**Director’s Management Team Meeting**

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| **Date of meeting**: | 23 April 2024 |
| **Title of paper:** | Section 106 market update and emerging policy proposals |
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| Is this paper commercially sensitive or to be deemed confidential? (Delete as applicable) |  | **No** |

# Executive Summary

* 1. Developers are required to build affordable housing as part of delivering against section 106 planning obligations, and these homes are sold to local authorities and housing associations (referred to hereafter as registered providers, or RPs). GLA officers have been aware for some time that developers can find it challenging to sell these homes to prospective buyers. In August 2022, the policy team presented a paper to DMT that concluded that there was evidence of a reduced interest in section 106 acquisitions. At the time, the decline appeared to mostly affect tall buildings, smaller schemes and schemes with a large share of shared ownership properties, particularly if family sized and/or in high value locations.
  2. This paper revisits this issue to better understand the current scale of the challenge, which we have heard anecdotally has worsened, and potential GLA solutions. It analyses the purchasing appetite for section 106 homes among local authorities (LAs) and small, medium and large HAs, including how this has shifted since 2022. It concludes that tall buildings as well as schemes with a large number of shared ownership units, particularly in central locations, remain unpopular. It highlights that large housing associations have reduced their interest in purchasing section 106 affordable homes and that small and medium sized HAs remain interested in them, but that the number of medium sized HAs is declining due to financial stress. It also finds that a limited number of LAs are buying section 106 homes and that for-profit registered providers (FPRPs) are still in the market, but have stringent requirements and appear to be more focused on markets outside of London.
  3. The paper, which mostly relies on anecdotal information due to the lack of available relevant robust data, recognises that there is a diminished interest in section 106 homes which has likely worsened since 2022 – particularly among large HAs. This decreased interest to purchase section 106 homes is occurring in the wider context of (and as a partial result of) a marked decline in the financial health of the sector amid growing regulatory pressures. Both the poor financial health of providers and the more stringent regulatory landscape are leading housing associations to pull out of the section 106 purchasing market, particularly as providers have less control over the quality or costs of these homes (in comparison to land-led development). .
  4. Overall, the paper concludes that the section 106 market is going through an adjustment characterised by fewer buyers and less competitive bidding, which results in developers having to contend with lower margins. In a market where housing delivery is constrained by well documented reasons, launching an offer specifically focused on unsold section 106 risks protecting developers’ margins without increasing supply. The paper ultimately recommends the GLA takes forward contained interventions, mostly targeted at supporting small and medium sized housing associations and encouraging local authorities into the market.

# Recommendation(s)

* 1. That DMT:
* **Notes** the conclusions of the evidence gathering exercise
* **Discusses** the proposed interventions.

# Introduction and background

Reasons for work and methodology

* 1. Developers have, for some time, highlighted to GLA officers that they struggle to sell section 106 homes to RPs (see Appendix 1 for a summary of a recent roundtable organised by BusinessLDN). The main issues and risks associated with a lack of interest in section 106 homes are:
* Developers may hold off or fail to start schemes if they can’t find an RP committed to buying the section 106 affordable homes early in the development process.
* Affordable homes might be left vacant in the middle of a housing crisis while developers wait for a buyer, meaning that Londoners in need of affordable housing are not able to access this. Where homes are left empty for an extended period of time, the owner becomes liable to paying Empty Homes Tax.
* Frustrated by the risk of keeping unsold homes in their portfolio, developers could decide to stop operating in London, reducing the overall housing delivery in the capital and the important share of affordable homes provided via section 106.
* A malfunctioning section 106 market leads developers to push for renegotiations of the original section 106 agreements to reduce the number of affordable homes delivered and/or introduce cascade mechanisms (also known as payment in lieu). More widely, the malfunctioning section 106 market can contribute to calls for reviewing/scrapping the threshold approach as set out in Policy H5 of the London Plan.
  1. This research explores whether reports of diminished appetite for section 106 acquisitions are confirmed. Specifically, it explores section 106 purchasing appetite among small, medium and large housing associations – including how this has shifted since 2022 – and explores the concerns that are prompting providers to withdraw from this part of the affordable housing sales market. The paper also sets out whether local authorities and for-profit registered providers are engaging in the market and, if not, what the barriers to entry are. Finally, the paper sets out a series of recommendations for the GLA to consider.
  2. The research has relied on a series of stakeholders interviews with both internal (GLA Planning and Area Teams colleagues) and external (Camden, DS2[[1]](#footnote-2), G15, G320, Homebuilders Federation - HBF, Hackney, Haringey, Harrow, Hounslow, L12, Populo Living, Southwark) stakeholders (see Appendix 2 for detail). In the absence of datasets that capture unsold section 106 homes and how long they have been on the market for, the conclusions of the paper are largely based on anecdotal information.

Section 106 agreements and their contribution to London affordable homes

* 1. In London, affordable homes are primarily delivered both via section 106 agreements and by GLA investment partners through capital grant funding. Between 2015-16 and 2022-23 roughly 35 per cent of affordable homes in London have been delivered via nil grant section 106 contributions[[2]](#footnote-3).
  2. The GLA’s preferred approach is for developers to engage early in the planning and development process with an RP that is committed to purchasing the affordable units. However, this is not always the case and, where the developer struggles to find a buyer, it reaches out to the relevant local authority for help in identifying one. Section 106 agreements do not specify a price at which the homes ought to be sold. The price is based on negotiations between the developer – who tries to extract the highest price – and the prospective buyer – who tries to extract the lowest price. Where no buyer is identified or a deal cannot be reached, the developer will often try to renegotiate the section 106 agreement. This negotiation may result in a shift in the overall affordable tenure balance (e.g. change from 20 shared ownership homes to 10 social rent homes and 10 shared ownership homes), a reduction in the amount of affordable homes delivered overall or an option to sell the units on the private market and make a payment in lieu to the local authority.

Financial health of the social housing sector in London

Between February and March the policy team conducted research to assess the financial health of the social housing sector in London. The note concluded that London’s RPs are facing increasing financial pressures that are likely to continue in the short to medium term. These pressures, primarily caused by a deteriorated macro-economic environment, government policies and the need for significant investment in existing stock, are pushing boards and cabinet to be more cautious in their investment decisions and prioritise limited financial resources on existing stock.

GLA work that impacts section 106 delivery

*Affordable Homes Programme*

* 1. Despite an in-principle presumption that RPs should not need grant to purchase section 106 homes, the Affordable Homes Programme (AHP) 2021-26 allows RPs to receive funding in some circumstances.
  2. Unlike its predecessor, the current AHP removed fixed grant rates, introduced negotiated grant rates (usually higher) and removed the ‘Developer-led route’ (fixed grant available to RPs that purchased S106 homes under the previous programme). The AHP 21-26 now only allows housing associations and local authorities to access grant above the initial 35 per cent affordable housing for schemes that provide 40 per cent or more (by habitable room) – although this has been flexed slightly alongside the introduction of the Accelerated Funding Route. For schemes that will deliver 100 per cent affordable, all units are eligible for GLA grant. The other relevant difference is that through the AHP 2021-26 only affordable homes that have received AHP grant can be counted towards programme delivery, meaning that no nil-grant homes will be included. While we didn’t hear this explicitly from stakeholders interviewed for this work, it is reasonable to deduce that this tighter funding environment could be contributing to dampened RP interest in purchasing section 106 homes.

*London Plan*

* 1. Through policies H4 and H5 of the London Plan the Mayor requires major developments which trigger affordable housing requirements to provide a minimum percentage of affordable housing. Schemes are expected to deliver at least the threshold level of affordable housing, without grant or public subsidy and to increase this proportion through the use of grant and other subsidy, where available[[3]](#footnote-5). Local Plans must be in general conformity with the London Plan, but they are also informed by the National Planning Policy Framework (NPPF)[[4]](#footnote-6).

*Opportunity London and L&G ‘London Super Fund’*

* 1. The GLA has been discussing options for closer working with institutional investors to deliver below market homes. Whilst these discussions are still at relatively early stages, two main options are emerging:
* Opportunity London – this would be an aggregator fund to support the delivery of a rental product that is below market, above social rent and not regulated and with inflation-linked rent increases. It is expected to be in the region of £5bn and will target the delivery of roughly 10,000 affordable homes. The main investors would be pension funds and investment funds, but interest is expected from large housing associations and developers. The fund would not seek grant.
* London Super Fund – this would see L&G act as fund manager that sources investors and inputs some of its own resources. It would be a smaller fund compared to Opportunity London, but in excess of £500m. It would set up a for-profit RP that will attract grant and will be focused on the delivery of traditional tenures such as social rent and shared ownership.
  1. Both funds would seek to acquire unsold section 106 homes – at least at their inception. The main issue presented by the Opportunity London fund is that most section 106 agreements will require standard tenures such as social rent and shared ownership. Agreements with planning authorities would therefore need to be struck to allow changing the tenure of unsold section 106 homes to a new one.

# Issues for consideration.

Overall picture

* 1. All stakeholders confirmed that the section 106 affordable housing sales market is challenging, both in London and the rest of England. The HBF and DS2 explained that there are fewer RP buyers on the market, which means that developers receive few – and often low – offers, partially because local authorities and housing associations have greater choice and less price competition. They also explained that the process for agreeing a sale has extended and takes longer than it used to, largely because local authorities and housing associations have significantly stepped-up their quality control checks. Evidence from the research carried out in 2022 showed that, in a handful of cases, quality control checks led to abortive deals and there is no reason to suggest this would no longer be happening.
  2. HBF and DS2 explained that interest in section 106 homes is low across the board. However, stakeholders largely confirmed the findings from the research carried out in 2022 and highlighted that schemes with specific characteristics suffer more than others. In summary:
* Schemes within tall buildings are considered to be less appealing. This is mostly because of concerns around evolving building safety regulations, service charges affordability (which tend to be higher in more complex buildings) and allocation reasons (for example, households with children tend to prefer homes in lower rise buildings). Whilst partners haven’t specified this, it is likely that early adoption of second staircases could help to improve trust in section 106 affordable homes in high rise schemes.
* The presence of shared ownership homes improves a scheme’s viability, however local authorities and housing associations are weary of investing in schemes with many shared ownership homes, particularly if in central London. This is partly because of high prices and limited pool of buyers within the £90k household income bracket.
* Large housing associations are unlikely to purchase schemes with fewer than 50 units. These would normally be purchased by smaller housing associations. However, medium sized ones are reducing in numbers.
* Schemes with high numbers of one bedroom socially rented flats are often considered more challenging to manage, because they tend to accommodate residents with more complex needs.
  1. On top of scheme’s characteristics, local authorities and housing associations confirmed that developers’ lack of early engagement in the design stage tend to deter them from acquiring section 106 homes. This is because limited influence on the design stage often leads to affordability, management and quality issues further down the line. Whilst the lack of engagement from developers to providers is not universal, it appears to be particularly pronounced among SMEs and developers that are less used at working with local authorities and housing associations.
  2. G15, L12 and local authorities also explained that intricated management arrangements where they are not the freeholder - and the scheme is managed by a managing agent - often leave them unable to address issues but blamed for them by the residents. They explained that the launch of the Tenants Satisfaction Measure Standard, which will monitor performances across all stock, including section 106 homes, makes investing in section 106 homes even less appealing.
  3. All the above might lead to the conclusion that the section 106 market is broken. However, as sections 4.6 to 4.19 explain, the reality is more complex and not too dissimilar from that described in 2022. That being said, larger housing associations appear to be significantly less involved in the market and are withdrawing even more than noted in 2022 due to wider macroeconomic and policy forces. Remaining small and medium housing associations appear to be more willing to invest, but are themselves constrained by the financial situation and access to funding. The picture for local authorities is mixed, with a couple of those that participated in the research fairly active in the market, but most either marginally involved or not involved at all. Those that are active appear to be motivated by the lower development risk that comes with section 106 acquisitions and competitive prices that can be agreed in the current market. FPRPs are still active, but not on levels seen before the sharp increase in interest rates.
  4. Difficulties in the section 106 market should be seen in the context of major challenges to providers both in respect of the financial health of the sector and in terms of the implications of new regulatory requirements imposed by government. The worsened financial health of housing associations and local authorities is driven by external macroeconomic pressures, changes in government’s policy (such as rent reduction and significant reduction of grant) and greater emphasis on quality and maintenance, which are all moving boards and cabinets away from development. This has a direct impact on RPs willingness to deliver and – consequently – acquire section 106 homes. Alongside the financial challenges experienced by the sector, the more stringent regulatory environment and the introduction of measures such as Tenant Satisfaction Measures are not only re-orienting RPs towards existing stock, but are driving decisions on acquisitions of section 106 homes too. RPs are experiencing lack of control over service charges and repairs (largely dependent on freeholders and managing agents that are held to lower standards than RPs) and this uncertainty is fuelling scepticism over section 106 acquisitions.

Large housing associations

* 1. G15 housing associations explained that they have reduced their section 106 purchases (see Graph 1 below) both in and out of London. The reduction in section 106 acquisitions as percentage of overall affordable housing delivered is a trend started – at the very least – in 2020-21. However, the general reduction in affordable housing delivery – caused by well documented issues – and a decision to focus development activity on AHP grant funded homes (in which purchasing section 106 homes from other developers generally do not count) and committed schemes, has further reduced the number of acquisitions in 2022-23 and 2023-24.

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| Graph 1 – G15 affordable homes starts and percentage of section 106 over total – All schemes in London[[5]](#footnote-7) |
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* 1. When looking for opportunities, G15 housing associations reported to us that they tend to avoid tall buildings and small schemes (below 50 homes) [[6]](#footnote-8). Tall buildings attract higher service charges, have been subject to changing building safety regulations and present concerns in terms of being lettable to families with children. Small and/or schemes situated outside their core operational footprint are – generally - very inefficient for them to manage. The data (Graph 2) seems to confirm that, in the context of a general contraction in development activity, when delivering small schemes, G15 housing associations priorities land-led delivery over section 106 acquisitions.

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| Graph 2 - G15 affordable homes starts and percentage of section 106 over total – small schemes[[7]](#footnote-9) |
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* 1. G15 housing associations explained that quality and design of section 106 schemes, and lack of involvement at early stages of the design process, causes issues on different fronts. Specifically:
* Building and fire safety - in an environment of evolving legislation and guidance, G15 HAs often seek measures that are above and beyond current standards. This makes schemes that do not meet their requirements unattractive.
* Affordability - limited influence in designing schemes often means that they attract higher service charges.
* Housing management and ownership structures – some section 106 schemes have complex management and ownership structures which impact the customer journey. HAs are rightly held accountable for failures in housing management issues by their residents, but often have little recourse to resolution where they are not the freeholder.
* Units and tenure split – as highlighted at 4.2 above, schemes with many socially rented one-bedroom flats tend to attract residents with more complex needs, making the scheme more challenging to manage. Similarly, schemes with many shared ownership homes are more difficult to market and a more balanced tenure split between social rent and shared ownership would be welcomed.

Medium-sized housing associations

* 1. Medium-sized housing associations explained that they are still relatively active in the section 106 market and that, partly because of higher risks in land-led development, some of them are actively looking at increasing the share of section 106 acquisitions in their development programme. The increase in interest should however be seen in the context of a significantly reduced development programme. Origin and Hexagon (part of the L12 group), both mentioned that, because of subdued activity in the market, HAs are able to extract good prices from developers.
  2. Medium-sized housing associations tend to be more focused on social rented homes, in schemes of ideally between 20 to 40 homes and preferably not towers. Where possible, they opt for freehold schemes, which reduce management and service charges risks. They echoed frustration raised by larger HAs at not being involved early in the design phase, being concerned about quality issues and feeling lack of control over the stock because of complex ownership arrangements and challenging relationship with managing agents.
  3. As Origin pointed out, the difficult financial environment is leading some of the L12 – usually quite active in the section 106 market – to merge with larger entities, who are traditionally more focused on land-led development. The increased market concentration will likely leave the sector with more HAs focused on land-led development and fewer interested in section 106 schemes, particularly those below 50 units, adding additional pressure to that segment of the market.

Small sized housing associations

* 1. The G320 explained that the section 106 market is really important for them and that, because of their small development programmes, they respond to opportunities to purchase these homes when they come and when they meet their requirements. However, they have fairly stringent requirements and Like medium and large housing associations, they are concerned by quality, design and service charges and lament being brought in at the very end.
  2. Small housing associations explained that the two main obstacles for them being more active in the market are:
* Local authorities and developers not engaging them when homes are available – they explained that developers usually are not aware of them and local authorities have preferred registered providers’ list that – they claim -rarely include G320 members (although this is yet to be tested with local authorities). This means that, when homes are available, they are unlikely to be aware and local authorities contact them once all other avenues have been exhausted.
* GLA’s funding rigidity – they explained that the way funding is provided through the AHP is designed for larger RPs, who can navigate complex application processes and can afford to invest resources in several rounds of negotiations. This means that they often don’t even try to access funding and, consequently, purchase section 106 homes. On top of this, the G320 claims that the homes they tend to purchase are more expensive and require a higher level of grant than what the GLA is ready to offer.

Local authorities

* 1. Interviewed local authorities presented a mixed picture. Haringey and Westminster are active in the market and consider section 106 acquisitions a good instrument to increase stock at relatively low financial risk, particularly in a period of tight margins. Harrow, Southwark and Newham proceed with Section 106 acquisitions on an ad hoc basis, but not at large volumes. Hounslow did some acquisitions in the past but has largely exited the market, whilst Camden and Hackney are not active. The research indicates that most local authorities are either not purchasing section 106 homes or purchasing small numbers of them. The two main reasons for their lack of enthusiasm are:
* They are animated by similar concerns to those highlighted by housing associations, and are constrained by limited capital resources.
* They focus on land-led development and are used to relying on housing associations hoovering up section 106 homes, while at the same time maintaining nomination agreements over the stock.
  1. Like Origin and Hexagon, Haringey highlighted that the current – subdued - market presents lots of opportunities for organisations focused on acquisitions. They built a team that has the specialism required to negotiate deals and understand potential design, quality and management issues. Unlike housing associations – and largely because they operate in a well-defined geographical area – they are interested in schemes of any dimension, but predominantly with social rent as tenure. They tend to turn down opportunities based on poor design/late involvement or when the scheme doesn’t meet requirements set out in the AHP.
  2. Southwark explained that, whilst it does occasionally complete section 106 deals, the stretched financial resources mean that it is unlikely to be very active in the market in future years, even with grant availability, unless the total grant share is able to fully or substantially cover the costs.

For-profit registered providers

* 1. Whilst no for-profit registered providers (FPRPs) has been approached for the research, HBF, DS2 and GLA colleagues painted a picture of marginal involvement. FPRPs seem to occasionally purchase section 106 homes but appear to be more focused on higher yielding markets outside of London, where they tend to invest in green field developments. Like most actors, FPRPs focus on driving the acquisition price as low as possible (L&G Affordable Homes explained at the BusinessLDN roundtable that they are putting offers forward but that their offers are considered too low by developers). On top of that, those that are part of large conglomerates focused on a range of stable income streams, struggle to internally compete for resource allocations against higher yielding and/or more secure investment options.
  2. Whilst FPRPs appetite for investment in section 106 units is uncertain, there have been reports of them salvaging schemes that would have otherwise gone unsold. At the same time, FPRPs involvement will need to be closely monitored because one local authority reported examples of fraudulent deals where the FPRP purchased section 106 homes – accessing grant – staircased to 100 per cent very quickly and turned the homes into private sale. Other boroughs shared anecdotal reports of FPRPs purchasing section 106 homes locally and flipping these from Social Rent to Affordable Rent tenures, thus impacting the ability for local authorities to accommodate households on their social housing waiting lists.

Recommended interventions

* 1. Whilst it is undeniable that the section 106 market is facing challenges, the main conclusion of the paper is that homes are still being sold – although not at the prices being sought by developers and more slowly. The market is adjusting to a ‘new normal’, characterised by a lower degree of competition, which leads to a downward pressure on prices.
  2. Rather than the GLA propping up the developer market with government grant, the recommendations below go in the direction of encouraging a wider pool of social housing providers to participate in the market and targeting grant to schemes that are genuinely under stress. Recognising that the GLA has already launched the AFR programme, which could marginally support the market, in the immediate term this paper recommends:
* **Avoiding any significant new grant intervention.** The GLA should continue to monitor the situation, let prices reduce and support schemes that are more at risk of going unsold (such as towers) through already existing means. The GLA could also consider an offer to smaller housing associations and local authorities focused on flipping section 106 shared ownership homes to social rent, reducing risks on schemes with large numbers of shared ownership homes. A generalised grant offer that doesn’t fully or substantially cover the cost of purchasing the homes is unlikely to persuade housing associations – particularly larger ones - or local authorities to acquire more homes.

Based on the research, it appears likely that developers are refusing lower offers in fear of significantly denting their margins and are putting pressure on the GLA and local authorities for market corrective interventions. Should the GLA intervene with a section 106 specific offer, it would risk protecting developers’ margins when the large majority of the homes would be sold at a lower price and have very little impact on delivery, which is ultimately impacted by a decline in demand.

* **Encourage developers to engage local authorities and housing associations early in the design phase**. It is also reasonably clear that, at least to a certain extent, developers could be pressed to work harder to collaborate more closely with local authorities and housing associations early in the design phase to make section 106 homes more attractive. The GLA should use its conveying powers to invite developers to engage RPs early. The lack of early engagement has been lamented by all local authorities and housing associations and, whilst not a silver bullet, would go a great deal towards assuring local authorities on issues of quality and design, that often negatively weight on deals advancing.
* **Ensure that local authorities review their preferred RP lists**. This would broaden the number of housing associations that local authorities contact when a scheme has units available for sale and ensure that a larger number of them is contacted from the beginning. It is particularly likely to support medium and small sized housing associations that are willing to invest in the market but might not be aware of all opportunities.
* **Invite local authorities that purchase section 106 homes to share best practice with peers**. Whilst the GLA should not be seen as pushing local authorities into acquiring section 106 homes, it should work with them to further explore the reticence of most of them to acquire section 106 homes. One of the local authorities that is actively purchasing section 106 homes (Haringey) has offered a session with Housing Directors’ Group where it can explain its strategy, risks and lessons learnt so far. The GLA should discuss with London Councils the opportunity of putting this on the agenda in a bid to increase interest in the approach. Whilst most local authorities’ strategy to leave section 106 homes to housing associations might have made sense when the market was very competitive, the situation has significantly changed. In a market characterised by low demand for section 106 homes and high risk in land-led schemes, a more active approach from local authorities could mean that homes are sold more quickly, reducing pressure for intervention.

Similarly, some local authorities explained that they are not confident competing in the market because they are not clear on price points and are concerned to drive up prices. If there is interest, the GLA could explore offering support to value section 106 homes.

* **Support small housing associations**. Small housing associations lamented challenges in applying for GLA grant because of long and bureaucratic processes. The issue is not limited to section 106 delivery and the G320 didn’t have a specific recommendation. MD3093 allocated £100,000 under the Small Site Small Builders learning and development budget as well roughly £90,000 for the creation of a grade 12 post, yet to be created. The GLA could explore the feasibility of using some of the above funding for the establishment of a resource dedicated to supporting grant applications from small housing associations. For example, it could help them carry out financial appraisals on schemes and work in a way similar to how the community-led housing hub does. If successful, this action might support the purchase of more small and smaller schemes by small HAs.
  1. In the medium to longer term the GLA should:
* **Create a database of all section 106 opportunities available in London**. This would allow developers to market opportunities to a broader range of registered providers and, at the same time, enable the GLA to better understand the market (for example the true scale of unsold units, how long they are unsold for, what type of schemes tend to have greater difficulties, etc). In February 2024, MD3216 approved expenditure of up to £30,000 in 2024-25 for consultancy to develop a pilot project facilitating acquisition opportunities of new 'section 106’ homes through the GLA’s SSSB online portal. Although targeted at small sites, changes to the portal will hopefully reduce the information gap reported by the G320[[8]](#footnote-10). Moreover, the consultancy work, yet to be agreed, could explore going further and marketing all section 106 opportunities on the portal. GLA planning colleagues are supportive of this type of intervention, particularly for schemes on smaller sites.

**Keeping service charges under control.** One of the recommendations advanced in 2022 was to explore moving to a policy position that expects (as with the new AHP 2021-26) developers to sign-up to the Charter. This was paused, in part due to the limited levers to achieve it, but further feasibility work could be carried out. An alternative option – floated by DLUHC officers – is to move developers to guarantee maximum service charge increases for a fixed period of time, e.g. 10 years. This would likely improve housing associations and local authorities’ confidence in section 106 homes, but it is difficult to imagine it achieving agreement beyond larger developers.

In the longer term, one local authority development stakeholder suggested the GLA could explore the feasibility of standardising minimum requirements for section 106 homes across London to ensure that – even where developers engage local authorities and housing associations at a later stage – there is a basic standard that is shared by developers and RPs. This would be resource intensive.

Other options for intervention

* 1. Alongside the options highlighted above, stakeholders put forward other suggestions. However, the paper does not recommend exploring them:
* **Cascade mechanism**. These have been adopted in previous downturns and involve allowing developers to market section 106 homes for sale and provide cash in lieu to the local authority. This is an option that is already available to local authorities where individual schemes genuinely struggle to sell. Whilst in some circumstances the option might be unavoidable, the GLA should not advocate for such a measure and leave it to local authorities to determine what is appropriate locally. It goes against the principle of building mixed communities and it is unlikely to result in the same number of affordable homes being built. The long-term implication of pursuing this route would be increased geographical divides between ‘richer’ and ‘poorer’ areas, which would bring significant reputational risk to the Mayor if pursued.
* **Off-site developments.** This would see the developer discharging its section 106 obligations on a different site, essentially delivering the affordable homes somewhere else (usually within the boundaries of the local authority). Conclusions similar to those made in relations to cascade mechanisms can be drawn, with the main difference being that off-site development provides greater certainty of delivery of the homes.
* **Grant offer targeted at the section 106 market**. As mentioned above, the GLA has already put forward the AFR grant offer, which can be flexed where required. The paper recommends waiting for this to filter through to the market and proceed with more targeted interventions within the limits of current offers before coming forward with additional ones.
* **Pay grant straight to the developer who will then contract a managing agent to manage the social housing units**. This option is not legal for social rented homes, which require a registered provider to be the landlord of the homes. It could be explored for shared ownership only schemes, where such requirement is not in place, but the GLA would likely need to invest in monitoring the contract.
* **Allow developers to secure an ‘in principle’ allocation which they can then market to an RP.** The recently launched AFR programme provides more certainty to registered providers and developers. Secondly, the GLA Capital Funding Guide makes it clear that the GLA ‘expects to discuss affordable housing grant requirements directly with the intended grant recipient’, instead of the developer[[9]](#footnote-11). The GLA does so to encourage developers to get a registered provider in place as early as possible as well as to ensure that grant requirements deliver value for money and are not substantially inflated by developers.
* **Increase the household income threshold for shared ownership**. This would increase the number of Londoners that are eligible for shared ownership. Consequently, it would likely stimulate demand for the product – particularly in central London – and reduce the risk linked with the product for local authorities and housing associations. However, the GLA launched a [consultation](https://www.london.gov.uk/sites/default/files/2023-05/Affordable%20Housing%20LPG%20Consultation%20Draft_2May2023.pdf) in May 2023 which included a review of income thresholds for shared ownership and London Living Rent. In the consultation document the GLA made it clear that it had no intention of reviewing the thresholds. This position is very unlikely to have changed since the consultation.
* **GLA to intervene in the Section 106 market and purchase homes.** Whilst, given the state of the market, this could theoretically be an interesting option, the GLA doesn’t – and doesn’t plan to – manage homes. Should the GLA acquire section 106 homes it would then need to sell them to a local authority or a housing association, essentially experiencing the same issue that developers are currently facing.

# Equalities

* 1. Between 2015-16 and 2022-23 nil grant Section 106 homes delivered roughly 35 per cent of London’s new affordable housing supply, therefore playing a crucial role in delivering housing that supports many Londoners with protected characteristics. The London Housing Strategy Impact Assessment found that Londoners with a range of protected characteristics stand to benefit from an increased supply of affordable homes, which the section 106 market supports. Particularly, young people, children and older people, disabled people, Black, Asian and Minority Ethnic Londoners, women and – potentially – LGBTQ+ Londoners are set to benefit from increased supply of affordable homes[[10]](#footnote-12).
  2. The ‘Housing and race equality in London: An analysis of secondary data’ research published by the GLA in March 2022 concludes that on average, ‘Black Londoners and those from most other minority ethnicity groups experience worse housing conditions, less tenure security, higher rates of housing need, worse affordability and lower wealth than White Londoners’. The research note also concludes that whilst social housing makes an important contribution to addressing these inequalities, there is not enough of it to meet ‘all of London’s acute housing needs’[[11]](#footnote-13).
  3. The Equality Impact Assessment (EqIA) undertaken for the Affordable Homes Programme 2021-26 also finds that Londoners from Black, Asian and Minority Ethnic backgrounds, Deaf and disabled residents and women are more likely to experience poverty - both a cause and a symptom of them struggling with the cost of housing. It also concludes that these groups of Londoners would be positively impacted by delivery of affordable homes[[12]](#footnote-14).
  4. The literature points towards the beneficial impact that delivering affordable homes has on Londoners with protected characteristics. Efforts aimed at preserving delivery of these home would therefore support various groups of Londoners. As highlighted in the ‘Key risks and issues’ section below the recommendations aim to thread a careful balance between ensuring that supply of section 106 homes is preserved in a difficult market environment without excessively diverting funding away from affordable homes that could be delivered through other routes. However, should the proposed approach get the wrong balance, Londoners with protected characteristics that are more in need of affordable homes would stand to lose the most.

# Key risks and issues

* 1. The research largely relies on anecdotal information provided by a range of stakeholders. The lack of quantitative data makes it difficult to reach a definitive conclusion on the extent of the issues. The main risk is that the paper underestimates the extent of the issue and that the recommended actions are not striking the right balance between ensuring that there is interest – at the right price - for section 106 homes and ceding to developers’ requests (by either providing more grant or supporting cascade mechanisms). Should the recommended approach be too light touch the following risks could emerge:
* Section 106 affordable homes remain unsold, meaning that household that need them cannot by housed
* Developers consider London a too challenging market and gradually withdraw from it, leading to fewer market housing starts and, consequently, fewer section 106 homes.
  1. To mitigate against these risks the GLA should continue its market monitoring efforts and be prepared to intervene more forcefully if needed.
  2. Secondly, there is a risk that, by encouraging local authorities to consider a more active role in the Section 106 market, the GLA is perceived as pushing them towards a market that presents some – particularly reputational – risks.

# Next steps

* 1. A revised version of this paper, incorporating DMT’s comments, should be used for briefing the incoming Deputy Mayor for Housing and Residential Development.

**Appendix 1 – BusinessLDN section 106 roundtable – Summary**

# Overview

### Housing & Land officers attended a roundtable event organised by BusinessLDN. The roundtable was focused on section 106 homes and on the difficulties that developers are experiencing in selling these homes to registered providers (RPs). Attendees and agenda are at Appendix 1.

### The discussion started with a presentation delivered by the consultancy DS2, which summarised the paper in Appendix 2. GLA officers were then given the option to respond to the paper. In their response they highlighted that they were familiar with most of the issues raised, that they were open to listen to additional feedback from the sector and that they will continue to work with government to explore additional flexibilities to existing programmes. GLA officers also highlighted that the quality of section 106 homes as well as spiralling service charges/affordability concerns represented a major barrier to RPs’ interest in acquiring them.

### These notes summarise the main points raised during the roundtable discussion.

# Summary of discussion

### Developers in the room agreed with the presentation provided by DS2 and explained that whilst the problem has been in the making for at least a couple of years, it is unlikely that it will go away in the short to medium term as RPs are now focused less on delivery and more on existing stock. They also explained that the number of offers they are receiving is very low and below what is viable (e.g. often one offer per scheme and significantly below delivery costs). In response to the points raised by the GLA they explained that:

* Whilst some developers have delivered low quality buildings in the past, they feel that the quality issue is often over-emphasised in discussions and not representative of what the industry is currently delivering
* Service charges reflect the services that are provided and that costs are increasing significantly because of inflationary pressures
* The roll-out of the new AHP (which in their view significantly restricts grant funding for section 106 homes) damaged the already weakening section 106 market
* Early payment from section 106 sales is essential to developers’ business models, so they will not progress schemes full stop if they do not have confidence they can sell S.106

### Clarion recognised that they are one of the few RPs still active in the section 106 market and explained that they:

* Have strict quality control measures in place – but these often differ from borough requirements
* Have reduced the pool of developers they are willing to work with to a few trusted ones
* Look for schemes that guarantee some form of service charge affordability (for example by generally avoiding schemes that provide a significant amount of services such as cinema rooms, gyms etc…)
* Do not consider schemes with fewer than 50 units because they are too difficult to manage/do not provide value for money.

### Southern explained that they have severely diminished activity in the section 106 market. They also challenged the GLA to be more flexible in its use of RCGF (and invited it to adopt the Homes England’s approach). More generally, they explained that they feel that government is considerably more flexible in how AHP is used outside of London than within London. Several representatives shared a view that it’s generally easier to do business outside of London, with fewer restrictions, less complex building types etc…

### Both Clarion and Southern confirmed that whilst delivering affordable homes is part of their charitable mission, the focus of RPs’ boards is predominantly on existing stock (building safety, decarbonisation, damp and mould, etc…) and capital resources are mostly focused on that issue.

### Battersea Power Station Development Company (BPSDC) suggested that local authorities and the GLA should be thinking about alternative solutions where section 106 doesn’t work. The two proposals they put forward were:

* Considering payment in lieu (PIL), where the developers would pay the local authority to deliver homes off-site and/or support with regeneration projects (they explained that off-site affordable homes have successfully been delivered in the Battersea area)
* Reducing the on-site affordable homes requirement for a time-limited period to recognise the challenging economic period that the home building sector is facing in London.
* Removing the uncertainty created by late-stage reviews.

### Developers agreed that the proposals put forward by BPSDC were sensible. They also explained that the £90k income limit for shared ownership is too low to deliver homes in central London and argued for an increase. They suggested either providing grant for section 106 acquisitions or linking AHP grant provided to partners to section 106 delivery (i.e. partners in receipt of GLA grant should also be forced to deliver an agreed amount through section 106 – not necessarily grant funded).

### Developers also explained that because the amount of affordable homes to be provided on site is high and because - in the last few years - the number of unsold section 106 homes in growing, they now face a significantly heightened financial risk when starting development. They made the points that the current viability process is ‘very laggy’, that landowners do not need to sell land in London and are fairly happy to wait (meaning that land prices are unlikely to decrease significantly to reflect developers’ heightened risks) and that developers don’t have to build in London (and are in fact leaving London for less risky markets outside).

### Legal and General Affordable Housing explained that they are willing to expand and are looking for opportunities, but that they have not been buying in London since 2021. They stated that they have been offering roughly 50 per cent of market value on section 106 homes but that all their offers have been rejected. They explained that planning uncertainty is often a barrier when their funders (pension funds) need to make decisions, and that they are struggling to compete internally for resources to invest in affordable housing delivery, where there are other investment opportunities for L&G to make a higher return. They argued for more flexibility on the threshold approach (GLA officers explained that said flexibility already exists), they asked for more certainty on the level of grant provided by the GLA to subjects that are not investment partners.

**Appendix 2 – Stakeholders interviewed**

|  |  |
| --- | --- |
| Role | Organisation |
| Camden | Head of Finance - Housing |
| DS2 | Consultant |
| G15 | Deputy Executive Director - Development |
| G320 | Chair |
| Homebuilders Federation | Director of Cities |
| Hackney | Deputy Director - Finance |
| Haringey | Assistant Director for Planning, Building. Standards and Sustainability |
| Harrow | Head of Finance - Housing |
| Hounslow | Director of Housing |
| L12 | Development Director |
| Populo Living | Chief Executive Officer |
| Southwark | Strategic Lead - Construction |

1. DS2 is a consultancy specialised in viability and affordable housing delivery. Alongside BusinessLDN they co-organised a section 106 roundtable attended by GLA officers, developers and registered providers early in February 2024. [↑](#footnote-ref-2)
2. DLUHC, [Live Table 1011](https://www.gov.uk/government/statistical-data-sets/live-tables-on-affordable-housing-supply), retrieved April 2024 – Planning colleagues explained that the quality of new-build data in London is questionable. The data does not appear to count new homes created through conversions and changes of use of existing properties, and appears to undercount the number of new build homes in London. [↑](#footnote-ref-3)
3. [↑](#footnote-ref-5)
4. [↑](#footnote-ref-6)
5. Data provided by G15 housing associations. Only nine of the 11 housing associations responded. [↑](#footnote-ref-7)
6. Whilst no specific mention of height was provided, it is likely that G15 HAs have shifted their concerns from tall buildings above 30 meters to tall building above 18 meters, as they specifically explained that they seek to go above and beyond regulatory requirements. [↑](#footnote-ref-8)
7. Data provided by G15 housing associations. Only nine of the 11 housing associations responded. [↑](#footnote-ref-9)
8. GLA, [MD3216 Small Site Small Builders Best Practice Funding Awards](https://www.london.gov.uk/who-we-are/governance-and-spending/promoting-good-governance/decision-making/mayoral-decisions/md3216-small-site-small-builders-best-practice-funding-awards), February 2024 [↑](#footnote-ref-10)
9. GLA, [Capital Funding Guide](https://www.london.gov.uk/sites/default/files/2024-03/02.%2018%20Section%202.%20General_Feb-2024%20without%20tracked%20changes.pdf), retrieved April 2024 [↑](#footnote-ref-11)
10. GLA, [London Housing Strategy – Impact Assessment](https://greaterlondonauthority-my.sharepoint.com/personal/luca_dellepiane_london_gov_uk/Documents/2018_lhs_impact_assessment_fa.pdf%20(london.gov.uk)), May 2018 [↑](#footnote-ref-12)
11. GLA, [Housing and race equality in London: An analysis of secondary data](https://www.london.gov.uk/sites/default/files/2023-12/HRN%208%20-%20Housing%20and%20race%20equality%20in%20London.pdf), March 2022 [↑](#footnote-ref-13)
12. GLA, [Homes for Londoners: Affordable Homes Programme 2021-2026 – Equality Impact Assessment](https://www.london.gov.uk/sites/default/files/homes_for_londoners_-_affordable_homes_programme_2021-2026_-_equality_impact_assessment.pdf), November 2020 [↑](#footnote-ref-14)