

Report for: Overview & Scrutiny Committee

Item number: 12

Title: Viability Assessments – Summary Report

Report authorised by: Cllr Charles Wright, Chair Overview & Scrutiny Committee

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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 in its budgetary and policy framework through conducting in-depth analysis of local policy issues and 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 Planning applications which are not compliant with requirements set out in the local planning policy framework are required to submit a viability assessment. This is essentially a financial statement provided by developers setting out the degree to which local planning obligations, such as the provision of affordable housing, can or cannot be met through the submitted planning application.
- 1.3 In this context, the Housing & Regeneration Scrutiny Panel (HRSP) conducted a review of the viability assessment process in Haringey. To support this review, a day long evidence session was held in a 'scrutiny-in-a-day' format, at which a range of contributors participated (including, Local Planning Officers, other Local Authorities and Developers and planning consultants)
- 1.4 This is a summary report detailing the key findings and the conclusions reached by the panel. Further to confirmation of the recommendations, a full report will be prepared ahead of submission to Cabinet.

2. Cabinet Member Introduction

N/A

3. Recommendations

- 3.1 That the Overview and Scrutiny Committee:
- (a) Note this summary report on viability assessments;
 - (b) Agree the recommendations set out in this summary report (as in 6.32);
 - (c) Agree that a full report is prepared ahead of the submission to Cabinet with updated legal and financial comments;
 - (d) That any variations to recommendations are agreed by the Chair in consultation with the Committee ahead of submission to Cabinet.

4. Reasons for decision

- 4.1 The report contains a summary of the key lines of evidence received by the panel together with its recommendations. These are required to be agreed by Overview & Scrutiny Committee before submission to Cabinet for approval.

5. Alternative options considered

- 5.1 The issue of viability assessments was selected for scrutiny review as part of the 2015/16 scrutiny work programme consultation. The Housing & Regeneration Scrutiny Panel received evidence from a range of contributors for this review, and in appraising all the evidence, these are the considered recommendations of the panel.

6. Background information

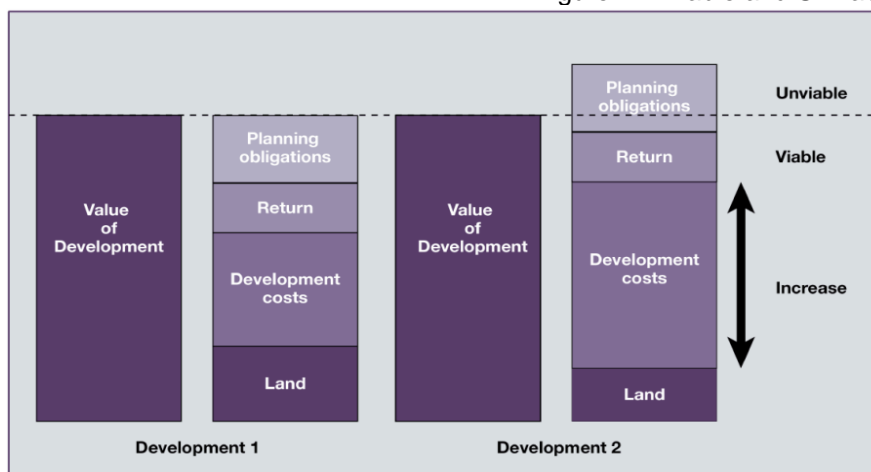
Context

- 6.1 Of the 42,870 affordable homes delivered in across the UK 2013, it is estimated that approximately 60% were funded by developers through S106 planning gain contributions. Recent legislative and policy changes however, have impacted on the number of affordable homes and other planning gains that may be delivered through this process.¹
- 6.2 Planning applications for major developments are required make a range of appropriate contributions to support requirements in the Local Plan (such as the provision of affordable housing, employment space or improvement to public realm). Such contributions can be made either through on site provision or cash in lieu of off-site provision.
- 6.3 Recent policy changes (National Planning Policy Guidance) however, mean where planning obligations renders a development unviable, developers may request that the Local Planning Authority (LPA) consider reducing these obligations in order to ensure that development still comes forward. In this context, it is now commonplace for planning applications to be supported by a financial appraisal or viability assessment submitted by the developer.
- 6.4 Viability can be demonstrated 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

¹ In the mix: the need for a diverse supply of new homes, Shelter, 2014 (p21)

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 development



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

- 6.5 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. This is because the value of an affordable housing unit is less than that of a similar sized private housing unit.
- 6.6 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 when applications are reported to them. In most council's this is done on a confidential basis.
- 6.7 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 target². Planning Policy can require that a review of viability takes place. Reviews 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.

Scrutiny Process

- 6.8 As part of the work programme consultation exercise 2015/16, the Housing and Regeneration Scrutiny Panel agreed to assess the viability assessment process. 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.'

- 6.9 In the context of the above, it was agreed that within this aim, there would be a number of component objectives:
- I. To review legislation and policy guidance in respect of development viability

² In Haringey, the current target is 40% of units to be affordable.

- II. To assess the Councils current policy and practice in respect of viability assessments and their role in delivering S106 outcomes – including affordable homes;
- III. To assess the policy and practice of viability assessments in operation at other local authorities with a view of identifying good practice in respect of:
 - a. Transparency – to members and the community;
 - b. Improving local challenge;
 - c. Increasing the provision of affordable homes.
- IV. To consider the potential impact of new legislation on viability assessments – Housing and Planning Act - in particular the requirement to provide for Starter Homes.
- V. To identify any further mechanisms, at the disposal of the Council, which may assist in maintaining levels of S106/affordable housing delivery in the Borough through viability discussions (e.g. ‘claw back’ or review arrangements).

6.10 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 2016³ at which a range of planning and viability experts were invited to contribute evidence. The session included contributions from the following groups:

- 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, Southwark and Islington;
- Developers, Planning Consultants and Housing Associations;
- London Forum of Civic and Amenity Societies.

6.11 The event programme as operated for the ‘scrutiny-in-a-day’ exercise with contributors is contained at Appendix A.

Methodological problems with viability assessments

6.12 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.

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

6.14 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);

³ An additional ‘mopping up’ exercise was held in May 2016.

- 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.

6.15 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.'*⁴

6.16 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 planning gain contributions (such as affordable homes). Indeed, it was noted that a 'viability industry' had developed in which specialist consultants have been remunerated for securing a reduction in planning gain contributions through the viability assessment process.

Transparency

6.17 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 it that these were 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.

6.18 The panel noted examples, both within and external to 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.

6.19 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.

6.20 Three local authorities gave evidence to the panel, all of which had introduced new Special Planning Guidance (SPG) for Viability Assessments within their respective

⁴ Real Estate & Planning, Working Papers in Real Estate & Planning 01/16, Business School, University of Reading

LPA. Improved transparency and openness for viability assessment processes were central to the new SPGs developed.

6.21 The panel were impressed with the approach taken by a London borough, which had taken a particularly robust approach to transparency. In this borough, viability assessments were published in full and without redaction ahead of Planning Committee determination, and to help promote community participation and engagement, the developer is also required to provide a summary of the 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 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 that the sale of land should be on a policy compliant basis (to help reduce over valuation).

6.22 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 with no issues raised by prospective developers.

6.23 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 allows 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

6.24 Review mechanisms are a means through 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.

- 6.25 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.
- 6.26 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 the reassessment of viability 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.
- 6.27 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.
- 6.28 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

- 6.29 A London Borough Officers Group (LBOG) has developed a viability protocol⁵ (February 2016) which is a response to widespread concerns as 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;

⁵ London Borough Development Viability Protocol, Consultation Draft, London Borough Viability Group (2016)

- Guidance on accepted data inputs and outputs for the models (land values, development costs, sales values);
- The use of review mechanisms.

6.30 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 Special Planning Guidance. 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.

6.31 The panel noted that if there was widespread adoption of the protocol within local SPG, 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.

Recommendations

6.32 The panel have made the following recommendations:

Viability Assessment Process

1. It is recommended that a new Special Planning Guidance (SPG) document is developed or that the existing SPG for Planning Obligations is updated to **reflect** the principles and practice recommended within the London Wide Viability Protocol.

2. 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%;

(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

Review mechanisms

3. (i) Recognising the time limited nature of viability assessments and the time lag from determination to commencement of development taking place on site, 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.

Transparency

4. (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 SPG.

Training, skills and expertise

5. (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 viability (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 SPG 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.

Policy, lobbying and support

(6) (i) That the Council write to the Mayor of London to encourage the adoption the 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).

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 and
- Priority 5 Creating homes and communities where people choose to live and are able to thrive

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

Finance and Procurement

As this is a summary report, full finance comments will be obtained for those recommendations agreed by the panel ahead of submission to Cabinet.

Legal

This is a welcome opportunity to review and improve how Councils (not just Haringey) manage viability issues. In particular to introduce or revise supplementary planning documents about viability and/or planning obligations would greatly assist all parties. Any new or revised guidance will need to take into account government policy (especially the National Planning Policy Framework and the Planning Practice Guidance). Viability should also be considered in plan making, and any new or revised guidance should similarly reflect the Council's up to date Local Plan.

Legal advice should be sought throughout this process, for instance in assessing to what extent exemptions in the Environmental Information Regulations 2004 and/or the Freedom of Information Act 2000 against disclosing commercially sensitive information need to be considered.

Equality

The Council has a public sector equality duty under the Equalities 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.

9. Use of Appendices

A – Event Programme for scrutiny in a day exercise

10. Local Government (Access to Information) Act 1985

- Haringey's Local Plan – Planning Obligations SPD, October 2014
- London Borough Development Viability Protocol, London Borough Viability Group, February 2016

Appendix A - Housing and Regeneration Scrutiny Panel Scrutiny in a Day (event schedule)
Viability Assessments – 7th April 2016
Haringey Civic Centre (CR1)

Timing	Session Aim	Lead
10.00	Introduction and welcome	Cllr Eugene Akwasi-Ayisi, Chair
10.05	Outline of the scrutiny process (1) the benefits of scrutiny involvement (2) aims & objectives of today's session (3) outcomes	Martin Bradford, 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 Graham Jones
11.00	Local Policy & Practice: the process of viability assessments in Haringey	Emma Williamson, 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.	Jacqueline Veater, Enabling and Engagement Manager Joe Baker, Head of Carbon Management
12.30-13.00	LUNCH BREAK	
13:00	The process of viability assessments	Anthony Lee, Senior Director, BNP Paribas
13:30	What can be learnt from the approaches taken in other local authorities?	Cllr Mark Williams, Cabinet Member for Regeneration and New Homes, LB Southwark Cllr Danny Thorpe, Cabinet Member for Regeneration and Transport, LB Greenwich
15:00	Developer and planning consultant perspectives on viability assessments.	Andrew Beharrel, Senior Partner, Pollard Thomas Edward Ben Spencer, Director, GS8 David Roach, Director, Dp9 Caroline Pennock, Business Development Director, Newl
16:30	Panel discussion – key findings, further evidence requirements, emerging recommendations.	Housing & Regeneration Scrutiny Panel
17.15	The next steps - close	

