homes they have planning permission to build, alongside private homes, but have been unable to find a buyer for. This information is then available for RPs and LAs to view and potentially connect with the developer. This could be a useful mechanism for matching up developers with RPs who are interested in s106 affordable housing.
- 4.18** The HBF report, [BID Farewell - An Examination of the Crisis in s106 Affordable Housing](#), promoted the use of cascades and encouraged, “.....a greater acceptance of cascade agreements by Local Planning AuthoritiesIn the short-term, this solution is the one that will be of most practical help to developers as it will ensure homes can continue to be built and give reassurance to the developer that if an RP cannot be found, that the

Affordable Homes can be changed to an alternative tenure or as last resort, a payment made to the LPA in lieu of the Affordable Housing.”

- 4.19** Where financial contributions are agreed, the research for this study indicated a need for a clear formula for setting the payment required.
- 4.20** If affordable housing homes are replaced by market units, there are implications for Community Infrastructure Levy charges (with affordable housing not being liable for CIL payments). This additional cost will need to be taken into account in any DoV negotiations.

Key messages summarised

- 4.21** Interest amongst RPs in taking up affordable housing delivered through s106 agreements has been reducing in the recent past and there may be no or very few RPs prepared to bid for affordable housing available through this route. This has major implications for the delivery of affordable housing and will put downward pressure on development viability. This is a national issue and ADC is not unique in identifying problems in engaging RPs in s106 affordable housing delivery.
- 4.22** Use of cascades in s106 agreements can be effective in providing clarity to developers (and RPs) about the options available where there are issues about RP engagement in the s106 process. Effective cascades will minimise the need for DoV.
- 4.23** Where a cascade is used which has a financial contribution as the final stage – there needs to be a clear and consistent mechanism for assessing the payment to be made. This will need to clarify how CIL payments are to be treated.

Chapter 5 Approach and recommendations

Overarching response

- 5.1** A set of key issues has arisen from the desk-based research and the interviews with stakeholders (officers, RPs, developers), addressing treatment of requests from applicants to vary the terms of the s106 affordable housing requirements. Broadly, in the short term this means employing a methodology that clearly assesses the options available to ADC and assists in arriving at the best one for the particular scheme in question. In the longer term, with suggested changes to standard s106 clauses and more extensive liaison with RPs, there should be fewer occasions where a DoV is required, although it will still be necessary to assess outcomes on a scheme-by-scheme basis where difficulties arise.
- 5.2** One of the issues this study was asked to address was the length of time considered reasonable for a proposed DoV (relating to affordable housing) to be submitted to ADC. The research undertaken does not indicate that the timing of DoV is critical (beyond planning ‘rules’ about timescales) – what matters is whether a DoV is justified and this aspect of the study is discussed in detail in the remainder of this chapter.
- 5.3** The review of the DoV process has shown that developers are presenting several options in respect of changing aspects of the s106 to enable a development to come forward in respect of the affordable housing. To assist ADC is considering these in the future we first present these options and their likely impact as well as ADC general preference. We then set out a broad framework presenting alternative pathways that can help ADC with their decision making under different scenarios and provide guidance to developers as to how ADC may consider future DoV applications.

Comparison of options and preferences potentially promoted through DoV applications

- 5.4** With any DoV application, critical to ADC will be those where the applicant proposes to amend the number and/or tenure of the affordable units. We first consider the implications of changing phasing and tenures as these are often a first consideration. As part of this, ADC have also indicated a preference for how they may consider these types of changes, although in some cases these are of equal preference where site specifics will determine the preferred option.
- 5.5** In the table below, the main options that have been presented are assessed in terms of their potential impacts and benefits. To assist in this process, we have made some high-level estimates of the relative financial impact of the key options. This analysis is very

much on a ‘rule of thumb’ basis but nevertheless may assist in an initial assessment of the available tenure options. Appendix 2 provides background information to the ‘rules of thumb’ we have derived – but noting that that this information is very high level and not a substitute for a full viability assessment when that is required. In all cases the suggested options and preferences are designed to ease pressures of the waiting list and align with adopted ADC policies.

5.6 The preferences set out in Table 5.1 then need to be further considered within the wider framework that is set out thereafter.

Table 5.1 Potential changes (in ADC order of preference) to affordable housing offer and their impact

Preference	Description / reason	Potential impacts
1 - Changes to phasing of units on site	Option may improve viability through improved cashflow - or it may allow time to find an RP where none had previously expressed interest.	Where applicants are unable on viability grounds to meet policy requirement this approach may allow for a higher overall % of affordable housing up to the policy percentage requirement. On a large scheme taking several years to build out, delay to affordable delivery may be significant.
=2 - Switch some or all shared ownership units to First Homes	Option gives additional control to developer who can dispose of units without needing to find an RP to take the units on	Shared ownership is usually available to households on lower incomes than First Homes. Although both First Homes and shared ownership will help lower income households ‘get on the housing ladder’, shared ownership can reach a wider pool of potential purchasers. In terms of unit value, the value of both units types are similar.
=2 - Switch some/all Affordable Rented units to shared ownership	Option will improve viability	Loss of rented homes available to households on the Housing Register.

Preference	Description / reason	Potential impacts
		Has the effect of increasing value of affordable units to the developer (by around 20 percentage points).
=2 - Units 'gifted' to council	No RP willing to take units but wish to preserve an element of rented units	ADC is already a stock owning authority so could consider taking on and managing the units and thus preserving much needed rental homes for those on the Housing Register Applicant will receive no payment for affordable units therefore number of affordable units will be <u>significantly</u> reduced for viability reasons.
3 - Switch some or all affordable rented units to First Homes	Option gives additional control to developer who can dispose of units without needing to find an RP to take on the units	Loss of rented homes available to households on the Housing Register. Has the effect of increasing value of affordable units to the developer (by around 20 percentage points). If the reason for the change is not on viability grounds, the council could seek to agree an additional payment in compensation.

5.7 The options in the above table will need to be considered in a way that ensures the applicant / developer has followed due process, making sure robust evidence is provided within a reasonable timeframe. To help achieve this, a stepped framework approach is recommended – which includes clarity around the decision-making process.

5.8 The principles underlying the stepped framework are as follows

- i) local plan policy is pre-eminent
- ii) greatest need in Arun is for affordable rented units (rather than alternative forms of low-cost home ownership)

- iii) on-site provision is preferable to cash receipt but this needs to be balanced with ability of ADC to quickly translate money received into new affordable homes
- iv) whatever is secured as an alternative affordable housing contribution, should have the same cost for the developer (this applies whether it is onsite/offsite or a financial contribution).

5.9 The 'pathway' diagram below outlines how the framework could be developed by ADC in conjunction with their RP partners and developers. There are two linked but different 'pathways' that need to be considered:

- no identified RP interest in a s106 development or
- where RPs are prepared to make an offer for affordable housing in a s106 scheme but this is considered inadequate by the developer.

5.10 These different 'pathways' are outlined in the diagram below, with the different stages explored in more detail in the following tables (Tables 5.2 & 5.3). They require an active approach by ADC including the housing enabler and the lead planning office working in tandem. One of the options outlined is for ADC to develop/purchase and own and manage affordable housing. ADC will need to consider what it sets as parameters for this recognising that this will be dependent upon size of scheme, location and delivery timetable. A later recommendation from this report is that ADC prepares an 'inhouse' development strategy to take this forward and set out its relevant protocols.

Figure 5.1 Framework for response to request for DoV – two ‘pathways’

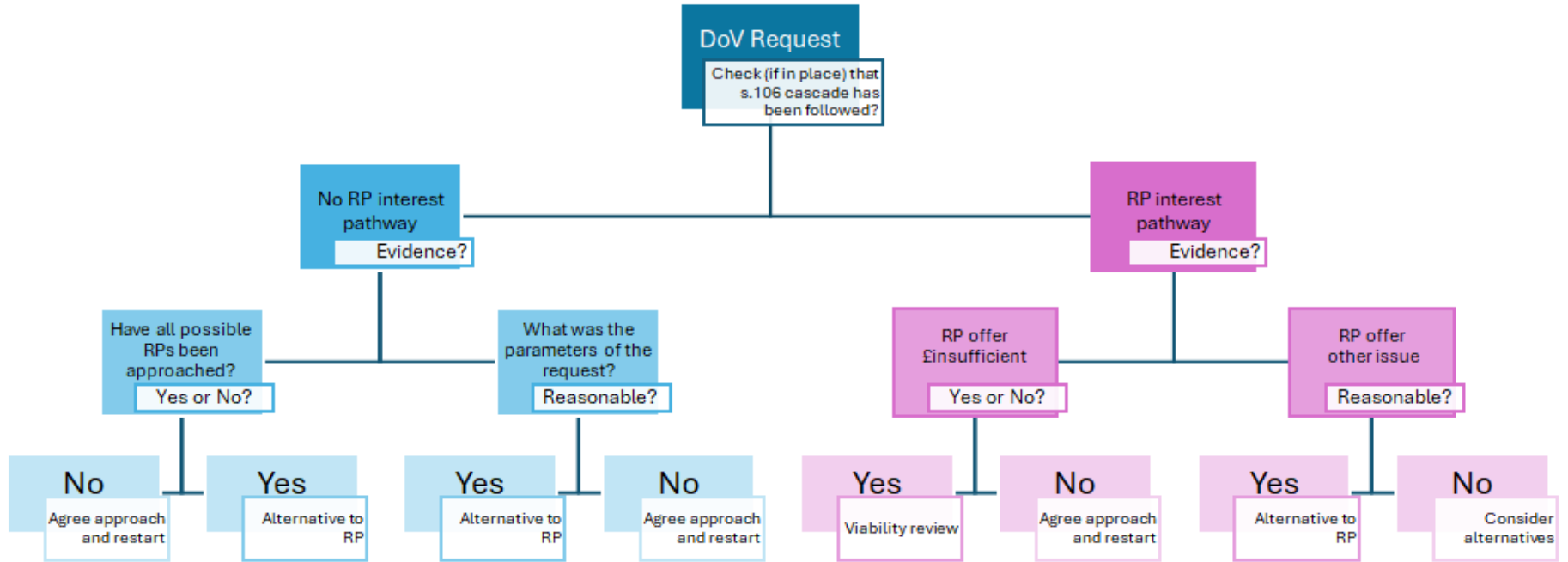


Table 5.2 Framework for response to request for DoV - with NO RP interest

Stage	Action	Timeframe	Notes
No offer received from RP by applicant	Evidence required from applicant showing RPs contacted, negative responses and reasons for not proceeding		Evidence – email correspondence or similar
Have all possible RPs been approached?	Applicant to add site to Homes England s106 clearing house service – and to demonstrate no interest ADC to work with applicant to ensure all RPs that might be able to deliver the affordable housing have been contacted	1 month to demonstrate no RP interest	Housing Enabler to draw on knowledge of the sector to ensure comprehensive coverage of RPs active in Arun and potentially suitable as development partners
Parameters of request - s106 changes	ADC to investigate with RPs whether there are minor changes that could be made to make the scheme acceptable to RP, developer & ADC Housing Team. Examples of possible changes include: i) Wording of s106 (to make consistent with guidance from National Housing Federation)	2 months	ADC to use relationships established with RPs to contact any providers who may be interested in purchasing units to discuss what could make scheme attractive more acceptable

Stage	Action	Timeframe	Notes
	<p>e.g. to the Mortgagee in Possession clause</p> <p>ii) Removal of any reference indicating rents set outside HE guidance</p> <p>If changes agreed – restart the bidding process with RPs that have indicated would find these changes would encourage a bid</p>		
<p>Parameters of request - changes to affordable housing sought</p>	<p>ADC to investigate with RPs and developers whether there are changes that could be made to composition of the scheme to make it more acceptable to RPs. Examples of possible changes include:</p> <p>i) Reduction in number of flats and/or 1-bed homes</p> <p>ii) Mix of type and/or size of affordable housing units</p> <p>iii) Tenure of affordable housing units (e.g. discount market sale or shared ownership rather than Affordable Rent).</p>	<p>2 months</p>	<p>ADC to use relationships established with RPs to contact any providers who may be interested in purchasing units to discuss what could make scheme attractive more acceptable</p> <p>Any changes proposed must be of equivalent value to the scheme</p>

Stage	Action	Timeframe	Notes
	If changes agreed – restart the bidding process with RPs that have indicated would find these changes would encourage a bid		
Alternative to RP - is ADC able / willing to purchase the units	Does scheme fit with strategy and available funding? Dependent on be dependent upon size of scheme, location and delivery timetable	Timeframe will depend upon ADC procedures – but decision could be made relatively quickly, say 14 days, then 2 months to agree terms	Note this can be a long process, staged through committee system, if a principle has not been established Local Plan refers to potential for purchasing serviced land – a further option for ADC to consider – whether there is appetite for direct development?
Alternative to RP -financial contribution	Other options not available Likely preferred for smaller schemes (say 10 or fewer dwellings) Level of contribution based on assumed scheme residual value with and without affordable housing. Therefore developer no better or worse off whether has a financial contribution or provides affordable housing on site	If viability evidence has already been assessed, a sum can be arrived at in 14 days with a further 14 days for developer to indicate acceptability.	Requires a consistent method to identify amount to be collected. ADC to develop its approach to collecting and spending accumulated financial contributions – whether in developing/purchasing units or through other mechanisms e.g. direct subsidy to RPs to increase payments to developers or direct ADC acquisitions for example.

Table 5.3 Framework for response to request for DoV where RP offer considered inadequate by developer

Stage	Action	Timeframe	Notes
RP interest	Evidence setting out what the offer is from the RP(s) and why the developer finds it unacceptable		Evidence should include offer amounts and/or RP parameters for the offer, such as particular mix/building standards/payment timings and developer response with any supporting viability information as to why the offer is not acceptable
Non-viable offer or other offer issues	a) Use of a calculator/model to ascertain whether offer reasonable – see also Appendix 2 for approximate values of affordable units	a) should be undertaken within 14 days	If independent viability assessment is required, this can be commissioned jointly – applicant to pay. Many councils establish a panel of viability consultants who can be called upon when required
See 5.11 for additional evidence required when developer raises concerns about scheme viability	b) If, on initial review by ADC, the offer is considered reasonable then full viability evidence from developer is required to show why they consider scheme non-viable c) If it is agreed that the offer is non-viable – are there changes to tenure mix or phasing that can be made – or d) a reduced % of affordable homes – this may require further	b) developer to be given 42 days (6 weeks) to provide viability evidence c & d) 3 months to agree and negotiate on changes to mix or overall level of affordable homes	A reduction in overall % of affordable housing is clearly a loss of units available for those in housing need – can sometimes be preferable to switching units from rented to an intermediate or market facing tenure, especially if it ensures that rented units remain available to those on the Housing Register. On larger sites, ADC could use overage clauses – to increase affordable housing delivery if viability has improved by the time market units are sold. Would require a viability assessment at a set point.

Stage	Action	Timeframe	Notes
	viability evidence, e.g. an independent viability assessment		If affordable housing units switched to market housing – ADC to agree how will treat CIL payments (which would be exempt if affordable housing).
Alternative to RP - is ADC able / willing to purchase the units	Does scheme fit with strategy and available funding? Dependent upon size of scheme, location and delivery timetable	Timeframe will depend upon ADC procedures – but decision could be made relatively quickly, say 28 days, then 2 months to agree terms	Note this can be a long process, staged through committee system, if a principle has not been established Local Plan refers to potential for purchasing serviced land – a further option for ADC to consider – whether there is appetite for direct development?
Alternative to RP - financial contribution	Other options not available Likely preferred for smaller schemes (say 10 or fewer dwellings) Level of contribution based on assumed scheme residual value with and without affordable housing. Therefore developer no better or worse off whether has a financial contribution or provides affordable housing on site	If viability evidence has already been assessed, a sum can be arrived at in 14 days with a further 14 days for developer to indicate acceptability.	Requires a consistent method to identify amount to be collected. ADC to develop its approach to collecting and spending accumulated financial contributions – whether in developing/purchasing units or through other mechanisms e.g. direct subsidy to RPs to increase payments to developers or direct ADC acquisitions for example.

Potential sources of viability evidence to draw on

5.11 The following table highlights evidence to consider when a developer requests a DoV on grounds that the viability of a scheme previously permitted has deteriorated such that a DoV is justified.

Table 5.4 Evidence for change

Evidence of change	Acceptability
Values – using housing price index, land registry and example of local transactions to prove the change	Is the change in values worth more than (say) 5% scheme GDV – under 5% generally considered within acceptable tolerances for error and de minimis impact in respect of delivery
Costs – using BCIS and/or QS reports (verified by an independent 3rd party) to prove change	Are the change in costs genuine in respect of inflation and wider economic or site specific and therefore could be considered as abnormal and should therefore follow PPG and be absorbed within land value uplift
Land value – there would need to be evidence to support a change in the existing use value such as changes to the price of agricultural land within the area	Does the change result in the uplift being unacceptable lower than industry norms e.g would it be lower than 10 x agricultural value.
Delivery of affordable housing – how many RPs have been approached, on what terms (e.g. sought value, mix, tenure, building standards) what has been the response	Have sufficient RPs been contacted (are they ones the ADC have put forward?), were terms reasonable and have they been negotiated and fully explored – has the cascade been fully utilised -owner should not have to accept non-viable offer – but should evidence the case

5.12 The above is a high level overview of potential evidence. The PPG on [Viability](#) provides a comprehensive guide to viability assessments which need to be followed if viability issues are raised about a scheme. If ADC has concerns about viability evidence put to it, it can seek an independent assessment of the evidence.

Other potential short to medium term actions

5.13 In addition to the adoption of a framework approach as outlined in the above table, there are other short to medium term actions emerging from the study that ADC could consider in addressing DoVs, if and when these are submitted. These actions could include:

- Review of internal decision making process to strengthen collaboration between planning and housing teams in addressing DoV and relationship with relevant committee(s). For example, an agreed protocol and timetable for responding to DoV applications between housing and planning teams and housing team invited to DoV discussions between the applicant and planning officers
- Developing an amended model s106 agreement, to include definitions of Affordable Rent and Social Rent separately, an updated cascade (with timeframe and evidences and leading to a commuted sum) and changes to clauses relating to rent levels, Mortgagee in Possession, Mortgage Guarantee – model clauses produced by the NHF may offer a useful option
- Adoption of a consistent method to calculate the amount of financial contributions when they are accepted in principle.

5.14 When ADC updates its evidence base and reviews its local plan, other aspects of affordable housing policy may need to be updated and which will have implications for future involvement of RPs in delivery through the s106 process. These could include:

- Build standards and whether ADC wants to set out standards other than those in Building Regulations- for example in relation to carbon reduction and Bio Diversity Net Gain
- Specification of dwelling mix and tenure within policy.

5.15 The above is not intended as an exhaustive list but illustrative of the kinds of policy approaches that can influence development viability and RP involvement in delivery.

Liaison with development industry

5.16 In support of the framework set out in Tables 5.2/5.3 and the short to medium term actions outlined above, there are opportunities to strengthen relationships with the development industry active in Arun and which have emerged through the research undertaken for this study. For example:

- By re-instating the RP liaison group that operated previously

- Liaison with neighbouring authorities to benchmark proposed approaches in Arun
- Establishing a developer forum to complement the RP liaison group – the forum could be across a number of West Sussex authorities.

Chapter 6 Summary and conclusions

Overview and scale of the issue

- 6.1** This study has addressed ADCs concerns that the delivery of affordable housing in the district is being held back by an increasing unwillingness of Registered Providers (RP's) to take up the option of affordable housing provided through s106 agreements. The study was specifically asked to provide advice about:
- The length of time considered reasonable for a proposed DoV (relating to affordable housing) to be submitted to ADC
 - The evidence required to justify a DoV (including the type of information required)
 - The process by which DoVs should be assessed by ADC.
- 6.2** The study has confirmed the scale of the issue and that it has emerged over the last couple of years. An online search found that three applications were made for DoV in 2023 and eleven in 2024. The reasons given for the DoV applications does vary between applications with three of the DoV for non affordable housing matters, five of the DoV are in respect of changing the mortgage clauses only and five of the DoV reference desired changes to s106 (e.g. change of tenure of some or all units to First Homes, commuted sum payment) of which one also references mortgages clauses. There is also one DoV requesting a change in timing of delivering affordable housing as well changes to mortgage clauses.
- 6.3** DoV applications do not appear to be directly triggered by developer concerns about development viability. However, the research for this study has highlighted that, where offers are made by RPs for affordable housing, the amount offered can reduce between the initial offer when the RP is first approached by a developer and the offer made when the developer has secured planning permission – thus affecting scheme viability.
- 6.4** This is a national issue and ADC is not unique in identifying problems in engaging RPs in s106 affordable housing delivery. RPs are increasingly focusing the development they undertake on 'land led schemes' which allows them to control the type and specification of the affordable housing they provide and which can attract subsidy from Homes England. It is not possible to tell how this situation will develop but it is worth noting that some of the RPs interviewed expected that the situation would ease with the next Affordable Homes Programme (AHP) from Homes England, starting in April 2026.
- 6.5** Developers interviewed for this study argued that 'cascades' in s106 agreements can be effective in providing clarity to developers (and RPs) about the options available where

there are issues about RP engagement in the s106 process. Effective cascades will minimise the need for DoV. ADC already has a model s106 agreement which employs a cascade but the research indicates that this may require updating to take account of the current difficulties with s106 schemes and reluctance of RPs to take up these options.

- 6.6** The cascade in the current ADC model agreement has a fixed financial contribution as the final stage. The study has found that it may be useful to retain the option of a financial contribution in future agreements – however, on-site provision will usually be the preferred option. ADC retains a Housing Revenue Account which means it can use money collected to either purchase affordable housing units and/or directly undertake development itself. However, the study found the need for a clear and consistent mechanism for assessing the payment to be made and to clarify how CIL payments are to be treated when financial contributions are collected.
- 6.7** In assessing DoV, there are a number of issues for ADC to take into account. The study did not conclude that there is a fixed length of time considered reasonable for a proposed DoV (relating to affordable housing) to be submitted – although evidence of a lack of interest among RPs must be sought – as is done now.
- 6.8** There are various options for changes to s106 agreements that can assist in ‘unlocking’ s106 schemes. We have put forward a framework for dealing with DoV applications, which will benefit from a review of internal decision-making process to strengthen collaboration between planning and housing teams in addressing DoV and the relationship with relevant committee(s). The proposed framework sets out a number of potential stages in the process, the evidence required to justify moving to the next stage and potential timings for this. The draft framework deals with the situation when there is no RP willing to take on affordable housing delivered through a s106 agreement and where an RP makes an offer for the affordable housing but, on viability grounds, that offer is considered inadequate by the developer (Table 5.2a and 5.2b respectively). The framework requires further development within ADC, between housing and planning teams, before it can be fully adopted but the outline set out in the report provides for:
- The evidence required to confirm that no offer has been received by the applicant from an RP – this includes demonstrating that the opportunity has been added to the [Homes England Database of s106 sites](#)
 - The evidence required to demonstrate that any offer received from an RP by the applicant is inadequate to deliver a viable scheme as required by the s106 agreement

- Possible changes to the s106 agreement to make it more acceptable to RPs to ensure clauses in the agreement are consistent with NHF model clauses e.g. to the Mortgagee in Possession clause
- A review of any viability concerns which, first checks ‘reasonableness’ of the RP offer against guideline amounts set out in a calculator/model and, if viability remains contentious, a full viability review will be triggered. Thereafter steps to improve viability should be considered with a range of options compared
- Reduction in overall percentage of affordable units – which will improve viability and may also encourage more RPs to take up the affordable housing in the sites
- Consideration by ADC whether it will consider purchasing the affordable housing and, only as a last option, calculation and collection of a financial contribution. ADC could use the financial contribution to develop/acquire affordable housing units if it so chose. This approach is possible given that ADC already holds a HRA but does imply a significant scaling up of its capacity to deliver and manage affordable housing.

6.9 In operating the framework, the report has set out a number of options that can improve viability or deal with the issue of not being able to appoint an RP to take the units and their relative benefits. These were described more fully in Tables 5.1, 5.2 & 5.3 and can be summarised as:

- Changes to phasing
- Switching some or all shared ownership units to First Homes – which avoids the need for involvement of an RP in the scheme but shared ownership can reach a wider pool of potential purchasers
- Switch some or all affordable rented units to First Homes – which again avoids the need for RP involvement but does not help in meeting the most acute housing need in the district
- Units ‘gifted’ to council – which means that the developer will receive no payment for these affordable units. Further work is required to develop guidance on the numbers of gifted properties that would be of a similar ‘value’ to those set out in the s106 agreement.

6.10 The adoption of a framework approach as outlined above would need to be supported by a review of internal decision-making processes and of the model s106 agreement used by ADC and the mechanism for assessing commuted sums to be collected. It will be important that there is an affective mechanism for the housing team to be consulted about a scheme and its s106 agreement (e.g. about the dwelling and tenure mix and timing) prior to the signing of the s106.

6.11 ADC may want to take up opportunities to strengthen relationships with the development industry active in Arun and which have emerged through the research undertaken for this study. These should include:

- re-instatement of the RP liaison group that operated previously and establishing a developer forum to complement the RP liaison group and also working with neighbouring authorities to benchmark proposed approaches in Arun
- build standards – liaise with RP's, consult development industry. Adopt something to append to s106 agreements
- mix of units – review AH mix/tenure in light of up to date data, noting that there is no requirement now for First Homes.

6.12 There are then some longer-term actions for ADC which have emerged from this study and which are probably matters best dealt with in the next review of the local plan – and with updated evidence about affordable housing need. These include:

- Clarification of circumstances in which ADC would consider accepting financial contributions in lieu of on-site provision of affordable housing
- Introducing greater flexibility in the dwelling type and tenure for affordable housing – rather than prescribing this in policy.

6.13 Linked to the first point, ADC should consider its approach to accepting financial contributions and how these are spent to help enable provision of affordable housing. Developing such a strategy is beyond the scope of this report but has emerged as an important action. This is allied to the council adopting a transparent and consistent approach to assessing financial contributions that support the equivalence principle i.e. principle that a developer should be no worse or better off whether affordable housing is provided on-site or as a financial contribution.

Appendix 1 – Discussion agenda

RP consultation agenda

Explain purpose – that Three Dragons has been appointed by Arun DC to look at affordable housing delivery to help understand why there has been an increase in s106 re-negotiations for affordable housing and what is the best way to respond.

Explain that comments won't be attributed to individuals or organisations – but we will reference the RPs we have interviewed in our report. Any direct quotes or references that will identify the contributor will be checked with the interviewee before sharing with client or reporting. We won't report any information that we are asked to keep private or only refer to obliquely.

Questions

1. Overview of your RP development in Arun and priorities going forward?
Prompt on spending priorities for organisation / investment in existing stock and how that impacts in Arun / priorities for future development / preferred site type / scale / rural delivery / s106 sites / land-led sites / whether different approaches in other areas.
2. Any barriers to affordable housing delivery in Arun in recent years and if so how have you responded? Are these barriers common across the areas you operate in or are there special local factors?
3. Approach to s106 delivery?
Do you take up s106 schemes if offered to you and has that changed recently? If so why? As a general rule, what % of the developers open market value would offer?
4. Is there a change in offers you are able to make? Or the sorts of units you require?
Impact of First Homes on offer prices? Availability of grant or other funds such as from LA or cross subsidy within organisation? What is your organisations strategy going forward for S106 schemes?
5. Have you had any offers made to developers turned down? If so, what were the circumstances?
6. What about circumstances where you have decided not to bid?
What would it take for any sites you have 'rejected' to become attractive? E.g. larger units, heat pumps, grant/ availability of other funds etc

7. Have you been in situations where a developer wants to renegotiate an agreement with the RP?
Reasons and outcome.
8. S106 agreements - Are there ways in which the s106 agreement could be improved for you at the outset? If they are renegotiated what should be the priorities – in terms of process and what is negotiated away?
9. Have you experience of initiatives undertaken by other authorities in response to lack of s106 delivery or in renegotiating agreements?
10. What can Arun as a planning authority do to facilitate higher take up of S106 schemes?

Developer consultation agenda

Explain purpose – that Three Dragons has been appointed by Arun DC to review delivery of affordable housing in Arun and, in particular, issues around development viability and the use of s.106 agreements, to help understand why there has been an increase in s.106 re-negotiations for affordable housing and what is the best way to respond.

Explain that comments won't be attributed to individuals or organisations – but Three Dragons will reference the developers we have interviewed in our report. Any direct quotes or references that will identify the contributor will be checked with the interviewee before sharing with client or reporting. We won't report any information that we are asked to keep private or only refer to obliquely.

Questions

1. *How strong is the sales market in Arun? And the west Sussex market generally? And has much changed – say in the last two to three years?*
2. *Overview of your company's activities in Arun – e.g. number of years building here, overall scale, preferred site type (e.g. urban, rural), preferred location in Arun (anywhere, coastal etc) preferred site size for development?*
3. *In your experience (in Arun) do you generally 'inherit' a s.106 from a land owner/promoter with an outline permission or are you more involved from the outset?*
4. *When you are involved in drafting a s.106 at the outset, would you always expect to negotiate the s.106 agreement for the delivery of affordable housing in Arun? And is this typical of the areas you operate in?*

5. Do you ever arrive at an amount of affordable housing in a s.106 agreement that is below that required by policy and/or a different type of affordable unit/tenure? In what circumstances?
6. At what point in the application/development cycle do you discuss the amount and mix of affordable housing with the council's housing team?
7. At what point in the application/development cycle do you begin discussions with an RP about the affordable housing? And at what point do you invite bids for the affordable homes? Do you ever change your offer on affordable products after these discussions?
8. Compared with the last 2 or 3 years, are housing associations (RPs) offering you the same payments for affordable housing – on a like for like basis? If changed, in what way and why do you think this has happened?
9. Where RPs are not submitting bids at all, what do you think is the reason for this? This could be cost related or other reasons
10. How important are First Homes to your development mix? And if you deliver them does this affect the approach from the RP?
11. Have you sought to renegotiate a s.106 agreement in Arun? Is this something you have also done elsewhere in your area of operation? In Arun and elsewhere – what has triggered this for you?
12. What evidence would you supply to justify a change to the s.106 – e.g. a full review of viability, something less than this? And are you usually asked for more detail by the council?
13. When you are thinking about renegotiating a s.106 agreement – what changes do you look for – a reduced % of AH, different types of AH units (size, tenure), changes in when the AH is required – or other options (e.g. serviced land parcels to sell to an RP)?
14. What works well for you in terms of the process of renegotiating s.106 agreements – particularly in considering scheme viability? Are there examples of good practice of this you would like to share.
15. Reflecting on this – do you think there are ways in which s.106 agreements could be changed at the outset – so the likelihood of needing to renegotiate them is lessened?
16. Any other comments.

Appendix 2 – Value of affordable housing tenures compared

To assess the value of different affordable tenures, we have used LHA rates, high level and generic affordable housing on-costs, average value of a new build terraced house – to assess the value of an affordable 2-bed terraced house compared to a market unit. Values of the 2-bed house are expressed as a percentage of the full market value – again an estimated figure. The percentages we have estimated should be treated with caution because costs, values and interest rates are subject to change over time and there will be other factors such as available of subsidy or unit specific costs that could have a significant impact. However, as a general guide to use when considering financial impacts of tenure changes, the percentages we have estimated are that:

- A 2-bed social rented unit is c35% of full open market value
- A 2-bed affordable rented unit is c50% of full open market value
- A 2-bed shared ownership unit (35% share) is c70% of full open market value
- A 2-bed First Home unit (capped at £250k) is c70% of full open market value.

The above are consistent with other evidence we have available from elsewhere.

(Data sources LHA rate for Worthing BRMA 2024/25; industry standard affordable housing assumptions; Land Registry House Price Index for August 2024 – existing terraced house plus premium for new build taken from comparison of general new build and general existing properties, downloaded January 2025.)

Appendix 3 – Deed of Variations 2023/2024

Deed of Variation summary 2023 / 2024 as at 4Q 2024

Reference	Location	Proposal	Status	Affordable housing related
A/221/24/DOV	Land at Arundel Road Angmering	Application to enter a Deed of Variation to modify the Section 106 dated 13th March 2020 linked to A/122/19/OUT (as amended) in relation to the definition of the sports pitches.	Undecided	No
P/113/24/DOV	Land South of Summer Lane & West of Pagham Road Pagham	Application to amend / supplement the Section 106 agreement dated 22/11/2018 linked to P/140/16/OUT in order to reflect the proposed mitigation area plan (Plan 3) in accordance with the recommendation from planning committee.	Undecided	No
BN/103/24/DOV	Land at Angels Nursery Yapton Road Barnham PO22 0AY	Application to enter a Deed of Variation to the Section 106 agreement dated 12/07/17 linked to BN/43/16/PL (as amended by various agreements and planning applications) relating to schedule 4 part 4 - mortgagee in possession clauses.	Undecided	Yes – mortgage clauses
WA/61/24/DOV	Land west of Tye Lane Walberton S030 2UH	Application to enter a Deed of Variation to modify the Section 106 dated 22/07/2022 linked to WA/68/20/OUT (as amended by WA/6/23/PL) regarding	Approve	Yes - tenure

Reference	Location	Proposal	Status	Affordable housing related
		amendments to schedule 1, paragraph 4, part B (affordable housing) and part C of schedule 1 (first homes provisions).		
BN/66/24/DOV	Land south of Barnham Station Barnham	Application to enter a Deed of Variation to the Section 106 agreement dated 3/12/2021 linked to BN/142/20/OUT (APP/C3810/W/21/3273087) (as varied by BN/142/20/OUT) in order to an additional First Homes tenure to schedule 1, part 2 - affordable housing.	Undecided	Yes - tenure
A/94/24/DOV	Rustington Golf Centre Golfers Lane Angmering BN16 4NB	Application to enter a Deed of Variation to modify the Section 106 dated 7th October 2022 linked to A/129/21/PL (APP/C3810/W/22/3298192) in relation to Schedule 1, Part B: affordable housing.	Undecided	Yes - tenure
WA/43/24/DOV	Land East of Tye Lane Walberton	Application to enter a Deed of Variation to modify the Section 106 dated 01/11/2017 linked to WA/44/17/OUT (as varied by WA/124/23/S73) in relation to the variation of the mortgagee exclusion clause.	Undecided	Yes – mortgage clause
FP/59/24/DOV	Land South of the A259 and off Stanhorn	Application to enter a Deed of Variation to modify the Section 106 dated 18 September 2006 (as amended) linked to FP/92/04	Undecided	No

Reference	Location	Proposal	Status	Affordable housing related
	Grove Felpham	(as amended) in relation to the deletion of reference to sports pitch provision and associated facilities and instead for the use of land for landscaping, open space and biodiversity net gain.		
BE/37/24/DOV	Nursery Fields Land to the North of Chalcraft Lane West Bersted PO21 5TS	Application to enter a Deed of Variation to the Section 106 agreement dated 7th September 2021 linked to BE/148/20/OUT (APP/C3810/W/21/3275040) in order to amend schedule 2 (affordable housing) definitions and clauses 1.1, 1.6, 1.7, 2.1, 4.2 and 4.5, add schedule 6 (first homes) and replace schedule 5 (self-build housebuilding).	Undecided	Yes – tenure & mortgage clause
LU/30/24/DOV	Land South Of The Littlehampton Academy Fitzalan Road Littlehampton BN17 6ED	Application to enter into a deed of variation of Schedule 1, Clause 1.1 of the Section 106 agreement dated 21/04/2022 following LU/116/21/PL regarding the re-allocation of plots 75 and 77 to open market units and plots 93 and 94 to shared ownership units.	Approve	Yes - tenure
P/2/24/DOV	Land North of Sefter Road & 80 Rose Green Road Pagham	Application to enter a Deed of Variation to the S106 dated 14-10-2019 secured under planning permission P/134/16/OUT to modify the trigger points for various	Approve	Yes – timing & mortgage clause

Reference	Location	Proposal	Status	Affordable housing related
		financial obligations and changes to the mortgagee exclusion clause.		
FP/207/23/DOV	Land to the North of Felpham Bognor Regis	Application to enter a Deed of Variation of the Section 106 dated 18/9/2006 linked to FP/92/04 to modify Schedule 3 Clause 47 relating to Mortgagee Exclusion Clause to allow charging at market value.	Approve	Yes – mortgage clause
P/76/23/DOV	Land at Hook Lane Pagham	Application to enter a Deed of Variation to the Section 106 agreement dated 02/09/2019 linked to P/30/19/OUT in order to modify Clause 12.1.2 exclusions of liability, Schedule 1, paragraph 2.7.4 obligation to enter into a nomination agreement in relation to the rented units and Schedule 1, paragraph 4 mortgagee in possession clause	Undecided	Yes – mortgage clause
A/118/23/DOV	Land South of Water Lane Angmering	Application to enter a deed of variation to the Section 106 Agreement dated 7/3/19 linked to A/99/17/OUT in order to modify the definition of Green Infrastructure, the spend purpose of the BMX track, skate park and fitness equipment contributions and the Mortgagee in Possession clause.	Undecided	Yes – mortgage clause