

## APPENDIX 1

# Merton's development viability supplementary planning document.

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Supplementary to Merton's Local Plan

For Adoption – 23<sup>rd</sup> May 2018 Cabinet Meeting

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## About Merton's Development Viability SPD

Merton's Development Viability Supplementary Planning Document (SPD) has been prepared to support the implementation of Merton Local Plan and the Mayor's London Plan policy requirements where a developer wishes to challenge planning policy on development viability grounds.

The most common matter that developers challenge as being economically unviable is the amount of affordable housing they can provide with their scheme.

This SPD covers the whole geographic area of the London Borough of Merton.

The document signposts to the Mayor's the Mayor of London adopted "*Homes for Londoners: affordable housing and viability supplementary planning guidance*" which applies to all London boroughs, including Merton.

[https://www.london.gov.uk/sites/default/files/ah\\_viability\\_spg\\_20170816.pdf](https://www.london.gov.uk/sites/default/files/ah_viability_spg_20170816.pdf)

The Mayor's *Home for Londoners: affordable housing and viability SPG* is very comprehensive guidance, setting out the background, explaining inputs into viability assessments and setting out clearly what can be expected of applicants. It is also helpful for residents and others who are interested in development.

The document is to be read in conjunction with **Merton's Planning Application Validation Checklist** which sets out the information that applicants must submit to the council from the outset when making a planning application.

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### ***Regulations and good practice***

The National Planning Policy Guidance (NPPG)

<https://www.gov.uk/government/collections/planning-practice-guidance> states that supplementary planning documents should build upon and provide more detailed advice or guidance on the policies in the Local Plan. They should not add unnecessarily to the financial burdens on development and should be prepared only where necessary and in line with paragraph 153 of the National Planning Policy Framework.

Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012 set out the requirements for producing Supplementary Planning Documents; this document has been produced under these Regulations.

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# 1. Introduction

1.1. This document is written to be used by people and organisations who are submitting planning applications to the council that they believe will not be able to comply with the council's planning policies and still be viable. This document is a technical guide; it assumes knowledge and understanding of planning and property terms.

1.2. The **purpose** of this Supplementation Planning Document is:

- *To endorse the Mayor of London's Affordable Housing and Viability SPG 2017 for the purposes of assessing planning applications and decision making for all planning applications in Merton*
- *To emphasize the importance of transparency in development viability, and to send a clear signal that all information in development viability appraisals submitted with planning applications in Merton should expect to be published.*
- *to provide additional guidance to developers, the public, and other stakeholders, on the approach to assessing viability through the planning process.*
- *to be read in conjunction with the planning application submission requirements for viability appraisals set out in Merton's local requirements within its Planning Application Validation Checklist 2018*
- *support relevant policies in the Merton Local Plan, particularly affordable housing policy but also in respect of any other development plan policies (comprising the London Plan and the Local Plan) where viability is a consideration.*
- *Applied as a material consideration in decision-making with respect of planning applications.*

## Why are we preparing this guidance?

1.3. Since the publication of the National Planning Policy Framework (NPPF) in 2012 viability has become a central part of the planning system.

1.4. However, there is no single standard for conducting development viability appraisals and there has been much debate amongst property and planning professionals about the best way to do them

1.5. There is also concern that viability assessments are being submitted to authorities that artificially estimate that the development is not viable, or marginally viable, which reduces the amount of affordable housing or other planning obligations.

1.6. This has resulted in growing recognition of:

- the need for greater consistency in the approach to viability;
- the need to ensure that viability appraisals are formed of inputs that are supported by robust evidence,
- greater transparency in the viability process.

### **What is development viability?**

1.7. For development to take place it has to generate a return that reflects the risks developers take and also generate a land value that incentivises landowners to release their sites for development.

1.8. The value generated from the development must exceed the costs of undertaking that development.

1.9. There are a number of factors that determine both value (such as how much rent a landlord might be able to charge for their site or how much a site might sell for) and cost (such as the cost of construction), and the calculation of all of these defines whether a development proposal is economically viable.

1.10. A development is viable if the value generated exceeds the cost of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken. The NPPF 2012 paragraph 173 states:

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the 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, 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 land owner and willing developer to enable the development to be deliverable.”*

1.11. Viability is therefore a key factor in determining whether a development proceeds or not. If developments do not generate reasonable returns for developers and landowners, sites won't come forward for new investment and we won't see new homes, shops and business space built locally.

### **Greater transparency and speed in the planning system**

1.12. Where residents, businesses, councilors, property owners and others do not have access to viability evidence they are unable to reach their own view of whether the

information is reasonable and robust, thus undermining confidence in the planning system. The Environmental Information Regulations (EIR) apply a presumption in favour of information disclosure; the exceptions are limited and even then, in most cases, it is necessary to decide whether the public interest is best served by the information being disclosed.

- 1.13. The importance of the principle of disclosure of viability information in planning cases has also been emphasised in several recent Information Tribunal decisions.
- 1.14. One of the key priorities for Merton Council in producing this guidance is to improve transparency in the planning system. Merton's approach is to state clearly that we expect information contained within development viability appraisals to be published.
- 1.15. As part of our approach to ensuring a robust assessment of development viability we require development viability appraisals to be submitted up-front with the planning application (for planning applications that require a development viability assessment, namely where the applicant wants to challenge a policy on viability grounds). Planning applications that require a development viability assessment won't be validated unless we receive one at submission to enable the time for a robust assessment without causing any delays to deciding the application. Merton's Validation Checklist is being updated to reflect this approach.

### **Endorsing the Mayor of London's Affordable Housing and Viability guidance**

- 1.16. The Mayor of London developed his Affordable Housing and Viability SPG 2017 <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/supplementary-planning-guidance/affordable-housing-and> in a response to the issues set out above and as part of his approach towards improving delivery of affordable housing
- 1.17. On 28th November 2017 the Mayor also published his new London Plan for consultation, so as to elevate the viability requirements included in his Affordable Housing and Viability SPG 2017 to development plan policy status.
- 1.18. The Mayor's Affordable Housing and Viability SPG applies across all of London, providing comprehensive guidance on development viability. This SPG has been designed to support more informed scrutiny of developer's viability submissions.
- 1.19. Merton's approach is to endorse the Mayor's SPG and apply it to all planning applications submitted to Merton Council that require a development viability assessment (i.e. not just those that are referable to the Mayor of London).

## 2. Policy context

2.1. The role of this SPD is to set out the Council’s development viability requirements for planning applications, providing additional guidance to help implement statutory development plan policies in Merton.

2.2. The statutory development plan in Merton is currently:

- Merton’s Sites and Policies Plan 2014
- Merton’s Core Planning Strategy 2011
- The Mayor’s London Plan 2016
- The South London Waste Plan 2012 (*not relevant for this SPD*)
- Merton’s Estates Plan 2018 (if adopted on 7<sup>th</sup> February 2018)

2.3. Merton’s Core Planning Strategy policy CS.8 *Housing choice* states:

*We will:*

- a. Require proposals for new homes including new build schemes and redevelopment proposals to be well designed and located to create socially mixed and sustainable neighbourhoods.*
- b. Seek the provision of a mix of housing types sizes and tenures at a local level to meet the needs of all sectors of the community. This includes the provision of family sized and smaller housing units and provision for those unable to compete financially in the housing market sector and those with special needs. All new housing will be built to lifetime home standards and 10% of new housing will be wheelchair accessible or easily adaptable for residents who are wheelchair users.*
- c. Aim for the borough-wide affordable housing target of 40% which is equivalent to the numerical target of 1,920 affordable homes in Merton for the period 2011-2026.*
- d. We will expect the following level of affordable housing units to be provided on individual sites:*

Threshold	Affordable housing target (units)	Affordable housing tenure split	Provision requirement
10 units or more	40%	60% social rented and 40% intermediate	On site; Only in exceptional circumstances will the council consider the provision of affordable housing off site or financial contribution in lieu of provision on site and this must be justified.

1-9 units <sup>1</sup>	20%	60% social rented and 40% intermediate	Provision of an affordable housing equivalent to that provided on-site as a financial contribution.
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- e. *In seeking affordable housing provision we will have regard to site characteristics such as site size, site suitability and economics of provision such as financial viability issues and other planning contributions.*

### **National Planning Policy Framework / Guidance**

- 2.4. NPPF paragraph 173 states that: *“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 land owner and willing developer to enable the development to be deliverable”.*
- 2.5. National Planning Practice Guidance (PPG) states that decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.
- 2.6. The Council has also had regard to government’s consultation draft NPPF and PPG - March 2018 when preparing this SPD.

### **London Plan**

- 2.7. Current London Plan (2016) policy 3.12 states, among other things, that negotiations on sites should take account of their individual circumstances including development viability. At paragraph 3.71 the London Plan advises, “developers should provide development appraisals to demonstrate that each scheme provides the maximum reasonable amount of affordable housing output” and directs boroughs to “evaluate these appraisals rigorously, drawing on assessments which take account of the individual circumstances of a site, the availability of public subsidy and other scheme requirements”.
- 2.8. The new draft London Plan (consultation draft December 2017; Policy H6 Threshold approach to applications) sets out a threshold approach to development viability<sup>2</sup> whereby:
- proposals which are providing 35% (or 50% for proposals on strategic industrial locations, local significance industrial sites, other industrial sites deemed appropriate for release and public sector land) or more affordable housing on site

<sup>1</sup> (as at January 2018, this element of the policy is not being applied in Merton following government’s Ministerial Statement)



and without public subsidy will not be required to submit a viability appraisals ('Fast Track' route).

- Those proposals not meeting the 35% threshold will be required to submit an appraisal ('Viability Tested' route).

2.9. The new London Plan also sets out the Mayor's approach to review mechanisms, transparency of viability information and Build to Rent schemes.

2.10. The Mayor of London published his Affordable Housing and Viability Supplementary Planning Guidance (SPG) in August 2017. The SPG introduces the threshold approach to viability and provides detailed guidance supporting the new and current London Plans.

2.11. The London Borough Viability Group was formed in 2014 in response to the increasing emphasis placed on development viability in the planning process. The Group draws together planning, housing and surveying officers from councils across London to consider best practice in the assessment of viability.

2.12. The London Borough Viability Group<sup>3</sup> has produced a non-statutory Development Viability Protocol published in November 2016 following public consultation to provide additional advice on the information requirements and approaches to be applied by London boroughs when assessing viability. The protocol is supported by Merton, as one of the members of this group, and much of its guidance is reflected in this SPD.

### 3. Preparing and submitting a development viability assessment

- 3.1. In accordance with Merton’s Local Plan and Mayor of London policy requirements, developers are required to supply viability information where necessary to demonstrate that a scheme is maximising affordable housing.
- 3.2. All financial viability appraisals should be accompanied by the following:
  - An **executive summary** setting out the key findings and conclusions of the financial viability appraisal. This should clearly explain the applicant’s reasoning why it would not be economically viable for the proposed development to comply fully with Local Plan and Mayor of London requirements.
  - A **fully working Argus Developer software model** that can be tested. The council will accept alternative models (e.g. Microsoft Excel based appraisals) provided they explicitly show the calculations and can be fully interrogated and the inputs varied.
  - A table that clearly sets out all the assumptions, inputs, benchmarks finally agreed for the application stage appraisal that together would enable any competent person to rerun the application viability appraisal and get the same result. The table should also contain notes against each assumption, input and benchmark as to how it will be dealt with in the viability review (to be secured under the s.106 agreement)<sup>2</sup>, e.g. whether the assumption/input/benchmark is fixed as per the application appraisal or whether actuals will be reviewed and how estimates will be established, or uplifted based on indices or freely available public data sources (list source and public location of source). This table must be appended to the viability appraisal. The viability review sections of the s.106 agreement will need to tie in to this table.
- 3.3. If changes are made to the proposal during the process of assessing the application that could affect viability or there is a material change in circumstances to the scheme, Merton Council will expect to receive a revised viability appraisal.
- 3.4. In addition to the above, Merton Council endorses the Mayor of London’s Affordable Housing and Viability SPG and requires the same level of inputs and approach within it for all planning applications in Merton that require a development viability appraisal. This should be commensurate with the scale of development.

#### Viability appraisal methodology

- 3.5. A development is deemed to be viable if the value generated exceeds the costs of the development and also provides sufficient incentive for the land to come forward and the development to be undertaken. The residual land value approach is most commonly

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<sup>2</sup> A legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) secured in connection with the granting of planning permission. Section 5 – “Review Mechanisms” – provides more information on viability reviews.

used for assessing development viability, is identified as the approach used in the Mayor's SPG and is supported by Merton.

- 3.6. Merton expects applicants to provide appraisals based on a methodology, inputs and assumptions that meet the requirements of the Mayor of London (Affordable Housing and Viability SPG 2017; published London Plan 2016 and consultation draft 2017). Applicants must use all reasonable endeavours to ensure that all inputs and assumptions are evidenced and benchmarked against publically available sources. As set out in paragraph 3.2 of this SPD, applicants should set out a list of all assumptions and inputs in a table showing the reference document and benchmark used to support each respective assumption/input.
- 3.7. Availability of public subsidy to support affordable housing assumptions should be fully evidenced including documentation from the Greater London Authority and Registered Providers.

### **Requirements for the stages in the planning viability assessment process**

#### ***Stage 1 – pre-application (will be kept confidential)***

- 3.8. Applicant must provide draft viability inputs and their preferred methodology to inform their planning application development viability submission, thereby speeding up the planning process.
- 3.9. The level of information required at this stage will depend on the scale and nature of the proposed development.

#### ***Stage 2 – planning application submitted (will be published on the council's website)***

- 3.10. Applicants must provide a full un-redacted financial viability appraisal wherever the applicant states their scheme cannot comply with planning policies for viability reasons (including, in accordance with the Mayor's Affordable Housing and Viability SPG 2017 'Viability Tested' route schemes with respect of affordable housing requirements).
- 3.11. This is to be provided when the planning application is submitted to the council, as set out in Merton's local requirements within its Planning Application Information Validation Checklist 2018.

#### ***Stage 2(a) – varying a planning decision***

- 3.12. Where an application made under section 73 of the Town and Country Planning Act 1990 (to vary or remove conditions associated with a planning permission) proposes:
  - a reduction in the number of units/habitable rooms/habitable floorspace for affordable housing, or
  - has the effect of increasing the number of overall residential units and/or varying the tenure mix, and

- in any other case where the council considers it is warranted,

the applicant will be required to submit an updated viability appraisal to assess any associated change in the provision of planning obligations unless the amendments mean that the revised development now complies fully with planning policy requirements. Where the original application was approved under the Fast Track route, the submission of an appraisal wouldn't be required to support the section 73 application if the development as amended would continue to meet the Fast Track route criteria (see Mayor's SPG paragraph 2.14). The need for updated viability appraisals where section 73 applications relate to developments with no residential element will be considered on a case by case basis.

### **Independent assessment**

- 3.13. Financial viability appraisals will be reviewed by the council or may be referred to council-appointed assessors for independent assessment. As set out in policy CS.8 *housing choice*, applicants will be expected to meet the costs associated with reviewing financial viability appraisals. Applicants will also be required to meet the costs of any subsequent reviews that may be needed, including where the application is subject to an appeal.

## 4. Transparency

- 4.1. Information relevant to plan-making and the planning application process is publicly available. This is consistent with the NPPF (paras 66 and 69) which places a requirement on local authorities to facilitate community involvement in planning decisions.
- 4.2. The PPG states that transparency of viability evidence is encouraged wherever possible (PPG Viability paragraph 004).
- 4.3. The Mayor of London also encourages the transparency of viability information to increase understanding and public trust in the planning process. The Mayor's Affordable Housing and Viability SPG 2017 states that there will only be very exceptional circumstances for keeping limited elements of viability information confidential. (Affordable Housing and Viability SPG, (August 2017), para 1.2)
- 4.4. The Environmental Information Regulations 2004 ('EIR') cover access to 'environmental information' held by public authorities including local planning authorities. 'Environmental information' for these purposes includes information relating to development viability. Under the EIR there is a presumption in favour of disclosure of environmental information. The EIR recognise that there are certain circumstances ('exceptions') where environmental information may fall not to be disclosed. In most cases, a balancing exercise has to be carried out to decide whether the exception should outweigh the presumption in favour of disclosure.
- 4.5. The availability of information submitted as part of the planning process is important to ensure public participation, confidence in the planning system and the accountability of those undertaking the assessments. The council's starting point is that information submitted as part of, and in support of, a viability assessment should be treated transparently and be available for wider scrutiny. As reflected in Merton's local requirements within its Planning Application Validation Checklist 2018, viability appraisals should be submitted without redaction. In submitting information, applicants do so in the knowledge that this may be made publicly available alongside other application documents. Revised or updated appraisals will similarly be treated in accordance with the principles set out in this section with regard to publication.
- 4.6. In deciding whether there is any reason why the submitted viability information should not be published alongside other planning application documents, the council will draw on the principles of the EIR. The council will depart from the starting point identified above only where there is a convincing case, in relation to specific elements of a viability assessment that one or more of the exceptions to disclose as contained in the EIR would apply so as to outweigh the public interest in disclosure of that information.
- 4.7. Where an applicant requests that only a redacted version of the development viability appraisal be made public, robust and proper justification for confidentiality will be required and should be made prior to the submission of a planning application.
- 4.8. If an applicant wishes to make a case for an exceptional circumstance in relation to withholding any part of their viability assessment from publication, they will need to

identify exactly what material they would wish to be withheld and provide full justification. This should take the form of a schedule or a table clearly identifying the relevant information, together with a marked up copy of the appraisal document. The council will consider the specific circumstances of the case in the light of the principles of the EIR. The council may decide not to accept the applicant's request that information should not be disclosed to the public.

- 4.9. Where a review of an applicant's financial viability appraisal is carried out on behalf of the local authority, disclosure of that review and, where different from the original appraisal submitted by the applicant, disclosure of the finally agreed viability appraisal that is used to inform decision making on the planning application, will reflect by the approach taken in relation to the originally submitted appraisal.
- 4.10. Irrespective of whether viability material is published alongside other application documents, the material may be made available to Members of the council's Planning Applications Committee, or to Members of the council more generally, in accordance with the arrangements for disclosure of information as provided for in the council's constitution.
- 4.11. The council may also need to make information available to a third party organisation where that body has a role in determining an application (e.g. the Mayor of London), has statutory consultee or other duties, is providing public subsidy or is fulfilling their own duties under the EIR and freedom of information legislation.
- 4.12. In the event a request from a third party is received for disclosure of viability information which has not been published online and which falls outside the scope outlined above, for example where the request is made by a member of the public, the council will have regard to the matters arising from the application when applying the EIR to the request.

## 5. Review mechanisms

- 5.1. Inputs into viability appraisals (e.g. sales values, rental yields etc) are typically determined based on current day values available at the time of the grant of planning permission.
- 5.2. However it may take many months and years between the assessment of the planning application and the day that the development is built and occupied. Review mechanisms address economic uncertainties which may arise over the lifetime of a development proposal.
- 5.3. Provisions for re-appraising the viability of schemes may form part of section 106 planning agreements. Review mechanisms will not be used to reduce the amount of affordable housing agreed when planning permission was granted.
- 5.4. In accordance with Mayor of London requirements (Affordable Housing and Viability SPG 2017 and the New London Plan consultation draft 2017) reviews may be sought under the 'Viability Tested route' on phased and non-phased schemes. Exactly when the review should take place (known as the "Trigger" for the review) will be agreed between the council and the applicant, having regard to the specifics of the proposed development and this will be determined through the assessment of the application.
- 5.5. The council will normally require viability reviews to take place at the following stages for all schemes not meeting the 35% affordable housing threshold:
  - Early reviews to be carried out upon substantial implementation of the development (e.g. commencement of above ground works) triggered in the event construction does not commence within 2 years of the grant of planning permission.
  - A near-the-end-of-development review, as soon as 75% of units have been sold, occupied or substantially completed in accordance with the Mayor of London requirements.
  - On phased developments, an additional viability review may be required prior to substantial completion of development phases (known as a mid-term review) to secure any uplift on subsequent phases.
- 5.6. In accordance with Mayor of London requirements (New London Plan (December 2017) and Affordable Housing and Viability SPG (August 2017)) for 'Fast Track route' schemes that meet or exceed the 35% threshold, an early review mechanism will be triggered if an agreed level of progress on implementation has not been made within two years of the permission being granted.
- 5.7. Any contribution arising from a review of viability would be capped by relevant policy requirements. In other words, if the Development Plan policy in place at the time was

for 50% affordable housing, the council could not insist on more than this. Share of any surplus will be in accordance with Mayor of London requirements.

- 5.8. Where reviews take place prior to or at an early stage of development delivery the council's priority will be for the delivery of additional on-site affordable housing. Where reviews take place at a later stage, the practicalities of delivering additional affordable housing on site may mean that off-site affordable housing or a commuted sum will be sought. For example, if the trigger for the late-stage review is the sale of at least 75% of the homes built on site, it would not be practical for the council to then insist on some of these sold homes now becoming affordable housing. Off-site provision must be fully justified and any costs met by the developer (e.g. design, professional / legal fees etc.)