theguardian

Revealed: how developers exploit flawed planning system to minimise affordable housing

The release of a 'viability assessment' for one of London's most high-profile developments – seen exclusively by the Guardian – sheds new light on how developers are taking advantage of planning laws to ramp up their returns

Visualisation of the £1.2bn Elephant Park development, on the site of the old Heygate Estate. Illustration: Lend Lease Corporation (2014)

Oliver Wainwright

Thursday 25 June 2015 09.34 BST

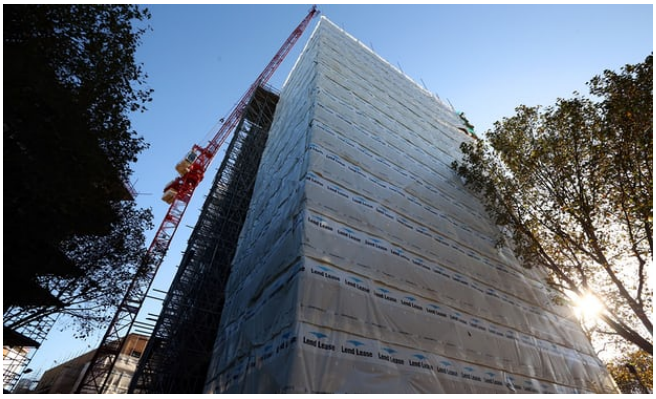
Golden towers emerge from a canopy of trees on a hoarding in Elephant and Castle, snaking around a nine-hectare strip of south London where soon will rise "a vibrant, established neighbourhood, where everybody loves to belong". It is a bold claim, given that there was an established neighbourhood here before, called the Heygate

Estate – home to 3,000 people in a group of 1970s concrete slab blocks that have since been crushed to hardcore and spread in mounds across the site, from which a few remaining trees still poke.

Everybody might love to belong in Australian developer Lend Lease's gilded vision for the area, but few will be able to afford it. While the Heygate was home to 1,194 social-rented flats at the time of its demolition, the new £1.2bn Elephant Park will provide just 74 such homes among its 2,500 units. Five hundred flats will be "affordable" – ie rented out at up to 80% of London's superheated market rate – but the bulk are for private sale, and are currently being marketed in a green-roofed sales cabin on the site. Nestling in a shipping-container village of temporary restaurants and pop-up pilates classes, the sales suite has a sense of shabby chic that belies the prices: a place in the Elephant dream costs £569,000 for a studio, or £801,000 for a two-bed flat.

None of this should come as a surprise, being the familiar aftermath of London's regenerative steamroller, which continues to crush council estates and replace them with less and less affordable housing. But alarm bells should sound when you realise that Southwark council is a development partner in the Elephant Park project, and that its own planning policy would require 432 social-rented homes, not 74, to be provided in a scheme of this size – a fact that didn't go unnoticed by Adrian Glasspool, a former leaseholder on the Heygate Estate.

In May 2012, shortly after Lend Lease submitted its planning application, Glasspool lodged a freedom of information request to see the figures used to justify this apparent breach of policy. Now, after a three-year battle of tribunals and appeals, during which Southwark council fought vociferously and spent large amounts of taxpayers' money to keep the details secret, a redacted version of the developer's "financial viability assessment" has finally materialised – a document that justifies why the planning policy cannot be met.



Building work on the new Elephant Park development in south London. Photograph: Getty Images/Carl Court

Seen exclusively by the Guardian, the document sheds new light on why so little affordable housing is being built across England; why planning policy consistently fails to be enforced; and why property developers are now enjoying profits that exceed even those of the pre-crash housing bubble.

In the last decade, London has lost 8,000 social-rented homes. Under the Tory-led coalition, the amount of affordable housing delivered across the country fell by a third - from 53,000 homes completed in 2010 to 36,000 in 2014. Much of the reason lies hidden in these developers' viability assessments and the dark arts of accounting, which have become all-powerful tools in the way our cities are being shaped.

It is a phenomenon, in the view of housing expert Dr Bob Colenutt at the University of Northampton, that "threatens the very foundations of the UK planning system"; a legalised practice of fiddling figures that represents "a wholesale fraud on the public purse". What was once a statutory system predicated on ensuring the best use of land has become, in Colenutt's and many other experts' eyes, solely about safeguarding the profits of those who want to develop that land.

Elephant and Castle is feeling the full force of London's 'regenerative steamroller'. Photograph: Sarah Lee

Under Section 106, also known as "planning gain", developers are required to provide a certain proportion of affordable housing in developments of more than 10 homes, ranging from 35-50% depending on the local authority in question. Developers who claim their schemes are not commercially viable, when subject to these obligations, must submit a financial viability assessment explaining precisely why the figures don't stack up.

In simple terms, this assessment takes the total costs of a project - construction, professional fees and profit - and subtracts them from the total projected revenue from selling the homes, based on current property values. What's left over is called the "residual land value" - the value of the site once the development has taken place, which must be high enough to represent a decent return to the landowner.

It is therefore in the developer's interest to maximise its projected costs and minimise the projected sales values to make its plans appear less profitable. With figures that generate a residual value not much higher than the building's current value, the developer can wave "evidence" before the council that the project simply "can't wash its face" if it has to meet an onerous affordable housing target - while all the time safeguarding their own profit.

According to Glasspool, the most striking thing about the Heygate viability assessment "is that it has nothing to do with the scheme's viability at all, and everything to do with its profitability for the developer". It is also all perfectly legal.

Within the pages of calculations, produced for Lend Lease by property agent Savills, the level of “acceptable” profit is fixed at 25% - a proportion that equates to around £300m. Southwark council commissioned an independent appraisal of this viability assessment from the government’s district valuer service (which was also revealed as part of the disclosure). The appraisal clearly highlights this 25% profit level as a concern, noting that “most development schemes when analysed following completion average out below 15%”. The difference represents more than £100m that could have been spent on affordable housing - yet the 25% profit level remains unchallenged.

A second concern was raised over the estimation of Elephant Park’s total value upon completion. The predicted sales values are set at an average of £600 per sq ft in the viability assessment, a figure it says is derived from “comparable” developments. Yet a close look at the appendix of these “comparable” schemes includes such properties as an ex-council flat in an estate on the fringes of Camberwell - a far cry from the glistening towers of Elephant Park.

On a recent visit to Lend Lease’s rustic sales cabin, I was greeted by a helpful assistant who said I’d have to hurry if I wanted to snap up one of the two remaining £2.5m penthouses in the One The Elephant development across the road, before handing me a price list for the new Elephant Park flats. They are currently selling for an average of more than £1,000 per sq ft: two-thirds more than the figure suggested in the viability assessment. In 10 years’ time, when the later phases are on the market, values are likely to have skyrocketed further. Yet the number of social units will remain at 74.

Once again, the district valuer queried these figures, suggesting a review mechanism be put in place to allow the amount of affordable housing to increase if sales turned out better than predicted. Such a mechanism is standard practice for a project of this scale, planned to be built out over the next 15 years. Further west along the Thames at Nine Elms - London’s new muscle beach for buildings, with its emerging skyline of steroidal towers - Wandsworth council has recently secured an extra £40m windfall for affordable housing through such a mechanism, as a result of rocketing sales values on the Embassy Gardens scheme.

Visualisation of a finished Elephant Park flat. Full prices start at £569,000 for a studio. Illustration: Lend Lease Corporation (2014)

Southwark’s planning officer, however, didn’t see the need for such a condition at the

Elephant. “A very significant economic upturn would be required,” he noted in his report, “to secure any increase in the quantum of affordable housing.”

A further question mark hangs over just how affordable the project’s “affordable housing” will be. Southwark’s planning policy states that all developments at Elephant and Castle must provide 35% affordable housing, split 50/50 between shared ownership (also known as “part-buy, part rent”) and social-rented. This was also a condition of the Regeneration Agreement between Southwark and Lend Lease.

Yet, in the viability assessment, not only does Lend Lease argue that it can provide just 25% affordable, but also that all one- and two-bed social-rented units in the scheme must be “affordable rent” - capped at 50% of the market rate - to make the project stack up. The difference is crucial: whereas social rent is pegged to average income and remains relatively stable, affordable rent is pegged to market forces, so does not.

What does that mean in monetary terms? In Southwark’s Affordable Rent Study, updated in December last year, the average social rent for one- and two-beds in the area was £97pw and £111pw respectively. Under Lend Lease’s “affordable” regime, managed by housing association London & Quadrant (L&Q), 50% of the market rate equates to £150pw and £184pw respectively. Across the board, that means the affordable units will be, on average, 37% higher than social rents would have been - and who knows what the market rate will be by the time the scheme is completed in 2025?

As for the shared-ownership units, L&Q’s current price list reveals that, to be eligible for the cheapest one-bed home, you must have a minimum household income of £57,500 - when the average household income in that part of Southwark is £24,324.

Right across London, the conversion of social-rented housing to affordable has been taking place at an alarming rate, often forced by government cuts to capital investment budgets for housing associations. According to recent figures from the Greater London Authority, about 11,000 homes have been converted in this way since 2012, representing a potential £50m increase in rental levels. In the past three years, L&Q has switched 1,673 tenancies - earning itself an extra £4.2m.

Southwark borough is estimated to have lost 358 social-rented homes in the Elephant Park deal. Photograph: Sarah Lee

Sitting in a cafe across the road from the vibrant hoardings of the new-look Heygate, a former resident of the estate is furious about the missed opportunity in what he sees as the borough's bodged negotiations over the development deal.

"It's a total fiasco in terms of securing public benefit from this massive regeneration scheme," says Jerry Flynn, who has run the 35% Campaign with Glasspool for the last few years, aimed at holding the council to account over its affordable housing policies. "Southwark has lost 358 social-rented homes in the deal, while Lend Lease stands to make whacking profits - on land they bought from the council for a pittance." Southwark sold the site for £50m, having spent £44m on emptying the estate, while estimating its gross development value at £990m.

"And they were blindfolded at the time," Flynn adds. "The whole thing was decided in documents that the council's planning committee wasn't even allowed to see."

A crucial failure of the current system is that developers' viability assessments are regularly hidden from councillors and protected from public scrutiny on the grounds of "commercial confidentiality". Revealing the figures, developers argue, would compromise sensitive trade secrets.

But these reports don't tend to be scrutinised by planning officers, either. In the case of Southwark, as was embarrassingly revealed at tribunal, the council didn't even have the right computer software to open Lend Lease's viability assessment, let alone the expertise to interrogate it.

To Pat McAllister, professor of real estate at University College London, the confidentiality argument makes no sense. "It shouldn't be a concern," he says. "There are well-established build costs out there in the BCIS database, the standard industry tool that everyone relies on. And a quick Google search gives you current sales values." Yet, time after time, developers and local authorities spend huge resources fighting to keep the figures in these assessments secret.

"It makes you wonder what it is, exactly, they are trying to hide," says Colenutt, who was called to the Heygate tribunal as an expert witness. "Why don't developers come clean on all this stuff? Why is it that on these vast sites in London, when huge amounts of money are being made, they're most determined to hide the viability assessments?"

The proposed West Grove at Elephant Park. Illustration: Lend Lease Corporation (2014)

Lend Lease is one of the most determined of the bunch. At the tribunal hearing in January last year, the company's commercial director, James Walsh, said: "If we knew that disclosure of this type of information was in prospect … we would certainly seek to disclose much less-detailed information to public authorities." He added that Lend Lease would even consider making the viability reports "available only for inspection at our premises, which would make it much more difficult for public authorities and their advisers to carry out robust interrogation of our information".

Other developers have even insisted on councils using a remote log-in system, so they can monitor exactly which parts of their viability models are being tested. A statutory process has never been so loaded in the applicant's favour.

With the private sector now calling the tune on affordable housing, while hiding the score in a locked room, it's not hard to see why the chief executive of the National Housing Federation, David Orr, recently told his members that developers are "leading local authorities on a merry dance".

"It's not so much a dance, as running rings around them," says planning expert Duncan Bowie, a lecturer at the University of Westminster. "Every consultant knows how to fiddle the figures in their client's interests, but most planning officers simply don't get it. Local authorities have really lost the plot on this."

Many consultants are now paid bonuses for successfully reducing the number of affordable units in a scheme; indeed an entire industry has grown up around the art of dodging planning obligations. But why has it only become such a problem now?

A relatively new arrival to the planning system, viability assessments have gained increasing weight since the National Planning Policy Framework (NPPF) introduced a crucial clause in 2012, stating that plans "should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened".

This clause has given developers a much freer licence to force their plans through the system regardless of constraints, on the basis that local planning policies represent needless "burdens" on their pockets. Democratic mechanisms for securing public benefit have been reframed as destructive barriers of red tape, and harmful obstacles to economic growth.

"Viability has driven a coach and horses through the planning system," says Colenutt. "All the things that are supposed to determine the best use of land - mix of uses, massing, density, social mix - have been trumped by finance. And it's a form of financial modelling that's hidden from view, entirely determined by the developers themselves. Councils are held over a barrel with the implied threat that 'If you don't play ball, we'll go elsewhere.' It's what the development industry has always wanted. They cannot believe their luck."

"Developers have been using viability for centuries, it's their bread and butter," says Pat McAllister. "It's a game, and they play it hard and they play it rough. That's their job. They'll look at the rules and see what they can get away with. So it all comes down to how the rules are set. The planning system simply wasn't prepared, so developers have managed to set new norms that favour them very fast."

Building work on London's £5bn new quarter, Greenwich Peninsula, 'where riverside living starts'. Photograph: Bloomberg via Getty Images

The landmark decision to force Southwark to disclose the viability assessment for the Heygate site - which was taken back in July 2013, but has taken this long to be coughed up - has since triggered further revealing disclosures on other major development projects across the capital.

A little further east, stretching along the Thames south of the O2 Arena, another line of billboards trumpets the arrival of a £5bn new quarter, Greenwich Peninsula, "where riverside living starts". The buildings sprouting here, which also sport the default regeneration costume of gold-effect cladding and stick-on bricks, claim to offer "views of Central Park and the London skyline".

The towers might be tall, but they're not quite tall enough to give a transatlantic prospect. It turns out the nearby strip of grass has been named after New York's majestic green lung - a trick of creative thinking that is not confined to the marketing material alone.

Developed by the Hong Kong-based company Knight Dragon, the project falls short of the Royal Borough of Greenwich's planning policy, providing just 21% affordable housing - all marshalled to the back end of the site, away from the expensive river views. The required level of 35% had been agreed with the previous owner of the site, but when Knight Dragon acquired the development in 2012 it negotiated its obligations down. The new deal represents a loss to the borough of 527 affordable homes.

Neither the developer nor planning authority, however, might have expected a housing policy expert to be living on the development's doorstep, in the form of Shane Brownie, a former housing strategist in the Department for Communities and Local Government and now head of research at the National Housing Federation. "I thought it was a bit odd that such a drastic change to the makeup one of London's biggest regeneration projects was tabled just before Christmas [2012] - and that it wasn't consulted on, but was quickly passed with very few questions being asked," says Brownie. "It seemed like a very strange decision to reduce the amount of affordable housing, just as the housing market was improving."

After lodging a request to see the viability assessment, Brownie began an 18-month battle with Greenwich council that ended in tribunal in January, with another landmark decision in favour of releasing the documents for public scrutiny. In a damning verdict for Knight Dragon, judge Nicholas Warren - who had also presided over the Heygate judgment - concluded: "This is a case where a company, robust enough to take on the development of a huge site over a period of 20 years ... immediately asks to be relieved of a planning obligation freely negotiated by its predecessor. It justifies this change on the basis of a downturn in house prices it knew about at the time of purchase, using a valuation model that looks at current values only and does not allow for change in the many factors that may affect a valuation over time."

Colenutt, who was again brought in as an expert witness in the tribunal, has been sifting through the pages of the released viability assessment and has already had his suspicions confirmed. "It shows an almost systematic underestimation of values and an overestimation of costs," he says. "They're saying that the sales values of their luxury flats, on this prime riverside site opposite Canary Wharf, on land they acquired at a discounted rate from the GLA, along with a £50m housing grant, would not be enough to cover their costs - which is frankly absurd." Knight Dragon declined to comment on these claims.

The Greenwich Peninsula viability assessment, produced by BNP Paribas, justifies the high construction costs on the grounds of building on a toxic, formerly industrial site - regardless of the fact that the land had already undergone heavy remediation work by English Partnerships in the 1990s as part of the Millennium project, at a cost of £225m to the taxpayer. Knight Dragon's marketing costs, meanwhile, are listed as 3% of the budget - equivalent to £30m - which Colenutt regards as another way of driving down the money left for affordable housing. In total, he estimates that the scheme could have been undervalued by as much as £500m. Again, Knight Dragon declined to comment.

Visualisation of the completed Greenwich Peninsula development, next to London's O2 Arena. Illustration: Knight Dragon

A visit to the sales suite, housed in a strange amoebic blob opposite the O2, gives you some idea of the place Knight Dragon is looking to create. I am whisked to the first floor by a besuited sales executive, where a digital table springs to life showcasing the vibrant lifestyle options that await, up to the £2.1m penthouses with "high-concept interiors" designed by Tom Dixon – who also designed this futuristic showroom. As I eye up one of the glowing perspex models, my host reassures me with a smile that none of the units in the building will be "affordable".

There is now no way, with hindsight, of clawing back the lost public benefit from this gigantic chunk of real-estate speculation. But there is still time for Greenwich council to influence what might happen on the swathe of land next door. On the western side of the peninsula, Knight Dragon has recently submitted outline planning for a further 12,000 homes – with not a single mention of affordable housing.

"I find it astonishing," says Brownie, "that a developer would submit an application without any suggestion of what kind of community they are proposing to make. I think they got the idea that, if they pushed on the door, it would open. We're just hoping the council has learned from what happened here and won't repeat the same mistakes."

Greenwich, to its credit, has recently proposed introducing a policy that would require all viability assessments to be open to public scrutiny, following growing calls for transparency. Announcing the news, the borough's cabinet member for regeneration, Danny Thorpe, said: "At the moment our hands are tied on affordable housing levels if the viability study shows a development won't work financially with the levels of affordable housing we want … Making the viability studies publicly available as part of the planning documents means the borough and residents alike can see precisely why a developer might claim they cannot meet our affordable housing targets."

It is a step in the right direction, but still not much reassurance for Colenutt. "They're basically saying they are making the information public so people know why the borough is conceding on affordable housing levels – rather than challenging the fundamental basis of viability itself. If they think the issue is purely one of transparency, they're wrong."

Having seen their attempt at interrogating the BNP Paribas report, Colenutt is not impressed. He describes the independent appraisal of the viability assessment, produced for Greenwich council, as “six pages of discussion with no analysis of the figures. It is completely irresponsible.”

The council responded: “We are confident that the independent assessor’s report … contained all relevant detail needed for [council] members to make an informed decision. The report was considered at three planning board meetings between February 2013 and February 2014 … This is a process that follows nationally set guidelines and which is carried out by local authorities across the country.”

The statement added that “one of the drivers” for the agreement between the Greater London Authority, Knight Dragon and the council was “the need to secure a £50m affordable housing grant which was time-limited and would otherwise have been lost”.

In Brownie’s view, this was another technique used to rush the application through the system. “The council was effectively forced to make the decision with a gun pointed at their head,” he says. “They were told: ‘If you don’t approve this, you’ll lose all of the affordable housing.’”

The tribunal judgment found that at least one councillor on the eight-strong planning board had questioned proceedings and asked for more detailed information from the viability assessment, but her request was denied. She has since left the council.

George Turner: ‘Anything can be made to look unviable, but it doesn't mean that viable alternatives aren't possible.’ Photograph: Bloomberg via Getty Images

Further upriver, in the shadow of another Millennium project, a similar war is being waged. Behind the sedately revolving capsules of the London Eye, plucky local resident George Turner has been holding another gargantuan development machine to account in a David-and-Goliath planning battle that reached the High Court.

On the site of the 1960s Shell Centre, a £1.2bn scheme of 900 flats has been proposed by Braeburn Estates – a conglomerate led by Canary Wharf Group and Qatari Diar, one backed by the Chinese state, the other by Qatar’s royal family. Their plans are suitably imperial, comprising a dense thicket of towers packed so close together that, according to independent analysis by the Building Research Establishment (commissioned by Lambeth council), a third of all flats would fall below the minimum daylight standards.

The council's planning policy aims for 50% affordable housing, but the Shell Centre will provide just 20%. It is the result of another viability assessment that pleads poverty to the council, while trumpeting the scheme as a lucrative opportunity to potential investors in the same breath.

The viability assessment, which was only disclosed when the project went to public inquiry, bears similar hallmarks to the previous examples. To the council, flats were listed with an average sales value of £1,330 per sq ft, while a presentation aimed at investors suggested they would sell at an average of £1,641 per sq ft - representing a disparity of £234m across the scheme.

Turner, who finally lost his appeal this month, is aghast at the wider implications of his case: "If they're saying it's not profitable to build luxury housing on the South Bank, next to Royal Festival Hall, with views of the parliament, then how can you possibly make money on housing anywhere in the country?

"Viability testing, the way it is structured at the moment, approaches the question from entirely the wrong end. The question from the council should be: 'Is a viable development able to be built on this site?' Not: 'Is this specific scheme viable?' Anything can be made to look unviable, but it doesn't mean that viable alternatives aren't possible."

Turner lays blame in the court of the consultants hired to produce the viability assessments, who often also work in behalf of the local authorities to assess other consultants' reports. And he singles out the work of one company as having the biggest influence: "If there was a monument built to the lack of affordable housing in this country," he says, "it would be built in the shape of BNP Paribas."

A model of the £1.2bn Shell Centre redevelopment.
Photograph: Oliver Wainwright

Such a monument, if Turner's logic is to be followed, already stands in the City of London, in the form of a silvery office block that looms in a stately bulge above Aldermanbury Square. At its summit I meet with BNP Paribas's director of financial viability advisory services, Dr Anthony Lee, a man who has advised 60 local authorities across the country on matters of viability, along with countless private developers, on a total of around 35,000 housing units to date. His name is stamped on viability assessments across the capital, from Stratford City in the east to Embassy Gardens in the west - as well as the Greenwich Peninsula, on behalf of Knight Dragon, and the Shell Centre, on behalf of Lambeth council.

In a boardroom overlooking a skyline of competing towers, I ask Lee why so many schemes that he has worked on - for both developer and local authority - have failed to meet the affordable housing requirements.

“That’s the first problem,” he says. “They’re not requirements but aspirational targets - they are a starting point for negotiation.” He describes an affordable housing target of 50% as meaning “a spectrum of between 0% and 50%”, which the local authority sets at the uppermost limit in the full knowledge that not every site in the borough will be able to fulfil the upper end of the spectrum. “I think the view that most councils would take is they would rather have 20% of something than 50% of nothing.”

While it is true that affordable housing targets are not legally enforceable, Lee’s is a position that others are quick to question. “To say an affordable housing target is an ‘aspiration’ is just belittling the status of statutory plans,” says Colenutt. “These are policies that local authorities have spent years painstakingly developing and consulting on in a democratic process.

“Developers are coming with the attitude of: ‘How much could we get out of that site if we were unconstrained? How much are we losing as a result of having to follow the planning policies for that site?’ So they start with packing as much as possible on to any given site and work back from there, instead of starting off with the local plan. You can make a perfectly respectable profit from following the plan - because the plans themselves are viability tested. And, if you can’t do it, then don’t buy the land in the first place. Let someone else develop it who will follow the rules.”

Royal Mail argued the Mount Pleasant plot in Farringdon must be stuffed full of luxury flats to achieve a competitive return. Illustration: Royal Mail

As for the widespread disparity in valuation between estimated values and actual sales prices, Lee is frank. “I would agree it is a flaw in the system,” he says, “but we have to base what we do on evidence, so we have to go on current sales values and what we know today. It is a static assessment, so as soon as I do a viability assessment it's already out of date by the next day. But that doesn't mean we got it wrong."

Again, many have challenged the logic of using current values in these assessments, when the entire development industry is based on speculation. "Developers are always forecasting, otherwise they wouldn't be building 15-year projects," says Turner. "The viability assessments build in an allowance for inflation of construction costs, but not sales values. It's being worked out on today's prices, but tomorrow's costs, which makes a mockery of the whole thing."

"It's utterly baffling," Colenutt says. "Even down the end of your street, a couple of houses will take a year to build, during which time their value will increase. Many schemes take 20 years, so it's a complete nonsense to fix it at today's values."

Lee agrees that the current system is too open to interpretation and needs clearer guidance, and he acknowledges that "the pendulum has swung too far in one direction" towards the development industry. But he assures me his company is equally fierce when working on behalf of local authorities to achieve the maximum possible amount of affordable housing: "We give everyone a kicking no matter which side we're on. I've been called a communist when I'm sitting on the other side of the table."

Lee says one of the key problems is the flexibility of approaches to land valuation: specifically, the crucial difference between using "existing use value" and "market value" in the viability equation.

The first approach - which he says BNP Paribas uses - defines the value of a site in its current use as the starting point for the viability assessment, whether that be a lucrative residential block or a low-value field. The market-value approach, which the Royal Institution of Chartered Surveyors advocates in its viability guidance, starts with the likely value that will be generated by the proposed use - thus potentially reducing the predicted return to the landowner by a significant margin.

"A policy-compliant scheme can very easily be made to appear unviable by changing existing-use value for market value," says Lee. "Market value just means whatever another developer is willing to pay for a site, so if someone has massively overpaid [for a comparable site] and only builds 10% affordable housing, you can guarantee the same result on your site. The more you accept this, the more land values go up and the more affordable housing is squeezed out."

Andrew Jones of BPS Chartered Surveyors, a viability consultant who advises more than 20 local authorities across the country, including nine London boroughs, agrees this is one of the fundamental flaws in the system. "It is completely circular to use market value," he says. "Because you're basically saying: 'If everyone else bidding for a similar site gets away with no affordable housing, then that's the value I'll use.' It completely circumvents planning policy."

Such was the case, he says, at Mount Pleasant in north London, where Royal Mail's valuers contended the £4bn scheme for 700 homes could not possibly meet both Islington and Camden councils' targets of 50% affordable housing because of the high value of the site to begin. The three-hectare plot (which spans the two boroughs) must be stuffed full of luxury flats, it argued, in order to achieve a competitive return.

Speaking in defence of Islington and Camden's case to refuse permission for the scheme at the planning hearing at City Hall, Jones stated: "The applicant [Royal Mail] has sought from day one to secure a consent which serves to protect the applicant's right to an excessive land value, irrespective of the implications this has for delivering affordable housing." He concluded that Royal Mail's position "fundamentally undermines the basis of the planning system". And with that, London's mayor Boris Johnson duly gave the scheme permission.

In Kings Cross, development company Argent has been busy transforming 26 hectares of formerly industrial rail-lands into a new urban quarter. Photograph: John Sturrock

Duncan Bowie is rueful about what the viability assessment process has led to, given that he was partly responsibly for unleashing the beast, while developing Ken Livingstone's new London Plan. He was senior planner with responsibility for housing at the Greater London Authority during Livingstone's eight years as mayor, when viability was first introduced into the city's planning process.

"It was originally about assessing the justification for public subsidy in private housing developments," Bowie says. "The then Housing Corporation was getting increasingly nervous about putting [public] grant funding into developments for affordable housing, when this could be achieved without subsidy. The corporation had to ensure it wasn't giving money where it wasn't needed."

The introduction of viability was also, he says, about proving that Section 106 agreements were not imposing too many burdens on the developer. "The viability assessment was a way of proving we weren't be unreasonable; we had to be able to assess the developer's ability to contribute."

In 2000, the London Plan introduced a policy that boroughs "should seek the maximum reasonable amount of affordable housing" from each private residential development. The viability assessment therefore became a way of proving that the affordable housing targets were indeed "reasonable", while still allowing the developer to make a decent profit. Hence this profit was enshrined as a fixed cost in the viability equation, at a healthy 20% margin - a level which might have been a necessary incentive during the recession, but is now more than most hedge funds make.

Ironically, the original exercise was undertaken to demonstrate that Livingstone's London-wide, 50% affordable housing target was eminently deliverable, not just Red Ken's pie-in-the-sky dream. Rather than allowing developers to prove they couldn't meet the targets, it was supposed to be a way of forcing them to show their books to prove that they could.

To begin with, it worked, with many major schemes achieving 35-50% affordable housing across the city - not the 10-25% we are seeing now. "The bitter irony is that now London is back in boom," says Bowie, "we're getting much less affordable housing out of major market deals than we used to in the recession.

"And now the housing grant has effectively gone," he adds, "viability has become a one-way negotiation. It's not about best use of public money, it's about developers using every technique and appraisal in their power to avoid compliance with planning policy."

No developer, it seems, is immune from exploiting whatever the system allows them to get away with. In Kings Cross, the high-minded, multi-award-winning development company Argent has been busy transforming 26 hectares of formerly industrial rail-lands into a new urban quarter, widely hailed as a model of inner-city regeneration. There are handsome brick housing blocks and well-crafted offices carefully arranged around a series of privately owned "public" spaces, brought to life with a wealth of pop-up pavilions and even a temporary lido. At its heart there's the trendy bustle of Central Saint Martins art college, soon to be joined by the flagship giants of Google's HQ and the Aga Khan's Islamic cultural centre. Even the Guardian is getting in on the action.

But, behind the scenes, having bestowed the area with a sprinkle of touchy-feely goodness, Argent is now trying to wriggle out of the commitment it made, back in 2006, to provide 40% affordable housing. In a legal agreement with Camden council, Argent pledged that of the 1,946 homes to be built on the site, 750 would be affordable. It is now looking to provide 21 fewer social homes and 96 fewer "intermediate rent" homes. It blames "the economy, political changes [and] reductions in subsidy", which have all made the scheme "unviable" - while conveniently ignoring the stratospheric rise in house prices over the last eight years. Flats recently advertised in the Kings Cross scheme include a one-bed for £985,000 and two-bed for £1.7m.

It is a move described by the housing campaigner Michael Edwards - who fought for a decade with many others to force Camden to make Argent meet its policy of 50% affordable - as "a terrible betrayal of the Kings Cross community and of the 29,000 households on Camden's housing waiting list".

Green councillor Sian Berry has now launched a legal challenge against the borough's decision: "There's no way Camden should accept this," she says, "especially given how hard the local community fought to get even the previous proportion. It really should have been 50% at a minimum." A petition has been set up calling for Argent to stick to its promises.

Capco's £8bn plan for 7,500 new homes at Earls Court is one of the capital's biggest regeneration projects. Photograph: High Level/Rex Shutterstock

Some councils are beginning to wise up to the dark art of viability assessments, and insisting that developers show their books. Steve Cowan, Labour leader of Hammersmith and Fulham since last year - who stood on a ticket of "homes for residents, not overseas investors" - takes a no-nonsense line. "These assessments are not worth the paper they're written on," he tells me. "I often just put them in the bin."

Cowan should know: he's had first-hand experience of how much damage they can wreak. He inherited one of the capital's biggest regeneration projects from his Tory forebears, an £8bn plan by developer Capital and Counties (Capco) for 7,500 new homes across a 32-hectare swathe of Earls Court. Just 11% of the scheme will be affordable, with one-bed flats starting at almost £600,000.

After an 18-month freedom-of-information battle waged by local residents, the district valuer's report of Capco's viability assessment was made public. Once again, campaigners argue that it shows how badly negotiations had been handled.

"Anyone reading this report should have smelled a rat," says Dr Richard Fordham, a viability expert called in by the local residents' campaign group to produce an independent assessment. "It's full of warped data, with raised costs and lowered revenues. But no one was allowed the time see it. One councillor, qualified in the field, was shut in a room and given two hours to read it. But it would require two full days to go through it properly. A lot of damage has been irretrievably done."

But Capco denies any wrongdoing, telling the Guardian: "The assessment was carried out by an independent body using standard industry methodologies. These are unfounded and baseless suggestions."

Following the Mount Pleasant fiasco, Islington has announced plans for a supplementary planning document addressing viability, which both Colenutt and McAllister agree is the most far-reaching step that any local authority has taken to date. Addressing profit levels, assessment methodologies and land value assumptions, it insists on developers providing the council with a working electronic version of their viability assessment, in which every variable can be rigorously interrogated.

“It’s time to be more robust,” says councillor James Murray, Islington’s executive member for housing and development. “Developers have been using viability wizardry for too long to dodge their obligations. Ultimately, we need a system that is more strongly plan-led, with affordable housing requirements that are seen to be firm and which actually have an effect on land value.”

Bowie, too, thinks it is time for local authorities to take a much harder line. “My own view now is that councils should be able to ‘zone’ areas for real affordable housing and fix the rent at 30% of household income,” he says. “If the landowner or developer won’t do the deal, the council should compulsorily purchase the site at its existing-use value and build the housing themselves. It might sound extreme, but it’s time to get tough.”

Many developers imply that building affordable housing always entails a loss – but when affordable rents are capitalised at up to 80% of market rate, the reality is it just makes less of a profit. (Affordable housing also removes a chunk of the development risk, given it comes with guaranteed funding from a housing association.) Still, with an imperative to maximise shareholders’ returns, why would any commercial developer agree to anything that makes less profit than the maximum that can possibly be squeezed out?

“These viability assessments conclusively prove that we cannot rely on developers to build affordable housing,” says Colenutt. “And they’re standing in the way of other groups who want to build it – the community land trusts, housing associations, co-housing groups – by preventing them from getting access to the land. Instead, the industry is wilfully inflating land values and forcing local authorities to grant permission for things they don’t want.

“Now that it’s been let in as a principle, viability is running riot through the entire system,” Colenutt adds. “It’s completely destroying the ability to build mixed communities, all on the grounds of spurious financial models. It’s critical that we develop the expertise to tackle it now – because this is going to be an almighty battle for years to come.”

Follow Guardian Cities on Twitter and Facebook and join the discussion

Topics

- Cities
- London
- Architecture
- Housing
- Communities