

THE LONDON BOROUGH OF SOUTHWARK

**TOWN AND COUNTRY PLANNING ACT 1990
AND ACQUISITION OF LAND ACT 1981**

Revised Inquiry into

**THE LONDON BOROUGH OF SOUTHWARK
(AYLESBURY ESTATE SITES 1B-1C)**

COMPULSORY PURCHASE ORDER 2014

PINS REFERENCE: NPCU/CPO/A5840/74092

**Proof of Evidence of
Dr Robert Colenutt - BA [Hons], MA, PhD
For the Aylesbury Leaseholders Group**

12 December 2017

1. My name is Dr Robert Colenutt. I have been asked by the Aylesbury Leaseholders Group to provide evidence on the importance of viability and deliverability in determining development and regeneration schemes.
2. I have a BA Hons, an MSc and a PhD. I have over 40 years experience in practice in town planning and regeneration, and in academic research into housing and planning, with a specialism in housing development and viability assessment.
3. I am employed by the School of the Built Environment, Oxford Brookes University as an Honorary Research Fellow specializing in Housing and Planning. I was previously a senior lecturer and researcher for 10 years in the Institute for Urban Affairs at the University of Northampton.
4. Before that I served for 20 years as a senior manager in Planning and Regeneration in local government. I was employed at the Greater London Council as Head of the Docklands Unit; I was Head of the Docklands Consultative Committee Support Unit based at LB Newham; I was Head of the Thames Gateway Unit at LB Barking and Dagenham, Head of Regeneration at the LB Haringey, and Head of Sustainable Development at Northamptonshire County Council.
5. My research experience includes published research into planning policy; housebuilding in the South East; and community-led housing. I am currently undertaking funded research into New Towns in the UK and Europe.
6. I have previously provided expert reports on viability assessment to Information Tribunals in 2013 and 2014 (EA/2014/0122, EA/2013/0162) **(BCT1)** and frequently submit reports on viability assessments to local authorities and community organisations. I have also given an invited presentation in viability assessment and Freedom of Information to the office of the Information Commissioner in 2014 **(BCT2)** ; to the GLA in 2015

(BCT4); and have published papers and given media interviews on viability assessment **(BCT3)**, including the BBC Sunday Politics show (22 March 2015) and BBC Inside Out (5th Oct 2015) .

7. In my evidence I am going to speak to the following item of the inspector's pre-inquiry meeting (PIM) list of 'Tests to be applied to the Compulsory Purchase Order':

- **Whether the scheme is likely to be blocked by any impediment to implementation**

8. My evidence consists of the following proof plus the following four appendices:

- **[BCT1]** - Information Tribunal decision notices (EA/2014/0122, EA/2013/0162)
- **[BCT2]** - Presentation to office of Information Commissioner (23/02/2015)
- **[BCT3]** - Guardian articles dated (14/07/2015, 25/06/2015)
- **[BCT4]** - GLA Planning Committee meeting on Development Viability, 17/11/2015

9. My evidence is concerned with explaining the critical importance in policy and practice of development viability and deliverability in assessing whether a development scheme is able to deliver planning obligations, including social and affordable housing.

10. There are significant delivery risks associated with the regeneration scheme for the Aylesbury Estate which will be examined by other witnesses. My evidence is concerned with demonstrating that from a planning point of view that viability and deliverability are fundamental planning issues in this case; and are the corner stone of Government policy on planning decisions.

Affordable Housing and Viability

11. Viability assessment is central to the determination of any major development that involves planning obligations delivered through both section 106 and Community Infrastructure Levy negotiations. It is also applied to the assessment of the soundness of Local Plans and Neighbourhood Plans. It is as important a material consideration in planning as design, sustainability, or land use.
12. Until the late 2000s the viability of development projects was not subject to routine assessment by local planning authorities. With the publication of the National Planning Policy Framework in 2012, viability assessment moved to the foreground of planning and the determination of sustainable development. The NPPF states that development schemes should be “deliverable”, making viability assessment a requirement both for Local Plan policies and for testing the validity of local authority planning obligations, particularly affordable housing obligations:

‘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.’ (NPPF, para. 173).

13. Viability in the NPPF was expressed in commercial terms:

‘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 developer to enable the development to be deliverable.’ (NPPF, para. 173).

14. From this point, the technical aspects of viability assessment have become the central concern of the development industry and local authorities. Commercial viability toolkits are commonplace, with some local authorities customising their own.
15. The standard industry model employs the Residual Valuation Method. This compares total scheme development costs with the scheme’s final development value to predict a residual land value, which is used to indicate whether there is sufficient surplus land value (after the landowner and developer have taken their share) to allow planning obligations to be met.
16. The most important implication of viability assessment is its impact on local authority affordable housing policies. This refers to local authority planning requirements for a percentage of affordable housing from housing developments of more than ten housing units. Given that for most local authorities this is the principal means by which affordable housing can be delivered, it is of major concern. Many local authorities require 30-40% of all new housing on large sites to be affordable, i.e. sub-market housing usually bought and managed by a housing association. CIL payments are also made by developers for infrastructure but they cannot be used for funding affordable housing. Thus, local authorities are heavily dependent on the viability of development schemes to deliver their affordable housing policies through the cross-subsidy from market housing or other commercial development on the site.
17. From the landowner point of view, his willingness to sell to a developer will depend on the price he expects to get for the land (the Benchmark Land Value), which in turns depends upon the value of the completed

development. Thus, his participation in a project is highly dependent on the amount of affordable housing proposed: any reduction in the percentage of market housing on the site, reduces his incentive to sell. The developer also has an incentive to reduce the level of affordable housing, firstly, because market housing is more profitable, and secondly, because a higher land value is more likely to get a landowner to sell.

18. Thus, together, developers and landowners aim to minimise the percentage of affordable units as far as possible; and viability assessment provides a means for them to do this. If they can show that the value of a completed development with the required policy percentage of affordable housing minus the costs of the scheme produces a land value that is below their profit benchmarks, the scheme can be deemed unviable. Under the NPPF, the planning authority will then be required to reduce its planning obligations for affordable housing until they reach the profit level of the developer, and the benchmark land value of the landowner.
19. A further aspect of viability assessment is “deliverability”. A scheme can be viable but may not be deliverable. There may be many reasons for this. For example, public funding may not be available for infrastructure or affordable housing grant, or a landowner or developer may be “banking” a planning permission as part of corporate land portfolio management. Or there may be Government policy reasons such as announcements on social housing or strategic infrastructure investment, or there may be flood risk, or public opposition reasons.
20. The upshot is that viability and deliverability must be taken into account by careful analysis of all inputs and outputs of the development: aspects of the development: costs; finance; valuation; risks to public funding; internal commercial risks of participating developer or housing association companies. National Planning Practice Guidance advises local authorities to develop an evidence base of market information, to collaborate with

developers and landowners, and to ensure that they have '*a comprehensive and consistent understanding of viability across their areas*'. The question before this Inquiry is whether this interrogation by the local authority has taken place.

21. The only viability statement for this scheme I am aware of is a very short two page Financial Viability Note from Notting Hill Housing Trust dated 4th March 2015 (**SM1**). This comprises a summary table of values without any detail on how each of these figures was generated. Given that the viability of the scheme depends upon cross-subsidy from market rents, it is essential that there is full interrogation of market data, costings, land values, and phasing; yet these essential data are not available.
22. The NHHT Note would not constitute a suitable viability analysis for many local planning authorities, and some would rule that the application was not valid for this reason. Many local authorities would require full presentation and analysis of market data, costings, land values, and phasing; yet these essential data are not available in this case. Furthermore, the analysis would challenge the profit level of 21% for NHHT shown which itself potentially reduces the viability of the scheme and poses a threat to the likelihood of the target percentage of social rent housing.
23. The Notting Hill Housing Trust statement of 4/3/2015 (**SM1**) says that a viability test for each site was required by the Development Partnership Agreement, but as far as I am aware this has not been undertaken, or has not been made available.
24. In my experience, it is highly unlikely that regeneration or new build housing schemes will deliver a 37.5% level of social housing without substantial affordable housing grant, or high levels of cross-subsidy, or very significant discounts on land value. Most likely all of these would be necessary.

25. Although local authorities often seek 30-40% of “affordable housing” this is in practice a “target” or “aspiration”. Developers and local authorities routinely say that this level of affordable housing is not achievable in practice (11% actual delivery is more usual) because the exceptional conditions for the viability of high levels of social housing are absent. And the outturn percentage of truly social housing i.e low rent housing, not intermediate or affordable rent housing, is very much lower often in the region of just 5%.
26. Thus, promises of 37.5% social housing – so critical to the assessment of the CPO – are unlikely on the basis of the information provided are unlikely to be delivered.
27. As indicated above there is no publicly available viability assessment that allows the objectors to evaluate the viability of the scheme.
28. I therefore conclude that the promised level of social housing does not meet the test of deliverability.

References

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