

The Value, Incidence and Impact of Developer Contributions in Scotland

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Executive Summary

Research Specification

The purpose of the research is to inform Scottish Government's [review of existing developer contributions mechanisms](#) by bringing together evidence under two broad themes:

- **Quantitative:** How much are existing mechanisms raising, what purposes are they being used for and how does this vary geographically?
- **Qualitative:** How effective are existing mechanisms and what are the practical issues associated with their use?

The value of developer contributions

- While every local planning authority responded to our questionnaire, data on planning obligations (and developer contributions more generally) were not recorded in a consistent way across planning authorities and in some cases authorities were unable to provide the detailed numbers we requested.
- Some of the data problems we encountered were undoubtedly the outcome of Covid 19. Equally, the relevant 2019 Planning Act provisions about monitoring will enable the more fundamental issues about data to be addressed.
- Based on the evidence we were able to collect, we estimate that in 2019/20 approximately £490 million worth of developer contributions were agreed, of which £310m was for affordable housing and £180m towards infrastructure.
- In 2017/18 the equivalent figure for affordable housing (excluding commuted sums) was £251m and that for 2018/19 was £220m. Thus, the agreed contributions for affordable housing has increased by more than a third over the three-year period.
- We are not able to provide estimates of the contributions to infrastructure for the two earlier years as the data were not available. The figures for 2019/20 were grossed up from the available data.
- The value of developer contributions is concentrated in a relatively small number of areas. The five largest contributing authorities, all in the central belt, accounted for about 43% of agreed contributions towards affordable housing in 2019/20. This proportion had declined from around 50% in 2017/2018, suggesting that their use

had become more widespread. With respect to infrastructure the proportion was around one third of the grossed-up figure.

- In this group of 5 authorities, our estimates suggest that the affordable housing contributions accounted for perhaps 30% of the land value with planning consent and without contributions.
- All these figures reflect the agreements made to provide contributions, not the amounts actually delivered. The evidence we received was that the vast majority of contributions agreed are subsequently delivered as long as the development goes ahead and is not subject to revised planning consents.
- It is clear that, while the purpose of planning contributions is to mitigate negative impacts of development and so make the development acceptable, it is also a form of land value capture by which some part of the increased land value following planning permission is implicitly taxed.

The incidence of developer contributions

- All but two planning authorities use developer contributions. However, the value of what is achieved is heavily concentrated in a few areas. Many authorities also make extensive use of planning conditions to secure in-kind contributions. Around 75% of authorities use developer contributions to secure affordable housing.
- Affordable housing accounted for over 60% of the value of developer contributions. The vast majority of infrastructure contributions relate to education, transport, open space and leisure provision.
- Most contributions contributed directly to the funding or in kind provisions of local authority or housing provider services. Where other service providers were involved the process was often more complex.
- It was generally agreed by respondents that landowners ultimately pay the developer contributions through lower land values. However, while this is true in principle, in practice uncertainties and negotiation may mean that some costs are borne by other participants. Levels of policy certainty/clarity also have a bearing on the extent to which costs can be passed on to landowners in the form of lower prices.
- Of particular relevance in this context is whether the availability of affordable housing subsidy, even in areas where land values are high, helps to maintain land

values. In this context the data suggest that grant levels are similar across the country and at least one authority has policies to reduce competition for land among RSLs.

Developer contributions in practice

- Most stakeholders were comfortable with the overall approach to developer contributions and saw it as strongly embedded in the planning system. Affordable housing in particular is well understood and accepted – in part because national and local expectations are clear.
- Stakeholders also thought that the vast majority of agreements were delivered, particularly those agreed for affordable housing.
- Infrastructure contributions worked less well. There were significant issues around timing of the funding and delivery of the infrastructure, particularly when they address requirements arising from a number of developments.
- Lack of integration between infrastructure providers' plans and programmes and development planning also makes the negotiations more difficult – especially when other infrastructure being financed from different sources must also be put in place.
- There was agreement that local development plans that clearly spelled out requirements made it easier to reach agreement. However, developers and others argued that authorities often depart from policies specified at the application stage, making it difficult for them to negotiate appropriate land prices.
- There was also concern that contributions were being sought for a wider range of purposes than in previous years including those not specified in local plans and other policy.
- There was general agreement that planning obligations should focus on site-specific mitigation including generated local needs.
- There was also a clear consensus that planning obligations are not generally an effective means of addressing the cumulative impacts of development, or an appropriate mechanism for securing funding for sub-regional and regional infrastructure requirements.

Key implications of the research

- Planning authorities have developed their own systems for monitoring developer contributions to address their local needs. However, the lack of consistent and comprehensive data makes it challenging to evaluate the effectiveness of developer contributions across the country. A coordinated and comprehensive monitoring system would help to inform both local planning authorities and central government policy.
- The developer contribution system is generally accepted and is working well in operational terms. The amount negotiated has increased significantly over the last three years. However, it could work better if experience was shared between authorities more effectively.
- Affordable housing contributions at around £310m in 2019/20 account for over 60% of the identified contributions negotiated. In the five largest contributing authorities the amounts achieved captured around 30% of market land values.
- It is inevitable that the funding secured via developer contributions is heavily concentrated among a small number of authorities with high land values, where authorities are able to negotiate a wider range of contributions, notably with respect to education and local infrastructure. This raises questions of equity between low and high value areas.
- On the other hand, the flexibility to waive affordable housing in areas has been used effectively to help support employment and growth.
- The evidence on infrastructure contributions, measured at £180m, was less complete than that for affordable housing. There was optimism that the value of contributions would increase over the next few years.
- It was generally accepted however that developer contributions could only be expected to support site mitigation together with necessary local infrastructure. More generally there appears to be a gap between developer contributions and the funding needed for infrastructure. City Region Deals provide only for specific infrastructure and are not available everywhere.
- There were also concerns around the timing of contributions, especially when infrastructure needed to be provided at an early stage in the development when the necessary up-front funding may not be available.

- Similarly, there were concerns about cumulative requirements involving a number of developments which do not fit easily within the negotiation process.
- But the core message must be that developer contributions are being increasingly negotiated, the system is generally accepted, and levels of funding achieved are comparable to those obtained in England.

1. The Project

1.1 Research Objectives

The original tender document issued in February 2020 stated:

Following the passage of the Planning (Scotland) Act 2019, Scottish Government is taking forward a comprehensive programme of planning reforms, the details of which were published in September 2019¹. As part of this, Scottish Government pledged to continue exploring how increases in land value can be more effectively captured for public benefit (e.g., to fund infrastructure required to support new development). Before exploring new potential approaches such as the infrastructure levy and/or changes to compulsory purchase rules, Scottish Government has committed to review the effectiveness of current mechanisms.

This research will help to inform Scottish Government's review by providing evidence on the effectiveness of current mechanisms, namely planning obligations, focussing in particular on how much they currently raise in Scotland, what the funds are being spent on and what this represents as a proportion of development value.

The purpose of the review is to evaluate the effectiveness of planning obligations as a means of securing timely contributions to - and delivery of - the infrastructure and affordable housing that are necessary to create high quality places. The findings of the review will inform future policy development on infrastructure planning and delivery in Scotland. More information about the background to the review can be found on the [Scottish Government's Transforming Planning](#) website.

The key requirements set out in the research specification were to answer the following questions:

- How much increased value is being captured, where is it being raised and how is it being spent?
- How effectively is value being captured through existing mechanisms? What are the practical issues associated with current approaches? Are they a transparent, effective and equitable way of funding infrastructure to support planned development?

The specification added:

¹ Scottish Government (2019) 'Transforming Planning in Practice – Post-Bill Work Programme

A range of qualitative and quantitative evidence is required to address these questions, not all of which is readily available and/or up to date. Current evidence gaps are most acute with respect to quantitative data: there is limited information available on the value of planning obligations in Scotland, which makes it challenging to address questions under the first strand in particular.

1.2 Timetable

The initial timetable expected that the research would take around five months and would be completed by the end of September 2020. However, Covid intervened and as a result the contract was not signed until the end of July. Some adjustments were made to the methodology and programme to address the reality that there were likely to be no face-to-face meetings and authorities might have problems in providing material because of working from home.

1.3 Methodology

Our research approach included six main elements:

1. An initial **scoping review** of existing policy documents, academic and practical studies and official statistics relevant to the issue of developer contributions to provide a clear understanding of the context and the relevant data available. This allowed us to specify a framework for identifying the main sources of increased land values arising from development; the instruments by which these values might be captured in the current legal and economic environment in Scotland; methods of estimating the extent to which these values might be captured; and other factors that might impact on the values actually captured.
2. Developing an **online questionnaire** to enable us to collect reliable information on the incidence, value and delivery of developer contributions (mainly by S75 but also by other mechanisms). The questionnaire was sent to all 34 local planning authorities – 32 local authorities and 2 national parks - after piloting with a small group of experts. We provided a support system to help the authorities to complete the questionnaire consistently and to ensure a high response rate with full information – ideally 100%.
3. **Analysis** of these **data**, to give both **qualitative** evidence on processes, practice and the PAs' understanding of challenges and effectiveness and **quantitative estimates** of the number and value of developer S75 and other contributions.
4. Four **case studies** of larger PAs that reflected a range of contexts and approaches to the issues around developer contributions. In each of the case study areas we undertook four **site or topic specific case studies**. In each area we sought information from all involved in the negotiation and delivery of contributions: local

- authorities, landowners and land assemblers, agents and developers (including public, private and not for profit), and housing associations.
5. Three **'roundtable' workshops** with authorities, developers, infrastructure providers and other stakeholders to help understand how current policy and practice impacts on the land, property and development market. Follow up **interviews** were also undertaken with a range of experts to address particular issues raised in the roundtables.
 6. Using available **data, survey** and **interview responses** to estimate the **value of the developer contributions** being captured for affordable housing and infrastructure by the full range of developer contribution mechanisms currently available and the use to which these contributions are put.

The findings with respect to each topic area are covered in sections 2 to 6. **Please note: Each of these sections has an associated Annex where the detailed analysis is provided.** Section 7 brings together the summary and conclusions.

1.4 Context

In order to interpret our findings, it is important to understand the context in which the developer contributions are operating in terms of factors which will impact on both capacity and value. We therefore examined a range of variables and looked at how they varied across the country. These variables included population, incomes, housing output, house prices and some basic information about the contributions themselves.

Given that our core interest is in the capacity to obtain developer contributions and need for such contributions, we have concentrated particularly on the spatial distribution of many of these variables--as even before starting the research we were aware that there would be considerable concentrations of both capacity and need.

1.4.1 Population

The latest figures on Scotland's population which are for 2019 show a total of 5.46 million, an increase of 200,000 since 2010. It is expected to increase to over 5.6m over the next decade. Figure 1 taken from the National Records of Scotland website shows the population in each of Scotland's 32 local authorities (although not in the national parks, which are also planning authorities). Population numbers per authority range from 22,000 to around 633,000. However, these numbers do not necessarily reflect relative densities because the physical areas also vary enormously – with some of the lowest populations living in some of the largest physical areas. In addition, it is important to note that some of the most populated areas are surrounded by other relatively populated areas, and there is considerable commuting between them. The areas with the highest populations are concentrated around Edinburgh, Glasgow and Aberdeen with the lowest populations in the Islands.

1.4.2 Incomes

The main source of income statistics is the UK Annual Survey of Hours and Earnings. This suggests that median gross weekly earnings in Scotland were around £575 per week in 2019, up from £485 per week in 2010.

Looking across the country, the highest median earnings based on workplace were in Aberdeen at £647 per week followed by Edinburgh at £618 per week. In Glasgow median earnings were around £580, while in Dumfries and Galloway and East Dunbartonshire at the bottom end of the scale they ran at around £510 per week. Figure 3 (Annex 1) shows how median earnings vary across the whole country.

The picture is rather different if one looks at earnings based on residence. Here East Lothian is at the top of the list followed by Edinburgh, and more generally residents of commuter belts around major cities have higher earnings than the cities themselves.

1.4.3 Households and dwellings

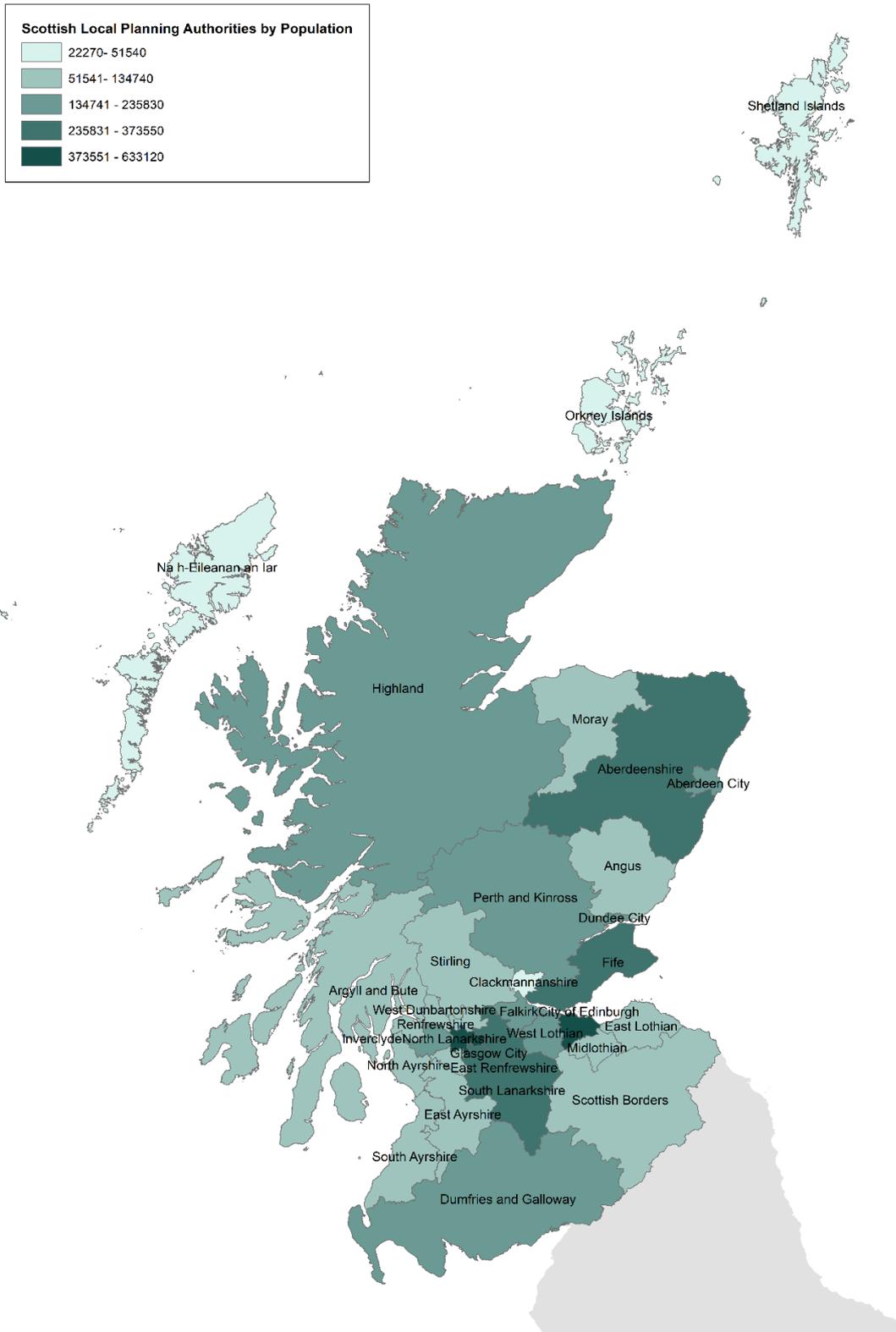
The housing stock in Scotland in 2019 was 2,637 million, up from 2,321 in 2010. As Figure 4 (Annex 1) shows, at the national level the number of dwellings across Scotland is considerably greater than the number of households – by around 5.6%. Moreover, while there has been some variation – and some limited relative growth in dwellings v households since 2010 – the ratio has generally been fairly stable for many years.

In 2019 the proportion of unoccupied dwellings across Scotland (based on council tax records) was around 4.1% overall, with considerably lower rates in remote areas but fairly consistent rates elsewhere. In terms of Strategic Development Areas, Glasgow and its SDA area had the highest occupancy rate followed by Edinburgh and its SDA area.

1.4.4 Housing completions

Turning to new build activity, Figure 5 (Annex 1) shows completions by tenure for Scotland as a whole. In 2018/19 there were 21,187 completions with around 75% of these being in the private sector. Edinburgh accounted for some 13% of total output (as compared to 9.5% of households), followed by South Lanarkshire, Glasgow, Highlands and Fife. These top five authorities accounted for some 40% of overall housing production.

Figure 1: Population by Local Planning Authority



1.4.5 House prices

House prices have risen by nearly 20% over the last decade (Figure 6, Annex 1) although there have been periods of stagnation and even slight decline. While the average price for Scotland as a whole was around £197,400 in the fourth quarter of 2020, prices in Edinburgh were almost 50% higher, followed by East Renfrewshire, East Lanarkshire and East Dunbartonshire, where averages were all above £250,000 in the last quarter of 2020. At the bottom end of the scale was West Dunbartonshire with average prices of around £132,600. Average prices in twenty-one of the authorities were below the Scotland average, reflecting the extent to which large parts of the country face relatively slow markets and might well find it relatively difficult to obtain developer contributions.

1.4.6 Developer contributions as a proportion of planning applications

Finally, Figure 7 (Annex 1) shows national data on the number of planning applications. It shows a decline in 2016/7 and 2017/8 but a steep rise between 2018/19 and 2019/2020.

1.4.7 Context: conclusions

The statistical evidence shows the very significant spatial variations in Scotland with population, economic activity and land values concentrated in a relatively small physical proportion of the country and therefore in a minority of PAs. This will inherently mean that large proportions of the funding generated by developer contributions will be concentrated in these areas – which are generally also where requirements for affordable housing and infrastructure related to economic activity will be concentrated. What is less clear from the general evidence is whether there is enough potential for developer contributions to mitigate the impacts of development and provide affordable housing in areas of the country with lower levels of activity and value.

2. Literature Review

2.1 Objectives and Coverage

The objectives of the literature review are to clarify the provenance of the concept of developer contributions; how they fit within the policy and legal framework in Scotland - including the 2019 Planning Scotland Act and the planning reform programme; the particular position of affordable housing; together with empirical estimates of the value incidence and delivery of developer contributions and of affordable housing. Finally, it includes some comparison with how similar arrangements in England as well as how similar issues are addressed in comparable countries overseas.

Annex 2 sets out the detailed literature review. Here we identify some of the most important findings. The literature falls into three main categories. Discussion of the principles behind developer contributions and more general land value capture; government publications which clarify their approach to developer contributions within policy – both general and specific to contributions - and the legal arrangements; and research-based evidence on the rationale of the system, how it actually operates and how much it produces together with some comparative literature. The full literature review can be found in Annex 2.

2.2 The rationale for developer contributions

The literature stresses that the rationale for developer contributions includes:

- (i) planning permission increases land values;
- (ii) new development may require investment in order to mitigate the impacts of the development – e.g., the need for more school places;
- (iii) it is logical that those who have benefitted from the permission should pay these costs.

Perhaps a simpler way of stating this, found in the economics of planning literature, is that using land value increases resulting from the granting of planning permission is an efficient and fair way of paying for necessary infrastructure associated with that development because, if well managed, this does not distort economic decisions.

A rather more controversial rationale, much discussed in the academic literature, is that developer contributions should be part of a more general policy of capturing land value increases for the public benefit (not just those resulting from the granting of planning permission) – which is part of a wider discussion about good taxation principles.

While contributions are called developer contributions because it is they who formally pay the bill; the general expectation is that the costs will in the main be passed back to the

landowner because they are part of the costs that the developer must take into account when determining the price that he/she is willing to pay to purchase the land. As such they are a *de facto* mechanism for capturing some elements of land value increases.

2.3 Recent policy debates

There was much debate around the time of the Planning Scotland Act 2019 about mechanisms for capturing land value increases to pay for infrastructure and affordable housing. That Act contains powers for Scottish Ministers to make regulations establishing an infrastructure levy, the income from which would be payable to local authorities for the purposes of funding infrastructure projects. The regulation-making power, which lapses seven years from the 2019 Act receiving Royal Assent, has not yet been implemented.

In addition to the infrastructure levy powers, opposition amendments introduced during the passage of the 2019 Act sought to go further by making provision for land value capture via compulsory purchase. The underlying intention was to enable local authorities to acquire land more cheaply by reforming the rules governing compulsory purchase compensation. In short, the amendments aimed to achieve this by excluding consideration of land's development potential ('hope value') for the purposes of assessing compensation. In May 2019 the Scottish Land Commission (SLC) published advice to Scottish Ministers on the potential options for land value uplift capture. This highlighted that the proposed amendments to the land compensation rules were unlikely to achieve their stated aims and risked being in breach of the European Convention on Human Rights, not least because landowners subject to compulsory purchase would receive less than if they had sold their land on the open market (in breach of the "equivalence principle"). In this context, it was suggested that there be a review of existing land value capture mechanisms, a recommendation that is now being addressed.

A key driver for reform, set out in the recent National Planning Framework 4 position statement, has been the intention to establish an 'infrastructure first' approach to development planning, with Development Plans providing the key link between the infrastructure needs of development and the funding and delivery mechanisms of infrastructure providers. The intention is to involve infrastructure providers, developers and other public bodies to ensure an integrated and coherent outcome-based approach to land use planning.

2.4 The legal framework

The current system of developer contributions in Scotland has evolved piecemeal. Planning obligations are legal agreements entered into under Section 75 of the Town and Country Planning (Scotland) Act 1997). Planning obligations can be used to secure contributions to, or provision of, infrastructure and affordable housing. Although the Act

itself does not tightly define the scope of Section 75 planning obligations, their use is subject to the five national policy tests currently set out in Circular 3/2012 (see below). Planning obligations can be entered into between a person with an interest in the land and the planning authority; or via a unilateral undertaking by a person with an interest in the land.

Developer contributions can also be secured through Section 69 of the Local Government (Scotland) Act 1973, which gives local authorities the power to enter into agreements for a purpose related to the discharge of any of its functions – including affordable housing. Finally, they may be sought through Section 48 of the Roads (Scotland) Act 1984 which allows roads authorities to enter into an agreement with any person willing to contribute to the construction or improvement of a road.

Section 75 planning obligations are enforceable against successors in title if they are registered in the Land Register of Scotland or recorded in the General Register of Sasines. Because planning obligations can run with the land, they can be a particularly appropriate mechanism where ongoing or phased payments are sought and/or where a site involves multiple developers.

2.5 The national policy framework for developer contributions

The policy framework governing the use of planning obligations is set out in detail in Circular 3/2012, the most recent version of which was published in November 2020. The Circular provides that Section 75 planning obligations should only be sought where they:

- Are necessary to make the proposed development **acceptable in planning terms**;
- Serve a **planning purpose** and, where it is possible to identify infrastructure requirements in advance, should relate to development plans;
- **Relate to the proposed development** either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relate in **scale and kind** to the proposed development; and
- Are **reasonable** in all other respects.

Circular 3/2012 stresses that planning obligations should only be used where the relevant outcome cannot be achieved through either a planning condition or an alternative legal agreement (e.g. under s69 of the Local Government Act 1973). The circular points out that alternative legal agreements may be more appropriate where, for example, one-off payments are sought.

Recent appeal decisions and case law have reinforced the need for a clear link between a proposed development and the infrastructure provided (or contributed to) via a planning

obligation and the need for contributions to be proportionate to the scale and nature of a development's impacts.

2.6 Affordable housing

Affordable housing has been a significant part of the development contribution policy including in particular on-site provision. Policy makes it clear that provision must be based on identified local needs and be of good quality and design. Scottish planning policy calls for no more than 25% but also that they can be required on any size of site. PAs may require higher proportions if justified by the local needs assessment.

2.7 Evidence on LPA policy and practice on infrastructure and developer contributions

Previous studies, the latest in 2016 have suggested that most PAs in Scotland (maybe of the order of 80%) use developer contributions but in very varied ways. Studies have shown that very small proportions of planning permissions have requirements for developer contributions attached. Some PAs have highly sophisticated systems. Research has also suggested that decisions are often made on a case-by-case basis not always supported by plans and supplementary guidance or consistent across agreements. Contributions not specified in policy or guidance may also be introduced quite late in the process reducing clarity and certainty for developers. Land values are then difficult to assess.

Researchers have suggested that contributions may not always work well on large complex sites because of the need for front loaded infrastructure and that there are difficulties in ensuring equity between the first and later on-site developers. But there were also many more general concerns about the timing of payments in relationship to when infrastructure is required and addressing the cumulative impacts of development.

We also noted that there were, at the time of earlier research, concerns that development plans were not always aligned with infrastructure needs, and that contributions were often concentrated on dealing with physical site constraints rather than on these wider infrastructure requirements. Even so, it was noted that most Local Plans addressed the delivery of infrastructure if often in rather general terms. Infrastructure for which contributions were required concentrated on roads and green infrastructure as well as education and local public services.

The empirical literature suggests that there are many concerns about the negotiation process and the time taken to obtain agreement, their lack of transparency and potential for change, as well as concerns that infrastructure is not always provided, despite contributions having been made. Site viability was a core issue recognised in

supplementary guidance but its assessment meant individual applications must be accompanied by relevant data.

2.8 Estimates of the incidence, value and delivery of developer contributions in Scotland

Previous research has indicated that the overall potential for contributions is less substantial than in England because development values are generally lower in Scotland, and that contributions would be more heavily concentrated in high-value areas.

Earlier studies, the latest in 2017, suggested that the amounts collected were quite small in many parts of the country because of the lack of value to capture. However, they also suggested that there was potential for some increases in the value of contributions. More recent studies have seen such increases. Even so, one of the latest studies (in 2016) suggested, based on annualised land values that perhaps a total £230m per annum would be available for affordable housing and infrastructure of which maybe £130m would come from S75 agreements. The study advised that it would be better to concentrate contributions on local impacts and affordable housing and to impose a charge on completed developments to help towards wider infrastructure costs. It has also been noted that land values are captured by other forms of national taxation such as Capital Gains Tax (CGT) and Land and Buildings Transaction Tax (LBTT), although these are non-hypothecated.

2.9 Delivery of affordable housing through developer contributions

Contributions towards affordable housing were very limited at least until the new millennium, both because of the need to provide explicit evidence of local need and that in many localities while the need was there the land value was not. Local housing strategies introduced in 2001 provided a clearer framework. Researchers in 2014 noted that between 2007/8 and 2011/2 a third of all affordable new build had involved developer contributions and that many PAs had policies on affordable housing in place. Most contributions were in the form of completed units; discounted land accounted for about 20% and commuted payments rather less. Researchers were concerned that grants might have enabled higher land values and that the advice as to 25% was putting a cap on contributions. Finally, the rural exceptions policy was hardly used.

There have been two estimates of affordable housing requirements in the last few years suggesting that around 60,000 were needed from 2016 – 2021 but this declined to 53,000 from 2012 – 2026. They supported the continued use of grant to help meet these needs. Other research suggested that developers were concentrating more on high valued areas with development on lower valued areas being undertaken more by local builders and affordable housing providers. Most recently, the Scottish Government has announced its

long term housing strategy looking ahead to 2040 which makes the commitment to build 100,000 new affordable homes by 2032 once its current five-year target of 50,000 homes is completed by 2022.

2.10 Advantages and disadvantages of planning obligations in Scotland

Existing literature suggests that the main advantages are fairness, because developers are only asked to contribute in line with the development; and flexibility in the face of viability challenges and changing market conditions. Disadvantages are related to lack of transparency; inconsistency; uncertainty around negotiations; delays and the extent to which they are inadequate to support infrastructure in many areas where it may be most needed.

2.11 Experience of developer contributions in England

The systems are seen as generally similar. Two distinctions are important:

1. the existence of the Community Infrastructure Levy (CIL), which operates alongside planning obligations in England and allows authorities to secure contributions towards infrastructure, including sub regional and regional infrastructure, that is not directly connected to the specific development for which planning permission is given; and
2. a grant regime in Scotland that supports affordable housing including significant proportions of social rent, while much affordable housing (notably affordable homeownership) in England is developed with no grant.

The amounts collected in England have risen from around £2.6 billion in 2003/4 measured in 2018/19 terms to £7bn in 2018/19. They contribute to new affordable homes as well as infrastructure (£4.7 billion and £2.3 billion respectively)

It is accepted that the costs that developers incur in making contributions fall mainly as lower land prices paid for land although the extent to which this is the case depends on the transparency and certainty of local plans and of implementation. Estimates suggest that on greenfield sites developer contributions including CIL take around 30% of the value of the land. A further 20% is taxed away via capital gains and transactions taxed.

Finally, there have been regular assessments of how much the system in England generates in funding and in kind contributions (such as on site affordable housing) and the effectiveness of the processes involved undertaken for the Ministry of Housing, Communities and Local Government.

More details of experience in England are provided in sub-annex 2A.

2.12 Overseas experience

It is worth noting that there is an extensive literature on overseas experience of capturing development value and of providing affordable housing through the planning system using a wide range of mechanisms. Some of the most successful involve very direct involvement by local authorities in land acquisition and assembly, infrastructure provision and development delivery including through joint ventures.

More details of possible lessons relevant to Scotland are given in sub-annex 2B.

3. Evidence from the Survey

3.1 The Questionnaire

We sent an online questionnaire to all 34 planning authorities (32 local authorities and two national park authorities) in order to understand if and how local authorities implement developer contributions policies; their attitudes to the system; and their assessment of its effectiveness—and particularly how much is actually raised. A draft of the survey was discussed at a roundtable of practitioners who worked in planning and housing and had particular knowledge of the developer contribution system and of the data that were collected. The questionnaire text is included in the report as Annex 3 (Sub-Annex 3A).

The survey aimed to collect detailed evidence from each authority on both qualitative questions (how they used the system and how effectively it works for them) and quantitative ones (the numbers of planning permissions; the proportion involving developer contributions; the amounts agreed for affordable housing and infrastructure and collected over the last three years).

The qualitative questions covered:

- (i) Planning authority policies, plans and guidance, including whether they had formal policies on developer contributions; when their development plan was adopted; supplementary guidance; whether they used standard charges and what areas were covered;
- (ii) Local infrastructure plans--how detailed they are; types of infrastructure included in developer contributions; and what proportion of infrastructure needs are covered by expected developer contributions;
- (iii) Affordable housing--whether it is sought; in what forms; and how much is received;
- (iv) Operational effectiveness--how delivery is monitored; whether what is agreed is delivered; and
- (v) Overall effectiveness--challenges; difficulties in achieving agreement; and consequent planning delays.

In terms of numbers we asked for:

- (vi) The number of planning applications and number of agreements;
- (vii) The use of the different approaches;
- (viii) The number of homes consented and delivered;
- (ix) The number of affordable homes permitted and completed, and the proportions that came via developer contributions;
- (x) The tenures of affordable homes permitted and completed;

- (xi) The number in each tenure that came via developer contributions
- (xii) The number of agreements for obligations other than affordable housing; the value of those obligations; and whether they were in the form of land, in kind or financial contributions.

Respondents were not asked to provide values for affordable housing contributions. These were estimated separately by the research team (see Chapter 6 for details).

3.2 Response rates

The overall response rate was 100%, which is extremely unusual in research of this type and for which we are very grateful.

However, many authorities found it challenging to complete all the questions in the surveys, both because of Covid 19 and because of lack of appropriate data. The pandemic meant that respondents often had far higher workloads than normal, and many were working under difficult conditions, usually from home. Many respondents said the circumstances made it difficult to liaise with colleagues in other departments, which was often necessary in order to answer questions in detail.

As importantly, respondents often did not have full access to the types of data we were requesting. Additionally, the data around developer contributions are held in different ways across authorities and it was often difficult to provide material in the form requested. Some authorities did not have collection systems which included all the data we were requesting. As a result, few authorities were able to answer all of our questions. Many clarified the problems they had faced in completing the questionnaire and added additional qualitative explanations where appropriate. Respondents' comments on the problems they faced are included in Annex 3, as is the question-by-question analysis.

3.3 Findings

3.3.1 Policies, plans, and guidance

Only three authorities said they did not have formal policies on developer contributions (with one non-response) (Table 1).

Table 1: Does your planning authority have formal policies on developer contributions?

	Count	%
Yes	30	91%
No	3	9%

Of the 26 PAs who stated they had policies on developer contributions in their **development plans**, 58% had put the current plan in place in 2017 or later. Importantly 70% had supplementary guidance on developer contributions and 40% had non-statutory guidance (including many who had both), mainly adopted over the last five years.

About two-thirds of authorities used standard charges for at least some developer contributions. Requirements did not usually apply to the whole PA area but to zones or more likely projects or sites.

3.3.2 The importance of developer contributions

Over the three-year period from 2017 – 2020, our survey reported 7.7 % of planning permissions included planning agreements. Just over two-thirds came under Section 75 of the Town and Country Planning (Scotland) Act 1997 and the rest under Section 69 of the Local Government (Scotland) Act 1973 (used mainly for smaller /simpler contributions). Although we asked about Section 48 of the Roads (Scotland) Act 1984, no PA reported using it during this period. The proportions of permissions accompanied by agreements seem quite low but are a considerable increase on earlier estimates which suggested less than one percent had included agreements.

Specifying requirements (notably for transport infrastructure specific to the site) using planning conditions -- which do not involve direct financial payments -- was mentioned by a number of authorities as an alternative to developer contributions in some circumstances².

3.3.3 Infrastructure

Developer contributions generally fall into two main categories: affordable housing (dealt with above) and infrastructure. The latter encompasses not only 'hard' infrastructure such as roads, bridges and public transport, but also facilities for education, health and leisure, and other public and environmental amenities.

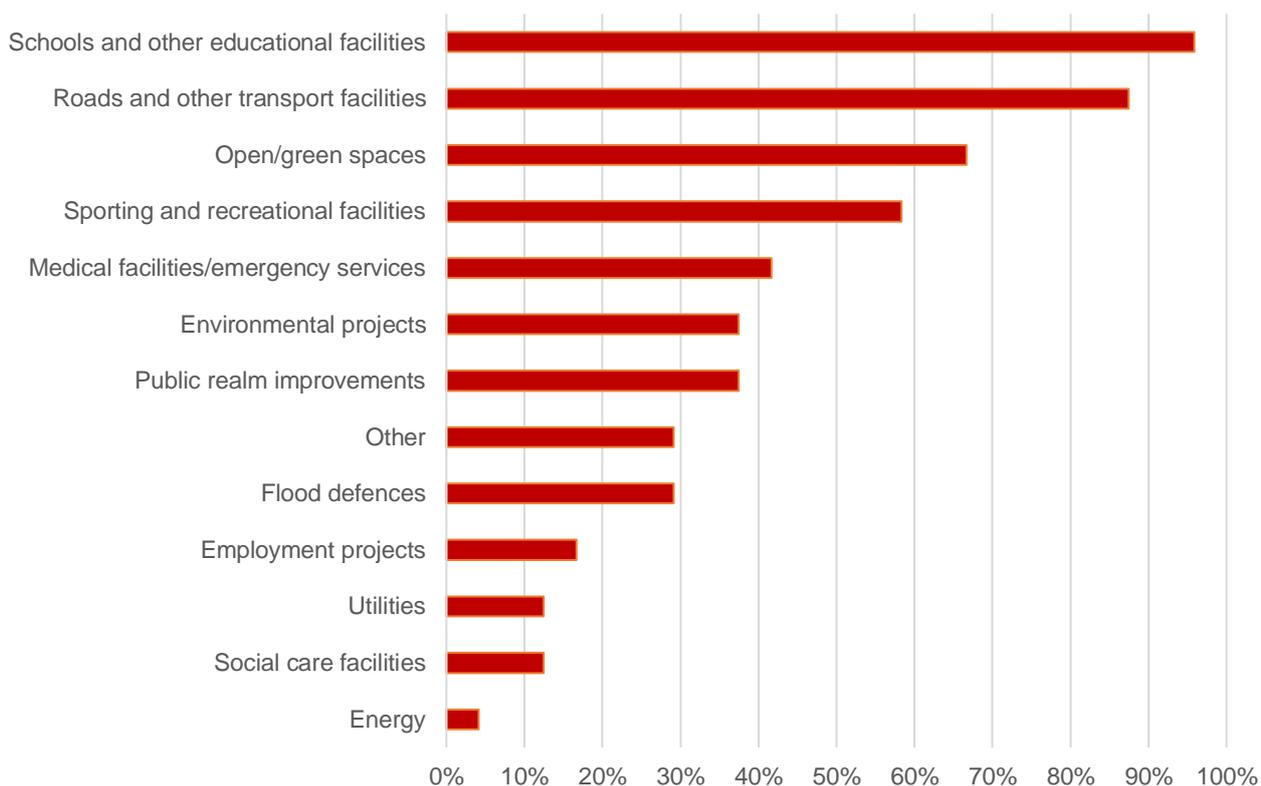
With respect to infrastructure, almost 90% of responding PAs had Infrastructure or Local Development Plan action programmes, and half had Infrastructure or Capital plans. Over two-thirds said their plans included costings. 42% of responding authorities said their infrastructure plans included both funding and timing, but a similar proportion said the documents covered neither.

The range of infrastructure included in the various programmes and plans was very wide (Figure 2). Almost all included education and nearly 90% covered roads, followed by open

² The rationale for using planning conditions was discussed in both the case studies and the roundtables.

spaces and recreational facilities. On the other hand, medical facilities were hardly mentioned. Almost 40% of respondents thought their authorities had infrastructure needs which were not reflected in their plans or programmes, partly because needs were constantly evolving.

Figure 2. Types of infrastructure covered by infrastructure programmes/plans



(all PAs with infrastructure programmes/plans; n=24. Multiple answers permitted)

The evidence on whether contributions to specific types of infrastructure had been agreed in each of the previous three years suggested somewhat lower figures. Seventy-five percent of authorities said they had agreed contributions for education, and the same percentage for roads. Just over 50% had made agreements for open space and somewhat under 50% for recreational facilities (Table 2).

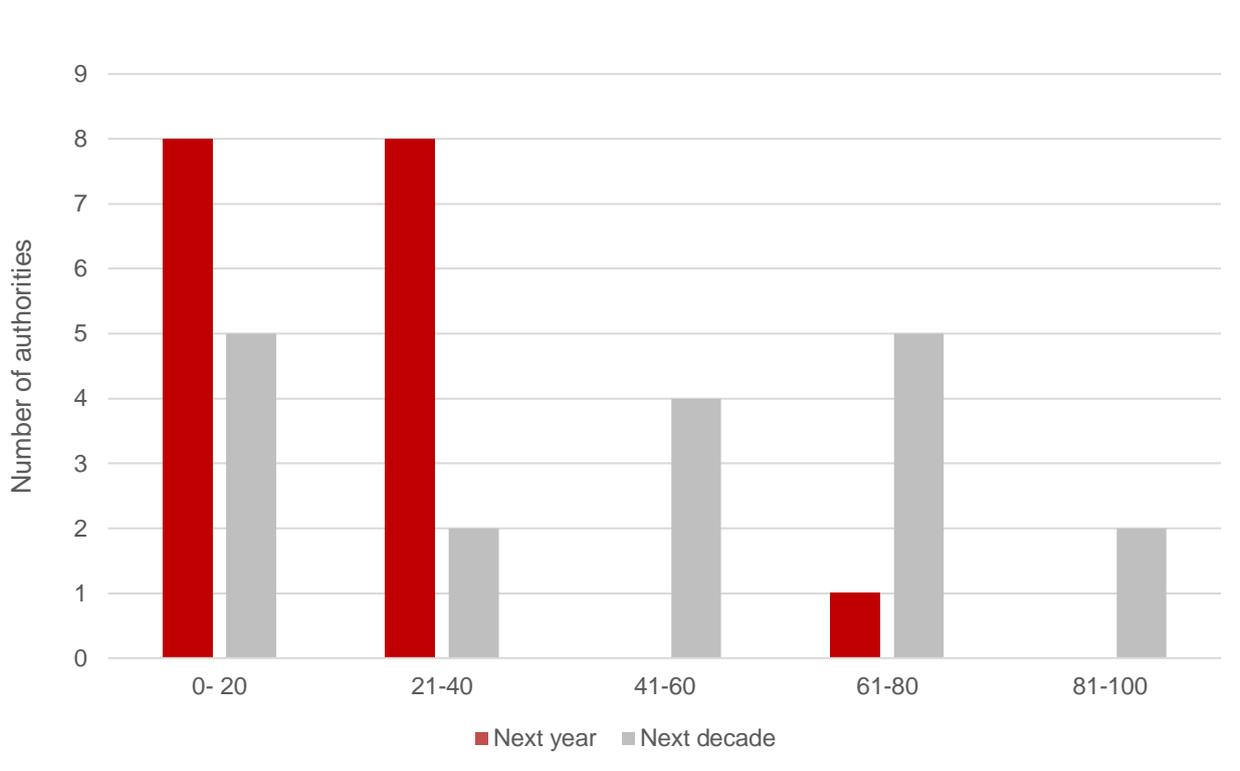
Table 2. Number of authorities entering into agreements related to various infrastructure types, by year agreed

	17/18	18/19	19/20
Schools and other educational facilities	16	15	14
Roads and other transport facilities	17	13	14
Sporting and recreational facilities	12	11	12
Open/green spaces	9	8	10
Public realm improvements	6	7	4
Medical facilities/ emergency services	5	5	4
Environmental projects	1		2
Energy	1	1	1
Employment projects	2		
Other	5	4	5

(PAs that had entered into agreements with developers in the preceding 3 years; n=20. Multiple answers permitted.)

Respondents were asked what proportion of infrastructure costs they expected to be covered by developer contributions in one year's time and in the next decade (Figure 3). Fifty percent of PAs responded to the question. Those that did said relatively small proportions of the costs in the coming year would be met in this way. They were far more sanguine about the next decade, with 11 of the 17 respondents saying 40% of infrastructure costs or more would be covered. It is fair to say that most respondents thought their estimates were only somewhat accurate; just one thought their estimate was very accurate. A number commented on how difficult such figures were to estimate.

Figure 3. % of infrastructure needs expected to be covered by developer contributions: next year and next decade



(Question seen by all PAs but not all responded; n=17)

3.3.4 Affordable housing

Affordable housing was undoubtedly the most commonplace form of requirement and of contribution. Eighty percent of respondents said they had policies to deliver affordable housing. Reasons for not having such policies among the 20% who did not have them included lack of identified need, viability, and the fact that the council itself met the requirement.

Those with policies mostly allowed all three means of delivery from developers: provision of land, completed homes and commuted sums, depending on circumstances at the individual site. Almost two-thirds of those with policies expressed their requirements as a proportion of new homes, using either the national 25% policy or their own Housing Need and Demand Assessment proportions. However 20% set no requirement. Requirements in all but one case related to residential developments rather than commercial. PAs set development-size thresholds below which no affordable housing contribution was required, which ranged from 2 to 50 units. Mostly it was social and/or midmarket rental that was to be delivered.

In the main the contributions required took no account of the extent of national subsidy. However, a small number of authorities mentioned that subsidy meant they did not have to

rely on developer contributions alone to provide the amount of affordable housing their authority needed.

In terms of numbers: of the roughly 110,000 homes permitted over the three-year survey period, almost 30% were affordable units. Some 8% - 10% of all homes permitted were affordable homes delivered through developer contributions. Table 3 shows that in the areas with the highest house prices (upper quartile), about 25% were affordable units via developer contributions, while in other areas average proportions were generally 5% or less. This reflects both the concentration of development overall in a few high-priced PAs, and the relative ease of negotiation in those areas because developers are keen to get on site.

Table 3. % of ALL homes consented to be delivered by DCs, by house-price quartile 1 = lowest prices

	2017/18	2018/19	2019/20
Price quartile 1 (data for 5 of 8 authorities)	4%	0%	0%
Price quartile 2 (data for 3 of 8 authorities)	4%	2%	32%
Price quartile 3 (data for 2 of 7 authorities)	5%	5%	2%
Price quartile 4 (data for 6 of 9 authorities)	18%	22%	24%

Source: Survey, Q39 (number of housing units permitted per year) and Q45 (number of affordable units permitted to be delivered by DCs)

With respect to tenure, around 70% of all affordable homes *permitted* were to be social rented properties with a further 22% being mid-market rent. There were hardly any shared ownership dwellings consented, and just under 10% were either partial equity or discounted market sale. Among all affordable homes *completed*, there were rather more social rented units and rather fewer for mid-market rent.

Looking just at the affordable housing provided through developer contributions, the tenure mix was very different. Contributions were involved in little more than 20% of both social and mid-market rented properties, but 93% of discounted market sales and all of the tiny number of shared ownership units.

About 40% of PAs answered our question on how long it takes to deliver affordable housing. The answer--an average of over two years and a maximum of four--does not suggest that such homes are delivered early to help developer cash flow, as is often suggested.

We examined whether permissions for new homes and affordable homes (both per thousand population) reflected house price levels and/or changes in house prices, to get some idea of what might determine activity rates. On average, 4.4 new homes of all types were permitted per thousand population in areas with house prices in the lowest quartile over the last three years, as compared to 7.1 in areas with prices in the highest quartile. This suggests some positive relationship between house prices and permissions, although there are variations across the three years. The relationship with *increases* in house prices, while similar, is less clear cut.

Turning to affordable homes delivered via developer contributions, output is much more strongly concentrated in higher-priced areas except for a clear anomaly in quartile 2 in 2019/20 (Table 3.3).

3.3.5 Operational efficiency

Over 70% of authorities said they had a dedicated team dealing with negotiating agreements, and 50% had a team that dealt with monitoring. Over 50% used site visits to monitor delivery but there were a wide range of additional/alternative approaches.

Around a quarter of PAs said that contributions were always delivered while over 60% they were mostly delivered. One PA had had none delivered. Authorities suggested that maybe up to 15% of agreements involved requests for variation – mainly because the scheme itself had changed. Most such requests were granted.

3.3.6 Specific Challenges

Finally, respondents were asked about the biggest challenges they faced, and this was a question they clearly wanted to answer. The two issues that dominated were viability and inadequate potential for developer contributions to achieve the required funding: 51 out of the 90 responses referred to these issues (Table 3.4, shaded rows). Negotiation difficulties were also important, mentioned by 40% of respondents.

Table 4. Biggest perceived challenges with developer contributions

	Count	%
Viability issues for developers	21	78%
Getting enough contributions to deal with the impact of cumulative developments on infrastructure needed	18	67%
Delays to site starts and therefore payment of contributions	14	52%
Land/development market not strong enough to support what is needed	12	44%
Negotiation difficulties	11	41%
Constraints arising from the five tests	8	30%
Other	6	22%
Total PAs responding	27	

(All PAs that had entered into agreements in last 3 years or previously; n=27. Multiple answers permitted)

A number of respondents also raised concerns about particular aspects of the current system. Three issues stood out:

- i) Concerns about infrastructure costs, which are rising faster than the indexation metrics and are extremely difficult to predict. Education costs in particular seemed to be undervalued: authorities said actual costs were higher and rising more rapidly than the sums secured in contributions;
- ii) The need to better align planning for new homes with transport and education estate strategies. Development should use existing capacity more effectively, and local authorities need to forecast future revenue funding requirements arising from infrastructure provision;
- iii) The timing of consideration of developer contributions: rather than being decided when permission in principle was granted, in the Scottish system they were considered far too late in the process.

3.4 Conclusions

The 100% response rate to our survey was both unexpected and highly appreciated. However, respondents faced major challenges providing the range of data requested. Some of these problems were due to the pandemic, which meant respondents were not always able to give us all the details we requested. More fundamentally, though, it was

clear that many authorities did not collect the specific data we required. In other cases, the information was only contained in individual planning files and proved to be too difficult to extract.

Despite these shortcomings, the evidence they were able to provide presented a very clear picture of how the system was operating and what was achieved across the country. Respondents also often provided additional information to help cover gaps.

The survey suggests that contributions are most regularly used for affordable housing and then for transport and education infrastructure but with instances of a wide range of contributions for other purposes, notably open space and sports facilities.

Developer contributions for affordable housing are well understood and relatively easy to negotiate – in part because there is a national standard. Some PAs said that they do not require developers to deliver affordable housing, sometimes because the evidence does not support an affordable housing requirement so they do not need such contributions, but more usually because they feel that requiring them would either make schemes non-viable or would drive away development.

Developer contributions for infrastructure are far less embedded in the system. Most PAs do have infrastructure action programmes and 50% have plans in place, but authorities generally recognise that because of viability constraints, contributions will only make a small dent in infrastructure requirements in the following year. Even so, authorities expect developer contributions to cover a higher proportion of requirements over the next decade.

The numbers presented make it clear that developer contributions are only negotiated for a small proportion of all planning permissions. Even so, survey evidence³ showed that around 30% of the affordable housing permitted is provided with the support of developer contributions (as well as government subsidy). Moreover, the vast majority is provided in higher valued areas.

Overall, the survey responses suggest that the developer contribution system is well embedded and is growing in importance. It shows that using contributions for affordable housing is well understood and generally accepted. The evidence with respect to infrastructure suggests that PAs are comfortable with contributions directly related to the site and demand arising from that site.

This section addresses the information which we requested from the Planning Authorities. It does not address the issues around the valuation of these contributions. This is addressed in section 6.

³ See Table 26, page 99.

4. Evidence from the Case Studies

4.1 Introduction

Section 4 (together with Annex 4) of the report explores the case study findings thematically.

The research specification required the Project Team to examine:

- a) whether planning authorities are clear and consistent in their approaches to setting out what infrastructure is needed; and
- b) when calculating what part of this is required from developer contributions, securing this in ways consistent with central and local government policy.

These issues are addressed in the survey questionnaires but were examined in specific detail with follow-up case studies and interviews.

Our research approach included selective site-specific case studies in a range of contexts to seek information from all involved in the negotiation and delivery of contributions: local authorities, landowners and land assemblers, agents and developers (including public, private and not for profit), and affordable housing providers. The objective was not only to understand the processes and outcomes on a specific site but also to learn more general lessons about how the system is working.

Four **case study areas** and four **site-specific case studies** within each case study area (totalling sixteen site-specific case studies) were selected to reflect the range of contexts across Scotland. The four case study areas selected by the Project Team reflect the range of urban morphologies in Scotland⁴ and were subsequently agreed by the Scottish Government (see Table 5).

⁴ informed by Scottish Government Urban Rural Classification 2016

Table 5: Case Study Areas

Case study area	Population ⁵	Type
City of Edinburgh Council	524,930	Major conurbation
West Lothian Council	183,100	Urban
Renfrewshire Council	179,100	Major hinterland
Aberdeen City/Aberdeenshire Council	489,880	Mixed Urban/Rural

We initially made contact with the relevant officers in the four case study areas. This was with a view:

- to establishing appetite, willingness and availability of resource to participate in the research;
- to establishing views on the suggested short-list of site-specific case studies and potential alternatives/additions; and
- to establishing views on other potential stakeholders to be consulted when examining each site-specific case study.

The final list of site-specific case studies within each case study area was subsequently agreed with the Scottish Government. In some areas, a ‘thematic case study’ was considered more appropriate than a site-specific case study, such as the ‘affordable housing thematic case study’ in West Lothian, which considered a range of delivery methods: a) direct provision by the developer on-site; b) transfer of land from developer to planning authority; c) a commuted sum; d) the 10% uplift in Core Development Areas (CDAs); and e) developer partner approach with a registered social landlord (RSL)/housing association (HA).

We prepared semi-structured interview topic guides, which were agreed by the Scottish Government, to provide a framework for discussion and to ensure consistency and the opportunity for comparison between the case study areas and site-specific case studies. Three types of topic guide were prepared to reflect the range of stakeholders involved in the negotiation and delivery of the contributions, namely Planning Authorities, Affordable Housing Deliverers and the Developers/Landowners/Agents.

⁵ National Records of Scotland Mid-2019 Population Estimates (updated April 2020)

This section firstly outlines the **key findings** from the case studies exercise summarised around **policy** (based on the intent of PAs to guide decisions and attain desired outcomes); **practice** (actual actions taken to attain desired outcomes); and **delivery** (the actual outcomes). Secondly, the themes of **policy**, **practice** and **delivery** are considered in further detail. Finally, there is a brief **summary** and **conclusion**.

4.2 Key findings from the Case Studies

4.2.1 Policy

- Developer contributions are shaped by the political priorities of local planning authorities (PAs), the levels of land values/house prices in relevant areas and the provision of existing capacity, that is, the need for additional affordable housing and infrastructure.
- Most of the case study PAs have policy and guidance on developer contributions that has evolved over many years with changing priorities and markets. However, there are some PAs where policy is much less established and there is a reliance on mechanisms like planning conditions.
- PAs now tend to use an ‘assessment approach’ for calculating contributions that clearly sets out requirements. The ‘assessment approach’ is both about clear policy and guidance from PAs on sites, as well as capacity assessments that provide the evidential basis upon which to determine the need for improved or additional infrastructure. Developers seem generally supportive of this approach, believing the system now to be more certain and transparent.
- Variations may be attributable in part to the ‘personal’ nature of the process by which developer contributions (especially Section 75 Agreements) are negotiated. PAs with greater resources, experience and skills, as well as a good knowledge of the development process, tended to have better relationships with developers/landowners, which facilitated agreement. Similarly, developers/landowners who had an appreciation of local politics and priorities found it easier to engage with PAs and foster agreement.
- The City of Edinburgh Council’s (to date unsuccessful) efforts to adopt supplementary guidance on developer contributions has provided an interesting and insightful backdrop to the Edinburgh case studies. This context does not seem to have compromised outcomes, as there were clear policies within the local development plan and developers seemed to understand council requirements.
- Although policy was generally clear and provided the basis for engagement by the development industry, there are examples of developers and their advisers challenging the evidence base underpinning the policy, e.g., changing circumstances and timing considerations.

4.2.2 Practice

- There continues to be considerable variation in practice between PAs in how they secure developer contributions e.g. in mechanisms used to derive contributions, such as Section 75 Agreements and planning conditions. Current policy makes it clear that planning conditions, including suspensive conditions, should be used wherever possible in the first instance (subject to the relevant policy tests that apply to the use of planning conditions, as set out in Circular 4/1998). Paragraph 82 of Circular 4/1998 suggests there may be circumstances where it is acceptable to use conditions for seeking financial contributions. Planning obligations should only be sought where they are required to make the proposal acceptable in land use planning terms and where the use of conditions or other legal agreement is not appropriate.
- Developer contributions remain a core part of planning practice. Three of the four case study areas make extensive use of Section 75 Agreements (S75) to derive developer contributions. The fourth case study area principally uses planning conditions.
- There are examples of flexibility in the interpretation of policy by PAs, particularly to support development viability, for example, willingness to consider alternative affordable tenures other than social rented housing as part of affordable housing contributions.
- There is also still a major role for negotiation, especially on complex sites where viability is weak or has weakened, or on priority sites that PAs want to be brought forward, for example, sites that are important for future housing supply in an PA.
- S75 of the Town and Country Planning (Scotland) Act 1997 is the main means of securing developer contributions and tends to be used on sites where education and/or affordable housing are required. It tends to be the preferred mechanism for financing such infrastructure as when registered it runs with the land.
- Legal agreements can also be made under other legislation including Section 69 of the Local Government (Scotland) Act 1973 and Section 48 of the Roads (Scotland) Act 1984 and provide a possible alternative mechanism to secure developer contributions. They are useful where the nature of the contribution is relatively straightforward, involves a one-off payment and/or does not require to be secured through successors in title. For this reason, they can help speed up the development process on smaller and less complex sites.
- There has been a growth in the types of infrastructure contributions sought by PAs and there are questions about their consistency with developer contributions policy. Some developers argued that there was 'scope creep' and they were being asked for more contributions in areas such as healthcare and community facilities beyond what they would have typically expected, with consequential implications upon the timescales in concluding agreements.

- Local authorities' action plans and those of infrastructure providers are not as well integrated as they should be in identifying infrastructure capacity. This becomes an issue where there is insufficient clarity over how and when such infrastructure will be paid for and delivered, and by whom. The issue is therefore not so much with regard sites being allocated with insufficient infrastructure capacity, but rather the lack of clarity and certainty as to how this will be mitigated and overcome.
- Delays attributable to the negotiation of developer contributions are not uncommon. However, the reasons for delay vary. An important distinction is the difference between 'unavoidable' delays that result from the 'normal' negotiation of developer contributions, and 'avoidable' delays that may be the outcome of strategic negotiation, a lack of PA capacity or a lack of consistent information.

4.2.3 Delivery

- Developer contributions are an important means of securing affordable homes and new infrastructure and the system is seen to be generally working well by the case study PAs, as well as by both public and private sector deliverers operating within these case study areas.
- Areas with higher land values are capable of, and more often do, deliver more contributions.
- Variation in market conditions is often the main reason for differences between local authorities in what is sought and what can be agreed.
- Planning conditions and other legal agreements are also important in securing 'in-kind' infrastructure contributions.
- Agreed contributions are mainly delivered as agreed, including on-site new affordable homes.
- Contributions are normally paid for on a 'drip of sales', meaning it can take time to fully fund the infrastructure required, or councils have to forward fund and take on financial risk. There can be challenges (legal and policy) associated with this approach, but not necessarily insurmountable as evident with the Winchburgh Tripartite Agreement.
- There are challenges in using developer contributions to securing sub-regional infrastructure and in dealing with the cumulative impact of developments, particularly around transport.
- Developers want more clarity and certainty on developer contributions to help them plan ahead and agree the prices they pay for the land they need which should take these into account.
- New mechanisms may be needed to secure the funding for sub-regional infrastructure (particularly transport), including the possibility of a new infrastructure levy.

These issues are discussed more fully below.

4.3 Policy, Practice, and Delivery

4.3.1 Policy

4.3.1.1. Governance

Developer contributions are generally not considered appropriate at a strategic scale within PAs, that is, where the infrastructure serves/benefits multiple developments across one or more PAs.

Political priorities can influence the capital plan of PAs and therefore the contributions that are sought.

Higher levels of developer contributions tend to be sought in higher value areas where development can make contributions and maintain viability. Many parts of Scotland cannot do this and therefore contributions are either waived or reduced by the PA in these areas so as to maintain development viability and demonstrate that the PA is 'open for business', as is evident in the four case study areas across Scotland.

Existing capacity is the other key variable – areas well provided for in terms of transport, schools, facilities, etc. will have less need for contributions, and on occasion developer contributions are waived where this may impact on development viability, or discourage investment in an area.

4.3.1.2. Process

PAs typically set out developer contributions requirements in planning policy, with a clear assessment process to establish infrastructure capacity. The 'assessment approach' is both about clear policy and guidance from PAs on sites, as well as capacity assessments that provide the evidential basis upon which to determine the need for improved or additional infrastructure. The intention is for developer contributions to be based on an objective assessment of infrastructure capacity rather than negotiation.

Developers tended to be in agreement that developer contributions are now more certain and transparent than they used to be and developers can plan ahead more effectively as a result, for example, account for contributions in bid prices for land.

However, some developers would like to see more evidence to justify the policy. In some cases, the evidence was not clear or did not seem to be there, for example, pupil-product requirement in certain areas. This was sometimes a source of successful challenge by developers and their advisers.

Areas in which developer contributions seemed to work best were in those areas where developers and the PA seemed to have a good understanding of each other's requirements and were willing to be pragmatic to reach agreement.

4.3.1.3. Nature of agreements

There is some evidence that the range of demands made of developer contributions is changing – what some case study participants referred to as 'scope creep'. For example, some exploration of contributions towards funding healthcare infrastructure. Policy allows for such contributions to be sought if the tests are met. Requests for healthcare contributions represent a relatively new development which explains a lack of institutional familiarity with how a requested developer contribution for healthcare should be evidenced.

4.3.2 Practice

4.3.2.1. Flexibility

There is some flexibility in the use of policy. In Edinburgh, for example, Social Rent has the highest priority in affordable housing provision and there is an expectation that at least 70% of affordable housing provision on sites with 12 units or more will be for Social Rent. However, the application of this policy has been flexible – on a number of schemes 100% Intermediate Rent provision has been accepted, which has helped to maintain overall development viability. In Aberdeen, affordable housing contributions in the City Centre schemes have been waived up to 2022 after an initial pilot. This is intended to accelerate housing delivery in the City Centre as part of a Council strategy to boost City Centre living.

As indicated by the findings above, there is evidence of variation between PAs both in how they secure developer contributions and what these contributions are used to fund. A clear example of this variation can be found in PA policy documentation. Most of the PA case studies had some form of online documentation detailing their planning obligations policy and requirements. In some cases, this was very detailed. However, there were instances where there was little detail beyond a general policy in the Local Development Plan, with developers expected to explore the detailed contributions required at pre-application stage. Developers also noted that some requests were made by PAs that were not policy compliant, and that these requests tended to come from elected members.

The ability to negotiate successfully and efficiently, monitor and then spend developer contributions also varies between PAs. Although a key determinant of how successfully PAs secure developer contributions was understood to be the more general economic conditions in a local authority area, the different skills, level of experience, resources and capacity of PA officers was also mentioned. Some PAs still felt that they are lacking in resources and specialist skills.

Some PAs had long serving and very experienced officers. In such contexts where a team of experienced PA officers was in place to deal with planning obligations there were also often well developed and detailed policies. Setting developer contributions policy, administering and negotiating S75, collecting monies, and managing spend was a considerable and resource intensive undertaking that required skills and investment.

4.3.2.2. Negotiation

Both PAs and developers generally believed that requirements such as affordable housing, education and open space are clearly set out in the assessment process and can be quantified and costed relatively easily.

Community facilities are usually subject to more negotiation as they cannot be as easily justified by evidence, e.g., existing capacity, pipeline, actual needs. Transport is usually the most complex in terms of appraisals and multi-agency working necessary to gain agreement and develop an action plan for delivery, including the use of contributions.

Although the assessment process is intended to make the process easier and clearer, there is still a major role for negotiation, particularly on complex sites or in areas where there have been changing market conditions. In some instances, PAs are keen to obtain particular developments and may be willing to provide some leeway on contributions.

Contributions on smaller sites tend to be agreed more quickly using the guidance, with minimal legal fees as a result.

There continues to be considerable variation in practice between PAs in how they secure developer contributions. Variations may be attributable in part to the 'personal' nature of the process by which developer contributions are negotiated. Some developers point to significant differences between PAs with respect to the level and nature of contributions required. PAs are also aware of this, and note that variations in what is secured depend on various factors including local policy and priorities, variations in land values, resources, experience and skills.

4.3.2.3. Timescales

Complex sites can take a year or more to agree a S75 after Mindes to Grant on complex sites. Transport and education are the normal sticking points.

Both PAs and developers had views on what can cause delay. However, several interviewees contrasted 'avoidable' and 'unavoidable' delays. The latter were usually understood to stem from the negotiation of developer contributions that are a necessary counterpart to the discretionary planning system. The former is those delays that can be attributed to contingent aspects of the process – such as inefficiencies in PAs or strategic bargaining by developers.

Speed can be affected by legal delays, and large complex schemes with multiple landowners were noted as being particularly slow. It can take a long time for multiple landowners to come to agreement and sign a S75 agreement.

4.3.2.4. Completion and modification

Modifications to S75 obligations under powers at S75A and 75B of the 1997 Act are quite often used in Edinburgh for scheme changes and modifications. However, some other PAs stated that modifications were only used on a small proportion of cases and usually around varying the original consent, which would have knock-on consequences for the S75.

4.3.3 Role of other instruments

In Edinburgh, S69 agreements and planning conditions are seldom used for developer contributions. They are not believed to be suitable for the delivery of schools or affordable housing, where more detailed legal agreements are required. Using planning conditions is not believed to give the Council the protection it needs, e.g., if site is sold, there is a need to tie new owner to the title.

However, other councils do use S69 agreements and planning conditions frequently – they are believed to be more standard, easier and less costly.

The role of viability assessments

Several of the PAs interviewed seek external advice on viability appraisals. This may be from the district valuer (DV) or development consultants. Some PAs have the in-house skills to deal but the ability of an PA to deal with viability assessments ‘in-house’ varies

The majority of the interviewed PA officers expected to engage with the development industry on a case-by-case basis with respect to viability questions.

Links with infrastructure providers

Local authorities’ action plans and those of infrastructure providers are not as well integrated as they could be. For example, allocated sites should provide greater clarity if necessary over who will provide the necessary infrastructure, when it will be provided and how much it will cost. The Affordable Housing & Housing Land Audits Planning Advice Note 2/2010 provides assessment criteria for the effectiveness of housing land which includes a criterion that states that, ‘Infrastructure: [should be] free from constraints, or can be provided realistically by a developer or another party’ (para.2.4 bullet pt.6). There was a bit of criticism in the case studies from both PAs and developers about wider infrastructure and the timeliness and extent of advice from major infrastructure providers. Unexpected infrastructure bills could completely scupper a development. Better alignment

between action plans as well as better coordination of wider infrastructure issues were felt to be needed.

Transparency

There was some discussion of the need in some instances to improve transparency of monitoring and reporting so that developer contribution monies secured, received, allocated, spent and delivered can be followed through the system.

Increased transparency potentially provides the opportunity to promote what has been delivered through developer contributions and the positive benefits of development.

4.3.4 Delivery

Values

It is easier to deliver contributions in higher value housing areas. When markets change, the level of contributions that can be paid and still keep development viable changes. Aberdeenshire is a good example of this – a lot of the development in the area paid for the infrastructure contributions required to make those developments feasible. This is much more difficult in today's market in the region.

A major determinant of how successfully PAs secure developer contributions was understood by all parties to be the more general economic conditions in a local authority area.

In some low value areas, what is secured through S75 is not sufficient to fund infrastructure and more investment is needed, beyond developer contributions, to unlock development.

Affordable housing

Affordable housing contributions generally seem to be delivered in the case study areas that use them. Developers and landowners were clear that they were required as a result of policy and made plans for the delivery of such contributions at an early stage.

Transport

There have been issues with the delivery of other contributions by PAs. We found examples of where intended transport improvements paid for by the developer contributions had not been delivered by the PA or its partners, resulting in developers seeking payback of these contributions. PAs argued that complex transport changes can be difficult to achieve on time due to multi stakeholder involvement, and some believe another mechanism for obtaining transport contributions may be required.

The Elswick Supreme Court case⁶ highlights the difficulties in providing contributions for strategic transport requirements based on the cumulative impacts of developments. New mechanisms for delivering such requirements need to be investigated.

Infrastructure delays and finance risks

PAs noted that collecting planning obligations is time and resource intensive. There is a lack of consistency and similarity in processes across the PAs.

There is a significant variation in practice between PAs in how developer contributions are used to forward-fund infrastructure. For example, one PA uses developer contributions reactively to mitigate the impact of development, whilst another has actively taken a managed and shared risk approach to allow forward funding of educational provision to remove a constraint to development (West Lothian Council re. Winchburgh) – the ‘Winchburgh Tripartite Agreement’. This Tripartite Agreement example is part of a Scottish Government (SG) led unlock proposal to address what was an intractable position where the LA required contributions from the developer which made the scheme undeliverable. SG provided a £26.8m loan to the developer and has underwritten the educational repayments to the council from the developer through an underwriting agreement. The level of risk to the LA is therefore limited and managed.

Contributions are often provided on a ‘drip’ as units are completed. This can mean that not all infrastructure is provided until after the development is completed, which can cause potential frustration, concerns and suspicion from the local community due to a lack of transparency of the S75 agreement process, and understanding of its content, structure and trigger mechanisms.

Some infrastructure, e.g., a new school, may need to be delivered alongside the development, which the council has to forward fund and then recoup through contributions. This represents a risk if not all contributions are paid or the development stalls or ends prematurely. Some councils said that they were less likely to build new schools on this basis going forward due to finance concerns.

Where sites are approved on appeal, some PAs claimed that contributions can be weaker as they have not been fully and effectively taken into account as part of a plan-led process or action programme.

⁶ [Aberdeen City and Shire Strategic Development Planning Authority v Elswick Development Co Ltd \[2017\]](#)

5. Evidence from the Roundtables and Interviews

5.1 Introduction

We held three roundtables to which we invited a wide range of stakeholders involved in the process of agreeing and implementing developer contributions. We were very pleased with the level of response to our invitations and grateful to all who participated. The first session involved mainly people working in the planning stages – from all angles; the second was attended by those mainly working on development of both housing and infrastructure; and the third involved a more varied group but with a concentration of national stakeholders. We covered similar questions in each session – although, of course, discussion and opinions ranged widely. The evidence from all the sessions complements that from our case studies (in Chapter 4) which concentrates on four PAs, as it covers a wide range of stakeholders operating across Scotland.

To supplement the roundtables, we also undertook a series of interviews covering aspects of policy and practice – notably to gain a greater understanding around infrastructure provision; how developer contributions work within the wider affordable housing framework; and the value of contributions.

Annex 5 provides a fuller coverage of this evidence and in particular contains a large number of quotations from those who attended the discussions and took part in interviews. It is important to stress that we are reporting what participants and interviewees told us about their experiences and their views, not our interpretation of these experiences and views.

5.2 The importance of contributions

All participants whatever their background stressed how important developer contributions are to their organisation. They were seen as particularly useful with respect to accessing land for affordable housing and in high-demand/high-land-value areas. In areas where there was a need to attract development, they were seen as having less of a role. In this context it was made clear that PAs looking to increase development activity sometimes felt it better to depend on government subsidy to deliver affordable housing, although development contributions might still be used to ensure necessary local infrastructure was in place. It was generally agreed that over the previous 15 years, S75 had become more embedded, consistent and transparent. Section 69 was used more for smaller requirements, while the use of S48 Highways Act agreements to provide transport infrastructure was unpopular because they do not ‘run with the land’ and therefore cannot bind subsequent owners.

A minority of authorities, however, saw planning conditions as a better means of securing outcomes especially with respect to necessary transport improvements. The most positive feature of planning conditions was that they reduced the need for negotiation and therefore saved time. However, participants emphasised that, in their experiences, some participants thought that it was not possible to use conditions to secure formal financial contributions even though developers will of necessity pay to meet site-specific conditions before they can start to develop – and are happy to do so.

Roundtable participants identified several challenges, especially in how the types of the infrastructure sought had grown in recent years. Several participants referred to ‘creep’, which reflected concerns about both:

- The types of contribution being required, which is thought to be getting broader (notably, it was argued, with respect to health care facilities); and
- the fact that these might be added later on in the negotiation process.

Healthcare providers however argued that new development did impact on health and social care requirements and therefore should be regarded as legitimate developer contributions. Those involved in NHS estate planning told us they increasingly looked towards developer contributions to secure land and funding for new primary care facilities

Participants regularly referred to ‘creep’ where requirements not identified in the plans were added to published lists (and formulae) for the infrastructure required for developments. These extra demands could compromise agreements made between developers and land owners based on the original specification. Participants explained how this added complexity and delay to discussions and negotiations. At the limit some felt that:

”What seems to happen more now is that whenever anything comes along which presents a cost burden to a local authority, there is pressure to look at whether development contributions are the answer to that cost burden”.

There was a quite widespread belief that contributions should mainly be used to mitigate the more site-specific aspects of a particular development. A number of participants thought infrastructure needs were not always well justified in plans and guidance, and that this gap resulted in delays and renegotiations. Developers made clear they had no objection to contributing to justifiable mitigations but needed clarity and certainty.

In this context it was argued by a representative of a PA that: ‘

”The development might contribute in part to something that is needed more widely in the area, but the gap (in funding) might be in the funding for the existing community”.

Not surprisingly given this perception, it was seen as much more difficult to use developer contributions to secure sub-regional infrastructure. A related challenge came in demands to make contributions to the cumulative impact of several developments but where the development in question made only a limited impact itself. This raised both legal and practical issues which led to tensions and sometimes meant the funding had to be returned.

These discussions raised the more general question of whether S75 was intended to be more directed at mitigation rather than more general requirements. In this context it was suggested that there was a need for clarification of what could legitimately be funded by S75 and statements such as: by a participant

“For strategic infrastructure delivery, Section 75 is not the right piece of legislation”.

5.3 The negotiation process

The ease of negotiating contributions depends significantly on the clarity of local plans. There was general agreement that there was reasonable clarity about affordable housing requirements but far less about other infrastructure. In part, these issues were seen by participants and interviewees as an outcome of national policy:

“At the moment it is hard to get the clarity up front at the plan stage because so much of that policy has not been finalised or comes in later at statutory guidance (which will be removed soon)”.

A rather different issue related to the scale and complexity of the site. Where there are multiple landowners and developers, and many lawyers are involved, the negotiation process is particularly difficult. Equally, however, these are often large-scale sites where the amount potentially available depends on getting the details right.

They are also the sites where it is likely that the configuration of infrastructure provided in the initial stages might significantly modify the potential of the site leading to the need for renegotiation.

There was considerable concern about the extent of uncertainty around the negotiation process, with both developers and local authorities arguing that the process can be unnecessarily bureaucratic and has been developed in an ad hoc manner.

5.4 Coordinating planning and development

Many participants stressed the need for clarity in local plans and supplementary guidance, saying it helped infrastructure providers, for example water and transport, to know where developments would take place and to plan their capital programmes accordingly.

Infrastructure providers stressed the need for local plans both to underpin a sustainable approach to services in terms of the locations of new development and to provide clarity about what was required from developer contributions. This necessarily involves co-ordination between authorities and infrastructure providers and between local authorities. It also needs local authorities to have better databases.

The problem of funding and coordinating infrastructure to meet sub regional needs and also to unlock long term development sites is central to these relationships. In this respect participants described how local authorities are beginning to collaborate more with each other and with providers and funders to secure this longer-term infrastructure.

Some argued that it was necessary to bring in at an early stage more of the experts in funding, financing, quantity surveying, cost assessment, civil engineering and development appraisal.

There was a general view among infrastructure providers that while 'Infrastructure First' was a desirable objective, it was not yet working in practice. Some argued that there has never been any meaningful alignment between their investment programmes. This was in part because the cycles of plan-making do not align with government funding, but more generally because there was no certainty about which sites would actually be developed and scale of development over a plan period. Others suggested that the development planning system is changing and will continue to change and that the move to 10-year plans might make the prediction element much more difficult.

There was considerable tension expressed with respect to the relationships between local authorities and infrastructure providers because of the different legal and regulatory environments in which they work and their different priorities. There were also practical issues in terms of funding collection and ensuring the infrastructure was in place within the necessary five-year timespan. All thought effective collaboration between authorities and providers was a highly desirable objective but making it happen was very much still a work in progress. This frustration is perhaps well summarised in this statement by a planning authority:

“It is one thing for a council to try and develop an infrastructure plan, all the parts of the infrastructure need to be linked up. The systems which should be in place to create these links are very unsophisticated, and it is hard to share plans between different projects which may well affect each other. We made some attempts to get the utility providers more involved and trying to look at longer term plans. I was surprised at how unsophisticated some of their forward planning processes are as well as the information and how it is held”

Equivalent, if less detailed, concerns were obvious among representatives from infrastructure providers.

These problems were exacerbated in the context of sub-regional investment. The discussion reflected on many attempts to develop better working relationships but also concern that there needed to be a better framework and indeed more funding. Contributions could not pay for everything.

There was considerable discussion about potential opportunities. One suggestion put forward by planners was that there be a national plan; another was that planners should become deliverers supported by government funding. Developers on the other hand saw the potential for institutional investors to bring in longer term and cheaper funding than that available through the public sector.

5.5 Affordable housing

Participants thought developer contributions were a very important mechanism for delivering new affordable housing. However, developer contributions did not work everywhere – notably on complex or brownfield sites and in low land-value areas. A number of authorities took the view that they needed development to be concentrated on increasing economic activity and did not seek affordable housing through developer contributions.

Agreement on securing affordable housing is often relatively straightforward significantly because of policy clarity. The figure of 25% affordable housing across Scotland is well understood and there is a degree of certainty around this. This helps to avoid some of the parallel problems found in England. In some higher valued areas local authorities do ask for – and obtain – higher proportions with developer agreement.

Most local authorities have clear statements of what affordable housing will be required (normally as social housing), so it is possible for developers to estimate the cost of the contribution and bid for land on that basis. This also covers the details of the housing mix. The subsidy available and the rents to be charged are also known. All of this makes negotiation easier.

However, there were concerns expressed that because the agreements were usually made between the developer and the planning team in the local authority, others who needed to be involved in implementing the agreement (notably the housing department and the housing association) often came too late into the discussion.

Much of the success of this aspect of developer contributions is seen to lie in the potential to obtain on-site serviced land normally transferred to the housing association either at nil price or often at a fairly nominal figure. Alternatively, the dwellings may be built by the

developer and the affordable housing transferred as completed units at an agreed price. Without this opportunity to access cheap land, housing associations felt that they would have no chance of being able to find suitable land at acceptable prices. In other words, the capacity to negotiate land as a developer contribution makes the affordable housing work in higher valued areas in a way which cannot be achieved simply through subsidy.

There are areas where 25% is seen as unachievable either because of site specific reasons or more generally because in lower valued areas the site would become non-viable. On greenfield sites, 25% is generally regarded as acceptable.

There are also some instances where both local authority and developer are happy for the provision to be off-site--even in another authority area--notably in rural locations. On the other hand, there was concern that in some rural areas, where new affordable housing was concentrated in a few sites, the location of the affordable housing might not correspond to demand.

All these issues are formally a matter for negotiation between the local authority and the developer. Housing associations are rarely involved directly. It is up to the developer to decide whether they want to bring in a preferred housing association early on in the process, or whether the ultimate owner should be identified before these negotiations take place.

Another element in the negotiation process relates to the mix of affordable housing provided. Some authorities require all of the housing to be transferred to the authority itself as council housing; others want all the housing to be social rented; others accept a mix of mid-market and affordable homes. There may also be negotiation about timing – e.g. it may be agreed that the affordable housing is built early in the development process to support cash flow. The negotiations appear to affect the financial value of the contributions made by developers on individual sites rather than the number of affordable dwellings provided on these sites

The same appears to apply to the mix of dwellings provided with respect to the number of bedspaces, rooms, accessibility and outdoor space. Negotiations relate to identified need, and again appear to affect the value of the contribution more than the numbers of units provided. However, while most participants felt these housing needs were well understood, others thought there was a general lack of clarity around exactly what was needed both at national and local levels.

Finally, participants argued that in general trade-offs were not made between affordable housing and other infrastructure provision. The affordable housing requirement was generally clearly specified; infrastructure requirements were discussed separately and were not seen as directly resulting in less affordable housing being provided.

5.6 The importance of grants

The starting point for decisions about the numbers and types of affordable housing required is the local authority's Local Housing Strategy. This is supported by an annually updated Strategic Housing Investment Plan setting out the local authority's view of affordable housing delivery priorities over a rolling 5 year period. Affordable housing receives central government grant which provides considerable longer-term certainty to providers. It was suggested that on average these grants cover between 48% and 50% of the cost per unit, leaving the rest to be found by the housing provider, including housing associations, potentially supported by developer contributions. Some authorities however felt that there was no need to ask for contributions, as the subsidy was enough to enable the required proportions of affordable housing to be provided. However, they saw the potential for securing developer contributions were grant rates to be reduced in the future.

Later interviews confirmed the importance of grants and how they both helped to keep rents low for tenants and helped housing associations acquire land and/or completed dwellings. Contributions on the other hand were designed to allow affordable housing to come forward on sites and in areas where either land would otherwise not be available and/or where affordable housing would be too expensive to build without support. In some areas developer contributions are seen to make higher proportions of affordable homes possible. In others, even with both grant and contributions, only small proportions can be achieved. This was notably the case in higher cost rural areas. Contributions could also allow higher numbers of affordable homes to be provided off-site through commuted payments.

There was however some concern about the interaction between the two forms of assistance. It was clear from interviews and policy that benchmark subsidy rates as well as actual subsidy levels are determined centrally and take no direct account of the potential for contributions. This is seen as wholly a local issue.

Asked whether grant tended to offset some of the reduction in land values arising from developer contributions, roundtable participants argued that grant was necessary to ensure viability and deliver the amount of affordable housing required and that landowners did not gain financially. Some however felt there was an effect on land values and perhaps even on developer profits. One participant, from a housing association, made the point that without grants, housing associations would pay less for completed units and developers would have to pay less for land to maintain the viability of their schemes.

5.7 SME builders

Roundtable participants suggested that the negotiation system disadvantaged smaller builders, whose financing model differs from that of major developers. In particular, they must usually pay for the land upfront before any negotiation can take place, and they

cannot spread risk by diversifying across a range of sites. Negotiations are of course necessary attributes of the individual planning permission system, but negotiating developer contributions was seen as adding a further layer of complexity.

5.8 Challenges for policy and practice

Participants raised a number of issues related to government policy and guidance as well as the impact of recent court cases and reporter decisions on planning appeals.

The most general issue raised by everyone who took part is whether contributions should be restricted to mitigating site-specific externalities or should fulfil wider objectives, such as providing sub-regional infrastructure or dealing with the cumulative impact of several developments. Some noted their frustration that the Infrastructure Levy had not yet been implemented.

There was concern that S75 has been stretched too far, especially on large-scale developments, in order to cover these sub-regional and cumulative development requirements. Participants felt that court cases had helped to clarify what was and was not allowed under S75.

A significant additional concern raised was how to address the need for upfront funding to provide the required infrastructure well before contributions were payable. There was also concern about inequities between developers with respect to the ordering of their contributions unless there are equalising arrangements put in place. Not entirely surprisingly, one suggested way forward was to reduce risks by providing upfront public investment to enable large developments to get underway.

5.9 Conclusions; is the contribution approach worthwhile, and how can it be improved?

Most of the participants in the roundtables and our interviewees thought the system worked well, although more collaborative working and greater clarification on requirements would improve things. They also thought that the public sector might need to take on more risk.

As one private sector participant put it:

“...Section 75 is a well-established system, it has stayed in place for a long time and people are getting better at using it... There is only so much contribution you can extract from a development before its unviable. Section 75 has the flexibility to let local authorities be in charge of what they choose to seek contributions to and/or whether they can get enough contributions to support it. Other systems have less flexibility”.

A local authority participant agreed that authorities also needed to change

“Clear and consistent guidance would help. It has been heartening to see consensus today. We as councils need to get better at the infrastructure plans and what education contributions are likely to be. Room for improvement but working reasonably well”.

Despite feeling that contributions worked well, many participants also wanted a more strategic approach to infrastructure funding, especially for large and complex sites and for sub regional infrastructure. They also wanted more and better integration between development and infrastructure plans. Some also thought there needed to be new ways of dealing with upfront funding and others expressed frustration that the government had not yet implemented the Infrastructure Levy.

6. The Value of Developer Contributions

6.1 Introduction

In this chapter we explain the methods and data used to estimate the value of developer contributions where these have been made under formal legal S75, S48, and S69 agreements. Using evidence from the local authority survey (see Chapter 3) on the agreements made with developers including on the numbers of new affordable homes agreed as well as agreements related to infrastructure provided in kind or in cash by developers, we first estimate the value of the contributions made for affordable housing in the three years from 2017-18 to 2019-20. We then use the more limited information that we were able to obtain through the survey on the contributions made by developers towards infrastructure to estimate the value of the latter contributions agreed in 2019-20. Together these two calculations enable us to make an estimate of the total amount of contributions agreed in the year 2019-20 covering both affordable homes and infrastructure...It is not possible to estimate the value of contributions that arise from developers meeting specified planning conditions as information on what is implied in terms of financial commitment to comply with the conditions will not be recorded.

6.2 Methods for valuing contributions to affordable housing

The following are the steps taken to make the estimate. The method follows the principles adopted in valuing contributions in England (Crook et al, 2016; Lord et al, 2020) and also draws on helpful advice from Rettie & Co, developers, local authorities and housing associations as well as government officials

Contributions are of three kinds:

- (i) Developers provide serviced land to affordable housing providers (principally registered social landlords) with the contribution being the value of the serviced site less any payment from the association. Our case studies, roundtables and interviews with key informants suggest that the land is usually transferred at nil consideration (but sometimes for a nominal £10k a plot).

There is no published data on land prices in Scotland so we had to calculate land prices ourselves. We did so by valuing the nil consideration as the difference between the residual value of land (i.e., what a developer would pay to a landowner) when all homes are market ones and when only 75 percent are market homes. The difference between these two residual values represents the 'contribution' made by the landowner when a 25 percent affordable housing requirement is in place. This make no allowance for any transfer of value to developers or landowners or indeed infrastructure arising from the availability of

subsidy, except to the extent that we have calculated what the value might be if £10k is paid for each plot.

We calculated the residual value for the full market site as the gross development value derived from a 105 dwelling 3-hectare site based on average house prices for newly built homes in each PA less all the costs of building the homes, servicing the site, all fees, marketing costs and financing and developers' profit. We calculated the residual value of the site with a 25 percent affordable housing requirement as the gross development value from 79 new homes (i.e., 75 percent of the site) less all the costs of constructing and selling these plus the costs of servicing the site for the 26 affordable homes.

- (ii) Developers sell completed units to registered providers and local authorities that can be used for social rent, mid-market rent, shared ownership, shared equity or discounted market homes. In these cases, the developer's contribution is the difference between the market price for the completed homes and the price paid by a registered provider. We calculated what registered providers could in principle pay for rented units by estimating the discounted net rent over a 30-year period as the debt the provider could afford to repay and adding to this the grant for a 5-person dwelling, taking account of the variations between each local authority in rents and grant. We recognise that many registered providers could pay more than our estimate to buy by borrowing more cheaply or using their reserves but we have no information on either of the latter. The numbers of shared ownership and shared equity were so small we simply included them as equivalent to mid-market rental units.
- (iii) Developers have sometimes been required to include market homes to be sold at a discount from full market price as part of their affordable housing obligations. We assumed in our calculations that discounted market sales were made at 70 percent of market prices for newly built homes in each local authority.
- (iv) The above calculations provided us with an estimate of the contributions per dwelling agreed. These were then used to calculate the total amounts per PA for each type of contribution using the data provided in our survey on the numbers agreed and whether these contributions were in the form of serviced land or completed units (and the tenure of the latter). Because not all PAs were able to provide these data we grossed up the totals to provide an overall estimate for Scotland taking account of the 2021 mid-year population of responding and non-responding populations

- (v) Commuted payments made by developers to local authorities as alternatives (or in addition to) the above. We asked all PAs to provide us with information on the sums agreed as commuted payments for affordable housing. Four were able to provide information on commuted payments towards affordable housing which had been agreed in 2019-20 totalling £1.8m. Five were also able to tell us about commuted payments for all types of affordable homes received in 2019-20: they received £8.5m in all.

6.3 Estimated value of developer contributions for new affordable homes in Scotland in 2019-20

Table 6 below shows the results of our estimates, based on the approach set out above and assuming land was transferred at nil consideration.

Table 6: Value of developer contributions agreed for new affordable homes in Scotland 2019-20

Type of contribution and dwellings (grossed up survey totals)	Estimated grossed up national total (£m)	Proportion of Scotland from top five local authorities#
Transfer of discounted land to registered provider for 2,700 dwellings*	82	45
Sale of completed units to registered providers for 1,150 social rented homes	161	44
Sale of completed units to registered providers for 505 mid-market rented homes	42	33
Sale of 180 market homes at discounted prices	15	44
Total	300	43
Commuted sum agreed with four LAs in 2019-20	1.8~	
Commuted sum for all uses paid to five LAs in 2019-20	8.5~	

*Note: all dwelling numbers rounded to nearest ten as these are grossed up numbers.

#Note: the top five local authorities in a ranking of authorities by total value of estimated contributions.

~Note: not grossed up.

If instead of developers transferring land to registered providers at nil consideration, the latter paid an average of £10k per plot the value of the developer contribution in the first row would be reduced to £54m.

Tables 7 and 8 (below) show our estimates for the years 2018-19 and 2017-18. We have no information from our local authority survey on the amounts of commuted payments agreed and received for these latter two years but taking the totals for discounted land and for completed units only we can see that the total sum agreed rose from £220m in 2017-18 to £300m in 2019-20 an increase of about a third over that period, reflecting a growth in numbers agreed as well as in the underlying financial variables used in our estimates including house prices and rents.

Table 7. Value of developer contributions agreed for new affordable homes in Scotland in 2018-19

Type of contribution and dwellings (grossed up survey totals)	Estimated grossed up national total (£m)	Proportion of Scotland from top five local authorities
Transfer of discounted land to registered provider for 1,900 dwellings*	66	48
Sale of completed units to registered providers for 920 social rented homes	147	48
Sale of completed units to registered providers for 220 mid-market rented homes	27	47
Sale of 130 market homes at discounted prices	11	47
Total	251	48

*Note: all dwelling numbers rounded to nearest ten as these are grossed up numbers

Table 8. Value of developer contributions agreed for new affordable homes in Scotland in 2017-18

Type of contribution and dwellings (grossed up survey totals)	Estimated grossed up national total (£m)	Proportion of Scotland from top five local authorities
Transfer of discounted land to registered provider for 1570 dwellings*	57	51
Sale of completed units to registered providers for 790 social rented homes	131	50
Sale of completed units to registered providers for 240 mid-market rented homes	30	49
Sale of 30 market homes at discounted prices	2	50
Total	220	50

*Note: all dwelling numbers rounded to nearest ten as these are grossed up numbers

The five authorities contributing approximately between four and five in ten of all contributions are in the central belt: City of Edinburgh, East Dunbartonshire, East Lothian, East Renfrewshire, and Midlothian, where high land values can support the provision of affordable homes (and still leave room for infrastructure contributions where they have been sought by the PAs) while ensuring the developments remain viable. This is consistent with the evidence presented in chapter 3 which showed very high proportions of contributions concentrated in the higher priced areas of the country. In these authorities the value of the developer contributions of serviced land amount to an average of 32 percent of the land value with planning consent in those authorities but without any developer contributions. Were all other PAs to have met the 25% requirement it would have taken 85 percent of land value. This reflects how little has been, and possibly can be, captured from land values in the rest of Scotland were the objective to support a 25 percent affordable housing contribution. Indeed, our estimates produce negative land values in several of these authorities indicating that if affordable housing is required the percentage must be much lower than a quarter of residential sites. Taking the figure for 2019-20 on the total value agreed of £300m (apart from commuted payments) this equates to an average of £9.3m per PA.

6.4 Valuing contributions to infrastructure

We have been unable to estimate the level of all contributions to infrastructure directly as PAs (for reasons explained in Chapter 3) did not retain this information in the form requested or could not access the data we needed. Our intended approach was to collect

information under types of contribution (land, in kind contributions, and direct financial payments) and for each type of contribution (i.e., for education, open space etc.) together with totals but this proved impossible.

We are therefore using the limited evidence that we received from about a third of all authorities to make some estimates under heroic assumptions.

There are three types of developer contributions towards infrastructure:

The first is the value of the land transferred to PAs (e.g., on which to build a school). To estimate this, we needed information of the amounts of land transferred and land values. However, we were unable to collect information of the hectares of land transferred from PAs from our survey. Therefore, we could not use the residual land values we had calculated for housing to make an estimate.

The second type is the value of financial contributions for agreements which provides the value directly.

Third is the value of in-kind agreements e.g., the transfer of new school classrooms built by the developer. This can be estimated indirectly by assuming that the average value of financial contributions per agreement for each type of contribution is equivalent to the value of the in-kind contribution (this is the approach taken in similar work in England based on detailed analysis of samples of agreements in PAs there).

Unfortunately, PAs were generally unable to break down the numbers of agreements by contribution type, did not have records available on the in-kind contributions agreed, nor on the land given by developers. Hence, we have been unable to place a value on in kind infrastructure contributions.

We also have no evidence on the amounts involved in meeting planning conditions where developers are required to ensure infrastructure is provided on the site where permission has been granted which, while technically not contributions, also impact on what is possible to capture from land values where the developers pay for, or provide in kind, the infrastructure specified in planning conditions.

6.5 Our estimate of financial contributions to infrastructure

Some PAs were able to provide us with data on the value of financial contributions agreed for the most recent financial year.

As is shown in Table 9 the total value agreed by the 13 PAs who had data with both the numbers of agreements and the value showed that there had been 483 agreements involving financial contributions to infrastructure which were valued at £80.8m or £6.2m

per PA. (with a range of £141k to £31.2m). Fourteen PAs told us about the total number of agreements (563) but only 13 could provide evidence on their financial attributes. It is notable that the same five authorities that agreed a large proportion of affordable housing contributions (see above) also secured 79 percent of the reported value of infrastructure contributions out of the 13 PAs who were able to provide us with data on what was agreed.

Table 9: Value of financial contributions to infrastructure in 2019-20

Financial contributions to Infrastructure	Total sum agreed or paid to PAs providing information (£m)	Sum per PA providing information (£m)	Grossed up total for Scotland (£m)
Contributions agreed with 13 PAs in 2019-20	80.8	6.2	179
Contributions received by 9 PAs in 2019-20	54.5	6.1	186

Only 9 PAs were able to estimate the financial contributions received in 2019-20 (which cover funding from earlier agreements made in the past) for infrastructure. These nine PAs estimated they received £54.5m in total for infrastructure (an average of £6.1m per PA).

Using the same population-based method that we used for affordable housing we grossed up these totals to the whole of Scotland. Of course, because we only have data from a third or less of all PAs the estimate has a much lower confidence level. However particularly because it includes most of the largest, most active, authorities it is probably in the right ballpark.

6.6 Conclusions

Taking the grossed-up figures for affordable housing and infrastructure agreed together – the overall figure is £479m – i.e., nearly half a billion pounds. This equates to a contribution from developers worth £30,500 for each private sector house completed in Scotland in 2018-19. In England in 2018/9 the comparable figures were roughly £7bn of which £2 billion were for infrastructure and worth £50,400 per private house completed (but in England all contributions to infrastructure were valued). Per head of population this suggests Scotland is agreeing around 85% of that agreed in England. Moreover, the

estimated split between affordable housing and infrastructure is around 65:35%, while in England it is roughly 70:30. These suggest that the systems are working in relatively similar ways.

7. Summary of the Evidence, Implications and Conclusions

7.1 Introduction

In this chapter, we first bring together the evidence presented in the preceding chapters and their associated appendices, to integrate our findings from the range of methods employed. We then bring out the implications of these findings and present conclusions with respect to the topic of this report: the value, incidence and impact of developer contributions.

It is worth noting that many of the themes that have run through the survey, the case studies, the roundtables and the interviews are not new. They have been discussed in many different ways at many different times – as is reflected in our literature review. This report however goes further by bringing the themes together in a systematic way; setting out additional evidence on how the system is working; and providing estimates of the value of developer contributions for both affordable housing and infrastructure over the last three years..

7.2 The Evidence

7.2.1 Policies and Plans

Our survey showed that over of 90% planning authorities (PAs) have policies with respect to developer contributions. Some apply across the PA others to specific areas. Some 80% use contributions on a regular basis and all but six authorities have used them at least once in last three years. Our survey results indicate greater use of developer contributions as proportions of all planning permissions than in earlier surveys. Eight percent of permissions had agreements over our survey period (2017-18 to 2019-20), with an average of 51 agreements per PA over the three years. There was a big range in these numbers, with seven PAs reporting fewer than five agreements over the three years but another six having 100 or more. The majority of PAs have policies embedded in local development plans (most adopted in the last four years) and in supplementary guidance. Affordable housing requirements are set out in local development plans whilst infrastructure needs are often also dealt with in supplementary guidance. Our case-study PAs tended to use an approach which assesses what is needed for each individual development to calculate and specify the contributions that are required. Developers generally support this approach because the system then gives certainty and transparency. Also, just under two thirds of PAs use standard charges for many requirements such as education.

Our case studies showed that developer contributions are shaped by the political priorities of planning authorities, the land values/house prices in their areas and existing

infrastructure capacity. The four case-study PAs considered as part of this research, reflective of the range of urban morphologies across Scotland, have policy and guidance on developer contributions that have evolved over many years with changing priorities and markets. However, some PAs where developer contribution policy is much less established rely on other mechanisms particularly planning conditions. For example, three of the four case-study areas make extensive use of Section 75 Agreements (S75s) to obtain developer contributions, but the fourth principally uses planning conditions.

Our survey confirmed many PAs use planning conditions extensively, partly as a substitute for S75 agreements which may take time to be negotiated and completed before planning permission can be granted. Conditions impose implicit rather than explicit financing obligations on developers and (in the case of suspensive conditions) must be met before development commences. Many PAs said planning conditions were better than S75 for securing transport improvements made necessary by the development, especially because they avoid the need for negotiation and therefore save time.

Looking at types of agreement, planning authorities generally preferred to use S75 over S69, as it was thought that only S75 can 'run with the land' and therefore bind successors to title when development land is sold on by the original applicants for planning permission. In the case-study PAs, S75 is the main means of securing developer contributions and tends to be used on sites where education contributions/provision and/or affordable housing are required. On smaller and less complex sites, S69s were also used. This was confirmed by our survey, with PAs reporting that S69 was used for smaller contributions (often paid 'up front' by developers), while S75 was used for more complex negotiation and where agreements needed to 'run with the land'.

Most PAs have policies to seek new affordable homes through contributions, often seeking a 25% contribution on development sites; those that do not have these policies suggest that the subsidy is adequate for them to meet their affordable housing targets or that supporting economic activity must take priority or that viability problems preclude securing them through developer contributions. Some insist on which affordable housing provider developers should partner with and some specify tenure, and transfer prices of land and completed units. But more generally, while the contributions are negotiated between the PA and the developer, the amount that affordable housing providers pay for land or completed units is normally left to discussion between developers and providers.

The survey shows that PAs have given permission to around 33,000⁷ new affordable dwellings over our three-year study period (and on a rising trend), of which a quarter to a third were to be delivered by developer contributions. The affordable housing delivered through developer contributions was mainly social and mid-market rent and contributions

⁷ These figures are grossed up for non-response.

were mainly in the form of discounted land, but also discounted completed units and commuted payments. These are agreed almost wholly on residential development sites, with little coming from commercial developments.

Overall, only between 8% and 10% of all new homes permitted were new affordable homes to be delivered via developer contributions, suggesting that the 25 percent target was only being secured in a few PAs with high need for these homes and possibly only on larger sites. When we analysed the figures by house-price quartile, we found that PAs in the highest house-price quartile secured about 25%, a figure which rose over the three years we studied. However, in the PAs in the three lower quartiles, the percentages of affordable homes via developer contributions were in low single figures.

The survey also suggests there has been more integration of development plans with infrastructure plans than earlier studies examined in the literature review. Eight in ten PAs now have infrastructure action plans and two-thirds of these were costed and evolving over time. Half of all PAs also have an infrastructure plan. But whilst PAs state that they always involve other council departments when drawing up plans, they only sometimes involve infrastructure providers. On infrastructure, PAs seek contributions principally for schools, roads, open space and sporting facilities. Developer contributions were expected to contribute only a small amount to overall infrastructure needs in the year succeeding our survey, but PAs indicated that they expected these contributions to grow over the next decade so as to eventually cover over 40% percent of needs.

7.2.2 Practice

All those involved in affordable housing (PAs, developers and housing associations [HAs]) made it clear that what made developer contributions so important was access to land through on-site contributions – they saw it as the core issue. We also heard evidence that negotiations were between developers – who had to decide what could be afforded for the land – and planning authorities; HAs were not usually involved in detail. In general, there was agreement that there was reasonable clarity about affordable housing requirements (although there is also a problem about estimating housing needs as local authority boundaries did not coincide with housing markets and thus risk understating need). There was seen to be far less clarity about other infrastructure.

Our evidence identified several challenges to the integration of plans and infrastructure. These include establishing a logical timeline for needs, costs and expenditure commitment. In addition, some requirements can be difficult to justify, for example, formulae requiring contributions for education from housing that is mainly for single persons.

Our case studies showed that local authorities' action plans and those of infrastructure providers are not as well integrated as they could be. We heard, for example, about allocated sites having insufficient water infrastructure, which impacted on site viability.

Many of those we spoke to complained of inadequate planning and cooperation on infrastructure of all types, saying this was partly because government money was needed to make sub-regional and regional infrastructure plans work and City Deals only very partially addressed these needs. In addition, PAs' local development plans and supplementary guidance were often not well evidenced on infrastructure in relation to site allocations. This created serious problems for integrating land use with infrastructure providers' capital programmes and for case work on planning applications (including on windfall sites). We heard that local authorities need better databases and to make better use of GIS.

A different issue related to the scale and complexity of sites. Where there are multiple landowners and developers and many lawyers are involved, the negotiation process is particularly difficult. Equally, however, these are often large-scale sites where the amount potentially available depends on getting the details right.

PAs tend to see S75 as appropriate only for site-specific mitigation, such as improvements to local junctions and educational facilities. Many referred to 'creep' compared to earlier periods, with imposition of S75 requirements that were neither in adopted plans nor supplementary guidance. These extra demands – made comparatively late in the planning process - could compromise agreements made between developers and landowners based on the original specification. Participants said this added complexity and delay to discussions and negotiations. There was uncertainty about the legitimacy of using S75 agreements for some forms of infrastructure such as primary health care provision.

Some authorities have used S75 to secure contributions towards sub-regional infrastructure which deals with the needs of a wider area than just those related to the specific site being developed. Even where developers have been prepared to pay for this sub-regional infrastructure, some Reporters, on appeal in relation to other counts, have struck down such agreements.

Existing mechanisms including S75 were also felt to be ill suited to addressing the cumulative impact arises from series of small-scale developments, where each may individually have a limited impact but together, over time, their effects (particularly on the demand for transport infrastructure) are significant.

The case studies demonstrated the importance of negotiation, especially on complex sites where viability is weak or has weakened, or on sites where PAs especially want to encourage development, perhaps because they are important for future housing supply or

employment. Our case-study authorities sometimes interpreted policy flexibly, particularly to support development viability. For example, some were willing to consider allowing developers to reduce their affordable housing requirement below 25% or to contribute to affordable tenures other than social housing, which is of course consistent with government guidance and should reflect housing needs.

Although negotiations (and re-negotiations) can cause delays, the case study evidence shows that they are by no means the only reasons for delay. In any case, there is a distinction between delays caused by the normal negotiation of developer contributions (which may be unavoidable), and those arising from strategic negotiation or a lack of PA capacity (which possibly are avoidable).

Because of the importance of negotiation (especially of S75 agreements), personal relationships are critical. PAs with greater resources, experience and skills, as well as a good knowledge of the development process, tended to have better relationships with developers/landowners, which facilitated reaching agreement. Similarly, developers and landowners who appreciated local politics and priorities found it easier to engage with PAs.

There was some evidence that Small and Medium Enterprise (SME) developers found the system more difficult than larger firms. The system's reliance on negotiations, and the consequent costs, disadvantaged smaller builders who have a different financing model from the major house builders. In particular, they must usually pay for the land upfront before any negotiation can take place and cannot spread risk by diversifying across a range of sites.

Not all developers accept PA policies without demur. Even where policy seemed clear and provided the basis for engagement by the development industry, some developers and their advisers have challenged underpinning evidence--citing, for example, changes in circumstances and timing considerations.

7.2.3 Delivery

The survey showed that only half of PAs have staff specifically tasked with monitoring the delivery of contributions. Over half of local authorities responding said they checked delivery of contributions through site visits while 20% had a digital alert system. PAs reported several other monitoring methods including liaison with building standards departments, requiring developers to provide sales statements and cross-checking council tax payments. Our survey responses also indicated how challenging this monitoring of contributions is. This was reflected in the difficulty many authorities had in answering questions about numbers of agreements and the value of contributions.

Nonetheless, nearly two-thirds of PAs said contributions were mostly delivered and a quarter that they were always delivered. Only a minority of agreements (just over 1 in 10)

had been renegotiated, and in those cases this was mainly in relation to revised planning applications. About 80% of requests for renegotiations were granted. Renegotiations have not become more common. PAs said their key challenges were in addressing viability, seeking contributions to deal with cumulative developments, getting payments made when development was delayed and the fact that the market was not strong enough to support what they needed. Only a minority of PAs thought putting agreements in place was difficult (although a third did think so), although most thought the process did delay the granting of planning permission.

Our survey painted a picture of a system that was broadly working well, but the case studies, roundtables and interviews suggested a more complex and challenging landscape in which there was tension about both requirements and viability. In terms of affordable housing, those involved with developer contributions see the system as also one that works reasonably well – although it could always be improved. Contributions are well embedded and understood, and what was agreed was largely delivered, unless a site did not go ahead or there were major changes in the specification for the site. However, developer contributions did not work everywhere – notably on complex, brownfield sites and in low land-value areas.

Approximately 12,000 new affordable homes were completed over our three-year survey period, of which just under 5,000 were via developer contributions. Our evidence of what was delivered in that period indicated that the equivalent of 60% of what had been agreed via S75 etc. over the three years was delivered during those years. Our survey evidence from local authorities suggested that it took about two years for agreed affordable homes to be delivered. Where we had data from PAs on both agreed and delivered affordable housing via developer contributions, these percentages were as high as 80%. Half of the homes that were agreed were for social rent and 17% percent for intermediate rent; 61% were to be delivered via discounted land and almost all the rest via discounted completed dwellings.

The case-study evidence confirms the survey findings that developers in areas with higher land values can and do contribute more affordable housing. Variations in market conditions explain differences between PAs in what is sought, what can be agreed and what is ultimately delivered.

Our evidence thus shows that securing affordable housing through developer contributions is relatively straightforward in high-value areas because of land values, policy clarity and (generally) consistency in application, plus the availability of grants. Market conditions in some PAs mean they can get more than the national target of 25%. In other areas, grants are high enough to avoid the need for S75 contributions, but these are often insufficient on brownfield sites, notwithstanding the flexibility that enables higher grants to meet such costs. Grants for affordable homes are important to delivery, but the grants regime is

separate from the system for securing developer contributions, with benchmark grant rates varying little across the country. This generates the risk that grants may in part be substituting for contributions which results in land not bearing the full cost. This can arise when the combination of grants and debt financed by rents enables providers to pay a sum for land or completed homes above that which developers would be willing to accept. In these cases, grant might be better focused on helping to fund provision where land values are inadequate or development costs are high. Some PAs did not seek developer contributions towards affordable homes because they had other priorities, especially in terms of developing brownfield sites and other areas needing regeneration and increased economic activity.

The most effective way of using developer contributions for affordable housing was seen to be through the provision of on-site serviced land, which was normally transferred to a housing provider (ie a housing association or council) at nil price, although sometimes with a small payment. Alternatively, the dwellings might be built by the developer and the affordable housing transferred as completed units at an agreed price. Without this opportunity to access cheap land, housing providers felt they would be unable to find suitable land at acceptable prices, especially in higher value areas.

Developers may be required to contribute not only to affordable housing but also to various types of infrastructure. We found no evidence of trade-offs between the two categories: affordable housing requirements were generally clearly specified, and any infrastructure requirement would not result in less affordable housing being provided.

The survey indicated that renegotiations were rare, that reaching agreement generally caused little difficulty and that most agreements were delivered. However, much of our other evidence suggested that getting agreements and contributions on infrastructure was more problematic than securing affordable homes. This may in part be because the survey covers all PAs, while evidence from the case studies, roundtables and interviews was more specific. Further, 'creep' may bring in additional requirements and increases complexity and negotiation.

Renegotiations can be caused by market changes, so that what was once possible in some areas became no longer possible. Contributions are normally paid out on a 'drip of sales' basis, so developers could face difficulties meeting agreed payments when market conditions changed; this could cause difficulties where PAs had already committed to providing, say, a new school. As a result, some PAs are extending their use of forward funding, while others are exploring new front funding mechanisms. However, more general constraints on local government finance limit their capacity to use such mechanisms.

Some developers (especially in high value areas with buoyant markets) wanted to reach agreement as quickly as possible, even if that meant accepting higher contributions, so as

to get on site faster. But in all cases, they wanted ‘certainty’ and ‘no surprises’ so the land value could be adjusted accordingly.

Despite the occasional problems of renegotiations leading to lower contributions, PAs responding to our survey said that they were optimistic that contributions would cover more infrastructure needs in future (often considerably more) than they do now. However, we have seen no clear evidence of successful planning and implementation to secure those higher aspirations up to now – except in those areas with both good cross-boundary collaboration between PAs and high land values.

There was general agreement that contributions were basically paid by the landowner provided there was clarity about the required affordable homes and/or infrastructure in local development plans and guidance. If plans were unclear, it made it more difficult for developers to structure their estimates of what to pay for land.

Where there is policy clarity and consistency in its implementation and a limited number of ‘players’, the evidence suggests that agreements are readily reached by the parties involved, but when the market changes and where there are many parties this can be much more difficult.

Our research focused on the decisions taken by planning authorities and developers. Equally important, but not covered as extensively in this study, are the questions of how landowners decide when to sell; how they assess how much their land is worth; and whether these vary by landowner type. Our evidence does show that residual values were generally far above current use prices for agriculture.

7.3 The Value of Developer Contributions

The available data made it possible to estimate the value of contributions to the provision of new affordable housing with reasonable confidence. However, it was more difficult to do so for contributions to infrastructure with the exception of direct financial payments made by developers. We were able to make an estimate of the proportion of land value that was ‘captured’ for developer contributions to affordable housing as we had enough information to estimate all these latter contributions. We could not estimate the proportion of land value captured from contributions to infrastructure as we only had limited information on these contributions.

Developers contributed to new affordable housing in four ways: (i) the sale of serviced land to housing associations and other registered providers; (ii) the sale of completed homes for social rented and mid-market housing; (iii) the sale of market homes to homeowners at a discount; and (iv) commuted payments where developers made direct financial payments that local authorities could use to secure affordable housing in other ways and on other sites.

Our estimates suggest that developers agreed in 2019-20 to contribute just over £300m in land, completed units and discounted market homes through developer contributions and that, in addition, small sums were agreed (and delivered) in commuted payments.

A significant proportion (40% plus) of each type of contribution was agreed by just five local authorities (all in the central belt of Scotland) and in these authorities we estimated that 30% of the market land value for housing was captured for these affordable housing contributions. These are also the authorities where 25% targets were generally being agreed. In other authorities achieving such targets would mean securing very much higher proportions of land value. What was achieved was therefore much more limited either to maintain viability or because affordable housing needs were much lower.

We estimated that local authorities also agreed with developers that they would make financial payments towards infrastructure of just under £180m in 2019-20 and that in the same year they received just under £190m in such payments (from agreements made in all preceding years) towards the provision of infrastructure.

Taking these two estimates (for affordable housing and infrastructure) together suggests that nearly £500m worth of contributions were agreed in 2019-20. On the top of that total there will have been other contributions specifically through the provision of land for infrastructure and in-kind contributions (e.g. of a completed building such as a community hall or a new school) but we are unable to make estimates of such contributions.

Taking account of the elements that cannot be included which are included in the English figures our estimate of £500m is in the same ballpark per head of population as the total of £7bn agreed in England in 2018-19 from all developer contributions - suggesting that a fairly similar system generates fairly similar results.

7.4 Implications

7.4.1 Are contributions an acceptable approach?

The contribution approach is clearly acceptable to PAs; only two authorities did not have formal policies, and all but three had these policies included in their development plan. Moreover, among those who had formal policies all but one had used the contribution system in the last three years.

The contributions approach was also acceptable to developers, although they had concerns about complexity, uncertainty and delays.

While they also accepted the approach, infrastructure providers were the least comfortable with it. This was partly because they had no direct involvement in developing the plans, but more generally because their priorities were different. Their focus was often on sub-

regional provision or meeting the cumulative impact of several developments – both of which make the system more complex.

More generally, after many (often mentioned as fifteen plus) years of professional experience of developer contributions most parties felt that the approach was fully embedded. There were however some systemic concerns (discussed below). It was also felt that practice often differed between authorities and consistent good practice could improve outcomes and lower costs of negotiation.

7.4.2 Are contributions easy to negotiate?

Affordable housing appeared to be far more straightforward than infrastructure to negotiate, in part because of the government 25% guidance and because of the Scottish Government commitment to affordable housing delivery through the Affordable Housing Supply Programme. It is most difficult in some rural areas, where on-site may not be appropriate. However, the most fundamental issue is that of viability. In low-priced areas, especially if the site requires some remediation, there may simply not be enough land value to make negotiations worthwhile. In these circumstances affordable housing will only be delivered if the subsidy available makes it viable.

The issues around infrastructure vary depending on the type of infrastructure required. In some cases, notably education, a formula makes it relatively easy to negotiate subject to viability. More generally, contributions made directly to authorities rather than ultimately to third parties appear to be easier to agree.

Where there was no formulaic approach, and those who would ultimately use the funding were not directly involved in negotiations, there were more obvious problems. A particular issue was seen to be that of 'scope creep' – that is, expansion of the types of infrastructure contribution sought (e.g. health services and sub-regional requirements). There were similar 'creep' concerns about additional requirements not included in the plan or supplementary guidance and a feeling that some PAs were 'pushing boundaries'.

In higher priced areas, where developers wanted to get on site as soon as possible, negotiations were generally easier. In cases involving accumulating funding and uncertainty about timing, the negotiations were particularly problematic.

7.4.3 Are negotiations successful?

The matrix below (Table 10) sets out some of the site-specific reasons why success in achieving developer contributions might vary. It sets out the researchers' assessment of the ease or difficulty of reaching agreements on contributions based on all the evidence presented in this report. At one extreme, small simple sites with one developer and a clear policy framework should be almost automatic. But the greater the number of stakeholders and requirements, especially with respect to infrastructure, the wider the range of uses for

contributions, and the longer the development timescale the more difficult negotiations may become.

Table 10. Site attributes and ease of negotiation

	One developer	Multiple developers	Site specific*	Sub-regional/ cumulative	Local plan Clear	Affordable housing need clear
Large site	2	3 - 4	1	4	2	1 – 2
Small site	1	3 -4	1	4 - 5	1	2
High house prices	1	2	1	3	1	1
Low house prices	2	4	2 - 4	4 - 5	2 – 5	3 – 5
Greenfield	1	2	1	3	1-2	1 -2
Brownfield	2 – 3	4	2-5	4 -5	2- 3	2-5

Scale: 1 = Easy; 2 = OK; 3 = Hard; 4 = Very hard; 5 = Nearly impossible

*Depends on viability.

In general, success relates to the ease of obtaining contributions – which is partly about the clarity of national policy and of local arrangements (including political attitudes); partly about experience of negotiation; and significantly about how much potential there is within the site’s land value.

7.4.4 Are contributions delivered?

The evidence suggested that the majority of contributions were delivered. For those that were not, there were three main reasons:

- The scheme did not go ahead;
- The scheme was modified, involving renegotiation of contributions; or
- The scheme was delayed or the infrastructure took longer to build so funds had to returned to the developer.

More generally there were concerns around the timing of infrastructure provision in relation to the delivery of funding and concerns when PAs had to frontload payments which could impose significant costs on authorities.

7.4.5 Are there adequate data?

There are considerable concerns about the availability of data that can enable effective monitoring of the developer contribution programme sometimes at PA level and particularly for central government. Each PA had its own collection methods and its own range of variables. Some aspects of the process were sometimes not covered and there was little consistency between authorities in their different approaches. While some of the issues that we encountered were a function of the pandemic others were simply because each PAs system had been put in piecemeal and for their own purposes. We note that the Planning (Scotland) Act 2019 contains powers (sections 35 and 36) that, once commenced, would require authorities to publish and report on planning obligations.

7.4.6 Are the contributions raised worth the effort?

The proportions of planning permissions on which contributions are agreed remains low, at around 7%, but is considerably higher than in earlier years.

The proportions of affordable housing to which contributions are made is now running at around 20%. Contributions are also important in broadening the mix of affordable homes particularly to affordable homeownership.

Perhaps more importantly, all those involved in providing affordable housing (PAs, developers and HAs) made it clear that what made contributions so important was access to land through on-site contributions. This is particularly important in high land value areas where much of the provision is obtained.

One research finding that stands out is that the value of contributions was heavily concentrated in just five PAs. This raises the question of whether the system is valued in other areas. However, the very general prevalence - and acceptance - of contributions suggests that across the country it is seen to be a worthwhile approach, because of its contribution to site specific mitigation.

There are perceived to be three fundamental types of contribution:

- **site specific mitigation** which is well addressed via contributions and must be done to make the development acceptable. If these costs cannot be covered because of viability issues the development should not go ahead;
- **affordable housing**, which again is generally accepted and implemented. However a number of authorities do not ask for affordable housing because they do not have the

required evidence base; available subsidy is enough to deliver what is required; or requiring contributions may adversely affect economic activity; and

- broader based **infrastructure** contributions which again will depend on viability as well as the extent to which such contributions, eg towards sub regional requirements, are consistent with the legal and policy framework.

Our evidence suggests that even authorities that can achieve only the first type of contribution find the approach valuable.

7.4.7 Are there other means of achieving the same objectives?

Some authorities, although they may use contributions for some purposes, are more inclined to employ planning conditions both to achieve site-specific mitigation and also somewhat more broadly with respect to transport by making provision in kind such as improving safe access to a site.

While policy on planning conditions means that it is not normally advisable to use planning conditions to specify financial matters *per se* to be a condition of a permission they do 'run with the land' and do, in the case of suspensive conditions, have to be met (for example by providing a road junction) before development can start (even if the land changes hands). In this context planning conditions are just as effective as S75. However, S75 sets out formal financial or in-kind arrangements directly and can also set revenue as well as capital obligations.

7.4.8 Is there adequate coordination/consultation?

The formal process of negotiation typically involves only the developer and the PA – and usually the planning department within the PA. Where what is being negotiated is straightforward, and those involved on both sides are experienced, this should work well. In some cases, there are early meetings between all relevant stakeholders. This is seen as highly desirable. Where this does not occur, stakeholders, including infrastructure providers and local-authority departments with a stake in the outcomes (notably housing departments), often feel that the outcomes would have been better if they had been involved at an earlier stage.

HAs also made it clear that the negotiations were between the developer (who had to decide what they could afford for the land) and the PA – and therefore the associations were not always involved in detail even where it would be helpful. Stakeholders suggested that internal protocols should be put in place to ensure consultation.

Similar issues were noted at a policy level. At the 'local' level participants in our roundtable and case studies wanted to see more liaison both within PAs to assist co-ordination of the spending of developer contributions and also between PAs and infrastructure providers particularly to secure more integration between provisions in

Development Plans and infrastructure providers' capital programmes. Similarly some respondents thought that central government's determination of housing subsidy and available funds for infrastructure should take account of how far developer contributions could substitute for public funds and enable the latter to go further.

7.4.9 Who pays the contribution?

There was general agreement that the contribution is basically paid by **the landowner** *if* there was clarity about the ask. If there were less clarity, it was more likely that some of the contribution would come from other stakeholders – at the limit endangering viability.

What was far less clear was how landowners made decisions about what land price would be achievable, as in many areas that price would be significantly above the current use value. How much land may be held off the market in the expectation of higher values /changes in policy is unclear and was not a question for this research.

The relationships between subsidy, contributions and land values are not always clear and depends on the nature of the negotiation. One issue which appears to be of importance is the nature of the landowner, eg in rural areas where there are large landowners with very long-term perspectives.

Some commentators argued that the incidence of payment did not always fall on the landowner. This was especially the case when subsidy was involved: affordable housing subsidies could in effect benefit the landowner or the developer--or indeed enable more infrastructure to be built--dependent on the clarity of the system and the relative capacity of those involved to negotiate.

Where contributions do come out of land value, there is a maximum amount that can be taken in contributions of all types without affecting viability. We expected to hear that PAs accepted trade-offs between affordable housing and infrastructure within this envelope. However, some research participants suggested that the two types of contribution were sometimes negotiated entirely separately.

7.4.10 Do contributions work for infrastructure?

The data we were able to obtain on infrastructure contributions (and indeed more generally) were very limited, and PAs collect their data in authority specific ways. The limited availability of data within PAs restricted what we could say with confidence, notably about the amounts collected. However, many more general issues are very clear cut.

First, and fundamental to attitudes, PAs generally see S75 as for site specific mitigation, something that conforms to the original statutory and policy frameworks. They therefore tended to be far more comfortable using it for site specific requirements; local junctions;

open space and educational facilities. Some were unclear whether other types of contribution, such as health care, fell within the remit of S75 contributions.

While many participants in the research suggested that using S75 for sub-regional or especially regional infrastructure was going too far the survey suggested that PAs have high aspirations to use developer contributions to fund more infrastructure in future. If this ambition is to be achieved there will need to be better planning greater coordination of funding sources and more integration of plans with those of infrastructure providers.

There is clearly tension between PAs and some infrastructure providers. This seems to relate mainly to what types of infrastructure should be regarded as eligible for developer contributions. However, it is also associated with lack of interaction between development and infrastructure planning and uncertainties particularly around the timescales for the collection of funds by the PA and their use by the providers.

One quite fundamental issue relates to the different interpretations among PAs, developers and infrastructure about what can legitimately be sought through contributions or unrealistic assumptions around Infrastructure First. Some assumed the latter meant that infrastructure should take priority over other uses for contributions; others that any development should not go ahead until the infrastructure was in place. Given much of the required funding does not come from contributions both of these interpretations would magnify uncertainties.

To summarise: almost everyone we spoke to implied that there was inadequate planning and cooperation in this context and that this was mainly because it required government money—not just developer contributions—to make sub-regional and regional infrastructure plans work. Some discussed whether private funding could be enabled to deal with both emerging requirements and backlogs arising from earlier developments.

7.4.11 What does everyone want?

What everyone was looking for was greater certainty both with respect to the requirements and to timing of delivery and payment. In particular, they wanted to streamline negotiation and ensure that all parties understood the costs and therefore the effect on land values.

The Scottish arrangements, with some well-defined targets, appear to be subject to less uncertainty than in England. Partly this reflected the extent to which most parties have been in it for the longer term and there were benefits to ensuring that arrangements agreed were comfortable for all parties to help continued collaboration.

Overall, everyone wanted more clarity and certainty. They also felt that contributions in the main were not an appropriate source of funding for most sub-regional and regional infrastructure. Equally they did not think there was enough available in developer

contributions to fund such infrastructure unless other funding linked to clear-cut infrastructure plans was also in place.

They saw the way forward being more government funding in addition to City Deals, but also, given the current low interest rates, private institutional finance.

7.5 Conclusions; the Value, Impact and Incidence of Developer Contributions

7.5.1 Value

Our estimates are inherently based on partial evidence although importantly this includes high quality evidence from the five authorities that generate the largest amounts of revenue.

The data we were able to collect were enough to provide a reasonable estimate of the contributions agreed towards affordable housing at a minimum of £307m in 2019/20. Around 40% of these contributions came from the five largest contributing authorities and, under reasonable assumptions, this accounts for about 30% of the land value included in the developments within these five local authorities.

We had less information on infrastructure. However, the evidence on financial contributions was enough to make an estimate of this element at around £180m agreed in 2019/20 across Scotland as a whole.

Overall, therefore we estimate that identified developer contributions agreed totalled £486m. In addition, there were contributions that could not be identified from the available data. Overall, these figures are comparable to those collected in England. The proportion agreed for infrastructure is somewhat higher than achieved in England. Affordable housing was rather less probably in part because of the lack of subsidy in England when contributions are involved.

7.5.2 Impact

The major impact is that, for a relatively small but significant proportion of planning applications, funding was made available to address site specific mitigation of the impacts of developments and to support affordable housing. Contributions enabled significant numbers of additional affordable homes to be agreed as well as a broader range of affordable homes.

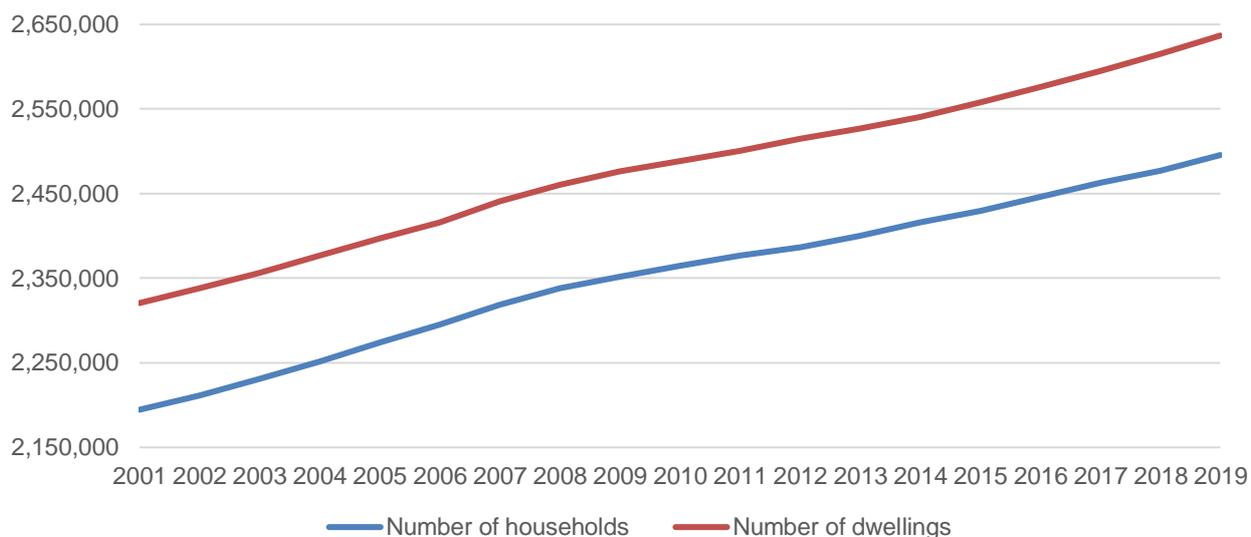
They have also made significant contributions to local needs with respect to education, transport open space and sporting and leisure amenities. However, they are less effective in addressing sub-regional and regional infrastructure needs.

7.5.3 Incidence

Developer contributions are used in all but two of the 34 PAs. Large scale contributions are limited mainly to high house price/high land value areas. But, contributions to mitigate site specific infrastructure impacts are almost universal. Affordable housing is also being agreed via developer contributions in around 75% of authorities.

Figure 5 shows how the housing stock has risen since the turn of the century and the extent to which it has kept pace with the growth in the number of households. The number of dwelling units was 5.6% more than the number of households in 2001 exactly comparable to 2001. However, in 2010 the gap had narrowed to 5.3% - so over the last nine years the numbers of dwelling have risen faster than the number of households.

Figure 5: Households and dwellings in Scotland, 2001-2019



Source: Estimates of Households and Dwellings 2019, National Records of Scotland

Figure 6: Housing completions by tenure, Scotland financial years 09/10 - 18/19

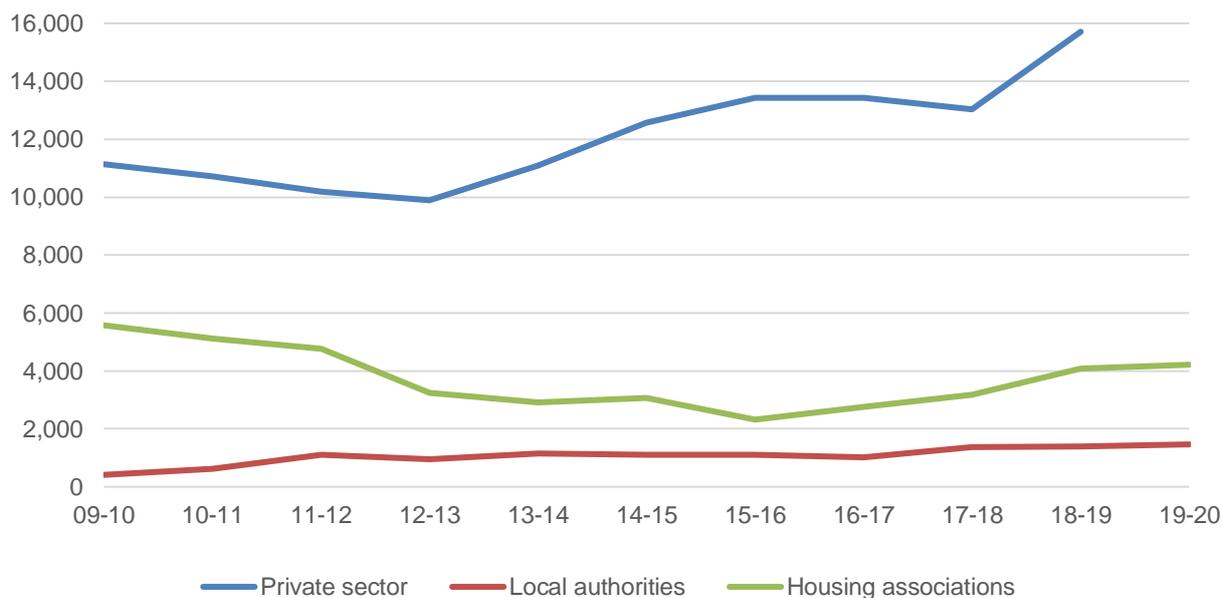
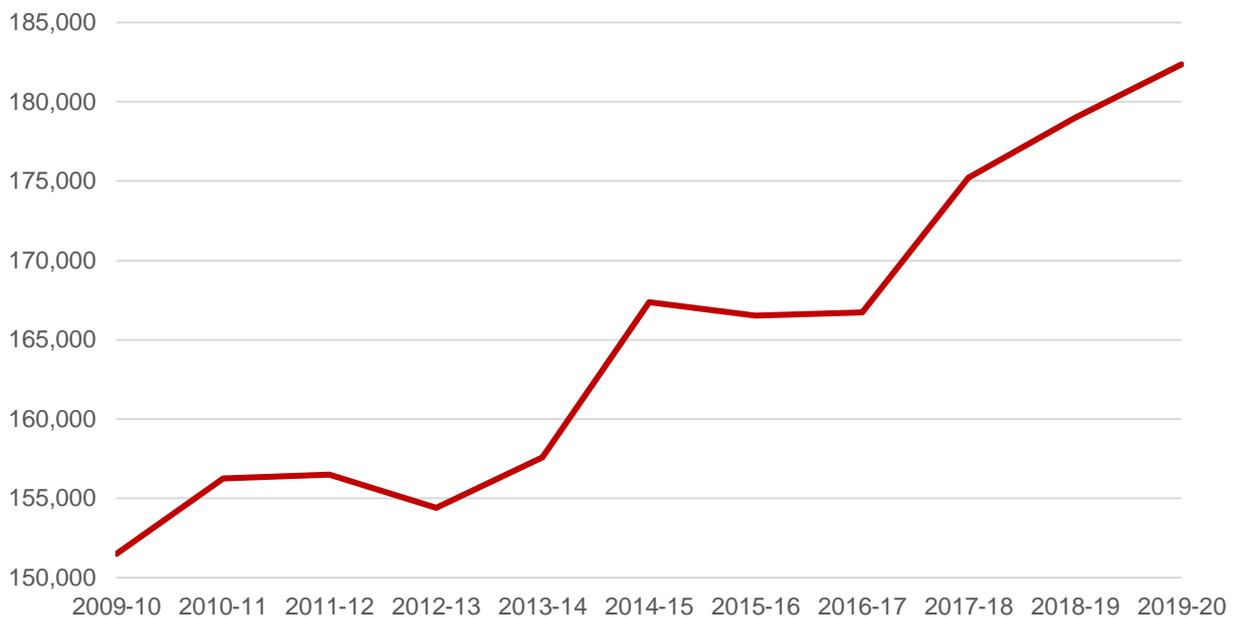


Figure 6 shows housing completions by tenure – with private sector dwellings accounting for around three quarters of output in 2017/8 - a considerably higher proportion than in 2010. Housing association output fell significantly from 2010 reaching a low point of just over 2,000 in 2015/6. This rose closer to 20% in 2017/8 with local authorities providing around 7%.

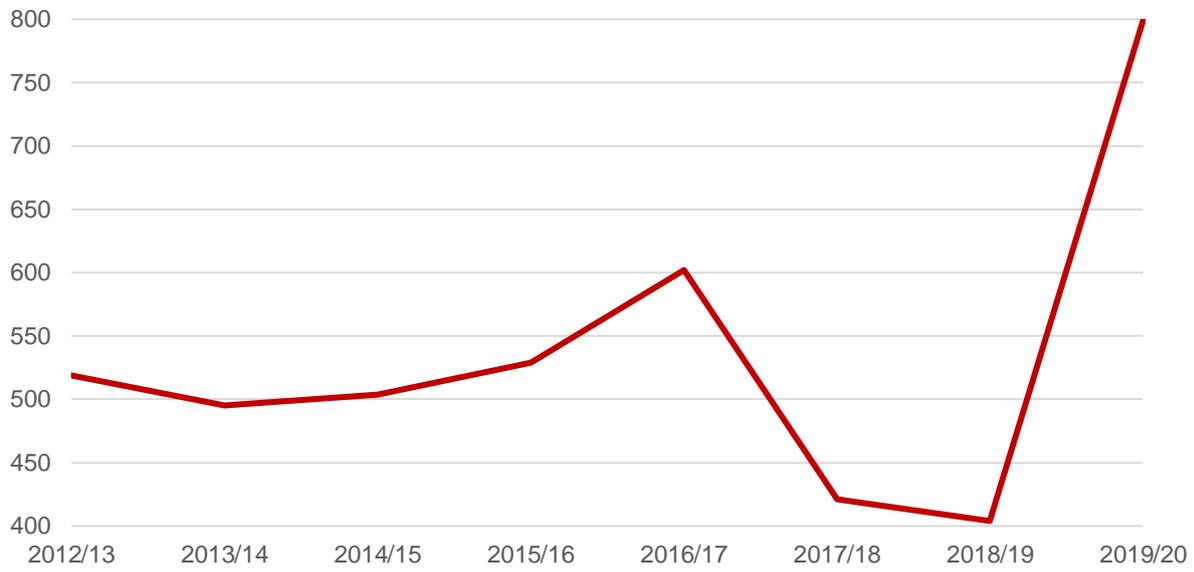
Figure 7 shows how average house prices have risen over the last decade by around 20% - with two periods of stagnation/decline.

Figure 7: Average residential property price, Scotland 2009/10 – 2019/20 (£)



Source: Registers of Scotland

Figure 8: Number of applications subject to planning/legal agreement (S69 or S75), all Scotland, 2012/13 – 2019/20



Source: 2019/20 Annual Planning Performance Statistics, Scotland tables, Table 29

9. Annex 2: Literature Review

9.1 Introduction: developer contributions review and aims of the literature review

The outputs of this research project are to be part of the evidence which informs the Scottish Government's planning reform programme. As part of this, the Government committed to carry out a review of the effectiveness of existing developer contribution mechanisms, in view of the paucity of information about this in Scotland, compared to that available for England (Crook *et al*, 2016; 2018; Lord *et al*, 2020; Crook & Whitehead, 2019). This was also one of the recommendations of the Scottish Land Commission in their advice to Scottish Ministers on land value capture (see below).

This literature review sets out in some detail what can be learned from publicly available material about the rationale of the contributions approach; the policy and practice on which the system is based; the evidence on how a similar approach operates in England; and what might be learned from other countries' experience (the detailed evidence from England and the material related to overseas experience are in two appendices).

The review starts by discussing the objectives of the developer contributions policy and the relationship of this planning-based approach to more general issues of land value capture. It then brings together detailed information about the attributes and importance of developer contributions and how the policy is implemented in Scotland; followed by evidence on the contributions obtained, particularly with respect to affordable housing and infrastructure. The paper then discusses the comparable system that operates in England and the findings about both its operation and delivery based on the regular assessments undertaken there. The penultimate section looks at relevant international experience using somewhat different approaches. The final section summarises the evidence submitted to Ministers by the Scottish Land Commission together with their recommendations on how to approach land value capture effectively.

9.2 The rationale of developer contributions and relevance to land value capture

Policy relating to developer contributions has evolved in Scotland, as it has done in England. It was originally a mechanism to be used specifically to mitigate the immediate impacts of new developments. Over time it has evolved as a more broadly based approach to securing funding for local and now more sub-regional infrastructure although recent court and planning appeal decisions discussed below now throw some doubt on whether they can be used for more than local infrastructure. In addition, obligations evolved to secure contributions towards wider community needs, especially for new affordable homes by making land available for them in areas where market activity was making this difficult. In England these approaches were rationalised as a means of

making planning decisions more acceptable. As such, it was conceived as both a planning oriented and a cost-based policy.

The rationale of land value – or more accurately in this case incremental land value – capture lies on in seeing the increase in value as properly subject to taxation - in that the granting of planning permission is the point at which it is possible to measure and realise the benefits of the permitted change of use (Crook, Henneberry and Whitehead 2016, chapter 2). It is thus both value-based and not inherently related to planning outcomes.

While developer contribution policies were not initiated as a means of land value capture, in so far as the costs developers incur in meeting obligations are passed back to landowners in the form of lower land prices, they become a *de facto* means of capturing the increased land value arising from new development following planning consent. This however has been an outcome of seeking contributions, not an explicitly intended objective.

Many countries throughout the world have adopted systems of incremental land value capture. Land values increase for many reasons: increased prosperity, the impact of new infrastructure (creating new opportunities for existing and new development) and the granting of planning permissions enabling new development to take place. These increases are subject to tax in a variety of ways. Seeking developer contributions has become one means of achieving this.

Developer contributions can also support the following objectives (Crook & Whitehead, 2019): (i) they can improve economic efficiency by getting developers to pay for (some) of the infrastructure required to support new developments; (ii) they can improve equity and fairness by capturing some of the ‘unearned increment’ arising from planning consent and using this to fund community needs including affordable homes; and (iii) they can raise income for public spending in ways consistent with taxation principles.

There have been three main policy mechanisms to achieve this since the post war planning system was established in England and in Scotland (Crook, *et al*, 2016): (i) un-hypothecated national taxation of development value; (ii) public acquisition of land at value in its existing use, e.g., early New Towns; and (iii) planning obligations and community infrastructure levy (but not the latter in Scotland). Planning obligations seeking developer contributions are now the main way whereby development value is captured in both Scotland and England by obliging developers to fund some of the infrastructure required to support their new developments, mitigating impacts and contributing to community needs.

9.3 The national policy framework and infrastructure planning

There was much debate during the passage of the Planning (Scotland) Act 2019 about capturing more development value to fund infrastructure and affordable homes through

planning obligations and infrastructure levies (Brett Associates, 2016; Scottish Futures Trust, 2019), the latter now provided for in legislation including via Master Plan Consent Areas, the latter also now provided for in the new Act.

There were also debates about enabling local authorities to acquire land at its value in its existing use but current arrangements requiring acquisition at market value were not changed (Crook, 2018; Scottish Land Commission, 2019). In its recent advice to Scottish Ministers the Scottish Land Commission noted that whilst there was public interest in enabling more of the uplift in land values created by the planning system to be used to support better place-making there also needed to be an adequate supply of development and that any new mechanism or approach is regarded as fair by all parties and has widespread political support. To be regarded as fair any new mechanism will need to ensure that landowners whose land is acquired through compulsory purchase receive equivalent compensation to landowners who sell their land on the open market. Simply introducing new rules to exclude hope value from compensation arrangements without addressing this issue is likely to be regarded as very unfair and could breach the protections provided by the European Convention of Human Rights (ECHR) and, the Commission noted would require far reaching changes to statute.

In the shorter term, an important mechanism for achieving financial equivalence between landowners would be to use planning policies and obligations to reduce market value (by ensuring that the costs of providing enabling infrastructure are reflected in the prices paid by developers). Existing Section 75 agreements and the new Infrastructure Levy and Masterplan Consent Areas proposed in the (then) Planning Bill could all be used to help achieve this.

To this end it recommended, amongst other matters, that Ministers:

1. Commission a national review of policy and practice in relation to developer contributions and seek recommendations that would help improve clarity and consistency of application across the country;
2. Implement proposals to introduce a new infrastructure levy as set out in the in Planning (Scotland) Bill; and
3. Use regulations required by the new provisions for Masterplan Consent Areas (MCAs) to require that MCA masterplans provide detailed information about the cost of infrastructure required to deliver the plan and prohibit piecemeal development. This approach is likely to be most effective in areas where there is significant value to capture but in many parts of Scotland this is not the case. This suggests a need for a more ambitious approach, in which the public sector shares

the risks and rewards of development more equitably with landowners and the development industry.

The review of developer contributions will inform future policy development on infrastructure funding and delivery in Scotland. This includes the National Planning Framework (NPF4) due to be published 2021⁸ and potential updates to Circular 3/2012. Over the longer term it will also inform implementation of the infrastructure levy – powers for which are contained in the Planning (Scotland) Act 2019.

The review is timely because the funding of infrastructure is critical to the delivery of inclusive economic growth and recovery. Furthermore, Scottish Government has signalled its intention to embed an ‘infrastructure first’ approach to development planning through the implementation of reforms in the Planning (Scotland) Act 2019. Development plans provide an opportunity to strengthen the link between the infrastructure needs of places and the funding and delivery mechanisms of infrastructure providers. It is also critical because recent legal and planning appeal decisions (e.g., the Elswick and AWP cases, respectively, see below) have questioned the extent to which developer contributions can contribute to sub regional infrastructure in circumstances where individual development have limited impact on what is required.

Development planning is the most significant area of change within the Planning (Scotland) Act 2019. The Act changed the form, content and process for preparing and adopting plans, aligning better with wider policy making at a national, regional and local scale including improving housing delivery and an infrastructure first approach to development, albeit with the removal of regional Strategic Development Plans and its replacement with Regional Spatial Strategies (now not part of the development plan). In future the National Planning Framework (to include SPP) will have full status as part of the statutory development plan system, a status the NPF does not currently have. NPF4 will look ahead to Scotland in 2050 and be reviewed every ten years. Following its approval by the Scottish Parliament and adoption by Scottish Ministers, subsequent local development plans will be required to take account of NPF4. And as the new development planning system evolves so too it is likely that planning for infrastructure will also evolve, including how policy related to developer contributions will contribute to infrastructure planning, with one consequence being a growing reliance on formal plan policy about contributions and less reliance on supplementary guidance.

The significance of developer contributions for the funding and delivery of infrastructure was emphasised in a recent report by the Scottish Futures Trust (2019). Whilst the public sector takes a major role in provision of infrastructure, the constraints of public funding require a contribution from planning led land value capture, including S75 contributions

⁸ NPF3 and Scottish Planning Policy (SPP) contain limited information on developer contributions

and the proposed Infrastructure Levy and also consideration of whether development land should be acquired at existing use value (EUUV). Furthermore, the Scottish Infrastructure Commission (2020) stressed that infrastructure suppliers need to interact with the place-based emphasis of the new Scottish planning system, including how place-based housing need assessments are linked effectively with plans and obligations policies to secure long term supply.

The 2019 Act removed strategic development plans, replacing them with Regional Spatial Strategies (RSS). These strategies will not be a formal part of the development plan but will inform future versions of the National Planning Framework and local development plans. RSS will strengthen the horizontal alignment of regional working, bringing spatial planning together with economic planning, city and growth deals and transport planning.

New regulations and guidance on local development plans will be consulted on and developed in due course. Given the extent of the changes, these will take around two years to finalise. The intention is that stronger local development plans will provide greater certainty for developers and communities, whilst also being flexible and responsive to wider priorities. Supplementary guidance and Ministerial powers to intervene at the adoption stage will be removed. Local development plans will move to a 10-year review cycle to provide greater focus on implementation and delivery.

Alongside introducing the new development plan system, the Scottish Government is reviewing housing land policies to inform NPF4 and the statutory requirements for the NPF to contain targets for housing land in different areas of Scotland. Local Development Plans (LDPs) will need targets for their district, and consider the housing the needs of students, older people and disabled people. Because the allocation of housing land has long been contentious, the aim is to establish targets for housing land that are clear enough to reduce conflict but also flexible enough to work within the longer-term timeframe of the NPF and local development plans. The opportunities for improved practice, including a greater focus on the deliverability of housing land, links with infrastructure and a more consistent approach to housing land audits, will also be explored in the review.

The current National Planning Framework 3 (NPF3) (Scottish Government, 2014a) provides the spatial expression to the Scottish Infrastructure Investment Plan and the Scottish Government's Economic Strategy. NPF3 highlights 14 National Developments and other strategically important development opportunities. Many of these are infrastructure related and are to happen over the next 20- 30 years. This is a high-level policy document which statutory development plans must have regard to but it is not an infrastructure investment plan. Scottish Planning Policy (Scottish Government, 2014b) sets out the Scottish Government's national planning policies for the operation of the planning system and the development and use of land. Emphasising planners' role as enablers of development, SPP directs the planning system to create opportunities by allocating sites

and enabling the delivery of necessary infrastructure, attracting investment and employment. Development is to be more closely aligned with transport and digital infrastructure to improve sustainability and connectivity. Circular 6/2013 on Development Planning (Scottish Government, 2013) emphasises the need for consultation with key agencies when drafting development plans. Key agencies are bodies under a specific duty to cooperate with planning authorities at defined stages within the development plan process. This includes the preparation of Action Programmes so plan-making authorities have the information they need to produce effective plans and to ensure that the plans themselves are aligned with the strategic objectives of the other agencies, who align their own policies and delivery programmes to the strategy and proposals of development plans.

9.4 The legal framework for developer contributions in Scotland

The current system of developer contributions in Scotland has evolved piecemeal. Planning authorities secure infrastructure investment from developers through a 'planning obligation', which is sometimes referred to as a 'section 75 agreement' (after the relevant clause in statute). These obligations help overcome obstacles to granting planning permission with the developer contributing to the necessary infrastructure. In the 1990s it also became common for developers to be asked to contribute to off-site infrastructure, principally upgrading road junctions. It is also possible to use S69 and S48 agreements (see below), although neither can 'run with the land' in the same way that S75 agreements can, i.e., cannot be binding on successors in title to land.

Planning obligations are commitments undertaken by a person with an interest in land to overcome obstacles to the granting of planning permission, potentially providing a means to, for example, compensate or reduce negative impacts on land use, the environment or infrastructure by making contributions in kind or in cash. They can help fund strategic infrastructure i.e., that needed to enable major new development to proceed as well as allowing smaller scale developments which have cumulative impacts to proceed. Their use is considered by each planning authority on a case-by-case basis but has to accord with government advice and local plan policy. The overall amount and scope of developer contributions has increased in recent years, with most planning authorities (PAs) now seeking contributions from a wide range of developments, and the range of infrastructure expanding to include schools and more recently for the provision of affordable housing.

Planning obligations are legal agreements secured through Section 75 of the Town and Country Planning (Scotland) Act 1997. This confers a power "for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified". There is a power to "require the payment (i) of a specified amount or an amount determined in accordance with the relevant instrument, or (ii) of periodic sums either indefinitely or for such period as may be specified in that instrument". Section 75

obligations tend to be used for financial payments, because the obligation runs with the land – i.e., once the obligation is registered in the Land Register or recorded in the Register of Sasines it binds not just the signatories but also the successors in title of the site. That is important because the applicant for planning permission often does not own the development site. Indeed, the purchase of the site is often conditional on the grant of planning permission. Also, the applicant often sells the site to a developer or developers once permission has been granted. Where the obligation imposes restrictions on the site itself, the planning authority needs to be able to enforce those restrictions on the parties with an interest in the site at the relevant time.

This provision thus permits a person to enter into an obligation, normally by agreement with the planning authority, which restricts or regulates the development or use of the land. Planning obligations may require payment of specified sums of money. The current framework is therefore, broadly speaking, a consensual one. In essence, a planning obligation is a contract between the planning authority and the landowner (and possibly future landowners, depending on the terms of the agreement) which restricts or regulates the use of land, for example through requiring developers to mitigate against any potential negative impact of development through means set out in the agreement. This can include making a payment to the planning authority towards the development of associated infrastructure, for example, expanding a school or improving a road. The issues covered by a planning obligation are such that they could not normally be enforced through a condition attached to planning permission.

Developer contributions can also be secured through Section 69 of the Local Government (Scotland) Act 1973, which gives local authorities the power to enter into agreements for a purpose related to the discharge of any of its functions and these can be used to secure affordable housing contributions (as well as S75). They can also use the Roads (Scotland) Act 1984. This allows roads authorities to enter into an agreement with any person willing to contribute to the construction or improvement of a road. This is often used where payment is required shortly after permission is granted, and the agreement does not need to run with the land, or where an element of infrastructure is desirable but is not directly required as a result of the impact of development. Less commonly local authorities use the Countryside (Scotland) Act 1967 and the Sewerage (Scotland) Act 1968. Table 11 below summarises the provisions of the three principal statutes related to developer contributions.

Table 11: Developer contributions, legal framework in Scotland

Statute	What it covers
<p>S75 of Town and Country Planning (Scotland) Act 1997 (as amended by the 2006 Act)</p>	<p>It provides that a person may either by agreement with the Planning Authority or unilaterally enter into a planning obligation restricting or regulating the use of land in the district of the Planning Authority, either permanently or during such a period as may be prescribed by the agreement or obligation.</p> <p>Section 75 Agreements may include financial provisions. Any agreement or obligation to which the owner of the land is a party may be recorded in the Register of Sasines or registered in the Land Register of Scotland and become binding on all future owners of the land affected by the agreement or obligation. Any breach of the agreement or obligation is enforceable by the Planning Authority. Obligations run with the land</p>
<p>Section 69 of the Local Government (Scotland) Act 1973</p>	<p>Gives local authorities the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. This provision enables agreements to be made with developers which can include financial payments or the transfer of assets to a local authority where this would discharge their functions. Agreements do not run with the land.</p>
<p>Section 48 of the Roads (Scotland) Act</p>	<p>Allows roads authorities to enter into an agreement with any person willing to contribute to the construction or improvement of a road. It is an alternative to the use of s69 of the 1973 Act where single up-front payments are made specifically to roads related investment which falls under the powers and duties of the local authority as roads authority. The powers are not available to National Park Authorities. Agreements do not run with the land.</p>

9.5 The policy framework for developer contributions in Scotland

This section covers central government policy and guidance and recent court and appeal decisions

The current Scottish Government advice (Circular 3/2012 on Planning Obligations and Good Neighbour Agreements: Scottish Government, 2012) stipulates that planning obligations should not be used to require payments to resolve issues that could be resolved in another way (for example, through alternative legal agreements and planning

conditions, including suspensive ['Grampian'] planning permission conditions). Such legal agreements and conditions have become more sophisticated. Current policy updated previous 1996 advice given at a time when it was thought that agreements had a limited application (Scottish Government, 2012). Although the current circular still refers to a 'limited role' for obligations, practice had by then changed so that agreements were being used not only to regulate development but also to seek financial contributions towards infrastructure and contribute to policy objectives such as securing more affordable homes.

The 3/2012 circular states that, where the need for obligations is known in advance, requirements for planning obligations should be set out in the development plan. There are five tests for when using an obligation is appropriate (note that unlike in England these tests do not have statutory force). They are:

- The obligation is *necessary* to make the proposed development acceptable in planning terms;
- The obligation serves a *planning purpose* and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- The obligation should *relate to the proposed development* either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- The obligation should *fairly and reasonably relate* in scale and kind to the proposed development;
- The obligation should be *reasonable* in all other respects.

Local authorities should thus set out their policies in their development plans and, if need be, also (currently) in supplementary guidance (Circular 1/2009, Scottish Government, 2009). Development plan policies should be supported with action programmes and action plans to ensure the policies connect with the funding and delivery of infrastructure. Whilst local residents and community organisations are consulted on policies in development plans, they are not normally involved in discussions about specific planning obligations, which generally only involve the developer and the planning authority and their advisers.

Whilst Section 75 provides the mechanism for planning obligations, it, does not impose tight restrictions on the use or scope of these obligations subject of course to the five tests (Ryden, 2015). The need for linkage between the development and infrastructure provision arises from court decisions on "material considerations". This means that for the terms of a Section 75 obligation to be taken into account when deciding a planning application, these terms have to be a material consideration. The courts have indicated that a benefit which has nothing to do with the development will not be a material consideration; if the benefit has some connection, then regard must be had to it although the extent to which it should affect the decision is a matter entirely within the discretion of the decision-maker.

Hence, in the absence of any specific provisions in statute, the law about obligations evolves through precedent in key court decisions. Policy is also upheld in planning appeal decisions.

Recent decisions have reinforced this need for a clear link between the development and the infrastructure for which contributions are sought. Two recent court and planning appeal decisions are relevant to the current debates. In the *Elsick* judgement by the Supreme Court in 2017 (UK Supreme Court, 2017: 66 *On appeal from: [2016] CSIH 28*; Cornerstone Barristers, 2017) it was held that asking for pooled contributions because of the cumulative impact of several developments was inconsistent with the statute because the specific development made only a trivial impact on the need for infrastructure. Hence without a statutory basis pooled contribution of the type sought were unlawful and could not be sought via developer contributions. In a recent (2020) planning appeal decision by EWP developments against a S75 agreement on Armadale, the reporter allowed the appeal and removed the obligation because it did not conform to the tests set out in Circular 3/2012 related to the improvement of the A801 road. This was because circumstances had changed and the evidence about the development's impact on traffic flow did not adequately demonstrate there was a connection between the proposed development and the needed to upgrade the road (Scottish Government, Planning and Environmental Appeals Division, 2020: *POA-400-2004*). Greig (2020) provides a useful commentary on recent court and appeal decisions related to S75.

Court and appeal decisions such as these have helped to demonstrate the challenge of using planning obligations for the purposes of funding regional or sub-regional infrastructure under the current policy and legal framework. It is also important to note that courts have supported the use of suspensive planning conditions, to prevent developments from proceeding until the necessary infrastructure is provided (*Grampian Regional Council v Aberdeen District Council* 1984 SLT 197 – hence these conditions are often described as “Grampian conditions”). The condition is a valid planning condition because it does not require payment. However, because these generate uncertainty about when/if the infrastructure will be delivered, especially if the infrastructure has to be provided by a third party such as Transport Scotland or Scottish Water, planning obligations have evolved to address infrastructure deficiencies (Ryden, 2015).

The Law Society of Scotland has recently undertaken a review of planning obligations with the aim of suggesting improvements to increase efficiency and transparency although it has not commented on recent court cases. Amongst many detailed suggestions it advocates greater use of model agreements (but retaining scope for flexibility, for example with respect to affordable housing obligations), addressing the liabilities of former owners, the enforceability of obligations and the recording and registration of agreements (Law Society of Scotland, 2020).

9.6 Developer contributions and affordable housing in Scotland

In addition to securing contributions towards infrastructure, obligations are also used to secure new affordable homes from developers. Policy is set out in Planning Advice Note PAN2/2010 (Scottish Government, 2010: PAN 2/2010), which revoked its predecessor (PAN74). Affordable housing is defined as reasonable quality housing, affordable to those on modest incomes; covering the full range of affordable housing including social rent, subsidised owner occupation (including shared ownership and shared equity), and intermediate homes. Local authorities need to base what they require on their housing need and demand assessments (HNDA) and local housing strategies (i.e., as required by Housing [Scotland] 2001 Act. The PAN emphasises the need to be flexible in what is required in relation to market conditions and to secure the variety of affordable homes needed as well as the obligations on developers to provide the necessary infrastructure. Hence, the advice stresses the need for clarity in PA policy as this will influence land values – and help secure the contributions required. The advice also covers design issues including quality and location suggesting that neither ‘pepper potting’ nor blocks are appropriate means of locating new affordable homes within market developments and that it is important to ensure affordable housing is not visibly different from the market homes

Current Scottish Planning Policy indicates that planning authorities should generally seek contributions as new affordable homes of no more than 25 percent of all new homes with no policy restriction placed on authorities with respect to the size of sites where contributions can be sought. The principal contributions to be secured are in the form of serviced land sold at discounted prices to affordable housing providers (and agreed by District Valuers), although direct provision of new homes is also possible. Greater proportions than 25 percent can be justified by reference to HNDAs as can a contribution from smaller sites, especially in rural areas, including sites with a few as four homes, although commuted payments or off-site contributions may be a better way of securing the homes needed.

9.7 Evidence on local planning authority policy and practice on infrastructure and developer contributions

Ryden (2015) found that nearly all (89 percent) of Scottish PAs use S75 contributions but that they vary widely in how they use them. The same scale of policy adoption was noted in an earlier study (Colin Buchanan & Partners *et al*, 2001) which also showed that few planning applications had agreements attached to them (for example only 0.8 percent of all planning applications in 1998-1999). It also showed that there was a very wide variation in use between PAs with 30 percent of all agreements being in Aberdeen and Aberdeenshire and that their use was largely restricted to residential and not commercial development. Ryden (2015) showed how some PAs had sophisticated developer contribution policies, covering contribution zones; strategic infrastructure payments; and requiring small

developments (e.g., single houses) to pay a share, while others had policies that were undifferentiated and covered a whole PA area, regardless of type and size of development. It also noted evidence, from an earlier Scottish Government report (GVA Grimley, 2009), that development viability was being negatively affected by the late requests made by PAs for developers to contribute to infrastructure, a feature also noted in earlier studies of planning agreements (Colin Buchanan & Partners *et al*, 2001). Despite setting out contributions in plans and in supplementary guidance, obligations were frequently negotiated on a case-by-case basis, with a process that was often protracted by challenges to the robustness of the evidence base supporting the policy approach (e.g., allegations that evidence did not sufficiently demonstrate need, that there were inconsistencies in evidence or that circumstances have changed). In such cases the lack of consistency creates uncertainty about the scale and costs of contributions required and this makes it difficult for developers and land promoters to decide on the price to pay for land. As a result, development is placed at risk because the estimated residual value of land after contributions have been finally agreed may not secure a price of land at which owners are willing to sell. Previous research had highlighted instances of developers pointing to the burden of land price as a means of negotiating down S75 obligations and this suggested that, in such cases, the current system is not effectively working in the way it should (cited in Ryden, 2015; see also the experience in England reviewed below in relation to the *Parkhurst* court case).

In the context of the financial climate after 2008, funding sources for infrastructure were drying up and more attempts were being made to use S75 to secure the funding required, despite the fact that such agreements did not work well for large and complex major development sites which can take several years to work through. As front-funding and side-by-side funding using debt would be constrained into the medium term, the infrastructure needed for large scale developments had to be provided 'up front' by the public sector and the expenditure subsequently recovered from developers and investors. The alternative was that the initial investors or developers of the first phase of a large and complex site bore a large proportion of the entire costs of the infrastructure that was funded through developer contributions so that subsequent developers gained a 'free ride' at the expense of the first investor or developer.

Scottish Futures Trust (2019) was also critical of how S75 worked. Partly this was because, despite Scottish Government policy on the matter (Scottish Government, 2009), development plans were not well aligned to the infrastructure needs of new development and although progress was being made, there was still a gap. As a result, planning policy is inconsistent in securing contributions through S75 and there was a key need to move away from the protracted negotiations by building in more intelligence on costs and timing as well as having more skilled and regularly updated staff in PAs. Ryden (2015) had noted that because most PAs had little experience of planning obligations, their staff capacity

and expertise was limited, whereas the developers they negotiated with had much more expertise to call upon.

Scottish Government policy on development plans set out in Circular 6/2013 (Scottish Government, 2013) requires that they be fully co-ordinated with other key strategies at the earliest stage, with 'buy-in' from key infrastructure providers to assist in the delivery of the emerging proposals (paragraphs 66 and 155). Plans should include "Items for which financial or other contributions, including affordable housing, will be sought, and the circumstances (locations, types of development) where they will be sought". Ryden (2015) found that 33 of the 37 Local Plans/Local Development Plans addressed the delivery of infrastructure within their policies as required by the Circular. Only four contained no relevant policies.

These policies varied widely in depth and comprehensiveness. The most common means of addressing the need for infrastructure is to include a general policy that states there will be a requirement for developer contributions in order to mitigate the impact of the development on a range of infrastructure types. Most plans provide a list of likely impacts on infrastructure types that are at capacity and will require investment. Other plans address infrastructure thematically, i.e., through dedicated policies on, for example, delivery of transport to facilitate development, provision of open space or education requirements. These policies can sit alongside the general policies as above or are instead of a catch-all policy. In some plans, there are thematic or proposal-specific policies that relate to developer contributions. While less focused on policies on developer contributions, these plans do contain a commentary on infrastructure issues within their site allocations.

The impact of developer contributions on site viability is consistently recognised in statutory PAs' supplementary guidance and less systematically in non-statutory guidance. The approach they take highlights the need for individual applications to provide information to demonstrate that the required contributions would make a site unviable so this can then be tested by a planning authority. It is, however, a matter for individual negotiation.

According to Ryden's study, the most common types of infrastructure to be funded by developer contributions were roads (local and strategic) and green infrastructure (the study did not examine affordable housing, which other work has shown to be significant – see below). In addition, contributions were sought for public transport, education (the latter increasingly so), formal recreation areas and community facilities including libraries. The use of contributions to fund sports facilities, public art, water and waste water treatment, healthcare facilities and travel plans is more sporadic. There did not appear to be a strong correlation between when a plan was prepared and the number of developer contributions sought.

Ryden (2015) also found that the existence of action plans and action programmes related to delivering infrastructure via developer contributions was very variable. A key problem was getting the funding needed in place at the right time (although it was easier to identify the costs that needed funding). PAs were often very reliant on other infrastructure providers to deliver what PAs had secured from developers via S75. It was also difficult to handle contributions to cumulative impacts by retaining S75 funding until there was enough to finance what is needed (and also difficult to justify what each development should contribute to pooled funding). All told, two thirds of PAs thought S75 was difficult to operate, even in tight markets. Large sites posed difficulties because they often had to coordinate provision by other PA departments. Some had started to front fund infrastructure on large sites through prudential borrowing with repayments via staged S75s as development proceeded. Transport and education were the critical infrastructures, but funding and timing was problematic especially for education and this was even more difficult with developments that have a small scale but cumulative impact. Timing was also a problem for developers as front funding is more difficult, especially for SME builders, as side-by-side funding by banks had become harder to get. Finally, complexity of agreements was also problematic especially as PA legal resources had declined.

Ryden & Brodie (2020) showed that PAs focus more on identifying physical constraints when considering development proposals than on assessing the need for infrastructure and how this can be funded via developer contributions. In addition, Ryden's earlier research (2015) showed there are only weak links with action plans. It noted that on housing sites where viability was an issue this often-needed non-disclosure agreements between the promoter and the PA as part of the assessment process.

Noteworthy is that an earlier study of the use of agreements over the years 1996 to 1999 had noted broadly similar problems such as the time taken to enter into agreements, their lack of detail and transparency, the often lateness of the terms proposed, and the need for better links between policy and the delivery of infrastructure. There was particular concern that planning applicants often had no control over the funding and implementation of infrastructure despite entering into contributions agreements with respect to these requirements (Colin Buchanan & Partners *et al*, 2001).

9.8 Estimates of the incidence, value and delivery of developer contributions in Scotland

Evidence on value is limited but it shows that, even although policy and especially practice in the mid-2000s was not as well developed as that in England, the lack of contributions was also due to very different market circumstances in the two countries, with far fewer parts of Scotland having high land value contexts than in England so there were fewer opportunities to secure developer contributions when planning consent was granted (Brett Associates, 2016; Crook *et al*, 2016; Crook, 2018).

Land and development values are generally much lower in Scotland than in England with the exception of the Edinburgh region. Estimates extracted from Valuation Office Agency data for the period 1995 to 2001 showed that the price of 'bulk' housing land (defined as 2ha plus) with planning consent in Scotland was generally similar to that for Northern England, with the exception of the area around Edinburgh where values were high even relative to South East England plus parts of Glasgow and Aberdeen City/Aberdeenshire (DTZ Pinda, 2002). With that exception, market values of land for new (for example housing) development were not greatly above the value of the land in its existing use, such as farmland.

More up to date evidence of what development value might be available to 'capture' across the whole of Scotland in the future comes from a recent study for the Scottish Government of its proposed infrastructure levy (Brett Associates, 2016). This suggested that, by calculating residual land values on an annualised basis, only £230m was annually available for affordable housing and infrastructure, of which it estimated that £130m was then being collected via S75 (with the amount on the increase), of which £45m was for affordable housing. The study confirmed the earlier DTZ findings, i.e., that the value to be captured was insufficient in many parts of Scotland to produce much funding for affordable homes and for infrastructure. The Brett study proposed the introduction of a charge to fund non-local infrastructure with S75 retained for local impacts and affordable housing. Such a charge would be set and collected locally and the recommended non-linear charge as a percentage of the market value of complete development with planning consent could secure £75m per year towards non-local infrastructure (and Brett proposed no exemptions to the charge). Together with S75, this would fund about 3.5 percent of the national infrastructure requirement.

These studies suggested that there may be limited value to be "captured" to fund infrastructure and affordable housing in many parts of Scotland, something that the few studies of what has been raised by contributions have confirmed. A study of S75, S69 (1973 Local Government Act) and S48 (1984 Roads Act) agreements over the three years, 2004-05 to 2006-07 (McMaster *et al.*, 2008) showed that less than 1 percent of all planning permissions had agreements on developer contributions. It also showed that the cash and in-kind value of these contributions secured over the study period was only £159m, significantly less than in England (see below), even allowing for Scotland's much lower development activity and population size. Only a fifth was for affordable homes (mostly in kind) with contributions (mainly in cash not in kind) also being made towards roads, recreation and education and mainly related to housing developments. Although there were significant variations in policy as well as practice, 84 percent of local planning authorities had adopted policy and the use of contributions was on a rising curve, particularly for major housing developments. By 2006-07, 16 percent of all planning applications for housing had agreements on contributions (rising from 9 percent in 2003-04) and the values secured were also rising as local planning authorities adopted formal

policies on contributions and developed good practice. The research team estimated that contributions secured would rise over the subsequent three years to 2010. The team also made the point that not all planning agreements resulted in financial contributions as many were solely intended to regulate development in ways not possible under planning conditions.

An estimate made a decade later (for the year 2014-15), based on extrapolating data from ten of Scotland's major house builders suggested the rising curve had been achieved and that £83.7m was raised in S75 contributions for that year alone (Nathaniel Lichfield and Partners, 2016). Of this total, 60 percent (£46.8m) was towards affordable homes, 16 percent for school provision and 27 percent for a range of community facilities, the balance being for sport and open space provision. The affordable homes contribution enabled 4,323 new homes to be built, of which a fifth were built directly by the house builders and the rest by local authorities using the home builders' financial contributions.

Land values are of course captured by other mechanisms, including transactions taxes on the transfer of land. An estimate (Rettie, 2019) showed that Land and Buildings Transactions Tax (LBTT) for residential transactions raised £258m in 2017-18 with Additional Dwellings Supplement (ADS) another £126m of which 10 percent came from transactions on new homes. This would not cover land transactions for new development as this would be covered by commercial LBTT.

9.9 Delivery of affordable housing by developer contributions

The use of developer contributions to secure new affordable homes before the current millennium was very limited and thought to be restrictive by limiting the circumstances where it could be applied (i.e., to explicit evidence of need at the local level) (Bramley, 2001). Other evidence suggested that using obligations to deliver affordable housing was challenging as development values were not always sufficient to support contributions despite developers becoming more willing to accept that they should make provision (Newhaven Research, 2008).

Shiel & Battye (2014), in a project for Shelter Scotland, showed that many PAs had policies on securing affordable housing via developer contributions and that where there were exceptions this was mostly because there was no need for additional affordable homes. A third of all new affordable homes with permission (there is no information on completions) between 2007-08 and 2011-12 were the product of developer contributions, greater than had been previously thought, and where policies were in place contributions could be significant (for example 57 percent of all new consents in Edinburgh were via

S75)⁹. Types of contribution included discounted land (22 percent), discounted completed units (57 percent) and commuted payments (16 percent), with discounted units via design and build agreements increasing in proportion. The researchers also noted that the data on which they based their estimate was no longer available and were concerned that the benchmark of 25 percent of all units being affordable risked becoming the maximum in places where more could be secured without impacting negatively on viability. They also noted that some case study research had suggested that, where grant was mixed with developer contributions, this resulted in higher land value. They argued that grant should be limited when developer contributions were secured, that more intermediate as well as social rented housing should be targeted, and that commuted payments targets should be set high enough to enable land to be bought at prices on which genuinely affordable new homes could be built. They wanted sites to be selected in places with decent infrastructure already provided so that affordable homes did not compete with other S75 contributions.

They also found that rural exceptions policies (as they are known in England) had not been developed and that planning policy in rural areas had focused more on addressing economic development and retaining existing populations than in explicitly addressing housing needs. This finding reflected an earlier study by Satsangi and Dunmore (2003) which had shown that using developer contributions in rural areas to fund affordable homes ranked lower than using them to address environmental objectives.

Two more recent reports (Powell *et al*, 2015; Dunning *et al*, 2020) have estimated Scotland's overall affordable housing requirements and showed that between 2016 and 2021, 60,000 new affordable homes were required and, that looking ahead, 53,000 would be needed between 2021 and 2026. Both reports examined the need for grant payments to support provision (a contrast to the position in England where there is a zero-grant default for provision on sites with planning obligations), noting that Scottish planning policy now requires development plans to take more account of housing needs and that local planning authorities were making extensive use of HNDA studies in coming to decisions on housing requirements. Most recently, the Scottish Government has published a long-term housing strategy setting out requirements for the construction of 100,000 new affordable homes (with 70 percent of these being for social rent) by 2032, following the completion of its current five-year 50,000 target by the end of 2021/22 (Scottish Government, 2021).

⁹ This high proportion may also reflect the recession and the low level of new build activity during the time of the study.

Ryden & Brodie (2020) noted that, in respect of affordable housing, developers are thought likely to promote only sites where the market is vibrant enough to allow them to deliver new affordable homes. In weaker market areas, they noted a structural change from private sector delivery of housing via S75 after 2008, to a greater dependency upon the affordable housing providers and the Scottish Government's current active grant programme. Local builders were acting as contractors for the delivery of that affordable housing in some areas, rather than taking private development market risk.

9.10 Advantages and disadvantages of planning obligations in Scotland

Many of the research publications already mentioned (e.g. Brett Associates, 2016; Buchanan, 2001; McMaster et al, 2008; Ryden, 2015) discuss the advantages and disadvantages of the system of planning obligations in Scotland.

Increasingly, planning stakeholders have raised concerns about the growing scope and complexity of planning obligations, including the time and costs involved in negotiation, the uncertainties they generate, the fairness of only covering a few large applications, and the openness to public scrutiny. Notwithstanding the criticisms, the current system has two main advantages: (i) fairness because a developer can only be asked to contribute towards infrastructure required for the particular development (although this creates problems for large and complex schemes where each individual project contributes cumulatively to what is needed); and (ii) flexibility because there are no rigid rules, particularly important where the viability of the development, and therefore the likelihood of it proceeding, might require the amount of developer contribution to be reduced.

But there are also disadvantages, including: (i) a lack of public transparency; (ii) Inconsistent approaches by PAs; (iii) lack of certainty because of reliance on negotiations in relation to individual projects; (iv) delays due to these negotiations about the amount of developer contributions and to the drafting legal agreements; (v) the link between development and infrastructure results in infrastructure delivery in strong market areas, not necessarily where it is most needed, including in areas where infrastructure is needed to stimulate new development.

9.11 The experience of developer contributions in England

There are many similarities in policy, practice and the delivery of developer contributions between Scotland and England. In both countries, contributions have been used to fund the infrastructure required to support new developments and the needs of local communities, especially for new affordable homes. One important difference is that there is already an infrastructure levy (the Community Infrastructure Levy or CIL) in place (since 2008) in England. This enables PAs to secure contributions towards infrastructure, including sub regional and regional infrastructure, that is not directly connected to the

specific development for which planning permission is given. Another important difference is that new affordable homes in Scotland are provided through a grant regime so that developer contributions have the main function of securing the land for this grant-aided housing, providing more mixed communities (an equally important objective in England) and different opportunities for tenants by changing the location of new affordable homes.

In most other respects the legal framework and policy requirements set by government are very similar, although the legal tests that planning obligation contributions (i.e., not CIL) must meet are enshrined in statute in England (and developer contributions are known as 'S106' agreements/contributions/obligations, 'named' after the relevant clause in the principal legislation). These tests require that contributions have to be justified on a 'rational nexus basis', i.e., the new development must 'cause' the need for specific infrastructure and the obligations must be related in scale and type to the proposed development. As in Scotland, PAs in England are encouraged to set out their contributions policies in their adopted local plans (and any SPG), including those related to affordable housing targets. Unlike the position in Scotland, Homes England (which funds housing associations) limits payment of grants to housing associations when they secure new homes through developer contributions, effectively to ensure that grants do not 'leak' into higher land prices on the market sites when the contributions are negotiated. In the future, PAs will be required to relate their policies to their Infrastructure Planning Statements and to be more transparent about what has been agreed and what is delivered by developers (in kind) and spent by PAs from the cash contributions.

One other difference is the regular monitoring of the incidence, value and delivery of developer contributions (and more latterly, also CIL) in England. There have now been six such studies commissioned by MHCLG (and its forerunners) covering the period between 2003-04 and 2018-19 and the results of these studies can be found in Crook *et al*, 2016, 2018a; Crook & Whitehead, 2019; and Lord *et al*, 2018, 2020). The following paragraphs summarise the key findings.

The research shows that S106 (alongside CIL in more recent years) has been far more successful in capturing development value than the previous attempts to capture it via un-hypothecated national taxation measures. Table 12 illustrates that the value of planning obligations (and latterly CIL) increased from £1.9bn in 2003-04 to £7bn in 2018/19 in nominal terms and from £2.6bn in 2003-04 to £7bn in real terms (at 2018-19 prices, using the GDP deflator), the latter being a nearly threefold increase. London and the South East receive the majority of contributions agreed. Across England the majority are for affordable homes (see below) but there have been more increases than average since 2003-04 for education, transport and for infrastructure related to health provision.

Table 12. Value of developer contributions agreed in England.

Planning Obligations	Year	Value nominal	Value @ 2018-19 prices	New homes completed p.a. by private developers	Value per house completed @ 2018-19 prices
Planning Obligations – cash and in kind	2003-04	£1,900m	£2,565m	130,100 (England)	£19,715
Planning Obligations – cash and in kind	2005-06	£3,927m	£5,066m	144,940 (England)	£34,952
Planning Obligations – cash and in kind	2007-08	£4,874m	£5,913m	147,170 (England)	£40,178
Planning Obligations – cash and in kind	2011-12	£3,700m	£4,181m	89,120 (England)	£46,914
Planning Obligations and CIL – cash and in kind	2016-17	£5,969m	£6,196m	120,450 (England)	£51,440
Planning Obligations and CIL – cash and in kind	2018-19	£6,979m	£6,979m	138,550 (England)	£50,371

Sources: Data derived from Crook et al (2016), Lord et al (2018, 2020).

The table also shows the average value of obligations agreed for each private house completed in the year of the agreement with the average value being £50k in 2018-19,

again a value which almost trebled between 2003-04 and 2018-19. The revenues from previous attempts at national taxation of development value were much lower (Crook, *et al*, 2016), with Development Land Tax raising only £68m in 1983-84 (£185m at 2018-19 prices) in the UK as a whole and worth £1,209 per private house completed in the UK in that year.

Evidence shows that the costs of contributions fall largely on landowners in the form of lower land prices. This is especially the case where there is clear PA policy and where national volume developers are negotiating through option agreements with landowners and land promoters are experienced in pre planning application discussions with PAs. It is less the case where PA policy is unclear (or inconsistently implemented) and SME developers are seeking planning consent and negotiating S106 agreements. In such cases land prices may not be negotiated downwards and/or the developers' margins may decrease, or the planned scheme may not proceed.

Recent estimates (Crook *et al* 2018b) suggest that developer contributions capture about 30 percent of open market development value of greenfield sites with planning consent (but unfettered by obligations) with about another 20 percent captured by capital gains and transactions taxes. Evidence also suggests that most agreed contributions are finally delivered (probably three quarters or more, depending on the year of agreement) subject to subsequent variations in timing of payments when market conditions change. Recently some developers have attempted to negotiate reductions in contributions, given changes in market conditions. The most recent UK Government study (Lord *et al*, 2020) suggests a decline in cash contributions being received and in other contributions being delivered compared with what had been agreed (see below).

Further evidence from England is provided in sub-annex 2A.

9.12 Sub-annex 2: Additional evidence from England

9.12.1 Affordable homes and S106 in England

Through developer contributions significant numbers of new affordable homes have been secured (principally by in kind contributions of dwellings and land at discounted market prices, although with more commuted payments in Greater London). An increasing proportion of these are accounted for by shared ownership dwellings. New affordable homes secured via S106 also account for significant proportions of all new affordable homes completed including those secured by means other than developer contributions.

In fact, a growing proportion of the increase in planning obligations has come as contributions to affordable housing (Crook *et al*, 2016; Lord *et al*, 2018, 2020). In 2005-06, this accounted for 51 percent of all contributions. By 2016-17, it was 68 percent and in 2018-19 it was two thirds again, worth £4.7bn. The increase reflects the greater number of

all new homes secured (hence more contributions on relevant sites with consent) but also the real increase in land values and house prices, the two key factors that 'drive' the value of contributions. It is also because some elements previously funded through obligations are now coming through CIL. Most of the affordable housing was 'in kind' provision on market sites with only a moderate amount of 'commuted payments' paid to PAs to help fund provision elsewhere (mainly in Greater London). There has also been a growth in the proportion secured in London and the South East, not surprisingly, as this is where affordable housing need is greatest and land values large enough to support provision.

The system secured between 10k and 20k new affordable homes each year in the 1990s but the number increased significantly after then partly because housing associations were less able to develop independently, as they were running out of traditional sources of land and also finding it difficult to acquire land in high value areas. Thereafter associations became increasingly dependent on S106 for land and new homes either in the form of free or discounted land or discounted prices for new homes. At the same time, PAs became more proactive in requiring affordable housing in S106 agreements, with 89 percent having relevant policies in place by 2001. In addition, practice became more 'bedded down' as PAs became more familiar with using obligations to secure affordable homes. Typically, PAs set overall requirements in their plans and seek to negotiate between 10 (typical of low demand areas) and 40 percent (typical of high demand areas in southern England) of affordable homes on all large residential sites, albeit not always achieving these.

The number of new affordable homes secured in agreed obligations rose from 15k in 1998-99 to 50k in 2007-08 but then fell, a reflection of the more challenging climate after the global financial crisis. The numbers then recovered between 2011-12 and 2016-17 from 32k in the former year to 50k in the latter (starter homes were included in the latter but not former year) as markets regained ground and as the government stimulated the building of more affordable homes by housing associations with some pump priming 'kick start' grant aid, before falling slightly to 44k in 2018-19. Evidence suggests that, up to 2007-08, most (around 80 percent) of the agreed new homes were delivered. It also shows that failures to deliver were the result of developments as a whole not being built, due to changing circumstances affecting the development itself and were not due to the costs of complying with the affordable housing element. In many cases developers sought to renegotiate the whole planning consent, such that eventually the site might proceed, including the affordable element. Since 2007-08 there has been more evidence of non-delivery of affordable homes along with other contributions (see below). Moreover, affordable provision via S106 became an increasing percentage of all new affordable homes provided, however funded, rising from one fifth in 1998-99 to nearly two thirds in 2008-09. Thereafter the proportion fell reflecting the extent of government grant support in the immediate period after the Global Financial Crisis but then the proportion funded via S106 without public subsidy via grants has since risen considerably in recent years reaching 45 percent in 2017-18. Over the same period the proportion of new affordable

homes that were shared ownership rose as were those built as one- or two-bedroom flats, both trends reflecting the way this mix made schemes more viable for developers than if all the new affordable homes had been rented ones. Also, throughout the period under study, an increasing proportion of these new homes on S106 sites were in areas of low deprivation and promoted the government's mixed communities agenda by giving lower socio-economic group households opportunities to move to suburban and greenfield areas which unfortunately tended to be at some distance from employment opportunities and lacked good public transport (Bibby *et al* 2016).

9.12.2 *Advantages and disadvantages of S106 in England*

Developer contribution mechanisms have raised so much more than previous un-hypothecated national taxation because (apart from the tariff based CIL) they are largely negotiated, meaning the specifics of site conditions, costs and prices are effectively taken into account. In order to be effective, they depend on having clear and simple policy in adopted local plans, which are consistently implemented: providing clarity to developers about what they will have to contribute when they are negotiating with landowners or with land promoters to buy land including on option agreements. This matter has been recently reinforced by the *Parkhurst* judgement in the English courts, which found that the contributions due by the appellant were to be as required by the PA plan and not determined by the price the developer had paid for the land. Another key factor in the success of contributions is that that they are contractual agreements that can be enforced by either party. Furthermore, the benefits flow to local communities mitigating the impact of new developments on them.

In addition, the English courts have permitted a wide scope to obligations, provided they make proposed developments acceptable in planning terms. Obligations also avoid the issue of assessing development value directly (as was the case with national taxation) although they do need to be negotiated - or fixed - to maintain development viability.

But, despite this success, developer contributions and CIL are not without challenges. First, they work well in tight and buoyant markets, which generate the development values that can be captured for contributions. Not surprisingly, the majority of agreed and delivered contributions are in the southern regions of England, areas where there is pressure for development and the need for more affordable homes. In 'less pressured markets' and when the market is less buoyant even in 'pressured areas, contributions are more difficult to secure and in recent years, following the Global Financial Crisis, developers have attempted to renegotiate agreed contributions downwards (and in 2013 were given the right to do so earlier than previous legislation had provided). In some cases, they succeeded but evidence shows that the reasons for the renegotiation were as much due to other factors (finance, land ownership, market opportunities changing) as to the cost of the previously agreed contributions.

Second, although negotiations (and their associated flexibility) are one of the factors for the success of S106 agreements, these can be complex and time consuming, especially where PA policy is unclear or inconsistent and where organisations external to the PA seek contributions not previously included in policy. These include cases where county councils acting as education authorities in two-tier authorities seek funding for schools or NHS commissioning bodies seek funding for new GP surgeries. Negotiations between PAs and developers are often asymmetric in terms of power and capacity, with developers hiring expert consultants to help argue cases on viability grounds and confronting PAs with fewer experts - and in small authorities few staff have the necessary expertise. To the extent that PAs have moved some of the requirements on contributions to a tariff base (which has increasingly been the case) this helps speed up the process and avoid the need to negotiate – at least on the items subject to tariff. Nonetheless, the system itself creates inevitable delays because of its complexity and in recent years these delays have been exacerbated by the loss of skilled PA staff including legal teams following cuts to local authority funding.

Third, there are big variations in what is agreed and delivered between PAs including those operating in similar market circumstances. This shows that such variations are not solely due to variations in the scope for extracting development value to pay for contributions but to the varying policies and practices of PAs operating in the same market contexts. This is perhaps inevitable given that policies are a matter for discretionary adoption by each PA but it does suggest that in many PAs there is scope for securing more and greater contributions if all authorities adopted best practice.

Fourth, partly because of government advice and partly because of local policy, many developments make no contribution. This is especially the case for small sites and for commercial developments. CIL was partly intended to overcome this problem by ensuring that all development contributed to sub regional infrastructure, but it has also become subject to substantial exceptions and exemptions. In addition, permitted development (PD) is exempt from S106 since planning consent is not required, although CIL can be charged. The recent increase in permitted development, following its application to office to residential conversions has meant no contributions are made to necessary site mitigations needed to make these developments acceptable in planning terms.

9.12.3 Community Infrastructure Levy in England

The introduction of CIL has added new complexities (Community Infrastructure Levy Review Group, 2016; Lord et al, 2018, 2020). It has mainly been adopted by planning authorities in high demand areas. In many lower demand areas, CIL has not been adopted because of viability concerns and because fixed CIL charges may reduce the development value 'left over' for affordable housing. Because of this, many small-scale developments in

lower demand areas are not contributing to infrastructure even though they could afford to do so.

As a flat rate charge not subject to site negotiation, CIL was originally conceived to be faster, fairer, more certain and transparent and to cover all development, but its introduction and implementation have proved complex and time consuming. The regulations have been changed nine times and several exemptions have been introduced (including developments of affordable homes; self-build), reducing the proportion of development potentially contributing to CIL. Some local authorities estimate they have lost up to half their potential CIL income to exemptions (Lord *et al*, 2018, 2020). Up to a quarter of funds raised now have to be devoted to very local needs by using CIL income to fund local groups, including parish councils, in the vicinity of new developments. CIL has also been increasingly perceived to be as uncertain as planning obligations, because of rate changes and because the timing of identified infrastructure provision is unclear.

Overall, considerably less has been collected than initially anticipated when CIL was introduced, although the amount agreed in 2016-17 was £771m, plus £174m by the London Mayoral CIL for Crossrail 1. By 2018-19 these had increased to £830m and £200m respectively (Lord *et al*, 2018, 2020). Most recently the pooling restrictions for S106 brought in at the time of CIL (to prevent 'double dipping') have been removed, enabling PAs to once again pool many S106 contributions towards local infrastructure. These latter changes have been widely welcomed and the most recent study (Lord *et al*, 2020) shows CIL is beginning to 'bed down' as PAs gain more experience of operating it with evidence that it is helping to speed up processes as CIL removes the time to negotiate sub regional infrastructure through S106. However, developers generally find CIL inappropriate for dealing with large sites given the complexities of such developments and the uncertainty of the timing of investment in infrastructure compared with the contractual certainty that S106 provides them.

9.13 Sub-appendix 2B: Overseas lessons for Scotland

Are there any lessons from abroad for Scotland? There are of course risks as well as advantages in looking for lessons on land value capture from abroad (see Crook & Monk, in Crook *et al* 2016). It is critical to understand the different contexts of overseas policy and practice, not the least the different constitutional, legal and administrative systems of other countries, their planning cultures and the different structures of their development industry and banking sectors. Without taking these into account there is a real risk that 'policy tourism', when trying to instigate 'back home' the successful plans, ideas and projects examined abroad, fails to produce desired outcomes (Crook, 2018). It is especially important to examine the legal frameworks underpinning policy in other countries. Critical to this is the manner in which the rules-based approaches based on complete systems of codes derived from abstract principles (characteristic of planning systems within

Napoleonic legal systems) differ from the common law approaches in other countries where discretionary planning systems are more prevalent. Of course, that is not to say that these differences are 'watertight'. There is a degree of discretion in rules-based systems (e.g., allowing sensible and formally agreed modifications when circumstances change) and discretionary systems do have rules (e.g., the importance of adopted plans being followed and of the role of precedent in common law in Britain). The latter is important when planning decisions are challenged on legal grounds in the courts (Booth, 2003, 2017).

Having made those warnings, are there lessons from abroad relevant to capturing development value in Scotland? One of the principal approaches to consider, especially from Germany and the Netherlands, is the way public ownership of land, albeit temporary, has been used to capture development value and fund infrastructure and affordable housing (Crook & Monk in Crook *et al*, 2016; Crook, 2018).

German municipalities capture development values when they zone land for new development. They do this by temporarily pooling sites in mixed ownership, servicing them and returning them back to their original owners, net of the land needed for public uses, at prices that cover municipalities' infrastructure costs and the impact of the readjustment on land values, retaining the right to share in any subsequent value uplift when development takes place. In designated regeneration areas, municipalities can freeze existing land values allowing them to acquire land at these frozen prices, install infrastructure and sell it on to developers with conditions (often set out in a master plan) related to what can be built. Where developers undertake new development themselves, they pay a share of municipalities' infrastructure costs in a manner not unlike the system of planning obligations in Scotland.

In the Netherlands, when municipalities were very active in acquiring development land in the post war years, especially for large-scale development of affordable social housing, they captured some of the development value by buying land at prices that reflected planned new uses, but without taking into account the impact on value of the planned infrastructure. They then serviced it and sold it on to developers (many of which were 'not for profit' housing associations) with clear planning briefs and at prices covering their infrastructure costs and with requirements as to what was built in terms of tenure and price. Municipalities are now less active in the land market because of the financial risks of land holding and because of the greater emphasis now on private sector development of smaller sites than the large-scale development of social housing. Infrastructure is now partly funded, in a manner similar to the planning obligations in Scotland, by developer contributions. Municipalities can now also use planning powers to require developers to build new affordable housing. In addition, new forms of public-private partnerships have emerged with developers pooling their land into a joint vehicle where risks (and rewards) are shared between themselves and municipalities.

These examples of practice from abroad suggest that temporary forms of land banking may be a useful way of proceeding. This will need rules about prices paid for land and the financing of the necessary infrastructure to enable the capturing of some development value through selling off serviced land at prices that recoup the costs of the un-serviced land and the infrastructure subsequently provided. But it is also notable that there are many similarities between both the Germany and Dutch systems and those in both England and Scotland when predominantly private development occurs because infrastructure is funded by developers making contributions to local governments' costs, implicitly capturing some of the development value.

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10. Annex 3: Analysis of Survey Data

This section reports on findings from our survey of 34 planning authorities (PAs) in Scotland, comprising 32 local authorities and two national parks. The survey achieved a 100% response rate, although not all authorities answered all questions (the number of respondents is indicated above each table). The reasons for this are explored at the end of this section.

10.1 Planning authority policies, plans and guidance

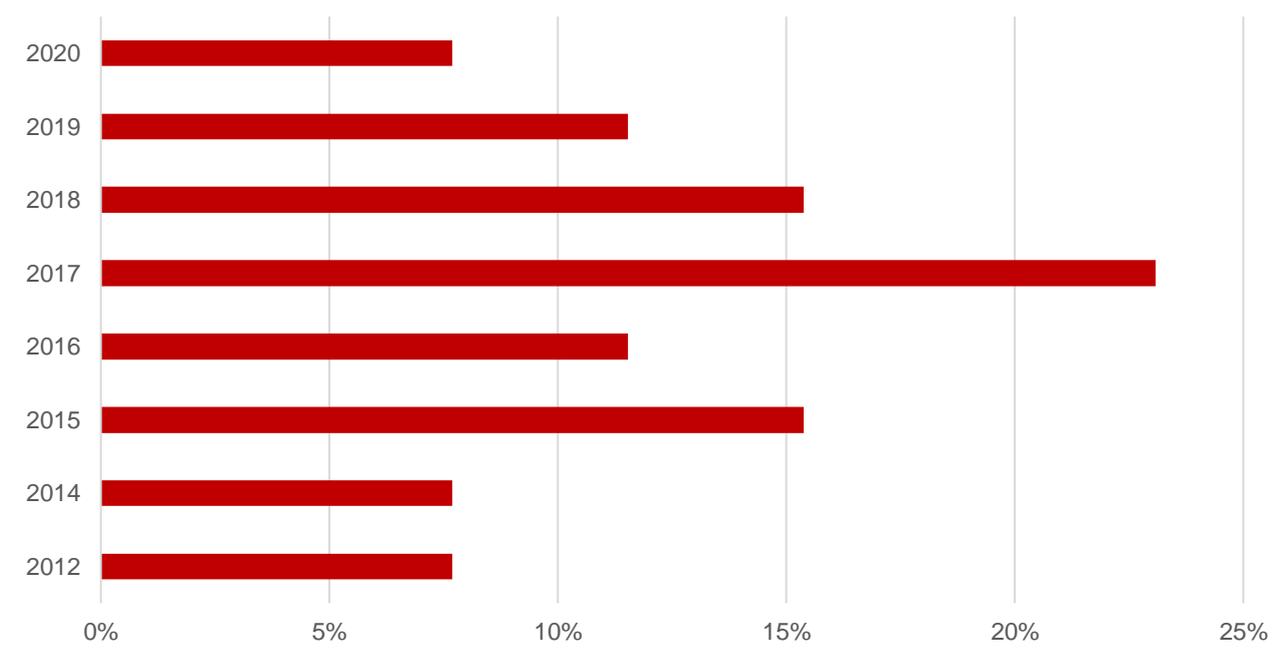
Table 13: Whether PAs have formal policies on developer contributions, by area type

	Total
Yes	30 (93%)
No	3 (7%)

(Question seen by all planning authorities; n=33)

More than 90% of responding authorities said they had formal policies on developer contributions (Table 13). All rural authorities said this was the case, while two urban authorities said they had no formal policies. Of those authorities that did have policies, almost all of them (96%) said these were contained in their development plans.

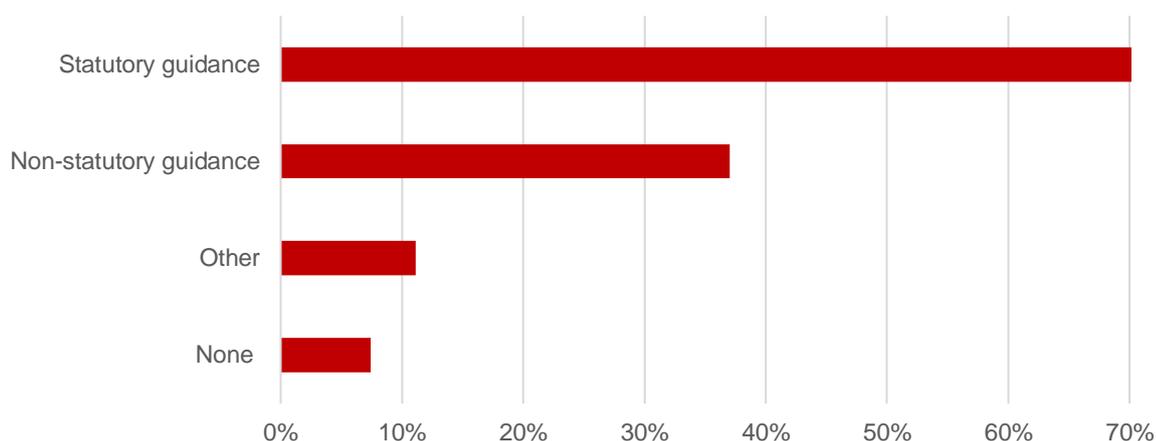
Figure 9: Year of adoption of local development plan



(all PAs with policies on developer contributions in their development plan; n=26)

Most authorities (58%) said they had adopted their development plan in the last four years (i.e., in 2017 or more recently), but some plans were from as early as 2012 (Figure 9).

Figure 10: Existence of supplementary guidance on developer contributions



(all PAs with policies on developer contributions; n=27. Multiple answers permitted)

The development plan was not the only policy document related to developer contributions: most authorities also had supplementary guidance in statutory and/or non-statutory form (Figure 10). Most of these documents had been adopted in the past five years, although a number dated from before 2015 including one affordable-housing policy from 2006.

Table 14: Whether PAs use standard charges for developer contributions, by area type

	Large urban	Other urban	Rural	Total
Yes	5	7	6	18 (64%)
No	3	3	4	10 (36%)

(all PAs with policies or guidance on developer contributions; n=28)

Importantly, 64% of authorities use standard charges for developer contributions (Table 14). A majority of PAs in all area types use this approach.

Table 15: Requirements related to specific zones/projects

	Large urban	Other urban	Rural	Total

Requirements apply to entire planning authority area	4	3	1	8 (29%)
Requirements apply to specific zones	5	4	4	13 (46%)
Requirements apply to specific projects/sites	5	5	6	16 (57%)

(all PAs with policies on developer contributions; n= 28. Multiple answers permitted)

In all area types, requirements generally did not apply across the whole planning-authority area, but were applied to specific zones, projects or sites (Table 15).

10.2 Local infrastructure plans

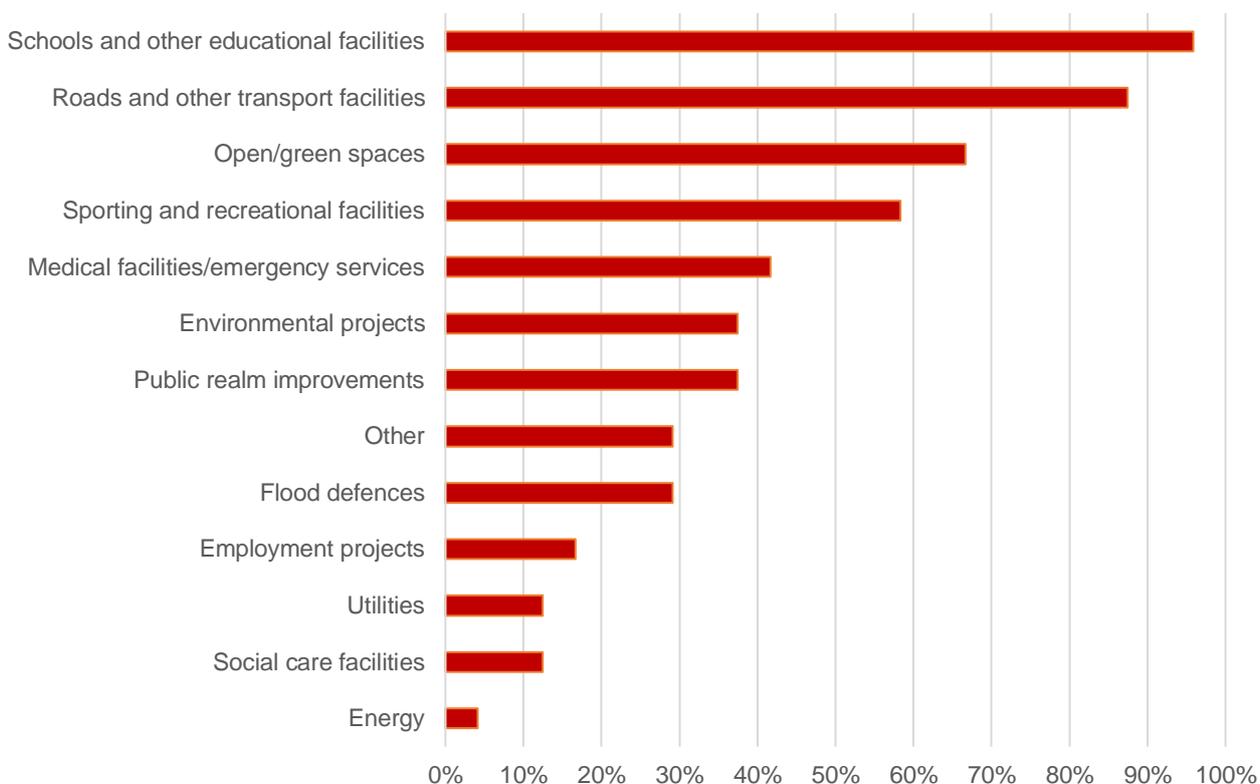
Table 16: Existence of infrastructure plans or programmes in PAs

Local authority has...	Number	%
Infrastructure / LDP action programme	25	89%
Infrastructure plan or capital plan	14	50%
Other	5	18%
Total PAs responding	28	

(All responding PAs; multiple answers permitted)

Planning authorities normally have formal plans to guide infrastructure investment (Table 16). Eighty-nine percent reported having an infrastructure or LDP action programme, while 50% had an infrastructure plan or capital plan. Authorities told us the plans were generally drawn up by planners in consultation with other council services; some also involved external stakeholders including developers or statutory consultees. A few used external transport consultants. Sixty-eight percent of responding authorities said these plans included costings for the required infrastructure.

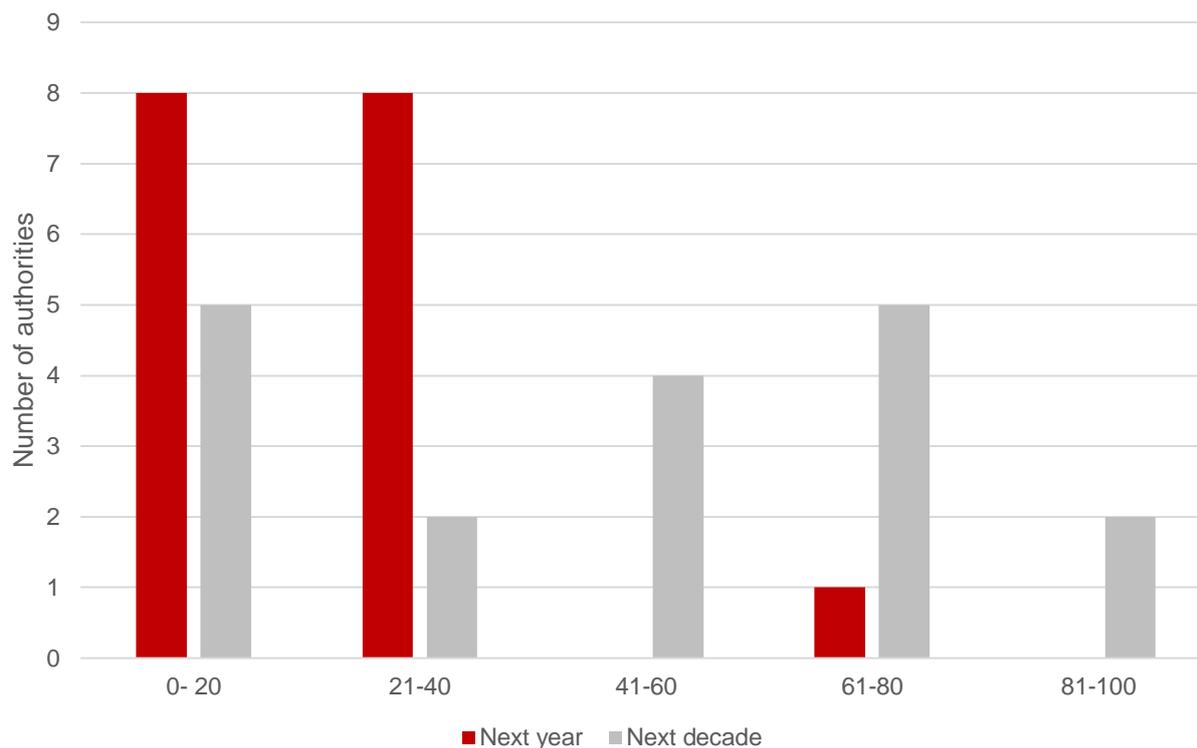
Figure 11. Types of infrastructure covered by infrastructure programmes/plans



(all PAs with infrastructure programmes/plans; n=24. Multiple answers permitted)

The plans and programmes cover a range of types of infrastructure (Figure 11). Schools and roads are the most common categories included, while energy, social care and utilities are less often found. Most commonly the plans and programmes cover the whole local-authority area, but plans for specific projects and sites were also regularly used.

Figure 12: % of infrastructure needs expected to be covered by developer contributions: next year and next decade



(Question seen by all PAs but not all responded; n=17)

Around 40% of the authorities who responded to this question expected developer contributions to address 60-plus percent of their defined infrastructure needs over the next decade (Figure 12). On the other hand, about a quarter of responding authorities thought that developer contributions would meet a maximum of 20% of these needs in the longer term. The position with respect to next year, where authorities have much more direct knowledge of both requirements and potential delivery, was much less positive: 16 out of the 17 replying said that 40% or less would be covered next year.

Only about half of planning authorities responded to this question, perhaps suggesting that these forecasts are difficult to make. Asked how accurate these forecasts of developer contributions were, 70% of respondents said they were somewhat accurate, and only a single respondent thought they were very accurate.

Even though most authorities did have formal infrastructure plans of some sort, 38% said they had infrastructure needs that were not included in these plans or programmes, including schools, digital infrastructure and healthcare. Some authorities noted that infrastructure needs were constantly evolving and that this could be difficult to capture in formal plans.

Table 17: Details covered by infrastructure plans: timing and funding

		Documents specify <i>funding</i>	
		Yes	No
Documents specify <i>timing</i>	Yes	11	1
	No	3	11

(PAs with infrastructure plans or programmes, n=26)

In terms of their level of detail, the infrastructure plans fall mainly into two groups: some specify both the funding and timing of the required infrastructure investment (cell highlighted green in Table 17), while some specify neither of these (cell highlighted pink).

10.3 Targets for affordable housing contributions

Eighty percent of respondents said their authorities had policies to support the delivery of affordable housing. This was as likely in rural authorities as in urban ones. The policies were normally found both in the local development plan and in supplementary guidance. The minority that did not have such policies gave several reasons including a lack of identified need, maintaining the viability of development, and that the council itself met any affordable-housing requirement.

Table 18: Form in which affordable housing contributions are sought

	Count	%
Commuted sums	23	96%
Completed homes	22	92%
Land	20	83%
Total PAs responding	24	

(All PAs with policies to secure affordable homes; n=24. Multiple answers permitted)

Developers can provide affordable housing in various ways and clearly most authorities used more than one approach. Commuted sums, completed homes and land were all used by over two-thirds of responding authorities, with commuted sums chosen by the highest number (Table 18).

Table 19: How targets for affordable homes are expressed.

	Count	%
As a proportion of new homes	15	63%
As numbers of units	1	4%
Targets set out in a different way	4	17%
No targets	5	21%
Total PAs responding	24	

(All PAs with policies to secure affordable homes; n=24. Multiple answers permitted)

Most authorities said they based their targets on the Housing Need and Demand Assessment or simply used the national policy target of 25%. Twenty-four authorities said they consulted local housing associations in drawing up their affordable-housing policies and targets; none said they did not do so. Most included the full range of affordable tenures and products in their target numbers; as discussed below, social rented homes and mid-market rental units dominate permissions and completions.

Table 20: Areas covered by affordable homes targets

	Count	%
Whole planning authority	17	89%
Particular neighbourhoods	4	21%
Particular sites	2	11%
Total PAs responding	19	

(All PAs with targets for delivery of affordable homes; n=19. Multiple answers permitted)

Targets for affordable housing were most often set as a proportion of new homes (Table 16), with small numbers using other methods or having no targets at all. In most cases the targets covered the entire planning authority rather than particular neighbourhoods or sites (Table 20).

Some 19 authorities said residential developments were required to contribute to affordable housing, while only a single authority said commercial schemes were required to contribute. Ten authorities said they required affordable housing contributions from schemes with four or more units, and one authority requires a contribution from any scheme with two or more. Some authorities set a higher threshold for requiring on-site

provision. At the other end of the scale, three authorities required affordable housing only from schemes of 20 or more units, including one where the cut-off was 50.

We asked authorities how the availability of grant funding affected their obligations policies for affordable housing. Most said they set their DC requirements without regard to potential grant funding, although they recognised that grant would affect the tenure of homes provided. Some survey respondents indicated that grant was handled by housing departments, with planners not involved. On the other hand, a few authorities said Scottish government grant funding was generous enough that they could achieve their affordable-housing targets *without* turning to developer contributions. This was seen as preferable because it did not discourage private development.

10.4 Types of infrastructure agreed as developer contributions

Table 21: Number of authorities entering into agreements related to various infrastructure types, by year agreed

	17/18	18/19	19/20
Schools and other educational facilities	16	15	14
Roads and other transport facilities	17	13	14
Sporting and recreational facilities	12	11	12
Open/green spaces	9	8	10
Public realm improvements	6	7	4
Medical facilities/ emergency services	5	5	4
Environmental projects	1		2
Energy	1	1	1
Employment projects	2		
Other	5	4	5

(PAs that had entered into agreements with developers in the preceding 3 years; n=20. Multiple answers permitted.)

As noted earlier, schools and roads were the types of infrastructure most commonly included in infrastructure development plans, and these were also the most common subjects of agreements for developer contributions in the last three years. Note that Table

21 indicates the numbers of authorities that entered into agreements related to each type of infrastructure, not the number of such agreements concluded, which is addressed later in this section.

10.5 Operational Effectiveness

Seventy-one percent of authorities said they had a dedicated team to *negotiate* developer agreements, while 50% said they had staff devoted to *monitoring* them. Only one authority said they outsourced this monitoring work.

Table 22: Methods of monitoring delivery of developer contributions

	Count	%
Site visits	15	56%
Digital alert system	5	19%
Other	23	85%
Number of responses	27	

(All PAs that had entered into agreements in last 3 years or previously; n=27. Multiple answers permitted)

Over half of local authorities responding said they checked delivery of contribution through site visits, and 19% had a digital alert system (Table 22). Authorities reported several other monitoring methods including liaison with building standards departments, requiring developers to provide sales statements and cross-checking council tax payments.

Table 23: Whether developer contributions are delivered as agreed

	Count	%
Always delivered	7	26%
Mostly delivered	17	63%
Only a minority delivered	2	7%
Never delivered	1	4%
Total PAs responding	27	

(All PAs that had entered into agreements in last 3 years or previously; n=27. Multiple answers permitted)

Planning authorities reported that contributions were mostly or always delivered; only a few reported low levels of compliance (Table 23).

Authorities reported that only a minority of agreements (median of 13.5%) had been subject to requests for variation over the last three years. Most of these requests (median 82%) were granted. The most frequently reported changes were reworking of the agreement in relation to further applications from developers that changed the overall plans for the site and resultant contribution requirements, and timing. Most respondents (63%) said requests for variation had not become more common in the last three years.

10.6 Overall Picture

Table 24: Biggest perceived challenges with regard to developer contributions

	Count	%
Viability issues for developers	21	78%
Getting enough contributions to deal with the impact of cumulative developments on infrastructure needed	18	67%
Delays to site starts and therefore payment of contributions	14	52%
Land/development market not strong enough to support what is needed	12	44%
Negotiation difficulties	11	41%
Constraints arising from the five tests	8	30%
Other	6	22%
Total PAs responding	27	

(All PAs that had entered into agreements in last 3 years or previously; n=27. Multiple answers permitted)

The biggest challenges with regard to agreeing and securing developer contributions were seen to be viability issues for developers and getting enough contributions to deal with the impact of cumulative developments (Table 24).

Table 25: Perceived difficulty of getting agreement on developer contributions ‘in this planning authority’

	Count	%
--	-------	---

Easy	3	11%
Neither easy nor difficult	15	56%
Difficult	8	30%
Very difficult	1	4%
Total PAs responding	27	100%

(All PAs that had entered into agreements in last 3 years or previously; n=27. Multiple answers permitted)

Getting agreement on developer contributions was generally seen as neither easy nor difficult, although about one-third of respondents said it was difficult or very difficult (Table 22).

Table 26: How agreeing developer contributions affects planning delay

	Count	%
Not at all	2	7%
A little	3	11%
A moderate amount	13	46%
A great deal ¹⁰	10	36%
Total PAs responding	28	100%

(All PAs; n=28)

The process of securing developer contributions was seen to add to planning delay, with over a third of respondents saying the effect was major (Table 26). Authorities said that the process of negotiating contributions on a site with 50 or more homes normally added to the time to grant consent, with estimates of the extra time required ranging from one month to two years. Most authorities said such agreements were usually concluded within nine months or less.

¹⁰ Note: Combines survey categories 'a great deal' and 'a lot'

10.7 Numbers of planning permissions and agreements 2017/18 – 2019/20

In the three years from 2017/18 to 2019/20, survey responses indicated there were about 22,500 planning permissions issued in Scotland for residential and commercial uses¹¹ (Table 27). There was a fall of about 9% in the annual numbers from 2017/18 to 2019/20.

Over the same three-year period there were 1,737 planning agreements concluded under S75 and S69¹², meaning 7.7% of permissions were covered by agreements. Although the number of planning permissions fell over the period 2017/18 to 2019/20, the number of planning agreements rose by about 50%. Most of the agreements (68%) were via S75, although that proportion fell markedly from 2017/18 to 2019/20.

On average, each planning authority made about 15 agreements for developer contributions per annum over the period. This average obscures significant variation: six authorities had each concluded more than 100 agreements, while another six authorities reported none at all over these three years (although most said they had entered into agreements at some time in the past, and would use them again if the situation and the development market warranted).

Table 27: Planning permissions and agreements: Scotland 2017/18 – 2019/20

	17/18	18/19	19/20	Totals/ Overall
Total planning permissions (commercial & residential)	7,797	7,654	7,130	22,581
Total planning agreements under S75 & S69	506	480	751	1,737
% of permissions with agreements	6.5%	6.3%	10.5%	7.7%
Average number of agreements per PA	14.9	14.1	22.1	14.9
Average proportion of agreements via S75*	79.2%	62.8%	61.8%	67.9%

Source: LSE London calculations based on survey responses, grossed up for non-response based on Scottish Govt statistics

*Average for those authorities giving breakdown in survey (n=17)

¹¹ The numbers in these tables may not correspond with Scottish Government statistics, in part because the 'commercial' designation does not coincide with official definitions of planning classes.

¹² Our survey also asked about S48 of the Roads (Scotland) Act 1984, but no planning authorities reported making agreements under this provision in the preceding three years. Scottish Government planning statistics report agreements under S69 and S75 only.

10.8 Use of S75 vs. S69

We asked how planning authorities decided between the use of S69 and S75. They said they generally used S69 for smaller contributions and those where the developer preferred to pay upfront, while S75 was usually preferred for complex obligations and those that needed to run with the land. Many authorities did not regard this as a decision that was theirs alone to take; rather the choice of instrument was a matter for negotiation with developers. One authority explained, 'It is not simply a question of the PA "deciding" which contribution route is taken: it is not for an PA to unilaterally decide that an S69 as opposed to an S75 will be used. Even if that might be the preferred approach for an PA, it is still subject to agreement by the developer.' Another said simply, 'It is left for the developer to choose.'

10.9 Units of housing and affordable housing

Turning now to housing, 109,570 homes in all were permitted from 2017/18 to 2019/20 (Table 28). Of these, 32,684 (about 30%) were affordable. The numbers of homes and affordable homes permitted both went up over this three-year period.

Table 28: Total and affordable homes permitted: Scotland 2017/18 – 2019/20

	17/18	18/19	19/20	Totals
Total number of new homes permitted	33,824	37,461	38,285	109,570
Total numbers of affordable homes permitted	9,915	10,130	12,639	32,684
Affordable homes permitted as % of all homes permitted	29.3%	27.0%	33.0%	29.8%

We asked respondents to tell us what proportion of affordable homes permitted were to be provided by developer contributions. The survey results were incomplete for this question, so we grossed up the figures for the country as a whole to account for non-responders, using two different techniques. We calculated that the proportion of affordable homes permitted was in the range of 25-34% of all homes permitted; the two figures are the results of different estimation methods¹³ (Table 29). Affordable homes permitted through

¹³ The lower figure is based on the proportion of developer contributions reported in the survey responses, while the higher is based on population.

developer contributions accounted for 8-10% of *all* homes permitted, again depending on the estimation method used (Table 26).

Table 29: Affordable homes permitted, of which via developer contributions: Scotland 2017/18 - 2019/20

Total numbers of affordable homes permitted via DCs	17/18	18/19	19/20	Totals/ overall
Estimation method 1	2,811	3,393	4,918	11,122
(% of affordable homes permitted)	28.4%	33.5%	38.9%	34.0%
Estimation method 2	2,190	2,542	3,540	8,272
(% of affordable homes permitted)	22.1%	25.1%	28.0%	25.3%
Affordable homes via DCs as % of all homes permitted				
Estimation method 1	8%	9%	13%	10%
Estimation method 2	6%	7%	9%	8%

Source: LSE London calculations based on survey responses. Totals grossed up for non-response by reciprocal of population-weighted sampling fraction

*Estimation method 1: Grossed up for non-response by reciprocal of population-weighted sampling fraction

*Estimation method 2: Grossed up by applying average % of homes via DCs to non-responding authorities

Table 30 below, shows the percentage of *ALL* homes consented that were to be delivered by developer contributions, by house-price quartile. These figures are calculated on partial data (see rows—in one quartile we had information for only two of seven authorities). Many authorities did not answer one or another of the two relevant questions, and there was not enough information to permit grossing up.

Even so, the information we do have suggests that in areas with the highest prices, developer contributions account for around a fifth to a quarter of consented homes, while the proportions are much lower in all the other quartiles. There is one outlier: the 2019/20 number in price quartile 2 reflects a single very high figure (presumably a major development) in one authority.

Table 30: % of ALL homes consented to be delivered by DCs, by house-price quartile 1= lowest prices

	2017/18	2018/19	2019/20
Price quartile 1 (data for 5 of 8 authorities)	4%	0%	0%
Price quartile 2 (data for 3 of 8 authorities)	4%	2%	32%
Price quartile 3 (data for 2 of 7 authorities)	5%	5%	2%
Price quartile 4 (data for 6 of 9 authorities)	18%	22%	24%

Source: Survey, Q39 (number of housing units permitted per year) and Q45 (number of affordable units permitted to be delivered by DCs)

Across Scotland, in the areas for which we have information (about half of planning authorities), more than two-thirds of affordable homes permitted in the last three years were social rented dwellings (Table 31). The next most common tenure was intermediate/mid-market rent: together these two tenures accounted for over 90% of affordable homes permitted over the period 2017/18 – 2019/20. Shared equity, discounted market sale and shared ownership made up the remainder. Shared ownership, an important component of affordable housing in England, accounted for only a handful of units in Scotland.

Table 31: Affordable homes permitted by tenure

Numbers	2017/18	2018/19	2019/20	Totals
Social rent	3,446	3,660	4,028	11,134
Intermediate/mid-market rent	1,304	815	1,464	3,583
Shared equity	546	273	372	1,191
Discounted market sale	40	90	128	258
Shared ownership	24	0	5	29
Percentages	3 yr. avg			
Social rent	64%	76%	67%	69%
Intermediate/mid-market rent	24%	17%	24%	22%
Shared equity	10%	6%	6%	7%

Discounted market sale	1%	2%	2%	2%
Shared ownership	0%	0%	0%	0%

Over the last three years, social housing dominated affordable housing output with 73% of completions, versus 69% of permissions over the same period (Table 32). Again, these numbers are not for the whole of Scotland but only for those authorities for which we have information. More authorities were able to give information about the tenure of completions than of permissions (23 vs 16).

Table 32: Tenure of new affordable homes completed

Numbers	2017/18	2018/19	2019/20	Totals
Social rent	2,453	3,642	3,094	9,189
Intermediate/mid-market rent	777	623	648	2,048
Shared equity	273	393	353	1,019
Discounted market sale	62	127	47	236
Shared ownership	0	24	0	24
Percentages	3 yr. avg			
Social rent	46%	75%	52%	73%
Intermediate/mid-market rent	14%	13%	11%	16%
Shared equity	5%	8%	6%	8%
Discounted market sale	1%	3%	1%	2%
Shared ownership	0%	0%	0%	0%

We noted above that developer contributions accounted for 25-34% of all affordable homes permitted in the last three years. Looking at the breakdown by tenure for those areas where we have information, about 22% of social rented homes and of mid-market rental homes permitted were to come via developer contributions (Table 33). Discounted market sale and shared ownership units were most likely to be provided via developer

contributions (93% and 100% respectively were to come this way), but the total number of such units was small.

Table 33: Affordable homes permitted by tenure, via developer contributions

Numbers	2017/18	2018/19	2019/20	Totals
Social rent	904	761	758	2,423
Intermediate/mid-market rent	272	165	338	775
Shared equity	12	11	0	23
Discounted market sale	40	90	110	240
Shared ownership	24	0	5	29
Percentages	3 yr. avg			
Social rent	26%	21%	19%	22%
Intermediate/mid-market rent	21%	20%	23%	22%
Shared equity	2%	4%	0%	2%
Discounted market sale	100%	100%	86%	93%
Shared ownership	100%	n/a	100%	100%

(only PAs giving breakdown in survey N=16)

We asked authorities how much time normally elapsed between conclusion of planning agreements and delivery of new affordable homes. 13 authorities replied. The average time reported was 27 months (minimum 12, reported by two authorities; maximum 48 months).

10.10 Use of developer contributions for affordable homes

Because developer contributions are taken ultimately out of the value of the land, we expected to find higher rates of provision via DCs in areas with high land values. We looked at the proportion of affordable homes permitted that were to come via developer contributions across the areas by house-price quartile (using house prices as a proxy for land values, for which there was no suitable data source). The analysis confirmed our hypothesis. Table 34 shows that in the three years from 2017/18 to 2019/20, 69% of affordable homes were to be provided via developer contributions in the areas with the

highest house prices (Quartile 4), versus only 10% in areas with the lowest prices (Quartile 1).

Table 34: Affordable homes permitted by price quartile: % via developer contributions

	House price quartile			
	1	2	3	4
2017/18	27%	24%	29%	73%
2018/19	2%	16%	23%	61%
2019/20	0%	20%	9%	75%
Overall average	10%	20%	21%	69%

(Only PAs giving information in survey N=18 Quartile 1 = lowest prices)

Source: LSE London calculations based on survey responses.

10.11 Do permissions for new homes reflect house prices levels and changes?

If the supply of new housing is responsive to demand, we would expect to see a higher level of permissions in areas with high house prices than in areas where prices are low, and/or in areas where prices are rising more rapidly.

To examine the first proposition, we divided the 32 Scottish local authorities¹⁴ into quartiles by house price and compared the numbers of permissions in the last three years.

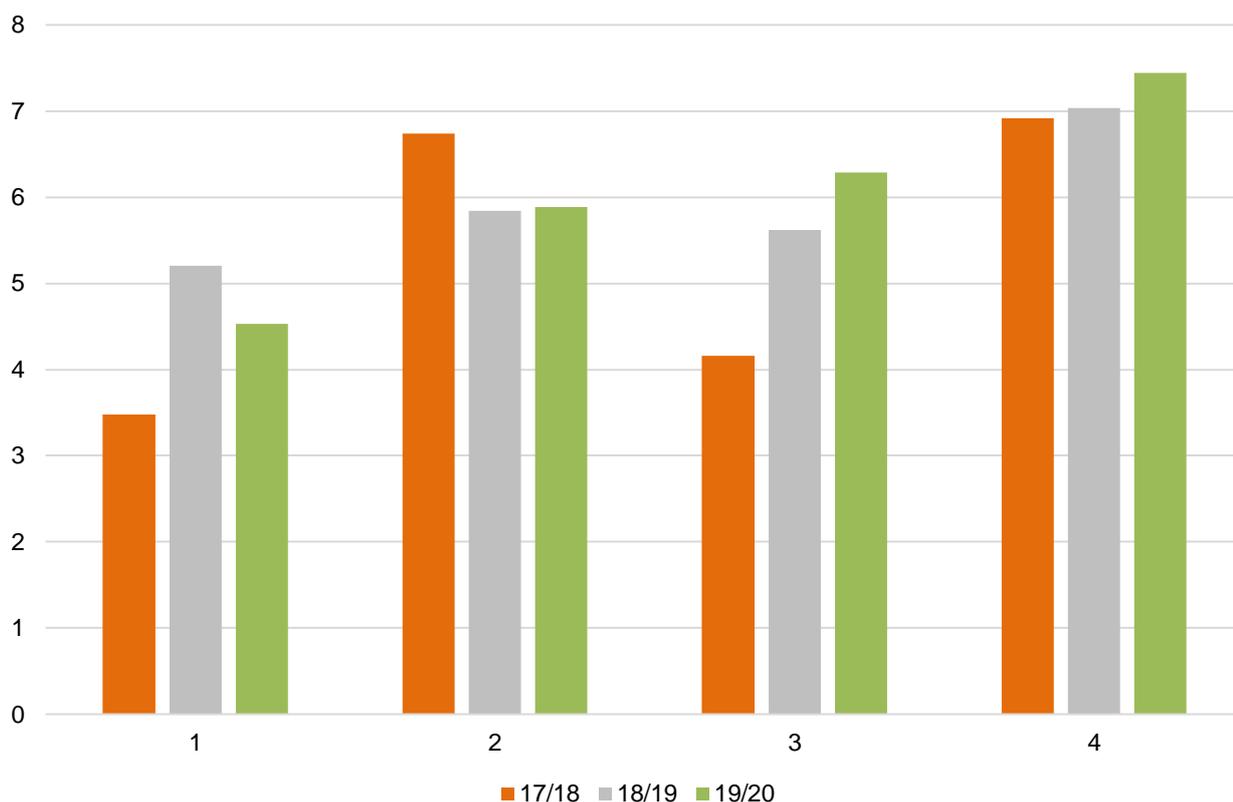
Because the populations differ enormously (Glasgow, the most populous authority, has 633,000 inhabitants while the Orkney Islands have only 22,000), we used figures for permissions per 1000 population. Within each quartile the totals were grossed up for non-response.

The analysis showed that over each of the last three years, there were on average 4.4 new homes permitted per thousand population in the areas with the lowest house prices (quartile 1), versus 7.1 per thousand population in areas with the highest house prices (quartile 4). This suggests there is a generally positive relationship between house price and number of homes permitted. There are variations from year to year—in 2017/18, for

¹⁴ The two national park authorities were omitted from this analysis as their populations are not reported separately.

example, there were more homes per thousand permitted by authorities in quartile 2 than in quartile 3 (Figure 13).

Figure 13: New homes permitted by local-authority house price quartile, 2017/18 – 2019/20

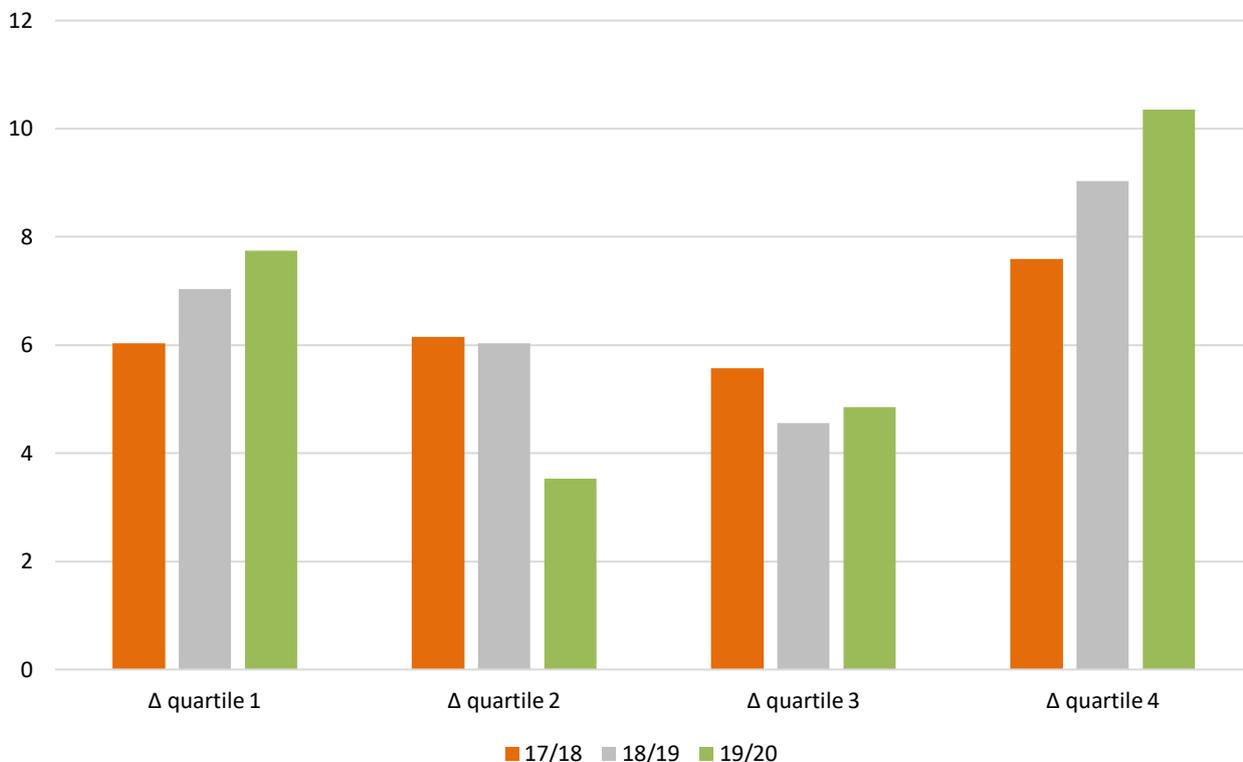


(per 1000 population; Quartile 1 = lowest prices)

To look at the second proposition – that supply and permissions respond to *changes* in house price – we did a similar analysis, dividing the 32 authorities into quartiles by house-price change. The quartiles were not the same; some of the authorities that had high absolute prices were in the lowest quartile for house-price change. Again, we compared the numbers of permissions in the last three years per 1000 population, with numbers within each quartile grossed up for non-response.

The analysis showed that over each of the last three years, there were on average 6.9 new homes permitted per thousand population in areas where house prices were rising most slowly (change quartile 1), versus 9 per thousand in areas where prices were going up fastest (change quartile 4). However, the relationship to house-price change is not straightforward, as the number of permissions per thousand was lowest in quartiles 2 and 3 (Figure 14).

Figure 14: New homes permitted by local-authority house price change quartile, 2017/18 – 2019/20



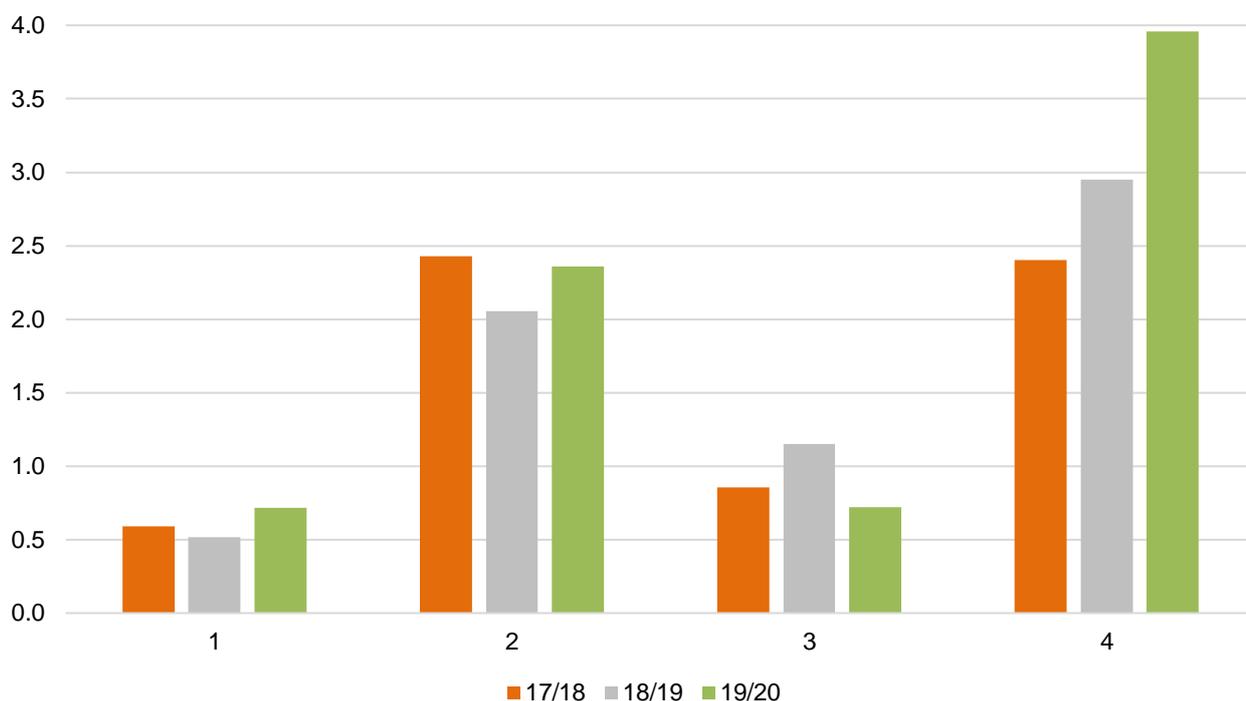
(per 1000 population; Quartile 1 = smallest increase)

10.12 Do permissions for *affordable* homes reflect house prices levels and changes?

Turning now to affordable homes, we calculated the numbers of affordable homes permitted per 1000 population over the last three years in each of the house-price quartiles. The figures were not grossed up for non-responders. Unsurprisingly, the areas where prices were highest (Quartile 4) were also those where most affordable homes were permitted (Figure 15), and those where market prices were already low (Quartile 1) saw far fewer. Here again though the picture was mixed, with Quartile 2 (lower prices) seeing more permissions for affordable housing on a population-weighted basis than Quartile 3 (higher prices).

In the highest price quartile, the numbers of affordable permissions went up strongly over the three-year period, but this was not the case in the other quartiles.

Figure 15: Affordable homes consented per 1000 population by price quartile



(per 1000 population; Quartile 1 = smallest increase)

10.13 Reasons for data gaps

Our survey had a 100% response rate from Scottish planning authorities, which in our experience is very unusual in a study of this type. Even so there were several questions that not all authorities answered.

Most of these gaps were in answers to questions about *numbers* (of planning permissions, homes, affordable homes) or *values* (of developer contributions). We recognise this was a demanding exercise for authorities: There were 11 such questions, all in the form of matrices, so the survey asked for more than 175 separate numbers or values.

The questions that proved most difficult for authorities to answer were about

- The numbers of planning permissions with agreements under S75/S69/S48 in the last three years
- The numbers of new affordable homes granted planning permission / completed in the last three years, of which through developer contributions
- The values of developer contributions

For example, we asked for the financial value of developer contributions in 2019-20, regardless of the year in which the agreement was made. Authorities were asked to say how much they received in direct financial contributions, and for the value of in-kind contributions. Even for direct financial contributions, only a minority of authorities were

able to provide data; most responded 'cannot estimate'. No authority could give us the value of in-kind contributions (except for the five authorities who said '0'). Similarly, few authorities could tell us what percentage of contributions agreed in financial year 2017-18 had been delivered by 31 March 2020.

There were three main reasons for the unanswered questions, according to our conversations and correspondence with local authorities, and the free-text responses to the survey:

- The authorities did not collect the specific data requested in the survey
- The data were inaccessible because of pandemic restrictions or were held by a different part of the authority, and/or
- The data were contained in individual case files and would have been onerous to extract.

Several authorities told us they focused on compiling the information required by the Scottish Government for the Planning Performance Framework. This emphasises the time taken to determine planning applications but does not address performance in terms of outcomes. Typical was this response to a query from us:

"My apologies for being unable to answer all of the questions in your survey – the way in which our database records information doesn't allow us to extract the fields you require".

Similarly, another authority said,

"The statistical data sought has necessitated detailed interrogation of Council records and in many cases cross service input. This has been time consuming and often reliant on officers running bespoke reports or manually extracting information.

Data on affordable housing were especially problematic. We asked for affordable home permissions and completions, broken down by product type (e.g., social rented, mid-market rent, shared ownership, etc.). Several authorities were unable to provide this, saying they did not hold the information in this way. One explained,

'The Council is unable to provide a direct response to this question as our legal agreements do not generally require the affordable housing tenure/type to be specified at the time of signing and grant of planning permission. Rather, our standard legal agreements include a requirement for 25% of the total number of housing units on site to be provided as affordable housing, and a clause requiring the subsequent submission and approval of an affordable housing scheme to outline exactly how the affordable housing requirement will be satisfied".

Another replied,

"in terms of social housing breakdown, we only record it as social housing and local authority - to break it down in to mid-market rent etc would require going through every single application and even then, would be unlikely to offer a comprehensive breakdown. The questions seem biased towards an expectation of having an affordable housing policy - which we do not have, as we deliver by other means which has resulted in difficulty in answering many of the questions as a lot of our data does not match your requirements".

Another said,

"With regard to these two questions (Q47: Units of affordable housing granted planning permission by type and mechanism, Q48: Units of affordable homes completed last 3 years, of which through developer contributions), these fell under another department's expertise. It is my understanding that this information is not readily available and would require a lot of resources to pull together, resources which are currently strained as is. We are trying to improve our in-house software which in the future would hopefully allow us to pull this information relatively quickly".

On the same issue, another said,

"We do a housing land audit 1st of April every year, and that's when we log completions. The data are published in October so there's a 5-month lag. The 2019 housing land audit was delayed, and so was last year's. For Q47 it's very hard to get these numbers—we could try to do it but it takes a long time".

Another challenge was in following the course of developer contributions through the system. One authority told us,

"We have too much data corporately; the question is how to interrogate and understand it as each service within the council uses the data its own way. Contributions are brought in by planning but then go to say education/housing/transport and we don't know what happens to them".

In response to our query about values of developer contributions, one authority said,

"I have been advised that this data is not readily available – to advise the value (£) would involve scrutinizing a number of planning consents and/or conditions and S75 agreements. ... Ideally (in future) we would be in a position where we can keep our data in a much more malleable form so it can be scrutinized in many a manner of ways with relative ease. ... We are eager to see what comes of the survey and learn lessons from other PA colleagues".

Again, on the value of developer contributions received in the most recent year, another authority said,

"I am not in a position to quantify the value of third-party infrastructure works for the financial year 2019/20. If the infrastructure requirement purely arises from a single development, then the developer will generally be required to carry out the works themselves. This is certainly not uncommon. However, the Council does not quantify the financial value of such development-specific infrastructure".

10.14 Specific concerns about the current system

Finally, several respondents used the survey to tell us about their concerns with aspects of the current system, or to make suggestions for improvement. Verbatim excerpts from selected responses appear below.

About the accuracy of forecast infrastructure costs:

"Infrastructure costs are increasing ahead of indexation metrics. Also, Scottish Futures Trust's education costs per sqm metric appears to be less than actual costs councils are receiving in competitive tender processes. Therefore, cost gaps are appearing between what is being secured in contributions and the actual costs of projects that they are due to deliver".

About retrospective contributions and the cumulative impact of development:

"Planning obligations and the assessment of impact from new development is arguably the single largest determining factor in assessing the viability or delivery of housing development in [local authority area]. Pressures on transport infrastructure and specifically, the school estate, can create an imbalance in planning for and delivering across [area]. This is heightened as all market areas within [area] have their own development market costs; for example, schools required in weaker housing market areas will have more of a cost impact on developers whose land values and revenues will be lower than the stronger market areas".

"The solution often arrived at to mitigate new development impacts is the provision of new infrastructure or assets; however, this creates additional ongoing revenue and planning costs for the authority over the lifetime of the development. Critically it is not possible to recoup such revenue funding from obligations which in turn places pressure on authority and partner capital plans".

"It would be more effective to align spatial planning and the transport or education estate strategy so that new development is directed to locations with capacity or to locations where spatial and community planning objectives are planned to be met.

Housebuilding including associated developer spending on mitigation, and local authority financial planning (capital and revenue) will be mutually supportive, and community planning can play a stronger role than it does currently where housebuilding can be led by market preferences. The new Planning (Scotland) Act 2019 offers scope to move us in that direction. The solution often arrived at to mitigate new development impacts is the provision of new infrastructure or assets; however, this creates additional ongoing revenue and planning costs for the authority over the lifetime of the development. Critically it is not possible to recoup such revenue funding from obligations which in turn places pressure on authority and partner capital plans”.

About the timing of agreements about developer contributions:

“I previously used to work in England and was involved in negotiating S106's. For English appeals, where an obligation is a consideration it is considered alongside all of the other issues and the inspector needs to have an actual completed obligation in front of them at the point of making a decision on an appeal i.e., even if everything else was deemed to be acceptable, if there was no obligation and one was deemed to be necessary, the application would be refused.

In Scottish appeals, (after) all of the other issues are considered, the need for an obligation is likely to be raised by the Council. The Reporter, having addressed layout and design etc, will--if satisfied with those--issue a Notice of Intention to the parties and note the need for an obligation to address contribution to X, Y and Z.

It will often only be at that point that the parties will get into serious discussions about contributions and the basis of those. (It) can potentially take weeks if not months before an agreement can be drafted. It is also possible that the parties will disagree requiring the appeal to reopen for the issues to be examined by the reporter. All of this can prolong the whole process but also the whole matter of the necessity for an obligation can be fundamental to the granting or not of permission. This therefore needs to be fully considered at the point of resolving to grant permission rather than that only being examined after the decision in principle to grant permission has been taken. In essence I think an approach more akin to the approach adopted in English appeal might reduce delay and uncertainty”.

10.15 Sub-annex 3A: Questionnaire

Planning Obligations in Scotland

Start of Block: Introduction

Q1 Thank you for taking this survey on developer contributions in Scotland. The study is being carried out by the London School of Economics in collaboration with the University of Sheffield, Rettie and Co and Stefano Smith Planning. The work has been commissioned by the Scottish Government to inform future policy development on infrastructure planning and delivery in Scotland. There is a glossary of terms which is provided as a separate Word document.

The questionnaire also asks for information relating to section 48 of the Roads (Scotland) Act 1984, so colleagues responsible for highways may need to be involved in compiling the data. Equally housing colleagues may have relevant information about affordable housing.

The survey will be open until **November 20th**. The survey does not need to be completed in one go. If more than one department of your authority is contributing to the questionnaire, they should all use the same link so they can see which questions have been answered already. **Please do not click the final 'submit survey' arrow until all questions that are relevant to your authority have been answered.** If you are able to complete the questionnaire more quickly, we would be very grateful.

The survey is designed so that you only see questions relevant to your authority, so you may not see all questions. Where you cannot respond to a question for some reason, please note the issue--there is space for additional information at the end of the survey.

No individuals or local authorities will be named in any research reports or outputs without specific permission. All data will be held securely on LSE servers and anonymised at the conclusion of the project.

If you have any questions about the survey or the information we are looking for, please contact our LSE helpline (telephone or email):

Fanny Blanc: f.blanc@lse.ac.uk
(+44) 7746 367 561

End of Block: Introduction

Start of Block: Information about the authority

Q2 Name of planning authority

Q3 Who is completing this questionnaire?

	Name (1)	Role at planning authority (2)	Years at planning authority (3)
Lead respondent (1)			
Contributor 1 (if any) (2)			
Contributor 2 (3)			
Contributor 3 (4)			
Contributor 4 (5)			

Q4 Has the planning authority entered into any agreements with developers / landowners securing contributions in the past 3 financial years (i.e. 2017-18, 2018-19 and 2019-20)? This includes contributions secured via S75, S69 and S48.

- Yes (1)
- No (2)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Q5 Were these contributions secured via ... ? (tick all that apply)

- Section 75 (1)
- Section 69 (2)
- Section 48 (3)
- Planning conditions (4)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = No

Q6 You said your authority had entered into no agreements on contributions in the last three years. What are the reasons for this? (tick all that apply)

- No requirements for new infrastructure (1)
 - Lack of development activity (2)
 - No affordable housing policy (3)
 - No developer contributions policy (6)
 - Development values too low so contributions would make development unviable (4)
 - Anything else (please specify--eg reliant on regeneration policies) (5)
-

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = No

Q7 You said your authority had entered into no agreements on contributions in the last three years. Have they entered into any such agreements in earlier years?

- Yes (1)
- No (2)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = No

Q8 Under what circumstances might the planning authority seek developer contributions in the future?

Q9 Does your planning authority have formal policies on developer contributions?

Yes (1)

No (2)

Display This Question:

If Does your planning authority have formal policies on developer contributions? = Yes

Q10 Are these policies set out in the local development plan?

Yes (1)

No (2)

Display This Question:

If Does your planning authority have formal policies on developer contributions? = Yes
And Are these policies set out in the local development plan? = Yes

Q11 In what year was the local developer plan adopted?

Q12 Does your planning authority have any supplementary guidance covering development contributions/planning obligations? (tick all that apply)

Yes, statutory guidance (3)

Yes, non-statutory guidance (4)

Other (please specify) (6)

No (5)

Display This Question:

If Does your planning authority have any supplementary guidance covering development contributions/p... = Yes, statutory guidance

Or Does your planning authority have any supplementary guidance covering development contributions/p... = Yes, non-statutory guidance

Q13 Which document(s) contain this guidance, and when were they adopted?

	Name of document (1)	Year adopted (3)
Document 1 (1)		
Document 2 (2)		
Document 3 (3)		

Display This Question:

If Does your planning authority have formal policies on developer contributions? = Yes

Or Does your planning authority have any supplementary guidance covering development contributions/p... = Yes, statutory guidance

Or Does your planning authority have any supplementary guidance covering development contributions/p... = Yes, non-statutory guidance

Q14 Does your planning authority use standard charges for developer contributions?

Yes (1)

No (2)

Display This Question:

If Does your planning authority have formal policies on developer contributions? = Yes

Or Does your planning authority have any supplementary guidance covering development contributions/p... = Yes, statutory guidance

Or Does your planning authority have any supplementary guidance covering development contributions/p... = Yes, non-statutory guidance

Q15 Does your planning authority have requirements that are specific to particular zones or projects? (tick all that apply)

No- requirements apply to entire planning authority area (1)

Yes-Zones (please specify) (2)

Yes-Specific projects/sites (please specify) (3)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q16 What factors does your planning authority take into account when deciding between using S75 and other statutory powers for agreeing contributions?

End of Block: Policies and practices

Start of Block: Local Infrastructure Plan

Q17 Does your planning authority have any of the following for **infrastructure that is related to new development or the Local Development Plan**? (tick all that apply)

- Infrastructure plan or capital plan (6)
- Infrastructure / LDP action programme (7)
- Infrastructure action plan (10)
- None of the above (11)
- Other (please specify) (13)

Q18 Does your authority have infrastructure needs related to new development that are **not** in any infrastructure / Local Development / Capital plans? If so what are they?

- No (1)
 - Yes (please specify) (2)
-

Display This Question:

If Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure plan or capital plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure / LDP action programme

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure action plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Other (please specify)

Q19 Does your planning authority have costings for the proposed investments?

- Yes (1)
 - No (2)
-

Display This Question:

If Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure plan or capital plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure / LDP action programme

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure action plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Other (please specify)

Q20 Who was involved in drawing this (these) document(s) up?

Display This Question:

If Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure plan or capital plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure / LDP action programme

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure action plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Other (please specify)

Q21 Do(es) these (this) document(s) specify when the infrastructure will be built (timing), and how it will be funded?

	Yes (1)	No (2)
Documents specify timing (1)	<input type="radio"/>	<input type="radio"/>
Documents specify funding (2)	<input type="radio"/>	<input type="radio"/>

Display This Question:

If Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure plan or capital plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure / LDP action programme

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure action plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Other (please specify)

Q22 What do(es) this (these) document(s) cover? (tick all that apply)

- Roads and other transport facilities (1)
 - Flood defences (2)
 - Schools and other educational facilities (3)
 - Medical facilities/ Emergency Services (4)
 - Social care facilities (5)
 - Sporting and recreational facilities (6)
 - Open/Green spaces (7)
 - Proportion given to town/parish councils and neighbourhood forums (8)
 - Public realm improvements (9)
 - Utilities (10)
 - Employment projects (11)
 - Environmental projects (12)
 - Energy (13)
 - Other (please specify) (14)
-

Display This Question:

If Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure plan or capital plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure / LDP action programme

Or Does your planning authority have any of the following for infrastructure that is related to new... = Infrastructure action plan

Or Does your planning authority have any of the following for infrastructure that is related to new... = Other (please specify)

Q23 What spatial area(s) do(es) this (these) document(s) cover?

	Whole area (1)	Specific projects (2)	Specific sites (3)	N/A (4)
Infrastructure plan or capital plan (1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Infrastructure / LDP action programme (2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Infrastructure action plan (3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other relevant document(s) (please specify) (4)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q24 What proportion of the identified infrastructure needs does your planning authority expect developer contributions to help deliver **over the next year?**

0 10 20 30 40 50 60 70 80 90 100

Percentage ()



Q25 What proportion of the identified infrastructure needs does your planning authority expect developer contributions to help deliver **over the next decade**?

0 10 20 30 40 50 60 70 80 90 100

Percentage ()



Q26 How accurate do you think these forecasts of developer contributions are?

- Very accurate (1)
- Somewhat accurate (2)
- Not very accurate (3)
- Not accurate (4)

End of Block: Local Infrastructure Plan

Start of Block: Affordable Housing Contributions

Q27 Does your planning authority have policies/practices to support the delivery of affordable homes through developer contributions?

- Yes (1)

No (2)

Display This Question:

If Does your planning authority have policies/practices to support the delivery of affordable homes... = No

Q28 You said your authority does not look for developer contributions for affordable housing. What are the reasons for this? (Tick all that apply)

- No identified need (1)
 - No capacity within the planning authority (2)
 - Maintaining viability of development (4)
 - Other (please specify--eg reliant on regeneration policies) (3)
-

Display This Question:

If Does your planning authority have policies/practices to support the delivery of affordable homes... = Yes

Q29 Are these policies/practices in your planning authority's local development plan and/or in supplementary guidance?

- Local Development Plan (1)
- Supplementary guidance (2)
- Both (3)
- Neither (4)

Display This Question:

If Does your planning authority have policies/practices to support the delivery of affordable homes... = Yes

Q30 Does your planning authority seek contributions through land, completed homes, commuted sums or a combination ? (please tick all that apply)

- Land (1)
- Completed homes (2)
- Commuted sums (3)

Display This Question:

If Does your planning authority have policies/practices to support the delivery of affordable homes... = Yes

Q31 Does your planning authority have targets for delivery of affordable homes through developer contributions? (tick all that apply)

Yes, in terms of proportion of new homes (6)

Yes, in terms of numbers of units (10)

Yes, set out in a different way (please specify) (11)

No (7)

Display This Question:

If Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of proportion of new homes

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of numbers of units

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, set out in a different way (please specify)

Q32 How are these targets determined?

Display This Question:

If Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of proportion of new homes

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of numbers of units

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, set out in a different way (please specify)

Q33 What tenures do you include in your affordable housing definition?

Display This Question:

If Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of proportion of new homes

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of numbers of units

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, set out in a different way (please specify)

Q34 What area is/are covered by these targets? (tick all that apply)

Whole planning authority (1)

Particular sites (2)

Particular neighbourhoods (3)

Display This Question:

If Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of proportion of new homes

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of numbers of units

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, set out in a different way (please specify)

Q35 What type(s) of development are required to contribute to affordable housing provision? Please tick all that apply

Residential above a certain number of units (please specify threshold) (1)

Commercial (4)

Display This Question:

If Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of proportion of new homes

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, in terms of numbers of units

Or Does your planning authority have targets for delivery of affordable homes through developer cont... = Yes, set out in a different way (please specify)

Or Does your planning authority have policies/practices to support the delivery of affordable homes... = Yes

Q36 Does your planning authority consult local housing associations/ affordable home providers when drawing up policies and targets?

Yes (1)

No (2)

Q37 How does the availability of grants for affordable housing influence your authority's obligations policies?

End of Block: Affordable Housing Contributions

Start of Block: Number of agreements and obligations within these agreements

Q38 For each of the last three financial years, how many planning permissions did your authority grant (excluding reserved matters)? Please **exclude** householder applications.

	Commercial (1)	Residential -- major developments (50 units or more) (2)	Residential -- Local developments (3)
2017/18 (1)			
2018/19 (2)			
2019/20 (3)			

Q39 How many new homes in total were consented?

- 2017/18 (1) _____
- 2018/19 (2) _____
- 2019/20 (3) _____

Q40 How much new commercial floor space in total was consented, in m2?

	Sq metres of commercial space (1)
consented 2017/18 (1)	
consented 2018/19 (2)	
consented 2019/20 (3)	

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Q41 For each of these 3 years, how many of these permissions had agreements entered into under

	2017/18 residential	2017/18 commercial	2018/19 residential	2018/19 commercial	2019/20 residential	2019/20 commercial

	with agreements (1)	with agreements (2)	with agreements (3)	with agreements (4)	with agreements (5)	with agreements (6)
S75 (1)						
S69 Local Government Act (2)						
S48 Roads Act (3)						

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Q42 What types of infrastructure were agreed as developer contributions in each year?

	2017/18 (17)	2018/19 (18)	2019/20 (19)
Roads and other transport facilities (5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Flood defences (6)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools and other educational facilities (7)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medical facilities/ Emergency Services (8)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Social care facilities (9)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sporting and recreational facilities (10)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Open/Green spaces (11)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proportion given to town/parish councils and neighbourhood forums (12)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Public realm improvements (13)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Utilities (14)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment projects (15)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental projects (16)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Energy (17)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify) (18)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Display This Question:
 If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Q43 In the most recent year for which you have data, for obligations **other than affordable housing**: (i) how were these contributions made (in kind/land/as financial contributions) and(ii) what was their total value?

	Number (1)	Value of contributions (2)
As land (1)		
As other in-kind contributions (4)		
As financial contributions (3)		

Display This Question:

If In the most recent year for which you have data, for obligations other than affordable housing: (i) how were these contributions made (in kind/land/as financial contributions) and (ii) what... As land - Number Is Greater Than 0

Or In the most recent year for which you have data, for obligations other than affordable housing: (i) how were these contributions made (in kind/land/as financial contributions) and (ii) what... As land - Value of contributions Is Greater Than 0

Or In the most recent year for which you have data, for obligations other than affordable housing: (i) how were these contributions made (in kind/land/as financial contributions) and (ii) what... As financial contributions - Number Is Greater Than 0

Or In the most recent year for which you have data, for obligations other than affordable housing: (i) how were these contributions made (in kind/land/as financial contributions) and (ii) what... As financial contributions - Value of contributions Is Greater Than 0

Or In the most recent year for which you have data, for obligations other than affordable housing: (i) how were these contributions made (in kind/land/as financial contributions) and (ii) what... As other in-kind contributions - Number Is Greater Than 0

Or In the most recent year for which you have data, for obligations other than affordable housing: (i) how were these contributions made (in kind/land/as financial contributions) and (ii) what... As other in-kind contributions - Value of contributions Is Greater Than 0

Q44 How reliable do you consider the values in the previous question to be?

- very reliable (1)
- somewhat reliable (2)
- not very reliable (3)
- not at all reliable (4)

End of Block: Number of agreements and obligations within these agreements

Start of Block: Affordable housing numbers approved

Q45 How many new affordable homes in total have been granted planning permission in each of the past 3 years, and of these how many have been secured via developer contributions?

	2017/18 affordable homes approved (1)	of which to be developer contributions (2)	2018/19 affordable homes approved (3)	of which to be developer contributions (4)	2019/20 affordable homes approved (5)	of which to be developer contributions (6)
Social rent (1)						
Intermediate rent / mid- market rent (5)						
Shared ownership (2)						
Discounted market sale (3)						

Shared equity (4)						
Other (please specify) (6)						

Q46 How reliable do you consider the numbers in the previous question to be?

- very reliable (1)
- somewhat reliable (2)
- not very reliable (3)
- not at all reliable (4)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Q47 Looking at **planning permissions granted in the most recent year**, how many units of each type of affordable housing were secured via developer contributions through

	Social rented housing (1)	Intermediate rent / mid-market rent (3)	Shared ownership (2)	Discounted market sale (4)	Shared equity (5)	Other (6)
Discounted land for affordable housing units provided on market site (1)						
Sale of completed units at discounted prices on market site (2)						
Off-site provision of discounted land for affordable housing (3)						
Off-site provision of discounted units (4)						
Commutated cash payment to local authority to provide new affordable homes elsewhere (please specify amount agreed) (5)						

End of Block: Affordable housing numbers approved

Start of Block: Affordable housing numbers completed

Q48 How many new affordable homes have been **completed** in each of the last three years, and how many were funded or otherwise provided by developer contributions?

	Complete d 2019/20 (1)	of which, through developer contribution s (2)	Complete d 2018/19 (3)	of which, developer contribution s (4)	complete d 2017/18 (5)	of which, developer contribution s (6)
Social rented housing (1)						
Intermediat e / mid- market rent (6)						
Shared ownership (2)						

Discounted market sale (3)						
Shared equity (4)						
Other (please specify) (5)						

Q49 How reliable do you consider the numbers in the previous question to be?

- very reliable (1)
- somewhat reliable (2)
- not very reliable (3)
- not at all reliable (4)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Q50 *In the most recent year*, how many of each tenure were funded/provided by

	Social rent (1)	Intermediate / mid-market rent (2)	Shared ownership (3)	Discounted market sale (4)	Shared equity (5)	Other (6)
Discounted land for affordable housing provided on market site (1)						
Sale of completed units at discounted prices on market site (2)						
Off- site provision of discounted land for affordable housing (3)						
Offsite provision of discounted units (4)						

Commuted cash payment to local authority to provide new affordable homes elsewhere (and specify amount agreed) (5)

--	--	--	--	--	--	--

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q51 On average how much time elapses between agreement and delivery of new affordable homes, in months?

0 5 10 14 19 24 29 34 38 43 48

Time in months ()	
-------------------	--

End of Block: Affordable housing numbers completed

Start of Block: Operational effectiveness

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q52 Does your authority have a dedicated team/staff to negotiate developer contribution agreements?

Yes (1)

No (2)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q53 Does your authority have a dedicated team/staff to monitor developer contribution agreements?

Yes (1)

No (2)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q54 How is delivery monitored? (tick all that apply)

Digital alert system (1)

Site visits (2)

Other (please specify) (3)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q55 Is any of this monitoring work outsourced?

Yes (1)

No (2)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q56 In general, are developer contributions usually delivered as agreed?

Always delivered (1)

Mostly delivered (2)

Only a minority delivered (3)

Never delivered (4)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q57 How much was delivered in 2019-20, regardless of the year in which the agreement was made? Please enter "cannot estimate" if values are not available

	Affordable homes (1)	All other infrastructure types (2)
As direct financial contributions (£) (1)		
As in-kind contributions (valued in £) (2)		

Display This Question:

If For each of these 3 years, how many of these permissions had agreements entered into under S75 - 2017/18 residential with agreements Is Greater Than 0

Or For each of these 3 years, how many of these permissions had agreements entered into under S75 - 2017/18 commercial with agreements Is Greater Than 0

Or For each of these 3 years, how many of these permissions had agreements entered into under S69 Local Government Act - 2017/18 residential with agreements Is Greater Than 0

Or Or For each of these 3 years, how many of these permissions had agreements entered into under S69 Local Government Act - 2017/18 commercial with agreements Is Greater Than 0

Or Or For each of these 3 years, how many of these permissions had agreements entered into under S48 Roads Act - 2017/18 residential with agreements Is Greater Than 0

Or Or For each of these 3 years, how many of these permissions had agreements entered into under S48 Roads Act - 2017/18 commercial with agreements Is Greater Than 0

Q58 Looking at the **agreements made in financial year 2017-18**, what percentage was delivered by **31 March 2020**?

% of agreed financial contributions (1)

% of new affordable homes agreed (2)

Display This Question:

If If Looking at the agreements made in financial year 2017-18, what percentage was delivered by 31 Mar... % of agreed financial contributions Is Greater Than 0

Or Or Looking at the agreements made in financial year 2017-18, what percentage was delivered by 31 Mar... % of new affordable homes agreed Is Greater Than 0

Q59 How reliable do you consider the numbers in the previous question to be?

very reliable (1)

somewhat reliable (2)

not very reliable (3)

not at all reliable (4)

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q60 Have variations become more common over the last three years?

Yes (1)

No (2)

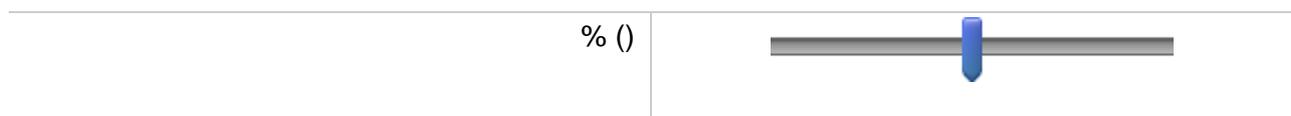
Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q61 What proportion of agreements have been subject to requests for variation over the last 3 years?

0 10 20 30 40 50 60 70 80 90 100

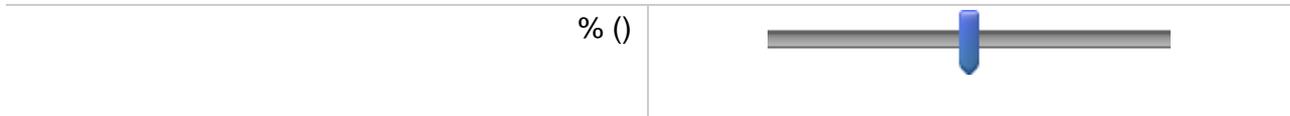


Display This Question:

If What proportion of agreements have been subject to requests for variation over the last 3 years? [%] > 0

Q62 And what proportion of requests for variation were agreed to over the last 3 years?

0 10 20 30 40 50 60 70 80 90 100



Display This Question:

If What proportion of agreements have been subject to requests for variation over the last 3 years? [%] > 0

Q63 What sorts of changes get agreed? (tick all that apply)

- Timing (1)
 - Reduced numbers of affordable housing (2)
 - Reworking of the agreement due to further applications from developers that change the overall plans for the site and resultant contribution requirements (4)
 - Other (please specify) (3)
-

Display This Question:

If What proportion of agreements have been subject to requests for variation over the last 3 years? [%] > 0

Q64 What types of changes requested are refused?

End of Block: Operational effectiveness

Start of Block: The overall picture

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q65 What are the biggest challenges your planning authority faces in getting contributions agreed and delivered? (tick all that apply)

- Land/development market not strong enough to support what is needed (1)
 - Constraints arising from the five tests (2)
 - Viability issues for developers (3)
 - Negotiation difficulties (4)
 - Getting enough contributions to deal with the impact of cumulative developments on infrastructure needed (5)
 - Delays to site starts and therefore payment of contributions (7)
 - Other (please specify) (6)
-

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q66 In your experience, is getting agreement on developer contributions in this local planning authority generally...?

- Very difficult (1)
 - Difficult (2)
 - Neither easy nor difficult (3)
 - Easy (4)
 - Very easy (5)
-

Q67 In your view, how much does the process of reaching agreements contribute to delays in agreeing planning permissions?

- A great deal (1)
 - A lot (2)
 - A moderate amount (3)
 - A little (4)
 - None at all (5)
-

Display This Question:

If Has the planning authority entered into any agreements with developers / landowners securing cont... = Yes

Or You said your authority had entered into no agreements on contributions in the last three years. ... = Yes

Q68 For large residential applications of 50 dwellings or more, about how many months does the process add to the time taken to grant consent?

- Months (1) _____
- N/A--no schemes this large (2)

End of Block: The overall picture

Start of Block: Data availability

Q69 Does your planning authority have any planning-authority specific data on the following that could be made available to the research team? (tick all that apply)

- Infrastructure costings (1)
 - Tenure of new affordable housing (2)
 - Size distribution of market and affordable homes (3)
 - Agricultural land values (4)
 - Serviced land values in particular uses (5)
 - The proportion of planning permissions granted that are delivered (6)
 - Other (please specify) (7)
-

End of Block: Data availability

Start of Block: Survey end

Q70 If you have had any difficulties with the survey itself, please tell us about them here.

Q71 Is there anything else you would like to say about the process and effectiveness of securing developer contributions in Scotland? You may use this space to expand on any of your previous answers.

Display This Question:

If If Is there anything else you would like to say about the process and effectiveness of securing developer contributions in Scotland? You may use this space to expand on any of your previous answ... Text Response Is Not Empty

Q72 If so, would you like to upload document(s)?

Q73 Please provide an email address for the person to contact in your authority, if the research team has questions.

Q74 This is the end of the survey. Before clicking the right arrow to register your authority's response, please ensure that **ALL** sections that apply to your authority have been completed. This is especially important if several people have contributed to the survey.

Thank you very much for your help with the research.

11. Annex 4: Case Study Template

URBAN MORPHOLOGY	
MAJOR CONURBATION <i>EDINBURGH</i>	
Key Characteristics	<p>Extensive developer contributions experience.</p> <p>Established policy and guidance on developer contributions and affordable housing.</p>
Site Specific Issues	<p>Case Study 1</p> <p>Large-scale mixed-use development.</p> <p>Off-site affordable housing provided and tram contribution. Developer bought land for AH, which was then delivered by a contractor and handed over to an RSL. 41 units provided, in excess of 25% requirement. Also, DCs for education and car parking.</p> <p>Successful development and DCs collected.</p> <p>Case Study 2</p> <p>Affordable housing successfully delivered – built by developer and bought by RSL on BC basis with budgeted price. DCs also to the new school and transport</p>

	<p>Case Study 3</p> <p>Large residential site.</p> <p>Affordable housing, education and transport contributions provided – successful development and multi-phased.</p> <p>Case Study 4</p> <p>Site won on appeal.</p> <p>Example of a greenfield site won on appeal but not in LDP and therefore not part of a plan-led process. Council believes DCs were weak as a result of no Action Programme.</p>
Interviewees	City of Edinburgh Council

THEME/SUB-THEME		
POLICY	PRACTICE	DELIVERY
Developer contributions policy supported by development industry	Regional variations in land value	Section 75 effectiveness
Developers clear that there is more certainty and transparency around DCs than used to be. Guidance and policy clear and the process is more	Much of Edinburgh is a high LV area and policies are applied fairly consistently across the city.	CEC has 2 monitoring officers who examine development

	<p>assessment than negotiation, particularly for smaller sites. DCs factored in at bid stage given the policy & guidance available. Agreement on smaller sites usually quick with minimal legal fees.</p> <p>Tram contributions now accepted as applying if the development is in the relevant zone.</p> <p>However, some developers would like more clarity on the evidence behind the assessment/policy/guidance.</p>	<p>Council policy is preference for 70% of AH to be Social but can be flexible. One of the case study sites was all MMR.</p> <p>AH S75 can cost RSLs over £30k per plot, especially if in City Centre. RSLs have little land control in the city and need S75 land to develop AH. To avoid competition, there is a 'gentlemen's agreement' between RSLs that certain territories are covered by certain RSLs and, in areas where there is more than one active RSL, the S75 land is shared, usually with direction from CEC.</p>	<p>progress across the city and secure DCs at the right times.</p> <p>S75 has been good for funding the tram in Edinburgh. A lot of AH is also being delivered through S75.</p> <p>Education is more challenging, but there is greater clarity now on costs and DCs required.</p> <p>Transport is more challenging still and a levy may be a better mechanism to secure. If DCs are not in sufficient sums, the Council may struggle to provide and sometimes has to return DCs if the required infrastructure has not been delivered.</p> <p>S69s and planning conditions are seldom used for DCs. Believed not to be suitable for schools or AH. Using in planning conditions not thought to give CEC the protection it needs e.g. if site is</p>
--	---	--	---

			sold, need to tie new owner to the title.
	Alternative policies	Assessment process v. negotiation	Scope creep of section 75
	<p>CIL approach may be better than the case-by-case approach. A city-wide tariff or area-based tariffs could enable CEC to be more proactive with infrastructure.</p> <p>A levy could provide more certainty for developers and the public purse as well as reduce land speculation. However, Council believes need to be retained by the relevant local authority to undertake the improvements rather than go to a national pot.</p> <p>Guidance does not support cumulative assessment and phasing, while an Infrastructure First approach does.</p>	<p>There is clear guidance on AH, education, transport, trams, etc., so clarity on DCs and assessment process straightforward. There is room for negotiation but from the starting point of the assessment.</p> <p>Guidance is evidence-based e.g. HNDA, school rolls. etc. However, some developers bemoaned the lack of evidence to support some guidance e.g. around schools.</p> <p>AH and education tend to be the most straightforward. Appeals can be instructive and are learned from.</p> <p>Transport appraisals can be more tricky and contentious and are subject to negotiation around appraisals. Tram contributions more straightforward and have</p>	

		<p>been supported by appeals (Infrastructure First approach).</p> <p>New evidence e.g. on school rolls, can also lead to negotiation on some developments, although not common, e.g. falling school rolls may mean fewer education DCs needed.</p> <p>Sometimes developers pay too much for the land and try to mitigate through the S75, but this will be resisted by the PA. There are legitimate reasons for flexibility to get development to work, especially when dealing with trickier sites, e.g. with listed buildings. The Council can also sometimes see the benefit of a certain development and be prepared to give some leeway on DCs.</p> <p>S75a quite frequently used for modifications.</p>	
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Affordable housing requirements	Negotiation parties/participants	Local infrastructure v. strategic/regional infrastructure
<p>AH to be 25% of all sites with 12 or more housing units. Preference is for a least 70% of this to be Social Rent.</p> <p>AH can be on-site or off-site but Planning Committee now prefers on-site as better guarantee of delivery.</p>		
Difficulties of appeal sites		
	<p>Application for a case study site was for a neighbouring site to an existing development. It came forward in advance of the current LDP being adopted. The LDP allocated this neighbouring site, in part, as a result of the initial site being in place. A contribution of £3.8M for education infrastructure was required. This much higher sum was a result of the development being included in the</p>	

		<p>LDP and part of the Action Programme.</p> <p>Had the Action Programme not been in place, it may have been more difficult to secure the required sum for education infrastructure. CEC believes that this demonstrates the benefit of having an Action Programme and guidance on DCs in place and therefore emphasises the need for a plan-led approach to the delivery of housing. This contrasts with the situation in the case study area won on appeal, where the Council did not secure the sum it considered appropriate.</p>	
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URBAN MORPHOLOGY

URBAN WEST LOTHIAN

Key Characteristics	<p>Extensive developer contributions experience.</p> <p>Established policy and guidance on developer contributions and affordable housing.</p>
Site Specific Issues	<p>Case Study 1</p> <p>Winchburgh New village. Large scale residential, mixed use development including new schools and associated infrastructure. Long-term vision and timescale to 2035 (25-year vision). 'Unique approach' to funding education – Tripartite Agreement between West Lothian Council, Winchburgh Developments Ltd and Scottish Government. 'Guarantor Approach'. Forward funded enabling infrastructure based on guarantees.</p> <p>Case Study 2</p> <p>Former coal mine</p> <p>Case Study 3</p> <p>Former mining town</p>

	<p>Case Study 4</p> <p>Affordable Housing Theme considers five delivery methods through Section 75s:</p> <ul style="list-style-type: none"> i) Direct provision by development. ii) Transfer of 'serviced' land from developer to planning authority. iii) Commuted sum. iv) 10% uplift (above 15% baseline) in Core Development Areas (CDAs). v) Developer partner approach with a registered social landlord (RSL)/housing association (HA). 		
Interviewees	<p>West Lothian Council (WLC)</p> <p>Winchburgh Developments Ltd</p>		
THEME/SUB-THEME			
	POLICY	PRACTICE	DELIVERY
	Developer contributions policy supported by development industry	Regional variations in land value	Section 75 effectiveness
	West Lothian Council (WLC) – Affordable Housing Policies (including	Case Study 3 - GC consider that the extensive 'shopping list' of DCs in the CDA (e.g. Armadale) is	West Lothian Council utilises a Planning Obligations Tracker ('Execom' related to Idox)

	<p>Supplementary Guidance) well established – plan-led approach.</p> <p>Case Study 2 – former Polkemmet opencast site. Two permissions granted at the same time: restoration of opencast site; housing development (2000 dws) and associated works (2004). Cost Regeneration initial developer, subsequently taken over by RBS and subsequently sold to Greentown Heartlands Ltd. subsidiary of WeLink (initially a renewables developer, but now includes a housing arm (esp. modular housing). 500 dws consented on the site when GHIL involved; now consented approximately 800 dwellings and 500 dwelling occupations on-site. 2011/2012 development progressed in earnest shortly in advance of motorway junction (2013). Subsequent activity in 2019/20 (approximately 150 completions). Limited number of DCs included in Section 75 due to older consent and less mature planning obligations policies. The scope of the</p>	<p>actually curtailing development due to impact on viability, rather than taking advantage of better land values in CDAs compared with non-CDA areas.</p>	<p>introduced approximately 3 years ago (2017). Legal agreements are inputted into system including triggers which are checked by the monitoring officer. It is a ‘tracking tool’, but Finance will confirm payment and spend (cost code – project driven) which completes planning involvement in the process. ‘Execom’ procured by West Lothian on a partnership basis with Midlothian Council with the potential scope of sharing services/resources broadly based on the Aberdeen City/Shire model.</p> <p>Case Study 2 – limited Section 75. Several modifications to S75 including: trigger date for provision of affordable housing removed retaining unit nos. as the trigger; level of affordable housing contributions (current application). Currently, no affordable housing yet provided on the site. Ongoing</p>
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<p>S75 was for: the provision of serviced land for 75 affordable housing units triggered by the 500th unit; education contributions for three classrooms – first classroom triggered by 1100th unit and second classroom triggered by 1500th unit; funding for a travel plan co-ordinator (subsequently removed from S75); provision of a travel strategy to secure funding for public transport; town centre improvements; and open space maintenance.</p> <p>Winchburgh – plan-led. Application submitted in 2005 originally by Cala as the developer. Masterplan-led development incorporating two major estates – Hopetoun Estate and Cadzow Land Holdings Ltd (local farmer). Winchburgh consented for 3450 units (2010) with 2050 in Broxburn with a total development of 5500 units.</p> <p>Case Study 3 – was a CDA. Allocation in Local Plan divided into three ‘bubbles’. South Armadale bubble comprised two different</p>	<p>discussions with regard education contributions to three new classrooms. Town centre improvements money transferred approximately 9 months ago (originally £50k but actual £59k in response to indexation). Council members currently considering how to disperse monies across relevant town centres.</p> <p>Developer has put together a monitoring matrix of requirements/contributions from Heartlands.</p> <p>Winchburgh - Winchburgh Section 75 took 2 years to negotiate and agree (2010-2012). Market conditions partly responsible for protracted negotiation. Lead developer changed from Cala to LXB (linked to Regenco) and now Winchburgh Developments Ltd (recently contracted back with Cala). Section 75 includes a</p>
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<p>developers that operated separately. Southdale development (southern part of South Armadale) is the case study area. Application consented for 1000 dwellings (submitted late 2008 and granted in 2010). Section 75 Agreement took several months to negotiate and agree.</p> <p>DC related policies rooted in the development plan and supplementary guidance (SG). In terms of affordable housing policy GC consider that there is some discrepancy in terms of how West Lothian Council (WLC) apply policy. For example, 10% uplift in affordable housing requirement in Core Development Areas (CDAs), such as in Armadale CDA. GC also concerned that historic SPG is simply being 'rolled forward' into new SG without due consideration and update (new assessment work), despite Reporter's recommendation for the Council to 'review' SPG. GC do not consider that this is sufficient, based on case law, to justify the DCs; still need to demonstrate Circular</p>		<p>large tranche of developer contributions informed by West Lothian Local Plan (2009) (including funding for improved public transport strategy, provision of land for two secondary schools, fund majority of non-denominational secondary school (both schools started on site in 2020), town centre improvement fund, full provision of denominational primary school which has started provision of two or three primary provision classroom streams going forward, affordable housing and public art strategy). Particularly complex phasing and triggers.</p> <p>In terms of the negotiation of the original S75, WDL covered WLC's legal costs. For the Tripartite Agreement WDL</p>
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	<p>compliance which is clear from Elswick and other case law examples. Affordable Housing Supplementary Guidance has now been approved by Scottish Government and adopted (including CDA percentage uplift), although GC retain concerns. WLC also progressing adoption of several other SG, including Education SG. It has been in draft form for approximately 18 months. GC concerned that WLC continue to apply rates set out in the non-statutory supplementary planning guidance which are up to 10 to 15 years old. Therefore, applying infrastructure requirements that are out-dated by virtue of changes in the draft SG on Education, and applying significant indexation. For example, Armadale CDA in the draft Education SG contributions in Q42017 is £11,645 per unit. By taking existing rates the Council is applying from the Education SPG it is on face value £13,381 (£20,159 including indexation). Other adopted DC-related SG includes</p>		<p>made a contribution to the legal costs.</p> <p>WDL undertake monthly review/updates of financial model and business plan (established in 2010/11).</p> <p>Case Study 3 – original Section 75 Agreement was 2010/11 and took several months to negotiate and agree and subsequent modified S75 Agreement in 2014 (in response to Council’s wish for early provision of primary school). Scope of S75 comprised: affordable housing (10% CDA uplift plus 15%); contributions to four schools – transfer of land for one of the schools; library contributions; train station P&R contributions; town centre improvements; cemeteries; public art; and dualling of the A801 (subsequently deleted following appeal). Education</p>
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	<p>cemeteries (approximately £100 per unit), transport, town centres</p>		<p>contributions currently being challenged by the developer (Burgess Salmon/GS on behalf of the developer). GC also recently submitted S75A re. town centre contributions based on concerns of application of a generic DC rate per dwelling towards undefined list of town centre improvements in Armadale which are considered unrelated to the development, and no assessment underpinning that. For example, DC towards CCTV cameras, park benches, library etc.</p> <p>Affordable housing to be delivered at Armadale (Southdale) through an area of land on-site safeguarded by the Council for transfer for affordable housing should there not be an alternative means for the delivery of the affordable housing.</p> <p>Understood to be largely RSL-</p>
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			led rather than a transfer of land to the Council. The developer has had RSL interest, but RSL did not progress due to delay in progress.
Affordable housing requirements	Assessment process v. negotiation		Scope creep of section 75
<p>1. Direct Provision by the Developer</p> <p>Ogilvie at the Former Vion Site in Broxburn. This was a windfall site which became available for redevelopment following the closure of the Hall's food factory. As it was a windfall site, there was no anticipated affordable housing contribution from the site, and consequently it was not included in the council contracts for its new build programme. Facilitating direct provision allowed earlier delivery of the social housing that would ordinarily have been possible. Delivery is via a separate contractual arrangement between the developer and the council. The overall</p>	<p>West Lothian Council (WLC) – seek an 'open book' accounting approach from the developer to demonstrate the value of the land and inform costs/values/returns; a standard matrix approach to development appraisals. The Council's Property Services will review and verify development appraisal. If there is a significant difference in opinion then the District Valuer (DV) is approached (or an independent valuer) to advise. This process generally only occurs where the developer is expressing concerns with regard the impact of developer contributions (DCs) upon the</p>		DC towards GP services/healthcare not formally requested as yet. WLC have asked for Health Impact Assessments to be submitted in support of some planning applications to establish healthcare capacity.

	<p>requirement is secured via a Section 75 agreement.</p> <p>2. Transfer of land to WLC</p> <p>This, until recently, was the most common for provision and generally involved 15% of the developable area to be transferred to the council. There are numerous examples. The largest scale transfers have been in the core development areas at Calderwood and Winchburgh. These are relatively straight forward transactions which are secured through Section 75 agreements with trigger dates for the transfer built into the agreement.</p> <p>The Section 75s require the site to be free of all infrastructure constraints and with services provided up to the boundary of the site to ensure that the site is essentially 'oven-ready'.</p> <p>The expectation was that the land would be delivered at nil value to the council, although the Affordable Housing Policy never set that as an</p>	<p>viability of the development. Under current new affordable housing policy (past 18 months approximately), if commuted sums are pursued than the DV advises on values at the outset. Generally, fewer challenges as a result of this change in process with the involvement of the DV. The cost of using the DV is shared between the developer and the Council (included in the new policy). Occasionally, the developer will volunteer to meet the entire cost of the DV.</p> <p>Case Study 3 – to enable progress of development WLC deferred DC in advance of the first 192 dwellings. Assisted in kick-starting development but made the subsequent phase of development more expensive. In 2014 modifications to Section 75A submitted. Extensive discussions took place between WLC and developer in advance of S75A to define contributions to 450 units.</p>	
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	<p>absolute requirement. Provision was always available to agree a value through the District Valuer. The current approach is now to obtain a value from the DV.</p> <p>3. Commuted sum</p> <p>There are a number of examples of this delivery as it was the preferred approach for sites of between 4 and 20 units under the previous version of the policy. The current policy takes the same approach although the 20-house upper limit is variable from settlement to settlement depending on need in that settlement, that is, if it is a low demand area for council housing a commuted sum can be secured for larger developments.</p> <p>Previously there could be disputes about the calculation of the commuted sum. The value was set at the value necessary for the council to purchase an equivalent area of land. This ballpark calculation used was 15% of the purchase value of the site from</p>	<p>Several subsequent discharges and modifications. Key issue was the payment of the primary school and cumulative impacts. £1.8 million contribution to the primary school plus some funding from WLC in recognition of an existing capacity issue within the school catchment. Primary school subsequently developed and opened on site. Currently approximately 300-400 units on site. Development stalled due to arrears in development contribution payments.</p>	
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which the commuted sum arose. However, this could lead to fluctuating values even within the same community. As a consequence, the price is more commonly agreed with the assistance of the DV.

4. 10% extra in CDAs

The policy allowed the extra 10% to be delivered by any means which was demonstrated as being affordable in perpetuity. In early cases gold shares, shared equity and discounted sales were all deemed acceptable provided that there was an 'in perpetuity' clause. In practice this proved difficult to secure. Consequently, in all cases the 10% top up has either been secured through transfer to an RSL or an additional 10% land transfer to the council.

In Winchburgh the current phase of the 10% requirement is being delivered by the Wheatly Group. The terms of that agreement are commercial between Winchburgh

Developments Ltd and Wheatly. The council's only involvement is in confirming that the delivery meets the requirements of the Section 75 agreement.

5. Developer approaches WLC with an RSL

This is an increasingly common approach given that the council's Affordable Housing Investment Programme recognises the role that RSLs will play in meeting housing need in the future. The council does not place any specific constraints on such partnerships – those arrangements being commercial between the developer and the RSL. As with (4) above the planning interest is in ensuring that the terms of the planning consent and legal agreement are being met.

This most recent agreement of this nature is with Greentown Heartlands Ltd who are the lead developers at

	<p>Heartlands and Winchburgh. Greentown are using an RSL partner to deliver the full affordable housing requirement on the site.</p> <p>Examples of where the Council is being flexible to affordable need and demand</p> <p>There are a number of aspects to this but mainly under three headings</p> <p>The policy itself</p> <p>First and foremost, the policy allows flexibility where there is a convincing appraisal which demonstrates that the application of the policy makes development of a site non-viable. That said, given that the policy has been in place for the best part of 15 years the council takes some convincing that the requirements of the site were not known prior to the developer purchasing the site. The council will always require the purchase price for</p>		
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the site to be part of any development appraisal.

More recently the policy has been revised to apply different contribution requirements in different settlements to reflect differing demands across the council area.

Involving Developers in the Affordable Housing Solution

The revised policy is much more flexible in terms of the possible means of discharging the requirement which allows more scope for the developer to be involved in agreeing the solution. Earlier iterations of the policy required in most instances the transfer of the land to the council (which was appropriate at the time as the council was, by far, the biggest housebuilder operating in West Lothian). However, the current policy allows the developer to present a solution to the council rather than the council defining the solution for the developer.

	<p>Being Flexible about when Land has to be transferred or Commuted Sum Payments Made</p> <p>The council recognises cashflow challenges for developers with bringing forward a development site and it will be as flexible as possible with payment or transfer dates. In short, the council has no interest in acquiring land well in advance of when it can build on that land – not least because it creates a maintenance liability for the council. Similarly, it will only require the payment of commuted sums at a point where these are needed to support the council's new build programme.</p> <p>That said, the council will generally not allow payments or transfers to be deferred beyond the point that the contributing site is 75% complete. Beyond that point there is a risk that the outstanding liabilities on a site exceed the remaining profit for the developer. In such circumstances there is a risk that a site is abandoned</p>		
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	rather than progressed to full completion.		
	Other requirements	Negotiation parties/participants	Local infrastructure v. strategic/regional infrastructure
		Winchburgh – in terms of values/costs WDL made available their full business plan and cashflow to SFT/WLC/SG. SG/WLC advisors carried out due diligence on WDL’s business model and SFT managing/brockering the business negotiation.	
		Guarantors & risk share	
		Winchburgh – Tripartite Agreement between West Lothain Council, Winchburgh Developments Ltd and Scottish Government sits alongside the Section 75.	
		Actors involved	
		Winchburgh Developments Ltd (WDL) – got involved in 2010	

		<p>(recession). Significant corporate changes in response to recession. 2010 context was paired down business plan in association with the draft Section 75 Agreement. Winchburgh 'minded to grant' (3450 houses et al) subject to S75 in late summer 2010. Section 75 took two years to negotiate and was agreed in 2012. Public/private participation & collaboration was needed at the outset to deliver a viable project. Key developer contribution issues in relation to education and transport (new motorway junction and railway station). Initial S75 applied to Phase 1 (up to 550 dws) and was 'silent' in terms of DC funding delivery mechanism thereafter to 3450 dws. Further S75 negotiations during 2013/14 between WDL and WLC seeking a different funding mechanism that would guarantee the funding and construction of the non-denominational (ND) secondary school. 2017 SFT involved and</p>	
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		<p>Edinburgh City Region Deal (identified funding for Winchburgh infrastructure). WDL drafted Heads of Terms proposal to WLC/Scottish Government (SG)/SFT outlining amendment to S75 based on SG support to the delivery of Winchburgh secondary education capacity (co-joined school campus at Winchburgh). In 2018 WLC signed the Tripartite Agreement (based on the HoT Agreement proposed by WDL). Tripartite Agreement incorporates a £15 million contingent liability guarantee to WLC borrowing for £61 million for schools infrastructure. WLC able to go to Public Works Loan Board to borrow money to build secondary school on serviced land transferred to the Council by WDL. WLC used HubCo South East to appoint Morrison Construction currently on-site building school estate (two secondary school buildings and first new build primary school).</p>	
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		<p>Tripartite Agreement involves a series of guarantors to mitigate risk (primarily in relation to borrowing for ND secondary education contributions, as the denominational contributions covered by a 'roof tax' in the Supplementary Planning Guidance (SPG) and WDL would pay for the first new build primary school) – WDL, WLC and SG.</p> <p>In 2018 in parallel with Tripartite Agreement, WDL submitted a S75A application seeking modification to S75 whereby ND secondary education contribution is £5760 per house occupied at Winchburgh derived from negotiation on the Tripartite Agreement (not based on plan-led policy/SPG). WLC now applying this charge on other housing developments across within the school catchment area subject to ongoing review. The Tripartite Agreement was a 'bespoke' solution, but some key learning for</p>	
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		<p>future mechanisms, such as development economics and finance (especially in context of funding major infrastructure). A component of the funding requirement (need for working capital) was the Housing Infrastructure Fund (HIF) loan (avoid bank debt – banks don't like lending for major infrastructure, especially in shared public/private domain). In 2018 WDL took out a £27 million infrastructure loan from HIF to enable progress into Phase 2 and deliver the whole Winchburgh Masterplan. In effect, SG is investing in WDL as either lender or guarantor for the Council's school infrastructure borrowing to the tune of £42 million (i.e. £15 million Government loan (contingent liability on the SG's balance sheet) and £27 million HIF loan). This was considered and agreed by Scottish Parliament in September 2018.</p>	
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URBAN MORPHOLOGY

MAJOR HINTERLAND *RENFREWSHIRE*

Key Characteristics	<p>Limited experience of developer contributions.</p> <p>Relies upon planning conditions to determine infrastructure requirements for development. Infrastructure funded by developer (developer/landowner negotiation).</p>
Site Specific Issues	<p>Case Study 1</p> <p>Strategic, brownfield redevelopment project. Landowner and developer. Vision aligned with Renfrewshire Council's ambitions for the site. Positive working relationship between landowner/developer and Renfrewshire Council.</p> <p>Place-based approach.</p> <p>Case Study 2</p> <p>Former hospital and mental health facility. Developer/housebuilder led (3 volume housebuilders).</p> <p>Development capacity increased from allocation/masterplan/planning application.</p> <p>Case Study 3</p> <p>Former large, strategic farm. City Region Deal project. Renfrewshire Chief Executive Office lead with support from Planning Service.</p>

	<p>Masterplan approach/infrastructure requirements defined.</p> <p>No Section 75 in delivery of the site.</p> <p>Landowner-led vision. Relatively straightforward planning process. Dedicated planning officer funded by planning fees working closely with City Deal Team.</p> <p>Case Study 4</p> <p>Former older people's care hospital and facility.</p>		
Interviewees	Renfrewshire Council		
THEME/SUB-THEME			
	POLICY	PRACTICE	DELIVERY
	Developer contributions policy supported by development industry	Regional variations in land value	Section 75 effectiveness
	Renfrewshire Council principally use <i>planning conditions</i> to define	Case Study 1 – brownfield contaminated site influenced the	Renfrewshire Council principally use planning

	<p>infrastructure funding requirements for developments rather than developer contributions (DCs). Planning conditions also used to secure affordable housing. Such conditions can leave detail to be agreed pursuant to a scheme to be approved later. Conditions need to be suitably detailed and cover the points that would need to be caught in a scheme for subsequent approval (e.g. location, mix, tenure etc as well as a mechanism in place to secure the transfer of housing to a housing association (HA), and also a back-up mechanism for delivering the affordable housing if there was not a HA available to take the affordable units). [Addendum - see recent Court of Appeal decision in England with regard delivering affordable housing by condition – <i>R (Zins) v East Suffolk Council [2020] EWHC 2969 (Admin)</i>].</p> <p>Renfrewshire also use <i>Section 69</i> DC when it is a simple contribution process. Otherwise, limited use of <i>Section 75s</i> as premise is that a plan-</p>	<p>level of DC. However, scale and time period (over 20 years) allowed for reasonable DCs to be achieved.</p> <p>Renfrewshire looked initially to the landowner to provide costs/values associated with the development. Landowner to demonstrate the viability of the development. Renfrewshire did not have a financial value to the <i>Section 75</i> but rather a series of projects. Landowner/developer generated the initial costs/values against each of the projects identified by Renfrewshire. Renfrewshire subsequently used own in-house services to verify costs/values (or external independent consultants where required) in context of ‘legal tests’ of planning obligations (<i>Planning Circular 3/2012</i>). For example, initial capital cost for motorway junction was estimated at £12 million, actual cost was £27 million. Also, initially the Council was to let a contract to build a</p>	<p>conditions to define infrastructure funding requirements for developments rather than developer contributions (DCs). Renfrewshire seek to avoid <i>Section 75’s</i> on SHIP projects as they should be in the plan already.</p> <p><i>Section 75</i> template developed in collaboration with Homes for Scotland and several housebuilders, as well as the Council’s in-house legal team.</p> <p>Proposed LDP2 (2019) contains an Infrastructure Constraints Map (evidence-based) that identifies existing capacity and therefore where development would need to make a contribution to mitigate impact. Timescales in negotiating and securing DCs should therefore be reduced.</p> <p>Limited number of <i>Section 75</i> agreements are modified or re-</p>
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	<p>led system should minimise the need for such a mechanism.</p> <p>Renfrewshire adopt a collaborative, inter-service approach with planning being core in terms of the process by which developer contributions policies/requirements are identified and evidenced. Community, Housing and Planning Services, as well as Roads and Education services. Also, Regeneration service which sits within the Chief Executives Department and provides the economic development function. In the development plan preparation process early collaboration with the Council services and Key Agencies on infrastructure capacity and requirements for development sites. In terms of housing related contribution, planning being a joint service with housing it is very clear that the whole Strategic Housing Investment Plan (SHIP) facilitates engagement with housing associations; sites not progressed if not part of the SHIP programme. Developer has flexibility to choose</p>	<p>primary school, but landowner eventually delivered school based on Council’s specification, as more cost effective.</p> <p>Landowner ultimately ‘pays’ for infrastructure not the developer. The developers ‘take it off’ the landowner. Therefore, more appropriately referred to as ‘landowner contributions’ rather than developer contributions. The market operates on the basis of gross price based on greenfield value, followed by consideration of ground conditions and abnormal costs and cost of planning gain to mitigate impact of the development on the local infrastructure.</p>	<p>negotiated after signing, partly due to the careful negotiation at the planning application post-submission stage and the fact that planning conditions are the preferred mechanism for securing DCs.</p> <p>Section 75s allows for phasing of infrastructure provision and potential flexibility in timing of infrastructure delivery in response to changing market conditions subject to evidence provided by applicant. Success is dependent upon the ‘reasonableness’ of all parties – a ‘partnership approach’.</p> <p>Case Study 1 – Masterplan and Design Guide underpinned place-based approach and infrastructure delivery through a Section 75 phasing development.</p> <p>Due to the scale of development at Dargavel there were a series of planning</p>
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	<p>their preferred housing association/development partner in the context of the SHIP.</p> <p>Renfrewshire did not have an affordable housing policy until the current LDP2 (2019). The Reporters have now completed their examination into the unresolved issues raised in representations to Proposed Renfrewshire Local Development Plan. The Council will now consider the Reporters Recommendations and modifications to the Plan.</p> <p>The scale of the development informs the infrastructure requirements. For example, large-scale developments the infrastructure requirements were identified early in the planning process (e.g. motorway junction improvements, education etc.), whereas with medium/small scale developments the infrastructure requirements emerged from pre-application/post-submission negotiations.</p>		<p>applications and subsequent modifications to the Section 75 to respond to changing market conditions over a 20-year period (e.g. timing of motorway junction triggered by number of houses built).</p> <p>Land transferred to Renfrewshire Council and nil value to develop affordable housing. Land was received in a remediated and 'shovel-ready' state.</p> <p>Section 75 included funding for a dedicated remediation and contamination officer within the Council due to the significance of this issue which helped in the timeous process (e.g. review and sign-off of technical remediation and decontamination strategies and reports associated with the site). Position still exists within EHO service working with landowner/developer.</p>
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<p>Case Study 2 – allocated site in the adopted LDP (2014). Envisaged a masterplan-led development and carried forward into LDP2 (2019). NHS landowner who engaged with housebuilders to progress planning in principle planning application (603 dwellings and associated access, parking and landscaping) (Ref.No.19/0810/PP). Also ‘agent’ for NHS providing development expertise. Different from initial masterplan proposal. Infrastructure requirements of the site detailed in the adopted LDP (2014) and subsequently updated by Council’s Services and Key Agencies and carried forward into the LDP2 (2019). Developer-led planning application was refused by Renfrewshire Council (against officer recommendation to grant subject to Section 75 Agreement) on the 2nd February 2021.</p> <p>Case Study 3 – plan-led, collaborative approach. Greenfield site adjacent to Glasgow Airport facilitated and supported by the Airport resulting</p>		<p>Renfrewshire has a dedicated officer monitoring Section 75. Developed a Section 75 ‘tracker’. In addition, Renfrewshire monitoring initial evidence base for infrastructure, enabling rephasing as required.</p> <p>Case Study 2 - developer-led planning application was refused by Renfrewshire Council (against officer recommendation to grant subject to Section 75 Agreement) on the 2nd February 2021. S75 Heads of Terms refers to a financial contribution required to ensure education requirements associated with the development are delivered. No affordable housing requirement as defined by SHIP. The private housing planned for the site was largely affordable within market</p>
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<p>in a 'partnership' approach. City Region Deal funded infrastructure and development. Led by Renfrewshire Chief Executive Service supported by other Services including Planning Service delivered in a collaborative way – masterplan and project-led development. No Section 75 associated with the delivery of AMID. The first planning permission (National Development) was granted in 2019 and first two phased on site – National Manufacturing Institute for Scotland and Manufacturing Medical Institute. Infrastructure being delivered through City Deal monies conditioned by the planning permission. Landowner-led development facilitated the process.</p> <p>Case Study 4 – former NHS hospital that became vacant during the preparation of the adopted LDP (2014) and subsequently allocated for housing in the Plan (50-70 units indicative capacity). Subsequent application by housebuilder for 110 units. Infrastructure capacity/requirements identified</p>		<p>context providing a mix and range of house types.</p> <p>Case Study 3 – no Section 75 associated with the delivery of the site. Infrastructure delivered through City Deal monies conditioned by the planning permission.</p> <p>Case Study 4 – no use of Section 75s. Developer contributions delivered through planning conditions.</p>
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	<p>through the plan-led process. Sufficient education capacity to accommodate proposed development. No Section 75. Planning conditions used to identify and deliver infrastructure requirements – principally roads and connections.</p> <p>Case Study 4 - former NHS hospital that became vacant during the preparation of the adopted LDP (2014) and subsequently allocated for housing in the Plan (200 units indicative capacity). First application for 276 units from housebuilder and subsequently increased to 330 units. Infrastructure capacity/requirements identified through the plan-led process. No Section 75. Planning conditions used to identify and deliver infrastructure requirements – principally roads and connections. Major planning application granted within 4 months. The infrastructure requirements (roads only i.e. access via new roundabout, pedestrian crossing and new slip road) identified</p>		
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	<p>during pre-application. No education requirements as sufficient capacity.</p>		
		<p>Assessment process v. negotiation</p>	<p>Scope creep of section 75</p>
		<p>Renfrewshire Council 25% affordable housing requirement starting point in the process, but then subject to housing need requirements in the local area and negotiation on 'place' needs in response to site size, local characteristics and land value (LV).</p> <p>If there is a viability issue, developer to provide viability assessment to demonstrate evidence.</p>	<p>Renfrewshire Council The key infrastructure requirements relate to affordable housing, transport and education. Increasing request for health contributions, but not yet delivered anywhere in Renfrewshire due to complexity of the GP services delivery model. Also challenge to define GP capacity and gaps to justify GP contribution.</p>

	Negotiation parties/participants	Local infrastructure v. strategic/regional infrastructure
	<p>Renfrewshire Council negotiate planning obligations on a site-by-site basis, rather than on a pre-subscribed basis. Focused on the specific infrastructure requirements that is fairly and reasonably related to the development.</p> <p>Negotiation of the DCs tends to happen during the post-submission/pre-determination stage of the planning application to avoid protracted negotiations and delay following ‘minded-to-grant’. Aim is to enable the timeous delivery of approved developments. Therefore, conditions process preferred to Section 75 mechanism by Renfrewshire Council.</p> <p>On large-scale developments (e.g. Dargavel) Renfrewshire Council request annual progress updates from the developer (including</p>	

		<p>current market conditions, Scottish Government funding (if applicable)).</p> <p>Case Study 1 led by a single, controlling landowner with a vision which helped in the negotiation process (landowner and PA working together), as opposed to other sites where there may be several negotiating parties with varying objectives.</p>	
Actors involved			
		<p>Renfrewshire work with a broad range of <i>housing associations (HAs)</i>. However, only a few have the capacity to develop. The SHIP identifies affordable housing targets. Renfrewshire seek local HAs to develop affordable housing, but national HAs have the development capacity to deliver.</p> <p>Case Study 1 – collaborative approach with landowner helped in the successful delivery of this</p>	

		<p>large, strategic site (effectively a new town). Also, a series of working groups (roads, education etc.) organised and facilitated by the Council helped to identify infrastructure requirements, phasing and delivery. WGs met monthly during peak process, and WGs still ongoing to consider infrastructure issues, such as bus penetration.</p> <p>Case Study 3 – no Section 75 associated with the delivery of the site. Infrastructure delivered through City Deal monies conditioned by the planning permission. Landowner-led development facilitated the process. PPiP and subsequent AMC's for subsequent phases of development, and PPiP for the bridge crossing the Clyde. All City Deal applications monitored on Council website. Also dedicated Development Management officer (partly funded by City Deal</p>	
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		planning application fees) using monitoring tool.	
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URBAN MORPHOLOGY

RURAL ABERDEEN CITY/ABERDEENSHIRE

Key Characteristics	<p>Extensive developer contributions experience.</p> <p>Established policy and guidance on developer contributions and affordable housing.</p> <p>Wide consultation within Council on DC requirements on specific sites.</p>
Site Specific Issues	<p>Case Study 1</p> <p>Elsick ended up going to Court to be settled over regional transport contribution (found in developer's favour).</p> <p>Affordable housing contributions previously waived, leading to what the local authority termed 'a double hit'.</p> <p>Little in way of DCs achieved due to slow rate of sales. In turn, lack of infrastructure has made site less appealing to target markets.</p> <p>Case Study 2</p> <p>Former greenfield site in Aberdeenshire. Small residential site where housing was remixed to accelerate AH delivery.</p> <p>No HAG used, with 25% AH paid for by DCs through Aberdeenshire Council's shared equity scheme. Developer built and handed over turnkey to an RSL.</p>

	<p>Total other DCs of £300k (mainly contribution to secondary school).</p> <p>Case Study 3</p> <p>Affordable Housing Theme considers:</p> <ul style="list-style-type: none"> i) Acceleration of City Centre development through waiving AH contributions; ii) AH still provided in some cases due to availability of HAG funding; and iii) Scheme extended after initial pilot demonstrated good delivery results and increase in developer activity. <p>Case Study 4</p> <p>Large, greenfield site in Aberdeenshire with 2 residential developments. Aberdeen urban extensions allocated in LDP.</p> <p>DCs are heavy at c.£45m for both sites combined given significant infrastructure needs. As well as AH, includes DCs to community facilities, health, schools and sports & recreation, and calculated on a per unit basis.</p> <p>AH being paid as part land payment and part build, with developer building product for an RSL.</p>
Interviewees	<p>Aberdeen City Council</p> <p>Aberdeenshire Council</p>

	THEME/SUB-THEME		
	POLICY	PRACTICE	DELIVERY
	Developer contributions policy supported by development industry	Regional variations in land value	Section 75 effectiveness
	<p>Developers like certainty and a clear assessment process allows S75 to be calculated and included in the bid price for the land.</p>	<p>DCs are tied to the LVs – areas with high LVs can afford more. Hence can extract high levels of DCs in strong markets but not when they turn. Aberdeenshire is a good example of this.</p> <p>Areas with low LVs, e.g. regen areas, don't tend to seek much in DCs.</p> <p>Variation also caused by issues such as existing capacity. Areas well-provided for will tend to have less DCs.</p> <p>DCs are then looked more at on a case-by-case basis rather than strict policy assessment.</p>	<p>Developers report every quarter on completions and council then invoices for the DCs.</p> <p>Councils use building warrant records to check on site completions, which inform DC requirements.</p> <p>Developers also monitor the delivery of infrastructure that DCs pay for.</p> <p>Market conditions in Aberdeen have deteriorated and face other threats from Covid and Brexit. One of the case study sites has high DCs. Viability is a developer concern and ACC will have discussions on what can and cannot be provided.</p>

			S69 also commonly used – more standard, easier and less costly. Planning conditions don't tend to be used. S75 will be used where AH is being delivered.
Affordable housing requirements	Assessment process v. negotiation	Scope creep of section 75	
<p>AH seen as the main contribution of development.</p> <p>Policy guided by HNDA, which informs SPP and LHS of both PAs. LDP informed by SDP and SPP.</p> <p>Aberdeen – Requirements set in LDP and with SPG alongside (latter gives details on delivery mechanisms and terms). 25% on sites of 4 or 5 or more units (4 in Aberdeenshire and 5 in Aberdeen). On-site provision preferred.</p> <p>Aberdeen waived AH requirements in the City Centre in 2018 to accelerate development there, which has lagged in recent times as a</p>	<p>Process is assessment-led. Requirements such as AH, education, health and open space are clearly set-out in the assessment process and can be quantified and costed easily. Community facilities can be more difficult to justify in terms of evidence e.g. existing capacity, pipeline, actual needs.</p> <p>Small sites seem easier, with pre-app advice and SPG clearly setting out requirements. DCs usually not onerous and can easily be subsumed within the development. Case Study 2 S75</p>		

	<p>result of viability challenges and the market downturn. Policy emerged from City Living strategy. Other DCs remain in place and are being delivered. Policy seen as significantly increasing City Centre housing activity. Developers have to use consents in 12 months or lose waiver. Was to last to 2020 but has been extended to 2022. AH still being delivered in the City Centre because some sites (or parts of sites) have been sold to RSLs to deliver AH through available HAG funding. Policy impacts will be examined at end of pilot.</p>	<p>was agreed prior to Planning Committee.</p> <p>Limited instances where viability of development is a factor in negotiation. Will consider if some adjustment can help development be built but need to be mindful that development may simply be unviable in any case. The DV has a specialist team that can examine viability.</p> <p>Elsick a good example of AH being waived under viability issues, but Council admits should have interrogated this more.</p> <p>Councils have also been pragmatic on remixing of sites and increasing densities to meet changing market conditions.</p> <p>Education less likely to be waived. Community facilities and sport & recreation more likely to be waived in negotiation. However, education (and other elements) can be challenged on</p>	
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	<p>deliverability, esp if not in capital plan.</p> <p>However, some developers believe that education evidence is weak for DCs e.g. pupil per household ratio.</p> <p>Little use of modification. Only accounts for c.10-15% of agreements in last 3 years. When it does happen, usually a technical exercise e.g. developer wants to vary original consent and this has an impact on S75.</p>	
Other requirements	Negotiation parties/participants	Local infrastructure v. strategic/regional infrastructure
Political priorities can influence the capital plan and therefore the DCs that are sought.		DCs tend to focus on local physical infrastructure. Can't really use for electronic infrastructure but this should probably be considered, especially with digital solutions now being more used in provision of services.

			<p>Future Infrastructure Requirements for Services (FIRS) is a group of infrastructure providers and councils to identify 'big ticket' items need, including education, health and roads. The LDP lists infrastructure needs for big sites and developers have understanding of general requirements.</p>
Actors involved			
		<p>Look to agree HoT during determinative period. Process works in parallel with other aspects of application. Drafting legal agreement after Minded to Grant usually takes 2 months due to iterations between developer and PA.</p> <p>Developers can delay signing S75 to maintain consent but will usually go back to Cmtte if not signed in 6 mths.</p>	

	<p>Developer found S75 difficult at one of the case study sites – long and costly in terms of legal fees. Cumulative impacts of transport and DC of land for new school were the particularly testing points. S75 took a year after Minded to Grant. Contribution to STF was removed after Elswick ruling.</p> <p>Another developer also thought that a major problem for S75s was time in negotiation.</p> <p>Another issue for a developer at this case study site is the DCs on AH – £21k per plot. The developer makes a loss on the AH unless they can achieve this price. Costs are also increasing in a declining market, tightening margins. The developer is negotiating with the Council on the AH as a result and the Council is engaging on this.</p> <p>In one of the case study areas, more than 25% AH is currently</p>	
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		<p>being delivered as this part of the development is front-loaded. This is helping to accelerate other provision, such as the new school.</p>	
<p>Risk re. forward funding</p>			
		<p>Standard legal agreement usually requires DC payments on a per unit basis each quarter in arrears. This can mean that not all infrastructure is provided until after the development is completed, which can cause issues with the local community.</p> <p>Some infrastructure e.g. a new school, may need to be delivered alongside the development, which the council has to forward-fund and then recoup through the DCs, which represents a risk if not all DCs are paid or the development stalls or ends prematurely. Councils less likely to build new schools on this basis</p>	

		<p>going forward due to finance concerns.</p> <p>Councils considering other possibilities e.g. S-curve distribution, where more DCs are paid during active construction phases and less at the beginning and end. May also look at performance bonds as way of insuring against non-delivery. However, these alternatives will have costs for developers/landowners and may lead to increased mistrust.</p> <p>A 'campus approach' to new infrastructure could help to deal with requirements more</p>	
		<p>DV valuations and squeeze on land value</p>	
		<p>DV valuation in one of the case study area was an issue for the developer. They believed it was valued using comps in higher</p>	

		<p>value and more established areas.</p> <p>On another case study site, the developer believed that DV was trying to squeeze as many DCs out of scheme as possible and applying a threshold greenfield value to a brownfield site.</p> <p>Developer argued that brownfield land should have a book value in relation to existing use. This seems to be an issue down south too e.g. Harman report on London Mayor's Guidance and SLC Enabling Development report (2019) also references this.</p>	
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12. Annex 5: Experiences and opinions of roundtable participants

12.1 The importance of developer contributions and mechanisms

All participants emphasised how important developer contributions are to their organisations, but that sometimes, planning conditions were a better means of securing outcomes and that there were also challenges especially the way the types of the infrastructure sought had grown in recent years, the difficulty of using them to secure sub-regional infrastructure, and the growing complexity of the system.

12.1.1 *The importance of contributions*

All participants from infrastructure and affordable housing providers, as well as professional advisers and local authorities, said that these were important mechanisms for getting financial and in kind contributions.

As someone from a representative body of house-builders said:

“The process may be cumbersome, but the basics are there. Development covers the infrastructure that is specifically needed for and related to the functioning of that development”.

Another house-builder enlarged on this:

“It is a benefit for home-builders if they can tell their customers that they will be well served infrastructure and that the current community will benefit from that infrastructure., if it is up front and clear, it allows them to calculate what it’s going to cost in relation to a particular development”

A lawyer involved in developer contributions for three decades observed that:

“I have been working in planning over 30 years... and I think it is both important now and will be important in the future. More and more, local authorities, often driven by fiscal constraints as well as the novelty of some projects, are looking towards the planning system to make up the infrastructure gap by delivering money or having the developers undertake it themselves”.

A planning consultant stressed that:

“Section 75 contributions are important for developers as a mechanism to demonstrate that they can address problems but at a site specific and local level.

Developers are actually quite keen to pay money to address an issue and Section 75 provides them the legal mechanism to do this”.

An affordable housing provider emphasised how:

“The importance of developer contributions in terms of land for housing associations cannot be overstated. In 2001 RSLs (SIC) were having difficulty finding land. Over the next few years, the affordable housing policy kicked in and this became the only way for RSLs to actually obtain land and build”.

In a later interview another provider stressed how, over the previous 15 years, S75 had become more embedded, consistent and transparent

But as a local authority planning representative pointed out:

“About 5 local authorities don’t use developer contributions because they saw it as prejudicial to their developments..... In growth areas where there is potential for development the use is common”.

This geographical variation point was also stressed by a participant from a professional institute:

“...We often talk about Section 75s in the context of high demand and high land value areas, where there is an ability to lever in Section 75 agreements. But in some other parts of the country, Heads of planning are wary of using Section 75 because they are trying to attract development and it seems more of a burden than benefit”.

A participant from a local authority also reinforced this geographical variation:

“There’s a postcode lottery. Our authority has an ambition to have a compact and connected city form, which theoretically looks doable given the amount of derelict land we have. Generally, in [local authority] we ask for developer contributions when it is seriously connected to infrastructure deficiency like in [area] ”.

A local authority planner from the same region of Scotland made similar points:

“[local authority] economy has suffered, industry moving out. We have a relatively weak economy and sizeable pockets of deprivation. Historically reasonable house prices, not much developer interest.We have taken the direction of investing in new builds to remedy this housing need. This takes pressure off the developers as we are funding these builds through Government help or through council rent (Tenants). So, we made a strategic decision to remove our affordable housing

contributions, so we have no developer contributions policy in [local authority] which should attract big developers”.

12.1.2 *Planning conditions alternative mechanisms*

As well as agreements under S75 and other relevant legislation, participants commented on and explained how planning conditions were also used to secure developer contributions to infrastructure.

A local authority planner explained why they were used:

“... that is something that we developed in [name of authority] ; to have suspensive positive planning conditions. The Circular that covers this (Circular 3, 2012) says you should always try and negotiate through planning conditions rather than legal agreements. Some legal agreements take 3 years to resolve, not because the parties were at odds with each other, but because there were so many parties involved. Particularly on multipurpose sites”.

Another local authority planner talked about the balance between agreements and conditions:

“We have used planning conditions particularly on sites where the reporter has been involved For affordable housing we tend to use Section 75 as there is a financial contribution involved as well as legal questions about land. It does take longer (than planning conditions) and we are trying to look at how we can streamline this process”.

A lawyer identified the basis of this choice between agreements and conditions:

“Planning conditions are regularly used by planning authorities, more so used for transport. Local authorities have a wide latitude to use conditions. Where PAs become uncomfortable is using conditions for delivery of contributions is money, as you are not supposed to use planning conditions to procure money”.

A transport infrastructure participant explained when it wanted conditions used:

“we regularly request that planning conditions are applied which will deliver trunk road infrastructure i.e. junction improvements”.

In a later interview the providers explained that they did not like the use of S48 Highways Act agreements to provide transport infrastructure as it did not ‘run with the land’ and therefore could not bind someone who subsequently bought the land and was completing the development. They also had concerns about S75 as they had to rely on local authorities collecting the funding and ensuring the infrastructure was funded and/or

provided – which providers we spoke to said became a problem if the funds were not used within five years as they believed developers could require the refunding of their contributions..

A local authority housing officer explained how the tax system also affected whether conditions are used:

“One issue regarding this choice is that where a council acquires a property using (planning conditions) , they will be required to pay LBTT additional dwelling supplement. If the council acquires a property using Section 75, they will not be required to pay this supplement”.

12.1.3 *Growth in the types of infrastructure required*

Participants regularly referred to ‘creep’ where requirements were added to published lists (and formulae) for the infrastructure required for developments. These were needed to support new developments but had not been identified in plans although they were related to supporting the development of, for example, new health facilities. These extra demands compromised agreements developers had reached with landowners about what to pay for land. They explained how this added complexity and delay to discussions and negotiations.

A participant from a housing representative body spoke about the growth of these extra requirements:

“Health is an area that has started to come into policy now as well as practice. At first, we would ask on behalf of our members if this was an appropriate use of Section 75, since lots of healthcare is funded through tax and lots of practices are private businesses. But it has found its way into plans and will continue to be there now.”

A participant from another representative body made the point that:

“What seems to happen more now is that whenever anything comes along which presents a cost burden to a local authority, there is pressure to look at whether development contributions are the answer to that cost burden.but it shows that there is possibility for movement in agreed sums which perhaps tests developers’ faith in the system and can make the process slower”.

A house-builders’ representative made the point that:

“There are more and more items for which contributions are being sought. You lose in transaction costs through working out what all of those individual things cost what

could have been gained through a more focussed approach. There is a creeping complexity in the system”.

A volume housebuilder added that:

“‘Creeping’ is a good point, there is a mission creep in relation to some Section 75s, where local authorities are trying to make Section 75s do what they aren’t supposed to. ... The planning system is often used as a ‘catch all’ for solving everything, which it cannot do”.

Another housebuilder thought some of these extra demands were inappropriate:

“Traditionally, high level healthcare is a Scottish Government reserved matter. Further, GP practices are private businesses – why should developers provide a free doctors’ surgery to a private practice?”

A lawyer advising private and public clients made a similar point:

“It would be interesting to ask what the material limits of the term ‘infrastructure’. I have heard of some attempts to obtain revenue sums from developers as well as infrastructure itself i.e., if you are making a school, why not have the developer pay for the teachers as well as the infrastructure because they are necessary to the functioning of that infrastructure. Is it just built infrastructure that counts?”

A local authority officer explained the context for these extra requirements

“Looking at the broader context of why this ‘creep’ is happening, I think it often comes down to lack of finance on the side of local authorities. In [authority] we have just produced an open space strategy. The budgets for producing open space have been reduced over the years. At the same time, we have a robust arrangement for taking developer contributions for open space. The problem is that these contributions go towards a fund which is used to manage how we deliver”.

A planning consultant stressed the needed for clarification of what could legitimately be funded by S75:

“I fear we will be editing Circular 3, 2012 every two years to add in surgeries, swimming pools etc. As a planning consultant, I feel we need to check back to 1) what are public goods that receive an income from council tax and 2) public funds raised once a house is on a plot and occupied by humans in the house. It’s uncertain whether we are in a legitimate asset class which answers those paragraph 14 tests in the circular; “Fairly, reasonably, related in scale and kind to the development we’re proposing””.

A consultant who was later interviewed thought that securing developer contributions for primary health care capital funding could be justified as large scale new development on greenfield and brownfield suburban locations brought additional patients into an area (just as they brought in additional school children). This therefore justified requiring developers to contribute to the costs of building new (or extended) GP surgeries (for example on a tariff basis per new dwelling as for education). However, the growing trend to integrate all health care provision makes this problematic in terms of the different funding mechanisms and the sub regional approach to provision.

Those involved in NHS estate planning described in later interviews how they increasingly looked towards developer contributions to secure land and also contributions to the funding of new primary care facilities. This was seen as an equally logical justification for developer contributions as was seeking those for new education and transport facilities because it was part of mitigating all the costs of providing the infrastructure needed for new developments. It was apparent that not all PAs recognized this and we heard that some prioritised seeking contributions towards the services that were provided by the PPAs themselves, such as education. It was also the case that policy in PA local plans was not as well developed as was the case for affordable housing and some other infrastructure and this caused challenges when negotiating contributions for new developments. There were also challenges in dealing with the long term additional primary care requirements of the cumulative impact of many small developments. There were different challenges for larger developments where the need had been agreed but there were problems in terms of the timing of payments in relation to the pace of the build out of new housing occasioning the need for some front funding. It was evident that policy and practice was evolving but that currently there was a mixed picture and an overall system lack of consistency both between PAs and between different Health Boards. Nonetheless, there was evidence that central government and the NHS wanted more co-ordination so that policy was clear in adopted plans.

12.1.4 *Site mitigation of wider sub regional requirements?*

Another challenge highlighted by all participants was the desire by local authorities to get contributions towards 'sub regional' infrastructure which went beyond supporting the specific development in question. A related challenge was demands to make contributions to the cumulative impact of several developments but where the development in question made only a limited impact itself.

A lawyer advising public and private clients made the point that:

“Local vs regional infrastructure: it is easy to work out the impacts of an education system and healthcare – but the link between the impact of a regional project like a travel network become harder to define. CIL has advantages over this”.

A planning consultant agreed:

“Section 75 has its limitations and strengths; it does not cover regional projects, but it has been successful in providing funding. What needs to be discussed is how other laws/ policies are layered around Section 75”.

A local authority planning officer explained these challenges for an authority

“The challenges from local members are quite significant, who want to know why the open spaces aren’t being created in their area..... Developer contributions simply turn into a more general funding for the overall infrastructure plan. What I need to work out is how to make sure how we are responding to a precise development in the relevant and responsible way”.

A participant representing infrastructure providers argued that:

“...what needs to be watched is that the developer contribution tail doesn’t wag the wider planning needs dog. Because Section 75 is mainly housing driven, it might be called into question whether it is the right sort of legislation to use for ‘places’ as a whole and does it put the right sort of emphasis on what should be done in ‘places’”.

A planning consultant agreed that:

“For strategic infrastructure delivery, Section 75 is not the right piece of legislation. This can be seen in local authorities attempting to use Section 75 in incorrect contexts, which can lead to legal problems”.

And a participant from a professional institute argued that:

“Section 75s are an important part of the planning system but don’t meet all the needs. I think it is beneficial to look at the broader picture here; how can we provide infrastructure in a much more proactive way and what is the role of government in infrastructure”.

A participant from a housing representative body explained how providing the wider subregional needs could undermine the local provision and:

“that authorities are having to pick and choose between a finite number of things to take from a development. The development might contribute in part to something that is needed more widely in the area, but the gap (in funding) might be in the funding for the existing community proportion”.

12.1.5 *Need for clarity in local plans and in contributions required*

A number of participants also thought that some infrastructure needs were not always well justified in plans and guidance and this results in delays and renegotiations. Developers made it clear they had no objection to contributing to justifiable mitigations but needed clarity and certainty.

A participant from a house-building representative body explained that whilst there is certainty about the affordable housing element:

“... with other contributions there is a lack of certainty up front; in local development plans there are no detailed costings of what infrastructure is required for individual allocations..... with Education and Transport contributions there is a lack of clarity about what is expected. The lack of clarity adds to the complexity around the use of Section 75s”.

Another from a developer representative body pointed out that:

“At the moment it is hard to get the clarity up front at the plan stage because so much of that policy has not been finalised or comes in later at statutory guidance (which will be removed soon). The potential benefit of this is bringing the policy forward into the plan, which could help developers to provide more evidence of viability”.

A volume house builder also emphasised that:

“councils are not prepared beforehand Affordable housing doesn't cause much of an issue. It is more complex projects like education which have more specific bottlenecks”.

Another house builder explained that:

“No developers object to the principle of offsetting the impact of what we build. The issue comes with the level of money required and more recently I have heard of councils looking to increase what they set down in their statutory guidance because they think there will be a Brexit impact”

And another volume house builder also pointed out the need for clarity on what is expected:

“To operate the developer contributions system a bit better; we need a clear vision of what we think the impact of the development is and what we think the solution is to mitigate that impact. This is often not done in time to deal with planning

applications; the planning application is delayed while the impact of the development is worked out between the developers and the council”.

And as one local authority planner pointed out there is much complexity on large sites where several developers and landowners are involved

“I have experience of a master plan site where there were 3 or 4 landowners and 6000 homes involved. A lot of the work was in the hands of accountants and lawyers,,,,,,,. Some cases involved the landowners wanting to delay the Section 75 because they would have been taxed if it had gone ahead”.

A planning consultant made the point that this lack of clarity can lead to much renegotiation

“Developer contribution is a key part of a toolbox. The configuration of infrastructure might change, so some of the demands around that might change in turn this may affect developer contributions and their relevance. Re-negotiation has been a part of that over the last few years”.

Another planning consultant also commented on the need for certainty:

“The flexibility of financial agreements is also a problem; either local authorities accepting less than they had originally agreed or asking for all the money up front from the developer in order to actually build the project”.

A local authority housing officer also stressed the same point:

“As an approach, the system is uncertain for planning authorities, housing authorities and developers. It encourages ‘gaming’; which is an entirely legitimate response as outcomes can be influenced by certain behaviours. On balance, it is a process that is unnecessarily bureaucratic, it has been developed in an ad hoc manner, and it would help all parties if there was a clearer process for extracting value from developments”.

12.2 Relationships between local plans and infrastructure requirements/plans

12.2.1 Coordinating development and infrastructure planning

A transport infrastructure provider stressed the importance of coordinating local authorities’ and providers’ plans:

“Where development is located is a key driver for travel demands. ...In the future, particularly in transport contexts, we will be looking for the national transport strategy, sustainable hierarchy and also investment hierarchies to be much more

embedded in the spatial strategy decision making process.....I hope that with the national planning framework and the national transport strategy there will be a change in the type of developer investment as well as choosing development sites which have existing capacity”.

A volume house-builder stressed how important this integration was for the business:

“The issue is that who takes the initiative to drive this. The last thing we want is to waste public money on a white elephant, so we need certainty. The bit that is missing from the infrastructure first approach is the development agency that is prepared to take that gamble, as if it is left to infrastructure providers it will not get done”.

A planning consultant reinforced the problems of this lack of integration:

“My experience is that is usually lacking and quite acutely so. The way local planning usually works is developers or landowners promote sites which is often a speculative exercise and infrastructure requirements are not assessed at that preliminary point. A solution to this might be... [to] force developers and local authorities to be more engaged at early stage. PA’s evidence base is often poor., PAs are often trying to use Section 75 for something it isn’t meant for which means that it does unravel”.

Another planning consultant also commented on how important better integration was for large scale development:

“We need to look closer at the developments we’re proposing when it is big scale green field release and how that might impact on the nearby city and its brown field quest to still deliver. I think we need a third part of planning activity....We need to bring in more of the experts in funding, financing, quantity surveying, cost assessment, civil engineering and development appraisal in order to action this”.

Infrastructure providers agreed with these views. From a water provider’s perspective:

“We are well involved and engaged in that process, but it does not inform our investment process. From an infrastructure perspective we need certainty, and the development plan does not give us this. There are around 13,000 sites in local development plans, some of which will roll on indefinitely. The certainty we need to invest is not there. This can mean long waits for infrastructure to actually be built”.

And from a transport provider’s perspective:

“Infrastructure first is an important ambition but actually how to deliver it still needs to be worked out. with regard to the alignment between PA plans and their business plans. In [the participant’s organisation] there has never been any meaningful alignment between our investment programmes just because the cycles of plan making do not align with government funding”.

In a later interview the transport provider stressed the need for local plans to both underpin a sustainable approach to transport (for example in terms of the locations of new development) and to provide clarity about what was required of developer contributions. Whilst this had been improving over the years, it still provided challenges for them when commenting on planning applications for new developments where there needed to be site mitigations with respect to transport including ensuring improvements to road safety. In addition, the provider had major problems when addressing the transport implications of cumulative developments and therefore the mitigations that could be secured from developers. This provided a ‘first mover’ advantage to the developers of initial small phases of what might later become a larger development in total. This was also a problem with the ‘infrastructure first’ approach as it was unclear how the required works could be funded before development started. Overall, the provider did not secure much from developer contributions to match its own capital funding

A participant from a professional institute noted that:

“[name of the professional institute] is supportive of the infrastructure first approach, but we recognise the challenge of bringing something like that in. The relationship between local plans and infrastructure plans is where we see some of the biggest challenges. ... This ought to be about place-making.....with the goal of achieving the sorts of sustainable communities we are looking for in our development plans”.

A participant from another professional institute reminded the roundtable that:

“Each local development plan has to have an action programme along with it. This is one of the weaknesses of the system because there is such a large variation in the rigour that is applied to each of these action plans. The development planning system is changing and will continue to change. The move to 10-year plans might make the prediction element much more difficult and what is the role of action plans/ programmes with this move?”

This point about planning reforms was reinforced by a local authority planner:

“Going forward with the planning reform agenda we will have local plans and not supplementary plans. So, the focus of what is coming through in the Section 75 will be rooted in a slimmed down adopted local development plan which will make it

harder for PAs. These reforms are supposed to last 10 years, which might mean tweaks are needed down the line”.

A local authority participant emphasised the need for a more corporate view:

“I think it is important that we view the delivery programme as more of a corporate plan, one which will shape the entire city or area it affects. Using the action programme in this way pushes us to take the plan more seriously..... [as] the autonomy of each council part can cause disruption to the overall delivery plan”.

A house-builder suggested a national plan as a better way:

“On land value capture, it is often a very thin margin for developers as the average price of each plot can be very high if we take into account the cost of ground conditions and the lower revenue point. Given this, it might make more sense to have a national plan on infrastructure, rather than leaving it to the nuances of local authorities and communities, who end up vying for new community centre or doctor’s surgery”.

A developer noted the need for all involved to think of how most efficiently to fund the infrastructure required

“There are institutional investors willing to invest in infrastructure at a far more reasonable rate than even Public Works Loan Board money, for a longer duration as well. That sense of team, where developers, contractors, providers, investors, local authorities and planners can get around a table and working out what is required and then finding the most cost-effective way of doing it”.

A participant representing local authority planners also suggested a different approach

“Planners should become deliverers. Has any work been done on the City Growth Deals and their finance? At [name of organisation] we have been working closely with Scottish Government about what are the asks for NPF4. One of the clear asks that has come up is for it to be properly funded across all the sectors, including Government departments, where most of the infrastructure funding is. ... So, we are expecting NPF4 to come with a full capital plan, particularly for national projects”.

Another local authority participant also suggested new ways of doing things but was frustrated by the difficulty of working with infrastructure providers

“In [name of local authority] we have been having conversations with infrastructure providers. I took this opportunity to present our land supply and our spatial strategy on using vacant and derelict land in hope of getting some useful information from

them as well as collaborate with them. Their reaction was simply to say that ‘it is fine’. I was hoping for something a bit more nuanced from them, developing an understanding of phasing”.

A local authority planner also talked about the challenges of getting all providers collaborating:

“It is one thing for a council to try and develop an infrastructure plan, all the parts of the infrastructure need to be linked up. The systems which should be in place to create these links are very unsophisticated, and it is hard to share plans between different projects which may well affect each other. We made some attempts to get the utility providers more involved and trying to look at longer term plans. I was surprised at how unsophisticated some of their forward planning processes are as well as the information and how it is held”.

12.2.2 *Sub-regional infrastructure*

A planner from another local authority spoke of the difficulty of using the system to deal with sub-regional infrastructure

“[name of local authority] has had experience of trying to do infrastructure planning and it has been incredibly testing..... Everything we have at the moment in terms of our approach to infrastructure planning is focussed on a site level basis. We are asking the question of what the specific site should do and not asking what the city needs”.

A developer talked about the role that house-builders and others could play in sub regional infrastructure and help ‘unlock’ sites:

“From a developer’s point of view, a sense of understanding the long-term plan is important. Knowing what the infrastructure plan is longer term (city, region) and then understanding what the contributions could be to unlock the value of these sites. Infrastructure first approach, then developments contribute back to the cost of the infrastructure”.

A participant from a house-building representative body noted the key role local authorities were already playing and said that:

“Some local authorities are making significant up-front investments and are unlocking new development. There is good practice out there”.

A local authority participant reported that local authorities were co-operating on this:

“Hopefully regional spatial strategies will help in terms of that coordination. The fact that they are not statutory gives them a little bit more leeway for creative thinking on these things.... creating some traction outside of planning circles with transport providers and other departments like this”.

A local authority planner talked about how growth deals were helping with this:

“The growth deals in some cases are providing a catalyst towards unlocking land and enabling housing development. In our case this is getting done across the three authorities that make up [area] so that there isn’t a barrier as you move across boundaries. We ought to invest in infrastructure up front. But this comes down to the risk appetite – how do you put that money up front when you don’t have a developer set up and willing to action the plan?”

A housebuilder observed, however, that general taxation was key to funding as land value could not fund everything:

“The principle of development mitigating any impact should be the key for Section 75 contributions. But we need to be realistic about where the funding for this infrastructure spending is going to come from.... so long-term infrastructure requirements need for a modern economy over many years can’t be funded solely off the land value. At the city region level, it makes more sense for infrastructure to be funded by general taxation while the site-specific stuff is dealt with by the planning system”.

12.3 Affordable housing through developer contributions

Participants thought developer contributions were a very important mechanism for delivering new affordable housing, but not everywhere especially on brownfield sites and in low land-value areas. Agreement on securing affordable housing is relatively straightforward because of policy clarity, plus availability of grants. Although the affordable housing percentage is much the same everywhere, local authorities may drop the requirement or reduce the percentage if they are keen to get some development.

12.3.1 Meeting targets

Participants stressed that, although local authority targets varied, they were generally consistently applied and mainly achieved and provided ‘on site’.

A housing association participant explained how they worked with developers to achieve targets

“Generally, we buy serviced land at nil transfer and build out ourselves, perhaps with back to back deals with developers; less often we buy completed units, mainly

when it is a small site; the price we pay depends on level of grant from government and what debt we can service from rents”.

Another housing association representative interviewed later in the research explained that most local authorities do have clear statements of what affordable housing will be required (normally as social housing) so it is possible for developers to estimate the cost of the contribution and bid for land on that basis. This also covers the details of the housing mix as most authorities want the affordable housing on site and comparable to the market housing. Land is normally transferred at near nil value although in some cases there is a negotiated price with the developer. Where the housing associations buys completed homes from developers the subsidy framework is also clear – as is the rent to be charged – so it is fairly straightforward in the majority of cases to decide what to pay developers for the units.

A housing association representative at the roundtables explained how it dealt with design and layout:

“Most developers have partnership house types so matters like design/type/density are usually addressed at that level not each site... in most areas house types will depend on need studies, often different in suburbs compared with inner city or city centre sites... From all view points, including management efficiency, pepper potting affordable housing does not work. Most local authorities want affordable housing on site and comparable to the market housing. This layout also gets the housing association units built out first so helping developers’ cash flow”.

This point about how housing associations buying completed units early in the build out of new developments helped developer’ cash flow and reduced their borrowing was made by other housing association and housing organisations’ staff interviewed after the roundtables

A representative of a housing development body, present at the roundtables also explained that:

“The figure of 25% of affordable housing across Scotland is well understood and there is a degree of certainty around this. In this sense it probably helps to avoid some of the parallel problems found in England, where there are multiple thresholds”.

Another housing association participant stressed how important developer contributions were:

“...without this land contribution, I do not know how RSLs and housing associations would provide social housing in the amounts that we are told we need to provide. There are local authorities talking about 30-35% affordable housing provision”.

A volume house-builder was prepared to go beyond the normal 25 percent and discussed the wider market issues:

“As a developer I would not mind providing 30-35% so long as it is factored in. If the private sector is allowed to play its part in providing affordable entry level housing without subsidy that will help to get the numbers up as well”.

A local authority participant confirmed that:

“In relation to the affordable housing policy, the planning system is working well. there is clarity around this policy for developers. Developers want to know what the contribution is likely to be and that will feed into their discussions in terms ofwhat they will pay landowners”.

An interviewee from a housing association involved in rural developments made the point that whilst need was located in a large number of villages relying on developer contributions from large developers building on one site in the area often meant the provision was concentrated only on one such site with the new affordable homes and related infrastructure often some way from where the need had arisen.

12.3.2 *Targets and viability*

As a volume house-builder explained:

“Most council areas in the East it is at least 25%, sometimes 15%. We are providing most of this on site, I can only think of one of our projects where we made a commuted sum in lieu. If the land is worth nothing, nobody is getting anything from it; it all comes down to viability”.

A planning consultant confirmed this variability in targets:

“Amongst clients of mine on development of greenfield, I agree with [a volume housebuilder], developers are happy to put upwards of 25% affordable housing down. We just need to make sure that at the first stage we know what the kit list is. ...on brownfield sites, I have some concerns that clients are squeezing down the development appraisal as far as possible. There needs to be an existing use value plinth for brownfield sites. ... This will also prevent over-taxation of difficult to develop brownfield sites and encourage developers rather than deter them”.

A local authority participant stressed how viability was not a problem on greenfield sites:

“Viability is an issue. But with regard to affordable housing, it is less of an issue because the sites tend to be greenfield spaces. What is more of an issue with affordable housing is the landowners pushing back because the developer comes back with a different price”.

Another planning consultant commented on how targets also needed to fit spatial planning objectives with respect to brownfield development:

“Should we look more and more that affordable housing ought to be commuted back to the City? This ... might be more of the tighter cluster, higher density and more mixed use. Various developers are saying the urban brownfield is where they want to be. This approach might help us deliver both green and brownfield”.

A participant from a housing industry representative body explained how affordable housing definitions provide flexibility:

“... The Scottish planning policy definition is quite wide, which is helpful because it gives you more flexibility to find more possible sites. But this is not universally supported by all local authorities who want the full 25% going directly to their council houses”.

A house-builder explained how more flexibility could enable more to be housed:

“The big push is often for the provision of social rent housing, particularly on high value sites. I would like to know how many people currently living in council housing at the moment have the means to move into private housing or buy their own. This would then free up those social rent units”.

A housing association participant explained how this had been attempted in one local authority:

“The housing options team [name of local authority] Council did a project (2006) which identified tenants of council houses and some housing associations who had aspirations to move. Some people had the aspiration but did not know how to go about it. The team were able to identify and enable them to move. This freed up council housing”.

12.3.3 *Understanding needs*

Most thought that policy and guidance of affordable housing needs was generally clear.

A participant from a local authority housing organisation pointed out that:

“Over the 15 years S75 had become more embedded, consistent and transparent. Most PAs do have clear statements of what affordable housing will be required (normally as social housing) so it is possible for developers to estimate the cost of the contribution and bid for land on that basis”.

But a few participants considered that housing needs were not well understood. One from an infrastructure organisation pointed out that:

“Accepting a pragmatic difference in geography is essential. Some projects will work in some places and won’t work in other places... Do we have a really clear understanding of what the housing need is? The evidence we got from our research is that we don’t understand the housing needs in Scotland, nor is our understanding of those needs joined up with economic development and how you drive that in the future”.

A participant from a professional body pointed out that:

“On [the] localised nature of housing needs and the demand assessment, the 2019 Act has a provision that the NPF will now have to set geographical housing targets, but this could go either way in terms of whether it has a top-down or bottom-up approach”.

A representative of a housing association interviewed after the roundtables pointed out how important it was for all participants to work together to secure the provision needed but that this did not always happen. In general, the key relationship in reaching agreements on contributions (including affordable housing) was between the developer and the planning team of a local authority with the details of how the affordable element was to be provided (including tenures) involving subsequent discussions with others including local authority housing departments and housing associations. The interviewee stressed that it worked better if all were involved early in the process as it enabled the developer to secure land at prices that helped it deliver all the contributions.

12.3.4 *The importance of grants*

Several participants commented on the importance of grants in making the affordable contributions possible.

As one local authority participant explained:

“As you know there is the strategic housing investment plan through which we plan in developments which are going through an affordable housing policy, whether it is the council or an RSL taking the units. This plan is incorporated into the SHIPS which are updated annually. It works reasonably well”.

But as a volume housebuilder stressed, grants did not cover all costs of a housing provider buying land or units from them:

“The grant funding usually only meets half the cost of the unit; the rest the housing associations raise themselves. My only concern... is that by over focussing affordable housing into urban brownfield sites, the developments are likely to gravitate to the cheaper areas and this might end up marginalizing people while missing the chance to have mixed communities”.

Another house-builder stressed the long-term value of the grant programme to the business:

“The Scottish Government’s support of the affordable housing programme through the local authority SHIP gives us certainty that we can partner with our RSLs or local authorities and provide the housing required. It allows us to develop really longstanding and useful relationships with RSLs or local authorities”.

A participant from a west central Scotland authority explained that it had a large grant allocation and a large network of housing associations and did not need to use developer contributions but that:

if budgets reduce then we may need to think about using Section 75s.

Although most S75s were delivered on site, a house-builder explained how higher targets could be delivered by providing the affordable elements on another site:

“...With some developments, for example [a development site], where rather than provide 25% affordable housing on site, an off-site area was found which provided over and above the 25%. Often it is just not realistic to put affordable housing in developments, particularly with the higher value ones”.

A local authority participant explained some of the challenges such commuted sums provided:

“We have had pushback more recently around some of the commuted sum payments due to land values increasing in this [specific location], which has the consequence of the commuted sum going up. ... More up-front clarity can be provided around how these payments are calculated”.

An interview after the roundtables with a government official about the role of grants confirmed the importance of grants and how they helped both keep rents low for tenants and helped housing associations acquire land and/or completed dwellings. The flat rates grants (with small variations in relation to locations and size of dwellings) are a benchmark

to provide value for money in government funding. It was explained that, where a developer may have provided serviced land as part of an affordable housing contribution (or was selling completed dwellings), then grants assist in reducing the costs of the project, potentially reducing private finance and / or bringing it in within the benchmark grant. Contributions are designed to allow housing to come forward on sites and in areas that either land would otherwise not be available and/ or would be too expensive to build. The level of grants is not fixed however to take explicit account of the value of land being transferred (or of prices of completed units being acquired) and is not something taken into account when reviewing bids for grants.

12.3.5 *Grants and land values*

Several participants commented on the extent to which grants affected land values.

One volume housebuilder argued that:

“The land values aren’t particularly affected. Affordable units are analysed in a different way to private units. One relevant point is that subsidy applies in relation to social rent or mid-market rent housing. The planning policy does allow other tenures of affordable housing to be provided. For example, low-cost homeownership costs no subsidy at all; so the Gov. and PAs could have more delivery (of affordable housing) if the tenure were wider”.

A local authority participant pointed out that:

“In our authority there is high demand for houses (especially for elderly people – which is more expensive) and high land values. The burden of cost can be too great for the grant to really make a dent in our costs incurred”.

A participant from a housing representative body explained that:

“In terms of the actual cost of any individual house, 38% is the figure cited by the more homes division as the percentage covered by grant/ subsidy. I don’t think there’s any strong evidence that the grant pushes up land prices, it may push up the cost of building a house for the council. For the most part it does work well, but it works best in higher value/ higher demand areas leaving questions about an equitable spread and delivery across varied areas”.

A housing association representative interviewed later stressed that, when buying completed units, they pay in line with affordable rents and relevant subsidy. They worked hard to ensure that the grant subsidy they get does not ‘disappear’ into land values. It was also noted that affordable housing also pays infrastructure tariffs though the association may be able to negotiate where this is not relevant – for example one bed units may not pay the tariff for education.

A house builder also explained the role grants played:

“The grant funding usually only meets half the cost of the unit; the rest the housing associations raise themselves. My only concern that by over focussing affordable housing into urban brownfield sites, the developments are likely to gravitate to the cheaper areas and this might end up marginalizing people while missing the chance to have mixed communities”.

Not everyone who took part or who was subsequently interviewed thought grants had no effect on land values. One from a housing association made the point that without grants housing associations would pay less for completed units so that developers would have to pay less for land to maintain the viability of their schemes.

12.3.6 *SME Developers*

A participant from a housing industry representative body explained that

“The experience of the smaller scale homebuilder is different. These smaller projects have very different viabilities, the costs these builders incur is higher, they will have less cash and they won't be able to spread risk over several sites”.

A participant from a housing developers' representative body explained that:

“...the number of them active in Scotland has decreased by 40% since 2008/9. Finance is clearly an important issue. However, the planning system itself does set up a certain barrier to entry. Most small builders can't obtain an option on small site, and so must buy it up front. The planning applications also cost money to submit. You can't pool across several sites and wait to see which one comes through because that is up front cash which small builders don't have. By doing this, you are taking out a valuable section of builders who could be putting up affordable housing in rural areas (5-10 units), or small-scale urban developments”.

12.3.7 *Trading off infrastructure and affordable housing*

A local authority participant was adamant that this did not happen:

“We can't (and wouldn't) trade one off against the other because if the affordable housing policy applies in one area that is not negotiable. What is discussed is the mix; is it on site or commuted sum? If the impact of a development requires a junction improvement or contributions towards schools, then that is discussed but not traded off”.

A participant who had advised on infrastructure provision was of a similar view:

“Overall it does help deliver on local requirements. Looking to the future, ‘housing 2040’ emphasises affordable homes where people want them, at the price they want to pay and with the right infrastructure around them”.

12.4 Implementation: challenges of policy and practice

Participants raised a number of issues, including government policy and guidance as well as the impact of recent court cases and reporter decisions on planning appeals including those related to the extent to which contributions could deal with sub regional infrastructure and also the cumulative impact of several developments.

A planning consultant participant noted that:

“The legal cases help because they enforced a certainty on what Section 75 is meant to do and what it is not meant to do. The challenge we are facing is people trying to stretch Section 75 to do things it wasn’t designed to do. That is, using Section 75 for very large plans is not a good use of it... If the aspirations to help fund infrastructure are going to be met, there has to be change either to Section 75 itself or through another mechanism”.

A volume house-builder expressed similar thoughts and wanted greater policy clarification:

“The sense of what is happening at a macro level is not well understood. Understanding how Section 75 works will help us to decide what comes after. What potential is there to tweak Section 75, or is it worth moving on to something like CIL?”

An infrastructure consultant agreed on the opportunities for changing matters:

“... Massive potential opportunity at the moment. New Planning Act, NPF4 going through its design, infrastructure commissions have made some pretty clear recommendations... How these factors will come together along with the Government’s plans will determine whether the Government is helping”.

A local authority participant explained how the council has been addressing reporter decisions:

“The reporter asked for supplementary guidance to be prepared ... which set out infrastructure required to support the plan and mechanisms to deliver that approach. The cumulative plan approach was accepted in the plan.... This has been a three-year process including formal rejection of it last year by the Scottish Government”.

Another local authority participant explained how the council is exploring ways of dealing with these challenges:

“Our plan models the requirements for borrowing for front-funding of the infrastructure plan which supports the local development plan. It is mostly in relation to two significant pieces of work which are education and growth in [place name]. The model calculates the potential borrowing required, over what period and how much money would be received from developer contributions.....We delivered [named primary school] through this model. We did receive significant developer contributions based on this approach”.

One developer noted that the challenges of dealing with cumulative development could be addressed:

“You only need a connection that is more than trivial between the development and what it is seeking contributions for. I don’t think this is unreasonable in the context of what Section 75 is meant to be. I don’t see any local authorities making major changes to their supplementary guidance”.

A house-builder took a different view especially where large development with several developers involved:

“If you are part of a wider land holding that has been allocated under a big masterplan, there are upfront payments depending on who goes first, and developers don’t want to be hit first unless they have a proper equalization agreement amongst all parties. This is where these sites might be stalling if they haven’t been brought under a proper equalization agreement”.

Another developer agreed that:

“Cumulative development is a big issue. Unless there is a roundtable agreement about the size of the investment for the infrastructure on a larger scale site – how does anybody know that it is being divvied out fairly? And how do you know that infrastructure will be delivered if you don’t know that every single piece is in place?”

A planning consultant commented on upfront funding in relation to cumulative impacts:

“I do think there can be a lot more agility in this process if we can increase the delivering hand of upfront funding. We have seen this applied in [several named developments] as well as many more. Upfront funding is a useful tool because it can help us start to decide, regionally (maybe nationally), where the big funding pot will deliver”.

Several participants discussed where upfront funding could come from: first a house builder

“Where is the security for upfront funding for developers? Developers would be happy to put necessary infrastructure down in lower value areas if it didn’t take so long to get cash back through slower sales and lower revenue points”.

A planning consultant thought the public sector had a role:

“Maybe this is a sign that the public sector and its agencies need to think about carefully honed masterplan contributions upfront”.

And a participant from a house building representative body explained how this needed to be linked to the planning review

“Need to link this work across with what is happening in the planning review. Change the culture of planning. If you want to front-fund infrastructure and then recoup it, it requires the local authority to have much more faith in its spatial strategy and site allocations. At the moment there is a tendency to look at Section 75s separately from the future processes for producing LDPs”.

Finally, a participant representing planning authorities agreed:

“I agree that the aspirations for the NPF4 must be much be higher. We don’t just see it as framework, but a national development plan for Scotland with a proper funded status, which will set out national and strategic infrastructure projects as well as costing them”.

12.5 Is the system worthwhile and what would make it work better?

Generally, participants thought the system worked well but that changes were needed, especially to secure upfront funding on large scale developments.

12.5.1 The system generally works well

Many thought the system worked well, although they also thought more collaborative working and clarifications on requirements would improve things, and that the public sector might need to take on more risk.

As a housing association participant remarked:

“All in all, it is important and works well; there is a settled harmonious existence between housing associations and developers”.

And as a house builder representative body participant put it:

“Yes. Our members made it clear that the current options on the table are the best. Section 75 is a well-established system, it has stayed in place for a long time and people are getting better at using it... There is only so much contribution you can extract from a development before its unviable. Section 75 has the flexibility to let local authorities be in charge of what they choose to seek contributions to and/or whether they can get enough contributions to support it. Other systems have less flexibility”.

A participant from a housing association stressed the need for more collaboration

“Definitely needs review. There is not a one size fits all. But with the new Covid challenges it needs to be looked at. More collaborative work would help; if RSLs understood costing projects and could share their side with developers”.

A participant from a housing representative body stressed the importance of local plans:

“Dealing with infrastructure and its costs and its viability first, at the plan making stage. With education, future predictions and realistic planning with the nature of educational infrastructure in mind. Focus in Section 75s, don’t try and make them cover all the costs; deal with the key infrastructure and streamlining of the process”.

A local authority participant agreed that authorities also needed to change:

“Clear and consistent guidance would help. It has been heartening to see consensus today. We as councils need to get better at the infrastructure plans and what education contributions are likely to be. Room for improvement but working reasonably well”.

Another local authority participant reflected on the importance of collaboration:

“From a strategic point of view, collaboration is really important. Less arguing over small facts and figures in the Section 75s”.

A participant representing local authority planners agreed:

“Worthwhile. But it needs to overhauled and enhanced. The different typologies in sites make it important to distinguish what the rules are for each one. Introducing filters would be beneficial to everybody”.

Developers and landowners agreed on collaborative working - a developer:

“Collaboration – look at the infrastructure requirements for a certain area, and what creating that infrastructure unlocks. Then decide what developments ought to go where”.

Another participant from an organisation working on land policy also agreed on the need for more certainty:

“There is still an issue around certainty. Where will the development take place and how will the infrastructure be funded. Infrastructure first might make more sense. This has to come from local authorities wanting to actually take risk”.

And a landowner representative body member also stressed the need for clarity:

“From the perspective of smaller and more rural developments, establishing viability for them and making sure they can come forward. Ensuring there is clarity on the way the methodology is applied in calculating what the contributions to be will help landowners”.

Another participant from an organisation involved with land policy also pointed to community engagement:

“The [named body] published research earlier this year on the benefits of early in-depth community engagement to developers and they found it led to better developments but also reduced risk”.

12.5.2 *New approaches to infrastructure funding*

Despite feeling that contributions worked well, many participants also wanted a more strategic approach to infrastructure funding, especially for large and complex sites and for sub regional infrastructure.

A lawyer participant pointed to areas where change was needed, despite recent legal clarifications:

“The court cases have clarified the limits but have introduced a nervousness on the part of local authorities to seek contributions. In particular, where those contributions are becoming more tenuous and remote to the actual development... Section 75s are being put to a purpose which they were not expected to be, however, the system is working okay for local development. Not for regional project like roads. CIL would suit this better”.

A volume house-builder was clear on what was needed:

“Yes [in answer to ‘is it working well?’], but I think a national infrastructure company collecting national levy would be better”.

A planning consultant was of a similar view:

“Let’s push for NPF to be a national development plan. Let’s align the Infrastructure Commission for Scotland and the infrastructure funding bodies, agencies and experts. More punch, less shrug from government. Say first where marketable land will be allocated and then assist delivery through market forces or interventions”.

And a participant from a local authority pointed to the need to address upfront funding:

“Looking at the upfront funding is really important. There are clear shortcomings with not being upfront when delivering houses which are going to be within a liveable development”.

A participant from a professional institute agreed:

“The Scottish Government had an opportunity to make some real changes through the planning act, but the changes are marginal. The new infrastructure levy is half-hearted. Do the Government. know what they want? How bold do Scottish government want to be with this?”

A participant from a housing authority noted that:

“The system works because of the hard work of people in it. It is frustrating that public policy objectives have to be gamed and negotiated with private and commercial interests. A degree of certainty around that would be helpful. A lot of it comes down to land taxation; if a development is a result of public policy decision then the value of that uplift should revert to the public realm. I think that is part of the answer to these difficulties”.

12.5.3 *The need for wider conversations and boldness in change*

Participants expressed some frustration with the slow pace of the changes needed.

As a participant from a house building representative body put it:

“There has been a huge amount of focus on different ways to extract contributions from the same small group of people. There might be margins where you can increase that, perhaps through introducing infrastructure levy, but that doesn’t look like a game changer. Frustrating that there is no conversation about this”.

A participant from another representative body put it like this:

“If local authorities and their infrastructure and service delivery partners had more support from the government on planning for and delivering infrastructure, we might find that lots of the issues around Section 75 might resolve themselves”.

An infrastructure consultant also had strong views on change and the need to be ‘bold’:

“You have to think about the foundation of what you want this to do. Go from there, that will lead you back to the boldness of the plan. Scottish government don’t tend to work in partnership, this may make things move more smoothly”.

13. Annex 6: Sources of data for valuing affordable housing contributions

- (i) Average house prices for newly built dwellings in each local authority: Register of Sasines, whose records were 'cleaned' by the research team at Rettie and Co.
- (ii) Construction and site preparation costs based on a cash flow model of all costs incurred over a two year development period including costs of building a 90 sq. m. semi-detached 2 story dwelling (source Scottish House Condition Survey) at £1,195 per sq. m. (source 'Costmodelling' using the mean figure for Q1 2021 for £15m sized contracts [i.e. appropriate for a 105 dwelling site] in Scotland) plus site development costs at 25 percent of constructions costs, fees at 12.5 percent of both the latter, other costs at 2 percent of both construction and site development costs, marketing costs at 3 percent of the open market units, financing costs at 3.5 percent over the development period (calculated on a monthly basis as costs incurred) and profits of 15 percent on total construction costs.
- (iii) Rents and management and maintenance costs of social rented homes taken from reports by The Scottish Housing Regulator and from Housemark; annual net rents for each local authority areas were discounted at 2 percent over 30 years (year 1 nominal net rents with no inflation) to estimate the net present value of the rental income as an estimate of how much registered providers could borrow.
- (iv) Mid-market rents calculated as 80 percent of LHA rent levels for each local authority; management and maintenance costs taken from reports by Housemark; annual net rents for each local authority areas were discounted at 2 percent over 30 years (year 1 nominal net rents with no inflation) to estimate the net present value of the rental income as an estimate of how much registered providers could borrow.
- (v) Grants taken from the Scottish Government's guidance on grant submissions for social and mid-market rental dwellings and the variations in grants according to size and location.
- (vi) The numbers of new homes agreed by developer contributions for each local authority were taken from our survey data, using both the totals agreed, the proportions to be secured by serviced land and by providers acquiring completed units and the tenure of the latter; values were calculated for each local authority; because we had no data from some local authorities the national totals were grossed up, taking account of the population of responding and non-responding local authorities.



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