

## **Appendix 1**

### **Response of London Borough of Barking and Dagenham to the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance (SPG)**

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#### **The Threshold Approach**

The Council supports the Mayor's commitment to a long term strategic aim of half of all new homes in London being affordable but also recognises the difficulties in achieving this target within current funding and viability constraints.

Barking and Dagenham does not have an affordable housing target in its Local Plan as the Inspector deleted this. The Council had proposed an overall affordable housing target of 50% in its Local Plan but the Inspector concluded that this was not viable. Consequently, the Council has applied London Plan policy on new developments. Despite not having a local target as a proportion of overall housing supply the Council has been one of the best performing borough's in the last six years in providing affordable housing due in no small part to the establishment of its own Local Housing Company, Reside. The latest London Annual Monitoring Report shows that from 11/12-13/14 49% of new homes built in Barking and Dagenham were affordable.

#### **Threshold approach to viability**

The Council supports the threshold approach to viability. The Council contributed towards the work commissioned by Islington on "Viability and the Planning System" and has experienced itself the issues around benchmark land values not being reflective of policy compliant schemes and the vicious circle that results from this. If the benchmark land value is based on a policy non-compliant scheme then the likelihood is that the scheme being tested will not be compliant either.

The Council is already applying the guidance in the SPG by putting benchmark land values in the S106 agreement and by putting in robust review mechanisms.

Whilst the Council supports a 35% threshold it needs to be recognised that for many sites in Barking and Dagenham this cannot be achieved without grant. This is demonstrated at Barking Riverside where recycled capital grant has enabled Barking Riverside Limited to commit to delivering a minimum of 35% and 50% contingent on further grant being made available. On schemes within Barking Town Centre where no grant is available provincial land values and capital construction costs have seen schemes struggle to even deliver 10% affordable housing. At the same time the guidance should recognise that market homes in many parts of Barking and Dagenham are more affordable than affordable homes in more expensive boroughs. Therefore, even where schemes do not provide 35% affordable housing without grant they are providing homes which in other boroughs would be considered to be affordable.

The Council is concerned that 35% is a high bar in Barking and Dagenham but not for many other London Boroughs where viability is less marginal as house prices are much higher and therefore less affordable. The result could make Barking and Dagenham a less attractive place to invest as developments will be subject to more scrutiny here than elsewhere in London where schemes can take route B. Elsewhere in London the Mayor's viability team may not get involved whereas every major private led scheme in Barking and Dagenham is unlikely to reach 35% and therefore is likely to come under the scrutiny of the Mayor's viability team. This is in addition to what the Council already does which is commission an independent consultant to review the applicant's viability appraisal. In future it may appear to the uninformed observer that the focus of the Mayor's viability team on

schemes in Barking and Dagenham is due to the borough not being tough on developers when in reality it is simply due to the distinct economics of development in this borough. Therefore, the Mayor's viability team needs to be sufficiently resourced and to scrutinise appraisals at the pre-application stage so as not to delay developments.

The Council supports the review mechanisms proposed for Route A and Route B and publishing viability information where 35% is not reached.

The Council considers that the agreed Benchmark Value should be set out in S106 for schemes via route A or route B.

### **Grant**

The guidance suggests, that were a scheme achieves 35% affordable housing without grant that if the developer commits to using grant to deliver an extra 5%, grant would then be available for the full 40% affordable housing. It is not clear why the GLA would choose to allocate grant to units which can be provided without grant. It would be far better to direct grants to schemes which cannot deliver 35% without grant to help them reach 35%.

For example, in Barking and Dagenham there is not a single example of a developer led scheme achieving 35% without grant and therefore, if it is the case that grant can only be used to deliver affordable housing above 35% then this will mean little if no grant will be used in Barking and Dagenham. This is despite the fact that being one of London's most affordable boroughs grant spent in Barking and Dagenham will deliver more affordable homes than in most other parts of London. Therefore the Council requests that the grant funding regime adopts a more sensitive approach allowing schemes that do not reach 35% without grant to access grant to increase affordable housing provision.

### **Registered providers and public land**

The Council understands the expectation that developments on public land should provide higher levels of affordable housing but the guidance needs to recognise that Councils are becoming increasingly active developers. The Council recognises it cannot survive through savings alone and must invest to generate an income to support Council services and therefore through its recently agreed investment strategy is buying land and entering into Joint Ventures to help accelerate housing building locally and therefore accelerate New Homes Bonus and return on investment to reinvest into vital public services. The ability of the Council to provide higher levels of affordable housing on its sites than private developers must be seen in this context.

Also, the Council's ability to provide affordable housing is also harmed by the Affordable Homes Funding Programme Guidance restricting access to grant to Registered Provider. The Council's Local Housing Company, Reside, is not a Registered Provider.

The Council has recent experience of trying to apply this guidance and in particular the recommendation that developers should partner with an RSL from the outset in order to access grant. More guidance is provided in paras 3.14-3.19 where it advises values should reflect offers made by RPs. For an outline application for a multi-phase development where construction is not planned to start for a number of years it is difficult for a developer to have this level of certainty and to be so advanced with an RP. More guidance is needed for how this applies to multi-phase outline planning applications.

### **Tenure**

The Council supports the suggested tenure split

30% low cost rent

30% intermediate

40% LPA defined

The Council has calculated that the London Affordable Rent and London Living Rent are roughly equivalent to 60-65% of a market rent in Barking and Dagenham. The Council does not regard the London Affordable Rent as either a low cost rent or a social rent. This is because the London Affordable Rent appears to have been calculated based on average London incomes and values which are higher than Barking and Dagenham's. The result is that there is little difference in affordability between London Living Rent and London Affordable Rent in Barking and Dagenham which cannot be what the Mayor intended. Clearly since the SPG makes a distinction between 30% low cost rent and 30% intermediate then the former should be significantly more affordable than the latter but in Barking and Dagenham they are not.

Therefore, the Council is concerned that none of the Mayor's Affordable Housing products are genuinely affordable to those in housing need in Barking and Dagenham including those on the London Living Wage. The Council considers that Affordable Housing Grant should support affordable housing at a locally calculated formula/target rent level and to do this London Affordable Rent should follow the approach taken for London Living Rent and be calculated on a borough by borough basis if not ward by ward. The importance of this issue is exemplified by the fact that the Council's Housing Needs Assessment found that only 18% of those households in housing need could afford a 50% of a market rent never mind a London Affordable Rent or a London Living Rent.

The Council has been looking at this in some detail and considers that affordable housing is better termed "Infrastructure Housing". The Council is proposing to establish five levels of Infrastructure Housing as set out in the table in Appendix 1 ranging from Council rents which are typically 38% of a market rent, then to a target rent which is 40%, to a 50% rent accessible to those on the London Living Wage, then homes at 65% and 80% rents for those in work on low and medium incomes including nurses, social workers, and emergency services employees and other hard to recruit workers who underpin the London economy and local communities.

The Council's view on the affordability and tenure of the remaining 40% will be influenced by whether the Council's proposed changes for how London Affordable Rent is calculated are taken on board. If they are then the Council would look to prioritise affordable housing at the affordability levels 2, 3, 4 and 5 as set out below as part of its commitment to ensure no one is left behind in the pursuit of growth.

### **Affordable housing in perpetuity**

The SPG needs to be alive to the threat in the Housing White Paper that Right-to-Buy may extend to housing association properties and to properties built by Council's through joint ventures. This is a significant threat to affordable housing delivery and the Mayor's support in fighting this would be greatly appreciated.

### **Definition of London Living Rent**

The Councils supports the definition of London Living Rent the same approach should be taken for London Affordable Rent.

### **Loss of existing affordable housing (including estate renewal)**

The guidance that there should be no net loss of existing affordable housing tenures including social rented needs to take into account development viability and availability of grant and also the characteristics of the housing stock in the surrounding area. The Council has undertaken a number of estate renewal schemes where it simply hasn't been possible to reprovide like for like social rented properties. These schemes have been necessary as the properties were in such a condition that it was uneconomical to bring them to decent homes standard. Therefore the requirement to reprovide the social rent could have thwarted these schemes leaving people in substandard accommodation. The SPG also needs to recognise that sometimes it is necessary to alter the mix of an Estate Renewal Scheme in order to achieve a mixed and balanced community and avoid mono-tenure estates. Similarly for developments in areas with a high concentration of affordable housing it can be better to seek off-site contributions to provide low cost rented housing elsewhere in the borough in the interests of creating mixed and balanced communities and the guidance should allow boroughs to do this.

### **Affordable housing values**

Here the guidance says for viability purposes London Living Rent homes should be assumed to be sold on a shared ownership basis after a period of 10 years with the relevant subsidy recycled. This is at odds with paragraph 2.44 which states Councils should secure affordable homes in perpetuity in S106 agreements.

### **Benchmark Land Value**

The Council supports the guidance on Benchmark Land Value. Ensuring the Benchmark Land Value is on the basis of a policy compliant scheme and then fixed in the S106 is critical. The guidance could usefully provide advice on how the Benchmark Land value is established where the site comprises existing buildings with freeholds and leaseholds. We have taken the approach that the benchmark land value must be established on the basis of an unencumbered title but developers have argued leaseholds and freeholds must be valued separately.

### **Contingent obligations and review mechanisms**

The Council supports the guidance on contingent obligations and review mechanisms

### **Approach to Opportunity Areas and Housing Zones**

The Council welcomes the recognition that sites in Opportunity Areas are by nature complex and therefore a more bespoke approach to affordable housing can be adopted. However, it is not clear whether Route A and Route B would apply in Opportunity Areas and if not what this means for the 35% target and the viability appraisal process for schemes that do not reach 35%. There are high levels of social housing in Barking Town Centre and this bespoke approach should allow the Council to seek off-site contributions for the provision of low-cost rented housing elsewhere in the borough to avoid reinforcing this concentration.

### **Build to rent**

### **Clawback**



The Council's preferred option is for a minimum covenant of 15 years and that all units must be maintained as build to rent for the whole term. Therefore, a clawback mechanism would apply if at the end of the 15 year term the tenure changed for the whole block. At this point a viability review would determine what if any surplus could be captured. The Council is concerned about clawback mechanisms as they allow individual units within a block to change tenure undermining the whole purpose of build to rent. Therefore, the Council does not support either Option 1 or Option 2 and any review after the covenant has expired must be on the basis of the whole block changing tenure not individual units.

### **Viability**

The Council has significant experience of dealing with Build to Rent schemes. One issue we encountered was the reluctance of the developer to agree a review of viability on occupation. This is because the applicant intended to sell the scheme to an institutional investor and therefore did not want to be exposed to a future liability for a scheme it had no future interest in. It would be useful for the guidance to cover this issue and make clear that this future liability needs to be priced into the deal agreed with the investor.

It is not clear how the viability of PRS should be treated in an outline application where the precise tenures have not been defined. Even whether this is known is the expectation that PRS is tested separately?

### **Management standards**

The SPG makes significant concessions for Build to Rent. In return the developer should be required to market units to local people first otherwise the Council supports the five key management standards set out.

## Appendix 1

<b>Infrastructure Housing</b>		<b>Household income required on basis of 35% of gross income (% of households in LBBD)</b>	<b>Per capita income (on basis of household salary being x 1.4 per capita salary)</b>	<b>Who it is for?</b>	<b>Supply</b>	<b>GLA grant</b>
<b>Level</b>	<b>% of market rent</b>					
<b>Level 1</b>	LBBD Council rents 38%	£15,547 (79%)	£11,105	17,500 existing stock for those in most housing need	Existing voids increased through Right to Move	Not supported.
<b>Level 2</b>	Target rents 40%	£18,571 (79%)	£13,265	London Living Wage	Housing Associations new build/S106 (if London Affordable Rent calculated at borough level)	
<b>Level 3 The Benchmark</b>	London Living Wage 50%	£24,703 (64%)	£17,645	London Living Wage	HRA/RESIDE/s106 (if London Affordable Rent calculated at borough level)	
<b>Level 4</b>	65% market rent/shared ownership	£32,125 (39%)	£22,946	Nurses, teachers, police constables other workers on low to modest incomes.	HRA/RESIDE/s106	London Living Rent/London Affordable Rent/London Shared Ownership
<b>Level 5</b>	80% market rent/shared ownership	£36,331 (30%)	£25,950	Nurses, teachers, police constables other workers on low to modest incomes.	HRA/RESIDE/s106	London Affordable Rent/London Shared Ownership



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Dear Mayor Khan

**Barnet's Response to Homes for Londoners – Draft Affordable Housing and Viability Supplementary Planning Guidance - November 2016**

I am writing in response to your draft supplementary planning guidance (SPG) document, 'Homes for Londoners' published in November 2016.

Through commenting on this draft SPG the Council welcomes this opportunity to influence the direction of travel of affordable housing and viability policies in the review of the London Plan. We also look forward to discussing in more detail our proposals for delivering affordable housing in Barnet particularly with regard to the percentage sought without public subsidy and preferred tenure mix. Barnet's Local Plan with the support of a Borough-wide viability assessment sets a 40% target for affordable housing.

Barnet's current population estimated in 2015 to be 374,980, makes it London's most populous borough and therefore the delivery of homes that people can afford is a key priority for this Council. To better understand Barnet's changing population the Council commissioned a local Housing Needs Assessment (HNA). Barnet's HNA shows the types of accommodation that will be needed to meet the expected increase in households as well as meeting existing unmet need. The provision of affordable housing has never been more important with over 27,000 new households estimated to need accommodating in Barnet over the period up to 2025. With development viability the subject of extensive scrutiny and the ways in which affordable housing is secured the subject of continuous change this type of accommodation has also never been as difficult to deliver.

Barnet has established a house building programme where new homes will be made available at rent levels that are affordable. This will generate additional revenue to be reinvested in building more affordable homes. The Council is also committed to revising its Affordable Housing Supplementary Planning Document (SPD), which guides applicants, agents, developers and planners through the delivery of affordable housing through mechanisms such as Section 106 Agreements.

The Council shares the overarching ambition to boost the overall supply of new homes by making the planning system clearer, quicker and more consistent, and to speed up the process for schemes that deliver higher levels of affordable housing. We recognise that as housing need increases new non-conventional housing products will come forward and will consider well-designed, high quality products which help to widen housing choice and contribute to affordable housing. However, in relation to affordable housing there is already a complex and rapidly changing policy landscape, and therefore a compelling need for a clearly understood and applied London wide definition of affordable housing. Whilst recognising that the approach outlined in this draft SPG accords with Mayoral manifesto commitments, the introduction of additional products and concepts used to define affordable housing in London, such as Built to Rent, London Affordable Rent and London Living Rent, will add to existing complexity and could serve to frustrate affordable housing delivery.

The intended approach set out in the SPG for exercising Mayoral call in powers for applications is supported where he is not satisfied with the veracity and robustness of the accompanying viability information or where he wishes to review the relative weight accorded to competing planning objectives.

In relation to the Mayor's approach to considering Vacant Building Credit (VBC) the Council welcomes the proposed tightening of the definition. Although take up on VBC has been minimal in Barnet we agree that VBC policy should not apply within London and would support the Mayor in making this case to Government.

With regard to the imposition of the 35% affordable housing threshold for determining whether detailed viability information needs to be submitted, we recognise that this is intended as an incentive to increase affordable housing delivered through the planning system. As a borough with a 40% affordable housing requirement in the Local Plan this is generally welcomed but will require careful monitoring by the GLA.

We also note the Mayor's expectation that higher proportions of affordable housing should be delivered on schemes developed by registered providers or on publically owned land. Despite best endeavours, in many cases this is likely to prove very challenging for many Barnet schemes where there are other significant infrastructure and competing demands for Section 106 contributions.

With regards to viability the introduction of a standardised open book approach as proposed in the SPG is welcomed. We acknowledge the merits of clearly setting out the information and assumptions that should be included in a viability appraisal using "Existing Use Value Plus" as the comparable Benchmark Land Value. The detailed operational proposals for viability appraisals outlined in the SPG, including the separate arrangements for Build to Rent, should serve to aid transparency and consistency of application, and are therefore supported.

Regarding tenure split for the 35% affordable housing provision, we recognise that this area of the guidance will be informed through the SPG consultation. It will be important that the final version of the SPG provides the necessary clarity on this matter in order to ensure consistent application across London. We note that in order to avoid the viability process an application, in addition to the 35% on-site affordable housing adhering to strict tenure requirements, must also "meet all of the other relevant policy requirements and obligations". Some flexibility may be needed here as, if applied literally, this is likely to prove very

challenging given that in practice most development schemes do not meet every Local Plan policy requirement to the letter.

Whilst generally supportive of the Mayor's approach towards Built to Rent we have a number of reservations about how the proposals outlined in the draft SPG are likely to work in practice. The covenant and clawback mechanisms proposed if units are sold out of Build to Rent are noted but we see no reason why the affordable housing restriction should not, as for units secured through the planning system, be in perpetuity. The intention is that Build to Rent developments are to be delivered as discounted market rent (preferably at London Living Rent levels). However, stipulating a minimum of 15 years and allowing commuted payments is likely to result in many units subsequently being sold on open market and thereby lost as affordable housing. We note from the recently issued Housing White Paper the emphasis on Build to Rent and that the Government intends to amend national planning policy to make it easier for developers of purpose-built developments for the rental market to offer affordable private rented homes instead of other forms of affordable homes. Given the growing importance of the private rented sector in London a thorough understanding of the Mayor's Build to Rent proposals will clearly be important to ensure successful implementation.

Where affordable housing is provided in practice the Council usually sells units to a RP, secured as affordable in perpetuity through a Section 106 planning obligation. However it is unclear in the SPG how this arrangement would operate under the Build to Rent proposals set out in the draft SPG. In Barnet there is a particular demand for family housing and we note the stated preference for longer tenancies of 3 years or more. Affording longer term tenancies is important, particularly for families, in providing security and stability.

We trust that this response provides a positive contribution to the Mayor's emerging policy thinking with respect to affordable housing and viability and look forward to working constructively with the Mayor / GLA; commenting further later in the year on the emergent draft London Plan and Housing Strategy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cath Shaw', written in a cursive style.

Cath Shaw  
Commissioning Director, Growth and Development



housing contributions should not be sought from developments of 10 units or less. Clarification is, therefore, required in this regard.

## **2. Tenure**

- 2.1. Flexibility on affordable housing tenures is welcomed. The draft SPG requires 30% of affordable housing provision to be low cost rent (social and affordable), 30% intermediate products (including London Living Rent). The remaining 40% is to be determined by London's local planning authorities. However, we consider it inappropriate to have to specify a prescriptive breakdown and would request that boroughs adopt a flexible approach to the remaining 40%, to allow for local circumstances.
- 2.2. The SPG invites London's local planning authorities to consider a more tailored approach to affordable housing for Opportunity Areas and Housing Zones, taking into account the characteristics of sites. As stated above, we would consider a tailored approach to be appropriate across the borough, and agree that this will aid regeneration of such areas, which are often mono tenure in nature. The challenges of estate renewal and the necessity to generate sufficient value from market development means that flexibility on affordable housing tenures is essential to deliver regeneration schemes that achieve mixed and balanced communities.
- 2.3. For strategic industrial locations (SIL), the Mayor recommends that, when the release of SIL is deemed appropriate in local plans, it fully contributes to other planning objectives in particular new affordable housing. This would appear to be an appropriate approach, subject to viability constraints.
- 2.4. The Mayor proposes that the 35% target is measured in habitable rooms to enable a range of accommodation sizes to be delivered. Basing affordable housing delivery in this way is more flexible and we agree with this approach.
- 2.5. We also have concerns about the introduction of London Living Rent as a tenure. Bexley, along with other London boroughs, faces increasing pressure on its resources from rising levels of homelessness, migration and increasing costs in the private rented sector. Given the scale of local pressures including a massive rise in families now in temporary accommodation we are very concerned that the Mayor proposes to set pan-London criteria for this initiative and do not support this. Average household incomes in Bexley are lower than in most other areas of London and there is deep concern that as rents will be based on Bexley average incomes, then local residents will have to compete in a market where they already struggle with more affluent renters relocating from other areas of London in search of lower rents.

## **3. Grant**

- 3.1. Applicants are encouraged to have registered housing providers (RPs) on board at pre-application stage. The Mayor's grant funding will only be available for applications if it increases the proportion of affordable housing above the nil-grant position to a level of 40% or more. We consider that this is a positive approach and would encourage developers will take advantage of this opportunity, as the grant will be for the full amount of affordable housing delivered.



#### **4. Starter Homes**

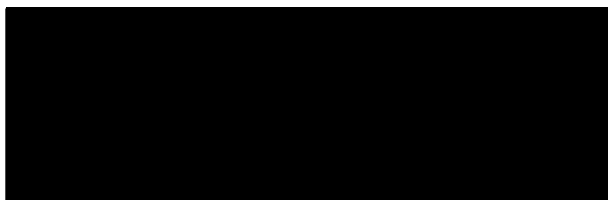
- 4.1 We note the Mayor will provide an update on Starter Homes when Government has issued the Regulations on this matter.

#### **5. Build to Rent**

- 5.1. The provision of a definition for Build to Rent and guidance for a planning covenant to cover specific planning permission for rental development with clawback arrangements if units are sold outside of the rental market is welcomed. Clarity on how affordable housing will be delivered in Build to Rent schemes is welcomed although, as stated previously, we do have concerns about the introduction of the London Living Rent. The guidance on scheme management is also welcomed.
- 5.2. We note that Build to Rent schemes are not required to follow the threshold approach to viability and will be assessed on their own viability. The DCLG has issued a consultation paper on Planning and Affordable Housing and Build to Rent, which acknowledges the potential need to take a different approach to Build to Rent schemes in London where the market is more established and viability relative to other tenures may be different than in other parts of the country. We are concerned that such arrangements still generate new demand for services that have to be financed.

#### **6. Guidance on viability appraisals**

- 6.1. The SPG introduces a more consistent approach to viability appraisals with clarification of assumptions and methodology. We note the Mayor supports the use of Existing Use Value Plus as the benchmark land value. We would support this approach.
- 6.2. With regard to revised viability appraisals, clarification is sought on the justification for allocating 60% of any increased GDV over build costs. Also in the suggested review formulas in Annex A, Formula 1 just assumes increased GDV less build costs split 60:40 in favour of the LPA, whereas Formula 3 makes a further deduction for extra developers profit on development costs. This would seem to be an inconsistent approach as further deduction of increased developers profit should be based on GDV so that it correlates with the earlier assumptions on viability.



Planning & Housing Strategy Manager

28<sup>TH</sup> FEBRUARY 2017

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Dear Mayor,

## **Response to the Mayor's Draft Affordable Housing and Viability SPG**

Thank you for the opportunity to comment on the Draft Affordable Housing and Viability Supplementary Planning Guidance in relation to viability and build to rent.

Brent Council fully supports the Mayor's ambition of increasing the provision of truly affordable dwellings to meet London's needs. The Council believes that the issuing of the draft Supplementary Planning Guidance is a positive move in the process of achieving 50% affordable housing provision across London in the coming years. It sends a clear signal that the Mayor will prioritise the delivery of affordable housing. This clarity should mean that affordable housing is factored into developer's appraisals prior to purchasing sites and is reflected in the price that is paid for land.

The Council understands the proposed threshold approach to viability assessment and the assumption that it will encourage developers to seek to move to deliver 35% more quickly than would otherwise be the case. In accordance with the request in the SPG, Brent proposes to accept the 35% threshold approach across the Borough with the exception of where it has recently adopted Local Plan policy in relation to seeking a minimum 50% where a loss of employment site is proposed, as set out DMP14. Where the viability assessment route is preferred by the developer, Brent would like to make it clear the maximum reasonable amount of affordable housing will have to be tested/delivered.

The Council welcomes the Mayor's concentration on providing affordable dwellings that can be regarded as genuinely affordable. In relation to the London Affordable Rent, the Council considers that whilst such rent levels will be more affordable to tenants, this needs to be assessed in relation to the impact that it will have on overall affordable housing delivery. Clearly the level of subsidy required to support London Affordable Rent is likely to be higher than affordable rent, or variations on it which mean that rents are set at a level which are within Local Housing Allowance rates. This will impact on overall levels of affordable

housing delivered. A recent Brent Strategic Housing Market Assessment indicated that nearly all tenants that would qualify for Social Rent (and therefore London Affordable Rent) in Brent would in any case be dependent on housing benefit to pay for rents. Against this background we consider that there should be some flexibility shown to Councils in the shorter term on the emphasis on London Affordable Rent compared to tenures which can offer rents within Local Housing Allowance rates. Brent currently seeks 70% social/affordable rent as set out in Policy DMP15 and 30% shared ownership/intermediate. It proposes to keep to this approach, assuming that the Mayor shows flexibility on the London Affordable Rent product.

On the London Living Rent product the Council does have concerns how it would work in practice. It needs greater clarity on what the product is and how tenants, against a backdrop of continual house price inflation, will be anticipated to be able to attain a deposit for low cost home ownership products. The issue of how tenants who for whatever reason do not save, or have genuine calls on funds saved for emergencies also needs some consideration and clarity. Whilst the SPG in valuation terms regards it as a shared ownership product, this needs confirmation from the Registered Provider sector that these assumptions are valid as otherwise it will obviously have impacts on viability calculations.

The identification that an open market price of £600,000 is likely to be the upper limit for a shared ownership product to be regarded as affordable is acknowledged. In Brent however, such prices are nearly being achieved for 1 bed properties in more expensive areas, whilst 3 bed properties in most areas are now at or over this total. It is not clear what the SPG is suggesting to Boroughs in respect of these dwellings as an alternative. Presumably the alternative is London Living Rent, but greater clarity is required.

In relation to contingent obligations and reviews related to Route A viability assessment, it is considered that greater flexibility should be allowed to take account of the site's characteristics, rather than requiring a review in all cases. On some sites with significant viability issues there may need to be an incentive to develop. Brent considers that a more flexible/discretionary approach will allow a proportionate response to promoting development whilst seeking to maximise affordable housing delivery is achieved.

In relation to Registered Providers, Brent supports the SPG's emphasis on early involvement in the S106 discussions/scheme development.

For viability assessments, the SPG identifies that the Alternative Use Value approach will typically only be accepted where there is an existing implementable permission for that use. Brent considers that rigid application of this approach might well on occasion be too restrictive for example, an appropriate Local Plan Site Specific Allocation could reasonably support a BLV on an AUV approach. As such greater flexibility on this point would be preferred by Brent.

On the transparency issue Brent supports the approach suggested in the SPG.

On the Vacant Building Credit Brent supports the approach set out in the SPG.

On Build for Rent Brent is supportive of the SPG's contents and understands the need to balance the benefits that this sector brings against its current reduced ability to deliver the amounts and types of affordable housing associated with private sale developments. Nevertheless, we encourage the GLA to keep a close eye on the sector in understanding viability issues in what is a quickly evolving sector. This is particularly so if a softening of the housing for sale market happens, whilst the demand for rented accommodation remains high. A concern is that the methodology for assessment should be able to keep pace with

the changes in financing of this sector. Otherwise there is a risk that there will be provision of less affordable than could reasonably be expected.

Yours sincerely,

Cllr Shama Tatler Cabinet Member for Regeneration, Growth and Skills

CC: Cllr Harbi Farah Cabinet Member for Housing and Welfare Reform

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3<sup>rd</sup> March 2017

Dear Mr Khan,

**Homes for Londoners – Draft Affordable Housing and Viability Supplementary Planning Guidance 2016**

Thank you for the opportunity to comment on the Draft Affordable Housing and Viability Supplementary Planning Guidance.

While we welcome the ambition to speed up planning decisions, and generally support the proposed changes in the process of producing viability assessments with greater transparency and certainty, there are a number of areas where the Council has concerns, or requires additional information before being able to confirm its support or otherwise.

It is important that Boroughs, as local planning authorities, with the detailed knowledge of their areas and needs can set their local objectives without these being undermined or side lined.

While the 'threshold approach' to affordable housing is in principle supported the level should be set by Boroughs to enable local objectives and circumstances to be fully reflected. While the proposed threshold of 35% for mixed tenure schemes is in line with the figure in the Council's adopted UDP and Draft Local Plan, it should be for the Council, as LPA, to determine the appropriate threshold for its area. The Council should be able to vary this figure if local circumstances change. Bromley uses 'habitable rooms' in determining the % of affordable housing within an overall scheme and supports this approach in the SPG to maximise the range of units in terms of size and property type.

However, the Council does not support the approach to referable applications set out in para 1.16. London Boroughs, as the LPAs, should be able to make planning decisions in line with the planning objectives for their area, and be able to attribute the weight to competing planning matters accordingly. Further details and discussion with boroughs regarding how this part of the SPG would be implemented are required, and if taken forward should be modified to ensure Borough's local priorities and decision making processes are respected.

The document places a strong emphasis on the use of review mechanisms. While this is understood as a means of achieving a greater level of affordable housing should values rise, there are concerns as to how this would work in practice. There is likely to be an impact on Council resources if further viability reviews are required, and it is unclear how extensive any such reviews might need to be, for instance requiring independent assessment. Further details are required and any increased demand on Council resources should be minimised for instance by ensuring that developers meet the full cost of reviews.

It is suggested (para 2.24) that developers engage with RPs at an early stage in the process (pre-application), which in conjunction with the route A approach could lead to better outcomes at application stage. Having RPs on board to input to the design of schemes should help to ensure that the maximum level of affordable housing can be accommodated within a development. Bromley already encourages the early engagement of RPs in the planning process. Details of what further encouragement can be would be appreciated.

The expectation that RP led schemes and public land will provide as much affordable housing as possible (London Plan policy 3.12) is noted. However, this has to be in the context of the Borough's overall planning priorities and objectives for its area and statutory duty under S123 of the Local Government Act 1972 to obtain best value when disposing of land. There will always be some sites where either residential schemes or the inclusion of affordable or social housing simply is not viable. At the London Borough of Bromley, all disposals are approved on a case by case basis, and the onus is on the Council to ensure that such statutory and planning requirements are met.

We broadly welcome the proposed 'standardised' approach to appraisals, which should result in greater transparency and levels of consistency. In particular, the proposal to have two routes (A+B) is supported in principle, to incentivise developers to come forward with a policy compliant level of affordable housing, with more limited interrogation of the figures. However, as indicated above Boroughs, as the LPA should be able to set the 'threshold' for the different routes.

While the Council welcomes the contribution that Build to Rent (BTR) can make to housing supply in the Borough and the potential for longer term tenancies there is not a clear case that the sector should receive preferential treatment in relation to viability. It is unclear how the affordable element of BTR will be affordable in perpetuity.

The requirement for greater detail and narrative to support appraisals is welcomed in principle.

Paragraph 3.32 requires profit levels to be evidenced and justified but we think greater clarity here would be beneficial. This has the potential to be another point of dispute between the LPA and developers. What justifications would be required?

We note the view that EUV+ will generally be the most appropriate way of determining the benchmark land value. We agree that market values or price paid should not be considered.

Guidance sets the split for affordable housing as 30% low cost (social and affordable rents), 30% intermediate (including London Living Rent) and 40% locally determined. LBB's current guidance is for 60:40 split in favour of affordable rented products, on a blended basis to allow for scheme flexibility. The local determination of 40% of the affordable homes is welcome, however Bromley would not wish to specify a borough wide mix of tenures for the 40% in advance at this stage. London Boroughs should be able to respond to changing local circumstances.

Overall guidelines to ensure a mix of tenures along existing lines is preferred rather than potentially restricted tenure splits, as this could restrict the level of affordable housing on some sites. There needs to be flexibility to respond to changing demand and specific site characteristics.

In addition we would welcome greater clarity regarding starter homes within the definition of intermediate housing and any targets on levels – particularly in light of the recent Housing White Paper.

For London Living Rent/Intermediate products, we would be keen that income thresholds are set locally and that measures are in place to promote schemes for local residents to ensure local housing need is met. There is concern that for example in London a £60K threshold may encourage outer migration from inner London effectively adding competition for places within Bromley. There is also concern that the living rent will not reflect the variations across the borough.

It is noted that an 'expert' viability unit will be set up. We would welcome further details regarding the role and support that may be provided through this unit for local authorities.

The document refers to ensuring the most efficient uses of land including higher density/taller buildings to achieve the 35% threshold. However, this should not be at the expense of other local priorities, for instance, the importance of protecting and enhancing local character. This may prove easier in areas where major infrastructure improvements are underway or planned, eg Cross Rail 1 and Cross Rail 2.

Yours sincerely

A black rectangular box redacting the signature of the Head of Planning Strategy and Projects.

Head of Planning Strategy and Projects

## **LB Camden –response to consultation on the Mayor's Draft SPG – Affordable Housing and Viability**

### **1. General**

- 1.1 The Mayor is thanked for the opportunity to submit comments relating to the draft SPG on affordable housing and viability. This response gives detailed comments and suggestions following a general response to the main aspects of the draft SPG.

#### ***Threshold approach***

- 1.2 Camden Council welcomes the Mayor's long-term target of 50% affordable housing, and will maintain its own local plan target of 50% for large developments. We strongly support the Mayor's efforts to secure more funding for affordable housing and deliver homes on TfL land.
- 1.3 Camden Council also supports the SPG's provision of a quicker route through the system for private developers who offer 35% affordable housing. Given that the vast majority don't meet this threshold, we consider that the 35% route will help deliver more affordable homes by providing a new incentive to the private sector.

#### ***Tenure***

- 1.4 We welcome the Mayor's commitment to genuinely affordable housing, and support the Mayor's benchmarks for London Affordable Rents, which we consider to be genuinely affordable rent levels.
- 1.5 We also welcome the Mayor's support for intermediate housing to rent. We would urge the Mayor to provide flexibility in the operation of the London Living Rent model so that it can be applied effectively in boroughs such as Camden with exceptionally high rents and house prices.
- 1.6 Camden Council supports the SPG's proposal that at least 30% of affordable housing should be at London Affordable Rents and 30% should be intermediate housing. With respect to the discretion offered to boroughs over the remaining 40%, Camden would wish to split this, bringing the total requirement for London Affordable Rent up to 60%, and adding 10% to intermediate housing, to be provided as intermediate homes to rent.

#### ***Vacant building credit***

- 1.7 Camden Council strongly supports the Mayor's view that in most circumstances it will not be appropriate to apply Vacant Building Credit in London, and welcomes the inclusion of this advice in the SPG.

#### ***Guidance on viability assessments***

- 1.8 We strongly support the SPG's proposal for a common approach to viability assessments, particularly the promotion of transparency and adoption of the existing use of land as the basis for its value, subject to the addition of a premium to incentivise landowners to bring land forward for development.



### ***Build to Rent***

- 1.9 Camden Council welcomes the Mayor's initiative to promote institutional investment in development of market housing to rent, and agrees that this has potential to improve quality in the private rented sector, and increase the overall delivery of housing. However, we would urge the Mayor to adjust the guidance on Build to Rent so that it can be applied effectively in the distinctive situations found in each borough, for example by providing explicit flexibility for boroughs to adjust the approach in the light of local circumstances.

### ***Finalising and implementing the SPG***

- 1.10 Camden Council welcomes the Mayor's collaborative approach to preparing the draft SPG, and for involving Cabinet Members and Council officers in discussion of the emerging guidance with his team and GLA officers prior to publication.
- 1.11 We very much hope that this collaborative approach will continue. Camden's Cabinet Member for Housing and Cabinet Member for Regeneration, Transport and Planning and Camden's officers would welcome the opportunity to be involved in further discussions with the Mayor's team and GLA officers to explain the comments and suggestions in this response.
- 1.12 Camden is nearing the end of the public examination process for the draft Camden Local Plan 2016. Consultation is currently taking place on Proposed Modifications, and we hope to adopt the Camden Local Plan this summer.
- 1.13 The Camden Local Plan will have more weight in the determination of planning applications than the Mayor's SPG, and may sometimes prevent the Council and other decision makers from following the SPG approach in full. Some of the potential divergences are discussed in the more detailed comments and suggestions that follow.
- 1.14 An example of such a divergence arises from paragraphs 4 and 2.6 of the SPG, which encourage authorities to apply the SPG to schemes capable of providing 10 or more homes. Both the Camden Development Policies adopted Nov 2010 and the draft Camden Local Plan 2016 seek affordable housing on the basis of a sliding-scale target. Once the draft Local Plan is adopted, we anticipate that the target for a scheme with capacity for 10 additional homes/ 1,000 sq m floorspace will be 20%. We expect the target to increase by 2% for each additional 100 sq m, so a target exceeding 35% would only arise from a scheme with capacity for 18 additional homes (1,800 sq m).
- 1.15 We therefore suggest that the SPG should acknowledge that where boroughs have adopted local plans that are up-to-date, these will have more weight than the Mayor's SPG, and therefore that boroughs may not be able to follow strictly the approach set out in the SPG. We encourage the Mayor to accommodate this situation by providing explicit flexibility for boroughs to adjust the approach in each part of the SPG in the light of local plan policies and other distinctive characteristics of their areas.
- 1.16 Following the adoption of the Camden Local Plan, Camden Council will be reviewing its own set of Supplementary Planning Documents (known as Camden Planning Guidance) to reflect the new Local Plan. We envisage that the reviewed Camden Planning Guidance will endorse many elements of the Mayor's SPG, and identify any areas where our approach will diverge from the Mayor's. To provide certainty to

developers, the Mayor might wish to advise all boroughs to use their own SPDs to identify elements of the Mayor's SPG that they support, and any areas of divergence.

- 1.17 The draft SPG section "Threshold Approach to Viability" precedes the more general section "Guidance on Viability Assessments". A number of elements of the general viability guidance provide the context for the more detailed threshold approach. We suggest that the Mayor may wish to consider reordering the sections in the finalised SPG to commence with "Guidance on Viability Assessments".

## **2. Threshold approach**

- 2.1 As indicated in para 1.3 of this response, the Council supports the principle of a streamlined approach to considering financial viability for schemes that provide more than 35% affordable housing, however we do have some detailed comments and suggestions regarding the approach proposed in the draft SPG.
- 2.2 This section of the Camden Council response includes a number of comments on the subsequent SPG section "Guidance on Viability Assessments", as this later section sets the context for the threshold guidance.

### ***Increasing affordable housing over 35%***

- 2.3 We welcome statements in the draft SPG that the Mayor's long-term strategic aim is for half the new homes in London to be affordable, and that the approach to affordable housing will be a key aspect of the London Plan review. We also note the aim in the SPG to increase output above 35% using grant available through the Affordable Homes Programme 2016-21, schemes led by RPs, and the release of public land.
- 2.4 It is possible that the 35% threshold could be seen by developers as a new affordable housing target, and form the basis of their bids for the purchase of land. In the short-term this could involve a lowering of bids and an improved delivery of affordable housing, but there is a risk that once land transactions have taken place, the 35% threshold could be locked-in for some years as the maximum percentage of affordable housing that can viably be delivered. This issue is a particular concern for boroughs such as Camden with exceptionally high house prices, where the level of grant available for developer-led schemes will have limited potential to deliver any additional affordable homes. We note that the potential for the price paid to be considered as part of viability assessment should be reduced by the SPG's advice that land values should be determined on the basis of the *Existing Use Value plus a Premium*. However, in practice land transactions are likely to have a significant impact on the percentage premium that is agreed.
- 2.5 To mitigate this risk, we suggest that SPG should state explicitly that developers should not treat the 35% threshold as a maximum target, and instead should have regard to:
- current London Plan Policy 3.8 indicating that the Mayor and the boroughs should seek to maximise affordable housing provision;
  - the SPG advice that the Mayor considers Existing Use Value plus a premium to be the most appropriate basis for a benchmark land value;
  - the Mayor's long-term strategic aim for 50% of new London homes to be affordable;
  - the Mayor's intention that the approach to affordable housing should be a key consideration of the London Plan review; and

- the provisions of the Mayor's Affordable Homes Programme 2016-21, which will provide grant towards all the affordable homes in the scheme if the total affordable housing meets or exceeds 40%.

### ***Measuring the percentage of affordable housing***

- 2.6 The draft SPG indicates in paragraphs 7 and 2.8 that the percentage of affordable housing should be measured in habitable rooms. In the Camden Development Policies adopted Nov 2010, Policy DP3 indicates that we consider the amount of affordable housing on the basis of the percentage of the total addition to housing floorspace. Similarly, the draft Camden Local Plan 2016 indicates in Policy H4 that "targets are applied to additional housing floorspace proposed, not to existing housing floorspace or replacement floorspace".
- 2.7 The use of floorspace rather than homes in measuring the percentage was introduced in Camden's own SPG in 2006 as a way to increase the delivery of large affordable homes and prevent developers from proposing particularly large market homes as a mechanism to reduce affordable housing requirements. Analysis of development monitoring data submitted as part of the examination of the Camden Local Plan shows that this approach has been successful, and is attached as Annex 1.
- 2.8 We note that measurement by habitable rooms has been adopted by the draft SPG with similar aims in mind. However, in Camden, the floorspace approach will have the weight of development plan policy, and it is not clear that the habitable rooms approach would be as successful. In Camden's market sector, open-plan styles are common. Many market flats have relatively few habitable rooms, but the rooms are quite large. At the higher end of the market, townhouses may have many large habitable rooms, and in some cases rooms have floor areas exceeding 20 or 30 sq m<sup>1</sup>. In contrast, Camden's social-affordable rented homes often comprise several relatively small habitable rooms, and our current guidance favours separate kitchens for affordable family housing, partly as a consequence of the population's ethnic mix. The habitable room approach could therefore deliver fewer affordable homes and less affordable floorspace. We also note that a measure based on habitable rooms is open to manipulation, since changes to the internal layout of flats and houses do not constitute development.
- 2.9 Camden Council suggests that the GLA should consider amending the SPG to consider the percentage of affordable housing by floorspace (sq m GIA) rather than habitable rooms. However, if evidence suggests that habitable rooms are a more appropriate measure than floorspace in some boroughs, we suggest that the SPG should provide explicit flexibility for other boroughs to measure the percentage of affordable housing by floor area where this would be more consistent with an up-to-date local plan and better meet affordable housing objectives.
- 2.10 LB Camden has found that applying affordable housing requirements to the **additional** housing floorspace in the scheme is helpful for developments involving existing housing, whether market or affordable housing. It can help to bring forward redevelopment of existing market housing where properties are in poor condition or the site is underused, and works in tandem with policies protecting affordable homes to help us ensure that estate regeneration schemes consider the needs of existing occupiers.

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<sup>1</sup> We have included plans of a Camden scheme with this response to illustrate the large floor areas of habitable rooms in homes aimed at the higher end of the market.

- 2.11 We suggest that the GLA should consider adopting a similar approach, although we recognise that considering such a change might be more appropriate through the review of the London Plan than the SPG.

***Schemes only suitable for Route A/ not suitable for Route B***

- 2.12 The draft SPG indicates in paragraph 2.9 and paragraph 2.58 that schemes that involve demolition or loss of existing affordable housing, including estate regeneration and renewal schemes, are only suitable for viability Route A rather than Route B.
- 2.13 Camden Council supports the draft SPG's statement that existing affordable housing should be replaced on a like-for-like basis. However, where an estate regeneration scheme *does* replace existing affordable housing like-for-like, and also provides 35% or more of the *additional* housing as affordable housing (in accordance with the relevant SPG tenure split), we suggest that the SPG should provide for the scheme to be considered via Route B.

***Financial viability review mechanism***

- 2.14 Camden Council has been successfully negotiating financial viability review mechanisms and deferred contingent obligations in relation to affordable housing since 2011. By the end of October 2016, there were agreements or undertakings in place relating to 37 schemes, and 29 of these developments had been started or completed. Deferred contingent contributions had been received for nine schemes, and six involved the maximum payment (equivalent to 50% affordable housing). The total sum received to the end of October 2016 was approximately £24 million.
- 2.15 In the light of our own experience, we believe there are a number of elements in the draft SPG that would benefit from adjustment or additional flexibility.

***a. profit and surplus***

- 2.16 Para 3.4 of the draft SPG confirms that the Mayor will use the residual land value methodology in considering financial viability. Camden Council welcomes this approach, which is consistent with existing Camden Planning Guidance.
- 2.17 Paras 3.32 to 3.35 of the draft SPG imply that the rate of profit or developer return should be agreed with the relevant borough or the Mayor as an ***input*** to the viability assessment. This is the approach taken in existing Camden Planning Guidance, and we suggest that the finalised SPG should make this guidance explicit. An agreed rate of profit is referred to on page 15 as an element of the early review mechanism for Route A, but could helpfully be highlighted in the second paragraph of page 15. On page 16, the SPG could helpfully state that for Route B, an agreed rate of profit should form part of the S106 agreement alongside Benchmark Land Value, providing an input to viability review if triggered.
- 2.18 Under the residual land value approach, where viability review takes place at an agreed profit level and agreed benchmark land value, a surplus arises if the residual land value exceeds the agreed benchmark. This is tacitly confirmed by para 3.37 of the draft SPG, which states that "a development is typically deemed to be viable if the residual land value is equal to or higher than the benchmark land value". However, the draft SPG refers on a number of occasions to *surplus returns* and *surplus profit* (eg second/ fourth/ fifth paras on page 15, fifth para on page 16, third/ seventh bullet point in para 3.53). We suggest that the draft SPG should be amended to refer to "surplus above the agreed benchmark land value" (or simply "surplus").

- 2.19 We note that in practice, any increase in the residual land value may well increase developer profit if it is not captured through a deferred contingent contribution to affordable housing. However, we suggest that the term 'surplus profit' is unhelpful as it could be negatively construed by the development industry and (where an appeal is being considered) by the Planning Inspectorate.

***b. surplus split***

- 2.20 The draft SPG indicates (in the fourth/ fifth paras on page 15, the fifth para on page 15, and Annex A) that any surplus should be split on a 60-40 basis, with the planning authority taking the greater share and the developer taking the lesser share. In accordance with Camden Planning Guidance, all existing S106 agreements that seek deferred contingent contributions for developments in Camden indicate that the split of the surplus between the borough and the developer will be 50-50.
- 2.21 We note that the split is essentially arbitrary, however we have found the 50-50 split to be relatively acceptable to the industry and easy to justify in the context of planning appeals. An equitable split maintains a clear incentive for developer to minimise build costs and maximise sales income, and is consistent with a 50% affordable housing target. We also note that it may be necessary to vary the split on some occasions, notably where the former landowner has imposed an 'overage' via the contract of sale, typically entitling the former landowner to a share of any increase in the anticipated sales value of the completed homes.
- 2.22 We suggest that the SPG should provide explicit flexibility around the split (perhaps by stating the Mayor's preferred or recommended split, rather than stating that the surplus **should** be split according the specified ratio). We also suggest that the Mayor should consider whether a preferred 50-50 split would be more appropriate than a 60-40 split.

***c. timing***

- 2.23 On page 15 and page 16, for viability Routes A and B the SPG proposes an early review of viability if an agreed level of progress has not been made within two years of the permission (in effect the review is contingent on progress). We suggest that the trigger point for a contingent review needs to be a point during implementation that can easily be monitored and enforced, such as implementation (commencement) and practical completion. The period from a grant of permission to an event such as implementation will depend on many factors, such as the scale and the condition of the site, complexity of the development, the number of pre-commencement conditions, and the detailed components of the build programme.
- 2.24 We have used Camden development monitoring data for completions from April 2005 to March 2015 to give an illustration of the variety of schemes, and the importance of relatively small schemes that could be all but complete within two years. Over that period, over 1,000 schemes involved 10 homes or fewer, and just under 100 schemes involved more than 10 homes. Of those with over 10 homes, over half had 11-20 homes, another quarter had 21-50 homes, 13% had 51-75 homes, and the remaining 8% involved 76-200 homes. In that context, when we have set an early review trigger that is contingent on progress, we have selected a clear event in the build programme, and agreed with the developer when we would expect this to take place. We have then added a maximum acceptable delay to set the timing of trigger for the contingent review.

- 2.25 Camden Council therefore suggests that the SPG should provide flexibility around the expression 'within two years of the permission', or define an early stage review in terms of the extent of the works that should be expected eg an early stage review should be triggered if 'practical implementation' has not taken place within three months of the anticipated date ('practical implementation' refers to material operations other than archaeological works, site or soil investigations, ground investigations site survey works, works of decontamination, the erection of hoardings and fences and the demolition of existing buildings).
- 2.26 Subsequent paragraphs in Section 2 of this response indicate that on-site delivery of any uplift in affordable housing may not be achievable in Camden, given the scale and character of typical developments in the borough. We note that para 3.52 of the draft SPG indicates that review mechanisms should be based on the most robust data available, generally the price paid for the completed units. We agree that fast-track viability Route B should involve a single review of viability, triggered only if an agreed level of progress towards completion has not been achieved. However, in the light of the limited scope for on-site provision in Camden, we suggest that the SPG should provide flexibility in Route B for a 'near end of development review' instead of 'an early review' where it would not be practical to introduce additional affordable housing on the application site. For example, where a scheme has an anticipated build programme of 27 months, a review could be sought upon practical completion if practical completion is not achieved within 30 months. We consider this is more likely to be attractive to developers than a requirement to identify market homes that will switch to affordable homes if viability has improved, and is more likely to generate an additional contribution because it will enable the price paid for market homes to be taken into account.
- 2.27 On page 15, for Viability Route A the SPG proposes a near end of development review once 75% of units are sold. This is the mechanism we have most commonly used for developments in Camden, and the Council supports it, but suggests that the SPG could helpfully refer to 'approximately' 75% to provide greater flexibility. Flexibility could be helpful in a number of circumstances, for example where there is a wide variation in the value of homes in a scheme.
- 2.28 On page 15, footnote 9 suggests an alternative trigger of "3 months before practical completion" where the homes are not being sold. We question whether this is a trigger point that could be monitored or enforced. We also have some doubts about whether viability reviews are likely to deliver any additional affordable housing where all homes are to be let by the developer – please see our comments on Build to Rent.

***d. uplift in affordable accommodation to be provided on-site***

- 2.29 In the fourth para on page 15, the fifth para on page 16 and the final bullet point of para 3.53, the draft SPG indicates that any surplus shown by an early viability review should be used to create additional affordable housing on site 'in most cases'. The fifth para on page 15 of the SPG goes on to suggest that plans (presumably plans referred to as part of the planning permission and S106 agreement) should show which units would switch to affordable accommodation in the event of viability improvement.
- 2.30 Camden Council shares the Mayor's presumption that affordable housing provision should be made as part of the development on the application site. One of the 37 legal agreements and undertakings referred to above related to a phased scheme of 198 homes plus commercial space, and this agreement did involve an early review if practical implementation had not occurred within 18 months, with any surplus to be

used to create additional affordable housing on site. However, given the character of development in Camden, we suggest that the expression 'in most cases' (which is omitted from para 3.53) implies that the approach will be widely applicable, whereas it is only likely to be appropriate for schemes involving more than 75 homes.

- 2.31 As indicated in paragraph 2.24 of this response, the vast majority of residential developments completed in Camden from financial years 2005 to 2014 involved 75 homes or fewer, thus phased developments are a rarity. In many cases, the build programme will be substantially progressed in the two years following permission.
- 2.32 Furthermore, the high house prices in Camden tend to generate high specification schemes with high service charges. High service charges make separate cores for affordable housing almost unavoidable, and these in turn make it undesirable to 'switch' units from market to affordable tenures once final designs and layouts have been fixed.
- 2.33 A final consideration is the impact of identifying units that might switch to affordable housing at the application/ S106 agreement stage. This is not something we sought to do in connection with the 198 home scheme referred to above, and we suggest that the potential for delay at the application stage outweighs the benefit of greater certainty at the early review stage, especially bearing in mind that the early review is contingent on progress, and should usually be unnecessary.
- 2.34 Taking these considerations into account, we suggest that explicit flexibility should be provided around whether additional affordable housing arising from an early viability review is provided on site. The SPG could possibly indicate that the Mayor's preference is for additional affordable housing to be provided on site wherever possible, but the Mayor recognises that on site provision may not be possible for single phase schemes, particularly schemes involving 75 homes or fewer.

***e. suggested Annex A formulae***

- 2.35 The third para on page 15 of the draft SPG indicates that reviews of Route A schemes should follow the formulae provided in SPG Annex A, while the sixth para 'encourages' the use of Annex A, and indicates that the formulae should be embedded in the S106 agreement. Annex A itself is titled "Suggested review formulas".
- 2.36 Camden Council has been successfully seeking post-implementation financial viability reviews and deferred contingent contributions to affordable housing since 2011, and as indicated in para 2.14 of this response, by the end of October 2016 these arrangements were in place through legal agreements or undertakings for 37 schemes, most of which were under construction or completed. Consequently, we have well established mechanisms, formulae and S106 clauses, which are outlined in Camden Planning Guidance.
- 2.37 The Mayor's suggested Annex A formulae are far more complex than the mechanisms established for Camden, and are not necessarily appropriate for the scale and character of typical developments in the borough. We also consider that the Annex A formulae would be likely to make the review process more opaque to the public rather than more transparent. We suggest that the SPG should make it clear on page 15 and in Annex A itself that the use of the formulae is optional and that boroughs may wish to incorporate them into S106 agreements where appropriate to the scale and character of the development proposed.

- 2.38 Broadly speaking, Formula 1 shows how to calculate the agreed borough share of the surplus available to provide additional affordable housing – as noted in para 2.22 of this response, we suggest that the borough share should be 50%. Formula 1 indicates that the surplus is: the increase in development value since the grant of permission *minus* the increase in costs since the grant of permission.
- 2.39 Formula 1 would be appropriate if the benchmark land value and the residual land value were equal at the time of the grant of permission. However, in our experience, the residual land value is frequently below the benchmark land value when permission is granted, as the developer is anticipating that increasing sales values will ensure scheme viability by the time of completion. In that context, the surplus is more easily expressed as: the residual land value at the time of review *minus* the benchmark land value.
- 2.40 It is notable that the formulae make no reference to benchmark value. Given the emphasis placed on benchmark value in other parts of the SPG (eg page 16 and paras 3.36 to 3.49), we consider this to be a significant omission that should be corrected.
- 2.41 Similar concerns arise from Formula 3, which would only be appropriate if the benchmark land value and the residual land value were equal at the time of the grant of permission. Formula 3 is made more complex than is necessary by distinguishing the known elements of value (and cost) from the estimated elements of value (and cost), when they could simply be treated as an updated estimate in the light of the additional information available. A further level of complexity is added by the use of build costs rather than development costs, which necessitates a separate reference to profit. In calculation of residual land value, the agreed return to the developer would be seen more usually as a normal element of the development costs.
- 2.42 Formulae 2 and 4 broadly speaking provide for any surplus to be converted into an additional affordable housing floorspace requirement, and for any affordable housing floorspace shortfall (compared with a 50% target) to be converted into a payment cap. For developments where additional affordable housing cannot be achieved on site, and for boroughs that already have an established figure for payments in lieu of affordable housing (generally a price per square metre), these complex formulae will not be necessary. We suggest that Annex A should specifically acknowledge that boroughs may choose to use an established payment in lieu figure (set out in a local plan or SPD) where additional affordable housing cannot be achieved on site.

***Cost of appraising the viability review to be met by the applicant***

- 2.43 The fourth paragraph on page 16 of the draft SPG indicates that for Route B, in the event that a viability review is triggered, the cost of the viability appraisal should be met by the applicant. We suggest that the same requirement should apply to any viability appraisal or review arising under Route A (and be included on page 15 of the SPG) and in Part 3 of the SPG (and be included in paras 3.1 to 3.9 and paras 3.50 to 3.54). We would also welcome acknowledgement in the SPG that boroughs may sometimes seek funding from the applicant for an independent review of the viability information the applicant has submitted.

***Viability information required for Route B***

- 2.44 The opening paragraph on page 16 of the SPG indicates that applicants will not be required to provide viability information, whilst the fourth para indicates that the S106 agreement should set out an agreed Benchmark Land Value. We consider that the



Benchmark Land Value is a form of viability information, and suggest that the opening paragraph of page 16 should be amended to indicate that applications will only be required to provide very limited viability information.

- 2.45 As stated in para 2.17 of this response, we suggest that the fourth para on page 16 of the SPG should indicate that an agreed rate of profit will also be specified in the S106 agreement.
- 2.46 Para 3.25 of the draft SPG states "it should not be assumed that abnormal costs will be offset at the expense of compliance with the Development Plan". In the light of this statement, we suggest that any abnormal or exceptional cost items that the applicant would wish to include in a viability review (eg decontamination, moving substations, moving water mains/ sewers etc) should also be specified in the S106 agreement, and referred to in the fourth para on page 16 of the SPG.
- 2.47 Paras 2.33 to 2.36 of this response indicate that the build programme for the scheme should be used to inform the timing of any early review of viability. We note that para 3.9 of the draft SPG indicates that details of the assumed development programme should be provided. On that basis, we suggest that a requirement to submit a build or development programme should be added to Part 2 of the SPG also (ideally on pages 15 and 16).

#### ***Early involvement of RPs***

- 2.48 The draft SPG indicates that RPs should be involved in market-led development at a pre-application stage. Section 5 of this response considers the proposal in more detail, notes that Camden's experience has shown early RP involvement to be difficult to achieve in practice, and suggests that the best prospect for achieving early RP involvement might be to make it an explicit requirement for following the Route B viability approach.
- 2.49 We note that under the heading "Registered providers and public owned land", para 2.24 of the draft SPG gives some indication that a purchase price for affordable housing agreed with an RP will form an element of S106 agreements, but does not state this explicitly. We suggest that any requirement for early involvement of RPs, particularly involvement that would lead to an affordable housing price forming part of S106 agreements, needs to be given strong emphasis in the early part of the finalised SPG.

### **3. Tenure**

#### ***London Affordable Rent and mix of affordable tenures***

- 3.1 As stated in para 1.4 of this response, Camden Council welcomes the Mayor's commitment to genuinely affordable housing, and supports the Mayor's benchmarks for London Affordable Rents, which we consider to be genuinely affordable rent levels. As indicated in para 1.6 of this response, we also support the SPG's proposal that at least 30% of affordable housing should be at London Affordable Rents and 30% should be intermediate housing. With respect to the discretion offered to boroughs over the remaining 40%, Camden would wish to split this, bringing the total requirement for London Affordable Rent up to 60%, and adding 10% to intermediate housing, to be provided as intermediate homes to rent.

### ***Intermediate housing and London Living Rent***

- 3.2 Camden Council also welcomes the Mayor's support for intermediate housing to rent, as indicated in para 1.5 of this response. However, we urge the Mayor to provide flexibility in the operation of the London Living Rent model so that it can be applied effectively in boroughs such as Camden with exceptionally high rents and house prices. We also encourage the Mayor to make a firmer statement about the suitability of shared ownership where house prices are high.
- 3.3 The Land Registry currently indicates that the average price paid in December 2016 for a home in Camden was £866,973. The draft Camden Local Plan notes the high house prices in the borough, and states: "in Camden it is rarely possible for providers to deliver shared ownership housing that would be affordable for households with incomes close to the median household income in Camden, and highly challenging to deliver schemes meeting the income thresholds set out in the London Plan. Given these constraints, we will strongly encourage provision of homes for intermediate rent rather than shared ownership, subject to maximising overall affordable housing output in the context of the resources available and development viability" (para 3.101, page 69).
- 3.4 The draft SPG states in paragraph 2.40 that "Generally shared ownership is not appropriate where unrestricted market values of a unit exceed £600,000". This is a welcome statement, but it would be helpful for the SPG to draw out the implications of the statement. We would particularly welcome a direct statement that the Mayor considers that homes with a market value exceeding £600,000 should not generally be provided for shared ownership, and in areas where the market value of new homes exceeds £600,000 the Mayor will support borough planning policies that specify intermediate rent as the preferred intermediate housing product.
- 3.5 High house prices in Camden and the limitations that high prices place on shared ownership also raise the following questions about the London Living Rent product:
- should London Living Rent follow a rent-to-buy model in the borough?;
  - what should happen to homes with a market value over £600,000 at the end of 10 years?; and
  - what should happen to occupiers who are unable to afford shared-ownership in Camden at the end of 10 years?
- 3.6 Camden Council has already provided a formal response to London Living Rent (agreed by the Cabinet Member for Housing in October 2016) and this is attached as Annex 2 to this response to the draft SPG. In addition to the questions raised in para 3.5 of this response, the response to London Living Rent also expresses reservations about the approach to setting rent levels, particularly the use of the ward as the geographic unit for calculating the benchmark rents.
- 3.7 Our response to London Living Rent sought discretion to vary a number of elements of the product to improve its suitability for lower to middle income households in Camden, and we would welcome the adjustment to the SPG to provide explicit discretion for boroughs with exceptionally high rents and house prices as follows:
- discretion for tenancies to continue after the initial 10-year period;
  - discretion to set benchmark rents based on a wider geographic area than wards; and
  - discretion to use borough benchmark rents as the average rent for each scheme, with rents varying around that to accommodate households with different income levels.

- 3.8 We encourage the Mayor's team and GLA officers to have further discussions with us about how intermediate housing should work in Camden, and whether the intermediate rent model we are promoting in the borough should be seen as a variation of the London Living Rent product, or as a discrete intermediate rent product.

#### **4. Vacant Building Credit**

- 4.1 As stated in para 1.7 of this response, Camden Council strongly supports the Mayor's view that in most circumstances it will not be appropriate to apply Vacant Building Credit in London, and welcomes the inclusion of this advice in the SPG.
- 4.2 We note that para 2.63 of the draft SPG suggests that for a development to qualify for Vacant Building Credit, an applicant will be required to demonstrate that the relevant buildings have been vacant for a continuous period of at least five years before the application was submitted. During the public examination into the draft Camden Local Plan, the Inspector expressed reservations about whether five years was an appropriate period for testing the ability of a public house to trade successfully, and in the light of this we are not confident that a requirement to demonstrate a continuous vacancy period of five years would be successful during an examination of a development plan or a planning appeal.
- 4.3 Para 2.64 of the draft SPG indicates that an application cannot qualify for the CIL vacancy test if it is claimed to qualify for Vacant Building Credit. On that basis, we suggest that the SPG could replace the demonstration of a five year vacancy with demonstration that the relevant buildings have been vacant for at least 30 months in the last 36 months (this is the inverse of the CIL vacancy test).
- 4.4 Our experience during the public examination of the draft Camden Local Plan suggests that if the Mayor wishes to incorporate his guidance on Vacant Building Credit into the London Plan, the panel of the Examination in Public is likely to seek supporting evidence, such as evidence of the proportion of residential developments that involve conversion or demolition of vacant buildings, and the impact that Vacant Building Credit would have on affordable housing output. Similarly, if boroughs seek to incorporate the guidance into local plans, the Inspector examining the soundness of the local plan is likely to seek supporting evidence.
- 4.5 Camden Council considers that the incorporation of the guidance on Vacant Building Credit into the London Plan would be of considerable assistance to boroughs, and within resource constraints would be willing to provide the Mayor and the GLA with as much evidence as possible about the potential impact of the Credit on the delivery of affordable housing in Camden.

#### **5. Guidance on Viability Assessment**

- 5.1 As stated in para 1.8 of this response, we strongly support the SPG's proposal for a common approach to viability assessments, particularly the promotion of transparency and adoption of the existing use of land as the basis for its value, subject to the addition of a premium to incentivise landowners to bring land forward for development.
- 5.2 Section 2 of this response dealing with the threshold approach also includes a number of comments relevant to the Part 3 of the draft SPG "Guidance on Viability

Assessments", and we ask the Mayor to take these into account when finalising Part 3.

#### ***Affordable housing values and early involvement of RPs***

- 5.3 As indicated in Section 2 of this response, the draft SPG indicates that applicants should engage with RPs at an early stage, and also states that the price offered by an RP for each affordable home should be enshrined in the S106 agreement. Camden Planning Guidance has been promoting early RP involvement in market-led schemes since 2006. The Council has recently added a requirement to CPG that the selected RP must be approved by the Council, and is in the process of confirming an Approved Strategic Partner List.
- 5.4 The Mayor's proposed approach to RP involvement would be likely to improve the quality of the affordable housing in market-led developments, and reduce the risk of upwards pressure on rents from a bidding competition between RPs. However, in our experience applicants are rarely prepared to commit to an RP before planning permission is granted, and we therefore consider that developers would need a very strong incentive to follow the draft SPG approach. Improved access to affordable housing grant from the GLA is unlikely to be a sufficient incentive. We consider that best prospect for achieving early involvement of an RP might be to make this an explicit requirement for an applicant wishing to follow the 'Route B' fast-track approach to viability, and therefore suggest that the Mayor should consider incorporating this provision in the finalised SPG.
- 5.5 We also suggest that any requirement for early involvement of RPs, particularly involvement that would lead to an affordable housing price forming part of S106 agreements, needs to be given strong emphasis in the early part of the finalised SPG.

#### ***Developer profit***

- 5.6 Section 2 of this response suggests that where a S106 agreement indicates that a viability review will be required in certain circumstances, an agreed rate of profit should also be included in the agreement. We suggest that paras 3.32 to 3.35 of the draft SPG should also explicitly state that the S106 agreement will specify the rate of profit where a viability review may be required.
- 5.7 Para 3.35 of the draft SPG indicates that the Mayor will consider profit as a factor of gross development cost or gross development value. Camden Planning Guidance currently indicates that our preference is for profit to be expressed as a percentage of gross development value. We have taken this approach in the light of our experience of deferred contingent contributions to affordable housing, and specifically financial contributions. Where the profit level is a factor of gross development cost, developers seek to include any deferred contingent financial contribution as part of development cost, adding significant complexity to the calculation of an appropriate figure for the deferred contingent contribution. We therefore suggest that the draft SPG could helpfully indicate that the Mayor will consider profit as a percentage of gross development value *rather than* gross development cost.

#### ***Benchmark land value and surplus***

- 5.8 As noted in Section 2 of this response, para 3.37 of the draft SPG states that "a development is typically deemed to be viable if the residual land value is equal to or higher than the benchmark land value". Camden Council supports this statement, and suggests that it should be extended to indicate that where the residual land value is

higher than the benchmark value, the difference between the two values represents a 'surplus' that is available to fund additional affordable housing and/ or other planning obligations.

### ***Contingent obligations and review mechanisms***

- 5.9 We suggest that para 3.51 of the draft SPG could helpfully make reference to changes in development costs as well as changes in the value of the development.
- 5.10 The seventh bullet point in para 3.53 of the draft SPG makes reference to 'surplus profit', and also suggests that the S106 agreements should include an agreed split between the developer and the borough. As explained in Section 2 of this response, we suggest that the term 'surplus profit' should be replaced with 'surplus above the agreed benchmark land value' (or simply 'surplus'). In line with our comments in Section 2 of this response, we also suggest that this bullet point should refer to the Mayor's preferred split, and that the Mayor should consider whether a preferred 50-50 split would be more appropriate than a 60-40 split.

## **6. Build to Rent**

- 6.1 As stated in para 1.9 of this response, Camden Council welcomes the Mayor's initiative to promote institutional investment in development of market housing to rent, and agrees that this has potential to improve quality in the private rented sector, and increase the overall delivery of housing.
- 6.2 However there is a risk that some elements of the guidance on Build to Rent might have an impact on our ability to deliver housing to buy and genuinely affordable housing to rent, and it is not entirely clear that the planning pathway provides suitable safeguards for councils or suitable benefits to developers to overcome this impact. We would urge the Mayor to adjust the guidance on Build to Rent so that it can be applied effectively in the distinctive situations found in each borough, for example by providing explicit flexibility for boroughs to adjust the approach in the light of local circumstances.
- 6.3 We note that Build to Rent is identified in this month's Housing White Paper as a sector that the government intends to promote through a number of national measures. We therefore recognise that there may be constraints on the final form of the SPG with respect to Build to Rent.

### ***Build to Rent pathway***

- 6.4 Para 4.7 of the draft SPG sets out a Build to Rent pathway, intended to provide a simplified route through the planning system for developments that meet certain criteria. However, the five principles said to comprise the pathway involve a rather confusing mix of the criteria that the developments must meet and the simplifications that will be provided in the planning system.
- 6.5 In particular, principle (1) 'definition' is not a definition in the strict sense, but a set of criteria the development should meet in order to qualify for the pathway. We suggest that this principle should be renamed to reflect its content more clearly, for example the titles 'schemes qualifying for the pathway' or 'qualifying for the pathway' might be more appropriate. Similarly, principle (5) 'management standards' provides a further set of qualifications or obligations that will apply to schemes wishing to follow the simplified pathway, and we suggest that principle (5) should be presented together with principle (1).

- 6.6 Principles (2), (3) and (4) are the only principles that genuinely set out a simplified pathway rather than setting out requirements that a development should meet if it is to follow the pathway, and we suggest that this could be made clearer by identifying them as the **three** simplified planning principles that will apply to developments that meet the relevant Build to Rent **qualifications**. Alternatively, principles (1) and (5) could be identified as 'obligations (or commitments) of the applicant/ operator' and principles (2), (3) and (4) could be identified as 'commitments of the Mayor/ local planning authorities'.
- 6.7 The remaining paragraphs of this section provide more detailed comments on each principle. To place these comments in context, it seems that the Build to Rent pathway has been prepared with a particular institutional investment model in mind. Two key elements of this model appear to be:
- an investor seeking a long-term return from the scheme will commission a contractor to develop the scheme, or will develop it in conjunction with a construction partner; and
  - the site under the control of the investor (whether a stand-alone site or a discrete site within a larger development) will have no potential to provide multiple blocks involving different tenures.
- 6.8 Build to Rent housing (other than social housing and student housing) is still a relatively new sector, and it seems likely that other models could emerge quite quickly. One other model is for market subsidiaries of Housing Associations to develop and manage private Build to Rent themselves with the aid of investor funding, such as Thames Valley Housing Association with their Fizzy Living brand. Other possible models include schemes developed speculatively for sale to the institutional market, and discrete components in larger schemes built by house-builders and commercial developers seeking to add diversity to a particular development area, diversify their investments to provide short-, medium- and long-term returns, and/ or reduce their exposure to risk from economic fluctuations. On that basis, we suggest that the SPG should provide sufficient flexibility to guide developments that do not conform to the anticipated model but do satisfy the qualifications for the Build to Rent pathway.

### **Definition**

- 6.9 As stated in para 6.5 of this response, the 'definition' is not a definition in the strict sense, but a set of criteria the development should meet in order to qualify for the pathway. Clearly many developments that do not meet these criteria are *de facto* built to rent. As the guidance is currently expressed, lower quality proposals that don't meet qualifying criteria are likely to seek equivalent benefits through planning applications and appeals. To mitigate this risk, we recommend that the SPG should replace the title 'definition' with a more accurate title such as 'schemes qualifying for the pathway', and should provide more clarity about what happens to schemes that don't meet pathway requirements, such as providing explicit discretion for boroughs to apply parts of the pathway principles to schemes that don't meet all the qualifying criteria where they judge this to be appropriate in the context of local circumstances.
- 6.10 In para 4.9 of the draft SPG, the first three bullets are simple qualifications that can be verified and enforced through the planning system, and we consider it appropriate for them to be retained as part of a renamed principle (1). We strongly support the third bullet point "all units to be self-contained and let separately". We note the footnote on page 40 of the SPG indicating that the 2016 Housing SPG provides guidance on non self-contained accommodation. The Camden Local Plan also provides a policy

designed specifically to ensure that the particular issues arising from proposals for housing with shared facilities and HMOs can be fully considered (Policy H10). We do not consider that the Local Plan approach to housing with shared facilities and HMOs could operate successfully in tandem with the Build to Rent planning pathway.

- 6.11 The fourth bullet point goes beyond what would be necessary in planning terms to secure management standards in the development and appears to be introduced primarily to provide for a discounted market approach to affordable housing in the context of the anticipated institutional investment model (our comments on the approach to affordable housing are provided in the subsequent paras of Section 6). If this bullet point is to be retained in its current form, we suggest that it should be incorporated into principle (5) as a factor that could help to secure high quality management. If the fourth bullet point is retained in principle (1), we suggest a more appropriate phrase would be 'unified ownership and management of all Build to Rent homes in the development'.
- 6.12 The final three bullet points in para 4.9 are effectively management commitments by the applicant/ operator, and are duplicated in principle (5) 'management standards'. Since principles (1) and (5) overlap, we suggest that these bullet points be replaced by a single bullet point 'compliance with specified management standards', and that principles (1) and (5) should be presented together (as suggested in para 6.5 of this response).
- 6.13 Para 4.10 of the draft SPG recognises that a Build to Rent development could form one block in a larger mixed use development. We disagree with the statement that the principle of single ownership underpins the need for a distinct approach to affordable housing, as clearly where a Build to Rent scheme forms one block in a larger mixed use development, there is potential for affordable housing to be provided in other blocks.
- 6.14 **Clawback** We agree in principle that there should be some mitigation where covenanted Build to Rent housing is lost as this would represent a reduction in the options available in the housing market. However, we suggest that the term 'clawback' could be negatively construed by the development industry and the Planning Inspectorate, and we do not think either of the options presented in paragraphs 4.13 to 4.15 of the SPG entirely serves the intended purpose. We would welcome opportunities to discuss this further with the Mayor's team and GLA officers.
- 6.15 Option one seeks to base a payment on the difference between:
- the amount of affordable housing the application development can provide if built as covenanted Build to Rent; and
  - the amount it can provide if built for sale.
- In our experience, the difference between these amounts is likely to be unpredictable, and may be marginal. There is a significant Build to Rent scheme under construction in Camden<sup>2</sup>, and viability assessment for this scheme proceeded on a built-for-sale basis as there was no existing Build to Rent market in the borough that would enable likely rents to be assessed. Furthermore, it is not clear whether the affordable housing quantum should be considered on the basis that it is discounted market rent or on the basis of the tenure split set out in draft SPG para 2.28.
- 6.16 Option two seeks to base a payment on the equivalent of 35% of the application development being provided as affordable housing (based on the tenure split set out in Part 2 of the SPG). Para 4.15 of the draft SPG suggests that this option avoids the

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<sup>2</sup> Essential Living at 100 Avenue Road, Swiss Cottage NW3 3HF, application ref 2014/1617/P

need for two viability appraisals, but we do not consider this strictly to be the case since the approach still involves viability appraisal of the application in accordance with Route A as well as calculation of a clawback payment based on a counterfactual appraisal involving 35% affordable housing. We are also concerned that this option involves a tacit assumption that Build to Rent schemes will provide less than 35% affordable housing, and that the maximum affordable housing requirement from Build to Rent schemes that are transferred to housing for sale will be 35%. There is a risk that this assumption could establish a higher benchmark land value for Build to Rent development compared with development built for sale. The potential impact of distinctive affordable housing arrangements for the Build to Rent sector is discussed in paragraphs 6.19 to 6.23 of this response.

- 6.17 Another difficulty that arises in connection with the clawback proposals is their relationship with:
- any viability review required after determination of the application in accordance with draft SPG para 4.33; and
  - a commuted sum or other arrangement for replacement of affordable housing in the event that the development is sold onto the open market.
- These three arrangements need to be considered together to ensure a consistent approach across all three that can work cumulatively if all three arrangements are triggered during the lifetime of the scheme.
- 6.18 One helpful element of consistency might be to agree an overall obligation cap at the start (possibly equivalent to 50% affordable housing with a tenure split in accordance with draft SPG para 2.28), which would reduce as a consequence of any affordable housing being provided (either initially or as a consequence of a post-permission viability review), but return to its original level if the affordable housing was subsequently sold. In the event of transfer of the scheme to housing for sale within the covenant period, it might be reasonable seek a single payment to mitigate the loss of the market rent homes and replace the affordable housing (possibly based on the agreed overall obligation cap). After the end of the covenant period, payment would only arise for any loss/ replacement of affordable housing. As indicated in para 6.14 of this response, we would welcome opportunities to discuss these arrangements further with the Mayor's team and GLA officers.

### ***Affordable housing tenure***

- 6.19 Build to Rent pathway developments would not deliver conventional affordable housing, but would provide homes managed by the operator at discounted market rents (DMR) (ideally pegged to benchmarks for London Living Rent). Four issues arise from the substitution of DMR for affordable housing.
- 6.20 Firstly, it is not clear who would be eligible for DMR homes or how they would be allocated. Para 4.20 of the draft SPG suggests they would be tenure blind and "pepper potted" through the development. The implication is that different tenants would be paying different amounts for identical homes, and in that context the DMR homes would have to be seen to be fairly allocated if the product is to have any credibility.
- 6.21 Secondly, it would not be possible to secure the retention of discounted market rent homes if the Built for Rent scheme was transferred to housing for sale. Consequently, complex arrangements would be needed to secure a commuted sum or replacement provision in accord with para 4.25 of the draft SPG, and discussed in paras 6.17 – 6.18 of this response. Paragraph 4.25 of the SPG as currently drafted gives no guidance on how replacement affordable housing would be secured, or how a



commuted sum would be calculated, yet the basis of these arrangements would need to be included in the S106 agreement for the application to be granted.

- 6.22 A third issue is that the substitution of DMR for affordable housing (in combination with the clawback options discussed in para 4.13 to 4.15 of the draft SPG and paras 6.14 to 6.18 of this response) could lead to higher benchmark land values arising for Build to Rent developments than for developments built for sale, and so make rental schemes significantly more viable than schemes built for sale. Our experience of student housing development suggests that this viability advantage could severely constrain the development of homes for sale. The higher benchmark value for Build to Rent could also form the basis of the minimum price that a landowner will accept for the purchase of land, thus depressing the proportion of affordable housing achievable in developments built for sale<sup>3</sup>.
- 6.23 The fourth issue is that the absence of conventional affordable housing from each Build to Rent scheme represents a missed opportunity to secure homes at London Affordable Rents, and a missed opportunity for Build to Rent to contribute to creating a mixed, inclusive and sustainable community, and so risks generating greater opposition from the host community than a development built for sale.
- 6.24 We suggest that these concerns could be mitigated by incorporating flexibility in the SPG for affordable housing to be provided in a variety of ways. As noted in para 6.8, we think it likely that more than one Build to Rent model will emerge, and the SPG could helpfully provide flexibility to allow different models to meet affordable housing requirements to different ways. Build to Rent schemes that are part of a development of multiple blocks could potentially provide conventional affordable housing in a separate block. Smaller Build to Rent schemes, or schemes that are built speculatively for offer to the institutional market, could potentially contribute through financial contributions. Discounted market rent homes could be offered where this will enable delivery of a higher proportion of affordable housing, and the homes will be made available to eligible households.<sup>4</sup>

### ***Design***

- 6.25 The draft SPG provides flexibility for 'innovatively designed' Build to Rent developments that qualify for the pathway to depart from the Mayor's existing design standards (including space standards). We are concerned that this provision could lead to a wide range of non-qualifying Build to Rent schemes seeking to develop studios and bedsits at a fraction of current space standards. We are also concerned that this flexibility could be a further factor making rental schemes more viable than schemes built for sale.
- 6.26 We suggest that this concern could be mitigated by placing some limits on the flexibility to depart from space standards, or by offering design guidance tailored specifically to Build to Rent schemes.

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<sup>3</sup> we agree with the Mayor that viability appraisals should assess benchmark land value on an EUV plus premium basis, but think it inevitable that 'comparable' land transactions and any relevant AUV will inform negotiations on the appropriate percentage premium

<sup>4</sup> the Build to Rent scheme referred to in para 6.15 of this response amalgamates the first and third approaches, providing 130 homes at private market rents, 18 homes at discounted market rent (subject to eligibility criteria and availability of 5-year tenancies - DMR to be provided for 15 years only after which they would revert to private market rent), and (in a separate block) 28 affordable rent homes and 18 intermediate homes

## ***Viability***

- 6.27 As indicated in the earlier paragraphs of Section 6, the unique affordable housing and design arrangements appear to favour Build to Rent schemes compared with schemes built for sale, and could form the basis of the minimum price that a landowner will accept for the purchase of land, thus depressing the proportion of affordable housing achievable in build for sale developments. These relaxations of affordable housing and design requirements contrast with the proposed viability testing arrangements for Build to Rent, and the latter could be seen as unnecessarily burdensome. The requirement for schemes to follow the 'Route A' viability arrangements implies that all schemes would be subject to an initial viability appraisal, and most schemes would be subject to one viability review (or sometimes two), even though there is limited potential to capture increased development value as the homes are not being developed for sale. A further complexity of the arrangements for viability review is the need for them to be consistent and compatible with arrangements for clawback and replacement of affordable housing, as discussed in para 6.17 of this response.
- 6.28 We suggest that difficulties arising from the affordable housing and viability arrangements proposed for Build to Rent schemes could be mitigated by amending the pathway to provide greater relaxation of the arrangements for viability testing and review, and stricter arrangements for affordable housing provision and design/ space standards. For example, it may be appropriate to forego post-permission viability reviews for schemes that are developed by or on behalf of the scheme's manager (subject to the covenant remaining unbroken), and are subject to full viability appraisal prior to a grant of planning permission. It may also be appropriate to forego viability reviews for other schemes that provide 35% or more conventional affordable housing (subject to the covenant remaining unbroken), or schemes that provide more than 35% of homes at discounted market rents to eligible households (subject to the covenant remaining unbroken). We would welcome opportunities to discuss this further with the Mayor's team and GLA officers.

## ***Management standards***

- 6.29 The Council supports the Management Standards proposed as part of the qualification for Build to Rent schemes to follow a simplified planning pathway. As indicated in para 6.5 of this response, we suggest that the term 'definition' should be replaced with the phrase 'schemes qualifying for the pathway' or the phrase 'qualifying for the pathway', and that principle (5) 'management standards' should be presented together with the renamed principle (1).

**Extract from LB Camden hearing statement on affordable housing  
Public Examination of Camden's Local Plan - September 2016**

**Why are the affordable housing targets in Policy H4 applied to proposed additional floorspace, rather than unit numbers?  
Is this approach justified and deliverable?**

**Justified**

1. The Council's justification for applying affordable housing targets to floorspace rather than unit numbers is set out in Local Plan paragraph 3.105. The Council applies affordable housing targets in terms of floorspace to assist the delivery of large affordable homes. The alternative approach of operating the target in terms of unit numbers would create a financial incentive for developers to:
  - minimise the affordable housing requirement by delivering large market homes; and
  - deliver affordable homes with only one or two bedrooms.
2. Measures to deliver large affordable homes are justified by the high proportion of households in social rent that live in overcrowded housing and/or live in homes the two bedrooms or fewer, as detailed in Local Plan paragraph 3.184. They are also consistent with London Plan Policy 3.8, which indicates that boroughs should address the provision of affordable family housing as a strategic priority (CD5.1 page 119).

**Deliverable**

3. The Council has been operating this approach since the adoption of the first version of the SPD "Camden Planning Guidance" in 2006, and the Council's experience is that the approach is successful and deliverable. This is borne out by delivery data set out in paragraphs 12.4 and 12.5, and supported by the Local Plan Viability Study, which has tested the viable proportion of affordable housing on the basis of floorspace.
4. The Council has tested the approach by examining monitoring data for approved developments involving 10 or more additional homes and including a proportion of affordable housing. The Council has been able to analyse 77 approved developments for which full floorspace details of each tenure is available. The analysis generated the following information about the approved developments:
  - 2,227 affordable units out of 5,795 total units – 38.4% affordable
  - 212,649 sq m affordable floorspace out of 591,489 sq m total – 36% affordable
  - the small percentage difference between these two measures suggests that the affordable component has not been skewed to small units
  - in 54 schemes, the percentage is greater by floorspace, indicating that the Council has successfully negotiated large homes in these schemes.
5. Since 2010/11, the Council's Authority Monitoring Reports have included the proportion of completed social-affordable rented homes (by unit numbers) with 3-or-more bedrooms. The figures are set out in Table 3.

**Table 3 – Proportion of social-affordable homes with 3+ bedrooms**

2010/11	2011/12	2012/13	2013/14	2014/15
36%	34%	34%	21%	44%

Source: Local Authority Monitoring

6. The Camden Local Plan Viability Study has tested affordable housing on the basis of the Local Plan's floorspace targets approach, as is indicated by paragraphs 5.30, 6.35 and 6.37 (CD2.19 pages 36, 86 and 96). The Council's Viability Study consultant confirms that a floorspace is assigned to each home in each typology, and the percentage affordable housing is considered on the basis of the aggregate floorspace of each typology.

**Camden Council comments on London Living Rent,  
submitted to the GLA October 2016**

**PROPOSALS FOR LONDON LIVING RENT  
FEEDBACK AND COMMENT FROM LB CAMDEN**

**1. Overview**

- 1.1 Camden broadly welcomes the Mayor's proposals to fund a new intermediate rent product called London Living Rent (LLR) through his Affordable Housing Programme (AHP) but would like to suggest a few amendments to make the product more flexible.
- 1.2 Camden is committed to high quality affordable intermediate housing products being delivered in the borough and, to this end, has recently published an Intermediate Housing Strategy (attached). This Strategy promotes intermediate rent as the Council's preferred intermediate housing product because shared ownership has become unaffordable to the types of household that the Council would like to see accessing intermediate housing.
- 1.3 Camden does, however, have two reservations about LLR as currently described:
  - the rent-to-buy nature of the product, with its expectation that the initial five-year tenancy would not be renewed (see Section 2 below) – to address this, Camden would like to see discretion introduced for providers to renew tenancies at the end of the initial five-year period
  - the approach to setting rent levels, including the use of the ward as the geographic unit for calculating the LLR (see Section 3 below) – to address this, Camden would like to see wards not used as the geographic unit for calculating the LLR, discretion introduced for providers to achieve benchmark borough rents as an average within individual schemes, and a different methodology and data source used for calculating borough average household incomes
- 1.4 Camden is responding to the LLR proposals as both an enabling authority for, and registered provider (RP) of, affordable housing, including intermediate housing.
- 1.5 As an enabling authority in a borough where most new RP provision comes through S106 agreements, we are aware that such provision would not usually be eligible for AHP funding. Given our reservations about the product, we have concerns about the restrictions that might be placed through planning policy on the intermediate housing that can be delivered on such schemes.
- 1.6 As a RP, we will be considering whether or not to bid for AHP funding to deliver LLR units in the light of the reservations that we have about the product.

**2. Rent-to-buy nature of the product**

- 2.1 The expectation that LLR tenants should, over the period of their five-year tenancies, build up sufficient savings for shared ownership or outright purchase of a home and therefore would not have those tenancies renewed, does not sit well with Camden's Intermediate Housing Strategy.
- 2.2 This expectation mirrors that of previous intermediate housing products known by the generic title of 'rent to buy'. The problem with the 'rent to buy' product has always

been what happens to the tenants if, at the end of their tenancies, they haven't built up enough savings to put down a deposit on a shared ownership or outright purchase home. The increase in house prices over recent years across London makes this an even more likely scenario now.

- 2.3 When the Council's Intermediate Housing Scrutiny Panel took evidence in 2015 from providers of intermediate housing, one of the strong messages that providers gave was that, whereas in the past people were seeing intermediate rent as a way to get a "leg up" onto the home ownership ladder, increasingly these days people were seeing it as a permanent housing option.
- 2.4 The main aim of Camden's Intermediate Housing Strategy is to preserve the social mix and community cohesion in the borough by ensuring that there is enough affordable housing for low to middle income households who do not qualify for social housing but cannot afford the high prices in the private rental and/or sale market. Even if these households could generate some savings during a five-year LLR tenancy in Camden, it is very unlikely that these savings would be enough for a deposit on a shared ownership home in the borough let alone an outright purchase, so the only option that they would have would be to move out of Camden.
- 2.5 The Mayor's LLR proposals do not make clear what would happen to tenants at the end of their tenancies if they had not built up enough savings to put down a deposit on a shared ownership or outright purchase home but, if the implication is that their tenancies would not be renewed, that would obviously be contrary to what the Council's Intermediate Housing Strategy is trying to achieve.
- 2.6 Camden would therefore like to see discretion introduced for providers to renew tenancies at the end of the initial five-year period.

### **3. The approach to setting rent levels**

- 3.1 On the face of it, the fact that the Mayor has said that the LLR product is aimed at households with incomes between £25-60k and mainly £35-45k seems to chime well with our Strategy, which says that the Council will encourage 'all providers to adopt an approach to intermediate rent with a range of rent levels from 40% to 80% of market rent to secure scheme viability whilst ensuring that a majority of provision is affordable to households with incomes between £30,000 and £40,000 (as adjusted by wage inflation)'.
- 3.2 However, the Mayor's proposal is 'to set initial rents based on median gross household incomes for particular geographic areas, rather than set a single London-wide rate. Median gross household incomes vary from around £27,000 in Newham to around £50,000 in Kensington and Chelsea – setting rents at one third of these figures is thought to be the most appropriate benchmark for a two-bedroom LLR home, representing a significant discount to the market in most boroughs.'
- 3.3 In addition, the Mayor's proposal is that, 'to allow further tailoring of rent levels, the rent for a one-bedroom home could be 10% lower, and the rent for a three-bedroom home 10% higher, than the two-bedroom benchmark', and that 'as an affordability safeguard, the rent for any individual unit should be at least 20% below its assessed market rent'.
- 3.4 The result of adopting this approach is that the average monthly rent for a two-bed LLR home will vary from £741 in Newham to £1,393 in Kensington & Chelsea, and would be £1,160 in Camden.

- 3.5 It is further proposed that, because demand and construction costs can vary widely within boroughs, the rent could be varied at ward level by up to 20% above or below the borough benchmark, in line with the variation in ward house prices. The Mayor has published proposed ward-level monthly rents for a two-bed LLR home for each borough, which in Camden would vary from £932 in Cantelowes to £1,392 in Frognal and Fitzjohns (requiring household incomes of £33,500 and £50,000 respectively to be affordable).
- 3.6 Thus, while Camden's Intermediate Housing Strategy promotes a range of rent levels *within individual intermediate rent schemes*, with the aim that a majority of provision is affordable to households with incomes between £30,000 and £40,000, the LLR proposals would result in the same rent level in each scheme but *a range of rent levels across the borough* that would be affordable to households with incomes between £33,500 and £50,000.
- 3.7 The impact of this approach has been compounded by the methodology and data sources used by the GLA to arrive at median gross household incomes per borough, which are different to the ones used by Camden. The methodology and data sources used by the GLA produce a median gross household income for Camden of £41,756, whereas the methodology and data sources used by Camden produce a figure of £36,802. The GLA have said that they are willing to reconsider the methodology and data sources used and we have made initial proposals about changes that could be made that would result in a lower household income figure and subsequently lower rents.
- 3.8 Camden also feels that the ward-based approach to calculating the London Living Rent may not be appropriate for several reasons. Firstly, while there are certainly variations in property prices within the borough, these are more associated with the type of housing stock than the ward they are in. Former social housing stock generally commands lower rent than older stock and is scattered throughout Camden. Gospel Oak ward, for example, is split between current/former social housing stock and very expensive period properties, and this split is not reflected in the LLR rate.
- 3.9 Secondly, wards are very small geographies, which has implications for the volume of house sales and the sample size of household incomes used to calculate the LLR. Thirdly, because Camden's urban fabric is so diverse (cf the Gospel Oak example above), the value of development land is probably not determined by which ward it is in but by other factors, e.g. proximity to stations and amenities.
- 3.10 Basing rents on wards may therefore lead to some unintended consequences as regards the location of LLR properties. An alternative geography might be the Broad Market Rent Areas (BMRA) used to calculate Local Housing Allowance (LHA) rates. These are ready-made geographies based on housing rental markets which could equally be used for calculating the LLR.
- 3.11 In conclusion, Camden would like to see the LLR proposals in relation to setting rent levels brought closer to the approach promoted in our Strategy by:
- wards not being used as the geographic unit for calculating the LLR
  - discretion being introduced for providers to achieve benchmark borough rents as an average within individual schemes
  - a different methodology and data source being used for calculating borough average household incomes



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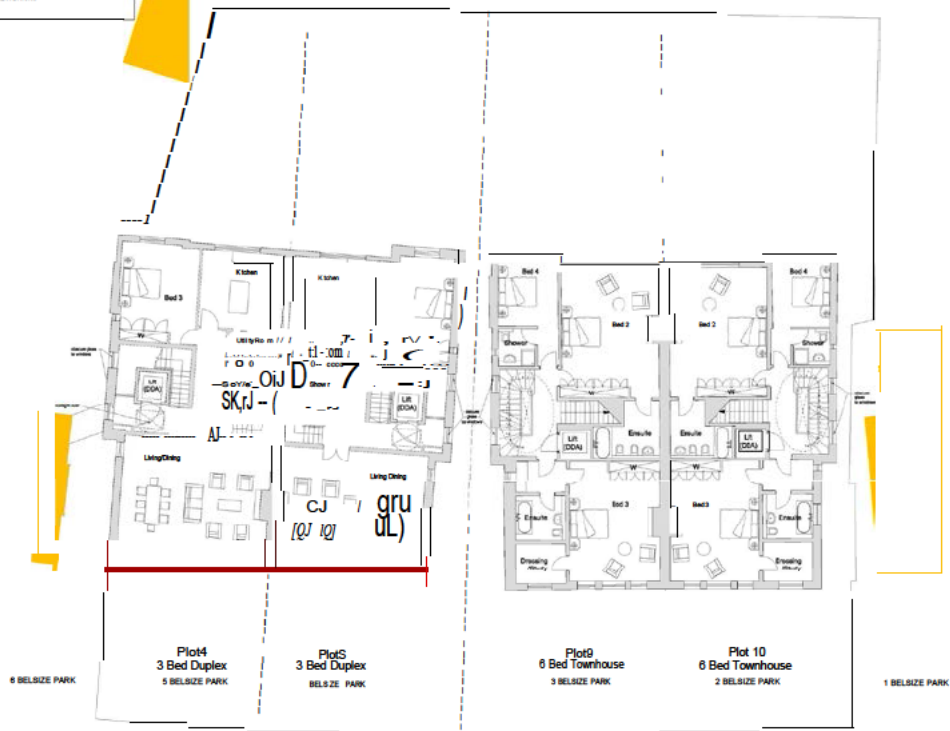
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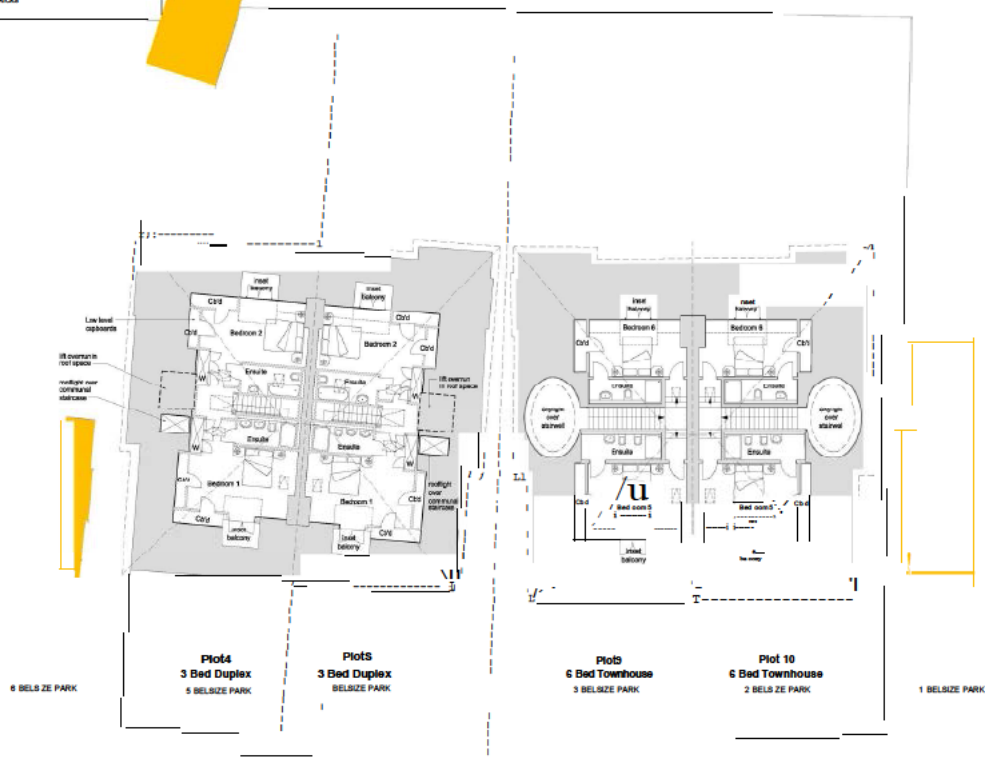
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**Osel**  
architects and  
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**APPROXIMATE GROSS  
EXTERNAL AREAS TO BUILDINGS**

Area:	m <sup>2</sup>	ft <sup>2</sup>
Basement	1306.2	14060
Lower Ground Floor	790	8504
Ground floor	713.9	7684
First floor	634.8	6833
Second floor	634	6824
Third floor	269.9	2905
<b>Total</b>	<b>4348.8</b>	<b>46810</b>

**APPROXIMATE NET  
INTERNAL AREAS TO BUILDINGS**

<b>Basement Car Park (42-45 Belsize Park)</b>			
Area:	m <sup>2</sup>	ft <sup>2</sup>	
Basement - Car Park	473.3	5095	

<b>45 Belsize Park</b>			
Area:	m <sup>2</sup>	ft <sup>2</sup>	
Basement - Communal Area (Staircase, store and plant room)	66.1	712	
Basement - <b>Plot 1 Duplex</b> Area	95.3	1026	
Lower Ground Floor - Communal Area (Staircase)	18.2	196	
Lower Ground Floor - <b>Plot 1 Duplex</b> Area	127.4	1371	
Ground Floor - Communal Area (Staircase and Entrance Lobby)	34	366	
Ground Floor - <b>Plot 2 Flat</b> Area	110.9	1194	
First Floor - Communal Area (Staircase)	12.1	130	
First Floor - <b>Plot 3 Flat</b> Area	119.1	1282	
First Floor - <b>Plot 4 Entrance</b> Area	5.7	61	
Second Floor - Communal Area	3.5	38	
Second Floor - <b>Plot 4 Duplex</b> Area	134.9	1452	
Third Floor - Communal Area	0	0	
Third Floor - <b>Plot 4 Duplex</b> Area	61.4	661	
Third Floor - Area Under 1.5m	7.2	78	
<b>Total</b>	<b>795.8</b>	<b>8427</b>	

<b>44 Belsize Park</b>			
Area:	m <sup>2</sup>	ft <sup>2</sup>	
Basement - Communal Area (Staircase, store and plant room)	66.1	712	
Basement - <b>Plot 5 Duplex</b> Area	116.8	1257	
Lower Ground Floor - Communal Area (Staircase)	17.9	193	
Lower Ground Floor - <b>Plot 5 Duplex</b> Area	144.7	1558	
Ground Floor - Communal Area (Staircase and Entrance Lobby)	32.8	353	
Ground Floor - <b>Plot 6 Flat</b> Area	111.5	1200	
First Floor - Communal Area (Staircase)	12.3	132	
First Floor - <b>Plot 7 Flat</b> Area	119.1	1282	
First Floor - <b>Plot 8 Entrance</b> Area	5.7	61	
Second Floor - Communal Area	3.5	38	
Second Floor - <b>Plot 8 Duplex</b> Area	135	1453	
Third Floor - Communal Area	0	0	
Third Floor - <b>Plot 8 Duplex</b> Area	62.1	668	
Third Floor - Area Under 1.5m	7.1	76	
<b>Total</b>	<b>834.6</b>	<b>8846</b>	

<b>43 Belsize Park - Plot 9 - 6 Storey Townhouse</b>			
Area:	m <sup>2</sup>	ft <sup>2</sup>	
Basement	192.8	2075	
Lower Ground Floor	151	1625	
Ground Floor	157.3	1693	
First Floor	139.5	1502	
Second Floor	139.2	1498	
Third Floor	58.5	630	
<b>Total</b>	<b>838.3</b>	<b>9023</b>	

<b>42 Belsize Park - Plot 10 - 6 Storey Townhouse</b>			
Area:	m <sup>2</sup>	ft <sup>2</sup>	
Basement	180.8	1946	
Lower Ground Floor	159.7	1719	
Ground Floor	158.5	1706	
First Floor	136.9	1474	
Second Floor	138.1	1487	
Third Floor	57.1	615	
<b>Total</b>	<b>831.1</b>	<b>8946</b>	

"Internal Net Floor Areas" are gross areas and are measured to the internal face of the enclosing walls of the Demise.

"Gross External Areas" are measured to the external face of the external walls and internal face of basement walls.

All areas are quoted as approximate and without prejudice and are subject to detailed survey and design information being made available and all necessary statutory consents being obtained. This schedule to be read in conjunction with OSEL drawings E11-029/AP3-01A - AP3-07A inclusive

Rev	Description	Date
A	Flat/House Numbers added - OSEL drawing numbers added; notes updated	3.6.11
B	Areas to plots 4 and 8 amended	7.6.11

<b>City of London Corporation Officer Comments on Homes for Londoners – draft Affordable Housing and Viability SPG 2016</b>	
<b>Homes for Londoners</b>	<b>City of London Corporation Comments</b>
<b>Background and Approach</b>	The City Corporation supports the Mayor's long-term ambition to increase the supply of affordable housing across London and the publication of further guidance on affordable housing delivery and viability through Supplementary Planning Guidance. This accords with the City Corporation's own ambition to contribute towards an increase in housing supply in London to help address difficulties facing London's communities and the risk to London's competitiveness and economy arising out of the lack of housing affordable to those on low and medium incomes. City Corporation actions include a commitment to deliver 700 additional affordable homes on its social housing estates by 2025.
<b>Threshold Approach to Viability and 35%</b>	<p>The City Corporation welcomes the statement in paragraph 2.1 that the SPG does not set a fixed target for affordable housing. It is important that the SPG allows the City and London Boroughs to apply adopted Local Plan affordable housing targets which reflect local evidence of housing need, within the context of the overall strategic approach set out in the London Plan.</p> <p>The City Corporation supports the principle of adopting an affordable housing percentage threshold to determine whether a viability study is required in support of a planning application. Whilst acknowledging that the Mayor's suggested 35% threshold is a strategic target across London, it is important that this target is applied flexibly, with implementation in line with locally adopted affordable housing targets. This is necessary to avoid confusion and ensure that viability studies are not required on schemes which would otherwise be policy compliant. For example, the City of London Local Plan sets a target of 30% on-site affordable housing, or a commuted sum equivalent to 60%. Within the City, these policy requirements should determine the threshold for requiring viability studies in support of planning applications.</p>
<b>Application of Viability Threshold</b>	The City Corporation supports the intention to apply the threshold approach to schemes which are capable of delivering 10 or more units (paragraph 2.6). This accords with affordable housing thresholds in the London Plan and the City of London Local Plan.
<b>Metric for determining affordable housing delivery</b>	Paragraph 2.8 requires that the affordable housing percentage should be measured on habitable rooms. Whilst the City Corporation understands the reasons for this approach, it is contrary to

<b>City of London Corporation Officer Comments on Homes for Londoners – draft Affordable Housing and Viability SPG 2016</b>	
<b>Homes for Londoners</b>	<b>City of London Corporation Comments</b>
	the adopted policy approach in the City of London Local Plan and Planning Obligations SPD which is based on the number of units delivered. The requirement to calculate thresholds on the basis of habitable rooms should be a matter of discretion for individual boroughs and the City.
Review mechanisms	<p>The proposal for review mechanisms where schemes do not meet required levels of affordable housing, is supported in principle. The inclusion of a review mechanism should depend upon whether sensitivity testing and growth scenarios were built into and considered in the initial viability study. There also needs to be flexibility where, for example, other local benefits arising from the development are considered to outweigh the need for more affordable housing.</p> <p>The City Corporation supports the proposal under Route A that a review mechanism should be triggered if a scheme has not commenced 2 years after the grant of planning permission and suggests that reviews should be undertaken prior to commencement. This element of the SPG may need to be reviewed in light of the Housing White Paper proposal that planning permissions for residential development should be limited to 2 years.</p>
Transparency of information	The City Corporation supports the aim of greater transparency in the use of viability studies, but also recognises that there are commercial sensitivities around the release of some aspects of these studies. The City Corporation will therefore work with applicants within the City to ensure, wherever possible, that necessary viability information is placed into the public arena.
Role of Public Sector Land	Paragraph 2.26 indicates that, on public sector land, maximising affordable housing delivery will include foregoing land value to increase the number of affordable units. Decisions on the disposal of local authority-owned land will need to be taken in light of a number of requirements, including the legal requirement to achieve best consideration and the delivery of other local authority priorities. Whilst the City Corporation supports the encouragement to maximise affordable housing units on publicly owned land, there needs to be flexibility in the disposal of sites to achieve other corporate priorities as well as contributing to the supply of affordable housing.
Affordable Housing Tenure	Whilst a tenure requirement for at least 30% intermediate housing may be an appropriate strategic level target across London (paragraph 2.28), the City Corporation considers that the SPG should provide flexibility for tenure mix targets to be set locally through Local Plans in

<b>City of London Corporation Officer Comments on Homes for Londoners – draft Affordable Housing and Viability SPG 2016</b>	
<b>Homes for Londoners</b>	<b>City of London Corporation Comments</b>
	response to local housing need. For example, the City of London SHMA 2016 indicates that the tenure split in the City should be 88% social rented and 12% intermediate.
City Corporation rent levels and preferred tenures	Paragraph 2.29 requests information from local authorities on rent levels, evidence for alternative intermediate products and preferred tenures for the 40% of provision which is to be determined locally. The City Corporation remains committed to the delivery of social rented homes at target social rents and therefore supports the delivery of new homes for low cost rent at the benchmark London Affordable Rent. The City Corporation has no current plan to develop any intermediate products and is not looking to prioritise any alternative products at this stage.
Affordable housing in perpetuity	The City Corporation supports the retention of affordable housing in perpetuity, but questions how this can be achieved given the right to buy legislation that exists for both council-owned and housing association properties. It would be helpful if the Mayor could provide further guidance on mechanisms that could be used to ensure the retention of affordable housing as envisaged.
Off-site and cash in-lieu	<p>Although the priority should be to deliver affordable housing on-site, the Mayor's SPG needs to reflect the requirements of Policy 4.3 in the London Plan which allows the use of land use swaps, housing credits and off-site contributions as mechanisms for sustaining the strategically important commercial clusters in the City of London and the north of the Isle of Dogs. In fulfilment of this policy, the City Corporation allows for cash in-lieu of on-site provision to fund delivery of a greater quantum of affordable housing on City Corporation owned housing estates within and outside of the City of London. Where local plans set targets for the amount of cash in-lieu required on a site and this target is met, the SPG should not require a viability study.</p> <p>The City Corporation agrees that off-site provision should be financially neutral in terms of the benefit to the applicant relative to on-site provision (paragraph 2.52). This is built into the City of London Local Plan which requires 30% provision on-site or the equivalent cash in-lieu contribution to 60% off-site.</p>
Loss of affordable housing, including estate renewal	The City Corporation supports the requirement (paragraph 2.54) that existing affordable housing should be replaced on a like for like basis where it is lost through redevelopment or estate regeneration. Where additional market housing is provided beyond that necessary to fund replacement affordable provision, this additional market housing should be subject to local



<b>City of London Corporation Officer Comments on Homes for Londoners – draft Affordable Housing and Viability SPG 2016</b>	
<b>Homes for Londoners</b>	<b>City of London Corporation Comments</b>
	affordable housing requirements. Viability studies will need to be submitted to demonstrate that such additional affordable housing provision is unviable.
Vacant Building Credit	The City Corporation fully supports the Mayor's comments on Vacant Building Credit and his view that in most circumstances it will not be appropriate in London. This reflects the approach taken in the City of London.
<b>Guidance on Viability Assessments</b>	<p>The City Corporation is supportive of the Mayor's aim to bring greater clarity and transparency to viability assessments. In particular, the City Corporation supports:</p> <ul style="list-style-type: none"> <li>• the requirement for developers to provide detailed support for inputs and assumptions made in viability studies and for developers to provide either a full working model or all the assumptions and calculations used in a model to enable testing and interrogation and, if necessary, 3rd party review.</li> <li>• The requirements for details of the development programme, including construction costs and income. Where benchmarking against BCIS is not appropriate, developers should provide benchmarking against comparable schemes.</li> <li>• The requirement for development values to be supported by information from comparable schemes. The SPG could also usefully include a requirement for developers to provide individual unit pricing rather than average values per sq ft or sq m.</li> <li>• The requirement for scenario testing and inclusion of growth scenarios, where relevant.</li> <li>• The requirement for detailed information on site specific abnormal costs. The developer should also be required to justify any abnormal build costs, where these depart significantly from benchmarked build cost information.</li> <li>• The acknowledgement that profit levels should be scheme specific. The SPG could usefully give guidance on benchmark levels of profit (expressed as a percentage of cost, value and IRR) and keep these up to date.</li> </ul> <p>The City Corporation notes the Mayor's preference that profit should be expressed as a factor of GDV or GDC, but considers that there should be greater acceptance that IRR can provide an appropriate measure on smaller schemes, where it is presented alongside profit as a factor of</p>

<b>City of London Corporation Officer Comments on Homes for Londoners – draft Affordable Housing and Viability SPG 2016</b>	
<b>Homes for Londoners</b>	<b>City of London Corporation Comments</b>
	<p>GDC or GDV.</p> <p>In relation to finance costs, the City Corporation considers that, whilst account should be taken of standard industry rates of finance, there should be potential for a developer to justify the use of alternative finance rates when supported by robust evidence.</p>
Benchmark Land Value	<p>The City Corporation notes the Mayor's preference for Existing Use Value plus a premium to determine the benchmark land value to be used in development appraisals. Whilst the mechanism for determining EUV is understood, the determination of an appropriate premium to be applied is far from clear. The premium should reflect the NPPF definition of a competitive return to a willing landowner, which could be based on market value rather than a fixed percentage.</p> <p>The SPG indicates, paragraph 3.48, that a market value approach will generally not be accepted by the Mayor. The City Corporation notes the Mayor's concern and the potential for a market value approach to reflect a developer's circumstances and aspirations rather than a development specific approach. However, where a market value approach can be justified with reference to comparable information on recent transactions and it can be shown that account has been taken of policy requirements, as set out in RICS guidance, this approach can be a justifiable way of assessing land value.</p> <p>The City Corporation therefore considers that a variety of approaches to defining the benchmark land value can be used, with the proviso that developers should demonstrate that proper account has been taken of site specific development plan policy requirements.</p>
Contingent Obligations and Review Mechanisms	<p>The City Corporation supports the use of contingent obligations and review mechanisms in appropriate circumstances to ensure that changes in development viability are properly reflected in the provision of affordable housing and other planning obligations. The use of contingent obligations and reviews should take account of whether sensitivity analysis or growth assumptions were inbuilt into the initial viability appraisal.</p>

<b>City of London Corporation Officer Comments on Homes for Londoners – draft Affordable Housing and Viability SPG 2016</b>	
<b>Homes for Londoners</b>	<b>City of London Corporation Comments</b>
	<p>Paragraph 3.53 suggests that the Mayor will look to assess changes in GDV and build costs in undertaking reviews. The City Corporation considers that, for consistency (and to reflect the approach taken in s106BC appeals), the review should entail a review of all inputs into the initial viability appraisal. This will enable consideration of changes in other circumstances, such as finance costs and levels of risk alongside changes in scheme values and build costs.</p>
<b>Build to Rent</b>	<p>The City Corporation supports the Mayor's ambition to increase the supply of housing through the private rented sector and the positive support for build to rent through the London Plan and the SPG.</p> <p>The City Corporation supports the Mayor's Build to Rent pathway set out in paragraph 4.7 and particularly the definition of Build to Rent set out in paragraph 4.9. In relation to affordable housing, the requirement for clawback mechanisms in s106 agreements, outlined in paragraphs 4.12 to 4.15 is supported. However, the City Corporation considers that Option two (paragraph 4.15) should indicate that the clawback amount should be based on the equivalent of 35% or whatever policy requirement is established in Local Plans. This would enable the City's 30% affordable housing target to be reflected.</p>

By email  
[housingspg@london.gov.uk](mailto:housingspg@london.gov.uk)

Email: [REDACTED]

Please ask for/reply to: [REDACTED]

Date: 28 February 2017

Dear Sir / Madam,

**London Borough of Croydon's response to Mayor of London's Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG)**

Firstly, the Council appreciates the opportunity to comment on the draft SPG and please find below the Council's comments.

The Council is very supportive of the SPG's approach to the transparency of viability assessments and agrees information should be available for public scrutiny. Equally, it is correct for the SPG to state that in very exceptional circumstances elements of viability information should be kept confidential and the balance of the public interest test is appropriate.

Paragraph 2.2 – the indication the London Plan review will explore the merits of fixed tariff approaches is welcomed. As the Mayor may be aware, the Croydon Local Plan has had a fixed tariff (requirement) since 2013 and the submitted Local Plan continues with this policy approach.

Paragraph 2.3 – the Council is supportive of the threshold approach that states should 35% affordable housing or more be provided without public subsidy and with the appropriate tenure mix no viability assessment or review mechanism will be required. It is agreed the approach provides certainty, consistency and an incentive to developers. However, the final SPG should consider and be clear regarding the weight to be awarded to the SPG in the face of an up to date Local Plan policy that seeks a different tariff or a less constrained approach to the use of review mechanisms. It is considered that the up to date Local Plan policy should prevail. It is noted that paragraph 2.7 is clear that any such difference should be discussed with the GLA and the Council agrees this is the correct approach.

Paragraph 2.6 – the Council considers the ten or more threshold for affordable housing to be the right threshold and aligns with a number of Local Plan policy thresholds.

Paragraph 2.8 – the Council note the preference for the affordable housing requirement to be calculated against habitable rooms. The Council has no objection to this approach.

The approach to 'early' and 'near end' review mechanisms set out in Route A are welcomed as setting the principles for review mechanisms and the Section 106 negotiations relating to them. It is welcomed that the 'early' review mechanism should focus on securing additional affordable housing on site and that possible units are identified in advance. The

two year permission implementation milestone is supported as an incentive to encourage the earliest possible development post the grant of planning permission.

In terms of Route B, it is right to include the requirement for a review mechanism should an agreed level of progress on implementation of the scheme not be achieved. This should ensure that schemes deliver at least the 35% affordable housing threshold that secured the planning permission. Again, the assumption that any surplus from the review mechanism will be accommodated on site is the correct approach.

Paragraph 2.24 – encouraging the earliest possible engagement with registered providers and at the pre application stage is a welcomed and important stance to facilitate the best opportunity of securing affordable housing.

Paragraph 2.28 – the SPG stating that the setting of tenure mix thresholds is still a matter for the Local Plan is supported. However, the preferred tenure split in the SPG is a helpful gauge for negotiations and policy setting.

The introduction of the London Living Rent as an intermediate product is broadly welcomed, especially as the rents are ward level caps to acknowledge what can be different income levels across a borough. It is noted that London Living Rent tenants will have the opportunity to progress to shared ownership.

Paragraph 2.38 – the intention for the 2017 annual monitoring report to reduce the eligibility threshold for intermediate products to a household income cap of £60,000 from £90,000 causes concern in the Croydon context. It is right that the reduced threshold would support the delivery of genuinely affordable homes, but the Council's concern is that £60,000 would exclude dual income households in the borough that are in the infancy of their professional, possibly public careers, and leave them unable to access intermediate products and left with the private rented sector as the only option. It is considered a threshold of £70,000 would address this in part. Also, it should be stated the importance of nomination agreements and policy in ensuring access is provided to all those in intermediate housing need.

Paragraphs 2.48 – 2.50 – it is important that off-site affordable housing delivery is to be exceptional as per current London Plan policy. The SPG would perhaps be enhanced if a preference for off-site provision was expressed, or left for the Local Authority to determine. In the Croydon context, there is a clear preference, as expressed in the Local Plan, for off site provision (donor site) over cash in lieu.

Paragraph 2.52 – it is right for the SPG to stress that off site provision should be financially neutral in terms of the benefit to the applicant relative to on-site provision, so as not to incentivise off site provision.

Paragraph 2.61 – the Council is supportive of the SPG's stance to Vacant Building Credit (VBC) in terms of in most circumstances it will not be appropriate to apply VBC. The criteria set out in paragraphs 2.62 and 2.63 is a helpful supplement to any locally set policy.

Paragraph 3.4 – The Council is very supportive of the Mayor's support for the London Borough Viability Protocol.

Paragraph 3.15 – The reserved right to investigate high assumed payments for affordable housing in viability appraisals is welcomed to ensure the delivery of affordable housing is being maximised.

Paragraph 3.22 – The need for an explanation if a scheme's build costs are greater than the BCIS benchmark by 10% or more is supported and will be helpful additional information to Section 106 negotiations.

Paragraph 3.25 – The Council support the position that site-specific abnormal costs should have influenced the land value and it should not be assumed that abnormal costs will be offset at the expense of policy requirements.

3.46 – The Council also considers that the 'Existing Use Value plus' viability approach is the most appropriate approach for planning purposes as it reflects reality, not the price paid for a site or any aspirational sum sought by a landowner.

Paragraphs 3.55 – 3.57 – The opportunity for LPAs to consider and introduce a bespoke approach to affordable housing policy and apply a fixed requirement in Opportunity Areas is welcomed. Indeed, Croydon has adopted such an approach since 2013 and continues to do so.

Overall, the Council is supportive of 'Part 3: Guidance on Viability Assessments' as a comprehensive and robust approach to set the framework and standardise viability negotiations to enable a more efficient and consistent planning system in London.

Paragraph 4.7 – The Council is supportive and welcomes the Build to Rent 'pathway' and the key principles set out in the SPG as a clear criteria regarding what is a Build to Rent product and how planning policy should be applied to Build to Rent schemes, especially in terms of affordable housing and design.

Paragraph 4.9 – The Council agree that in the absence of a planning use class for Build to Rent a definition is necessary. The definition set out in paragraph 4.9 is both welcomed and supported.

Paragraph 4.11 – The Council agrees that the simplest way to secure new homes as Build to Rent homes is through a covenant in a Section 106. In the final SPG it might be useful to include model covenant wording for inclusion in Section 106s.

In terms of affordable housing clawback for inclusion in a Section 106, the Council favour *Option two* (paragraph 4.15) as it only requires one viability appraisal, links the clawback to the SPG threshold of 35% affordable housing and enshrines that the clawback is only payable if the covenant is broken. The Council consider this to be the simplest and most efficient approach.

Paragraph 4.16 – the Council agree that affordable housing secured from a Build to Rent scheme should be in perpetuity.

Paragraph 4.19 – 4.25 – the Council believe it is sensible to set discount market rent rates from Build to Rent schemes on the basis of the London living rent. However, it is considered the flexibility to negotiate the discount market rent on a scheme by scheme basis is important to ensure the LPA can secure its preferred affordable housing outputs.

Paragraph 4.34 – As stated in the SPG, the Council agree that in the absence of a large number of existing Build to Rent schemes, the viability assessment approach included in the SPG should be followed with the acknowledgment that Build to Rent economics and viability is distinct.

If you have any queries regarding the above, please do not hesitate to contact me.

Yours faithfully



**Interim Head of Spatial Planning**

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Dear Sir or Madam

Thank you for consulting London Borough of Ealing on the draft Affordable Housing and Viability SPG. Our response is set out below.

The publication of an SPG on this key area of housing and planning policy is welcomed, and in particular the threshold approach is considered a good step towards simplifying the current unwieldy viability process.

However, the 35% target may be under-ambitious, particularly in the case of outer London boroughs and it would be preferred that part 2 of the document is more encouraging to optimising affordable housing above the defined minimum. If the guidance is appropriately worded then this threshold could be tested through the local plan review process and exceeded where appropriate. This would be proportionate given that the threshold is in effect a ceiling for unsubsidised affordable housing delivery with the potential to reduce the requirement through viability testing but not to increase it above the point at which testing will no longer apply.

It may also be appropriate to set higher thresholds through area specific guidance such as SPDs and OAPFs given the greater uplift inherent to certain types of development such as former industrial land. The guidance should not miss the opportunity to provide a clear basis for increasing delivery where specific circumstances make this possible.

We note the provisions in paras 1.17-1.23 regarding transparency of information in viability assessments. Open information is laudable but the value of viability assessments lies precisely in their ability to disclose commercially sensitive information. It is likely that greater openness in the availability of these assessments will simply result in more limited disclosure by developers.

Clear guidance on tenure is essential to the success of the threshold approach and LBE has the following specific comments on approach of the SPG;

- We welcome the approach taken to preferred tenure split, which allows local flexibility over the 40% affordable component



- We have concerns over the income eligibility of £60k per household for intermediate housing. This is not consistent with national policy set out in the Housing White Paper. A £60k household income may be appropriate for the London Living Rent and social rent, but the existing household income limit of £90k would be more appropriate for affordable rent/DMR or other intermediate housing products for purchase.
- The approach taken on the affordability of intermediate homes should be consistent with the government's Help to Buy scheme. The proposed approach that housing costs (rent and service charges) should be no greater than 40% of net household income is inconsistent with the Help to Buy maximum of 45%.
- The guidance should not seek to restrict the length of mortgage terms; this is best left to mortgage providers. Longer mortgage terms in excess of 25 years are available (subject to retirement income restrictions) on the open market and these are welcome as they help increase the affordability of intermediate housing products for purchase.
- The approach to discount market rent needs to be strongly evidenced. LBE is currently seeing schemes considerably in excess of local London Living Rents and the guidance needs to be clear that these costs have been priced into the proposed threshold and tenure split.

We also strongly welcome the proposed approach to Vacant Building Credit, which has been a source of considerable confusion and delay on the projects to which it has been applied in Ealing. A common approach of not applying the credit across London Boroughs and the GLA will greatly assist in clarifying policy and boosting delivery of all housing and especially affordable.

Yours faithfully

  
**Strategic Planning Manager**  
**London Borough of Ealing**



1914 - 1918



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Mayor of London  
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Telephone : 020 8379 1000  
My Ref : PPT/AHVSPG  
Your Ref :  
Date : 14 February 2017

Dear Mr Khan,

**Re: Consultation on the draft Affordable Housing and Viability SPG**

I write in response to your consultation on the draft Affordable Housing and Viability SPG, published on 29 November 2016 and have pleasure in enclosing Enfield Council's response to the document.

The Council has ambitious plans for growth over the future years. Due to this, we have responded fully to each of the chapters within the document. In this context, the draft SPG leaves a number of unanswered questions; for example, authorities still need to see more details on how new initiatives such as Build-to-Rent will actually operate in practice.

Certain aspects of the proposals may require further thinking and development prior to publication of the next London Plan. For example, text in the recent '*A City for all Londoners*' very clearly spells out the Mayor's 50% Affordable Housing ambition. In comparison, throughout the SPG a figure of 35% is referred to as being a 'viability threshold'. Early discussions on the new SHLAA have indicated that the housing delivery target will be within the region of 55-65,000 homes per year. At 50% affordable, London would need 27,500-32,500 additional affordable homes per year, yet the £3.15bn grant which has been made available to 2021 will only fund 90,000 Affordable Homes in total. The current London Plan affordable homes target is 40%, irrespective of grant availability. It is not clear that the new proposals will deliver a dramatic uplift in affordable housing delivery. The stronger line on viability in the SPG is welcomed, but a more open discussion on developer profit has not been addressed.

The Council also has reservations about the justification for lowering the threshold for London Living Rent properties to £60,000. Referring to LLR rents as '1/3 of household income is misleading when many properties, based on your figures for Enfield, will cost considerably more. Furthermore, such properties will still require prospective buyers to meet the qualifying criteria for a mortgage. Given the current economic uncertainties affecting the UK, the possibility of a downturn and tightening of lending conditions in future years cannot be dismissed at the present time. Genuinely affordable homes would then need to be built for rent and not for sale as a policy response.

Ian Davis  
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Enfield Council  
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Website: [www.enfield.gov.uk](http://www.enfield.gov.uk)

Enfield Council looks forward to continuing to work with the GLA as it develops additional new strategies and plans in the future.

Yours faithfully,



Planning Policy Team Leader  
Enfield Council

## AFFORDABLE HOUSING AND VIABILITY SPG COMMENTS

1.1 As a general comment, the draft SPG is over-complicated in places and does not really answer some of the questions which the Council has about the new Mayor's strategy for housing delivery. Indeed, in some aspects the draft SPG raises additional issues. The Council would have expected to see a few more cross-references to the Affordable Housing and Viability SPG within the 'City for All Londoners' document, given that there is an element of overlap between the consultation timetables.

1.2. Given that the draft SPG was published in late November 2016 and the Government issued a national 'Build-to-Rent' consultation document<sup>1</sup> alongside the publication of the White Paper in February 2017, the Mayor will also need to ensure that the draft remains consistent with all aspects of the emerging Government proposals prior to the adoption of the SPG.

1.3. In our response to 'A City for All Londoners', the Council stated that we supported the Mayor's target of 50% of homes being affordable.<sup>2</sup> However, in opening the SPG, Paragraph 2.1 appears to somewhat undermine the above statement by setting out that *"the SPG does not and cannot set a fixed target for affordable housing in developments"*. Paragraph 2.3 then notes that *"Schemes meeting or exceeding 35% affordable housing without public subsidy are not required to submit viability information"*. The rest of Chapter 2 subsequently makes it clear that Mayor's intention is for 35% Affordable Housing which should then be 'topped up' to 50% wherever grants or other subsidy will be available.

1.4. The Council considers that the 50% aim should be made clearer at the start of Chapter 2, via an amendment to Paragraph 2.3, if 50% is the Mayor's true aspiration. The figure of 35% is referred to several times within Chapter 2, and 50% is not mentioned at all by the document until the end of the explanation for the 'Route A' pathway.

1.5. The Council would also raise a concern that developers may well interpret the change as a simple reduction in the London Plan target from 40% (2015 London Plan) to 35%, knowing there will be no 'requirement to be subject to review mechanisms or to provide viability information' as long as they deliver 35% and start work on-site within two years of being granted planning consent.

1.6. This should not detract from the fact that a generally tougher stance on viability is welcomed. If this does eventually show a result in developers increasing their initial affordable offer on schemes to avoid more detailed scrutiny of their viability figures, it is recognised that this could help to increase the average provision levels across the City. However, the success or otherwise of the new approach will need to be monitored closely by both the GLA and the Boroughs over forthcoming years.

1.7. Following the Court of Appeal judgement of May 2016, an LPA can no longer seek Affordable Housing contributions from sites of 1 to 10 residential units where the maximum combined floorspace is 1000 square metres (or less). Bearing in mind the wording of Paragraphs 16 and 31 of the NPPG Planning Obligations section - which clearly offer protection for sites of 10 units, the Mayor may wish to consider whether or not the reference to 'ten or more units' in paragraph 2.6 should be amended to '11 or more units'.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589939/Build\\_To\\_Rent\\_consultation\\_document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589939/Build_To_Rent_consultation_document.pdf)

<sup>2</sup> Page 37 of 'A City for All Londoners' contains a very clear statement that *"...As Mayor I want to do a lot – working towards a strategic, London-wide target for 50 per cent of new homes built in London to be affordable"*.

1.8. With regards to housing targets, the London Plan sets a housing target for Enfield of a minimum 798 additional units per annum. When measuring the 'number' of affordable housing units or homes generally, for monitoring purposes, it makes more sense to simply count the number. However, our understanding is that the new mayor is using a habitable room measure of affordable homes as a way of exceeding the level provided under the previous administration. By saying that 50% of homes should be affordable would mean that, of the 798 new homes a year, 399 will be affordable. The Council would point out that developers and registered providers work in units, and statutory returns also require the information in units. But under the new Mayor's thinking, Local Authorities are now expected to accept a different methodology which risks putting us at odds with key business partners. It will also make monitoring provision difficult.

1.9. Early workshops for the new SHLAA have indicated that GLA expect the next London Plan target figure to be in the region of 55-65,000 new homes each year, a significant uplift on the current City-wide target of 42,000. This will, naturally, see the city-wide Affordable Housing target of 17,000 (40% of delivery) increase. As such, while not setting a 'prescriptive' target through the SPG, the Council would suggest that the GLA should not rule out a return to the use of borough-wide Affordable Housing targets within the new London Plan, considering the significantly higher rates of housing delivery which will be required over forthcoming years.

#### **THE NEW ROUTE 'A' AND ROUTE 'B' PATHWAYS**

1.10. The Council has no comment on the merits or otherwise of the introduction of the pathways themselves as a route to planning permission. We would enquire as to whether or not the GLA intend for the new pathways to speed up the process of getting planning consent? And if so, how? This is not clear from reading the document.

1.11. With reference to the Mayor's new pathway routes themselves:

- **Route A:** We note that a scheme will be required to undergo a full viability appraisal so that the onsite affordable housing and subsequent financial contribution are equal to 50%. The Council supports the intention behind this, but would query what happens if sufficient grant/subsidy is not available, and the application cannot be 'topped up' to 50%? Effectively, the Mayor's new approach may risk delivering fewer units than under the 2015 London Plan policy. When dealing with affordable housing in Build-to-Rent (BTR) there may also be a tension between the approach outlined by the SPG, and proposals within the DCLG Build-to-Rent consultation, which require a minimum of just 20% affordable housing on-site in BTR schemes, all of which should be homes at discounted market rent.
- **Route B:** As set out earlier, developers may well interpret the change as a simple reduction in the target from 40% (2015 London Plan) to 35%, knowing there will be no 'requirement to be subject to review mechanisms or to provide viability information' as long as they deliver 35% Affordable Housing and start the scheme within two years of being granted consent. This would, inevitably result in a squeeze for other contributions which are typically required under Section 106 (examples including Education provision) for residential schemes in order to provide the higher proportion of Affordable Housing. This might help to increase the construction of Affordable Housing, but it will still not be good news per se for a Local Authority given the other various roles which a Council performs (e.g. that of Local Education Authority).

1.12. Unfortunately, the pathway approaches seem to disregard one of the critical reasons for viability negotiations being a drawn-out process; namely that of developers automatically requiring 20% developer profit when preparing an appraisal. Should this continue to happen under the new

arrangements, it would undermine much of the discussion around higher targets, aims and aspirations. This would still not prevent disputes on scheme viability from arising. It appears as though 20% is just accepted as a 'bottom line' for a developer and, beyond that, schemes are non-viable. This clearly is not the case; it just means the developer profit will be lower. If the Mayor really wants to highlight viability then we would have expected to see more clarity and discussion on this point.

1.13. Secondly, although the viability appraisal would undergo scrutiny by the GLA where 35% Affordable Housing is not provided, if the source of dispute is actually the 20% developer profit figure, is the GLA formally intending to rule that a developer must accept a lower percentage of developer profit to meet the 35% figure required?

1.14. Thirdly, it is somewhat belatedly clarified at Paragraph 2.15 that the figure of 35% is not a target, '*...but a threshold at which the approach to viability information changes*'. This indiscriminate percentage appears as though it will operate irrespective of factors such as the site size, or the number of units within a proposed development. Like many boroughs, Enfield has a sizeable estate renewal programme underway, and the new pathways may risk extending the length of time it will take for a scheme to be granted planning consent where a larger development proposal which offers e.g. 32% affordable housing is then subjected to an unnecessarily high level of scrutiny under Route A.

1.15. Paragraph 2.15 also makes clear that a scheme which cannot deliver the 35% threshold can still gain permission where a lower level of affordable housing is justified through site-specific viability appraisals (as happens now). This also serves to undermine much of the earlier discussion around higher percentages within the SPG and other statements by the Mayor. Presumably such schemes would only be granted permission after following the 'Route A' approach and undergoing detailed scrutiny of the viability figures which, as we comment above, may result in applications taking longer to determine than under the processes which are currently in place.

1.16. In addition with the viability test dependent on the level of affordable housing being provided, there will be a large number of schemes meeting the automatic testing 'Route B' level of 35%. So the 50% target really will be a long way off.

1.17. In summary, the general aspirations to deliver more homes are welcomed, but the processes set out in this SPG may be a little over-complicated. The 2015 London Plan set a target of 40% (irrespective of any grant/subsidy being available). Although the Council supports the tougher stance on viability, in practice it is not immediately apparent that the GLA's new proposals will actively deliver the large uplift in affordable homes which will be required in future years. If the new approach cannot guarantee additional affordable homes, there does not appear to be any discernible benefit in changing from a simple 40% target to a higher longer-term 'aspirational' figure which contains multiple get-out clauses.

## **TENURE**

1.18. The Council notes the tenure mix set out by Para 2.28. We would presume that the exact mix will need to be kept under review, given that the next London Plan will incorporate a higher housing target, and that the city-wide target of 17,000 affordable homes will doubtlessly increase under the next London Plan.

## **LONDON LIVING RENT**

1.19. The Council would ask the Mayor to bear in mind that, although affordability is not a material planning consideration, it remains a de facto concern for the Council as a Local Housing

Authority. For example, in page 39 of a City for all Londoners, the Mayor stated that he ‘...will deliver more shared ownership properties....’, yet shared ownership homes are often the most expensive way of getting on the housing ladder.

1.20. The Council welcomes the creation of the London Living Rent (LLR) as a new housing option. However, LLR is a product which converts to a market home after an initial rented tenure. This will still require prospective owners to satisfy credit-scoring criteria and have sufficient savings to access a mortgage deposit, a process which Local Authorities do not have any control or influence over. Whenever someone takes up the option to purchase their LLR home, an affordable property will be lost from the local stock at the point where the occupier of an LLR home obtains the right to purchase the home and secures a mortgage.

1.21. The London Living Rent website<sup>3</sup> notes that rents are based “*on one third of average local household incomes and targeted at middle-income households in London’s private rented sector who are looking to build up savings for future shared ownership or outright purchase. Eligibility is restricted to households that are currently renting, with a maximum income of £60,000 and who are not currently able to purchase a home (including through shared ownership) in the local area*”. This definition does not appear in the draft SPG and should be provided.

1.22. Paragraph 2.34 of the SPG then states that ‘*the GLA has calculated ward-level caps for LLR homes based on one-third of median gross household income for the local borough.*’ However, it continues to say that ‘*the cap varies from the Borough median by up to 20% in line with house prices in the ward*’. This latter sentence is not listed on the London Living Rent website. The Council suggest that this must be corrected in order to reflect the LLR’s true position.

1.23. As an example, for a one bedroom flat in Enfield, the GLA’s London Living Rent spreadsheet notes that rents would vary from a low of £618 (Jubilee) to £927 (Winchmore Hill) depending on the ward where the home is located. 2015 CACI Paycheck data shows that average median household earnings were £32,472 for Enfield. At 1/3 of average gross household earnings (the baseline figure for LLR costs) this would mean rental costs being based on an amount of £10,824 per year (£902 per month) in Enfield for a home under LLR. Allowing for the 20% uplift outlined in para 2.34 of the SPG would still mean a maximum rent of £1,082.40 per month could be charged for the largest available London Living Rent property in the Borough.

1.24. Yet under the GLA’s own publicly-available calculations, the cost of a 4 bedroom family home would vary from £824 (Jubilee) to £1236 (Winchmore Hill) dependent on the ward of construction, with a six bedroom unit in the most expensive ward rising to £1442.

1.25. The Council does not dispute that LLR is a sub-market rent, and could still be a valuable addition to the affordable housing options in the Borough, but adding the 20% uplift mentioned in the SPG will inflate some rents to levels considerably higher than 1/3 of average household earnings. The Council suggests that the Mayor should use the definition at Para 2.39 of the SPG only. This sets out that, for intermediate dwellings to be considered affordable, their costs should not exceed ‘40% of net household income’. This would include LLR homes. However, the persistent references to 1/3 of household income for LLR are misleading.

1.26. In this context, we noted that in Para 2.38 the Mayor states that he will ‘limit eligibility for London Living Rent and other intermediate rent products to £60,000 a year or less’ in the forthcoming 2017 Annual Monitoring Report. This is also something which we would query further.

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<sup>3</sup> See: <https://www.london.gov.uk/what-we-do/housing-and-land/renting/london-living-rent#acc-i-44674>

As of 1 April 2016, the intermediate cap increased to £80k in England (outside of London boroughs) and £90k within London.

1.27. Firstly, relating to the point above, the Council would ask the Mayor to clarify whether or not he proposes that the £60,000 cap applies for other non-LLR intermediate products such as Shared Ownership homes, or homes made available by other Rent-to-Buy providers such as 'Rent Plus'?

1.28. Secondly, the actual target market for LLR is also quite vague<sup>4</sup>. This should be addressed by future GLA publications. Para 2.33 of the SPG states that LLR is "*aimed at single people and couples*" but what is meant by '*other households with more than one person*'? If family homes, why not say so? In any case, household characteristics will not always remain constant - especially over a period as long as 10 years. We must surmise that the GLA agree with this latter point to some extent, given that the publicly available spreadsheet of LLR rents per borough includes costs for renting homes containing up to 6 bedrooms for each ward across the entire city.

1.29. Thirdly, and most importantly, the justification given for reducing the threshold to £60,000 is stated on the LLR website as being "*the income (rounded to the nearest thousand pounds) required to afford a two-bedroom LLR property in the most expensive ward in London, Queen's Gate in Kensington and Chelsea*". The stated monthly rent is £1,671. It is likely that LLR will need to offer some family homes, so the stated justification for calculating the £60k figure appears flawed at best. For example, a four bedroom property in the same Queen's Gate ward under LLR would cost £2,005 according to the GLA's own spreadsheet calculations<sup>5</sup>. This would require a net monthly income of £5,012.50 to stay within the 40% 'affordable' net household income definition which appears at paragraph 2.39 of the SPG. This represents a joint income of approximately £78,500 for a couple at 2016/17 income tax rates – considerably higher than the Mayor's forthcoming £60,000 cap.

1.30. Fourthly, it could be argued that, given the high mortgage deposit requirements in London, many working households (including those earning much more than the £60,000 LLR eligibility cap) do not have 'sufficient current savings to buy a home' in their local area. With reference to the £60k earnings cap, if LLR is aimed at social rent tenants who are in regular employment or those with below average earnings who live in the private rented sector, LLR will not be targeting the same demographic groups which seek to purchase shared ownership or shared equity properties. However it does not automatically mean that such groups will be able to afford to buy an LLR home following the end of the rented period.

1.31. Our fifth and final observation is that, as LLR will be a rent-to-buy product, market forces cannot be ignored. Buying an LLR home would still require someone to pass a credit check and obtain a conventional mortgage for a share of the home. Reducing the threshold to £60,000 also ignores the obvious fact that those in the £60-90k bracket would often be better placed to service a mortgage due to a higher income. Members of that group – including 'key workers', some of whom may well have bought an intermediate property or could have qualified for LLR had it been in existence during previous years could now find a key route to ownership blocked off.

1.32. The Council would comment that, up to 2015, the London Plan AMR set a maximum income threshold of £74,000 for those seeking to purchase an Intermediate Affordable Home with one or two bedroom properties, with the income threshold rising to £90,000 for those seeking to acquire a

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<sup>4</sup> Paragraph 2.33 states that: "Eligibility for London Living Rent is restricted to existing tenants with a maximum household income of £60,000, without sufficient current savings to purchase a home in the local area. It is aimed at single people, couples and other households with more than one person".

<sup>5</sup> As shown on the GLA's own spreadsheet: [https://www.london.gov.uk/sites/default/files/london\\_living\\_rent\\_-\\_monthly\\_ward-level\\_rents\\_by\\_size.xlsx](https://www.london.gov.uk/sites/default/files/london_living_rent_-_monthly_ward-level_rents_by_size.xlsx)



family home. If the cap needs revision in order to reflect that LLR homes should target a different market to other 'intermediate' products, it is unclear as to why the Mayor has not reverted to the pre-2015 income threshold model with differential bands. This would still appear to have relevance. Family homes will need to be provided under LLR in addition to smaller units with fewer bedrooms.

1.33. Such a large fall in the income threshold could well have unintended consequences for those who earn just over the forthcoming eligibility limit, who may find their housing costs increasing dramatically if the only realistic housing option which London can offer in future will be 'Build to Rent' – unless reducing the cap was identified in advance as a way of enticing a particular profile of tenant (generally younger/single people and childless couples) into that sector.

1.34. In summary, the Council does not dispute that LLR could be a useful source of additional sub-market housing. We do not necessarily disagree with introducing a lower threshold per se for LLR homes. However, the Council believes that the Mayor should think again about his justification for reducing the cap. In our opinion, the £60,000 threshold is too low.

1.35. The Mayor cannot rule out the fact that, following the 'Brexit' vote and the associated economic uncertainty affecting the UK (which the Mayor himself referred to on multiple occasions in '*A City for all Londoners*'), it is not unrealistic to expect that lending criteria may tighten again in the future (as occurred during the financial downturn of 2008/09). In the event of any prolonged downturn there would be a need to encourage the building of more homes for rent due to lenders becoming more risk-averse. As the Council sets out in its response on the Build-to-Rent section of the document, part of the solution would be to make a clearer distinction between the London Living Rent (LLR) and Discounted Market Rent (DMR). This would help to create a more flexible policy basis for the Mayor (i.e. to change focus and give greater priority to the development of DMR homes) in the event of an economic landscape arising from Spring 2017 onwards which begins to look considerably different from the position in December 2016.

#### **VACANT BUILDING CREDIT**

1.36. The Council supports the Mayor's stance on the Vacant Building Credit (VBC) set out in paragraphs 2.55 to 2.65. Since the Court of Appeal decision in May 2016, local authorities have had no option but to allow VBC where it would be due, in line with national policy. Para 2.65 seemingly attempts to reflect this. The tougher position will help local authorities to refuse VBC claims from developers in the future and is welcomed.

1.37. Despite the Court of Appeal decision (referenced at para 2.57) setting out that '*it is for the decision maker to assess how much weighting the Written Ministerial Statement has....*', the Mayor will doubtlessly be aware that some Local Authorities have lost appeals where contributions have been sought from sites of 10, or fewer units which are under the floorspace threshold of 1,000 sq m.

1.38. The Mayor should be aware that eight London Boroughs (including Enfield) have local DPD policies which sought contributions towards affordable housing on sites of 10 units or less. With reference to the argument set out in paras 2.55 to 2.61, concluding with the position that "*the Mayor's view is that in most circumstances it will not be appropriate to apply the VBC in London*", the Council suggests that the Mayor may also wish to consider the merits of including a similar argument in the next London Plan (citing the intention of the national policy, the current pressure for affordable housing in London and past delivery rates against local and strategic targets, increase in the loss of affordable housing due to initiatives proposed by the Housing and Planning Act 2016, and the NPPF requirement to seek to meet objectively assessed need) weighing these considerations up against national policy to set future London-wide Affordable Housing policies.

1.39. The merits of taking a stronger line would enable every Borough to set or retain a threshold lower than that which has been promoted through the NPPG. In turn, a lower threshold would help Boroughs to deliver against the Mayor's aim of 50% Affordable Housing.

#### **GUIDANCE ON VIABILITY ASSESSMENTS**

1.40. The Council generally welcomes Part 3 of the SPG and has no further comment to make on this section. Enfield was involved in the development of the viability protocol. However, as we commented in paragraphs 1.11 and 1.12, the document is silent on developer profit matters and we would have expected to see something on this, given the tougher stance on viability taken in the draft SPG.

#### **BUILD TO RENT**

1.41. The Council recognizes that Build-to-Rent (BTR) housing developments could help to improve the quality of housing available for tenants within London's Private Rented Sector (PRS). We support the proposed 'discounted market rent' approach of providing affordable housing from BTR schemes.

1.42. Regarding para 4.9, and, given the importance the Mayor attributes to the growing importance of the BTR sector, he may wish to open dialogue with the Government regarding the creation of a distinct planning use class for BTR developments. There are several ways in which such schemes will overlap between the planning and housing fields. The issues raised under 4.9 relate more to operational housing matters (letting, management, tenancy length) than planning.

1.43. The Council accepts that BTR is a new initiative, and that many of the developments which will come to house people over the coming years are still on the drawing board. However, we would have expected to see some more clarity as to how the Build-to-Rent system will begin to operate within the SPG.

1.44. For example, we know the properties will be aimed at those who are currently living in the PRS. However, there are various housing policy considerations which the developers/operators of BTR schemes will need to address, including:

- **Standardized accessibility criteria for BTR.** Who is eligible to live in a Build-to-Rent property? Will there be a 'maximum income' cut-off? Will there be some form of 'local connection' test? We note that the properties are to be advertised via GLA's London-wide portal but if units are open to anyone working anywhere, irrespective of the borough in which they reside or work, it will be difficult to assess and monitor the inroads BTR makes to addressing housing need.
- **Lettings and allocation.** As above, any standardized criteria would need to be agreed by local authorities, operators of BTR developments, the GLA and possibly some of the large developers. Allowing newly-completed BTR properties to be advertised on 'First Steps' is sensible, however the 'any other advertising' being undertaken (as mentioned at paragraph 4.36) may overcomplicate the process for prospective tenants unless further guidance and clarity is given as to where BTR developments can be listed. Notwithstanding this, there could be housing related matters which would justify the creation a new pan-London lettings and allocations agency to deal with BTR properties, and handle the registration of new and prospective tenants and any letting queries.
- **What will happen if/when a tenant needs to move into a larger/smaller unit due to a change in personal circumstances?** This could be an issue if the owner/operator does not have any vacant units within their portfolio of stock. How easy will it be for a tenant to then be accepted by another owner or operator? As set out above, if a pan-London agency is

created, such a body could also help out with the transfer of tenants from Company A to Company B.

- **A Local Authority may still have a duty of care to any household** in the event of their BTR provider being unable to accommodate them due to a lack of vacant larger/smaller stock. The interface with choice-based lettings will need to be addressed.
- **How would/should a local authority monitor the performance of Build-To-Rent developers** in the absence of identified resources (e.g. staffing) and, if the management of units by the site operator is sub-standard, how will they be held to account and by whom?
- **Where rents in BTR schemes exceed the Local Housing Allowance, tenants would still need to make up any shortfall in the rent.** Given the wider post-Brexit economic uncertainty and, that one of the key 'attractions' of BTR will be a longer and more stable tenancy than is found in a conventional PRS offer, inevitably there will be circumstances where tenants lose their job and are dependent on housing benefits to pay their rent. Given the growing importance of this sector, it may be beneficial if the GLA could work more closely with providers to ensure that the rents charged in BTR developments did not exceed the LHA caps, perhaps working towards some form of standardized design specification.

1.45. We repeat our comment that, although the physical affordability of homes is not within the control of planning, it remains a de facto concern for the Council as a Local Housing Authority.

1.46. With reference to Para 4.11, given that a developer would have covenanted to keep the block within the 'Build-to-Rent' tenure for at least 15 years at the point of signing their S106, if the covenant is broken and a block (or the entire development) is sold out of the BTR sector, the Council suggests that such a scenario should be treated similarly to an overdue payment under S106. The financial contribution received as part of any 'clawback' should simply be calculated in line with the policy requirements of a local Section 106 or Planning Obligations SPD, and the payment would automatically be index-linked and interest added from the date of signing the S106 agreement.

1.47. We believe this is justified for two reasons: Firstly, if a block or an entire development is sold out of the BTR sector, the Local Authority would need to ensure it receives a larger financial contribution than would have been the case had the affordable housing contribution been provided as an in-lieu payment at the time of submitting the planning application. This is because build costs would have increased due to the passage of time since the initial planning permission was granted. The Local Authority would be left with no option but to re-provide the Affordable Housing units off-site. Secondly, the S106 process is governed by contract law. Sale of the units before the initial 15 year restricted period could, technically, constitute a breach of the Section 106 agreement.

1.48. However, the Council would also comment that, as Build-to-Rent schemes are founded on a principle of receiving revenue income from rents over the long term (as opposed to the short term receipts generated from sales of homes), developers and site owners should not really be looking or needing to sell such units out of the sector within the initial covenanted period.

1.49. In the event of any sale and the sudden loss of units, the Local Authority would be within its rights to ensure that it is more than compensated for the disruption which the early sale of a block would bring for the authority and residents of the block/scheme which is sold on. In the event of early sale of a scheme, the sellers should also compensate tenants for any costs they incur during their relocation given that part of the BTR rationale is 'longer and more secure tenancies'.

1.50. Where the sudden loss of units occurs due to sale, if a pan-London BTR agency was to be created (as suggested in Para 1.45), such a body would also be able to help out and work with Local Authorities to identify any spare capacity in BTR schemes across London. It would also have a role in liaising with operators to help in accommodating any displaced tenants while new accommodation is under construction. Anyone without a place to stay would, in all probability, end up in temporary accommodation with the Local Authority having to pick up the bill. That would, obviously come at a cost; moreover it would also reduce the funding available to help the most vulnerable in society.

1.51. The Mayor should also be aware of the provisions within the Government's recently-launched 'Build-to-Rent' consultation document. The Government's proposed terms for the provision of affordable homes in BTR schemes are via a minimum of 20% 'Affordable Private Rent' (Discounted Market Rent) let at a minimum of 20% below the full market rent. To meet this aim the Government intends to set an expectation in the National Planning Policy Framework that, where Affordable Private Rent is offered, consideration should be given to accepting the discounted market rented homes within a BTR development instead of seeking other forms of affordable housing. There may be a tension between this approach and the Mayor's intended 35% affordable housing 'viability threshold', which appears to apply to BTR schemes.

#### **VAT EXEMPTION**

1.52. With regards to Para 4.17, the Council accepts and understands that the rationale for any proposed VAT exemption is designed to incentivise the construction of BTR developments, with the associated aim of reducing the construction costs of the scheme and, overall, helping to improve scheme viability. However, the operation of the Value Added Tax (VAT) system has nothing to do with Section 106 legislation, the planning system or housing policy.

1.53. The Council will remind the Mayor that he would need to agree any exemptions for Build-to-Rent schemes from paying VAT with Central Government. No formal announcement has been made by HMRC to exempt Build-to-Rent developments from paying VAT; neither does the recently published DCLG 'Build-To-Rent' consultation document (February 2017)<sup>6</sup> confirm any provision for VAT exemption. It is not the role of a Local Authority to help developers of a particular form of housing to avoid paying taxes.

1.54. Furthermore, given that the VAT exemption for BTR appears to be a GLA initiative and the Mayor has cautioned that *'Section 106 agreements and covenants should be carefully worded in order that construction of the units would be VAT zero-rated'*, the Council suggests that the GLA itself should propose a form of wording for any new standard 'model' clauses to be included within S106 agreements.

1.55. Moreover, we would also point out that the DCLG 'Build-To-Rent' consultation document rules out the use of a time-restricted covenant as Government do *'not want to create a perverse incentive to developers to game the system by rapidly converting a Build to Rent planning application into a for-sale scheme (which is one reason for the practice of adopting covenants)'*.<sup>7</sup>

1.56. If a developer sells their BTR homes within the initial 'restricted' period (which Para 4.11 specifies as being at least 15 years), the Council sees no reason why the development/developer should not then repay the 20% VAT where they had previously benefitted from an exemption/relief

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<sup>6</sup> Refer to this document at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589939/Build\\_To\\_Rent\\_consultation\\_document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589939/Build_To_Rent_consultation_document.pdf)

<sup>7</sup> See page 24: 'Planning and Affordable Housing for Build to Rent –A Consultation Paper' (February 2017)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589939/Build\\_To\\_Rent\\_consultation\\_document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589939/Build_To_Rent_consultation_document.pdf)

at the point of construction. It would be for the seller of a BTR scheme to resolve the issue of any outstanding VAT with HMRC.

1.57. The Council would also comment that BTR units will be entirely owned and operated by private companies. It is unclear why the Mayor believes the construction of BTR developments should benefit from not paying VAT over and above the construction of any other form of housing. A local authority SHMA shows that various different types and tenures of housing development will be required across London going forward. No evidence is available as to why BTR should be prioritized over other tenures.

1.58. With regards to the statement within Paragraph 4.18: *'Additionally, overall ownership of the building(s) in which the units are located may be allowed to change over the covenanted period without triggering 'clawback' if they remain in single ownership and management as Build to Rent'*. This is the point where many housing policy-related concerns will begin. Local authorities will want to make sure that, following any change of ownership, rents are not increased dramatically or unnecessarily by any new owners. Future safeguards may be required to reduce this risk.

#### **AFFORDABLE HOUSING IN PERPETUITY**

1.59. Paragraphs 4.16 and 4.25 of the SPG state that: *"All affordable housing, including discounted market rent/ London Living Rent, secured through planning should be affordable in perpetuity in line with the requirements of the NPPF. Therefore, should the developments be sold onto the open market at any time, during or after the covenant period, then a commuted sum would need to be paid to the LPA to secure the affordable housing provision in perpetuity, or replacement affordable housing would need to be provided of an equivalent value"*.

1.60. The same argument must, therefore, apply to any discounted market rent affordable housing which is delivered through a build-to-rent development. Yet Paragraph 4.17 appears to contradict this in stating *"....it is also necessary that the separate use or disposal of a unit is not totally prohibited by any covenant, statutory planning consent or similar provision"*.

1.61. The Mayor has asked for all discounted market rental affordable housing (which, by default, would include those delivered under BTR) to be retained as affordable in perpetuity. Simultaneously, the SPG sets out that homes delivered on a BTR scheme should not be restricted in a single use by clauses in the S106 agreement. However, the 'carefully worded' clauses required to ensure a VAT exemption for BTR by para 4.17 may then indirectly affect the retention in perpetuity of affordable homes (which are affordable by virtue of the discounted market rent) within a BTR scheme. This point once again relates to the operation of the VAT system, and is not a matter for the Local Authority to become embroiled with.

1.62. With reference to para 4.25, the sale of a BTR development out of the sector may mean a sizeable 'overnight' drop in the number of affordable units within a given borough. While the statutory 2 month period provided under a Section 21 termination notice would enable an employed tenant reasonable time to find alternative accommodation, not everyone will benefit from this, particularly any tenant(s) who are out of work at the time that a development is sold. The seller would be required to communicate written notification of their intention to sell a number of units within a development (or indeed, the entire development itself) to both the Local Authority and the GLA.

1.63. Where a block or entire development is to be sold out of the BTR sector, the GLA should also be mindful that a Local Authority would also require any in-lieu payment a considerable period of time ahead of the sale in order for a replacement Affordable Housing scheme to be devised,

planning permission to be obtained and construction works to begin, so that the process of decanting tenants from the old scheme to the new homes is as seamless as possible.

1.64. However, the Council would also comment that, as Build-to-Rent schemes are founded on a principle of receiving revenue income from rents over the long term (as opposed to the short term receipts generated from sales of homes), developers and site owners should not really be looking or needing to sell such units out of the sector within the initial covenanted period. We refer once more to our comments in paragraphs 1.49 to 1.51.

#### **LONDON LIVING RENT HOMES IN BUILD-TO-RENT DEVELOPMENTS**

1.65. The Council believes that the Mayor risks over-complicating the situation if any 'London Living Rent' homes within a Build-to-Rent (BTR) development are not subsequently offered to tenants to purchase.

1.66. On one hand, the Mayor cannot ignore the fact that leaving some LLR homes as 'rent only' may cause confusion among occupants, tenants, prospective purchasers and, indeed, some housing providers, given that LLR is and has, to date, been promoted as a 'rent-to-buy' product. The obvious counter-argument is that the prohibition also overlooks the fact that any revenue from LLR sales could, theoretically, improve the viability of a scheme, and enabling this flexibility would make it less likely that the developer of a BTR scheme would then need to sell during the initial period (lasting at least 15 years under an S106 agreement) which the homes would be required to be available on BTR terms. However, BTR developments themselves are not homes for private sale.

1.67. The Council's proposed solution is for a clearer distinction to be made between the London Living Rent (LLR) and Discounted Market Rent (DMR). If the rent for some DMR homes was set at a similar level to the LLR, any affordable homes within a BTR development would therefore not need to be formally marketed as being a 'LLR' home. This would help to avoid confusion. There would then be a clear difference created between 'discounted market rent' and 'LLR' - which will need to be addressed in the final SPG. DMR can be set at anything upto 80% of local market rent, in line with both the NPPF definition of Affordable Housing, and the emerging definition of 'Affordable Private Rent' housing, within the Government's Housing White Paper (February 2017).<sup>8</sup>

1.68. The Council believes that any 'LLR' tenants will expect to have the option to purchase their LLR home after their initial 3, 5 or 10 year rented term. In comparison, DMR tenants would not have the 'right-to-buy' at any stage, and they could be made fully aware of this at the time of expressing interest in a property.

1.69. The Mayor's '*City for All Londoners*' consultation document included various references to the "uncertainty following the EU referendum result" which cannot be ignored or dismissed by policy makers at the present time. Many house purchasers buy their property via a conventional mortgage. In the event that either the national economy, or the London economy, deteriorates to a greater extent than is currently envisaged by politicians, it cannot be disregarded that a tightening of lending criteria will follow.

1.70. Drawing a clear distinction between LLR and DMR would, therefore, help to create a more flexible policy basis for the Mayor (enabling him to give greater priority to the development of DMR homes) in the event of an economic landscape arising from Spring 2017 onwards which begins to look considerably different from the position in December 2016. DMR properties could still be let

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<sup>8</sup> See Box 4, page 100 of 'Fixing our Broken Housing Market', DCLG, February 2017.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/590043/Fixing\\_our\\_broken\\_housing\\_market\\_-\\_housing\\_white\\_paper.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590043/Fixing_our_broken_housing_market_-_housing_white_paper.pdf)

relatively easily. The contrary perspective is that tighter lending restrictions would, inevitably, see the number of loans granted by banks decreasing. This would, of course, affect the number of transactions involving properties built for sale (in any form) where applicants need to obtain a conventional mortgage to complete the purchase.

1.71. Para 4.24 requires clarity. The SPG states that, where London Living Rent is provided within a BTR development, *'it is recognised that this will usually represent a deeper discount on rents for Build to Rent homes than the common metric of 80% of full market value of that home. This will have impacts on the quantum of affordable housing that can be obtained through the viability process'*. Given the quote above, where viability concerns are identified, it appears that the Mayor's own pathways may need the flexibility to accept a lower-than-35% proportion of affordable housing in some schemes, as a 'trade-off' in exchange for delivering a larger number of homes which a greater number of people will find 'affordable'. With a scenario of this nature, it would then be unrealistic to force such a scheme down the Route 'A' pathway and scrutiny of the viability figures. The Council suggest that the Mayor may wish to amend the wording of Route A to take account of such a scenario.

1.72. In any case, 80% of full market value is the limit for a home to qualify as 'affordable' under the NPPF definition, and it is the Council's understanding that Build-to-Rent is not intended as an 'Affordable' product. Viability should not present an issue in larger developments where developers are able to benefit from high property values by providing a quantum of homes for sale on the open market as well as under shared ownership arrangements, in addition to receiving income over a longer period of time through letting homes at Affordable Rent, via the London Living Rent or any other form of intermediate arrangement.

## **MANAGEMENT STANDARDS**

1.73. In relation to the five key management standards, we are pleased the Mayor is committed to ensuring best practice in this sector. By setting minimum 3 year tenancies and applying a standard formula for rent increases this approach provides a degree of comfort and certainty upon which tenants can occupy their homes.

1.74. With regard to the 2<sup>nd</sup> bullet point of para 4.36, a Local Planning Authority (LPA) does not have the power to cap rents. The level of rent paid by a tenant is not a planning issue and the Mayor should also be aware that the length of any tenancy agreements is not a planning matter. For clarification we suggest the words 'Local Planning Authority' should be amended to 'Local Authority'.

# Royal Borough of Greenwich

## Response to consultation to SPG on Affordable Housing and Viability

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### Introduction

The Mayor of London's consultation on his draft "Affordable Housing and Viability Supplementary Planning Guidance 2016" was published on the 29th November 2016. This briefing lays out Royal Greenwich's response to the draft document highlighting issues around the SPG for the borough and will be sent to the GLA as part of the consultation process before the 28th February 2017.

### Context

The Mayor is committed to a long-term strategic aim of half of all new homes in London being affordable. The Mayor intends to move towards this goal by investing more in affordable housing, bringing forward more public land for affordable homes, and by increasing the amount of affordable housing delivered through the planning system.

The new London Plan (consultation draft expected Autumn 2017) will be based on an updated assessment of housing need and a comprehensive understanding of London's capacity to meet it within the context of all of London's competing land uses. The approach to affordable housing will be a key consideration of the London Plan review. It will consider appropriate approaches, levels for any tariffs or thresholds, and whether these should vary spatially

In the meantime, this SPG provides guidance to ensure that existing policy is as effective as possible. It does not and cannot introduce new policy. The SPG's main aim is to speed up planning decisions and increase the amount of affordable housing delivered through the planning system. Importantly, it will help embed the requirement for affordable housing into land values and make the viability process more consistent and transparent, as well as speeding up



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the planning process for those schemes which are delivering more affordable homes.

The SPG sets out the Mayor's preferred approach and Local Planning Authorities (LPAs) are strongly encouraged to follow this approach for all schemes of ten or more units. However, it should be noted that technically this SPG is not enforceable and as such boroughs could carry on with their current affordable housing practices if they wish.

At the point when an application is submitted City Hall will (in parallel with the consideration being undertaken by the Local Planning Authority) refer schemes that do not meet the thresholds and refer planning applications to a new team of viability experts. The overall idea is to 'nudge' developers to deliver more affordable homes by means of carrot (faster planning) and stick (referrals). The mayor also intends to work closely with boroughs to ensure his guidance is broadly adopted across London.

There has been concern across London about how viability assessments have been carried out for some time. It was raised by the London Assembly's Planning Committee (1<sup>st</sup> February 2016) where the Committee asked for SPG on viability assessments stating "there is a real need to bring the "dark art" of viability assessments into the bright light of public scrutiny"<sup>1</sup>. This was then echoed in Sadiq Khan's Manifesto where he stated that he would "support councils to enforce clear, new rules to maximise the affordable housing in new developments with greater transparency around viability assessments..."

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<sup>1</sup> Letter from Nicky Gavron to Mayor Boris Johnson on behalf of London Assembly Planning Committee 1.2.16

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The Mayor's Supplementary Planning Guidance (SPG) is a key objective of the Mayor's in a bid to speed up and increase the delivery of affordable housing in the capital. It will "boost the overall supply of new homes by making the planning system clearer, quicker and more consistent" and that "it aims to increase the amount of affordable housing coming through the planning system to reward those who deliver more".<sup>2</sup> The Mayor of London's intention is to ensure that half of all new homes built in London are affordable.

### What is Supplementary Planning Guidance?

The SPG sits with in the context of the Mayor's other key tools to increasing affordable housing. The Mayor's Homes for Londoners: Affordable Homes Programme 2016–2021, sets out how grant is going to be used to increase the amount of affordable housing delivered on developer-led sites above 35%, and to support approved providers deliver programmes with at least 50% affordable housing.

This SPG will supersede section 3.3 (Build to Rent) and Part 5 (Viability) of the March 2016 Affordable Housing SPG. The rest of that SPG remains current.

Supplementary Planning Documents (SPD) build upon and provide more detailed guidance about policies in the Local Plan<sup>3</sup>. In this instance the document is supplementary guidance to the London Plan. It does not form part

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[https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiW46W\\_hJzRAhXeOVAKHQuVCZYQFggqMAI&url=https%3A%2F%2Fwww.london.gov.uk%2Fsites%2Fdefault%2Ffiles%2Fdraft\\_affordable\\_housing\\_and\\_viability\\_spg\\_2016.pdf&usg=AFQjCNG014a47DDA4eD-7OhYY9KzHvgWkA](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiW46W_hJzRAhXeOVAKHQuVCZYQFggqMAI&url=https%3A%2F%2Fwww.london.gov.uk%2Fsites%2Fdefault%2Ffiles%2Fdraft_affordable_housing_and_viability_spg_2016.pdf&usg=AFQjCNG014a47DDA4eD-7OhYY9KzHvgWkA) page 3

<sup>3</sup> [www.designingbuildings.co.uk/wiki/Supplementary\\_planning\\_document\\_SPD](http://www.designingbuildings.co.uk/wiki/Supplementary_planning_document_SPD) accessed 30.12.16

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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of the Plan itself and is not subject to independent examination, but it is a material consideration in determining planning applications i.e. it needs to be taken into account when a planner or planning committee is considering an application.

### **What does the SPG propose?**

The SPG covers affordable housing and viability.

- The SPG proposes a 35% threshold for affordable housing on any development creating 10 or more homes. If a development achieves 35% or more affordable housing *without* public subsidy<sup>4</sup> then it does not have to undergo a viability assessment. Under the new system, developers offering 35% affordable housing will have their schemes fast tracked without viability checks. Those that fall short of this threshold will go through the normal viability process – but will have to make their viability assessments public. Only in “very exceptional circumstances” will developers be able to keep viability assessments private and only when it is in the public interest,
- The viability test employed by the Mayor is described in detail in the SPG. It will use a set methodology to examine whether the development under consideration could deliver more affordable housing than is proposed by the applicant. The Mayor is also setting up a unit within the GLA to carry out this work.

### **Introduction of a new London Living Rent.**

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<sup>4</sup> The document makes it clear that this includes grant, public loans and any public land at a reduced cost

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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- The new guidance also introduces two new tenure types within the 35% provision. Of the affordable homes in a development, 30% should be available at London Affordable Rent, which is a new tenure for those in the “greatest need”.
- A further 30% will go to intermediate affordable homes – either shared ownership or the new London Living Rent tenure. This sets maximum rents at one third of the average household income in a borough: across London, that will mean an average of £977 a month for a two-bed home. The boroughs will get to decide how the remaining 40% is split between the three tenures.

### **Expanding Build to Rent**

- In an attempt to encourage more high-quality rented homes, the mayor has exempted build-to-rent (BTR) developments from the threshold approach to viability. Instead, these schemes will be assessed on a case-by-case basis that takes into account the fact that rental income creates lower profits than for-sale properties. A form of discounted market rent – at similar levels to the London Living Rent – will form the basis of the affordable housing provision for BTR.

To qualify, developments will have to comprise more than 50 units and will have to remain as BTR blocks for 15 years. If a developer sells individual homes during this time, it will have to pay a ‘clawback’ charge to the local authority and the development can only be traded if it remains a BTR scheme.

- The purpose is to encourage the development of good quality privately rented homes in London. The Mayor is looking to Local Planning Authorities (LPAs) to assist with this approach. This form of housing would have a

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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different viability assessment than other housing developments which would recognise “the distinct economics of the sector”. The Mayor’s intention is to aid this form of development by creating “a Build to Rent ‘pathway’ through the planning system”<sup>5</sup>

### **Housing Associations to shoulder most of the Burden**

- Housing associations will still be expected to deliver high levels of affordable housing, with many expected to reach 50% or even 60% within their own schemes. The government’s newly allocated £3.15bn to start 90,000 new affordable homes in London by March 2021 will allow housing associations – and their development partners – to provide homes at London Living Rent and London Affordable Rent as well as through shared ownership with the help of grants.
- Renters of homes at London Living Rent provided under these grants will have a right to buy the homes they are renting within 10 years, with providers expected to support that process.

### **Proposed response from Royal Greenwich to the Consultation**

#### ***Delivery of Affordable Housing***

The Royal Borough already has a clear political commitment to delivering affordable housing in the borough as evidenced by its Core Strategy and Local Plan (2014). The Borough’s commitment under Policy H3 Affordable Housing seeks at least 35% affordable housing but it is also noted in the supporting text to the policy that some sites with low Existing Use Values could deliver in excess of this minimum amount rising to 60% as an achievable target. The Borough has delivered the 6<sup>th</sup> highest number of new affordable housing in

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<sup>5</sup> P39 SPG

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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London over the last 5 years but welcomes any additional pressure to ensure that higher amounts of affordable housing can be delivered.

If the Borough agree to this Threshold Approach it is unclear how the Council will secure any more than 35% on those sites envisaged by the supporting text to the core strategy policy.

### ***Threshold Approach to Viability***

It should be noted the Royal Borough already does not require a viability appraisal for schemes that achieve 35% affordable housing with a 70:30 target/intermediate tenure split. If a policy compliant tenure split is not proposed, the Council would expect a viability assessment to accompany any application.

In principle the Council agrees with the threshold approach but further consideration needs to be given to the tenure split and meeting the Borough's greatest affordable need. In principle, the Borough would hope that the threshold approach devised by the Mayor would assist the Council in providing an improved level of affordable housing from new developments in the borough. However, noting the experience of RBG, many applicants still chose to submit a lower than 35% affordable housing offer and go through the process of viability testing. It is hoped that the GLA taking a similar approach to RBG will encourage more developers to go with the default 35% affordable housing with 70/30 tenure split. It is hoped that raising this at a strategic London wide level will stimulate greater take up and thus deliver more genuine affordable housing at the Borough level

Para 2.11 of the draft SPG states that in order to follow Route B the application must meet all other relevant obligations and requirements taking into account the priority given to affordable housing in Policy 8.2 of the LP. Concerns is

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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expressed as to whether this statement is a little vague and will lead to ambiguity between the applicant and LPA as to the definition of meeting all other obligations especially around criteria E of Policy 8.2?

### ***Review Mechanism***

It is agreed that should a developer default to the 35%, 70/30 tenure split then the Council would not seek to impose a second stage review. The Council still supports the use of early stage review in order to ensure progress on implementation of permissions and avoid land banking by developers.

There should be a commitment by the GLA to review the use of the near end review (second stage) once the Threshold Approach is established and if it results in developers complying with the 35% threshold as normal practice. This will enable schemes to deliver additional affordable homes at the later stage should it prove to be viable.

### ***Use of Habitable Rooms in the 35% viability calculation***

We welcome the approach of basing the calculation for the 35% of homes being affordable on habitable rooms provided this encourages the development of larger family homes (this is also a key part of the Royal Greenwich Local Plan<sup>6</sup>).

It will, however, require different and somewhat more complicated monitoring of affordable housing schemes going forward to ensure that this way of delivering affordable housing is reported on properly. In developments which are non-policy compliant it is unclear how the use of a habitable room measurement would assist and the Council proposes that there should be an ability to use both calculations which would be more meaningful in

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<sup>6</sup> Table 8 p4 Royal Greenwich Local Plan: Core Strategy with Detailed Policies

## Royal Borough of Greenwich

### Response to consultation to SPG on Affordable Housing and Viability

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demonstrating the actual affordable offer. It would be useful if the GLA provided an example showing the difference between unit number and habitable unit measurement of affordable housing on the same site with different schemes with a high number of family units and one without.

The 35% refers to the proportion of habitable rooms which are delivered which are affordable. The intention of the Guidance is to put the burden for the financial provision for a basic level of affordable housing on to the land owner.

Furthermore, the London Plan currently lacks a definition of 'habitable room'. Whilst Greenwich's Core Strategy 2014 does not provide a definition the superseded unitary development plan defined a habitable room as including all separate living rooms, including bedrooms, but excluding kitchens of less than 13 m<sup>2</sup> and all bathrooms, toilets, landings, halls and lobbies. The Council believes that the draft Housing SPG therefore needs to contain a similar and acceptable definition of 'habitable room' and the SPG should make it clear what is the definition of a habitable room.

#### ***Tenure***

The SPG identifies a 60:40 tenure split with 30% at low cost rent, 30% intermediate with London Living Rent/shared ownership being the default and 40% to be determined by the LPA. In respect of the tenure split the Borough has the following comments to make. The Borough policy currently seeks a tenure split of 70:30 social/affordable rent and 30% intermediate. We would not welcome a move towards an affordable tenure split of 60:40 and note that Policy 3.11 allows flexibility for the LPAs to set a local target taking into account local need as enshrined in Policy 3.11. The affordable low cost rent is expected to be meet the needs of those eligible for social housing (social/affordable rent).



## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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Specific to para 2.29 the Borough provides the following commentary on rent levels, London living rent and preferred tenure split for 40%

Rent levels: No affordable housing rent product should be higher than the local allowance.

Rent levels for prioritising alternative immediate products over option of LLR:  
We would not seek to prioritise other intermediate products over London living rent.

Preferred tenure for the remaining 40%: The Borough's preferred tenure split would be to secure a 70:30 low cost rent/intermediate split. In this respect the 40% would be applied to securing low cost rent tenure in line with the current Core Strategy requirement. The Boroughs SHMAA demonstrates that those in greatest need require social (target) rent and that where an affordable rent product is agreed that the rents should include a distribution of rents and not focus on the top of the spectrum but should be allocated with greater than 80% discounts.

### ***Starter Homes***

The Council welcomes the announcement that Ministers have dropped plans to impose a legal duty on councils to ensure provision of at least 20 % Starter Homes on all reasonably sized development sites. The document confirms that the government will not introduce a statutory requirement for Starter Homes "at the present time". The Council welcomes this announcement as starter homes do not provide a genuine, in perpetuity, affordable housing product.

### ***Off site and Cash in Lieu***

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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The Council agrees that the affordable housing contribution should be on site as opposed to off site or cash in lieu.

### ***Loss of Existing Affordable Housing***

The Council agrees with the proposed approach to deliver the equivalent amount of affordable housing floor space and better quality accommodation when proceeding with estate renewal programmes.

### ***Vacant Building credit***

RBG agree with the mayor's view that it would not be appropriate to apply VBC in London.

### ***The Viability Assessment***

Royal Greenwich welcomes the Mayor's support for the London Borough Viability protocol and welcomes the fact that the SPG guidance and technical approach to the Viability Assessment is consistent with this.

The SPG does not discuss what the differences between the build-to-rent viability model and a viability appraisal for the more traditional build and private sale development. Clarification is sought on this point and how the Mayor would address this.

### ***Housing Zones***

The Guidance notes that Housing Zones may require a more bespoke approach. The Royal Borough is already involved in the Housing Zone at Abbeywood, Plumstead and Thamesmead which with Peabody. There is already a funding agreement between Peabody and the GLA to deliver at least 45% affordable housing via this scheme over the next 10 years. The agreement was signed on the 29<sup>th</sup> July 2016. The Borough expects that this scheme remains unaffected

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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by the Guidance, that the agreement is not reopened and that it is not the Mayor's intention to allow this.

### ***Effect on Local Housing Companies: Meridian Home Start***

Meridian Home Start is the Housing Company set up by the Council to deliver affordable housing and which has since become independent of the Council, formed as a Community Benefit Society. This company was the recipient of public subsidy in the form of 29 homes which were transferred to the Company at nil consideration. The Council is considering transferring some of its HRA and General Fund land to the Company in order to produce housing at sub market rents at rental rates of 80% or below the market level. The Company would require the land to be transferred to it at nil cost and would also need a loan to assist it with building housing on the transferred land. Once the Company has a sufficient amount of housing built so that it has a more substantial asset base it is possible it may be able to build without public subsidy or loan finance from the Council.

The SPG would apply to Meridian Home Start and that of many other London authorities who are working within similar models for housing companies. The application of the SPG will create an additional step in the development process which is not helpful for delivery. As RBG's company is looking to deliver homes with rents of up to 80% of market levels this would appear to be against the general thrust of the Mayor's policy and the borough would appreciate further clarity.

### ***Build to Rent (PRS)***

A significant part of the SPG covers the Mayor's plans to improve the offer around private rented housing in London. The consultation document states that this form of tenure is supportive of "labour market mobility" and that it

## Royal Borough of Greenwich Response to consultation to SPG on Affordable Housing and Viability

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helps support consistent housing delivery but he also recognises that there is a need to offer more stability to those living in this form of tenure. The private rented sector makes up an increasing proportion of the tenure within Royal Greenwich. The most recent calculation assesses that around 29% of all households in the borough live in the private rented sector.

Royal Greenwich welcomes the Mayor of London's focus on delivering affordable better quality private rented housing. Whilst we are supportive of the Build to Rent product we would not expect the Build to Rent to be at the expense of delivering much needed affordable housing within the Borough. To this affect the build to rent product should only ever be in lieu of private sales housing and not the affordable units. Of course we acknowledge the impact Build to Rent has on viability as opposed to market sale and that this will impact on a schemes overall viability. This will need careful consideration when assessing the level and contribution of Build to Rent in the overall provision of housing in the Borough.

RBG agree that when Build to Rent is proposed as part of a residential development the threshold approach to viability does not apply and a full viability assessment would be required. This recognises the distinct economics of this sector.

RBG would not welcome the mayor's commitment that in PRS schemes the affordable component can be entirely discounted market rent. RBG would expect the tenure of the affordable housing component of any Build to Rent scheme to be a matter for the Borough to determine and not imposed through this SPG. If a Discount Market Rent affordable product is pursued there should be a commitment to ensure that the discounted rents are spread across the rent spectrum and not discounted at the minimum discount only.

# Royal Borough of Greenwich

## Response to consultation to SPG on Affordable Housing and Viability

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### **Conclusion**

The Borough broadly agrees with the approach set down in the SPG and the strategic aim of delivering much need affordable housing across London and particular in the Royal Borough of Greenwich. The principle of the threshold approach which intends to remove the vagaries of a viability led approach to affordable housing delivery in the capital is welcomed. There are some reservations in the draft SPG that require further exploration and justification not least the tenure split proposed and the affordable component of build to rent schemes. We would not wish to see the decision making powers of Greenwich eroded. Greenwich currently strives to secure genuine affordable housing that seeks to truly address the borough's local need and welcomes the strengthening of this approach through a London wide strategy.

Furthermore, we wish to see better joined up working between the Borough and the GLA to ensure the maximum delivery of genuine affordable housing products that target those in greatest need and to this end we welcome the addition of a team of viability experts to the GLA to assist in this ambition.

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Cllr Philip Glanville  
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28 February 2017

Sent by email to: [housingspg@london.gov.uk](mailto:housingspg@london.gov.uk)

Dear Sadiq,

### **Draft Affordable Housing and Viability SPG 2016**

Thank you for the opportunity to comment on your draft Housing and Viability SPG.

Hackney Council is committed to working with you to help tackle the housing crisis in our borough and across the capital. Our recent year-long engagement with residents found that housing affordability was the top concern of residents in the borough. The current reviews of our Local Plan and Housing Strategy will give high priority to delivering the genuinely affordable homes that our residents need.

I broadly welcome the proposals in the draft SPG as a first step towards helping tackle London's housing crisis, in advance of the development of a new London Plan over the next couple of years.

I set out my comments on each section of the draft SPG below:

### **1. The threshold approach and tenure mix guidance**

The Council's current borough-wide strategic target is for 50% of all developments comprising 11 or more units to be affordable housing, subject to site characteristics, location and overall scheme viability. This is underpinned by evidence from an Affordable Housing Viability Study and a Strategic Housing Market Assessment. We are reviewing the Local Plan this year and will

be commissioning a viability assessment which, amongst other things, will inform a review of the CIL charging schedule and an update to our affordable housing policies, including policies on tenure mix.

Over the last five years Hackney has performed well compared to other London boroughs and has delivered on average 36% affordable homes. Going forward the Council's ability to deliver genuinely affordable homes is constrained by a number of factors – not just viability. A large proportion of homes are built on small sites for which affordable housing cannot be secured (43% of conventional homes that were built in 2015/16 were on small sites). Notwithstanding current national planning policy, we would ask you to lead the way in exploring ways in which affordable housing, including financial contributions, could be secured on small sites. Affordable housing delivery is also affected by permitted development rights which allow the change of use from a range of commercial properties to residential without the need to apply for planning permission, and in turn no obligation to provide affordable housing. Hackney has and will continue to use Article 4 Directions to remove permitted development rights where this can be justified and would seek your support for this.

We believe that a minimum 35% threshold for the scrutiny of viability is a workable short-term approach in the current circumstances, given the need to speed up delivery. The impact of this approach on overall affordable housing delivery and the speed of implementation must be closely monitored. However safeguards are required to ensure that developers do not provide lower quality and more 'guarded' viability information when less than 35% affordable housing is proposed, due to the realisation that information will be subject to greater public disclosure.

We welcome the expectations in the SPG that grant from the Affordable Homes Programme will be used to help housing providers achieve higher than 40% delivery of affordable housing and that the Mayor will work with 'strategic partners' to achieve higher levels.

Alongside the Mayor of London, the Council would like to move towards a threshold that matches the Council's evidenced target for affordable housing of 50%. We look forward to a road map in the London Plan review for moving towards a London-wide target of 50% affordable housing across London and / or an approach that permits a range of threshold levels in different areas of London, subject to supporting evidence.

We strongly support the proposals that:

- high levels of scrutiny will be applied to schemes not meeting the 35% threshold and that applicants will have to provide detailed and transparent viability information
- comprehensive review mechanisms will be applied to schemes not meeting the 35% threshold in order to ensure that affordable housing contributions are increased if viability improves over time
- in the case of schemes meeting the 35% threshold, a review mechanism will be triggered if an agreed level of progress is not made within two years.

In terms of the mix of affordable housing tenures, we suggest that the definitions of Social Rent / London Affordable Rent from the Affordable Homes Programme Funding Guide are also included in the SPG, to underpin their incorporation into local planning guidance, and to raise



awareness of the definitions amongst housing providers, even where GLA grant is not being sought on a scheme.

There is a significant need in Hackney for rented homes that are genuinely affordable to those on middle incomes, and London Living Rents will help ensure relative affordability by linking rent levels to average local earnings. The Affordable Homes Programme funding guide states that providers will have the flexibility to switch between Shared Ownership and London Living Rent up to the point of sales or letting, in response to consumer demand. We recommend that safeguards are put in place to ensure that providers do not simply switch most homes to the more financially advantageous product. Our preferred approach would be that the relevant local authority must agree to any switch, based on local evidence of need, on the basis that agreement will not be unreasonably withheld.

We look forward to an update regarding Starter Homes that reflects the proposals in the Government's recent Housing White Paper. Such an update will be needed for the current review of our Local Plan.

We agree with the Mayor of London's view that in most circumstances in London it would not be appropriate to apply the Vacant Building Credit.

## **2. Viability assessments**

We strongly support the Mayor of London's requirements regarding the publication of transparent viability assessments, as well as guidance on the assumptions that are made in the assessments. In particular, we agree with the Mayor of London's preference for using EUV Plus as the comparable benchmark land value. The publication of transparent viability assessments was a recommendation of the Council's Living in Hackney Scrutiny Commission, following their investigation into affordable housing delivery in 2014/15.

It would be helpful to include guidance to ensure that assumptions about Developer's Profit in viability assessments are not set at excessive levels. In viability assessments for Build to Rent, there is a case that Developer's Profit should be relatively lower because, as recognised in the SPG, although this form of provision offers lower early returns, it also has lower market risk than for sales schemes.

It would also be helpful for more guidance to be provided on when the alternative use value (AUV) approach may be acceptable in viability appraisals.

## **3. Build to Rent**

We welcome the 'alternative pathway' that recognises the specific features of Build to Rent, and in particular:

- the proposed covenant arrangements and the principle of 'clawback' in the event of units being sold out of the Build to Rent sector
- that the affordable housing on Build to Rent developments must remain affordable in perpetuity, or the subsidy recycled for affordable housing.



The clawback mechanism should seek to recoup subsidy in respect of any affordable housing that is sold out, and to secure an affordable housing contribution to the Council that fully reflects the value of the affordable housing.

We warmly welcome the proposed management standards, which include many of the good practices promoted by Hackney through its '10 Steps to better private renting' campaign. However, we recommend adding a requirement that managers of Build to Rent schemes must be accredited by the London Landlord Accreditation Scheme and comply with the London Rental Standard. Further clarity is needed on whether the break clauses proposed apply to the tenants only or landlords too, and also on the 'formula-linked' rent increases - for example, would this be inflation capped?

We also suggest that the SPG should be more prescriptive in stating that the rent levels for the affordable element of Build to Rent Schemes should normally be set at London Living Rent levels, as this would ensure that they are genuinely affordable to households on middle incomes and give greater certainty to developers. Sub-market rents set with reference to market rents rather than earnings are unlikely to be genuinely affordable to households on middle incomes in Hackney.

I look forward to working with you over the coming years to help achieve a step-change in the delivery of new homes in the capital, with the aim of ensuring that at least half of all new homes are genuinely affordable to those on low to middle incomes.

Yours sincerely,



**Philip Glanville**  
Mayor of Hackney



**London Borough of Hammersmith and Fulham response:**

**GLA Homes for Londoners Draft Affordable Housing and Viability SPG  
Consultation 2016**

28<sup>th</sup> February 2017

The consultation requests for responses on the following matters in the draft SPG:

- i) The threshold approach to affordable housing;
- ii) Approach to viability assessments;
- iii) LBHF intermediate housing product preference;
- iv) Local preference on remaining tenure split;
- v) Guidance on rent levels for those homes to be delivered for low cost rent;
- vi) Build to rent

LBHF's response to these matters, is outlined below.

**i) Threshold approach:**

LBHF acknowledges there may be potential benefits of the 35% threshold approach to affordable housing, particularly in terms of speed of decision making in planning applications and certainty. However, we are currently in the advanced stages of revising our Local Plan having made the Regulation 19 Submission to the Planning Inspectorate and an Examination in Public expected around May this year.

Our Regulation 19 Submission proposes to increase our borough-wide affordable housing target from 40% to 50% on sites capable of providing 10 or more units. This increased target is supported by a borough-wide viability appraisal carried out by an independent consultant. We are also seeking to adopt within our new Local Plan a more robust and challenging approach to developer's viability appraisals (Viability Protocol) to ensure that we achieve as near as we can to the 50% target, with Section 106 viability review mechanisms also to be incorporated to assist this objective.

Therefore, given where we are in our Local Plan adoption process and that the Mayor's SPG is in draft form, we will continue to pursue our objective through the emerging Local Plan to increase the affordable housing target to 50%. Where this is not proposed we will require a viability appraisal in line with our new Viability Protocol to justify why it is not viable to provide 50% affordable housing. This viability appraisal will be vigorously assessed with the assistance of viability consultants.

**ii) Viability assessments:**

The SPG sets out several best practice principles in how viability appraisals should be approached by developers to ensure a fairer, more transparent and consistent approach across London. This mainly focuses on benchmark land value, development values & build costs, growth assumptions, profit and review mechanisms

These principles have already been captured by LBHF in our emerging Local Plan, Viability Protocol and **are therefore supported**.

We question, however, the standardised approach to viability review mechanisms which is being promoted, as this may not be best suited to all proposals in terms of capturing and maximising any future uplift in a scheme's viability. We have extensive experience of the benefits in tailoring review mechanisms to individual schemes given the varying scale and different characteristics that major schemes display.

We, therefore, consider that while the Suggested Review Formulas in Annex A may provide a useful base position, the SPG should be clear that it is the individual boroughs who are best placed to determine the most appropriate timing, formulas and surplus split in respect of viability review mechanisms.

**iii) Intermediate housing product preferences:**

*LBHF intermediate housing preferences:*

The GLA SPG requests: 'Robust evidence, on the grounds of affordability, for prioritising alternative intermediate products over the options of London Living Rent and shared ownership.'

**LBHF response**

LBHF welcomes the general approach of working to ensure that all affordable housing properties provided in developments are genuinely and demonstrably affordable and meet local need. The flexibility being offered by the Mayor to local planning authorities to advise and choose the appropriate intermediate housing tenures for rent or sale to achieve their stated aims, is also welcomed.

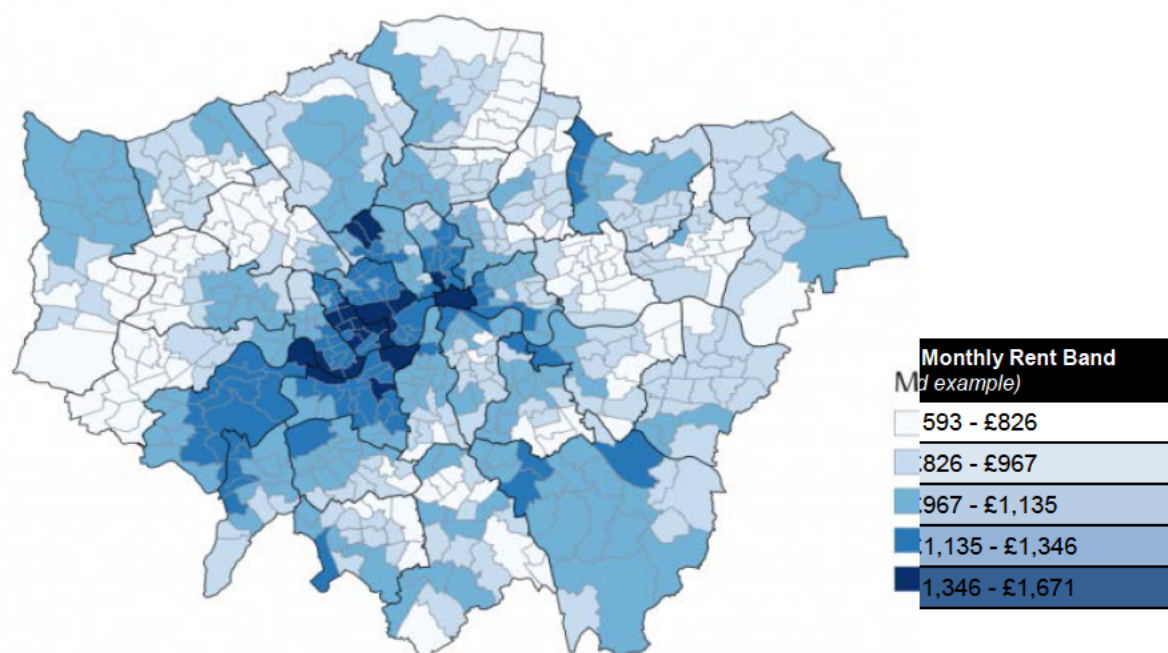
**LBHF recommends adoption of the council's shared equity model as the alternative affordable housing product to shared ownership and London Living Rent while retaining flexibility to use any of the three products to best meet the affordability of residents and workers in the borough.**

Analysis of intermediate housing products is outlined below:

London Living Rent is designed to help households on average incomes to rent below market value to save a deposit and move into home ownership. Ideally 1 and 2 bedroom units. It is envisaged that this product will help singles, couples, and households with more than one person but not multi-adult house-sharers due to income threshold (maximum household income is £60,000).

The GLA published the rental bands for the different wards in London using the 2-bed benchmarks. These are:

## London Living Rent per month for a 2 bedroom unit by ward



Using the two-bedroom rents for each ward as a benchmark, the rent for a one-bedroom home is assumed to be 10% lower, for a three-bedroom home 10% higher and for a four-bedroom home 20% higher. As a final affordability safeguard, the rent for any individual unit must be at least 20% below its assessed market rent.

The benchmarks give the following ranges for each borough ward:

London Living Rent (Range by H&F Ward)					
Ward	Band	1Bed	2Bed	3Bed	4Bed
College Park & Old Oak	B	£743 - £870	£826 - £967	£909 - £1,064	£991 - £1,160
Wormholt & White City		£743 - £870	£826 - £967	£909 - £1,064	£991 - £1,160
Shepherds Bush Green	C	£870 - £1,022	£967 - £1,135	£1,064 - £1,249	£1,160 - £1,362
Askew		£870 - £1,022	£967 - £1,135	£1,064 - £1,249	£1,160 - £1,362
Addison		£870 - £1,022	£967 - £1,135	£1,064 - £1,249	£1,160 - £1,362
Ravenscourt Park		£870 - £1,022	£967 - £1,135	£1,064 - £1,249	£1,160 - £1,362
Hammersmith Broadway		£870 - £1,022	£967 - £1,135	£1,064 - £1,249	£1,160 - £1,362
Avonmore & Brook Green	D	£1,022 - £1,211	£1,135 - £1,346	£1,249 - £1,481	£1,362 - £1,615
Fulham Reach		£1,022 - £1,211	£1,135 - £1,346	£1,249 - £1,481	£1,362 - £1,615
North End		£1,022 - £1,211	£1,135 - £1,346	£1,249 - £1,481	£1,362 - £1,615
Fulham Broadway		£1,022 - £1,211	£1,135 - £1,346	£1,249 - £1,481	£1,362 - £1,615
Munster		£1,022 - £1,211	£1,135 - £1,346	£1,249 - £1,481	£1,362 - £1,615
Town		£1,022 - £1,211	£1,135 - £1,346	£1,249 - £1,481	£1,362 - £1,615
Parsons Green & Walham		£1,022 - £1,211	£1,135 - £1,346	£1,249 - £1,481	£1,362 - £1,615
Palace Riverside	E	£1,211 - £1,504	£1,346 - £1,671	£1,481 - £1,838	£1,615 - £2,005
Sands End		£1,211 - £1,504	£1,346 - £1,671	£1,481 - £1,838	£1,615 - £2,005

Using the ranges, we calculated the average rent for each ward in the borough and minimum income required to afford the rents using the affordability principle of 40% net income to be spent on housing cost (the same as shared ownership):

London Living Rent (Average by H&F Ward)									
Ward	Band	1Bed	Minimum Income	2Bed	Minimum Income	3Bed	Minimum Income	4Bed	Minimum Income
College Park & Old Oak	B	£807	£34,586	£897	£38,443	£986	£42,257	£1,076	£46,114
Wormholt & White City		£807	£34,586	£897	£38,443	£986	£42,257	£1,076	£46,114
Shepherds Bush Green	C	£946	£40,543	£1,051	£45,043	£1,156	£49,543	£1,261	£54,043
Askew		£946	£40,543	£1,051	£45,043	£1,156	£49,543	£1,261	£54,043
Addison		£946	£40,543	£1,051	£45,043	£1,156	£49,543	£1,261	£54,043
Ravenscourt Park		£946	£40,543	£1,051	£45,043	£1,156	£49,543	£1,261	£54,043
Hammersmith Broadway		£946	£40,543	£1,051	£45,043	£1,156	£49,543	£1,261	£54,043
Avonmore & Brook Green	D	£1,116	£47,829	£1,241	£53,186	£1,365	£58,500	£1,489	£63,814
Fulham Reach		£1,116	£47,829	£1,241	£53,186	£1,365	£58,500	£1,489	£63,814
North End		£1,116	£47,829	£1,241	£53,186	£1,365	£58,500	£1,489	£63,814
Fulham Broadway		£1,116	£47,829	£1,241	£53,186	£1,365	£58,500	£1,489	£63,814
Munster		£1,116	£47,829	£1,241	£53,186	£1,365	£58,500	£1,489	£63,814
Town		£1,116	£47,829	£1,241	£53,186	£1,365	£58,500	£1,489	£63,814
Parsons Green & Walham		£1,116	£47,829	£1,241	£53,186	£1,365	£58,500	£1,489	£63,814
Palace Riverside	E	£1,358	£58,200	£1,509	£64,671	£1,659	£71,100	£1,810	£77,571
Sands End		£1,358	£58,200	£1,509	£64,671	£1,659	£71,100	£1,810	£77,571

The results show that the London Living Rents, although below 80% of market rents, are still unaffordable to the majority of applicants registered with the Council's home ownership service. In addition, two wards in Fulham (Palace Riverside and Sands End) would require incomes above the proposed £60,000 income cap to afford properties bigger than a studio/one bedroom.

### Shared Ownership

In the draft Supplementary Planning Guidance 2016, it is noted that “Generally, shared ownership is not appropriate where unrestricted market values of a unit exceeded £600,000.”<sup>1</sup>

To examine the appropriateness of the shared ownership model, analysis was undertaken of the open market value of units delivered in the borough's main postcodes (W12, W6, SW6) and for which the Council had access to an independent valuation report.

The data showed that, on average, only studios and 1 bedroom properties have unrestricted values of less than £600,000 (the point which the draft guidance deems

<sup>1</sup> page 22, para 2.40 of the Affordable Housing and Viability Supplementary Planning Guidance 2016



inappropriate for shared ownership). The lowest being in W12 for £532,917. All property sizes attracted much higher valuations.

Therefore, to deliver shared ownership affordable to a range of incomes in Hammersmith and Fulham, as is encouraged by the mayor and expected by this Council, housing providers would be required to significantly reduce service charges and the rents they charge on the unsold equity in shared ownership (traditionally set at 2.75% of the unsold share).

To illustrate this point, we used the average two-bedroom property valuation, from the same data pool above, in the two biggest postcodes in the borough (SW6 and W12) and applied the affordability calculation for shared ownership as outlined in the draft guidance:

### **SW6**

Property Valuation	£876,000	-
Share for Sale	25%	£219,000
Assumed Deposit	10%	£21,900
Rent on Unsold Share	2.75%	£1,505
Estimated Service Charge	£100	-
Interest Rate	4%	-

- Minimum income required to afford this property is £113,400.
- To bring this example a level below the £60,000 income threshold will require reducing the rent on unsold equity from 2.75% to 0.5% (£273pcm) and halving the example service charge to £50. This would only reduce the household minimum income requirement to circa £58,500.

### **W12**

Property Valuation	£767,280	-
Share for Sale	25%	£191,750
Assumed Deposit	10%	£19,175
Rent on Unsold Share	2.75%	£1,318
Estimated Service Charge	£100	-
Interest Rate	4	-

- Minimum income required to afford this property is £99,800.
- To bring this example a level below the £60,000 income threshold will require reducing the rent on unsold equity from 2.75% to 0.75% (£239pcm) while maintaining the example service charge £100. This would only reduce the household minimum income requirement to circa £58,700.

Finally, although shared ownership remains the most familiar affordable home ownership product. In areas of London, like Hammersmith and Fulham, where land and property values are among the highest in the country, shared ownership can only viably support provision of studios and 1 bedroom properties.

## **Council Shared Equity / Discounted Market Sale**

Through this product a purchaser buys an affordable housing property at a percentage of its market value. The difference between the discounted sale price and the market value of the home is covenanted to the Council in perpetuity. Nothing is payable on the unsold interest.

In the event the owner decides to sell the property, they would do so at the same discounted percentage of the prevailing open market value and, in doing so, pass on a sustainable affordable housing unit to subsequent buyers eligible for affordable housing as assessed by the Council.

The affordable home's sale price is written into section 106 agreements and is calculated by reference to income thresholds enshrined in the Housing Strategy's Home Buy Allocation Scheme. Through this, the Council can meet a range of affordability groups without being significantly affected by the open market value of the subject property.

The proposed product can produce better affordability for applicants because there is no rental payable (as is the case in shared ownership). The maximum mortgage available to applicants is between 85-90%.

Having been employed in several developments in the borough. It is the preferred affordable home ownership products for applicants because of its simplicity and affordability.

The product has been operated by housing associations and can enable developers to pursue direct delivery models.

### **iv) Remaining 40% split:**

LBHF has identified a 60% social/affordable rent and 40% intermediate housing split in the draft submission of the Local Plan with an overall target of seeking 50% affordable housing.

**Recommendation:** In line with the Council's draft Local Plan policies, LBHF proposes a split of 60% social/affordable rent and 40% shared ownership/London Living Rent products. It is noted that viability may be a challenge to achieve the LBHF social rent levels and would therefore need to be at approx. 30% of market rent.

### **v) Rent Levels**

The GLA consultation states: 'Guidance on rent levels for those homes to be delivered for low cost rent if above benchmark London Affordable Rent levels, with clear justification for how these are genuinely affordable'

The Mayor has outlined the Weekly London Affordable Rent benchmark (inclusive of Service Charge) in the Affordable Homes Programme Funding Guide 2016-21.

Comments on the guidance in respect of low cost rent would be more appropriately provided by Registered Providers (RPs). However, LBHF will expect RPs providing low cost rent properties in the borough to match the Council's new build rent levels which are similar to the levels issued by the Mayor.

#### **vi) Build to Rent**

Finally, LBHF generally supports the definition of Build to Rent (BtR) as presented in the draft SPG. We acknowledge the Mayor's request that councils take a more positive approach to assist the provision of BtR and that local plans recognise that BtR can increase housing supply. We are proposing to add some wording in the justification text of our emerging local plan identifying the important contribution BtR can make to meeting a specific housing need in London, especially affordable BtR and the council's support for it in the right locations. However, we feel it is important that it is left to the discretion of individual boroughs to determine where the right locations for BtR in their areas are, through the planning application process and their local plan policies and site allocations.

Similarly, the SPG should be clear that it is for the individual boroughs to take decisions forward on how they approach encouraging and facilitating homes on their own land, and whether it is appropriate and beneficial to take deferred land receipts or forgo land value to increase the number of affordable units. Optimising brownfield sites for housing and maximising genuinely affordable homes is a priority objective for this council and we are successfully pursuing this approach on our own land through both a direct delivery programme and a Joint Venture company with a property developer.

The council supports the use of 'clawback' mechanisms in S106 agreements in the event of units being sold out of the BtR sector during the covenant. In terms of the two options in dealing with BtR viability assessments, we support Option One as it provides the opportunity to 'clawback' up to 50% affordable housing as opposed to 35%. With the application of our Viability Protocol and robust scrutiny of applicants' viability appraisals, the council aims to achieve high levels of affordable housing which should be 50%, or as near to 50% as possible.

While the Mayor's draft SPG acknowledges the additional financial challenges of a BtR proposal, the SPG should also highlight the financial benefits of a BtR scheme. For example, there is less risk securing prospective tenants to rent a home as opposed to the more challenging task of finding people to buy a house. This should also facilitate and encourage a faster build rate and delivery of homes to prospective tenants and shorter construction period than a sale to market scheme. These characteristics should reduce financing costs and justify a lower developer's profit target which should be expressed as a percentage of gross development costs or gross development value.

We trust that you find these comments constructive and helpful and we look forward to future engagement with the Mayor on his emerging housing policies and guidance.



By email to: [housingspg@london.gov.uk](mailto:housingspg@london.gov.uk)

**Your ref:**

Date: 28<sup>th</sup> February 2017

**Our ref:**

Direct 020 8489 2819/0789 141  
dial: 2515

Email: [REDACTED]

## **Homes for Londoners: Draft Affordable Housing and Viability Supplementary Planning Guidance**

I am writing on behalf of the London Borough of Haringey in response to the consultation on the Mayor's draft Affordable Housing and Viability Supplementary Planning Guidance (SPG).

Haringey Council welcomes the Mayor's aims, expressed in this SPG, to introduce more transparency into the process, to introduce a standardised approach to viability assessments, to incentivise the driving up of the level of affordable housing delivered through the planning process and to support the development of the "Build to Rent" sector. The Council also supports the new approach to investment in the Mayor's affordable Housing Programme, which should dovetail with this SPG to deliver more affordable homes.

In particular, Haringey Council is supportive of the approach to simplify the viability assessment process for schemes where 35% affordable housing, in a policy compliant mix, is proposed without grant. Nevertheless, there are issues that need to be addressed in adopting this approach and these are set out below. Haringey Council would like to see these addressed in the final version of the SPG, although we do recognise that it will be much easier to do so in the new draft London Plan, in which the fundamental policies can be redrafted to better deliver these aims.

With regard to paragraph 1.16 of the SPG; the Council is supportive of the approach proposed in general; that is that the Mayor is right to call in applications where viability suggests higher levels of affordable housing could be delivered. The Council would wish to see the Mayor using this power judiciously where Councils are failing to maximise the delivery of genuinely affordable housing delivery. This would mark a clear break with the approach of the last administration at City Hall and signal the Mayor's commitment to increasing the supply of affordable housing. However, Haringey Council believes that it is best placed, rather than the Mayor, to assess the weight to be given to competing planning objectives on local developments, in the light of its own adopted policies,

## Regeneration, Planning and Development

**Lyn Garner Director**

should affordable housing be proposed to be forgone to better deliver a differing priority.

With regard to transparency of information in paras 1.17 to 1.23; Haringey Council supports this approach and has routinely been publishing such information for some time. We have recently adopted a new validation requirements document for applicants which formalises this approach. We will also make this clear in the forthcoming update to our Planning Obligations SPD.

With regard to part 2; Haringey Council broadly supports a simplified approach to viability assessment in circumstances where 35% affordable is provided at nil grant, with policy compliant tenure. However, we are of the view that a short form viability assessment should be submitted with the application in order to allow rudimentary assessment of costs such as build costs and to provide a benchmark in any subsequent reviews, for example if sufficient progress is not made with implementation.

Haringey Council would welcome discussion with the development industry as to how an 'agreed level of progress' will be defined and is interested to see the responses from the industry to this consultation. We understand the sentiment of what it aimed for here and we support it. Currently we seek reviews where schemes are not implemented within 18 months. We are concerned that a bespoke approach to the level of progress in each application will lead to delays in negotiating section 106 agreements. Many LPAs may face capacity issues in trying to monitor progress in order to trigger the proposed reviews.

Haringey Council supports the approach to measure the level of affordable housing in habitable rooms. This should also be given more prominence in the London Plan Annual Monitoring Reports, which at the moment are very unit driven in terms of monitoring.

In the Route B red box, section 4 sets out that an agreed Benchmark Land Value should be set out in each 106 agreement. We suggest that this is best agreed through the submission of a rudimentary assessment as set out above. We would also question the use of the phrase 'best endeavours', which may prove overly onerous.

The Council supports the clear separation in terms of the assessment of what can be achieved with and without grant. It supports the proposals to increase the level of affordable housing in schemes to 50% (from 35%) where possible with grant and recognises that the approach in the Affordable Housing Prospectus is a consistent and transparent approach to achieving this. Together these set a clear direction of travel for the new London Plan. The Council hopes the GLA will also support greater flexibility within its investment programmes on how Right to Buy receipts can be used, both in terms of combining with other investment and in the timetable for spending receipts.

In paragraph 2.29 the consultation poses specific questions regarding affordability and mix. Our response to this is that we would expect these to be compliant with

our adopted Local Plan and Housing Strategy, appendix D of which sets out our definition of affordability. On the three specific questions:

- We would not normally expect homes to be delivered for low cost rent above benchmark London Affordable Rent levels, and agree that these would need a clear justification to demonstrate they are genuinely affordable.
- We would expect most intermediate products coming forward to be shared ownership and London Living Rent – or variations of these as they emerge. But we would want to retain the option of delivering other products both where we are likely to be delivering significant numbers of intermediate homes (ie to achieve a better mix) and where new and innovative products emerge.
- Our preferred tenure mix for the 40% of the affordable housing reserved for LPA definition would be 75:25 low cost rent: intermediate (low cost home ownership and London Living Rent). Overall this would deliver our strategic aim of 60:40 low cost rent:intermediate. However, a more bespoke approach will be applied in Opportunity Areas, such as the Tottenham Housing Zone, as encouraged in paragraph 3.56 of the SPG and set out in our Housing Strategy (section 5.2).

With regard to paragraph 2.50 we support accepting cash-in-lieu only on an exceptional basis and where robustly justified. The presumption for onsite is right and should remain. It is not clear whether it is being said that there should be a presumption against cash-in-lieu contributions if no site is identified. Council officers understand that not linking cash-in-lieu for affordable units with identified affordable development sites can lead to delays in delivery, however where the Council has a ready programme available for the delivery of affordable housing a cash-in-lieu contribution should be considered acceptable if this is a better option than onsite affordable in terms of type and location of provision. There is also no indication of how the cash-in-lieu contribution of broadly equivalent value should be calculated in this new approach to viability.

The Council welcomes the approach to vacant building credit in paras 2.59 to 2.65, although this has not been a particularly significant issue yet in Haringey, and there are questions as to how it would be monitored.

The Council is supportive of the appraisal requirements and development values set out in Part 3 and is particularly supportive of the growth assumptions section as well as the encouragement of early involvement of Registered Providers and clarity around how the payments from Registered Providers should be accounted for. The clarifications on costs are also welcomed. The use of EUV plus as the preferred method of assessment is also welcomed and the limited circumstances where an alternative use can be used, is also supported and the clarification welcomed.

Part 4, on Build to Rent is also broadly supported. Haringey Council wishes to support the growth of this sector in the borough, but does have some concerns

## **Regeneration, Planning and Development**

**Lyn Garner Director**

over elements of the proposals. Haringey Council would be very concerned about watering down design requirements and reducing space standards, given that these homes are not usually reserved for private rent in perpetuity.

The proposal that the affordable homes should all be discounted market rent is entirely sensible, with the quantum determined through viability. But the SPG should have gone further and made clear that these should always be at London Living Rent levels, not set at 80% of local market rents, which the Mayor has himself said is unaffordable. Haringey Council would be keen to work with the GLA to lobby Government on its proposal in the White Paper and accompanying Build to Rent consultation threat to overrule the proposals in this SPG (and any subsequent London Plan) and instead impose a blanket 20% affordable housing requirement on all Build to Rent schemes, with these homes being just 20% cheaper than the local market.

Please contact me, as above, if you wish to discuss any of these issues in any greater detail.

  
**Head of Housing Strategy and Commissioning**

**Planning Policy**

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Harrow  
HA1 2UY

Date: 28 February 2017

Sadiq Khan, Mayor of London  
(Affordable Housing SPG)  
GLA, City Hall  
The Queen's Walk  
London  
SE1 2AA

**By email: [housingspg@london.gov.uk](mailto:housingspg@london.gov.uk)**

Dear Mr Khan,

**Draft Affordable Housing and Viability SPG (2016) - consultation**

Harrow Council welcomes the opportunity to comment on the draft Affordable Housing and Viability Supplementary Planning Guidance (SPG).

In particular, we welcome the SPG's main aim to speed up planning decisions and increase the amount of affordable housing delivered through the planning system. The desire to ensure that the requirement for affordable housing is embedded into land values is also welcomed; such an approach is consistent with the National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG) and recent statements from Government.

The approach to Viability Assessments contained in Part 3 of the SPG and the statement of support for the London Borough Viability Protocol are also welcomed.

The strong link between the SPG and the Mayor's *Homes for Londoners: Affordable Homes Programme 2016-21* funding programme is also strongly supported. It recognises that the planning system can at the moment only go so far towards delivering the Mayor's strategic target of 50% of new homes being affordable and targets grant funding to push affordable housing provision beyond 40%, above the proposed 35% 'procedural' threshold.

The attached table (Attachment 1) contains Council's detailed representations on the actual content of the draft SPG, highlighting those areas of support and those where further clarification could help to improve the revised SPG.

The draft SPG specifically seeks responses from Local Planning Authorities on a number of matters. In this regard, the following responses are offered:

### *Proposed Approach*

The London Borough of Harrow intends to follow the 35% threshold approach. The 35% threshold is considered a challenging, yet realistic target based on recent affordable housing outcomes within the borough. In this regard, the Council granted permission for an average of 17.1% affordable housing between 2010/11-2015/16 from all sources. Adjusting for estate renewal and those sites where the Council cannot seek affordable housing (i.e. proposals less than ten dwellings and schemes granted prior approval under the office-to-residential permitted development regime), the average proportion of affordable housing secured by way of planning permission in the past six years is 22.4% (1340 affordable homes out of a total 5984 permitted where affordable housing could be sought).

Whilst the borough intends to follow the Mayor's proposed approach in the SPG, we reserve the ability on an application-by-application basis to require full viability evidence to be submitted despite a scheme meeting the 35% threshold and preferred tenure split (Route B) where we consider the affordable housing proposal does not represent the maximum reasonable amount. Such an approach is considered consistent the Mayor's SPG, as the 35% threshold relates to the process followed rather than the overall level of affordable housing sought (i.e. the maximum reasonable) in the London Plan.

### *Preferred Tenure Split*

The Council supports the minimum tenure split of affordable housing tenure of at least 30% low cost rent (social rent or affordable rent) and at least 30% intermediate products (with London Living Rent and / or shared ownership being the default tenures assumed) and the flexibility within these minimum levels. Within the low cost rent element, we would prefer to be securing London Affordable Rent rather than the lower social rent levels as we are finding that the gap between social and market rents is dis-incentivising people from moving from social housing to private rented or home ownership.

Within the remaining 40% flexible' tenure split, the Council's preferred affordable housing tenures 10% intermediate, with the remaining 30% being social rent / affordable rent. This would total to an overall affordable housing split of 60/40 low-cost rent / intermediate, reflecting the current tenure split in our Local Plan.

The proposed flexible tenure split also reflects that there are currently around 1,400 applicant households on the Council's Housing register. Current new build projections over the next 2 years, plus annual relets from existing stock, will only meet approximately 50% of this current housing need, whilst homelessness continues to increase. Consequently, we wish to prioritise low cost rent within the 40% flexible portion but are mindful that some increase in the intermediate tenure is required to support the viable provision of affordable rent on individual sites and meet the demand for low cost home ownership products.

The above preferred tenure splits represent the Council's position at this point in time. We would however expect to be able to amend the preferred tenure splits where warranted by changed circumstances and more recent evidence / Government policy proposals. We understand that the Mayor is considering the London Plan Annual Monitoring Report as a potential mechanism for formally and regularly documenting any updates to the Boroughs' preferred tenures and welcome such an approach.

If you would like to discuss any of the Council's representations and proposed tenure split in more detail, please contact [REDACTED] Planning Policy Manager, on [REDACTED] or [REDACTED] and [REDACTED], Housing Enabling Manager, on [REDACTED], who will be happy to discuss.

Kind regards,



**Paul Nichols**

Director of Regeneration and Planning

**Attachments:** Attachment 1 – Detailed comments

## Attachment 1 - Detailed comments

<b>Draft Affordable Housing and Viability SPG</b> Representations of the London Borough of Harrow <span style="float: right;">Closing date: 28 February 2017</span>			
No.	Page	Paragraph	Representations
1	4	3	The Council strongly supports the view that post-NPPF Local Plans should be considered viable and that negotiations to reduce affordable housing obligations on a particular site should only be in exceptional circumstances and where these circumstances were not evident at the time the site was purchased or the Local Plan was adopted.
2	6	13	The Council agrees with the Mayor's view that in most circumstances in London it will not be appropriate to apply the Vacant Building Credit.
3	6	14	We welcome the Mayor's desire for consistency of approach and consider that it would be advantageous to London as a whole if the evidence required for Financial Viability Assessments was strengthened e.g. block by block floor by floor market research, a template for identifying professional fees and % applied to each element to achieve the total i.e. 10% or 12% for the whole scheme, finance costs and ground rent yields etc.
4	6	15	The principle that Financial Viability Assessments will be publicly available alongside other application documents is welcomed. Non-publication should be an exception not the norm and the Council agree that the onus should be on the applicant to make the case. The Council is in the process of amending its Validation Requirements to reflect this.
5	6	16	The explicit preference that Existing Use Value Plus is adopted as the comparable Benchmark Land Value and that the premium (if any) will be based on a site by site justification is welcomed.
6	10	1.13	The clear statement that site abnormalities should impact upon land value and not necessarily be born through a reduction in Planning Obligations is welcomed.
7	11	1.16	The Council considers that further clarity should be provided in relation to circumstances the Mayor may 'call in' an application on the basis that the 'chance of significant contribution to affordable housing could be forgone due to other grounds and the Mayor wants to review the weight the LPA has given to competing planning objectives'. A range of considerations may be relevant in establishing weight, including site specific detail contained within the Local Plan and whether the 'competing objective' can only be physically delivered on the site whereas affordable housing is essentially a non-'Bricks and Mortar', tenure / financial mechanism (i.e. is not site dependent, but is sought on applicable sites).



8	13	Part 2	There are references throughout Part 2 as to various matters that will be included in S106 agreements. It would help with consistency if the Mayor produced template S106 agreements (including incorporating any specific methodology coming out of the Homes for Londoners funding programme, early and later reviews, Build-to-Rent clauses / covenants etc) and nominations deeds.
9	13	2.3	Comprehensive reviews for schemes that do not meet the 35% threshold or require public subsidy to do so is supported.
10	14	2.9	Some clarity on the approach to be taken to off-site cash in lieu would be helpful to ensure consistency of method. For example, to elaborate on paragraph 2.50 - how will "broadly equivalent value" be approached? Will there be acknowledgement that no affordable housing on site may in some instances translate into an increase in sales values and therefore a greater off site cash in lieu sum generated?
11	15	Route A, 2 <sup>nd</sup> para, 2 <sup>nd</sup> sentence.	It is unclear why a review mechanism would only be required if a 'surplus' is generated over and above the returns necessary for a scheme to be deemed viable. If the scheme is not generating a surplus, this casts doubts on whether the scheme is deliverable. Regardless of this, the fact the scheme is below the threshold and scheme viability can change significantly within a short period of time, means that reviews should almost always be required where affordable housing provision is below the threshold.
12	15	Route A (and also Route B)	Further information / guidance are needed regarding how an agreed level of progress will be established, including likely milestones and acceptable circumstances where delays have been caused. 'Best endeavours' and 'reasonable endeavours' have different meanings in law so the Mayor needs to be certain 'best endeavours' is what is intended.
13	15	Para under last bullet point	In some instances it may be appropriate for the review to cover more than just gross development value and build costs, as other significant elements may change over time.
14	16	Route B, last para.	This should be strengthened to make it clear that a developer should have a Registered Provider on board at the pre application stage or at least the time the application is made, to (a) ensure the housing offer of at least 35% is feasible and practical, (b) to ensure that the full range of grant and other public subsidy has been explored; and (c) enable any potentially exceptionally high RP offer to be explored as required by this SPG. Practical experience is however that it is resisted by some developers and it is difficult to insist that an RP is on board at the time the application is made.

15	17	2.11	Affordable housing is only one of a number of priorities expressed by the Mayor in London Plan Policy 8.2, with others being public transport improvements, climate change, air quality, social infrastructure and the provision of small shops. This is a very broad range of infrastructure and any balancing of priorities in context of development viability should have regard to any relevant infrastructure provisions in the relevant Local Plan / CIL Regulation 123 list and the like.
16	18	2.18	The Council is concerned about the expectation that housing on publically owned land will provide higher proportions of affordable housing. In many instances, the development of publically owned land is undertaken in part to provide funding for community infrastructure i.e. surplus NHS hospital land may be released for residential development with the proceeds being re-invested in modernisation / enhancing the hospital facilities. Additionally, re-investment of the proceeds from development is often required to provide replacement / consolidated community infrastructure on-site / elsewhere and without this replacement / consolidated infrastructure, the site would not be available for development in the first place (i.e. no housing would be provided, yet alone any affordable housing).
17	19	2.24	The principle of developers having an RP on-board early in the process is accepted as being beneficial. However as noted above, experience is that this is not the case and it is difficult for the LPA to compel early engagement.
18	19	2.26	As noted above, the Council would be concerned about any automatic assumption that land value would be forgone on public land in order to deliver additional affordable homes. Enabling development is often required to support new / replacement community infrastructure and to insist on higher rates of Affordable Housing / forgoing land value would put the viability of such development at risk. Provision is only one aspect of what creates a sustainable community.
19	19	2.26	The Council would be concerned about linking additional densities / development to the provision of additional affordable housing. The physical appropriateness of a development should be assessed against the relevant policies, site / development context and design considerations and not traded-off for additional affordable housing (which is a tenure / financial consideration).
20	19	2.28	<p>The Council welcomes the intention to maintain a degree of flexibility with respect to affordable housing tenure split.</p> <p>Split of intermediate should also be agreed with the local authority to ensure an appropriate split across the borough that meets demand from average income earners who want to eventually purchase (London Living Rent) and those ready to purchase but can't do so on the open market (Shared ownership). Otherwise boroughs will end up with what the RP or developer wants that suits their programme, not local demand.</p>

21	19/20	2.28/2.29	Please see the introduction / covering letter for the borough's response to recent levels / preferred tenures for the 'flexible' 40% tenure split.
22	23	2.47	The Council agrees with the types of schemes identified as not being suitable for Route B (off-site and cash in lieu, loss of affordable housing, vacant building credit, and build-to-rent) as the viability of these schemes / circumstances needs to be robustly and transparently assessed.
23	23	2.47	The SPG does not provide any guidance regarding how specialist housing for older people may be addressed with respect to development viability and the approaches outlined in the draft SPG. Whilst it is recognised that there is a fine dividing line between C2 and C3 use-class and that the development viability of specialist accommodation for older persons and associated funding / grant mechanisms will differ from general housing, a clear statement indicating whether or not the SPG applies to such accommodation would provide clarity.
24	23	2.52	It would be preferable that there is a clear methodology for calculating off-site contributions for consistency.
25	25-26	2.55-2.65	The Council strongly agrees with the Mayor's view that Vacant Building Credit will not normally be applicable in London and should only be accepted where it provides a genuine incentive to bring forward a site for development. Similarly, the Council agrees that CIL relief is not applicable when Vacant Building Credit has been applied.
26	26	2.63	This clarity is welcomed.
27	27	3.1	The Mayor's support for the London Borough Viability Protocol is welcomed. The protocol and the associated pan-London group stemmed from the recognition of many boroughs for the need to be more robust / consistent in reviewing FVA and negotiating the maximum reasonable amount of affordable housing. It is anticipated that the Mayor's SPG will also make a significant contribution to achieving these objectives. It is noted that there is still no "model" or quality level that developers should be achieving and there should be i.e. minimum standards required before FVA is in an acceptable format. This would save time in negotiations seeking clarifications.
28	28	3.7	The working model should also include cash-flow analysis, particularly where the proposal is for a build-to-rent scheme.
29	28	3.8	The proposed specification should be clear about any differences in the specification for affordable tenure units compared to market units. The specification between tenures often differs and it is suggested that the SPG should include a requirement that any differential be clearly shown in the build cost breakdown or if not any S106 could require the affordable housing to be delivered to exactly the same specification as private homes for sale.

30	28	3.13	The scenario test is welcomed, particularly where affordable housing provision is below the 35% threshold. It may also be useful in such circumstances for scenario testing to include different tenure splits within the flexible 40% element of the affordable housing offer, so that LPAs / the Mayor can consider options for increasing overall affordable housing provision or meeting housing need, or at least ensuring the offer most closely reflects need relevant to a particular site.
31	29	3.14	It is suggested that this paragraph should be strengthened to “are required to” as there is evidence information is being withheld on bid value and structure (for example, Harrow had an example where the RP offer was £2M less in the FVA than achieved, and payment structure was also not accurately reflected..
32	29	3.15	The Mayor’s proposal to investigate high assumed payments for affordable housing is supported and the Council will follow such an approach where appropriate.
33	29	3.16	The SPG’s observations regarding the timings of payment from RPs also emphasises the need to ensure full cash flow detail is provided in the working model.
34	30	‘Costs’	Many costs within FVAs are calculated as percentages of construction costs and / or development value (i.e. design fees and professional fees, marketing etc) and applicants’ FVAs reflect what they considered are ‘industry norms’. Often these go unchallenged by the independent reviews commissioned LPAs and the LPAs themselves are not in a position to robustly challenge them due to the lack of evidence. They can often represent significant costs on larger schemes. It would be beneficial if the Mayor could provide guidance as what are reasonable proportions / percentages for these elements. Such information may be more appropriately published separately to the SPG and updated regularly to reflect the fluidity in the development industry. The SPG could however be expanded upon to indicate that where costs are expressed as a proportion of construction costs or development value, these are fully justified in the FVA / supporting information.
35	30	3.20/3.25	Guidance on what is considered to constitute abnormal / extraordinary costs in London would be welcomed as piling; remediation and services diversions are common in London.
36	30	3.25	The clear statement regarding site-specific abnormal costs being reflected in land value is welcomed.
37	31	3.26	It is unclear why the Mayor is proposing to adopt a standardised approach to finance costs and further justification / narrative regarding this would be useful, including examples where such an approach may not be appropriate. There should be greater clarity on finance costs as these can vary considerably; the SPG could identify appropriate evidence that should be provided.

38	31	3.33	The statement that 'target profit levels should be appropriate to current market conditions and will reflect the level of risk being taken' is welcomed. However, LPAs often don't have the evidence / market insight to robustly argue this point and some guidance / benchmarks from the GLA would be beneficial.
39	32	Benchmark Land Value	The re-iteration of the requirement under the NPPG that land or site value should reflect policy requirements, planning obligations and any CIL charge is welcome. The SPG should however be more explicit that it is not the role of the planning system to 'socialise' any poor land purchases by a developer (i.e. where they have paid above the EUV + premium) by accepting a lower level of affordable housing than that which is the maximum reasonable amount. The SPG should be clear that in such circumstances, the resultant profit level would in most circumstances be lower. The risk however is that at a lower level of profit, the site may not come forward for development until the viability position / developer profit improves in order to provide a 'reasonable return' for the developer.
40	33	3.45, 4 <sup>th</sup> bullet / 3.49	Some recent appeal decisions have suggested that the realistic prospect that permission would be granted for an alternative use is sufficient for the alternative use value to be an acceptable benchmark. Additionally, clarify on whether an income from temporary uses on sites e.g. car washing facilities on hard standing on sites, or advertising hoardings should be factored into FVAs would also be useful.
41	36	3.53	This provides a clear approach to review mechanisms and what should be included in the Section 106 and is welcomed.
42	37	3.58	Land marketed unsuccessfully for some time (for industry uses) and therefore being deemed surplus to requirements (as per Harrow Local Plan policy) would have a low EUV that would assist increasing affordable housing provision.
43	37-46	4.1-4.39	The overall approach provides much greater clarity and is welcomed. We also welcome the Mayor's tailored approach to affordable housing within Build to Rent schemes based on tenure blind discounted market rent, which recognises the distinct approach to viability required on Build to Rent schemes compared to market sale schemes.
44	38	4.4	The Council welcomes the Mayor's recognition of the value of build to rent in the overall mix as a form of housing that meets a range of important needs in London and helps to accelerate delivery on major sites.
45	39	4.7 (4)	It would be useful to have a standard minimum standard template for FVAs for build-to-rent schemes to follow.
46	Appendices		There may be instances where it is appropriate for all values and costs to be reviewed as all elements may change over time.



# HILLINGDON

LONDON

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1 February 2017

Dear Mr Khan,

**RE: Draft Affordable Housing and Viability Supplementary Planning Guidance**

The London Borough of Hillingdon welcomes the opportunity to comment on the Draft Affordable Housing and Viability SPG. Following a full review of the document, the Council would like to provide the following views, in order to influence specific aspects of this SPG and to inform the Mayor of London's wider approach to affordable housing in the new London Plan.

The Council is supportive of the ambition to speed up planning decisions and increase the amount of affordable housing delivered through the planning system. Furthermore, the Council is in general agreement with the proposed changes in the process of producing viability assessments. It is the Council's view that treating viability assessments with greater transparency and more clarity will facilitate better understanding during the planning process and supports the wider aim of fostering trust in the planning system.

However, the Council does not support a definitive threshold approach to affordable housing. Thresholds for affordable housing provision should not be universal, due to there being different needs between London boroughs and within different parts of an individual borough. The Council's 'in principle' view is that local planning authorities should therefore be able to set their own thresholds, based on local circumstance. However, in the event that the proposed is carried through into the document, the 35% is considered to be generally appropriate.

In regards to referable applications, the Council does not support the Mayor's latest stance on calling in applications for determination. Where the local planning authority has given greater weight to competing planning objectives over a further contribution to affordable housing, this decision should be respected. London boroughs should be able to make

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planning decisions in line with the planning objectives of their own borough. If this approach is to be taken forward, the Council would like to see greater clarity provided around the weight given to alternative planning objectives and how the call in process would work.

Concerning the new guidance on Build to Rent, the Council welcomes the contribution this sector can make in increasing housing supply and the potential for longer term tenancies. It is recognised that the economics of the sector are distinct from Build for Sale market housing, but it is unclear that this prevents Build to Rent from competing on an equal footing. This may be the case for small providers making an entrance to the market, but for established providers, the operating model would include a portfolio of rental properties producing income that would help to absorb initial costs. The economics of this model are not limited to the operation of a specific development.

Furthermore, The Council is supportive of home ownership and although Build to Rent can make a useful contribution to the mix of housing in the borough, it is not clear that it should receive preferential treatment in relation to viability. It is important that affordable housing, including that provided as Build to Rent, should remain as affordable in perpetuity. It is not currently clear that this would be the case.

There are concerns regarding the proposal that affordable homes provided at discounted market rent be owned and managed by a Build to Rent landlord themselves, without any requirement that they be a Registered Provider and that they may have mandatory CIL relief. It is not clear how oversight to confirm continued use as affordable housing would take place. In addition, the preference expressed in the document for rent at London Living Rent levels and for longer tenancies may not transpire, if they are not made requirements of the Build to Rent sector.

The requirement for grant supported London Living Rent properties to be made available for purchase by the occupant is supported and the Council would like to see this requirement maintained in relation to affordable Build to Rent properties. Furthermore, the Council also maintains that design standards should be maintained in the Build to Rent sector.

Finally, the need for family sized housing in Hillingdon is demonstrable across all tenures. Consequently, the Council does not support the flexibility provided for more 1 and 2 bed 'Build to Rent' dwellings.

Should you have any queries regarding the content of this response, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Chris Mansfield', written in dark ink.

**Christopher Mansfield**

Deputy Director of Planning, Transportation and Community Projects  
Residents Services



## Hounslow Borough Council

### Response to Homes for Londoners, Draft Affordable Housing and Viability SPG (2016) Consultation

28/02/17

#### Structure

- Introduction
- Part 1 – Background and Approach
- Part 2 – Threshold Approach to Viability
- Part 3 – Guidance on Viability Assessments
- Part 4 – Build to Rent

#### Introduction

In November 2016 the Mayor published ‘Homes for all Londoners – Draft Affordable Housing and Viability Supplementary Planning Guidance’ (SPG). The draft SPG outlines:

- a threshold approach to affordable housing where schemes providing 35% are not subject to a viability review but those that do not meet this target are scrutinised in depth;
- fully transparent viability assessments;
- more flexibility for local boroughs on affordable tenure, including 30% social/affordable rent, 30% intermediate (shared ownership or London Living Rent) with the remaining 40% decided by the Borough;
- tougher rules on the application of Vacant Building Credit;
- further guidance on undertaking viability assessments;
- strong support for Build to Rent schemes with bespoke arrangements for affordable housing focusing on discount market rent.

The draft SPG sets out the Mayor’s long-term strategic aim to achieve 50% affordable homes across London. The purpose of the draft SPG is to provide a framework for delivering the maximum reasonable amount of affordable housing in the context of the existing London Plan.

The main aim of the draft SPG is to accelerate overall housing delivery to increase the amount of affordable housing delivered through the planning system. It also sets the scene for a comprehensive review of the London Plan, where the approach to affordable housing will be a key consideration. The document is divided into four sections discussed below. The draft SPG will supersede section 3.3 (Build to Rent) and Part 5 (Viability) of the existing Housing SPG (March 2016).

Following is Hounslow Borough Councils response to the Mayor’s invitation to comment on the draft Homes for Londoners, Affordable Housing and Viability SPG 2016.

For further comment or query please contact Hounslow Borough Council’s Policy team via:

E-mail Planning Policy:

[ldf@hounslow.gov.uk](mailto:ldf@hounslow.gov.uk) /

Tel Planning Policy:

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*N.b. Hounslow Borough Councils comments on the draft Affordable Housing SPG are indicated in red font.*

## **Part 1 – Background and Approach**

The current London Plan seeks to maximise affordable housing provision in London – set out in policy 3.11 (affordable housing targets) and 3.12 (negotiating affordable housing on individual private residential and mixed use developments). These targets seek to ensure an average pf at least 17,000 new affordable homes a year. However, the current need for affordable homes has been assessed as 25,600 homes annually.

In 2015-16, early figures suggest only 5,299 affordable homes were delivered. If current policy remains unchanged, the current low trend is likely to continue, in 2014/15 affordable housing comprised only 13% of units approved.

### **Background to Affordable Housing Provision in Hounslow**

The recent Hounslow Housing Market Assessment (HHMA) (2016) identified total affordable housing need as being 1,485 households per annum. The supply of affordable housing from relets and other sources was estimated to be 574 per annum so the net need for affordable housing need is 911 households. This requirement represents 48% of the overall OAN for the borough, leaving market provision of 987 units.

The Hounslow Local Plan (2015), Policy SC2 – Maximising the Provision of Affordable Housing: aims to maximise the provision of affordable mixed tenure housing on development sites and from all other sources of supply. A strategic target of 40% of additional housing delivered across the borough between 2015 and 2030 was set. Policy SC1 – Housing Growth sets an annual monitoring target of 822 additional homes per year. The London Plan housing target for the borough is currently 470 units per year. When the 40% strategic target is applied to Policy SC1 target this equates to approximately 329 affordable units per annum. When applied to the London Plan housing target this equates to 188 affordable units per annum.

The latest Hounslow Authority Monitoring Report Part 1 (2014-15) identifies the total net number of affordable housing completions in the reporting year 2013-14 as being 79 dwellings (information collated from the London Development Database (LDD) / checked and verified by the council's Affordable Housing Supply team, and updated as necessary). This figure represents 8.8% of net completions in the 2014-15 reporting year (897). Or 9.6% of the Local Plan (2015) housing target (822) or 16.8% of the London Plan Housing target for the borough. Historic affordable housing delivery has fallen short of the existing strategic target of 40% (set in 2015).

These figures are set against Hounslow Council's 'New Affordable Housing Pledge: 2014-18' which seeks to secure a further 3,000 affordable homes in Hounslow, 400 of which will be new Council houses. This equates to an ambitious annualised target of 750 affordable housing units.

The Affordable Housing Supply Delivery Plan 2014-18 anticipates that over the next four years at least 75% of new affordable housing supply will come through the statutory planning process – likely to be derived from the following sources:

- Planning applications on sites providing over 10 residential units;
- Large Strategic Sites, including where the Council has land ownership, for example Brentford High Street, Hounslow Town Centre and Feltham Regeneration;
- Working with Registered Providers to secure affordable additional affordable housing on Section 106 and whole sites;
- Working with Registered Providers, private developers and other land owners on potential land assembly options.

There is a clear and demonstrable need for affordable housing provision in Hounslow. The Council recognise and support the delivery of affordable housing through existing planning policies and the Affordable Housing Supply Delivery Plan 2014-18, however recent monitoring outputs suggest the borough's strategic target of 40% affordable housing has not been achieved in recent monitoring periods.

**With regard to Part 1 of the draft SPG it is Hounslow Borough Council's view that:**

- In light of available local evidence Hounslow Borough Council supports the main aim of the draft Affordable Housing and Viability SPG which is to accelerate overall housing delivery and increase the amount of affordable housing delivered through the planning system. We have however identified a number of issues we would encourage the Mayor to address before an amended draft SPG is adopted.

## **Part 2 – Threshold Approach to Viability**

The draft SPG specifically focuses on viability by developing a more consistent and transparent process to increase the contribution from Section 106 obligations.

The draft SPG intends to introduce a threshold approach: broadly schemes meeting or exceeding 35% affordable housing without public subsidy are not required to submit viability assessment information ('Route B'). This means schemes which cannot deliver the threshold can still achieve planning permission where the lower level is fully justified through site specific viability appraisals ('Route A'). Appraisals shall be treated transparently, with such information publically available alongside other planning documents.

Key points regarding the 35% threshold include:

- The Mayor recommends that this apply to schemes of ten units or more.
- To be fully compliant, the 35% affordable scheme must also meet the Mayor's tenure requirements for 30% low cost rent, 30% intermediate products (including the London Living Rent) and 40% determined by the Local Planning Authority. This is a shift from current London Plan guidance on tenure (60%/40% social rent / intermediate products) and will require more detailed negotiations and modelling options for Local Planning Authorities. Once agreed amongst Boroughs, the remaining 40% breakdown will be published in later versions of the SPG.
- The 35% target will be measured on habitable rooms with the intention of delivering a range of different size homes.
- Where the level of affordable housing offered is 35% this will normally be considered as the maximum reasonable amount that can be delivered.
- Unless an agreed level of progress on implementation has been made within two years of planning permission having been granted, an early review mechanism will be triggered. This will be negotiated on a scheme by scheme basis through the section 106 legal agreement. The maximum amount of affordable housing to be provided will be capped at 50%.

The following applications will still have to undergo full viability testing regardless of whether they achieve 35% affordable:

- Applications proposing affordable housing off-site or as a payment in lieu;
- Applications which involve demolition of existing affordable housing (including estate regeneration schemes);
- Applications where the applicant claims the vacant building credit applies.

For applications that are not fully policy compliant, two evidenced viability reviews will be required; albeit they will only apply if a 'surplus' is generated over and above the returns necessary for a scheme to be considered viable. How this will be implemented is unclear, but the SPG intends the following reviews on All 'Route A' schemes and for each phase of phased schemes:

- An early review where an agreed level of progress on implementing the permission is not made within two years of the permission being granted. Where a surplus above the initial agreed profit level is identified, this should be split 60 / 40 between the LPA and the developer. It is expected that any uplift in affordable accommodation at this early stage would be accommodated on-site requiring plans to identify units that would switch to affordable accommodation.

- A near end review of development which would be applied once 75% of units are sold. Where surplus profit is identified this should be split 60 / 40 between the LPA and developer. This would typically be expected as a financial contribution towards off-site affordable provision.

The reviews would need to assess changes to gross development value and build costs. The review and on-site provision would again be capped to 50% affordable housing. The mechanism may also be used to contribute to other policy contributions which may not have been viable according to the initial assessment.

**With regard to Part 2 of the draft SPG it is Hounslow Borough Council's view that:**

- Where schemes meet or exceed 35% affordable housing without public subsidy ('Route B') (capped at 50%) or where schemes cannot deliver the threshold but are still able to achieve planning permission where the lower level is fully justified through site specific viability appraisals ('Route A') we wish to raise concern that the 35% threshold and 50% cap are arbitrary and therefore do not reflect evidenced affordable housing OAN.

We acknowledge the Mayor's stated intention to consider appropriate threshold levels or other approaches when preparing the New London Plan, however Hounslow would encourage the Mayor to employ a consistent yet flexible methodology from the outset by setting sensitive thresholds and caps for each borough with due consideration given to affordable housing OAN - where evidence is demonstrably up to date. This would ensure the threshold approach is tailored to individual borough requirements across London

For example – Hounslow has an affordable housing OAN which represents 48% net housing need. A range could be applied whereby the affordable housing Route B threshold could be set at 10% below the 48% OAN (38%) with a maximum cap set at 10% above the affordable housing OAN (58%). This threshold approach or similar would also allow for flexible and responsive affordable housing policies in local plans. Where LPA's do not have an up-to-date OAN the arbitrary cap could be applied instead.

- The efficacy of the threshold approach remains untested. Hounslow wish to see the threshold approach trailed by volunteer LPA's to evidence the Mayors proposals. Doing so would identify unforeseen effects which could then be remediated by adjusting the approach outlined in the draft SPG prior to London wide adoption. For example is the adoption of an affordable housing threshold likely to incentivise increased affordable housing provision by negating the need for viability assessments? Is this evidenced? Surely a viability assessment would constitute only a small proportion of overall development costs for a scheme with ten or more units?

While Hounslow recognise the Mayor is moving toward a long-term strategic aim of 50% affordable housing delivery across London we are concerned this figure is unreflective of local affordable housing OAN / circumstances. We would encourage the Mayor to commit to adopting an evidenced approach to affordable housing provision at the borough level.

- Para 2.7 states: "Where a borough currently adopts an approach which delivers a higher than average percentage of affordable housing (without public subsidy) the local approach should continue to apply. Where a borough is minded to continue using a local approach, as part of this consultation, the Mayor requests boroughs discuss with the GLA and provide

evidence that this will deliver an average of more than 35% affordable housing without public subsidy”.

The draft SPG does not set out a clear explanatory methodology. Hounslow ask the Mayor to clarify how the delivery of affordable housing would be measured/recorded by the Mayor for the purposes of the draft SPG.

The latest Hounslow Authority Monitoring Report Part 1 (2014-15) (the most up to date) identifies the net total number of affordable housing completions in the report year 2013-14 as being 79 dwellings (information collated from the London Development Database [LDD] / checked and verified by the council’s Affordable Housing Supply team, and updated as necessary). This figure represents 8.8% of net completions in the 2014-15 reporting year (897). Or 9.6% of the Local Plan (2015) housing target (822) or 16.8% of the London Plan housing target for the borough.

Taken at face value these figures demonstrate affordable housing delivery has fallen short of Hounslow’s existing strategic target of 40% (set in 2015) and the Mayor’s proposed 35% threshold which would prevent the Council from defending existing policies as outlined in para 2.7. Hounslow consider this to be an overly restrictive condition as explained below.

The Council is particularly concerned that the imposition of a 35% threshold alongside restrictions on review under ‘Route B’ would limit Hounslow’s negotiating position and could damage the Councils ability to secure the maximum reasonable amount on all schemes.

- The loss of an out-turn review on ‘Route B’ schemes is of primary concern to Hounslow, which has been using such reviews in all schemes that fall short of policy compliance since c2000 and has recently successfully lobbied for this to be enshrined in Local Plan policy, including providing evidence review mechanism payments (cited later) and procuring a viability study which demonstrated that a 40% affordable housing is a reasonable and achievable affordable housing target for Hounslow.

Under the draft SPG if 35% tenure split compliant on-site affordable housing is provided a review only takes place if a development has not started after two years. This may allow a review of viability at that point, but it does not allow for the actual point of sales uplift that out-turn reviews bring.

Hounslow considers the accumulative loss of potentially 5% affordable housing from each site towards its own strategic target of 40% (15% based on the London Plan strategic target) with no justification required to show 35% as the maximum reasonable provision could result in a significant loss of potential affordable provision. This is due to the possibility of a 35% threshold being lower than the maximum affordable provision potential and from the loss of the potential maximum 5-15% in uplift to policy compliance that an out-turn review would or could constitute.

This lack of scrutiny with only the benchmark land value required for S106 would hamper the ability of the Council to accurately fight against refusal decisions at appeal and, in fact, may largely remove the right to refuse on such grounds if 35% is provided, even if it is known or suspected more could be provided.

It is difficult to quantify exactly how many unit or out-turn review contributions towards the provision of additional units this ambiguity represents, but, while analysis shows that the Council appears to be averaging 29% on-site affordable without subsidy over the last three

years (The Council counts units towards its Pledge to secure 3,000 affordable homes between 2014-18 at the time of permission for all other developers units and at completion for its own) it has secured significant amounts via out-turn review (although admittedly on many schemes that provided less than 35% on-site affordable housing).

Hounslow would like to clarify that there is a difference between the Council and the GLA in terms of accounting. While Hounslow report on completions to the GLA for GLA purposes, for our own purposes, and with specific reference to the current Labour administration's Pledge to secure 3,000 affordable homes, we count affordable housing in two ways - those provided by the developer at the time of permission and those the Council build ourselves at the time of completion. It is from developers at the time of permission that we are securing an average of 29% affordable housing without subsidy, which, in the absence of a definition, we are taking to generally mean no GLA funding (that we are aware of).

The Council has received the following payments via the out-turn review mechanism viability reappraisal in recent years. Sums in green have yet to be allocated for spending. Those in black were presented to the Inspector at Local Plan Examination in public to demonstrate the effectiveness of Hounslow's review mechanism policy.

Application (Site) No	Address1	Total Received
00657/P/P16	Kew Bridge Road, Land adjacent to Kew Bridge	£ 1,323,801.00 £ 3,738,628.00 £ 1,883,567.33
00607/41/P28	41 High Street	£ 361,400.00
00607/42-50/P5	42 - 50 High Street and Goat Wharf Brentford	£ 1,073,455.00
00248/319-327/P8	319-327 Chiswick High Road	£ 1,147,929.00
00505/Z/P34	Alfa Laval	£ 1,147,929.00

Those sums in black (totalling £3,906,185) have been allocated as one of the largest and key parts of a £9.14 million S106 investment by the Council (also including HRA funds) towards building 95 Council own-build Council houses. Those in green account for the largest portion (£6.77million) of the remaining £8,541,550 S106 affordable housing money the Council has to spend on new affordable housing.

Of these the Kew Bridge Scheme is particularly pertinent, has continued to prove the effectiveness of such mechanisms and was recently highlighted in a Planning Magazine article highlighting review mechanisms.

### ***HOUNSLOW, LONDON £6.9 MILLION CLAWBACK***

*The London Borough of Hounslow granted permission for developer St George's 308-home Kew Bridge scheme in October 2011. Now complete, the scheme includes 3,750 square metres of commercial space. The application proposed providing 61 affordable homes, equivalent to a 20 per cent affordable housing level, against the 50 per cent target set in the London Plan at the time.*

*According to a 2011 planning committee report, the applicant agreed to a clawback mechanism in the section 106 agreement stating that the housing contribution would rise to a maximum of 50 per cent if the viability of the development subsequently rose above an agreed base level. The council's affordable housing supply manager, Sean Doran, says that over the last decade it has been Hounslow's policy to negotiate reviews if applications propose affordable housing levels that fall below its policy requirements on viability grounds.*

*Doran says that the Kew Bridge scheme has resulted in three payments totalling £6.9 million in affordable housing contributions over and above the 20 per cent originally agreed across the two phases of development. These were triggered when each phase neared completion, with a third review following the final apartment sales. The first review prompted a £1.3 million payment in February 2014 and five additional off-site affordable homes in September 2014, Doran reports. The second yielded contributions of £3.7 million in January 2016 and the third £1.9 million in June 2016. Doran says: "The process took a long time to negotiate, but the actual reviews have been relatively straightforward and resulted in a very positive outcome for all parties."*

*(Planning Resource August 12<sup>th</sup> 2016)*

Kew Bridge is a scheme that has not been hindered by viability negotiations, has not stalled and in fact it is the result of a proactive relationship between developer and Council based on a clear and demonstrable explanation of local policy requirements which has enabled the site to progress to plan, therefore allowing the requirement for out-turn reviews to be triggered, leading to the amount now received for reinvestment in additional affordable housing. In fact, all of Hounslow's achievement in this regard is because the use of out-turn review allows for lower, yet fully scrutinized on-site affordable offers (as opposed to non-justified offers of 35%) with a robust out-turn review to account for any policy shortfall, if viability later allows. This has meant that nearly all of the cases cited in this document have come forward in some way and the borough is seen as tough and robust in its approach to securing affordable housing while not being anti-development and securing money towards affordable housing. We would also draw your attention to the email of Marilyn Smith- Head of Development Management-dated 12/12/2016 re Hounslow House Ref D+P/22279D/0 in this regard, which makes a similar case re the timing of viability reviews.

The success of the Council in its progress to date towards achieving its Pledge (currently 2,244 units secured) and the role our long-standing use of out-turn review mechanisms therefore cannot be underestimated. It enables us to keep all avenues of negotiation open and reduces our reliance on grant, although of course we do need to apply for some grant. Its long-standing use has also helped to give some, if only a little, insurance against Mayoral political change and eras of not so generous grant allocation and has already proven fruitful beyond the timescale of any recent London Plan and accompanying SPG. It represents a long fought for and effective policy that the current drafting of the SPG risks diminishing.

The table below highlights a selection, but not definitive, list of other s106 agreements which have been negotiated by the council and include a deferred contribution for affordable housing subject to future viability. It represents an amended version of further evidence presented at Local Plan Examination in Public in 2015. Those cases which have



been removed are Kew Bridge and Alfa Laval, which are highlighted in green in the previous table and have since come forward.

Application (Site) No	Address1	Maximum due if future viability allows
00530/60/P2	Hounslow Social Club	£ 1,155,155.00
00248/CY/P1	500 Chiswick High Road and 30-32 Chiswick Road	£ 8,100,000.00
00176/A/P62	Burlington Lane	£ 1,527,350.00
00703/A/P1	Brentford Football Club (strategic site)	£87 million*
01101/F/P1	Swan Court, White Lion Court	£ 4,309,065.00
00248/408-430/P1	Empire House	£ 2,476,824.00
00607/BA/P2, 00607/AJ/P10, 00607/80/L2, 00607/AJ/L9, 00607/BA/L1	Brentford High Street (strategic sites for town centre regeneration)	£70 million*

\*These two sites of strategic importance which have been granted permission. No affordable housing was included in the Brentford Football Club permission as it was considered that the community benefits that would arise from the provision of a new stadium in Hounslow would significantly outweigh the benefits of delivering some affordable housing in this location. The permission at the Brentford High Street includes the provision of 10% affordable housing. However, by having a review mechanism in place gives the council the ability to review viability in future and capture any uplift in values to provide affordable housing. These would have been very different potential outcomes if either applicant had put in a largely unsubstantiated 35% amount of affordable housing to start with.

- Para 2.8 states: “The percentage of affordable housing on a scheme should be measured in habitable rooms to ensure that a range of sizes of affordable homes can be delivered, including family sized homes, taking account of local mix policies and having regard to the site specific circumstances”.

Hounslow assess affordable housing provision on a dwelling basis. It is possible for the Council to extrapolate its approach on a habitable room basis.

- The Mayor is keen to retain the flexible approach to tenure outlined in London Plan policy 3.11 (para 2.28). The preferred tenure split outlined in the draft SPG is for schemes to deliver:
  - At least 30% low cost rent (social rent or affordable rent) with rent set at levels that the LPA considers ‘genuinely affordable’ (this will generally be significantly less than the 80% market rent).
  - At least 30% as intermediate products, with London Living Rent and / or shared ownership being the default tenures assumed in this category.
  - The remaining 40% to be determined by the relevant LPA.” (para 2.22).

Hounslow support a continued, flexible approach to tenure.

- Para 2.29 of the draft SPG invites LPAs “to provide guidance on and inform the Mayor of”:

- o What rent levels we consider ‘genuinely affordable’ if above benchmark London Affordable Rent levels, with clear justification for how these are genuinely affordable?

Affordable rents in Hounslow are currently set at 60-65% of market rents for family sized units and up to 80% for 1 or 2 bedroom units. In both cases if Local Housing Allowance (LHA) is lower, we use this rate. This is what we consider “affordable”. Where possible, i.e. only on our own schemes, we prefer to set social rent levels this is because the Hounslow Housing Market Assessment (HHMA) (2016) outlines that 50% of our households cannot afford anything higher.

- o Robust evidence, on the grounds of affordability, for prioritising alternative intermediate products over the options of the London Living Rent and shared ownership.

Hounslow would prefer for alternative intermediate products not to be prioritised over standard intermediate products, although the Council recognise alternative intermediate products have a role to play. Hounslow have successfully secured Discount Market Sale product on three schemes.

- o Preferred tenure(s) for the remaining 40%. This is encouraged to be drawn from the products listed above, but could include other products where they are evidenced as genuinely affordable and are consistent with the London Plan’s definition of affordable housing.

Policy 3.11 sets the current strategic affordable housing target for London. It states that in order to give “impetus to a strong and diverse intermediate sector, 60% of the affordable housing provision should be for social and affordable rent and 40% for intermediate rent for sale”. The policy allows for flexibility, LPA’s are asked to set separate targets for social / affordable rents and intermediate housing in their local plans. Para 2.28 of the draft SPG states that the “Mayor is keen to maintain this flexibility”, which Hounslow welcomes.

The draft SPG outlines that the preferred tenure split is for schemes to deliver at least 30% low cost rent (social rent or affordable rent and 30% as intermediate products (para 2.28). Currently Hounslow Local Plan Policy SC2 – Maximising the Provision of Affordable Housing outlines a strategic split of 60% affordable / social rented and 40% intermediate in recognition of the role intermediate housing can play in freeing up social rented housing and helping Londoners step onto the housing ladder.

The current tenure split outlined in Hounslow Local Plan Policy SC2 meets the base expectation outlined in para 2.28. In line with existing policy Hounslow wish to retain the existing 60% affordable / social rented and 40% intermediate tenure split.

- Vacant Building Credit (VBC) (paras 2.55 – 2.65). In general terms Hounslow agree with the Mayor's view – outlined in the draft SPG - that in most circumstances it will not be appropriate to apply VBC in London. The draft SPG states that VBC should only be applied in some limited circumstances - where the credit should be applied and would, in line with the intention of the policy, provide an incentive for brownfield development on sites containing vacant buildings that would not otherwise come forward for development. Hounslow invites the Mayor to consider incorporating the Council's current approach of assessing viability where VBC applies to take into account uplift in viability such credit allows and providing a mechanism to gain more affordable from this uplift on any non VBC part of a scheme or land area.

### **Part 3 – Guidance on Viability Assessments**

For referable schemes that do not meet the 35% threshold, the Mayor will review both the viability information submitted by the applicant and any review carried out by the Local Planning Authority and will consider whether the approach taken is sufficiently justified by evidence. Overall, the Mayor aims to establish whether the proposed level of affordable housing is the maximum that can be reasonably supported. The Mayor's team may ask the applicant and/or LPA for clarification and additional information.

The Mayor supports the London Borough Viability Protocol and the guidance within the draft SPG is considered consistent with the protocol. The Mayor will use the residual land value methodology to determine the underlying land value once the costs of the development (including developer's profit) are deducted from the gross development value.

The draft SPG is clear in stating that "where viability information is required, the LPA, and for referable schemes the Mayor, should be provided with the full working model and / or all the assumptions and calculations included in the modelling so that officers can test and interrogate the information. There must be no hidden calculations or assumptions in the model".

To determine affordable housing values, applicants are encouraged to engage with Registered Providers at the earliest opportunity and the values should reflect discussions. For viability purposes, London Living Rent homes in mixed tenure schemes should be assumed to be sold on a shared ownership basis after 10 years with the relevant subsidy recycled.

The draft SPG supports contingent obligations and review mechanisms to maximise affordable housing delivery in the long run. These provide a reappraisal mechanism to ensure that maximum public benefit is secured over the period of the development. These mechanisms recognise the need to maximise affordable housing provision and address economic uncertainties which may arise over the lifetime of a development proposal and can encourage the build out of schemes. They allow increases in Section 106 contributions to reflect changes in the value of the development from the date of application to a specific point in time /stage of development and help ensure that affordable housing need is met.

The review mechanism is to be capped so that on-site affordable housing and financial contributions are equivalent to 50% affordable housing. Although additional affordable housing to 50% will generally be a priority, the review mechanism may also be used to contribute towards other policy contributions which may not have been viable in the initial assessment. The relevant triggers for a review must be set out in the s106 agreement.

#### **With regard to Part 3 of the draft SPG it is Hounslow Borough Council's view that:**

- Hounslow seek clarification from the Mayor with regard to contingent obligations and review mechanisms as outlined in para 3.51; contingent obligations and review mechanisms would: "allow increases in Section 106 contributions to reflect changes in the value of the development from the date of application to a specific point in time / stage of development and help ensure that affordable housing need is met. Such approaches are intended to support the effective and equitable implementation of planning policy while also providing flexibility to address viability concerns such as those arising from market uncertainty." This paragraph seems to imply that it would not only be possible to increase contributions to reflect changes in the value of development but that contributions could in-fact decline

using the same mechanism. Such a mechanism could introduce significant uncertainties to the Council's funding processes.

How would this mechanism work in practice when applied to 'Route A' schemes' (presumably route B schemes would be exempt?)? The Council cannot support this mechanism without fully understanding how it would work in practice.

## **Part 4: Build to Rent**

The Build to Rent Sector, also known as the Private Rented Sector (PRS) is the fastest growing housing tenure in London with 28% of Londoners living in PRS in 2016 compared to 15% in 2004. The existing London Plan recognises that the planning system should take a more positive approach to enabling this sector. The Mayor believes that such developments can make a contribution to increasing the housing supply and are beneficial in a number of ways as they can:

- Attract investment into London's housing market that would otherwise not be there
- Accelerate delivery on individual sites as they are less prone to 'absorption constraints' on build-out rates
- More easily deliver across the housing market cycle as they are less impacted by house price downturns
- Provide a more consistent and at scale demand for off-site manufacture
- Offer longer term tenancies
- Ensure a commitment to place making through single ownership; and
- Provide a better management standard than the majority of the mainstream PRS sector.

The draft SPG seeks to encourage the delivery of these schemes, proposing a Build to Rent 'pathway' through the planning system of which the key principles are set out below. Clarity on how affordable housing will be delivered on Build to Rent schemes within London is welcomed.

**Definition** – The Mayor wishes to establish a clear definition for Build to Rent products. The definition used for the purposes of the SPG is:

- A development, or block / phase within a development, of at least 50 units
- The homes to be held as Build to Rent under a covenant for at least 15 years
- All units to be self-contained and let separately
- Unified ownership and unified management of the development
- Professional and on-site management
- Longer tenancies offered, ideally three years or more; and,
- Property manager to be part of an accredited Ombudsman Scheme and a member of a recognised professional body.

**Affordable Housing Tenure** – Where a developer is proposing a Build to Rent development, the affordable housing offer can be entirely discounted market rent, delivered without a grant. The Mayor would prefer this discounted market rent to be at London Living Rent levels, to ensure a city-wide, consistent approach. The London Living Rent is designed to deliver 'genuinely affordable homes' and is therefore intended to limit eligibility to households on incomes of £60,000 a year or less together with other intermediate rent products in the forthcoming annual monitoring report (2017); this is a step change from the current income thresholds on intermediate products topped at £90,000. It is recognised that this will usually represent a deeper discount on rents for Build to Rent homes than the common metric of 80% of the full market value.

**Design** – The SPG sets out that Build to Rent development can be particularly suitable to higher density development within or on the edge of town centres or near transport nodes.

**Viability** – In approaching viability within Build to Rent schemes, the Mayor is keen to recognise the distinct economies of the sector and will tailor viability appraisals accordingly. Build to Rent schemes will not be required to follow the threshold approach to viability and will instead be assessed on their own viability with the intention of maximising the supply of intermediate rent, preferably and

London Living Rent levels. The review mechanisms will be the same as those set out in 'Route A' above.

**Management Standards** – The SPG requires the best management standards to be upheld, including longer tenancies (three years or more), formula-linked rent increases, on-site management and a complaints procedure. Properties must also be advertised on the GLA's London wide portal which can be in addition to any further advertising.

**With regard to Part 4 of the draft SPG it is Hounslow Borough Council's view that:**

- How does the Mayor envisage Discounted Market Rent (DMR) working in this context?



# ISLINGTON

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3 March 2017

Dear Mr Khan

## **London Borough of Islington Response – Draft Affordable Housing and Viability SPG**

Thank you for the opportunity to comment on the Draft Affordable Housing and Viability SPG.

Islington Council strongly supports and shares the Mayor's objective of increasing the number of genuinely affordable homes in London, and believes that the SPG is an important first step towards achieving this aim.

Islington's Local Plan requires that half of all new homes delivered in the borough are affordable, and we strongly welcome the Mayor's commitment to achieving this same aim across London in the long term.

The borough has an exceptional track record of housing delivery despite being England's most densely populated local authority and the second smallest by area. We are in the top ten for housing delivery in England and Wales and have delivered high levels of affordable housing despite an unsupportive policy climate from the previous Mayor and Central Government. Islington's impressive record of housing delivery demonstrates that it is both possible to deliver large numbers of new homes and to deliver a high percentage of genuinely affordable homes.

Ultimately, it will be for the statutory Local Plan preparation and review process to determine the appropriate level of affordable housing in any given borough. Islington Council is currently reviewing its Local Plan. We will, of course, work very closely with the GLA to ensure that our shared ambition to maximise affordable housing provision on all sites and under all circumstances is achieved.

The approach taken in the draft SPG is largely consistent with our own planning policies, and we therefore wish to make very few comments at this point in time.

### ***Support for the proposed approach to openness and transparency***

We fully support the Mayor's approach to openness and transparency in regards to viability information.

### ***We request a local approach to viability***

We strongly support the Mayor's aim of increasing the level of affordable housing across London from the unacceptably low levels that have been seen in recent years. We appreciate that the



proposed threshold approach (Route B) might result in a significant increase in affordable housing delivery in those London boroughs that may not have delivered much affordable housing in recent years.

However, as is inherent in any 'one size fits all' approach, there is a danger that some boroughs such as Islington, who have been able to deliver higher levels of affordable housing, might potentially lose out with the Route B approach. This would no doubt weaken local support for additional housing development in their area.

As we have seen in Islington, there are sites that can deliver considerably more than 35% affordable housing on site without public subsidy. It is also likely that the number of sites that can deliver over 35% will increase if the methodology for viability assessments advocated in this SPG is robustly applied.

Paragraph 12 of the draft SPG states that:

*The SPG is also clear that where an LPA currently adopts an approach which delivers a higher average percentage of affordable housing (without public subsidy) the local approach should continue to apply. Where a borough is minded to continue using a local approach, as part of this consultation, the Mayor requests boroughs discuss with the GLA and provide evidence that this will deliver an average of more than 35% affordable housing without public subsidy.*

Islington falls into this category and we wish to continue with a local approach that requires 50% affordable housing across the borough. We would be happy to meet with GLA officers to explain why such an approach would be appropriate to Islington.

We do not ask that the SPG lists those boroughs that will take a local approach, but merely request that it continues to provide sufficient flexibility for those boroughs that wish to do so.

***The SPG should require that developers must seek subsidy to ensure that over 35% affordable housing is delivered on site***

We wholly support the Mayor's approach to the use of grant funding to increase the proportion of affordable housing on private-sector led schemes. However, we would strongly encourage the Mayor to consider additional mechanisms to ensure that grant funding is taken up by as many schemes as possible (accepting of course that not every scheme can be funded).

The draft SPG as worded does not require all developers to seek the use of subsidy to increase affordable housing above 35% when that level of affordable housing is achieved without public subsidy. In order to maximise the delivery of affordable housing, this requirement should be inserted into the SPG.

***Developers must have a Registered Provider on board at the pre-application stage***

To benefit from the Route B approach, the Mayor should require that at the pre-application stage a developer must without exception have an agreement with a Registered Provider to deliver affordable housing. This will ensure that Registered Providers, who often struggle to acquire sites in a very competitive land market, are always brought on board at an early stage and that, with the use of grant and other resources, the level of affordable housing can increase towards 40% and above facilitated by the Mayor's sliding scale grant regime approach.

***Tenure Split***

We fully support the requirement for schemes to be consistent with the relevant tenure split and meet all of the other relevant policy requirements and obligations, in order to benefit from a Route B approach.

### ***RP led schemes and schemes on public land should deliver more than 35%***

We strongly support Mayor's expectation that RP led schemes and schemes on public land should deliver as much affordable housing as possible. We believe that the intention of the SPG is that the threshold approach set out in Route B will not apply to RP led schemes and schemes on public land. It would be helpful if this is made absolutely clear in the SPG.

Furthermore, it would also be helpful if the SPG was amended to clarify that the Mayor's expectation of a higher proportion of affordable housing delivery on publicly owned land should apply to the disposal of all publicly owned sites. This, together with the clear methodology for undertaking viability assessments set out in the SPG, will ensure that public sector bodies have realistic expectations about the level of capital receipts they might secure and ensure that developers do not overpay for land and later fail to comply with boroughs' affordable housing requirements. This leads to lengthy planning application and appeal processes further down the line, which ultimately slows down the delivery of much needed housing.

### ***In principle support for London Living Rent as an intermediate product***

Islington's current Local Plan seeks a tenure mix of 70% social rented homes and 30% intermediate homes. Due to high housing costs and the nature of affordable housing need in Islington, for homes to be genuinely affordable we do not support rent levels above the benchmark London Affordable Rent levels set out in the Homes for Londoners: Affordable Homes Programme 2016-21 (i.e. rents equivalent to the formula rent caps for social rent).

Due to the acknowledged affordability issues with shared ownership in high value boroughs such as Islington we are in principle supportive of delivering London Living Rent as a tenure option within our current 30% intermediate target, and support limiting eligibility for this and other intermediate rent products to households on incomes of £60,000 a year or less. As this new product is likely to be in very high demand, we consider it essential that boroughs have the ability to set local priorities for the allocation of these homes. We also welcome the clarity in paragraph 2.42 regarding the status of non-self-contained accommodation and hostels.

### ***Support for approach to Vacant Building Credit***

We strongly agree with the Mayor that in most circumstances it will not be appropriate to apply the Vacant Building Credit (VBC) in London, and consider the criteria identified to be taken into account in assessing the applicability of the VBC to be wholly appropriate. In particular, we welcome the clear guidance in paragraph 2.63 regarding the evidence necessary to demonstrate that a building has not been made vacant for the sole purpose of redevelopment.

### ***SPG should set out support for Small Sites Contributions***

We would ask that the SPG sets out guidance that is supportive of boroughs securing financial contributions towards affordable housing from small sites where this is viable. It is our view that the significant need for affordable housing across London means that in most boroughs this need outweighs national guidance on this issue. We have had significant recent success with this approach at appeal.

### ***Support for a consistent and robust approach on Viability Assessments***

A robust and consistent approach to viability assessments is critical to ensuring that the maximum public benefit is secured over the period of the development plan. We wholly support the Mayor's approach to viability in all its aspects. It provides greater clarity and sets out the key requirements expected with the submission of viability assessments. This will help to achieve the aim of establishing a standardised approach.

### ***Support for EUV+ premium approach***



In particular, we express our strongest possible support for the proposed use of existing use value plus (EUV+) methodology in viability assessments. This methodology is most conducive to maintaining a functioning plan-led system and must form the primary basis for determining the benchmark land value.

EUV+ clearly identifies the uplift in value arising from the grant of planning permission as it allows a comparison with the situation in which planning permission has not been secured. Alternative methodologies that are reliant on market transactions that do not reflect development plan policies (market value approach) should be strongly discouraged due to their inherent circularity, and inflationary impact on land values. We agree with the Mayor that the market value approach will generally not be accepted in viability assessments, and it must only be considered in very exceptional circumstances.

### ***A Statutory Declaration should be required***

In order for viability assessments to be relied on as evidence in determining a planning application, it is important that they provide a true and fair reflection of the viability of the development. Therefore, we would advocate for viability assessments to be supported by a Statutory Declaration to verify the information provided. Moreover, in cases where a viability assessment shows a different level of planning obligations to be viable from that proposed by an applicant, a statutory declaration should be required which will verify that they consider the scheme as proposed to be deliverable based on the information provided.

### ***Concerns about the approach to the Build to Rent product***

Islington remains to be convinced about the evidence underlying the Mayor's specific support for the Build to Rent product. The distinct economics of Build to Rent should be considered with more evidence. It may be incorrect to assume that this product can have inherently lower returns when compared to Build for Sale in all cases. For example, its characteristics such as reduced sales/marketing costs, shortened delivery programme, and an improved potential for economies of scale are advantageous. The Build to Rent product presents a very attractive opportunity for large institutional investors. It provides diversification of a portfolio with long-term returns, benefiting from both potential rental growth and the increases in the value of the assets. Such attributes may not be fully reflected in a conventional viability submission.

However we note that the SPG recognises that boroughs will need to adopt a locally appropriate approach to this section of the market, and this is strongly welcomed. As with previous comments, there should be stronger encouragement – if not a requirement – regarding the use of grant funding to ensure that opportunities for delivering affordable housing within this product are maximised.

We agree that a 'clawback' mechanism should be included in all Section 106 agreements in the event of units being sold out of the Build to Rent sector during the covenant. It would be helpful to have more detailed information and examples of how both approaches are intended to work. It is noted that the clawback amounts are determined at the initial planning application stage for Option One, and no new appraisals (or re-appraisals) are prepared. This means changes in market conditions will not be taken into account. In certain circumstances, it is the changes in market conditions that may have the potential to act as an incentive for the covenants to be broken, and this will not be effectively captured by the clawback mechanism. We recommend that an updated appraisal is required when the clawback mechanism is triggered.

The minimum covenant period should reflect the maturing and more established Build to Rent market. We suggest further assessments to be undertaken by the GLA on covenant periods and their bearing on the reversionary values. In cases where viability testing indicates a negligible or

minor impact of a longer covenant length, it would be appropriate to require a period that is longer than 15 years.

We consider that paragraphs 4.28 and 4.29 regarding design lack clarity and could be misapplied. No indication has been provided on what the supposed 'value' of on-site management/purpose-built design is, and which standards are envisaged to have some level of flexibility as a result of this. In any event, it is for the local planning authority to determine design quality on individual applications. The proposed management standards are generally supported, although it is not clear why daily onsite presence has been included.

### **Conclusion**

Should you wish to discuss the above comments, or if we can offer any assistance with the preparation of the SPG, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink that reads "Karen Sullivan". The signature is written in a cursive style with a horizontal line underneath.

Karen Sullivan  
Service Director Planning & Development



**Planning and Borough Development**

Kensington Town Hall, Hornton Street, London, W8 7NX

**Executive Director for Planning and Borough Development**

Graham Stallwood

**Head of Forward Planning**

Jonathan Wade



THE ROYAL BOROUGH OF  
**KENSINGTON  
AND CHELSEA**

Email: [housingspg@london.gov.uk](mailto:housingspg@london.gov.uk)

28 February 2017

My reference: JJ/RK

Dear Mayor Khan

**Re: Draft Affordable Housing and Viability Supplementary Planning Guidance**

Please find enclosed the Royal Borough of Kensington and Chelsea's response to your consultation on the Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG) 2016. The Council welcomes the opportunity to comment on the issues and guidance set out in the draft SPG.

**Part 1 – Background and Approach**

**Paragraphs 1.1-1.15**

- 1.1 This Council welcomes the objective of the SPG to increase the delivery of affordable housing through the planning system, and supports the introduction of consistent, London-wide requirements, for development viability appraisals.

**Paragraph 1.16**

Clarification should be given that the conditions set out in this paragraph refer only to those applications which are already referable to the Mayor.

**Paragraphs 1.17-1.23**

- 1.2 The transparency and scrutiny of viability appraisals is supported in so far as it is required to secure the maximum reasonable amount of affordable housing.

**Part 2 - The Threshold Approach to Viability**

**Paragraphs 2.1-2.26**

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- 2.1 The Council welcomes the principle of a London-wide 'threshold approach' to the requirement for viability assessments. It is recognised that such an approach will provide clarity and consistency for developers, as well as emphasising the importance of delivering the maximum reasonable amount of affordable housing.
- 2.2 The threshold level of 35 per cent affordable housing without public subsidy is also supported. This is in line with the Council's revised affordable housing target as proposed through the Local Plan Partial Review, and supported by local evidence on development viability. The Council is also supportive of the proposal to use the Mayor's funding powers to further increase the provision of affordable housing up to 50 per cent. The Council would also welcome a funding approach where subsidy can reflect land values – which is a significant problem in this borough.
- 2.3 One area of concern for the Borough is the proposal to measure the threshold level of affordable housing in terms of the percentage of habitable rooms. The issue in Kensington and Chelsea in terms of the range of affordable housing provision is the size of the affordable units relative to market units rather than the number of habitable rooms. In this context, the proportion of total residential floorspace provided as affordable housing is considered to be a fairer measure of affordable housing provision as it allows for a range of unit sizes and limits the scope for any imbalance between the size of market and affordable units. The Council therefore requests flexibility to allow the threshold to be measured in a manner which most appropriately addresses local market conditions.

#### **Paragraphs 2.27-2.53**

- 2.3 The Mayor's commitment to deliver homes that are genuinely affordable is also a key priority for this Council, and we welcome the statement in paragraph 2.28 of the SPG that flexibility to meet local needs set out in the London Plan will be maintained. The Council's Strategic Housing Market Assessment (2015) demonstrates an ongoing need for a range of affordable housing to ensure that provision is made for those on middle, as well as low incomes, given the extremely high property values across Kensington and Chelsea. The draft affordable housing policy in the Local Plan Partial Review sets a 50:50 tenure split between social/affordable rent and intermediate affordable housing options to ensure that these local needs are met. This approach is in conformity with the draft guidance set out in the SPG.
- 2.4 The cost of affordable housing is also a key concern for Kensington and Chelsea. The Council currently requires RPs to set affordable rents in accordance with its own affordable rents policy. In terms of the intermediate sector, analysis in the Strategic Housing Market Assessment of the income required to access the intermediate housing in RBKC shows that there are only small areas in the north of the borough where shared ownership is affordable, and would only be affordable to those at the maximum of the income threshold. However, the majority of intermediate housing in the borough to date has been delivered as shared ownership. In light of experience in the borough which suggests that RPs generally seek flexibility between shared ownership and intermediate rent, the Council has adopted its own intermediate rent policy to ensure that rents are charged at no greater than 40% of net income where a household's gross income falls within income bands from £20,000 up to the London-wide maximum of £85,000.
- 2.5 Whilst the Council welcomes the principle of the London Living Rent, we have significant reservations about its application in the borough. The median gross household income for RBKC has been assessed at £50,000. Therefore, 'target middle income' households

in RBKC, upon which the borough's London Living Rent (LLR) levels will be established only have an 'affordability window' of £10,000 before the maximum eligibility threshold of £60,000 per household is reached. The median gross household income in RBKC is greater due to the very high incomes enjoyed by a greater-than-average proportion of the borough's residents who can already access home ownership and rental housing. The comparatively high levels of LLR that arise in RBKC as a result of this methodology suggest that the product may not serve its objectives. The lowest LLR in Borough will be too expensive for many middle income households and saving for a deposit will be impossible. For example, the proposed lowest LLR in RBKC represents 49% of the income for a nurse and 88% of income for a teaching assistant. The Council therefore strongly encourages the Mayor to consider possible alternative methodologies for calculating LLR such as the use of lower quartile earnings or the exclusion of upper quartile earnings.

#### **Paragraph 2.54**

- 2.6 The continued requirement for the replacement of existing affordable housing floorspace and the proposed approach to market housing in use as temporary housing accommodation is supported.

#### **Paragraph 2.55-2.66**

- 2.7 The Council notes that the SPG proposes guidance on the application of the Vacant Building Credit (VBC) across London, encouraging boroughs to reflect this approach in their forthcoming Local Plans. This Council, through the Local Plan Partial Review shares the position of the Mayor that in most circumstances the VBC will not apply and welcomes the proposed criteria for the application of VBC.

### **Part 3 – Guidance on Viability Assessments**

#### **Paragraphs 3.1-3.9**

- 3.1 The Mayor's proposed approach to referable schemes which do not meet the 35% viability threshold is noted.

#### **Paragraphs 3.10-3.49**

- 3.2 The general guidance on the content of viability appraisals in the SPG is welcomed. In particular, the Council shares the Mayor's view that the Existing Use Value Plus (EUV+) approach to determining benchmark land values is the most appropriate for planning purposes, and that alternative approaches should only be used in exceptional circumstances. This approach is referred to in the Council's Local Plan Partial Review.

#### **Paragraphs 3.50-3.54**

- 3.3 The use of contingent Section 106 obligations / review mechanisms where these are required to secure the maximum reasonable amount of affordable housing is supported. It is assumed that such a requirement will apply both to phased and non-phased developments. However, the Council do feel that despite the provisions put forward by the Mayor, there may be issues in identifying additional affordable units on approved sites, and that this approach may not maximise the level of affordable housing if, for example, a greater number of lower cost units could be delivered offsite. The Council would therefore welcome greater flexibility on the most appropriate approach to capture the additional affordable housing potential through the early review process.

#### **Paragraphs 3.55-3.57**

- 3.4 This Council concurs with the view that it is preferable to take a bespoke approach to affordable housing for Opportunity Areas because the cost of developing sites varies considerably. Our remaining undeveloped Opportunity Area, Kensal Canalside, will require very significant investment in transport infrastructure: a Crossrail station, a new road bridge, junction improvements and new road infrastructure in addition to the infrastructure normally required to support development. A Development Infrastructure Funding Study has been undertaken to demonstrate that this investment can be funded by the development and indicate the level of affordable housing that can be delivered.

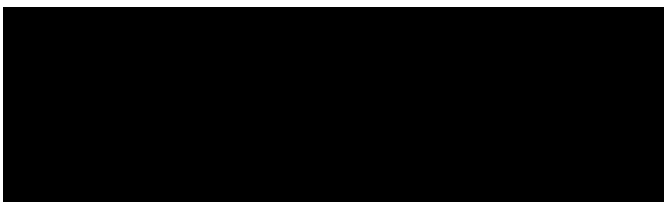
## **Part 4 - Build to Rent**

### **Paragraphs 4.1-4.39**

- 4.1 The Council recognises the potential of 'Build to Rent' housing to meet particular housing needs. The publication version of the Local Plan Partial Review welcomes the definition of Build to Rent proposed in the SPG including the requirements for a 15 year covenant to retain such homes in single ownership although the Council would welcome the flexibility to consider an extension to this period where appropriate. The Council also recognises the benefits of establishing a consistent London-wide approach for the assessment of such schemes in the form of the Build to Rent 'pathway' set out in the SPG. However, the Council does not agree with the proposed approach to affordable housing in such proposals, which would be contrary to existing development plan policies. Whilst accepting the need for flexibility given the distinct characteristics of Build to Rent developments, the Council considers that such schemes must continue to be assessed against the affordable housing policies in the Local Plan. Previous build to rent schemes approved in the borough have delivered conventional affordable housing provision offsite or through cash in lieu payments without having a detrimental impact on the deliverability of the overall scheme.

We hope that you find our comments useful and please do not hesitate to contact us if you wish to discuss any of the issues raised.

Yours sincerely,



Head of Forward Planning



## **London Plan Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG)**

### **Consultation Response from the London Borough of Lambeth**

**28 February 2017**

Lambeth welcomes the opportunity to comment on the Mayor's Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG). We have recently consulted on our own [Draft Development Viability SPD](#) - the consultation period ran until 13 February 2017. We note the Mayor's response and will discuss proposed revisions to our SPD with GLA officers to ensure the two documents are consistent.

We broadly support the approach of the Mayor's draft SPG and in particular we welcome the SPG's underpinning theme of transparency. However, we have the following comments.

#### **Part 2: Threshold Approach to Viability**

We accept the principle of the 35 per cent threshold and acknowledge that, pragmatically, this measure may help increase delivery of affordable housing through the planning system in London. However, Lambeth remains committed to its adopted Local Plan policy target of 40 per cent affordable housing without public subsidy and 50 per cent with public subsidy. We will continue to pursue this for Route A schemes. We also think that it is critical for the Mayor to continue to pursue other mechanisms for increasing delivery of affordable housing to ensure that his overall long-term strategic aim of 50 per cent of all new homes in London being affordable is achieved.

We agree that, under the proposed threshold approach, developers should be incentivised to provide 35 per cent affordable on-site without public subsidy, and agree that the two alternative routes A and B are likely to help achieve this by giving more certainty to developers. Estate renewal programmes and build-to-rent schemes are rightly excluded from the threshold approach. We also agree that developers wishing to pursue off-site affordable housing or payments in lieu and/or the use of the vacant building credit should still be subject to a full and transparent viability assessment under Route A.

However, we do think that the proposed threshold approach may result in a trade-off between the overall quantity of affordable housing delivered through the planning system and the proportion of social rent (as distinct from affordable rent) delivered.

Although we appreciate the need for a range of sizes of affordable homes, as set out in paragraph 2.8 of the draft SPG, we note that a threshold based on habitable rooms is a fundamental change in approach. Lambeth does not support this change because it is likely to result in a further reduction in the overall number of affordable housing units delivered. The SPG does not provide any evidence underpinning the proposed change to habitable rooms, so there is a risk of unintended consequences. Lambeth needs affordable units of all sizes and our existing, recently adopted Local Plan policy (H4) sets out the Council's preferred dwelling mix for affordable housing. This policy is successfully helping us to secure an appropriate mix of affordable unit sizes to meet identified need in Lambeth, including a proportion of smaller units to deal with the consequences of changing household sizes and measures such as the benefit cap. As Lambeth Local Plan policies are based on units, this proposed change in approach is likely to lead to confusion at implementation and difficulty with monitoring. The GLA's own monitoring system, the London Development Database, currently does not record habitable rooms, so would have to undergo a fundamental change. Please

allow boroughs to continue to use units instead of habitable rooms if they consider that to be the most appropriate approach in their area and this is consistent with adopted Local Plan policy.

We support the proposed approach on review mechanisms. Early review mechanisms enable LPAs to define what actually gets built out by when. However, where a surplus above the initial agreed profit level is identified, we believe the split between the LPA and developer should be more in favour of the LPA. This helps minimise the potential perverse incentive to developers to 'game' the review mechanism system in their favour. Our own preferred split is 80:20, as stated in our Draft Viability SPD. We think this same split should be used in the Mayor's SPG and applied London-wide. Failing that, please allow boroughs to apply the split they consider most appropriate for their circumstances.

We think the SPG needs to provide guidance on the approach for applications considered under Section 73 to add additional units, as developers are inclined to use this mechanism incrementally to undermine the proportion of affordable housing secured through the original permission. For viability purposes, the consented scheme should become the benchmark land value against which the 'new' scheme is assessed

Please see further comments on benchmark land values under Part 3 below.

We support the use of grant funding to enable the delivery of affordable homes, as set out in paragraphs 2.20 to 2.23. However, the level of funding available is insufficient to ensure more larger homes are delivered in high value areas. High residential property prices in Lambeth, particularly in the north of the borough, mean that an additional £28,000 per unit would not be sufficient to incentivise a developer to provide more affordable units. For example, a 3 bedroom property is valued at £1m but RPs can pay no more than £120,000 for an affordable rent property.

In relation to early engagement with Registered Providers (RPs) in paragraph 2.24, our experience suggests that there is a current reluctance on the part of many RPs to engage with schemes that involve a small number of affordable units. Please could the Mayor consider how RPs can be incentivised to deal with smaller unit numbers, because collectively these types of development could bring forward a significant quantum of additional affordable housing and contribute to the Mayor's overall long-term target? Please could this issue and an appropriate incentivisation mechanism be reflected in the SPG?

We support the preferred tenure mix set out in paragraph 2.28 and are pleased that the SPG supports boroughs to determine the remaining 40 per cent according to local circumstances. Lambeth wishes the remaining 40 per cent to be Affordable/Social Rented housing as this will bring the overall split to 70:30 in line with Lambeth Local Plan policy H2(a)(iii). This mix is evidence based and recently adopted. We are not clear whether borough-level preferences are to be listed in the revised version of the SPG once published. We request that, either way, the final SPG make very clear that this final 40 percent is for boroughs to determine in their Local Plans and associated guidance.

We strongly support the principle of the London Living Rent approach, as we agree that it is important to ensure a diversity of products within the intermediate sector. The London Living Rent as proposed would be targeted towards households with incomes of between £30k and £60k (as set out in paragraph 2.33). Lambeth's emerging housing market assessment shows that about a third of households in Lambeth fall into that income range. Lambeth wants to provide homes for those on a range of different incomes and we think that the London Living Rent approach presents a reasonable

option for those in the middle unable to afford other routes into home ownership and who are unlikely to secure social rented housing.

However, in practice intermediate housing tends to be allocated to households with incomes very close to the threshold maximum, meaning single people and single-income households are competing with couples and families that are more likely to have a combined household income at that threshold level. We would like to see a 'two tier' system introduced, with different income thresholds for single income households (including single people) and dual-income households, to give single people and single income households fairer access to London Living Rent products and other forms of intermediate housing.

In addition, more clarity is needed on how the London Living Rent will be monitored.

In addition to London Living Rent, the following intermediate products should be prioritised:

- Discount Market Sale. These products can help to meet elements of need in the intermediate market. The possibility of discount market sale products as a form of affordable housing should be included within appropriate parameters, which must include securing the discount in perpetuity.
- Intermediate Rent. Given the high costs of much of shared ownership, it has been possible to negotiate this for people on a range of different income levels that can be used as a substitute for shared ownership. Indeed, if property prices continue increasing, it will not be possible to provide shared ownership and intermediate rent will be the only product that is feasible. Examples of schemes in Lambeth delivering Intermediate Rent include the Shell Centre and Newington Butts.
- Flexi-tenure. This is a scheme whereby PRS can be switched to affordable rent, or vice versa, according to changes in private rents in relation to obtaining a set income. This was explored with the GLA a couple of years ago. However, the problem at the time was that the scheme was not viable when virtually all schemes were private sale. Now that PRS is becoming more popular, it may be possible to implement the Flexi-tenure approach, and Lambeth is actively exploring this as a possibility..
- Custom Build. Lambeth are currently exploring options for custom build on council-owned sites. An enabling provider would manage the design and construction process, and the land value is held in perpetuity as a fixed discount to the sale price of the new homes. Buyers would have to pay the council a long-term ground rent, so in effect is similar to shared ownership. There may be further opportunities for increasing the affordability through buyers "self-finishing" homes, or even getting involved in the construction to accrue "sweat equity" and learn construction skills. Custom build allows density to be maximised on infill sites so would be particularly suitable in Lambeth. However, within the context of such a severe housing crisis, this is unlikely to be priority product in Lambeth unless it can be demonstrated that it would meet a priority need.
- Community Land Trusts. This mechanism has potential as another means to deliver intermediate affordable housing, secured through s106 agreements. However, in practice Mayoral finance is likely to be needed in the majority of cases to bridge the funding gap. This will need a London-wide approach and Lambeth would welcome a Mayoral lead on this.

Paragraph 2.29 asks for guidance on rent levels for those homes to be delivered for low cost rent if above London Affordable Rent levels. The proposed London Affordable Rent levels are provided in the table below. These benchmarks reflect the formula rent cap for social rented properties, i.e. the most that can be charged under the formula.

Bedroom Size	London Affordable Rent 2017-2018 Benchmark (weekly rents exclusive of service charges)
Bedsit and one bedroom	£144.26
Two bedroom	£152.73
Three bedroom	£161.22
Four bedroom	£169.70
Five bedroom	£178.18
Six or more bedrooms	£186.66

Lambeth's existing policy approach on social rented housing is to keep the rents on larger properties as low as possible so that they remain affordable for those reliant on benefits. We have accepted that in order to do so, higher rents up to the LHA can be charged for 1 and 2 bedroom accommodation.

The new benefit cap means that large families will have even less money available to spend on their rent, as shown in the table below.

	Child Tax Credit	Child Benefit	Income Support/JSA	TOTAL BENEFIT	Amount 'left' for housing single parent (couple)
1 child	£64.02	£20.70	£73.10	£157.82	£284 (£242)
2 children	£117.50	£34.40	£73.10	£225.00	£217 (£175)
3 children	£170.99	£48.10	£73.10	£292.19	£150 (£108)
4 children	£224.48	£61.80	£73.10	£359.38	£83 (£41)

In response to paragraph 2.29 of the SPG, we would therefore like freedom for rents to be higher than benchmark London Affordable Rent level for small units if this allows us to reduce the rents for larger units.

It is worth noting that the benefit restriction to the under 35s (£95 per week in Lambeth) will mean new build 'London Affordable Rent' products are unaffordable to anyone in this age group who finds themselves fully reliant on welfare support to pay their rent.

At the moment, we permit shared ownership to be affordable in accordance with the GLA's affordability criterion, i.e. household income up to £90K. Whilst it is desirable that London Living Rent is set at a lower level, if this is substituted for shared ownership developers will need to provide additional subsidy. This is likely to be at the expense of affordable rent accommodation.

We support the approach to off-site and cash in lieu as set out in paragraph 2.48-2.53 and the approach to estate renewal in paragraph 2.54.

We support the proposed approach to the Vacant Building Credit as set out in paragraphs 2.55 to 2.65, and welcome this London-wide position.

### **Part 3 – Guidance on Viability Assessments**

We agree with the Mayor that the 'Existing Use Value plus' approach is usually the most appropriate approach to benchmark land value for planning purposes, and that this addresses the requirements of the NPPF. This is consistent with the approach in Lambeth's draft Development Viability SPD. However, there continues to be debate about how the premium above EUV should be calculated. Whilst the guidance in the second bullet point under 3.45 is welcome, this would be strengthened by further explanation within the body of the SPG. We note the reference in footnote 19 to the GLA Development Appraisal Toolkit Guidance Notes (2015) but have not been able to find this document on-line (although have been sent a copy on request by GLA officers). We support the approach to AUV set out in paragraph 3.49 and welcome the additional clarity on this point at a London-wide level. We propose to add to the wording in our own SPD on this point to reflect the Mayor's position.

Please could the SPG provide guidance on the approach to viability (Benchmark Land Value specifically) on land owned by public sector bodies such as the NHS, education providers and TfL.

We would not advocate a different approach in the Opportunity Areas and the Housing Zone in Lambeth at present, as set out in paragraphs 3.55-3.57. In our view, the 35 per cent threshold approach should be applied initially borough-wide to keep it simple and to enable us and the GLA to monitor its impact. We think this is likely to maximise its effectiveness. There is no evidence in Lambeth as yet to justify differentiating the approach by geographical area, although this can potentially be re-considered in time once the impact of the approach has been assessed.

### **Part 4 - Build to Rent**

We support the proposed approach to Build to Rent. Private renting has now overtaken social renting as the main tenure in Lambeth. We want to make sure that the options for private renters improve with better management and more secure tenancies. We also want to deliver and support the delivery of a diverse range of housing opportunities for those who cannot access social rented housing but are also unable to access market housing. We are therefore committed to supporting in principle new purpose-built PRS schemes and to strengthening the intermediate market.

We support the covenant approach as set out in paragraph 4.11 but believe that the covenant period should be longer (20 years). It should also include provision for rent reviews, to allow for additional PRS units to be 'flipped' to affordable, should rents increase more than expected. We request further guidance around how the claw-back covenant would work in practice, including template S106 clauses.

There are likely to be additional monitoring costs related to enforcing the delivery of the affordable element of Build to Rent. It would be helpful to make clear in the SPG that LPAs are entitled to recover a monitoring fee specifically to ensure that the discount market rent product is actually being delivered.

Paragraph 4.21 states that the affordable housing offer on Build to Rent schemes should be London Living Rent (a London-specific form of Discount Market Rent). We note that this reflects the approach in the government's consultation on Build to Rent and Affordable Housing, launched on 7 February alongside the Housing White Paper. We would welcome more flexibility on this in both documents, as this is likely to result in a significant decline in delivery of social/affordable rent affordable housing (non-intermediate) for which there continues to be a very strong need in

Lambeth. Whilst we accept there will be some Build to Rent schemes in a single block that lend themselves best to a fully intermediate offer pepper-potted throughout the building, under single management, there are other types of Build to Rent proposal (involving more than one block) that could easily accommodate a more diverse range of types of affordable housing – both in terms of management and viability. We are actively exploring the possibility in a number of schemes of securing conventional affordable/social rented accommodation in conjunction with Build to Rent, with the affordable component being managed by a Registered Provider. Initial viability testing on these schemes demonstrates that a mix of affordable tenures is achievable. If the affordable housing in Build to Rent schemes is restricted too narrowly to intermediate products, this is likely to have the perverse effect of incentivising developers to opt for Build to Rent in every case, to avoid delivering any social or affordable rent. This would result in a reduced diversity of new housing, which is the opposite of what the government, the Mayor and Lambeth are all trying to achieve..

The inclusion of conventional social and affordable rent accommodation will require a regulated Registered Provider to own, or at least manage, this and mean that a private owner cannot be solely responsible for providing the whole scheme as proposed by the SPG.

There is ambiguity at present in the SPG about the difference between London Living Rent in general (which allows for rent-to-buy) and the type of London Living Rent that is intended to be associated with Build to Rent schemes. We assume that in the case of Build to Rent schemes, the discount market rent units (the intermediate affordable element) are intended to remain as rental units and not be available for rent to buy. However, at present this is not at all clear in the SPG. It might be helpful to differentiate between the two types of LLR product by giving them a different name, to avoid confusion?

We appreciate the need for flexibility on the mix of unit sizes in Build to Rent schemes, as set out in paragraph 4.27. However, we consider that clarification is required in relation to how this flexibility of design and space standards is intended to work in practice, so that current London Policy is not undermined. Having flexibility as the default approach to design and space standards is likely to lead to misinterpretation, and ultimately sub-standard accommodation. It is preferable to retain and promote clear standards but allow for exceptions on a case by case basis, where a strong case can be made for the benefits of a different design approach.

We support the principle of more secure long-term tenancies, as set out in paragraph 4.36. However, it would be helpful for the SPG to provide further guidance about how longer-term tenancies will be secured, monitored and enforced.

**Greater London Authority draft affordable housing and viability supplementary  
planning guidance consultation**

**London Councils response**

**1. Introduction**

London Councils welcomes the opportunity to comment on the draft housing and viability supplementary planning guidance (SPG) set out by the GLA. London Councils recognise and support the document's aim to maximise affordable housing delivery and increase certainty in the development process by setting a threshold route and a more standardised approach to assessing viability. However, London Councils believes that parts of this guidance set a more prescriptive approach to viability and affordable housing delivery. We believe that boroughs value flexibility and discretion in securing affordable housing on individual sites in tenures that best meet local need, and it is important that this is supported and not eroded by the supplementary planning guidance.

**2. The threshold approach to viability**

London Councils recognises the GLA's aim to increase certainty to developers and local authorities by proposing a new threshold approach to viability. This new route for viability would work by limiting the viability information that applicants need to provide if they deliver at least 35% affordable housing in prescribed tenures as part of their developments. Limiting the need for a viability assessment when this benchmark is met may make the development process speedier and less complex. However, boroughs have identified a number of issues that will require further clarification in a final SPG.

London Councils believes that high land values in some boroughs will make it difficult to incentivise applicants to use the threshold approach to viability in the short term. Instead it is likely that the majority of applicants will choose to submit full viability assessments. It could be useful for the GLA to set out an impact assessment which provides information to justify a pan London 35% threshold figure and provides an estimated number of future applications which will use this approach across London. This will be particularly relevant in the context of Government white paper guidance which sets out proposed requirement for at least 10% of affordable housing on development sites to be affordable home ownership products.

The final SPG should also clarify the actions that boroughs can take when an applicant chooses to select a threshold approach on a site a borough feels can comfortably deliver more than 35% affordable housing. Boroughs' affordable housing planning policies aim to maximise the level of affordable housing contribution on all sites. It is likely that on some sites a 35% threshold target is not appropriate would be capable of delivering more than 35% affordable housing. The final SPG should give boroughs the flexibility to identify individual development sites where a threshold approach to viability would be unsuitable and have the ability to require applicants to submit a full viability assessment on these sites.

It is unclear how the threshold will impact on boroughs' ability to negotiate contributions to other planning obligations, such as community or education facilities. If the average level of affordable housing contribution is raised to 35% due to the threshold approach (as is the GLA's intention) it is likely that developers will not be able to provide the same level of

planning obligations to mitigate the impact of development in other areas and keep a development scheme viable. It would be helpful for the GLA to provide an assessment which examined the likely impacts of the threshold approach.

## **2.1 The tenure of affordable housing tenure**

It is important for boroughs to retain flexibility over the tenure mix on sites that provide affordable housing. This guidance document is more prescriptive in its approach to tenure than current London Plan policies, aiming to ensure that at least 30% of the affordable housing is at London affordable rent levels and 30% of the affordable housing is at London living rent or shared ownership. Currently boroughs have a greater degree of flexibility to select tenure mix on individual developments themselves in line with policy in the London Plan (which aims to ensure a split of 60% social or affordable rent and 40% intermediate /shared ownership). It is important that the supplementary planning guidance does not erode the ability of boroughs to negotiate the tenures of affordable housing that best meet local needs on development schemes, so long as they comply with policy set at a national level and in the London Plan.

Some boroughs have raised concerns around how the London Living Rent product operates. Boroughs would like to seek greater discretion for tenancies to be retained permanently for intermediate rent rather than rent-to-buy; for benchmark rents to be based on a wider geographic area and for the benchmark rent to form an average in each scheme, with rents varying around that to accommodate households with different income levels. With agreement from the GLA, boroughs could also be given an option to promote their own intermediate rent products instead of London Living Rent.

With the release of the Government's white paper, the GLA needs to clarify in the supplementary planning guidance whether the London Living Rent can be defined as an affordable homeownership product. The white paper has identified that the Government intend introduce a requirement for 10% of homes provided on a development site to be affordable homeownership and if this is adopted into national policy it will be more complex for boroughs to comply with proposals set out in the draft guidance.

It is also proposed that London Living Rent units will be let on a GLA pan London Portal with no local prioritisation for tenants. This will be problematic for many boroughs, some of whom already monitor and prioritise local applications for intermediate rented products. Boroughs strongly believe that affordable homes being delivered in their areas should meet local housing needs first and London Councils believes this should be reflected in the SPG.

## **2.2 Vacant Building Credit**

London Councils is very supportive of the proposed content within the SPG around the vacant building credit. Currently the vacant building credit (VBC) is allowing developments on high value sites to be delivered without providing affordable housing. Due to the high land values in London it is likely vacant buildings come forward for development through the planning system and do not need an extra incentive through VCB. Allowing boroughs greater discretion to decide when it is appropriate to apply the VBC and ensuring that applicants submit viability information is a welcome step which will ensure a higher delivery of affordable housing in London. A similar mayoral approach to sites delivered through permitted development in London would also be welcomed by boroughs.



### **3.0 Guidance on viability assessments**

#### **3.1 Measurement of affordable housing in habitable rooms per hectare**

The document also emphasises that boroughs should measure affordable housing contributions by the percentage of habitable rooms. A concern raised by some boroughs is that this may lead to a discrepancy in unit size between affordable and market housing on development schemes. The SPG could instead set out different ways of measuring affordable housing contribution (such as by percentage floor space) and allow boroughs discretion to choose the method of measurement best suited to individual development sites.

#### **3.2 Review Mechanisms**

The review mechanisms set out in the document for schemes are complex and many boroughs already have successful viability review mechanisms. Final guidance within an SPG could allow boroughs a greater level of flexibility to set out their own or keep current review mechanisms if they can demonstrate that these are maximising the delivery of affordable housing. However, for those boroughs that do not have review mechanism policy the policy set out in the SPG should apply.

#### **3.3 Transparency**

There is a consensus amongst boroughs that they are supportive of increased transparency in viability assessments. It is promising that the GLA have taken into account the recommendations of the borough viability protocol and many boroughs have already adopted principals around transparency in local policy.

#### **3.4 Build Costs, Planning Obligations and Developer Profit**

London Councils welcomes a more standardised approach to assessing viability. The draft guidance set out around assessing build costs, planning obligations and developer profit is welcome and should aid boroughs in the viability assessment process. However, London Councils believes that boroughs should have slightly more discretion when agreeing the use of an internal rate of return method of valuation on large schemes. The guidance currently states that this approach should only be used on scheme above 1000 units. London Councils believes it is unhelpful to affix such a number of units and individuality of differing development should be taken account of before deciding the appropriate method of valuation.

#### **3.5 Benchmark land value and existing use value + premium valuation approach**

London Councils supports the use of an “existing use value + premium approach” to valuation and believes that other methods of valuation should only be used in exceptional circumstances defined by boroughs. Local policies in many boroughs reflect this stand point and it is welcome that guidance in the SPG will support this.

### **4.0 Build to rent**

London Councils is supportive of build to rent homes as they can play an important role in creating the mixed communities needed to alleviate London’s housing crisis. Build to Rent

can create additional affordable housing in London, and due to rental market absorption rates can be delivered faster than traditional market housing. There are approximately 30,000 build to rent units in the development pipeline in London and strong London wide policy is essential in increasing the delivery of this product.

The guidance and recognition that Build to Rent needs a different approach to viability and affordable housing provision is welcome in the document. However, collectively boroughs have identified a number of issues with the draft guidance which should be rectified in a final document.

#### **4.1 Definition**

London Councils broadly agrees with these principles although a final SPG document could clarify a number of issues. For example, the definition of a build to rent scheme is narrow (for example to the current guidance qualifies build to rent schemes only if they are above 50 units) and there is no guidance is given on how boroughs should treat build to rent developments if they do not adhere to this description. There is an opportunity for the guidance to allow more discretion to boroughs over the types of build to rent schemes that they would like to promote in their area.

#### **4.2 Affordable housing tenure**

The guidance proposes that affordable housing to take the form of London Living Rent units managed as part of the scheme. On suitable development schemes boroughs could be given more flexibility to negotiate the provision of affordable housing tenures with lower levels of rent where this better meets local need. However, it is appreciated that this is a new tenure and the GLAs aim is to increase certainty to ensure that a pipeline of build to rent homes is delivered.

#### **4.3 Covenants clawback and affordable housing in perpetuity**

London Councils supports the placing of covenants on build to rent development to ensure that they remain in single ownership and that units cannot be sold in a certain time period. With the understanding that this is a new market for London, London Councils believes that a 15 year covenant period should be a transitional arrangement and there is scope to extend this covenant period to 20 or 25 years when the market has further matured.

A clawback mechanism that works for boroughs is important and individual boroughs will add their own specific comments on this point. However, it is important that the affordable housing element on build to rent developments is in perpetuity be it through retained on site provision of units or financial contributions.

#### **4.4 Design and Viability**

London Councils supports flexibility in design for build to rent developments. However, each scheme needs to be assessed on its own individual merits and any relaxation of design standards should be to meet evidenced local need and at the discretion of boroughs. If

individual schemes relax space standards to enable more units to be provided this should be reflected in the viability assessment.

#### **4.5 Management standards**

London Councils believes that for the discounted market rent units provided in build to rent schemes (which will usually be at London Living Rent levels) local residents should be prioritised over those who are on a GLA London wide portal. This prioritisation could be time limited to lessen the risk of the developer and enshrined in section 106 agreements. There are examples of such agreements which have been utilised in successful build to rent developments in London.

**From:** [REDACTED]  
**To:** [Housing SPG 2016](#)  
**Cc:** [REDACTED]  
**Subject:** Consultation Response - Mayor of London Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG)  
**Date:** 28 February 2017 16:18:50  
**Attachments:** [image005.jpg](#)  
[image006.jpg](#)

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Dear Sirs,

Merton welcomes the Mayor's aim to create more certainty and improved levels of affordable housing.

Merton also supports the principles set out in the document as to how this is to be achieved, provided that local authorities retain some flexibility surrounding the criteria as to whether the viability exemption, under the "Route B" approach, has been engaged by an applicant, in particular:

- ***Ability to decide whether the 35% threshold is appropriate on a per habitable room basis or on a per unit basis from site to site.*** We are concerned that by prescribing the threshold as on the basis of habitable rooms we may see oversized units in developments that might not be suitable for families, just so the applicant can avoid viability testing. Such scenarios may encourage applicants to withhold their intentions regarding affordable housing for the original application preventing decision makers fully considering the benefits/dis-benefits of granting planning permission. Types of locations where large units might not be suitable for affordable housing include locations where it is not possible to secure onsite play/open space/amenity provision either on site or a safe/accessible distance or route offsite. We are supportive of the intention of the SPG to optimise the delivery of affordable housing however there is concern that the approach regarding habitable rooms might incentivise taking affordable housing out of the initial decision making process on the acceptability of schemes, and thereby push it down the list of priorities, rather than up.
- ***Ability to decide whether a satisfactory tenure mix is proposed on a site by site basis.*** It is considered that the income threshold and affordability costs should be the only fixed parameter influencing the proportion of shared ownership/intermediate products that can be applied. Otherwise it should be for the local authority to determine the appropriateness of introducing 30% or more affordable or social rented units and the breakdown of tenures within the 40% bracket on a site by site basis, in line with current/emerging local plan policy and supporting studies/data. For some referable schemes designing in affordable or social rented units can be a challenge (for example schemes with single or a small number of cores), and we would request that some greater flexibility on tenure is available for these schemes so that the Route B incentive can be used more widely.
- ***Ability to waive the early stage review mechanism provided a late stage review mechanism with financial contribution in lieu is agreed with the applicant to clawback any surplus (capped with the proposed surplus share for Route A), in certain cases.*** The Council is concerned that for some sites, where further on-site provision is impractical due to site constraints, requiring an early stage review might prevent

development coming forward for delivery, and that an advanced stage review could apply where planning permission hasn't been implemented within the specified period.

Merton welcomes the additional guidance on PRS and would welcome support from the GLA when dealing with these schemes, where possible.

In conclusion Merton supports the overall emphasis in the draft SPD of incentivising developers to increase affordable housing returns. We consider that it should be possible to apply the threshold approach more flexibly in terms of tenure and form of measurement (allowing for the threshold to be met either on the basis of units or habitable rooms), that responds to a wider range of sites provided affordability criteria set out in the Mayors Annual Monitoring Report is met, and for some flexibility on the form of review mechanism, so that the incentive under "Route B" can be applied more widely and the increase in affordable housing optimised.

If you have any queries in relation to this response please don't hesitate to contact me.

Regards

**[REDACTED], S106/External Funding Officer, Future Merton**

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[REDACTED]

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**Disclaimer:** Any officer advice in relation to the Community Infrastructure Levy provided in this email, or elsewhere, shall not be regarded as definitive advice. It is not intended to replace the need to read, understand and comply with the Community Infrastructure Levy Regulations 2010 (as amended) (the "Regulations") and (where consistent with the Regulations) government advice and guidance on CIL. Applicants, developers and landowners are accordingly advised to seek their own professional advice. This statement does not apply to any statutory notices or decisions given under the Regulations that may be attached or included in this email.

Validation checklists must be adhered to when submitting a new application:  
<http://www.merton.gov.uk/living/planning/valid-checklists.htm>

## **London Borough of Newham Response to Draft Affordable Housing and Viability SPG**

### **Executive Summary**

- The London Borough of Newham(LBN) welcomes the Draft Affordable Housing and Viability SPG
- We support the strategic aim of delivering all new housing as 50% affordable housing and welcome the attempt to achieve this with the use of public subsidy on schemes with 35% plus affordable housing.
- LBN wish to see the Viability element of the planning process, as it relates to affordable housing, being as transparent and open to inform decision makers, the general public and build confidence in the planning process.
- LBN supports giving the development industry certainty, in terms of a 35% Affordable housing threshold (whilst meeting all other obligations and with zero subsidy). This is in the context of the policy in Newham's Core Strategy to achieve 35%-50% Affordable housing on individual sites and 50% Affordable Housing over the lifetime of the plan.
- LBN agrees that any approach to viability and affordable housing needs to be in addition to all other relevant policy and developer obligations. In particular Newham has a policy to deliver 39% family housing on top of the other social and physical infrastructure necessary to make development acceptable.
- LBN continues to support the London Borough Development Viability Protocol.
- LBN with the GLA recognises the aim of the SPG to ensure a fair and proportionate approach to assessing Land Value in the planning process, particularly the emphasis on the Existing Use Value Approach (EUV+)
- LBN recognises the distinct economics and benefits of the Build to Rent sector and supports the GLA approach on covenants that bind this type of housing, as a rented product, and the need to

develop clawback mechanisms that reflect the distinct economics of this emerging “use class”.

Newham is at present exceeding its London Plan target for housing delivery in 2015/2016 and projecting the same for 2016/2017.

### **Threshold Approach to Viability**

- LBN see the 35% Affordable Housing threshold (whilst meeting all other obligations and with zero subsidy) as an excellent mechanism for maximising affordable housing provision and changing the incentives on developers.
- LBN wishes to ensure that the planning process delivers the maximum reasonable level of affordable housing on individual sites and LBN will work constructively with the GLA to maximise the impact of public subsidy in delivering affordable housing. Additionally LBN have a policy requirement to deliver 39% plus family housing, that is subject to viability. This requirement will need to continue to be tested and delivered.
- . Given the range of policy obligations (including family housing) our expectation is that the vast majority of developments will still require viability assessments - at least until the 35% threshold , along with other obligations becomes firmly part of future land pricing.
- As a borough with considerable potential for residential development and rising residential values we believe that 35% - 50% affordable housing can be achieved without a negative impact on housing delivery.
- As a borough which as experienced a process of ongoing regeneration, we are aware that values set out in viability appraisals and agreed by RiCS professionals subsequently are greatly exceeded when the schemes are subsequently built out. This has been most marked in very large plus 1000 unit schemes in the Stratford and Royal Docks area. A restriction on review mechanisms for large multi phased schemes would negatively impact on the borough’s reasonable requests to achieve greater onsite or offsite affordable housing outcomes, in line with our

Core Strategy and the London Plan's requirement "to maximise affordable Housing provision"<sup>1</sup>.

### **Route A and the Threshold Approach:**

- *"Early Review"* LBN supports the delivery of onsite housing as part of a review mechanism outcome particularly as an outcome of major multi-phased permissions.
- LBN believe that review mechanism "surpluses" should be based on a revenue principle not a profit share. As profit levels are opaque and subject to considerable manipulation.
- A 60%/40% split on a review mechanism surplus on superprofit (or additional revenue), in favour of the Local Planning Authority, should be a target which Local Planning Authorities can surpass, in pursuance of our requirement to "seek to maximise affordable housing provision"<sup>2</sup>.
- LBN believes that revenue only based review mechanisms may be preferable to full reappraisals, as the cost side of a development, even after practical completion is opaque and is difficult for LPAs to interrogate.

### **Route B and the 35% Threshold**

- LBN continues to see the need for viability submissions on major applications to meet our Core Strategy requirements and to "seek to maximise affordable housing provision"<sup>3</sup>
- LBN does not and will not seek viability submission on planning application which are in conformity with Newham's Core Strategy, London Plan and national legislation.
- As stated earlier review mechanisms (not pre-commencement mechanisms), particularly on major schemes may continued to be required to meet local, regional and national policy requirements for Affordable Housing. Review Mechanisms should still be required on multi-phased schemes where "front loaded" infrastructure costs create a situation were affordable housing

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<sup>1</sup> London Plan 3.11 Page 129

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*



delivery is reduced in early phases but needs to be provided “disproportionally” in later phases.

- LBN supports the tiered application of Public Subsidy to incentivise 35% plus affordable housing being secured through the S106 process.

## **Tenure**

- LBN strongly supports the focus on delivering “genuinely affordable homes”<sup>4</sup>
- LBN supports the 60%/40% split on affordable/social rent homes and intermediate tenure homes with the overall affordable housing secured via the planning /S106 process.
- LBN supports a tenure mix of 60% social/affordable rent at “genuinely affordable rents. 40% London Living Rent/Shared Ownership.
- LBN sees London Living Rent as a positive step to help residents wishing to access home ownership, but who are at present unable to access private ownership or traditional shared ownership products. However we would welcome further discussions to ensure that LLR is deliverable in areas like Newham with high market rents but low average earnings.

## **Offsite and Cash in Lieu**

- As with all major schemes LBN supports the approach that viability submission should be submitted and assessed to ensure policy compliance with affordable, family housing and emerging local plan policies.
- LBN supports the principle of “financial neutrality” (set out in 2.52) in assessing appropriate offsite payments to disincentivise offsite delivery and ensure all applications are treated on a financial level playing field.

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<sup>4</sup> 2.27 page 19.

### **Guidance On Viability Assessments**

- As a supporter of the London Borough Development Viability Protocol we fully support the appraisal requirements set out in Pages 30-35.

### **Contingent Obligations and Review Mechanisms**

- LBN supports the proposals set out here with the caveat that a GDV only or revenue based review mechanism may be more transparent or more appropriate, in some cases.

### **Strategic Industrial Locations (SIL)**

- LBN supports the view that if a SIL site is deemed suitable for release that the land value may be lower and that the associated uplift in value should be reflected in appropriate Affordable Housing and Planning Obligations, ensuring all Development Plan objectives are being met.

### **Build To Rent**

- LBN notes and supports the positive contribution that Private Rented Sector (PRS) units make to housing supply and specific need.
- LBN supports investment and delivery in this developing housing sector.
- LBN recognises the “distinct economics” of this sector and has and will continue to work flexibly to ensure delivery of this housing typology while not over riding other identified housing needs and necessary infrastructure.

- LBN supports a specific viability assessment route for PRS development and proposes using revenue sharing based routes to ensure delivery while not negatively impacting on the delivery of affordable and family housing.
- LBN supports the definitions set out in 4.9 for PRS units.
- LBN supports the options set out in 4.13 and 4.15 and suggests that revenue sharing mechanisms may constitute a third option for schemes with low initial returns but with the possibility of building considerable returns over the 15 year covenanted period
- LBN supports that affordable units delivered via or in conjunction with PRS schemes should be London Living Rents or “genuinely” affordable to the largest extent practicable.

### **Suggested Review Formulas**

- LBN notes the suggested review mechanisms proposed, which it believes may be suitable on occasion but wishes it noted its preference for transparent GDV or revenue based formulas.

**Place Directorate**

**Caroline Bruce**  
**Corporate Director of Place**

Town Hall, 128-142 High Road  
Ilford IG1 1DD

Please ask for  
Direct line  
Fax

Date 28<sup>th</sup> February 2017

Dear Sir/Madam,

Thank you for the opportunity to comment on the Draft Affordable Housing and Viability Supplementary Planning Guidance 2016. We welcome the publication of guidance that sets out a consistent approach to dealing with affordable housing and viability across the capital that will contribute to increasing the supply of new affordable homes.

We have set out our response under the headings for each chapter:

### **Background and approach**

We support the Mayor's aim for openness and transparency in approaching viability and agree that information relevant to planning determinations should be publically available. This is consistent with the London Borough's Development Viability Protocol which has been developed over recent years.

### **The Threshold Approach**

We support the proposed threshold of 35% of a scheme to be affordable housing based on habitable rooms to help deliver a range of different sized homes. We also support the requirement for schemes which do not meet the 35% threshold or require public subsidy to do so, to submit detailed viability information.

Whilst we support the principle of applying comprehensive review mechanisms to schemes that do not meet the threshold, we recognise that it is difficult to secure future contributions if viability improves as a result of an uplift in value and may be resisted by developers, even with the proposed split in benefits between the local planning authority and the developer. Our preference is to maximise the percentage of affordable housing at the outset by using growth assumptions and building this into the approach to viability.

We support the use of an early review mechanism to ensure that progress is made on compliant schemes within two years of planning permission being granted.

We support the Mayor's aspiration for a mix of affordable housing tenures that include low-cost rent and other intermediate products including London Living Rent and/or shared ownership and we will forward our preferred tenure split under separate cover. However, further assessment of the housing market would be required to establish the proportion of low-cost rent that we would be seeking in future schemes.

### **Guidance on viability assessments**

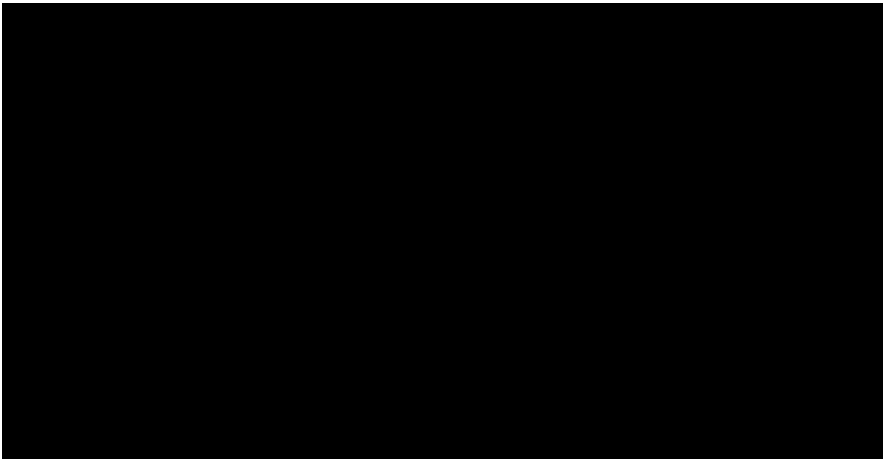
We support the provision of detailed guidance on viability assessments and the fact that the SPG is consistent with the London Borough's Viability Protocol. Along with the majority of boroughs, we have adopted this standardised approach to assessing the viability of schemes that fail to meet affordable housing policy requirements. We welcome the extra weight that this SPG gives to this approach which should help to improve and speed up negotiations.

We support the principle that the presumption would be that all information is made public, and that it is the applicants' responsibility to make the case if they want viability information to remain undisclosed.

We welcome the opportunity to be able to consider bespoke approaches to affordable housing within designated Housing Zones, such as Ilford, in order to provide certainty to developers on complex sites and achieve the best possible affordable housing solution for each site.

### **Build-to-Rent**

We welcome specific guidance on Build to Rent developments, recognising that it is delivered using a different financial model from other tenures, as this is an growing sector of the housing market in the capital. We welcome guidance on the requirement for covenant for future years, including the



Strategic Head of Delivery

## **London Borough of Richmond Response to**

### **Draft Affordable Housing and Viability Supplementary Planning Guidance**

#### **1. Background and Approach**

##### **Summary:**

Page 9. On schemes referable to the Mayor, the Mayor will adopt the approach set out in this guidance and LPA's are strongly encouraged to follow this approach.

Page 11 -12. The Mayor will expect submitted viability appraisals by an applicant and their assessment by the LPA to be available for public scrutiny, unless there are exceptional and legitimate circumstances for not doing so.

##### **Response:**

Support. The Local Validation Checklist asks for a Viability Report. The Publication Local Plan Policy LP 36 at paragraph 9.3.5 states "Full public disclosure of financial information should be expected to inform transparent decision-making, as set out in the Local Validation Checklist." Development management colleagues are aware to flag this up in pre-application discussions (following discussion at the London Viability Group meeting the letter template used by L. B. Islington has been confidentially shared with officers).

#### **2. Threshold Approach to Viability**

##### **Summary:**

Page 13 -14. The SPG does not set out a fixed target for affordable housing developments but specifically focuses on viability to deliver the maximum reasonable amount of affordable housing. The Mayor has an aspiration of a long term strategic aim of 50% of all new homes in London being affordable and the approach to affordable housing delivery will be a key consideration in the London Plan review with draft consultation expected in the Autumn. At this stage, the SPD does not and cannot introduce new policy.

The SPG introduces a "threshold approach" whereby schemes meeting or exceeding 35% affordable housing without public subsidy and policy compliant with the requirements of the Homes for Londoners guidance are not required to submit viability information. This will apply to any scheme of 10 or more units.

##### **Response:**

Council policy requires any scheme delivering less than 50% affordable homes to submit a viability appraisal to support the quantum of affordable housing being proposed, also seeking on-site provision on all sizes of former employment sites.

It is unclear from the SPG how a council would know whether a scheme providing a 35% affordable housing that was policy compliant could in fact deliver more than 35% affordable housing, as there will be no requirement for an applicant to provide a viability appraisal with such an offer.

Furthermore it is not clear how a council would be able to test the viability of providing other planning obligations as well as affordable housing. As at present 35% affordable housing is rarely achieved as is evidenced for London by the Mayor's AMR. In reality if negotiations seek to secure other planning obligations such as education or community facilities, the affordable housing offer is reduced below 35% and the overall viability of planning obligations sought by the council can be tested.

It is unlikely in most circumstances that the 35% threshold to exempt an applicant from having to provide a viability appraisal would provide any incentive to developers in L.B. Richmond, as the vast majority of schemes in the borough deliver 20%-30% affordable housing after a viability assessment. It may therefore be more appropriate for the GLA to set the threshold at 30% affordable housing to provide greater incentive to developers to deliver this quantum of affordable housing to avoid a viability appraisal, although the same challenges would still arise as mentioned in the preceding paragraph.

The percentage could be subject to review and progressively applied as the market adjusts to this benchmark.

It is not agreed that the tenure mix also needs to be fixed for the 30/35% to apply. This should be a matter that is left for local planning authorities to determine and as necessary settle the tenure mix with GLA Officers as appropriate.

#### **Summary:**

Page 14. The percentage of affordable housing should be measured in habitable rooms.

#### **Response:**

A flexible approach is applied with current policy stating that where affordable housing involves dwellings with larger numbers of habitable rooms per dwelling, or different sizes of habitable rooms with different tenures, it may be more appropriate for the calculation of the affordable housing proportion to be in terms of habitable rooms or floor space. One of the Council's priorities is to secure family sized rented homes, therefore determining % of affordable housing through habitable rooms alone could undermine the Council's ability to influence the 40% of provision where it can apply its 'local discretion'.

It's not clear whether the Mayor's intends the 30:30:40 split referred to on page 19 also to be calculated in relation to habitable rooms?

Example

30 unit scheme

20 x 1 beds=40 habitable rooms =65% of the total

Means that 10 x 1 beds (33% units) 20 hab. rooms would nearly achieve the 35% affordable housing requirement but not necessarily providing the most in-demand 2 bed LLR or LAR homes, nor would it allow any flexibility for local discretion. If the Mayor's split is applied to units, the local discretion would apply to 4 x 1 bed units (or fewer if local discretion seeks larger units).

Overall, however, officers are not averse to representing the level of affordable housing being delivered in a number of ways that may show that the Council has maximised delivery and sought the best mix of housing and tenures for the locality in question.

**Summary:**

Page 15 - For schemes not meeting the 35% threshold a viability appraisal will be required and assessed to determine the maximum reasonable amount of affordable housing that could be supported by the development. There would also be two reviews, one, as in the preceding paragraph, where milestones have not been achieved. If this demonstrated a higher level of affordable housing could be achieved, this would be provided on site. The second review may not be required if the scheme is delivering significant other social infrastructure such as transport, health or education but this is at the LPA and GLA's discretion. The second review would be applied after 75% of market sales. Where a surplus is identified, this would be split 60:40 between the Council and the Owner and taken as a commuted sum ring-fenced for the delivery of affordable housing. The surplus would be capped at the equivalent of the scheme delivering 50% affordable housing. The review mechanisms do not allow for a reduction in the affordable housing already consented.

**Response:**

The Affordable Housing SPD allows for a future review to take account of the market values of the site when completed, which could result in a higher affordable housing but does not specify milestones where this is to occur. Review mechanisms have been negotiated on a case by case basis depending on the timing of the scheme and whether it is phased or not. The Publication Local Plan Policy LP 36 states that the Council will evaluate appraisals and consider whether it is necessary to secure provision for re-appraising the viability of a scheme prior to implementation to secure contingent obligations. Re-appraising schemes could extend to small sites and/or single phase developments, given the high values in L.B. Richmond. This position could be undermined by the SPG, which would not allow the best outcome for delivering affordable housing in the borough.

**Summary:**

Page 16 - For applications meeting the 35% affordable housing without public subsidy and policy compliant with the requirements of the Homes for Londoners guidance, there would be no review mechanism, save for a review mechanism after two years if the scheme had not progressed to certain milestones agreed by the LPA.



**Response:**

There is no reference to this specific form of review in the Council's Affordable Housing SPD, further details below about general approach.

**Summary:**

Page 19 - Applicants should have an RP engaged prior to progressing the scheme and secure from them a commitment to affordable housing provision at an agreed purchase price.

**Response:**

This is a requirement of Richmond Council's Local Validation Checklist and is emphasised in pre-application discussions. The Publication Local Plan Policy LP 36 states where on-site provision is required, an application should be accompanied by evidence of meaningful discussions with a Registered Provider which have informed the proposed tenure, size of units and design to address local priorities and explored additional funding opportunities. This is supported as otherwise it appears developers can 'design out' affordable housing.

**Summary:**

Pages 19 -22 Preferred Tenure Split – at least 30% at LAR, 30% LLR and/or LSO and 40% to be determined by the LPA. The LPA to give justification as to why

- A. It would wish to set benchmark LAR rents above those stated by the GLA.
- B. Robust evidence for any other intermediate products other than LLR and LSO
- C. To state their preferred preference for tenures of the discretionary 40% and this will be set out in the final version of the SPG

When considering the mix, LPA's should take into account the values generated by different types of affordable tenures on delivering the 35% threshold.

**Response:**

The Council encourages Registered Providers to have regard to rent levels as set out in its Tenancy Strategy to ensure affordability for all households including those where the Local Housing Allowance rate may be applied when assessing welfare benefits. This allows flexibility of rent setting reflecting the wide difference in market rent levels across the Borough.

The Council has compared the proposed LLR levels with available information on market rent levels Borough-wide by ward (source Hometrack). This suggests that some adjustment is needed to ensure that the baseline two bedroom rent levels are set at a maximum 80% of market in 8 of the 18 wards (where rent levels are up to 88% of market).

For one bedroom homes, analysis suggests that LLR rents would significantly exceed market rents and in some cases would be equivalent to market rent.

For three bedroom homes analysis suggested that LLR rents would be set at an average of 62% of market rents (in some cases as low as 52%).

Given the relatively high LLR rents (and associated household income) applicable in many L.B. Richmond wards, it will not be an option for many households on below median income but still reliant on private rented accommodation. L.B. Richmond's recently published Strategic Housing Market Assessment confirmed that 38% of households have incomes below £40,000 with 19.5% with incomes between £40 and £60,000. In only 5 wards would LLR household incomes (for two bedroom homes) be below £40,000. This suggests that there may be a significant number of households aspiring to forming a family and move towards home ownership whose needs would not be met by the LLR product.

In view of the impact of LLR rents on scheme viability, 3 bedroom homes are unlikely to be provided in L.B. Richmond.

The Council has a tenure split of 80% rented, 20% intermediate, a divergence from the London Plan which was agreed as part of the Core Strategy adopted in 2009 and the latest SHMA and draft Local Plan, currently out for consultation, recommends this to continue, given the affordable housing needs in the borough. In terms of the Council's preferred tenure mix for the local discretion element the emphasis on rented homes would continue, however to maximise the delivery of affordable homes there will be flexibility on this split. The priority for unit sizes within this mix will also be an important consideration on a site by site basis – to ensure that the LLR/LAR requirement does not adversely impact on viability of providing larger units in the 'local discretion' element. There would still need to be flexibility to assess on individual sites, for example the size of units that reflect local character.

Officers seek to ensure that two thirds of shared ownership homes are affordable to those with a maximum household income of £45,000. LLR rents and hence purchase for shared ownership would be affordable to those with a household not exceeding this threshold in half of the Borough's Wards. However LBR would seek to ensure that their residents would continue to be prioritised for LLR homes as an intermediate product especially where the Council may use its own Housing Capital funding to support delivery.

At present LLR is to be made available pan-London. The Mayor's advice on London Living Rent states that: 'Where there is more than one eligible applicant, providers should determine priority through use of a local intermediate waiting list (if one exists), by using a priority group or groups identified by the local borough, or as a last resort by first-come, first-served.'

Flexibility of approach is therefore required to allow for local discretion and local planning policy.

In addition it is proposed that after 10 years the LLR units are converted to shared ownership by selling to the existing tenant or someone else. Officers have concerns if it is the GLA's intention that after 10 years a LLR tenant is evicted if they can not afford to purchase under shared ownership terms. Whether tenants would have sufficient disposable income to enable them to be able to afford to purchase on shared ownership terms is difficult to predict as this will be dependent on personal circumstances, house price movements and a household's employment over the period. So whilst officers broadly support this aspect of the LLR, amelioration needs to be considered to the introduction of the product so that it does not store up problems for the future (e.g. renting into a savings plan, clear expectations in relation to money advice and support being given by the registered provider if they cannot buy).

The different levels of income required to be eligible for the LLR and Shared Ownership products give cause for concern. LLR homes are only eligible to those on gross household incomes of £60,000 pa, whereas shared ownership homes are eligible to those on gross household incomes of £90,000 pa. How would these then be valued on viability appraisals given they could convert to shared ownership at any period within the 10 years? There is also concern that those on £60,000 incomes would have enough surplus saved from LLR rents to enable them to purchase shared ownership property eligible to those on £90,000 incomes.

Household incomes for LLR based on LBR's analysis would not exceed £60,000 for all unit sizes (1 to 3 bed) therefore this threshold of eligibility as proposed is supported in order that this is a product distinct from conventional shared ownership.

It is also proposed that LLR units are let immediately on the GLA website Pan London portal. The only instance where LPA's could prioritise local applicants would be if the demand for the LLR units in any given scheme exceeded supply. In that case RP's could prioritise those applicants that met the LPA's local priorities, rather than allocating on a first come first served basis. There is, however, no clarification on how long this prioritisation would last. It is considered that Richmond Council would not agree to this and officers do not support it. These homes with other affordable homes delivered should be prioritised to meet the significant and evidenced local demand first and would only be marketed more widely after a set marketing period agreed within the Section 106 had been reached. Officers therefore would strongly urge that the exclusive three month marketing period for LSO is also applied to LPA's for LLR to meet local demand- see above.

LSO – So whilst the officer's consider that the Council is broadly supportive of this product, Richmond Council, will be maintaining the same eligibility and marketing requirements that exist for current shared ownership, including local affordability and three month marketing for LPA's.

In terms of other intermediate products officers consider products such as Low Cost Home Ownership as delivered by Pocket Homes (in particular relevant locations) and intermediate rent can provide useful alternative forms of affordable housing to meet local housing demand. Officers will seek to retain these options and a degree of flexibility in how they meet the Home for Londoners aspirations.

#### **Summary:**

Page 19 Setting out the breakdown of tenures should be for the Council's 40% discretion.

#### **Response:**

In terms of the Council's 40% discretion, if the GLA retains the 35% threshold it is the officers expectation that to achieve this target the majority of this 40% would need to be a form of intermediate housing, as LAR will have a relatively low value and be a considerable cost on the GDV of any scheme. As each site needs to be considered on its own merits, the officers do not consider it would be appropriate to have a definitive assumption on the affordable tenures that would be sought for this 40% and that the tenure mix is considered on each application. Officers would suggest this is necessary also to help address the transitional period of the imposition of the Homes For Londoners policies mentioned previously.

Officers would seek to use the 40% discretion to be able to apply its own approach to affordability as set out in its Tenancy Strategy and Intermediate Housing Policy Statement (subject to amendment). In particular we would seek to apply our approach to rent setting – in general between LAR and LLR when grant funding affordable rented homes through the Council's own Housing Capital Programme. We would seek to agree this with the GLA in order to make best use of combined grant availability to enhance delivery.

**Summary:**

Page 22- Affordability should be based on housing costs being no more than 40% of net household income and that affordable housing is secured in perpetuity

**Response:**

The Council seeks to ensure that one third of shared ownership homes are affordable at a household income of £45,000 for the initial three months of marketing.

The aspiration of home ownership will continue to be challenging for LLR tenants in L.B. Richmond. For example in Teddington ward a 2-bed home valued at £500k with a 25% share purchase requires a household income of around £51,500 compared with a LLR income of £42,500 (LLR at £1182 per month) thus requiring a 20% increase in income; this disregards the impact of rent increases until shared ownership is achieved and also assumes sufficient accumulation of savings for the deposit.

(Note the GLA benchmark of intermediate housing affordability limits housing costs at 40% of net household income whereas LLR is based on 33% of gross household income- the above assumes the 33% figure will remain constant).

As well as mortgage costs it would be helpful to specify the expected rent level (2.75% on unsold equity) consistent with the Homes for Londoners Guide (para.20).

The attraction of LLR in L.B. Richmond will be dependent on the RP's assumption about the proportion of tenants who will move to home ownership within 10 years and the level of share purchased.

Officers recognise that in certain localities a household will be willing to pay more for housing as a more central location will mean that in turn that household will be spending less for instance on travel costs, there are therefore a number of factors that need to be taken into account.

**Summary:**

Page 23 Starter Homes.

**Response:**

The Publication Local Plan similarly advises that further details are awaited from Government but cautions that the local evidence from the Richmond Housing Register is that the income and/or deposit needed to access a Starter Home would render it unaffordable for the vast majority of people with an interest in securing low cost home ownership housing. Low cost home ownership

options would only be acceptable as part of a mix with rented affordable homes, having regard to local needs and involvement of Registered Providers to secure products in perpetuity.

**Summary:**

Page 23 -24 Off Site and cash in lieu – All schemes which propose off site provision or cash in lieu payment are required to provide a detailed viability appraisal to justify this approach,

**Response:**

The Council has been cautious towards allowing off site and cash in lieu contributions, given the lack of sites and limited opportunities for spending, and relied on the London Plan for policy guidance should a developer propose this in the borough. The Publication Local Plan re-affirms the Council's requirement for schemes of fewer than 10 units (where there is no loss of employment) to provide an off-site affordable housing contribution. LBR's Affordable Housing Programme can be financed through a combination of S106 contributions, New Homes Bonus, our Housing Capital Programme and borrowing. S106 contributions are aggregated with these other sources of funding and therefore are not allocated to a specific scheme. The Council would not object to providing details of the total amount from S106 contributions expended annually on delivery of affordable housing, although this is more onerous as this links with reporting requirements for Authority's Monitoring Reports which set out contributions received.

**Summary:**

Page 23 -24 The Mayor will work with boroughs to ensure the money (from in lieu S106 contributions) is spent inline with his affordable housing objectives.

**Response:**

The Council works to deliver affordable housing, increasing units above that shown to be viable/and or adjusting tenure and affordability to meet out local priorities. It is important that Local Authorities who are providing grant support to assist delivery are able to determine how best to apply S106 contributions particularly where the Mayor has not been involved in negotiations (on schemes below the referable threshold). It would be more helpful if the wording here reflected joint working between councils and the GLA to pool available funding to meet local authority priorities as reflected in the 40% LA discretionary provision where these accord with the Mayor's overall objectives.

**Summary:**

Page 24 - Loss of existing affordable housing (including estate renewal) – Expectation that loss of social housing floorspace will be replaced and the 35% threshold will not apply. Where market housing (including those sold under the RTB) has been used as temporary affordable

accommodation on an estate, this should be considered as market housing when considering like for like replacement.

**Response:**

The Council has no specific policy but officers would support this proposal in relation to regeneration within the borough. Officers welcome the fact that the starting point for social housing should be replacement.

**Summary:**

Page 25- 26. Vacant Building Credit – suggests a London wide approach to Vacant Building Credit, that in most circumstances it will not be appropriate to apply, setting out guidance to assess the applicability and criteria for boroughs to consider.

**Response:**

The Publication Local Plan reflects the overall approach set out in the SPG, stating at paragraph 9.3.2 “In London the majority of development is brownfield and does not need to be incentivised, as in many cases the building will only have been made vacant for the sole purpose of re-development, therefore the Vacant Building Credit will not apply.” The approach set out in the SPG is supported.

### **3. Guidance on Viability Assessments**

**Summary:**

Page 27 – Guidance on Viability Assessments & Page 28 - Appraisal Requirements, Development values and Growth Assumptions– Viability appraisal should be submitted as part of the application. Appraisals should include unit, habitable room, unit size, density and split of tenures. Figures should be provided as both GIA and NIA. The development programme and the timing of costs and incomes should be provided. Growth assumptions should be provided even if not as part of the main appraisal.

**Response:**

It is considered that the Council would support these proposals that are consistent with existing Council expectations. The inputs of viability assessment are expected to be discussed and agreed at the pre-application stage and the assessment is part of the planning applications validation checklist. The Council fully expects that a full viability assessment with agreed inputs is to be submitted at the validations stage before it is assessed by officers. Currently the Council asks for a summary of the viability assessment to be provided to be added to the Councils Website. However, officers are supportive of the principles of the emerging London Borough viability protocol and would be open to agreement of further transparency once the Council has had the opportunity to consult on its position.

We support the provision of growth assumptions, which can be key when negotiating affordable schemes that have low affordable housing levels offered. For consistency, the we would be

interested to know what growth assumption indices the Mayor intends to use to validate the applicant's growth assumptions

**Summary:**

Page 29 -Affordable Housing Values

**Response:**

See the response to Page 19 in supporting the principle of these proposals but questioning their practicality. It is considered that the Council would also support affordable housing values being contained in the Section 106 if these are agreed.

**Summary:**

Page 30 -32 – Build Costs, Planning Obligations and Developer Profit

**Response:**

Officers agree with the proposals in this Section which are consistent with current practice. Whilst agreeing the using of an IRR approach should not be used except on schemes above 1,000 units, officers would recommend that this should be at the discretion of the LPA and its advisers rather than setting affixed unit number when IRR could be considered.

**Summary:**

Page 32 -35 Benchmark Land Value and Existing Use Value + Premium Approach

**Response:**

We strongly support these proposals and that any other Benchmark Land value other than EUV + Premium approach should only be used in appraisals except in exceptional circumstances, for instance where there is an extant permission. This is consistent with the Councils' existing approach.

As stated if an AUV approach was accepted it would have to fully comply with development plan policies, that it could be implemented on the site in question and subject to detailed pre planning discussions.

As one of the Council's experiencing the highest level of prior approval permissions the AUV of a residential prior approval has a significant impact on residual value. Would it be possible to make it clear that prior approvals if forming an assessment of AUV will be required to demonstrate deliverability (including full floor plans and planning permission for any alterations required to enable implementation of the prior approval) and that there are no other barriers to delivery e.g. consents in place, infrastructure connections suitable.

**Summary:**

Page 37 – Approach to Housing Zones and Opportunity Areas

**Response:**

No comment.

**Summary:**

Page 37 - Strategic Industrial Locations

**Response:**

As there are no Strategic Industrial Locations identified within Richmond. The Council is seeking to protect employment land, but where any development is proposed on former employment land planning policies seek above normal policy requirements for affordable housing given the preference for an EUV+ approach.

#### **4. Build to Rent**

**Summary:**

Page 46 – Support for Build to Rent schemes in LDF's

**Response:**

As the viable threshold for BTR is around 50 units this may be less of an issue in L.B. Richmond given the limited supply of large sites. The Publication Local Plan recognises that the PRS can assist in meeting a range of needs and be particularly suitable for certain locations, however wholly PRS proposals are unlikely to be supported by the Council where they do not contribute to the higher priority need for affordable housing.

**Summary:**

Page 47 – 51 Suggested Review Formulas

**Response:**

The Council's preference is for the details of legal agreements and review formulas to be assessed on a case by case basis.



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Mayor Sadiq Khan  
Affordable Housing SPG  
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Date: 04 July 2016

Ref: MW/686

Dear Sadiq

### **Draft Affordable Housing and Viability SPG**

Thank you for the opportunity to respond to the public consultation on the draft Affordable Housing and Viability SPG. We support the London approach to affordable housing viability and find the SPG to be setting the context for the borough SPDs. However there are areas particularly where tenure mix is considered where the London approach may not be the same in every borough. Therefore we suggest that it would be useful for the London SPG to set out that there should be flexibility and that each borough is required to meet a local housing need where particular housing tenures, as set out in borough planning policies, may differ.

#### Viability and Planning:

Southwark Council supports the Mayor's aspiration to issue guidance in relation to affordable housing tenures and development viability. As noted, development viability has taken an elevated role in the planning process over recent years. Southwark Council, along with a small number of London boroughs, has taken a leading role in developing guidance to assist clarity, consistency, transparency and fairness in the assessment of development viability and thereby accelerate the planning decision process. The Council adopted a Development Viability SPD in 2016 and collaborated on the London Borough Development Viability Protocol, which was published in late 2016.

Many of the proposals in the draft guidance are consistent with the approaches to development viability information set out in Southwark's SPD and the London Borough Development Viability Protocol. However, owing to the Council's considerable experience in this field, it is considered that aspects of the proposed guidance could be enhanced to achieve better planning outcomes. Southwark Council also recommend the Mayor's guidance endorses the principle of '*if it ain't broke...*' in relation to boroughs which successfully operate a local approach. This would be

preferable to the Mayor's current draft which strongly encourages all boroughs to follow the Mayor's proposed approach.

#### Transparency of Information:

Southwark Council is in agreement with the Mayor that development viability information should be made publically available where development viability is relied upon to justify a departure from planning policy requirements. The draft guidance provides for exceptional circumstances where certain elements of a financial viability appraisal could be redacted. Southwark requires 100% transparency and encourages the Mayor to follow this lead. Southwark has found that, in the main, developers have been receptive to this approach and the approach is strongly supported by residents.

Where there is a risk that disclosure of information would fail the public interest test set out in the Environmental Information Regulations (EIR) Southwark has been able to work with applicants to ensure that any such information can be presented for public scrutiny in such a way that would not prejudice the development proposal. In the unlikely event where this would be impossible then applicants can rely on the EIR regulations. There should be a strong presumption in favour of full transparency and it is unnecessary to present any exceptional circumstances which may apply by virtue of Government regulations in the guidance as this may encourage some applicants to stretch the definition of exceptional circumstances.

#### The 'Threshold approach':

Southwark Council currently requires a financial viability appraisal in support of all planning applications which trigger an affordable housing requirement; irrespective of whether the affordable housing offer meets policy requirements. Whilst supportive of the Mayor's objective to simplify and accelerate the planning application process and encourage faster housing delivery, the Council has concerns about possible unintended consequences that may arise from the Mayor's proposed 'threshold approach'.

A crucial role for planning authorities is to ensure the sustainable development of its area. An important consideration when determining planning applications is whether a proposal is deliverable. In the absence of evidence to demonstrate an affordable housing offer is viable a planning authority cannot be assured a proposal is in fact deliverable. Offering a 'fast track' approach which circumvents scrutiny of scheme viability may encourage some applicants to offer a policy compliant affordable housing offer which is not actually viable.

This may be attractive to investors who do not intend to build a proposed scheme themselves and it may be attractive to developers who have taken a speculative view about favourable changes in market conditions which would result in the proposed scheme becoming viable at some future point. Whilst it may be acceptable for a developer to take a reasonable view on market changes, some developers may rely on overly-bullish market forecasts. If the forecast is not borne out in reality then the scheme will not be implemented. In such a scenario the owner of the planning permission could either wait until such a time that the scheme can be developed viably or they may request a downward revision to their affordable housing obligations. Neither option is attractive to the planning authority.

The Council does not consider the submission of viability information to represent an unreasonable burden to applicants and the complexity and cost of preparing a financial viability assessment is often exaggerated. No developer would propose a scheme of development without having assessed the viability of their proposed scheme. As such the viability information will be available and relatively straightforward to present in a format that can be scrutinised by a planning authority. It is the view of the Council that the value in having financial viability information available for scrutiny outweighs the limited benefits that could be achieved through waiving the requirement.

The Mayor's proposed approach to viability reviews also appears to be predicated on the assumption that a financial viability position has been agreed with the planning authority for Route A and Route B schemes. This is because any scheme which benefits from Route B will be subject to an early viability review if an agreed level of progress is not made within two years. The guidance states that the S106 Agreement should set out an agreed Benchmark Land Value which will form the comparison for the viability assessment if triggered by the review mechanism. By implication therefore there is a need for a financial viability appraisal at the application stage in order to secure an effective review. The proposed guidance is not at all clear how an agreement on the Benchmark Land Value could be reached in the absence of a financial viability appraisal at the application stage.

The Council suggests the Mayor considers a lighter-touch approach to the assessment of viability for policy compliant schemes but which still enables the planning authority to consider the deliverability of the proposal. This could take the form of a viability appraisal summary. Provided the broad cost estimates and anticipated development value are considered to be reasonable then a requirement for a detailed full financial viability appraisal could be unnecessary. All values presented in such a financial viability appraisal executive summary would form the basis of any subsequent review.

#### Grant:

This notwithstanding, the Council has concerns that the proposed grant structure may disincentivise the provision of family affordable homes. The guidance states that a fixed grant of £28,000 will be available for all additional affordable homes irrespective of number of bedrooms provided. This perverse incentive could be neutralised by linking the level of grant proportionately to the floor area or number of habitable rooms provided. A flat rate grant may also disincentivise the provision of affordable housing tenures with a greater opportunity cost, i.e. social rent and London Affordable Rent, in favour of intermediate tenure homes. The Council recommends the Mayor makes available higher grants for social housing than that which is available for intermediate tenure homes. If the Mayor intends for grant to facilitate local housing needs equally (as defined by the local planning authority) there should be a differential grant level depending on the tenure of affordable housing being funded. The difference in grant should neutralise the impact of providing different types of affordable housing to the applicant.

A further concern is that the flat rate grant does not reflect local market conditions. A higher level of grant is required in higher values areas, such as inner-London, to that

required in lower value areas, such as outer-London, in order for the grant to provide an equal incentive. A flat rate grant may favour affordable housing delivery in outer-London at the expense of inner-London.

#### Tenure:

The Council welcomes the Mayor's aspiration to improve diversity in affordable housing products to meet a range of housing needs. The Council particularly welcomes the proposed London Living Rent as a new preferred intermediate housing tenure that could meet the needs of households that would struggle to afford Shared Ownership.

Furthermore, the Council is concerned that the guidance states that the split between shared ownership and London Living Rent should be determined by applicants (in discussion with their RP partner). This raises two concerns. Firstly, not all applicants bring forward a development proposal with an RP partner. Secondly, there may be instances where a borough has a strong reason to favour shared ownership over London Living Rent (or vice-versa). For example, in some higher value areas shared ownership is an unaffordable product for the majority of eligible households because access is dependent upon the availability of a very substantial deposit. Again, it is important that boroughs are encouraged to determine the acceptability of alternative forms of intermediate housing.

The Council is currently preparing evidence, on the grounds of affordability, for prioritising London Living Rent or shared ownership based on local market conditions.

The Council strongly disagrees that self-contained studios should be acceptable as part of an affordable housing offer.

#### Guidance on Viability Assessments:

The Council is generally supportive of Part 3 of the proposed consultation. It seems reasonable that a developer can scenario test various growth assumptions in order to demonstrate their proposal is deliverable. However, it is important that where a developer relies on growth assumptions to underpin an affordable housing offer these growth assumptions cannot be relied upon to justify any subsequent appeal for a downward revision in affordable housing contributions. Any growth assumptions which do not materialise must be at the risk of the developer and this should be absorbed by the developer by achieving a lower profit than the target profit and not at the expense of affordable housing. Applicants who rely on growth assumptions should confirm that the scheme will proceed irrespective of whether the growth assumptions are borne out and that they are prepared to accept a lower profit level in such an event.

#### Build to rent:

##### DEFINITION:

The Council agrees it is important to have a clear definition for institutional PRS schemes and for any such schemes to be secured through a covenant. Southwark considers the minimum covenant should be for 30 years, rather than 15, as proposed in the guidance. The Council also supports minimum three year tenancies for private tenants. The Council considers that the clawback Option Two provides the strongest

incentive for developers to retain homes in the PRS. Option One does not provide for a review that takes into account any improvement in viability that may have occurred between the grant of planning permission and the point at which the scheme exits the PRS.

It is recommended the Mayor eliminates the opportunity for developers to negotiate shorter tenancy periods. The current wording uses the term 'ideally'; this implies longer tenancies are desirable but not essential.

#### AFFORDABLE HOUSING TENURE:

The Council considers that affordable housing tenants in PRS schemes should be offered longer tenancies of at least five years, to bring them in line with the maximum new social tenancy period following the changes to lifetime tenancies introduced by the government

#### DESIGN:

The Council does not accept that PRS homes may not require the same standard of design as build for sale homes.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Mark Williams', followed by a long, horizontal, slightly wavy line that extends to the right.

Cllr Mark Williams  
Cabinet Member for Regeneration and New Homes

## **Mayor of London - Consultation on Homes for Londoners: Draft Affordable housing and Viability SPG 2016.**

### **Response by the London Borough of Sutton**

#### **Background and Approach (Part 1)**

The Council welcomes the Mayor's approach in trying to achieve a London-wide 50% affordable housing target. This is consistent with the 50% borough target set in the council's emerging Local Plan. Whilst the council is supportive of the general thrust of the SPG, particularly in seeking to make viability assessments more transparent and representative of true costs and realistic profit levels, it does have concerns that the threshold approach to viability does not go far enough to ensure the delivery of a meaningful proportion of affordable housing. In addition, it is disappointing that the document is silent on the potential contribution of small sites to affordable housing. Notwithstanding the government's view on planning obligations in relation to sites of 10 or less units and the difficulties in assessing such contributions, these sites make up about 30% of this borough's housing supply and have significant potential to contribute to affordable housing supply or to provide off-site funding. Evidence from borough-wide appraisals have shown such sites have higher residual land values than sites in excess of 10 units because of a lack of affordable housing requirement.

The council welcomes the Mayor's desire to see information relating to viability appraisals available for scrutiny and comment, like other elements of a planning application. We would welcome the legal principles underpinning the GLA's proposed approach being shared with London boroughs so that Local Planning Authorities can adopt a similar approach. The council does have some concern as to whether the Mayor's making most or even all information submitted by an applicant public would lead to less information being submitted.

#### **Threshold Approach (Part 2)**

Whilst the council would welcome such an approach in principle it has strong reservations about whether it will deliver the desired outcomes in practice. Judging on present performance, sites coming forward with 35% or more affordable housing are very few and thus this approach is unlikely to reduce the number of S106 agreements. This is unlikely to change unless appraisals can be made more transparent with a standardised framework with standardised costs/profit margins undertaken by accredited appraisers to reveal the true cost of the development.

In the council's view, to have a longer term effect on affordable housing supply and to hold down land prices, a different approach is required. This would require all developments to provide a fixed non-negotiable proportion of all floorspace on site as affordable. In this way, site prices would not be inflated by those developers prepared to outbid others on the basis of their confidence in negotiating away S106 requirements. Once such an approach was in place both CIL and affordable housing would have to be discounted from the land value. This approach would have to start from a fixed date in the future in order to not unreasonably affect those developers that have already secured sites under the current regime. Provided such an approach is adopted consistently it should reduce land prices. Where there was

evidence that owners were not bringing forward their sites in the hope of future changes to legislation, local authorities should be encouraged to acquire sites at the new reduced value either to pass onto developers or to use for their own housing purposes.

We have read with interest the recently published study “Viability and the Planning System: The Relationship between Economic Viability Testing, Land Values and Affordable Housing in London prepared for 13 London boroughs and would commend its recommendations to you. Some of these chime with what we have written above and with what the Mayor is seeking to achieve.

For some high density sites, where there may be management issues because affordable and market units would have to share the same block, it may be necessary to ensure that the developer provided the affordable housing contribution off-site or provided an equivalent contribution to enable the local authority or a housing association to be able to provide that level of affordable floorspace on another site.

The council supports a process that triggers viability reviews if planning permissions are not commenced within 2 years and prior agreement is reached to how that progress is defined. Furthermore, guidance as to how the additional affordable contribution is calculated is welcomed. The downside will be administering such additional requirements and costs even though the cost of appraisals will fall to the developer.

Para 2.28 refers to London Plan Policy 3.11 asking LPAs to set separate targets for social/affordable rented and intermediate housing in their areas and yet para 2.30 refers to Boroughs and the GLA needing to reach agreement on the tenure mix and it being published as part of this SPG. This compromises the LPAs flexibility and its plan making process.

In terms of the request for feedback on the Mayor's preferred tenure split set out in para 2.28 the council is not entirely clear as to how this is intended to work. If the council's understanding is correct, whilst we welcome the flexibility for the LPA to allocate different amounts of the 'remaining 40%' to either the 30% allocated for low cost rent (social/affordable rent) or 30% intermediate products, this would still limit the council's preferred tenure split based on its own local needs study. This suggested a 75:25 split between social /affordable rent and intermediate.

The council would welcome clarification on what the GLA consider to be acceptable affordable housing products in terms of the definition of affordable housing. Clearly, there is little point in seeking to secure more affordable housing if what is ultimately secured is not truly affordable. In this respect it would be helpful to have guidance on what are considered to be affordable products (given so many recent changes) and in the case of intermediate products what are considered to be upper income limits. Such guidance would always need to be considered in the local context but would none the less be very useful.

#### *Loss of existing affordable housing, including estate renewal*

The Mayor expects affordable housing in estates to be replaced during regeneration on a like for like basis meaning at least the equivalent floorspace of affordable housing. The council supports the principle of retaining the same floorspace of affordable housing but is concerned how practical this would be where it is not possible to significantly increase density. Therefore there needs to be some flexibility if estate regeneration is to take place. For example, if some of the affordable floor space were configured into one bedroomed units at London Living Rent levels, this might enable a greater proportion of affordable rented

family homes to be delivered.

### *Vacant Building Credit*

The attempt to provide some clarity is welcomed but it is considered this guidance to boroughs needs to be given more strength in the London Plan as many boroughs such as Sutton will have already developed their Local Plans without including any reference to how they will deal with this matter. We also believe that there needs to be a pan London approach. It would also be worth providing clarification on how the vacancy test for vacant building credit and the vacancy test for CIL/CIL relief relate to one another and some worked examples included. It is also not clear how the content of para 2.60 can be used to determine whether vacant building credit should be applied and not be appropriate in most cases in London (first sentence of para 2.61). It would be clearer if the tests in para 2.62/2.63 were put into the London Plan as suggested above.

### **Viability Assessment (Part 3)**

The council welcomes the standardisation of viability assessments. If all boroughs adopt a similar approach it is more likely that developers will adapt and there will be a cross-London effect on land prices. In this respect the council considers that:

- Building in growth scenarios as a scenario test in addition to the main appraisal (based on current values) helps an understanding of what might happen in the future, particularly if the scheme is currently considered marginal.
- It is helpful to include the price the Registered Provider has agreed to pay for each unit in the appraisal and how it will change through the phasing of the development.
- The attempt to agree a list of standardised costs that can be included and how they should be assessed is welcomed. It is particularly important to stress the point in para 3.25 about abnormal costs. It is the developer's responsibility before acquiring a site to have undertaken all relevant surveys and to take account of any abnormal costs. These should then be taken off the price offered for the site. Often these are presented instead as unforeseen additional costs to be taken account of in appraisals whereas they often reflect lack of due diligence on the part of purchasers. Until this is made clear land values are unlikely to reduce.
- Again, it should be made clear that all planning obligations and CIL charges need to be discounted from the price paid for the land. Too often it seems developers are willing to increase their bids for sites on the basis they can subsequently negotiate away planning obligations.
- The council supports the view that developers' profit should be revised to support current market conditions and should not remain constant when interest rates are low.
- The council welcomes incorporating review mechanisms into section 106 agreements particularly for larger developments spread over many years or where development is delayed to ensure the council receives its appropriate amount of affordable housing.
- We wonder whether it would be feasible to try to move towards having a register of accredited viability assessors or setting up a neutral panel of assessors who were bound by professional rules of conduct to give truly independent assessments. In this way it might lead more developers to bring forward schemes which meet the 35%



threshold test.

#### **Build to Rent (Part 4)**

The council welcomes the guidance on Build to Rent schemes, given the difficulties arising from the absence of a distinct use class for such properties. In particular, we welcome the proposed specific Build to Rent viability approach. However, the 50 unit threshold suggested appears somewhat arbitrary and would only apply to very few sites in this borough. We believe a less prescriptive approach allowing boroughs to test with Build to Rent investors and developers the optimum level of provision.

We welcome the clawback options set out in the guidance.

However, we believe that the sections on affordable housing tenure need to be varied and strengthened. We query why the Mayor is stating his preference for the Discounted Market Rent (DMR) provision in a scheme to be London Living Rent. We would prefer that the guidance should state that rents should be set at at least the London Living Rent, given that these are a range per ward this still provides PRS developers the scope to argue for rents at the higher end of this range. We also believe Build to Rent developers should be willing to negotiate a range of submarket rents to satisfy the LPA's expectations of affordable housing. We believe that many investors in this sector are willing to do so. However, the guidance appears to accept that DMR in PRS schemes should solely be intermediate or London Living Rent.

We believe it is crucial that the Mayor sets out clearer expectations of access to this product for households in need on Council housing registers on modest incomes, including homeless families. There is a growing number of families who are homeless simply because the existing private rented sector market is dysfunctional, with many households facing termination of assured shorthold tenancies where the landlord is seeking a higher rent or wishes to sell the property. In this context, Build to Rent investors and developers and their managing agents should become accustomed to accepting referrals and nominations from local authorities for such families. If London is to be an inclusive city which provides access to good quality rented housing for people on all income levels, the Mayor and London boroughs should work collectively to build this expectation into the range of products that this sector can produce.

Finally, on a general issue relating to affordable housing, in para 2.8 it is suggested that affordable housing should be measured in terms of habitable rooms. Given that habitable rooms can vary in size would it not be more equitable to express proportions of affordable and market housing in terms of floorspace.

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8 February 2017

[mayor@towerhamlets.gov.uk](mailto:mayor@towerhamlets.gov.uk)  
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Dear Mayor Khan,

**Re: Consultation on *Homes for Londoners Draft Affordable Housing and Viability SPG***

Thank you for providing the London Borough of Tower Hamlets ('LBTH') with an opportunity to comment on this draft SPG. Overall, we are supportive of the measures set out in the SPG and share your view that many of these measures will help address the challenge of delivering enough housing in London.

In relation to some of the key elements of the SPG, we comment as follows:

**A Threshold Approach to Viability**

LBTH are cautiously supportive of this proposal but would like the proposal to be regularly reviewed to ensure it is an effective measure. In addition, LBTH would appreciate more information relating to how the review mechanism will operate. One concern LBTH has is that the review mechanism seems to be based on a future revaluation of the benchmark land value agreed at application stage; the link between the ability of a scheme to deliver more affordable housing and the change in a benchmark land value may be tenuous – an alternative may be a simple formula that compares changes in house prices (Land Registry House Price Index) with build cost changes (BCIS All-In Tender Price Index).

**Grant Funding**

Whilst the availability of grant funding does not originate from the SPG document, LBTH supports the availability of grant funding to increase the delivery of affordable housing and it will be considering how it can best ensure schemes in the borough can make the most of the grant funding available.

**Starter Homes**

LBTH is supportive of the approach to providing an update to the approach to Starter Homes in London once the relevant regulations have been published. LBTH would like it known that we do not consider Starter Homes to be an appropriate Affordable Housing product for the borough and would encourage the Mayor of London to take a stance opposing this product, subject to the content of the recently published Housing White Paper and the forthcoming regulations.

## **Vacant Building Credit**

LBTH is supportive of the approach set out in the SPG and does not consider that the Vacant Building credit is an appropriate mechanism to increase the likelihood of housing development being delivered in London.

## **Benchmark Land Values in Viability Assessments**

LBTH is supportive of the approach of the SPG in this regard and considers the measures set out will help to increase the provision of affordable housing in the borough. LBTH would like to point out that it has recently published its own Development Viability Supplementary Planning Document (SPD) and the proposed approach to Benchmark Land Values in this document are consistent with the approach proposed in the SPG – we would welcome any comments the GLA has on our SPD.

## **Mayor of London's Call-In Powers**

LBTH is supportive of the proposal that the Mayor will 'call in' applications where viability requirements have not been appropriately addressed and where further planning obligations can be accommodated in the planning application.

## **Review Mechanisms**

LBTH finds it helpful that the SPG is prescriptive with regard to viability reviews but notes that the SPG describes that surplus profit should be split 60/40 between the Local Authority and applicant/developer. This represents a significant increase on profit generally allowed for in application stage viability assessments. There is no evidence to suggest that developers require additional levels of profit in delivering a scheme for which the planning obligations have been increased as a result of a review. Can the Mayor of London please consider making this an 80/20 split – this better accords to prevailing application stage requirements and there is no evidence to deviate from this approach.

## **Transparency of Viability Assessments**

LBTH is supportive of the approach and is seeking to implement its own position of transparency in due course.

## **Assessing Build to Rent Schemes in a Viability Context**

LBTH is generally supportive of a clarified approach to assessing Build to Rent schemes in a viability context although has the following concerns:

- a. LBTH would question if the distinct economics of a build to rent scheme would warrant the provision of lower levels of affordable housing versus a sale scheme as implied by the SPG;
- b. The suggestion that policies requiring a range of unit sizes should be applied "flexibly" to Build to Rent, with 1 and 2 bed units prioritised needs further consideration. Given the growing number of families currently living in, often poor quality, private rented accommodation in the borough, we would be keen to encourage the use of Build to Rent to meet their needs and help ensure greater security of tenancy. The 2011 Census

- c. revealed that almost 30% of families with dependent children were living in the private rented sector. This is likely to have increased over the 6 years since the census, given the increasing affordability barriers to ownership. We would be interested in understanding the evidence used to come to the GLA's alternative conclusion.
- d. The approach to relaxing space standards. Whilst this may have positive benefits for affordability, it limits the adaptability and usability of these units in the long term. This is especially concerning given that the units may transfer to private for sale housing after 15 years, when they may no longer have enhanced on-site management.

In relation to concerns B and C above, LBTH would like to emphasise that the relaxing of space standards and the flexible application of unit sizes to Build to Rent schemes should be further considered, particularly in terms of any application to the affordable elements of these schemes.

We are aware of a number of different products and typologies of Build to Rent emerging within London (from student housing style products to traditional flatted developments) and we would like to see the SPG provide a greater degree of guidance as to what is considered suitable for meeting London's needs. It is our view that some of the products coming forward do not contribute towards meeting long-term housing need which is adaptable to the changing needs of residents.

#### **Loss of existing affordable housing and estate renewal**

LBTH is supportive of the approach described in the SPG.

#### **Affordable Housing Tenures: "London Living Rent" and "London Affordable Rent"**

LBTH are generally supportive of the approach of the SPG (and associated documents) but would like to point out:

- The borough fully intends to provide affordable housing products that are genuinely affordable and in line with the requirements for London Affordable Rent. In terms of the London Living Rent the Council will review the application of this tenure type in the context of the other intermediate products offered by the borough – it may be the case that in certain localities it is preferred to say, shared ownership. LBTH will work with the GLA throughout the adoption of its new Local Plan to ensure these products are appropriately accommodated.
- LBTH agrees with the concerns expressed as to the affordability of intermediate products and agrees that shared ownership may not be suitable where the unrestricted market value of a property exceeds £600,000. However this does mean that parts of the borough (such as the Isle of Dogs), where a large amount of development is taking place, will only produce locally unaffordable shared ownership properties, in particular the London Living Rent Product. This is due to the rent formula being heavily dependent on house prices in each ward. Given that rented affordable housing is also often not suitable due to the high-rise typology of the development coming forward, this has negative impacts on creating mixed and balanced communities. LBTH would be interested in the GLA considering reducing the link between the value of London Living Rent homes and the property's market value and strengthening the relationship between the value of London Living Rent homes and local incomes.

Paragraph 2.29 asks Local Planning Authorities (LPA's) to provide, as part of the consultation, information on where boroughs intend to deliver low-cost rent if above London Affordable Rent levels,

information on where boroughs might prioritise types of intermediate housing products over London Living rent and shared ownership products, as well as what LPA intends for the 40% of affordable housing that the Mayor of London proposes is appropriate for determination by the LPA. Taking these responses in turn, LBTH does not intend to deliver low-cost rent above London Affordable Rent levels nor does it intend to generally deliver Intermediate products apart from Shared Ownership and London Living Rent. In terms of the 40%, LBTH intends for 5% to be allocated to delivering Social Target Rent products whilst 35% to be dedicated to delivering the Tower Hamlets Living Rent which is based on local wage levels. Please note that the Council is in the process of renewing its Local Plan so this may be subject to change.


### **Guidance on Viability Assessments**

LBTH is supportive of the approach described in the SPG but would comment that with regard to development values (paragraphs 3.10 – 3.12), this provision could be expanded slightly to state that where comparable transactions are used to establish sales value inputs and where they are more than three months older than the point of negotiation, that the comparable values should be updated according to the Land Registry House Price Indices.

### **Affordable Student Housing**

Emerging LBTH Local Plan policy will add emphasis to the need to deliver affordable student accommodation, where appropriate, in the borough. This is referenced in the London Plan but not in the SPG. LBTH had expected greater clarity to be provided in respect of affordable student accommodation policy set out in the London Plan so asks whether this greater clarity could be added to the SPG?

Yours sincerely,



John Biggs  
Executive Mayor of Tower Hamlets

## **Wandsworth Borough Council Response to**

### **Draft Affordable Housing and Viability Supplementary Planning Guidance**

#### **1. Background and Approach**

##### **Summary:**

Page 9. On schemes referable to the Mayor, the Mayor will adopt the approach set out in this guidance and LPA's are strongly encouraged to follow this approach.

Page 11 - 12. The Mayor will expect submitted viability appraisals by an applicant and their assessment by the LPA to be available for public scrutiny, unless there are exceptional and legitimate circumstances for not doing so.

##### **Response:**

Support. Core Strategy Policy IS5 requires a viability assessment on schemes of 10 or more units where less than 50% affordable housing units are being proposed. The Council's Planning Obligations SPD requires all viability appraisals to be independently assessed with the findings and recommendations being provided to members of the Planning Applications Committee for their consideration subject to commercial confidentiality considerations where relevant. When the initial appraisal has been provided the aim will be for the Council and/or its assessors and the applicant to agree the inputs being used in that appraisal. Where there is disagreement in relation to certain inputs and no agreement can be reached, the Council may elect to report this to the Planning Committee. Alternative options may be put to Committee in terms of affordable housing that might be required (given the inputs used by the Council) or the Committee may be asked to consider the use of a review mechanism which would allow actual (financial) inputs to be considered in addition to these circumstances. The Council is due to update its Planning Obligations SPD to include commitments to further transparency in accordance with the London Borough wide Viability Protocol.

The GLA will be aware that inputs to viability can be in dispute up to the day of a committee. Wandsworth Council do not consider it appropriate to publish viabilities which may be subject to revision. However it is clearly reasonable to set out to the Committee the discussions on financial appraisals that have been undertaken, areas of dispute and resolution and in turn to publish the assessment and as appropriate the viability appraisal as soon as possible. Therefore planning authorities can be seen to be being transparent in terms of process and discussions whilst also taking forward applications so they can be concluded to facilitate and enable development.

#### **2. Threshold Approach to Viability**

##### **Summary:**

Page 13 -14. The SPG does not set out a fixed target for affordable housing developments but specifically focuses on viability to deliver the maximum reasonable amount of affordable housing. The Mayor has an aspiration of a long term strategic aim of 50% of all new homes in London being affordable and the approach to affordable housing delivery will be a key consideration in the London

Plan review with draft consultation expected in the Autumn. At this stage, the SPD does not and cannot introduce new policy.

The SPG introduces a “threshold approach” whereby schemes meeting or exceeding 35% affordable housing without public subsidy and policy compliant with the requirements of the Homes for Londoners guidance are not required to submit viability information. This will apply to any scheme of 10 or more units.

**Response:**

The Council require any scheme delivering less than 50% affordable homes to submit a viability appraisal to support the quantum of affordable housing being proposed, an expectation of a minimum of 15% affordable housing in Vauxhall Nine Elms and 33% in the rest of the borough will be provided subject to the viability assessment. It is unclear from the SPG how a council would know whether a scheme providing 35% affordable housing that was policy compliant could in fact deliver more than 35% affordable housing, as there will be no requirement for an applicant to provide a viability appraisal with such an offer.

Furthermore it is not clear how a council would be able to test the viability of providing other planning obligations as well as affordable housing. As at present 35% affordable housing is rarely achieved as is evidenced for London by the Mayor’s AMR, In reality if negotiations seek to secure other planning obligations such as education or community facilities, the affordable housing offer is reduced below 35% and the overall viability of planning obligations sought by the council can be tested.

It is unlikely in most circumstances that the 35% threshold to exempt an applicant from having to provide a viability appraisal would provide any incentive to developers in Wandsworth, as the vast majority of schemes in the borough deliver 20%-30% affordable housing after a viability assessment. It may therefore be more appropriate for the GLA to set the threshold at 30% affordable housing to provide greater incentive to developers to deliver this quantum of affordable housing to avoid a viability appraisal, although the same challenges would arise as mentioned in the preceding paragraph.

The percentage could be subject to review and progressively applied as the market adjusts to this benchmark.

It is not agreed that the tenure mix also needs to be fixed for the 30/35% to apply. This should be a matter that is left for local planning authorities to determine and as necessary settle the tenure mix with GLA Officers as appropriate.

**Summary:**

Page 14. The percentage of affordable housing should be measured in habitable rooms.

**Response:**

The Council currently measures quantum by units than habitable rooms. The adoption of habitable rooms would be more onerous than units on schemes for intermediate affordable housing where there is a greater emphasis on smaller units due to affordability and possibly less onerous on



schemes for affordable rent where larger homes are required. Overall however, officers are not averse to representing the level of affordable housing being delivered in a number of ways that may show that the Council has maximised delivery and sought the best mix of housing and tenures for the locality in question.

**Summary:**

Page 15 - For schemes not meeting the 35% threshold a viability appraisal will be required and assessed to determine the maximum reasonable amount of affordable housing that could be supported by the development. There would also be two reviews. One as in the preceding paragraph where milestones have not been achieved. If this demonstrated a higher level of affordable housing could be achieved, this would be provided on site. The second review may not be required if the scheme is delivering significant other social infrastructure such as transport, health or education but this is at the LPA and GLA's discretion. The second review, would be applied after 75% of market sales. Where a surplus is identified this would be split 60:40 between the Council and the Owner and taken as a commuted sum ringfenced for the delivery of affordable housing. The surplus would be capped at the equivalent of the scheme delivering 50% affordable housing. The review mechanisms do not allow for a reduction in the affordable housing already consented.

**Response:**

We would generally support an interim review that would be applied where triggers had not been met, albeit there would need to be some discretion in respect to limited extension of timescales where there is demonstrated good reason (e.g. external factors such as public works which would delay delivery for a short period).

In some respects, ignoring the first review, this is not dissimilar to the Council's current policies contained within the Council's Planning Obligations SPD. The main differences are that the Council's review is triggered at 90% sales. The Council also try to agree the maximum reasonable amount of affordable housing with a developer and where the Council is satisfied this is the case we do not require a review mechanism. The SPG approach would make a review mechanism mandatory which we do not agree with in every circumstance. A final scheme review should only be required where the LPA is not satisfied that the maximum reasonable level of affordable housing has been achieved and/or where the offer of affordable housing has been offered on current values, costs and assumptions with the applicant failing to offer affordable housing above the level determined at risk.

In addition the Council do not usually seek review mechanisms on schemes below 20 units whereas the SPG approach applies to schemes of 10 units or more. This should be considered to ensure that the planning process does not get unnecessarily jammed by re-visits of applications and reviews.

**Summary:**

Page 16. For applications meeting the 35% affordable housing without public subsidy and policy compliant with the requirements of the Homes for Londoners guidance, there would be no review mechanism, save for a review mechanism after two years if the scheme had not progressed to certain milestones agreed by the LPA.



**Response:**

Although the Council's current Planning Obligations SPD does not require such a review mechanism, it does not seem unreasonable to incentivise a developer to progress works after a planning consent is granted and the milestones to be agreed would be at the LPA's discretion. This would clearly need to be sensitively managed for larger and phased developments to not create over onerous obligations.

However, as above officers are not clear as constructed whether the 35% affordable threshold would be an option that a developer and existing land owner would take up. The risk here is that a well founded policy proposal will not be utilised for the sake of a level of flexibility on percentage and tenure which would allow this proposal to bed in not least as the property market responds.

**Summary:**

Page 19 - Applicants should have an RP engaged prior to progressing the scheme and secure from them a commitment to affordable housing provision at an agreed purchase price.

**Response:**

The Council do not currently require this although developers are required to transfer the affordable units to one of the Council's preferred RP development partners, unless another RP is approved by the Council. Whilst officers would not oppose the principle set out in the SPG and encourage early engagement with RPS, this may not always be possible as schemes evolve during the pre planning process and often after an application has been submitted in terms of number, type, affordability and location of units, which would make it difficult for an RP to commit to a purchase or a price for the units.

There is also a risk that prices will be pegged unnecessarily by what a RP is willing to pay that may bear little relation to what if properly marketed the RP market might be willing to pay. It follows that the less paid the less affordable housing delivered. This presents therefore as an inadvisable commitment which does not allow for the market to be fully tested or use of market intelligence to be utilised.

**Summary:**

Pages 19 -22 Preferred Tenure Split – at least 30% at LAR, 30% LLR and/or LSO and 40% to be determined by the LPA. The LPA to give justification as to why

- A. It would wish to set benchmark LAR rents above those stated by the GLA.
- B. Robust evidence for any other intermediate products other than LLR and LSO
- C. To state their preferred preference for tenures of the discretionary 40% and this will be set out in the final version of the SPG

When considering the mix, LPA's should take into account the values generated by different types of affordable tenures on delivering the 35% threshold.

**Response:**

The Council seek a minimum of 33% affordable housing split 60% affordable rent to 40% intermediate housing subject to a viability appraisal in accordance with the Local Plan. This mix is indicative and each scheme is considered on its own merits when seeking to maximise the reasonable amount of affordable housing a scheme can support and taking into account the height and massing of the scheme, its location and the location of the tenures within the scheme and their bedsize.

The Council sets annual affordability guidance for affordable rent and intermediate housing. For affordable rent ( which include services charges these are set at two levels, "capped" affordable rents that are set at a lower percentage to open market values and "discounted" affordable rents that are set at higher percentages to open market rents. Generally we seek to require larger family sized affordable rented units (3 bed +) to be affordable at capped levels and smaller units at discounted affordable rents aimed at working households. For intermediate housing the Council sets affordability criteria as to who these units should be affordable to. These are currently set at 50% of 1 bed units affordable to those on gross annual household incomes of £ 46,000 pa, 50% of 2 bed units affordable to those on gross annual household incomes of £ 56,000 pa and 50% of 3 bed units affordable to those on gross annual household incomes of £ 62,000 pa. The remaining 50% of intermediate units have to be affordable to gross household incomes within the GLA intermediate income thresholds, currently £ 90,000 pa

The LAR benchmark rent levels are substantially below the Council's capped affordable rent guidance but are exclusive of service charges. It would be anticipated that once service charges are deducted from the Council's capped affordable rent levels and added to LAR rents the difference between the two levels may not be significant. However, the Council rarely achieve 30% capped affordable rents (except on Council self build schemes where there is no up front land value or developers profit to be accounted for) on any scheme and therefore adopting 30% LAR will come at a greater cost to the scheme as the price an RP pays for these units will be lower than they can afford to pay utilising the Council capped and discounted affordable rent guidance. This in turn will mean less affordable housing can be supported making achieving the 35% affordable housing threshold even harder to achieve.

As stated above, this would reinforce officer's view that a 30% threshold should be targeted rather than 35% given under existing policy the Council rarely achieves more than 30% on developer led schemes. Flexibility to negotiate a 60/40 split of affordable rent to intermediate would also be preferable and could be subject to review.

Whilst it may be argued that land values will adjust to take account of the SPG requirements, this will take time to factor into the market place and many schemes and landowners aspirations built on many previous years of delivery across mayoral cycles will not reflect the land values transactions in the near future. WBC therefore consider the GLA should have in place transitional arrangements in the 2016 – 2021 programme to account for this context.

Council officers have initially assessed the anticipated LLR rent levels utilising the proposed formula in WBC against the Council's current intermediate housing policy. Early conclusions are that they would be affordable in most areas of the borough although may be problematic in terms of affordability for 3 beds.

It is proposed that after 10 years the LLR units are converted to shared ownership by selling to the existing tenant or someone else. Is it the GLA's intention that after 10 years a LLR tenant is evicted if they can not afford to purchase under shared ownership terms?

Whether tenants would have sufficient disposable income after 10 years to enable them to be able to afford to purchase on shared ownership terms is difficult to predict as this will be dependent on personal circumstances, house price movements and a households employment over the period. So whilst Wandsworth would broadly support this aspect of the LLR amelioration needs to be considered to the introduction of the product does not store up problems for the future (e.g. renting linked to a savings plan, clear expectations in relation to money advice and support being given by the registered provider if they cannot buy).

There is also contradiction that LLR homes are only eligible to those on gross household incomes of £ 60,000 pa whereas shared ownership homes are eligible to those on gross household incomes of £ 90,000 pa. How would these be valued on viability appraisals given they could convert to shared ownership at any period within the 10 years and would those on £ 60,000 incomes have enough surplus saved from LLR rents to enable them to purchase shared ownership property eligible to those on £ 90,000 incomes.

It is also proposed that LLR units are let immediately on the GLA website Pan London portal. The only instance where LPA's could prioritise local applicants would be if the demand for the LLR units in any given scheme exceeded supply. In that case RP's could prioritise those applicants that met the LPA's local priorities, rather than allocating on a first come first served basis. There is, however, no clarification on how long this prioritisation would last. It is considered that Wandsworth Council would not agree to this and officers do not support this. These homes with other affordable homes delivered should be prioritised to meet significant and evidenced local demand first and would only be marketed more widely after a set exclusive marketing period agreed within the Section 106.

LSO – So whilst officer's consider that the Council is broadly supportive of this product, Wandsworth Council will be maintaining the same eligibility and marketing requirements that exist for current shared ownership, including local affordability and 3 month marketing for LPA's.

In terms of other intermediate products officers consider products such as Pocket Homes and intermediate rent can provide useful alternative forms of affordable housing to meet housing demand and this had been detailed in the Councils Housing Strategy. The Council would seek to retain these options and a degree of flexibility in how they meet the Home for Londoners aspirations should be available.

## **Summary:**

Page 19. Setting out the breakdown of tenures should be for the Council's 40% discretion.

**Response:**

It is considered that it would be Council's expectation that to achieve this target the majority of this 40% would need to be a form of intermediate housing, as LAR will have a relatively low value and be a considerable cost on the GDV of any scheme. As each site needs to be considered on its own merits, it is not considered appropriate to have a definitive assumption on the affordable tenures that would be sought for this 40% and that the tenure mix is considered on each application. Officers would suggest this is necessary also to help address the transitional period of the imposition of the Homes For Londoners policies mentioned previously.

**Summary:**

Page 22. Affordability should be based on housing costs being no more than 40% of net household income and that affordable housing is secured in perpetuity

**Response:**

The Council assume 45% of net household income should be expended on housing costs with net income being 74% of gross. It would be preferred to retain this position and also support affordable housing to be secured in Legal agreements for future households. Such a position recognises that in certain localities a household will be willing to pay more for housing as a more central location will mean that in turn that household would be spending less for instance on travel costs. Equally lower council tax levels would mean more disposable income. So there are a number of factors to take into account.

**Summary:**

Page 23. Starter Homes.

**Response:**

As with the Mayor, the Council awaits further guidance from Government on the Starter Homes requirement in London and any impact it may have on the proposed SPG.

**Summary:**

Page 23 -24. Off Site and cash in lieu. All schemes which propose off site provision or cash in lieu payment are required to provide a detailed viability appraisal to justify this approach,

**Response:**

The the proposals in the SPG which are consistent with the Council's own current planning policies are supported. It is considered that the Council would not object to providing details of the total

amount from S106 contributions expended annually on delivery of affordable housing, although this is more onerous as this links with reporting requirements for Authorities' Monitoring Reports which set out contributions received.

**Summary:**

Page 24 - Loss of existing affordable housing (including estate renewal) – Expectation that loss of social housing floorspace will be replaced and the 35% threshold will not apply. Where market housing (including those sold under the RTB) has been used as temporary affordable accommodation on an estate, this should be considered as market housing when considering like for like replacement.

**Response:**

It is considered that the Council would support this proposal as being consistent with its own policies and recognising the complexities of estate regeneration schemes. Whilst not the case in Wandsworth, officers welcome the fact that the starting point for social housing should be replacement albeit that this is the expectation and may be subject to discussion and appraisal. In particular this may for instance consider other community and social infrastructure benefits and related costs.

**Summary:**

Page 25- 26. Vacant Building Credit – suggests a London wide approach to Vacant Building Credit, that in most circumstances it will not be appropriate to apply, setting out guidance to assess the applicability and criteria for boroughs to consider.

**Response:**

The Council has no specific policy on Vacant Building Credit but it is agreed that the approach set out in the SPG in that VBC is unlikely to bring forward more development. Current Local Plan policy seeks affordable housing provision and VBC could undermine this adopted policy position. The approach set out in the SPD is supported.

**Summary:**

Page 27 – Guidance on Viability Assessments & Page 28 - Appraisal Requirements, Development values and Growth Assumptions– Viability appraisal should be submitted as part of the application. Appraisals should include unit, habitable room, unit size, density and split of tenures. Figures should be provided as both GIA and NIA. The development programme and the timing of costs and incomes should be provided. Growth assumptions should be provided even if not as part of the main appraisal

**Response:**

It is considered that the Council would support these proposals that are consistent with existing Council expectations. The inputs of viability assessment are expected to be discussed and agreed at the pre application stage and the assessment is part of the planning applications validation checklist. The Council fully expects that a full viability assessment with agreed inputs is to be submitted at the validations stage before it is assessed by officers. Currently the Council asks for a summary of the viability assessment to be provided to be added to the Councils Website. However the officers is supportive of the principles of the emerging London Borough viability protocol and would be open to agreement of further transparency once the Council has had the opportunity to consult on its position.

We support the provision of growth assumptions which can be key in negotiating affordable schemes that have low affordable housing levels being offered. For consistency, the Council would be interested to know what growth assumption indices the Mayor intends to use to validate the applicant's growth assumptions.

**Summary:**

Page 29 -Affordable Housing Values

**Response:**

See the response to Page 19 in supporting the principle of these proposals but questioning their practicality. It is considered that the Council would also support affordable housing values being contained in the Section 106 if these are agreed.

**Summary:**

Page 30 -32 – Build Costs, Planning Obligations and Developer Profit

**Response:**

Officers agree with the proposals in this Section which are consistent with current practice. Whilst agreeing the using of an IRR approach should not be used except on schemes above 1,000 units, officers would recommend that this should be at the discretion of the LPA and its advisers rather than setting affixed unit number when IRR could be considered.

**Summary:**

Page 32 -35 Benchmark Land Value and Existing Use Value + Premium Approach

**Response:**

We strongly support these proposals and that any other Benchmark Land value other than EUV + Premium approach should only be used in appraisals except in exceptional circumstances, for

instance where there is an extant permission. This is consistent with the Councils' existing approach.

As stated if an AUV approach was accepted it would have to fully comply with development plan policies, that it could be implemented on the site in question and subject to detailed pre planning discussions.

As mentioned earlier there will need to be due regard made for schemes acquired prior to the adoption of the SPG in terms of the price paid.

**Summary:**

Page 37 – Approach to Housing Zones and Opportunity Areas

**Response:**

Officers would agree that due to their complexity a bespoke approach should be taken to OA's and HZ's with the LPA's setting out its own targets for such areas

**Summary:**

Page 37 - Strategic Industrial Locations

**Response:**

The Queenstown Road, Battersea Strategic Industrial Location plays a crucial role in providing land for a broad mix of industrial and other uses, including transport functions, waste management and aggregates transfer. The area is host to a wide variety of industrial businesses which make a highly valuable contribution both to the borough's economy and serving the needs of businesses and institutions in central London. Its location is of particular benefit to these various functions, supporting the construction industries in the VNEB opportunity area and acting as a distribution hub on the outskirts of central London. Recent evidence from the borough Employment Land and Premises Study (AECOM, 2016) found that there remains significant demand for industrial land in the borough, and recommended that the entirety of the SIL be retained and protected for industrial uses. It also identified an opportunity to re-designate parts of the SIL as Industrial Business Park in order to provide more floorspace for a wider variety of businesses and to reflect the mix of uses (non residential) in these areas. These recommendations will be taken forward in the proposed submission version of the current review of employment and industry policies in Wandsworth's Local Plan, which will be published and consulted on in March.

The existing and proposed policy position therefore does not allow for housing/affordable housing to be located within the SIL area. The principle of reviewing the SIL designation as part of the Local Plan process is supported. If future evidence indicates that a re-designation of the SIL for residential use is appropriate taking into account other policy implications then this would be considered accordingly as part of the Local Plan review process.

**Summary:**

Pages 38- 39. Build for Rent.

**Response:**

Officers agree with the Mayor that Build to Rent ie purposely built private rented units can make a particular contribution to increasing housing supply, particular in the appropriate locations and has already encouraged this type of development in its housing strategy. The Council agrees that Build to Rent cannot compete with build for market sale and in appraisals will have a lower return which will be reflected in financial appraisals submitted for consideration.

It should be noted however that the Council is strongly against any private rented scheme that seeks a C2 designation. Officers would wish the GLA to support a position where PRS schemes for general letting (e.g. rather than student letting) would be given a C3 designation.

To note here that the Council is also not supportive of a C2 designation for Extra Care Housing which we believe in many instances to be inappropriate.

**Summary:**

Page 40. Build to Rent Definition.

Schemes above 50 units, to be held under a covenant for at least 15 years, self contained and let separately, with a unified management of the development with on site management with longer tenancies (three years or more offered) with defined in tenant rent reviews and the property manager to be an accredited Ombudsman scheme and a member of a recognised professional body.

**Response:**

The Council would be supportive of the 15 year covenant meaning individual units can not be sold and overall ownership can only change if the scheme remains Build to Rent. Officers support the option of longer term tenancies being offered with the ability for the tenant end the tenancy earlier being an option. Single management and rent reviews being defined are also supported. The Council would support registered bodies being managing agents this should not be too proscriptive.

As a number of schemes in the borough are less than 50 units, the LPA should have discretion to accept schemes of less than 50 units as Build To Rent schemes.

The London Mayor might also consider some form of requirement for such landlords to voluntarily subscribe to the Housing Ombudsman Service so there is a clear route for complaints to be dealt with and escalated.



**Summary:**

Pages 40 -41 – Clawback

**Response:**

The Council would support a clawback mechanism in the event of the units being sold out during the Build to Rent covenant period. The Council is seeking advice from it's viability consultants as to the two clawback options outlined in the SPG and would be happy to share their advice with the GLA.

**Summary:**

Page 42 – Affordable Housing Tenure

**Response:**

The Council would be supportive of any affordable housing tenure within a Build for Rent scheme being provided as Discounted Market Rent at a minimum 80% of the market. Whilst the Council notes the Mayor's preference for Discounted Market Rent (DMR) Units to be let at LLR, this may mean in high value boroughs the amount of DMR units may be small in quantum given the discount to OMR this may require. The Council would prefer the option detailed in paragraph 4.23 of the SPG of a wider mix of discounted rent products with 80% of OMR being the upper threshold as identified above. The Council agree the DMR should be secured in S 106 Legal agreements and that if the developments should be sold during or after the covenant period a commuted sum would be paid to the LPA.

The Council would also wish to see approaches used to agree a affordable housing percentage to be agreed with flexibility on what at anytime units might be let at a discounted rent. This would allow for tenancy and income reviews and also might allow for the actual level of affordable housing being provided in relation to seeking to secure a level of return.

**Summary:**

Pages 42 - 45 – Design and Viability

**Response:**

The Council would agree that Local Planning policies should be applied flexibly to Build To Rent schemes particularly in relation to space standards and unit size and their lower value and risk should be reflected in viability assessments. However, it should be entirely at the LPA's discretion as to any standards it chooses to relax and the justification it requires to deviate from existing standards.

The Council would further agree that the 35% threshold for such schemes should not apply and that the mechanisms for schemes proposed not providing 35% affordable housing should apply

**Summary:**

Page 45 – Management Standards

**Response:**

The Council would consider that developers should be required to market the units exclusively to its boroughs residents with this marketing also utilising the GLA London wide portal for an agreed period of time established in the Section 106. This should not lessen the period of letting the properties but ensure that the units, particularly the DMR units are marketed and promoted to local residents and they are given first priority for the units when marketed. The Council already have such arrangements on similar “ Build to Rent” schemes in the borough which the Owners/developers have been agreeable to.

**Summary:**

Page 46 – Support for Build to Rent schemes in LDF’s

**Response:**

The adopted Local Plan supports the development of Build To Rent (Private Rented Sector) housing and schemes offering a mixture of private and intermediate rented housing aimed at working households. BTR can assist in meeting a range of needs but it is important that schemes are delivered in the right location and not to the detriment of the overall delivery of other forms of affordable housing.

**Summary:**

Page 47 – 51 Suggested Review Formulas

**Response:**

Whilst the officers consider the review mechanisms proposed in the SPG are workable, it notes these take into account both costs and revenues. In Wandsworth’s Planning Obligation SPD the Council has made the review mechanisms simpler to avoid long and lengthy disputes between applicants and the LPA on inputs and values of an appraisal – which the authority has had experience of and have taken significant time to work through for very little benefit.

The Council’s review mechanisms purely rely on taking the estimated sales values at the point of application as the benchmark that are then inflated by BCIS to take into account any cost inflation/deflation during the construction. These are then compared to the actual sales values at the point the review is triggered and any surplus identified is then divided between the Council and the owner on a 60:40 basis.

We consider this to be a simpler approach that both Council and applicant can swiftly agree and whilst it may not be as sophisticated as the full review proposed by the GLA it does work and does avoid lengthy and costly disputes on appraisal input values.



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Please reply to: [REDACTED]  
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Date: 28th February 2017

Dear Mayor,

#### **DRAFT AFFORDABLE HOUSING AND VIABILITY SUPPLEMENTARY PLANNING GUIDANCE**

Thank you for the opportunity to comment on your draft Supplementary Planning Document on Affordable Housing and Viability.

#### **General comments**

We share your ambition to expand and accelerate delivery of affordable housing and welcome the importance you place in the planning system as a way of delivering this. We have reservations, however, about the extent to which the kind of approach outlined in the document will be effective – we would favour a more radical approach that would allow boroughs to set an affordable housing tariff along the lines of the Community Infrastructure Levy. This kind of approach would provide greater certainty for all involved, and remove the need to deal with these issues at the level of technical detail that runs through the draft SPG.

While we endorse the principles running through the draft SPG and would welcome working with the GLA to work them up into more detail, we are concerned that overall, the document seems highly prescriptive, and focusses unduly on matters of process and methodology. A better approach would be to set standards and outcomes, perhaps with information about approaches that boroughs could adopt as a kind of “toolkit”. This would allow local planning authorities, like Westminster, in delivering the right mix of affordable housing tenures to meet local need and demand against the background of local land and development markets. A relationship based more on partnership between the Mayor and boroughs, working together to deliver jointly agreed objectives, is likely to be more productive in terms of delivering more housing and meeting local needs more rapidly than an approach seeking to micro-manage the way in which local planning authorities deal with applications.

The SPG is silent on some issues of affordable housing delivery of concern to Westminster. There is nothing about encouraging cross-borough initiatives to accelerate provision, for example. Although Government has now published its Housing White Paper, there is still uncertainty about when regulations for key provisions of the Housing and Planning Act 2016 (like the mandatory 10%



requirement for affordable home ownership units, disposal of high value voids and the extension of right to buy) might come into force. Government is also considering major changes to developer contributions, which could have major implications for the approach to viability outlined in the draft. These are likely to require major changes to the approach set out in the SPG. It is unwise to try to force through major, very detailed changes of this kind when national policy may well be changing imminently as indicated in the White Paper.

In any event, we have doubts about the extent to which supplementary guidance intended to support the current London Plan is the appropriate vehicle for changes that stray some way from strategic policy and into very detailed matters of procedure. As you know, the National Planning Policy Framework says that such documents should be used *“where they can help applicants make successful applications ... and should not be used to add unnecessarily to the financial burdens on development”* (paragraph 153). It is settled law that they cannot make new policy. It needs to be clear that the NPPF guidance has been considered in drawing the document up to give local planning authorities some assurance that its approach is consistent with national policy and that we can properly give it weight in taking planning decisions. We have particular concerns given that in places the document does seem to stray into the realms of policy-making.

### **Threshold Approach to Viability**

We consider the 35% threshold to be insufficiently justified. The SPG states that it is based on analysis of past completions and approvals, but it is not at all clear how this has been done or that sufficient account has been taken of factors like availability of grant for some past completions and approvals which will skew the figures as to what is deliverable. It also does not seem to be informed by current economic conditions. Account does not seem to have been taken of the different land markets and values between boroughs across London. In short, we have concerns that applying a single, London-wide threshold is simply too crude to be effective.

The SPG states that because this approach has been used to arrive at the 35% threshold – and because it is a threshold and not a target or policy – that viability testing of the threshold is not required. This assertion does not sit well with the National Planning Policy Framework, which says that careful attention should be given to viability and costs in all plan-making and decision-taking and that full account should be taken of relevant market and economic signals. Any decisions taken on the basis of the SPG may have to be defended through the appeal process and local planning authorities have to be assured that this can be done successfully.

The draft also says that schemes which fall below the threshold will be subject to review mechanisms. We have no objection to the principle of this kind of approach, although it has to be recognised that these will have a financial impact on the deliverability of schemes. However the London Plan only provides support for review pre-implementation (see Policy 3.12B). We have concern that the elaborate, multi-phase approach suggested in the draft strays into the introduction of new policy, which the SPG cannot do. The SPG is also unclear as to whether estate regeneration will be required to follow Route A or not – in our view it should not.

We welcome the indication in the document that fixed, “CIL-type” tariff approaches will be explored as a means to increasing the level of affordable housing delivered. This is something we have expressed support for in the past, providing this is on a borough basis.



We would strongly suggest reconsideration of the use of habitable rooms to measure affordable housing delivery. In high value areas like Westminster this may have the unintended consequences of encouraging delivery of only small units and provide scope for 'gaming' the system. The SPG provides no justification for using habitable rooms as a measure instead of floorspace or units (or changing from the current position where the choice is left to boroughs in the light of local circumstances). Starting to measure schemes in habitable rooms will be challenging in Westminster as existing systems are not set up to record this information<sup>1</sup> and it will mean that future scheme delivery cannot be easily compared to past delivery (which is shown in units or floorspace).

### **Review Mechanisms**

We broadly support the principle of review mechanisms to increase affordable housing delivery, to make the viability appraisal system more transparent and to incentivise earlier implementation of planning permissions. However we have identified some issues related to reviewing permitted schemes. Review mechanisms will require new viability assessments to be carried out to take account of changing circumstances such as rising costs. The SPG should acknowledge this, the practicalities of how this will be undertaken and resourced and the delays it is likely to cause to delivery. Early review mechanisms which require switching tenure of units will not be practical and we expect this will result in developers arguing that payments in lieu should be made instead.

True profits could be higher than declared if mark ups on the prices received for good and labour, discounts taken off payments and risk premiums taken on are obscured. Review mechanisms should only allow the LPA to secure the maximum policy requirement generated by the development, not an automatic percentage of the developer's profit. In any case, we question whether deciding what is an appropriate level of profit from development above which additional requirements should be imposed is an appropriate use of planning powers.

Any review mechanism should be transparent and as uncomplicated as possible. The SPG should set out key principles, but allow boroughs to choose approaches that work for them in the light of local circumstances. We are concerned that the approach in the draft is over-complex and has too uncertain a policy basis to be imposed in the way proposed.

### **Grant**

We are not convinced that the new approach to grant proposed in the SPG will necessarily deliver extra units as it is only being offered on schemes which are already proposing 40% affordable housing – many schemes will find it difficult to get up to that threshold. Even if grant is available for schemes, the value of converting a market to an affordable unit needs to be taken into account to make it worth a developer's while.

The SPG indicates that no viability evidence will be required if grant is applied for schemes with over 40% affordable housing provision. We disagree with this approach, as developers should as a matter of principle prove that the subsidy is required.

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<sup>1</sup> The current system only records the number of bedrooms.



We do not support the expectation that public land will have a nil value for the purposes of appraisals as this will mean that any public scheme which covers its build costs will be expected to be viable and therefore the maximum amount of affordable housing will be expected. This is unrealistic and if a scheme is to be delivered by a developer, a public body will require market value for the land. The Council holds its property in different “funds” which are treated differently under statute. Land held against the Housing Revenue Account cannot be traded at nil value - if it is to be developed by third party developer the Secretary of State will need to authorise a sale, supported by a formal valuation. That valuation is unlikely to be nil. Accordingly assuming nil value will render schemes undeliverable if they are to have a full complement of (indeed any) affordable housing. It would also be likely that public bodies would be inclined to hold land rather than sell for development. This will in fact lead to a slowdown in building for schemes of precisely the kind likely to deliver additional affordable housing.

### **Tenure**

We are in favour of bespoke policy approaches to affordable housing in Opportunity Areas and Housing Zones. The approach to tenure mix proposed in the SPG is also welcome as it gives local planning authorities more flexibility to require a tenure mix which meets local needs and demands. It would, for example, allow us to go ahead with our announced intention to move to a 60% : 40% intermediate : social/affordable rent split in City Plan policy.

The SPG asks local planning authorities to indicate what tenure they prefer for the remaining 40% and encourages these to be drawn from the intermediate products the Mayor prefers. We do not think the SPG should prescribe what intermediate products boroughs should be requiring, as local flexibility to choose products means that local circumstances can be taken into account to deliver homes that meet identified local needs and which will be sustainable for providers and residents alike. We would like local authorities to have flexibility on what type of low cost rent (i.e. social or affordable rent) is delivered based on our local needs and to look at intermediate products other than the Mayor's London Living Rent.

The final version of the SPG should take account of national government policy set out in the recent white paper that housing sites should deliver a minimum of 10% affordable home ownership products. There is a clear need to consider how this might work in London. Shared ownership for example does not work very well as an intermediate product in Westminster – the values are generally too high for people to attain their share and in any case the subsidy is not recycled once the homes are sold on the open market. Westminster would like the ability to develop innovative intermediate products to ensure they meet local needs/policy objectives and affordability (the home ownership accelerator product we have taken forward in partnership with Dolphin Living, for example) and would welcome the Mayor's support for this approach.

It needs to be clear that the various new forms of affordable housing referred to in the SPG - such as discounted market rent and London Living Rent sits within the nationally-set definition of affordable housing in the NPPF (currently and as proposed in the Housing White Paper) otherwise it risks being unsound, unduly restrictive on boroughs and creates uncertainty for developers.

The SPG invites boroughs to inform the Mayor of guidance on rent levels for homes to be delivered for low cost rent in above benchmark Affordable Rent levels with clear justification for how these



are genuinely affordable. The table below shows the affordable rent levels charged in Westminster compared to the London affordable rent benchmarks and it can be seen that the average gross rent charged in Westminster is not too dissimilar from the London benchmarks. The lower affordable rent levels recommended in Westminster are linked to lower quartile incomes and the higher levels are linked to median incomes of those on our intermediate housing register.

We are considering an increase in the rent ranges recommended in our affordable rent statement as incomes have increased. However, we consider it essential that we retain the ability to set our own affordable rents levels to reflect Westminster's particular circumstances (including affordability) and allow sufficient flexibility to strike the appropriate balance between rent levels and delivery of additional affordable housing. This is especially important for our housing regeneration areas where viability may determine how many net additional affordable homes can be delivered (even though these circumstances may be limited).

Dwelling Size	London Affordable Rent benchmarks for 2017-18	Gross Weekly Affordable Rent Range- WCC Affordable Rent Statement	Average gross rent by dwelling size to be charged ( <i>midpoint of the range, inclusive of service charge</i> ) <sup>2</sup>
Bedsit and one bedroom	£144.26	£135 - £172	£153.50
Two bedrooms	£152.73	£148 - £194	£171
Three bedrooms	£161.22	£156 - £210	£183
Four bedrooms	£169.70	As above	As above
Five bedrooms	£178.18	As above	As above
Six or more bedrooms	£186.66	As above	As above

### Vacant building credit

The SPG sets out the Mayor's opinion on the vacant building credit in that he considers that the application of it will undermine key existing policies in the London Plan and therefore, in his view *"in most circumstances in London it will not be appropriate to apply the vacant building credit"*.

Ultimately this is judgement not a matter of policy, but of planning law – and will be one for individual planning authorities and not (for the most part) the Mayor. The Vacant Building Credit is a matter of national policy which the Court of Appeal has confirmed was properly made. It was restated in May 2016 and so post-dates publication of the last iteration of the London Plan. It is clearly a material consideration in taking planning decision and the weight that should be given to it in particular cases is for the decision-maker concerned. While the Mayor is entitled to say what weight he intends to give to the Credit in taking the decisions he does when he considers

<sup>2</sup> Note – gross rent to be set out in the legal agreement but where rents can increase annually by CPI + 1%





applications, he cannot instruct boroughs to take the same view (indeed boroughs who accepted such instructions would probably be open to challenge themselves). While we welcome suggested criteria for whether the vacant building credit should apply (some of which we have adopted in our own guidance) we question the value of the Mayor simply asserting that the vacant building credit should not apply *anywhere* in London because it will undermine existing policies. In practice this will have to continue to be a matter decided by each borough on the facts of each case.

The Mayor's approach in the SPG seems likely to be challenged and may cause confusion in the development industry when drawing up schemes which appear to meet the NPPG definition of a vacant building. A clearer approach would be to have in place criteria for assessing whether a building qualifies for the credit and leave it to the boroughs to determine if it does.

### Viability Assessments

We support efforts to make the viability process more transparent and therefore increase the public's trust in them. Viability assessments need to be rigorous, transparent and readily grasped by non-experts. Local planning authorities should be free to choose the methodology that they consider meets these principles and there is no justification for the Mayor to seek to intervene with the level of micro-management that runs through this section of the draft.

The viability methodology advocated in the SPG is not the one currently used in Westminster for dealing with planning applications – we use the Royal Institution of Chartered Surveyors' recommended approach. While we have no problem with the Mayor expressing a view about different approaches, we do not consider it reasonable for the Mayor to purport to *require* all local authorities to adopt the methodology he favours to assess viability for policy-making and for taking planning decisions. In any event, these activities are different in nature and it should be for the authority concerned to decide which should be used for what purpose, depending on their needs. Each local planning authority has to decide the way in which it ensures its decision-makers are properly informed to take planning decision in the light of local needs and circumstances. We therefore do not support the Mayor's intentions to seek to prescribe essentially procedural matters like the particular methodology that should be used to assess viability.

As it is, no evidence is put forward to support the view implicit in the SPG that the Mayor's preferred approach to viability will increase the amount of affordable housing secured. The points made about being open and clear about the basis on which inputs like land value are put forward are understood and agreed – but it is possible to deliver outcomes like transparency, clarity and robustness without being prescriptive about the methodology used.

This approach misses the real point about viability - the really important factors is less the method that is used and more ensuring that those taking decisions and those advising them – councillors and their professional officers – receive information that is comprehensive, accurate, presented to them in ways that help them make properly-informed decisions.

The SPG places considerable emphasis on requiring developers to justify their profit levels. The planning system is not set up as a mechanism to tax capital gains (and seeking to operate it as such at scale could lead to a range of legal and technical issues as well as to maximise resistance from developers). We find it hard to conceive of a situation where a planning application would be



refused because the developer is likely to make ‘too much profit’ (or where an inspector at appeal would be likely to agree). A profit level of around 20% has become the norm in recent years and a supplementary document should probably avoid trying to dictate whether this is acceptable for all developments, in all parts of London, at any stage of the development cycle.

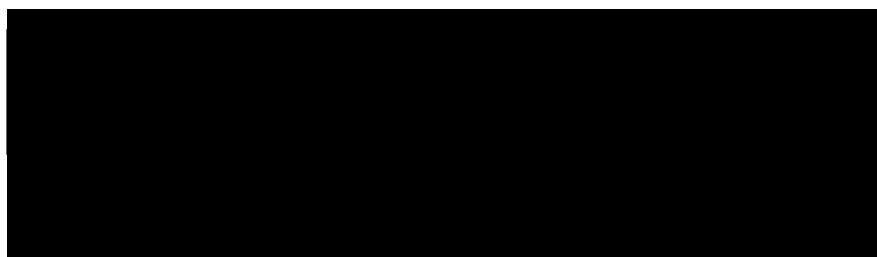
### **Build to Rent**

We do not expect the build to rent policies set out in the SPG to have much of an impact in Westminster because of the definition given in the SPG of this product (over 50 units which are self contained). This also means that non-self contained co-living products like those of “The Collective” would not be covered.

That said we have doubts about whether the approaches proposed in the SPG will have a significant impact on the delivery of build to rent products. The guidance is very prescriptive and combined with clawback clauses – these approaches are likely to dis-incentivise delivery of this product. The level of prescription also risks inhibiting innovation by establishing one model for approaches of this kind.

I hope these comments are helpful and Westminster looks forward to working more closely with the Mayor to refine proposals.

Yours sincerely,



Head of City Policy and Strategy