

**BRIEFING NOTE:  
WHICH WAY TO TURN?**

**EXPLAINING THE BLOCKAGES IN THE  
PROCESS OF PURCHASING SECTION  
106 AFFORDABLE HOMES**

**May 2025**

### What is a Section 106 agreement?

A Section 106 agreement, also known as planning obligations, is a legal agreement between a Local Authority and a developer attached to a planning permission that helps to mitigate the impact of the development and make it acceptable in planning terms.

Developers make contributions to local infrastructure through several different ways with a Section 106 agreement being the main route through which developers provide affordable housing. The Section 106 agreement specifies, amongst other details, the quantum and type of affordable homes that will be constructed. Once a planning application has been submitted to the Local Authority the developer will begin engaging with Registered Providers (RPs) to sell the affordable homes in the scheme which, once complete, are fully transferred to the ownership and management of a RP.

### Challenges of delivering affordable housing through Section 106 agreement

Over the past decade, Section 106 agreements have been a vital mechanism to fund and deliver affordable housing in London and across the country with 47% of all affordable housing delivered in the financial year 2022/23 across the UK being funded this way. However, developers are currently struggling to secure an RP partner to purchase the affordable homes in their schemes which is either causing significant delays to development or simply brings it to a standstill.

The inability for RPs to partner with developers is due to a series of macroeconomic challenges facing the affordable housing sector such as:

- **Rising costs and uncertainty** – high build cost inflation, regulatory uncertainty with the building safety gateway process proceeding in a timely manner, and an under-resourced planning system are reducing spending on new development.
- **Investing in existing homes** – RPs need to focus their limited finances on their existing homes, including work on repairs, retrofit, and fire safety improvements rather than new construction.
- **Reduced grant funding and rent policy changes** – lower levels of government grant funding compared to historic levels and previous changes to rent settlements impact on investment have forced housing associations to cut back on new development.

### What options are there when an RP is not able to purchase the Section 106 homes?

The accompanying diagram outlines the Section 106 agreement process in more detail and the options available to a developer if they are unable to secure an RP partner to purchase the affordable homes once planning permission is granted. The options are:

- **Option 1:** The developer proceeds with construction without securing an RP but with aim of securing one during the build. However, it may not always be possible to proceed with development as funders are unlikely to lend in the absence of an RP being contracted in advance. If the developer has the necessary finance to proceed, the completed development cannot be occupied until the affordable housing obligations are met.

- **Option 2:** The developer cannot build and waits to secure an RP before commencing construction.
- **Option 3:** The developer negotiates with the local authority to make a payment in lieu to fund their local house building programmes.
- **Option 4:** The developer returns to planning to renegotiate the planning permission.

All of these options are difficult and ultimately are constraining the construction of the new homes London desperately needs. Options 1 and 2 require the developer to sit and wait – delaying development – until an RP is found. In option 1, the significant delay can create additional costs which may impact the viability of the scheme, eventually forcing the applicant to pursue option 4. Option 2 carries a greater degree of legal and financial risk for the developer and may result in completed affordable homes lying empty until an RP is found. Given these risks, very few developers are likely to go down this route.

Option 3 provides a pragmatic alternative. Instead of the developer building the affordable homes, the Local Authority receives the cash equivalent of them – a so-called ‘payment in lieu’. This allows the development to proceed while providing the Local Authority with an injection of money to support their own local house building programmes.

Finally, and if none of these options can be agreed, the developer may have no other choice but to pursue option 4 - renegotiating the planning permission. This involves further delays, costs and potentially a reduction in the level of affordable housing.

#### **What actions can be taken?**

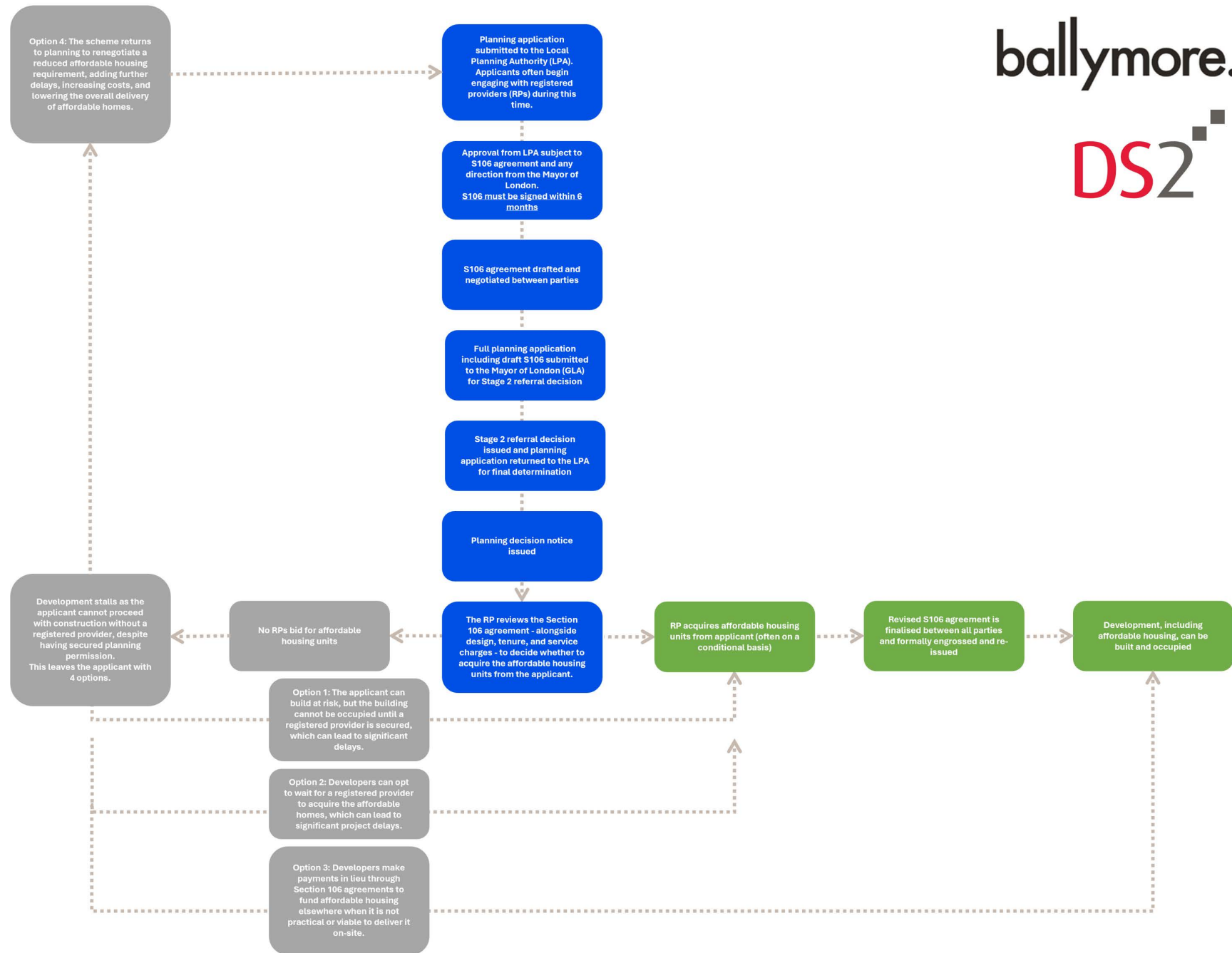
- Encourage more local authorities, where appropriate, to accept payments in lieu, supporting their own housing projects, such as estate regeneration.
- Expand or streamline the process for adding more RPs to the Local Authority’s approved list of RPs, increasing available partners for developers.
- Considering creating a public sector-led institutional-backed vehicle to purchase unsold Section 106 affordable homes, providing long-term housing for working Londoners.
- At the forthcoming Spending Review, the Government should provide long-term certainty on an affordable housing rent settlement and significantly increase the funding in a new Affordable Housing Programme which reflect RPs’ costs and market cycles.
- Supplement public funding into affordable housing by encouraging more and removing the barriers to greater levels of private investment into the sector which can help drive a step-change in affordable housing supply.

#### **Interested in finding out more?**

In partnership with DS2, we have produced this [briefing note](#) which provides more detail on this subject.

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## Challenges and options in the S106 market



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At BusinessLDN, our mission is to make London the best city in the world in which to do business, working with and for the whole UK.

We work to deliver the bigger picture, campaigning to tackle today's challenges and to secure the future promise of London. We harness the power of our members, from sectors that span the economy, to shape the future of the capital so Londoners thrive and businesses prosper. We support business to succeed — locally, nationally, globally.

We campaigned for the creation of the office of London Mayor and Transport for London, for the Elizabeth Line, for congestion charging, and we incubated Teach First. We create opportunities for our members, from sharing insights to providing platforms, from making introductions to finding new talent.

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At DS2 we specialise in financial viability and affordable housing, advising on a diverse range of projects including high profile and strategic sites in London and Nationwide.

We concentrate on our market so we can provide clear, independent and commercially-driven advice to our clients. In addition to the client services listed below, we are thought leaders in the property and housing sector, working regularly with organisations such as the RICS and BusinessLDN to produce published materials on current and emerging issues.

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With a portfolio that includes over 20,000 homes delivered in the UK and Ireland and over 15,000 ready to commence or in the planning pipeline, Ballymore is known for its commitment to design excellence, innovation, and placemaking.