

Scrutiny Project: Viability Assessment Process in Haringey

A project from the Housing & Regeneration Scrutiny Panel

2016

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1. Introduction

- 1.1 Viability assessments were introduced through the National Planning Policy Framework to ensure that the scale or burden of planning obligations detailed within a local planning policy framework (such as a requirement to provide affordable homes) do not threaten the feasibility of an individual development or prevent development in general coming forward. In this context, the deliverability of local development is now as an important an issue for the Local Planning Authority (LPA) as it is for developers.
- 1.2 There are however inherent tensions within the viability assessments process as competing stakeholders (developers and local authorities) seek to obtain as best deal as possible from the planning gain derived from new development. There is growing body of evidence to suggest that viability assessments, particularly those which use overly pessimistic cost data, are being used by developers to negotiate a reduction in planning obligations, particularly the requirement to provide affordable homes.¹ Conversely, with a decline in public subsidy, there is an ever greater reliance on S106 Agreements to deliver affordable homes. Viability assessments therefore provide a framework through which competing interests are mutually assessed, tested and eventually agreed.
- 1.3 It is therefore important that the LPA operates a clear and transparent viability assessment process to ensure that the interests of competing stakeholders are fairly represented. There should also be robust mechanisms in place to enable the LPA to fairly assess submitted financial statements so that where possible, development proposals that come forward are compliant with local planning policies, particularly those concerning the provision of affordable homes.
- 1.4 Under the agreed terms of reference, scrutiny panels can assist the Council by conducting in depth analysis of local policy issues. In this context, it was agreed with Cabinet Members and senior officers that the Housing & Regeneration Scrutiny Panel (HRSP) could assist by reviewing and make recommendations to improve the local viability assessment process in Haringey. The following report sets out the aims of the HRSP, the nature of its investigation and its findings and recommendations.

2. Aims, objectives and methods

- 2.1 As part of the work programme consultation exercise 2015/16, the Housing and Regeneration Scrutiny Panel agreed to review the viability assessment process in Haringey. The agreed aim of this work was:

'To assess the Councils policy and practice in relation to the application of policy and guidance in respect of viability assessments and to make recommendations to ensure confidence and transparency to the process – and application of the process in order to assist the Council (including Planning Committee) in the consideration of planning applications where viability is a material planning consideration.'

¹ The viability attack on social and affordable housing, FORe THOUGHT, University of Sheffield, Bob Colenutt, 2015

- 2.2 Within this overarching aim, the panel agreed the following objectives:
- To review legislation and policy guidance in respect of development viability and the Councils current policy and practice in respect of viability assessments;
 - To assess comparative policy and practice at other local authorities with a view to identifying good practice so as to inform the viability assessment process in Haringey, particularly in relation to transparency, improving local challenge and increasing supply of affordable homes.
 - To consider the potential impact of the Housing and Planning Bill and the requirement to provide for Starter Homes;
 - To identify any further mechanisms available to the Council, which may assist in maintaining levels of S106/affordable housing delivery in the Borough through viability discussions (e.g. 'claw back' arrangements);
 - To assess the potential for any collective response through London Councils or other amalgam of London boroughs, which may assist in a more robust challenge to local viability assessments.
- 2.3 Further to the aims and objectives listed above, the Housing & Regeneration Scrutiny Panel conducted a 'scrutiny-in-a-day' exercise. This was a day-long event held on 7th April 2016 at which a range of planning and viability experts were invited to contribute evidence. The session included contributions from the following:
- Local Planning Officers
 - Local Housing Development, Housing Enablement and Carbon Management Officers
 - BNP Paribas, specialist providers of viability reports and appraisals;
 - Other local authorities including Greenwich and Southwark
 - Developers, Planning Consultants and Housing Associations.
- 2.4 An additional 'mop-up' session was held in May 2016 for those contributors that could not attend on the scrutiny-in-a-day session and to follow up other lines of enquiry from that first session. Contributors included:
- Islington Council;
 - London Borough wide partnership;
 - London Forum of Civic and Amenity Societies.

3. Background

National Context

- 3.1 Of the 42,870 affordable homes delivered in across the UK 2013, it is estimated that approximately 60% were funded by developers through S106 contributions. Changes to the way the delivery of affordable housing is funded has impacted on the number of affordable homes and other section 106 obligations that may be delivered through this process.²
- 3.2 Planning applications for major developments are required to meet a range of requirements in the Local Plan (such as the provision of affordable housing, employment space or improvement to public realm). Such requirements are expected to be met by the development in full. With respect to affordable housing, this is expected to be delivered on site, though in exceptional circumstances can be met through off-site provision or cash in lieu.

² In the mix: the need for a diverse supply of new homes, Shelter, 2014 (p21)

3.3 Local plan policy SP2 sets out that the maximum reasonable amount of affordable housing should be provided on a site by site basis working towards a borough-wide target of 40%. In order to establish the maximum reasonable amount of affordable housing a financial appraisal or viability assessment is submitted by the developer to establish the maximum reasonable amount of affordable housing.

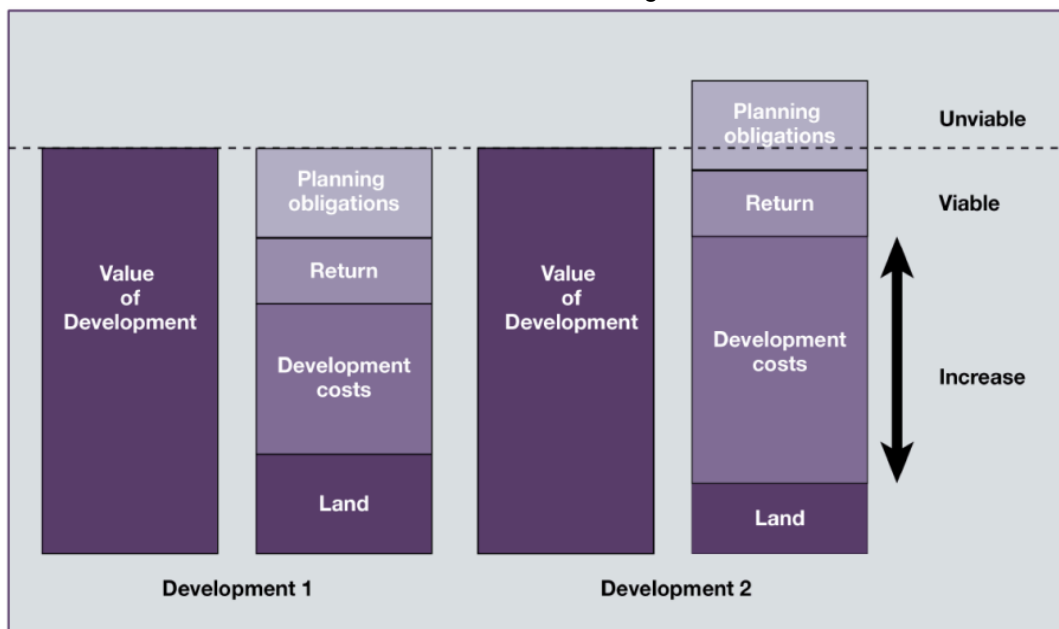
What is viability?

3.4 The National Planning Policy Framework 2012 (section 173) defines viability as thus:

'Plans should be deliverable. Therefore the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, should when taking account of the normal costs of the development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable.'

3.5 Viability is demonstrated in the table below (Figure 1). A development can be seen to be viable if the cumulative costs of the land, development costs (such as construction, professional fees and marketing), developer return (profit) and planning obligations (such as the provision affordable homes) equates to the gross value of the development (the income generated from sales). If these costs exceed the gross development value, the scheme is unviable (Figure 1).

Figure 1 – Viable and Unviable development³



3.6 The affordable housing component of major developments is usually the largest cost for a developer and the most often cited reason for schemes being considered unviable. In addition, the income that a developer may derived from the provision of affordable housing (such as shared ownership or affordable to social rent) may be more variable that that from private housing for outright sale.

³ Source: 'Financial Viability in Planning', RICS, 2012

- 3.7 There are a number of factors which are central to the viability assessment process. From the income side, the key factor is the income derived from sales values. On the costs side, the value that a developer has paid a landowner for the site is critical. There are two common approaches to land valuations to viability assessments:
- **Existing use +**; this approach uses the existing use value of the site, plus a premium of between 10-20% of that value to the landowner;
 - **Market value** approach: this approach uses the value which developers may have acquired the site and subject to market forces and in areas of high demand or competition land values will be driven up and impact the viability assessment calculation). Such an approach may not fully recognise or reflect the impact of local policy requirements (e.g. the need to provide affordable home).
- 3.8 Councils, including Haringey, employ independent advisors to review the submitted viability assessments to verify the costs, values and other assumptions made by the developer. Viability assessments are normally made available to members of Planning Committees on request when applications are reported to them. In most council's this is done on a confidential basis.
- 3.9 Where the financial appraisal demonstrates that the development is not viable, and that the maximum amount of affordable housing that a scheme can reasonably support is below the agreed policy target⁴. Planning Policy can require that a review of viability takes place. Review mechanisms usually seek to take into account changes to the anticipated revenue and costs associated with a development and identifies what happens in the event that the viability changes.

Local Policy and Practice

- 3.10 The position of the Local Planning Authority in Haringey (LB Haringey) in respect of viability is as set out in the Supplementary Planning Document for Planning Obligations (2014) which gives effect to the policies set out in the Haringey Local Plan.⁵
- 3.11 In Haringey, the policy is that for proposed developments with capacity for 10 or more units, the LPA will seek the maximum reasonable amount of affordable housing, having regard to a borough-wide (not site-specific) affordable housing target of 40%, based on habitable rooms.
- 3.12 There is provision within Haringey policy framework in which the required affordable homes contribution outlined above can, in exceptional circumstances, be over-ridden by other policy requirements. Such exceptional circumstances include the need to provide for community facilities (Such as schools or healthcare provision) or additional work space (where the previous use was for employment). In both circumstances, the cost of such provision can be deducted from the cost of the affordable homes requirement.
- 3.13 The current position in Haringey is that a viability assessment is required for all major applications. Submitted viability assessments are independently assessed on behalf of the Council at the expense of the applicant (as set out in the Planning Obligation SPD).

⁴ In Haringey, the current target is 40% of units to be affordable.

⁵ Planning Obligations Special Planning Document, October 2014, Haringey Local Plan

- 3.14 In terms of the number of viability assessments undertaken each year in Haringey:
- There are approximately 15 - 20 major applications submitted each year which are subject to a viability assessment;
 - There were 31 Section 106 Agreements completed in the last 12 months of which 22 have an affordable housing obligation (on and off-site provision).
- 3.15 There are a number of key elements within the viability assessments process in Haringey:
- In terms of methodology, the LPA does not accept the Market Value approach in valuing land as this can contribute to a wider escalation of land values in the area, and limit compliance to local planning policy requirements;
 - In terms of costs and other data that contribute to the viability assessment, Haringey (along with most others) complies to those standards and benchmarks costs set out within the Redbook⁶ and the GLA adapted 3 Dragons Viability Assessment Toolkit;
 - There is a general preference within the LPA to make viability assessments public with a number of exceptions (e.g. where the developer has not already bought the land and where publication may inhibit competition or further inflate prices).
- 3.16 In Haringey, review mechanisms are routinely in place for all major applications where viability has been an issue. There is a general policy that a review mechanism is required if an application has not been implemented within 12/18 months. In this context, prior to the development commencing, the viability assessment has to be resubmitted in exactly the same format as when the original application was submitted to take into account any rise in values or fall in build costs. In line with other authorities, if any additional profit is identified within the scheme from the review mechanism, this is divided between the Council (60%) and the developer, to incentivise the developer to make further planning contributions. The review mechanism also applies to the latter phases of larger scale development schemes, to ensure latter phases take account of changes in assumed development values.

4. Key findings of the panel from the review

- 4.1 The following highlights the key findings and conclusions of the Housing and Regeneration Scrutiny Panel.

Methodological problems with viability assessments

- 4.2 The panel noted that there were three methodological problems associated with viability assessment process:
- The inconsistency in which different models were used;
 - The weakness of actual data inputs in to the models;
 - The sensitivity of models.
- 4.3 Whilst the Greater London Assembly Housing Development Control Toolkit 2010 (based on the Three Dragons Model) was widely used to develop viability assessments, it was noted that that other different models were in use and were generally accepted by LPAs. Such an inconsistent approach however made it difficult

⁶ The Red Book is issued by Royal Institute of Chartered Surveyors which contains mandatory rules, best practice guidance and related commentary to undertake asset valuations and other industry standards.

to draw comparative assessments and the ability to meaningfully appraise these within individual LPAs.

- 4.4 Secondly, evidence presented to the panel indicated that there were also weaknesses with the actual data input into the viability assessments models, which included:
- The time limited nature of data inputs, such as sales values (where these are required to be at the time of writing the viability assessment);
 - Subjectivity of some data used (such as design and marketing);
 - The use of standardised measures in the formulation of construction and finance costs;
 - Difference in methods used to calculate the value of land to be used for development;
 - Disputes as to the acceptability of 20% profit margin on development.
- 4.5 The panel also noted that because of the subjective nature of component data within viability assessments models, variations of as little as 5% to some values could produce significant changes in the outturns or residual resource available at the end of the development scheme. Research from the University of Reading has concluded:

*'Given that the output of such models – estimated land values or returns – can be very sensitive to relatively small changes in major inputs such as construction costs or sale prices, the implications for estimated planning obligations can be substantial.'*⁷

- 4.6 In the context of the above, there is an incentive for prospective developers to provide overly pessimistic viability assessments (overstating costs and undervaluing development) in that this may help reduce section 106 contributions (such as affordable homes). Indeed, in commentaries seen by the panel, it was suggested that a 'viability industry' had developed in which specialist consultants are working to secure a reduction in planning gain contributions through the viability assessment process.⁸

Transparency

- 4.7 Transparency was a consistent theme in much of the evidence gathering with contributors. It was noted that with the exception of a few London boroughs, viability assessments were not routinely published, and even when these were made public, they are often complex and opaque documents or were heavily redacted. This had created a perception of secrecy and mistrust, particularly among local residents and the community at large.
- 4.8 The panel noted examples, both within and without of the borough, of where the inability of the community to meaningful contribute and scrutinise viability assessments had perpetuated mistrust of the local planning system. The panel were of the view that improved transparency together with improved public engagement and involvement could help build community confidence in the local planning system and the difficult decisions that need to be taken in respect of viability.

⁷ Real Estate & Planning, Working Papers in Real Estate & Planning 01/16, Business School, University of Reading

⁸ Revealed: How developers exploit flawed planning system to minimise affordable housing. Olivier Wainwright, The Guardian, June 2015.

- 4.9 Evidence received from a specialist viability assessment provider suggested to the panel that there was very little data in these reports which was not already in the public domain or that could be considered commercially sensitive. Furthermore, there was a view that in the context of a housing crisis where there is a growing demand for affordable homes, it would be in the public interest to improve transparency and scrutiny of schemes which were not compliant with such local policy requirements.
- 4.10 Three local authorities gave evidence to the panel, all of which had introduced new Supplementary Planning Documents (SPD) for Viability Assessments within their respective LPA. Improved transparency and openness for viability assessment processes were central to the new SPDs developed.
- 4.11 The panel were impressed with the approach taken by a London borough, which had taken a particularly robust approach to transparency. Here viability assessments were published in full and without redaction ahead of determination at Planning Committee. Also, to help promote community participation and engagement, the developer is also required to provide a summary of the viability assessment which is also published alongside the submitted application. In the view of the authority, it was noted that this approach:
- 1) Improved transparency for the community and helped to ensure continued support for regeneration programmes;
 - 2) Helped to improve understanding among local stakeholders as to why schemes were not policy compliant;
 - 3) Improved awareness and understanding among landowners, particularly in respect of reiterating that the sale of land should be on a policy compliant basis (to help reduce over valuation).
- 4.12 The panel noted that the general preference for Haringey Council was to make viability assessments public, though there was no explicit policy to support this as yet. It was noted that a number of viability assessments for large planning applications had recently been published (e.g. Tottenham Hotspur Football Club) with no issues raised by prospective developers.
- 4.13 In summary, the panel came to the following conclusions to support its view that there should be improved transparency for the viability assessment process:
- The methodological limitations of viability models warrant further public examination and scrutiny;
 - Data inputs and outputs in to these viability assessment models are subjective and should be open to public scrutiny;
 - There is relatively little evidence to suggest that full disclosure would damage commercial interests or inhibit development coming forward;
 - Given the national, regional and local significance in improving the supply of affordable homes, it is in the public interest that viability assessments are published to promote awareness and understanding in the community;
 - An open book approach would allow the LPA to undertake a comparative analysis and assessment of the proposed development schemes in other authorities which may guide and inform negotiations on local schemes.

Review Mechanisms

- 4.14 Review mechanisms are a means to take account of changes in values between granting of planning permission, development and completion. Affordable homes are

secured through S106 agreements, which commit developers to a certain level or number of affordable homes within that development. This decision is made at Planning Committee, but development may not actually take place on site until 18 months later. The panel noted that in London, with house prices rising 8% per annum, the values derived from sale of private units within the development may have increased by 10-12% in this period. Thus the level of affordable homes that may be viable within a scheme may be substantially higher than when the viability assessments were completed 18 months previous. Given that the scheme may be a further 12-18 months until actual completion (in which time sales values may have increased further) the scope for increased affordable homes provision may increase further.

- 4.15 In this context, review mechanisms are a process through which to assess any additional profits that may accrue from increased income from rising sales, with a view to maximising policy compliance. The panel noted that in many authorities there were arrangements to share any additional profit arising from the scheme between the developer and the LPA to help meet local plan requirements (such as affordable homes). As the development may be nearing completion then this new agreement will generally be in the form of a cash payment in lieu of off-site provision. Therefore, such review mechanisms should help achieve higher levels of affordable homes.
- 4.16 In Haringey, the panel learnt that review mechanisms are routinely in place for all major applications that are not policy compliant. In these circumstances, the viability assessment has to be resubmitted in exactly the same format as when the original application was submitted to take into account any rise in values or fall in build costs. In Haringey, any additional profit identified through a 'clawback mechanism' is divided between the Council (60%) and the developer (40%). The panel noted that similar agreements are in place in other authorities, as these help to incentivise developers to make further gains from the development and ensure continuation on site.
- 4.17 The panel heard evidence from other boroughs as to how review mechanisms were applied:
- In one authority, there was a preference for advance stage review mechanisms – which are applied at the point at which there was 75% completion on site as there was more concrete data in terms of sales values and build costs through which to reassess policy compliance;
 - In another authority, a review mechanism is in place for all proposed development that is not policy compliant (irrespective of size), and that this review takes place once ¼ of new units are occupied. Any revision upward in viability is split 50/50 between developer and the council.
- 4.18 The panel noted that review mechanisms are important in respect of viability given the time limited nature of viability assessments and that they provide an additional process in which the LPA can assess component figures that make up viability assessments. The panel noted an example from another authority where an initial off-site contribution to local infrastructure of £12m was initially agreed, but further to the review mechanism, this sum was almost doubled.

London Wide Viability Protocol

- 4.19 A London Borough Officers Group (LBOG) has developed a London wide viability protocol⁹ (February 2016) as a response to widespread concerns to the operation of viability assessments. The group have developed a protocol which is intended to promote a more standardised methodology and process for viability assessments process across London. The protocol includes recommendations for:
- Preferred models of viability assessments;
 - Openness and transparency;
 - Guidance on accepted data inputs and outputs for the models (land values, development costs, sales values);
 - The use of review mechanisms.
- 4.20 LBOG has consulted upon the protocol and is currently updating this based on the consultation feedback. The panel noted that Haringey is part of this group and has actively contributed to this process. It was noted that 27 of 32 boroughs are signed up to this process and there is support for this process at London Councils. Boroughs are being encouraged to adopt the principles and practice set out in the London Wide Viability Protocol through dedicated Supplementary Planning Documents. The GLA are also building on this protocol to develop London Plan viability SPG. It was noted that three authorities have already completed this and others are in the process of agreement. The panel noted that this additional layer of guidance will help to bolster LPA positioning on viability, and strengthen its position if challenged.
- 4.21 The panel noted that if there was widespread adoption of the protocol within local SPDs, this would help to develop a consistent approach to viability which would make authorities less susceptible to challenge. In addition, it is hoped that the Mayor could adopt the London Wide Viability Protocol as this would provide further status and weight in planning considerations.

5. Recommendations

5.1 Viability Assessment Process

It is recommended that a new Supplementary Planning Document (SPD) is developed or that the existing SPD for Planning Obligations is updated to **reflect** the principles and practice recommended within the London Wide Viability Protocol.

In addition, new viability assessment guidance that is developed and published should reflect the following:

- (i) Outline viability assessments should be developed in consultation with developers in pre-application process, but a date to for determination can only be agreed once a full and final viability assessment has been received by the Local Planning Authority (LPA).
- (ii) That there should be explicit published guidance as to the expected methodology, inputs and supporting evidence that should be used in providing viability assessments – in particular:
 - (a) The LPA should emphasise to prospective developers that it will not accept ‘market value’ approach to land values within such calculations
 - (b) That guidance should indicate that any profit levels on the development should be calculated on the gross development value, and between a range of 10-20%;

⁹ London Borough Development Viability Protocol, Consultation Draft, London Borough Viability Group (2016)

(iii) That a statutory declaration should be provided signed by an accountable person/s, who would confirm the accuracy of information in the viability assessment and that this is consistent with the information that an applicant is using to inform their own commercial decisions and the information relied on as the basis of the release of development finance

5.2 Review mechanisms

(i) Recognising the time limited nature of viability assessments and the time lag from determination to commencement of development taking place on site, it is recommended that review mechanisms should be standard for all planning applications which are not policy compliant, to ensure the maximum public benefit is secured over the period of the development.

(ii) To allow for a more realistic assessment of viability it recommended that an 'advance stage review mechanism' takes place at the point at which 66% sales have been completed and that there will be substantive sales and construction cost evidence to support the reassessment.

5.3 Transparency

(i) It is recommended that to improve transparency, promote scrutiny and public confidence in the viability assessment process, it is recommended that all viability assessments are made public in their entirety and without redaction.

(ii) It is also recommended that a summary of the viability assessment is published alongside the application at validation.

(iii) In the interests of transparency and openness and to remove any notions of conflict of interest, it is recommended the costs of independent viability experts appointed by the Council to appraise any submitted viability assessment are charged and paid for directly by the Council. Reimbursement should then be sought from the developer who is legally liable for such costs.

(iv) That the housing and regenerations scrutiny panel is formally consulted on the emerging new SPD.

5.4 Training, skills and expertise

(i) The panel recommend that to further develop the in-house capacity and expertise of the Local Planning Authority to assess, commission and scrutinise viability assessments /appraisals:

(ii) that additional dedicated training on viability assessments is provided to existing Planning Officers;

(ii) that the Local Planning Authority explore ways (possibly in cooperation with neighbouring Planning Authorities) to recruit and retain a specialist quantity surveyor (this would not preclude the need to commission specialist viability consultants).

(iv) To support scrutiny and assessment of viability assessments and viability appraisals, the panel recommend that dedicated training is provided to members of the Planning Committee on viability assessments which should include:

(a) expectations of the London Wide Viability Protocol;

- (b) emerging changes to the viability landscape (e.g. Mayor of London Housing SPG, London Housing Commission)
- (c) recent legal cases and legal precedent;
- (d) once updated, viability requirements as set out in the new / updated local SPD on viability/ planning obligations for Haringey LPA.

(v) Given the significance of viability assessments in securing affordable homes and other public gains and the need to extend community confidence in this process, it is recommended that such training is also extended to all members of the council.

5.5 Policy, lobbying and support

(i) That the Council write to the Mayor of London to encourage the adoption of a London Wide Viability Protocol, and make representations to London Councils to do the same.

(ii) Given the contested nature of review mechanisms (that is if they apply solely to phased developments as per the Governments Planning Practice Guidance) the council should lobby DCLG for greater clarity in guidance (or make representation to London Councils, or Mayor of London to lobby on its behalf).

Appendices

Appendix A – Scrutiny in a day programme for viability assessments (7/4/16)

Timing	Session Aim	Lead
10.00	Introduction and welcome	Panel Chair
10.05	Outline of the scrutiny process (1) the benefits of scrutiny involvement (2) aims & objectives of today's session (3) outcomes	Scrutiny Officer
10.10	Expert independent guidance for the panel – national context to viability assessments, National Planning Policy Framework, elements of viability assessments, viability methodology.	Planning Officers Society
11.00	Local Policy & Practice: the process of viability assessments in Haringey	Head of Development Management
12.00	Local challenges for viability assessments in provision of affordable housing, engagement with local Registered Providers and carbon reduction targets.	Enabling and Engagement Manager Head of Carbon Management Strategic Housing Development
12.30	LUNCH BREAK	
13:00	The process of viability assessments	BNP Paribas
13:30	What can be learnt from the approaches taken in other local authorities?	Cabinet Member (LB Southwark) Cabinet Member (LB Greenwich)
15:00	Developer and planning consultant perspectives on viability assessments.	Pollard Thomas Edwards GS8 Dp9 Newlon
16:30	Panel discussion – key findings, further evidence requirements, emerging recommendations.	Housing & Regeneration Scrutiny Panel
17.15	The next steps - close	

Appendix B – Additional evidence gathering session (11/5/16)

Timing	Session Aim	Lead
10.00	Introduction and welcome	Chair of Overview & Scrutiny
10.00	What can be learnt from the approaches taken in other local authorities? The pan-London approach	LB Islington
11.00	Pan London community perspectives	The London Forum of Civic and Amenity Societies