

Report for: Housing and Regeneration Scrutiny Panel – 2nd October 2017

Item number: 11

Title: Viability Assessments – Scrutiny Project Update

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: NA

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.'

1.3 The panel held a day-long scrutiny event in April 2016 and a follow-up event in May 2016 which was attended by officers, viability experts, developers, housing associations and relevant officers from other councils.

1.4 The panel made a number of recommendations (these are set out in **appendix 1** below). The Council's response to the report was reported to Regulatory

Committee on 17th January 2017 and agreed by Cabinet on 25th January 2017. This report provides an update in terms of the progress that has been made in implementing the recommendations as agreed by officers.

2. Cabinet Member Introduction

- 2.1 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 were agreed. Officers have made progress on implementing the recommendations.

3. Recommendations

- 3.1 That the Panel note and endorse the actions being taken forward as a result of the panel's recommendations, which were agreed by Regulatory Committee, and are set out in **appendix 1**.

4. Reasons for decision

- 4.1 The evidence supporting the recommendation is outlined in the main body of the report (**Appendix 1**).

5. Alternative options considered

- 5.1 The reasons for actions taken following the panel's recommendations are outlined in appendix 1. Not implementing the recommendations has been considered however this would not assist in achieving strategic outcomes.

6. Background information

- 6.1 Since the HRSP embarked on this project there have been a number of changes in the context within which viability assessments are dealt with in the planning process. Most notably, The Mayor of London's Supplementary Planning Guidance: Homes for Londoners has been published (August 2017) (SPG). In it the Mayor sets out that he expects developers' viability information to be made public (including Council and third party assessments) as is generally the case with all other planning documents. He states that applicants should still have the opportunity to argue that limited elements should be confidential, but the onus is on the applicant to make this case.
- 6.2 The Mayor's approach is similar to that now taken by the Council, as set out in the Council's Local List of Planning Application Validation Requirements. This sets out a default position that the full viability assessment will be published when the affordable housing level has been agreed with officers prior to the committee report being published (applicants will need to provide reasons for any information to be redacted at this stage). Up until that point a redacted version must be published as a minimum. The Local List was subject to public and stakeholder consultation and the approach set out did not attract

objections. Indeed, the approach set out in the Council's Local List and the Mayor's SPG is becoming the norm across London and applicants and developers are becoming less adverse to the approach.

- 6.3 The full suite of HRSP recommendations and subsequent actions are set out in **Appendix 1**.

7. Contribution to strategic outcomes

- 7.1 The work 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

- 8.1 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

- 8.2 The update to the recommendations is noted. And as indicated in the report the Mayor's SPG has now been published. In addition, Government guidance on viability in the National Planning Policy Framework and Planning Practice Guidance remain a material consideration for planning applications.

Equality

- 8.3 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- 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 three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

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. The intention of the recommendations currently being implemented, and the Mayor of London's latest SPG, is to increase the amount of affordable housing developed, with the intention of retaining and creating mixed, balanced communities. This should benefit those individuals and families who are currently unable to afford home ownership and high rental prices in the current market.

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 in accessing stable and secure housing.

9. Use of Appendices

Appendix 1 – Scrutiny Panel recommendations and Planning Service response.

10. Local Government (Access to Information) Act 1985

Background Documents

Affordable Housing and Viability – Supplementary Planning Guidance 2017

<https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/supplementary-planning-guidance/affordable-housing-and>

Appendix 1

Recommendation from Scrutiny Review	Planning Service Response	Update
<p>1. <u>Viability Assessment Process</u></p> <p>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.</p> <p>In addition, new viability assessment guidance that is developed and published should reflect the following:</p> <p>(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).</p> <p>(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:</p> <p>(a) The LPA should emphasise to prospective developers that it will not accept ‘market value’ approach to land values within such calculations</p> <p>(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%;</p>	<p>Agreed. A new SPD is currently under preparation.</p> <p>This is already the case.</p> <p>This is already set out in the current Planning Obligations SPD</p> <p>Cannot be agreed. Profit levels should reflect the current state of the market and applicants should justify their proposed profit level taking account of the current state</p>	<p>The S106 SPD is scheduled for Cabinet on 17th October 2017. This was delayed to take account of the Mayor’s Housing SPG.</p> <p>This is carried forward in the new draft SPD</p>

<p>(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</p>	<p>Cannot be agreed. There is no legal basis for this.</p>	
<p><u>2. Review mechanisms</u></p> <p>(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.</p> <p>(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.</p>	<p>Partially agreed. Currently major applications usually have a review mechanism such that if applications are not implemented within 18 months the viability will need to be rerun prior to implementation. It is intended to stipulate this within the new Planning Obligations SPD.</p> <p>Not agreed but an alternative is proposed: As above a reassessment should be conditioned where development does not commence within 18 months of grant. On large phased major development schemes a review mechanism should also be employed prior to commencement of a particular phase or phases, with any uplift to be delivered in the latter phases of the scheme. Where major development is not proposed to be phased, the s106 should include a 'clawback' based on sales value uplift only – with the sales value in sqft agreed between the Council and developer either at grant and/or upon reassessment prior to commencement, with an 80:20 profit share. The sales values to be assessed after the sale of the final unit.</p>	<p>This 18 months review is included in all major application decision notices.</p>
<p><u>3. Transparency</u></p> <p>(i) It is recommended that to improve transparency, promote scrutiny and public confidence in the viability assessment process, it</p>	<p>Partially agreed. The Local validation requirements that is currently being consulted on sets out that the Council's default position is that viability assessments</p>	<p>The Local List of Validation Requirements now sets out a default position that the full viability assessment will be published when the</p>

<p>is recommended that all viability assessments are made public in their entirety and without redaction.</p> <p>(ii) It is also recommended that a summary of the viability assessment is published alongside the application at validation.</p> <p>(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.</p> <p>(iv) That the housing and regenerations scrutiny panel is formally consulted on the emerging new SPD.</p>	<p>should be published in full prior to the determination of the planning application, after negotiations have been concluded, in line with recent Information Commissioner decisions. In some cases it may be appropriate for some information to be redacted however the onus is on the applicant to make this case on a case by case basis.</p> <p>This is already the case.</p> <p>Partially agreed. The contracts are between the Council and the viability consultant in any case and as such it is not agreed that there is a conflict of interest. Despite this the Council is working with the procurement team to put this system in process.</p>	<p>affordable housing level has been agreed with officers prior to the committee report being published (applicants will need to provide reasons for any information to be redacted at this stage). Up until that point a redacted version must be published as a minimum.</p> <p>The Planning Service is procuring specialist viability consultancy services which will be paid for by the Council, the costs will then be recouped from individual applicants. The tender for this contract will be put out in October 2017.</p>
<p>4. <u>Training, skills and expertise</u></p> <p>(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:</p> <p>(ii) that additional dedicated training on viability assessments is provided to existing Planning Officers;</p> <p>(ii) that the Local Planning Authority explore ways (possibly in cooperation with neighbouring</p>	<p>Agreed. Training to be carried out for all Planning Officers in April 2017.</p> <p>Not Agreed. The GLA are setting up a viability unit that will be used instead.</p>	<p>The training has been put-back to autumn 2017.</p>

<p>Planning Authorities) to recruit and retain a specialist quantity surveyor (this would not preclude the need to commission specialist viability consultants).</p> <p>(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:</p> <p>(a) expectations of the London Wide Viability Protocol;</p> <p>(b) emerging changes to the viability landscape (e.g. Mayor of London Housing SPG, London Housing Commission)</p> <p>(c) recent legal cases and legal precedent;</p> <p>(d) once updated, viability requirements as set out in the new / updated local SPD on viability/ planning obligations for Haringey LPA.</p> <p>(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.</p>	<p>Agreed. Training has previously been provided and a further dedicated session will take place in 2017/18 following a review of the member training programme.</p> <p>Agreed.</p>	<p>The Planning Service has arranged training by a leading viability assessor to be delivered 30th October 2017.</p>
<p>5. <u>Policy, lobbying and support</u></p> <p>(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.</p> <p>(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</p>	<p>Agreed however it is noted that this has been superseded by the Mayor's own viability SPG that is expected to be issued for consultation shortly.</p> <p>Agreed. Although it is noted that the Mayor's SPG is expected to cover this in any case.</p>	<p>The Planning Service reviewed the consultation on the Mayor's SPD, which has now been published. The Planning Service support the content of the SPG.</p>

DCLG for greater clarity in guidance (or make representation to London Councils, or Mayor of London to lobby on its behalf).		
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