

Investigation into the obstacles created by 106 conditions and self-builds

Introduction

The Gwynedd Council Strategic Plan acknowledges that consideration needs to be given to whether there are other models which could be implemented in order to provide affordable housing in the County for the future, a part of which is to overcome the obstacles created by 106 conditions.

The Housing Strategic Unit has undertaken research to discover whether obstacles exist with 106 agreements and if so, is this the reason which prevents self-build units from being erected.

A brief was created at the beginning of the research and five hypotheses had been made, namely:

1. It is the 106 agreements and the wording which create obstacles and mean that the banks are unwilling to lend
2. It is self-build units which are affected mostly rather than large developments
3. It might be the financial/personal situation of the individual which prevents them from being able to obtain a mortgage
4. The number of self-build units which have been completed is low (over a specific period)
5. The time to complete a self-build unit from receipt of planning permission is long

This report will seek to confirm or refute the abovementioned hypotheses and will make recommendations to the Delivery Panel on how to overcome any obstacles.

The wording of the 106 agreement

No lenders offer mortgages to self-build units that are subject to a 106 agreement as the panels which act on mortgages do not interact with the panels which act on self-build plans and it is not possible to combine the two.

Gwynedd Council and Principality have worked together on the wording of the agreements in recent years and at the time Principality agreed to the wording. The legal department has noted that the agreements seem to work on developments which are not self-builds.

Principality has provided observations on what it wishes to see as a minimum in an agreement; however many of the points noted by them are not relevant to Gwynedd. The main observations made by Principality which are relevant to Gwynedd are as follows:

- That the first charge goes to the lender i.e. if the borrower defaults on the payments the lender gets the first charge on the property.
There is no 'charge' under the Gwynedd 106 at present.
- That the local condition is three years where possible.
The Gwynedd agreement is five years at present.
- Changing the wording of the 'Mortgage in Possession' clause.

- **The Gwynedd agreement notes that if a bank takes possession they must offer the property to Gwynedd first and if we don't need it, it is then sold on the open market. But they must pay an amount to Gwynedd when this happens, namely the difference between the open market price and the affordable price.**

No mortgages are offered to self-build units subject to 106 condition however it appears that there are issues arising when looking at the wording of the agreement. It would be an idea to have a further discussion on the above with the Council's Legal Department.

It is also important to note that lenders do lend for self-build units without a 106 agreement. The Principality is not one of those.

Joint meeting with Mortgage companies

A meeting was arranged with Principality, 75 Point 3, a mortgage company from Pwllheli, Snowdonia National Park Authority, Gwynedd Council Officers, Anglesey Council Officers and Tai Eryri Housing Association in order to discuss the obstacles arising from the 106 agreements. The main observations made during the meeting are as follows:

- The Park and Gwynedd 106 Agreements have been amended by now and are clearer and more reasonable. There is no major problem with the 106 condition itself but as they vary it is not worth the companies looking at each one individually. Work is being undertaken by the North Wales Authorities' Legal Services now looking into reconciling elements of 106 agreements. It is possible that this will assist with the matter noted above. We will need to be ensured that we are kept up to date on this work.
- The 106 condition is acceptable on the whole to lenders; however, there are difficulties with these agreements when owners wish to sell.
- The Principality does not offer staged payments but they have considered a bridging loan. Before looking into this in detail the credit rating of the applicants must be ensured in order to reduce the risk.
- Affordable housing will continue in Gwynedd given also that the Joint Local Development Plan encourages it. Self-build is important in rural areas.
- Obtaining a mortgage certificate can be a problem as the company does not know what the property will be when offering the mortgage, and then the offer can change when the applicant finds a property.
- The main obstacle to individuals not able to obtain a mortgage would be the condition, but in the context of self-build with a 106 these mortgages do not exist in any case. It can also be because of the individual's financial situation, therefore there are other circumstances which can cause problems also.

As has already been noted, no lenders offer mortgages on self-build units subject to a 106 condition. However, what does become apparent from the above in looking at the agreement alone is that there are other circumstances which prevent an individual from accessing mortgages and therefore it is not fair to put the whole burden on the condition.

Other Councils' Procedures

Conwy Council

- Looking at creating a more standard version of a 106 template; however, they have not faced many problems with the agreements.
- Intend to look at the problem with self-build and the work of preparing their Affordable Housing SPG will provide the link with the national policy and will then give clarity to everyone.

Flintshire County Council

- In the past they have removed the 106 condition in order to help individuals to access a mortgage; however the individual is required to pay a commuted sum to the Council for this.
- This has not happened often and the individual receives a detailed assessment before a decision is made.
- The commuted sum is then recycled to be able to help individuals who are trying to buy an affordable house. They acknowledge that they lose a unit but they can help someone else.

Anglesey County Council

- Offer a short-term loan to self-builders on Council land
- One applicant has submitted an application and the loan is for £20K up to a maximum of £60K, with a fee of £250 to be paid in the first month and then fixed interest on the loan.
- A mortgage certificate must be presented at the beginning which shows that they can obtain a mortgage in principle (and have had the credit checks).
- The Council keeps land ownership until the builder obtains the mortgage
- The unit is not seen as a self-build unit once it has been completed and therefore it is possible to obtain a general mortgage at this point.

The experiences of applicants / self-builders

Contact has been made with an individual who had difficulties accessing a self-build mortgage with a 106 condition. This person's experience was that a self-build mortgage including a 106 clause as part of the planning conditions was available at the start of the process. However, by the time he had signed the agreement the lenders did not offer this type of mortgage and therefore it has not been possible to proceed with the development. In addition, with a self-build unit there are initial costs such as architects' costs and planning fees and the individual has spent a considerable amount on these aspects. As he was unable to obtain a mortgage he now rents a house and it is impossible for him to save money to be able to build because his money goes on rent.

This individual said:

"If the intention of a 106 restriction is to encourage young people to remain in their areas, it does not make sense that no establishment is willing to offer us a mortgage."

Information from the Gwynedd and the Park planning area

Planning permission for self-build residential units with an affordable 106 agreement in the Gwynedd planning area

- Five planning applications had been received in 2012/2013 and one of these was for change of use.
- Ten applications had been received in 2011/2012 and two of these were for converting a building and three for external building changes/adaptations.

Planning permission for self-build residential units with an affordable 106 agreement in the Park planning area

- Two applications had been received in 2012/2013
- Two applications had been received in 2011/2012 – one for a conversion and one change of use

Of the abovementioned figures, it appears that the number of individuals coming forward to apply for planning permission for self-build units is low.

The number of self-build residential units that have come through, and the length of time it has taken to complete a unit from receipt of planning permission in Gwynedd

Where the development is one unit only it has been presumed that this is a self-build unit. It is these units that have been included in the figures below.

- Six self-build units had been completed in 2012/2013 and three had signed the agreement in 2011 and three in 2012
- Five self-build units had been completed in 2011/2012 and the timing of signing the agreements varies between 2007 and 2011.

The number of self-build residential units that have come through, and the length of time it has taken to complete a unit from receipt of planning permission in the Park

Where the development is one unit only it has been presumed that this is a self-build unit. It is these units that have been included in the figures below.

- Two self-build units had been completed in 2012/2013 and one had signed the agreement in 2011 and one in 2012
- One self-build unit had been completed in 2011/2012 and the agreement was signed in 2007

Of the abovementioned figures, it appears that there is no specific pattern for the time it takes to complete a self-build unit; however, some of the units which were completed in 2011/2012 have taken more time to complete. In addition, the number of units completed is low; namely 11 in Gwynedd and three in the Park.

Conclusions

- It is not the wording of the 106 which prevents individuals from obtaining a mortgage on self-build units but the fact that no lenders offer such mortgages. The reason for

this is that the panels which act on mortgages do not interact with the panels which act on self-build plans and it is not possible to combine the two. However, once a self-build unit which is subject to a 106 condition is completed it is not then seen as a 'self-build unit' and therefore it is possible to obtain a general mortgage at this point.

- In terms of the agreement itself it appears from the observations which have been received that they work on the whole and that they have improved, although points have been highlighted by the Principality within the Gwynedd agreement.
- The old agreements can cause difficulties when the owner comes to selling the property and also because they vary across north Wales it is not worth the companies looking at each one individually.
- Self-builders have been affected because there are no mortgages available rather than the large developments
- The agreement is not the only reason that prevents someone from obtaining a mortgage, it can also be the individual's financial situation
- Between 2011 and 2013, 15 planning permissions had been granted in Gwynedd and four in the Park for self-build residential units subject to a 106 agreement
- There is no specific pattern for the time it takes to complete a self-build unit; however, some of the units which were completed in 2011/2012 have taken more time to complete.
- Between 2011 and 2013 the number of self-build units that have been completed is low. In 2011-2012 in the Gwynedd planning area, 23% of the units which had been completed were self-build ones subject to a 106 condition. In 2012-2013 in the Gwynedd planning area, 17% of the units which had been completed were self-build ones subject to a 106 condition. The accumulative total in Gwynedd between 2011-2013 was 22%.

Options for consideration

- It will not be possible to reconcile the agreements across north Wales as everyone's affordable housing policies are different; however there is a piece of work being undertaken at present with the North Wales Authorities' Legal Services to try to reconcile elements of the agreement. The Housing Strategic Unit will ensure that we are kept up to date on this work.
- Further discussion is needed with Gwynedd Council's Legal Department to try to resolve the matters that Principality has highlighted.
- Consider removing the 106 condition and the self-build planning applications and that a commuted sum is paid to the Council in order to do this.
- Look at establishing a pilot scheme in order to offer a loan to individuals who are trying to erect a self-build unit subject to a 106 condition. As initial figures, we will be looking at a target of 10 units and a sum of £800,000 (namely a loan of a maximum of £80,000 per unit). We will also require interest every month on the loan. The Cabinet Member has by now submitted this type of model to the Members in order to receive their initial observations.

Decision

- Reduce the period noted in the mortgage in possession clause within Gwynedd Council's 106 agreement from 12 weeks to 6 weeks.