

**The Quality of S106 funded Social Housing
Scrutiny Challenge Session Report**



**London Borough of Tower Hamlets
March 2015**

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Chair of the challenge session, Overview and Scrutiny Lead for Development and Renewal

Much of the social housing built since the millennium is not fit for purpose; I fear we may be building the first slums of the 21st Century. To be specific I'm referring to social housing built by private developers under s.106 agreements and handed over to Housing Associations to manage. These properties, generally high rise and high density, simply aren't robust enough to cope with their intensity of use.

I'm not suggesting developers are setting out to build inferior accommodation for social housing. Indeed it appears from the evidence received in the challenge session that the materials and components are broadly similar across both developer's social and private housing. The problem arises because of intensity of use brought about by high occupancy. Private housing is generally under occupied by people out all week at work and often away at weekends. Social housing is generally over occupied by families in residence 24 hours a day seven days a week. The wear and tear generated by those occupying social housing is massively greater than those occupying private housing.

Housing Associations building their own social housing are well aware of the demands their residents will place on their properties. Their experience leads them to use the most robust materials and equipment. The lifetime costs of getting the specification right from the start is well understood; paying a little more for the building is rewarded by reduced maintenance costs over time.

Private developers have little or no experience of social housing and are generally more interested in build costs than future maintenance because they have no ongoing involvement with the properties they build. Building to a price often means using materials and installing equipment that will quickly fail; such as lifts, door entry, security systems and plasterboard walls in stairwells and communal corridors.

Housing Associations that have experienced these problems with s.106 social housing have learned their lesson; they are unlikely to take on s.106 schemes again. Housing Associations new to Tower Hamlets that are competing to get in on the housing boom in the borough will agree to almost anything. Of course in time they too will recognise their mistake. Unfortunately there appears to be an almost never ending supply of Housing Associations willing to take on s.106 schemes in the borough, and unless checked the cycle will continue.

The losers in all of this are the residents of this s.106 social housing. They move into what appears to be a wonderful new apartment only to find in a relatively short period that they have simply swapped one form of poor housing for another.

We must intervene in this madness. Deregulation leaves us with only limited options, but there appears to be support from the more experienced Housing Associations for the introduction of minimum standards for robustness. It is possible that the introduction of such standards may slightly reduce the overall numbers of social housing provided; but it is better to build properties to last than to be forced to find huge sums of money in the future to put right these mistakes.

Summary of recommendations

RECOMMENDATION 1:

The Council investigate the feasibility of adopting a minimum design standard, developed with the Tower Hamlets Housing Forum, governing materials specification, enforced through the planning process, as part of its refresh of the Local Plan.

RECOMMENDATION 2:

The Council reinvigorate the LBTH Developers Forum and encourage developers to identify and work with a Registered Provider from the Council's preferred list earlier on in the planning application process.

RECOMMENDATION 3:

The Council work in partnership with Registered Providers through the Tower Hamlets Housing Forum to develop specific expertise in contracting for and managing high density developments, and to encourage reinvestment of money into existing housing stock.

RECOMMENDATION 4:

The Council consider options and resources available to monitor and enforce compliance with S106 legal agreements.

1. INTRODUCTION

- 1.1 Tower Hamlets has one of the highest population densities in inner London. By 2025 it is projected that there will be a further 43,275 new homes in the borough (equating to 2,885 per year) in line with the Government's housing targets set out in the London Plan. However, housing affordability is low in comparison to national standards, and existing social housing quality (in terms of decency) has been low but is now improving. Housing need, both in terms of quality and quantity, is one of the most significant drivers for change in the borough.
- 1.2 One of the primary means of delivery of affordable housing is through on site provision made by a developer, secured through a legal agreement between the developer and the Local Planning Authority pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) when planning permission is granted.
- 1.3 Section 106 of the Act sets out provision for a legal agreement to be drawn up between the developer of a piece of land and the Local Planning Authority (LPA) to mitigate the impacts of a development to benefit the local community and support local infrastructure, through "planning obligations". These obligations can restrict the use of the land; require specific activities to be carried out on the land; require the land to be used in a specific way; or require a sum of money to be paid to the Authority on a specified date or dates.
- 1.4 Section 106 agreements (as these are commonly known) are the main way for LPAs to deliver affordable housing, including social housing. This element of a development will then be sold on to a Registered Provider (RP) to be managed. RPs are non-profit making organisations which are run independently from councils, and are the main developers of new homes in the social housing sector. They are part funded and regulated by the government, through the Homes and Communities Agency, and raise the rest of the money they need for developing homes from bank and private finance institutions, and their own revenue streams. There are more than 50 housing associations working in Tower Hamlets, managing over 30,000 homes.
- 1.5 There is concern amongst some councillors and residents that the social housing being built in the borough through these agreements is not robust enough, with materials being used which are not suitable for high density housing with a much greater intensity of use than private dwellings. Councillors speaking to residents on their doorsteps witness this at first-hand, seeing for themselves the wear and tear on some of the properties, many of which are less than 15 years old, and hearing from families where this is having a detrimental effect on their quality of life. Residents raised a number of common issues with the build quality of this social housing, including:
- Failing lifts
 - Faulty door entry security systems
 - Thin plasterboard internal walls
 - Poor quality fire doors and general door furniture
 - Inadequate waste and recycling systems

- Communal floor coverings, including bare concrete floors
- Social housing entrances in side streets/alleys ('poor doors').

All of these have implications for noise insulation, fire safety, and the general appearance of the property.

- 1.6 Councillors learnt through discussions with Registered Providers that the developers control the design process and pick their partners. There is anecdotal evidence that some RPs withdraw from contract negotiations when they become aware of insufficient design specifications which would lead to a development being difficult and costly to maintain. The quality of the housing is affecting the residents' quality of life and the main outcome to be achieved from the challenge session was to ultimately improve the quality of such social housing in the Borough.
- 1.7 The aim of the challenge session was to explore whether there was an issue with the design and build quality of some of the affordable housing in the borough provided through S106 planning obligations; and, if so, what changes to planning policy, practice or procedures could be made to address these concerns, whilst still ensuring the continued provision of affordable housing in the Borough. The session was chaired by Cllr Dave Chesterton, Scrutiny Lead for Development and Renewal. It took place on Thursday 22nd January 2015.
- 1.8 The session was attended by:

Cllr Dave Chesterton	Overview and Scrutiny Lead, Development and Renewal (Blackwall and Cubitt Town Ward)
Cllr Denise Jones	Overview and Scrutiny Lead for Children's Services (St Katharine's and Wapping Ward)
Cllr Muhammad Ansar Mustaqim	Overview and Scrutiny Committee Member (St Peter's Ward)
Geoff Pearce	Executive Director of Regeneration and Development, Swan Housing
Sandra Fawcett	Executive Director of Housing, Swan Housing
Peter Exton	Director of Asset Management, Tower Hamlets Community Housing (THCH)
Frank Vickery	Former Assistant Chief Executive, East Thames Group
Peter Halpenny	Development Director, Ballymore UK
Peter McCall	Construction Director, Ballymore UK
Paul Maton	Estates Director, Ballymore Asset Management Ltd
Jackie Odunoye	Service Head, Strategy Regeneration and Sustainability, LBTH
Owen Whalley	Service Head for Planning and Building Control, LBTH
Paul Buckenham	Development Manager, Planning and Building Control, LBTH
Mark Cairns	Senior Strategy, Policy and Performance Officer, Corporate Strategy and Equality, LBTH
Louise Fleming	Strategy, Policy and Performance Officer, Corporate Strategy & Equality, LBTH

- 1.8 The challenge session took the format of an evening meeting which was held in the Town Hall and open to the public. The session was publicised in East End Life.
- 1.9 The agenda for the session began with an introduction to the key issues under review by Councillor Chesterton. Following this, attendees heard from representatives of Swan Housing and Tower Hamlets Community Housing (THCH), two of the Council's preferred RPs. They talked about their history of working with developers and the Council and common issues with high density developments. Attendees then heard from representatives of Ballymore UK, who had extensive experience of building and managing mixed tenure housing developments in the Borough. They spoke about their specifications and how they ensured quality in their development.
- 1.10 A presentation from the Council's Service Head, Planning and Building Control addressed the core questions under review and suggested ways in which the Council could strengthen the current policy framework. All presentations were followed by a question and answer session. The challenge session concluded with a summing up of the issues and recommendations by Councillor Chesterton.

2. NATIONAL, REGIONAL AND LOCAL PLANNING POLICY BACKGROUND

Planning Obligations

- 2.1 The National Planning Policy Framework (NPPF), published in March 2012, sets out the Government's planning policies for England and provides guidance for Local Authorities as to how those policies should be applied. Paragraph 203 of the Decision Making Section states that LPAs should consider whether a development which is unacceptable in planning policy terms could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used in instances where a planning condition cannot be used to address the impact of a development. Planning obligations can be used to tackle specific problems, such as restricting what the premises can be used for, or requiring a developer to get specific approval for aspects of the development, such as the materials to be used, before proceeding. The authority has to give reasons for the conditions.
- 2.2 Further, the Planning Practice Guidance states that all planning obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, obligations should not prevent development from going forward by making the development financially unviable. LPAs should be flexible in their approach and take into account specific site circumstances. Contributions should not normally be sought from developments of 10 residential units or less.
- 2.3 A restriction or requirement imposed under a s106 planning obligation is enforceable by injunction. If there is a breach of a requirement in a planning obligation the LPA may enter the land and carry out the operations; and recover any expenses reasonably incurred.

Affordable Housing

- 2.4 The NPPF defines Affordable Housing as social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined by taking into account local incomes and local house prices. Affordable housing should remain at an affordable price for future eligible households.
- Social rented – this is owned by Local Authorities and private registered providers. Guideline target rents are determined through the national rent regime.
 - Affordable rented – this is housing which is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable)
 - Intermediate housing – these are homes for sale and rent provided at a cost above social rent but below market levels subject to the criteria in the affordable rented definition above. These can include shared ownership and other low cost homes for sale and intermediate rent.

Design

- 2.5 In the NPPF, Part 7 of Achieving Sustainable Development (Requiring Good Design) places a responsibility on LPAs to plan positively for the achievement of high quality and inclusive design for all development. The Framework goes on to suggest that LPAs should consider using design codes where they could help deliver high quality outcomes. However, those design policies should avoid being too prescriptive and should provide guidance on the overall scale, density, massing, height, landscape, layout, materials and access.
- 2.6 The Planning Practice Guidance to support the NPPF, which is published online and updated regularly, contains specific guidance on design. Under Part 3 (What is a well-designed place?) it states that a well-designed place should be functional and fit for purpose, delivered in a way that achieves value for money in relation to lifetime costs. It also states that a well-designed place should be adaptable and resilient. Places that are easy to manage tend to be more resilient, for example where maintenance is supported by good access and easy to maintain, hard wearing materials.

Viability

- 2.7 The NPPF advises that to ensure viability, the costs of any requirements for affordable housing, infrastructure contributions or other planning obligations should not, when taking account of the normal cost of development and mitigation, prevent competitive returns to a land owner and developer to enable the development to be deliverable. This is the subject of a “viability assessment” for each development, normally submitted (confidentially) to the LPA to support negotiations prior to determining a planning application.
- 2.8 The Planning Practice Guidance on viability goes further to say that Local Plans should be presented in the context of the local market. However this should not undermine the ambition for high quality design, but this should be tested against the likelihood of delivery. Viability is important where planning obligations are concerned. All decisions must be underpinned by an understanding of viability. Where the viability of a development is in question, LPAs should exercise flexibility in applying policy requirements wherever possible. When carrying out a viability assessment, a number of variables are taken into consideration, including land values, construction costs, sales values and rental yields, , percentages of affordable housing, and the build period. Changing any of the variables will have an impact on a development’s viability.

London Policy

- 2.9 The London Housing Strategy, published in June 2014, sets out the Mayor of London’s long term strategy to build approximately 42,000 new homes per year. Of those, 17,000 should be affordable. The Strategy acknowledges that it is not just the number of houses being built that is important, but that the quality of those homes performs well for the occupants and stands the test of time.

- 2.10 The London Plan, which is the Spatial Development Strategy for Greater London, was published in July 2011 and sets out the strategic vision of the Mayor of London in relation to the quality and design of housing developments. The Plan addresses high level considerations such as minimum space standards in line with the Lifetime Home standards. The Mayor addressed other aspects of housing design through the Housing Supplementary Planning Guidance (SPG), which drew on the London Design Guide for Affordable Housing.
- 2.11 The Mayor of London's London Housing Design Guide, as adopted through the Housing Supplementary Planning Guidance, encourages the creation of attractive homes and neighbourhoods, without segregation by type or tenure. The London Housing Design Guide focuses on standards to improve the internal design of new homes and sets out minimum space standards including ceiling heights, room sizes and levels of usable integrated storage. The design guide has also reduced the number of requirements to which developers must refer from more than 300 to 90. The design standards have been adopted as planning policy through the London Plan. They are the first design standards to apply to new homes across all tenures and have been incorporated into the specification of all major house builders and registered providers operating in London. All bids from providers for the Homes and Communities Agency (HCA) 2015-18 affordable homes programme must be based on full compliance with the design standards. However these minimum standards do not address the type of materials to be used internally within the units.

The Council's Policy

- 2.12 The Tower Hamlets Local Plan consists of the Core Strategy, adopted in September 2010, and the Managing Development Document (adopted April 2013) and provides policies to guide and manage development in the Borough. Part 4 of the Core Strategy (Strengthening Neighbourhood Wellbeing) sets out the Council's strategic vision for ensuring that all housing in Tower Hamlets is high quality, well designed, energy efficient and durable. Paragraph 4.5 of Part 4 states that new homes in the Borough will take into account national and regional guidance on design standards.
- 2.13 The Managing Development Document (MDD) builds on the Council's Core Strategy objectives and provides a planning tool to support the delivery of affordable housing, jobs, parks, schools and other important services. DM3 in the MDD states that affordable housing should be built to the same standards and should share the same level of amenities as private housing; and that development should maximise the delivery of affordable housing on-site. Policy DM4 sets out detailed policies for considering design quality in new developments.
- 2.14 The Council's Planning Obligations Supplementary Planning Document (SPD), which was adopted in January 2012, explains the Council's approach to planning obligations, including when they will be sought and how they will be calculated. Planning obligations for affordable housing will be sought for all major residential development over 10 units. The SPD also sets out a framework for the monitoring and implementation of S106 agreements.

The Role of the Council's Development and Strategic Development Committees

- 2.15 The Council's Development Committee, made up of seven Members of the Council, and reflecting the political balance of the Council, meets once a month to consider and determine applications for planning permission made under the Town and Country Planning Act 1990. The Committee performs a quasi-judicial function and applications are determined having regard to national, regional and local planning policy. Officer recommendations to grant planning permission, where affordable housing is a requirement, are subject to the prior completion of a S106 legal agreement to secure planning obligations in line with the heads of terms set out in the Committee report. The Council's Strategic Development Committee performs a similar role to the Development Committee, but has terms of reference to consider planning applications for larger scale development proposals.

3. KEY FINDINGS AND RECOMMENDATIONS

Common problems with higher density housing

- 3.1 The session began by exploring the prevalence of the problems described by councillors. Representatives of Swan Housing identified some common issues in developments resulting from S106 agreements with poorer design specifications, such as:
- Plasterboard being used for party walls and communal areas, which had an impact on sound insulation
 - Aluminium entrance doors which are not strong enough to withstand the level of use
 - Lift equipment which failed regularly
 - Water based paint, which was not hardwearing enough and became marked
 - Carpets and flooring not designed for a larger footfall and therefore wearing out in places
 - Balcony decks not being strong enough and breaking
- 3.2 Swan and Ballymore also gave examples of poor mechanical installations, design and workmanship which could also sometimes be found in such developments. An example acknowledged by Ballymore was its development at Blackwall Way. The developer stated that lessons have been learnt in the nine years since this development had been built.
- 3.3 In exploring the reasons for these problems, the RPs and developer present pointed to the fact that foot traffic in affordable and social housing is often much heavier than in private housing, and materials are subject to greater wear. Choices of design components used in these developments do not always reflect this, and Swan has spent a significant amount of money replacing components earlier than expected.
- 3.4 This in turn has an impact on service charge to residents, which ultimately impact on some of the most vulnerable. Tower Hamlets Community Housing (THCH) added that alongside reduced durability, the parts used by developers for such developments are often cheaper and sourced abroad. In the event of repairs being needed, this often means longer waiting times for replacements to be shipped and therefore for repairs to be finalised for residents.

Input of RPs in specifications

- 3.5 The session considered how and why there is a mismatch between RPs' preferred building specifications, and what is implemented for affordable housing provided through S106. Two important and connected elements to this were identified: the use of lower specifications by developers, and the willingness of RPs to take such developments on. RP attendees at the session agreed that that some developers build the affordable housing units using lower specifications for a number of reasons – inexperience regarding the higher wear to which the materials will be subjected, a desire to keep costs down, and possibly because they have no long-term interest in the development, as it will be managed by others. Though undesirable, this

practice is incentivised by a market of RPs being willing to accept S106 schemes in order to meet their delivery programme targets.

- 3.6 As an example, Swan representatives acknowledged that in its early days, it had entered into S106 agreements with developers without being selective or assertive about design and build specifications, in order to grow its presence in Tower Hamlets. As a result, Swan often has to replace components in such developments twice in a 5-7 year period, rather than the once that would be expected. This increases both management costs and the dissatisfaction of the customers, and so Swan no longer takes on S106 developments. It would consider them again in the future, but only if it was possible to exert more influence and control over their design and construction specification. Swan's experience is that by managing the construction of housing itself, the results are often better, as it has relationships built up with suppliers of better quality materials and components.
- 3.7 RPs may have a better understanding of the design and build requirements for a development of social housing than some developers, and this should influence the specification. Indeed, THCH do not currently take on any S106 developments unless their design specification has been used. However, in spite of this, an issue remains where other RPs do not take the same stance. Challenge session members were concerned that some inexperienced RPs did not fully realise the consequences of accepting design specifications which were not of a high standard, and the problems for residents would continue.

Local authority influence and limitations

- 3.8 The Council's Planning and Building Control Service Head advised that there are a range of national and local planning policy requirements and tools available to influence housing design quality. Planning policies focus on external appearance, materials and the relationship of buildings and spaces to one another. In terms of housing quality, planning policies and the development management process can influence internal space standards, access to daylight, aspect and outlook. The planning system has historically not focused on internal build standards or materials, as internal alterations to buildings do not require planning permission. However development viability is a material consideration, and viability assessments include consideration of overall construction costs, though do not impose requirements which would influence the quality matters concerning councillors. The Service is also responsible for ensuring that all building work complies with national Building Regulations. However, these ensure structural integrity and fire safety only, and do not prescribe detailed design.
- 3.9 Given the demand for affordable housing in Tower Hamlets, and ambitious targets set by the GLA regarding numbers of houses to be built, policies are aimed at optimising supply. Officers accepted that there is a problem with the quality of some affordable housing, particularly given the densities that are now being delivered, however they felt further evidence was needed to assess the nature and extent of this and whether newer development exhibits better construction and fit out standards.
- 3.10 The Service Head for Strategy, Sustainability and Regeneration suggested that RPs have a key role to play in influencing quality through their decisions

on whether or not to take on low-specification developments. Although the council has a list of preferred RPs, developers are free to contract with any provider regardless of their track record in this regard.

Recommendations

- 3.11 There was agreement amongst all attendees at the session that RPs should influence the specification of S106 developments, and enabling and ensuring their input earlier in the process is important – ideally at the outset. This requires RPs to insist on better design specifications before taking on developments.
- 3.12 The attendees discussed requiring this as part of the S106 agreement for a development, and agreeing the specification in the planning assessment or viability assessment stage. However, Ballymore advised that this would probably be resisted by developers. Officers advised that planning permission goes with the land and is not personal to the applicant and hence permission could not be refused on the basis of a developer not engaging with an RP early on.
- 3.13 It was proposed that a better solution would be to have a local minimum design standard governing the durability of materials, to which all developers must sign up. It is unknown at present if the council has the power to make quality of internal building materials and construction costs a material planning consideration, or influence this otherwise through planning policy, and this requires legal advice.
- 3.14 However, even if so, the council would need to consider the effect this would have on the viability of S106 schemes. Swan expressed the view that using better components would not cost developers much more; and, due to lower lifetime maintenance costs being incurred by RPs, it would be in developers' best interests in the long run. Initial sampling of recent viability appraisals drawn upon in the session indicated that increasing building costs would result in a reduction in affordable units of between 1% and 7%. If accurate, this would impact on delivery against housing targets.
- 3.15 Council officers suggested that further consideration be given to developing a Tower Hamlets minimum standard in design, including seeking legal advice. This should be undertaken as part of the refresh of the Local Plan, carrying out consultation with appropriate stakeholders and with the input of the council's Development Committee.
- 3.16 A representative from Tower Hamlets Community Homes (THCH) pointed out that the general direction of government policy was currently to reduce the perceived regulatory burden on developers in order to speed up delivery of new homes. Hence any proposals to introduce more restrictive policies could be challenging in this context.
- 3.17

RECOMMENDATION 1:
The Council investigate the feasibility of adopting a minimum design standard, developed with the Tower Hamlets Housing Forum, governing materials specification, enforced through the planning process, as part of its refresh of the Local Plan.

- 3.18 Whilst it may not be possible to impose obligations upon developers to allow RPs to influence specifications, it is nonetheless in the interests of residents for this to happen. Developers should work with RPs to ensure housing is fit for its purpose, and RPs should understand and recognise the importance of ensuring an adequate specification for high density housing, and insist upon this in contracting with developers. The council should therefore work with both sets of stakeholders to influence this.

RECOMMENDATION 2:

The Council reinvigorate the LBTH Developers Forum and encourage developers to identify and work with a Registered Provider from the Council's preferred list earlier on in the planning application process.

RECOMMENDATION 3:

The Council work in partnership with the Registered Providers through Tower Hamlets Housing Forum to develop specific expertise in contracting for and managing high density developments.

- 3.19 Ballymore suggested that the council should increase monitoring and enforcement of S106 obligations, as some developers would try to extricate themselves from arrangements. Officers stated that there was a need to look into what powers the Council would have when the agreements were not adhered to. The Council's current resource of planning enforcement officers would not be sufficient to monitor the level of detail being proposed by the Challenge Session. However, if there was a minimum design specification in place and additional resources to monitor compliance with it, remedying issues of non-compliance with any clauses in a legal agreement would ultimately require Court action. Therefore any changes would affect resources available in Legal Services.

RECOMMENDATION 4:

The Council consider options and resources available to monitor and enforce compliance with S106 legal agreements.