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<http://35percent.org/>

26 Feb 2017

Dear Mayor,

The 35% Campaign was set up by the Elephant Amenity Network in response to Southwark Council's failure to ensure that housing developments provided a minimum of 35% affordable housing, as required by the local plan.

Through our campaigning activities we have gained us some understanding of viability in planning and we have given evidence about its impact on the delivery of affordable housing at examinations in public, public inquiries and Information Tribunal hearings. Through the last, we helped secure FOI decisions that have led to greater transparency in planning decision-making.

We have met GLA officers to discuss the SPG twice, under the auspices of Just Space. We thank them for their time.

Our comments

The use of viability assessments by developers to avoid meeting their affordable housing commitments is an abuse of the planning system, so we welcome the Mayor's attempts to tackle the problem, while having reservations about the effectiveness of the remedies proposed by this SPG.

First of all, though we must say we are dismayed that the Mayor proposes no measures to increase the supply of social rented housing (we do not include affordable rent in the category). Indeed, the SPG does the opposite with proposals that will increase its marginalisation. Social rented housing is the cheapest kind of affordable housing and the

only kind that is truly affordable to those most in housing need. It should be the priority tenure in any attempt to resolve the housing crisis.

On the other hand the SPG gives enthusiastic support to a relatively new kind of affordable housing for rent – Build to Rent. This is by most counts inferior to social rented housing, and maybe affordable rent. It is more expensive, less secure and is less certain to remain an affordable housing tenure in the longer term. BtR will also be privately provided, owned and managed - an innovation for affordable housing. The SPG also appears content to accept that facilitating home ownership through intermediate housing is a receding prospect.

Taken together we think this represents a sea-change in the delivery of affordable housing in London, but the SPG presents no evidence for it basis. While the SPG promotes one kind of affordable housing and marginalises another, there is no assessment of the relative need for any tenure and no assessment of the impact on London's demography.

These points are taken up below in our detailed comments. Numbers refer to the relevant SPG paragraphs; our suggestions for changes to the SPG and requests for clarifications are in bold.

7 The proposal to scrutinise scheme viability if it does not reach a 35% threshold appears little different to current LPA practices, which have proved ineffectual. Developers consider the cost and inconvenience of viability assessments (VAs) worthwhile, if they can reduce their affordable housing requirement. **A higher threshold of 50% affordable housing, in line with the Mayors promise to achieve 50% affordable housing, combined with the Mayor's scrutiny of the viability of all developments that fail to meet 50%, is needed to incentivise developers to provide affordable housing. A dedicated viability unit, resourced by developer contributions, should be established to conduct this fresh scrutiny, which would not simply repeat that of the LPA.**

1.3 It is stated that the SPG cannot introduce new policy and does not do so. **We believe that taken together some of the SPG's proposed are significant enough to qualify as changes to policy and should therefore not be implemented until the London Plan is revised.** These changes are the preferred tenure split for affordable housing of 30% low cost rent; 30% intermediate; 40% at LPA's determination (para 2.28) and the support accorded Build to Rent (BtR) (part 4) including the proposed BtR pathway (para 4.7) and exclusion of social rent/affordable rent and intermediate for sale housing from BtR. The SPG cites no evidence or research for the impact of these proposals, something that can be remedied by their consideration as London Plan alterations,

1.3 The Mayor intends that the requirement for affordable housing will 'embed itself into land values'. We understand this to mean that when a developer is mindful that they will have to pay for affordable housing they will not pay too much for the land. We think that developers may continue to be less concerned about the land price, if they are

confident that the benchmark land value used in viability assessments is high enough to relieve them of affordable housing. The Skipton House development at the Elephant & Castle is an example of this. The land was purchased for £54m, while the benchmark land value was £137m, which resulted in no on-site affordable housing. The Mayor declined to call-in this application. **The Mayor must exercise his call-in powers much more readily, if the requirement to embed affordable housing into land values is to be achieved.**

1.6-1.8 The figures cited show clearly the past years' failure to achieve London Plan affordable housing targets. Notwithstanding this failure in 2014/15 99% of the total housing target was achieved, and the delivery of free-market housing exceeded the target, reaching 130%, while only 52% of the affordable housing target was achieved (London Tenant's Federation analysis of GLA figures for net housing delivery 2014/2015). It is hard not to conclude from this that while developers are taking full advantage of housing demand to maximise free-market housing they are also minimising affordable housing and are being allowed to do so by the LPAs and the GLA. **The Mayor should consider whether the overachievement of free-market housing has been at the expense of affordable housing and what measures are available to compensate for the loss of affordable housing and to redress the balance of affordable and free-market housing in line with the aims of the London Plan.**

1.16 We think that the discretion the Mayor proposes will encourage developers to chance presenting an inadequate viability assessment. We further believe that many LPAs do not have the capacity to scrutinise assessments properly and extra planning considerations eg the need to be seen to be allowing development, plays a part in LPA decision making. We think that much of this may be forestalled, if it is known that the Mayor will intervene in such circumstances. **We therefore suggest deleting 'consider' from this paragraph, so as to read 'the Mayor will direct that he is the Local Planning Authority for the purposes of determining the an application (often referred to as 'call-in') or directing refusal when: he is not satisfied with the viability information submitted by the applicant, the assumptions that underpin the information, or the level of scrutiny given by the LPA'.**

1.17 Viability information should be made available both alongside and at the same time as other application documents. This would help ensure that there is sufficient time for the public to digest and comment on complex viability information. Southwark Council only issues the full viability assessments one week before determination. **We therefore suggest adding to this paragraph, to read '.....that information relevant to planning determinations, including all full viability assessments and any appraisals should be publicly available alongside and from the same time as the other planning documents...'**

1.21-1.22 We fear that the provisions of these paragraphs will become readily exploited loopholes and then the norm, compromising the Mayor's attempts to promote transparency. **We suggest that these paragraphs are removed.**

2.5 We agree that where there is public subsidy of a development a greater level of affordable housing should be delivered. **Should our previous suggestion that the threshold for all developments be 50% (7 above) not be accepted by the Mayor, we make the alternative suggestion that any development that receives public subsidy must meet a threshold of 50% to be considered under Route B.**

2.12 – 2.13 The London Plan makes it clear that affordable housing provision is a particular priority when securing developer contributions (Policy 8.2). The emphasis of these two paragraphs should be that all planning obligations must be taken into account by the applicant and landowner. This is in line with RICS guidance for assessing scheme viability and trade-offs between different requirements should not be encouraged. **We therefore suggest that these two paragraphs are rewritten and replaced with a single paragraph, saying ‘The requirement to deliver investment in affordable housing and other infrastructure investment will generally be set out in the development plan and CIL charging schedule and thus should be taken into account by the applicant and the landowner and should not lead to a reduction in affordable housing. If notwithstanding this an applicant offers a viability assessment to justify any reduction in these obligations they will be required to provide viability information as per Route A.**

2.14 – 2.15 The analysis of past completions and approvals should address the failure to achieve the affordable housing target, whilst exceeding the free market target, in 2014/15. The threshold should not be set at a level which replicates this failure. Further it’s stated that there has been no viability testing to justify 35% and that it is not a fixed level, so does not prohibit developments with less affordable housing. Developers should therefore not be unduly deterred by the threshold approach. For this reason **we propose that the threshold be set at 50%** to maximise affordable housing delivery. We fear that otherwise 35% will become the norm, notwithstanding the SPG’s statement that it is not a fixed level and schemes that could deliver more than 35% will have the affordable housing depressed to that level.

2.18 We assume that the 35% threshold will apply to schemes developed by RPs and those built on publicly owned land, but it does not seem unreasonable to expect such schemes to be 100% affordable, so applying a 50% threshold is the least that can be expected. We suggest that **all developments that receive public funding should be subject to a 50% threshold and this should be stated in this paragraph.**

2.19 We suggest replacing ‘should’ with ‘must’ in the penultimate sentence, to read **‘Where grant or other public subsidy is available and would increase the proportion of affordable housing, this must be utilised’.**

2.22 While we can understand that the intention of this paragraph is to incentivise developers to deliver 40% plus affordable housing we are concerned that relieving

developers of any need to provide a viability assessment may lose opportunities to increase affordable housing beyond that. This is all the more the concern in the absence of a viability assessment to justify 35% as the threshold.

2.25 In line with our comments above 2.18 we suggest that this paragraph be reworded to read - **Generally the Mayor expects RP-led schemes and schemes on public land to deliver as much affordable housing as possible within the context of the requirements of London Plan policy 3.12, but no less than 50%.**

2.28 No coherent explanation is given for changing the affordable housing tenure split. It is not justified by any assessment of housing need, any estimation of the change's impact on different income groups, particularly lower and middle income ranges, nor any estimate or assessment of the demographic consequences. Even without such measurements it is reasonable to say that the chances of those who depend on social rented housing to secure a home are being significantly reduced by the Mayor.

Further, we believe that the this preferred tenure split amounts to a change in the London Plan Policy 3.11 contrary to para 3. **We therefore strongly object to the change and ask the Mayor to retain the current 60%; 40% tenure split between social /affordable rent and intermediate housing.**

2.28 bullet point 1 The intention to limit affordable rent levels to much below 80% market rent is welcome, but rents for social housing are being ratcheted up nonetheless. The benchmarks for London Affordable Rent exclude service charges and are appreciable higher than 2015 target rents in Southwark (£97, £111, £124, £140 for 1, 2, 3, 4-beds), which are themselves above what many council tenants pay, where rents have not met the target.

We are also concerned that the latitude allowed to LPAs to go beyond the LLR benchmarks further undermines social rent; not only will the rents be higher, they will form a new benchmark, dragging up social rents. **The Mayor should make it clear that social rent, the cheapest kind of affordable housing for rent, is the desirable benchmark by which LPAs should set their rents and in any event that rents should comply with the London Affordable Rent benchmark.**

2.28 bullet 2 We cannot see what the other 'intermediate products' referred to in the final sentence could be and question **whether it is necessary to include this provision, given the range of intermediate types already covered. If Build to Rent intermediate rent is meant this should be made explicit.**

2.29 In line with our comments to 2.28 bullet 1 we are concerned at the latitude afforded LPAs to prioritise 'alternative intermediate products'. The Mayor is aware that the term affordable housing is largely discredited because so much of it simply not affordable. Indiscriminate use of the category to allow any housing just marginally cheaper than market

housing to qualify as affordable will further discredit, the term, while still leaving unmet housing need,

2.30 – 2.31 The 'lower values' attracted by social rented housing will lead to its reduction in new developments, as will allowing 'flexibility' of tenure split in Opportunity Areas which will lead to its reduction in new developments.

2.34 London Living Rent sounds like a misnomer, as it is an intermediate tenure, which we believe is not how it was originally intended. In any event the cost of LLR rent is at least twice the level of council rents in our borough, Southwark, as the LLR for three wards from the Elephant & Castle show – Cathedral Ward £1093pcm, Chaucer £941, East Walworth £887.

2.35 As an intermediate product has any assessment been conducted to establish London Living Rents utility in meeting housing need and will it meet those needs better than current alternative intermediate products?

2.45 A recent Ombudsman's decision found that Southwark Council 'did not have a systematic supervision procedure to check (S106) compliance' and 'it is hard to know how many social housing units all section 106 agreements called for and how many developers delivered. Or indeed, how many remain social housing units' <http://35percent.org/img/LGOFinalDecisionSOR.pdf>. **The SPG should address whether this might be the case for other LPAs.**

2.50 Where an in lieu payment is allowed **the Mayor should consider a fixed tariff, based on an amount payable per habitable room, at a rate sufficiently high to encourage developers to provide on-site affordable housing in the first instance**, in line with the London Plan. Should an in lieu payment be allowed, it would also help ensure that the LPA gets an equitable share of the value of the development to build affordable housing.

3.5 We have noted that developers invariably claim that a particular scheme can deliver no, or very little, affordable housing and provides a viability assessment to that effect. The developer nonetheless agrees to make an 'ex-gratia' contribution, which is higher than that justified by the viability assessment. While at first view this could be said to reflect well on the developer, it is a bad practice, because it must make use of the 'hidden calculations or assumptions' this paragraph prohibits, if the development is to be financially sound. Not unnaturally it also gives rise to the suspicion that false figures were used in the first place. **We therefore suggest that any development where the developer offers an ex-gratia payment is 'called-in' by the Mayor, re-examined for viability, but in any event is not approved with anything less than the ex-gratia offer.**

3.8 The tax avoidance arrangements of developers have become a matter of public concern. **We suggest that the applicant information should also include ultimate beneficiaries, including off-shore companies.**

3.18 Who other than a RP currently provides affordable housing? **This paragraph should state if the intended reference includes Build to Rent developers**, given the prominent place they have in the SPG.

3.32 – 3.35 Developer’s level of profit is a matter of legitimate public interest because of its impact on affordable housing delivery. It is treated as a cost in the viability calculations and as such should be limited. The Mayor will also be fully aware that a development’s profit is seldom ‘scheme specific’, but instead accords with a perceived industry norm. The Mayor must therefore either rigorously enforce his proposal that profit should reflect risk, or the lack of it, or drive down the industry norm. To this end, **we suggest that The Mayor set a publicly supported benchmark level of profit, against which an individual development’s profit can be measured and varied, according to its risks.**

3.36 **We ask the Mayor to consider the not unusual case of the developer and land owner being one and the same in relation to benchmark land value.** In this case the developer is effectively setting the bench mark for nominally selling the land to themselves, at a fictitious price that would persuade them to sell, which unsurprisingly is usually high. We give as an example the Skipton House development at the Elephant and Castle, which set a £137m benchmark land value, when the purchase price was £54m, albeit from some years earlier, with consequent loss of affordable housing

3.45 **We ask the Mayor to ensure the premium above the EUV is specified in all FVA information made public, not subsumed in total figure for EUV plus premium. Financial models should also be made public, to allow proper interrogation of inputs and assumptions.**

3.47 **We ask the Mayor to give some indication of how long he will pursue the approach of ‘embedding land values’ and an idea of any alternative approaches if it does not succeed.**

3.56 Opportunity Areas should also provide opportunities for all tenures of affordable housing, including social rented housing. We note that the previous Mayor avoided saying how much social rented housing Opportunity Areas would provide http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_48387. We can say that in the Elephant and Castle Opportunity Area that the figure is negligible – none of the six most recent consented or completed large developments, totalling 2500 dwellings, has a single social rented unit. The Heygate estate, redeveloped as Elephant Park, will have 89, out of 2700 homes, and there are about 60 social rented units in smaller developments.

As phrased at the moment, we see these paragraphs continuing this lamentable process.

We therefore suggest that they are rewritten to include a 50% affordable housing requirement, with a 60:40 tenure split between social/affordable rent and intermediate housing, the tenure split of London Plan Policy 3.11.

4.1-4.5 'Positive' support and encouragement for Build to Rent should be based on assessment of relative housing tenure needs, rather than market trends. Build to Rent is a relatively new tenure, as acknowledged by para 4.31, and the SPG presents no research or evidence on how it will meet London's housing need, what sector of the community it will serve or its likely wider social, demographic and economic impact. We note the London Plan support for 'purpose built private rented products', but there is an evident intention to expand its role significantly, which warrants further public discussion and consultation. We surmise that such discussions have taken place with other stakeholders in the preparation of this SPG. **We therefore suggest that there is a formal public consultation about these points before the Mayor further promotes BtR as a suitable housing tenure for London. To begin and aid this we also ask for any information provided to, or received from, other stakeholders, in relation to BtR.**

4.5 – 4.6 We take the meaning of these paragraph and others, to be that BtR will be allowed to deliver less affordable housing than 'build for sale' developments or that it will be biased towards higher value tenures. We cannot see any justification for such an exception, if it is intended. BtR is free-market housing and a model chosen by the developer for what they hope is their profitable advantage. There is no reason why any disadvantages, such as slower rate of return, should be compensated for by a loss of affordable housing, or the exclusion of lower value, social rent. We see this as on a par with the Mayors approach to site-specific abnormal costs (para 3.25) where he adopts the correct approach, attributing them to the developer. **We therefore suggest that these paragraph are rewritten to say that BtR developments will be required to deliver a 50% affordable housing requirement, with a 60:40 tenure split between social/affordable rent and intermediate housing, the tenure split of London Plan Policy 3.11.**

4.7(2) This paragraph says the SPG's BtR pathway 'recognises the need for all homes on the Build to Rent development to stay under single management', without saying what that need is, and that the affordable homes will be discounted market rent (DMR), without saying why. There are no obvious reasons why the affordable housing cannot be managed by a RP or why the affordable housing should have to be DMR.

4.7(3) We understand this paragraph to mean that BtR will meet lower design standards than those required by Policy 3.5(d). We can see no justification for this.

4.7(4) While we think that it is appropriate that all BtR developments should provide a viability assessment, for the reasons given in para 4.32, we do not think it is appropriate to apply different measures or adopt different assumptions for BtR than for any other free market housing development for the reasons given above, paras 4.5- 4.6.

In the light of the above comments we suggest that the Mayor reconsiders the BtR 'pathway' in the light of further consultation as suggested above para 4.1-4.5

4.9 We do not understand why BtR does not fall within use classes C3 and **ask the Mayor to explain this.**

4.9 bullet point 2 A proposed minimum length of covenant is likely to become the norm by default and 15 years appears very short. Many current phased developments take longer than this to build. **Notwithstanding our overarching concerns about BtR, we nonetheless suggest that the minimum covenant length be at least 50 years.**

4.10 This paragraph is either poorly worded or self-contradictory. It first says that all homes in a development are required to be BtR, but then that they might not be. Nor does it explain why single ownership and single management is the most important principle for BtR or how it underpins the need, itself unexplained, for 'the distinct approach to affordable housing'. **We ask the Mayor to clarify these points.**

4.11 **We ask the Mayor to clarify what happens to BtR after the covenant period.**

4.12 Notwithstanding the statement in para 4.11 that individual homes cannot be sold during the covenant period, paragraph 4.12 proposes 'clawback' arrangements for that eventuality. It is only prudent that such arrangements should be in place, but it raises concerns as to how likely and how often this may happen. We note the final sentence in para 4.15 which in referring to some developments where there is 'no likelihood' of this happening, leaves an inference that there are others where it is indeed likely. We are concerned that selling BtR units onto the open market in the covenant period is, or will become, part of the BtR's business model and that paying clawback will simply be regarded as a price for realising a greater or quicker profit. The LPA will receive the clawback amount (it is not clear how much – see comment below) to reinvest in affordable housing, but indicates that BtR may be an uncertain and unstable way of providing affordable housing.

4.13 (1) We find this paragraph confused and difficult to understand. While the clawback Option One would establish the 'initial loss of affordable housing' entailed in a BtR scheme, as opposed to a 'for-sale' scheme, it also states that the difference would only be recouped in the event that the BtR homes are sold out of the sector. We cannot understand the rationale of this arrangement, which appears to accept that a BtR scheme that delivers less than a free-market scheme is permissible, without any compensating payment or off-site affordable housing provision. **We suggest that this paragraph is reworded to the effect that, should it be established that a BtR application does not provide the same level of affordable housing as a for sale scheme on the same site, with the current tenure split of 60:40 social/affordable and intermediate housing, it thereby fails to meet London Plan objectives of prioritising and maximising affordable housing and should therefore be rejected.**

(2) Separate to this, the amount to be paid in the event of BtR units being sold out of the sector would recoup only the 'initial loss of affordable housing', not the loss due to the sale. We assume that another payment would be due for the housing sold, according to 4.25. If this is correct **we think the SPG needs to express these arrangements more clearly.**

(3) It is not clear here whether the clawback would operate only if affordable BtR units were sold or if market rent units were sold, or both, although the last appears to be case from 4.16. **Notwithstanding our overarching concerns about BtR we suggest the SPG needs to be explicit on this point.**

(4) No account is given of how much money would be payable in either the event of clawback and it is not stated that the review mechanism would apply (Formulae Annex A). **Notwithstanding our overarching concerns about BtR we ask for clarification on this point.**

4.14 We assume this arrangement only holds if the BtR units are sold out of the sector as described in 4.13 and refer to our comments and suggestion there.

4.15 (1) Option Two appears to confirm the rationale described above in 4.13 – that there would only be a payment in 'the event of the covenant being broken' – so our concerns about Option One remain equally applicable to Option Two. We refer therefore to our comments and suggestion to 4.13.

(2) Option Two seems to treat the 35% affordable housing as a target, not as a threshold, in that it is being used as a measure for clawback, not just to determine which viability route an application should take, contrary to 2.15.

4.16 We have stated our concern that social rent housing has not been delivered according to S106 agreements above 2.45. We emphasise here the Ombudsman's comment that it cannot be known, even when delivered, how many social housing units remain so. We believe that the complexity of affordable housing S106 arrangements allows this abuse. BtR affordable housing will introduce further complexity, with which under-resourced and over-stretched LPAs will find it difficult to cope, to the developers' advantage and with the loss of genuinely affordable housing. **We therefore suggest that the Mayor must strengthen monitoring procedures and dedicate greater GLA resources to ensure that affordable housing remains so 'in perpetuity'.**

4.17 We surmise from this paragraph that there is a VAT problem with BtR that the Mayor proposes to solve at the expense of a water-tight covenant securing BtR affordable housing in perpetuity. We can see no reason for extending this concession for reasons we give in 4.5- 4.6. **Notwithstanding our overarching concerns about BtR we suggest that any covenant, statutory planning consent or similar provision totally prohibits the separate use or disposal of a BtR unit.**

Should this suggestion not be adopted by the Mayor then we make the further suggestion that any VAT gain to the developer from covenants etc that allow sale are accounted for in any viability assessment.

4.18 Please see our objection to this paragraph above 4.17. In addition we think the clawback arrangements are inadequate, in that they appear to leave them to LPA discretion. Further, allowing a change of ownership on the single condition that the development remains under single ownership and management, without any consideration of a new owner's aims is inadequate. While the BtR's model may be to gain a profit through renting, plainly developers wish to keep selling BtR units as an option, either singly or totally, in or out of covenant, and it will be exercised if the market conditions are right and if it suits the owners. Any prospective buyer will also have to recoup the cost of their purchase with potential consequences for rents and tenant security. The situation of forced sales because of an owner's financial difficulty or insolvency, with whatever consequences for rents and tenant security also cannot be discounted. This gives added weight to our suggestion above 4.1-4.5 **that there is a formal public consultation about BtR before the Mayor further promotes BtR as a suitable housing tenure for London.**

Notwithstanding this suggestion, and our overarching concerns about BtR we make the further suggestions that there should in normal circumstances be no overall sale of BtR during the covenant period; that, should such a sale be proved necessary, it will require the Mayor's approval, who will act on the principle that the tenant's interests in a fair rent and security override the interest of the owner's or prospective purchaser. Any profits made by the sale should also be subject to clawback, in addition to that for any initial affordable housing lost.

4.19 Our concerns about the suitability of BtR as a housing tenure that best meets the needs of Londoners are given in 4.1- 4.5. These concerns are deepened by the proposal that BtR developments can, as a matter of policy and without any viability justification, exclude both social/affordable rented housing and intermediate for-sale housing. This is particularly egregious in the case of social rented housing. The BtR alternative Discounted Market Rent (DMR) is an intermediate product that may at least be in reach of those who could afford intermediate for-sale housing; this is decidedly not the case for those who rely on social rented housing.

We note the qualification that this 'can be... delivered without grant', not that it must or will be. **We ask for clarification that if there is any grant or other public funding assistance social/affordable rent and intermediate housing will be required from BtR in line with that required from for-sale housing.**

We also ask for an explanation as to how DMR conforms to the NPPF Annex 2 Glossary definition of affordable housing and why it is not the 'low-cost market' housing specifically noted as not being not affordable housing for planning purposes.

Notwithstanding the above we think that the exclusion by policy of social/affordable rent and intermediate housing is a sufficiently serious change, as to amount to a change in the London Plan, contrary to para 3 and reinforces the argument for a formal public consultation about BtR as a suitable housing tenure for London, before this SPG is adopted.

4.20 Pepper potting does not require DMR, only a developer's willingness to comply with the local plan and an LPA determined to enforce it. Even if we allow that pepper potting is difficult to manage (we do not) different tenures can be grouped or clustered in various ways on any development. The social value of 'tenure blind development' will be largely lost on BtR developments, anyway, because social rented housing is being excluded. We note with some surprise the implication that DMR is a better form of affordable housing because it can also qualify for mandatory CiL relief. This, like the zero VAT rating, accrues to the developer's benefit and is a loss to the public purse. **We suggest that the Mayor ensures that any CiL relief is taken into account in any viability assessment and goes toward the provision of more, or cheaper, affordable housing.**

4.21 The Mayor's preference for DMR to be at London Living Rent Levels (LLR) is weak, particularly in the light of the numerous concessions being made to encourage BtR. **Notwithstanding our overarching concerns and other suggestions about BtR and DMR we suggest that all the DMR housing in a BtR development must be at LLR.**

We do not share the Mayor's confidence that LLR 'can be easily understood' and 'can earn the public's trust'. LLR was launched as a rent product, but is now an intermediate product on for-sale developments, and only exists as a rent product at LLR 'levels' on BtR developments. There is no fixed percentage for the amount of LLR housing on either for-sale or BtR developments and while ward-level caps have been produced the actual rents payable are still not necessarily clear. For an example of this we refer the Mayor to the affordable housing statement for the planning application for the BtR redevelopment of the Elephant & Castle shopping centre (ref 16/AP/4458), which after 36 pages ends with the baffling statement '*The blended percentage of market rent across all the DMR homes is 57% with a range of 15% to 80% of Market Rent*'. **Notwithstanding our overarching concerns and other suggestions about BtR and DMR we suggest that the Mayor sets the LLR amounts for all DMR housing.**

4.22 We do not fully understand the difference between the two different methods of setting LLR. The first method appears to retain LLR for as long as the unit is let as DMR, the second method seems to retain the initial discount. **We ask for clarification of how the Mayor would expect a given rent to diverge under each method and which method results in a higher rent.**

4.23 We cannot see the necessity for this paragraph, given the wide range of tested affordable housing tenures and the introduction of DMR. It renders much of the

preceding SPG nugatory. We note that while the housing needs of those who can afford intermediate products are protected, even if only nominally, the social rented sector is accorded no such protection. **We suggest that this paragraph is deleted.**

4.24 The amount of DMR housing and its levels of rent should be addressed in the viability assessment as a matter of course and therefore makes this paragraph redundant. This paragraph will also act as an encouragement to developers to trade-off the amount of DMR housing against the rent, rather than looking at other variables, such as profit and with a consequent loss of genuinely affordable housing. **We suggest that this paragraph is deleted.**

4.25 Please see our comment to 4.13 (2)

4.26 We understand this paragraph to apply laxer residential mix standards to BtR developments, without saying why, beyond a vague reference to suitability. It promotes BtR for town centres and transport nodes at the expense of other tenures, including other affordable housing tenure, and larger family units. It also promotes 1 and 2 bed units, citing a greater relative demand over owner-occupation and social rent. This supposed lack of demand can be explained by the lack of supply, in the case of social rented housing, and expense, in the case of owner-occupation. As an affordable housing tenure that should remedy these ills, BtR has the disadvantages of not allowing home ownership, charging much higher rents than social rent and only affordable rents lower than 80% market, if their number of is reduced. We refer the Mayor to our previous comments 4.5-4.6, 4.7(4) regarding 'the 'distinct viability challenges faced by BtR'. **We therefore suggest that this paragraph is rewritten to the effect that BtR will be treated in the same way as any free-market development with regards to residential mix, density standards and viability requirements.**

4.28 We understand the intention of this paragraph to apply laxer space standards to BtR. **We therefore suggest that this paragraph is rewritten to the effect that BtR will be treated in the same way as any free-market development with regards to space standards.**

4.29 We understand the intention of this paragraph to apply laxer design standards to BtR. We cannot see why a longer covenant should justify laxer design standards, even while longer covenants are desirable (our comment 4.9 bullet point 2). **We therefore suggest that this paragraph is rewritten to the effect that BtR will be treated in the same way as any free-market development with regards to design standards.**

4.31 We agree that Route A is the more appropriate viability route for BtR, but a more fundamental point is that if BtR cannot meet the affordable housing targets, thresholds and tenure splits of other free-market development, despite the residential mix, density and design standard concessions proposed in this SPG, then it is not a tenure that should be encouraged. We also note that there are 'insufficient BtR schemes completed for any

threshold to be set' which reinforces the argument for formal consultation about the suitability of BtR as a solution to London's Housing crisis. **We therefore suggest that the Mayor reconsider his support for BtR, and conduct a formal consultation on the suitability of BtR as part of the solution to London's Housing crisis.**

4.32 We note that the London Plan purpose of maximising the amount of affordable housing has been reduced here to maximising intermediate rent, with no requirement that such rent be at LLR levels. This will continue the process of marginalising social rented housing, noted in 3.56. **We suggest rewording this sentence to read 'with the intention of maximising affordable housing in the London Plan ratios of 60:40 social/affordable rent and intermediate housing'.**

If the previous suggestion should not be adopted and notwithstanding our overarching concerns about LLR we suggest that 'preferably' is replaced by 'all', to read 'all at London Living Rent levels'.

4.33 We either have not understood this paragraph correctly or have not understood its rationale. It appears to say that if a BtR developer produces a viability assessment showing that 35% affordable housing could be provided on a for-sale scheme, which is not going to be built, the unspecified amount of affordable housing that will be built will not be subject to a viability review. It also thereby implies that any amount of affordable housing will be acceptable, and even if it is below 35%. If this interpretation is correct it make little sense and appears in direct contradiction to 4.32. We refer to our similar comments on 4.13-4.15. **We therefore ask for clarification of this paragraph.**

4.34 We refer to our previous comments and suggestions on 4.26 and others.

4.35 The various issues raised eg profit, sales and marketing, rate of disposal should be addressed in the viability assessment as a matter of course and therefore make this paragraph redundant. This paragraph indicates that BtR will be treated more favourable in the appraisal of viability assessments than for-sale developers, which is inequitable, unwarranted and will lead to the loss of affordable housing. We refer to our previous comments at 4.5-4.6, 4.24. **We suggest that this paragraph is deleted.**

4.36 bullet point 1 We assume that the proposal that minimum 3-year tenancies should be available to 'all tenants' includes DMR tenants. If so this compares unfavourably with social rent/affordable rent housing tenancies, particularly social rented. As random examples, L&Q offer an intermediate rent tenancy where, after an initial for 6 months 'you will be able to stay for as long as you like' <https://lqpricedin.co.uk/wp-content/uploads/2015/01/Goldcrest-House-IMR-Brochure.pdf> and Notting Hill Housing Trust offer a 5 year tenancy, with the assumption that it will be renewed <https://www.nhhg.org.uk/residents/your-tenancy-or-lease/for-tenants/#panel3676>

We therefore suggest that the first sentence of this bullet point is reworded to read; 'All tenancies will be for a minimum of 5 years with a presumption that they will be renewed'.

4.37 bullet point 2 Please see our comments to 4.21 and 4.22.

4.38 – 4.39 In the light of the numerous concerns we have raised about BtR, the many concessions it has been afforded and the lack of solid research and assessment of its utility solving the housing crisis or its social and demographic impact **we suggest that the Mayor reconsider his support for BtR.**

END

Homes for Londoners: Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG) – Generation Rent response

Generation Rent

Generation Rent is the national organisation for private renters, working for a secure, affordable, and decent private rented sector, as part of ending the housing crisis.

We also have a programme focused on London's private rented sector, recognising the specific issues around affordability, demand, and housing mix, that exist in the capital.

Our work includes policy development (linked to devolution in the London context), political advocacy, and community organising to support private renters in improving their circumstances through a united and growing political movement.

Introduction

The well-publicised growth in London's private rented sector, growing to 28% of all homes in 2017, is a phenomenon that has profound social, economic, and political, consequences for London's present and future.

The lack of protection from eviction for private renters is borne out in quantifiable trends, such as the increase in homelessness in London,ⁱ and the general rise in 'no fault' evictions in the private rented sector.

It also has potential current and future results that are less easy to measure, or have yet to be quantified, such as the effect on community cohesion across different parts of London, and the influence on tenants' mental health, resulting both from the inherent instability of their tenancy, and the eviction process itself.ⁱⁱ

The high and increasing cost of private renting also has clear results for London's residents and communities. There are more people living in poverty in the PRS than in other tenure in the city,ⁱⁱⁱ and high rents have contributed to a rise in London's housing benefit bill to £6 billion per year.

The freeze on Local Housing Allowance up to 2020 will see the number of private renters in poverty increase, as well as larger numbers of renters struggling to find suitable homes in the city.^{iv}

High rents accompanied by ever-rising house prices has also created a growing number of Londoners who are 'stuck' in the private rented sector, unable to raise a sufficient deposit or borrow enough money to buy a home,^v but living on incomes and in situations which mean they will never access secure and affordable social housing.^{vi}

In the present, this means that tenants are unable to plan for the long-term in the city, and those who are more likely to use local services (such as families) have difficulty if they need to move as a result of a rent rise or eviction.

The potential future consequences are also extremely worrying. An increasing number of older people will be living in the private rented sector over the next two decades, but many will have minimal pensions and facing rental costs that are above social security provision. This at the very least means additional costs to the state through housing benefit, but may also see more and more vulnerable people facing homelessness.

The broader social trend that also results from increasing numbers unable to afford a mortgage is an increase in inequality, an existing trend that the Mayor is keen to tackle. Property owners and landlords will see their assets increase and their housing costs remain low and falling, while those privately renting are likely to spend more and more of their income on rents and will have no asset to realise later on in life.

It is necessary to spell out this bleak picture in order to focus the mind on what the purpose of the Mayor's housing policy should be in relation to the private rented sector, which this response will focus on.

Within the remit of Build-to-Rent supply policy, as set out in the document, we should therefore be looking to policy that answers the social questions above – providing secure and affordable housing to a range of London households on a long-term basis.

If this portion of supply is instead targeted simply at a segment of higher-income, professional tenants, who are least hurt by the current faults of the private rented sector, it would seem harder to justify allowing land for development of this tenure over and above more affordable products.

Conditions in build-to-rent developments

It is heartening to read that the Mayor intends build-to-rent to be used to deliver 'more high-quality private rented homes' that can 'meet a range of needs'.^{vii} However, the document in its current form lays out very little detail as to how this will be achieved.

Clearly these developments will be compliant with current build and design standards, as stated, but for renters to feel confident about conditions in their properties, they require prompt and willing action on repairs and complaints.

We welcome the requirement for all schemes to have onsite presence, a complaints procedure, membership of an ombudsman scheme, and membership of a professional body. However, we know that 'complaints procedures' can vary in quality and ability to force action, as has been shown by poor management in privately rented student accommodation.^{viii}

It would therefore be helpful if the Mayor were to provide an outline of what would be expected within a complaints scheme, how this interacts with the local authority enforcement team, and provide financial compensation and redress over and above the current ombudsman schemes.

As build-to-rent should act as an exemplar of conditions and management in the sector, ensuring that tenants can easily and quickly get compensation in the case of poor conditions or management, should be part of the SPG.

Security of tenure

It is encouraging that London build-to-rent is seeking to implement the principle of longer tenancies, but the language around the policy leaves some uncertainty around the practical results of this intention and how it will actually support tenants.

Rather than stating that 'Longer tenancies (three years or more) should be available to all tenants', the document should make clear that three-year tenancies are mandatory, with break clauses running throughout those contracts to allow the tenant to serve notice of a month.

Currently, this seems to be the preferred option of the Mayor, but without making it compulsory it is possible that it will be avoided by cautious investors, rather than being made an industry standard that all should adhere to.

Equally, the fact that the policy explicitly states that market tenancies should not be subject to a specific level of rent rise across the three years undermines this security further.

In other words, people currently paying market rents may want to access a new product that allows rises equal to inflation but will be discouraged from taking longer tenancies if the rent rise is potentially infinite.

How LPAs will interpret what level would discourage tenants from taking longer tenancies is unclear; certainly wealthier renters will still be able to access these properties and this may therefore pass that test, but do nothing for most renters.

Instead, rent rises across the three years should be limited to inflation for all build-to-rent; this can then be factored into developers business models and does not create a race to drive up rents across the industry (as developers bid more on land on the basis of expensive and rising rents).

Affordability and viability

Generation Rent very much supports the concept of the London Living Rent, despite concerns about the affordability of rents charged at the upper end of listed figures, and the questions around how the procession towards homeownership will work, given the cost of homeownership in London and the uncertainty around how long someone will stay in a tenancy.

It is therefore a disappointment to see that the affordable provision of any build-to-rent development is only a preference for London Living Rent, rather than an absolute requirement. The document suggests intermediate rents may serve as part of affordable provision, where 'local need' is identified.

Given the breadth and diversity of London's private rented sector, it would always be possible to show this 'need', yet intermediate rents (at up to 80% of market rent) are not genuinely affordable. Furthermore, identifying intermediate rent as affordable contradicts the Mayor's stated policy of affordable housing equating to either shared ownership, London Living Rent, or low cost rent.

It is important that rent rises are limited to CPI, but this again appears to be a preference, as opposed to a requisite part of the affordable offer.

It is welcome that provision is in place to make the affordable contribution affordable in perpetuity, but it is unclear whether the Mayor will be getting best value for money through either of the clawback mechanisms suggested, given the profit that may be made by developers selling new units on the open market.

In addition, an expected covenant on build-to-rent developments of fifteen years does not provide long-term PRS homes in London, and could be exploited by developers looking to profit from market homes for sale after fifteen years, with minimal affordable housing provision.

To limit that, all build-to-rent developments should have an expected level of affordable housing, rather than be completely exempt from the requirements of the SPG on developments for sale.

It is right to say that the economics of build-to-rent does differ from sales development, but a target can still be agreed that puts developers on a level playing field and guarantees Londoners a steady supply of affordable homes.

Without that stated figure, and given the untested nature of build-to-rent, developers will be able to negotiate down levels of provision as we have so often seen on traditional developments, and build-to-rent will undermine the Mayoral aspiration of 50% of all new homes being affordable.

Diversity in build-to-rent

To date in London, build-to-rent developments have been marketed at young professionals on high incomes, with little or no provision for other kinds of renters. The paper makes no suggestions as to how build-to-rent may be diversified for the range of incomes in the PRS and the different household types.

A good addition would be work to encourage developments to include genuinely affordable, family housing. The modelling for London Living Rent is based on two-bed apartments, for couples or two sharers, yet one in three PRS households in London include dependent children.

Alongside providing more family housing, the Mayor could take a strong role in modelling proposals for build-to-rent developments of entirely sub-market rent, to show this is possible and to move away from build-to-rent being associated with being a high-end, expensive product.

Doing this would start to show the possible positive social outcomes of building new privately rented homes, as opposed to simply building more high-value homes that are not affordable for most Londoners.

Conclusion

The Mayoral focus on building more homes for private rent is a recognition that too often private renters have been ignored by modern housing policy. Despite facing the worst conditions, the least security, and the highest housing costs in London, they are often trapped, unable to get a mortgage or access a social tenancy.

However, given the scarcity of land in London and the priorities for its housing, it is important that every build-to-rent development supports as wide a range of private tenants as possible.

This means building homes that are not simply let at (high-end) market rent, and that guarantee security of tenure, as well as maximising affordable housing provision within each development.

For further information, please contact:



London Campaigns Manager
Generation Rent



ⁱ <https://www.theguardian.com/uk-news/davehillblog/2016/dec/01/londons-homelessness-count-continues-to-rise>

ⁱⁱ Small studies overseas suggest this trend, see for example <http://nlihc.org/article/effects-eviction-include-material-hardship-and-poor-health-mothers-and-children>. It's clear much more work needs to be done in this area, which should include a long-term study of Londoners who have been evicted in the private rented sector.

ⁱⁱⁱ <http://www.londonpovertyprofile.org.uk/LPP%202015%20findings.pdf>

^{iv} <http://www.londoncouncils.gov.uk/our-key-themes/tracking-welfare-reforms/resources/impact-freezing-lha-rates-london>

^v House prices in London are ten times the average salary, see

<http://www.independent.co.uk/news/business/news/oxford-least-affordable-house-prices-property-prices-commuter-cities-in-the-uk-a6954036.html>

^{vi} For example, the council waiting list in Barking and Dagenham is up to 50 years:

<https://www.theguardian.com/society/2016/oct/19/council-house-wait-50-years-barking-and-dagenham-councillor-documentary-london-no-place-to-call-home>

^{vii} https://www.london.gov.uk/sites/default/files/draft_affordable_housing_and_viability_spg_2016.pdf, p. 38.

^{viii} <http://www.standard.co.uk/news/london/ucl-students-awarded-nearly-300000-in-rent-row-over-poor-living-conditions-a3128166.html>

RESPONSE TO MAYOR OF LONDON'S DRAFT SPG ON AFFORDABLE HOUSING AND VIABILITY

HIGHBURY GROUP ON HOUSING DELIVERY

Introduction

The Highbury Group is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies on policy options for optimising the output of housing including affordable housing. The current core membership is set out in a footnote to this submission.

Key Points:

- * Financial viability assessments should be secondary to the achievement of adopted planning policy
- * The proposed 35% affordable housing threshold will mean that schemes that could comply with the full policy requirements as set out in the London Plan will not receive adequate scrutiny and that the policy of achieving the maximum reasonable amount of affordable housing in policy 3.12 of the London Plan will not be delivered in relation to such schemes.
- * The GLA affordable housing toolkit and guidance must be updated to current values, prices and financial assumptions, and must be reviewed annually.

The role of viability within planning policy and practice

The Highbury Group welcomes the intention of the Mayor to strengthen the policy mechanism for maximising delivery of affordable housing in terms of the existing policies set out in the 2015 London Plan, specifically in relation to

the use of viability assessment of planning applications. We are conscious of the fact that the draft SPG has to operate within the existing policy and that the Mayor will make proposals later in the year to amend housing policies and other policies in the London Plan.

We would also wish to stress that planning decisions in relation to residential development should continue to be plan led and based primarily on whether schemes provide housing to meet the requirements identified in the Strategic Housing Market assessment and in planning briefs for specific sites which are derived from this assessment. While financial appraisals assess the justification for non-compliance based on the development economics of a specific development proposal, the GLA and boroughs should also use the financial appraisal system to test whether a proposed scheme could be adjusted to provide more and or more appropriate affordable housing, including an assessment of whether the Mayor is justified in contributing grant in relation to the specific scheme to optimise affordable housing outputs. The financial appraisal system should also be used to test the affordability of the homes provided to prospective occupants in terms of the target group and income based criteria for affordability of different types of sub-market housing.

Part 2 The Threshold Approach.

While we appreciate the intention of the Mayor to simplify the current appraisal system, we have concerns that the proposed threshold approach will not necessarily maximise the output of genuinely affordable homes on the full range of sites referable to the Mayor. We are also aware that individual Boroughs will refer to the approach proposed by the Mayor in their assessment of schemes they determine which are not referable to the Mayor.

The London Plan retains a numerical affordable housing target equivalent to 40% of the identified housing capacity of 42,000 homes a year. The Mayor has also stated his intention of raising this target to 50%. The Mayor has commissioned a new Strategic Housing Market Assessment (SHMA) and a new Strategic Housing Land Availability Assessment (SHLAA) to inform the proposed new target. It is likely that these new assessments will demonstrate that the need for additional sub-market homes is greater than 50% of assessed development capacity over the next 10 years – the period for which new London-wide and borough housing targets will apply. In this context, we think it is inappropriate to set a site specific threshold of 35% sub-market housing, above which full financial scrutiny is dis-applied in relation to schemes not involving any public subsidy.

The proposal is put forward as a mechanism for speeding up the planning decision making process and is not supported by any evidence to the effect that, London-wide, the current 40% target or potentially a higher target, is not deliverable. The fact that in recent years the 40% target has not been delivered is not in itself evidence that in the current context and in the period up to the adoption of a new target, the 40% target cannot be delivered. In fact the Mayor has recently stated that the aggregate of schemes considered by him since May 2016, have in fact been given planning consent on the basis of achieving an affordable housing output of above 40%. The proposed change in practice does not appear to be based on any research demonstrating that in practice the 40% target cannot be delivered on specific sites or on an aggregate of sites, similar to the research which was carried out by the Three Dragons consultancy to support the inclusion of the 50% target in the 2004 London Plan.

While it is correct that the level of direct public subsidy per unit available for different types of sub-market housing is less than it was in 2004, sales values are significantly higher, with a near doubling of sales values in some areas of London since 2008. The earlier research demonstrated that in central London boroughs, high value schemes could support 50% affordable housing without grant. In the current context, there will certainly be high value schemes which could support 50% affordable housing without grant and consequently the 35% threshold will fail to deliver the existing London plan policy of delivering the maximum reasonable output of affordable housing on a specific site.

We note the statements in para 2.3 and 2.9 that all schemes receiving public subsidy (including Mayoral or Borough grant or any discount on market value of public land), schemes involving off site affordable housing provision, schemes involving demolition of affordable housing, and applications making use of vacant building credit, will be subject full financial appraisal, irrespective of whether the proportion of affordable housing proposed is above 35%. It is however also important to specify that the 35% figure will be assessed in terms of habitable rooms or floorspace and not in relation to units, in order to take into account the differential size between tenures of proposed dwellings.

It is however critical to ensure that before applications are considered for the Route B process, the full policy requirements in the London Plan are tested and the additional guidance in the Housing SPG are considered. This relates not only to schemes delivering the required mix of sub-market provision ('affordable housing' for the purposes of the Mayor's proposed 35% target/threshold) a minimum of 60% of sub-market homes meeting the criteria for social and affordable rent. In para 2.28, the draft SPG introduces different targets for different types of sub-market housing product which are different from those set out in the London Plan. The new proposed threshold/target could lead to a significant reduction of the proportion of sub-market housing which is social or affordable rented housing. We would stress that while the Mayor has the power to determine how his housing investment programme is allocated between different types of sub-market housing product, and change of the targets set out in the London Plan requires a formal revision to the London Plan, for which there is a statutory process. We would also point out with reference to para 2.28, that it is inconsistent with the objective of achieving genuinely affordable social or affordable housing if the rent levels are higher than the relevant limit for housing benefit such as local housing allowance. The Mayor GLA therefore should for the purposes of its use of its housing investment funding and exercise of its planning powers require that rent levels should not exceed benefit levels.

Paragraph 2.34 refers to London Living Rent. There is an expectation that London Living Rent tenants cannot afford owner occupation but may seek in due course to move into owner occupation. It is therefore illogical to include the incomes of those who are already in owner occupation in the definition of

median household income for London Living Rent level limits. Including local owner occupier household income will vary significantly the figure of one third of the relevant median household income quoted in the draft SPG. For instance in a borough with about 45% of households being owner occupiers, including owner occupier incomes increases the median income figure by a third. Crucially the scale of the variation will be different dependent on the local proportion of housing that is owner-occupied. It is technically unsatisfactory to have such a measure defined in a way which varies according to the local proportion of housing which is owner-occupied. Therefore the only household income data useable for the purposes of setting the London Living Rent level is that of households excluding owner occupier incomes.

Schemes should also provide a mix of unit types in accordance with assessed housing requirements including the target for homes which are 3 bedrooms or larger, the minimum internal space standards and amenity and environmental standards and also comply with the density policies as set out in the existing London Plan, and do not constitute over-development or under-development. If these policy requirements are dis-applied, it is likely that that in order to avoid financial appraisal, some developers will produce schemes that provide 35% sub-market through providing small units which are only marginally submarket in schemes which are over-developed and in built forms which are inappropriate for the intended occupants. This would clearly be an unsatisfactory outcome.

It is also critical that in appraising schemes which purport to include affordable housing units, the GLA assess whether the homes proposed as social or affordable rent or intermediate homes, actually meet the needs of the intended target group and are affordable by them. It is therefore essential that the GLA reintroduce into the viability model the assessment of individual units against the relevant affordability criteria. This includes an assessment of service charges as well as rental and purchase costs. We are concerned to note that the guidance Notes for the affordable housing development control toolkit no longer appear on the Mayoral website. The GLA should also assess whether the payment of CIL and planning gain contributions are sufficient to support a new

residential development.

The SPG indicates that lower affordable housing targets will be considered in Opportunity Areas ‘given the need for additional infrastructure’. While it is recognised that some Opportunity Areas will require significant infrastructure, given the importance of the Opportunity Areas in delivering new housing supply, any waiver of the normal policy requirements for affordable housing in relation to these areas, will significantly reduce the ability of the Mayor to deliver the overall affordable housing targets set in the London Plan. As the existing London Plan does not include differential treatment of affordable housing targets for schemes within Opportunity Areas, it is ultra vires to introduce a separate policy through SPG. Moreover this proposal does not recognise that the development economics of schemes within Opportunity Areas will vary widely, and the treatment of all Opportunity Areas as if they have similar characteristics is not appropriate.

Part 3 Guidance on Viability Assessments

It is essential that viability appraisals are carried out on a consistent basis and that the GLA maintains a dataset on all appraisals undertaken, to enable the comparison of individual schemes and to establish a benchmarking system. It would be preferable for a standard model to be used and an updated version of the GLA’s own Affordable Housing Toolkit would appear to be most appropriate as it was, unlike the other models in common usage, designed specifically for the purpose of development appraisal by public planning bodies to assess any justification based on scheme economics for non-compliance with published planning policies. It is essential that the current version of the model, which is based on January 2015 assumptions on costs, valued and financing assumptions is brought up to date, and updated on an annual basis as used to be the case. This is especially important given the significant increase in sales values of the majority of London developments over the last two years. Using out of date assumptions will significantly reduce affordable housing outputs, as well as increasing developers ‘surplus’ profit.

We strongly support the proposal that all appraisals and assessment of viability submissions should be undertaken by the GLA's in-house team. This will remove the potential conflict of interest that often arises in the case of relying on assessments by private consultants employed by or paid for by the applicant. We also support the requirement that appraisals should be fully transparent and that all of the background viability information should be available both to the officers, the Mayor and councillors involved in determining planning applications and to the general public.

We support the detailed guidance on the content and assumptions to be used in viability submissions. We support the use of Existing Use Value plus premium as a basis for consideration of land value. It would however be helpful for the Mayor to issue guidance on the acceptable premium in specific contexts and to seek full justification for profit levels assumed by applicants in their viability assessments. Proportionate premiums could be set in relation to the actual EUV with a higher proportionate premium in relation to land where the EUV is low, or in relation to the existing land use concerned. It is important that the premium is sufficient to ensure that the appropriate land is released for housing development, while ensuring that the landowner does not capitalise on hope value to the extent that it significantly reduces either the quantum of submarket housing or the affordability of such housing. Where a landowner is not prepared to release an appropriate housing site on the basis of EUV plus a reasonable premium, the Mayor should consider using his Compulsory Purchase powers to ensure that the site is brought forward for development.

We support the application of review formulae.

Part 4 Build to Rent

We do not support the inclusion of Build to Rent in the affordable housing definition, unless the scheme meets the criteria for intermediate housing as set out in the London Plan and the Housing SPG. . This includes the appropriate

affordability criteria as well as the criteria that these criteria are met in perpetuity. Where the homes can be sold within a prescribed period, or where rents can be raised above the appropriate level, such homes should not be considered as covered by the affordable homes policies and targets set out in the London Plan. It is important that the Mayor urgently brings forward revised definitions for affordability for each category of sub-market housing, which relate directly to the incomes of the target group for each sub-market product, as in the 2004 and 2008 London Plans, rather than relying on the current national Government definition that housing available at up to 80% market price or 80% market rent is deemed to be affordable in terms of the application of planning policy and targets for affordable housing outputs within new developments.

Affordable Housing and Viability Supplementary Planning Guidance (SPG)

Response of Just Space network to the consultation draft

28 February 2017

Just Space is a 10-year-old network of community organisations which exists to facilitate effective public participation in London planning. It comprises dozens of groups which support each other on local and London-wide issues and, over the past 2 years, has taken the initiative by preparing for the new Mayor a major statement: [Towards a community-led Plan for London: policy directions and proposals.](#)

The draft SPG has been discussed and debated in the light of the network's policies and priorities and this short document presents the key points we wish to press upon the Mayor and officers. Some of the member-organisations in Just Space will be making their own representations and we should especially stress our support for the meticulous commentary prepared by the 35% Campaign, especially in respect of the viability proposals on which they are truly expert.

1. There are no provisions to increase the supply of new housing at **social** rent, or to protect existing stocks. Indeed the social housing requirement on private development projects is proposed to be reduced. Just Space has always argued that social rent is the **ONLY** rent regime which meets the needs of those in the greatest housing need and of Londoners on normal incomes. The evidence for this is even stronger now and homelessness is growing. The swing of emphasis away from meeting the greatest needs started with the previous Mayor and Londoners are looking to the new Mayor to undo that damage, re-emphasise the meeting of needs and base his guidance on evidence of current need. We are aware that a new Strategic Housing

Market Assessment is about to start and will inform the London Plan and Housing Strategy. Until the results are available there is no basis for the affordability proposals in the draft SPG.

2. The relatively new idea of developments built from the outset for renting by private developers – called **Build to Rent (BtR)** – is being promoted without adequate preparation or research. It is proposed to grant various privileges for developments of this sort and the whole concept represents such a major change of policy that it should be withdrawn and re-considered as part of the next London Plan. The Mayor may be hoping for a lot of these homes to be built to help meet targets for total output (though they will not contribute to social housing output, despite the proposed privileges) but if there is really as much “investor interest” as claimed, then this output will probably be forthcoming without any new privileges. Pending the adoption of the new London Plan, developments designed for rental should be subject to the same social and affordable requirements as any other scheme.

3. Pending the new London Plan there is merit in the idea that developments which meet (or exceed) a minimum threshold of (genuinely) affordable housing provision should be exempt from the need to present **viability assessments**. But the threshold should be set at 50% “affordable” (the Mayor’s manifesto commitment), not at 35%.

4. Within the required “affordable” housing the requirement for **60% to be social rent** should be revived and enforced. One aim of all this is to lower developers’ profit expectations and thus gradually lower the amounts they pay for land, and the sooner the Mayor starts to push these expectations down the better. Developers whose schemes meet the existing London Plan target of 35-40% “affordable” could still apply and still get permission

but would simply not benefit from the fast track handling. The Mayor is surely free to reward those whose projects exceed the plan's requirements.

5. Without prejudice to point 4, Just Space groups consider that the social and other "affordable" housing requirements should be clearly stated as non-negotiable. The Mayor's (fine) ambition to bring land prices down can only be achieved if developers are convinced that affordable housing requirements cannot be negotiated away against other planning considerations. If this cannot legally be achieved in the SPG it should be foundational in the draft Plan.

6. All developments taking place on **public land** should be required to deliver 100% "affordable" housing and developments by housing associations (RPs) should be required to meet at least the 50% "affordable" requirement.

JustSpace.org.uk

Paul Robinson

From: [REDACTED]
Sent: 28 February 2017 23:35
To: Housing SPG 2016
Subject: Response to Draft Housing SPG from Kennington Oval and Vauxhall Forum
Attachments: VA Redacted 1 152.jpg; VA Redacted 2 153.jpg; VA Redacted 3 154.jpg; VA Redacted 4 155.jpg; KOVF Rep SPG ref Viability 28Feb17.docx; GE view.docx

Dear Sirs

I attach a response to the Mayor's draft SPG on Affordable Housing and Viability, on behalf of the Kennington Oval and Vauxhall Forum, a body designated by the London Borough of Lambeth to prepare a Neighbourhood Plan for its area.

Yours faithfully

[REDACTED]
Chair of Planning Group
Kennington Oval and Vauxhall Forum

28 February 2017

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**The Cooperative Party - London Coop Housing Advisory
Group**

***“Mayor for London – Homes for London: Draft Affordable
Housing Supplementary Planning Guidance 2016”***

submission in response to consultation 28 February 2017

The following is a submission made by the Cooperative Party – London Coop Housing Advisory Group on the Mayors the “Homes for London, Draft Affordable Housing and Viability Supplementary Planning Document.

(1) The Cooperative Party - London Coop Housing Advisory Group

The Cooperative Party - London Coop Housing Advisory Group (LCHAG) was formed to promote Coop Housing in the Capital, and to engage with London Mayor, London Assembly, and London Boroughs on the delivery of Coop Housing.

By Cooperative Housing, the London Coop Housing Advisory means fully mutually owned housing coops or ownership coops, tenant management coops/organisations, co-housing groups, community land trusts, and all forms of democratic controlled and led housing.

The London Coop Housing Advisory Group is representative of the cooperative housing movement in London through the London Federation of Housing Coops, (current Chair & Secretary), through the London Cooperative Party Council (the political wing of the Coop Party) including a number of representatives who have an active interest in housing, and/or current Councillors who have served as London Borough Planning and Housing Committees, and the current Chair of the International Coop Housing Movement and former Chief Executive of Cooperative Development Services

Collectively, the London Cooperative Housing Advisory Group, has considerable knowledge and expertise of the Coop and wider housing sector, including development and the National, London, and Borough Planning Frameworks.

(2) Support for Homes for Londoners Approach

LCHAG is supportive of its main aim of the “Homes for London, Draft Affordable Housing and Viability SPG, namely

“to speed up planning decisions and increase amount of affordable housing and delivered through the planning system” and supports the SPG’s effort to “embed the requirement for affordable housing into land values and makes the viability process more consistent and transparent, as well as speeding up the planning process for those schemes which are delivering more affordable housing”

The LCHAG is also generally supportive of the detailed measures and the development of enhanced tools to aid the delivery of affordable housing set out in the SPG. Although, in some areas the LCHG, believes specific reference to, or mention of Cooperative Housing form would be beneficial to the SPG aims.

In addition, the LCHAG wishes to raise some key areas of recognition in relation to Cooperative Housing, that it believes would be mutually beneficially if embedded in the SPG.

(3) General Support and Detailed Comments on approach

The LCHAG general comments on the SPG are set out below:

Part 2 Threshold Approach to Viability

The guidance set out in the draft SPG on the threshold approach, of seeking 35% of affordable housing on private led development, without the requirement for a viability assessment is considered a sensible incentive to achieve a high level of affordable housing and speed up the assessment of planning applications. The assumption being that a 35% affordable housing delivery can generally be met without the requirement of public subsidy/grant, and that this norm will impact and shape land values of the longer term to enable delivery.

The Route A Threshold Approach core requirements for viability assessments are well considered and supported. Also the review mechanism requirement for both approaches Route A and Route B is considered essential and supported.

The measuring of the delivery of affordable housing in terms of habitable rooms is considered desirable and useful tool in terms of the greater range and size of affordable housing achieved from development. However, measuring affordable housing units will be required to be captured over time in the Annual Monitoring Report process over time, to provide meaningful outcome data on affordable home delivery (This historically has not been the case)

The LCHAG also considers that is additional benefit in measuring and capturing information on affordable housing to be achieved in a development in terms of square meters of affordable housing and as a proportion of any affordable housing in any residential development.

It is noted that the Threshold Approach is the wider context strategic context of a 50% strategic target for all new homes in London being affordable. Therefore, by implication that schemes in receipt of public subsidy through financial subsidy and/or access to publicly owned land will achieve more. The LCHAG consider that the challenges in relation to higher % of delivery, will need to be considered on a case by case basis, but with adequate delivery infrastructure and resources to incentivise and deliver. It recognised that the draft SPG spells out the Mayor's approach, to a greater or less extent, in paras 2.17 to 2.26 in relation to grant and involvement of Registered Providers.

On Tenure – it is recognised that as stated in the SPG that tenure is defined in the London Plan, greater encouragement could be given to including Cooperative Housing as a particular form of affordable tenure.

Living Rent – the introduction of the London Living Rent as a new form of intermediate affordable housing is welcome. It is considered that further diversification of intermediate affordable housing, is something that the cooperative sector can in particular aid. Further, in relation to encouraging London Living Rent tenants into home ownership (para 2.35) it should be noted that cooperative home ownership would achieve this automatically through collective home ownership, and that different forms of home ownership need to be recognised in the SPG.

Further, a simple step towards greater diversification is highlighting the right to manage in all new developments, once completed, by tenants/residents. This could be supported by an amendment to SPG, which requires the scheme developers/landowners to inform and support right to manage once a development is complete.

Affordable housing in perpetuity - Para 2.44 notes the requirement of affordable housing for future eligible households should be secured through a legal agreement through housing associations or cooperatives registered with the Mayor. The LCHG welcomes the recognition offered in the SPG that Housing Coops help providing affordable housing in perpetuity. But maintain that the reference to housing coops as vehicle for providing affordable housing needs to be stronger, as housing coops are uniquely geared to providing of affordable housing in perpetuity, as the homes provided by fully mutually owned Housing Coops are already (collectively) owned by their resident members, and therefore exempt from right to buy legislation. *(Please see LCHAG Key Representations below)*

Off site and cash in lieu –although affordable housing is best provided through on site provision, and off site contributions should be resisted, the SPG rightly provides further guidance to the use of site and cash in lieu provisions. The sums involved in off-site provision are substantial, and are likely to increase, with the enhanced use of review mechanisms going forward. LCHAG believes that boroughs holding such sum should be transparent and open about its application in the delivery of affordable housing as recommended in the SPG through the publication of an annual report. But further there should be an ability the ability of Housing Coops and other affordable housing providers following the objectives of the Mayors affordable housing objectives to bid for resources as a means of ensuring delivery. Guidance in the SPG on the right to bid for additional funds would be welcome.

Loss of existing affordable housing (including estate renewal) – LCHAG believe that successful estate renewal can only be delivered with local community involvement Tenant Management Organisations are other similar led resident/tenant organisations involvement, were they exist, should be included in the design of the type and delivery of affordable housing where they exist. *(Please see LCHAG Key Representations below)*

The LCHAG would also argue on this point, separate to any direct comments on the SPG as a planning document, that additional expertise and resources needs to be developed and shared across London, to ensure lessons from individual community led development can be learned and applied on a wider development spectrum, and expensive consultant fees re-stating already learned lessons models can be where possible avoided.

Part 3: Guidance on Viability Assessments

The detailed guidance on the approaches to viability assessment provides and a sound technical framework on, and adding on existing protocols and practice, including:

- Development values
 - Growth Assumptions
 - Affordable Housing Values
- Costs
 - Build Costs
 - Planning Obligations
 - Development profits
- Development Land Value
 - Existing use Value plus premium
- Contingent Obligations and Review mechanisms
- Approach to Opportunity Areas and Housing Zones

- Strategic Industrial Site

The LCHAG is supportive of the approaches set out, and would limit its comments to

(a) Existing Use Values plus premium - The LCHAG supports the basic understanding that benchmarking land value is based constantly, on existing uses, related to already permitted planning consents, plus a relatively small premium required to bring forward sites into the market. Alternative approaches should generally not be considered, as they distort both individual viability assessments and the market.

(b) Cross site viability assessment: Consideration should be given in the SPG how developers work across sites and boroughs. Ideally, through assessing a development programme by a developer across a number of sites, in one borough, or across boroughs, through open book accounting and transparency at all stages including post development financial appraisals – with scope to adjust Section 106 requirements across a range of development sites in accordance with finders on developers/landowners/consortiums. At a basic level this would include:

- Firstly, in not allowing high costs from one development be artificially allocated or transferred from one development to another.
- Secondly, by ensuring surplus generated from some schemes should not be lost by treating each scheme individually, This would require a progression on current affordable housing review mechanisms, where instead of the review recommending additional affordable units, on the single site the Section 106 agreement relates to (which is can be difficult to achieve dependent on the timing of the review mechanism), or simply making an offsite affordable financial contribution as more often is the case after a review.. A developer would be required to transfer the surplus provision for additional affordable housing, following a Section 106 required review, to another site own in the ownership of the same developer/landowner in terms building additional affordable housing on the second site in its ownership.

Part 4: Build to Rent

The LCHAG supports the significance given in the SPG to the growing Build to Rent sector and the need to provide guidance for its development. It believes further that the Cooperative Housing model can be used to expand and enhance Build to Rent, with the scope

- provide both affordable housing provision and managed market rent under one single management arrangement. i.e. a cooperative.
- Provide a significant asset lock to housing remaining affordable housing in any scheme in perpetuity through the avoidance of market sales.
- Enhance the desirability and acceptability and stability of the rented sector through mutual or co-ownership. This may be particularly relevant in high density schemes built with end user requirements potential taken aboard through involvement of end users in design process.
- Incentivise good management practice through accountability through mutual ownership.

The LCHAG recognises that the above points need further practical application in delivering cooperatively built and managed schemes, but would welcome the opportunity to work with the GLA to explore Cooperative best practice in terms of “Build for Rent”.

(4) LCHAG Key Representations on draft SPG

Overall, there is a need in planning guidance, as in the wider delivering of housing in the UK, to more fully recognise the unique advantage the cooperative model of housing can provide.

The LCHAG therefore ask that the draft SPG be amended to address key issues relating to Cooperative Housing models.

(a) **Cooperative Housing as a model of affordable housing in perpetuity.**

Fully mutually owned cooperative housing is exempt from right to buy, as it already collectively owned by its resident cooperative members. Therefore, unlike other forms of affordable housing, it has the scope to remain affordable in perpetuity.

The draft SPG as planning guidance has the scope to be amended to recognise the role Cooperative Housing, in its guidance, as means of achieving affordable housing stock in perpetuity.

(b) **The role Cooperative Housing and community led housing can have in enabling new development.**

Cooperative owned and/or cooperative managed housing through Tenant Management Organisations area often embedded in their communities. As a result they can often be the best placed to articulate and lead the aspirations for new housing, in terms of the release of existing housing estate land, or other publicly owned assets for development, if new affordable housing is to be delivered for existing communities.

The draft SPG provides guidance on the need for Registered Providers to be engaged in the preparation of housing development scheme, including on the release of public land – where it is considered appropriate to fore go land value as a result of achieving greater amounts of affordable housing.

The RCIS published *Land and Society Commission Report 2011*, pre-empted how this general policy guidance may be amended to include community led housing by clearly stating:

“Local authorities should consider how the needs and aspirations of their local communities could be met through community led housing, as part of the normal process of evidence gathering and development of local planning and housing policy.”

“To do this, local authorities should work with the HCA and housing associations to consider how they could use their assets to support local community led housing initiatives, as part of the Local Investment Plan process.”

(Recommendation 8, and supporting text Land & Society Commission Report, RCIS 2011)

For the London Mayor, who acts as a both a planning authority, and has assumed the functions of the HCA in London, amending the draft SPG could provide an appropriate opportunity to address this point.

It further believes that separate

(c) Diversifying and strengthening affordable housing tenure/types, through increased Cooperative Housing in the Capital.

Generally, in the draft SPG there should be recognition of the scope of Cooperative Housing models to enable and provide greater choice and provision of affordable housing to meet the challenges of housing need and market failure in the Capital.

Cooperative Housing or Community controlled housing in London forms a relatively small but still significant contribution towards overall stock -just under 68,000 homes in either cooperative ownership or under cooperative management (see Appendix 1 summary of Community Controlled Housing in London)

The LCHAG believes there is scope for London to lead the way in expanding the Cooperative Housing sector in the UK, from an estimated Cooperative Housing share of housing stock at 0.6% to something approaching comparative European countries. For example, Germany 5%, Austria 8% and Norway 15%. (Source ICA Housing 2012)

Reflecting the scope of various forms of Cooperative Housing to add to the choice of affordable house available and diversification of the housing market in London, should be referenced in amendments to the draft SPG.

Clive Fraser, Convenor of London Cooperative Housing Advisory Group

Appendix 1 Summary of Community Controlled Housing in London

LFHC has 267 co-ops on its database. BSHF has done some excellent research and found 775 community managed housing organisations nationally, of which 289 in London. Of these, according to the data we have available, 17 do not yet have any properties, though some such as Brixton Green, Leathermarket and RUSS have live projects at planning or construction stages. There are also community housing associations

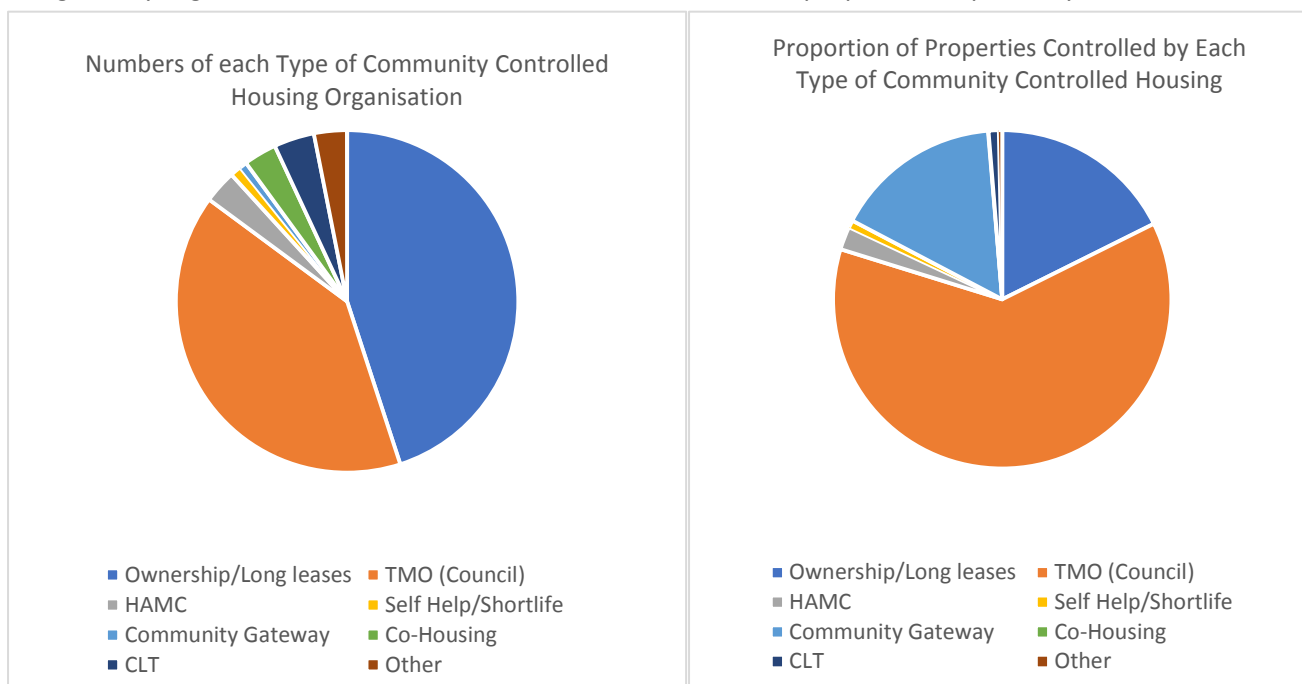
The others not included would have more properties (Spitalfields CHA, Phoenix in Bromley etc)

BSHF lists 289 for the London region, including community gateway, co-housing and community housing association groups not on the LFHC database. 67,911

Of these, 116 are TMOs in local authorities: 42,203 units (both tenanted and leasehold, but reliable figures do not exist of the breakdown for all those TMOs).

Co-operative Housing	Number	Units	Avg	%
Nationally	775	131,028	169	
London	289	67911	235	
Ownership/Long leases	130	11981	92	18%
TMO (Council)	116	42203	364	62%
HAMC	9	1499	167	2%
Self Help/Shortlife	3	481	160	1%
Community Gateway	2	10832	5416	16%
Co-Housing	9	31	3	0%
CLT	11	663	60	1%
Other	9	221	25	0%

There are nine organisations listed as Housing Association Management Co-ops, but these include two former council TMOs that transferred to a housing co-operative (WATMOS). Two community gateway organisations, Phoenix and Watford, 5,832 and 5,000 properties respectively.



The majority of community controlled housing organisations are either housing co-ops that own the property / have long-standing lease agreements or else or they are tenant management organisations which manage council properties under a management agreement. Tenant management organisations (TMOs) tend to be larger and comprise 62% of all tenant controlled housing across London. The oldest were founded in 1976.

██████████ Secretary, London Federation of Housing Co-ops, February 2017

Appendix 2: Information Sources used or referred to in submission

- Royal Institute of Chartered Surveyors (RICS) - Land & Society Commission Report, 2011
- International Cooperative Alliance (ICA) Housing – Profile of a Movement -Cooperative Housing - Around the World 2012
- Building and Social Housing Foundation database 2016 – with some additional modification in relation to the Summary of Community Controlled Housing in London.

Paul Robinson

From: [REDACTED]
Sent: 27 February 2017 21:42
To: Housing SPG 2016
Cc: Jennifer Peters
Subject: Draft Affordable Housing SPG

London Forum of Amenity and Civic Societies supports the content of this draft SPG.

The Mayor's new approach to viability assessment is welcomed and should be implemented promptly.

We are not sure that 30% low cost social rent out of the 35% affordable housing will be sufficient in total quantity to meet the needs of key workers in London and those on low incomes.

The "increased densities" on publically owned land need more explanation.

The way in which boroughs will notify the Mayor of each development for his consideration of its affordable home content should be clarified, with explanation also of the way communities will be involved.

The Mayor is urged to resist the Government's proposals to build 'Starter Homes' as affordable homes when they are clearly not so in London. Their delivery could require the discount offered to purchasers to be paid for by the enforced sale of social rented homes which would be a disaster.

The Right to Buy should not be allowed for Build-to-Rent homes unless some are meant to be of the 'Rent-to-Buy' type. There should be conditions applied to any more 'Right to Buy' contracts to prevent the homes being rented out on an AirBnB basis.

[REDACTED]
London Forum of Amenity and Civic Societies

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Citizens UK response to Mayor of London's draft Affordable Housing and Viability Supplementary Planning Guidance 2016

WHO WE ARE

London Citizens brings communities together to act for social justice and the common good. We have 200 communities in dues-paying membership reaching over 350,000 Londoners. On 28th April, 6,000 people gathered at the London Citizens Mayoral Accountability Assembly with Sadiq Khan and Zac Goldsmith. The agenda on the evening was born out of tens of thousands of conversations between people across London Citizens' member institutions discussing how London's housing crisis is affecting their lives.

These conversations brought into sharp focus what many of us knew already – that London is in desperate need of more genuinely and permanently affordable homes. The nurses, pensioners, teachers, students, business owners, administrative staff and cleaners of this city are struggling to afford to stay. From stories of a family of six sharing one bathroom with 22 other people in Elephant & Castle to schools across the capital struggling to recruit good teachers, the things we have heard make clear the dire housing situation many Londoners are forced to endure and the structural and societal problems that the housing crisis compounds.

One proposal that we made on that day was for a 'Good Development Standard' through which new developments should be 50% affordable and where this was not possible an improved public viability assessment should be applied – and we were delighted to hear from Sadiq Khan respond positively to this.

SUPPORT FOR THE POLICY

That is why London Citizens strongly supports the Mayor's overall emphasis on genuinely affordable homes for Londoners and in particular strongly supports this new Affordable Housing and Viability Supplementary Planning Guidance.

We believe this policy will result in more of the genuinely affordable homes that Londoners desperately need. Delivery of these homes is critical to London's future, and the well-being of all who live here. This policy has our wholehearted support.

WORTH GREATER FOCUS

There are four areas of the policy that we would like strengthened further and/or depend on a robust and proactive implementation of the policy:

1. **35% minimum, but 50% target retained in both the immediate and long-term** – we continue to encourage a lasting focus on reaching over 50% where possible, and as a requirement when GLA land is involved and we support the strategy of using GLA funding to get closer to 50%.
2. **Robust and proactive enforcement** – the success of this policy relies on the Mayor being ready and willing to call in planning applications that fail to reach the 35% threshold and we would support this strongly to set a new standard.
3. **Genuinely affordable** – we support the Mayor's focus on using measures of affordability linked to local incomes. We would call on the Mayor to continue to move towards only including affordable products where the cost of the home is linked to local incomes.
4. **Permanently affordable** – we encourage a greater focus on permanently affordable housing solutions, such as Community Land Trusts. We ask the Mayor to include Community Land Trusts as part of his recognised list of intermediate housing products and work proactively to encourage funding bids for CLT homes the Mayor's £3.15bn Affordable Homes Programme. This will help deliver not just genuinely but permanently affordable homes for generations to come.

OUR ONGOING COMMITMENT

London Citizens pledges our community action to promote more genuinely and permanently affordable housing. We will:

- Continue to campaign locally around specific developments to encourage housebuilders and Local Authorities to move towards delivering 50% affordable homes on large sites.
- Lobby for support for London Living Rent as an improved standard of intermediate affordability.
- Highlight the very low levels of affordability that some developers have achieved over recent years, while making very significant profits.
- Encourage Local Authorities and communities to put funding applications in to the Mayor's £3.15bn Affordable Homes Programme to ensure much needed Community Land Trust homes are built across the capital.



The Mayor of London
housingspg@london.gov.uk

Response to consultation on the Draft Affordable Housing and Viability SPG

I welcome the opportunity to comment on the Draft Affordable Housing and Viability SPG. I have campaigned for a number of years on the issue of development viability.

I have acted as a witness and advocate at several planning inquiries where development viability was an issue. In 2015 I took the Secretary of State and then Mayor of London (and others) to the High Court over their support for the Shell Centre application. The rules surrounding the disclosure of development viability were central to my case.

I also acted as a witness in the information tribunal case of Southwark vs ICO over the refusal of the council to release the viability assessment on the Heygate Estate.

In late 2015 I started a publication, [ourcity.london](http://www.ourcity.london), which reports on the development industry in London. The practices surrounding development viability have been the focus of a number of stories on the site. You can see an archive of these stories at <http://www.ourcity.london/tag/viability/>

As a result of my campaigning and research I have been asked to speak at a number of leading institutions in the field of planning and development, including UCL, the Royal Town Planning Institute and the Royal College of Art. My consultation response is informed by my research and experience in this area.

Transparency

I very much welcome the commitment to transparency in this consultation document. The issue of transparency in development viability assessments has been one of the most controversial issues in town planning in recent years. Until now there has been no policy on this issue from the Mayor. The issue has been litigated both before the High Court and the Information Tribunal, who have both produced completely contradictory answers. New policy on this issue is therefore urgently required.

Until now the position of the Mayor has been to support the financial secrecy of developers and their refusal to disclose viability information to the public through executive action. This has been achieved by acceding to developers' requests not to disclose information to the public under FOI, and spending considerable amounts of money employing barristers to argue on behalf of developers during court proceedings. This has severely restricted the ability of the public to hold developers to account and seriously damaged public confidence in the planning process.

It is therefore very welcome that the new administration has understood the issue and created policy which makes it clear that transparency is required.

However, the policy as written does set out the potential of some information to be withheld and gives broad scope to the Mayor to accept requests for confidentiality, even if the broad thrust of the policy emphasises transparency.

My concern is that if the Mayor was minded to withhold viability evidence there would be little in this policy to prevent that.

I would therefore urge the Mayor to be clearer as to what circumstances might merit information not being disclosed. The importance of this point is demonstrated by the London Borough of Lambeth, who have recently proposed a policy similar to the Mayor's on the transparency of development viability assessments. However, in practice when local residents have tried to access such information they have found that the borough continues to withhold almost all information, citing the need to maintain good relations with developers. Maintaining good relations with their electorate appears to be a secondary concern.

The viability of affordable housing in London

As is set out in paragraph 1.13 of the consultation document, affordable housing targets are tested as part of a local plan's examination in public and have to be deliverable as a matter of national planning policy. If a high affordable housing target is deemed unachievable by a planning inspector then it will not be able to be adopted as policy. Therefore if an affordable housing target appears in a local plan that target should be achievable in principle under normal circumstances.

This important fact has far-reaching consequences. It means that a widespread failure to meet the planning policy on affordable housing is highly unlikely to be the result of any deficiency in the affordable housing target.

Instead, poor quality and deliberately misleading viability assessments, provided by surveyors acting on behalf of developers as part of planning applications, which systematically underestimate the profitability of development schemes, are at the heart of the problem. My own research shows that the largest house builders have seen their profit margins increase substantially over the last five years, despite claiming that many of their schemes are financially unviable.¹

Following a number of high profile scandals where developers were shown to be using the confidentiality granted to them by planning authorities to game the viability system, the idea that the problem lies with the developers and not with the planners is widely understood by the public.² This was even accepted by the previous Mayor, who referred to the development viability process as a 'dark art'.

Unfortunately, the regulatory body for the surveying profession, the Royal Institute of Chartered Surveyors, has steadfastly refused to deal with this issue, so it is crucial that the new SPG from the Mayor addresses the problem of false and misleading viability assessments produced for the purpose of removing affordable housing obligations from developments.

1 See George Turner, House Builders Profits Explode 5x in Six Years, *ourcity.london*, November 2016, http://www.ourcity.london/issues/viability/house_builders_profits/

2 See Olly Wainwright, Revealed: how developers exploit flawed planning system to minimise affordable housing, *The Guardian*, 25 June 2015. <https://www.theguardian.com/cities/2015/jun/25/london-developers-viability-planning-affordable-social-housing-regeneration-oliver-wainwright>

The threshold approach

Whilst greater transparency over viability assessments and a standardised approach to assessing scheme viability will greatly assist in exposing bad practice, the threshold approach to viability being advocated by the Mayor fundamentally fails to address the central problem of the viability process, and worse still rewards previous bad behaviour.

The approach set out by the Mayor is that developments which provide 35% affordable housing will not be required to submit viability information. As long as the development is acceptable in terms of other planning policy it will then be granted permission to build.

Although the current London Plan does not have a target affordable housing requirement, as the consultation document acknowledges, most London boroughs have a target of 50%.

The threshold approach, therefore, whilst being posited as a new approach to viability, delivering more certainty to developers and ‘nudging’ them towards building more affordable homes is in reality little more than a cut in the affordable housing requirement on developers.

There is little evidence in the SPG to show that this approach will work. As noted above, the issue with viability assessments has been the practice of creating deliberately misleading estimates of the viability of development schemes.

Often developers have used these tools to achieve affordable housing settlements which are far below the 35% threshold. Given the huge profits that can be realised in the London property market, there is a sharp financial incentive available for every affordable home developers can convert to a market property. The question that this SPG fails to answer, is why would a developer settle for 35%, when they can get away with 20%, 10% or even zero, and make millions doing so?

The Mayor should therefore not specify a specific target, and instead adopt the threshold of the borough where the development application is being made.

Why 35%?

As the consultation document makes clear, the 35% figure was arrived at using an analysis of previous planning applications. This is highly problematic for a number of reasons. Firstly, if we accept that in the past developers have not provided accurate viability information, then by definition the Mayor is choosing to base the threshold on information which he knows to be unreliable.

Secondly, using what developers have got away with in the past as a baseline rewards developers for past dishonesty, and simply encourages them to push harder in the future.

Finally, the most serious deficiency with the threshold is that it is clearly not in compliance with national planning policy, and is therefore unlawful.

As the NPPF makes clear, affordable housing targets need to be based on demonstrated need. In setting the target based on previous applications (the what developers have got away with approach) the Mayor has taken no account of the real housing need for affordable housing in London as is required by national planning policy.

Undermining local democracy

One of the more concerning elements of the threshold approach is that it is being imposed on local authorities. This seriously undermines local democracy and locally-led aspirations for more mixed communities.

Paragraph 12 of the SPG sets out how if a borough has a higher target and is delivering more than 35% then they can continue with their current policies, if not, they should adopt the Mayor's lower target.

It would be better for the Mayor to assist boroughs in increasing their delivery of affordable housing by encouraging better enforcement of planning policies rather than to tell boroughs to give up on enforcing their target, and to set a lower one instead.

Profit margins

It is welcome that the SPG rejects the approach backed by RICS, which is to base viability assessments on the market value of development sites. The RICS approach is obviously circular, and encourages developers to overbid for sites and to hand the bill to the public via the subsidy of reducing planning obligations.

However, the uplift of 20-30% cited by the SPG is far too high and way above the norm and established planning policy. Planning inquiry decisions support a figure of EUV +10%. The SPG should be amended to reflect this.

It should be noted that the profit benchmark in a viability assessment should be a minimum required for a development to go forward, not the profit *desired* by the developer. That is why a lower target is appropriate. If a developer achieves the planning obligations, then there is nothing stopping them from achieving much higher levels of profit.

The second problem with this section is the suggestion in paragraph 3.45 that the profit target should take into account the requirements of the landowner. This conflicts with the basic legal principle that planning permission runs with the land and not with the landowner. A permission does not expire when a developer sells land; the permission remains with the land.

There is also another problem with this suggestion. Say, for example, there was an application for a new development on land owned by a private equity fund whose investors required a profit level of 40-50% of gross development value. Because of that demand the developer cannot provide any affordable housing. If another land owner would be satisfied with a lower profit which would allow affordable housing to be built, would it be right to grant the permission simply because the private equity fund has a perception that they require more profit? Clearly not.

The SPG should therefore make clear that the profit target should not be dependent on requirements of any particular land owner.

Opportunity Areas

The consultation document states that lower affordable housing targets may be appropriate in opportunity areas given the need in these areas for additional infrastructure. This is similar to the approach adopted in Wandsworth in the Vauxhall Nine Elms and Battersea Opportunity area where the council lowered the affordable housing requirement to just 15%.

It is my fear that this provision opens up a potentially enormous loophole in the delivery of affordable housing in London. The previous Mayor was enthusiastic about designating large parts of London as opportunity areas. These areas are not only places with poor transport links requiring infrastructure investment; the Mayor's opportunity areas include London Bridge, Tottenham Court Road and Waterloo.

The Mayor should therefore remove the passages from the SPG which open the possibility of lowering the affordable housing requirement in opportunity areas at least until much clearer guidelines are produced and consulted upon as to when this might be appropriate. If this does not happen, then it will be argued that every opportunity area should have a lower affordable housing requirement, and large parts of London will become high-income enclaves. This will be contrary to the London Plan's policy of creating mixed and balanced communities.

A better approach

The Mayor should consider adopting a different approach to viability which would address many of the issues surrounding false or misleading viability assessments submitted by developers.

Currently, development viability is assessed on the basis of an individual development proposal rather than the capacity of the land itself to deliver a plan compliant development.

For example, a developer may approach a planning department with a proposal for a very high cost development, such as a large tower, with Versace designed interiors (this is a real-life example). All of those things make the development expensive and the delivery of affordable housing more difficult.

However, it could well be the case that a different form of development could deliver a better outcome in terms of planning policy. Current planning practice means this is rarely considered.

The SPG should state that viability appraisals should be done on the basis of a notional scheme that represents the most policy compliant scheme of any form of development on the site, and not the most achievable within a specific built form.

An alternative to this approach is to introduce much stricter controls over what costs are allowed to be discounted from projected revenues on a viability appraisal. By way of example, on one scheme I found that developers had allowed a cost of £25k per kitchen on a scheme; an extremely high cost per kitchen which the developers attempted to discount from the affordable housing requirement.³

³ George Turner, King's Gold – How King's College London is profiting from the housing crisis, *ourcity.london*, February 23 2016, <http://www.ourcity.london/case-studies/kings-gold/>

New developments also frequently build whole new buildings as marketing suites which are then demolished on the completion of the building. This great expense is discounted from the affordable housing requirement.

The SPG could adopt an approach which sets out costs (such as marketing suites) which should not be discounted from revenues before profit is calculated for viability purposes.

Concluding remarks

While there are some things to be welcomed in this SPG, it feels like the overall balance gives far too much to the development community that has already taken so much from our city. If changes are not made to this SPG, then London will have little chance of delivering the kind of housing that Londoners desperately need, and that developers can deliver, albeit at normal rather than wholly exceptional profit levels.