

Affordable Housing Viability & confidentiality

Explanation behind change to planning application validation checklist requirement and updates to draft Planning Obligations SPD proposed for adoption.

Summary

1. This report sets out how Merton (in line with other London boroughs and the GLA) are looking to improve how they deal with assessing development viability of planning applications, in particular to support affordable housing. This focus is in line with the recommendations arising from the Housing Scrutiny Task Group's final report (October 2015)
2. A pan-London borough officer group has developed a protocol for the whole of London (see Appendix 1) to agree a consistent approach to addressing viability considerations across the boroughs.
3. The new Mayor of London has set affordable housing as a top priority and will be using the protocol to inform the new London Plan policy and guidance surrounding viability and affordable housing.
4. The government has also commenced reviewing viability, in particular the potential to standardise the types of viability information that is assessed.
5. This report sets the background how Merton proposes to address this issue, in particular to support the recommendations to Cabinet meeting on 19 September 2016 to seek adoption of the revised Planning Obligations SPD and a revised planning application validation checklist to support the improved approach to addressing viability in planning applications.

Details

6. Development viability has become an important consideration within the planning process as established by the National Planning Policy Framework 2012 (NPPF) paragraph 174 which states "To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable"
7. Viability testing is undertaken when boroughs produce Local Plans and when considering planning applications. This influences the extent to which new developments meet Local Plan requirements, in particular the provision of affordable housing, infrastructure and compliance with environmental policies.
8. Development viability is assessed by comparing the net or "residual" value of a development (after deducting its costs from its revenue) with the value of the land. If the former is sufficiently greater than the latter and would provide a competitive return to a willing developer then the development is considered "viable" and the landowner could be expected to release the land for development.

9. Many developers state that only minimal levels of affordable housing, well below policy targets, can be viably delivered with their planning application and there are constant challenges in assessing viability on most housing sites.
10. In March the previous Mayor of London adopted his London Plan Housing Supplementary Planning Guidance (SPD), which includes updated support for the application of approaches to viability including on land value (support for the “Existing Use Value plus a Premium” approach, the use of review mechanisms for both multiple and single phased schemes, and considerations as to how to address viability in private rental sector schemes.
11. The new Mayor of London, who has made affordable housing one of his top priorities, is expected to carry out an overhaul of the London Plan over the first year of his term, to be preceded by an initial statement on policy and guidance within the next couple of months, with a strong affordable housing and viability emphasis.

Transparency of Viability Submissions

12. Viability submissions made by planning applicants have traditionally been considered as commercially confidential. However recent judgements of the Environmental and Information authorities have challenged this position, and in May this year the Environmental Information Tier 1 Tribunal found overturned all reasons to withhold disclosure of full and detailed viability information of a proposal the Streatham Megabowl site, in the London Borough of Lambeth.
13. In their report the panellists made points about the reality of viability information only being a forecast and not sufficiently reflective of actual costs and values that would undermine confidentiality. Also critically the panellist considered that scheme size does not change whether viability information should be disclosed, with the public interest need in terms of affordable housing overriding the reduced commercial interest attached to withholding making the information public, irrespective as to scheme scale or whether or not other community benefits are at stake.
14. Internal legal advice has urged planning authorities to use this as precedence as far as supporting approaches to make all viability submissions made in support of planning applications public, provided that applicants are made aware that their submissions are being made on this basis through updates to published lists of planning application submission requirements, via borough validation checklists/supplementary planning guidance so that authorities can best insure against the risk of exposure to breach of commercial confidentiality claims by applicants.

London Borough Protocol

15. A borough officer group was set up in late 2014 to discuss experiences, challenges and approaches to assessing viability with the aim of improving outcomes for councils and local communities. A key action of the group has been to produce a joint protocol drawing on best practice to set out overarching principles for considering development viability in line with the NPPF and the national Planning Practice Guidance (PPG).
16. The aim of the protocol is to provide greater clarity to applicants regarding the information required from development viability appraisals, and to address key issues such as the transparency of information, land value and the use of review mechanisms to assess whether greater policy compliance could be achieved after permission has been granted.

17. Officers from other London boroughs have been in discussions with CLG and it is understood that the new Mayor of London's will take much of the protocol to inform guidance and policy development, both the initial statement expected over the next couple of months and the new London Plan over the coming year. The protocol has been consulted on publically over February/ March 2016.
18. The protocol will allow an opportunity for boroughs to demonstrate, a borough-led option for how a standardised approach could work, and thereby influence the development of Government policy in this area.
19. Other London Boroughs have sought to address these issues through updates to Supplementary Planning Guidance and/or changes to their local checklists of requirements for planning application submissions.

Merton's approach

20. Following the recommendations of the Affordable Housing Task Group last year, officers have been investigating ways to improve the robustness in how Merton assesses viability appraisals, and on the back of the London borough officer group, the viability protocol and Mayor of London guidance, have identified the following two key priorities:
 - (i) Increasing transparency in viability submissions to Merton: It is proposed to amend the local validation checklist to require the submission of viability information when the planning application is submitted to allow a timely and robust assessment of viability information, and clarity that all viability information will be made available to Councillors and the public and that applicant's submissions will be accepted on the assumption that the applicant agrees to this.
 - (ii) Update and adopt the revised planning obligations SPD: so that it reflects up to date London Plan supplementary planning guidance on viability set out in the Mayors Housing SPD adopted in March, any relevant conclusions to the Government review, the London Viability Protocol and providing the subtext to the aforementioned changes to the validation checklist.

BACKGROUND PAPERS

[Part 4 of the London Plan Housing SPG \(March 2016\)](#)

[London Borough Protocol](#) – draft published for consultation (February 2016)

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