

Report for: Cabinet

Item number: 8

Title: Housing Viability assessments- response to Scrutiny review

Report

authorised by: Lyn Garner, Director of Regeneration, Planning and Development

Lead Officer: Emma Williamson, Assistant Director – Planning

Ward(s) affected: ALL

Report for Key/

Non Key Decision: N/A

1. Describe the issue under consideration

1.1 Under the agreed terms of reference, scrutiny panels can assist the Council and the Cabinet in its budgetary and policy framework through conducting in-depth analysis of local policy issues and can make recommendations for service development or improvement. The panels may:

- Review the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- Conduct research to assist in specific investigations. This may involve surveys, focus groups, public meetings and/or site visits;
- Make reports and recommendations, on issues affecting the authority's area, to Full Council, its Committees or Sub-Committees, the Executive, or to other appropriate external bodies.

1.2 In this context, the Housing & Regeneration Scrutiny Panel (HRSP) conducted a review of the viability assessment process in Haringey. The agreed aim of the work was as follows:

'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.'

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.

1.2 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.

1.3 An additional 'mop-up' session was held in May 2016 for those contributors that could not attend 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.

1.4 The final report, attached at **Appendix 1**, details the conclusions and recommendations of the HRSP, and the Comments of the Planning Service to the recommendations.

2. Cabinet Member Introduction

I welcome the work of the Scrutiny panel in helping to make sure that the Planning Service is doing all it can to deliver the maximum reasonable amount of affordable housing and to ensure that the processes used in Haringey are as rigorous as those used in other London Boroughs. In most instances Haringey had already implemented best practice and the majority of the panel's recommendations have been agreed. The Council intends to adopt the approach set out in the London-Wide Borough protocol on viability assessments.

3. Recommendation

3.1 That the Cabinet note those recommendations of Scrutiny Panel as [agreed by the Planning Service] and as agreed by Regulatory Committee (the agreement and or comments of the Regulatory Committee will be provided as an addendum to this Cabinet report following the Regulatory Committee meeting on 17 January 2017) outlined in **Appendix 2**, and where these recommendations have cost implications the funding source should be determined by the Chief Operating Officer.

4. Reasons for decision

4.1 The evidence supporting the Panels' recommendations is outlined in the main body of the report (**Appendix 1**).

5. Alternative options considered

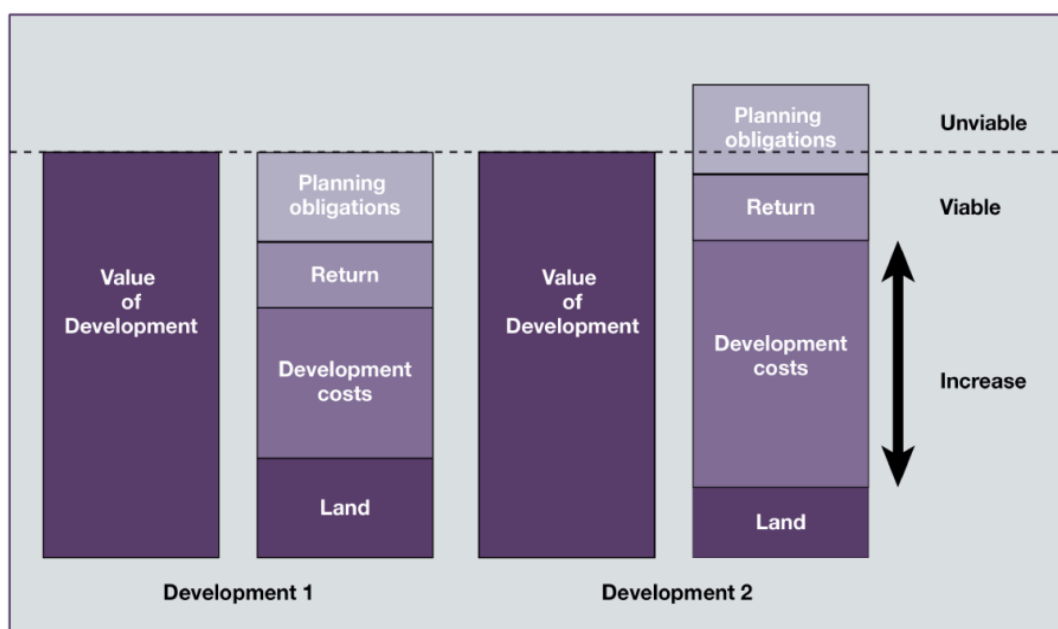
5.1 The evidence supporting the Panels' recommendations is outlined in the main body of the report (**Appendix 1**). The Cabinet could choose not to accept the recommendations, despite endorsement by the Planning Service.

6. Background information

6.1 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.'

6.2 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).



6.3 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 boroughwide 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.

- 6.3 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. Assess how the allocation neighbourhood CIL receipts can maximise opportunities for improving local infrastructure through alignment with other funding programmes both internal and external to the Council.
- 6.4 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).
- 6.5 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 Redbook 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).
- 6.6 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.
- 6.7 A London Borough Officers Group (LBOG) has developed a London wide viability protocol (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.
- 6.8 Haringey is a member of this group and has actively contributed to this process. The GLA are also building on this protocol to develop a London Plan viability SPG and it is

understood that the final version of the Protocol is not going to be published until the GLA has finalised its SPG.

- 6.9 On the evidence received, the panel have made 5 recommendations which it hoped will contribute to the development of governance arrangements for the CIL.

7. Contribution to strategic outcomes

- 7.1 The work of the panel will contribute to Priority 4 of the Corporate Plan to promote sustainable housing, growth and employment.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

The accuracy of viability assessments impacts on the number of affordable homes on developments in the borough. Affordable housing has a positive financial impact for the Council who may be able to use the newly developed affordable homes to discharge their duty to house a homeless family or otherwise house families or individuals in need of affordable housing.

The cost of implementing all recommendations will be met from existing budgets.

Legal

Under Section 9F of the Local Government Act 2000 ("LGA"), Overview and Scrutiny Committee has the power to make reports or recommendations to Cabinet on matters which are the responsibility of the executive, not the responsibility of the executive or which affects the Council's area or the inhabitant of its area. Overview and Scrutiny Committee must by notice in writing require Cabinet to consider the report and recommendations. The report and recommendations should be presented to the next available Cabinet meeting together with an officer report where appropriate. Under Section 9FE of the LGA, there is a duty on Cabinet to respond to the report, indicating what (if any) action Cabinet proposes to take, within 2 months of receiving the report and recommendations.

The recommendations from the scrutiny review and the draft responses from the Planning Service are noted, and that the responses reflect current law and practice.

As evident from the Panel's report, viability is a complex issue, especially in regards to the delivery of affordable housing, and there are several policy and legislative provisions that should be considered.

The local plan policy requirement for affordable housing SP2 is subject to viability.

Government guidance on viability is also a material consideration in planning applications. The National Planning Policy Framework (NPPF) is noted above. And in respect of planning obligations the NPPF states they should be sufficiently flexible to prevent planned development being stalled.

The Government's Planning Practice Guidance (PPG) states that viability should be based on current costs and values. Planning applications should be considered in today's circumstances. However, where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in costs of delivery may be considered.

This means any decision to impose a later post permission viability review needs to take into account the PPG, and if seeking to depart from the PPG e.g. by imposing later post permission viability reviews for non-medium or long term phased developments reasoned justification for such a departure should be given. Carrying out the recommendations may add weight to any such reasons for departure.

Further, any planning obligations such as post permission viability reviews need to satisfy the tests in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

The PPG (and a Ministerial Statement) also specify that contributions including affordable housing should not be sought from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1000sqm (gross internal area), which may affect current Haringey policy requirements for schemes where there are 10 units proposed. And a vacant building credit was also introduced, whereby the developer can claim a 'financial credit' which is the equivalent of the gross floor-space of any relevant vacant buildings being brought back into use or demolished as part of the scheme and then deducted from the overall affordable housing contribution calculation. This again will have implications for the delivery of affordable housing. So similarly when seeking to depart from any of this guidance, reasoned justification should be provided.

As indicated in paragraph 6.8 above, the Mayor of London has recently published a draft Affordable Housing and Viability Supplementary Planning Guidance 2016 for consultation, If and when it is adopted this will impact viability reviews and depending on the final version may make it easier for London local planning authorities to depart from current Government guidance and also change how they deal with viability assessments.

Future legislative changes also may affect affordable housing and consequently scheme viability. The introduction of starter homes by the Housing and Planning Act 2016 subject to regulations is expected to impact scheme viability and the type and quantity of affordable homes delivered. The PPG (and another Ministerial Statement) holds that for a starter homes exception sites policy local planning authorities are encouraged not to seek section 106 affordable housing and tariff-style contributions that would otherwise apply.

Section 106ZB of the Town and Country Planning Act 1990 (as amended) concerns the enforceability of affordable housing planning obligations, if and when it is brought into force with then regulations made under it may also affect how affordable housing is delivered (including viability reviews).

In terms of transparency, previously some developers have been reluctant to publicly disclose their viability reviews for commercial sensitivity reasons. There have been

several Information Commissioner's Office decisions centred around whether this information is exempt from disclosure on the basis that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest, and whether maintaining this exemption is in the public interest. Some recent decisions have held the information can be disclosed, but this may be dependent on the facts of each individual case. The PPG also states wherever possible, applicants should provide viability evidence through an open book approach to improve the review of evidence submitted and for transparency.

Equality

The Council has a public sector equality duty under the Equality Act (2010) to have due regard to:

- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- advance equality of opportunity between people who share those protected characteristics and people who do not;
- Foster good relations between people who share those characteristics and people who do not.

The Scrutiny Review recommendations are aimed at improving the consistency and transparency over the viability assessment process in Haringey. The development of a London Wide Viability Protocol should also improve the consistency of the process across London boroughs.

Sharp rises in both rental and house prices in Haringey are excluding many younger people and those with moderate household incomes from being able to afford home ownership. Increasing the supply of affordable housing through local planning policies and Section 106 is therefore a key strategic priority and contributes to equality of opportunity to access stable and secure housing. Improving the consistency and scrutiny of viability assessments supports this strategic goal.

9. Use of Appendices

Appendix 1 – report of Scrutiny Panel

Appendix 2 – Response by the Planning Service to recommendations

10. Local Government (Access to Information) Act 1985

Haringey CIL Charging Schedule <http://www.haringey.gov.uk/planning-and-building-control/planning/planning-applications/pre-application-guidance/community-infrastructure-levy-cil#cil-charging-schedule>

Appendix 1

Appendix 1 – report of Scrutiny Panel

