

Paul Robinson

From: Mark Smith [REDACTED]
Sent: 02 February 2017 11:44
To: Housing SPG 2016
Subject: Comments re Draft AH & Viability SPG

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sir/Madam

I wish to make the following comments regarding the draft SPG:

General

1. There should be no requirement for a viability assessment/review post planning if any scheme is implemented/commenced within 2 years from date of planning consent. Reviews are cumbersome, expensive and time consuming and often led to disagreements which can stall schemes or prevent occupation of schemes. Dispute mechanisms to resolve disputes between the developer and the Council are expensive and time consuming.
2. LPAs should provide planning policy and publish the criteria regarding when/what schemes will be required to provide viability assessment reviews post planning approval.
3. Viability assessment reviews post planning approval should provide for the eventuality that existing affordable housing contributions may be reduced if the review concludes such.
4. There should be a fast track dispute resolution system available to resolve viability assessment disputes during the planning application process and post planning application process which allows planning applications/schemes to progress without stalling.
5. It should be made clear by each LPA, that the costs of viability assessment consultants retained by the Council to carry out viability assessment reviews post planning consent will be borne by the Council and not the applicant. The applicant is not legally required to pay said fees.
6. It should be made clear by each LPA that the costs of viability assessment consultants retained by the Council to carry out a viability assessment review of the applicant's viability assessment submitted with the planning application will be borne by the Council and not the applicant. The applicant is not legally required to pay said fees.
7. Viability assessments that accompany major planning applications should be reviewed by the Council and a draft report issued jointly to the Council and applicant no later than 6 weeks from the date of validation. If a draft report is not received within 6 weeks, then the viability assessment provided by the applicant shall be deemed to be agreed. For minor schemes, this should be 3 weeks.

Sincerely

Mark Smith



AFFORDABLE HOUSING AND VIABILITY SPG (LONDON)

BENCHMARK LAND VALUE

The SPG confirms that the Mayor considers Existing Use Value plus premium (EUV+) as the most appropriate approach for planning purposes (para 3.46) with alternative approaches only considered in exceptional circumstances which must be robustly justified by the applicant. The Mayor considers (para 3.47) that all other approaches to the benchmark land value will disappear over time as the 'preferred approach' is embedded.

The EUV plus premium remains undefined (traditionally a premium ranging between 0%-30% has applied) within the guidance and will undoubtedly become an issue of great significance if the Policy is adopted.

The RICS published a comprehensive Guidance Noteⁱ in 2012 entitled 'Financial Viability in Planning' (FVP GN). The FVP GN explored in detail benchmark land value and the various different applications. The preferred method when considering land value is Site Value:

"Site Value should equate to the market value subject to the following assumption; that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan"

This method allows the practitioner to make appropriate judgements, which must be reasonable, having regard to the workings of the market. If sites are not willingly delivered at competitive returns to the landowner and the developer, development will not take place.

The GN explores the use of EUV and EUV+ but argues that this approach is singular and does not reflect the workings of the market as land is not released at EUV or EUV+. The margin is also arbitrary and often inconsistently applied. Appendix E of the GN goes on to state the difficulty of trying to apply EUV into viability appraisals. The Red Bookⁱⁱ defines EUV as follows:

'The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction after properly marketing and where the parties had each acted knowledgeably, prudently and without compulsion assuming that the buyer is granted vacant possession of all parts of the property required by the business and disregarding potential alternative uses and any other characteristics of the property that would cause market value to differ from that needed to replace the remaining service potential at least cost.'

This definition is inappropriate when considered in a financial viability in planning context. It is an accounting definition of value for business use and, as such, hypothetical in a market context. The GN states that this approach does not reflect the workings of the market and to apply it with the addition of a premium is a very unsatisfactory methodology when compared with the market value approach.

The National Planning Policy Framework (NPPF) published in March 2012 sets out the Government's planning policies for England and how these are expected to be applied. The NPPF has a clear presumption in favour of sustainable development and in determining planning applications local planning authorities should take account of this. The Framework recognises that development should not be subject to such a scale of obligation and policy burdens that its viability is threatened; and in addition obligations should be flexible to market changes in order to ensure planned developments are not stalled. This reinforces the need for viability testing in order to allow willing landowners and developers to receive competitive returns which in turn enable the delivery of development. Competitive returns refer to the operation of the market in the real world in a manner that ensures delivery.ⁱⁱⁱ

Planning Practice Guidance (PPG) provides guidance to support the NPPF and was launched on 6 March 2014 and is updated from time to time. Section 3 of the PPG 'Viability Guidance' emphasises the importance of market based evidence:

“Evidence based judgement: assessing viability requires judgements which are informed by the relevant available facts. It requires a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market.”

Site value is a critically important component in the financial model in order to assess whether a proposed development delivers a viable return. Paragraph 014 of the PPG states:

“Central to the consideration of viability is the assessment of land or site value. The most appropriate way to assess land or site value will vary but there are common principles which should be reflected.

In all cases, estimated land or site value should:

- *reflect emerging policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;*
- *provide a competitive return to willing developers and land owners (including equity resulting from those building their own homes); and*
- *be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.”*

Paragraph 015 of the PPG states:

“The National Planning Policy Framework states that viability should consider “competitive returns to a willing landowner and willing developer to enable the development to be deliverable.” This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.

A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.”

In paragraph 3.49 of the draft guidance it states that the only application of Alternative Use Value (Site Value definition as preferred by the RICS) would be where there is an existing implementable permission for that use. Paragraph 3.4.9 of the (FVP GN):

3.4.9 *It has become very common for practitioners to look at alternative use value (AUV) as a land value benchmark. This will come with its own set of planning obligations and requirements. Reviewing alternative uses is very much part of the process of assessing the market value of land and it is not unusual to consider a range of scenarios for certain properties. Where an alternative use can be readily identified as generating a higher value, the value for this alternative use would be the market value. Again, comparable evidence may provide information to assist in arriving at an AUV. Accordingly, in assessing the market value of the land there may well be a range of possible market values for different uses, which could be applicable to the land and buildings, from current use through to a number of alternative use options, each having its own planning obligation requirements. These will be used to derive the ‘market value with assumption’ (the option with highest value being the Site Value) for input into a viability assessment.*

AUV as an approach can be hypothetical so long as the assumptions meet local planning policies. This is particularly pertinent for sheltered housing developers. The typical site requirement is for small generally brownfield sites close to local amenities. The level of competition in the market for these sites is strong, and competing bidders typically come from not only the residential sector, but also Care Home operators, discount retailers, leisure and roadside uses to name a few. Therefore, an owner of such a 0.5 acre – 2 acre site would not be restricted to merely considering an offer from a Policy compliant residential use. If other uses are able to generate a higher offer for the land than EUV or EUV+ the landowner will sell to the use that provides the highest value. To limit the assessment on the benchmark site value to EUV plus would have a severe unintended impact on sheltered/retirement housing market.

For example, we have a site within a London Borough which has been out of use for a decade and has arguably in planning terms could be argued not to have a land use. Applying the EUV would therefore generate a negligible or nil land value, as the site would be £0 + 20 or 30%. This would be contrary to basic function of the London land market. The application of EUV within a viability appraisal of this site would generate an affordable housing contribution at a level that would make it more attractive to the land owner to develop the site for other purposes than a sheltered housing scheme.

This will be an issue on all suitable development sites for retirement housing and will make the sector less competitive in the land market against alternative uses. This is significant given the identified '*critical*' (PPG) need for the delivery of specialised accommodation for older persons.

In addition, a significant amount of land in London is owned by Public Bodies. These bodies have a statutory obligation to obtain best consideration for their disposals. Various guidance establish this principal including Managing Public Money published by HM Treasury and Section 123 of the Local Government Act 1972 and Circular 06/03 which set out the statutory duty on Local Authorities to achieve best value in the context of land disposals. Disposals should not be for a consideration 'less than can reasonably be obtained'. In most instances 'best consideration' is to achieve the Market Value. If EUV is imposed as the base for all viability assessments it will penalise the residential development sector and restrict the available receipt for Public Bodies.

The insistence in the draft SPG in adopting EUV/EUV+ is inconsistent with NPPF, PPG and RICS Guidance and does not reflect the workings of the market. If applied it will impact on the retirement market more significantly than the wider general housing market for the reasons set out above.

Rather than dismissing AUV as an alternative or to only site with an implementable permission (Para 3.49) we are view that the SPG should be amended to allow the use of AUV/Market Value approach so long as this approach is properly applied to avoid the circularity argument raised in the April 2015 RICS research^{iv}. As currently worded, and despite only being a preference of the Major to use EUV/EUV+, practitioners, particularly acting for Local Authorities, will inevitably argue the only approach for viability assessments in the Capital is EUV/EUV+ which will have a significant and in our view unintended consequence for the Retirement Sector which is likely to reduce supply and at the extreme end stall this type of development as the economics of development would be unworkable.

ⁱ A Guidance Note provides users with recommendations for accepted good practice as followed by competent and conscientious practitioners – Recommended Good Practice.

ⁱⁱ RICS Valuation – Professional Standards January 2014

ⁱⁱⁱ Paragraph 173 and 205 NPPF.

^{iv} RICS Financial Viability Appraisal in Planning Decisions: Theory and Practice April 2015



ANTHOLOGY

Built from London

Mr John Lett
Greater London Authority
City Hall
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28 February 2017

Dear Mr Lett

**HOMES FOR LONDONERS;
DRAFT AFFORDABLE HOUSING & VIABILITY SUPPLEMENTARY PLANNING
GUIDANCE**

Anthology aims to become one of the key players in London's development industry and since its formation in 2014, now has over 1,000 new homes in planning and construction.

We strongly support the Mayor's objective to increase affordable housing output in London and to help push housing output to exceed the current c. 30,000 completions annually.

We are pleased to have the opportunity to review the draft SPG and should like to make a few comments to assist with its development. Our comments relate specially to: the approach to land value and the market; inflexibility; and funding.

Land Value & London's Land Market

The provision of 35% affordable housing is a major step change in development economics. With current output in the region of 25%; a 40% increase in output is envisaged.

The draft SPG approach is essentially that land owners will accept lower values for their land so that more value is available for affordable housing.

It's important to recognise that construction costs have escalated significantly in recent years with inflation over the period 2011 – 2017 amounting to some 32%.

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The value of land as a percentage of GDV (i.e. per sq. metre) has reduced over the same period but this is partially offset where density allows a greater intensity of development or where sales values have in the past been unconstrained. Land prices (i.e. per acre) have only increased gradually during the same period.

For the draft SPG approach to work effectively, the value of land in the development process would need to adjust downwards. Alternatively, there would need to be a significant reduction in build costs. We question whether this is likely in London generally, particularly in outer London where land prices are lower.

More importantly, it must be recognised that the majority of land owners have a choice about selling land and will, in all likelihood, have an income from it already.

Land is used for security on debt and to provide income for pension funds and other investors. It is sensible to assume land owners will not sell it if their asset is worth less.

If its value is reduced in a development scenario by the application of the draft SPG principles, it is likely that many owners would choose the status quo. Such an outcome would, in our opinion, have adverse consequences for the implementation of the London Plan.

We believe that there is insufficient land in London's land market already.

To solve the housing shortage, housing development needs to be the most profitable use of land from an owner's perspective.

There is the possibility that, as a result of the draft SPG, alternative land values will become more attractive or that land simply will not come forward for redevelopment because of the risk to the value of an asset.

This is an inherent weakness of the SPG approach. In our submission, land needs to retain its value to ensure its sale for housing development or funding needs to be made available to bridge the gap. As such, we question whether the EUV plus premium approach will ensure adequate land comes forward for development.

Greater consideration should be given to the alternative uses to which the land can be put including competing uses such as offices, retail and tourism. Equally, the site's planning history must be counted towards its value. Developers and land owners have fiduciary duties to partners, shareholders and funders and cannot ignore planning permissions which run with the land when they are disposing of it.

The funds that invest in land in London cannot simply write off the value of their investments to bring forward housing development. The inverse is true. Only an increase in value will incentivise them to sell.

This is a major tension in the thinking behind the SPG. Because of the imbalance between supply and demand, we do not believe that land values will adjust downwards or at least in sufficient quantum to make the draft policy work.

Public Authorities also have fiduciary duties and are under the same pressure to maintain value even though they can take account of social benefits. This tension may explain why public land supply is not having the effect it could.

Land cannot, in our view, be separated from its intrinsic market value. Indeed, the market value of the completed homes is a key variable in the viability exercise itself.

That said, we accept that developers cannot expect to pay for land on an unrealistic prospectus and then seek to deliver less affordable housing thus.

A balance needs to be struck and we suggest that alternative values and site planning history should be recognised as part of the benchmark value exercise.

London has a restricted land supply with insufficient land to feed the development sector. We believe that attacking this bottle neck is the key to pushing housing output over 30,000. Significantly more land for development is required to make this happen.

In our view, the only way to increase the land supply for development purposes is to inject greater competition in the land market by increasing the supply of land, thus increasing the purchasing power of developers.

Policy must also recognise that the development market comprises: private development companies (like Anthology); Registered Providers; and PRS operators.

Private development companies such as Anthology are required to make a commercial return whilst complying with all standards, policies, taxes, CIL, planning obligations and delivery of affordable housing.

We note what the draft SPG says about PRS. We believe it is important that public policy maintains a level playing field for all segments of the development industry.

We should just like to observe that we haven't seen any evidence that PRS providers struggle to compete for land opportunities. In fact, the opposite is true from our perspective.

Inflexibility

The SPG provides some guidance on claw-back reviews. The operation of review mechanisms and their negotiation during the S.106 process can lengthen a project significantly and often does.

We believe that review mechanisms are problematic generally and only slow down the development process adding cost and uncertainty to an already lengthy and uncertain process. They are unhelpful and impact upon delivery.

A planning permission should offer sufficient certainty to an investor that the valuation underpinning the project will remain the same through its life.

The draft SPG also offers an upwards only review mechanism. In our view, it would be more helpful if it contemplated the downward situation and so help prevent projects from stalling during a market downturn. We would urge that this is reconsidered to increase flexibility and prevent delay.

Funding

The SPG cautions that developers should record profit as gross margin unless a project of over 1,000 homes is contemplated.

For the banks that fund housing development in London, the IRR hurdle rate is the basis for decisions on funding and the deployment of equity.

An IRR is the time weighted return and is the only accurate way of measuring the profitability of an investment over a long period.

All large-scale, long-term investment is measured in IRR including local and national Government funds.

We believe that the SPG should reflect this. It is not in our power to change it.

Conclusion

To summarise, Anthology supports the need for additional affordable and private housing and wishes to make a major contribution towards future housing supply itself.

continued

But we remain concerned about the effect of the draft SPG on the land market and believe it will not deliver its intended objectives and may, in fact, thwart and delay development.

We hope the above comments are helpful. We would be pleased to discuss this further should you wish to.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Scott Bailey', with a stylized flourish at the end.

Scott Bailey
Planning Director



ARGENT

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28 February 2017

Dear Sirs

**Draft Affordable Housing and Viability Supplementary Planning Guidance 2016 –
Representations on Behalf of Argent (Property Development) Services LLP**

I am writing on behalf of Argent (Property Development) Services LLP ('Argent') in response to the consultation on the draft London Plan Affordable Housing and Viability Supplementary Planning Guidance (the 'Draft SPG').

Argent is already well-known for its mixed-use regeneration scheme at King's Cross where, as part of the King's Cross Central Limited Partnership, it has taken a long-term view to investment and returns, and made significant investment in social infrastructure, services and public realm in order to create and maintain a flourishing community. Argent is also involved in a number of other projects across London, including at Brent Cross South and Tottenham Hale where it is working in partnership with Related, one of the United States' leading property companies. Capitalising on both firms' expertise and track record of significant urban placemaking, we have formed a new partnership called Argent-Related ('AR') which is committed to developing projects of scale in London that involve creating lasting, liveable places.

In March 2015, Argent/AR was selected to partner with London Borough of Barnet to develop Brent Cross South, an 192-acre area south of the Brent Cross shopping centre. The new development will sit alongside Hammerson and Standard Life Investments' redevelopment of Brent Cross shopping centre, connected via a new pedestrian bridge across the North Circular. The Brent Cross South masterplan, which already has outline planning permission, includes 6,700 homes and workspace for over 25,000 new jobs; a new high street, with local shops and restaurants; improved transport connections with the new station serving the development and better walking and cycle routes; and new parks, squares and community facilities.

In Tottenham, Argent/AR is working with the London Borough of Haringey ('LB Haringey') to form a strategic partnership in order to deliver an ambitious new programme to transform Tottenham Hale. The regeneration of Tottenham Hale represents the first phase of London's largest Housing Zone in Tottenham. The partnership with AR will deliver a range of around 900 homes (including market sale, build to rent and affordable) around the Tottenham Hale transport hub, with Victoria line, National Rail and future Crossrail 2 services.

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Argent/AR has also formed a joint venture partnership ('JV') with One Housing, who owns and manages approximately 2,100 homes located on four housing estates on the Isle of Dogs. Argent/AR and One Housing are working together and with residents to consider the potential redevelopment options for these estates. While no decisions have been taken in favour of redevelopment, or what form that may take, the prominence of the estates within the Isle of Dogs and South Poplar Opportunity Area Planning Framework area means it is reasonable to assume that they could play an important role on the Isle of Dogs, both in terms of improved and additional housing (including affordable housing) and strategic infrastructure for those estates and the wider area. The JV is engaging proactively with the GLA and the London Borough of Tower Hamlets in relation to the OAPF and the Council's emerging Local Plan.

Argent/AR is committed to working with key stakeholders and decision makers to create places which inspire the communities that live and work there. We consider the publication of the SPG to be timely, particularly in the context of the Housing White Paper and best practice guidance from the GLA on estate regeneration which look to support the supply of new homes and new (or improved) infrastructure, and in the case of the former, encourage LPAs to plan proactively for build to rent products.

Argent/AR shares many of the GLA's objectives set out in the Draft SPG and we welcome the ambition of the document to create clarity and transparency around affordable housing provision and the use of viability assessments. Affordable housing viability assessments have been something of a 'black art' and practice varies widely from borough to borough. Developers experience unnecessary delays and local communities see individual developments falling short against policy targets that always set the bar too high for individual market developments, to provide the basis for negotiation. The result undermines the planning system in the eyes of many and helps breed public cynicism about the motives of all actors in the system, including of course reputable developers like ourselves.

We understand that other organisations such as London First, which we are a member of, are making more general representations on the Draft SPG on behalf of London businesses. Consequently, our comments are directed to reflect our experiences and the practicalities of delivering comprehensive regeneration in London.

1. Recognition of Opportunity Areas and Housing Zones in the Threshold Approach:

Argent/AR welcomes the Draft SPG's recognition of a more bespoke approach to affordable housing within Opportunity Areas and Housing Zones (paragraph 3.56) and the complexities and investment required to bring development forward in these areas. Housing Zones and Opportunity Areas represent a large part of our pipeline of projects, for example at Tottenham Hale and at Brent Cross, and have the potential to deliver significant housing development alongside social infrastructure, utilities and transport improvements which will contribute to the creation of successful new places. Each area has specific constraints and opportunities and therefore we agree that any affordable housing target and tenure

mix for that area should be driven by the LPA based on the needs of that site, including requirements for other infrastructure and investment.

Given that these Housing Zones and Opportunity Areas have already been subject to a high degree of joint working with the GLA and others, for example through the Housing Zone funding process, we would welcome further clarity on how the GLA sees this flexibility playing out in practice, especially where a local policy framework on affordable housing in such areas already exists. In our view, the Draft SPG offers an opportunity to set out case studies where a bespoke approach has been successfully adopted by a LPA for a Housing Zone or Opportunity Area to illustrate how the flexibility contained in London Plan policies (e.g. Policy 3.11) should be applied. The Tottenham Housing Zone could serve as one such example where LB Haringey Cabinet Members have agreed a 'portfolio approach' to affordable housing across the borough which responds to each site's specific characteristics while targeting a borough-wide figure of 40% (as set out in their emerging Alterations to Strategic Policies document which is expected to be adopted in March). This approach means that affordable housing delivery can vary from site to site, taking account of the impact of other non-residential uses (health centre, education uses, social and community uses, work space) on the ability to reach the levels of affordable housing that would be possible on similar sites if they were purely residential. Further, the tenure mix can similarly respond individually to different sites across the Housing Zone, so for example, in the new mixed-use District Centre, the predominant tenure mix is identified as home ownership or private rent with a minimum 25% affordable low cost ownership homes. Council land value in the District Centre can then be used to further supplement affordable homes, including higher proportions of homes for rent, in other parts of the Housing Zone, such that overall, LB Haringey will achieve their borough-wide target of 40%.

Argent/AR consider there is scope to extend the ambition of the Draft SPG to enable speed and clarity in areas known to be facing wider delivery challenges, for example Housing Zones and Opportunity Areas, and to reflect the wider contribution that larger regeneration schemes make to a place. These are the areas in London which offer some of the greatest opportunities for growth but are not supported by the SPG as currently drafted. Argent/AR encourage the Draft SPG to clarify how the GLA will approach these sites through the proposed Threshold Approach.

Paragraph 2.9 of the Draft SPG suggests that Route B is not anticipated to be an appropriate route for London's most challenging and complex sites where delivery of 35% affordable housing is known to not be feasible. Estate regeneration schemes and Opportunity Areas or Housing Zones such as Tottenham and Brent Cross South are likely to require significant investment in social infrastructure, services and public realm and therefore pose a challenge in achieving the 35% threshold, irrespective of meeting any other criteria for Route B. The implication of this is that sites facing the greatest obstacles are automatically subject to Route A and the prescription that this brings with it in terms of review mechanisms and full

viability assessments without consideration of whether such an approach is feasible in practice.

Argent/AR would like to see Route B extended to incorporate flexibility in the 'threshold' requirements in exceptional circumstances, for example Housing Zones and Opportunity Areas, where supported by robust evidence. We suggest that where a Local Planning Authority has an evidence base which supports a lower proportion of affordable housing, this could instead be reflected in a hybrid to Route B, with the 35% target replaced by a lower figure which takes into account the significant work already undertaken and specific characteristics of the site. The same route could also anticipate scenarios where the percentage could be achieved but only with greater flexibility applied in the mix of tenures, unit sizes, terms on affordability, triggers for any review mechanism and other planning requirements.

2. **Review Mechanisms:** We acknowledge that there are circumstances where review mechanisms may be appropriate in providing a reappraisal mechanism. However the 'one size fits all' approach set out in Route A fails to reflect the very different funding, risk and delivery models associated with large housing and regeneration schemes. Opportunity Areas, Housing Zones and estate regeneration schemes face some of the greatest delivery challenges whilst simultaneously providing some of London's most significant opportunities to deliver growth. The proposed reviews change the risk profile for investors and create a significant disincentive to developers taking on these more risky longer-term developments.

We would encourage greater clarity on the approach to the reviews set out in Route A, in particular recognition that there will be exceptions to include Opportunity Areas and Housing Zones where scheme specific solutions are appropriate. This could be addressed through a hybrid route for such areas, as suggested above.

3. **Tenure Flexibility:** Regeneration provides an opportunity to invest not only in new homes, but jobs, placemaking, infrastructure, training initiatives etc. Delivery of mixed and balanced communities offering a range of tenures and choices reflects established national and regional planning policy priorities. Diversification of tenure and type of housing is a critical component in delivering wider regeneration objectives, particularly in Opportunity Areas and Housing Zones but also on estate regeneration schemes. For example in Tottenham, LB Haringey has an emerging policy framework through the Tottenham Area Action Plan (expected to be adopted in March 2017) which supports different tenure mixes across the Housing Zone to balance existing tenures and reflect the diverse nature of the sites.

Paragraph 2.13 of the Draft SPG acknowledges in the context of Opportunity Areas LPA's "may wish" to allow a degree of flexibility in the tenure split for Route B. However, no such flexibility is offered for Route A, which will be the required approach for the majority of projects within Opportunity Areas/Housing Zones and estate regeneration schemes. As noted previously, it is not clear how this will sit with boroughs who already have flexible

policies in place. The Draft SPG should take a more positive approach whereby authorities are required to engage in exploring a variety of tenures to ascertain if it enables the target percentage of affordable housing to be agreed and therefore Route B (or a variation of this route) to be pursued within Opportunity Areas or Housing Zones. Further, the SPG as currently drafted fails to encourage innovation in tenure to better meet identified housing needs. There is an increasing realisation of the potential for new funding and investment in affordable housing outside of traditional routes and if the GLA is to achieve its ambition to deliver a step change in housing and affordable housing delivery, such innovation should be welcomed and encouraged by the SPG.

Whilst we support the GLAs aspiration to provide a range of genuinely affordable products, we do have some concern around the proposed reduction in the income threshold for intermediate products to £60,000, set out in paragraph 2.38 of the Draft SPG. At King's Cross (and indeed in other central London boroughs), the values are now such that some intermediate products are becoming unaffordable to families even at the current income cap of £90,000. This reduction is likely to see fewer intermediate units being delivered, especially where the higher cap is used to facilitate the provision of other tenures such as social rent and/or in high value areas. Further, it is expected that it will also affect the value developers receive from RPs for their affordable housing which will in turn affect their capacity to deliver the numbers expected in the Draft SPG. We would encourage the GLA to incorporate some flexibility for a higher income cap in appropriate areas rather than applying a blanket reduction across all boroughs.

4. **Intensification:** The potential to optimise housing delivery within existing planning permissions may offer an opportunity to deliver more homes for Londoners, potentially with materially higher quantum of affordable housing than it was viable to commit to at the time of an application being determined. The application of the Threshold Approach proposed in the Draft SPG in such circumstances is unclear. We ask that the document expressly confirms that the Threshold Approach would apply only to net additional residential habitable rooms, otherwise this would be likely to result in the land value of the extant planning permission being higher than for an intensified scheme. This would result in frustrating rather than encouraging housing delivery.
5. **Sharing Information:** We generally agree with the GLA's principles of openness and transparency of information and note that the Draft SPG already contains some flexibility for an Applicant to make the case on an individual application basis for specific items to be withheld, subject to agreement with individual authorities. Greater clarity on this would be welcomed to avoid inconsistency across Boroughs whilst also providing reassurance to third parties seeking to obtain financial information in relation to applications where there is agreement that it is reasonable for certain information not to be released. A non-exhaustive list of exceptional circumstances which commonly give rise to commercially sensitive information or could jeopardise ongoing negotiations could be identified and defined in the SPG, thus minimising the risk of Freedom of Information requests and potentially tribunal

by third parties. We acknowledge that such circumstances are limited but could include information where at the time of the application being submitted there are or will be active negotiations in relation to compensation or land acquisition, where there is an imminent or active CPO, or where there are Rights of Lights claims, for example. This would not prevent other circumstances of confidentiality being put to authorities but would provide certainty for those known areas where confidentiality is reasonable.

Build to Rent: The positive recognition of Build to Rent, in particular the distinct economics of this type of product, is welcomed. Build to Rent delivers lower upfront land value compared to open market residential products and is an attractive asset class for institutions and other investors seeking long-term, inflation tracking returns. This needs to be recognised by all players, including public landowners and Councils, who in our experience have varying responses to Build to Rent. We consider that the Draft SPG could provide an opportunity to reinforce the differences in the economics between sale and rent and require Local Authorities to plan for, enable and welcome Build to Rent delivery, particularly in light of the recently published Housing White Paper.

Build to Rent remains an emerging sector in the UK, largely due to the underdeveloped capital markets for long-term finance in this area, the absence of industry benchmarking data which makes it difficult to underwrite any investment, a lack of consumer awareness of the product and varying approaches to rental values. It is our view that to support investment in and the establishment of the Build to Rent sector, the Draft SPG would benefit from greater flexibility/clarification in the following areas:

- a. References to review/clawback mechanisms present a considerable investment risk as drafted and do not reflect how providers/investors operate. Build to Rent schemes are generally forward funded by the future asset owner or sold to the asset owner during development, at which point the developer's receipt is fixed and the risk falls on the asset owner in the event of any change to operating cost or revenue. The price paid by the asset owner will also usually factor in growth assumptions. Consequently, any references to review/clawback mechanisms should be removed and/or be clarified that if considered absolutely essential based on the specifics of a scheme, they should be limited to pre-implementation review only.
- b. While investors are generally comfortable with some inclusion of discount to market rent, they do expect the income to track the market. Consequently, there should be flexibility in the approach to rent setting and increases to reflect site specific circumstances.
- c. Affordability of homes should be subject to discounts to market rents, rather than apply an arbitrary income cap applied to intermediate home ownership products (i.e. £60,000), to allow flexibility to reflect specific local needs and provide a range of rents. It would be more appropriate to cap maximum rents for Discounted Market Rent homes within Build to Rent schemes to 80% of market rent.
- d. Design of Build to Rent schemes may require flexibility, such as allowing individual unit space standards to sit below current Housing SPG minimums if the shortfall is

included elsewhere in the building as amenity space and variation in the number of units per core.

6. **Starter Homes:** Following the recent publication of the Government's Housing White Paper, it is apparent that whilst there has been a shift in the approach taken to Starter Homes, this remains very much a policy requirement. We would encourage the GLA to advise on the treatment of Starter Homes in London in the context of the approach being promoted by the Draft SPG, in particular its relationship to tenure mix discussed in paragraphs 2.27 to 2.31, to provide clarity and ensure consistency moving forwards in the translation of the Government's requirements across London to include definition, approach, terms and requirements.
7. **Delivery of Affordable Housing:** The Draft SPG should seek to encourage innovation and diversity in the delivery of affordable tenures, encouraging new products and providers to the market. New models of affordable development could of course include those provided by the wider development sector rather than RPs and therefore the Draft SPG should avoid being prescriptive in terms of tenure types and provider, for example by recognising the potential for alternative products in Paragraphs 2.24 to 2.31. There are potential new providers and an appetite for investment in the sector which has the potential to bring with it innovation. This should be encouraged by the SPG and prescription avoided.

Specifically in relation to paragraphs 2.24 to 2.26 on Registered Providers and Public Land, our experience is that it is not always possible to have an RP on board at the pre-application stage. Tendering and fixing a price is generally achieved only after planning permission is secured, although there may be informal conversations before this time. These paragraphs should be less prescriptive about the timing of engagement with RPs and acknowledge that an RP may not necessarily be required to deliver all of the affordable products in a scheme, particularly on a larger regeneration project.

8. **Public Land:** We note the Mayor's strategic aim for 50% of new homes to be affordable and, in paragraph 2.25, for RP-led schemes and schemes on public land to deliver as much affordable housing as possible within the context of the requirements of the London Plan policy 3.12. Argent/AR would welcome more detail on the circumstances or types of scheme where the Mayor would wish to see 50% affordable housing, having regard to our earlier comments on ensuring flexibility for long-term regeneration schemes and wider social and environmental contributions these make beyond housing.

Overall, we welcome the publication of this document and the overarching objectives to speed up planning decisions and make the viability process more consistent and transparent. We are of the view that whilst it provides useful clarity on some aspects of the approach to affordable housing and viability, it does not necessarily incorporate the flexibility or pragmatism required to address the range of development and affordable products which the GLA is seeking to deliver. We hope our representations provide some ideas on how to refine the document to

ensure that the guidance the SPG is providing on how the London Plan policies are applied is presented in a way that achieves a step change in delivery sought by the GLA and the wider development industry.

Yours faithfully

A handwritten signature in black ink that reads "Alex Woolmore". The signature is written in a cursive, flowing style.

Alexandra Woolmore

Senior Projects Director (Head of Planning)

Mayor of London – Homes for Londoners: Draft Affordable Housing and Viability SPG 2016 – AVL Reps

Introduction

The following document sets out our response to the Mayor of London's Homes for Londoners: Draft Affordable Housing and Viability SPG 2016. We first of all set out a number of general points dealing with viability assessments of this nature. We raise these issues based on our experience of advising both the public and private sectors on viability and affordable housing. We then deal with specific points in the draft SPG.

General Points

- Those carrying out viability appraisals should be from a RICS registered business, with experience of valuation and viability appraisals. This is due to the following issues:
 - The financial implications of the type of viability assessments associated with affordable housing can be hugely significant for both the LPA and the developer. Those undertaking the work should have the appropriate professional experience to understand the weight of this work. We find that there are often unregulated parties submitting and reviewing (on behalf of local authorities) viability statements with limited experience.
 - It would not be acceptable to rely on an unregulated party to submit a valuation for bank lending, for example. We question why this should be any different in viability cases, where so much is at stake?
 - Those undertaking this work should have a professional understanding of how the market functions and should be aware of valuation practices. Too often we see a lack of understanding of market nuances. For example, we often see appraisals where, based on comparable evidence, average values are applied to schemes on a price per sqft basis without consideration of unit sizes. This can lead to inflated prices on larger units which do not reflect what people would actually pay for the unit typology within the local market.
 - It is often the case that data is presented without any analysis of interpretation.
 - Non-regulated business lack the objectivity required for these types of assessments. It is often evident that the goal for certain parties is to “save” the client money through a reduction in planning obligations.
- There should be some mechanism for ensuring that viability statements are independent.
 - As noted above, it is often clear that a developer or council has had an influence on the assumptions applied in an appraisal, biasing its outputs towards a desirable outcome for that party.
 - We propose that each viability assessor should be required to provide a statement that they have acted on an independent basis and not working on an incentivised basis.

- We would like to understand how much weight will this document be given?
 - Will it be made clear which councils are adopting this document as policy?
 - Will the RICS and RTPI be endorsing this document to ensure a consistent approach across these professional bodies? We assume that such an endorsement would also help to ensure clear and concise guidance from these professional bodies. Guidance notes currently lack a joined-up approach. This is leading to inconsistencies in assessments, and a lack of robustness – these all create delays to the planning system.
- There is little recognition given to the fact that the market is stronger in certain areas of London – certain areas are thriving, whilst in others values are decreasing. There needs to be recognition that there are inner and outer London markets in particular.
- The Housing White Paper indicates that 10% of all schemes should comprise of Starter Homes. Does this mean that only 25% of schemes will feature other affordable tenures?
- A common-sense approach should be encouraged in viability assessments and guidance, which is severely lacking at the moment. We see many examples whereby the redevelopment value without affordable housing is below the existing use value – there are currently “no hooks” in planning guidance which allows the reviewer or the council to ask the question “If, based on your assumptions the scheme is so unviable, then why are you promoting this scheme?”

We now deal with specific points of the SPG:

Background and Approach

- **Para ref: 1.7** - Given that only 13% affordable housing has been delivered in 2014/15, what has the 35% threshold figure been based on? Is this based on a viability statement across the Boroughs? Is it realistic to expect schemes to achieve this level?
- As the proposed 35% affordable housing is merely a threshold is it not more appropriate to go for a lower affordable ask but have much narrower criteria to challenge affordable housing on grounds of viability? A less flexible approach to challenge viability would generate more onus on developers to factor policy into the price when bidding for sites. This would have the desired effect in reducing land values.

Threshold Approach to Appraisals

- **Para ref: 2.3** – Reviews are proposed after 2 years. Should this not be three years, as planning permissions are currently valid for 3 years?
 - If the applicant seeks to extend the permission at 3 years, a review of the scheme will need to be undertaken at this point anyway. Will a 2 year review add unnecessarily to the workload of the LPA and costs for the developer?

- **Para ref: 2.3** – The wording around the review mechanisms suggests that they are in place to capture any uplift in values. However, in the interest of fairness should they not also reflect decreases in values, with the possibility of delivering less affordable housing should there be a downturn in the market? This is being experienced in certain inner London Boroughs at present?
- **Para ref: 2.6** – It should be recognised that adopting a ten-or-more unit affordable policy can have a significant positive impact on land values for smaller sites – in our experience this leads to a distortion in the market. On smaller sites that are flexible enough to deliver less than 10 units but also have the capacity to provide more than 10 units, developers are basing the credible alternate use value on this basis of a 10 unit or less scheme. When this credible alternative use land value is then applied in the viability calculation for a slightly larger scheme (above the 10 unit threshold) the ability to extract affordable housing contributions is minimal due to the higher land value used.
- **Para ref: 2.8** – This is more complicated to calculate than a per unit basis and presents greater room for error. Additionally, what is the definition of a habitable room – does it include the living room, say? What happens in cases where a dining room is used for an additional sleeping space for example?
- **Para ref: 2.8** – As things stand, the requirement for different sizes of unit is highlighted in a LA's Strategic Housing Market Assessment. How is a per habitable room approach an improvement on the requirements set out here?
- **Para ref: 2.12** – Should this list include listed and heritage buildings? The retention of heritage assets can have a significant impact on the viability of certain sites.
- **Para ref: 2.14** – Again, it is stated that the 35% affordable threshold is 'practical', but what evidence has been used to support this claim?
- **Para ref: 2.24** – Although we agree that engagement with RPs is the best way to gain robust information to inform appraisals, we have frequently found that they can be difficult to reach. It is not uncommon to wait 3 to 4 weeks for a response. This comment is based on work we have done for both public and private-sector clients. We acknowledge that this is often due to how busy housing associations are. However, we would highlight the following issues with engagement:
 - Finding the relevant contact for property acquisitions is frequently difficult. These contact details are generally not published on housing association websites. Receptionists are also often uncertain of where to direct such enquiries.
 - RPs are often unwilling to give an indication of their typical transfer values.
 - We have been made aware that most RP's will only take on a certain number of units. This is due to the fact it is not practical to manage small numbers of units spread throughout the city. We have been told that they will often only look at sites offering more than 30 affordable units.

We propose that in order to make this process more efficient and to allow for more robust viability appraisals, RPs could publish their minimum requirements, transfer

values, location requirements and other relevant information. This could include details of the actual transfer values achieved in each local authority area. This data should also be updated regularly. Such a resource would allow assessors access to accurate evidence and offer greater consistency in the approach to viability assessments. This would also take pressure off the housing associations, as they would have to deal with a smaller number of requests for information.

- **Para ref: 2.40** – How does this tie up with the need to provide larger family units? In many areas of London, values easily exceed £600,000.
- **Para ref: 2.51** – Is there a time limit for how long the contribution will be held in this pot? In other cases, contributions can be returned if unused after a certain time period. Is this the case here?

Guidance on Viability Assessments

- **Para ref: 3.5** – Which models should be used? It should be acknowledged that some models are unsuited to appraising certain types of development?
 - We note that certain models, such as the HCA DAT model do not deal well with complex multi-phase schemes, or with mixed use development involving commercial space. Of the HCA model, the academic Tim Havard states that, *'the modelling of non-residential elements in particular is a gross oversimplification and inadequate'*.¹
 - We also note that paragraph 3.5 states that there should be no hidden calculations or assumptions. We find that this is actually a failure of the HCA model and also the GLA Toolkit. Assumptions are often fixed and are frequently hidden. Havard also says of the HCA model, *'the model is opaque, the user cannot easily interrogate the model to see how the calculations are actually being done'*.²
- **Para ref: 3.6** – This needs to be reciprocal. Viability statements issued on the Council's behalf also need to come with narrative and evidence. If both parties are explicit in their approach and assumptions, then this will help to avoid unnecessary delay and the potential for appeals.
- **Para ref: 3.9** – It is unlikely that commercial information such as letting agreements and contracts can or will be made available. However, evidence of comparable deals should be necessary to evidence the values adopted in appraisals.
- **Para ref: 3.13** – The PPG states that valuations need to be done on today's values³ and we disagree that growth should be factored in any case. This is especially true given build costs are to be considered on today's values (why one and not the other?).
 - Following on, we instead propose a common sense check in cases where developers are happy to proceed when showing limited viability.

¹ Havard, 2014. *Financial Feasibility Studies for Property Development*. P.107.

² Havard, 2014. *Financial Feasibility Studies for Property Development*. P.106.

³ DCLG, 2014. *Planning Practice Guidance*. Paragraph: 017 Reference ID: 10-017-20140306

- The question should be asked - *why is the developer proceeding if the scheme is not viable? If viability is not being achieved, how are they seeking to deliver the scheme?*
- A developer should be able to answer these questions.
- A similar approach has been taken by Islington, as outlined in their Development Viability SPD (Jan 2016). This states:

4.6. The council has received development appraisals which indicate that a development would generate a significant deficit with the level of planning obligations as proposed by the applicant, even at a level lower than required by policy. This raises questions regarding the commercial basis of the proposed scheme and the terms under which development finance is likely to be secured. This would also appear to be at odds with general market conditions and the high rates of development within the borough (where not explained by circumstances specific to the site).

- **Para ref: 3.16** – Again, it is not always the case that RPs are willing to engage.
- **Para ref: 3.20** – In cases of non-standard development, sources such as BCIS cannot always be applied. For example, BCIS does not provide cost information for church conversions or bespoke buildings. In these cases, it should be necessary to appoint a QS to provide a cost plan.
- **Para ref: 3.22** – This makes reference to costs which are 10% or more above BCIS. Does this mean median or upper quartile BCIS figures? There is also other benchmark data available, such as SPONS which are appropriate for costing schemes.
- **Para ref: 3.25 – Wrong** – Abnormals are not always apparent until you get below the ground following demolition. Thus, you do not always know the abnormals prior to site purchase.
 - Abnormal costs may only be abnormals for other uses, but not for the existing use. For example, a site which is considered polluted for residential may not always be viewed this way for industrial. The cost will be covered at some point along the line, but may not be reflected in the purchase price for the land.
- **Para ref: 3.33** – This paragraph notes low levels of profit accepted for commercial and PRS. We would question what evidence or justification this claim is based on?
 - This paragraph should not stipulate that profit levels should be based on market conditions and then stipulate what would currently be accepted and what should normally be the case for certain types of property. You cannot forecast what will happen in the market, and the market will vary from location to location.
 - We also note that there is frequently little narrative in viability assessments giving the reasoning behind selecting a certain level of profit. We would appreciate a requirement for more justification and reasoning behind this assumption.
- **Para ref: 3.41** - We appreciate that there is the potential for circularity in a comparable evidence-based approach to land value, where purchasers have not factored in policy-contributions when bidding for sites. However, as noted below (in relation to 3.42), there are also faults with the Existing Use plus Premium approach. A comparable

evidence-based method is more appropriate in some cases. However, it should be made clear that it is the responsibility of the viability assessor to show how they have broken the circularity, and adjust the comparable evidence to reflect the policy, the local market and scheme specifics, as per RICS Viability in Planning.

- **Para ref: 3.41** - This paragraph is also worded in a way which suggests that the price paid for land is always above the actual value of a site. This is patently untrue. It may, in some cases, be appropriate to apply the value paid for the land by a developer. We note that this should read, 'it is inappropriate to apply the value paid for land by a landowner when this value exceeds the existing use value of the site', if the EUV+ approach is to be adopted.
 - This may be an opportunity for another common sense check – *Is the price paid for a site / or the comparable evidence used higher than the existing use value?*

We also note that the landowner should be required to provide the price they have paid for the site and evidence of how they had factored in planning policy when formulating the purchase price. The guidance should be clear that the flexibility in the planning system is not there to “soften the developer’s blow” for making optimistic assumptions when bidding for a site.

- **Para ref: 3.42** – If a premium is to be applied, evidence needs to be provided that shows that an uplift in value has been created through the development proposed. It also need to show that policy is accounted for in the land value adopted.

We also have concerns that an existing use plus premium approach fails the PPG on Viability, paragraph 004 test:

“Evidence based judgement: assessing viability requires judgements which are informed by the relevant available facts.”

In our experience the premium is never based on evidence and is usually an arbitrary figure. Therefore, we would recommend that the guidance explains how the premium figure should be derived in the local market and is explicit about what evidence should be drawn upon.

- **Para ref: 3.42** - With tightening of industrial land and loss of offices through PD rights, secondary rents are starting to increase and yields are starting to harden resulting in good capital values. When we start applying these capital values in existing use plus premium calculations this can produce a threshold land value higher than residential value reflecting full affordable housing policy. Therefore existing use plus premium has the potential to distort the market.
- **Para ref: 3.42** – We have found that certain factors can lead to spikes in land value when residential prices have not yet been influenced in certain areas. This has happened in relation to Crossrail, for example. How can the EUV plus premium approach reflect this sort of scenario?
- **Para ref: 3.42** - How can an Existing Use Value plus Premium approach be used in cases where the site has already been cleared? In this case, there is no existing use.

- In relation to land value, if an EUV+ approach is taken, we propose another common sense check.
 - If the existing use value is higher than the residual value of the proposed development? If so, *why is the developer proceeding with the scheme?*
 - If this is the case, it shows that there is more value in the land in its current use.
- **Para ref: 3.45** – Why should a lower benchmark be used in cases where the landowner already possesses the site? They would get this additional value were they to sell the site on, so why should they not benefit in retaining the site and bringing the development forward?
- **Para ref: 3.45** – We feel that mentioning a 20-30% premium is dangerous. We have already had experience of this figure being quoted in a Hearing Statement for a planning appeal. This should not be explicitly stated as this will lead to the figures quoted being referenced and used as evidence. This is especially true as there is no clear way of evidencing the figure assumed for a premium (noted above in response to 3.42). Instead, the premium should reflect market conditions, but we again question how this can be achieved whilst satisfying the PPG guidance on viability.
- **Para ref: 3.59** – What evidence has been used to support the claim that existing use values in SILs are lower? 500 hectares of industrial land has been lost in London in the last 5 years alone.⁴ This is inflating the value of SIL land significantly.

Build to Rent

- **Para ref: 4.15** – This potentially puts a significant liability on the owners of this asset. Will this have an impact on the yield? It will have a negative impact on viability, and is it practical? Option 2 states that in the event of default the developer would automatically require to make a contribution equating to 35% affordable housing. A covenant that stipulates this requirement is a potential burden on the scheme and therefore will need to be factored into the pricing of the PRS investment, e.g. a weaker yield may be applied which further impacts on the viability of the scheme. We suggest that no reference is made to a figure and that in the event that the covenant is broken a valuation exercise is undertaken to reflect the market conditions at the time.

Appendices

- **Ref: Formula 1** – Reference to build costs should be changed to state ‘total development costs’. As things are currently worded, this suggests only the base build costs are taken into account with the calculation.

⁴ NLA, 2016. *Made in London: Industrial Land and the Future of Manufacturing*. Presentation, 2/12/16.

Conclusion

We support a London-wide approach to assessing viability for planning obligations. However, in its current form the draft SPG is likely to create more uncertainty. We feel that this is because it is not consistent with RICS Guidance on Viability in Planning. This is likely to result in further delays in the planning system and is unlikely to have the desired effect of reducing land values in viability statements.

Paul Robinson

From: Russell Pedley [REDACTED]
Sent: 26 February 2017 20:30
To: Housing SPG 2016
Cc: Jennifer Peters
Subject: CONSULTATION RESPONSE TO DRAFT AFFORDABLE HOUSING AND VIABILITY SUPPLEMENTARY PLANNING GUIDANCE 2016
Attachments: Doc - 7 Feb 2017 - 14-09.pdf; ULI BTR Guide section 4.6 Design guidance.pdf

Dear Sir or Madam

Assael Architecture are Architects to a number of purpose-designed Build to Rent schemes in London and the UK. Our schemes in London include Greenwich Creekside, 250 homes for Essential Living (on site using volumetric modular construction), Young Street in Kensington for 60 homes for Grainger plc (on site), Pontoon Dock in Newham for 250 homes for LinkCity & Grainger plc (due on site later this year on land owned by GLA). Ferry Lane on Blackhorse Road in Walthamstow for 440 homes for Legal & General (consented and due on site later this year). We have also assisted Legal & General and Be:here with their design guides for Build to Rent and have twice won the Housing Design Award for the private rented category.

Generally, we support this SPG and specifically the encouragement of professionally managed Build to Rent for Londoners in Part 4; Build to Rent. However, in the context of the recently issued White Paper which highlights innovation in design, we have the following comments in relation to paragraph 4.28 of the SPG.

"With regard to design, Policy 3.5 of the London Plan sets out the approach to delivering good quality housing. The Policy includes the space standards set out in table 3.3 of the Plan and links to further guidance on standards required to achieve good quality development which are set out in the 2016 Housing SPG. These standards apply to all tenures. However, Policy 3.5D of the London Plan provides flexibility to consider innovative designs where they meet identified need and are of an exceptional design and standard"

Through our experience of working with, and negotiating designs for a number of clients, institutions and investors with some of the borough's planning departments, there is insufficient clarity on the flexibility of interpretation on design standards. Policy 3.5 of the London Plan is not specific to the different requirements of Build to Rent, which are different to market sale and affordable housing.

The White Paper, "Fixing our broken housing market" specifically paragraph 1.55 (extract attached), acknowledges "one size does not fit all" and since the Government proposes to review the *Nationally Prescribed Space Standards*, we would like this to also be acknowledged in the SPG in relation to schemes specifically designed for Build to Rent that are to be professionally managed and operated.

In terms of innovation, the sector would like to see specific flexible guidance along the lines outlined in the ULI UK Residential Council's *Build to Rent: Best Practice Guide Ed.2, Section 4.6 Design Guidance* (extract attached) which would help clients and designers develop innovative designs that Londoners need. The SPG could refer to this Guide as best practice.

We would be happy to participate in any review of further planning guidance or in the forthcoming amendments to the London Plan.

Kind regards

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Russell Pedley

BA DiplArch MA urban design RIBA FRSA
Director

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AJ120 Business Pioneer of the Year 2015, The Sunday Times 36th Best Small Company to Work For 2015 and [other awards](#).

GLA draft Affordable Housing & Viability SPG, November 2016 – Representations of The Ballymore Group

GLA Reference	Comment
Part One: Background & Approach	
<p>Mayoral strategic aim of half of all new homes from all sources being affordable. This will be achieved through greater use of public land, housing investment and the increase of affordable homes through the planning system.</p>	<p>The overarching objective is welcomed. However, the NPPF and NPPG recognise that each site should be assessed on its ability to deliver planning obligations, and other community benefits, and that a one size fits all approach is not acceptable. Indeed, whilst a broad-brush approach to the evidence base underpinning planning policy might be acceptable in order to make plans deliverable, site specific assessments should be more detailed reflecting the relevant available facts and reflect the unique characteristics of development sites so that the scale of obligations does not burden their delivery.</p> <p>An overly prescriptive singular approach could prove detrimental to the delivery of development sites and ultimately the overarching objectives of the Development Plan.</p>
<p>The SPG represents a ‘step change’ towards 50% affordable housing from all sources.</p>	<p>The SPG introduces a threshold approach to the delivery of affordable housing. Ballymore would question whether the 35% figure is too high as very few large strategic sites can support 35% affordable housing, with other planning obligations and CIL. A figure of, say, 25% would appear to be somewhat higher than the 13% referenced in the SPG as achieved in the last year of the previous administration.</p> <p>There is also limited incentive to get to 35%, where schemes are less viable, and the GLA must recognise that whilst an incentive is helpful, ultimately, a scheme must be meet a range of developers and funders’ criteria to be delivered. There is a long term linear relationship between consents and starts in the capital, and to break this and get more schemes on site and ultimately more homes delivered, the SPG should recognise the relationship between planning obligations and CIL, development profit and land value. The latter relationship is often ignored, as we shall come onto.</p>
<p>The Mayor and referable applications</p>	<p>The SPG promotes an additional ‘safety-net’ in relation to discussions regarding the level of affordable housing. It is worth noting that on larger sites, the local planning authorities already employ professional Valuers and the viability information is subject to significant scrutiny. Viability is undertaken on an objective impartial basis, and no two Valuers are likely to come up with exactly the same answer. Whilst there are benefits in working with the GLA on viability matters, it is hoped that in general the level of scrutiny already provided is high and the safety-net does not cause additional delays.</p>

<p>Boroughs are actively encouraged to support the GLA approach to viability information to provide London-wide consistency</p>	<p>The shift towards transparency is welcomed. Ballymore are very willing to share certain information as part of the planning process be it through the publication of information or through presentations on viability matters to Officers and Members. Certain information will not be made available; for example, information relating to funding agreements, rights to light liabilities of joint venture agreements. There is a real risk that too onerous application of this element of the SPG threatens a developer's commercial interests which is contrary to the tests as set out in the 2014 Environmental Regulations.</p> <p>London-wide consistency is also welcomed however the point made above regarding the threat of a singular approach remains. What would be of greater help would be an acknowledgement that a one-size CUV or Market Value approach is not possible and that advisors undertaking assessments should consider all the information at their disposal and make informed professional judgements, working with local planning authorities, that balance the competing requirements of landowners, profit and obligations. This is currently missing from the process and surrounding debate and the makes the process less rigorous. A singular approach to land value is not acceptable, is contrary to the NPPF and NPPG and is not helpful.</p>
<p>Part Two: Threshold Approach to Viability</p>	
<p>The introduction of a threshold approach to 'nudge' developers to deliver more homes</p>	<p>Whilst in principle this makes some sense, as noted above the 35% figure which appears arbitrary is high and may not be achieved on most larger sites. Current evidence would support this. The threshold approach must acknowledge that schemes that disregard viability evidence which is a material consideration in the determination of planning applications, may not ultimately may not trigger the applicant's own profit hurdles or indeed be fundable. Ultimately, achieved consents need to be deliverable.</p> <p>There is also an expectation that the flex in the equation in order to get to 35% affordable housing, will be the landowner's component. This is a naïve assumption and one that threatens the delivery of development sites. Landowners are clearly an important ingredient in the equation, and many will choose to hold on to their assets if land prices are on a significantly downwards trend.</p> <p>Many landowners have alternative uses that their sites can be used for and flexibility exists in existing affordable housing policy to allow for this. The decision on what use to bring forward is not always made upon land purchase and property companies may evolve designs for competing uses following the acquisition of site, before deciding upon which use to apply for. Whilst the SPG seeks to ignore the relative values of competing uses, something that is clear should be acknowledged by the NPPG, this is a fundamental component of the land market and on that failure to acknowledge, will have a detrimental effect on land supply.</p>

<p>The SPG requires LPAs to refer to their affordable housing policies as part of the consultation process and explain through evidence how this will deliver more than 35% without grant subsidy</p>	<p>London comprises 33 different planning authorities. Local areas range from the highest value housing that can be found anywhere globally, and competing uses in central London to areas with the high levels of deprivation, particularly to the east. The ability of local authorities to set policies that reflect the development economics within their boundaries and make decisions based upon local costs and values is essential to ensure that a continuous stream of new housing, with associated benefits, came come forward in all areas. A policy target that is set by, for example, artificially reducing the cost of land in an area, may on paper yield a high level of affordable housing, CIL and other benefits however from a commercial perspective and from a landowner's perspective, these consents may not ultimately be deliverable. Departure from the existing localised approach would be detrimental to housing delivery and inconsistent with Government policy and guidance.</p>
<p>All schemes are expected to make the most efficient use of available affordable housing resource</p>	<p>This aspect of the SPG is welcomed. The use of 'developer-led' funding to increase the overall level of affordable housing is helpful and can make a tangible impact upon delivery.</p>
<p>The Threshold approach for viability assessments contains a 'Route A' and 'Route B' approach</p>	<p>As noted above, the 35% figure appears one that is arbitrary and is somewhere on the spectrum of between the level of affordable housing that is currently being delivered and the 50% strategic aspiration. The clear expectation is that land value will be the flex in the equation however the comments above reflect the risks of a reliance upon that approach. The Route B definition relates to 35% affordable housing without public subsidy and with the 'relevant tenure split'. The requirements is also for 'all other relevant policy requirements and obligations' being met. There are very few schemes, if any, that are truly fully policy compliant is this definition is stretched beyond affordable housing policy alone. Further clarity is therefore required on this definition.</p> <p>Route B also includes the removal of an early review if an agreed level of progress on implementation is not made within two years. The implementation time-period should be assessed on a site by site basis and be at the discretion of the LPAs advisors who can make an informed judgement on the programme of works before them as with many schemes this may not be possible i.e. early infrastructure works are required, vacant possession can't be achieved and so on.</p> <p>Notwithstanding the comments made above regarding viability being a material consideration, and failure to acknowledge viability constraints may put the delivery of larger schemes at risk, developers will not be willing to artificially increase affordable housing percentages if the scheme is then to be held up with further reviews within two years.</p>

<p>Any surplus upon review, will be split 60/40 in the LPAs favour</p>	<p>Any uplift should be shared on a 50/50 basis with an identified cap reflective of the local policy headline target. The 50% affordable housing is from all sources and therefore the implication is that, with a significant number of 100% affordable housing sites and estate regeneration with high levels of affordable housing, the strategic target for mixed-tenure schemes should be less than the strategic overall target. Ultimately all liabilities emanating from review mechanisms will need to be funded, and if they are too onerous, then this puts the delivery of schemes at risk.</p> <p>We also make comment here in relation to the formulaic approach to the review mechanism. The formula provided does not allow the landowner to include certain reasonable additional costs and therefore is not consistent with the NPPG and NPPF.</p> <p>If reviews are to be included, with the LPA seeking to benefit from increased values, landowners and their funders will need to ensure that the reviews recognise all reasonable costs of development.</p>
<p>Route B review to identify the Benchmark Land Value within the S106 for future viability testing</p>	<p>In order to meet the requirements of the NPPF and NPPG any future viability test should consider a reasonable return the landowner and a developer. A viability review is simply a re-run of a project's viability at a future point in time. If market conditions improve, and development profit and planning obligations are improved, then the landowner will expect to be compensated by way, for example, of an overage agreement. This is also the case on larger schemes where the quantum of development under review at a future point in time may not reflect the initial consented development quantum. Similarly, the landowner would likely be entitled to an improved return. Therefore, a Benchmark Land Value that is fixed and does not necessarily reflect the quantum of development being considered or the passage of time, is not consistent with the NPPF and NPPG requirements.</p> <p>It may however be sufficient that the Benchmark Land Value is subject to an agreed indexation.</p>
<p>The review mechanism will be used to contribute to other policy objectives</p>	<p>This requires further clarification. Regulation 122 of the Community Infrastructure Legislation sets out the tests upon which planning obligations can be sought. For a scheme to obtain a planning consent it must be deemed acceptable in planning terms and that the mitigation measures accrued by way of planning obligations are sufficient. The Council should not simply seek betterment. In many cases, it is ultimately not clear what a 'policy compliant' level of obligations for a particular item might be. The reviews should therefore, in certain cases, seek to deliver additional affordable housing only.</p>

<p>Early engagement with Registered Providers and an agree price</p>	<p>In many cases, RPs are unable to engage with developers at an early stage of the design process and this is particularly relevant on multi-phased schemes where future phases are some way off.</p> <p>In making offers for affordable housing, RPs value affordable housing on a DCF basis using a range of cash flow lengths and inputs. In some cases, an RP will offer more for planning gain affordable housing than their standard model concludes is available if the housing is, for example, in a particular location and is able to managed off an existing facility nearby. Conversely, offers are sometimes lower than those envisaged in the viability case and the landowner has limited options in terms of mitigating the impact. Ultimately, the contract between the landowner and RP is a private commercial agreement.</p>
<p>The SPG notes that development density and the relationship with affordable housing provision may in cases be explored</p>	<p>This is a welcomed component of the SPG. Simple density matrices commonly fail to acknowledge the local characteristics of a site and there are many examples of very high quality architecture across the capital that have veered away from the crude application of a prescribed matrix.</p>
<p>The SPG promotes 30/30/40 tenure weighting to affordable housing comprising London Living Rent, affordable / social rent with the remainder at the discretion of the LPA</p>	<p>Existing affordable housing policy recognises the requirements of mixed and balanced communities. In certain instances, it may be pertinent to deliver a different affordable housing mix and generally, LPAs are flexible in the policy application. The SPG should allow this to continue.</p> <p>London Living Rent is welcomed and may, in certain circumstances be a welcomed addition to the housing mix. The tenure is unlikely to be required in all cases and there are a number of Registered Providers openly mirroring these comments. The role of London Living Rent on Build to Rent schemes, which we shall come onto, is welcomed. Further clarity is required through in regard the valuation principles of London Living Rent as it is not clear how a sale after 10 years as suggested can be factored into the valuation.</p>
<p>London Living Rent restricted to households with up to £60,000 household income</p>	<p>The current affordability threshold is £90,000 household income. In central London particularly, there is demand for intermediate homes available to higher-earning households who play an important role in the capital's economy. The SPG should recognise that there are higher earners who could be priced out of affordable homes if the cap for rented homes is reduced.</p> <p>The higher market values in central London also make shared ownership properties difficult to deliver and an intermediate rented product, at a higher percentage of market rent would meet a defined need and also provide a higher return to the landowner to subsidise the delivery of London Living Rent which yields a relatively low return.</p>

Definition of Starter Homes	The Housing White Paper now provides clarity on the definition of Starter Homes (the legislation is contained within the 2016 Housing and Planning Bill). The White Paper requires that 10% of all homes shall be for affordable home ownership. The SPG should clarify whether the Housing Bill requirement takes priority over other forms of affordable accommodation.
Vacant Building Credit	Further clarity is required as the wording of the SPG does not appear to be consistent with the Written Ministerial Statement or the NPPG amendment (Para 021-023 as amended 19 th May 2016).
Part Three: Guidance on Viability Assessments	
Appraisal requirements	The SPG seeks information that is related to the landowner and ignores the fact that viability is undertaken on an objective basis that is not unique to the landowner. Further clarity is required as to why this is needed. Information that is directly relevant to the landowner may be commercially sensitive and retained (structured funding agreements whereas a weighted cost of capital across all costs reflecting a market norm for the type of development in question should be appropriate).
Affordable housing values	<p>The SPG requires affordable housing offers that are made by Registered Providers and also a right to investigate ‘high’ assumed payments for affordable housing. The agreement between a Registered Provider and a landowner is a commercial agreement and it will generally not be acceptable for the agreement to be made public.</p> <p>Registered Providers are generally willing to engage with developers but only when there is a degree of certainty over delivery. Registered Providers value affordable housing using a DCF approach and the values offered often reflect certain nuances in their valuation approach i.e. the use of internal subsidies such as RCGF and sometimes a degree of conditionality. Given the objective nature of viability, the values proposed are not always appropriate for viability purposes and Registered Providers will generally not want their offers in the public domain.</p>
Build costs	The SPG places significant reliance on BCIS. Whilst BCIS is a helpful indicator for a smaller more straight forward projects, given the source and general scarcity of the data, it is not reliable for larger more complicated projects. The SPG should not place too greater reliance on BCIS and rather encourage landowners to submit elemental cost plans that are consistent with the level of detail provided in the drawings in support of planning applications (i.e. RIBA Plan of Works Stage C). Wherever possible such assessments should be benchmarked against other similar projects.

Abnormal costs	<p>The SPG notes that the level of abnormal costs on a site should inform the premium about the Current Use Value on the site. The SPG assumes that these abnormal costs would be known at the point of acquisition. This is clearly not always the case.</p> <p>The landowner's expectations will be measured against a number of factors including the site's existing use, the proposed density and uses on the site, the level of profit that the developer is seeking to extract and the level of obligations, including CIL, that the scheme will yield. This will ultimately influence the margin above CUV as discussed above. If the margin is eroded too significantly, the likely outcome is that the site may not be brought forward as a development site.</p>
Finance costs	<p>The SPG notes that a standardised approach to finance costs will generally be adopted. However, the individual Valuer should assess the nature of the project, including its size, mix and geographical location. The level of risk will also dictate the margin at which the lender applies its costs to senior and secondary debt and the loan to value. A one size fits all approach to finance is not adequate.</p>
Developer profit	<p>Similarly, the SPG notes that profit levels should be no higher than 2008/9 requirements despite current market uncertainties. The profit return should reflect reasonable market returns based on regular engagement with the development industry on their requirements as well as their funders. Profit is a constituent of risk.</p> <p>The SPG notes that an Internal Rate of Return (IRR) is only appropriate to schemes of over 1,000 homes. The SPG should also acknowledge that there are capital intensive schemes, for example those with upfront infrastructure costs, where an IRR is a more reliable gauge of profitability. Each scheme should be assessed upon its own merits.</p>
Benchmark land value	<p>The one size fits all approach to land values does not reflect the unique nature of development sites. The SPG recognises that the CUV+ to viability is the preferred approach. However, it is the 'plus' in the equation that is relevant and should reflect the particular characteristics of the site. The SPG should recognise in accordance with the NPPF and NPPG that there are a range of measures that should provide an indication of an appropriate site value for the purposes of planning viability. These include, but are not limited to, the site's existing use, alternative uses, market information, the uplift in density being proposed and so on. Failure to recognise this puts the delivery of development sites at risk. The benchmark land value should also have regard to the level of development profit being extracted and the scale of planning obligations and CIL being derived.</p> <p>It is for each landowner and practitioner to work through the various tests and often an explanation in accordance with policy and guidance as to the appropriate Benchmark land value. A singular approach to this particular measure, the SPG refers to 20% to 30% being adequate, is inert and increases the risks the prospects of non-delivery.</p>

	<p>As an example, a site with an existing tenanted office building with good rents may yield a reasonable CUV and with limited scope for a greater amount of space on the site, the uplift from CUV required to release the site may be very limited. Conversely, a cleared site or one with low-density and low-grade industrial uses, with an allocation for mixed use development, perhaps increasing site coverage multiple times, will not likely be released with a premium above CUV of 20% to 30% and it is highly probable that the release value will be a multiple of CUV rather than a margin above.</p> <p>Landowners in this latter scenario will feel entitled to a reasonable return for their asset. In the case of the office building it may be that land value represents, say 30% of GDV whereas in the case of the low-density industrial building, the land value may be no more than 10%. Valuers should use their professional judgement to assess the value of land for planning viability purposes, ensuring that there is a reasonable split between land value, development profit and planning obligations / CIL.</p>
The use of review mechanisms	<p>The SPG recognises that review mechanisms can contribute to additional planning gain based on future market improvements. Reviews have been incorporated on longer-term schemes, the RICS suggest a five-year development programme might be appropriate or where there are multiple phases. The SPG should seek to avoid the use of reviews on shorter term projects, unless exceptional circumstances exist, as reviews on smaller projects decrease the prospects of funding opportunities and ultimately, deliverability.</p> <p>Reviews can also be time consuming in terms of their collation and their execution. In a single-phase scheme with a development programme of say two to three years, the potential for significant upside is relatively limited.</p> <p>The review mechanisms should incorporate a review of all values and all costs. The current proposed formula does not allow the landowner to capture full costs, are therefore is not consistent with the NPPF's reference to a reasonable return to a landowner. The proposed review structure does not allow for the landowner to reduce obligations in the event of viability worsening and this is understood within the context of Part 122 of the CIL Regulations. However, in order to balance these risks, the capture of all reasonable costs should be allowable.</p>
Approach to Opportunity Areas and Housing Zones	<p>The bespoke approach to the testing of viability in these areas is welcomed.</p>

**'HOMES FOR LONDONERS'
DRAFT AFFORDABLE HOUSING AND VIABILITY SPG**

RESPONSE TO CONSULTATION
ON BEHALF OF BARRATT LONDON
FEBRUARY 2017



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'HOMES FOR LONDONERS'
DRAFT AFFORDABLE HOUSING AND VIABILITY SPG

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 FEBRUARY 2017

Issue / revision	Prepared by	Luke Vallins
Reference	Signature	LV
177306	Date	February 2017
This document is issued for	Checked by	Faraz Baber
<input type="checkbox"/> Information	Signature	FB
<input type="checkbox"/> Approval	Date	February 2017
<input type="checkbox"/> Comment	Authorised by	Faraz Baber
<input checked="" type="checkbox"/> Submission	Signature	FB
Comments	Date	February 2017
	Authorised by	Faraz Baber
	Signature	FB
	Date	February 2017
	Please return by	

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1.0 Introduction

Brief

- 1.1 Terence O'Rourke has prepared these representations on behalf of Barratt London in response to the Mayor of London's 'Homes for Londoners' draft Affordable Housing and Viability Supplementary Planning Guidance (SPG), which was published for consultation on 29 November 2016.

Barratt London

- 1.2 Barratt London is the market-leading residential developer in the Capital. With over 30 years' experience, Barratt London has helped shape one of the world's most exciting, diverse and dynamic cities.
- 1.3 Barratt London design, build and sell large, complex residential-led developments tailored to the needs of its customers and stakeholders, as well as local boroughs and communities. Working with respected planners and designers, Barratt London has accrued invaluable experience in realising high-quality homes right across one of the world's most architecturally challenging but undeniably exciting cities.
- 1.4 Part of the Barratt Developments PLC group of companies, Barratt London (from hereon referred to as Barratt) established as a separate brand in January 2014. Its new brand reflects its dedication to the London market and demonstrates that Barratt are London specialists, focused on making this extraordinary urban playground an even better place to invest in property and, most importantly, call home.

Overview

- 1.5 Barratt supports, in principle, the Mayor's strategic ambition and the overarching aims of the SPG to speed up planning decisions, increase the amount of affordable housing delivered through the planning system, embed the requirement for affordable housing into land values, and make the viability process more consistent and transparent.
- 1.6 That said, it is important to recognise that there is a need to encourage development and incentivise the release of land, and it is essential that the measures put forward to achieve the Mayor's ambition are both realistic and achievable. There is therefore a need for flexibility, where appropriate, and for the guidance to be applied pragmatically. This is because an overly prescriptive approach may put certainty and delivery at risk, especially on large multi phased schemes that provide a high proportion of housing, including affordable housing.
- 1.7 These representations respond to the main areas of interest to Barratt within the draft SPG, generally following the same structure and headings as the document. Where specific comment is made, the relevant paragraph is noted along with Barratt's response, for ease of reference.
- 1.8 We trust that these comments will be duly noted and taken into account in preparing the final version of the SPG. We would be happy to discuss and

expand upon our comments where necessary and where this would assist in finalising the document.

2.0 Background and approach (Part 1)

Overview

- 2.1 Barratt is broadly supportive of the rationale behind introducing an Affordable Housing and Viability SPG, which seeks to deliver more affordable homes in London and lead the way in openness and transparency to help foster a greater understanding of and trust in the planning system.

London plan policy

- 2.2 It is helpful the Mayor recognises that his commitment to a long term strategic aim of half of all new homes in London being affordable will take time, especially in light of the low levels of affordable housing granted through planning permissions in recent years, and how this compares against the targets set out in the London Plan.

Viability and planning

- 2.3 The key national policy and practice advice that relates to viability and planning are in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG). While these policies are plan led, the ability to deliver is reliant on the market economy. In practice, there can be a tension between what is deemed necessary in strategic policy terms based on local need and what is considered viable on a site by site basis given the state of the local market conditions. The resultant effect can lead to setting unachievable affordable housing targets which impact on the delivery of market housing as well as affordable housing. The recently published Housing White Paper has made reference to tightening the definition of what evidence is needed to support a sound plan. This may help clarify this current tension between plan making and viability.

The Mayor and referable applications

- 2.4 Barratt welcomes the clarity provided by the Mayor on which applications may be called in and we hope to see further detail on how this will be applied. Whilst it is acknowledged that the Mayor is committed to securing London-wide consistency in the implementation of the SPG, and will therefore consider calling in or directing the refusal of applications under certain circumstances, it is important that this does not cause unnecessary delays in the planning process, as well as take the power to determine viability away from LPAs.
- 2.5 It is important that in the vast majority of cases the Mayor will trust the judgement of LPAs, and viability consultants instructed on their behalf, to scrutinise the viability information submitted by developers. This will ensure that new and affordable homes are delivered quickly and are not held up unnecessarily.

Transparency of information

- 2.6 Barratt is supportive of ensuring that the planning process remains open and transparent, as far as practicable. However, there will be circumstances where information should not be made public because of commercial sensitivity. We

seek clarification on the criteria required for applicants to justify withholding commercially sensitive information, which is critical to a competitive market. To help foster trust and openness of the viability process, we suggest a plain English summary of the development viability appraisal is produced for the general public which highlights the main parts of the application as well as the narrative to the development as part of the wider community it sits in. This should **not** be a technical summary but written in a style that can easily be communicated to the local community so they can interpret what planning gain is being achieved. We believe this approach will be in line with emerging RICS guidance on Financial Viability in Planning.

- 2.7 Barratt encourages the Mayor to ensure that sufficient flexibility is factored into the final version of the SPG to reflect the need for a number of aspects of commercial information to remain confidential.
- 2.8 With regard to the Mayor referring to and publishing viability information if it has not been published by the LPA, Barratt feels that it is important that the Mayor consults with LPAs prior to this information being made publicly available, in order to understand the LPA's reasons for not publishing it. This will ensure that information that may be, or may become sensitive, is not immediately released into the public domain, especially if there is a credible reason for it not being published by the LPA.
- 2.9 It is also likely that the need for information not to be publicly available may not arise at an early stage in the planning process, and so the necessary exceptional circumstances may not be immediately apparent. More suitable wording for paragraph 1.21 would therefore be as follows, with the proposed additional text underlined:

"If an applicant considers that an exceptional circumstance is likely to arise, this should ideally and where practicable be raised at an early stage within the pre-application process, or as soon as it becomes apparent."

3.0 Threshold approach to viability (Part 2)

Overview

- 3.1 Barratt supports the view that the SPG cannot set a fixed target for affordable housing in developments. Such a fixed approach would be likely to significantly compromise both market and affordable housing delivery and would not assist in maximising the level of affordable housing provision through schemes.
- 3.2 It is also appropriate for a framework to be introduced that seeks to deliver the maximum reasonable amount of affordable housing that is viable as part of new schemes, taking account of a suitable level of return for developers, based on the nature of the site and the risks involved. It is agreed that a more transparent and consistent approach is needed, and such an approach will hopefully provide greater confidence amongst developers, as they would understand how the requirement for affordable housing is to be dealt with from the outset.
- 3.3 The threshold approach to affordable housing is supported in principle, as it provides a far clearer and more consistent methodology for affordable housing delivery, which will hopefully reduce the amount of time lost in negotiations between developers and LPAs. In particular, for schemes that are able to deliver 35% affordable housing (Route A), it is anticipated that this will speed up the planning process and enable officers to focus their time on other planning considerations.
- 3.4 Given recent rates of affordable housing delivery in London, for example, in 2014/15 only 13% of homes that were approved were affordable homes (see paragraph 1.7 of the document), the 35% threshold had been set very high. It is also likely to be particularly challenging in some LPAs as there is significant variation in the required tenure mix and viability across London, along with local market conditions, land value, site specific costs and site infrastructure costs, which will influence the level of affordable housing that can be achieved.
- 3.5 The SPG needs to be applied in a flexible and pragmatic manner, given that those schemes that are often able to provide the greatest proportion of affordable housing generally benefit from LPAs being more flexible in other respects.

Approach to planning applications

- 3.6 Barratt has concerns with the Mayor's proposal that *"Where a borough currently adopts an approach which delivers a higher average percentage of affordable housing (without public subsidy) the local approach should continue to apply."* This would not comply with the Mayor's own objective of achieving a London-wide consistent approach to affordable housing. The threshold approach should therefore be applied across all boroughs to avoid creating uncertainty.

Routes for applications under the ‘threshold approach’

- 3.7 The two routes (Route A and B) set out under the threshold approach seem broadly appropriate in principle, although greater justification and clarity is required to demonstrate that they are both reasonable and deliverable.
- 3.8 Whilst it is accepted that the progress to be made on individual sites within two years of achieving a planning permission (of relevance when considering whether an ‘early review’ is triggered or not) will vary, there is currently a lack of clarity regarding the definition of “*an agreed level of progress*”. This is likely to result in different LPAs adopting different approaches and significant variation within London, contrary to the objective of achieving London-wide consistency. Further detail is required on this matter to avoid creating uncertainty for developers who often have interests across a number of LPA boundaries.
- 3.9 Whilst the terms of the ‘early review’ would be outlined in a Section 106 agreement, it does not appear that full appreciation has been given to the practicalities of accommodating any uplift in affordable housing on-site. This is because the need to accommodate further affordable homes will require a considerable re-think of how the scheme is to be delivered and function. For example, affordable units may be of a different size to market units and may benefit from being located in different locations. To have to incorporate further affordable units on-site after two years will have both design and management implications for schemes as a whole.
- 3.10 Furthermore, identifying on plans which units would switch to affordable accommodation in the event that viability improves is not straight forward, especially as there can be no guarantee over the number of additional affordable housing units that might need to be incorporated into a scheme i.e. this could be one or it could be fifty. Further detail is required as to how the Mayor anticipates this working.
- 3.11 If there is to be an uplift in affordable housing, off-site provision is more appropriate. Off-site provision would also enable the additional affordable homes to be factored into a scheme from the outset. As there is the potential for the quality of places to be compromised if additional affordable units are retrofitted into a scheme, the SPG should clarify that the delivery of affordable housing off-site can be appropriate, provided it can be delivered quickly and would generate high quality new homes.
- 3.12 The proposed ‘near end of development review’ would reduce the certainty of returns for developers, which could negatively influence attitudes towards the risks associated with the development process. This would not assist in boosting the delivery of new and affordable homes and further consideration should be given to whether this second review is required.
- 3.13 If review mechanisms are to be applied then it is reasonable for them to also take account of scenarios where the viability of schemes worsens as they are being built out. For example, if a deficit, when compared with the agreed profit level, is identified, this should be taken into account in the level of affordable housing that is delivered so that the agreed profit margin can be achieved. This is an important consideration in ensuring the completion of schemes and

would be a fairer approach to responding to changing market conditions throughout the development process.

- 3.14 Barratt agrees that the total of on-site affordable housing delivery and financial contributions should be capped, but that the level of the cap should be agreed during pre-application discussions, rather than being the equivalent to a maximum of 50% affordable housing in all cases as the SPG proposes.
- 3.15 With regard to Route B, Barratt supports the principle of viability information not being required where 35% or more affordable housing is delivered on site, without public subsidy. As explained earlier, this will hopefully assist in speeding up planning decisions and enable new housing to be delivered quickly.
- 3.16 However, clarity is required over what is meant by Route B schemes needing to “*meet all of the other relevant policy requirements and obligations*”, as this brings a whole host of other planning considerations into discussions surrounding affordable housing and viability, which is not necessary.
- 3.17 It is important to note that most schemes do not and cannot meet all policy requirements and obligations for a number of reasons, and applying a number of constraints will not contribute towards maximising affordable housing delivery. It would therefore be more reasonable for schemes that are close to achieving 35% affordable housing, alongside all policy requirements, obligations and the required tenure mix, to be treated in a pragmatic manner so as not to delay affordable housing delivery, which would be the likely outcome of them going down Route A. Alternatively, the number of constraints for a scheme to proceed through Route A should be limited, as this will ensure that the focus is on affordable housing.

Tenure

- 3.18 In a number of circumstances it is likely that there will be a need for some flexibility over the required tenure split to reflect local needs (i.e. some departures from the preferred approach outlined in paragraph 2.28 of at least 30% social / affordable rent, at least 30% as intermediate products and the remaining 40% to be determined by the relevant LPA). Furthermore, providing LPAs with discretion to set 40% of the tenure mix is likely to significantly influence the viability of schemes.
- 3.19 It will be necessary for the Mayor to monitor the tenure mix that LPAs require as part of schemes to ensure that they are not being determined in isolation and do not unnecessarily compromise the delivery of new and affordable homes. In addition, it needs to be recognised that development often has significant up front infrastructure costs – roads, flood defence, moving station entrances, contributions towards railway improvements, etc – which will clearly influence viability.

Definition of London Living Rent / affordability of other intermediate products

- 3.20 Barratt is supportive of the introduction of new affordable housing at London Living Rents, as introduced from paragraph 2.32. However, it is felt that the maximum household income of £60,000 for which London Living Rents can be benefitted from should be more flexible and, at least in some areas, be increased to £90,000. This would reflect the maximum income for those households that can access intermediate products and would assist with the viability of schemes.
- 3.21 Encouraging LPAs to allow flexibility between London Living Rent and shared ownership products, depending on demand (see paragraph 2.36), would appear to create a conflict with the earlier encouragement given to developers securing a commitment from a Registered Provider at an agreed purchase price early on in the planning and development process. Clarity is required over how purchase prices can be agreed between a Registered Provider and developer when LPAs may request different mixes of London Living Rent and shared ownership products on a case-by-case basis.

Grant

- 3.22 Barratt is supportive of the potential to benefit from grant funding, and other subsidies, to increase the level of affordable housing that can be delivered. This will provide much needed assistance in boosting affordable housing delivery.

Registered Providers

- 3.23 Barratt understands why the Mayor sees advantages of engagement with Registered Providers from the outset and securing commitments from them early on in the planning process (as set out in paragraph 2.24).
- 3.24 However, the draft SPG fails to acknowledge the difficulties in achieving this prior to a certain level of progress being made. In particular, at the very least, the Mayor expects developers to have a Registered Provider on board during pre-application discussions with the LPA and Mayor.
- 3.25 Barratt, as with many other developers, requires flexibility in choosing the right Registered Provider partner, especially as circumstances often change during the planning and contract negotiation processes. Having a Registered Provider on board at this early stage, as well as securing a commitment from a Registered Provider at an agreed purchase price, will therefore not be practicable and will enforce unnecessary restrictions.

Annex A

- 3.26 Barratt has the following comments on the suggested review formulas set out in Annex A of the draft SPG.

Formula 1: Early review surplus

- The most appropriate way of establishing the updated build costs is through the BCIS building cost index.

- There is no recognition of additional costs that may have arisen since the application stage.
- It is assumed that all of the change in GDV will go towards calculating the surplus – there is no recognition for increased developer profit.
- It is suggested that the policy surplus is shared 60/40 – the developer only receiving 40% of the surplus. The assumption is that the developer profit is deemed to be included in the 40% share of the surplus. This is not an equitable split.

Formula 2: Early review additional floorspace

- The cost of converting market housing to social / affordable rented and intermediate does not recognise varying developer profit for different tenures.
- There is no recognition for additional costs to achieve the additional floorspace.

Formula 3: Advance stage review

- It is suggested that this review is undertaken when the development is 75% sold – clarification is required as to whether this relates to 75% sold or 75% occupied.
- It is again assumed that all of the change in GDV goes towards calculating the surplus – there is no recognition for increased developer profit.
- It is suggested that the policy surplus is shared 60/40 – the developer only receiving 40% of the surplus. The assumption is that the developer profit is deemed to be included in the 40% share of the surplus. This is not an equitable split.

4.0 Guidance on viability assessments (Part 3)

Overview

- 4.1 As explained earlier, Barratt is supportive of making viability assessments clearer, more open and more transparent, as well as hopefully achieving a consistent London-wide approach, which could speed up the review of the viability of schemes.
- 4.2 Viability assessments should be easy to follow and based on appropriate evidence, to enable the LPA and Mayor to review the information in a timely manner.
- 4.3 It must be acknowledged, however, that at the time at which such assessments take place, it is generally only possible to provide a best guess, based on a range of assumptions, the information available, and market trends, which is likely to vary on a case-by-case basis.

Affordable housing values

- 4.4 With reference to paragraphs 3.16 and 3.17, there is likely to be some information associated with the development process that is particularly commercially sensitive, and it would not be appropriate for such details to be disclosed in a viability assessment or in a Section 106 agreement. This includes the price paid by Registered Providers, the timing of these payments, and the name of the Registered Provider.
- 4.5 In addition, a Registered Provider is unlikely to want to commit to purchase units or agree on a price when there is no certainty over the timescales for the submission and determination of an application, particularly because of constraints regarding the timing of grant funding. These requirements should be reviewed so as not to place impractical demands on developers.
- 4.6 It is also necessary to note here that if a Registered Provider is able to pay a higher price via cross subsidy or internal funding, this will make the scheme more viable, which will therefore produce more affordable housing.

Developer profit

- 4.7 Barratt welcomes the Mayor's comment in paragraph 3.32 and 3.33 that an appropriate level of developer profit is scheme specific and should be appropriate to current market conditions and will reflect the level of risk being taken. It would be inappropriate to apply a universal profit margin that did not take account of the nature of each scheme and the context within which it is being brought forward.
- 4.8 However, it is not clear why target profit levels "*would currently be expected to be lower than levels that were typical following the financial downturn of 2008/9*", as outlined in paragraph 3.33. This text should be removed given that the current economic climate remains very challenging following the Brexit vote and future economic uncertainty moving forward.

Benchmark land value

- 4.9 The EUV plus approach does not incentivise the release of land for residential development, especially given if it is at 20-30% premium, as suggested by the draft SPG. The hope value that might be expected from planning policy and urban design considerations may be significantly higher than 20-30% above the EUV. This level of profit above the EUV will not encourage the landowner to release the site for residential development. This presents a risk that the landowner will not release the site in the expectation that policy may change at a later date or a non-residential scheme may be pursued.
- 4.10 There may be circumstances where an 'Alternative Use' approach is appropriate where planning policy and other material considerations dictate.
- 4.11 Similarly, market value can be appropriate in the viability process.

Approach to Opportunity Areas and Housing Zones

- 4.12 Barratt welcomes the Mayor's view that in Opportunity Areas and Housing Zones, LPAs should "*consider a more bespoke approach to affordable housing taking account the nature of the specific sites*". This acknowledges that these areas are different, each with their own set of challenges, and a different arrangement may be more appropriate.

Other matters

- 4.13 It is also noted that questions have been raised regarding the legal conformity of the draft SPG with the National Planning Practice Guidance (NPPG), which we trust will be fully scrutinised before the document is finalised.

5.0 Build to rent (Part 4)

- 5.1 Barratt does not have any specific comments to make on this section of the draft SPG.

6.0 Conclusions

- 6.1 Barratt London is grateful for the opportunity to comment on the Mayor of London's 'Homes for Londoners' draft Affordable Housing and Viability SPG.
- 6.2 Barratt is, in general, supportive of the principle of the measures set out within the draft SPG, which are predominantly focused on boosting the delivery of affordable homes in London in an open and transparent manner, being the first step towards the Mayor's aspiration of half of all new homes in London being affordable.
- 6.3 Barratt believes that the measures will go some way towards increasing the supply of affordable homes, but has set out where further justification or amendments are required to ensure that the SPG encourages development and incentivises the release of land, and the Mayor's objectives can be achieved. Central to this will be ensuring that there is sufficient flexibility, where appropriate, as an overly prescriptive approach could put the delivery of much-needed new and affordable housing at risk.
- 6.4 We trust that these comments will be duly noted and taken into account in preparing the final version of the SPG. We would be happy to discuss and expand upon our comments where necessary and where this would assist in finalising the document.



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23 February 2016

Dear Sir/Madam

Representations from Battersea Power Station Development Company (BPSDC) on behalf of the owners of Battersea Power Station regarding the update to the Affordable Housing and Viability SPG sections of the Mayor's Housing SPG (November 2016)

We hereby submit formal representations regarding the above draft document which was issued for consultation on 29th November 2016. Please find our comments below, which we respectfully request are taken into consideration.

BPSDC, on behalf of the owners of Battersea Power Station, are progressing with the delivery of the Battersea Power Station masterplan – one of Central London's largest and most anticipated development projects. In total, the project will deliver more than 4,000 new homes and 15,000 jobs, as well as restoring one of the capital's most iconic landmarks and helping to fund the delivery of a new London Underground line to support the delivery of the wider Vauxhall Nine Elms Battersea Opportunity Area.

The Mayor's office has had a long and collaborative involvement in Nine Elms and Battersea Power Station to date, and BPSDC anticipates a continued role for the Mayor in the ongoing delivery of the site. Now, perhaps more than ever, the challenges facing the project and the capital alike require carefully considered decisions to make the best use of available resources, so that the challenges can be overcome and the best outcome can be achieved for all involved. Whilst some of the challenges facing the site are shared with developments across London, its complexity, scale and timing also present some unique obstacles which demand a more tailored solution, if delivery is to continue.

BPSDC applauds the Mayor's aspirations for delivery of new homes and encourages the administration to implement policies that encourage and facilitate the delivery of new homes. A planning policy framework that reduces hurdles and obstructions in delivering development will have a positive impact on securing the Mayor's aspirations.

BPSDC's comments below reflect our experience to date in delivering a uniquely challenging strategic development. We believe that the SPG will be most effective in delivering its aims if it is clear that there

are circumstances where a bespoke approach to viability is the best way to deliver development and growth, and where other unique viability considerations can be properly taken into account. Our comments seek to draw out this clarity.

Development in Opportunity Areas

Opportunity Areas (OAs) represent a significant proportion of London's development pipeline, in terms of new housing, jobs and infrastructure. As such it is vital that their complexities and unique delivery challenges are not prejudiced by an inflexible approach to viability. The Vauxhall Nine Elms Battersea OA alone will deliver more than 20,000 new homes and 26,000 new jobs, along with an extension to the Northern Line and other social infrastructure including health and education facilities. The approach to securing affordable housing on new development in the VNEB OA was informed by a comprehensive understanding of the cost of infrastructure required to support this quantum of development, and was set at 15% accordingly.

Wandsworth's Local Plan target of providing at least 15% affordable housing in the OA was arrived at through the Development Plan process, supported by viability work. The most recent Local Plan, adopted in accordance with both the NPPF and the current London Plan, retains the 15% requirement for Nine Elms. The detailed work on the infrastructure costs has subsequently informed Wandsworth's CIL rates, which were set on the basis of a 15% affordable housing requirement (had affordable housing been set at 35%, for example, CIL rates would be lower), and are not negotiable. On the basis that the general costs involved in delivering development projects has increased markedly since this time, it is very important that expectations for affordable housing are not suddenly increased without taking these other elements into account.

The SPG references to Opportunity Areas at paragraphs 3.55 to 3.57 appear to recognise the need for a bespoke approach in these areas, but the SPG is not entirely clear about how this relates to the 35% threshold and Route A (including its stipulation on review mechanisms) in particular. The SPG appears to say that LPA's can agree a bespoke approach in OAs, but we would welcome further clarity here, and in particular an understanding of how the Mayor will and Local Authorities should treat OA applications at the point of considering whether an application is to proceed under Route A or Route B (or neither). Given the scale and complexity of delivery challenges facing OAs, it is important for developments within OAs to be assessed taking full account of the policy framework which has already been adopted to reflect their specific circumstances.

Tenure flexibility

Tenure flexibility is another important element of the approach to Opportunity Areas. Paragraph 2.31 of the SPG, which indicates the importance of tenure flexibility in affordable housing proposals within Opportunity Areas, is welcomed, albeit this only appears to apply to Route B applications which are unlikely in an OA given the propensity for abnormal infrastructure costs as noted above. At Battersea Power Station the approach to tenure has been based on site specific circumstances alongside local needs, the requirements of local businesses & public sector organisations and the shared regeneration objectives. Flexibility in relation to tenures has enabled a balance to be struck between achieving the maximum reasonable quantum and providing a range of affordability to meet a variety of needs whilst adding diversity of housing choice.

Given the above, we consider that the way in which the SPG proposes to relate to development in Opportunity Areas needs to be clarified, so that it does not inadvertently place undue burden on them and

slow or stifle development in those parts of London where the capacity for growth and new development is greatest.

Amendments to and intensification of existing planning permissions

In much the same way as for Opportunity Areas, it is considered that the SPG could go further in recognising the unique circumstances involved in amending existing planning permissions – normally achieved by way of Section 73. On larger, more complex masterplan developments such as Battersea, there is an almost guaranteed requirement for amendments during the development's lifespan, and where the original permissions have been granted and their affordable housing provision already set (taking into account the other development viability challenges noted above), the approach proposed by the new SPG could have significant, detrimental implications unless it is applied flexibly taking into account site-specific circumstances. The certainty of NLE financial contributions and 15% affordable housing provision were primary considerations for the Battersea Power Station shareholders when considering whether to take on the abandoned Power Station project; retrospective changes to policy on such a complex project mid-delivery would have ramifications to delivery.

The clarification suggested above for Opportunity Areas would help in situations where a permission is within an OA, but more generally, where an affordable housing contribution has been determined in relation to an NPPF-compliant Development Plan, it will have been measured and assessed against a local target and all other contributions set accordingly. Development finance and delivery agreements may then have already been secured on this basis, and so to approach an application to amend a consent in the same way as an entirely new application is highly likely to be prejudicial and problematic for such developments.

The first element of the SPG which presents a difficulty for Section 73 applications of this kind is the way in which the Mayor intends to apply the threshold test and other aspects of the SPG where, for example, a Section 73 application proposes a change of use or an intensification of use that will result in changes to a development's housing component. Such applications are generally made in order to improve the deliverability of an existing planning permission, and should therefore be seen by the Mayor as a positive move by developers to implement otherwise stalled or unviable developments. In order therefore to avoid impacting on delivery and growth, and bring more development forward, we would encourage recognition of applications which amend existing planning permissions that are already mid-delivery.

The second element is in the proposal for all affordable housing provision to be measured by habitable rooms. Many LPAs use different measures, and where a level of provision has already been set on a consent in compliance with the Development Plan, the SPG should acknowledge this and utilise the same measure for the basis of assessment to ensure consistency.

Miscellaneous comments

We would also like to provide the following comments on other aspects of the Draft SPG:

- **Registered Provider** – In a number of areas the SPG appears to encourage disposal of affordable housing to a Registered Provider (RP). BPSDC are working with RPs in terms of delivery but have not resolved delivery of all affordable homes and recognise the potential benefit of holding affordable homes for the long term given the objective of creating a sustainable new community and asset. It would be preferable if this type of approach could be recognised.

- **Build to Rent** – We welcome the inclusion of a specific chapter regarding Build to Rent, the recognition of the benefits of this tenure and the guidance on design, affordable housing and viability.
- **Review Mechanisms** – At present references to Review Mechanisms include prescriptive approaches – for example paragraph 3.54, which states that a new or modified planning permission would be required where a reduction in the 'base' level of affordable housing required as part of the planning permission is sought. It is necessary to allow greater flexibility in the nature of any review mechanisms to respond to individual site circumstances, especially if the Mayor intends to meet the growth and delivery targets for new homes in London. Should a review mechanism be fully tested and understood in terms of the potential outcomes up and down, and these outcomes be considered at the point of imposition to ensure that the development remained acceptable in planning terms, then there may be instances where a new or modified planning permission is not necessary.
- **Affordability of intermediate products** – the proposed income cap of £60,000 (a reduction from the current £90,000) would exclude half a million of London's households who fall within the £60-90k income group, the majority of which are in need of Intermediate Affordable Housing due to mortgage lending being limited to 4.5x household income. We consider that this is an important group which needs to be recognised within the approach to affordable housing, in particular to areas of new development where this income group can play an important role in establishing new communities and economies.
- **Mixed Use** – Sites such as Battersea Power Station will often include retail or office development which is in itself a regionally significant part of commercial property supply. Often this type of development will have its own investment and funding structure and as such it is challenging to link it to residential viability, particularly where a review mechanism is included. It would be preferable to recognise this point.
- **Developer Return** – We welcome recognition that larger residential schemes i.e. in excess of 1,000 units may be appropriate for an IRR return threshold as alternative to profit on GDV however would encourage recognition that this should relate not only to the number of residential units but to the overall size of the scheme i.e. in the case of mixed use the number of units may be less than 1,000 but an IRR may still be appropriate.

We would welcome the opportunity to discuss the content of this letter should you find it helpful. Please contact Gordon Adams of this office for further information.

Yours faithfully,



Gordon Adams
Head of Planning – Battersea Power Station Development Company
 (on behalf of Battersea Project Land Company)

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28th February 2017

By post and email,

Dear Sir/Madam

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

We welcome the Supplementary Planning Guidance and in particular the specific focus given to providing clarity in respect of the emerging Build to Rent (BtR) sector and recognition of the benefits this offers.

Our experience of Build to Rent (BtR)

We are a BtR developer with two schemes for 350 homes in operation which were sold to institutional investors. We have a pipeline of over 2,000 BtR homes in delivery or at advanced stages of planning which we expect to be delivered over the next 5 years.

We make our comments against this experience and with three key drivers in mind.

- Speed and certainty of planning
- Competing with market sale
- Requirements of institutional investors

We have highlighted areas of the document that we feel could be amended or where additional clarification would be beneficial. For ease our comments are restricted to these areas rather than providing a detailed commentary on the entire document. We have suggested where we think the guidance can be simplified to provide clarity wherever possible.

We urge that additional clarification and more specific policy be included within the replacement London Plan as it evolves over the coming months in order to ensure that this guidance becomes planning policy, as this will assist greatly in the provision of new Build to Rent homes.

We would be delighted to provide any assistance you may require as the replacement London Plan is drafted for consultation.

Response to the draft guidance

- Tenure

- Paragraph 2.38/39

We suggest that the intention to reduce eligibility of intermediate rent products (including Discount Market Rent (DMR)) to households on incomes of £60,000 a year or less in the forthcoming annual monitoring report could have unintended consequences as a result of adding an additional (unnecessary) constraint and that this should not be applied to DMR homes.

We believe the potential unintended consequences are:

- Artificial cap on rents for DMR homes

A cap on annual household income of £60,000 would limit the maximum rent for any home to £1,400-£1,500 per month (depending on the tax paid by the occupants). This creates a potential constraint on the ability to let DMR homes at 80% of market value on (typically) larger homes, which may be suitable for multiple occupation (sharers).

- Restricting sharing to assist affordability

With this cap a 1-bed flat rented to a single person earning £60,000 per annum would be considered affordable (provided its rent was less than £1,400-£1,500 per month) but a 3 bed flat let to sharers would not be considered affordable if each person earned more than c.£20,000.

We would suggest for DMR homes (not let at London Living Rent) that the requirement for annual housing costs to be no greater than 40% of net household income is an adequate restriction on affordability and that the current cap of £90,000 should remain.

- Part 4 - Build to Rent

- Paragraph 4.4

We suggest that specific reference to Build to Rent (BtR) developments contributing to the delivery of homes that are attainable to local people is included. Our occupation data at our East India scheme shows that 79% of our tenants earn less than £50,000 per annum and 80% of household incomes are less than £90,000 per annum which demonstrates that our homes are attainable to people earning moderate incomes.

We also believe that the following wider benefits should also be referenced:

- o The ability of BtR homes to support the wider housing economy
 - o Acting as a catalyst for local physical and economic regeneration
 - o Increasing local tax income and spend

Making these clear statements will be beneficial in shaping discussions around BtR homes with Local Planning Authorities (LPAs) where this new tenure is a relatively unknown entity.

- Paragraph 4.5/6

We suggest that it would be helpful if clarity could be provided for LPAs that the specific economics of the BtR sector means that a reduced quantum of affordable homes should be anticipated on BtR developments.

Our experience is that whilst the overall principle is generally accepted, LPAs typically start discussions by stating that their expectation is that their policy requirement for affordable housing will be provided. Whilst we will always endeavor to meet policy and understand this based on housing need the reality is that these policies have been set against an assessment of what market sale developments can deliver and they do not, therefore, reflect the distinct economics of the BtR sector.

We have provided some specific comments around viability later in this document and suggested a simple mechanism for comparing market sale and BtR developments (see Paragraph 4.31).

- Paragraph 4.13/15 (Clawback)

You have sought views on the practical application of the two proposed options.

We believe that either option is acceptable but that one should be chosen in order to provide clarity.

Later in these representations we suggest a method of linking viability to a market rent development delivering a 35% affordable provision. If this methodology is followed it will be a simple process to follow Option 2.

However if this methodology is not followed our experience suggests that, for at least for the foreseeable future, LPAs are likely to require two viability appraisals for any scheme – one for ‘build for sale’ and one for BtR. Where this is the case clearly the developer will have clarity over the level of affordable that the ‘build for sale’ appraisal would be capable of generating and the ability to pursue Option 1 would be desirable.

If Option 1 is preferred we suggest that wording is added to provide greater clarity around the mix that should be assumed on the ‘build for sale’ appraisal as this is likely to be different to the mix in the BtR assessment. We suggest the affordable mix should be that specified in Paragraph 2.28 of the guidance.

- Paragraph 4.16

We have no issues with affordable housing being provided in perpetuity although it should be recognised that there would be potential for a greater quantum to be provided if the provision was linked to the period of the covenant provided (assuming this is for a minimum of 15 years).

We suggest that flexibility be provided to allow for the option of linking the affordable housing provision to the length of the covenant so that LPAs can decide which option best delivers against local need.

- Paragraph 4.19

We support is the introduction of Discounted Market Rent as a new intermediate tenure. This provides an opportunity to create and manage homes for Londoners on moderate incomes but with the same high quality and level of services received by all of our tenants. This is beneficial in terms of stewardship and our desire to create sustainable communities.

We note that a similar tenure 'affordable private rent' has been included within the recent White Paper and any subsequent amendment to NPPF will support its introduction.

However we would suggest that some additional clarification may be helpful in relation to nominations as this will be a new tenure type which will not necessarily be reflected in LPA strategies and policies.

We suggest that it would be simplest if a statement was made that DMR homes are not expected to be subject to nominations from the LPA and that operators have flexibility to directly let the units within the criteria agreed as part of the planning discussions. If this clarification is not provided this will have a materially adverse effect on investor appetite due to the restriction this will place on the ability of the homes to be let on the open market because of the reliance on a 3rd party who would not be party to any contractual agreement.

- 4.21/4.24

We suggest for clarity and simplicity that the definition of DMR units should follow that set out in the DCLG Planning and Affordable Housing for Build to Rent consultation paper. In particular it should be clearly stated that the expectation is that these units will be let at a level at least 20% below local market rent. This will provide clarity when bidding for opportunities.

We appreciate the desire for DMR units to be let at London Living Rent levels or at levels that the LPA wish to determine but as a base case these should be considered against a benchmark based on at a 20% discount. This can then form the basis of discussions around a reduction in unit numbers if rents reduce from this base case position.

- Paragraph 4.22

We believe that the option for setting DMR rent levels that will work best will be fixing initial rents at a rate that reflects the agreed discount to market levels for the specific development. This is also by far the simplest mechanism to administer and for LPAs to monitor.

We are also concerned that basing the discount on local market comparables rather than the specific development will potentially prevent BtR developments acting as a catalyst for regeneration.

We therefore suggest that there should be a stated preference for initial rents to be based on at a rate that reflects the agreed discount to market levels for the specific development.

We also suggest that flexibility needs to be included to allow for fixed rent increases during (longer) tenancies to be used rather than a specific requirement to link increases to CPI. Fixed increases will remove an administrative burden for landlords and uncertainty for tenants. We suggest that the wording is amended to reflect that increases should be capped at a level broadly in line with actual or anticipated CPI levels. This will provide greater flexibility for operators.

- Paragraph 4.25

We suggest clarification is required to make it clear that a commuted sum is not required if the development remains as BtR but is sold to another operator/investor, subject to the ongoing covenant.

- Paragraph 4.26/9

The guidance around flexibility in design is welcomed but our experience suggests that additional clarity would be beneficial to specifically guide LPAs about where flexibility in design could be applied. We believe that flexibility could be indicated for BtR developments in the following areas:

- the number of units served off a core
- the quantum of parking spaces provided (especially where a car club is in place and managed for renters)
- space standards (in line with the proposed review the Nationally Prescribed Space Standards contained within the White Paper)

We note that the length of covenant is stated to affect the level of flexibility in design that should be applied. We would suggest that similar flexibility should be linked to the quantum and quality of the amenity provision. If provision of such amenity is also covenanted then its inclusion should enable a more flexible approach to be taken in some areas of design.

- Viability

- Paragraph 4.31

We appreciate the reasons why no viability threshold has been set on BtR developments but we believe that the inclusion of a 35% threshold for market sale developments provides the opportunity to create a simple mechanism for benchmarking BtR developments against this threshold without the need to undertake time consuming and costly viability assessments.

We suggest that this could be a simple comparison between the blended Gross Development Value of the different tenure options on the grounds that the costs of construction will be broadly similar and will permit a simple and objective test which can be externally verified as below.

- An assessment of the Gross Development Value is undertaken for an indicative market sale development with a 35% affordable housing provision based on the tenure split set out in Paragraph 2.28 of the SPG. This is expressed as a blended value across the development

- o Details are provided of the Gross Development Value of the BtR development based on the proposed private rent and Discount Market Rent homes. This is expressed as a blended value across the development
- o If the blended Gross Development Values are comparable then the BtR scheme can be considered to be providing an equivalent affordable housing provision to the market sale development

By way of a worked example (based on a scheme of 250 units with an average unit size of 650ft²)

Market sale development			
Tenure	%age	Value/ft ²	Blended value/ft ²
Market sale	65%	£745	£598
Affordable	35%	£325	

Build to Rent development			
Tenure	%age	Value/ft ²	Blended value/ft ²
Private rent	90%	£610	£598
Discounted market rent	10%	£488 (@ 80% of market value)	

However should the need for viability assessments continue we would urge that more definitive guidance around the methodology and assumptions for BtR viability assessments is issued as soon as possible in order that LPAs adopt a consistent approach to assessing viability and BtR developers have more certainty.

We understand the intention is to create an industry group to assist with developing an approach to assessing viability of BtR developments and we would reiterate our willingness and desire to be involved in such a group.

- Paragraph 4.32

We appreciate the logic around the review mechanisms but the intention to require BtR developments not meeting the equivalent 35% threshold to include the review mechanisms set out in Route A presents practical difficulties.

There is recognition in the guidance that BtR deals are generally forward funded by the future asset owner or sold during the development period. Under both these scenarios the asset owner/investor is looking for certainty of return and is taking market risk. They will be providing a fixed level of capital based on a long term view of how the asset will perform.

It is, therefore, not appropriate for a review to be undertaken after a short period of time and for any uplift to be shared as there may be other issues affecting the performance of the asset over its lifetime on which the asset owner will have taken a view. In addition the investor/asset manager will not have allocated additional capital to cover such an eventuality and the developer will have sold the asset and no longer have any involvement in the development.

For this reason we suggest that a post-occupation review is not appropriate for BtR developments and the guidance should be amended accordingly.

- Paragraph 4.35

In addition to the four areas set out in the guidance we believe that the following should also be referenced to be taken into account when valuing BtR units:

- o Institutional investors will pay less than the market value of the comparable sale value
- o BtR developments are subject to different tax treatments
- o BtR developments will typically include amenity provision
- o BtR operators will incur costs associated with undertaking professional management of the homes and the long term stewardship of completed communities
- o Rental growth is more closely linked to average earnings and inflation than sales values

- Paragraph 4.36

We suggest that membership of suitable bodies be extended to include United Kingdom Apartment Association and Association of Registered Letting Agents.

In addition we believe that the GLA may no longer be pursuing the London-wide portal due to the Government announcement regarding the scrapping of letting agent's fees so this section may need to be amended accordingly.

We hope that our comments are self-explanatory but if we can provide any further assistance or clarification please contact us.

We remain keen to be involved in discussions around the Build to Rent sector and specifically in discussions around how viability appraisals should be assessed and look forward to hearing from you in this respect.

Yours faithfully

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Affordable Housing SPG

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Dear Sir/Madam

A RESPONSE BY BELLWAY HOMES TO THE MAYOR OF LONDON'S DRAFT AFFORDABLE HOUSING AND VIABILITY SUPPLEMENTARY PLANNING GUIDANCE

Bellway Homes is one of the leading housebuilders in London. Bellway has been actively building houses in London throughout the new millennium and this is a key component of our overall business. Bellway continues to focus its operational activities in the more affordable locations within London and it is vital that the planning framework continues to enable and support the role of private house builders such as Bellway in maintaining and strengthening their activity in London.

Whilst we recognise the Mayor's mandate to deliver more affordable housing through the planning process, and any proposals to streamline the planning system for certain schemes are welcomed. Ultimately it's the acceleration of the overall supply of housing within London which will deliver more affordable housing. Introducing, what are in effect changes to planning policy through supplementary planning guidance is, in our view, not the appropriate way to facilitate this.

Guidance suggests an SPG is not the appropriate forum in which to write new policy, this issue needs considerably more discussion between the private and public sector in order to ensure that the proposal is both appropriate and workable. This would be best achieved through a formal alteration to the London Plan with the examination in public that would accompany it. Our specific concerns are as follows:

1. Justification for setting a 35% affordable housing provision as the threshold for viability assessment has not been provided. This represents a significant increase on the levels of affordable housing provided within the majority of planning consents within London to date. There is no evidence presented to demonstrate that most land development opportunities will be able to achieve this level of affordable housing. This should be provided in order to support the case for its introduction. Otherwise, the SPG may not incentivise and facilitate compliance and so fail to deliver the increase in affordable housing expected.

What is evident from our own recent land purchases is that very few sites have delivered a percentage close to the 35% target. An increase in the percentage of affordable housing provided on a site decreases the value of that site. Although some landowners may accept the write down in the value of their site, others will take a longer-term view and withhold land from the market, delay development until such a time as the market shifts, or release it for alternative land use developments which are more profitable.

A significant proportion of sites acquired by Bellway have planning permission already secured. We are therefore concerned that opportunities for us to acquire sites which are ready to build out will be reduced.

2. In order to avoid the viability process, the applicant must *“meet all of the relevant policy requirements and obligations”* and the 35% on-site affordable housing must be *“consistent with the relevant tenure split”*. In practice there’s a significant degree of variance and most schemes diverge from policy to some degree or other. Will applications proposing 35% affordable housing also be required to satisfy the myriad of specific local policies before it qualifies for Route B? This change also removes the opportunity for Local Authorities to seek to meet local need and could be disruptive to local policy objectives.
3. It is unclear the extent to which there is ‘buy-in’ from the London Boroughs and the degree to which the approach will be adopted across London. Although *“boroughs are strongly encouraged to adopt the same approach to viability information and assessment to provide London wide consistency”*. We believe that there is a strong potential for variations across different boroughs and this should be given greater attention. The Mayor should be clear that a single threshold for viability assessments should apply.

The guidance doesn’t fully consider the situation where boroughs having an existing affordable housing target of more than 35%. Brent, Camden, Islington and Ealing are four examples where the affordable housing target is 50%. Are these boroughs going to agree to set the threshold for viability assessment at 35%? Without this understanding, the SPG does not provide the certainty it is seeking to achieve. We would draw your attention to the Mayoral CIL, which is banded into concentric zones around London and it may well be that a similar approach has to be introduced in order to allow for local discrepancies.

4. Despite not requiring a viability submission, applications that meet the 35% threshold will still be required to provide a benchmark value. This requirement has the potential to take as much time as preparing a formal viability submission. Furthermore the complexities of defining a landowner premium are comparable to those involved with establishing market value. Additionally there is no mention of any indexation in relation to this benchmark value - which can have a significant impact on overall viability.
5. The tenure split proposed contains some ambiguities and has the potential to delay the assessment of affordable housing values, impeding our ability to make informed offers on the basis of a 35% provision.
 - a) Proposing that 40% of the affordable product can be determined by the relevant authority is a significant shift in the affordable housing policy currently prescribed in the London Plan, this will result in an inconsistent approach being taken across the boroughs.
 - b) The 30% requirement for London Affordable Rent; we’re concerned that current consultation will result in significant variance across the capital and may delay activity until the levels are agreed.
 - c) It is unclear whether the split of 30% intermediate products *“should be determined by the applicant”* or if ‘other intermediate products’ will be *prioritised* by the LPA.

- d) We have no measure of the capital values which London Living Rent will deliver. The SPG suggests that the planning subsidy required will be the '*similar to shared ownership schemes*' this is however untested and will be open to interpretation by RP's.

6. Where a viability assessment is required, we're concerned that;

- a) the guidance stipulates that the 'Existing Use Value plus' will be the only recognised method of determining the benchmark land value, a method which tends to undervalue land.
- b) scenario testing should be submitted which sets out sales value growth assumptions although build costs and the land value is fixed at the date of submission.
- c) as a general rule all viability information will be made publically available. We would like agreement on those matters that will be treated as confidential prior to submission, such as sales values and tendered construction costs.
- d) Extensive clawback mechanisms for schemes below the 35% threshold may prove detrimental to housing delivery, particularly if review mechanisms are applied to all applications not just to phased developments.

Clearly, the underlying need is to increase the supply of housing in London. This will only be achieved by setting the correct spatial planning framework to deliver this objective through the London Plan. We understand that work to review the London plan is currently underway. We would welcome the opportunity to offer our advice to the Mayor in how this plan may be put into a form that will best deliver these objectives.

James McConnell
Regional Planning Director

On behalf of the Bellway London divisions (North and South London and Thames Gateway)

1. EXECUTIVE SUMMARY AND OVERVIEW

- 1.1 Berkeley Group welcomes the opportunity to respond to the consultation on the Mayor's draft Affordable Housing and Viability SPG. We share the Mayor's desire to increase housing delivery, including that of affordable housing, increase transparency in the viability assessment process and speed up the planning process.
- 1.2 Berkeley Group accounts for about 10% of all new homes delivered in London, including 10% of the new affordable homes. We deliver major mixed use developments including estate regeneration projects at Woodberry Down and Kidbrooke and regeneration projects such as Beaufort Park in Colindale and Southall Waterside. Placemaking is at the heart of our approach. Our developments deliver a mix of uses, homes in different tenures, commercial space and community spaces, as well as exceptional public realm and new public spaces. As part of our developments we have delivered theatres, community rooms, artists' studios, schools and health centres.
- 1.3 London has a housing crisis. The need to increase housing delivery in London is clear; despite a buoyant market in recent years, delivery remains far below the level of demand. It is therefore critical that landowners are encouraged to release land, developers are encouraged to develop and banks to finance residential/mixed use development. This is in the context of housing delivery likely to become more challenging in the coming years as the market worsens when it reaches the downward part of the cycle. This could be exacerbated by the uncertainty of the impact of the withdrawal from Europe affecting decision making by households and companies.
- 1.4 One critical way to increase the delivery of new homes is to support small housebuilders who will develop small, infill sites, providing important new supply relatively quickly (subject to the planning process). To assist small housebuilders and swift delivery, we suggest that sites with fewer than fifty homes should not be required to provide affordable housing on-site, as it adds complexity and delay, rather they should contribute through a payment in lieu.
- 1.5 We welcome the Mayor's proposal that where applications meet 35% affordable housing provision they will not be required to submit a viability assessment. This will not be achievable with the current high rates of CIL. Development 'benefits' are captured through affordable housing, CIL and S106. Since the introduction of CIL the emphasis has been on infrastructure delivery, through CIL, at the expense of affordable housing. To achieve the switch in emphasis to affordable housing CIL will have to be removed or dramatically reduced.

- 1.6 The planning process plays an important part in supporting housing delivery. Improvements to the way the planning system operates to speed it up are welcome. A key challenge in recent years has been the impact on CIL which has driven down the level of affordable housing delivery. The impact of CIL is likely to be heightened in a worsening market, with lower values and slower sales rates. How the Mayor and boroughs respond to this will be critical in maintaining housing delivery, and crucially that of affordable housing. CIL, a fixed, and in many instances a very high, charge has not been in place previously in a falling market. Exempting large sites from CIL would aid delivery of affordable housing and secure infrastructure delivery through S106 agreements.
- 1.7 Achieving 35% affordable housing may not always be possible and this response highlights where we have concerns with the proposed approach, in particular where we consider the proposed approach might not aid the Mayor in achieving his objectives. The Mayor has highlighted that last year only 13% affordable housing was delivered. This would have been subject to viability assessments and highlights the challenge of reaching 35%.
- 1.8 We recognise that concerns have been raised with the viability assessment process and we support the desire to make the process more transparent. Greater realism about what development can and should bear will help achieve transparency and understanding from those scrutinising applications. In revising the London Plan we would ask the Mayor to review policies that impose significant costs on development and ask boroughs to do the same, reflecting that the policy priority of affordable housing and the desire for increased transparency in the planning process.
- 1.9 The availability of land is a crucial determinant for housing supply and to tackle the housing crisis. As highlighted in the GLA's own analysis, a lot of land with planning permission for development is not held by developers and is often slow to be released for development, if at all. Many landowners have no need to sell land so it is important that they are incentivised to do so. We support the Mayor's objective that landowners do not benefit through inflated prices, at the expense of public benefits, but it is a very careful balance to ensure that land owners sell land for development so new homes and jobs can be delivered, as well as environmental and public realm improvements. This will be particularly important in the redevelopment of redundant and poorly used employment land and achieving the regeneration of ailing town centres where provision of new homes is important to revitalise the centre, provide a customer base, enhance the public realm and deliver much needed new homes.
- 1.10 Viability assessments need to reflect a realistic value of land and the cost to develop it to an appropriate quality, as well as the inherent risk in development. Developing brownfield sites is important to housing delivery and urban renewal but is costly and complex. Even with extensive due diligence, not all costs can be known on purchase, and the price of land will be what the land owner is prepared to sell for. On complex regeneration sites development economics are finely balanced; unless policy and its application reflects this sites will not be developed and will remain poorly used and degraded.

- 1.11 The remaining major development sites in London are highly complex, contaminated brownfield sites which are subject to significant risk, frequently require assembly, need considerable investment to create a place and face complex challenges such as rights to light and often the threat of judicial review. Developing them requires significant time (in preparation and execution), expertise and capital. For example, some of our recent sites have included redundant, highly contaminated and poorly accessed gas sites; a town centre site which had failed to be developed by one of the UK's largest property companies for many years and includes two listed buildings on the heritage at risk register which have been vacant for 30 years; degraded and contaminated former industrial estates; and a former printworks where we had to demolish a 1.2 million sq ft building and resolve over 200 rights to light injuries. As well as substantial investment in site preparation and decontamination, these sites need significant investment to create a high quality place to transform them from their former uses and reconnect them to the surrounding area.
- 1.12 Even with extensive due diligence not all costs can be known at the outset and there will still be considerable risk. Development viability is a genuine and increasing concern and the risks faced by developers are real. This needs to be recognised if review mechanisms are imposed, ensuring that they are fair and equitable and operate both upwards and downwards.
- 1.13 We note that the Mayor will clarify his approach when the Government has announced the next steps on Starter Homes. It is important that those who are unable to purchase market homes are helped through affordable housing policies, and Discount Market Sale (DMS) homes are a far better way to do this than Starter Homes. They are an enduring affordable home and more affordable than Starter Homes; and the borough benefits from unsold equity and any receipts from staircasing.
- 1.14 Our key comments on the draft proposal are:
- a) We welcome the proposal that an application that includes 35% affordable housing will not be required to submit a viability assessment;
 - b) Achieving 35% affordable housing will not be possible without significantly reduced or no CIL;
 - c) Where borough affordable housing policies are greater than 35% applicants might still have to provide a viability assessment because of the risk of third party challenge;
 - d) The requirement to meet all planning requirements and obligations is not possible to achieve and could negate the threshold approach;
 - e) The make-up of the 40% of affordable homes at the boroughs' discretion could have a fundamental impact on viability depending on the chosen tenure. In the period before policy is updated this will create considerable uncertainty for developers;

- f) Other than to incentivise implementation, review mechanisms should only be included on long term developments and should result in capped payments in lieu. The financial cap must be on the value at the date of permission. The proposed 50% cap has no basis in policy and new policy can't be introduced through an SPG. On major, complex regeneration projects reviews should be downward as well as upward, recognising the significant risk
- g) Any surplus on review should be shared 60/40 in favour of the applicant, recognising the risk in development;
- h) On many applications it is not practical or appropriate to engage a registered provider at planning application stage. Circumstances are likely to change over the course of developments, including the nature of affordable housing demand and grant availability. It is therefore not appropriate to enshrine in the S106 affordable housing values.
- i) The Mayor should explicitly reference the elements of the draft London Borough Viability Protocol which he expects to be followed to avoid any ambiguity. We have raised serious concerns with some elements of the draft protocol;
- j) Increased transparency in viability assessments must recognise that some information is necessarily confidential; and
- k) Viability assessments should only be submitted and published when agreed to avoid unnecessary cost and confusion.

2. BACKGROUND AND APPROACH

- 2.1 We note that the Mayor's long term strategic aim is that half of all new homes will be affordable and this will be achieved through a range of mechanisms including the planning system, public investment and use of public land. New affordable homes will also be in a range of tenures to assist all those who need help. It is important that it is recognised that this does not equate to a target for half of new homes on a development being affordable as this would be extremely challenging financially as well as in terms of management and placemaking. Successful communities need a range of people including those on incomes that enable them to support local facilities.
- 2.2 We note that SPG cannot introduce new policy, rather provide guidance on the existing London Plan. In this regard we would question the cap on review for 50% affordable housing as it has no basis in policy.
- 2.3 We support the Mayor's desire for transparency in the viability assessment process. We would highlight that Tribunal decisions that have recognised that elements of assessments are of a commercially confidential nature, for example allowances made for third party rights such as land acquisition or rights of light.

- 2.4 The timing of submission and publication of information and assessments is important. Large complex applications will evolve considerably as a result of statutory and community consultation and discussions with the planning authority. These changes will impact on viability. Rather than submit and publish different iterations of an assessment, which would be time consuming and costly and not aid public understanding of the assessment, assessments are more appropriately submitted and published when they are agreed. To aid community understanding it might be preferable to publish a summary of the assessment and the independent assessor's review of it.

3. THRESHOLD APPROACH TO VIABILITY

- 3.1 We support the Mayor's desire in the 'threshold' approach to speed up planning and increase the delivery of affordable housing and welcome the proposal that applications that meet or exceed 35% affordable housing do not have to undertake a viability assessment.
- 3.2 We are concerned that the Mayor's important intention could be undermined by the requirement that all planning policy requirements are met; challenges in boroughs where the local policy is greater than 35%; and in the time taken to agree the benchmark land value.
- 3.3 Local plans include a range of policies, many of which are not cumulatively achievable for technical or financial reasons. In determining applications boroughs will weigh the relative importance of different policies in respect of the individual proposal and site circumstances. The requirement to meet 'all other policy requirements and obligations' is unrealistic and extremely hard to achieve, and could be used to challenge a borough's decision. Such an approach can only work if there is a fundamental review of requirements and obligations. We suggest that this is amended to:
- "the borough is satisfied with other policy requirements and obligations."
- 3.4 Many boroughs have policies that require greater than 35% affordable housing. When applications are decided by the boroughs the officer's report will need to demonstrate how the proposal accords with the development plan, including on affordable housing. This could be subject to a third party challenge if a viability assessment has not been undertaken to demonstrate why the local policy cannot be achieved.
- 3.5 We understand the Mayor's desire to include a review to ensure swift implementation of planning permissions. In our experience, frequently the most contentious aspect of a viability assessment is the benchmark land value. Requiring agreement on the benchmark land value would not speed up the planning process.
- 3.6 The inclusion of review mechanisms is likely to increase the cost of capital as it is seen as an increased risk by funders. Other than to incentivise implementation, reviews should only be included on long term developments.

- 3.7 Whilst the 35% threshold marks a differential approach to viability, it is essentially a target and we do consider that it should be viability tested. This is particularly important as the Mayor has highlighted that last year only 13% affordable housing was delivered which is substantially below 35% and applications would have been subject to viability assessments. We consider that the low rate of affordable housing delivery is fundamentally the result of the impact of CIL on viability, rather than the application of policy.
- 3.8 Exceptionally, where there is a review we agree that the value must be capped. We do not consider that there is a policy justification for 50% affordable housing and it therefore cannot be introduced in an SPG. The SPG recognises that many boroughs have high affordable housing targets that are not achieved. We therefore suggest that any review should reflect what is realistically achievable, for example be capped on the basis of the average level of affordable housing that has been achieved locally over a five year period. The value of the cap should be set at the time that the planning permission is granted so there is certainty for the developer, and crucially, their funders. On major, complex regeneration projects reviews should be downward as well as upward, recognising the significant risk.
- 3.9 We do not consider that it is reasonable that any surplus be shared 60/40 in the borough's favour. Given the considerable risk inherent in development we would suggest that the split be 60/40 in favour of the applicant.
- 3.10 We note the Mayor's approach to tenure: 30% low cost rent; 30% intermediate including London Living Rent; and 40% at the discretion of the borough. What the borough expects in its 40% will have a fundamental impact on viability and the ability to achieve the threshold. The ability to achieve the 35% threshold could rest with how the borough treats its 40%.
- 3.11 We note that the Mayor plans to decrease the intermediate income threshold to £60,000. This will have a significant impact on the ability to deliver intermediate homes.
- 3.12 London Living Rent will be important to many Londoners but it should not replace all other intermediate homes such as shared ownership and DMS. These are important to the many households unable to get on the housing ladder.
- 3.13 We note that the expedited 'route B' is not considered appropriate where affordable housing is provided off site or through a payment in lieu. The ability to deliver off-site or through a payment can result in better and faster affordable housing delivery. For example, One Blackfriars has contributed £29 million to affordable housing delivery in Southwark, assisting the borough's delivery programme. One Blackfriars has contributed to the Willow Walk development where the first tenants moved in during January 2016, over two years before the first residents will move into One Blackfriars.

- 3.14 To aid housing delivery, and support small housebuilders, sites with fewer than fifty homes should contribute payments in lieu rather than provide affordable housing on site. This should also apply to small sites owned by the public sector to ensure that both affordable housing delivery and value are maximised.
- 3.15 We note the Mayor's approach to Vacant Building Credit and the Mayor's desire to increase affordable housing delivery. Given fragile development economics this could make it more favourable to deliver new homes through permitted development rights which would result in poorer quality homes (that won't meet the Mayor's standards) and would forgo other benefits including to the public realm. We therefore suggest that the application of the Vacant Building Credit is considered in the context of the overall quality of the development and the benefits it will deliver.
- 3.16 The Mayor's approach in promoting the development of build to rent homes is positive and we welcome the proposal that they contribute to affordable housing through an intermediate discount market rent. An unduly onerous approach to viability assessment could undermine the benefits of the Mayor's policy approach.

4. GUIDANCE ON VIABILITY ASSESSMENTS

- 4.1 We support the approach to increase transparency in viability assessment. For the reasons highlighted in this response, we consider that many applications will still need to undertake viability assessments. It is therefore important that an appropriate and proportionate approach is adopted.
- 4.2 We do not think it is appropriate to provide information on the applicant as a fundamental tenet of the planning system is that it should be applicant-blind.
- 4.3 The assumed development programme, especially on long term developments, can only be indicative as it will be subject to change if the market or other circumstances change.
- 4.4 It is extremely unlikely that RPs will be involved at application stage, especially on long term developments where it can be many years before some of the affordable homes will be delivered. It will therefore not be possible to include RP offers. As a result of this, and that on long term, developments there can be changes to the availability of grant or the nature of affordable housing design, it will not be possible to 'enshrine' offer values in the S106.
- 4.5 We note that it is to be assumed that London Living Rent homes will be sold on a shared ownership basis after ten years. This could be challenging, especially as many shared ownership homes are not fully 'staircased out' after then years. We note that the ten year period is also shorter than the Mayor's preferred minimum covenant for build to rent homes.

- 4.6 Fundamental to housing delivery is the supply of land. It is therefore critical that policy incentivises the release of land for housing. The premium above existing use must be at a level that a landowner would choose to sell their site. There will be instances where market value is appropriate. Viability must reflect the true cost of land assembly. This will become more important as assembly will be increasingly required to deliver complex sites for housing delivery. We note the Mayor's views on market value. It would be perverse in instances where land is being compulsorily purchased, on the basis of market value, that the viability is undertaken on existing use value.
- 4.7 Given the mixed use nature of London it is appropriate to accept alternative use values; this should not be restricted to where there is an existing planning permission. NPPG (para 024) recognises that the alternative use value approach offers a way of establishing the land value which would incentivise a land owner to sell. The guidance expects the alternative use to be realistic and compliant with planning policy. However, it does not include a requirement for the alternative use to have planning permission and therefore the SPG should reflect this position.
- 4.8 We have highlighted in this response our concern with the proposed approach to review mechanisms. Beyond the pre-commencement review, reviews should only be included on long term developments and it is fair and equitable to have upward and downward reviews. Where there are reviews the cap should be at the average level of affordable housing that has been achieved locally over a five year period, and the surplus should be split 60/40 in favour of the applicant, recognising the risk in development. Reviews must take full account of cost increases. Other than pre-commencement, reviews should normally result in a cash payment given the cost and complexity of trying to accommodate further affordable housing on site.
- 4.9 The approach in Opportunity Areas, Housing Zones and in Strategic Industrial Locations should reflect the over-riding objective to increase housing delivery and affordable housing delivery. Approaches that seek to complicate or increase the cost of development should be avoided.

Draft London Borough Viability Protocol

- 4.10 We welcome a common approach to undertaking viability assessments but have concerns with the approach proposed in the draft London Borough Viability protocol. The Mayor's stated support for the guidance, while recognising that he will use a less detailed approach, could cause confusion. We suggest that for clarity elements that the Mayor will use are included in the SPG and therefore there is a single point of reference for applicants, with no ambiguity over the proposed approach.
- 4.11 Given Berkeley Group's concerns with the draft London Borough Viability protocol we have included here key elements of our response to the consultation on the draft protocol, using the headings from the draft.

Viability Assessment Process

- 4.12 Early discussion of all aspects of development is critical for the swift and efficient processing of applications and ultimately the delivery of new homes. On major developments the nature, mix and scale of development is likely to evolve considerably as a result of discussions with the planning authority and consultation pre and post application. This will limit the extent to which viability can be discussed at the pre application stage as the proposal is likely to be subject to considerable change.
- 4.13 We agree that developments should be designed to be in accordance with development plan policies but the extent to which this can be achieved will be dependent on the site's circumstances and the degree to which it is possible to meet all policy aspirations.
- 4.14 There will be instances when the appraisal shows a deficit but the applicant will proceed with the development as they expect the market and values to improve. This is the sort of risk that developers expect to assess and take. Applicants should not be precluded from the ability to do this. Where there is a deficit the review should take effect from the deficit position. In these circumstances the council could require the applicant to set out their growth assumptions to justify their decision to proceed with a deficit.
- 4.15 Where the borough or its independent experts do not agree with key appraisal assumptions including costs and values this should be supported by justification and evidence of why they do not support the inputs.

Openness

- 4.16 Many assessments include information which is commercially sensitive. For example, this could be allowance for acquisition of third party land, rights of light, vacant possession compensation costs or other information that would severely compromise the applicant's commercial position. If there are elements of the information within the assessment which the applicant considers should not be disclosed on the basis that they are commercially sensitive, we suggest that the applicant is required to provide reasoned justification on why it should be redacted. This reflects recent FOI decisions which recognises that some information is commercially sensitive and there should not be blanket disclosure.

Development Values

- 4.17 In most cases registered providers (RPs) are not engaged at the application stage as they are usually secured closer to the delivery of the affordable homes. RPs will not be in a position to make offers at such an early and speculative stage.

Development Costs

- 4.18 Where the borough seeks external cost advice this should be from a suitably qualified consultant, with relevant experience.
- 4.19 Where a comprehensive project-specific report is provided by a quantity surveyor this should take precedence over BCIS.

Developer Profit

- 4.20 The planning application process is applicant-neutral and planning permissions run with the land. It is therefore not appropriate to justify profit levels in respect of an applicant's risk profile.
- 4.21 We agree that profit levels should be related to the level of risk. Property development is a cyclical and highly risky business. It is very easy, at the top of the market with high values and strong growth, to ignore the huge investment it takes to make development happen and the risks that developers take.
- 4.22 Major regeneration projects require tens and sometimes hundreds of millions of pounds of investment before any cash is returned, let alone profit made. This will include significant early investment in creating a place which benefits the wider area.
- 4.23 Development entails significant risks including letting construction contracts, cost inflation, sales and commercial letting, and other external factors such as the wider economy, local issues (such as increased competition and factors affecting the quality of the wider environment) and issues such as rights of light and the physical challenges of demolition and construction. The return sought by shareholders reflects the degree of risk that is taken.

Land Value

- 4.24 We share frustrations about high prices being bid for sites which disregard planning policies and affordable housing, rewarding the land owner at the expense of the public. However, fundamental to calculating the land value is being realistic about the price at which land owners will release land (as exemplified in the NPPF). We agree that this is a highly tricky and sensitive exercise which must balance the need to release land for development with the need to deliver public benefits.
- 4.25 Land will not be released at existing use value; a reasonable premium will be expected from landowners to justify sale. If there is a reasonable prospect of land securing planning permission for an alternative, higher value use, the land owner will expect this to be reflected in the land value. Policy compliant alternative use value should therefore be accepted.
- 4.26 It is unrealistic to consider that a landowner will sell a site for less if it is perceived that the land no longer meets their needs.

Reviews

- 4.27 Reviews should only be included post implementation (other than where linked to an agreed early milestone) in exceptional circumstances. Typically on long term developments developers will invest significant sums at risk on site preparation and the provision of early infrastructure.
- 4.28 Any review must take full account of cost increases, start at the position that the development is not in deficit, and be capped at the outset at the level of affordable housing policy compliance so that the full risk is known to the applicant and their funders.
- 4.29 Where growth assumptions are included in the assessment we do not think it is reasonable to include a review mechanism as this would effectively be double counting.

5. BUILD TO RENT

- 5.1 We welcome the Mayor's approach to support delivery of bespoke build to rent homes. In particular we welcome recognition that policy should be applied flexibly for build to rent, for example housing standards, recognising the different way in which build to rent homes are managed and used.
- 5.2 We consider that option A is the more appropriate approach to clawback in the event that a build to rent development becomes build for sale. This approach assesses what the development would have been able to support in affordable housing, rather than assuming that it could support 35%. We would suggest that the rate be fixed at the point planning is granted and then indexed.
- 5.3 We note that affordable housing is to be provided in perpetuity but for the purpose of viability a sale after ten years is assumed. This period is also shorter than the suggested 15 year covenant.
- 5.4 We agree that inclusion of intermediate affordable housing in the form of discount market rent is more appropriate financially and in terms of management. Given the Mayor's clear objective to increase the delivery of build to rent homes, we would suggest that 'route B' be available for build to rent applications where they achieve 35% affordable housing.

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23/02/17

GLA draft Affordable Housing & Viability SPG, November 2016 – Representations of Bishopsgate Goodsyard

GLA Reference	Comment
Part One: Background & Approach	
<p>Mayoral strategic aim of half of all new homes from all sources being affordable. This will be achieved through greater use of public land, housing investment and the increase of affordable homes through the planning system.</p>	<p>The overarching objective is welcomed. However, the NPPF and NPPG recognise that each site should be assessed on its ability to deliver planning obligations, and other community benefits, and that a one size fits all approach is not acceptable especially for a site such as The Goodsyard due to the significant range of physical and complex constraints located above, on and below ground level and whereby the area within which foundations can be placed is limited to approximately one third of the site.</p> <p>Whilst a broad-brush approach to the evidence base underpinning planning policy might be acceptable in order to make plans deliverable, site specific assessments should be more detailed reflecting the relevant available facts and reflect the unique characteristics of development sites so that the scale of obligations does not burden their delivery which is imperative for a site such as The Goodsyard.</p> <p>An overly prescriptive singular approach could prove detrimental to the delivery of development sites such as The Goodsyard and ultimately the overarching objectives of the Development Plan.</p> <p>The Goodsyard is one of the most complex sites to deliver, hence, in part, why the site has remained vacant through various economic and property cycles for many decades. The SPG should retain existing policy flexibility and a common-sense approach in respect of certain viability components as a singular overly prescriptive methodology risks the application of over-onerous obligations and accompanying risks of non-delivery. The risk profile on this site from a developer and funder's perspective is particularly high.</p>
<p>The SPG represents a 'step change' towards 50% affordable housing from all sources.</p>	<p>The SPG introduces a threshold approach to the delivery of affordable housing. BGY Regeneration Limited would question whether the 35% figure is too high for a large strategic scheme such as The Goodsyard as very few large strategic sites can support 35% affordable housing, with other planning obligations and CIL. A figure of, say, 25% would appear to be somewhat higher than the 13% referenced in the SPG as achieved in the last year of the previous administration.</p> <p>There is also limited incentive to get to 35%, where schemes are less viable such as The Goodsyard, the GLA must recognise that whilst an incentive is helpful, ultimately, a scheme must be able to meet a range of developers and funders' criteria to be</p>

	<p>delivered. There is a long term linear relationship between consents and starts in the capital, and to break this and get more schemes on site and ultimately more homes delivered, the SPG should recognise the relationship between planning obligations and CIL, development profit and land value. The latter relationship is often ignored, as we shall come onto.</p>
The Mayor and referable applications	<p>The Goodsyards was 'called in' by the Mayor in September 2015 and remains with him for determination.</p> <p>BGY Regeneration Limited recognise that there are benefits in working with the GLA on viability matters and have done historically with the GLA and their externally appointed professional Valuers to reach a positive outcome for both parties.</p> <p>BGY Regeneration Limited, whilst supportive of the new GLA viability team, hope that the implementation of the team does not cause additional delays and that the work undertaken with the previous externally appointed professional Valuer isn't unravelled.</p>
Boroughs are actively encouraged to support the GLA approach to viability information to provide London-wide consistency	<p>The shift towards transparency is welcomed. BGY Regeneration Limited are very willing to share certain information as part of the planning process through the publication of information. However some viability information is particularly commercially sensitive and cannot be made publically available; for example, information relating to funding agreements, rights to light liabilities or joint venture agreements. There is a real risk that too onerous application of this element of the SPG threatens a developer's commercial interests which is contrary to the tests as set out in the 2014 Environmental Regulations.</p> <p>London-wide consistency is also welcomed however the point made above regarding the threat of a singular approach remains, in particular for a site such as The Goodsyards where a singular approach just doesn't work. What would be of greater help would be an acknowledgement that a one-size CUV or Market Value approach is not possible and that advisors undertaking assessments should consider all the information at their disposal and make informed professional judgements, working with local planning authorities, that balance the competing requirements of landowners, profit and obligations. This is currently missing from the process and surrounding debate and the makes the process less rigorous. A singular approach to land value is not acceptable, is contrary to the NPPF and NPPG and is not helpful.</p> <p>Clearly for a site such as The Goodsyards which is a relatively cleared site and has been for some time now, a singular approach to land value, such as CUV, doesn't work as it does not provide an incentive for the Landowner to release the site for development given the uplift that a planning permission would have on the land value compared to the relatively low or little CUV.</p>
Part Two: Threshold Approach to Viability	
The introduction of a threshold approach to 'nudge' developers to	<p>Whilst in principle this makes some sense, as noted above the 35% figure which appears arbitrary is high and is unlikely be achieved on most larger sites such as The Goodsyards, which is unlikely to meet the threshold target whilst being fully policy</p>

<p>deliver more homes</p>	<p>compliant in terms of affordable housing mix and tenure and also planning obligations due to site specific circumstances and the significant abnormal costs. Current evidence would support this.</p> <p>There is an expectation that the flex in the equation in order to get to 35% affordable housing, will be the landowner's component. This is a naïve assumption and one that threatens the delivery of development sites. Landowners are clearly an important ingredient in the equation, and many will choose to hold on to their assets if land prices are on a significantly downwards trend.</p> <p>Many landowners have alternative uses that their sites can be used for and flexibility exists in existing affordable housing policy to allow for this. The decision on what use to bring forward is not always made upon land purchase and property companies may evolve designs for competing uses following the acquisition of site, before deciding upon which use to apply for. Whilst the SPG seeks to ignore the relative values of competing uses, something that is clear should be acknowledged by the NPPG, this is a fundamental component of the land market and on that failure to acknowledge, will have a detrimental effect on land supply.</p>
<p>All schemes are expected to make the most efficient use of available affordable housing resource</p>	<p>This aspect of the SPG is welcomed. The use of 'developer-led' funding to increase the overall level of affordable housing is helpful and can make a tangible impact upon delivery.</p>
<p>The Threshold approach for viability assessments contains a 'Route A' and 'Route B' approach</p>	<p>As noted above, the 35% figure appears one that is arbitrary and is somewhere on the spectrum of between the level of affordable housing that is currently being delivered and the 50% strategic aspiration. The clear expectation is that land value will be the flex in the equation however the comments above reflect the risks of a reliance upon that approach. The Route B definition relates to 35% affordable housing without public subsidy and with the 'relevant tenure split'. The requirements is also for 'all other relevant policy requirements and obligations' being met. There are very few schemes, if any, that are truly fully policy compliant and this definition is stretched beyond affordable housing policy alone. Further clarity is therefore required on this definition.</p> <p>BGY Regeneration Limited believe that by removing reference to 'all other relevant policy requirements and obligations' being met will increase the likelihood that firms would consider this route.</p> <p>Route B also includes the removal of an early review if an agreed level of progress on implementation is not made within two years. The implementation time-period should be assessed on a site by site basis and be at the discretion of the LPAs advisors who can make an informed judgement on the programme of works before them as with many schemes this may not be possible i.e. early infrastructure works are required, vacant possession can't be achieved and so on.</p> <p>Notwithstanding the comments made above regarding viability being a material consideration, and failure to acknowledge</p>

	<p>viability constraints may put the delivery of larger schemes at risk, developers will not be willing to artificially increase affordable housing percentages if the scheme is then to be held up with further reviews within two years.</p>
<p>Any surplus upon review, will be split 60/40 in the LPAs favour</p>	<p>Any uplift should be shared on a 50/50 basis with an identified cap reflective of the local policy headline target. The 50% affordable housing is from all sources and therefore the implication is that, with a significant number of 100% affordable housing sites and estate regeneration with high levels of affordable housing, the strategic target for mixed-tenure schemes should be less than the strategic overall target. Ultimately all liabilities emanating from review mechanisms will need to be funded, and if they are too onerous, then this puts the delivery of schemes at risk.</p> <p>We also make comment here in relation to the formulaic approach to the review mechanism. The formula provided does not allow the landowner to include certain reasonable additional costs and therefore is not consistent with the NPPG and NPPF.</p> <p>If reviews are to be included, with the LPA seeking to benefit from increased values, landowners and their funders will need to ensure that the reviews recognise all reasonable costs of development.</p>
<p>The review mechanism will be used to contribute to other policy objectives</p>	<p>This requires further clarification. Regulation 122 of the Community Infrastructure Legislation sets out the tests upon which planning obligations can be sought. For a scheme to obtain a planning consent it must be deemed acceptable in planning terms and that the mitigation measures accrued by way of planning obligations are sufficient. The Council should not simply seek betterment. In many cases, it is ultimately not clear what a 'policy compliant' level of obligations for a particular item might be. The reviews should therefore, in certain cases, seek to deliver additional affordable housing only.</p>
<p>Early engagement with Registered Providers and an agree price</p>	<p>In many cases, RPs are unable to engage with developers at an early stage of the design process and this is particularly relevant on multi-phased schemes where future phases are some way off.</p> <p>In making offers for affordable housing, RPs value affordable housing on a DCF basis using a range of cash flow lengths and inputs. In some cases, an RP will offer more for planning gain affordable housing than their standard model concludes is available if the housing is, for example, in a particular location and is able to managed off an existing facility nearby. Conversely, offers are sometimes lower than those envisaged in the viability case and the landowner has limited options in terms of mitigating the impact. Ultimately, the contract between the landowner and RP is a private commercial agreement.</p>
<p>The SPG notes that development density and the relationship with affordable housing provision may in cases be explored</p>	<p>This is a very welcomed component of the SPG by BGY Regeneration Limited. Simple density matrices commonly fail to acknowledge the local characteristics of a site and there are many examples of very high quality architecture across the capital that have veered away from the crude application of a prescribed matrix.</p>

<p>The SPG promotes 30/30/40 tenure weighting to affordable housing comprising London Living Rent, affordable / social rent with the remainder at the discretion of the LPA</p>	<p>Existing affordable housing policy recognises the requirements of mixed and balanced communities. In certain instances, it may be pertinent to deliver a different affordable housing mix and generally, LPAs are flexible in the policy application. The SPG should allow this to continue.</p> <p>London Living Rent is welcomed and may, in certain circumstances be a welcomed addition to the housing mix. The tenure is unlikely to be required in all cases and there are a number of Registered Providers openly mirroring these comments. The role of London Living Rent on Build to Rent schemes, which we shall come onto, is welcomed. Further clarity is required through in regard the valuation principles of London Living Rent as it is not clear how a sale after 10 years as suggested can be factored into the valuation.</p> <p>Guidance is also needed in regards to what type of affordable housing product the LPA will seek for the remaining 40% given that the determining LPA for The Goodsyard is currently the GLA. The type of affordable housing product the GLA could seek is significant and in some ways creates uncertainty in terms of the monetary impact on proposed schemes until a steer is given by the LPA.</p>
<p>London Living Rent restricted to households with up to £60,000 household income</p>	<p>The current affordability threshold is £90,000 household income. In central London particularly, there is demand for intermediate homes available to higher-earning households who play an important role in the capital's economy. The SPG should recognise that there are higher earners who could be priced out of affordable homes if the cap for rented homes is reduced.</p> <p>The higher market values in central London also make shared ownership properties difficult to deliver and an intermediate rented product, at a higher percentage of market rent would meet a defined need and also provide a higher return to the landowner to subsidise the delivery of London Living Rent which yields a relatively low return.</p>
<p>Definition of Starter Homes</p>	<p>The Housing White Paper now provides clarity on the definition of Starter Homes (the legislation is contained within the 2016 Housing and Planning Bill). The White Paper requires that 10% of all homes shall be for affordable home ownership. The SPG should clarify whether the Housing Bill requirement takes priority over other forms of affordable accommodation.</p>
<p>Part Three: Guidance on Viability Assessments</p>	
<p>Appraisal requirements</p>	<p>The SPG seeks information that is related to the landowner and ignores the fact that viability is undertaken on an objective basis that is not unique to the landowner. Further clarity is required as to why this is needed. Information that is directly relevant to the landowner may be commercially sensitive and retained (structured funding agreements whereas a weighted cost of capital across all costs reflecting a market norm for the type of development in question should be appropriate).</p>

Affordable housing values	<p>The SPG requires affordable housing offers that are made by Registered Providers and also a right to investigate ‘high’ assumed payments for affordable housing. The agreement between a Registered Provider and a landowner is a commercial agreement and it will generally not be acceptable for the agreement to be made public.</p> <p>Registered Providers are generally willing to engage with developers but only when there is a degree of certainty over delivery. Registered Providers value affordable housing using a DCF approach and the values offered often reflect certain nuances in their valuation approach i.e. the use of internal subsidies such as RCGF and sometimes a degree of conditionality. Given the objective nature of viability, the values proposed are not always appropriate for viability purposes and Registered Providers will generally not want their offers in the public domain.</p>
Build costs	<p>The SPG places significant reliance on BCIS. Whilst BCIS is a helpful indicator for a smaller more straight forward projects, given the source and general scarcity of the data, it is not reliable for larger more complicated projects such as The Goodsyards which as mentioned earlier has significant abnormal costs due to the complexity of the site and it would therefore be unreasonable to rely upon BCIS for the purposes of this scheme. The SPG should not place too greater reliance on BCIS and rather encourage landowners to submit elemental cost plans that are consistent with the level of detail provided in the drawings in support of planning applications (i.e. RIBA Plan of Works Stage C) of which BGY Regeneration Ltd have done in the past</p>
Abnormal costs	<p>The SPG notes that the level of abnormal costs on a site should inform the premium about the Current Use Value on the site. The SPG assumes that these abnormal costs would be known at the point of acquisition. This is clearly not always the case and something that has been experienced by BGY Regeneration Limited in terms of the considerable costs involved such as building above an existing railway line to name a few which isn’t known in great detail until detailed surveys are carried out.</p> <p>The landowner’s expectations will be measured against a number of factors including the site’s existing use, the proposed density and uses on the site, the level of profit that the developer is seeking to extract and the level of obligations, including CIL, that the scheme will yield. This will ultimately influence the margin above CUV as discussed above. If the margin is eroded too significantly, the likely outcome is that the site may not be brought forward as a development site which would likely be the case for The Goodsyards.</p>
Finance costs	<p>The SPG notes that a standardised approach to finance costs will generally be adopted. However, the individual Valuer should assess the nature of the project, including its size, mix and geographical location. The level of risk will also dictate the margin at which the lender applies its costs to senior and secondary debt and also the loan to value. A one size fits all approach to finance is not adequate for a scheme such as The Goodsyards given the current economic climate, the long development programme envisaged and the time estimated prior to any revenue being received due to the significant infrastructure costs in which a higher level of finance cost may be incurred</p>

Developer profit	<p>Similarly, the SPG notes that profit levels should be no higher than 2008/9 requirements despite current market uncertainties. The profit return should reflect reasonable market returns based on regular engagement with the development industry on their requirements as well as their funders. Profit is a constitute of risk.</p>
Benchmark land value	<p>As touched upon previously, for The Goodsyard the one size fits all approach to land values does not reflect the unique nature of development site. The SPG recognises that the CUV+ to viability is the preferred approach. However, it is the ‘plus’ in the equation that is relevant and should reflect the particular characteristics of the site. The SPG should recognise in accordance with the NPPF and NPPG that there are a range of measures that should provide an indication of an appropriate site value for the purposes of planning viability. These include, but are not limited to, the site’s existing use, alternative uses, market information, the uplift in density being proposed and so on. Failure to recognise this put the delivery of development sites at risk. The benchmark land value should also have regard to the level of development profit being extracted and the scale of planning obligations and CIL being derived.</p> <p>It is for each landowner and practitioner to work through the various tests and often an explanation in accordance with policy and guidance as to the appropriate Benchmark land value. A singular approach to this particular measure, the SPG refers to 20% to 30% being adequate, is inert and increases the risks the prospects of non-delivery.</p> <p>The Goodsyard which has a low CUV, but with an allocation for mixed use development, significantly increasing site coverage multiple times, will not likely be released with a premium above CUV of 20% to 30% and it is highly probable that the release value will be a multiple of CUV rather than a margin above.</p> <p>Landowners in this scenario will feel entitled to a reasonable return for their asset. Valuers should use their professional judgement to assess the value of land for planning viability purposes, ensuring that there is a reasonable split between land value, development profit and planning obligations / CIL.</p> <p>Clearly the Landowner for The Goodsyard isn’t going to release the land for development at CUV plus 20% when a mixed use development planning permission will result in a significant increase in land value and therefore will seek a significant premium above CUV or if this isn’t the case, not release the land for development.</p> <p>Valuers should use their professional judgement based upon the characteristics and circumstances of the site to assess the value of land for planning viability purposes where in the case for The Goodsyard, a CUV plus approach to land value is not appropriate and is doesn’t incentive the landowner to bring forward the site for development.</p>

The use of review mechanisms	<p>The SPG recognises that review mechanisms can contribute to additional planning gain based on future market improvements. Reviews have been incorporated on longer-term schemes and the RICS suggest a five-year development programme might be appropriate or where there are multiple phases.</p> <p>The review mechanisms should incorporate a review of all values and all costs. The current proposed formula does not allow the landowner to capture full costs, are therefore is not consistent with the NPPF's reference to a reasonable return to a landowner.</p> <p>Post-completions reviews on sites such as the Goodsyard could be problematic in funding terms as the funders are already outlaying significant capital expenditure over a long period of time. Whilst additional liabilities might be known, given the already high costs of delivering development on the site, the additional costs will increase risk and the overall costs of delivery, something that may tip the balance towards non-delivery.</p> <p>The proposed review structure does not allow for the landowner to reduce obligations in the event of viability worsening and this is understood within the context of Part 122 of the CIL Regulations. However, to balance these risks, the capture of all reasonable costs should be allowable.</p>
Approach to Opportunity Areas and Housing Zones	BGY Regeneration Limited support the bespoke approach to the testing of viability in these areas.
Part Four: Build to Rent	
Support for Build to Rent	<p>The SPG continues the narrative from the previous administration's efforts to increase the role of Build to Rent and thus promote greater housing delivery and choice.</p> <p>The use of a covenant for Build to Rent, where the economics of provision is recognised by Local Planning Authorities is also a positive. The combined measures will assist in attracting greater institutional funding and specialist developers into delivering schemes in the capital. Larger, complicated mixed-use projects such as the Goodsyard may benefit from the delivery of phases that could be delivered as Build to Rent in the future.</p> <p>The SPG takes this a step further and provides a 'pathway' for Build to Rent schemes. This is also very much welcomed. The ability to deliver discounted market rented products alongside private accommodation, to be managed across the same platform offering tenants a greater security of tenure is a positive and will ultimately increase overall housing numbers.</p>

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The British Property Federation

1. The BPF represents the commercial real estate sector – an industry with a market value of £1,662bn which contributed more than £94bn to the economy in 2014. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. The UK's commercial real estate sector contributes about 5.4% of GDP, and directly employs 1 million people, or 6.8% of the labour force. It provides the nation's built environment and is diversifying from its core investment in the nation's offices, shops, leisure facilities and factories, to support the new economy through investments in logistics, healthcare, student accommodation, infrastructure, residential and increasingly through Build to Rent investment in new housing.
3. We are pleased to see the Mayor and his administration exploring how to develop more affordable homes in the capital, as part of the wider drive for building more homes across the country. That said, it is important that the Mayor's policy does not inadvertently lead to a reduction in supply (of market and affordable) and also, does not generate uncertainty in the formulation of policy that undermines investment.

Transparency of Information

4. The Mayor's intentions to 'lead the way in openness and transparency' are certainly admirable and we support making development industry activity more open to public scrutiny. However, it has to be recognised that in some circumstances this is not always practical or advisable.
5. When submitting a viability appraisal alongside a planning application, some elements regarding costs and contracts for a project are still part of ongoing negotiations; effectively setting these values in stone and placing the information in the public realm may drive prices higher, as a contractor will then have a 'hard' value that they know the applicant has detailed in the application. This could distort the market and ultimately, perversely limit the number of affordable homes that are delivered in London.

We have attempted to look at alternative ways of providing the Mayor with the information he seeks and believe that a public executive summary, that includes the necessary information for explaining the viability of the development and specifics that do not compromise a developer's ability to negotiate with contractors, could be created for the public to scrutinise alongside a planning application. This is already a practice that has been adopted by a number of London boroughs and so would be relatively easy to roll out across the capital.

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Routes for Applications under the 'Threshold Approach': Route A vs Route B

6. We welcome the trajectory that the Mayor and his team are taking to try and speed up residential development and simultaneously boost affordable housing supply. However, and although well-intentioned, the details of the two proposed routes under the threshold approach are misguided and in practice, could lead to less residential development coming through the pipeline and once again, ultimately still not enough affordable housing being delivered.
7. **35% Threshold:** The Mayor's long-term strategic target of 50% affordable housing is a laudable ambition. However, the draft SPG suggests that under *Route B*, not only does a developer have to meet the 35% threshold to avoid having to provide a viability assessment but the application must also be "consistent with the relevant tenure split and meet all of the other relevant policy requirements and obligations". The requirement to meet all other 'requirements and obligations' implies that a scheme under route B must meet all policy requirements, both statutory and non statutory, including land use and density for example. This will serve to reduce the viability of schemes and in simple terms, failure to comply with all requirements and obligations will result all schemes proceeding down route A.
8. After meeting with developers and consultants across the industry, we have concluded that the proposed approach is close to impossible to achieve, meaning that the vast majority of developments will have to use *Route A*, which defeats the object of including two routes in the SPG and will lead to added delays in application determination - hence clogging up the planning process stage of achieving development on the ground. If the 35% threshold is the main aim of the Mayor it would be wiser to remove the requirement to meet all other relevant policy requirements and obligations from the SPG.
9. We are more than willing to set up a working group and work with the GLA to try and create an approach that will work for both the Mayor and the industry.
10. **Review mechanisms:** We agree that there should be an early review of *Route A planning permissions*, as unnecessary delay stymies the development process, and creates dissatisfaction and uncertainty both in the industry and the wider community. However, we would question the need for a 'near end of development review'.
11. Members are very anxious that this could delay the completion of those developments that already have marginal viability, but it could also damage as a matter of principle investor confidence in a project at the outset, and reduce/remove the ability to borrow both in the form of debt or equity. This would result in some developments becoming even more marginal in terms of viability and again, potentially causing less affordable housing to be built, often in the areas where it is needed most and also delaying implementation of schemes that do go ahead.
12. It is also important to note that cost can change over time, and even at a 'near end' review, the full amount of cost cannot be calculated. Thus, the 60/40 split could cause further viability problems towards the end of a project. There is no evidence underlying this proposed split and without any justification, 50/50 has to be the fairer, most reasonable option.
13. The uncertainty caused by implementing review mechanisms could again have the perverse effect of driving investment away from London or into other asset classes. We suggest that the Mayor needs to look again at this section of the SPG as it could seriously damage the amount of investment and delivery of homes of all tenures in London.

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Grant

14. For developers receiving a public grant it seems logical that they should provide a larger volume of affordable homes. We agree that the system in the draft guidance looks broadly sensible. However, there is not enough to incentivise developers to take a grant as there is little to no benefit in terms of moving from route A to B as we refer to in paragraph nine.

Registered Providers (RPs) & Publicly Owned Land

15. The points set out in the draft guidance on RPs are broadly sensible. However, paragraph 2.26 states that on public sector land “this will include forgoing land value to increase the number of affordable units”. This overlooks the requirement under s.123 of the Local Government Act 1972 for local authorities to obtain the best consideration that they reasonably can on the disposal of land. There is case law that supplements this test but, in short, it is not as simple for local authorities to reduce the price of land to secure more affordable housing as the draft SPG suggests.

London Living Rent

16. The Mayor’s decision to create a London Living Rent (LLR) is commendable in principle and as such, has industry support. However, in its currently proposed format, it is most likely that it will have unintended and potentially damaging consequences for local housing markets. The fact that rent levels will be defined by ward, while borough incomes will be used to cap those rents could be a significant issue, with tenants moving from one ward to another in pursuit of cheaper rents. This could have a perverse effect on other rents, driving them up as demand increases in these areas. We would suggest revising the SPG to specify clearer eligibility criteria for LLR to be used by London Borough’s.
17. In addition, some developers may focus on looking for sites in parts of boroughs that have a higher LLR, thus potentially causing the provision of affordable housing in areas with a lower LLR to be constrained.
18. There currently is a lack of clarity regarding exactly how LLR will work, how it will relate to other affordable products such as shared ownership and how LLR will be reset over time. There are widely-held concerns that LLR could turn into a form of a rent cap, depending on any future policy following the next Mayoral election.
19. Rather than LLR as currently proposed becoming an overly complex and potentially a politically-led system for rent-setting and potentially capping, the Mayor should undertake and publish a full assessment of its potential impact, and provide greater clarity on how it will be set in the future.

Vacant Building Credit

20. We question why reference to Vacant Building Credit (VBC) is made in the draft SPG. As the VBC was announced in a Written Ministerial Statement, together with updates to the national Planning Policy Guidance, we would argue that it need not and should not be referred to in the SPG. In the BPF’s opinion,

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the VBC is a matter for individual boroughs to consider on a case-by-case basis as development projects come forward, and rather than cause potential problems of inconsistency and a lack of clarity, it would be wiser to remove the reference from the SPG.

Appraisal Requirements

21. The section on appraisal requirements provides sensible guidance.

Development Values

22. While it is understandable that the GLA would like information on development values, we question the prescriptiveness of what would be asked for in relation to assumptions. The section on growth assumptions seems particularly prescriptive; in practice we do not see the need for including growth assumptions in a planning submission, particularly when the later viability review stage would ensure that any future growth/uplift is taken into account.

Costs

23. Our submission already alludes to problems around making information about building cost public at planning application stage. We believe that some costs simply cannot and should not have to, in effect, be fixed for use in a planning application submission document which can then be freely perused by competitors, as well as the public.
24. For instance, contractor costs are simply not finalised at the time of planning, and if an estimate is used this could lead to issues of creating a superficial price floor as contractors will know the amount a developer has estimated and could damage the ability of developers to negotiate any further. This perversely could decrease viability and ultimately, limit the number of affordable homes being developed.
25. We also query the reliance on the BCIS database as a benchmark tool as we believe the tool is inappropriate for complex schemes in Central/Inner London. Within the last five years there have only been nine large Inner London residential schemes added to the database. BCIS rates also lag behind the market due to the reporting time periods and do not take account of site specific circumstances. The rates also exclude allowances for external works, contingencies, fees and non-recoverable VAT. The use of BICS should not therefore be considered an appropriate replacement for a site specific elemental cost benchmarking exercise undertaken by suitably qualified Quantity Surveyor. This is particularly relevant for more complex developments. The SPG should be amended to reflect this.
26. While we endorse the principle of the Mayor and his team wanting to create a planning system that is both transparent and easier to navigate, we question whether this proposal will actually help; instead, it could stymie the development of the homes the Mayor and Londoners want and need.

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Benchmark Land Values

27. Again, we support the principle of the Mayor trying to create a simpler system for viability appraisal. However we would argue that there needs to be as much flexibility in the system as possible, in order to maximise the number of affordable units that are ultimately built.
28. We believe the current drafting of the SPG that suggests that there will be limited justification for any approach other than Existing Use Value plus premium (EUV+) is a mistake. We understand the Mayor's intention for land values to change to enable more affordable units to come through the planning pipeline, however the EUV+ approach fails to recognise the existence of the existing planning consents and competing commercial land uses.
29. For example in Central London it is expected that a developer would be able to pay more than both the EUV of the site plus 20-30% and a residential developer providing 35% Affordable Housing. By adopting the EUV+ approach to land value developers will not be able to outbid commercial developers which could lead to a large reduction in housing delivery. The approach may also stymie the release of land for development.
30. In paragraph 3.47 it states that the 'the circumstances in which an alternative approach can be justified are likely to reduce over time as the preferred approach becomes embedded in the market'. We believe this argument is flawed, the market could take a considerable amount of time to change and in the meantime land owners will not accept a reduced amount and will likely sit on land until the desired amount is paid.
31. The SPG needs to cater for these problems where the market value is appropriate in the viability process or it could lead to further problems in the development of all types of homes.

Opportunity Areas & Housing Zones

32. We fully support the Mayor in his decision to encourage local planning authorities (LPAs) to consider a more bespoke approach to affordable housing in opportunity areas within London. Unless agreed rather than imposed on a developer, a defined percentage of affordable units in opportunity areas is therefore inappropriate, and would discourage developers from investing in these areas.

Strategic Industrial Locations (SILs)

33. As SILs are fully protected by the Mayor in policy terms, and London-wide policies for SILs are reflected in local plans and Borough/ GLA planning decisions, there is no obvious need to refer to these locations in specific terms in the SPG. We would suggest that to achieve the most appropriate outcomes on redevelopment of these sites, the Mayor should work with the industry closely to provide the homes that Londoners need.

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Build to Rent Introduction

34. We fully welcome the Mayor's commitment to continue support of the provision of more high quality private-rented homes. We also welcome the Mayor's comment that Build to Rent (BTR) can make a particular contribution to housing supply by attracting investment into London's housing market, accelerating delivery, providing for consistent and at-scale demand, using modern methods of construction and offering longer tenancies.
35. We are also very encouraged to see a separate chapter on BTR highlighting how it is different from other tenures of housing. We look forward to working with the GLA on continuing this push for creating a good quality rental market that serves wide-ranging needs in the capital.

Definition

36. Defining a new product is always difficult and we welcome the GLA's draft definition. However, we do have several comments on the draft wording.
37. **50 units:** We understand the reasoning behind setting 50 units as a minimum, however there has to be some level of flexibility for certain areas of London. For instance, in Westminster and Camden there are developers offering schemes of less than 50 units, as land prices tend to be higher, there are more heritage and design constraints and BTR developments are of necessity often smaller in these boroughs. We would suggest retaining the 50 units as a guideline but allowing flexibility by explaining in the guidance that there might be some BTR projects that fall below this level.
38. **15 year covenant:** We would argue that ten years would be a more appropriate time period; we explain why later in this submission.
39. **Let separately:** Generally we would agree with this criterion, but there are some BTR operators that have made arrangements for a proportion of units to be let via employers who use the apartments for staff. As long as the definition does not prevent this type of offer, we would support it.
40. **Professional and on-site management:** We fully support having professionally-managed blocks, and while most would have some level of concierge service on-site, there will be others that do not. For example, an on-site concierge may not be viable for blocks of less than 100 units, therefore they tend to have a concierge/manager who looks after several smaller buildings. We would argue that it would be more appropriate to change the definition to 'professionally managed' and remove the requirement to be on-site managed, or alternatively, acknowledge that some buildings may not have this level of service and why.
41. Again, we would like to stress that we welcome the Mayor seeking to define the characteristics of a product that is still relatively new. However, we would argue that because of this newness, there needs to be a degree of flexibility for the market, so as not to deter new entrants offering something innovative and different.

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Covenant & Clawback

42. Covenants and clawback arrangements have become the norm within the BTR sector, but each developer and each local authority has different preferences as to what length of covenant is suitable to individual projects and circumstances. We welcome the Mayor's stance that covenants should be accepted but we would argue that ten years would be more suited to BTR developers and investors.
43. There needs to be a degree of flexibility in the BTR model due to it still being relatively new to the UK. A ten year covenant would provide that encouragement to investors – particularly new ones - to take the leap into this new industry.
44. The draft SPG itself alludes to the fact that different developers will be looking at different methods of developing/ funding, with some creating BTR for the long-term and others that may want an exit-plan post-covenant. Therefore, rather than deter developers we would argue that it would be wise to keep both options that are set out in the draft SPG available, with the developer allowed to choose which option they would prefer.
45. **Option One:** It is important to keep in mind at all times that BTR is completely different to Build-for-Sale. While we understand the reasoning behind option one, LPAs need to be fully aware that although a developer might submit two viability assessments, they are not like-for-like developments and cannot be directly compared as such.
46. Option one also has a lack of clarity in regard to tenure. We would suggest when reporting back that the GLA needs to clarify if a clawback is used with option one, whether the clawback would relate to the discounted market rent (DMR) units, or would it be the 35% more traditional forms of affordable housing?
47. **Option Two:** We would argue that option two needs more detail in regard to the clawback amount of 35%, again in terms of whether this in relation to DMR, or a more traditional model of affordable housing?
48. Therefore while we would like to stress that we support in principle the Mayor's evolving work on BTR, there needs to be more done on improving and therefore amending the two viability options. We would be most willing to set up a roundtable or work with officials to create options that will work for both the industry and the GLA.

Affordable Housing Tenure

49. We welcome the acknowledgement that DMR is the most suitable affordable option for BTR. We understand the Mayor's stated preference for DMR to be at LLR levels but we believe that DMR is a far more flexible affordable option which is why it is suited to BTR. This form of affordable tenure allows tenants to move up and down the income scale and allows for these changes, whereas LLR does not.
50. We would suggest that the first sentence of paragraph 4.22 be deleted, so that LPAs will not assume that the DMR units in all BTR developments should be set to LLR at the start of each new tenancy.
51. We also query the inclusion of limiting rent rises to CPI within a tenancy. We would argue that this should be for the developer to decide, and there should be a level of flexibility, choice and agreement for each development. It would be sensible to instead allow rent to be increased by a formula that is agreed with a

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local authority and clearly stated in a tenancy agreement. As long as this rate of increase is agreed and is fully explained to the tenant at the start of the tenancy, this more flexible approach would be fully acceptable to all.

Design

- 52. We welcome the Mayor's decision to allow for flexibility on space standards in BTR developments; we also consider it to be sensible to link them to length of covenant. However, paragraph 4.29 should be in stronger terms. There should be explicit reference to the fact that BTR tends to be developed at a higher density with communal facilities, which justify more flexibility on space standards.
- 53. It is also important to note that many BTR schemes contain a higher quantum of communal facilities which means other forms of private amenities are less essential.
- 54. We are willing to work with the Mayor's team to help enhance this section of the SPG to provide a level of guidance that will be both acceptable for both developers and the GLA.

Viability

- 55. We support the Mayor's acknowledgement that BTR is a completely different model to Build-for-Sale; however we disagree with paragraph 4.35. We would suggest deleting this paragraph as although BTR may be less risky compared to for sale developments at the present time, this could change as the market evolves. Rather than comparing BTR and for sale in this paragraph, it would be more appropriate to delete it and acknowledge that they are completely different development models and should be treated as such.
- 56. There is also a degree of concern regarding the review stage. A lack of viability is still a problem with BTR, and as we have mentioned earlier in this submission, any reviews that could damage the ability to finance a product, or attract new investors to the sector, could be extremely damaging when trying to bring forward this form of housing in the capital. We would urge the GLA to keep this in mind at all times when reviewing the draft guidance, as any review could damage what is often uncertain viability further.

Management Standards

- 57. Again, we support the Mayor in his effort to create developments that showcase the best management practice in the rented sector. However, we have one very small amendment to suggest being made to the draft. On the first bullet point it should read "Longer tenancies (*ideally* three years or more)".

Support for Build-to-Rent

- 58. The Mayor's support for the BTR sector is most welcome. However, one area that has to date been an obstacle is that of local plans; there is a large proportion of London Boroughs that still does not recognise, or refer to BTR in their development plan policies. We would ask the Mayor to encourage those boroughs to

DRAFT AFFORDABLE HOUSING AND VIABILITY SUPPLEMENTARY PLANNING GUIDANCE 2016



do far more to rectify this situation– the presence of a local plan policy alone could dramatically increase the amount of BTR development that comes forward. We would also like to make one more slight change to the draft, in our opinion paragraph 4.38 should read “further support for build to rent **should** be given ...”.

Conclusions

59. We welcome the GLA’s Draft Affordable Housing and Viability SPG and we are very pleased with the section on build to rent. However, there are sections within the SPG, mainly parts 1-3, that need quite a lot of further work. We are more than willing to work with the GLA and the Mayor’s team to develop the SPG and create something that will bring forward more affordable homes and will work for developers, the Mayor and local authorities.

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Homes for Londoners

Draft Affordable Housing and Viability Supplementary Planning Guidance 2016

Parts 1 & 2: The Threshold Approach

<p>The pan-London 35% affordable housing target</p>	<p>The SPG makes the point that a pan-London target could start to embed affordable housing requirements into land values across London. We have often seen developers pay in excess of development expectations in order to secure the site. This method relies on the prospect for land value growth and pays little attention to the need to provide affordable housing. Although price paid is no longer generally seen as an appropriate methodology of benchmarking, applicants will often seek to set their benchmark values close to price paid by manipulating market information.</p> <p>The 35% figure it is not a fixed level of affordable housing, but a threshold at which the approach to viability information changes, however, it does not reflect the characteristics of the site or the policy of the Local Authority. The SPG speaks of a future intention to provide 50% as a pan-London figure but it is not clear why this isn't the aim from the outset.</p>
<p>The approach to viability information differs depending on the level of affordable housing provided</p>	<p>Schemes which do not meet the 35% threshold or require public subsidy to do so, will be required to submit detailed viability information. Also, the Mayor will treat information submitted as part of, and in support of, a viability assessment transparently. A more open process in general coupled with the level of supporting documentation required depending on the level of affordable housing may reinforce many developer's aspiration to keep large amounts of information out of the public eye. This may act as an incentive for developers to provide this minimum level to avoid the costs associated with the viability review process and potential appeal.</p>
<p>Early review mechanisms for proposals with 35% affordable housing</p>	<p>There is a focus on an early review mechanism if progress is not made within two years. For larger schemes, we typically see multiple review mechanisms as a good method of ensuring the development provides the maximum level of affordable housing. Larger schemes frequently have the ability to provide high numbers of affordable housing, if they are only reviewed at an early stage this potential will not be captured.</p>
<p>No submission of viability information for sites that provide 35% affordable housing</p>	<p>This approach also does not take into account site specific circumstances such as a residential unit values, development costs and importantly the benchmark land value. The existing Mayors Housing SPG focuses on the 'existing use plus' method of viability benchmarking which takes into account the value of the use on site. For example, a cleared development site may be able to provide more affordable housing than an occupied commercial property where extensive demolition and tenant compensation costs are required to bring the site forward for development.</p> <p>Where surplus is identified at the pre-implementation review stage, in most cases affordable accommodation will be provided on site. Although this is positive as more affordable units will be provided rather than PIL, this may be difficult to achieve in practice in line with internal design. For example, if there are</p>

	separate cores for private and affordable units which may be of importance in relation to service charges.
Measurement of affordable housing based on habitable rooms	This is a positive step as many developers seek to provide a high level of small affordable units in order to achieve the overall unit percentage of affordable housing, however, the actual affordable floorarea may be significantly lower. Importantly, this approach also allows local mix policies to be considered. An approach based on affordable floor area will take this one step further.
Early and late review mechanisms for applications which do not meet the 35% threshold	<p>Many developers currently seek to avoid viability reviews in order to make large gains from value growth. The principle of both early and late mechanisms is a positive step for ensuring maximum contribution towards affordable housing.</p> <p>The first review is not triggered if an agreed level of progress has been made. Therefore, if sales/rental value growth has occurred but the developer has implemented the scheme, no review will be applicable. This may place an additional burden on LPA's to test when an appropriate level of implementation has occurred.</p>
Affordable housing in perpetuity	For all affordable housing types, LPAs should ensure that affordable housing provision is secured for future eligible households through a legal agreement. We agree with this methodology.
Vacant building credit not applicable in London except in exceptional circumstances	<p>The SPG clearly points out that much of the development land in London is brownfield. Development of vacant buildings is relatively common in London and there is already incentive to do so in order to extract more value from sites in a wider context of good value growth.</p> <p>The SPG lists 4 criteria which must be met in order for VBC to be applicable. There is incentive to develop brownfield sites in London even when these criteria are met. VBC can have substantial implications on the levels of affordable housing required from a scheme.</p>

Part 3: Guidance on Viability assessments

Where viability information is required, full working models are required	Working versions of appraisals allow Councils and their advisors to understand inputs and calculations in detail. Importantly, it allows for an interrogation of finance and development timescale assumptions which are often calculated using complex formula.
Development Values	The SPG states in relation to development values "where relevant, should reflect arrangements with future occupiers." Viability testing on the whole is impersonal to the developer. It is not clear as to when future occupiers should be taken into account when establishing GDV. This could be explained further.
Affordable Housing Values	In line with the London Plan applicants should engage with RP's at an early stage and affordable values should reflect discussions with RP's. It is relatively uncommon to see extensive discussions between applicants and RP's in order ascertain realistic affordable housing values. The SPG reiterates the importance of discussions with RP's. The timing of payments should also be reflected within the viability analysis process.
Build costs provided in an	Applicants frequently provide a summary cost plan in place of

elemental format and based on current day costs	an elemental cost plan. This leads to difficulties in benchmarking against BCIS information. Therefore, this is a useful requirement. Applicants do sometimes seek to include inflation. We agree that this does not reflect current costs as required by PPG.
Planning Obligations: "likely S106 planning obligations should be included as a development cost."	This requires further explanation. PPG clearly states that planning obligations should be included within the benchmark land cost, however, practitioners often attempt to avoid this and interpret the Guidance differently.
Profit	The SPG states "requirements for affordable housing should reflect significantly lower levels of risk when compared to private residential units. Similarly, lower levels of return would normally be expected for commercial and private rented accommodation." This is positive. Many developers seek to include a universal profit requirement which indicates identical risk across private / affordable and commercial property. Developers may provide letters from bank lenders which specify a level of required profit.
Benchmark value	NPPG outlines the need for the benchmark value to reflect policy requirements. We have seen viability submissions which analyse market based evidence but reflect non-policy compliant levels of affordable housing e.g. if the policy is 50% but an actual contribution of 25% is seen frequently in the local area - the benchmark values are analysed on the basis of 25%. This inflates the benchmark value. This does not take into account site specific circumstances and reinforces a perpetual situation whereby the same (non-policy compliant) level of affordable housing contributions are developed. The Draft SPG requires further clarity in this regard.
EUV as the most appropriate method of benchmarking for viability	This reflects a planning rather than market led system. This method removes the illogicality often associated with land purchase prices based on unfounded development assumptions and more importantly; no reflection of planning policy.
EUV premiums	More explanation is required. The SPG quotes a "lower premium" is required for a site which creates ongoing liabilities/costs. The SPG therefore does not reference sites which do not require any premium to be released for development as they are a net cost to the landowner. Further detail is required in relation to the site-specific considerations in determining the premium. This will only become more important/contentious as EUV plus becomes seen as the most appropriate benchmark for viability purposes.
AUV	Generally, the Mayor will accept an AUV benchmark where there is an existing implementable permission for the use. Further clarification would be useful in relation to the other situations where AUV is appropriate.

Part 4: Build to Rent

Paragraph 4.6: Distinct economies in the context of build to rent	It would be useful to have more clarity on what the GLA considers to be the best approach in this circumstances e.g. would it advocate the use of a discounted cashflow approach?
Profit allowances	It should be made clear whether the GLA considers a lower profit return to be suitable for the DMR units relative to the private market units.

The homes to be held as Build to Rent under a covenant for at least 15 years	What happens at the end of the 15 years? Will there be a requirement to slowly phase in full market rents? This is important from a viability point of view to be confirmed, as this impacts on revenues and therefore values.
Paragraph 4.13: Option One clawback mechanism	This Option One clawback mechanism would likely need to be trigger a payment in lieu. This could become a highly complex calculation and may cause considerable expense in terms of fees etc. Therefore, we suggest that a simple pre-agreed formulaic mechanism should be used, such that the sale of a unit at a price exceeding £xx per sqft would then trigger a predetermined level of payment in lieu. We do not envisage on-site affordable delivery being a realistic form of clawback, so would expect a commuted sum.
Paragraph 4.15 - Option Two	This may have difficulties being agreed as it may lead to additional payments being made (to increase the delivery level up to 35%) which would never have been viable even if the scheme had originally been 100% private sale. So, it may be challenged as requiring more delivery than is viable and therefore compromising the 'competitive return' of the landowner.
Paragraph 4.31 - Route B of the threshold approach to viability, set out in Part 2 of this SPG, may not be appropriate for Build to Rent schemes because of the required mix of tenures required for Route B.	<p>A specific threshold approach for Build to Rent has <i>not therefore been proposed as part of this SPG as there are currently insufficient Build to Rent schemes completed for any such threshold to be set with the certainty that it is not either too high and will reduce development, nor too low and will fail to maximise affordable housing delivery.</i></p> <p>While we agree with the logic of this statement, in practical terms it may reduce the negotiating position of the Local Authority if it does not have a target.</p>
Paragraph 4.34 - <i>The general viability approach set out in Part 3 of this SPG should be followed for Build to Rent schemes. However, it is recognised that there are some elements of the traditional build for sale viability assessment approach that needs to be adjusted to take into account the distinct economics of Build to Rent. This difference arises in part from Build to Rent schemes being founded on long term revenue income from rents (taking account of management and maintenance costs) rather than short term receipts from sales).</i>	We question whether it is necessary to adopt a different viability approach, as it is commonplace to adopt a traditional investment valuation approach to valuing traditional affordable housing even though this involves long terms revenue streams. The traditional approach assumes an investment sale at practical completion of the scheme. Therefore, a traditional approach can be used, so long as a realistic investment valuation of the Build to Rent asset is made, which reflects the relatively low risk of the product and therefore the low yields achievable.



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28/02/2017

Dear Sir / Madam,

**AFFORDABLE HOUSING AND VIABILITY SUPPLEMENTARY PLANNING GUIDANCE (SPG)
PREFERRED APPROACH CONSULTATION – REPRESENTATIONS FROM BRITISH LAND**

Please find below representations submitted by British Land in respect of the London Plan Affordable Housing and Viability Supplementary Planning Guidance (SPG) Preferred Approach Consultation.

British Land is a FTSE-100 property company. We own and manage a portfolio of commercial property worth £19 billion, including several prestigious sites here in the capital such as Broadgate, our Paddington Campus, Regent's Place, and the 46-acre regeneration site at Canada Water. Across these sites we are committed to developing sustainably and conscientiously, with our attachment to place making and creating balanced communities at the heart of our approach.

It is requested that the content of these representations be given due regard and consideration in making the amendments deemed appropriate or necessary for the SPG to be formally adopted by the Mayor in accordance with the adopted London plan (2016) and national planning regulations, policy and guidance.

Consultation Responses

British Land welcomes the introduction of the SPG and its intent to provide greater clarity in relation to the application of existing London Plan affordable housing and viability policies with the aim of speeding up and increasing the delivery of housing. Having reviewed the document we believe there are areas of the SPG that can be enhanced and amended to further its effectiveness in delivering the Mayors objectives for housing and affordable housing delivery. We set out our thoughts and recommendations below. We are happy to clarify these or discuss them further with the GLA.

Opportunity Areas (para 3.55-57)

British Land welcomes the introduction of a threshold approach to affordable housing, which enables schemes meeting the threshold to progress quickly through the planning system. We also welcome the added flexibility within Opportunity Areas. The SPG is clear that Opportunity Areas are key sources of housing supply in London. They are, by their nature, complex to bring forward and often require significant investment in infrastructure and this should be fully recognised throughout the document to ensure housing supply in these key growth areas. We welcome further discussions on how this flexible approach can be developed further to maximise housing outputs in Opportunity Areas.

The Mayor and referable applications (para 1.16)

British Land supports the Mayor's commitment to determine planning applications positively where the opportunity for significant contributions to affordable housing could be missed due to other local planning obligations.

Recommendations

- The SPG should provide examples of these other planning policy grounds to provide clear guidance for Local Authorities.

Transparency of Information (para 1.17-1.23)

British Land supports openness and transparency as a means to foster trust in the planning system amongst the public and project stakeholders. It is worth noting that in the case of Elephant and Castle, the First-Tier Tribunal General Regulatory Chamber (Information Rights) recognised that there needs to be a balance between transparency and commercial confidentiality. It found that the public interest favoured withholding some information (9th May 2014).

Recommendations

- Items / circumstances that could be exempt from disclosure should be outlined in the SPG. Some viability information is particularly commercially sensitive and cannot be made publicly available. This includes information that could prejudice the commercial position of a developer in respect of a future settlement for development related compensation (i.e. rights of light). This is particularly relevant on large mixed regeneration schemes such as Canada Water, where there are significant commercial barriers to e.g. vacant Possession that include tenant / leaseholder negotiations. The discussions are confidential and subject to commercial terms to all parties involved and public disclosure could risk delivery of development and housing. We believe an approach similar to British Land's experience in RB Kingston where the full viability appraisal – including details of commercially sensitive costs and values - was provided to Council members with their viability consultant present as part of a briefing session prior to planning committee to provide assurance that the best affordable housing outcome was being secured.

Approach to Threshold Viability (para 2.6 – 2.19)

British Land supports the introduction of a threshold approach to viability that enables schemes exceeding the threshold to progress quickly through the planning system without the need for detailed viability information or comprehensive review mechanisms. British Land are also supportive of the use of public subsidy to increase the supply of affordable housing.

Recommendations

- The unique nature of mixed use schemes should be included within the SPG and the approach to viability on this basis (i.e. residential on a standalone basis) recognised. Mixed use sites such as Canada Water will often include retail or office development which is in itself a locally and regionally significant part of commercial property supply alongside significant housing supply. Often commercial development will have its own investment and funding structure and requirements that mean it is challenging to link it to residential viability, particularly where a review mechanism is included.
- The application of the threshold approach to all units / hab rooms on intensification proposals does not incentivise developers to intensify existing planning consents. Applying 35% affordable to the originally consented and net additional homes would often reduce the value of a scheme below that of the extent consent. However, applying 35% affordable to the net additional and leaving the originally consented homes unchanged will often be viable.
- As intensification of existing consents will play a key role in delivering the Mayor's housing objectives, it is suggested the threshold approach is only applied to the net additional units / habitable rooms proposed as part of intensification. The example at Annex 1 demonstrates that, applying the 35% on the uplift principle to just a few major consents in London would deliver over 3,500 more affordable homes.
- The requirement for Route B schemes to 'meet all of the other relevant policy requirements and obligations' is overly prescriptive and should be deleted. This does not reflect the fact that the majority of planning decisions are taken on the basis of planning balance related to site specific circumstances. This would

require many schemes that would otherwise be eligible for quick delivery through Route B to go through a more protracted and rigorous viability review even though 35% affordable housing is proposed.

- Where grant is used to increase the quantum of affordable above 35% affordable housing, the provisions of Route B should apply – i.e. reduced review mechanisms to reflect the scheme achieves 35% affordable. As currently drafted the onerous review mechanisms proposed under Route A would be a disincentive for developers from using public subsidy to boost supply above 35% affordable housing. The SPG should be amended on this basis.

Application of Review Mechanisms (para 2.11-13, 3.50-54 and Annex A)

British Land are concerned at the prescriptive approach to review mechanisms within the SPG. Delivering a range of schemes from large strategic regeneration schemes in Opportunity Areas such as Canada Water to smaller residential only sites, we are acutely aware of the potential negative implications of the imposition of review mechanisms / incorrectly applied review mechanisms.

Recommendations

- The review mechanism drafting currently assumes a one-size fits all approach and should recognise the unique nature of schemes such as Canada Water, where on current day costs and values the provision of affordable housing could be over and above the level justified by viability alone.
- The review mechanism should differentiate between projects of scale and should not be overly prescriptive in its application in both timing and nature of the review. As currently drafted, the review mechanism formulas do not recognise the long-term nature of large strategic schemes with evolving communities and the complex planning framework that often accompanies them. Reviews for these schemes should be flexible and agreed at Borough level.
- In accordance with the NPPG (10-017-20140303) and London Housing SPG (para 4.3.3), review mechanisms are not appropriate for smaller schemes that are built out over a short period or are a single phase. This should be made clear in the SPG.
- The wording in the SPG and formulas relating to review mechanisms at Annex A should be amended to take account of circumstances where more affordable housing is provided than can be justified by viability alone (i.e. a viability deficit). This disincentives over provision of affordable housing on-site. For large, strategic schemes such as Canada Water there should be the ability for the significant abnormal costs associated with such developments to be included in the review mechanism calculation.
- An option should also be included to enable developers to remove the review requirement by committing to the over delivery of on-site affordable housing at the application stage based on a growth scenario and/or an internal commercial view (which may include non-financial considerations). This can be an important aspect of securing development funding where a review mechanism increases uncertainty or delay to delivery for funders and developers.

Tenure (para 2.27 – 2.45)

British Land supports the Mayors preference for a range of tenures to be provided as part of the affordable housing proposals on schemes including 30% local cost rent and 30% intermediate.

Recommendations

- It is important to recognise the benefits of gap analysis for place making purposes at a local level. A bespoke approach may be more suitable in order to achieve a more balanced and sustainable community in terms of tenure mix, particularly in Opportunity Areas and this includes a range of affordability levels as highlighted at Annex 4.

- The SPG proposes a reduced income cap for intermediate products from £90,000 to £60,000. This has the effect of excluding half a million London households including many key workers that keep London's economy functioning from affordable housing in the face of high private sector rents in many Boroughs and the affordability to buy an average house on the open market in London at c. 17 times average incomes (ONS data). On many schemes a range of affordability is required up to £90,000, to provide housing for keyworkers (for example a nurse salary of £35,751 and primary teacher of £39,377 totalling £75,128). These households will be excluded under the revised income cap.
- The change will also reduce achievable affordable housing values impacting on scheme viability and potentially the total amount of affordable housing delivered. Therefore the £90,000 threshold should be reinstated, acknowledging that a range of household incomes need to be served responding to local circumstances.
- Care should be taken when deciding what the remaining 40% (to be determined by the LPA) of affordable housing comprises. Annex 2 compares the position adopting current GLA guidance (60/40 rent/intermediate) to 70/30 rent/intermediate (i.e. if the whole 40% were to be rent) and the reverse of 30/70 rent/intermediate. The table demonstrates that a movement to the former position risks the loss of c.21,000 affordable homes over the plan period whilst the later gives an opportunity to deliver c.105,000 additional affordable homes.

Guidance on Viability Assessments (para 3.1-3.9)

British Land agree to the principle of a consistent approach to viability assessments with the aim of providing clarity to both applicants and Local Authorities on the detailed requirements of viability submission as well as the aim of speeding up delivery of new homes.

Recommendations

- Reference to the 'The London Borough Viability Protocol' should be removed. This is not a statutory planning document and has not be consulted upon on this basis.
- Reference to applicant specific details should be removed in accordance with NPPG which relates planning to land use not applicant details. This could also have the effect of making planning permission undeliverable by the market if linked to an applicant's individual circumstances.

Development Values (para 3.10-3.19)

British Land welcome the further guidance in relation to how values should be approached in viability assessment.

Recommendations

- The requirement to include details of growth and inflation assumptions and appraisals in viability submissions should be removed in the absence of provisions to over-provide affordable housing within the SPG. The viability reviews proposed will capture any growth and inflation over the project period.
- It is inappropriate for the same value to be applied to London Living Rent and Shared Ownership homes. London Living Rent is envisaged to be a rental product for a significant period which will ultimately derive a different value to Shared Ownership homes. The reference at 2.28 should be removed from the SPG.
- In accordance with the NPPF and London Housing SPG, drafting should acknowledge that Intermediate Tenures can be delivered direct by the developer or by another organisation other than a Registered Providers.
- The SPG should acknowledge that it is not always feasible to agree detailed terms with a Registered Provider at the planning stage due to the need for a fixed detailed design and many RP's will also consider information relating to affordable housing pricing commercially sensitive. It is not therefore appropriate for values assumed in the viability assessment to be enshrined in the S106 (para 3.17) and this should be removed from the SPG.

Costs (para 3.20-3.35)

British Land supports the use of build costs provided in an elemental form by a suitably qualified cost consultant based on a detailed specification of the proposed development. British Land also supports the use of a developer's profit which takes into account the individual characteristics of the scheme linked to risk profile.

Recommendations

- Reliance on BCIS as the benchmark for build costs should be avoided as the indices lag behind the market due to the reporting time periods and do not take account of site specific circumstances. The rates also exclude allowances for external works, contingencies, fees and non-recoverable VAT. This risks costs being understated and in the absence of a downwards review mechanism, meaning the viability of schemes could be overstated and planning consents permitted that are unviable and non-deliverable. Annex 3 is an extract from BCIS, set to include schemes of at least 10,000m² GIA, located in London and delivered within the last 5 years. The table shows that the database only includes 9 such projects and is therefore not reliable as a source of costs for major schemes.
- Securing contractor costs as evidence to support site abnormals are unlikely to be feasible on large regeneration schemes or where outline planning consent is being sought as further surveys are likely to be required to allow contractor pricing to take place and / or detailed design solutions are required that are unlikely to have been developed yet. Suitable benchmarking or relevant consultant cost advice should be of sufficient detail at the planning stage of projects.
- The suggestion that lower profit levels are required compared to 2008/9 should be removed from the SPG as no evidence has been provided to support this assertion. In light of the uncertainty created by Brexit and the recent global economic slowdown, potentially higher profit levels are required to ensure longer term, strategic projects remain viable and deliverable in the medium to longer term, particularly in the absence of downwards review mechanisms in the SPG.

Benchmark Land Value (para 3.36-3.49)

British Land supports the use of a benchmark land value equal to the value below which the land owner (acting rationally) is unlikely to dispose of a site for redevelopment. However, British Land have serious concerns over the limited approach to land value set out within the SPG.

Recommendations

- National policy recognises that the approach to land value needs to reflect either the current use value of the land and / or its value for a realistic alternative use that complies with planning policy. This is particularly relevant in London where competing non-residential uses for sites could lead to other development (e.g. commercial office / retail) being more viable than a residential scheme with 35% affordable housing. This is recognised in the NPPG and within para 4.1.4/5/6 of London Plan Housing SPG (2016) page 11 of the GLA's Development Appraisal Toolkit Guidance Notes (Jan 2014), pp.28-29 of the LHDG's Viability Testing Local Plans (June 2012) and p12 of the RICS Financial Viability in Planning Guidance Note (2012) – all of which advocate several approaches to land value. This is particularly relevant on large strategic sites in Opportunity Areas where vacant land or low density existing uses coupled with high upfront infrastructure requirements mean a EUV approach could reduce the quantum of residential development and in turn reducing the potential of sites or even worse sites not being released for development to deliver the target levels of affordable housing set out by the Mayor. The SPG should be amended to include other approaches to land value including alternative use and market value in accordance with relevant policy.
- We anticipate public sector bodies will comment directly, however, public sector owned land has a statutory requirement to achieve 'best value' and this should be taken into account. References to reduced land value on the basis of publicly owned land should be further considered.

- Where the public land is subject to a public-private joint venture (JV), potentially with a mix of land owners or uses within the JV, it should be made explicit that this is not considered to be appropriate for a reduced land value to be assumed.
- The approach to land value appears to be inconsistent through the section, particularly in relation to alternative uses and this should be revisited in line with the comments above.

Part 4 - Build to Rent

British Land welcomes the introduction of a specific section within the SPG to deal with Build to Rent that recognises the unique economics of the tenure and the contribution it can make to meeting objectively assessed housing need.

Recommendations

- For mixed use / mixed tenure schemes, the unique economics of Build to Rent schemes should be reflected in the viability appraisal and it should be recognised where the scheme does not meet the threshold level of affordable housing as a result. Wording within the SPG should reflect this specific circumstance.

Clawback (para 4.13)

In respect of the covenant clawback mechanism, it is considered that the SPG should allow flexibility for the Developer to select either Option 1 or 2.

Recommendations

- Option 1 should be amended to give greater clarity on the calculation, in particular it should be noted that in the 'build for sale' appraisal the affordable housing tenure mix should be that specified under 2.28 of the SPG.
- Option 2 should also be amended to make explicit that if the developer selects this methodology, the LPA should not request a separate Build-for-Sale appraisal as this will cause unnecessary delay to the process.

Discounted Market Rents (para 4.22–4.24)

The proposal of including the Discount Market Rented product as the affordable housing product within Build to Rent schemes is welcome. However, the mechanics of this product as set out within the SPG will need to be carefully considered to ensure they align with the market rent homes and maximise the affordable housing outcome delivered by Build to Rent schemes.

Recommendations

- Discount Market Rent levels should be limited to those of market rent homes to ensure investor interest in schemes - this will ensure a revenue stream that tracks the market. As this is a market facing affordable housing product with distinct investment requirements it is suggested that the discount to market is based on a range of discounts to market rent from 20% to 60% and that these units sit outside the reduced income cap of £60,000 for certain intermediate products. The wording should reflect that discounted rents will be based on a maximum of 80% of market rent. This will enable developers and Local Authorities to work together to optimise the affordable housing outcome on Build to Rent schemes recognising that a discount approach to the affordable housing element will also allow specific need groups such as key workers to be better targeted by these types of schemes.
- Build to Rent investors require annual rent increases that are either fixed or follow affordable housing rent increases (i.e. CPI+1% per annum). The wording should be updated to reflect either of these scenarios recognising that a fixed increase would need to reflect a reasonable level e.g. aligned to CPI+1%.

- Rents should be able to be reset to London Living Rent at the end of each tenancy. The wording at 4.22 should be deleted to enable this.

Break up and Sale (para 4.25)

The proposal that when a scheme is broken up and homes sold on an individual basis, a commuted sum is payable to the Local Authority is supported.

Recommendations.

- The SPG should make it clear that where a block / scheme is sold to another build to rent operator then no commuted sum would be payable.

Design Guidance (para 4.26-4.29)

Recognition by the Mayor within the SPG that different design requirements are required for Build to Rent schemes to ensure a high-quality product that is able to deliver its share of affordable housing is welcomed by British Land.

Recommendations

- It should be made clear where the design flexibilities should be focussed to ensure all those developing Build to Rent schemes and Local Authorities are aware of the approach that should be taken this should include guidance on density (higher than London Plan density matrix), dwelling mix (more 1 and 2 beds), unit sizes (potentially smaller than LHDG sizes where balance is amenity), cores (allow up to 15 units on one floor) and parking (little or none).

Review mechanisms - Build to Rent (para 4.33)

British Land is concerned that the proposed review mechanisms in the SPG are applied to Build to Rent schemes and this could risk the delivery of the type of tenure.

Recommendations

- The distinct nature of the funding arrangements for Build to Rent schemes mean the developer agrees a price for the completed Build to Rent homes with the future owner either prior to or early on in the development period. This price includes a risk premium for fluctuations in operating costs as well as growth assumptions around rents. Therefore it is not possible for the owner to benefit from any improvements in rents from those forecast at the point of agreeing the price. For this reason, the review mechanism for Build to Rent schemes should be limited to pre-implementation or early review to ensure deliverable schemes of this tenure. The wording of the SPG should clearly state this.

I trust the above recommendations in response to the consultation are helpful, but if you require further information on any of the representation areas or clarification please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Adrian Penfold".

Adrian Penfold
Head of Planning

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Via e mail to housingspg@london.gov.uk

DRAFT

27th February 2017

Dear Sir/ Madam

THE CROWN ESTATE

RESPONSE TO 'HOMES FOR LONDONERS' CONSULTATION DOCUMENT

CBRE is responding on behalf of The Crown Estate in relation to the above referenced consultation document. The Crown Estate is committed to the long term sustainable development of its Regent Street and St James's portfolio, located within the City of Westminster, and is pleased to take part in this consultation.

The Crown Estate

The Crown Estate has a nationwide property portfolio with a combined value of over £11.5 billion. The largest concentration of these assets is in the West End in St James's and Regent Street. Between them, as well as including residential uses, these two areas form a significant proportion of The Crown Estate's UK commercial portfolio. Over 10,000 people work on Regent Street in more than 700 office businesses and over 150 retail and catering outlets.

Alongside the comprehensive renewal and redevelopment of Regent Street that has been undertaken to provide modern office, retail and residential space and an enhanced public realm, The Crown Estate has embarked on a strategy to enhance the role of St James's, acknowledging the area's distinctive mix of uses, from theatres, restaurants and bespoke shopping to the fine art businesses and international auction houses within St James's and the cluster of private members' clubs in Pall Mall as well as significant residential occupiers.

The Crown Estate's vision is to be a progressive commercial business creating significant value beyond financial return. It works with partners and stakeholders to grow the business, outperforming the market whilst delivering sustainable long-term returns and making a positive impact through its total contribution to the UK. The Crown Estate is guided by its values – commercialism, integrity and stewardship – in everything it does.

Response to 'Homes for all Londoners'

The Crown Estate is committed to helping to meet London's housing needs, including in respect of affordable housing. It has recently delivered two new affordable housing schemes in Westminster connection with the ongoing renewal and redevelopment of its Regent Street and St James's portfolio. These are as follows:

- Lavington Mansions, located on Ogle Street in Fitzrovia, which comprises 21 dwellings (15 shared ownership and 6 social rented). This scheme was completed in 2014 and is now managed by Peabody. It was delivered in connection with The Crown Estate's redevelopment of Regent Street Blocks W4/ W5 (at the junction of New Burlington Street)
- 147-150 Grosvenor Road in Pimlico, which comprises 12 intermediate dwellings. It was completed in 2016 and is now managed by Network Housing Group. This scheme was delivered in connection with The Crown Estate's commercial redevelopment of St James's Market

Threshold Approach to Viability

We note Part 2 of this document (threshold approach to viability) proposes schemes that meet or exceed 35% affordable housing onsite without public subsidy are not required to submit viability information. We also note paragraph 2.48 states that all schemes which propose off-site provision or a cash in lieu payment are required to provide a detailed viability appraisal to justify this approach.

We consider this SPG should acknowledge that the justification for delivering off site affordable housing or making a payment in lieu is not always driven by viability grounds alone. There may be other practical considerations driving such an approach. This may also deliver wider qualitative benefits in satisfaction of other planning policy objectives.

The Crown Estate's Regent Street and St James's portfolios are located entirely within the defined Central Activities Zone (CAZ). It also comprises numerous listed buildings and unlisted buildings of merit.

Within London's defined Central Activities Zone, there are complex, multiple public interest objectives informing development decisions. We also consider some degree of trade-off is needed between driving economic growth and commercial development and meeting the need for additional affordable housing.

Furthermore, it is often impractical for a variety of reasons to incorporate affordable housing of an appropriate design for transfer to, or management by, a registered social landlord or other appropriate body within schemes which entail the refurbishment or partial redevelopment of listed buildings and unlisted buildings of merit.

Whilst Westminster Council does expect affordable housing to be provided on site in the first instance in accordance with the requirements of policy S16 of its adopted City Plan (November 2016), this policy goes on to state that *'where the council considers that this is not practical or viable, the affordable housing should be provided off-site in the vicinity. Off-site provision beyond the vicinity of the development will only be acceptable where the council considers that the affordable housing provision is greater and of a higher quality than would be possible on- or off-site in the vicinity, and where it would not add to an existing localised concentration of social housing, as set out in City Management policy.'*

The Crown Estate considers that they have the opportunity to deliver a greater level of affordable housing off-site and would welcome the approach to consider opportunities for land use credits to deliver an appropriate balance and mix of uses across their portfolio. We believe the two affordable housing schemes as referred to above are examples of where a better outcome was achieved off-site, in terms of the quality and amenity of affordable housing provided, consistent with the objectives of this policy.

We consider that given the special circumstances that often exist when bringing forward redevelopment schemes for historic buildings within the Central Activities Zone, it is important policy is applied with suitable flexibility at the local level so as to allow delivery of off-site affordable housing when this can deliver better planning outcomes. It is also important to acknowledge that there are other issues in addition to financial viability alone which need to be considered in such circumstances. We also consider it important to retain appropriate flexibility at the local level in setting rates for payments in lieu, as is currently the case within Westminster.

Build to Rent

The Crown Estate welcomes the Mayor's support for the Build to Rent sector and the acknowledgement of the beneficial contribution this can make to increasing London's housing supply as set out in this draft SPG.

We also welcome the acknowledgement in this draft SPG that the distinct economics of this sector relative to mainstream 'build for sale' market housing should be taken into account in considering planning applications for build to rent schemes.

We look forward to continuing a positive dialogue with the Greater London Authority in relation to this emerging SPG as well as the development of the new London Plan. If you have any queries or require further information in connection with this response, please do not hesitate to contact me.

Thanks for your assistance.

Yours faithfully,

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

GRAHAM TIMMS
Associate Director

Representations on Draft Affordable Housing and Viability Supplementary Planning Guidance 2016

The draft SPG has been produced to supplement the Mayors Housing SPG and provide strategic guidance on the delivery of affordable housing in London.

In our view the document is over-long and repetitive in many places where it could be a far more succinct document. The document deals with three aspects. Firstly the rationale and aim of the SPG; secondly the threshold approach; and thirdly the viability assessments. It also provides guidance on 'build to rent' sector.

We support the view expressed in paragraph 1.3 that "In the meantime this supplementary planning guidance (SPG) provides guidance to ensure that existing policy is as effective as possible. It does not and cannot introduce new policy".

We agree with the view expressed in paragraph 1.11 that at present the process of agreeing viability matters is and has become 'protracted' and is delaying planning permissions and the delivery of much needed housing.

The draft SPG puts forward two approaches to the consideration of affordable housing. Those that provide affordable housing that meets the proposed 35% threshold and those that do not.

First we agree that there needs to be a 'tipping' point between the need for extensive, expensive and protracted viability assessments. Second we consider that notwithstanding the level of affordable housing sought through the London Plan the threshold within the draft SPG should be lowered to a more realistic level of 25% with a review of the threshold when the next version of the London Plan is adopted. We consider that this lower level than suggested in the current economic climate would closer represent the 'maximum reasonable amount of affordable housing'.

However the adoption of the threshold as suggested in paragraph 2.7 would still mean that where a borough had adopted an approach that delivered a higher average percentage of affordable housing (without public subsidy) then this local approach should continue to apply. This would still mean that there is the potential for an inconsistent approach to affordable housing in London with the two levels of in tension.

We agree with the contents of paragraph 2.8 of the draft SPG that 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 site specific

circumstances". There is a need for a consistent approach throughout London as to how this is calculated.

Route A of the proposed process is suggested with an 'early review' and a 'near end of development review'. Again there needs to consistency as to what in particular the first phrase means.

Route B of the proposed process suggests that this is followed where amongst other matters the scheme is "consistent with the relevant tenure split". This therefore places a second level of refinement on the test and is likely to see more proposals fail to be candidates for the Rout B approach. In our view more flexibility should be applied to this second bullet point in Route B as again the tenure split varies between Boroughs. These different levels are referred to in paragraphs 2.27-2.31 of the draft document.

We have commented above on the proposed threshold level of 35% and the rationale for this is set in paragraphs 2.14-2.16 of the draft SPG. Given that "it is not a fixed level of affordable housing, but a threshold at which the approach to viability information changes" there is in our view the ability to lower the threshold as suggested. Whilst we agree that a single threshold would potentially deliver consistency for the reasons identified above in relation to individual Borough levels we have reservations that this will be consistent.

Paragraphs 2.48-2.53 deal with 'off site and cash in lieu' approaches to affordable housing. We support the approach in paragraph 2.51 that contributions should be held in a separate 'affordable housing pot' in order to deliver affordable housing elsewhere within the Borough and to meet the CIL tests. We consider that this can be the preferred approach rather than requiring the identification of alternative sites.

We support the approach in paragraph 3.5 that there are a number of viability models that can be used, rather than adopting a single model. We do not accept that the detailed working of viability models should be made public.

We support the approach in paragraphs 3.42 – 3.49 that the EUV+ method is an appropriate approach when dealing with the value of a site. We note that this approach is stated in bold in paragraph 3.46 of the document, although alternatives will also be considered in exceptional circumstances. We however do not agree with the comment in paragraph in paragraph 3.48 that states "Thus a market value approach will generally not be accepted by the Mayor". This in our view is a valid approach to looking at viability where the market value reflects a recent transaction.

In respect of AUV we note the comments in paragraph 3.49 that relate to this approach. We consider that this approach is also valid on some sites. Therefore whilst we note the preference for EUV+ there will be sites where 'market value' or AUV are more appropriate so exceptional circumstances do not need to be demonstrated.

Paragraphs 3.50 – 3.54 refer to the use of 'review mechanisms'. On smaller development proposals this generates a difficulty with external funding as it provides no certainty for the funding body. This is particularly the case with 'a near end of redevelopment review' as suggested in Route A. Given the uncertainty for the funding body as to what the ultimate development will be should the economics move this may well prohibit a bank lending on the development. We therefore suggest a threshold of 50 residential units.

For these smaller schemes we consider that the only acceptable review clause would be one where the review is triggered should the implementation of the development not have reached a building stage within a time period. Such as not having achieved first floor slab with 24 months.

In respect of Build to Rent paragraph 4.16 suggests that this should be secured in perpetuity. We suggest that this is onerous and a maximum timeframe of 20 years is more appropriate to reflect the ever changing housing market and housing.

The Mayors Housing SPG (March 2016) refers to Houses in Multiple Occupation in paragraphs 3.4.1 – 3.4.3. This draft SPG is however silent on the contribution that this type of accommodation makes to the provision of 'affordable' accommodation in London, given its size and affordability. It is considered that this should be recognised in the draft SPG and the document should make it clear that no affordable housing will be sought in proposals that seek to deliver HMO accommodation in London.

RPS CgMs Limited

February 2017

Draft London Affordable Housing Viability SPG

Name: [REDACTED]
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Introduction

Planning Issues Limited is a planning and design consultancy acting on behalf of Churchill Retirement Living. The team is made up of chartered Town Planners, Architects and Housing professionals with extensive experience in both market and affordable housing delivery.

Planning Issues provides advice from the initial stages of land identification through to completion of developments and has an interest in ensuring that emerging planning policy and obligations are deliverable.

Churchill Retirement Living is an industry leading provider of high quality retirement homes in England and Wales. The company has ambitious growth plans over the next five years and will play an important part in the overall shared aspiration of increasing housing delivery across the sector.

The retirement element of the new build market represents a hugely important sector which enables older people to access housing more suitable to their changing housing requirements in later life. The retirement sector offers housing choice and plays an undervalued role in the market by freeing up larger housing which can be then accessed by younger households. The important role the sector plays is recognised within the Housing White Paper (2017) which sets out plans to ensure that local authorities plan for retirement housing need.

Churchill Retirement Living is an active developer across London with a number of successfully completed sites and many more either on site, or in the planning and feasibility stages. Churchill Retirement Living redevelops small brownfield sites in sustainable urban locations. Sites are typically less than 0.5 of a hectare meaning that policy

compliant off site affordable contributions are typically agreed with local authorities as the most suitable means of contribution.

The following consultation response is therefore made in the interests of ensuring that policy is deliverable and does not cause unnecessary delays to the planning process. Policy must also be flexible to ensure that the viability of specific types of proposals and the costs of delivering certain brownfield sites are reflected throughout the economic cycle as required by national policy.

The Current National and London Plan Affordable Housing Policy Position

The National Planning Policy Framework¹ (NPPF) is clear at paragraph 173 that in order to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable,

At paragraph 174, the NPPF requires that Local planning authorities should set out their policy on local standards in the Local Plan, including requirements for affordable housing. They should assess the likely cumulative impacts on development in their area of all existing and proposed local standards, supplementary planning documents and policies that support the development plan, when added to nationally required standards. In order to be appropriate, the cumulative impact of these standards and policies should not put implementation of the plan at serious risk, and should facilitate development throughout the economic cycle meaning that flexibility should be included.

In relation to assessing viability at decision making level, i.e. on an individual site or application, National Planning Practice Guidance (PPG) is clear that where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary. This should be informed by the particular circumstances of the site and proposed development in question. Assessing the viability of a particular site requires more detailed analysis than at plan level. PPG states in this regard that:

'Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.'

1

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

*This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. **These contributions should not be sought without regard to individual scheme viability**². (My emphasis)*

PPG also provides guidance on where and how planning obligations should be introduced.

***‘Policies for seeking planning obligations should be set out in a Local Plan, neighbourhood plan and where applicable in the London Plan to enable fair and open testing of the policy at examination. Supplementary planning documents should not be used to add unnecessarily to the financial burdens on development and should not be used to set rates or charges which have not been established through development plan policy.** (My Emphasis)*

Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure. Local communities should be involved in the setting of planning obligations policies in a Local Plan, neighbourhood plan and where applicable in the London Plan.³

Relevant existing London Plan Policy relating to affordable housing delivery is set out in policies 3.11 (targets) and 3.12 (negotiating affordable housing delivery on private residential and mixed use schemes).

Policy 3.11 seeks to ensure that at least 17,000 affordable homes should be delivered across London on an annual basis (equating to broadly 40% of overall housing delivery targets). The strategic tenure mix sought across London is 60% affordable/social rented and 40% intermediate housing.

Policy 3.12 sets out that the maximum reasonable provision of affordable housing should be sought when negotiating on individual private residential and mixed use proposals having regard to a range of criteria including targets, individual site circumstances, viability considerations and the need to encourage rather than restrain residential development.

Supporting text to policy 3.12 sets out that in making arrangements for assessing planning obligations, boroughs should consider whether it is appropriate to put in place provisions for re-appraising the viability of schemes prior to implementation⁴.

Further guidance on the implementation of London Plan Affordable Housing Policy is set out within the Mayor’s Housing SPG which was published in March 2016. The current guidance encourages the use of the existing use value plus approach as a viability

² <http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-and-decision-taking/>

³ Paragraph: 003 Reference ID: 23b-003-20150326

⁴ London Plan 2016, paragraph 3.75.

benchmark but recognises that there are circumstances where market value or alternative use value may be more appropriate.

In relation to review clauses or overage, the current SPG is clear that these may be appropriate on multi phased or longer term proposals but for single phase proposals, it may be more appropriate to use time constraints on permissions so that proposals will have viability reassessed only if they are not built out within an agreed time period. This is consistent with current National Planning Practice Guidance (NPPG).

Aims of the Draft Guidance

The foreword provided by the Mayor of London sets out that the intention of the draft SPG is to boost the overall supply for new homes by making the planning system clearer, quicker and more consistent. It aims to increase the amount of affordable housing coming through the planning system and reward those who deliver more on site.

Despite the above stated intentions, the draft SPG proceeds to seek to amend existing London Plan policy requirements and introduce requirements which in our view are likely to achieve the opposite of the Mayor's aspirations for the guidance as set out above. Untested and unsupported guidance such as that proposed is likely to make the planning system in London unclear, slower and application of policy aspirations muddled and multilayered. Furthermore, it is also not appropriate to seek to clearly amend existing adopted policy through supplementary guidance and seeking to do so adds to the uncertainty and risk associated with housing development in London.

Consultation Response

Part 1 – Background and Approach

The Mayor's long term strategic target is that 50% of new homes are affordable. At present, the affordable homes delivery rate is just 13% of new supply.

The draft SPG is clear that supplementary planning guidance cannot introduce new policy and can only provide guidance on policy requirements set out within the existing London Plan. Policy can only be changed through the formal amendment of the existing London Plan which is due to commence during 2017 with an adoption of the revised plan most likely not earlier than 2019.

The limitations of the draft SPG are therefore to provide guidance to ensure that existing policy is as effective as possible. Under no circumstances should it seek to amend existing policy and the draft acknowledges this point.

We provide detail below as to why we believe the SPG as currently drafted does in fact seek to amend existing adopted policy. This is not an appropriate precedent to set and

does not provide developers or investors with sufficient confidence about the Mayor's approach.

At 1.13 the SPG sets out that plans adopted post NPPF should be considered viable and that negotiations to reduce obligations based on site specific considerations should only be necessary where there are exceptional or abnormal costs. The NPPF and PPG are clear that alongside abnormal costs, the development type in question must also be a consideration in viability reviews. This is particularly pertinent in testing viability for retirement type housing which is less efficient than general needs housing with a significantly slower return on investment. These considerations impact negatively on the financing of such schemes.

Viability testing at plan level looks at typical sites but does not seek to examine every site or development type as that would not be possible.

In relation to assessing viability at decision making level, i.e. on an individual site or application, National Planning Practice Guidance (PPG) is clear that where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary. This should be informed by the particular circumstances of the site **and** proposed development in question. PPG states in this regard that:

'Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.'

*This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. **These contributions should not be sought without regard to individual scheme viability**⁵. (My emphasis)*

Part 2 – Threshold Approach to Viability

The draft SPG seeks to introduce a threshold approach to viability testing in London whereby schemes meeting or exceeding 35 percent affordable housing without public subsidy are not required to submit viability information. This is known as 'Route B'. All other proposals providing less than 35% affordable housing are proposed to be subject to 'Route A'.

This proposed approach therefore seeks to establish a 2 tiered approach whereby certain proposals secure a light touch approach with just 35% affordable housing and those who

⁵ <http://planningguidance.communities.gov.uk/blog/guidance/viability-guidance/viability-and-decision-taking/>

have demonstrated their proposals are unviable, are pursued for 50% affordable housing provision or the equivalent cash amount until 75% of their units have sold.

It has become common consensus in our negotiations with local authorities that the restricted nature of Churchill Retirement Livings sites do not readily facilitate on site affordable housing delivery in a form which might lead to a sustainable community. As such, Churchill and other similar providers will generally agree to make cash in lieu contributions towards affordable housing delivery elsewhere in the local authority area.

The draft SPG in effect penalises smaller providers by putting those proposing to deliver 35% affordable housing on site at an advantage whereas smaller or specialist providers who cannot deliver the same affordable housing on site will be pursued for 50% affordable housing. This potentially has massive ramifications for a smaller or specialist provider's ability to compete for development sites in London and puts at risk the delivery of much needed quality housing provided by specialist providers. Such a policy needs careful analysis in terms of implications on delivery of all housing typologies and should not be shoehorned in through SPG.

Tenure

Paragraph 2.27 onwards of the draft SPG seeks to amend the affordable housing tenure targets in the currently adopted London Plan. Paragraph 2.28 states that the current position contains some flexibility as local authorities are asked to set targets locally. However, the current London Plan Policy 3.11 explicitly states that across London, 60% of affordable housing delivery should be affordable housing for social and affordable rent and 40% for intermediate rent or sale.

The draft SPG then proceeds to seek to alter the currently adopted targets to at least 30% low cost rent, at least 30% intermediate products and with the remaining 40% to be determined by the relevant local planning authority (LPAs). LPA's are invited to respond to the consultation in order to make known their preferred 40% and the intention is that a borough by borough prescribed mix will be published in the final SPG and that further tenures may be included beyond the list set out within the SPG. The possible range of tenure mixes now includes social rent, affordable rent, London Living Rent, shared ownership, shared equity, intermediate rent, Starter Homes and any other variable which an LPA may deem meets local housing need. At 2.31 the draft SPG states that LPA's may wish to allow a degree of flexibility on a site by site basis.

Firstly, the draft SPG is seeking to amend the existing adopted policy by altering substantially the adopted tenure requirements in policy 3.11 which is not appropriate through SPG.

Secondly, the suggested changes make viability testing on a borough by borough basis incredibly difficult and uncertain for developers if not clearly defined in the final SPG and agreed at borough level. Therefore once again, the aspiration of increasing certainty through the SPG will not be achieved without a clear and fixed position in relation to tenure aspirations.

As the progression of a site to planning stages can often take months if not years from inception, borough tenure aspirations cannot remain in a constant state of flexibility due to the financial implications for developers in bringing sites forward. There are inevitable financial implications in amending tenure requirements which will have implications in delivering overall affordable housing numbers across London. There is no mention of viability testing being undertaken to underpin such changes as will already have been required at a borough level for that borough's existing tenure mix requirements. The draft SPG simply says that boroughs should be mindful of the cost of their preferred tenure.

The draft SPG should not seek to amend adopted London Plan or local tenure mix requirements without having regard to impact on viability considerations. To do so would be contrary to the NPPF which requires that planning obligations sought be tested and proven to be financially viable. It is more appropriate to make these changes through a formal early amendment of the existing London Plan which would ensure such changes are deliverable. Delaying such a change is also required to ensure that the currently unknown impact of the new affordable housing types set out in the Housing White Paper can be properly tested.

Off site provision

Paragraph 2.48 onwards discusses off site provision and cash in lieu payments and confirms that schemes proposing off site provision will be subject to 'route A' review. 2.52 confirm that off site provision should be financially neutral relative to on site provision and appraisal should include the cost of delivering affordable housing on site.

In Planning Issue's experience in negotiating affordable housing requirements on behalf of Churchill Retirement Living, it is generally concluded by local planning authorities that:

- On site provision of affordable housing alongside sheltered housing is not deliverable due to the inherently small nature of such sites, an inability to mix tenures in one single block and the affordability of service charges;
- Where viable, the most appropriate and expedient mechanism for making an affordable housing contribution is in the form of a cash in lieu payment.
- The actual contribution should be determined on a site by site basis and will depend on the viability of the proposals in question including the current use of the application

site. Prescribing a minimum percentage or a set formula will in many circumstances inhibit the delivery of this type of housing due to the marginal viability of many such proposals⁶.

- Many housing needs assessments conclude that retirement housing of all tenures including private for sale units generally meet a housing need locally and release larger under occupied properties in the immediate area for the use of younger families.

The final SPG should be clear that there are instances where off site provision or cash in lieu payments may unlock housing delivery and meet the London Plan aspiration of encouraging and not restraining overall delivery. The final draft should acknowledge the role played by certain providers in meeting specialist need not addressed by general needs providers.

At 2.52, reference to specific mechanisms for establishing the cost of delivering affordable housing on site should be removed. The approach suggested is inaccurate and should be removed. Such a mechanism is contrary to the principle of 'equivalence' in assessing the benefits of offsite contributions.

Vacant Building Credit

The VBC was introduced in a Written Ministerial Statement (WMS) followed by updates to the National Planning Policy Guidance (PPG).

The draft SPG states that VBC will only be considered on sites where the buildings have been vacant for at least five years and for at least two of those, the buildings have been actively marketed at realistic prices. Should VBC apply, CIL relief through the vacancy test cannot be claimed under the proposed terms of the draft SPG.

VBC was introduced alongside the small sites threshold with the intention of assisting small and medium size developers unlock smaller brownfield sites. The policy is set out within National Planning Practice Guidance (PPG) and is therefore a material planning consideration in determining individual planning applications. This position was confirmed through the Court of Appeal judgement which reinstated the policy in 2016. This decision also considered that while the development plan is the starting point for the decision taker, it is not the law that greater weight be attached to it than other considerations (...) Secondly, policy may overtake a development plan ("...outdated and superseded by more recent guidance"). Both considerations tend to show that no systematic primacy is to be accorded to the development plan (see paragraph 20 of the Court of Appeal judgement).

At paragraph 2.58 of the draft SPG, it states that the VBC is unlikely to bring forward more development and that as affordable housing targets are subject to viability testing,

⁶ <http://content.knightfrank.com/research/696/documents/en/2016-3770.pdf> (Policy Section Page 4)

affordable housing targets are not preventing sites from coming forward. London is not in a unique position in this regard, with viability testing applied throughout the country. The guidance contained within the NPPG is intended to encourage house building on brownfield land and be blind to the issue of viability.

The Mayor's approach is directly contrary to NPPG and seeks to expand guidance as to its application which is not set out in NPPG. In the case of *R (West Berkshire District Council) v Secretary of State for Communities and Local Government*, the Secretary of State expressed the view that the policy was a matter to which 'very considerable weight' should be attached and this view has been borne out in recent appeal decisions⁷.

To attempt to instruct London Boroughs to explicitly ignore national policy is incorrect and to expressly set out circumstances in which the policy might apply in a London context is not appropriate through SPG. Decision takers are required to consider the guidance as it is a material consideration.

At paragraph 2.64 of the draft it is stated that if a scheme qualifies for VBC it cannot qualify for vacancy relief under the CIL regulations. Again, there is no policy footing for this position which again is contrary to the intention of the VBC policy.

This section of the SPG should be removed in its entirety. Appropriate London specific evidence can be produced as part of the forthcoming review of the London Plan if policy will seek to restrict the use of VBC in London. Likewise, at a borough level, local policies can be pursued through the development plan process.

Part 3 – Guidance on Viability Assessments

At paragraph 3.2 the draft SPG states that for referable schemes, the Mayor will review both the viability evidence submitted by the applicant AND any review or assessment carried out by or for the LPA. This suggests that rather than streamlining and reducing planning times, the Mayor's review is likely to be time consuming and discourage developers bringing forward sites in London.

The Mayor's in house viability team will need to be of a sufficient size to process the vast amount of referable schemes coming forward with less than 35% affordable housing. They will also need to be suitably skilled in the assessment of the unique viability of particular housing typologies such as retirement housing.

At paragraph 3.8, the draft states that information should be provided relating to the applicant company. It is widely known that planning obligations run with the land and not the developer. *RICS Viability in Planning* guidance is also clear that in undertaking scheme-

⁷ Appeal Decision APP/D0840/W/16/3142537

specific viability assessments, the nature of the applicant should normally be disregarded, as should benefits or dis-benefits that are unique to the applicant. The aim should be to reflect industry benchmarks in both development management and plan making viability testing.

Putting the above in context, this is particularly important in London where consented schemes may be sold on to alternative developers. Planning obligations acceptable to one business model may not be acceptable to another and could well lead to the creation of a backlog of undeliverable permissions in the capital.

At paragraph 3.12 the draft sets out detail required in terms of comparable sales information. Certain types of residential proposals are unlikely to have recent direct comparable sales information available in close proximity of an application site. Reasonable adjusted average values are generally combined in such cases. However, it is generally not possible to analyse comparable schemes on a unit by unit basis and the unique attributes of particular units are difficult to translate to other sites. Reasonable average comparable sales values should be adopted in these instances.

Growth assumption testing requirements are set out at paragraph 3.13. Decision takers should be reminded that in terms of achievable values, viability testing should be undertaken at the time of the application's determination. Scenario testing should be based on falls in the market as well as potential growth such is the risk a speculative developer/investor makes in delivering housing in London.

From paragraph 3.14 onward, the draft guidance details requirements relating to affordable housing values. Capping the price offered by an RP for S106 units seems like a counterintuitive position to take by the Mayor. An RP may use borrowing, cross subsidy and its own reserves plus grant funding where available to arrive at an offer for S106 affordable units. Capping what an RP may offer could well reduce affordable housing delivery on certain sites and discourage the use of existing RP assets to deliver affordable housing.

The price paid for individual affordable housing units should not be "enshrined in the S106 agreement" as proposed as throughout the development process, circumstances or parties may change resulting in lower affordable housing values forthcoming. Again, this could lead to delays in delivery if constant amendments to legal agreements need to be renegotiated each time minor changes occur. Furthermore, such a requirement is time intensive to monitor, begging the question as to whether or not it will be monitored to any extent or indeed a measurable objective.

Paragraph 3.25 deals with the issue of abnormal costs and suggests that there should be a presumption that all abnormal costs are factored into the price paid for the land or the premium above the existing use value applied. In many cases, development specific

abnormal costs are relevant considerations e.g. particular piling, soil remediation requirements for particular types of housing. It should not be automatically assumed that all abnormal development costs be deducted from land value. Seeking to deduct from the premium applied above EUV is also likely to cause even further confusion and protracted negotiations beyond what is already currently a contentious issue.

Paragraph 3.31 talks about the importance of CIL rates and other planning obligations being set at a level which allows for the delivery of affordable housing targets. As the draft SPG is already seeking to amend the existing policy requirements, there is a strong possibility that any existing CIL viability testing will be immediately outdated. This does not seem to be considered to any great extent in the draft SPG which could lead to further delivery frustration. The failure to adequately consider the impact of the full range of planning obligations for retirement housing is examined as part of Knight Frank's review of retirement demand in 2016.⁸

Paragraph 3.32 of the draft SPG details the required assumptions in relation to developer return. We agree that the appropriate level of profit is scheme specific but must also be reflective of the type of housing proposed. Retirement housing has unique viability characteristics which increase developer risk at the outset. Sales periods can extend into years rather than months with general needs developments and the investor is therefore exposed for much longer periods to fluctuations in the housing market. Further detail on the differences between general needs and retirement viability characteristics are set out within the Three Dragons review undertaken for the Retirement Housing Group.⁹ Furthermore, a recent appeal decision at Cornwater Fields, Nottinghamshire¹⁰ concluded that the extra complexity and risk added by the inclusion of retirement housing on the scheme warranted the inclusion of a higher return for risk.

In relation to benchmark land value (BLV), it is clear that the draft SPG advocates the use of Existing Use value (EUV) + over use of fixed land value or market value. EUV PLUS is likely to be the most equitable method of assessing viability whilst ensuring that allowance is made for securing planning obligations. However, the most worryingly inconsistent element of the EUV+ approach is the actual incentive or PLUS element for the landowner.

Firstly, it is likely that in testing CIL and Local Plan viability that a borough's appointed consultant will utilise the EUV PLUS approach but the incentive or plus element is likely to be fixed for testing purposes. This is often at a rate of 20% or more above assessed EUV. When it comes to site by site negotiation, in our experience, the borough's appointed

⁸ <https://kfcontent.blob.core.windows.net/research/696/documents/en/2016-3770.pdf>

⁹ <http://www.retirementhousinggroup.com/publications/CIL%20viability%20appraisal%20issues%20RHG%20%20February%202016.pdf>

¹⁰ Appeal Reference: APP/N3020/S/16/3154302

consultant will often seek to apply a variation to the PLUS element as due to the lack of guidance relating to this input, this is one of the easiest inputs to challenge. This is often without valid reason and based upon a matter of opinion only.

The draft SPG does little to alleviate this issue, providing a broad range of potential uplifts (“The premium could be 20% to 30%...may be considerably lower”). Where existing use values are relatively high, viability will normally be a concern in achieving a deliverable and viable package of S106 requirements. The lack of consistency applied to the EUV PLUS approach is a real risk for developers in bringing forward land.

In relation to the use of alternative use values, the draft guidance should not preclude their use in the consideration of viability appraisal if a planning permission is not in place. This is contrary to NPPG.

Further guidance should be provided relating to the EUV PLUS approach to ensure consistency in application of the PLUS element. The PLUS element should never be less than the percentage used in CIL or Local Plan viability testing locally. Alternative use values must be considered if they are considered deliverable.

Contingent Obligations and Review Mechanisms

The draft SPG advocates the use of review mechanisms on all sites that do not provide a full policy compliant provision of affordable housing. This is regardless of the size of the proposal. National policy, RICS guidance and recent planning decisions are clear that such a mechanism is only suitable for larger multi phased proposals. PPG sets out that viability should be based on current day costs and values unless schemes require phased delivery over the medium to longer term.¹¹

A significant number of recent planning appeal decisions¹² are clear that overage mechanisms are not appropriate for single phase schemes for several important reasons which include:

- Risk to delivery caused as there will be added risk that funding or alternative developers will not be forthcoming due to unknown future payments;
- On single phases schemes, overage is contrary to national policy (NPPF/NPPG, RICS guidance and CIL Regulations 122 i.e. is the requirement necessary, related to the development and fairly related in scale and kind?);

¹¹ Reference ID: 10-017-20140306

¹² Appeal Refs: 2228247, 3143743, 3133603, 3153625, 2207771, 3005876 and 3119189

- There is generally no commitment to 'underage' whereby the risk of investing in a project is not shared between the parties (see paragraph 3.54 of the draft SPG which is clear that upward only reviews are expected);

On single phase or short term developments, review clauses should be used rather than 'overage' requirements. If a development has not progressed to an agreed position within 2 years following the award of planning approval, a review clause may be triggered prior to start on site.

Suggested Review Formulas

Annex A of the draft SPG sets out suggested review formulae to be included in S106 agreements where the full policy requirement for affordable housing has not been met by the applicant.

While it may be useful to include examples of such mechanisms for longer term phased schemes only, each site will need to be judged on its own merits and a one size fits all approach is unlikely to work in our view. The SPG should make it clear that these are suggested approaches but that formula must be agreed on a site by site basis to ensure the requirements of investors are met.

In relation to the early stage review, the intention of the review mechanism in this case is to secure additional floorspace on site. This is unlikely to work in practice on smaller scale proposals where management of affordable units is likely to be a key consideration in the success or otherwise of the development. For certain types of housing such as retirement housing, it is generally agreed on smaller sites that an offsite contribution towards affordable housing is the most sustainable option. Units sought on site at such a late stage would likely lead to the proposal becoming unsustainable for the developer to progress. The SPG should be clear that boroughs should not seek the provision of units on site where it has been agreed as part of the planning permission that off site or payment in lieu is more suitable.

Conclusions

We would agree with the Mayor that further guidance on the application of viability in planning is required. However in attempting to simplify the process in London, the draft SPG has raised more questions than it answered in our view.

Despite explicitly setting out that the draft SPG will not amend existing policy, it is clear that it does exactly that. By amending tenure requirements and allowing certain developers to provide 35% and others 50%, a 2 tiered approach is proposed which is likely to penalise certain housing providers over others. The proposals add more confusion to

the system and potentially require updates to existing Local Plan and CIL viability studies across London depending on the impact of the proposed new tenure mixes required.

The draft also seeks to introduce new policy in relation to the application of vacant building credit in London by prescribing minimum vacancy periods for the policy to apply. As this detail is not prescribed in the NPPG, this is clearly an attempt to introduce new policy through the SPG. As set out, changes to policy should be properly progressed through the London Plan review.

We believe that the majority of schemes will continue to go down 'Route A' due to the requirement for 'Route B' proposals to be fully policy compliant in every regard. 'Route B' may assist Registered Provider led schemes where an element of cross subsidy can be used to provide a minimum 35% provision on site at a tenure mix supported by the borough.

We also believe that the proposed new arrangement unfairly treats smaller non main stream housing providers and particularly those providing for private retirement housing where it is commonly agreed that off site provision is the most sustainable option. The draft SPG leaves only 'Route A' open to such proposals with review mechanisms now required to multiple stages. Such measures are likely to discourage investment in these types of proposals in London which is the opposite intention of the Mayor's 'fast track' approach. The draft SPG adds a further level of bureaucracy, cost and uncertainty to already time consuming system.

The draft SPG should be amended to ensure that the uncertainty of 'overage' requirements specifically excludes small, single phase, short and medium term developments. Review clauses prior to implementation are the only suitable mechanisms which are consistent with national policy in this regard.

Going forward we would be happy to assist in formulating workable policies which would help in the delivery of the Mayor's housing aspirations.

End.

Paul Robinson

From: Michael Hill [REDACTED]
Sent: 14 February 2017 10:09
To: Housing SPG 2016
Cc: Mike Lambert; Jim Dodd
Subject: Comments on the Draft Affordable Housing and Viability SPG

Follow Up Flag: Follow up
Flag Status: Flagged

We generally welcome this ,given the importance of increasing not only the overall supply of housing in London ,but more specifically the proportion of that increased supply that is affordable.

We strongly support the linkage between viability and the new grant arrangements as set out in the AHP and in particular the incentive to increase provision above 35%.However,we believe that there is need for greater clarity on the inter-relationship between grant and viability. E.g. if a scheme can secure planning permission on the basis of having justified a level of less than 35% -without public subsidy- as set out in para 2.15 ,then is the incentive,for other than Approved Providers, to secure AHP grant to increase that provision to 41% plus purely a financial one.?

Re para 2.54 we have some serious concerns about how the AHP will contribute to improving the viability,and therefore the delivery,of estate regeneration schemes.We fully support the objective of 'no net loss of existing affordable housing' but on other than those estate regeneration schemes that achieve a radical increase in density, an estate with say 70-75% of its existing housing comprising affordable rent then,even if that reduces to say 35% of the new ,increased, total number of new homes ,this would mean that ALL of the other new homes would need to comprise Rent to Buy and SO Affordable homes, in order to meet the AHP requirement of a 35;65 tenure split. Given that viability is likely to be the biggest single barrier to significant ongoing estate regeneration- which is recognised by the latest Housing White Paper and others as a major potential contributor of additional new homes ,this is very worrying to us.

We welcome the focus on Build to Rent for two main reasons. Firstly, much of the new and existing housing intended for owner occupation over the last few years has been 'lost' to Buy to Let and Buy to Leave investors which has undermined the creation of sustainable communities and neighbourhoods.Secondly, following the Stamp Duty and other changes last year there has been a significant decline in demand for Buy to Rent which has impacted on overall development/sales rates; Build to Rent can not only offset this but ultimately enable an overall increase in rates of supply.

I hope these comments are of help;I would be happy to expand on them if necessary.

Michael Hill

Michael Hill BA (Hons) MRICS
Business Strategy Director
Partnerships
Countryside Properties (UK) Ltd

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Via e mail to housingspg@london.gov.uk

DRAFT

27th February 2017

Dear Sir/ Madam

THE CROWN ESTATE

RESPONSE TO 'HOMES FOR LONDONERS' CONSULTATION DOCUMENT

CBRE is responding on behalf of The Crown Estate in relation to the above referenced consultation document. The Crown Estate is committed to the long term sustainable development of its Regent Street and St James's portfolio, located within the City of Westminster, and is pleased to take part in this consultation.

The Crown Estate

The Crown Estate has a nationwide property portfolio with a combined value of over £11.5 billion. The largest concentration of these assets is in the West End in St James's and Regent Street. Between them, as well as including residential uses, these two areas form a significant proportion of The Crown Estate's UK commercial portfolio. Over 10,000 people work on Regent Street in more than 700 office businesses and over 150 retail and catering outlets.

Alongside the comprehensive renewal and redevelopment of Regent Street that has been undertaken to provide modern office, retail and residential space and an enhanced public realm, The Crown Estate has embarked on a strategy to enhance the role of St James's, acknowledging the area's distinctive mix of uses, from theatres, restaurants and bespoke shopping to the fine art businesses and international auction houses within St James's and the cluster of private members' clubs in Pall Mall as well as significant residential occupiers.

The Crown Estate's vision is to be a progressive commercial business creating significant value beyond financial return. It works with partners and stakeholders to grow the business, outperforming the market whilst delivering sustainable long-term returns and making a positive impact through its total contribution to the UK. The Crown Estate is guided by its values – commercialism, integrity and stewardship – in everything it does.

Response to 'Homes for all Londoners'

The Crown Estate is committed to helping to meet London's housing needs, including in respect of affordable housing. It has recently delivered two new affordable housing schemes in Westminster connection with the ongoing renewal and redevelopment of its Regent Street and St James's portfolio. These are as follows:

- Lavington Mansions, located on Ogle Street in Fitzrovia, which comprises 21 dwellings (15 shared ownership and 6 social rented). This scheme was completed in 2014 and is now managed by Peabody. It was delivered in connection with The Crown Estate's redevelopment of Regent Street Blocks W4/ W5 (at the junction of New Burlington Street)
- 147-150 Grosvenor Road in Pimlico, which comprises 12 intermediate dwellings. It was completed in 2016 and is now managed by Network Housing Group. This scheme was delivered in connection with The Crown Estate's commercial redevelopment of St James's Market

Threshold Approach to Viability

We note Part 2 of this document (threshold approach to viability) proposes schemes that meet or exceed 35% affordable housing onsite without public subsidy are not required to submit viability information. We also note paragraph 2.48 states that all schemes which propose off-site provision or a cash in lieu payment are required to provide a detailed viability appraisal to justify this approach.

We consider this SPG should acknowledge that the justification for delivering off site affordable housing or making a payment in lieu is not always driven by viability grounds alone. There may be other practical considerations driving such an approach. This may also deliver wider qualitative benefits in satisfaction of other planning policy objectives.

The Crown Estate's Regent Street and St James's portfolios are located entirely within the defined Central Activities Zone (CAZ). It also comprises numerous listed buildings and unlisted buildings of merit.

Within London's defined Central Activities Zone, there are complex, multiple public interest objectives informing development decisions. We also consider some degree of trade-off is needed between driving economic growth and commercial development and meeting the need for additional affordable housing.

Furthermore, it is often impractical for a variety of reasons to incorporate affordable housing of an appropriate design for transfer to, or management by, a registered social landlord or other appropriate body within schemes which entail the refurbishment or partial redevelopment of listed buildings and unlisted buildings of merit.

Whilst Westminster Council does expect affordable housing to be provided on site in the first instance in accordance with the requirements of policy S16 of its adopted City Plan (November 2016), this policy goes on to state that *'where the council considers that this is not practical or viable, the affordable housing should be provided off-site in the vicinity. Off-site provision beyond the vicinity of the development will only be acceptable where the council considers that the affordable housing provision is greater and of a higher quality than would be possible on- or off-site in the vicinity, and where it would not add to an existing localised concentration of social housing, as set out in City Management policy.'*

The Crown Estate considers that they have the opportunity to deliver a greater level of affordable housing off-site and would welcome the approach to consider opportunities for land use credits to deliver an appropriate balance and mix of uses across their portfolio. We believe the two affordable housing schemes as referred to above are examples of where a better outcome was achieved off-site, in terms of the quality and amenity of affordable housing provided, consistent with the objectives of this policy.

We consider that given the special circumstances that often exist when bringing forward redevelopment schemes for historic buildings within the Central Activities Zone, it is important policy is applied with suitable flexibility at the local level so as to allow delivery of off-site affordable housing when this can deliver better planning outcomes. It is also important to acknowledge that there are other issues in addition to financial viability alone which need to be considered in such circumstances. We also consider it important to retain appropriate flexibility at the local level in setting rates for payments in lieu, as is currently the case within Westminster.

Build to Rent

The Crown Estate welcomes the Mayor's support for the Build to Rent sector and the acknowledgement of the beneficial contribution this can make to increasing London's housing supply as set out in this draft SPG.

We also welcome the acknowledgement in this draft SPG that the distinct economics of this sector relative to mainstream 'build for sale' market housing should be taken into account in considering planning applications for build to rent schemes.

We look forward to continuing a positive dialogue with the Greater London Authority in relation to this emerging SPG as well as the development of the new London Plan. If you have any queries or require further information in connection with this response, please do not hesitate to contact me.

Thanks for your assistance.

Yours faithfully,

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

GRAHAM TIMMS
Associate Director

GLA draft Affordable Housing & Viability SPG, November 2017 – Representations of Delancey

GLA Reference	Comment
Part One: Background & Approach	
<p>Mayoral strategic aim of half of all new homes from all sources being affordable. This will be achieved through greater use of public land, housing investment and the increase of affordable homes through the planning system.</p>	<p>The overarching objective is welcomed. However, the NPPF and NPPG recognise that each site should be assessed on its ability to deliver planning obligations, and other community benefits, and that a one size fits all approach is not achievable.</p> <p>Whilst a high-level approach to the evidence base underpinning planning policy might be acceptable to ensure that plans are deliverable, site specific assessments should be more detailed reflecting the relevant available facts and reflect the unique characteristics of development sites so that the scale of obligations does not burden their delivery.</p> <p>An overly prescriptive singular approach to viability and the delivery of affordable housing that does not consider local circumstances could prove detrimental to delivery of development sites and ultimately the overarching objectives of the Development Plan.</p>
<p>The SPG represents a ‘step change’ towards 50% affordable housing from all sources.</p>	<p>The SPG introduces a threshold approach to the delivery of affordable housing and this principle is welcomed. It is recognised that the threshold approach reflects a required step-change in the behaviours of landowners and buyers and that the policy direction will need to be embedded in land values, if it is to prove successful.</p> <p>Delancey would question whether the 35% figure is too high as very few large strategic sites can support 35% affordable housing, with other planning obligations and CIL. A figure of, say, 25% would appear to be somewhat higher than the 13% referenced in the SPG as achieved in the last year of the previous administration.</p> <p>There is also limited incentive to get to 35%, where schemes are less viable, and the GLA must recognise that whilst an incentive is helpful, ultimately, a scheme must meet a range of developers and funders’ criteria to be delivered and viability remains a material consideration given central Government policy. A technically viable scheme on paper, that meets neither the landowner or funder’s delivery requirements, will not increase overall housing supply.</p> <p>There is a long term linear relationship between consents and starts in the capital, and to break this and get more schemes on site and ultimately more homes delivered, the SPG should recognise the relationship between planning obligations and</p>

	CIL, development profit and land value.
The Mayor and referable applications	<p>The SPG promotes an additional ‘safety-net’ for the GLA through the setting up on an in-house viability team. Local planning authorities already employ professional Valuers and the viability information is subject to significant scrutiny.</p> <p>Viability is undertaken on an objective impartial basis, and no two Valuers are likely to come up with the same answer. Whilst there are significant benefits in working with the GLA on viability matters the general level of scrutiny already provided is high and the added safety-net should not be implemented in a way which would cause additional delays.</p> <p>The planning application process is already very expensive and cumbersome particularly for large scale regeneration projects that can make a significant impact on housing delivery within London and the GLA SPG could consider a statutory timescale for viability discussions to be concluded prior to determination by a third-party expert.</p>
Boroughs are actively encouraged to support the GLA approach to viability information to provide London-wide consistency	<p>The shift towards transparency is welcomed. Delancey are very willing to share certain information as part of the planning process be it through the publication of viability reports or through presentations on viability matters to Officers and Members.</p> <p>Certain information will not be made available; for example, information relating to funding agreements, rights to light liabilities of joint venture agreements. There is a real risk that too onerous application of this element of the SPG threatens a developer’s commercial interests which is contrary to the tests as set out in the 2014 Environmental Regulations.</p> <p>London-wide consistency is also welcomed however the point made above regarding the threat of a singular approach remains. What would be of greater help would be an acknowledgement that a one-size CUV or Market Value approach is not possible and that advisors undertaking assessments should consider all the information at their disposal and make informed professional judgements, working with local planning authorities, that balance the competing requirements of landowners and developer’s reasonable requirements.</p> <p>This balanced approach and consideration of the facts on a site by site basis is currently missing from the process and a lack of professional judgement and accompanying dialogue with key stakeholders in harming housing delivery.</p> <p>As noted above, the SPG could also consider a standard third party binding arbitration route if viability on strategic sites is not agreed within a standard time-period. The process could ensure that the viability component does not hold up planning determination. The third-party role could be managed by a professional regulatory organisation such as the RICS.</p>

Part Two: Threshold Approach to Viability	
The introduction of a threshold approach to ‘nudge’ developers to deliver more homes	<p>Whilst in principle this makes sense, as noted above the 35% figure is a high threshold and is not being achieved on most larger sites. Whilst it is acknowledged that a change of behaviour is required to embed the policy direction into land values, the threshold approach must ensure that deliverable planning consents are encouraged.</p> <p>There is an expectation in the SPG that the flex in the equation to get to 35% affordable housing, will be the landowner’s component. This is an assumption that threatens the delivery of development sites. Landowners are clearly important in the equation, and many will choose to hold on to their assets if land prices are forced too low.</p> <p>Many landowners have alternative uses that their sites can be used for and flexibility exists in existing affordable housing policy to allow these sites to come forward. The decision on what use to bring forward is not always made upon land purchase and property companies may evolve designs for competing uses following the acquisition of site, before deciding upon which use to apply for.</p> <p>The SPG seeks to ignore the relative values of competing uses. The NPPG makes it clear that this should be a fundamental component of the land market and one that must be acknowledged in the viability process to avoid a detrimental effect on land supply.</p>
The SPG requires LPAs to refer to their affordable housing policies as part of the consultation process and explain through evidence how this will deliver more than 35% without grant subsidy	<p>London comprises 33 different planning authorities and local markets with some of the highest world-wide house prices and others with high levels of deprivation.</p> <p>The ability of local authorities to set policies that reflect local housing markets within their boundaries and make decisions based upon local conditions is essential to ensure that a continuous stream of new housing, with associated benefits, came come forward in all areas.</p> <p>Departure from the existing evidence based policy would be detrimental to housing delivery and inconsistent with Government policy and guidance.</p>
All schemes are expected to make the most efficient use of available affordable housing resource	This aspect of the SPG is welcomed. The use of ‘developer-led’ funding to increase the overall level of affordable housing is helpful and can make a positive contribution in the right locations to affordable housing delivery.
The Threshold approach for viability assessments contains a	As noted above, the 35% figure appears one that is high and is somewhere on the spectrum of between the level of

<p>'Route A' and 'Route B' approach</p>	<p>affordable housing that is currently being delivered and the 50% strategic aspiration.</p> <p>The clear expectation is that land value will be the flex in the equation however the comments above reflect the risks of a reliance upon that approach. The Route B definition relates to 35% affordable housing without public subsidy and with the 'relevant tenure split'. This is where flexibility around what affordable housing products are available could help achieve the headline requirement of 35% with flexibility related to local circumstances.</p> <p>The requirement is also for 'all other relevant policy requirements and obligations' being met. There are very few schemes that are fully policy compliant in all areas and it is not clear whether the policy compliance relates to matters of affordable housing or all policy objectives. Further clarity is therefore required on this definition. All policy objectives would be an impossible barrier.</p> <p>Route B includes the removal of an early review if an agreed level of progress on implementation is not made within two years. The implementation time-period should be assessed on a site by site basis and be at the discretion of the LPA who can make an informed judgement on the programme of works before them as with many schemes this may not be possible i.e. early infrastructure works are required, vacant possession can't be achieved and so on.</p> <p>Notwithstanding the comments made above regarding viability being a material consideration, and failure to acknowledge viability constraints putting the delivery of larger schemes at risk, developers and funders will be unwilling to artificially increase affordable housing percentages if the scheme is then to be held up with further reviews within two years. The additional risk being required should be countenanced with the removal of the review mechanism.</p>
<p>Any surplus upon review, will be split 60/40 in the LPAs favour</p>	<p>Any uplift should be shared on a 50/50 basis with an identified cap reflective of the local policy headline target. The 50% affordable housing is from all sources i.e. 100% affordable sites and estate regeneration and therefore it is questionable as to whether the cap on contributions should be at 50%. Ultimately all liabilities emanating from review mechanisms will need to be funded, and if they are too onerous, then this puts the delivery of schemes at risk.</p> <p>We also make comment here in relation to the formulaic approach to the review mechanism. The formula provided does not allow the landowner to include certain reasonable additional costs and therefore is not consistent with the NPPG and NPPF.</p> <p>If reviews are to be included, with the LPA seeking to benefit from increased values, landowners and their funders will need to ensure that the reviews recognise all reasonable costs of development.</p> <p>This could materially distort the development funding market and needs to incorporate flexibility and great caution if this</p>

	<p>is to be adopted as a London-wide approach.</p> <p>The SPG should acknowledge economic headwinds and it would be prudent to consider both up and downwards directions in market outcomes. Whilst the SPG presents an upwards only review for affordable housing matters, failure to acknowledge market signals could render longer-term, multi-phased schemes, undeliverable without the ability to reduce obligations.</p>
Route B review to identify the Benchmark Land Value within the S106 for future viability testing	<p>To meet the requirements of the NPPF and NPPG any future viability test should consider a reasonable return the landowner and a developer as well as the level of obligations that are achievable.</p> <p>A viability review is simply a re-run of a project's viability at a future point in time. If market conditions improve, and development profit and planning obligations are improved, then the landowner will expect to be compensated by way, for example, of an overage agreement. This is also the case on larger schemes where the quantum of development under review at a future point in time may not reflect the initial consented development quantum. Similarly, the landowner would likely be entitled to an improved return.</p> <p>Therefore, a Benchmark Land Value that is fixed and does not necessarily reflect the quantum of development being considered or the passage of time and is therefore not consistent with the NPPF and NPPG requirements.</p> <p>It may however be sufficient, in certain cases, that the Benchmark Land Value is subject to an agreed indexation.</p>
The review mechanism will be used to contribute to other policy objectives	<p>This requires further clarification. Regulation 122 of the Community Infrastructure Legislation sets out the tests upon which planning obligations can be sought. For a scheme to obtain planning consent it must be deemed acceptable in planning terms and that the mitigation measures accrued by way of planning obligations are sufficient.</p> <p>The Council should not simply seek betterment. In many cases, it is ultimately not clear what a 'policy compliant' level of obligations might be. The reviews should therefore, in certain cases, seek to deliver additional affordable housing only.</p>
Early engagement with Registered Providers and an agree price	<p>In many cases, RPs are unable to engage with developers at an early stage of the design process and this is particularly relevant on multi-phased schemes where future phases are some way off or in outline.</p> <p>In making offers for affordable housing, RPs value affordable housing on a DCF basis using a range of cash flow inputs. In some cases, an RP will offer more for planning gain affordable housing than their standard model concludes is available if the housing is, for example, in a location with existing management provision close by and it would be anti-competitive</p>

	<p>to manipulate these arrangements.</p> <p>Ultimately, the contract between the landowner and RP is a private commercial agreement.</p>
The SPG notes that development density and the relationship with affordable housing provision may in cases be explored	<p>This is a welcomed component of the SPG. Simple density matrices commonly fail to acknowledge the local characteristics of a site and there are many examples of very high quality architecture across the capital that have veered away from the application of a prescribed approach. Affordable housing levels can generally be improved where additional development is allowed.</p>
The SPG promotes 30/30/40 tenure weighting to affordable housing comprising London Living Rent, affordable / social rent with the remainder at the discretion of the LPA	<p>Existing affordable housing policy recognises the requirements of mixed and balanced communities. In certain instances, it may be pertinent to deliver a different affordable housing mix and generally, LPAs are flexible in policy application. The SPG should allow this to continue.</p> <p>The proposed 40% that is discretionary is an important component and supported flexibility around this element may help to move towards the strategic headline position for affordable housing.</p> <p>London Living Rent may, in certain circumstances, be a welcomed addition to the housing offer.</p> <p>The role of London Living Rent on Build to Rent schemes, which we shall come onto, is welcomed.</p> <p>Further clarity is required through in regard the valuation principles of London Living Rent as it is not clear how, for example, a sale after 10 years as suggested can be factored into the valuation. Acknowledgement is also required that there are a significant number of households who will not qualify for London Living Rents but whose housing options in London are severely constrained and need high quality intermediate homes. London Living Rent should not close off options for these households.</p>
London Living Rent restricted to households with up to £60,000 household income	<p>The current affordability threshold is £90,000 household income. In central London, there is demand for intermediate homes available to higher-earning households who play an important role in the capital's economy. The SPG should recognise that there are higher earners who could be priced out of affordable homes if the cap for rented homes is reduced.</p> <p>London Living Rent is unlikely to be suitable for house shares of multiple adults due to the household income limit. This represents an arbitrary distinction between household types. Adults sharing rental accommodation is a popular housing choice for many people. Often the choice is driven by the need to share the cost of good quality housing as earnings are at a low level. Delancey have clear evidence of key workers and junior staff embracing this option. These households should</p>

	<p>not be excluded from this intermediate discounted market rental properties if their combined income levels qualify.</p> <p>LPA's will often have a demonstrable intermediate housing need at a more varied price point than simply London Living Rent and might seek to negotiate a higher overall affordable housing provision by enabling an element of housing at a lower discount to market, say from 20%. At these higher intermediate price points, in many London locations, a £60,000 household income cap will mean applicants will not qualify through standard referencing. Flexibility to set a higher household income cap in these situations will be essential.</p> <p>The higher market values in central London also make shared ownership properties difficult to deliver and an intermediate rented product, at a higher percentage of market rent would meet a defined need and provide a higher return to the landowner to subsidise the delivery of London Living Rent which yields a relatively low return.</p> <p>Ultimately, the objective must be homes for all and that requires delivery of accommodation across a very wide income spectrum. To focus provision on narrow income bands will ultimately exclude certain Londoners from quality housing.</p>
Definition of Starter Homes	<p>The Housing White Paper now provides clarity on the definition of Starter Homes (the legislation is contained within the 2016 Housing and Planning Bill). The White Paper requires that 10% of all homes shall be for affordable home ownership.</p> <p>The SPG should clarify whether the Housing Bill requirement takes priority over other forms of affordable accommodation.</p>
Vacant Building Credit	<p>Further clarity is required as the wording of the SPG does not appear to be consistent with the Witten Ministerial Statement or the NPPG amendment.</p>
Part Three: Guidance on Viability Assessments	
Appraisal requirements	<p>The SPG seeks information that is related to the landowner and ignores the fact that viability is undertaken on an objective basis that is not personal to the landowner.</p> <p>Further clarity is required as to why this is needed. Information that is directly relevant to the landowner may be commercially sensitive, for example, structured funding agreements when a weighted cost of capital across all costs reflecting a market norm for the type of development in question should be appropriate.</p> <p>Ultimately the planning consent is not personal to the applicant and the viability process should reflect this.</p>

Affordable housing values	<p>The SPG requires affordable housing offers that are made by Registered Providers and reserve a right to investigate ‘high’ assumed payments for affordable housing. The agreement between a Registered Provider and a landowner is a commercial agreement and it will generally not be acceptable for the agreement to be made public.</p> <p>Registered Providers are generally willing to engage with developers but only when there is a degree of certainty over delivery. Registered Providers value affordable housing using a DCF approach and the values offered often reflect certain nuances in their valuation approach i.e. the use of internal subsidies such as RCGF and sometimes a degree of conditionality.</p> <p>Given the objective nature of viability, the values proposed are not always appropriate for viability purposes and Registered Providers will generally not want their offers in the public domain.</p>
Build costs	<p>The SPG places significant reliance on BCIS. Whilst BCIS is a helpful indicator for some standard projects, given the source and general scarcity of the data, it is not reliable for larger more complicated projects. This is clearly not always the case and is simply not an appropriate data set for complex mixed use, high density developments.</p> <p>The SPG should not place too greater reliance on BCIS and rather encourage landowners to submit elemental cost plans that are consistent with the level of detail provided in the drawings in support of planning applications (i.e. RIBA Plan of Works Stage C). Wherever possible such assessments should be benchmarked against other similar projects where a full measured cost plan has been prepared by a professional RICS qualified QS at considerable expense to the developer. This must be properly respected.</p> <p>Applicants should consider to submit detailed elemental cost breakdowns reflecting the level of detail contained within the application, using relevant benchmarking data wherever possible.</p>
Abnormal costs	<p>The SPG notes that the level of abnormal costs on a site should inform the premium about the Current Use Value on the site. The SPG assumes that these abnormal costs would be known at the point of acquisition.</p> <p>The landowner’s expectations will be measured against a number of factors including the site’s existing use, the proposed density, the type of uses on the site, the level of profit that the developer is seeking to extract and the level of obligations and CIL, that the scheme will yield. This will ultimately influence the margin above CUV as discussed above.</p> <p>If the margin is eroded too significantly, the likely outcome is that the site may not be brought forward as a development site.</p>

Finance costs	<p>The SPG notes that a standardised approach to finance costs will generally be adopted. However, the individual Valuer should assess the nature of the project, including its size, mix and geographical location.</p> <p>The level of risk will dictate the margin at which the lender applies its costs to senior and secondary debt and also the loan to value. A one size fits all approach to finance is not adequate.</p>
Developer profit	<p>The SPG notes that profit levels should be no higher than 2008/9 requirements despite current market uncertainties. The profit return should reflect reasonable market returns based on regular engagement with the development industry on their requirements as well as their funders. Profit is a derivative of risk.</p> <p>Section 15 of the NPPG, in relation to profit for viability purposes, states:</p> <p><i>The National Planning Policy Framework states that viability should consider “competitive returns to a willing landowner and willing developer to enable the development to be deliverable.” This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.</i></p> <p>The SPG notes that an Internal Rate of Return (IRR) is only appropriate to schemes of over 1,000 homes. The SPG should also acknowledge that there are capital intensive schemes, for example those with upfront infrastructure costs, where an IRR is a more reliable gauge of profitability or where there is a relatively long programme.</p> <p>Also, whilst the approach taken should not be specific to the applicant, different sources of capital have different metrics that must be satisfied. This should be understood and respected.</p> <p>Each scheme should be assessed upon its own merits.</p>
Benchmark land value	<p>Section 14 of the NPPG, in relation to land value for viability purposes, states:</p> <p><i>Central to the consideration of viability is the assessment of land or site value. The most appropriate way to assess land or site value will vary but there are common principles which should be reflected.</i></p> <p><i>In all cases, estimated land or site value should:</i></p> <ul style="list-style-type: none"> - <i>reflect emerging policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;</i>

- *provide a competitive return to willing developers and land owners (including equity resulting from those building their own homes); and*
- *be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.*

The one size fits all approach to land values does not reflect the unique nature of development sites. The SPG recognises that the CUV+ to viability is the preferred approach. However, it is the ‘plus’ in the equation that is relevant and should reflect the particular characteristics of the site.

The SPG should recognise in accordance with the NPPF and NPPG that there are a range of measures that should provide an indication of an appropriate site value for the purposes of planning viability. These include, but are not limited to, the site’s existing use, alternative uses, market information, the uplift in density being proposed and so on. Failure to recognise this put the delivery of development sites at risk. The benchmark land value should also have regard to the level of development profit being extracted and the scale of planning obligations and CIL being derived.

It is for each landowner and practitioner to work through the various tests and often an explanation in accordance with policy and guidance as to the appropriate Benchmark land value. A singular approach to this measure, the SPG refers to 20% to 30% being adequate, increases the risks and prospects of non-delivery. Each site should be measured on its own merits.

As an example, a site with an existing tenanted office building with good rents may yield a reasonable CUV and with limited scope for a greater amount of space on the site, the uplift from CUV required to release the site may be very limited.

Conversely, a cleared site or one with low-density and low-grade industrial uses, with an allocation for mixed use development, perhaps increasing site coverage multiple times, will not likely be released with a premium above CUV of 20% to 30% and it is highly probable that the release value will be a multiple of CUV rather than a margin above.

Landowners in this latter scenario will feel entitled to a reasonable return for their asset. In the case of the office building it may be that land value represents, say 30% of GDV whereas in the case of the low-density industrial building, the land value may be no more than 10%. Valuers should use their professional judgement to assess the value of land for planning viability purposes, ensuring that there is a reasonable split between land value, development profit and planning obligations / CIL.

The use of review mechanisms	<p>The SPG recognises that review mechanisms can contribute to additional planning gain based on future market improvements. Reviews have been incorporated on longer-term schemes and the RICS suggest a five-year development programme might be appropriate or where there are multiple phases.</p> <p>The SPG should seek to avoid the use of reviews on shorter term projects, unless exceptional circumstances exist, as reviews on smaller projects decrease the prospects of funding opportunities and ultimately, deliverability.</p> <p>Reviews can also be time consuming in terms of their collation and their execution. In a single-phase scheme with a development programme of say two to three years, the potential for significant upside is relatively limited.</p> <p>The review mechanisms should incorporate a review of all values and all costs. The current proposed formula does not allow the landowner to capture full costs, are therefore is not consistent with the NPPF's reference to a reasonable return to a landowner.</p> <p>The proposed review structure does not allow for the landowner to reduce obligations in the event of viability worsening and this is understood within the context of Part 122 of the CIL Regulations. However, to balance these risks, the capture of all reasonable costs should be allowable.</p>
Approach to Opportunity Areas and Housing Zones	The bespoke approach to the testing of viability in these areas is welcomed.
Part Four: Build to Rent	
Support for Build to Rent	<p>The SPG continues the narrative from the previous administration's efforts to increase the role of Build to Rent and thus promote greater housing delivery and choice.</p> <p>The recognition and promotion of greater security of tenure for tenants, bespoke product design and professional management standards, is welcomed. The use of a covenant for Build to Rent, where the economics of provision is recognised by Local Planning Authorities is also a positive. The combined measures will assist in attracting greater institutional funding and specialist developers into delivering schemes in the capital.</p> <p>The SPG takes this a step further and provides a 'pathway' for Build to Rent schemes. This is also very much welcomed. The ability to deliver discounted market rented products alongside private accommodation, to be managed across the same platform offering tenants a greater security of tenure is a positive and will ultimately increase overall housing numbers.</p>

	<p>The SPG should also offer landowners some increased benefit for achieving 35% affordable housing as exists with open market for sale schemes. The SPG should also recognise that to offer homes at London Living Rents, in order to increase the overall affordable housing percentage, discounted market homes available to households on incomes all the way up to the current £90,000 threshold should be offered.</p> <p>This creates additional value to support viability but also recognises that particularly in central London there are many households in higher income brackets, particularly in central London, that are unable to access traditional affordable housing products or open market for sale homes. These ‘middle-income’ households are often consigned to the private rented sector where options around quality of accommodation, management and security of tenure can be limited.</p> <p>In relation to the use of review mechanisms, Delancey are of the view that any scheme that yields 35% affordable housing, and can make a start on site within a reasonable time-period, should avoid the need for a new review (not to be confused with the covenant provisions). Obtaining funding for schemes with review mechanisms, particularly at the practical completion stage will become problematic, and the risks of additional funding requirements, even if the liabilities are known, will increase the risk profile and therefore increase overall development costs.</p>
Clawback Provisions	<p>Delancey would encourage election of either option one or two at the investor’s discretion. It is impossible to generalise as to an investors’ approach to the delivery of rental housing (for some the comfort of being able to sell properties on if the rental model fails and potentially retain an element of profit will be an important consideration) and a sensible, pragmatic approach is more likely to encourage institutional investors into the market, particularly at a time when the sector is immature.</p>
Design	<p>Further guidance around flexibility to space standards for build to rent housing is welcomed and may, through intelligent design innovation, provide another route to improving financial viability and adding a wider mix of market and discounted market products to projects.</p>

28 February 2017

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Dear Sir/Madam,

**Homes for Londoners – Draft Affordable Housing and Viability SPG November 2016
Representations for Co-living**

DP9 represents a number of operators who specialise in delivering and operating high-quality, shared-living rental accommodation across London. The developments are comparable to serviced apartments or a long-stay hotel. However, given the focus on shared communal facilities between the residents, they are distinct from other products on the market and have therefore been coined 'co-living'.

Co-living is focused on providing high-quality affordable accommodation for London's working population. Given the focus on shared communal space, co-living schemes are not just a home, but create a social experience, bringing people together and creating communities. The result is that people often wish to remain within a co-living scheme for several years until they reach a different stage of their life. It is therefore a stepping stone on the ladder before more traditional forms of residential accommodation, at a rental price point affordable to London's working population. The affordability of the product will help to keep London's workers living in London, rather than being forced away from their places of work by the rising cost of housing.

Current planning guidance

A set of criteria were introduced into the Mayor's Housing SPG, 2016 which recognise the need for this type of specialist housing and set out guidelines for innovative, non-self-contained accommodation. It is supportive of co-living schemes in locations with a high PTAL in mixed-use areas, where high quality management can be ensured and unintended user groups such as the homeless can be controlled. It makes it clear that viability appraisals should be undertaken to determine whether affordable housing can be delivered as part of such schemes. We have embraced these guidelines as the parameters for bringing forward new schemes.

London Boroughs engaged with to date, have all acknowledged and identified the need to increase the supply of high-quality housing for London's workers. The challenge that London's Boroughs have recognised is the lack of a clear planning policy framework that deals with innovative housing products such as co-living, and particularly how to deal with affordable housing targets.

We therefore want to play an active role in working with officers to assist with the formulation of London Plan policies relating to new forms of innovative housing products. In particular, we propose that a clear evidence base is prepared on housing need for this part of the market and a set of guidelines should be developed to ensure co-living product is delivered in a right way.



Approach to affordable housing

Co-living is a market product that relies on no public subsidy and typically provides accommodation at rental levels that can be afforded by those who would otherwise qualify for traditional affordable housing provided by Boroughs or Registered Providers.

Given that co-living is a housing product (notably contributing towards housing delivery targets) and does not fall within the current definition of traditional affordable housing, we are currently following the Housing SPG, 2016 approach to test what the maximum reasonable contribution this housing product can make towards subsidised affordable housing.

As a rental product, which the London Plan recognises has a distinct economic model, and given the rental levels the market derives it will not be able to deliver affordable rental levels for London's workers and also achieve the target market sale levels for traditional affordable housing targeted by the Mayor.

To ensure that co-living maximises its contribution towards mixed and balanced communities and is meeting a range of housing needs, the suggested approach as schemes come forward is to undertake viability appraisals and focus any subsidy available in one or both of the following ways

1. A financial payment to the Borough to bring forward traditional affordable housing to meet the specific local needs.
2. A discounted market rent approach to a proportion of the co-living units. This would be expected to follow a similar approach to Section 4 Build to Rent, of the draft Nov 2016 guidance which currently relates to C3 housing and excludes non self-contained accommodation. Such that subsidised rent levels are provided on a proportion of the units set at a level to address local needs. Where this has been explored to date co living has been able to provide for incomes of c £25,000 which would cater for those on low starting salaries in their first jobs.

It is suggested that policy flexibility is provided for either of these approaches to be considered on a site by site basis, so that Authorities can consider how to maximise that affordable housing outcomes from co-living.

A further point of discussion with the GLA to date has been whether there are specific qualifying criteria that could be applied to co-living so that it falls within the definition of affordable housing. We would welcome the opportunity to engage further on this to enable 100% affordable housing schemes to come forward speeding up delivery in London.

Whilst it is understood the draft definition of London Living Rent does not cover non self-contained accommodation co-living residents would qualify from an income perspective. We would welcome further discussions on how this may be taken forward. For instance, if co-living rents were guaranteed within the 20% tolerance on local average household income set for London Living Rent.

Next Steps

We would welcome the opportunity to work with the London Plan team to ensure that the new Affordable Housing and Viability SPG (2016) and any future changes to the London Plan and Housing SPG (2016) include greater recognition of new forms of housing such as co-living through specific policies to support and steer its delivery. To achieve this, we suggest a working party is established with co-living industry operators, along the lines that currently exist for traditional build to rent products.

Paul Robinson

From: Nick Charalambous [REDACTED]
Sent: 29 November 2016 15:15
To: Housing SPG 2016
Subject: Affordable Housing & Viability SPG consultation

Dear Sirs,

We will revert shortly with a more detailed critique, but disappointed to see no guidance specially for small schemes under 20 units. No mention of increasing scale of affordable housing above most LPA 9 unit threshold, no mention of options when RP refuse to bid for small 106 elements.

Regards,

Nick Charalambous, Director,
For and on behalf of



Nick Charalambous
Director



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CONSULTATION RESPONSE SUBMITTED BY ESSENTIAL LIVING

1. About Essential Living

This submission is being made by Essential Living, a developer and operator of homes for rent. Essential Living is one of the UK's first build to rent companies investing institutional finance into housing and offering residents longer tenancies and professional customer service. The company has a pipeline of 5,000 homes across London and the South East. The first scheme, Vantage Point in Archway, is now two-thirds full while Farrier House (Bethnal Green) and Berkshire House (Maidenhead) will open in April.

Essential Living is financed by London-based M3 Capital Partners, an institution which manages American pension fund money, which has also invested heavily in student housing, logistics and infrastructure. Crucially, they are a long-term investor who prioritise income returns and who invest for decades. Essential Living was the first structure of scale in the UK created to invest institutional funds into creating professionally managed rental housing at a pre-planning and pre-construction stage. Other institutions have invested into the sector, but few are developing their own stock. This places many considerable extra pressures on the business.

Essential Living is committed to creating positive, vibrant developments that set the standard for the private rental sector. Ultimately, the company believes renting can be an aspirational tenure. By giving customers access to great transport links, great onsite amenities and safe buildings with secure, long term tenancy agreements, residents can live lifestyles they would not be able to obtain as buyers and receive the service that everyone renting should receive.

This document sets out Essential Living's response to Part 4 of the Draft Affordable Housing and Viability Supplementary Planning Guidance on Build to Rent.

2. SPG Part Four: Build to Rent

Essential Living welcomes the clarification from the GLA on the definition of Build to Rent (BTR) and the acknowledgement of its role in the London housing market.

In particular, Essential Living welcomes the decision to exclude BTR from the 'threshold approach' due to its unique financial model and the support for institutional investment in public land.

2.1 Clawback

Para 4.13

In option one of the two clawback options presented, BTR developers would be required to prepare a 'build for sale' viability report as well as a BTR viability appraisal. If the covenant was broken, the clawback amount of affordable housing would be set at the level outlined in the build for sale viability report.

Para 4.15

In option two of the clawback options presented, the clawback level would be set at the 35%, with no requirement for a second, “build for sale” viability report. Of the two options presented on clawback in the SPG, option two is preferable because Essential Living does not intend to break its covenants and would avoid submitting two appraisals.

Although option two is preferable from a planning perspective, enacting it would have an adverse impact on valuation which in turn could pose a significant barrier to development due to how lenders would view this. For example, if a bank was to value a development with a clawback of 35% in the covenant, the valuer would ring fence the 35% affordable housing for the period of the covenant and keep it outside the value of the asset they were lending against. This would essentially depress the value of the scheme by the clawback amount. Clearly, this would significantly reduce the level of finance that could be raised by the developer, impact returns significantly.

The benefit of option one, in which two viability assessments are provided, is that both could show the project only being viable with a lower percentage of affordable housing. For example, if the “for sale” viability report suggested that 25% affordable housing was the highest percentage possible, the ring fenced amount would be lower and the value of the development would be higher than if it was 35%.

Although this would arise as a consequence, Essential Living is aware that the impact is on valuation and lending, not on planning.

2.2 Affordable housing tenure

Paras 4.19-4.20

Essential Living welcomes the recognition of Discount Market Rent as a distinct form of affordable housing to be managed by the provider.

Para 4.24

At present Essential Living negotiates the level of affordable housing on its sites with individual councils. This ensures that councils secure the quantum of affordable housing required at the price point required. The provision of affordable rented housing will be proportional to the total discount being offered. Should the London Living Rent be mandatory, it is likely that the quantum of development will fall in some boroughs, specifically those with higher average rents such as Kensington and Chelsea, for example.

This could occur because affordable housing set at London Living Rent in Barking, for example, is likely to equate to a higher percentage of the market rental rates than affordable housing set at London Living Rent in Kensington. Due to lower market rental rates, London Living Rent in Barking could be around 80% of the market price, while in Kensington and Chelsea, due to higher market rents, it could be in the region of 60%.

This could result in development becoming less attractive in boroughs where affordable housing will be at a lower percentage of market rate due to need to also achieve 35 per cent affordable housing. It could also result in developers delivering a low number of higher discount affordable housing, instead of a higher number of lower discount affordable housing. This could exacerbate the lack of affordable housing in areas where there is a great need.

We request further guidance from the Mayor on whether a lower quantum of affordable housing will be acceptable in areas where the London Living Rent is significantly below market rent.

2.3 Design

Para 4.27

Essential Living welcomes the Mayor's acknowledgement that Build to Rent schemes are particularly suited to higher density housing and the guidance for local authorities on when higher density developments could be acceptable.

Para 4.28

Essential Living would like greater clarity on space standards for Build to Rent schemes. Every Essential Living development includes a high quantum of communal space available for free to all residents. Each Essential Living apartment is fully self-sufficient with living space and kitchens. But additional space provided in the buildings offer residents areas for communal dining, home working, fitness and for socialising in lounges, TV rooms and games areas. These spaces greatly increase the amount of space each resident has as their "home" – albeit some of this space is shared with others. As such, it should be possible to adopt a flexible to approach to individual unit sizes, reflecting the provision of communal space in the development as a whole and the high quality and variety of that space being far beyond what someone living in comparable buy-to-let flat may have access to.

Essential Living would also like clarification on the provision for outdoor amenity space (balconies). With Build to Rent it should not be a requirement to have the same outdoor amenity provisions as a build for sale scheme because of the quantum of shared amenity spaces.

2.4 Viability

Para 4.35 and 4.38

Essential Living welcomes the acknowledgment of the unique financial model in BTR schemes and the understanding that profits can be lower. Supporting institutional investment on public land and exploring possibilities for joint ventures is a positive step and will enable BTR developers to acquire land in what is a highly competitive market.

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BY EMAIL

28th February 2017

Dear Sir/Madam,

**Re: A RESPONSE BY FAIRVIEW NEW HOMES TO THE MAYOR OF LONDON'S
DRAFT AFFORDABLE HOUSING AND VIABILITY SUPPLEMENTARY
PLANNING GUIDANCE**

Thank you for the opportunity to comment on the Draft Affordable Housing Supplementary Planning Guidance (draft SPG). These representations are made on behalf of Fairview New Homes Limited ("Fairview").

We will first introduce Fairview and make some general observations on matters of planning principle. We will then make more detailed comments on the contents of the draft SPG.

Fairview New Homes

Fairview is a successful SME house builder with more than 50 years' experience developing across London and the South East. Fairview is committed to delivering high quality and sustainable new homes and understands that affordable housing is an important component of this.

The business has delivered over 400 housing and mixed used projects in London and the South East since 1961 and we are currently producing over 650 residential units per annum (mainly apartments). We specialise in urban sites with challenging characteristics, e.g. contaminated noisy-sites, etc. Our business model is to purchase the land unconditionally and work closely with local authorities and communities to deliver high-quality regeneration schemes. We currently have prospects for new land acquisitions in approximately half of London's Boroughs.

We are a specialist in complicated land assembly, avoiding the costs and delays of CPO. This has yielded a number of brownfield sites and joint ventures with Councils to deliver new affordable housing products and new Council housing.

General principles

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 and private residential and mixed used developments). These Policies seek to ensure that 17,000 additional affordable homes are delivered per year.

It is noted within the draft SPG at paragraph 1.7 that the delivery of affordable homes has been falling significantly short of this minimum target for years. We acknowledge that the Mayor has a mandate to rectify this as soon as is practicable.

The GLA asserts that the draft SPG does not alter London Plan policy in paragraphs 3 and 2.1, but it sets a minimum target level to avoid a viability review subject to certain caveats including compliance with planning policy and delivery within a prescribed period.

The NPPF (para 153) does not support the production of draft SPGs to determine new policy. It is wrong for planning policy to be adopted without the appropriate development plan process, as required by the NPPF, without the requisite consultations and viability testing. We are, therefore, concerned if the SPGs are to be used to make planning policy. However, in this specific case we agree with the need to urgent clarificatory guidance, which should be subject to the normal consultation and viability testing as the new London Plan in prepared over the next 2-3 years

Detailed comments on the draft SPG

We welcome the clarity achieved by the removal of the requirement for viability assessments and viability reviews in the event that the 35% benchmark by habitable rooms is met. The adversarial and ill-defined approach to viability assessments taken by advisors appointed by London Boroughs has led to unnecessary delays as extreme positions have been adopted without any underlying justification. However, 35% may not be achievable on some projects and where this is the case, we are concerned about aspects of the Route A approach which we have outlined below. More generally there will be times when economic and property market conditions are such that the threshold level of 35% is not generally achievable, for example 2009-12. In these circumstances the Mayor should be prepared to reduce the level of affordable below which a detailed viability analysis is required. This will be particularly necessary as the successful implementation of the SPG will reduce the need and availability of advisors experienced in the viability process leading to capacity constraints at the on-set of harsher market conditions. It is recognised that 35% is a working assumption of that which is deliverable now and as such flexibility should be applied.

ROUTE A

Early Review

Fairview carefully designs all its housing schemes to optimise the quantum, mix and on-going management of the housing units, such as ensuring that rented units are located in their own separate cores. It is not practicable to identify and deliver additional affordable units in the event of an early review without compromising these benefits. If the Mayor is minded to continue with an early review as part of the SPG, it must be made clear that the remedy should be in the form of a financial contribution, not on-site provision.

Our support for the draft SPG is predicated on the assumption that it will bring greater certainty to the development process, but the potential requirement to accommodate an unquantifiable number of affordable units in the proposals would have the opposite effect.

Recommendation

An early review is unnecessary and should be deleted from Route A. The life of the planning permission provides a clear cut off.

We accept the argument for a near end of development review, after 75% of the units have been sold in regard to Route A and in regard to route B, if an agreed level of progress has not been made within 2 years of the planning permission being granted, however, where reviews are to be carried out we have the following specific concerns.

Split of any surplus profit following a review.

A consensus has emerged amongst developers and LPAs in London that a 50:50 split of surplus profit is an appropriate level to incentivise developers to maximise provision.

We believe there can be no justification for LPAs to take a higher share than 50% of any surplus when the developer is required to foot the bill for 100% of any deficit and pay tax on any profit. The Mayor is seeking to encourage development and this split could act to discourage optimal levels of development.

Recommendation

We cannot support a split of surplus profit which favours one party and we strongly urge the Mayor to revert to the established 50:50 division of surpluses following a viability review.

Guidance on Viability Assessments

In regard to the “Guidance on Viability Assessments” we make the following comments:

Paragraph 3.15 asserts that for viability purposes that London Living Rent homes should be assumed to be sold on a shared ownership basis after a period of 10 years which means that *“the planning subsidy required will be similar to shared ownership homes”*. However, we are advised by Register Providers (RPs) that in practice hardly any rent to buy purchasers buy their homes. For this reason RPs offers for Living Rented units do not assume any capital receipt and are substantially lower than those for equivalent shared ownership homes: this reality must be reflected in any viability assessments carried out by the LPAs or Mayor.

Recommendation

For the purposes of viability assessment the value of the proceeds from the sale of London Living Rented units must reflect the actual amounts being paid by the Registered Providers.

We accept EUV + as the basis for appraisal, but for the reasons given below the Mayor’s approach to determining the Premium to be added to EUV does not reflect the requirements of National Planning Policy which states in paragraph 173 of the NPPF that *“to ensure viability”* the cost of affordable housing should be such that it *“provides competitive returns to a willing landowner”* and as defined in Paragraph 024 of the “National Planning Practice Guidance on *Viability – Land Value*” *“A competitive return for the land owner is the price at which a reasonable landowner would be willing to sell their land for development”*.

The approach suggested in the draft SPG to calculating the Premium % is that *“a site which does not meet the requirements of the landowner or creates ongoing liabilities/costs”* should have a lower premium than *“a site occupied by a profit-making business”*. There is no logic to this statement. The former will have almost certainly have a lower EUV than the latter and in practice there is no reason why a willing vendor (i.e. one that has no need to sell) should accept a lower % incentive as well as a lower land price.

In practice the opposite is likely to be the case, because the cash value of any given percentage will reduce disproportionately as the EUV goes down, so that the lower the EUV, the higher the % addition which will be needed in order to incentivise a reasonable, willing, vendor to sell. Because to put it simply, a 50% premium on £2m is worth the same in cash terms as 10% on £10m.

The draft SPG states that the assessment of what is a *“competitive return”* *should take into account the overarching aim of delivering, sustainable policy-compliant development”*. This contradicts the guidance of the NPPF and NPPG which simply states that a “competitive return” is the price at which a reasonable landowner would

be willing to sell. Paragraph 3.45 makes clear that the determination of EUV should “be independent of the proposed scheme”.

Recommendation

The draft SPG should be changed so that it is clear that the landowner’s incentive should be sufficient to encourage a realistic price at which the vendor is willing to sell, regardless of the planning authority’s wider aims.

The draft SPG also states “*that an uplift in land value is dependent on the grant of full planning consent*”. However, in the real world the most significant factor determining the Premium above EUV which a reasonable landowner will require in order to be willing to sell their land is, not the actual granting of consent, but the probability of a consent being granted.

A commercial landowner with two otherwise identical sites, will require a higher price for the one in regard to which the LPA has stated in writing that they are willing to grant planning permission for a high-density residential scheme, than for the other, which the LPA advises must remain permanently in employment use. Both sites may have identical EUVs, based on rental income and yield, but the Premium for the former may be 200%+ and for the latter 0%. The extent of the Premium will depend on the quality of the evidence that the LPA intends to grant consent. If a residential allocation has been granted by the LPA the Premium will have to be at the higher end of the scale to persuade a reasonable, willing landowner to sell. If the LPA has provided Pre Application advice stating that change of use would be considered a breach of policy, but may be considered after unsuccessful marketing for 2 years, a Premium in the range of 20% to 30% suggested by the draft SPG may indeed be sufficient.

If could be argued that the size of the Premium % should increase until the market value of the property without planning consent, is achieved. This not our position, but we do believe that percentages of 20% to 30% are far too low to reflect the Premium above EUV that a reasonable, willing, landowner will rightly demand. (for a commercial site which has been allocated for residential development, or has indicated in writing that it is willing to grant consent). If this is not recognised by the Mayor, it will lead at best to constant conflict with developers over the value of BLVs and at worst to the stagnation of the development programme in London because “willing” vendors will not release sites until their reasonable expectations on price are met .

Recommendation

We have not within the time available concluded how exactly the premium issue can adequately be resolved, but we are looking at the potential for a sliding scale, which is illustrated below. We would, therefore, recommend the following be investigated by the GLA in undertaking their review:

For sites without a residential planning permission but which are allocated for residential development	a % Premium of up to 100% of EUV may be considered if they have a low EUV (i.e., less than 10% of GDV). The % Premium will be reduced on such sites if they have a higher EUV. This reduction will be on a sliding scale such that the % is reduced from 100% to 30% as the value of the EUV rises until it is set to 30%.
For sites without a residential planning permission which are not allocated for residential development, but which the LPA confirms in writing are suitable for residential development	a % Premium of up to 50% of EUV may be considered if they have a low EUV (i.e., less than 10% of GDV). The % Premium will be reduced on such sites with a higher EUV. This reduction will be on a sliding scale such that the % is reduced from 50% to 20% as the value of the EUV rises
For all other sites	the % Premium should be up to 30% of EUV for sites with a low EUV (i.e. less than 10% of GDV) but the Premium will be reduced on sites with a higher EUV. This reduction will be on a sliding scale such that the % is reduced from 30% to 10% as the value of the EUV rises.

Formula 3: Advanced Stage Review Contribution – we note that in Paragraph 3.35 it states that “the Mayor will normally consider profit as a factor of Gross Development Cost (GDC) or Gross Development Value (GDV). This is welcomed, but the formula in Annex A refers only to the GDC approach which is not the industry norm.

Recommendation

The SPG should be changed so that an alternative formula is added which calculates profit on GDV, or a footnote is added to this effect so that this approach, which is accepted as legitimate by the Mayor, is not rejected later by default.

ROUTE B

Even within Route B there will be an early review if an agreed level of progress on implementation is not made within two years of the permission being granted. There are sites that will suffer delays that are out of the control of the developer. Adding a review mechanism for implementation that is shorter than the lifespan of the planning permission adds financial risk to the planning permission.

There does not appear to be any justification for an early review trigger within a S106 agreement for schemes that are able to satisfy the 35% threshold. Any “review” or “overage clause” will create significant difficulties for bank lending because it becomes extremely difficult for the developer to predict future market conditions and therefore increased lending risk.

The Mayor's approach conflicts with national guidance. The NPPF discourages the use of review mechanisms other than on large, multi-phased schemes.

There is an important distinction between a planning permission and an implementable consent. An implementable consent is one where all pre-commencement conditions are discharged and other licences secured. At Fairview, the majority of our sites are purchased unconditionally. Therefore, we seek to develop sites as quickly as possible, because we incur the holding costs associated with delay. Notwithstanding this, we are often restricted in our ability to get on and develop sites, due to the number of planning conditions imposed on the planning permission, or the technical challenges associated with the type of sites we develop. Often conditions are drafted as pre-commencement and they can take months to get signed off. We recently had a site in one London Borough where they imposed 58 conditions to the planning permission. In another instance the Council took over 6 months before providing initial comments on condition submissions. This is out of our control and increases the risk of review with an underperforming Local Planning Authority. (LPA)

The draft SPG states that the level of progress should be agreed in the s106 and will differ depending on the scheme. Further guidance about the thresholds for progress and circumstances where the review should not be triggered should be included within the draft SPG. As drafted there is ambiguity and this will likely cause further delays with s106 negotiations.

Recommendation

We recommend that the Mayor supplements the draft SPG with a much clearer structure showing what will constitute progress on implementation. It must be made clear that progress only starts post an implementable planning permission (IPP) and that the Council has a statutory duty to clear planning conditions in the requisite period.

We also consider that there is scope for a template s106 to be included in planning guidance to reduce the delays caused at this stage in the planning process. At the moment developers have to navigate through Council's legal departments with no consistency in how agreements are drafted.

Tenure split

To avoid Route A applicants will have to comply with the 'preferred' new tenure split proposed by the Mayor which is 30% social or affordable rent, 30% intermediate, and 40% to be decided by the relevant London Borough (page 20 of the draft SPG). Paragraph 2.31 states that applicants wishing to benefit from Route B will have to conform to this tenure split. Whilst this is a departure from the London Plan Policy 3.11, this is an amendment that is welcomed and allows for greater flexibility. The importance of flexibility in Opportunity Areas is also welcomed.

Policy 3.10 of the London Plan states that eligibility for affordable housing products “is determined with regard to local incomes and local house prices”. It is considered that the split into 3 will allow local authorities to promote mixed and balanced communities and apply the 40% tenure as required.

Clarity is necessary to ensure that the system operates effectively. Too much reliance on site specific assessments of viability and negotiation will undermine the efficiency of the draft SPG, thereby not achieving its aims. Lack of clarity in the tenure split means that policy costs will not get embedded in land values. Without clarity on the tenure split, schemes will potentially be forced down Route A.

Recommendation

Confirmation is required that the 40% tenure will be Borough-wide and not reviewed on a site-by-site basis. Boroughs should be encouraged to determine at the earliest opportunity their Borough wide targets within the 40% band.

Accordance with Policy

The draft SPG states that applications must meet or exceed the 35% threshold while also meeting the specified tenure mix and all other requirements and obligations if they are to avoid Route A. These are undefined and this needs to be clarified.

The extent to which the local planning authority will apply the London Plan and other local plan policy requirements is a matter for LPAs to decide. The decision maker will need to consider a range of competing objectives, and make a balanced decision. Often proposals have to navigate competing policies and cannot meet all of the policy requirements, e.g. higher densities vs amenity and parking standards.

The Mayor will need to clarify how tensions between policies in the Local Plan and the London Plan will be resolved. For those schemes that go down Route A, the GLA should be clear who will adjudicate on which local planning policies will be relaxed, to enable an implementable scheme to be designed.

Recommendation

The draft SPG priority is 35% affordable, the local planning authorities should be able to decide whether they consider the scheme is in accordance with overall planning policies.

GENERAL COMMENTS

In addition to our specific comments on the two routes through viability, we would like to comment and make recommendations on the following:

Higher Targets

The GLA states that LPAs with higher affordable housing percentage targets can still apply these. Further that where an LPA uses the local approach, it will need to justify this to the Mayor, demonstrating that this is feasible without public subsidy.

Recommendation:

The Mayor should be very clear with Boroughs that higher targets should be set via local plans to provide clarity and should not be varied on a site-by-site basis.

Developer profit

Paragraph 3.33 states that it is the Mayor's expectation that target profit levels will be lower than levels that were typical following the financial downturn of 2008/9.

We see no justification for this position at a time when there is more political and economic uncertainty than at any time since the turmoil of the Credit Crunch and when the level of risk involved in development is as high as it has ever been.

The now long-established convention is to allow 6% profit on affordable revenues and 20% on the remaining GDV. This will be generally accepted by developers as reasonable, even if it does not reflect the expectations of lenders who insist on higher returns. Any attempt to insist on lower profit margins will be resisted by the industry and we would strongly advise not to press for the adoption of lower margins at a time when property values are falling, particularly in Central London and we are facing into the enormous uncertainty created by Brexit and all the implications it may have for the cost of materials and labour. The draft SPG and the Housing White Paper encourage smaller house builders. Certainty around profit levels which can be relied upon in s106 negotiations is a critical element to encourage development.

Recommendation:

The draft SPG should clearly state the long-established convention to allow 6% profit on affordable revenues and 20% on the remaining GDV.

Transparency

The draft SPG states that the Mayor wants the GLA to lead the way in openness and transparency. Whilst transparency in decision-making is welcomed, we would ask the Mayor to respect the need for commercially sensitive information to be kept out of the public domain and to recognise that full disclosure should only be necessary to the decision makers, not the general public.

Issues of particular concern relate to negotiations over Rights of Light (ROL) with adjoining owners, where it could be very damaging for details of the budgets set aside for possible settlements to be revealed. Negotiations with adjoining owners over compensation for rights of access and easements may also be commercially sensitive, as may be details of bids from third parties such as Registered Providers or potential occupiers of commercial/ retail units.

We urge therefore that common sense is allowed to prevail and there should not be a presumption that all viability information is automatically available to the public.

Recommendation

The draft SPG should provide clear guidance on what aspects of viability reviews can remain undisclosed at the request of applicants to protect commercial negotiations.

Vacant Building Credit

The Vacant Building Credit was introduced via the Written Ministerial Statement of 28 November 2014. In London the instances where VBC will be relevant are diminishing, but we would contend that it should remain an option to kick start regeneration on larger sites where development costs are high and revenues currently suppressed.

Fairview asserts that this section of the draft SPG should be redrafted or removed altogether, because the restrictions imposed on the operation of the Vacant Building Credit are so far-reaching as to nullify its effect and we believe it is outside the remit of the draft SPG to effect removal of national planning policy.

Recommendation

Vacant Building Credit is national policy and should be removed from the guidance provided by the draft SPG.

Summary

In summary, we support the aim of the draft SPG to provide clarity and speed up housing delivery. We, however, consider that the draft SPG needs to make changes to the following in order to achieve this aim:

- The draft SPG needs to assert its overriding position in relation to current adopted policy;
- There needs to be much clearer demarcation between areas of responsibility for the Mayor and the London Boroughs;
- The draft SPG needs to state clearly how tensions between policies in the London Plan and Local Plan will be resolved;
- The draft SPG needs to clearly state that tenure split will be a Borough wide target embedded in planning policy;
- There is no evidence to support the contention that Living Rent revenues will be equivalent to those generated by shared ownership and this should be recognised by the Mayor in assessing viability.
- The approach adopted to the calculation of the Premium to be added to EUV is flawed and should be amended to reflect market reality. Applications that meet the 35% threshold (or the threshold target established in adopted London Borough Local Plans) should not be subject to a further review to capture any further potential uplift. Developers need certainty to incentivise housing delivery;
- The split of surpluses, should the Mayor insist on an early review under Route A, should reflect a 50:50 split, as this will incentivise the optimal level of housing development;
- Applications that meet the 35% threshold (or the threshold target established in adopted London Borough Local Plans) to be in accordance with the tenure and policy requirements to be considered for Route B. Boroughs should determine whether a scheme meets their local plan policies;;
- Vacant Building Credit is national policy and should be removed from the guidance provided by the draft SPG;
- The draft SPG should make clearer that commercially sensitive elements of Viability Assessments will not be made publicly available if confidentially is requested by developers in respect to commercially sensitive information, and
- A minimum profit allowance of 6% of Affordable revenue and 20% of remaining GDV should be assumed in viability assessments.

Thank you for the opportunity of making representations to the draft SPG. Fairview will endeavour to continue to support the Mayor's agenda, for the redevelopment of brownfield sites to maximise development potential and the delivery of much needed new housing and affordable housing across London.

Should you require clarification or any additional information, please do not hesitate to contact me.

Yours faithfully



Mark Jackson
Head of Planning - Fairview New Homes



Draft Affordable Housing and Viability Supplementary Planning Guidance 2016

A consultation submission to the Greater London Authority

27 February 2017

About First Base

First Base is an influential developer and investor delivering innovatively-designed buildings and places that are adaptable to the changing needs of businesses and communities.

We have delivered on a mixed use portfolio of projects, ranging from residential through retail to workspace, always including place-making and sustainability at their core.

Our projects have been delivered in conjunction with leading architects, including Rogers Stirk Harbour + Partners, Make, Allford Hall Monaghan Morris and Glenn Howells.

First Base's best-known projects are:

- **Silvertown**, where First Base is leading a consortium developing a 62-acre mixed use development in London's Royal Dock. With a GDV of £3.5bn, Silvertown includes 5 million square feet of commercial and brand space and 3,000 new homes.
- **Adelaide Wharf**, a mixed use development in Shoreditch with 147 homes and collaborative workspace which regenerated a disused industrial site and supported numerous businesses to thrive.
- **East Village**, Stratford, where First Base is managing a £300 million portfolio of homes that is a key element of the 2012 Olympic Legacy.

First Base was founded in 2002, is privately owned by its directors, and is based in Central London.

Summary response to the consultation

First Base's response to this consultation is based on our previous experience within the context of both developing new homes within London outright, and through working in partnership to deliver new supply.

First Base broadly welcomes the publication for consultation of this draft SPG, and the statement of intent behind it.



FIRST BASE

Namely to meet the Mayor of London's objectives with regards to housing and planning within London to:

- Increase the amount of affordable housing delivered through the planning system.
- Embed the requirement for affordable housing into land values.
- Make the viability process more consistent and transparent by ensuring that development appraisals are robustly and consistently scrutinised.

First Base also welcomes the aims of the SPG to provide clarity and certainty to the planning process in London about affordable housing expectations, and the development viability process.

We believe that the specific focus on Build to Rent within the SPG represents a significant, and positive policy change to support this emerging key sector in helping to tackle the undersupply of new homes in the capital.

This is something where we have already established a significant track record in delivering, with 350 BTR units completed for Discount Market Rent (DMR) in East Village.

First Base particularly supports the Mayor's statement of intent to see greater levels of investment in the provision of affordable housing in London, and the bringing forward of a greater proportion of public land to facilitate its delivery where appropriate.

This is especially relevant for us, given that we have successfully worked in partnership with public sector organisations to deliver new homes across a range of tenures on public land.

Build to Rent

The Build to Rent (BTR) sector has an important role in seeking to deliver additional supply within London and we are pleased to see the Mayor, through this SPG, produce specific guidance to support BTR developments and the Mayor's commitment to the sector in general.

First Base support the ambition to encourage more institutional investment within the sector contained within the SPG, and through other emerging London and national policies, and particularly welcome the new guidance to provide greater certainty around requirements relating to covenant and clawback arrangements for any units sold, at a future point, out of the BTR sector.

In addition to this, we also acknowledge the clarity which could be provided within the context of the planning system through the Mayor's proposed Build to Rent 'pathway' which seeks to define a series of key principles around; definition, affordable housing tenure, design, viability and management standards. We also support the exclusion of BTR from the SPG's threshold approach. This will help the sector to grow and provide further confidence to build to rent developers and investors.



FIRST BASE

We would also wish to promote a flexibility of approach as regards the interpretation of planning guidelines to support BTR, especially with respect to:

- Higher density development
- Unit mix and space standards
- Innovation in design, especially with regard to Modern Methods of Construction (MMC)

These must be considered, whilst keeping the main focus on delivering a quality product irrespective on tenure type.

A sound investment with a social purpose

As one of the UK's largest providers of high quality housing for outright sale, rent and care and support, we can play a significant role in the creation of solutions which are sustainable and can accelerate delivery of new homes. Bridging the gap in supply and demand requires investment; however, government subsidy is tight. Solutions need to be scalable and must accelerate the delivery of new homes. Additionally, institutional investors have billions of pounds for investment and are searching for opportunities that meet their requirements.

We have a solution. Flexible Rent.

What is Flexible rent?

Flexible Rent is a new model that has been co-developed by Home Group and the New Economics Foundation.

- For investors, it is a way to invest in property with the certainty of a defined income stream, significantly reducing risks
- For renters, it offers both sub-market and open market rental homes for professionals who may be struggling to afford their own home and ensures the affordability of those rents in the long term
- For the community, it ensures the affordability of market rents over time, giving renters the confidence to set down roots
- For government, it accelerates the delivery of additional high quality housing by breaking the traditional reliance on sales absorption rates

The total rent for these quality designed schemes will be linked to inflation, e.g. CPIH, while the percentage of discounted versus full price units within it will flex to account for changes in open market rents and affordability, thereby offering investors a lower risk income stream.

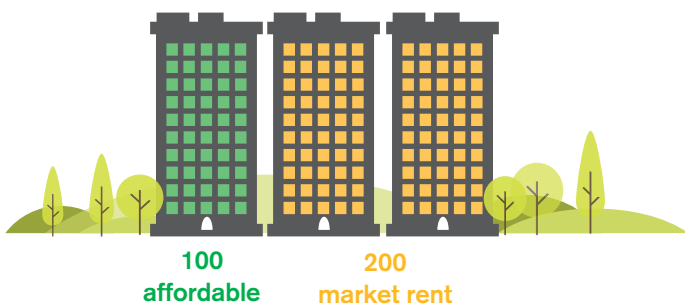
All flexible rent schemes will be at a scale. This means tenancy churn will be at a sufficient level as life happens and people naturally move in and out. This gives us the flexibility to move rents up or down, as required, to maintain the defined income from the scheme.

The Benefits

- Certainty of the affordability of rents in the long term, provided through private sector investment
- Bridging the gap between supply and demand – a scalable model that can be repeated across the country without competing with other tenures, thereby providing true additionality, contributing to an increase in supply
- Accelerating the pace of delivery as it is not tied to sales rates, the rental market has proven higher absorption
- Opportunities for those previously priced out of the market – both sub market and open market rent homes will be on offer. These will house a wide range of households including 'generation rent', families and other groups in the future, with the opportunity to expand the offer to other demographics as well
- An aspirational lifestyle – an excellent customer offer with a strong focus on innovative design, technology and flexible amenity spaces
- A flexible tenancy – longer tenancies offered as standard, typically three years, with the option for customers to leave following the initial six months
- Truly tenure blind – to allow for flexing, all schemes must be truly mixed tenure with all customers enjoying the same experience

How does it work?

Typical planning compliant scheme for 300 homes



Rent of the whole scheme = the 'defined income'

High rent growth

Market rents go up by inflation +5%

The extra 5% subsidises more discounted market rents



18 units would be converted to discounted market rent to arrive back at the 'defined income'

Negative rent growth

Market rents go down by inflation -5%

Market rents are now more affordable,

5% less subsidy is required



22 units would be converted to market rent to arrive back at the 'defined income'

home
group

About us

Home Group is one of the largest housing associations operating in the UK, with more than 100,000 customers living in our 54,000 homes. We are ambitious and strive to be the best in our sector, with clear targets to grow and diversify our forward development programme.

With more than £3.5bn of assets and a turnover in excess of £350m, we are financially strong and well placed to help meet the established need for 1.8 million new homes in the UK. We are actively seeking partners with the matching drive and expertise so that we can deliver answers to Britain's housing shortage. We are on track to deliver 10,000 homes over the next five years.

We have a track record in delivering successful large scale projects and we achieve this by establishing and building strong partnerships. We are able to use our financial strength to unlock opportunities and joint ventures with collaborative projects across the UK.

Even with this significant commercial appetite, we are considered a strong and safe pair of hands in the housing sector. Our outstanding standards of service have been commended further. In November 2015, the Homes and Communities Agency awarded us the highest possible rating of G1/V1. We are one of a small number housing associations nationally who are fully compliant with the Homes and Communities Agency's expectations in terms of good governance and financial viability.

Home Group – building homes, independence and aspirations

Further information

For further information, please contact

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28 February 2017

Mr Khan,

SUBMISSION OF REPRESENTATIONS – GLA DRAFT AFFORDABLE HOUSING AND VIABILITY SPG 2016

G15 is the group of London's largest housing associations which collectively house one in ten Londoners and build one in four new homes. The primary objective of the G15 is to provide good quality homes that are affordable for ordinary Londoners.

G15 welcome the publication of the draft Affordable Housing and Viability SPG, and the intent that the SPG provides further clarity and guidance to the delivery of affordable housing in London.

This response to the SPG follows previous consultation with G15 members.

PART 1 BACKGROUND AND APPROACH

APPROACH OF THE GUIDANCE

G15 welcome the intent to reduce the uncertainty that currently exists with delivering affordable housing in London and speed up the delivery of desperately needed homes. G15 supports the introduction of a '35% threshold' approach to affordable housing and the move away from protracted and uncertain viability negotiations on mixed-tenure schemes.

Whilst the move to a threshold approach is appreciated, guidance on the issue of a revised London Plan to reinforce this approach is welcomed.

The G15:

Affinity Sutton
A2 Dominion Group
Amicus Horizon
Catalyst Housing Group
Circle Housing Group

East Thames
Family Mosaic
Genesis Housing Group
Hyde Group
London & Quadrant

Metropolitan Housing Partnership
Network Housing Group
Notting Hill Housing Group
Peabody
Southern Housing Group

TRANSPARENCY OF INFORMATION

As a group of organisations that are committed to transparency, G15 supports the GLA adopting greater transparency in the planning system. It is noted that the guiding principle is that all information should be accessible and it is acknowledged that there are exceptions. G15 would emphasise that confidentiality is maintained only in the most exceptional circumstances where sensitive or confidential matters would be affected.

PART 2 - THRESHOLD APPROACH TO VIABILITY

As noted earlier, G15 supports the threshold approach in the context of demonstrating “*The maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes*” in line London Plan Policy 3.12. It is noted at paragraph 8 that applications that meet or exceed the 35% threshold will not be required to submit viability information on the basis that all other requirements are met. Further guidance is required as the specific requirements and obligations that are referred to are not clear. It is uncommon for applications to achieve complete planning policy compliance and non-compliance must be considered by the LPA who will consider any deviation from policy against other benefits a scheme may offer. This should not prejudice the requirement to submit viability information.

ROUTE A – THRESHOLD APPROACH

G15 support the requirement to provide supporting viability evidence on applications that do not meet the threshold level. It is noted that where an application does not meet the ‘threshold’ that an ‘early review’ will be required if the development is not implemented within two years of grant of planning permission. Further consideration and clarity should be given to what constitutes ‘implementation’ of the planning permission. It is also considered that submission of a build programme should not be a requirement of any Section 106 Agreement and that flexibility needs to be maintained to allow developments to respond to commercial realities.

The SPG makes reference to any uplift in affordable accommodation being accommodated on-site and that plans should identify which units would switch to affordable accommodation in the event of an increase in viability. G15 would emphasise that suitability of family accommodation, affordability of service charge and other management factors are considered and given priority in the design and integration of different tenures.

Reference is made to any “*surplus above the initial agreed profit level is identified, this should be split 60/40 between the LPA and developer.*” G15 are concerned that a 60/40 split towards the LPA does not reflect developer risk on projects. In light of the current market conditions, G15 would propose a 70:30 split in favour of the developer in particular consideration of the fact that RPs may assume an initial lower profit margin and also recycle and reinvest profits back into the delivery of affordable homes. It is considered that a split of

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50/50 towards the developer would be a more appropriate recognition of developer risk and uncertainty.

It is noted that reviews should assess changes to gross development value and build costs. G15 proposes that profit margins should also be assessed, particularly in circumstances where profit margins in an original agreed viability assessment are at lower levels than what a private developer would consider acceptable. The provision for the assessment of profit margins should be included in the suggested review formulas contained in Annex A.

ROUTE B – APPLICATIONS THAT MEET OR EXCEED TRESHOLD

Overall, G15 consider that those points made under Route A are equally applicable for Route B and should be applied equally under both routes.

It is noted that *“applications will not be required to provide viability information, nor be subject to review mechanisms if agreed level of progress is made, where they:*

- *deliver 35% or more affordable housing onsite without public subsidy;*
- *are consistent with the relevant tenure split (see below in paragraphs 2.27 - 2.31); and*
- *meet all of the other relevant policy requirements and obligations.”*

G15 support the principal that where an application fails to meet the 35% threshold, that viability information is submitted. However the requirement to submit viability information for an application that exceeds 35% does not necessarily support the option to move away from protracted and uncertain viability negotiations.

The rationale for an early review trigger within a Section 106 Agreement for developments that are able to satisfy or exceed the 35% threshold is also questioned. G15 would support a two year period being placed on RPs to enter into a construction contract owing to potential changes to market conditions or changes in affordable housing regulation. G15 would consider that review mechanisms on large, multi-phased applications, particularly regeneration schemes, ought to be discouraged due to the complexities often presented by projects of this type

GRANT

G15 is in full support of the Mayor using grant funding at the current specified levels to enable and increase the delivery of more affordable homes in London.

REGISTERED PROVIDERS AND PUBLIC OWNED LAND

G15 is generally supportive of the overall intent as set out within paragraphs 2.24-2.26. It is noted that reference is made in paragraph 2.24 that *“developers should engage with a RPs prior to progressing the scheme and secure from them a commitment to affordable housing provision at an agreed purchase price”*. G15 are in agreement that approaching the integration of well designed affordable housing will improve homes for our customers. It should however be noted that this approach contains potential commercial risk for the RP.

The G15:	Affinity Sutton	East Thames	Metropolitan Housing Partnership
	A2 Dominion Group	Family Mosaic	Network Housing Group
	Amicus Horizon	Genesis Housing Group	Notting Hill Housing Group
	Catalyst Housing Group	Hyde Group	Peabody
	Circle Housing Group	London & Quadrant	Southern Housing Group

G15 are in support of RP-led and schemes on public land delivering as much affordable housing as possible as set out in paragraph 2.25, but that this is considered in light of RPs maintaining competitiveness in the London land market. G15 also welcome the ability to explore increasing density on appropriate sites in order to maximise levels of affordable housing.

It is considered appropriate that sufficient flexibility is set out within the SPG as noted under 2.28-2.31 that under Route B, LPAs may wish to allow a degree of flexibility in relation to tenure split that is more appropriate to their borough. Although reference is made to flexibility of tenure within Opportunity Areas, it is considered that this flexibility should not be restricted solely to specific areas but, should be considered on a site by site basis as appropriate in order to maximise housing delivery.

TENURE

G15 welcome the Mayor's desire to see greater low cost homes in London to meet local need. With reference to paragraphs 2.28 and 2.30, G15 is in support of achieving an appropriate balance of different affordable tenures in order to both address local need and to enable a maximum level of affordable housing in planning applications.

It is noted that LPAs are expected to provide guidance on what is considered to be an appropriate level for low cost rented homes in their boroughs. Whilst this is supported, the G15 would urge the Mayor to also place a requirement for LPAs to provide an up to date assessment of local housing need to support the 40% element of the suggested tenure split and that this is balanced against the remaining 30% low cost rent and 30% intermediate tenures put forward in the SPG. G15 also welcome that guidance is issued to LPAs to ensure that the 40% facilitates Route B.

DEFINITION OF LONDON LIVING RENT

G15 is supportive of products that encourage households to save for a deposit in order to buy their own home. Paragraph 2.33 states that eligibility for London Living Rent will be restricted to existing tenants. G15 would request that that eligibility for this product is not limited to existing tenants and made available to those who would normally be considered eligible for intermediate housing. It is also not entirely clear how this would work in practice.

G15 welcome the publication of London Living Rent levels on the GLA website. G15 would welcome the publication of ward level income data used to determine London Living Rents. This data could help to inform how accessible London Living Rent will be for existing RP customers.

Reference is also made under paragraph 2.35 to "*offer tenants the right to purchase their London Living Rent home on a shared ownership basis*". It is not clear how this will work in relation to intermediate products staying affordable in perpetuity as stated in paragraph 2.45. This requires further clarification. Further guidance how RPs can encourage tenants into home ownership is also welcomed.

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AFFORDABLE HOUSING IN PERPETUITY

As stated above, G15 are supportive of the Mayor's desire to see a range of affordable housing tenures to meet local need. It is accepted that social/affordable rented housing should be secured in perpetuity through legal agreement.

G15 support the recycling of affordable subsidy in order to provide new affordable homes. However, would question the requirement for the recycling of affordable subsidy to be secured through a legal Section 106 agreement. It is not clear how this would work and further clarity should be provided. G15 would also like to make the request that Section 106 legal agreements do not contain restrictions that limit the use of subsidy to specific local authority areas.

PART 3: GUIDANCE ON VIABILITY ASSESSMENTS

G15 welcome the guidance on viability assessments and supports efforts to reduce uncertainty in land markets to facilitate the delivery of affordable homes.

AFFORDABLE HOUSING VALUES

G15 supports developers engaging with RPs at an early stage. In order to assess planning subsidy required for London Living Rent on pre-application schemes, the G15 would welcome further guidance from the Mayor to RPs on London Living Rent assumptions as set out in paragraphs 2.35 and 3.14.

BUILD COSTS

Paragraph 3.22 sets out that where costs are in excess of BCIS benchmarks by 10% that this should be set out in an executive summary. Paragraph 3.25 also clarifies that site-specific abnormal costs should influence land value. It is often the case that BCIS does not always provide dependable data for London based developments. In addition to this and where site specific abnormal costs are identified, it should be acknowledged that these costs often become known after purchase and upon undertaking significant intrusive ground works. It is considered that abnormal costs need to be considered on a site-specific basis and it cannot be assumed that abnormal costs will influence land value.

G15 do not disagree that appraisals should be based on current day costs, however and specifically concerning public sector led construction procurement, estimated build costs should reflect a current day fixed price tender sum where a mid-point inflation is included.

DEVELOPER PROFIT

It is acknowledged that target profit levels should be appropriate to current market conditions. However and as a result of uncertainty in the current economic climate, risk levels should be reflected in the profit sought by developers.

The G15:

Affinity Sutton
A2 Dominion Group
Amicus Horizon
Catalyst Housing Group
Circle Housing Group

East Thames
Family Mosaic
Genesis Housing Group
Hyde Group
London & Quadrant

Metropolitan Housing Partnership
Network Housing Group
Notting Hill Housing Group
Peabody
Southern Housing Group

BENCHMARK LAND VALUE

The SPG sets out specific guidance for the calculation of Benchmark Land Value and the use of Existing Use Value plus premium to be used in the preparation of viability assessments. G15 is in support of the Mayor's approach to Benchmark Land Value and the promotion of delivering more affordable housing through brownfield sites.

EXISTING USE VALUE PLUS PREMIUM

Paragraph 3.45 references a 20%-30% premium that could be applied to EUV. G15 would advocate a less prescriptive approach to assessment of a premium, particularly during the transition period, and that the premium is assessed on a site specific basis. G15 acknowledge that EUV+ was favoured in the existing 2016 Housing SPG, however and in practical terms, the G15 seek recognition that flexibility on land value will be granted to those sites acquired prior to November 2016.

We trust that you will be able to incorporate the listed comments into a revised SPG and would be happy to discuss these with you further should you find this of assistance. If you have any queries, please do not hesitate to contact me.

Yours sincerely,

John Hughes
Group Development Director
Notting Hill Housing
For and on behalf of The G15

The G15:

Affinity Sutton
A2 Dominion Group
Amicus Horizon
Catalyst Housing Group
Circle Housing Group

East Thames
Family Mosaic
Genesis Housing Group
Hyde Group
London & Quadrant

Metropolitan Housing Partnership
Network Housing Group
Notting Hill Housing Group
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GLA City Hall, Post Point 18
The Queen's Walk
London
SE1 2AA

28 February 2017

[Affordable Housing and Viability Supplementary Planning Guidance \(SPG\)](#)

Introduction

We write on behalf of our client, Galliard Homes Limited ("GHL") to provide representations to the above. On the whole, GHL is supportive of the thrust of the SPG and considers that many of its aims and mechanisms for delivering much needed private and affordable housing are commendable and they trust that all London Boroughs support this approach. However, there are a number of areas where concerns are raised, which are set out below.

The key points of this representation can be summarised as follows:

1. The 35% threshold is too high and appears arbitrarily chosen without appropriate justification or sensitivity testing;
2. There is a high bar to reach in meeting the requirements of route B, which should provide greater flexibility in terms of meeting all other policy requirements;
3. There are inconsistencies with national guidance in relation to the threshold for triggering affordable housing requirements and the vacant buildings credit (VBC);
4. A number of aspects regarding the viability assessment methodology require finessing or clarifying; and
5. There should be a consideration to extending the Mayor's call-in powers.

These key points are explored in more detail in the sections below.

Our client questions what justification or sensitivity testing has been carried out to substantiate that 35% is the appropriate affordable housing benchmark in which to implement the SPG. Their experience has demonstrated that 20-25% is actually a practically and financially deliverable quantum of affordable almost anywhere in the Capital and going beyond this level causes implications on viability. Our client welcomes certainty regarding the approach to

prescribed affordable housing levels, however considers the chosen threshold to be ill-conceived and the market should be given greater explanation as to its justification.

High bar on route B

The box on page 16 sets out the requirement for route B, where a viability assessment is not required if a development is able to offer 35% affordable housing. However, this requirement is subject to meeting all of the other relevant policy requirements and obligations.

However, it is considered that the bar for triggering route B is too high. GHl request clarity on this point as to what constitutes a relevant policy and whether it is all policies or specifically housing policies.

It is rare for a development to meet all policy requirements, since it is up to decision makers to weigh any benefits of the scheme as a material consideration in exercising the planning balance. GHl's concern is that this requirement may be exercised by London Boroughs in the event that it is not supportive of a proposal. It may encourage scenarios whereby the Local Authority compels a developer to submit a viability assessment, even if more than 35% affordable is proposed.

The requirement to meet all other relevant policies is likely to deter developers from progressing schemes with 35% affordable housing, which is the very purpose of its introduction. If it is the case that certain policies, for instance a policy on housing mix where a high percentage of family units is required, cannot be met due to viability concerns from the developer, it is likely that very few schemes will be able to provide 35% affordable housing.

Inconsistent with national guidance

National policy includes direction set out in written ministerial statements (WMS) which act as a material consideration in planning decisions. The SPG departs from national policy in the following key ways, and without substantial justification.

Vacant building credit (VBC)

The SPG states VBC should not be applied in London except in limited circumstances (para 2.61), on the basis that vacant buildings will come forward for development anyway. This is at odds with WMS of 28 November 2014, which imposes no such limits in an effort to encourage redevelopment on brownfield land. Vacant is not defined nationally in order to allow the credit to be applied flexibly, and the SPG seeks to fill this void by defining that applicants will need to demonstrate that a building has been empty for 5-years and actively marketed for 2-years (2.63). Further, the SPG states that if the VBC is applied, it will trigger the requirement for a viability assessment (2.65).

It is considered that the requirement for VBC to be applied is too stringent and exceeds national requirements, potentially resulting in developers avoiding certain sites or not progressing sites that have the ability to provide much needed housing. It is recommended that the definition of 'vacant' should be amended to allow for that prescribed in the aforementioned WMS. It is also considered that the requirement to demonstrate marketing is removed in many instances, as vacant buildings have usually passed their usable timeline and there is no benefit of seeking to retain them in favour of development that can deliver much needed private and affordable housing.

The 10 units trigger

The above-10-units trigger for delivering affordable housing was introduced in the WMS of 28 November 2014. The WMS states “no requirement for affordable on 10 units or less”. The SPG, however, states a requirement to “deliver affordable on 10 units or more”(2.56). It is suggested that the trigger should be amended to ensure consistency with the national position.

Viability assessments

GHL supports the principle of ensuring a consistent approach to methodology in relation to affordable housing viability assessments. However, a key area of concern is in relation to scenario testing. The SPG requires applicants to provide information on its growth assumptions and suggests that scenario testing should be provided where little or no affordable housing is viable. However, the SPG makes no reference to scenario testing in relation to build costs and site value, which it is suggested should be tied to present day. Clearly the assumptions on costs are equally important in ensuring deliverability, and if scenario testing is required, this should equally apply to all variables that inform site viability appraisals.

Another concern relates to the fact that although the SPG does not prevent viability appraisals from being submitted for schemes with less than 35% affordable, the implication of extended review clauses is being imposed without a full understanding of their implications. Where implemented by Council's, there is a clear lack of appreciation of the related 'future' funding implications or the delays review clauses tend to bring part way through a build project, in respect of their structuring and policing them. Further work needs to be given to the implications of any review and what difficulties they actually cause the developer in ensuring delivery of the scheme. There is potential that this could hamper delivery, which would fundamentally undermine the aspiration of the SPG.

Call in powers

Finally, it is considered that the Mayor should review the GLA's call-in powers to enable it to take control of applications where London boroughs are not complying with the requirements of the SPG.

It is requested that the points outlined above are considered and taken into account before the next draft of the SPG is produced.

Yours sincerely



Max Plotnek
Planning Director

cc: [REDACTED] Galliard Homes Ltd

Executive summary

2.1 Grainger welcomes the London Draft SPG, Affordable Housing and Viability consultation, and the clear direction of travel for GLA housing policy.

2.2 The recognition of build to rent and a professional, institutionally-backed PRS market, and the positive contribution it can make to housing supply and also housing standards is very welcome.

2.3 The Draft SPG is a significant positive step forward in formally recognising the new, emerging build to rent, large scale professional rental market in London housing policy.

2.4 The Draft SPG importantly recognises the different business model, investment approach and mechanics of the build to rent sector from the buy to let market, and it seeks to level the playing field between build to rent and build for sale development. This approach is very welcome.

2.5 Overall, we applaud the Mayor and his Housing Team for listening to the sector and taking a positive, progressive approach to supporting the build to rent sector.

2.6 There remain, however, a number of detailed points within the Draft SPG which we believe require further fine-tuning to ensure they achieve the full intentions of the GLA as we understand them. We address these specific points further down in the next section of this paper.

2.7 Selective licensing, not covered in the Draft SPG, continues to undermine investment decisions in London. The implementation of borough-wide licensing on the PRS is a significant cost and regulatory burden for large scale, professional landlords. The licensing structures often require applications for each individual unit, rather than allowing for one for a building, owned and operated by a single entity. We strongly urge the Mayor to look to limit or encourage a different approach to selective licensing which caters for the build to rent, large scale PRS market.

2.8 While we are pleased with the Draft SPG's recognition of the build to rent sector, we were surprised that there is little recognition of a core customer group within the sector, sharers. In particular, the affordability measure for London Living Rent is based on a single household income, despite the likelihood and sometimes preference to share accommodation. Where we are designing apartments and houses suitable for two couples to share, the current London Living Rent proposals would not take account of this, which we believe is incorrect.

2.9 Grainger is an active member of London First and the British Property Federation. We have participated in numerous engagement sessions with the GLA ahead of publication of the draft SPG and after its publication, and we welcome the GLA's open approach to consultation and their willingness to listen.

2.10 Grainger supports the responses by the BPF and London First to the Draft SPG consultation, having fed into these responses.

Detailed comments

The Threshold Approach to Viability

3.1 Grainger welcomes the Mayor's intention to introduce an element of certainty into the planning process with regard to affordable housing requirements, and we are broadly supportive of the proposal of a threshold approach.

3.2 We are concerned that the step in rights to review under Routes A and B could be onerous and potentially cause significant and costly issues if not implemented appropriately. We would like further clarification from the GLA as to how and when they propose the step in rights.

3.3 Specifically, we believe it is important that step in rights do not apply when a delay is caused by a third party or a process outside the control of the developer, such CPO, s.106 negotiations, rights of lights issues etc.

3.4 We also propose that the split of surplus profit should be 50:50 between LPA and developer, rather than 60:40 on the grounds of fairness.

Route B

3.5 Within the proposed breakdown of the 35% affordable housing allocation, we believe it is important that the Mayor ensures the 40% left to the discretion of the LPA does not render the development unviable.

3.6 We are concerned that the requirement to agree benchmark land value for route B schemes could add significant delays to the planning process and the redraft of the SPG should look to address this.

Build to Rent

4.1 **Build to rent definition** – We fully support the proposal to define build to rent and long term, large scale, purpose-built rental homes. This will enable the sector to be differentiated and be recognised as a wholly different proposition from the buy-to-let market.

4.2 Defining the build to rent sector however risks being overly prescriptive, thereby excluding certain business models, product innovation and flexibility, and could thereby stifle investment and ultimately the quality of housing and service available to renters.

4.3 **50 units** – We agree that build to rent is best delivered at scale. However, there are situations where a single site or a single building may not make up 50 units, but that a cluster of nearby sites or buildings, being developed, owned and managed by a single operator, achieves the necessary scale and enable the delivery of enhanced customer service levels.

4.4 By way of example, in partnership with the Royal Borough of Kensington and Chelsea, Grainger is developing 163 new homes of mixed tenures across seven nearby sites, on land which is owned by the borough. The vast majority of the tenure mix is open market rent, but includes a proportion of for sale homes and affordable homes. Overall the sites together will form a single portfolio asset which will be managed and overseen by Grainger, and the assets are being designed and purpose-built predominantly for long term rental (both private rental and affordable rental). Individually, however, some of the sites do not meet the 50 unit

threshold, despite them clearly being build to rent in every other sense of its meaning (e.g. purpose built and designed, single owner, manager, operator, long term investment of 125 years, longer term tenancies etc).

4.5 We propose the wording is amended to allow for a nearby cluster of buildings or sites being delivered by a single entity for long term rental housing to qualify as build to rent. We propose the wording is amended to include *“buildings or phases of schemes within a locality which together form at least 50 units.”*

4.6 **Covenant length of 15 years or more** – Grainger is a long term investor. Our intention with every investment is to own and manage the homes for the long term (e.g. decades), supporting community building and good place making. We therefore are comfortable and happy to commit for long periods of time, such as we have done in RBKC for 125 years.

4.7 As a long term investor however, we still strongly believe that there should be greater flexibility for LPA's to determine the covenant length. It is entirely likely that certain build to rent sites will require shorter covenant lengths for valid reasons.

4.8 We propose that the wording is amended to provide greater flexibility on the length of covenant, and reduce the 15 year threshold to 10 years.

4.9 As a long term investor, it is critical to have optionality in the future should unforeseen financial or economic circumstances arise. Without this optionality, it may be difficult for large scale investors to raise capital or accept the higher level of risk.

4.10 **On-site management** – Grainger is a strong believer in management and customer service being a critical differentiator for the build to rent sector. We are providing on-site management on many of our build to rent buildings. We do however believe that there will be cases (e.g. smaller sites under 100 units or lower price points) where good quality rental homes with good customer service can be delivered without the need for dedicated, full time on-site personnel. In order for certain schemes to be viable, investors will require flexibility in their management approach, such as a building manager that moves between two or three nearby buildings, or a technology-based solution that provides similar customer service levels.

4.11 We propose the wording is amended to allow for market innovation and different approaches to management. We propose the wording is amended to *“a professional management platform suitable to the size of the development”*.

4.12 **Tenancy terms** – Grainger first began offering longer term tenancies in 2015, one of the first landlords in the UK to do so. We have seen take up of longer term tenancies differ significantly between buildings and locations. We have seen more than 50% take up at one of our buildings, while less than 10% in another.

4.13 We support inclusion of offering longer term tenancies in the build to rent definition as set out of the Draft SPG.

4.14 Grainger supports the need for transparent rental increases for tenants. We would push back on the prescriptive use of a formula as we believe this will discourage market innovation and competition.

4.15 **Accreditation, Ombudsman or Professional Body membership** – Grainger is a member of the British Property Federation, London First, the UK Apartments Association,

IRPM, ARLA and others. Grainger is regulated by the RICS. Grainger is a member of the Ombudsman Services, and we are accredited by the London Rental Standard. Grainger is recognised for a high level of corporate responsibility and is part of the FTSE4Good index. In 2016, Grainger received the highest rating ('Green Star') by the Global Real Estate Sustainability Benchmark for its sustainability and responsibility efforts.

4.16 We fully support this proposal to ensure that there are third party, independent checks on the sector and provide customers with greater protection, however we believe that landlords which comply with such requirements or are part of suitable accreditation schemes or professional bodies should be either exempt or fast tracked through local Selective Licensing schemes, which are onerous, costly and add little value to the quality and service provision by build to rent operators.

4.17 Affordable housing tenure, Discounted Market Rent and London Living Rent – Grainger welcomes the Mayor's recognition of DMR as a suitable form of affordable housing. While Grainger has its own Registered Provider, we continue to believe DMR provides the build to rent sector with additional scope for ensuring schemes are viable and can deliver affordable homes, as well as good quality customer service through single management structures.

4.18 We recognise the Mayor's desire for London Living Rent (LLR) to be the preferred tenure for DMR and for DMR to be genuinely affordable for local people, however we believe the SPG should provide for greater flexibility regarding the preference for LLR. Where London Living Rent in certain locations is suitable, it is not always suitable in other locations and more flexible forms of DMR should be allowed.

4.19 Certain locations may be better suited to a higher level of affordable housing provision at lower discounts than LLR provides. This should be at the discretion of the LPA and build to rent provider.

4.20 LLR increases should not be limited to CPI. The SPG should be amended to allow for increases of CPI+1% which aligns to other forms of affordable housing rental increases.

4.21 It is important the rate of rent increases between LLR and market rent do not differ too greatly, which would lead to large, disproportionate changes in the discount relative to market rents over time.

4.22 We recommend that the LLR therefore includes a reference to the current market level when being determined, this discount should then be entrenched in the s.106. On the granting of new LLR tenancies, the rent should be rebased at the discount to the market rent.

4.23 Build to rent is unlike the private for sale sector. Rent levels set by build to rent operators, such as Grainger, are based on affordability of the demographic living and working in the area. If rents are set too high, prospective residents cannot afford them, resulting in the landlord being forced to reduce rents in order to let the units. LLR should be set as a discount to market rents (e.g. 20%) and will track local income levels as the rent is rebased against the BTR levels on the renewal of tenancies. In addition, by tracking the BTR rent level, the LLR will not out strip the market increases within the locality.

4.24 Grainger fully supports the adoption of LLR but strongly believes that the rents should stay as a discount to the BTR rent in order to ensure they continue to be affordable to the intermediate target group.

4.25 Setting LLR based on wards can lead to perverse rent levels. We recommend rents are set on a larger area size, such as the borough or a cluster of wards.

4.26 For example, LLR in our Vauxhall site would be higher than the LLR in our Waterloo portfolio because of the small number and mix of residential units in Waterloo distorting the ward's average rent, even though the market rents are much higher in Waterloo than Vauxhall.

4.27 LLR should also cater for sharers and multiple households with multiple incomes in a single dwelling and we recommend that SPG is amended accordingly.

4.28 **Design** – We welcome the flexibility with regard to design and build to rent provided for in the Draft SPG. Build to rent through greater use of communal spaces and catering for not just single households, but often sharers, means design of the buildings must be different.

4.29 Flexibility of design standards is welcome, however we reserve some concern over the suggestion that such flexibility is offered on the basis of other restrictions such as longer covenants. We believe this may unintentionally lead in some circumstances to applicants being 'held for ransom' unfairly and it being seen that longer covenants are an assumed requirement when proposing flexibility on design.

4.30 We would encourage the GLA to produce specific clarification around how design and space standards can be flexed by LPAs to allow for BTR. We regularly come across issues regarding number of units per core, lifts per core, unit size mix, car parking spaces and cycle storage, and sometimes the design of the BTR buildings suffer accordingly, leading to lower efficiencies and thereby lower viability.

Rental covenant, clawback and viability on build to rent

5.1 The intention of a rental covenant is twofold. Firstly, to provide the local authority with the assurance and protection that the homes will remain in the rental market for a good period of time in return for different treatment within planning and in relation to planning obligations, to reflect the very different viability of build to rent from traditional build for sale schemes.

5.2 The covenant is also however intended to provide the BTR investor with future optionality should the scheme not meet its expectations for both investor and customers. The build to rent sector is new. There is a clear possibility that certain investments and developments in this nascent sector may not eventually meet their financial expectations or their product quality and service expectations.

5.3 It is important that there is the option of converting BTR buildings in the future into either 'for sale' buildings, either wholly or partially, or to convert into other uses.

5.4 Without this flexibility, some BTR buildings which are not delivering the expected returns, will therefore suffer in terms of their efficiency and ultimately the service and maintenance of the buildings may suffer. In these circumstances, it is necessary for BTR investors to have the option to reconsider the appropriate and best use for the building. The clawback mechanism must not make it unviable or uneconomical to exit out of BTR if required.

5.6 **Option 1 v Option 2 viability assessment for build to rent** – Grainger prefers Option 1, whereby two viability assessments are undertaken (BTR and BFS) and the clawback is set against the difference of the two viabilities.

5.7 It is important that the BFS viability assessment is based on the design of the proposed BTR scheme so as not to incur additional costs of working up a completely theoretical BFS scheme. We suggest that the GLA amends the wording within the clause to make specific reference to the BFS viability appraisal being conducted on the BTR scheme as designed.

5.8 **Clawback** – We believe that clawback mechanisms should include a *pro rata* element, whereby the amount of the clawback reduces over time proportional to the length of the covenant, e.g. less clawback is payable with one year left of the covenant.

5.9 We also believe that the clawback should be payable proportionately to the percentage amount of units changing from BTR into BFS, e.g. we do not believe it fair or economically viable for the entire clawback to be payable if only a small percentage of units are sold out of the building. It is an unlikely and unintended scenario for any BTR investor to be in such a situation, however it is necessary for policy not to preclude any such possible scenarios.

5.10 We would also request further information around the BTR viability template which is being proposed by the GLA. We would like to be consulted on the assumptions which will be included within that template.

Concluding remarks

6.1 Overall, Grainger is very supportive of the GLA's Draft Affordable Housing and Viability SPG and we are pleased to see feedback raised in the consultation process has been listened to and fed in accordingly.

6.2 As long term investors, we are committed to creating and supporting strong communities and great places. We are concerned that the adoption of overly prescriptive definition of BTR and standardised assumptions around the viability of schemes could result in the quality of schemes dropping and a full BTR offer not being possible.

6.3 We are also concerned that the SPG does not acknowledge that a core customer group for BTR are sharers and young professionals. It is therefore important that when LPAs are looking at affordability, they note the number of people living in each flat and therefore the income brackets that the unit is accessible to. As an example, Grainger's Abbeville Apartments, Barking, units are available and genuinely affordable to income brackets between £13k per annum and £36k.

6.4 It is also important to note that a BTR development provides employment opportunities for the local community for the long term. This approach to investing for the long term will address some of the issues usually presented by new build schemes in central locations, as well as helping to ensure new and old communities integrate.

6.5 Lastly, we believe the introduction of borough-wide selective licensing schemes undermine the build to rent sector and provide little to no public benefit since the BTR sector is already leading the market in housing and management standards. We strongly encourage the Mayor to look at ways of ensuring that selective licensing schemes do not undermine the sector and instead cater for it.

We look forward to working with the GLA going forward.

Mayor of London – Homes for Londoners Draft Housing & Viability Supplementary Planning Guidance 2016

Consultation Response February 2017

1. Introduction and Key Context

- 1.1 Greystar welcome the draft 'Supplementary Planning Guidance' (SPG) published on 29 November 2016. As the first document on housing policy since the election of Sadiq Khan as Mayor of London on 5 May 2016, it recognises historic problems surrounding the supply of new homes in London and sets out important policy proposals across all tenure groups by focusing on affordability.
- 1.2 Over recent decades in the UK, and in London particularly, the conventional model for housing delivery has resulted in increasing polarisation of affordability between 'for sale' and designated 'affordable' housing. Consequently, this area of policy has become understandably more contentious, whilst leaving a growing swathe of London's population finding themselves without practical or reliable accommodation choices – priced out of home ownership, and ineligible for designated 'affordable' housing – people who are nonetheless essential to the city's social and economic wellbeing.
- 1.3 The arguments in favour of including a stronger purpose-designed, purpose-managed rental sector within policy are well rehearsed, and it is not intended to repeat them in detail within this consultation response, other than the following key points:
 - a. The existing rental housing sector has frequently not worked well for its residents. The emphasis on the Build to Rent sector is therefore extremely welcome, and the acknowledgement of its distinct economics is helpful in encouraging investment and the delivery of additional homes for London.
 - b. Greystar's multifamily approach within the Build to Rent sector fits very well with the Mayor's outlined priorities. We have 30 years of experience of this type of managed community in the USA, where we are the largest operator. We seek to bring this model to London to provide purpose-designed rental communities, with purpose-designed accommodation and amenities, together with organised on-site management and secure tenancies for residents who wish to be long-term members of their neighbourhood. As a current example, our Greenford development in LB Ealing will be a really important purpose-built rental-led scheme in London – 1,965 new homes within a mixed-use neighbourhood that will be delivered significantly more quickly than if built conventionally for sale.
 - c. This type of development reflects a global investment asset class, which will harness new sources of funding to deliver genuinely additional homes beyond the historical providers of UK housing supply over recent decades.

- d. The multifamily rental model has the potential to deliver market and sub-market housing to a range of people who are not currently well served, across an attainable spectrum of affordability, in contrast to much of the existing polarised market.
- e. Greystar representatives have been actively involved in various discussions with GLA and other stakeholders regarding emerging policies in this area, and we hope that such discussions will be encouraged to continue as the sector develops.
- f. Greystar are actively involved with the British Property Federation (BPF) and Urban Land Institute (ULI), and have contributed to the compilation of their consultation responses to the draft SPG.
- g. In view of our primary activities being investment, development and asset management within the Build to Rent sector, we are limiting our responses here to Part 4 of the draft SPG, which is titled 'Build to Rent'.

Specific commentary on Part 4: Build to Rent

Part 4 of the draft SPG document sets out the Mayor's support for the Build to Rent sector in specific terms, building on the broad support expressed fairly briefly in the previous Housing SPG dated March 2016. Set out below are a number of points on which we have observations or want to respond – all references relate to the draft SPG's paragraph numbers and text in italics are direct quotes.

4.3 – Terminology. The draft SPG acknowledges a variety of terms for purpose-built rental accommodation, including '*Multi-Family*', but concludes that all rental housing that meets the draft SPG's criteria should be referred to in planning terms as '*Build to Rent*'. It is welcome that a recognisable single term has been identified to describe this category of rental property.

4.5 & 4.6 – Distinct economics of Build to Rent. We welcome the clear guidance to Local Planning Authorities (LPAs) that they should consider the distinct economic factors when considering Build to Rent planning applications. We would be happy to collaborate with GLA and others in exploring ways in which this guidance can be communicated and best reinforced with the LPAs, as we are currently experiencing significant variety of understanding in discussions across different London boroughs.

4.7 & 4.9 – Build to Rent 'Pathway' and Definition. We accept the key principles described in the Build to Rent 'Pathway', which clearly differ from 'for sale' housing criteria, and the subsequent definition of Build to Rent.

4.11 to 4.15 – Covenant & Clawback. We acknowledge that during the covenant period, which the Mayor expects to be at least 15 years, Build to Rent homes must be retained in single ownership, i.e. individual units cannot be sold. It is important that the overall ownership of a Build to Rent development, or building(s) within a wider scheme, is permitted to change, and that clawback will not apply if the property remains in operation as Build to Rent. We note that any clawback mechanism that relies on a viability comparison of the Build to Rent scheme as a 'for sale' scheme is potentially flawed, due to the fundamental differences in the building design (including residents' amenity spaces, management areas, etc.) having an unrepresentative impact on valuation metrics.

4.19 to 4.24 – Affordable Housing. The expectations around affordable housing within Build to Rent developments, and how they differ from that applicable to ‘for-sale’ schemes, are broadly welcome and crucial to the SPG. Key points are as follows:

- We support the Mayor’s stated aim *‘to maintain the integrity of the Build to Rent development’* by permitting the affordable housing to be *‘entirely discounted market rent (DMR), managed by the Build to Rent provider and delivered without grant, i.e. entirely through planning gain.’* This is entirely appropriate for this tenure type – it allows operators to maintain ownership and management of all of the Build to Rent homes, which is better for all of the residents in an integrated community, and is cleaner in investment terms.
- We note that the Government’s recent Housing White Paper has introduced the term ‘Affordable Private Rent’ as an alternative term for discounted market rent. Whilst this additional terminology and acronym (APR) are not particularly welcome, it would be sensible and helpful if the London and national policies maintained alignment on which terminology to employ. For the purposes of this consultation response, we will continue to use the term DMR, as this is consistent with the draft SPG.
- DMR units can be genuinely *‘tenure blind’* by being *‘pepper-potted’* throughout Build to Rent developments. For example, whilst the unit mix we are proposing at our Greenford scheme will be agreed, the precise location of the DMR units within the building(s) will not be defined, and may change over time to reflect both actual demand experienced, as well as potential changes in the circumstances of the residents. This will help to create a long-term and sustainable community.
- As Build to Rent developments will frequently provide a new type of rental product into a given local area, the likelihood that rent levels in the new development will reflect a premium to existing rent levels in the immediate area should be appreciated. This is primarily because these new Build to Rent developments are typically not comparable to existing local stock, in terms of both superior accommodation quality and level of management. In order to address this issue, and to provide vital predictability to the investment model, levels of discount within DMR tiers should be related to the market rent levels within the new Build to Rent development or possibly, in time, similar developments in the local area.
- We have a number of observations on the stated preference for DMR rents to be set at *‘London Living Rent’* (LLR) levels. Whilst we recognise that this level of affordability is desirable politically, we note that its impact will inevitably vary widely across different parts of London. This is a complex area, and the effects on viability and investment are potentially significant, so it is important to clarify the following points:
 - The draft SPG recognises that the deeper discount implied by LLR, where required, will result in a lower quantum of affordable housing (para. 4.24). This will be determined by the viability assessment process, but expectations will need to be managed carefully with LPAs, and GLA could be even clearer about what these are likely to be.
 - Build to Rent developments are also likely to attract new residents from a wider catchment area than simply the immediate locality, so there is also an argument that relating rental levels to existing, narrowly-focused local income levels are not an appropriate benchmark, particularly for larger developments.

- It is noted that the GLA will update the local income data on an annual basis, but we recommend that there is also an annual and predictable mechanism for updating the LLR household income threshold value, which currently stands at £60,000 (<https://www.london.gov.uk/what-we-do/housing-and-land/renting/london-living-rent#acc-i-44674>).
- We welcome the mechanism by which the discount level to market rent may be set to reflect LLR for the initial tenancy '*with this discount then being applied to the current market rate for the development at the start of each new letting*'. It is important for investment modelling that DMR rents into the future are always related to market rent levels, rather than to local income levels over which providers have no control and which are impossible to model reliably into the long term. Please also see our comments on perpetuity below, as these issues are linked and will directly affect potential investment into the sector.
- It is also welcome that LLR is not the only allowable DMR rent level. Where agreed with the Local Authority, a wider range of DMR levels may be provided, to cater for '*specific local need*'. As an example at Greenford we are hoping to agree two different tiers of DMR with LB Ealing, which will provide a greater level of social mobility within the development should residents' circumstances change over time.

4.25 – Affordable Housing in Perpetuity. All affordable housing provided within Build to Rent developments, including DMR and LLR tenancies, is intended to remain affordable in perpetuity. Again, we understand the political importance of this but note that a significant likely problem for the future arises as currently proposed – it is probable that DMR rents will become constrained by the household income thresholds as defined for either LLR or intermediate DMR rent levels as time goes on.

In contrast to conventional affordable housing tenure types, which are typically transferred by the developer to a Registered Provider at the point of Practical Completion of the buildings, the ownership of DMR homes within Build to Rent developments will be retained by the Build to Rent investor for decades to come. As the value of the affordable housing provision is therefore never crystallised at a specific point in time, the future revenue from those DMR homes and associated viability therefore needs to be predictable to investors.

We suggest that this issue warrants further debate before the SPG is finalised, in order to ensure that future barriers to investment are not created inadvertently. We would seek an opportunity to participate in such discussions, as we believe there are a number of potential options to address the problem as and when it arises. We are currently working on how best to illustrate this issue alongside JLL, who are acting as our viability consultants on our Greenford proposals, and summarise this via the following points at this stage. Please note that, whilst Greenford is referred to here as an example for illustration, the principles of this commentary will apply generally across all Build to Rent developments.

- As it is defined as intermediate housing, DMR is subject to an income cap. In London, the Mayoral housing income threshold for intermediate tenures is £90,000 (see para. 3.44 of London Plan Annual Monitoring Report 12 – July 2016 update). At current rental levels at Greenford, this figure is some way above the level of household income required to afford the initial rent levels, and therefore the value of the DMR is determined only by the degree of discount applied (i.e. where the DMR is provided at a 20% discount, the value of the DMR = 80% of market rent).
- However, if rental inflation exceeds the rate at which the household income threshold is increased by the Mayor's office (assuming that it is raised to reflect income growth) it

will be this income cap, and not the originally agreed discount to market rent, that will determine the rent level at some point in the future. At this point, the value of the DMR would be constrained below the agreed discount level, which in turn would represent a significant problem of predictability for investors.

- We have modelled this issue in outline at this stage, in an attempt to demonstrate the potential timescales for this problem to manifest itself. Please note that the following examples assume that rental growth will exceed growth in the household income threshold by 2% pa, and are intended to illustrate the principles of this issue, rather than purporting to be exact predictions.
 - If a Build to Rent unit type currently has a market rent of £2,000 pcm, and a corresponding 80% DMR unit (i.e. 20% discount) has a rent of £1,600 pcm, then by Year 22 the income cap would limit the value of the rent, and the discount would start to exceed the originally agreed level of 20%.
 - Similarly, if a Build to Rent unit has a market rent of £2,200 and a corresponding 80% DMR unit has a rent of £1,760 pcm, then the income cap will adversely impact the degree of discount by Year 17.
 - These examples relate to larger units, as they naturally require a larger household income. However, what is clearly illustrated is that there is likely to be an adverse impact upon the value of DMR housing within approximately a 20-year period. Given that the stated intention is to deliver DMR housing 'in perpetuity', this has a clear implication for the investment value of such housing, and therefore for the overall Build to Rent scheme.
 - The sensitivity table below illustrates the forecast year during which the income cap, and not the discount initially agreed, is likely to determine the actual DMR rental level. Reasonably simply, it shows the implication for potential investors of an 'in perpetuity' requirement.

		Rental Growth				
		1%	2%	3%	4%	5%
Rental Values	£1,500			25 yrs	19 yrs	15 yrs
	£1,600		33 yrs	22 yrs	17 yrs	14 yrs
	£1,700		30 yrs	20 yrs	15 yrs	12 yrs
	£1,800		28 yrs	18 yrs	14 yrs	11 yrs
	£1,900		25 yrs	17 yrs	13 yrs	10 yrs
	£2,000		22 yrs	15 yrs	11 yrs	9 yrs
	£2,100		20 yrs	13 yrs	10 yrs	8 yrs
	£2,200		17 yrs	12 yrs	9 yrs	7 yrs
	£2,300	30 yrs	15 yrs	10 yrs	8 yrs	6 yrs
	£2,400	26 yrs	13 yrs	9 yrs	7 yrs	5 yrs
	£2,500	22 yrs	11 yrs	7 yrs	6 yrs	5 yrs

- Current and emerging policy envisages that the intermediate housing income threshold will be increased annually, to reflect income inflation. From an investor's perspective this mechanism is not guaranteed and, even if it were, it does not remove the problem outlined. There are therefore two risk areas for potential investors:
 - Firstly, income growth may well be lower than rental growth, meaning that the value of DMR in future will be forced below the initially agreed level, relative to market rent.

- Secondly, the household income threshold may not increase in line with actual salary inflation – this mechanism could be varied by successive Mayoral administrations, which may have different objectives from those currently envisaged.
- In summary, ‘in perpetuity’ DMR housing is likely over time to be subject to a form of rent control not linked to the performance of the rental market, but instead politically determined, and will therefore be deemed by investors to be unpredictable. We do not believe this to be the GLA’s intention, and we would welcome additional discussion on how best to address the issue so as not to put future supply at risk.
- **4.26 to 4.29 – Design.** Whilst there has been much recent debate about design flexibility in the Build to Rent sector, with reference to London Housing Design Guide criteria, much seems to focus on the size and design of apartments. Flexibility in the design of the overall building is generally more important for Greystar developments, particularly as we aim to secure efficiencies for the benefit of residents and our future long-term management operations. Key points that we welcome in the draft SPG include the following:
 - It is recognised that Build to Rent *‘can be particularly suited to higher density development within or on the edge of town centres or near transport nodes’*.
 - There should be flexibility applied to local policies regarding the mix of unit sizes in such locations *‘to reflect demand for new rental stock, which is much greater for 1 and 2 beds than in the owner-occupied or social rented sector’*. It is also noted that there may be *‘distinct viability challenges’* for Build to Rent if too many larger units are required within a scheme.
 - It is noted that Policy 3.5D of the London Plan *‘provides flexibility to consider innovative designs where they meet identified need and are of an exceptional design and standard’*.
 - It is noted that *‘space standards are not prescriptive regarding the layout of dwellings’*, which we interpret as perhaps also referring to the arrangement of units within the building rather than individual apartment layouts. Paragraph 4.29 encourages LPAs to *‘take into account the value of on-site management and purpose-built design’*. From specific issues that have arisen on our proposals to date, we trust that it is reasonable to assume that increased units per core, longer corridors, the relationship between private and shared external amenity space and single-aspect units will fall into this category of flexibility.
 - Finally, we note that the section concludes by stating that the length of the rental covenant *‘may influence the level of flexibility that is acceptable’*.
- **4.30 to 4.35 – Viability.** This section is clearly closely related to the earlier section on Affordable Housing, as well as paras. 4.11 to 4.15, and we will not repeat previous comments here. Importantly, it repeats the emphasis on *‘the distinct economics of the Build to Rent sector’*, and clearly states that viability assessments should be *‘specifically designed to deal with this model’*. Key comments are as follows:
 - Whilst the 35% threshold method for the a fast-track ‘Route B’ to affordable housing in ‘for-sale’ schemes has been widely publicised, the draft SPG makes clear that this *‘may not be appropriate for Build to Rent schemes’*. Roundtable meetings in advance of the draft SPG have suggested defining an alternative but analogous threshold method for Build to Rent development. As one of the

advantages of the threshold method is to avoid delay in delivery due to excessive time spent on viability assessment exercises, it seems a wasted opportunity to not apply such a method to the sector that is generally the keenest to deliver quickly.

- Whilst we appreciate that there is not yet a great deal of case-study evidence, we suggest that an alternative to the 35% threshold method figure for for-sale development would be extremely helpful in setting expectations for Build to Rent proposals – a figure around the 20% level has been suggested by all parties as likely to be sensible. With this in mind, it is hard to envisage the scenario described in para. 4.33 as being realistic. We would be happy to have further discussions on this point, either specifically to Greystar's experience or within the context of a sector roundtable group.
- It is noted that each scheme *'should be assessed on its own viability with the intention of maximising the supply of intermediate rent, preferably at London Living Rent levels'*. Such assessments for Build to Rent should follow the viability approach set out in Part 3 of the draft SPG, recognising that some elements of the traditional build for sale approach will need *'to be adjusted to take into account the distinct economics of Build to Rent'*. Over time, and we hope fairly soon, we would prefer the development of a generally accepted specific viability methodology for Build to Rent, rather than adapting a 'for-sale' approach which does not fit well for reasons set out previously.
- In the meantime, we welcome the recognition of key differences which include:
 - *'Build to Rent schemes being founded on long term rental revenue income from rents (taking account of management and maintenance costs) rather than short term sale receipts'*;
 - *A 'different approach to profit (often lower than a build for sale scheme)'*;
 - *'Different approaches to sales and marketing'*;
 - *'Rate of sale/disposal'* – recognised as generally faster for Build to Rent;
 - We note the phrase *'potentially lower risk [for Build to Rent] compared to for sale schemes'*, although this is an area which deserves further discussion.
- **4.36 & 4.37 – Management Standards.** We share the Mayor's ambition to provide a better rental experience for residents through support for Build to Rent as purpose designed and then purpose managed into the future. We welcome the approach that such improved experience needs to be demonstrated by showcasing *'best management practice'*. As specific comments:
 - *'Longer tenancies'* – we suggest that the wording of para. 4.9 *'(ideally three years or more)'* should be used again here. This approach will be incorporated within our wider lettings and management strategies, which will build on our existing systems in line with the SPG's aspirations. We also anticipate including additional features from our international experience, such as tenant loyalty programmes, to encourage the establishment of a long-term community;
 - *'Within these tenancies there should be formula-linked rent increases.'* We propose that rent increases within any tenancies longer than one year will be defined in advance through a pre-agreed mechanism, using formulae as appropriate, so that the resident is fully aware of this at the point of letting the property.
 - *'There must be on-site management.'* Greystar developments will generally be at a scale that ensures that there will be an on-site management presence at all

times. This is a core element of our management approach for ‘multifamily’ / Build to Rent development, which we know from experience will assist to establish the community and placemaking features as quickly and as permanently as possible.

- *‘Providers must have a complaints procedure in place and be a member of a recognised ombudsman scheme.’* Greystar will always have a complaints procedure in place, in accordance with our existing management systems, and we confirm that Greystar are an active member of the British Property Federation (BPF). Furthermore, Greystar are a founder member of the United Kingdom Apartment Association (UKAA), which was established in 2016 *“to professionalise and improve the service delivery of the residential rental sector in the UK by utilising and sharing best practices and knowledge gained from other agencies around the world”*. We suggest that the UKAA is added to the given list of recognised organisations.
 - *‘Finally, properties must be advertised on the GLA’s London-wide portal’* in addition to any other marketing. Greystar had a meeting with GLA in September 2016 to discuss proposals for the London-wide portal. We currently await further details of the GLA portal, but we are firm supporters of this initiative and confirm that it is our intention to advertise on this in due course. Further information on the likely timescales for availability of the portal would be very welcome.
- **4.38 & 4.39 – General Support for Build to Rent.** Part 4 of the draft SPG concludes with some additional points that further indicating support for the Build to Rent sector. We welcome all of these, as follows:
 - Local Authorities are encouraged to support Build to Rent *‘through spatial planning policies, Local Development Frameworks or local housing and other related strategies’*. This might include:
 - Encouragement of *‘long-term institutional investment’*, through working with GLA and delivery partners;
 - *‘Supporting institutional investment on public land’*, perhaps through joint venture arrangements or deferred land receipts. This is entirely sensible, but we anticipate the need for innovative procurement methodology to be developed in many cases to allow this to happen, and note that GLA intervention may be required in order to achieve this within reasonable timescales;
 - *‘Maximising the potential of Real Estate Investment Trusts and other vehicles to attract investment into the sector’*.
 - Finally, we welcome the stated intention that the Mayor will set out measures to support the Build to Rent sector in his new London Housing Strategy within the forthcoming London Plan. The likely timing of this is not specified, but we would like to remain engaged with the GLA in order to assist with this evolving strategy where possible.

Affordable Housing SPG
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27 February 2017

Dear Sir / Madam

**A RESPONSE BY THE HOME BUILDERS FEDERATION (HBF) TO THE
MAYOR OF LONDON'S DRAFT AFFORDABLE HOUSING AND VIABILITY
SUPPLEMENTARY PLANNING GUIDANCE (SPG)**

Thank you for consulting the Home Builders Federation (HBF) on the Draft Affordable Housing SPG. The HBF is the principal representative body of the housebuilding industry in England and Wales and our representations reflect the views of discussions with our membership of national and multinational plc's, through regional developers to small, local builders. Our members account for over 80% of all new housing built in England and Wales in any one year.

We hope that these representations will be considered by the Mayor and we would welcome the opportunity to discuss these the GLA's officers before the SPG is adopted.

We will first make some general observations on matters of planning principle. We will then turn to make some more detailed comments on the contents of the SPG.

General principles

We acknowledge the argument in paragraph 3 of the Executive Summary that the Mayor's approach in the SPG could help to embed policy values into land values, and provide for a more consistent, transparent and speedier planning process. These are all arguable points and we will address them through our more detailed comments on the SPG below. However, notwithstanding the potential benefits, the Mayor is wrong in bringing about this important change in policy approach by way of an SPG rather than through a revision to the London Plan. We wrote to the GLA about this previously (12 August 2016) and we are disappointed that the Mayor has decided to continue with the SPG.

We will restate what we said back then. It is established practice that changes in planning policy can only be made through Local Plans (Planning and Compulsory Purchase Act, 2004, Section 17 (3)). Supplementary Planning Documents should not be used to introduce new policy especially when this will add financial burdens to development (NPPF, paragraph 153). Therefore, in line with national policy and planning practice, the Mayor's SPGs should only build upon and provide more detailed

guidance on the policies that are already included in the London Plan. While the London Plan is not a development plan document, it does have to be prepared with reference to national planning policy. Regulation 8(3) of the Town and Country Planning (Local Planning) Regulations 2012 states that *“any policies contained in a supplementary planning document must not conflict with the adopted development plan”*. While those regulations do not apply to the London Plan because it is not a development plan document, it would be perverse if the Mayor’s SPG is allowed to override and conflict with established development plan policy.

It is worth emphasising that we operate within a plan-led system. The plan-led system was introduced in 1990 to provide certainty and clarity for applicants and decision-takers. The plan-led system was devised to ensure that applicants who submit proposals that accord with the development plan should have those applications approved and without delay. This essential principle is re-articulated by the NPPF in paragraph 14.

In London the development plan consists of the London Plan (which provides the wider spatial strategy) and the relevant London Borough development plan. The London Plan, however, is not a development plan document, as clarified by Section 38(2) of the Planning and Compulsory Purchase Act 2004. It is a spatial development strategy that is part of the development plan for London. The London Plan, and the Borough development plan documents, that form the development plan for London, are subject to examination in public by the Secretary of State. This is necessary to ensure that planning policies are sound: that they are consistent with national policy as well as positively prepared, justified and effective. We are concerned, therefore, when policy changes are made via SPG, the Mayor is circumventing an important procedural step that has been established to ensure soundness, as well as to provide fairness and accountability within the planning system.

We are aware that the GLA asserts in paragraphs 3 and 2.1 of the SPG that the SPG does not alter London Plan policy. This clearly is not the case since the SPG will set a minimum affordable housing rate (of 35%) across all of London – a figure that is not in the London Plan. All applicants must comply with this, otherwise they will be required to submit viability assessments to justify deviations from the SPG. In addition to this the SPG imposes review clauses on all applications. This is something that will be potentially at odds often with Borough local planning policies (including the two development corporations) and their locally specific approaches to providing affordable housing. We also note that the Mayor intends to also dis-apply the Vacant Building Credit introduced through the Written Ministerial Statement. Both of these things represent a change of policy for reasons we will explain in more detail below. The SPG, therefore, is not merely a mechanism for dealing with non-policy compliant applications. It inserts a whole new tier of planning policy between the London Plan and Borough local plans.

We are very concerned by this move by the Mayor to circumvent established planning procedure. We note, furthermore, that it is the Mayor’s long-term aim to secure 50% affordable housing (paragraph 2.17). The industry is concerned that the Mayor could at any time issue a revised SPG that established a new threshold of 50% affordable housing and do so outside of the accountability of the development plan process.

London Plan approach to providing affordable housing

The setting of the threshold affordable housing target through the SPG is contrary to the London Plan. London Plan Policy 3.11 does not establish a London-wide indicative affordable housing target. The policy states:

“The Mayor will, and boroughs and other relevant agencies and partners should seek to maximise affordable housing provision and ensure an average of at least 17,000 more affordable homes per year in London over the term of this Plan.”

In Part B of the policy, the London Plan is clear that it is for the responsibility of the London Boroughs to set an overall target in their Local plans. Part B states:

“Boroughs should set an overall target in LDFs for the amount of affordable housing provision needed over the plan period in their areas...”

Furthermore, the London Plan is clear in Policy 3.11, C (a) that it is the responsibility of the Boroughs to identify appropriate affordable housing targets for their areas taking into account *“current and future housing requirements in line with Policies 3.8, 3.10 and 3.11”*. The London Plan also advises that *“when setting an affordable housing target account must also be taken of the deliverability of these homes”* (paragraph 3.64). This is recognition within the London Plan that the cost of local policies and other strategic objectives (such as regeneration initiatives) may have a material impact on how much affordable housing can be provided. Part D of Policy 3.11 acknowledges the *‘local circumstances’* that will tend to influence the setting of local affordable housing targets.

Despite the clear recognition by the London Plan that the establishment of affordable housing policies is a local matter, the Mayor has decided to override this and impose his own target.

It is not appropriate for the Mayor to establish a minimum threshold rate of 35% in the SPG because it is contrary to London Plan policy. Among other things, doing it through a non-examined SPG would fail to have regard to the specific circumstances in each borough that the London boroughs need to take into account when establishing an appropriate and deliverable threshold rate of affordable housing.

Interestingly we note in paragraph 2.56 that the GLA reminds us that the starting point must remain the development plan, but it acknowledges the discretion of the decision maker in applying national policy if other material considerations indicate otherwise. It is clear from this that waiving existing national, London Plan and local plan policy in favour of the SPG ought to be the exception not the rule. Asserting the discretion of the decision maker as to when national, London Plan and local plan affordable housing policy can be ignored in favour of the SPG cannot be done on a sweeping basis. We are not convinced that the Mayor can dis-apply national policy, London Plan policy, and Borough local plan policy through this SPG.

Lastly, we consider that the matter of affordable housing supply, especially the question of the tenure mix, is not a strategic matter that ought to concern the Mayor. It is a local matter for the London planning authorities (including the two Development Corporations) to decide the most appropriate percentage and tenure mix for their areas and sub-areas. We find it curious that the Mayor, on the one hand, has determined that the Duty to Cooperate was not a strategic matter that concerned the London Plan for which the Mayor was responsible (even though this question has profound strategic implications for effective planning across the south east of England if not in England as a whole) but decides that it is appropriate to involve himself in the minutiae of the affordable housing mix for potentially every residential application 10 units and above in London. The Mayor should focus on strategic questions and allow the London Boroughs to interpret policies 3.10 to 3.12 of the London Plan.

Vacant Building Credit

The Vacant Building Credit was introduced via the Written Ministerial Statement of 28 November 2014.

As stated above, the Mayor is correct in stating that the decision maker does have the discretion to dis-apply planning policy if material considerations indicate that there are public benefits in doing so. However this does not allow for the blanket dis-application of national policy outside of the development plan process. This would be contrary to law. What amounts to 'exceptional circumstances' is essentially a site specific test, not a test that can be applied to the whole of London on the basis of an unsubstantiated assumption by the Mayor through an untested SPG that there is an 'exceptional circumstance' that applies to every single residential development site across London.

The Mayor argues that there is an exceptional circumstance in London that means that he is justified in suspending the application of the Vacant Building Credit. We are unconvinced. London is no more or less exceptional than all the other cities and towns in England who rely to a very large extent on the recycling of brownfield land to provide for their housing needs (Birmingham, Leeds, Manchester, Coventry, Oxford, Bristol, Brighton, Crawley, Luton and Ipswich are all examples of towns and cities who will have to rely to a very large extent on previously developed land to provide for their housing needs, including the need for affordable housing, but they have not dis-applied the vacant building credit). The purpose of the Government's change of policy is to facilitate the process of housing delivery by removing onerous affordable housing obligations on developers.

The Mayor could potentially dis-apply the Vacant Building Credit through a revision to the London Plan if this is robustly justified at examination (in a similar way that some LPAs can dis-apply the affordable housing threshold in Local Plans), but we cannot see how he can do this through the SPG. That would be unlawful.

This section of the SPG should be removed.

"Permission in Principle"

We also struggle to see how the Mayor's approach will work alongside the proposed Permission in Principle that could be introduced following its provision in statute by the Housing and Planning Act 2016 gaining assent last year. The Permission in Principle is supposed to apply to 90% of schemes on brownfield sites. The Permission in Principle may be granted for housing-led development either on application to the local planning authority (LPA) (or Secretary of State (SoS) in some instances), or through qualifying documents (QDs). QDs are development plan documents, neighbourhood plans or the brownfield register that meet the criteria in section 59(2) of the Town and Country Planning Act 1990, which has been inserted by s150 of the HPA 2016.

In plain English, the Permission in Principle promotes the idea that applicants will be able to secure 'automatic consent' for certain sites where the principal of development has already been established in a local plan. The relevant London Borough would need to determine an application in accordance with its adopted local plan. We cannot see how the Mayor's SPG would do anything other than impair this ability. The Mayor is aware that the London Plan is not a development plan document under Section 38(2) of the 2004 Act. Nor is the GLA a local planning authority. The London Plan is a spatial development strategy, not a development plan document as such, so the SPG could

not be used to restrict the ability of the London Boroughs to implement the permission in principle in line with the policies in their adopted local plans.

Summary

These comments on the general approach of the SPG lead us to conclude that the GLA is mistaken in thinking that it can introduce changes to affordable housing policy in London via this SPG. The changes that the Mayor wants can only be made through a partial review to the London Plan so that they are subject to proper examination in public. In choosing to make these changes outside of the London Plan and the local plan process the Mayor is undermining the authority of the NPPF and the efficacy of the plan-led system. The SPG introduces a third layer of policy on top of the London Plan and the Borough Plans that undermines existing affordable housing policies in existing London Borough plans. This does not help provide clarity for applicants (NPPF, paragraph 15) and it increases confusion for decision-takers (NPPF, paragraphs 17 and 154).

We would remind the Mayor that the rationale for the introduction of the plan-led system back in 1990 was to facilitate speedier decision-taking so that, in the words of the NPPF, *“development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise”* (paragraph 12). The Mayor’s SPG interferes with this principle. It introduces untested policy via an SPG in an attempt to override examined London Plan and London Borough local plan policies.

Detailed comments on the SPG

As we stated above, we can see a number of advantages and disadvantages associated with the Mayor's approach. The advantage is, as the SPG states, that it has the *potential* to provide greater clarity, transparency and speedier decision taking. The problem with the SPG at the moment is that it is too intrusive and too prescriptive. It needs to be much simpler with much clearer lines of demarcation between the responsibilities of the Mayor (strategic objective setting) and those of the boroughs (managing the details). The Mayor's approach also attempts to sit on top of a lot of examined and established policy in both the London Plan and the Borough local plans all of which places significant costs on development. We are struggling to see how reconciling all these requirements can result in anything other than all applications being forced down Route A. It is not clear to us whether the Mayor or the London Boroughs will have the resources to manage this process. While we recognise that practically all residential schemes in London currently involve an element of negotiation to come up with a viable and implementable scheme suggesting that the process costs associated with the SPG may not be any greater than they currently are, the SPG does contain review mechanisms under both Routes A and B, that will place additional demands on the Boroughs who are already extremely hard-pressed.

This will not necessarily result in speedier decision taking. This could have implications for rates of housing completions in London. The National Audit Office in its report titled *Housing in England: overview* (National Audit Office, 19 January 2017) has observed that net housing completions in the England is falling behind the need and that a 'step change' in housebuilding is required in London in particular (paragraph 20). A further report by Civitas titled *Housing Supply and Household Growth, National and Local* (December 2016) has observed that London is falling significantly behind the household projections in terms of completions, providing just 55% of the projected housing need indicated by the DCLG 2014 Household Projections. While we understand the desire of the Mayor to improve the number of affordable housing completions, he needs to be careful that the measures he puts in place to attempt to achieve this do not choke-off the supply of homes in London. He will need to keep the effect of the SPG under careful review.

We also note that paragraph 12 of the SPG acknowledges that those LPAs with higher affordable housing targets, should still apply these. It would be helpful if the GLA explained how this would work in practice. We assume that the a London Borough with an *aspirational* target of 50% affordable housing, like Camden Council, would apply the 50% as the threshold, and follow the same procedures set out in the SPG as one would with a threshold of 35%. The Council's own plan and viability modelling recognises that this target is unlikely to be deliverable in many cases, so the implication of this is that all residential applications of 10 dwellings and more, would routinely have to be sent down route A.

Camden Council is also an interesting in other respects because it has a very complex approach for affordable housing where it operates a sliding scale whereby schemes of 24 dwellings and fewer will have to provide a 2% S106 obligation towards affordable housing for each dwelling provided on site. It is unclear how the Mayor's guidance will sit alongside existing policy in the borough local plans which can adopt quite complex approaches to affordable housing collection.

The evidence for 35% affordable housing

The NPPF requires in paragraph 174 that local plan policies, including requirements for affordable housing, should be set out in local plans after having had regard to viability.

The London Plan, although it is not a development plan document, is required to adhere to national planning policy. It has become established planning practice that local planning authorities set their affordable housing targets in their Plans on the basis of evidence contained in their local plan viability assessments. This principle applies to the Mayor of London too. In accordance with the NPPF, the Mayor needs to demonstrate that the threshold figure of 35% affordable housing is viable and deliverable in the majority of circumstances in London. Because the Mayor has not done this, and nor is he likely to be able to owing to the extreme diversity of the land market across London and the variability of developments costs owing to local plan policies and different priorities, the Mayor cannot effect this change.

The London Plan does not specify 35% affordable housing based on habitable rooms. It has identified a numerical target of 17,000 affordable homes a year, but how this target is achieved is left to the Boroughs to determine. This is explicitly referred to in paragraph 3.69 of the London Plan which acknowledges that *“the Mayor recognises that, in light of local circumstances, boroughs may wish to express their targets in different ways, including in absolute or percentage terms”*. Setting a target outside of the London Plan is clearly contrary to established planning practice.

It is contrary to national policy for the Mayor to attempt to establish a threshold figure of 35% affordable housing outside of the London Plan and independently from London Borough Local Plans. The HBF does not support the Mayor's approach. The London Plan is (or should be) a strategic document. Detail relating to the size of the affordable housing contribution, should be a local matter. Moreover this is a local policy that might need to be applied flexibly if material considerations indicate that this may be appropriate.

Habitable rooms (paragraph 2.14)

We note that the basis for the Mayor's calculation of the affordable housing contribution will be habitable rooms. This introduces another complication because some London Boroughs do not calculate their affordable housing requirements in this way. They have policies calculated on the number of dwellings (Richmond-Upon-Thames is an example I have commented upon recently). This inconsistency in approach (which was inevitable because the London Plan does not stipulate a precise approach to this question) will inevitably cause difficulties for applicants in trying to interpret of what represents 'policy compliance'. We remind the Mayor that the NPPF requires that *“all plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally”*. The ambiguity over which approach to the calculation of the affordable housing contribution will prevail in decision-taking undermines this essential principle, and, ultimately, the efficacy of the plan-led system.

We find it difficult to recommend a solution to this difficulty because it represents a clear clash of approach between the boroughs and the Mayor.

Paragraph 2.6

The SPG states that the new affordable housing threshold will apply to schemes of *ten or more units*. We recommend that the SPG is amended to reflect the Written Ministerial Statement of 28 November 2014 whereby affordable housing will not be sought from schemes of *10 units or less*. The SPG, therefore, is not in accordance with national policy. The SPG should be amended to reflect the proper threshold of eleven or more dwellings or that affordable housing will not be sought from schemes with a gross combined floor space of 1,000 square metres.

Paragraph 8

The SPG states that applications must meet or exceed the 35% threshold while also meeting the specified tenure mix and all other requirements and obligations if they are to avoid Route A. This will be very challenging for many developments. There are many residential locations in London where local plan viability assessments have demonstrated that it is unfeasible to provide any level of affordable housing owing to the regeneration costs. The Kings Cross regeneration area in the London Borough of Camden springs to mind where the Council's viability appraisals have shown that zero affordable housing is viable. As we have stated above, this suggests that all applications will be forced down Route A. The requirement for viability assessments and reviews for potentially all residential applications of ten or more units will add to the cost of development and place additional resource demands on the Boroughs.

At the moment the extent to which the local planning authority will apply the London Plan and local plan policy requirements is a matter for it to decide. The decision maker will need to consider a range of competing objectives. The effect of the wording in the SPG will be to remove this discretion.

We can see tremendous scope for delay and a decline in completions as a consequence. If the Mayor decides that other local policies should be relaxed to facilitate the supply of affordable housing, but the local authority disagrees, wishing to capture more of the development value for other objectives, how will this impasse be overcome? It is unclear with whom the ultimate decision will reside. It is interesting to read in the LSE report titled *Accelerating Housing Production in London*, June 2016, that the authors of this report concluded that the imposition of a non-negotiable across-the-board percentage requirement for affordable housing would probably be politically unacceptable to the London Boroughs. The Mayor will need to clarify how these tensions will be resolved. For those schemes that go down Route A, the GLA should clarify who will adjudicate on which local planning policies will be relaxed to enable an implementable scheme to be designed.

The cost of certain London Plan policies such as zero carbon homes and wheelchair accessible homes, which were never adequately assessed as part of the London Plan, could present particular challenges (the GLA, as part of the examination of the Minor Alterations to the London Plan acknowledged that the cost of building to Part M4 (3) could present significant viability challenges for flatted schemes. Paragraph 3.48 of the London Plan tacitly acknowledges this as a potential viability issue). The cost of all these policies applied to all residential schemes is likely to steer the vast majority of applications down Route A. It is unclear which policy elements in the development plan for London – i.e. the London Plan and the London Borough local plans – will be considered to be the priority for compliance. It would help enormously with the operability of his 'fast track' process if the Mayor provided a clear statement on who gets to decide. At the moment it is extremely unclear. This is not in keeping with the spirit of the NPPF which requires clear policies guiding how the presumption in favour of sustainable development will operate locally (NPPF, paragraphs 15 and 17).

Paragraph 12

The GLA states that LPAs with higher affordable housing percentage targets can still apply these. The GLA states that where an LPA uses the local approach, it will need to justify this to the Mayor, demonstrating that this is feasible without public subsidy. The GLA appears to be suggesting that every application in a local authority area that has a

higher affordable housing target will have to be routinely submitted to the GLA for approval, with the GLA checking to see if the scheme is viable without public subsidy. This suggests that the SPG may well become an obstacle to speedier decision making, rather than assisting.

It would be helpful if the Mayor provided a flow diagram with timings showing how he expects these issues to be resolved within the 13 weeks allowed for the determination of major planning applications.

Paragraph 2.27 – 2.31: Tenure split

To avoid Route A applicants will have to comply with the 'preferred' new tenure split proposed by the Mayor which is 30% social or affordable rent, 30% intermediate, and 40% to be decided by the relevant London Borough (page 20). Paragraph 2.31 states that applicants wishing to benefit from Route B will have to conform to this tenure split. This contrasts with the London Plan in Policy 3.11 which expects that 60% of affordable homes to be provided *either* as social rent or affordable rent, and 40% for intermediate rent or sale. Policy 3.12 of the London Plan which concerns *planning decisions and LDF preparation* allows the relevant London LPA to take into consideration the following, among other things:

- d. *the need to promote mixed and balanced communities (Policy 3.9);*
- e. *the size and type of affordable housing needed in particular locations*

Moreover, Policy 3.10 of the London Plan states that eligibility for affordable housing products "*is determined with regard to local incomes and local house prices*". Therefore Policy 3.10 explicitly acknowledges that a local approach to affordable housing tenure and products is more appropriate.

The Mayor's approach flouts established London Plan policy. This undermines the authority of the London Plan.

The Mayor, therefore, is diverging from established policy in the London Plan by requiring applicants to conform to his SPG. This only adds to the already confusing planning policy landscape in London and introduces a level of prescription which is at odds with policies 3.10, 3.11 and 3.12.

The SPG overrides these policies and we now faced with a situation where applicants are confronted with three different approaches to affordable housing all potentially requiring something different: we have policy in the London Plan; policy in a local plan; and the new approach in this SPG. This is hardly conducive to providing certainty for the development industry. Larger developers may just about be able to navigate this uncertainty. Smaller developers will be unable to function in the policy morass.

Secondly, the cost differential between providing social rent and affordable rent is considerable and this can have a crucial impact on the viability of many developments. Many of the London Borough Plans remain very vague about the exact tenure split that is required (e.g. Camden and Haringey which both specify 60% social or affordable rent), although this is contrary to the NPPF which requires local plan policies to be clear for applicants and decision makers (NPPF, paragraphs 15, 17 and 153). Clarity is necessary to ensure that the plan-led system operates effectively. Too much reliance on site specific assessments of viability and negotiation will undermine the efficacy of the plan-led system. This lack of clarity in the tenure split means that policy costs will

not get embedded in land values. Without clarity on the tenure split we are concerned that all schemes will be forced down Route A.

The Mayor tacitly acknowledges this to be a problem when he asserts that he is 'keen to maintain this flexibility to meet needs' but nevertheless wants to "ensure(ing) the delivery of his preferred affordable products". Unfortunately his approach does not provide clarity but adds more complexity. In contrast to the London Plan the Mayor now wants 30% low cost rent as either social rent or affordable rent although the precise split is still to be determined by the London Borough. He also wants 30% intermediate with the new product London Living Rent being the default tenure of choice. Finally, the GLA wants the last 40% to be decided by the LPA, although even this comes with caveats, with the London boroughs being required to get justify their choice of products with the Mayor. We feel that the Mayor is being too controlling and is becoming too involved in the detail of Borough planning policy and decision making.

We are very uncomfortable with the Mayor's attempt to change the tenure mix from the London Plan through the SPG. This will have significant cost implications for development and this is clearly at odds with national policy.

Furthermore, the GLA will need to be aware, that the London Boroughs will only be able to alter their tenure mixes through updates / reviews of their own local plans. It is difficult to see how they can alter tenure mixes in their adopted plans to accommodate the Mayor's new preferences.

Effect on place-making

If the tenure split proposed by the Mayor is followed, and all London Plan and local policy requirements are non-negotiable (to qualify for Route B applicants must '*meet all of the other relevant policy requirements and obligations*', page 16), then the place-making agenda in London is likely to suffer especially if land-owners (including the London Boroughs and other public sector bodies) refuse to accept the benchmark land values proposed by the Mayor. All residential schemes in London depend on negotiation of the policy package. Very few schemes are policy-compliant in all areas. Meeting the threshold and all policies will inevitably reduce the funding available for design and place-making.

London Living Rent

The Mayor wants his London Living Rent and shared ownership to be the default tenures within the 30% intermediate split. This is another example of how the Mayor, rather than allowing the London Boroughs to determine their own approaches to the tenure split and the products to be provided within these tenures despite what Policy 3.12 in the London Plan requires. This is limiting the discretion of the Boroughs through the SPG. The consequence will be slower decision-taking in London contributing to a fall in completions.

How the tenure section of the SPG could be improved

This section of the SPG is complex and the potential for conflict with established policy is very great. If the SPG had said that the threshold is 35% but left it to the London boroughs to determine the tenure split and the products they prefer in accordance with their own local policies (based on examined evidence), then the HBF might have been more supportive of the SPG. Instead, the Mayor's insistence on controlling the details of tenure will tend to militate against the effective of the SPG as well as housing delivery in

London because applicants would not know what they would need to comply with: the London Plan, the borough plan or the SPG.

The SPG should only set a threshold of 35% affordable housing. Outside of that the London Boroughs, should be allowed to determine the tenure and the type of products within each tenure.

Viability assessments

We are concerned about some the assumptions being made by the Mayor regarding his approach to viability assessments. The Mayor's approach in the SPG will overlook some very important nuances at a local authority and sub-local authority level that can only be properly reflected by a local plan approach to viability. Assessing viability for the purpose of establishing an appropriate affordable housing target in a London Borough Plan can be hard enough. Trying to fix this on the London-wide basis is impossible. The Mayor's approach will fail to adequately account for the cost of regeneration schemes and local plan policies in addition to London Plan policy requirements.

At paragraph 4 in the viability section of the PPG states that *"assessing viability requires judgements which are informed by relevant available facts. It requires a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market."*

We have the following specific observations to make:

Benchmark land values and Existing Use Value

The Mayor cannot prescribe an approach to assessing viability which conflicts directly with the NPPF.

Paragraph 173 of the NPPF states:

"To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."

The PPG provides some guidance on viability and benchmark land values at paragraph 24:

The National Planning Policy Framework states that viability should consider "competitive returns to a willing landowner and willing developer to enable the development to be deliverable." This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.

A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.

By prescribing *EUV plus* the Mayor is advocating an approach that will result in a number of difficulties. Adopting EUV plus as the benchmark may conflict with the a) expectations of land owners who on the basis of similar transactions may expect an Alternative Use Value (AUV) or market value; b) land deals already agreed on the basis of AUV or market value; c) the assumptions that underpin existing London Borough local plan viability assessments; and d) the assumptions that have informed current negotiations or underpin existing London Borough decisions on applications. In short, the Mayor's approach is directly at odds with the more discretionary approach advocated by the PPG.

Site-specific viability assessments: conflict with national policy and guidance

The reliance of site-specific viability assessments is generally discouraged by the NPPF and the PPG because it undermines the efficacy of the plan-led system. Local plans ought to be based on a set of policies that will enable most residential development sites to be deliverable in the majority of cases over the life of the plan at the time the plan is examined, with site specific assessments being the exception rather than the rule (NPPF, paragraph 174). This is to assist with speedier decision-taking, so that applications that accord with the development plan can be approved without delay (NPPF, paragraph 14). This in turn requires all plans to provide "*clear policies that will guide how the presumption will be applied locally*" (NPPF, paragraph 15). As the PPG states:

"decision-taking on individual applications does not normally require consideration of viability...Assessing the viability of a particular site requires more detailed analysis than at plan level" (viability chapter, paragraph 16).

The inference of the PPG is that site-specific viability assessments should be the exception and not the rule. When done properly, local plans policies will set a level of affordable housing and other policies that will allow the majority of sites to come forward over the economic cycle. The Mayor's approach which requires a viability assessment with every application, even those that go down Route B because of the early review mechanism, is directly at odds with the spirit of the plan-led system which was introduced in 1990 on the basis that it would provide more certainty for applicants.

Developer Profit

Paragraph 3.33 explains that it is the Mayor's expectation that target profit levels will be lower than levels that were typical following the financial downturn of 2008/9. While the Mayor, rightly, does not stipulate an appropriate Gross Development Value (GDV) to be applied to residential projects in London the Mayor needs to guard against assuming that the profit expectations of developers in London will always be lower in 2017 than they were in 2008/9. Even though we have tentatively emerged from the Global Financial Crisis confidence is still fragile and most development is still extremely risky (and arguably made even more so by this SPG). Consequently, developers will expect healthy returns if they are to undertake house building. An internal report by Savills titled *Residential Development Margin* (dated September 2016) observed that the hurdle rate for larger house builders is typically 20-25% of GDV while for SMEs the hurdle rate will be higher still at 25-30% to reflect their higher project finance costs (see more on this below). This is especially the case in London because, because most schemes are flatted developments. As the Harman Report of 2012 observes, developments consisting of large flatted blocks on previously developments land in urban areas with high cash requirements "*will demand significantly higher levels of profit to achieve an acceptable ROCE (Rate On Capital Employed)*" (page 46).

We would be very concerned, therefore, if on reviewing submitted viability assessments, the Mayor chose to routinely dismiss the profit margins provided by applicants.

Review clauses

The chief problem with any of the review clauses being proposed under both Routes A and B is that these will be very unattractive to banks since it will be unclear to the lender if the developer will take a hit on the revenue of the scheme at a later date (should the developer be unable to maintain delivery in accordance with the agreed S106 obligation). While the big PLC companies may be able to operate with this potential future liability, smaller developers will not. The key to increasing housing delivery is to increase the number of new entrants¹. The review clauses in the SPG will tend to militate against this. The costs of delay, negotiation and the production of bespoke viability information will tend to privilege established developers.

Route A

We note that it is proposed that under Route A there will be two review stages: an early review and a near end review. (once 75% of units are sold).

Route B

We note that under Route B there will be an early review if the level of progress on implementation is not made within two years of permission being granted.

Firstly, in relation to Route B we cannot see the justification for an early review trigger within a S106 agreement for schemes that are able to satisfy the 35% threshold. This requirement will undermine the attractiveness of the SPG to developers and as a mechanism to simplify and fast-track applications. Any review or overage clause will create significant difficulties for bank lending because it becomes extremely difficult for the developer to predict future market conditions and therefore to build in a suitable contingency. Whether the Mayor's viability model will permit a contingency is also another matter.

The Mayor's approach also conflicts with national guidance. The PPG discourages the use of review mechanisms other than on large, multi-phased schemes (Viability chapter, paragraph 16).

Secondly, there is an important distinction between a planning permission and an implementable consent. An implementable consent is one where all pre-commencement conditions are discharged and other licences secured (for example, getting a consent for scaffolding is a particular problem in London). This will quickly erode the two year period. The SPG should be much clearer about what will constitute 'an agreed level of progress on implementation'. We recommend that the two years is counted from the day that all pre-commencement conditions are discharged and all relevant licences secured.

We note the use of the phrase 'best endeavours' in relation to implementing the scheme. This is a very vague expression. We recommend that the Mayor omits these words and supplements this with a much clearer structure showing what will constitute progress on implementation.

¹ *Reversing the Decline of Small Housebuilders: Reinvigorating Entrepreneurialism and Building More Homes*. Home Builders Federation, 2017. Copy attached.

We cannot see the justification for the 60/40 split of any surplus profit between the LPA and the developer other than an attempt at value capture. This should be unnecessary if the scheme is achieving the 35% threshold. The potential for a review and the 60/40 split of profit in favour of the LPA detracts from the potential attractiveness of Route B and the SPG as a whole for developers. Developers might be more inclined to support the SPG if this review clause was removed from Route B.

Paragraph 3.49

The draft SPG states that “generally the Mayor will only accept the use of AUV where there is an existing implementable permission for that use”. This implies that the Mayor will retrospectively seek reviews on all current planning permissions. The Mayor should clarify if this is the case, or whether this statement will only apply to schemes agreed since the draft SPG was published. The Mayor cannot require the review of schemes that have already been agreed.

Secondly, the use of the word ‘generally’ implies that the Mayor may not accept AUV even for schemes that have already been agreed. For clarity the Mayor should delete the word ‘generally’ and agree to accept the use of AUV for existing schemes where this has been used as the benchmark land value.

Who decides what policies can be varied or dis-applied to make a scheme viable?

Paragraph 2.13 states that for those schemes assessed under Route A that are unable to meet the affordable housing requirements, it will be for the relevant London Borough *and where relevant* the Mayor to decide whether the evidence justifies a lower level of affordable housing. Firstly, this suggests a duplication of effort because the viability information should provide this evidence, otherwise there is no point to Route A. Secondly, the text indicates that it will be either the London Borough or the Mayor who will decide which elements of the policy framework are varied in order to make the scheme viable: this may be the affordable housing percentage or it could be another policy requirement, such as zero carbon homes. The SPG is unclear on this point. It is unclear who will have the ultimate say-so in deciding what policy requirements should be relaxed or removed to improve viability, and what remains non-negotiable. This lacks the clarity required for effective decision-taking. To avoid confusion and wasted effort, this decision should reside with the relevant London Borough since it will be the Borough who has the best understanding of the needs and relative priorities of their local area. This would also be consistent with Policy 3.12 parts A and B of the London Plan.

Explore the use of grant and other public subsidy to increase the level of affordable housing

If the applicant is able to meet the threshold of 35% affordable housing (or the higher affordable housing target stipulated by a- London Borough) there is no justification for compelling the applicant to identify and secure other revenue streams in order to increase the affordable housing contribution. The London Borough and the Mayor is only able to determine the application that is before them, not the hypothetical application that they think could have been made. It cannot reject an application on the basis that a different one could have been submitted. If the application does not accord with the development plan (the affordable housing threshold and the policies contained in the London Plan and the Borough Plan) then the Mayor and the London Borough has

the option to refuse the application. What is being proposed here will delay the determination of applications.

This requirement detracts from the potential benefits of the SPG. Developers might be more inclined to support the SPG if this requirement to seek subsidy was removed.

A barrier to small house builders

Another area of concern is that the document is written as if all residential applications will be made by PLC house builder companies. This clearly will not be the case.

The SPG will represent a major barrier for SMEs, and other providers of more specialist products, such as companies trying to build retirement housing, who are subject to much higher overheads than big house builders.

While there may be some conditional support for the SPG among the PLC house builder companies this is only because they tend to have access to bigger resources that enable them to navigate the considerable complexities of London's planning system more easily. They are better able to absorb the costs associated with uncertainty and delay in the planning system because they have multiple outlets where they are able to draw on the revenue from more profitable schemes to help subsidise the less profitable ones in the short-term. The same cannot be said for SMEs or for retirement house builders. Many SMEs work on only one scheme at a time. If that scheme fails to make an adequate return (or even makes a loss) then that company may well fold. It will conclude that the returns associated with bringing forward residential schemes in London are too marginal.

The inability of builders to access any returns on the development until the very end of the building and selling process means that the recycling of equity is extremely challenging for most small developers, unlike for big builders. This has major consequences for their capacity to grow. The HBF has identified that most SMEs building fewer than 100-150 homes per year are now reliant on project finance agreed on a site-by-site basis, in itself inefficient for both lender and borrower, with significant additional fees for entry, exit and legal agreements. This turns the headline interest rate of perhaps 6% into something more like 7-8% or higher.

The availability and terms of financing for residential development has also become extremely challenging for small housebuilding companies over the past decade or so. Lenders have drastically changed their attitudes to the sector since the Global Financial Crisis. A lenders' appetite for risk correlates to the risk and uncertainty inherent in the planning process on which all developers are reliant. The SPG will increase this risk.

The SMEs that we have spoken to in the course of preparing this response view with alarm the SPG because it will add another layer of uncertainty which cannot easily be absorbed by smaller companies. Uncertainty over what affordable housing threshold will apply (e.g. the Mayor's 35% or the local authority's 50%), the precise tenure mix, and the review clauses, or how the Borough or the GLA (if it is to be determined by them) will react to an application will all undermine the confidence of banks to lend against smaller developments because it will not be possible to anticipate the revenue and cost of the development. The increase in uncertainty associated with submitting an application will deter many schemes, and lenders will be less inclined to lend.

The prospect of a review under either Route A or Route B also increases the liability for the smaller developer. It means that the lender could never be certain that the applicant would have the money needed to pay-back the loan provided. To guarantee this the

applicant would need to set aside a contingency. Not only would this tie-up valuable development cash but it may also be insufficient if the future development value of the scheme exceeds the level set aside in the contingency. Furthermore, how one would decide what would be an appropriate contingency (quite apart from how the Mayor would treat such a contingency in the viability appraisal) would be almost impossible to forecast because future costs and prices are so uncertain. Whether the bank would be happy to lend on the basis of all these uncertainties and liabilities is very doubtful.

Delay as a consequence of the Mayor and the Boroughs arguing over the application of policy and the requirement for the applicant to prepare viability assessments that assess both the threshold and the viability of the review/overage requirements of the SPG are additional costs that cannot be sustained by smaller developers.

It is our view that the review clauses must be removed from both routes A and B. Such overage charges are unjustified. The Mayor and the Boroughs should settle for an agreed amount of affordable housing and leave it at that.

Monitoring the effect of the SPG

The Mayor should review his initiative after six months to assess the effect of his SPG on housing delivery across London – not just the effect on affordable housing delivery, but new housing delivery in total. The Mayor should compare the number of completions in 2017/18 by each London Borough with completions achieved in previous years. We recognise that it may provide difficult to assess the full effect of the SPG on delivery in the new financial year (2017/2018) as many completions will relate to permissions granted in earlier years (especially in the case of strategic sites).

We also recommend that the Mayor convenes a meeting with a wide range of developers – large and small companies – and the London Boroughs to discuss their direct experiences of the operation of the SPG and its effect on housing delivery.

The Mayor should examine what effect his review clauses are having on the delivery of strategic sites and whether this is helping to secure more affordable units in later phases, and the trade-off in terms of the time it is taking to determine applications on later phases.

The monitoring of net completions of homes will serve as an indicator of the effectiveness of the SPG and the extent to which it contributes in a positive way to the development plan for London.

Summary

We anticipate that the effect of the SPG will be to send most residential applications of ten or more units (sic) in London down Route A. The Mayor's SPG will override a lot of established Borough local plan policy that has been carefully developed having regard to viability and tested at public examination. We cannot see how many residential schemes will be able to provide 35% affordable housing as well as comply with all the policies currently contained in the London and Borough plans. Contrary to the Mayor's assertion, we suspect that his package of proposals will tend to inhibit the supply of housing in London, rather than 'fast-track' proposals.

If we are proved correct and that most residential schemes will now be directed down Route A, we are concerned about the additional demands this will place on the local authorities and GLA staff time. We may be over-stating the problem because most residential schemes in London probably already have to be negotiated on a case-by-

case basis owing to viability problems, but the additional layers of checking by the Mayor (confirming subsidies, agreeing tenure mixes and products, agreeing policy priorities, reviewing all applications even for schemes that meet the threshold) has the potential to bog-down the development management system in London. Even schemes that meet the threshold will be subject to review clauses if the agreed levels of progress are not made. Overall, the effect of the SPG is likely to add further layers of complexity and cost. This will not help with speedier decision taking.

We consider that the issue of providing for affordable housing is best left to the individual London Boroughs to determine until the Mayor is able to adopt his new approach to affordable housing through a new London Plan. If the Mayor does want to make these changes he must do so through a review of the London Plan. As we have stated above, we see no reason why the Mayor cannot introduce these changes through a quick and focused partial review of the London Plan that concentrates on a review of policies 3.10 to 3.13. This could be done within the year. It would not need to wait for a full review of the London Plan to be completed in 2019.

However, if the Mayor intends to proceed with the SPG then the SPG needs to be made much simpler with a much clearer demarcation between areas of responsibility for the Mayor and the London Boroughs. It is our view that the Mayor should simply establish a threshold of 35% but allow the London Boroughs the discretion to decide on the tenure split and type of product in each tenure in accordance with established local plan (and evidenced-based) policies. We also feel that it is unjustified for applications that meet the 35% threshold (or the threshold target established in adopted London Borough Local Plans) to be subject to a review to capture any further potential uplift. The London Boroughs should also be allowed to retain discretion over the application of London Plan and local plan policies so that they can choose to prioritise different planning objectives. The Mayor should only be involved when scrutinising the viability information for schemes submitted under Route A.

Yours faithfully

James Stevens, MRTPI
Director for London and the Devolved Cites

[Redacted signature]

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28th February 2017

Email: [REDACTED]

Dear Sirs,

I am writing to you on behalf of Hollybrook to provide our representations on the recent Affordable Housing and Viability Supplementary Planning Guidance (SPG) November 2016.

While we are aware that the current housing crisis is a problem, we feel that the proposed policies will devalue developers and only serve to make the current housing crisis worse. The current Viability process causes problems and uncertainties for developers, and we would welcome greater clarity from the outset to avoid costly delays and wrangles at appeal.

Below is a number of recommendations that we believe will help benefit the current SPG. If you have any questions regarding Hollybrook's objections or would like to discuss other possible options, please do not hesitate to contact me.

Hollybrook Representations

1. Minimum Threshold of Affordable Housing

The Affordable Housing SPG is contradicted by the New Government Housing White Paper which says, "in keeping with our approach to deliver a range of affordable homes to buy, rather than a mandatory requirement for starter homes, we intend to amend the NPPF to introduce a clear policy expectation that housing sites deliver a minimum of 10% affordable home ownership units." The minimum level in the SPG should be in accordance with Housing White Paper (i.e. 10%).

2. Disclosure of Information

Viability information should not be made publicly available at any stage. This information is highly sensitive and confidential and can leave developers commercially exposed.

3. Use of Review Mechanisms

The principle of any affordable housing review provision, in the context of a self-contained and single phase development is contrary to PPG. The NPPF, in its emphasis on delivery, especially of housing, stresses the importance of the viability of development. For example, paragraph 173:

"...to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing...should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable".

Further detail is provided at paragraph 10-017-2014 0306 of PPG:

"Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances.

"However, where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in costs of delivery may be considered. Forecasts, based on relevant market data, should be agreed between the applicant and the local planning authority wherever possible".

The advice issued by the Royal Institute of Chartered Surveyors – that re-appraisals should only be considered in exceptional cases is thus consistent with policy and guidance.

There are precedent appeal decisions which establish review mechanisms are not suitable for single phased developments.

In a decision dated 31 March 2014, at Meadow Cottage, Iver, the Inspector concluded that a proposal for 39 flats with an estimated build time of 18-24 months should not qualify for a review clause. Paragraph 14 stated:

"There is furthermore nothing in national planning policy or guidance that supports this approach for a scheme of this size. Developers operate in a high-risk environment and an overage would introduce post-implementation uncertainty. It is also likely to hamper the competitive return referred to in the Framework and the PPG".

In a decision dated 29 May 2015 at Langley Road, Poole, the Inspector stated that a review clause would bring a significant element of uncertainty into the future value of the land and the returns it would provide, could well discourage investors and make funding for the scheme harder or more expensive to secure, and was thus unacceptable. The contrast was made with cases "...where a development is likely to be delivered in a number of discrete and separate phases over a relatively long time frame".

In a decision dated 6 October 2015 at Sutton Park Road, Seaford, the Inspector adopted the approach of the Meadow Cottage decision, and found that "the affordable housing obligation would not be fairly and reasonably related to the development in question or necessary to make it acceptable in planning terms".

In a decision dated 28 April 2016 at Wellington Street, London SE18, the Inspector, basing himself on PPG, referred to "clear guidance which seeks to avoid post-development re-appraisals...", and therefore could not "conclude that in this case a review mechanism for the development would be reasonable".

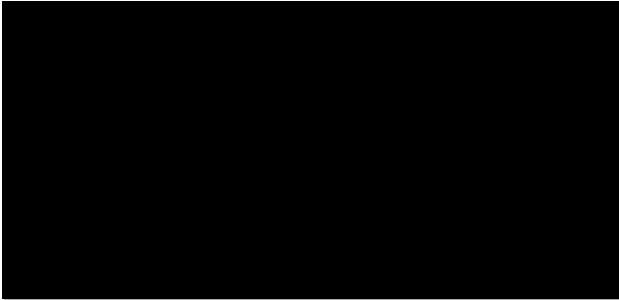
Finally, in a decision dated 7 June 2016 at Masons Hill, Bromley, the Inspector concluded that a review clause "...could introduce a significant element of uncertainty into the future value of the land and the returns it would provide. For these reasons, it would therefore count against the viability of the development". From the above examples, it is clear that Review Mechanisms should only be used in multi phased developments.

4. Review Mechanism Mechanics for Phased Developments

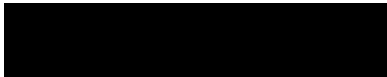
- A. The proposed surplus share of split 60/40 in favour of the LPA provides little incentive for Developers to pursue development and thus becomes a factor in housing coming forward. The proposed surplus share should be weighted in favour of the Developer to incentivise maximum return being sought.
- B. As we can see in the RICS Guidance on Financial Viability in Planning, Existing Use Value is contrary to RICS guidance which says *"Site Value should equate to the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan"*. Using the existing use value when undertaking a viability assessment is unrealistic and would not take into account the development potential of the site. Any reasonable landowner would sell their site for the market value and not at existing use value, therefore when a viability assessment is undertaken the market value of the site should be used. EUV is an unrealistic benchmark land value, therefore, Market Value should be used as per the RICS guidelines.
- C. The review mechanism *"Advance Stage Review Contribution"* on page 49 of the document, with both early and late stage review, are ill conceived and unfeasible in their current form. The review mechanism makes no allowance for a number of factors, which are out of the developer's control, that could delay the start of the development such as the discharge of the pre-start conditions, difficulty in obtaining funding should there be a downturn in the market etc. As with our earlier point, a review mechanism should only be in place for phased developments, but when used, the proposed review mechanism only accounts for GDV and build cost and fails to address other development costs such as finance, CIL etc. Therefore, the review mechanism should make allowances for deductions of all other costs associated with developments.
- D. The current form in which construction costs are calculated during review mechanism is not reflective of what is currently happening in the market. The BCIS does not fully recognise the bespoke nature and complexity of private development in London where values and logistics can significantly impact costs. Build costs should not be determined by BCIS but should be a bespoke cost analysis carried out for individual schemes. The BCIS does not include numerous other costs associated with the construction of a development. Therefore, the BCIS should never be used for calculations when carrying out the Review Mechanism in phased developments.
- E. A clear and concise resolution process should be put in place to deal with any disputes that arise from the review mechanism between the developer and the LPA, such as referral to RICS for determination.

F. While assessing developers profit there needs to be greater consideration and input from the banks in order to determine what percentage of cost, or GDV, will need to be obtained in order to secure funding for the development. A scheme that cannot reach a minimum level of profit will not be able to obtains borrowings from a lender.

G. Profit linked to IRR should be allowed at schemes from 500 units upwards as oppose to 1000 units.



Hollybrook Limited



Affordable Housing SPG,
FREEPOST LON15799,
GLA City Hall,
Post point 18,
The Queen's Walk,
London,
SE1 2AA.

WITHOUT PREJUDICE

23rd February 2017

Dear Sirs,

COMMENT ON THE DRAFT AFFORDABLE HOUSING & VIABILITY SUPPLEMENTARY PLANNING GUIDANCE (SPG).

Introduction:-

My views herein are on behalf of; James R Brown & Company Ltd and all past/present/future clients whether they are planning applicants or Boroughs.

We mainly act for planning applicants but occasionally act for Boroughs.

I have been appraising the viability of development projects for approaching 30 years and I am a qualified RICS Registered Valuer. I have also been directly employed by property development companies in the past.

Over the last 5 years (i.e. since the demise of Housing Association Grant), I estimate that I have produced viability reports for planning purposes on over 350 projects in London ranging from a two house scheme up to individual projects with Gross Development Values approaching £1bn (e.g. Whiteleys, W2).

Affordable housing provisions have been agreed at local level on about 98% of those projects following scrutiny of my reports by independent viability consultants. On average, the vast majority of those projects ended up with significantly less than 35% affordable housing but more than the 13% referred to in Section 1.2 of the SPG.

General Response to the SPG:-

- a) The current system of negotiating affordable housing provisions on a site specific basis often involves numerous debates/issues but it is the optimum reasonable system in so far as Section 106 ("S.106") is capable of delivering affordable housing.
- b) Whilst greater certainty in development would theoretically be welcome, any quasi fixed affordable housing percentage (especially a high one like 35%) will eliminate numerous potential sites which can only come forward viably with less than 35% affordable. Recent history tells us that this is indeed most sites (hence the recent 13% delivery quantum referred to within the SPG).
- c) Although, the SPG does not prevent viability representations being submitted for schemes with less than 35% affordable, the implication of extended review clauses (bearing in mind how these are panning out in terms of how Boroughs are requiring them to operate seemingly without full appreciation of the related funding implications or the delays review clauses tend to bring about with respect to structuring and policing them) is such that either path to agreeing affordable housing provisions presented by the SPG (i.e. Routes A or B via the Threshold Approach) are un-sustainable. I do not think either option will incentivise the market, quite the opposite.
- d) Whilst everybody would like to see more affordable homes and a greater percentage proportion of affordable homes, the S.106 model is not the answer. The S.106 model is not meant to be a tax but a means to address harm caused by development. The Mayor and Government need to look at other affordable housing delivery models (and/or be more flexible with respect to the time duration of affordable housing 'restrictions' on S.106 affordable housing and affordability issues) as the S.106 model is already delivering as much quantum/quality as it can.
- e) As we all know, property markets move in cycles and most market commentators were calling the top of the market in London (notwithstanding that there are variances between Central & Outer London etc) towards the end of 2015.
- f) Recent 'start on site' statistics (e.g. as reported by MOLIOR – Page 14 Quarterly Analysis: Sales – January 2017) indicate a sharp reduction in the number of starts between 2015 and 2016. Now is not an appropriate point in the market to introduce an SPG like this.
- g) I believe that, in summary, this is because short to medium term markets are particularly uncertain, particularly since the Brexit referendum.
- h) Whilst the SPG seeks to help create certainty, it is seeking an average quantum of affordable housing that, on average, is too high and the main certainty will unfortunately be that this will substantially diminish development implementation and progression.
- i) Whilst the GLA may witness some planning applicants offering 35%, the overall picture in terms of starts on site will be the key measure as to the success or calamity of this SPG.
- j) It is clear that 35% is too high because, even in a rising market over recent years, 35% has not been delivered despite vigorous independent viability scrutiny.
- k) Where has 35% come from? Is there any up to date evidence to support this percentage as being, on average, viable? The fact that only 13% (if correct – as this does sound low) affordable housing has been delivered recently (following scrutiny by independent consultants) and that starts on site are currently falling sharply clearly indicates that 35% affordable is not typically viable.

- l) Whilst it is obvious that the GLA want to diminish land costs/values down to try and forcibly assist viability, I fear this will simply stop many sites coming forward for development. Does the Mayor have any considered evidence with respect to quantifying this substantial risk?
- m) The SPG is not clear upon whether a review clause route will be required if the tenure split and/or affordability split of a 35% provision is not policy compliant. What is most important between; affordable housing quantum, the tenure type of affordable housing and/or the affordability of affordable housing? I would suggest that the latter is the most important but this does not facilitate the highest quantum of affordable housing.
- n) The SPG and rapidly emerging advice to Boroughs from their viability consultants (following this draft SPG) does not appear to appreciate how most private residential led development is funded. Most involves a significant amount of Bank finance. To secure this, certain loan to value ratios have to be identified as well as prospective profit/risk levels. Currently emerging review clause concepts are in serious danger of rendering many prospective development projects un-fundable.
- o) Overall, I think this SPG will unfortunately damage housing delivery at this time.

Using the numbering in the SPG from hereon to make specific points, we comment against these as follows:-

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(S.9) – a move to 35% when schemes that have actually been delivered are averaging 13% affordable is substantially more than a ‘nudge’. It is not reasonable to expect, on average, developer’s to move from delivering 13% to more than double. Has the Mayor prepared any hypothetically ‘typical’ residual appraisals across the Boroughs to see what Residual Land Values (“RLVs”) are produced with 35% affordable housing along-side CIL payments etc and has the Mayor considered how these compare to ‘reasonable’ land values in the context of existing and competing land uses other than residential? If not, I would ask again - how is 35% justified and is there any up to date evidence to support this?

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(S.6) – the ‘debate’ about appropriate approaches to Benchmark Land Values (“BLV” – a.k.a. SVB) has been around for several years but remains critical. I believe that, if approached appropriately and reasonably, all of the current guidance (i.e. whether from the RICS, the GLA and/or other bodies) should lead to the same BLV number. In my experience, Boroughs and the GLA tend to shun the words ‘Market Value’ with respect to BLVs as they suspect this inevitably means high BLVs which lead to lower affordable housing provisions. However, this view of Market Value is unnecessary as the specific definition of Market Value in the RICS’s Guidance Note 94/2012 (Financial Viability in Planning) is well thought out by highly experienced professionals (who advise both private and public sector clients) and it is not the same as the definition of Market Value in the RICS ‘Red Book’. This means that, if approached correctly, the use of Market Value as defined within GN 94/2012 will not lead to SVBs which are purely based upon what similar sites may have recently sold for. Regard will had to whether or not such transactions appropriately accounted for planning policy.

Existing Use Value, Current Use Value and Alternative Use Values are a component of Market Value (as per RICS GN 94/2012). Whilst I understand the GLA’s concerns in how BLVs are arrived at, it is not realistic, reasonable or constructive to seek to cast aside Alternative Use Value as a key driver of BLVs and, furthermore, land transaction evidence needs to be considered (albeit with caution and with appropriate analysis) in deciding what ‘land-owner’s premium’ should be added to a CUV or EUV assessment.

A problem has developed amongst some viability consultants advising Boroughs whereupon they typically apply a ‘semi-fixed’ 20% land-owner’s premium (or less) for no discernible or evidential reason. The somewhat excessive but nonetheless valid example I tend to cite when querying this is what would happen if one had a garden shed on an acre of land in the middle of Mayfair. If the shed had an EUV /CUV of £1,000, it is clearly un-reasonable to suggest that the site would come forward for development for £1,200. General land transactions in the area would influence the minimum price at which a vendor would sell. The EUV or CUV plus land-owner’s premium approach has merit but not if a land-owner’s premium of 20% is considered to be ‘standard’ (which it should not be). Unless we are all going to be completely unrealistic, consideration must surely be given (albeit with caution and based upon appropriate/reasonable analysis) to:-

- Land transaction comparables.
- Whether the site is in a particularly low value use surrounded by high value uses and/or in a high value area.
- Whether the site is income producing or not.
- Whether there are any ‘push’ influences on a hypothetical vendor to sell.
- Any other valid/reasonable evidence or logic.

If one adds an appropriate land-owner's premium to a reasonable EUV or CUV, one effectively ends up with Market Value as defined by the RICS in their GN 94/2012. In this sense, the EUV/CUV plus land-owner's premium becomes a valuation 'method' with Market Value being the valuation 'basis'.

Whilst references are made amongst some viability consultants to typical land-owner's premiums ranging between 10-40% over EUV/CUV, it needs to be appreciated that, if expressed as a percentage, it might well be substantially above 40% (e.g. in the case of the garden shed in Mayfair example mentioned above).

On the ground, I have found some viability consultants, Boroughs and the GLA unfortunately seeking to unreasonably translate the EUV/CUV plus land-owner's premium approach and seemingly apply a cap of 20% on land-owner's premium. For example, I had one case where the site was about 8 acres and accommodated a football stadium and hotel. The Borough and their viability consultant were insistent that an appropriate BLV in that instance was £zero. Clearly, that was beyond unreasonable. To a lesser extreme, another project I have recently worked on involved a cleared site in E16. The Borough, their viability consultant and the GLA all recently claimed that a reasonable BLV is one which happens to equate to about £1.56m per acre. Unfortunately, even accounting for the fact that the Mayor wants to diminish land values to assist viability, vendors will simply not bring prospective development land forward at these levels. This is a major concern.

- 1.3 I do not believe the SPG's main aim to accelerate overall housing delivery will be achieved. An aim to secure more affordable housing in a more uncertain market cannot surely happen.
- 1.14 A number of Boroughs have used one or two viability consultants to produce viability reports to underpin and justify their Borough Wide affordable housing target. These were often produced some time ago and are out of date. In my experience, those same consultants have subsequently agreed that most of the individual projects that they have gone on to consider cannot deliver anywhere near 50% or even 35%. In conclusion, the evidence used to support the S.106 affordable housing policies adopted by most Boroughs are out of kilter with what has subsequently been agreed on average by the same consultants who have indicated that 35% or more is, on average, viable. There is a serious 'dis-connect' in this regard and this ideally needs to be considered by all stakeholders.
- 2.4 The Threshold Approach does not provide a realistic 'incentive' to developers. It effectively implies that developers can either go down Route B (and try and absorb a percentage of affordable housing which is too high) or face complication and delay via Route B (i.e. the viability 'and reviews' path).
- 2.6 Does this imply that The Mayor discourages the Threshold Approach for schemes under 10 units? Please can the Mayor clarify !

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RouteA Current GLA policy and sound advice from the RICS indicates that, for short term projects, review clauses are not appropriate and, for longer term phased projects, pre-implementation reviews are appropriate. There is no evidence or ultimately constructive sense to have 'near end of development' reviews on short term projects and no need for pre-implementation reviews if a viability exercise has just been gone through. This will seriously damage the ability to fund schemes as, in particular, loan security valuers will not be able to demonstrate adequate loan to value cover and risk cover.

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RouteB History tells us that 'delivered' schemes have only contained 13% affordable on average in what has been a rising market. This surely indicates that 35% in what is now a significantly uncertain market is un-sustainable.

- 2.14 As per my comments earlier, does the Mayor have any up to date evidence testing what 35% affordable typically does to land values across London and how these compare to existing use values and/or whatever might be deemed to be reasonable land values. I believe that this blanket approach will unfortunately damage land supply substantially.
- 2.15 Whilst the SPG indicates that Route B (i.e. 35% affordable) is not fixed, Route A is equally detrimental to development given the new/extended 'review' proposals.
- 2.29 Leaving LPA's to choose what affordable tenure (and presumably how affordable that tenure is) will be required on 40% of the affordable housing provision creates uncertainty and is likely to lead to additional viability issues due to that uncertainty and as most LPA's will probably choose the most affordable (and therefore least valuable) affordable housing tenures.
- 2.44 More affordable housing would be deliverable if it did not have to be perpetually affordable. Why shouldn't this be an option?
- 3.1-
- 3.6 Why does the Mayor effectively reject RICS guidance in favour of guidance on viability produced by the Boroughs? The RICS has members that act for private and public sector bodies and has been setting standards and providing advice on property development matters for decades?
- 3.14 Over the last 2 years, many RPs do not seem to have been interested in getting involved with S.106 affordable housing unless the site has consent. Understandably, they do not wish to waste their limited time resources on something that their organisation may never get an opportunity to own. Furthermore, as an increasing number of RPs are increasingly more focussed on doing private led residential development themselves, the requirement to involve them in financial matters pertaining to a planning application can present serious conflicts of interest. What does the Mayor advise in this regard?
- 3.33 The Mayor seems to be advising the market how they should assess necessary profit. However, in reality, applicants have to see profit targets based upon how Banks/shareholders etc measure profit and it is not reasonable for the GLA to tell the market how profit should be targeted. In reality, most developers and their funders target profit via profit on cost as a single percentage. They do not split profit between various elements within a scheme. Why is the Mayor trying to tell the market how they should target profit as this will surely lead to artificial viability assessments?
- 3.42 If thought through logically, EUV or CUV plus land-owner's premium should lead to the same BLV number as the definition of Market Value in the RICS's GN 94/2012.
- 3.46 In reality, AUV is a substantial influence on the price at which vendors are willing to sell land. Pushing this aside will damage land supply. Why does the Mayor think the EUV+ approach is usually the most appropriate approach for planning purposes? What evidence does the Mayor consider appropriate with respect to justifying the level of land-owner's premium?
- 3.48 An inappropriate interpretation of the RICS's definition of Market Value can lead to excessively high BLVs. Equally, and indeed more so in practice based upon my experience, viability consultants acting for LPAs can arrive at excessively low BLVs by mis-interpreting and/or not properly justifying (with evidence) EUVs/CUVs plus land-owner premiums. As such, it is unreasonable for the Mayor to not accept the RICS's recommended approach especially as the RICS is, collectively, the most knowledgeable non-political institution with respect to property development, valuation and viability matters in the UK.

- 3.49 It does not seem reasonable for the Mayor to direct that an AUV approach to BLVs should only be accepted if a planning consent for that alternative use exists. This surely has no regard to reality. Again, with respect to my 'garden shed on 1 acre of land in Mayfair' example referred to earlier, a vendor would not realistically sell that site for £1,200 if there is no planning permission for, say, an office block on the site. However, the scope to obtain a planning consent for office use might be realistic and would/should therefore be reflected in its value. Again, I believe the Mayor's proposed approach in this regard will seriously damage land supply.
- 3.50-
- 3.54 We have indicated our views on review clauses earlier herein. Compared to the GLA's previous policies on review clauses, no new evidence suggests that it is now appropriate to impose review clauses on single phase relatively short to medium term schemes. Indeed, current and foreseeable market uncertainty connected to Brexit (for example) mean that there is certainly no justification for this more than ever in the current market as it would be highly prejudicial to scheme fundability and deliverability.
- 4.1-
- 4.15 In simple terms, 'Build to Rent' and/or PRS schemes will typically be significantly less able to viably sustain an affordable housing provision as BtR and PRS are generally worth less than unrestricted C3 residential, especially if 'conditioned'. Is this fully accepted by the Mayor in principle?

Yours faithfully,



James Brown BSc (Hons) MRICS
RICS Registered Valuer
Director

Draft Affordable Housing and Viability Supplementary Planning Guidance 2016

A consultation submission to the Greater London Authority

27 February 2017

About Keepmoat Group

Keepmoat Group is a leading UK partnership homebuilder and construction company. The majority of the group's activity is in partnership with housing associations and local authorities to design, build, refurbish and regenerate places across Great Britain. The group employs over 3,500 people, with 9% of its workforce made up of trainees, apprentices and graduates.

Keepmoat Group's areas of expertise include:

- **New build homes:** Keepmoat is a top 10 homebuilder and built over 4,500 homes in 2016 for a full range of tenures: private rent, affordable rent, social rent, shared ownership and private sale. Its new homes for sale tend to be two, three and four bedroom homes for first and second time buyers. More than 70% of private sales in 2015/16 were to first time buyers, with 66% of sales supported by the Help to Buy programme. Locations tend to be benefiting from housing-led urban regeneration.
- **Community regeneration:** work includes full internal and external refurbishment and retro-fitting of large estates and tower blocks as well as converting high-rise offices. New build housing is delivered in both large and small scale mixed tenure developments to support local regeneration.
- **Retirement solutions:** Keepmoat's offer includes new build retirement communities, 'lifelong homes' and specialist housing, including Extra Care schemes.
- **Energy and fuel poverty:** Keepmoat delivers solutions for both social and private housing to address the challenges of fuel poverty, reducing carbon emissions and improving the health and wellbeing of occupants. Activity includes creating zero carbon and passivhaus new homes, retrofitting high-rise residential accommodation, insulation of all types of hard-to-treat properties as well as high efficiency and renewable heating solutions.

Summary response to the consultation

Keepmoat's response to this consultation is based upon its previous experience within the context of both developing new homes within London outright, and through working in partnership with the London Boroughs, and Registered Providers, to deliver new supply.

Keepmoat welcomes the publication for consultation of this draft SPG, and the statement of intent behind it. Namely, to meet the Mayor of London's objectives with regards to housing and planning within London to:

- Increase the amount of affordable housing delivered through the planning system
- Embed the requirement for affordable housing into land values
- Make the viability process more consistent and transparent by ensuring that development appraisals are robustly and consistently scrutinised

Keepmoat also welcomes the aims of the SPG to provide clarity and certainty to the planning process in London about affordable housing expectations, and the development viability process. Keepmoat also believes that the specific focus on Build to Rent within the SPG represents a significant, and positive, policy change to support this emerging key sector in helping to tackle the undersupply of new homes in the capital.

Keepmoat particularly supports the Mayor's statement of intent to see greater levels of investment in the provision of affordable housing in London, and the bringing forward of a greater proportion of public land to facilitate its delivery where appropriate.

This is especially relevant for Keepmoat, given that our business model is predicated upon developing a partnership approach with local authorities and RP's to deliver new homes across a range of tenures on public land.

In this context Keepmoat believes that greater consideration needs to be given as to the treatment of best value by local authorities in the disposal of land and assets, both within the General Fund and the HRA, to give greater freedom and flexibility when seeking to deliver a higher proportion of affordable housing by either RPs or private developers.

This is especially true within the London context; given that the largest holders of public land are the boroughs, especially as most still retain an HRA and significant housing land assets.

Such flexibility would greatly assist in the ability of the sector to deliver a greater of tenures, at higher discounts to market (both sale and rent) on public land.

On this we welcome the Government's announcement, in the recent Housing White Paper, to consult further on this, and are of the view that partnership projects could deliver more if local authorities are able to dispose of land to their partners at less than best consideration, which would have a significant impact upon the viable delivery of a greater proportion of affordable homes on any given site.

However, we would also urge the Mayor to issue greater clarity around the testing of viability appraisals in the context of an LPA also being the applicant through a joint venture development. Or how the appeal process would work should an applicant and LPA fail to reach agreement.

Background and Approach

Whilst the introduction of the 35% threshold represents a significant increase from the level that has been provided to date, as is to be welcomed in order to increase the delivery of affordable housing, Keepmoat is of the view that this can only be achieved by adopting a flexible approach on a site by site basis.

This is especially true in the context of Route B and the additional constraints this places upon developers seeking to achieve this target. These pressures include complex tenure splits, comprehensive reviews and other planning constraints which may be placed upon the applicant. In order to maximise the prospects of achieving the 35% figure these should be limited where possible.

The Threshold Approach

Given the great disparity between the boroughs Keepmoat believes that the 35% threshold will be more difficult to achieve in some areas than others. As such, the SPG should give more recognition that being able to meet the 35% target will greatly depend upon local market conditions, land values, local infrastructure requirements, and the individual borough's specific tenure requirements.

However, we do particularly welcome and support the clarity provided in the context of estates regeneration where the direction given via Route A is clear.

Route A response in detail

- The near end review proposals may change the envisaged risk profile of a scheme, potentially reducing the certainty of returns and impacting upon the ability to raise development finance. Keepmoat would question whether this review is required, given the ambition to attract a broader range of players into the market.
- We believe that the SPG needs to provide greater clarity about the acceptability of building affordable housing off-site where that would result in more homes being built.
- The cap for the review mechanism should be agreed at the planning application stage.
- With regards to development uplift a 50/50 split is the most equitable and strikes an appropriate balance which reflects the development risk an applicant faces.
- Land release may not be incentivised if only build costs and GDV are considered in the review process.

Route B response in detail

- Whilst Keepmoat welcomes the intent of the 35% we have concerns that this may not be achieved due to the imposition of other onerous obligations. In order to mitigate this we believe that the Mayor and Boroughs should work to minimise the demands of all other relevant policy requirement and obligation to facilitate this.

- The SPG needs to be flexible in its application and as such, we believe that the Mayor should engage with the Boroughs to ensure that this is the case.
- With regards to the 40% borough proportion, Keepmoat has concerns that the overall tenure mix set by the boroughs may render development unviable unless there is clear direction given by the Mayor and GLA.
- The requirement to agree benchmark land values should only be required when a review is triggered. Otherwise the requirement to undertake this for route B schemes may result in significant delay due to the difficulty in reaching agreement.

On the wider themes relating to the release of public land and treatment of Registered Providers, we would make the following points:

- Whilst early discussions with RPs are to be welcomed, it is not always feasible to secure a commitment and agree pricing until the planning process has been de-risked.
- Keepmoat strongly support the proposals within the SPG that increased densities could be explored on a case by case basis to make the delivery of affordable homes more viable.

Viability Assessments

Keepmoat broadly supports the move towards greater transparency and openness in the viability process, but only if it succeeds to delivering more affordable homes without prejudicing the commercial position of applicants. The aim of seeking to streamline the process is also to be welcomed, though both the Mayor and the boroughs need to ensure that adequate resources are provided to order to achieve this aim.

In terms of other specific comments Keepmoat would raise the following:

- On development values we would question the need for predicted growth assumptions to be included, especially when the review process will seek to capture any future growth/value uplift.
- Greater flexibility is required when considering build costs as BCIS, as advocated by the SPG, does not provide data which is wholly reliable in the context of the central/inner London market.
- Not all abnormal costs are known by applicants prior to purchasing a site and on issues relating to contamination etc may be far higher than first envisaged. Greater flexibility is therefore required to reflect the fact that some detailed investigation may only be possible post site purchase and after existing structures have been removed.
- There should be an allowance included within the appraisal for mid-point inflationary costs to be considered, as opposed to being solely based on current day costs.
- Given the current environment we would expect that risk levels for any scheme to be reflected in the profit sought by the developer.

- The EUV plus approach proposed does not incentivise the release of land for residential development, especially given the premium the GLA propose to allow at 20-30%.
- There is a need within the SPG for greater flexibility with regard to the consideration of alternative approaches to benchmark land value. Otherwise there is little incentive for developers to release sites for residential use with the proposed EUV+ approach.
- The review mechanism should have the ability to reflect both upward and downward changes to the market and respond accordingly.

Build to Rent

The Build to Rent sector has an important role in seeking to deliver additional supply within London and we are pleased to see the Mayor, through this SPG, produce specific guidance to support Build to Rent developments and the Mayor's commitment to the sector in general. Keepmoat believes that Build to Rent is a key component in meeting the demand for more high quality accommodation for private rent.

In Keepmoat's view newly built homes in the private rented sector, supported by institutional investment, will relieve pressure on the market and improve the range of affordable housing options. We support the ambition to encourage more institutional investment within the sector contained within the SPG and through other emerging London and national policies.

We particularly welcome the new guidance to provide greater certainty around requirements relating to covenant and clawback arrangements for any units sold, at a future point, out of the BTR sector.

In addition to this, we also acknowledge the clarity which could be provided within the context of the planning system through the Mayor's proposed Build to Rent 'pathway' which seeks to define a series of key principles around; definition, affordable housing tenure, design, viability and management standards.

We also support the exclusion of BTR from the SPG's threshold approach. This will help the sector to grow and provide further confidence to build to rent developers and investors.

Keepmoat also agree that the provision of Discount Market Rent (DMR) is better suited to BTR developments because it can more easily be tenure blind and pepper potted throughout developments.

Whilst we welcome the intent to provide greater clarity over dwelling mix, we would caution that the expected mix on many BTR developments may not meet local authority requirements, which will include a desire for more 3 bed and family homes.

Ben Denton
Group Strategy & Business Development Director
Keepmoat Group

Paul Robinson

From: Luck, Ralph [REDACTED]
Sent: 27 February 2017 16:09
To: Housing SPG 2016
Subject: Homes for Londoners

Dear Sadiq Khan,

I am writing in respect of your Homes for Londoners Consultation which, although it does not directly address the issue of homes and affordable homes for Students, could so easily do so if it was accepted that Build for Rent Schemes included those for student housing. In many ways student housing for rent was the forerunner of the now accepted PRS schemes. Taking the basis of your suggested definition in the document all that would need changing would be for 'all units to be self contained' to be amended to include ensuite student accommodation where communal cooking facilities are provided for clusters of otherwise self contained units, as tends to be the norm and favoured by students. Otherwise all units would have to be studios which are more expensive for students and not generally favoured by the majority of students. All other aspects of the definition can be met including the granting of longer tenancies or licences, (universities are not legally able to grant ASTs), as certainly in the case of King's we seek to move towards granting occupation rights for longer than just the first year of study and move towards the length of the student's course.

The advantages of proceeding in the way I have suggested is that we would then be able to provide a percentage of the student homes at discounted rents to make them more affordable for poorer students. Although it would be highly unlikely that any student homes would be sold out of the Build to Rent covenant period, clawback could be included in any Section 106 accompanying a planning permission on the basis of Option 2 in the consultation document.

Ralph Luck OBE FRICS
Director of Real Estate
King's College London
James Clerk Maxwell Building
57 Waterloo Road, LONDON SE1 8WA



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Our ref

Affordable Housing SPG
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GLA City Hall, Post Point 18
The Queen's Walk
London SE1 2AA
BY EMAIL



28 February 2017

Dear Sir / Madam

Homes for Londoners – Draft Affordable Housing and Viability SPG 2016

Land Securities is a FTSE 100 company and the largest Real Estate Investment Trust (REIT) in the UK on the basis of equity market capitalisation with a commercial property portfolio worth £14.5 billion. We have an established track record as one of the foremost property developers in the UK and a significant number of our development and investment properties are located within London. Although we are known predominantly as a commercial developer, we have delivered significant numbers of homes in London and will continue to be involved with residential development and regeneration of sites of strategic importance through the next property cycle. We therefore welcome the opportunity to comment on the Draft Affordable Housing and Viability Supplementary Planning Guidance.

We have reviewed and would endorse the content of the London First and the WPA/CPA Representation. Like London First we welcome efforts to streamline the planning viability process and welcome the recognition of the part Build to Rent has to play in alleviating the Housing crisis. We are however particularly concerned with the following aspects of the SPG; Disclosure of Sensitive Commercial information, Existing Use Value and Review Mechanisms. We also think that the policy should be more ambitious in promoting offsite and cross borough delivery of Affordable Housing and the use of Affordable Housing credits to help boost the supply of Affordable Housing units.

Disclosure of commercially sensitive information – we agree that the public needs to be assured that viability and Affordable Housing contributions are established through a robust process that stands up to scrutiny. We are however very concerned that disclosure of commercially sensitive information will prove counterproductive and jeopardise ours and the wider industry's ability to develop. There are many commercially sensitive costs held within a development appraisal at the time of planning that should not be disclosed. Making information such as build costs or budgets allocated for third party negotiations publicly available would undermine a developer's ability to make projects viable (i.e. third parties would seek to secure settlements in excess of the budgets allocated in the appraisal, thereby jeopardising the delivery of the scheme.) This could distort the market and reduce the amount of affordable homes that are delivered in London. We believe the current arrangements, where appraisals and cost plans are submitted to an LPA's trusted independent specialists to be reviewed, should continue. This existing process could be supplemented with executive summaries of the viability review for the public record.

(cont / 2)

Review Mechanisms – Certainty is a key ingredient for investment and is something the property industry has long called for. We are therefore concerned that the review mechanisms set out in the draft SPG would add another tier of uncertainty to the development process and imbalance the risk/reward assessment by limiting the upside performance, but maintaining the same downside risk. Review mechanisms can play a role in large complex multi-phase schemes which may be developed over several economic cycles - in these cases affordable housing provision for far off phases can be hard to establish at the time of planning so reviews may be warranted. However, we are concerned that the SPG would lead to a proliferation of reviews and we do not believe this would be in the public interest of boosting overall housing supply.

The uncertainty caused by review mechanisms could ultimately lead to investment in housing supply going elsewhere, either geographically or to different asset classes. Getting projects on site is an incredibly complex process. Work-streams such as the detailed design process, securing funding, agreeing letting terms on any commercial elements of mixed use schemes, could all be undermined by review mechanisms. A near end of development review is also impractical as costs are not known when 75% of units are sold or at 3 months before PC (e.g a final account with a contractor can take a year or more to resolve).

Notwithstanding our objection to the review mechanisms, we would emphasise the detailed points raised by London First in terms of the mechanics of the reviews. In particular, the profit splits are inequitable and will dis-incentivise developers, real costs need to be allowable in calculating profit rather than being limited to build costs, returns should fairly represent risk and if imposed, reviews should be both capable of moving affordable provision both upward and downward.

Existing Use Value (EUV): Land Securities notes the Mayor's preferred approach for Existing Use Value (EUV) plus a premium to determine the benchmark land value. Whilst EUV is an understood term in the form of its underlying accounting principles, an appropriate premium can only be calculated, or derived from the perspective of transacted bids in the market. The premium should reflect the NPPF definition of a competitive return to a willing landowner, which is then expanded upon in Planning Practice Guidance and is not based upon a fixed percentage. This is also set out in the RICS Guidance Note which is professional led sector guidance. A market approach in accordance with PPG is justified by reference to comparable information on transactions, which are not significantly above the market norm, and where it can be shown that policy requirements have been taken into account. This approach is the most a suitable way of assessing benchmark land value. This would then also be consistent with paragraph 014 of viability planning practice guidance (PPG).

Offsite and cross Borough Affordable Housing provision: Whilst Land Securities accepts that existing policy states a preference for onsite Affordable Housing provision, in practice this is very restrictive and does not enable the delivery of additional housing, particularly in central Boroughs and tightly constrained urban areas. We support the GLA's aspiration to increase the overall supply of housing and affordable homes, and therefore we strongly encourage the GLA to be far more flexible about offsite provision and its location where it can be demonstrated that mixed and balanced communities can be maintained. The GLA should use its London wide oversight to permit the delivery of Affordable Housing offsite and across different Boroughs, especially where this will result in the delivery of more homes.

Affordable Housing credits: we believe that the SPG is currently missing a significant opportunity to further boost the delivery of Affordable Housing by not recognising and promoting the role of Affordable

(cont / 3)

Housing Credits – where new affordable housing is built early and then used against a planning requirement generated by a different scheme. Land Securities did this very successfully in Westminster with a scheme called Wilton Plaza (WP). WP delivered 74 affordable housing units, 68 of which were granted the status of an “affordable housing credit” to be used by a subsequent scheme that generated an affordable housing requirement. The London Plan supports the use of credits, with Policy 4.3B(b) specifically recognising the contribution that land use swaps and credits can make, particularly in the context of supporting important clusters of commercial activity. We think it would therefore be a very positive addition for the draft SPG to also promote, rather than discourage, such Affordable Housing Credit schemes as it would help enable the early delivery of Affordable Housing in London.

Affordable Housing & Discount Market Rent: We welcome the Mayor’s recognition of the importance of Build to Rent homes (BTR) and that Discount Market Rent (DMR) homes are an acceptable form of affordable housing tenure. However as reference to DMR homes appears only in Part 4, which deals solely with BTR, we believe it would be helpful for the SPG to confirm that DMR would also be an acceptable affordable housing tenure in all schemes including those providing new homes for sale, BTR and a combination of both. This will further assist the planning system in increasing the supply of affordable homes.

There are many other issues raised by the draft SPG such as appraisal guidelines, developer profit, abnormal costs, approach to grant and the preferred tenure split where we feel that the SPG, although well intentioned, does not appreciate the complexity and sheer difficulty of delivering developments in London.

We would urge the Mayor to take advantage of the wealth of experience that sits behind the London First response by way of the input of its members. As one of those members, we would be happy to meet with those tasked with bringing forward the SPG to further explain or expand on our concerns.

Yours sincerely,

James Rowbotham
Development Director
London Portfolio

[Redacted signature block]

GLA DRAFT AFFORDABLE HOUSING AND VIABILITY SPG 2016

SUBMISSION FROM LENDLEASE

1. Introductory statement

- 1.1. We welcome this opportunity to set out comments on the draft Affordable Housing and Viability Supplementary Planning Guidance 2016 ('draft SPG') document. Lendlease would like to emphasise our continued support for the Mayor's focus on boosting the overall supply of high quality homes for London.
- 1.2. Lendlease is committed to the delivery of new homes in London across multiple different tenures and products. We pride ourselves on our ability to develop the best places and spaces with inclusive, tenure-blind housing to accommodate all Londoners. Our schemes at Elephant and Castle (Elephant Park), the International Quarter in Stratford demonstrate this vision and we look forward to continuing to demonstrate this through The Timber Yard, Deptford and future regeneration projects across London.
- 1.3. We fully support efforts to make London's planning system clearer, faster and more compatible with the drive toward policy outcomes. We see the potential for the right balance and consistency between Mayoral and London Borough policies to promote both acceleration and momentum in housing delivery, which would benefit all stakeholders.
- 1.4. In this context, we consider that two policy areas – **Viability and Build to Rent** – are critical to increasing the volume of delivery of new homes in London.
- 1.5. There are four important considerations we would like to highlight for any **Viability** assessment;
 - Consideration of the full context and wider benefits delivered (2.1 – 2.3)
 - Threshold flexibility and incentivisation (2.4 – 2.6)
 - Commercially sensitive information distribution (2.7)
 - Timing of value and cost determination (2.8 – 2.9)
- 1.6. With regards to **Build to Rent**, we see three clear challenges to an effective approach to the adoption of this emerging asset class;
 - Defining 'market' to set discount market rent (3.1 – 3.4)
 - Covenant, tenancy and clawback flexibility appropriate to context (3.5 – 3.7)
 - Establishing clear Design and management standards (3.8 – 3.9)

2. Viability (Part 2)

Consistency of approach with consideration of the full context and wider benefits delivered

- 2.1. We are keen to promote a view of viability in line with Policy 3.12 of the Adopted London Plan (2016). Considering wider criteria such as infrastructure improvement, public space enhancement, community facilities and the ability to provide momentum of delivery through

cyclical economic conditions would encourage developments that promote mixed, balanced communities whilst satisfying local needs and objectives.

- 2.2. There are a range of factors which are not necessarily able to be addressed on a Borough-wide basis, such as site-specific housing need, subsidies, site context, and consistency with other local objectives, for example, if the site were located within an Opportunity Area. We contend that a viability assessment approach that considers these points in a flexible but transparent manner would allow a greater number of development sites to progress.
- 2.3. In cases where the over-provision of affordable housing could be beneficial to unlock future development sites, ideally this would also be taken into consideration in subsequent, connected viability calculations. Each planning application for a major, phased delivery project would then be considered in the full context of its prior and future agreed phases.

Threshold flexibility and incentivisation

- 2.4. The principle of a threshold approach to viability to enable speed of delivery and the desire to create consistency and certainty across London are welcomed. However, this threshold approach could provide a better incentive for developers to intensify existing planning consents and sufficient flexibility to address wider considerations of Policy 3.12, such as tenure mix with reasonable amendments to the current drafting.
- 2.5. To promote a flexible approach, we would suggest that Route B (page 16 of the SPG) be amended to allow schemes to go through this route where agreed with the Local Authority and the GLA. For example, a reduction to the percentage Affordable Housing requirement or other terms if the scheme delivers other community facilities that better serve local objectives and context. Conversely, flexibility could be included that incentivises developers to commit to the over delivery of on-site affordable housing at the application stage by creating a route that avoids the review requirement over a defined, higher affordability threshold.
- 2.6. In terms of affordability, we would be concerned that the proposed income cap of £60,000 (a reduction from the current £90,000) for intermediate products, would exclude half a million of London's households (who fall within the £60-90k income group), the majority of which are in need of Intermediate Affordable Housing due to mortgage lending being limited to 4.5x household income. This reduced cap will have a negative impact on viability of a number of development schemes and consequently the overall quantum of affordable housing that can be delivered.

Commercially sensitive information distribution

- 2.7. We agree that the principles of openness and transparency should be critical to viability considerations. However detailed levels of information are particularly sensitive to wider distribution.

This is evident in three respects;

- i. publishing detailed development, commercial and financial models or assumptions can disrupt fair competition and tendering;
- ii. there is the potential to prejudice both Authority and Developer positions in respect of rights of light, compensation, land acquisition etc.
- iii. there is a level of complexity that would not be accurately appreciated by a wider audience and, based on our experience, this could be open to misinterpretation and misrepresentation.

Timing of value and cost determination

- 2.8. Affordable housing valuation; it is not always feasible to agree detailed terms with a Registered Provider at the planning stage due to the need for a fixed detailed design. If values assumed in the viability assessment are then enshrined in the S106 (para 3.17) this could be subject to inaccuracy or values inflated by risk considerations. The SPG should also note that some Intermediate Tenures can be delivered direct by the developer or by another organisation other than a Registered Provider.
- 2.9. Unless sparingly used as a guide, a reliance on the BCIS database as a benchmark tool for build costs can be problematic. BCIS rates lag behind the market due to the reporting time periods and do not take account of site specific circumstances. The rates also exclude allowances for external works, contingencies, fees and non-recoverable VAT. A site specific elemental cost benchmarking exercise undertaken by an appropriate team and verified by suitably qualified, independent Quantity Surveyor is, in our experience a much more reliable method of improving cost certainty.

3. Build to Rent (Part 4)

Defining 'market' to set discount market rent

- 3.1. We agree that it is not appropriate to set a specific threshold approach for the level of affordable housing provided within Built to Rent schemes and, therefore, we accept that each scheme should be assessed under Route A (page 15 of the draft SPG) in terms of its own viability. As a note for consideration, it is rarely possible to simply 'flip' units to affordable accommodation in a development that is underway without incurring cost and time associated with redesign / change of procurement strategy. On review, if a greater contribution to affordable housing is necessitated, then this could be resolved by way of commuted sum.
- 3.2. The recognition in paragraph 4.7(2) of the draft SPG that encouragement will be given to affordable homes for Build to Rent developments being delivered as discounted market rent properties is wholly supported. In our experience, the challenging element is a congruous methodology to defining the 'market' with which to apply a discount factor. If this could be defined in a comprehensive (i.e., taking in all development context factors, target residents, eligibility and immediate local rents achievable) and consistent approach across London it would be highly beneficial.
- 3.3. Whilst we support the benefit of city-wide consistency and mandate associated with setting discounted market rent a London Living Rent levels, analysis conducted by Lichfield suggests this may not always be appropriate. We suggest this could be promoted as more of a benchmark, to be considered alongside detailed regard for site location, viability, eligibility and affordability to avoid an imbalanced delivery of Build to Rent across London.
- 3.4. Rents for future tenancies can be considered in different tiers in discounted market rent levels. We would envisage confirming rent rises within tenancies based on an 'agreed formulae' and with wording similar to standard rent review clauses. This could refer to CPI, investor interest could be limited if this were too prescriptively applied.

Allowing flexibility to set covenants, tenancies and clawback appropriate to development context

- 3.5. The proposal for 15 years to be set as a benchmark covenant period is reasonable. We suggest some scope for flexibility, as this could be subject to circumstances regarding viability, wider objectives set by the local authority and the structure of the Build to Rent investment or funding solution.
- 3.6. We support the drive to encourage longer tenancies than those that are standard in the wider private rented sector – it is also recognised that as a general principle, Build to Rent operators are incentivised to work towards longer rental periods for income certainty. We believe that it is important that this is to remain as an optional provision, a prescriptive approach may generate unintended delays or complications.
- 3.7. Most London Boroughs currently use Option One for clawback (4.13 and 4.14). However, the methodology of Option Two (4.15) is an equally appropriate alternative. We would suggest that a developer could be given the choice in negotiating which option to use for calculating clawback, based on the specifics of the Build to Rent project in question. We would seek to:
- i. Allow for flexibility to consider the details of the agreed covenant and whether or there is an established intention to sell the asset;
 - ii. Ensure the unique characteristics of Build to Rent developments which make direct comparison to “build for sale” products problematic are not neglected. For example, communal facilities and service provision offered by Build to Rent;
 - iii. Clarify how to negotiate the complexity inherent in comparting tenures and units let at discounted market rent on sale and any significant infrastructure costs required.

Establishing clear design and management standards

- 3.8. As there is scope to provide a bespoke product designed specifically for the purpose-built rental market, we support the scope to accept flexibility in design standards/. We suggest more clarity is provided on whether flexibility would only relate to certain standards, or to all standards. For example, clear Mayoral guidance is sought on whether a significant number of units off a single core would be acceptable, or whether certain units could not have balconies. In a scenario when more communal amenity space is incorporated into a development, it is important to understand whether there is scope to reduce size or relax parking requirements.
- 3.9. Whilst we support the concept of management standards and we would apply our own standards to our schemes, we advocate a less prescriptive approach than setting such standards in the definition of Build to Rent (4.36). Perhaps, in a similar manner to the promotion of Sustainability through BREEAM / LEED, a voluntary and independent certification body could provide a kitemark approach to incentivising best practice management across the growing Build to Rent market.

4. Conclusion

- 4.1. We would like to thank you for the opportunity to provide comments and hope that the is submission is useful to those reviewing the draft SPG.
- 4.2. Alongside the guidance already set out in the SPG, if it were possible to address the points that we have made across Viability and Build to Rent, regarding flexibility, consistency,



incentivisation and clear standards, we believe there would be the significant capacity to drive momentum in housing delivery in a way that benefits all parties.

- 4.3. Lendlease would be happy to discuss the points raised in this response further. If the committee would benefit from further consultation on any of the points made in this document, we can arrange a suitable forum to discuss in more detail.

If you have any questions please do not hesitate to contact:

Seema Kotecha

Head of Corporate Affairs, Europe

20 Triton Street, Regent's Place, London, NW1 3BF

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Homes for Londoners: Draft Affordable Housing and Viability SPG 2016

Levitt Bernstein's submission to open consultation

26 February 2016

Introduction

Levitt Bernstein was founded 50 years ago with the primary purpose of creating better homes for all – a principle that is as fundamental to our work now as it was then.

We specialise in the design of new homes and continue to work on projects of all shapes and sizes across the country, from large estate regenerations to small new build developments. The quality of our work has been recognised with numerous design awards and accolades.

As well as designing new homes, we set standards and shape opinion within the sector. We regularly contribute to books, papers, guidelines and reports and have undertaken significant commissions for the HCA and DCLG, as well as produce design guides for local authorities and registered providers.

This knowledge and experience of the housing sector makes us well placed to comment on the draft SPG, and we are pleased to offer some initial thoughts below.

General comments

We welcome this publication and applaud the important steps it takes towards retaining, or perhaps reinstating, London's status as a city for everyone. We particularly welcome the new threshold approach to viability, based on a fixed minimum percentage of affordable housing, and a more open, transparent and consistent approach to the appraisal process itself.

Viability appraisals have become opaque and unfair and Levitt Bernstein has campaigned vigorously for a higher proportion of affordable rent to be achieved in practice, not just in policy. We believe that 35% is a sensible and realistic starting point (without subsidy) and it is encouraging that, in broad terms, this proposal in the SPG seems to have been well received by all sectors. 50% is also a worthy long-term aim; particularly in light of the worryingly low numbers of affordable rented housing that have been delivered over the last few years. It is also refreshing to see a carrot (rather than a stick) approach.

We support the intention to provide significant levels of grant funding to approved providers who offer 40% affordable housing or more. Competition for land is such that, without grant (or local policies that demand more), we are unlikely to see levels above 35% except from local authorities themselves. We urge the Mayor to treat the disposal of public land as the last resort, and for local authorities to retain at least a stake in the land, by forming public/private consortia where they are not in a position to manage new development alone. We would like to see 50% affordable housing become the minimum requirement (without subsidy) on land owned by 'us', the public.

As we all know, most affordable housing in London is unaffordable to most Londoners (including discounted market rent) so we particularly welcome the introduction of the London Living Rent. However, demand is likely to exceed supply by some way, and we are interested to know how prospective tenants will be expected to apply, and how these homes will be allocated.

We agree that London needs more purpose built homes for private rent but are uneasy about very large scale, mono-tenure, institutional developments. They may not be compatible with the ethos of fine-grain, mixed tenure communities and often result in very large blocks with double-banked corridors and single aspect flats. One of the early principles of the London Housing Design Guide, and the justification behind many of its standards, was the premise that all homes should be suitable for occupation under any tenure.

This is a sound principle, particularly as the housing we build today should last at least 100 years and new tenures are emerging all the time. The future is likely to be just as uncertain as the past and we have seen many examples of buildings that have become problematic or obsolete, within a few decade.

We are concerned about the long-term sustainability of some Build to Rent developments (BTR) and their suitability to be occupied by families under affordable rent, for example. They are often not designed with children in mind and that could reduce flexibility in the future, particularly if space or other standards are reduced - as has been suggested. We would caution against these approaches for that reason.

However we welcome attempts to ensure that BTR developments are well managed and support the proposal to require three-year tenancies to be available. It would be useful to understand what powers the GLA holds in respect of this.

We offer more detailed views on specific issues with reference to particular paragraphs:

PART 2 THRESHOLD APPROACH TO VIABILITY

Tenure

Para 2.33 - The maximum household earnings limit of £60,000, for eligibility to the London Living Rent is relatively high even as a joint income, and £90,000 for shared ownership very high. What happens if salary increases above these amounts over the course of the tenancy, and is there protection against sub-letting?

Para 2.41 - We suggest that it would be better to base mix (and rents) on the number of bedspaces, not the number of bedrooms (see also response to para 2.54).

Para 2.42 - We welcome the exclusion of 'non-self-contained accommodation', from the definition of affordable rent.

Starter Homes

Para 2.46 - As the government has now published the Housing White Paper, clarity around GLA policy on providing Starter Homes would be useful.

Schemes not suitable for Route B of the Threshold Approach

Para 2.47 - It would be helpful to give examples of schemes which are not suitable for on-site provision – is this mainly the luxury market?

Para 2.54 - When replacing affordable housing, could we suggest this is based on providing equivalent bedspaces, rather than floor area, in the mix preferred by the local authority? This would then align with the way in which we believe the percentage split of affordable housing would best be achieved.

PART 3 GUIDANCE ON VIABILITY ASSESSMENTS

Contingent Obligations and Review Mechanisms

Para 3.53 – We support the principle of review mechanisms to ensure that Section 106 contributions remain fair and proportionate over the course of a project, and agree that the base level of affordable housing agreed as part of the planning permission should remain the minimum contribution.

Para 3.56 – We support the suggestion that local authorities should consider requiring a fixed percentage of affordable housing and the mix of tenures as part of an OA Framework. Developers value certainty.

PART 4 BUILD TO RENT

Why the Mayor Supports Build to Rent

Para 4.6 – While Build to Rent (BTR) undoubtedly yields significantly less revenue in the short term, compared with for sale products, the long-term revenue will almost certainly be higher. We wonder whether it would be better to consider offering long-term, low interest loans, rather than what may prove over time, to be short-sighted, cost-cutting concessions.

Para 4.9 – Given that new buildings should be expected to last at least 100 years, a 15-year covenant seems too short. Can the GLA take effective steps to prevent sub-letting? Can it require evidence of the number of people living in each apartment at a given time?

Para 4.27 – We understand and support this in principle but it may reduce long-term flexibility.

Para 4.28 – We have always believed that the suggestion that internal space can be compromised in return for ‘exceptional or innovative design’ is misguided. Exceptional design should always be applauded (and largely expected) but it is subjective and often relates to the external design – little practical help when it comes to day-to-day life. In any event, the space standard is predicated on good design and, in many PRS flats the ‘innovation’ amounts to nothing more than a good quality, small kitchen, and not providing a hall.

Fully open plan living works for some, but is less likely to suit fully occupying families where the clash of simultaneous activities in a single space can give rise to tensions. When bedroom doors open directly off an open plan living room, privacy can be compromised, it can be hard to get children to sleep and the noise of the TV, dishwasher or washing machine can be a problem. The increased potential for noise to leak into the corridor and disturb neighbours (without the buffering effect of a hall and secondary doors) is also a concern. Inadequate soundproofing is already a significant cause of complaint about new homes. We suggest that it would be more innovative to design flexible, future-proof layouts that can work in different ways to suit different types of households and preferences.

The prevalence of single aspect flats in BTR blocks is also concerning. The ‘presumption in favour of dual aspect’ was one of the most welcome elements of the London Housing Design Guide, and now the Housing SPG 2016. It not only discourages the use of long, institutional, double-banked corridors, but also reduces the likelihood of overheating; an increasing problem, particularly in high density apartment blocks, yet is being waived in BTR.

The following italicised text is an extract of our response to a City for All Londoners and is relevant to BTR:

Build to Rent

The new draft SPG actively encourages purpose built private rent while recognising that it can be inherently less viable than development for outright sale. As well as offering a bespoke viability ‘pathway’, there is a suggestion that some housing standards may be relaxed for larger PRS developments.

Depending on which standards they might be, we would caution against that approach because the pressures on shared adults can be even more acute than those on families. It is important to protect standards such as space and soundproofing but pragmatic to review requirements for wheelchair housing for all privately rented housing (see Accessibility item below).

Large PRS schemes are usually aimed at young professionals. Very large schemes risk compromising the principle of mixed communities, particularly as the SPG also suggests that the affordable housing contribution could be provided as shared ownership, rather than affordable or social rent. This potentially means that meeting the housing needs of older people, families and the poorest households will fall disproportionately to other developments in the same area. We are also concerned that shared housing (typically in privately rent) tends to be classed as C3, rather than C4; giving the impression that it is family housing, whereas the majority (by any sensible definition) are HMOs.

Accessibility

The requirement for 100% step-free access is laudable but not always achievable. We would like to see this recognised in the wording of the next Plan policy. Similarly, 10% Category 3 housing is still widely felt to be an overprovision; particularly in the larger purpose-built PRS blocks which are aimed at young professionals.

As well as the fact that the level of need for this demographic is likely to be significantly below the national average; homes designed for private rent can only be designed to wheelchair adaptable standards, not the wheelchair accessible standard that most fulltime wheelchair users are likely to need. Landlords are very unlikely to agree to make the necessary modifications to make them fully accessible because the tenant may move on, and the adapted flat may be difficult to let.

We would also like the GLA to take steps to ensure that accessible homes are available to, and affordable for, those who need it. The Accessible Housing Register should be updated to refer to Category 2 and Category 3 homes, and a standard template used across London for consistency.

Boroughs should be required to keep their local registers up to date, and to retain the adaptable and the accessible versions of Category 3 floor plans in Title Deeds in perpetuity. It should also be a requirement to include the accessibility category and size of a home in marketing literature. These measures would help initial and subsequent purchasers to find a home that meets their current and future needs, and understand how it could be adapted.

Julia Park for Levitt Bernstein, 26 February 2017



GLA Draft Affordable Housing and Viability Supplementary Planning Guidance

CONSULTATION RESPONSE

Response From: London First, Middlesex House, 34-42 Cleveland Street, W1T 4JE

Date Submitted: 28 February 2017

About London First

London First has the mission to make London the best city in the world in which to do business. We work with the support of the capital's major businesses in key sectors such as housing, retail, finance, professional services, property, ICT and education.

Summary position

The lack of affordable housebuilding and completed new homes in London is part of a wider, historic failure to plan for and build the 50,000 homes a year that London needs. The Mayor must continue to prioritise delivery of all forms of housing, including affordable housing. Ultimately, the success of the policies in the Supplementary Planning Guidance (SPG) will be judged by whether they encourage the delivery of more housebuilding in London.

We welcome the overarching aims of the draft SPG to provide clarity and certainty in the planning process in London, particularly around affordable housing expectations and the development viability process. The proposals regarding build to rent (BTR) represent a significant and positive change in policy.

To encourage uptake of the new threshold approach, the SPG should be less prescriptive and more flexible. Greater emphasis should be placed on the need for the guidance to be applied pragmatically.

1 - London First's view

The threshold approach

- We support the principle of the 'threshold' approach, whereby applicants for proposals that meet or exceed 35% level of affordable housing do not have to undertake a viability assessment.
- The 35% threshold is a very ambitious target, representing a significant increase over and above the actual level of affordable housing that has been secured via planning permissions and through developer contributions in recent years.
- Specifying this ambitious target and requiring applications to meet all planning requirements and obligations is likely to be particularly challenging, and could

negate the potential effectiveness of the threshold approach. In practice, applications which are close to meeting the 35% threshold, all planning policy and obligations, and the required tenure mix should be treated pragmatically, on their own merits, rather than being automatically forced to follow Route A.

- The suggested tenure mix of the remaining 40% of affordable homes that is proposed to be at the boroughs' discretion is likely to have a significant impact on the viability of applications. The Mayor must monitor the breakdown of tenures within the 40% set by boroughs, to ensure this part of the threshold approach is not set in isolation or with unrealistic requirements, so that it does not constrain development from coming forward.

Guidance on viability assessments

- We support the overarching aim for more openness and transparency in the planning application process, including the move towards an open book approach to viability assessments.
- The Mayor should recognise that public disclosure of commercially sensitive information, which, for example, could relate to land assembly, occupier negotiations, rates of return or construction contracts can seriously compromise the ability of a developer to agree the commercial arrangements necessary to bring forward developments and act as a brake on new affordable housing delivery. This would not preclude commercially sensitive information being shared with the Greater London Authority's and Local Planning Authority's advisors to assist with the viability assessment process, which we feel best serves the public interest.
- We note Information Commissioner decisions stating that some information in such assessments is commercially sensitive and should remain out of the public domain. The SPG should reflect these decisions in its guidance.
- While we welcome the aim of streamlining the methodology for preparing viability assessments, the draft SPG is overly prescriptive in its approach, particularly for assessing Benchmark Land Value. The proposed use of Existing Use Value plus, as currently proposed (with the premium at 20-30%) will not provide sufficient incentive for land to be released for residential use.
- The SPG's proposed approach conflicts with the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) which states that a developer should be expected to receive competitive returns. The premium in the SPG 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.
- The SPG should also acknowledge that alternative uses should be considered, if there is a reasonable prospect of any/all of those uses coming forward.

Build to Rent

- The proposals supporting the expansion of the build to rent (BTR) market in London represent a significant and positive change in policy. In particular, we welcome: the draft SPG's acknowledgement of the distinct financial model of BTR; the potential it has to increase London's housing supply; and allowing the affordable housing element of BTR developments to be entirely discounted market rent (DMR).
- We also welcome the continuing action the Mayor proposes to take to support BTR such as: working in partnership with boroughs; bringing forward public

land; and providing a clear and consistent approach to planning permission for BTR schemes.

2 – Detailed Comments

SPG Part 1 – Background and Approach

The introduction of the 35% threshold approach represents a significant increase from the level of affordable housing the market has previously been able to provide via the implementation of planning permissions and s106 obligations. As the draft SPG highlights, only 13% of homes granted planning permission in 2014/15 were affordable. This figure presumably includes development by registered providers and boroughs, as well as the private sector. As such, the private sector's delivery rate of affordable homes is likely to be lower than the 13% figure.

As the draft SPG states, moving towards the Mayor's overall aim of half of all new homes in London being affordable will take time. When the provision of new affordable housing has come close to this level of delivery at a borough level, it has been due to the borough taking a flexible approach to any additional planning conditions which may be required of the applicant. For example, where the developer commits to deliver specific local infrastructure or investment in public realm. The Mayor should follow this example and adopt a flexible approach to compliance with the additional constraints that Route B places on developers, to support this demanding target. Limiting the number of additional pressures such as demanding tenure splits, comprehensive reviews, and other planning constraints placed on developers to focus on delivering the 35%, will be essential in making the transition to the threshold approach.

SPG Part 2 - Threshold approach to viability

Para 2.7 – The SPG should recognise that the 35% threshold will be more difficult to achieve in some boroughs (and parts of boroughs) than others. The economic viability of an individual scheme and its ability to meet the 35% threshold will depend on various matters, from site specific costs to local market conditions, land value and site infrastructure costs. It will also vary according to the borough's specific tenure mix requirements; for example, the more social rented tenure required, the more challenging it will be to achieve the threshold level of affordable housing.

The SPG should acknowledge that, as set out in London First's Report; *The Off-Site Rule*, sometimes, the nature of a development, site characteristics or local housing need mean that off-site delivery can offer better solutions in terms of the quality, quantum and mix of homes built.

Commercial development within the Central Activities Zone (CAZ) is often required to provide an element of housing, including – where large enough – affordable housing. It will often be the case that providing this housing on site is difficult and expensive (for example due to a small site size). Local housing needs may also be better served by providing this offsite or via a commuted payment (which can then be delivered by the GLA). The SPG should support such an approach.

Para 2.8 – We support the proposed methodology by which the percentage of affordable housing on a development should be calculated according to the number of habitable rooms.

Affordable Housing Credits

While not covered in SPG, the GLA should consider what role a system of affordable housing credits such as that operated by Westminster City Council could play in delivering affordable housing. Where new affordable housing is created when it is not a policy requirement credit is created which can then be drawn down against future affordable housing requirements arising from the development of other sites. This encourages early delivery of affordable housing and, as it would be considered an ‘offsite’ contribution, ensures the maximum reasonable level of affordable housing is delivered according to the individual scheme’s viability.

Route A

- I. Review mechanisms beyond the pre-commencement stage should only apply to complex or multiphase schemes where there is limited information available for future phases. If reviews are adopted they should be both upwards and downwards to reflect changes in the market.
- II. The SPG proposals for reviews change the risk profile for investors and lenders, reducing certainty on returns which will inhibit the ability for developers to enter into the commercial agreements needed to allow the development to proceed with certainty and may restrict the ability to obtain development finance. Greater thought should be given to whether reviews, particularly near end, support the intention of the SPG in bringing forward more new affordable homes.
- III. Where a review takes place and more affordable housing is required, the SPG should, taking into account our earlier comment on the benefits of off-site delivery, provide greater clarity about the circumstances in which building affordable housing off-site should be accepted, including where it can be demonstrated that this would result in optimised delivery, e.g. either in terms of the quality or quantum of homes built.
- IV. We support the review mechanism being capped but the level of the cap should be agreed at the pre-planning application stage.
- V. Where there is any uplift in profits, a 50:50 split is more equitable than a 60:40 split in favour of the council as it better incentivises developers, who are bearing the development risk, to deliver an uplift.
- VI. As currently proposed, reviews only allow Gross Development Value and build costs to be considered. This does not allow the developer to capture other costs in the reassessment, nor a full profit return. For example, if the original scheme showed only a 13% return for the developer, the proposed review mechanism would restrict the developer to that return and not allow a higher level of return than the original 13% especially where they have taken a lower return on the original scheme on the basis of full profit returns in the future. This approach is unlikely to incentivise land release in the manner intended and is at odds with the NPPF which states: “*To ensure viability the costs of any requirements likely to be applied to development... should, when taking account of the normal cost of development and mitigation, provide competitive*

returns to a willing land owner and willing developer to enable the development to be deliverable.”¹

Route B

- I. The overarching aim of this approach is positive, but the 35% threshold is a very ambitious one. The draft SPG states that in 2014/15 only 13% of homes given planning permission were affordable. In addition, to support developers to meet the threshold approach, the Mayor and boroughs should actively seek to minimise the demands of ‘all other relevant policy requirements and obligations’.
- II. An applicant should try to ensure that the proposed development meets all policy requirements and obligations, but given that the 35% threshold is a significant increase from historic delivery rates, and the cost of meeting the threshold will differ across London, flexibility is likely to be needed. The SPG should either recognise this point, or the Mayor should discuss with the boroughs how a common-sense approach to the application of the threshold can be introduced in such a way as not to stymie development. For example, where an application scheme is providing 35% affordable housing, with the tenure mix that is being sought, but does not meet all other policy requirements, it would seem appropriate and justifiable to allow the borough to have the discretion to advise an applicant to follow route B.
- III. In respect of the 40% borough proportion of the tenure mix, the Mayor should ensure that the mix set by a borough does not render development unviable. For example, the higher the proportion of social rent housing required, particularly where residential values are low, the more difficult it will be to achieve 35% or more affordable housing. This reinforces the need for both GLA and borough discretion regarding tenure mix, for example if variation from this will enable 35% to be delivered on-site.
- IV. A requirement to agree a benchmark land value for Route B schemes will potentially cause delay to the planning process, as this is often a very difficult matter to agree. This should only be required where a review is triggered.

Registered providers and publicly-owned land

Para 2.24 - Early discussions with registered providers (RPs) are often beneficial and RPs will usually be willing partners in this process. However, it should be noted that it is not always technically feasible to secure formal commitment and agree the details of a transaction until after planning permission has been granted.

Para 2.26 - We welcome the SPG proposals that increased densities could be explored on a case by case basis to make the delivery of affordable homes more viable. The SPG should be clear that this applies to all sites, not just public owned land.

Other intermediate housing

Para 2.36 – 2.43 – Reducing the combined income cap for all forms of intermediate housing to £60,000 could have a negative impact on affordable housing percentages. Higher caps may be appropriate in some areas for example, central London boroughs,

¹ NPPF, Paragraph 173

to offset the very low value options provided by some tenures such as social rent, for development viability to stack up and the threshold level of affordable housing to be achieved.

Offsite and cash in lieu

Paras 2.48 - 2.53 - Scrutiny and control over the use of payments in lieu by the Mayor, including proposals to monitor and publish information on how monies are spent is welcome.

The SPG or the London Plan should place a fixed time limit on the borough to commit funds to affordable housing projects, after which the monies would be transferred to the Mayor to be used in one of the GLA's affordable housing programmes. For further information about this, see our report *The Off-Site Rule*.

Public Land

The effective provision of public land has an important role to play in supporting the Mayor's ambitions as set out in the SPG. We believe the Mayor, through Homes for Londoners, should play a key role in the delivery of housing on publicly-owned land. This includes:

- Advising on a strategy for TfL land, from the perspective of maximising housing delivery;
- Advancing the work of the London Land Commission;
- Providing a centralised competency for compulsory purchase powers;
- Providing a source of expertise and guidance in surmounting perceived or real constraints around 'best consideration', procurement and State Aid.

SPG Part 3: Guidance on Viability Assessments

We support the move towards transparency and openness in the viability process but this must not be at the expense of disclosing commercially sensitive information. Likewise, we welcome the aim of trying to streamline the viability process but greater flexibility is required on the methodology and inputs used, in order to allow individual proposals to be treated on a case-by-case basis.

Detailed comments

Para 3.6 – We support the proposed requirement for an executive summary of the report.

Appraisal requirements

Para 3.7 - 3.9 – The viability process is an objective one and not specific to the applicant. Information on the applicant should not be required since the viability is assessed in relation to the site and not the applicant's individual circumstances.

Development Values

Para 3.10 - 3.13 – We query why growth assumptions are required, when the viability review stage proposed would ensure that any future growth or uplift is captured.

Affordable Housing Values

Paras 3.16 – 3.19 - Any offers from an RP are likely to be commercially sensitive. While an RP may wish to come forward at an early stage (i.e. before planning permission has been granted), it may be legally problematic to do so if their financial offer, a commercial deal between the RP and the applicant, is fully disclosed.

Due to constraints created by grant funding, RPs will find it easier to commit to purchase or agree a price if there is certainty on timings e.g. if the scheme is beyond pre-application stage.

Build Costs

Para 3.20 - The draft SPG advocates the use of Building Cost Information Service (BCIS) as the principal source of build costs, supported by evidence from cost consultants. However, greater flexibility is required to consider actual build costs from comparable schemes, as BCIS does not provide reliable data - particularly for schemes in central and inner London. A report by a qualified quantity surveyor should be acceptable to the Borough and GLA and can be examined by the boroughs consultants.

Para 3.25 - The draft SPG assumes that all abnormal costs would be known by the applicant prior to the purchase of the site. This is not a realistic expectation, as there are almost inevitably some abnormal costs that a developer is unlikely to know of until they begin work on-site. For example, higher than expected decontamination costs, and additional costs arising from detailed specifications for highways works, site preparation and so on.

Para 3.27 – The draft SPG sets out that appraisals should be based on current day costs, however, there should also be an allowance for mid-point inflation to reflect how contractors structure their costs.

Developer Profit

Para 3.33 - We disagree that financial returns should be lower than 2008/09, particularly given the current uncertain economic climate. We would expect risk levels for any scheme to be reflected in the profit sought by the developer and suggest that para 3.33 is removed.

Para 3.35 – IRR should be an acceptable proxy for measuring profit (linked to growth).

Benchmark Land Value

Paras 3.36 - 3.41 - the Existing Use Value (EUV) plus approach proposed is unlikely to incentivise the release of land for residential development, especially given the premium the GLA proposes to allow (of 20-30%). If a site is developed at a particularly low density or is low value, it will have a low EUV. The hope value that might be expected from redevelopment, based on planning policies and design considerations, may however be significantly higher than 20-30% above the EUV (e.g. if for a use

other than housing). The 20-30% level of premium above the EUV will, in such circumstances, not encourage the landowner to release the site for residential-led development. This poses a significant risk that the developer will seek to pursue an alternative, non-residential-based scheme (such as for commercial or office development for the site), or simply hold onto the site with the expectation that the EUV plus approach will be revised later, allowing for a higher premium.

Alternative Approach

Para 3.46 - The SPG should allow for alternative uses which have not been granted planning permission but have a reasonable prospect of achieving permission based on their accordance with planning policy, or in light of other material considerations. For example, a mix of different uses and different floorspace levels should be taken into account, if planning permission would be granted for them.

Para 3.48 - The SPG should recognise there are circumstances where market value is appropriate in the viability process.

Para 3.49 - The SPG needs to be more flexible to allow for circumstances when it is appropriate to consider alternative approaches to benchmark land value. Otherwise there will be circumstances where there is little incentive for developers to release sites for residential use with the proposed EUV plus approach.

Review Mechanisms and Contingent Obligations

Para 3.51 – In line with our comments on Route A, the SPG's proposals for reviews will discourage the implementation of development schemes and delivery of new affordable homes. Review mechanisms beyond the pre-commencement stage should only apply may to complex or multiphase schemes where there is limited information available for future phases. If reviews are adopted they should be both upwards and downwards to reflect changes in the market.

SPG Part 4: Build to Rent

The proposals to expand the BTR market in London represent a significant and positive change in policy. We are pleased the Mayor recognises the potential of this emerging market and is intent on creating a policy context and operating environment for the sector to grow. The policy alignment between the Housing White Paper and the draft SPG reinforces the Mayor's positive work to create this operating environment.

Viability

Para 4.5 & 4.38 - We welcome the SPG's acknowledgement of the distinct financial model of BTR. We agree with the Mayor's measures to support BTR developments where, due to the lower and longer rates of return, prospective developers will not be able to bid for land at the same rate as for sale residential developers. The Mayor's emphasis on providing further support for BTR by working in partnership with boroughs, to bring forward public land, provide a clear and consistent approach to planning permission for BTR schemes and maximise investment into the sector is a positive step.

Exemption from the Threshold Approach

Para 4.7 - We support the exclusion of BTR from the draft SPG's threshold approach. This should help the sector to grow and provide further confidence to BTR developers and investors.

Definition

Para 4.9 – While we expect most developments to be above 50 units, we believe it is important to retain the flexibility necessary to establish whether BTR can operate on smaller or fragmented sites. As such we suggest that 50 units remains as a guideline but with the flexibility to deliver projects at a lower level.

BTR schemes should have high quality professional management. However, this does not always need to be on-site. In many existing good quality affordable and private rental schemes, particularly those below 100 units, on-site management is not universal and a requirement for such could impact heavily on viability and not deliver a higher standard of service. Furthermore, on-site management may result in unwanted cost increases to residents. On-site management is not a blanket regulatory requirement for affordable rented housing and, as such, should not be so for BTR schemes. We suggest this requirement is altered or removed.

Clawback

4.12 - 4.15 – BTR developments are long term products. In time, as in countries with mature markets, a secondary market should develop where companies buy BTR blocks from each other. However, where, for whatever reason, the developers want to sell some individual homes in accordance with the terms of the covenant the clawback should be paid on the proportion of the units sold rather than on the whole building.

Design

Paras 4.19 - 4.29 - We welcome the recognition that local policies on design should be applied flexibly, both to reflect demand for new rental stock and to take account of the viability challenges facing BTR development. Unit size, bedrooms, aspect, units per core and amenity space will all be driven by requirements to attract new and changing customers and operate efficiently over the long-term.

Para 4.28 – Paragraph 1.55 of the government's Housing White Paper: 'Fixing our broken housing market' acknowledges that, with regard to design standards, 'one size does not fit all'. It would be logical to echo this steer in the SPG.

The government's forthcoming review of the national space standards represents a good opportunity to consider the role of space standards in relation to BTR development in London. The Mayor should play a full part in responding to this consultation with a view to securing an appropriate BTR standard for London.

Affordable Housing & Discount Market Rent (DMR)

Paras 4.19 - 4.20 - We support the proposal for the affordable housing provision for BTR schemes to be entirely DMR, managed by the provider and delivered without grant. This will allow for single management of a BTR development which is vital to securing more investment into the sector, and also offers other benefits at noted in the SPG such as the ability to more easily make developments tenure blind.

London Living Rent

Para 4.21 – The affordability measure for London Living Rent (LLR) is based on a single household income. BTR developments will most likely be designed with a key market of sharers in mind. Where properties are designed to be occupied by two couples the current LLR proposals do not take this into account. The Mayor should consider amending the affordability measure to reflect this market.

Para 4.22 - We would welcome clarity on the rationale for London Living Rent increases being limited to CPI. Given the likely rise in costs of materials and labour, having the flexibility to increase rents by CPI+1% would provide greater surety for investors and more resilience for schemes in the development pipeline. Furthermore, there is precedent for this baseline in the previous affordable housing settlement.

Para 4.24 - In stipulating London Living Rent as the preferred DMR product for BTR, the Mayor is in most instances pushing developers to deliver a lower number of affordable homes with higher level discounts against market rent. This approach may create tension with boroughs who are seeking to deliver high numbers of affordable housing, often using lower levels of discount. The Mayor will therefore need to robustly defend this approach if the trade-off outlined above is not being properly understood or implemented at a local level. The wording of the SPG should be strengthened to make this clear.

Dwelling Mix

Para 4.27 - We welcome the Mayor's steer to local authorities to be more flexible on dwelling mix and unit sizes. It is unlikely that the expected mix found in BTR developments (mostly 1 and 2 beds) will meet local authority requirements which will include more 3 bed and family homes.

Management Standards

Para 4.36 – While we support the intention to ensure that suppliers are of a high quality, we do not agree with the following technical measure:

4.36 'Providers must have a complaints procedure in place and be a member of a recognised ombudsman scheme. They must also have membership of a designated professional body, such as the British Property Federation or Royal Institute of Chartered Surveyors...'

The British Property Federation (listed as an example) are a trade body and not a professional body: the BPF has no responsibility for professional standards in the sector. We suggest this point is reworded in the finalised SPG.

General Support for Build to Rent

Para 4.38-4.39 – The steps outlined to provide further support for BTR, including through local planning policy and use of public land, are welcome.

As the GLA are aware, we are currently working with London Councils on a publication for councillors about BTR which the GLA. This publication will highlight to councillors the benefits that build to rent development can offer their local areas. The Mayor should consider what more can be done in this space to help explain to councillors the difference between the quality of homes and professional management delivered by BTR developers and the wider PRS market, characterised by small and amateur landlords.

London Tenants Federation

28.02.17

LTF response to the Mayor's Affordable Housing and Viability SPG

1. Introduction

- 1.1 London Tenants Federation (LTF) is an umbrella organisation. It brings together (mostly) borough- and London-wide federations and organisations of tenants of social housing providers. Its membership also includes the London Federation of Housing Co-operatives and the National Federation of Tenant Management Organisations. A number of its member organisations involve both council and housing association tenants and a few (a minority) are also involving some private tenants.
- 1.2 LTF aims to facilitate a consensus voice for tenants on strategic regional housing, planning and community related issues. It had representation on the Mayor's Housing Forum from 2005 until the Forum was closed, its members have been invited to attend almost all Examinations in Public of the London Plan / alterations to the London Plan.
- 1.3 LTF members are concerned that the current Mayor continues, as previous London Mayors have done, to feed the private market which has consistently failed to support delivery of homes that most Londoners can genuinely afford. Necessarily the result is support for developers and the needs of high earners at the expense of ordinary working class households. Particularly we highlight those that fall within the bottom 50 to 60 percent of London households (by income) whose needs have been constantly highlighted in housing needs analyses carried out or commissioned by the GLA that are not able to meet the cost of any form of housing other than social-rented homes.

2. Summary of LTF comments / proposals:

- The Mayor must (is indeed required to) take an evidence-based approach to dealing with addressing London's housing need. This is not the case in respect of this SPG. The Mayor should focus on delivering not-for-profit social-rented homes for which there is high evidence of need.
- Setting a target for delivery of 'affordable' housing doesn't mean anything if this is mostly about delivering homes that are not affordable to most London households.
- The Mayor should emphasise and stick rigidly to delivery of the current London Plan target for 60% of 'affordable' housing to be social/affordable rent homes – not reduce this to 30% - which will only continue to increase the current back log of need for social-rented homes in London.

- The Mayor should ensure that the total affordable housing grant is spent on delivering homes for which there is evidence of need, not on subsidising developers to make larger profits.
- Public land should be used exclusively for delivery of not-for-profit social-rented homes – not be socially undervalued and handed over to the private sector.
- The Mayor should immediately stop referring to homes that are not affordable to the majority as ‘affordable’ or worse still ‘genuinely affordable’.

3. The Mayor must take an evidence-based approach to dealing to addressing housing need. This is not the case in respect of this SPG. The Mayor should focus on delivering not-for-profit social-rented homes for which there is high evidence of need.

The 2013 SHMA identified a need for 15,700 new social-rented homes to be delivered per annum in London, of which 3,045 was covering the backlog of housing need. With ongoing failures to deliver sufficient social-rent (even with affordable-rent homes added to the social housing category) the backlog of need will have increased over the last four years (unless displacement of low income households from London is significantly and intentionally gathering pace).

The draft affordable housing SPG does not mention this extreme level of evidenced need for social-rented homes and does not propose how this need will be addressed.

4. Setting a target for delivery of ‘affordable’ housing doesn’t mean anything if this is mostly about delivering homes that are not affordable to most London households.

Playing a game of smoke and mirrors to apparently hit housing targets of 35% or even 50% ‘affordable homes’ is offensive to those (the majority) who are unable to afford 67% market rents (the suggested London Living Rents average) or intermediate housing.

It is of note, as a couple of examples, that an average London bus driver, earns just £10.80¹ per hour or £20,695 annual salary, and a fully trained nurse in London and average of £25,060² (according to the Royal College or Nursing). Rents at London Living Rent levels will not be within the reach or either (see more on this in section 6 of this response) .

LTF’s analysis of net delivery of housing for 2005-15³ shows that 30% of the homes delivered (85,033) were ‘affordable (comprising social, affordable rent

¹ http://www.payscale.com/research/UK/Job=Bus_Driver/Hourly_Rate/4d7c97e4/London

² [http://www.payscale.com/research/UK/Job=Registered_Nurse_\(RN\)/Salary/682c8064/London](http://www.payscale.com/research/UK/Job=Registered_Nurse_(RN)/Salary/682c8064/London)

³ [http://www.londontenants.org/publications/reports/10%20years%20-%20housing%20targets%20\(F\).pdf](http://www.londontenants.org/publications/reports/10%20years%20-%20housing%20targets%20(F).pdf)

and intermediate homes), or, 8,500 a year. In reality then, with additional housing grant and new policy on dealing with viability, it should not be so difficult to increase to 35% 'affordable housing'.

The real problem, however, is exactly how much of that housing is actually affordable to the bottom half of households by income in London. LTF's analysis finds that this is only 17% of homes delivered in London over the period 2005-15 were social rented. If the result of the SPG is that the number of social/ affordable rent remains at a similar low level, the Mayor will just continue to fail the bottom half of London's households (by income); those with the most serious and evidenced housing need.

- 5. The Mayor should emphasis and stick rigidly to delivery of the current London Plan targets for 60% of 'affordable' housing to be social/affordable rent homes – not reduce this to 30% - as this will continue to increase the current back log of need for social-rented homes in London.**

The target of affordable housing was reduced in 2011 from 50% (of the total housing target) to an equivalent of 41%. The tenure split for social-rented homes (of the affordable housing total) was also reduced from 70% social-rented and 30% intermediate to a 60% social/affordable rent and 40% intermediate split. The 70/30 split of 50% affordable housing could theoretically have delivered 35% social-rented homes while the latter 60/40%, 25% social/affordable-rent homes.

The 60/40% split was found to be deliverable at the Examination in Public of the London Plan in 2010. There is no justification for reducing the 60% to 'at least 30%'.

DCLG analysis of housing supply in England for 2015/16⁴ makes it clear that overall, most units supplied during that year were through section 106 (nil grant), but that most of this supply was for tenures other than affordable rent homes. We are extremely concerned that if the Mayor does not strongly adhere to the 60% social / affordable rent that most homes developed with nil grant will be London Living Rent homes for which there is no evidence of benefit in terms of meeting need.

The Mayor must insist that developers adhere to at least 60% of affordable housing being social/ affordable rent.

- 6. The Mayor should ensure that the total affordable housing grant is spent on delivery of homes for which there is evidence of need, not on subsidising developers to make larger profits and ignoring evidenced need.**

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/569979/Affordable_Housing_Supply_2015-16.pdf

According to GLA housing officers, in cost terms, London Living Rent homes will, on average, be roughly 67% market rents (pretty much the same as average affordable rent homes, to date, in London). In 2011, Hometrack found that households would need an income of £44,500 to meet the cost of 80% market rents in London. It would have required (in 2011) a household income of (or £37,269).⁵ The median household income level in London in 2013 (latest available from the GLA data store) was £39,100 a year.

Given that London private rents have increased by at least £400 per month since 2011, and London house prices risen £105 a day over the last 5 years. we assume that the household incomes will have had to have increase by at least £5,600 a year (at 67% market rents to meet the cost).

Of even greater concern, is that while affordable-rent homes were accessible to households that would otherwise have been access to social-rent homes (albeit hiking up housing benefit dependency), London Living Rent homes are aimed not at those who would be able to access social-rented homes, but at higher, 'middle income' working households. This literally robs from the least well-off to subsidise 'middle income' households.

At no time has the GLA assessed the need for either private-rented homes at full market rents or at 67% market rents. The 2013 SHMA only assessed the need for social-rented homes and presumed that those eligible for social-rented would also be able to access affordable rent homes. Planning authorities, including the Mayor, are required to assess need for different type of housing, which has not been done in relation to London Living Rent homes. No evidence is provided support using the affordable housing grant for anything other than social / affordable rent homes and intermediate housing.

7. LTF is of the view that public land should be used exclusively for delivery of social-rented homes – not be undervalued and handed over to the private sector.

Since developers have always failed to meet targets to deliver sufficient social-rented homes, it is inappropriate to hand over public land for their financial. Public land should be held for public benefit – delivery of not-for profit social-rented homes and social and community infrastructure. Such homes should be delivered by local authorities, co-operatives or community land trusts to ensure long term benefit.

8. The Mayor should immediately stop referring to homes that are just not affordable to the majority as 'affordable' or worse still 'genuinely affordable'.

⁵ Hometrack analysis has determined average national and regional household incomes needed to meet the cost of the Government's 'affordable rent tenancies' (at 80% market rents) – reported in inside housing 18.02.11
<http://www.insidehousing.co.uk/news/housing-management/tenants-need-%C2%A323k-salary/6513707.article>

The term affordable housing is a con. The only genuinely affordable housing in London is that through which rent covers the cost of managing maintaining and repairing homes, not putting money into the pockets of developers and private landlords which is for-profit housing.) This distinction should be highlighted by the London Mayor.

Yours sincerely

[REDACTED]

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