

Subject: Development Viability

Report to: Planning Committee

Report of: Executive Director of Secretariat

Date: 17 November 2015

This report will be considered in public

1. Summary

- 1.1 Members are asked to note this report as background to discussing with invited experts issues surrounding development viability in London, the impact on delivering affordable housing and the scope for further Mayoral guidance.

2. Recommendation

- 2.1 **That the Committee note this report as background to discussing with invited experts issues surrounding development viability in London, the impact on delivering affordable housing and the scope for further Mayoral guidance.**
- 2.2 **That the Committee agrees to use part of its next meeting on 26 January 2016 to discuss with officers from the GLA Planning Team issues arising from this meeting and any implications for future Mayoral guidance on development viability.**

3. Background

What is development viability?

- 3.1 For commercial development to take place it has to make a profit - the value (revenue) generated from the development must exceed the costs of undertaking that development. There are a number of factors that determine both revenue and costs, and the calculation of these defines whether a development proposal is economically viable. Viability is therefore the key factor which determines whether a development proceeds or not.

Policy context

- 3.3 The National Planning Policy Framework (NPPF) is clear that the scale of obligations and policy requirements that are set out in local plans, should not be high enough to threaten development viability.
- 3.4 Paragraph 173 of the NPPF sets out 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.”¹

- 3.5 Section 106 of the Town and Country Planning Act 1990 allows local authorities to require certain conditions that make a development proposal acceptable in planning terms. The common uses of planning obligations are to secure affordable housing, and to secure financial contributions to provide supporting infrastructure for the development.
- 3.6 The Growth and Infrastructure Act (2015) inserts further provisions into Section 106 of the 1990 Act. These sections introduce a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing. It allows a developer to apply to renegotiate contributions based on a claim of lower development viability relative to the conditions that prevailed when permission was first granted.
- 3.7 The test for economic viability is that the evidence indicates that the planning obligations (as currently agreed) make the scheme unviable in current market conditions. Evidence is normally provided through a viability assessment, either at the application stage or when obligations are being reviewed under the provisions of the Growth and Infrastructure Act.
- 3.8 The issue of viability assessments, and the impact they are having on the delivery of affordable housing, has been described as “the most controversial aspect in planning at the moment.”²

The role of the Mayor and the GLA

- 3.9 The Mayor has a role in providing strategic leadership in London on the delivery of affordable homes and advocating best practice. The Mayor sets policy on development viability through London Plan Policy 3.12,³ which is similar to that provided through the NPPF.
- 3.10 The Mayor has not issued any specific guidance on best practice in assessing development viability, but has provided a user manual for his widely used Development Appraisal Toolkit (otherwise known as the Three Dragons Toolkit).⁴ The Mayor has said that he will look into producing an SPG on the topic,⁵ and this discussion could help form the basis for such a document.

4. Issues for Consideration

Key issues in the current debate

- 4.1 There is a growing concern among campaigners, boroughs and the Mayor that viability assessments are being used by some developers deliberately to reduce the amount of planning obligations put forward in a Section 106 agreement, while generating high levels of profit.

¹ National Planning Policy Framework, March 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

² John Wachter, London Borough of Islington, Viability: What does it mean for the plan-led system? 18 September 2015 <http://www.rtpi.org.uk/briefing-room/rtpi-blog/viability-what-does-it-mean-for-the-plan-led-system/>

³ Greater London Authority, 2015, *The London Plan*, pp.131-134

⁴ Greater London Authority, 2015, *Greater London Authority Development Appraisal Toolkit: Guidance Notes*

⁵ Mayor’s Question 2015/2221- *Viability in Planning Decisions*, 15 July 2015

- 4.2 This has a particular impact on the level of affordable housing secured via this route as other types of planning obligations (such as providing for health care, education or transport improvements) are now covered by a community infrastructure levy (CIL) which is non-negotiable and not therefore subject to a viability assessment.
- 4.3 The Mayor recognises that the issue of viability appraisal has become something of a “dark art” and that “sometimes developers do get away with it and it is very frustrating.”⁶ He has agreed to explore the need for Supplementary Planning Guidance (SPG) on viability.⁷
- 4.4 London boroughs such as Islington,⁸ Greenwich⁹ and Southwark,¹⁰ have proposed policies aimed at making the viability assessment process more transparent. Reform of viability assessments is also supported by a number of other organisations, including the Town and Country Planning Association and the Royal Institute of British Architects, which has called for greater public participation and consideration of the long-term interests of communities.¹¹
- 4.5 Developers, in turn, defend their rights to make a return on the investment. The outcome of viability assessments have become increasingly important to developers, not least because of fluctuations in the housing market, difficulties in securing development finance and reductions in the grant funding for affordable housing.¹²
- 4.6 Developers are also concerned about exposing potentially commercially sensitive information that will put them at a disadvantage to their competitors. They maintain that the introduction of the Community Infrastructure Levy (CIL), has also increased pressure on the commercial viability of schemes, potentially reducing the level of planning contribution they can afford to make.
- 4.7 Furthermore, there have been calls from both councils and developers to address the skills imbalance between parties, most notably a lack of expertise in local planning departments.¹³ The Joseph Rowntree Foundation has also suggested that sometimes local authorities set unrealistic affordable housing targets.¹⁴ As a result, some organisations have called for an SPG¹⁵ on viability from the Mayor, based on Islington’s recent consultation on the issue.¹⁶

Issues for discussion

- 4.8 This meeting presents Members with the opportunity to discuss:
- The current factors affecting the viability of development in London and their impact on delivering affordable housing.

⁶ Mayor’s Question 2015/2221- Viability in Planning Decisions, 15 July 2015

⁷ Ibid

⁸ London Borough of Islington, 2015, [Draft Development Viability: Supplementary Planning Document](#)

⁹ Royal Borough of Greenwich, 2015, [Local Information Requirements List for Planning Applications: Public consultation draft](#)

¹⁰ London Borough of Southwark, 2015, “[My Conscience is Clear’ – Council Leader Peter John comes out Fighting as Heygate Deal Scrutinised](#)”

¹¹ Town and Country Planning Association, 2015, ‘[Communities risk losing essential new affordable housing unless Government sets fair planning guidance](#)’

¹² Joseph Rowntree Foundation, 2015, [Rethinking planning obligations: balancing housing numbers and affordability](#)

¹³ , Alisdair Chant, Westminster Property Association and Pat Hayes, London Borough of Ealing, [Planning Committee](#), 16 July 2015

¹⁴ Joseph Rowntree Foundation, 2015, [Rethinking planning obligations: balancing housing numbers and affordability, p.15](#)

¹⁵ Supplementary Planning Guidance is a document that supports the policies provided in the statutory London Plan. It cannot be used to prescribe new policy, but rather provides further detail and guidance.

¹⁶ Professor Patrick McAllister, UCL; Stephen Hill, C20 Future Planners and Oliver Wainwright, The Guardian, [Planning Committee](#), 16 July 2015

- The current approaches to assessing financial viability of developments, and any need for improving these assessments.
- The case for Mayoral Supplementary Planning Guidance on the viability of developments, and what a new SPG might contain in terms of improvements to the assessment process.

Invited guests

4.10 The following experts have been invited to the meeting to discuss those issues set out above:

- Dr Sue Brownill, Reader in Urban Policy and Governance, Oxford Brookes University
- Dr Bob Colenutt, Senior Lecturer, University of Northampton
- Robert Fourt, Partner, Gerald Eve
- Anthony Lee, Senior Director, BNP Paribas Real Estate
- Tony Mulhall, Associate Director, Royal Institution of Chartered Surveyors
- John Wachter, Viability and Section 106 Manager, London Borough of Islington

4.11 Members are recommended to agree to use part of its next meeting, on 26 January 2016, to discuss with officers from the GLA Planning Team issues arising from this meeting, and implications for any future Mayoral guidance on development viability.

5. Legal Implications

5.1 The Committee has the power to do what is recommended in this report.

6. Financial Implications

6.1 There are no direct financial implications to the GLA arising from this report.

List of appendices to this report:

None

<h3>Local Government (Access to Information) Act 1985</h3> <p>List of Background Papers:</p>
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