1. INTRODUCTION

1.1 This report summarises the main issues raised in response to the consultation draft of the Affordable Housing and Viability Supplementary Planning Guidance (SPG) and how these have been taken in to account in preparing the final version of the SPG. The SPG has been updated to take account of these responses where appropriate, and to ensure that the document is as up-to-date as possible. The consultation was held between 29 November 2016 and 28 February 2017 and generated over 130 responses. Responses were received from a range of stakeholders, including developers, agents, Registered Providers, Local Authorities, academics, voluntary groups, pressure groups and individuals.

2. PART 1 BACKGROUND AND APPROACH

Approach of the guidance

2.1 The guidance sets out a key step towards increasing the delivery of affordable housing above levels secured through the planning system in recent years. As part of this the SPG seeks to embed the requirement for affordable housing into land values and make the viability process more consistent and transparent. It will help to ensure that development appraisals are robustly and consistently scrutinised as well as speeding up the planning process for those schemes which are delivering more affordable homes. The objectives of the SPG were met with widespread support.

2.2 The London Plan seeks to maximise affordable housing provision in London and deliver mixed and balanced communities. This is set out in Policy 3.9 (mixed and balanced communities), 3.11 (affordable housing targets) and 3.12 (negotiating affordable housing on individual private residential and mixed used developments). Some respondents considered that the SPG introduces new policy. The Mayor is however clear that the SPG provides guidance on implementing the London Plan including those policies referred to above, rather than introducing new policy. The London Plan is currently being reviewed and will set out the Mayor’s new approach to planning policy.

2.3 Respondents had a range of views about whether the proposed guidance represented the most suitable approach to increase affordable housing delivery. Some representations considered elements of the SPG too prescriptive and that elements of the approach could restrict development. The final version of the SPG has been amended in response to these comments to strike a balance between providing clear and effective guidance which provides consistency and ensuring the SPG allows for flexibility of approach where appropriate for specific circumstances.

2.4 Some responses considered that the guidance could be premature because planning, viability and affordable housing policy are evolving areas of government policy. The Mayor will review relevant changes to government
policy, however considers that it is important to provide further guidance on affordable housing provision in London in view of the under-delivery in recent years and to address a range of issues relating to the assessment of development viability within the planning process.

Transparency of information

2.5 The Mayor considers that there should be greater transparency in the viability assessment process. This was strongly supported as part of the consultation, although some respondents still felt that viability assessments should remain confidential or considered that the guidance should allow for elements of a viability assessment to remain confidential. The SPG provides an opportunity for applicants to justify why limited elements of a viability appraisal could remain undisclosed. However, the importance of transparency justifies this being limited to exceptional circumstances which are assessed on a case-by-case basis according to established principles of 'adverse effect' and the public interest. The Mayor also notes that viability assessments are objective and that they often draw from publicly available information sources.

2.6 Some respondents noted that viability assessments are technical documents and challenging for non-expert readers to interpret. The amended guidance states that applicants should provide a summary which outlines key findings and conclusions of the assessment to assist LPAs and members of the public.

3. PART 2 THRESHOLD APPROACH TO VIABILITY

Routes for applications under the ‘threshold approach’

3.1 The threshold approach seeks to provide a clear basis for determining the level of affordable housing that is expected in planning applications which will provide greater certainty to developers within the planning process and when purchasing land. Conversely the Mayor has set out a procedure for those schemes delivering lower levels of affordable housing involving rigorous assessment of viability and a comprehensive approach to viability review mechanisms. This will entail Early Stage Reviews where an agreed level of progress has not been reached and Late Stage Reviews to determine whether additional affordable housing contributions can be supported when the values and costs of development are known. This approach incentivises the delivery of higher levels of affordable housing compared with previous years.

3.2 The revised guidance refers to the ‘Fast Track Route’ (previously Route B) and ‘Viability Tested Route’ (previously Route A) to distinguish between schemes that provide and do not meet the threshold level of affordable housing.

3.3 The revised guidance reiterates the incentive for the Fast Track Route by stating that viability information will not be required at application stage for those schemes that meet the threshold. Benchmark land values and other viability information will not be required at the application stage. Instead, where Early Stage Review mechanisms are triggered on Fast Track schemes these will be determined on the basis of value and cost information submitted at the
time of the review with changes in values and costs determined through the use of market tracking indices. A suggested formula reflecting this approach has been included in Annex A of the SPG.

3.4 Some comments noted the draft guidance was unclear whether a scheme progressed through the Viability Tested Route may be required to provide more than 35% if demonstrated viable. The amended guidance clarifies that wherever an application proposes less than 35% affordable housing, a greater level than 35% could be required if the LPA or the Mayor determines that this could be supported.

3.5 The draft guidance proposed that applications should meet ‘all of the other relevant policy requirements and obligations’ to benefit from the Fast Track Route. Some respondents considered this would limit opportunities to pursue the Fast Track Route. This is because it is normal for schemes, particularly larger and more complex proposals, to be assessed by LPAs taking account a balance of considerations against various Local Plan policies. The Mayor wishes to increase affordable housing delivery through incentivising applicants to take the Fast Track Route where proposals are acceptable to LPAs. As such the amended guidance clarifies that applications should meet ‘other relevant obligations and requirements to the satisfaction of the LPA and where relevant the Mayor’ to benefit from the Fast Track Route.

3.6 The draft guidance states that Fast Track Route schemes must be consistent with the relevant tenure split for affordable housing. However, some respondents considered there should be some flexibility where a proposal makes a significant contribution to affordable housing. The final guidance recognises that some schemes may bring forward a significant proportion of affordable housing which does not conform to the borough or the Mayor’s preferred affordable housing tenure split. Where acceptable to the LPA the Fast Track Route can be used where at least 75% of the scheme is affordable housing in perpetuity.

3.7 Respondents noted the draft guidance did not set out how applications to amend existing consented schemes, such as S73 applications and applications to vary S106 agreements will be approached. The amended guidance clarifies that the Viability Tested Route will be applied to applications to amend an approved scheme unless the original scheme and revised scheme continue to meet the relevant threshold. Revised schemes reducing the level of affordable housing or other policy requirements will be considered under the Viability Tested Route. Proposals for deeds of variation to Section 106 agreements for referable applications should be subject to consultation with the Mayor.

3.8 Some respondents were concerned about the resourcing implications of assessing viability assessments and implementing viability reviews. The final guidance clarifies that all costs incurred by an LPA and/or the Mayor in scrutinising a viability assessment or viability review should be met by the applicant.
The Threshold Level

3.9 There were a wide range of views on whether the threshold was the appropriate level. Some representations considered the threshold to be too high which would result in schemes being unable to use the Fast Track Route. Some respondents considered that the threshold too low, which could result in lost opportunities to maximise affordable housing where a scheme could viably deliver more than 35% affordable housing. No consultation responses provided evidence that the threshold should be raised or lowered.

3.10 The Mayor considers the threshold to be ambitious and realistic. The approach seeks to provide greater certainty and embed affordable housing requirements in land values, whilst incentivising developers to increase affordable housing level rather than relying on viability assessments to justify lower delivery. The guidance also sets out the basis for increasing delivery beyond 35% through the use of grant and in various other circumstances (see below).

3.11 The SPG’s preference for measuring affordable housing contributions in habitable rooms was generally accepted by respondents. However, some respondents were concerned that if room sizes in market units were significantly larger than in affordable homes, this could result in an under-provision of affordable accommodation. Generally these respondents favoured the use of habitable floorspace. To address this and other concerns about potential ‘gaming’ of the system and the impact of requirements for large market units on affordable housing proportions, the final guidance clarifies that habitable floorspace could provide a more suitable measure where room sizes in private and market elements of a scheme are not comparable.

Increasing affordable housing to 50%

3.12 A number of respondents raised concerns about how the Mayor intends to deliver his aim of 50% affordable with the 35% threshold. The SPG is clear that the 50% is a long term strategic target that the Mayor is fully committed to, but that it will take time to deliver and the measures in the SPG, along with the funding package the Mayor has secured are the first steps to achieving this aim. However, to recognise this concern the SPG has been updated to strengthen the requirement for all applicants, even where they have met the 35% threshold, to demonstrate that they have explored the use of grant and to increase the level of affordable housing towards 50%.

Grant and Registered Providers

3.13 The guidance requires applicants to engage early within the process with Registered Providers (RPs) and explore the potential to increase affordable housing delivery through the use of grant. The Mayor’s Affordable Housing Programme 2016-2021 Funding Guidance was published in November 2016. Some responses commented on the levels of grant that are available, and the terms of that grant. Suggested amendments are outside the scope of the SPG.
3.14 Some responses noted that it can be difficult to enter into discussions with RPs at the pre-application or application stage before proposals are fully designed and costed. In line with the London Plan, the Mayor however considers that it is important that applicants seek to engage with RPs at the application stage to ensure affordable housing proposals are maximised through the use of grant and other subsidy and that schemes are suitable for the market.

Public land

3.15 Some respondents considered that higher levels of affordable housing should not be sought from public sector land recognising the other purposes that the sale of land can contribute towards. Other respondents considered that public sector land should provide levels of affordable housing at or exceeding 50%.

3.16 It is widely recognised that public sector land should make a significant contribution towards addressing the housing crisis. Public land released for housing development typically has a low existing use value and has the potential to achieve higher levels of affordable housing. For these reasons the revised guidance sets out that schemes on public land should provide 50% or the local plan strategic target to benefit from the Fast Track Route. This will apply to land that is in ownership or use by the public sector or organisation owned by the public sector and to land that has been released from public ownership for housing delivery.

3.17 In order to encourage public sector land owners to deliver higher levels of affordable housing, the guidance states that where a public sector landowner has an agreement with the Mayor to deliver 50% affordable housing across a portfolio of sites, the 35% threshold can apply on individual sites.

Density

3.18 Some respondents queried whether it may be acceptable to achieve higher densities to support the provision of affordable housing. In order to ensure that increased densities do not merely result in increased land values without an improvement in affordable housing delivery, the revised guidance states that this should only be considered where increasing the level of affordable housing above the 35% threshold. Furthermore, the Mayor does not consider that increased densities should result in a reduction in build or design quality. As such the final guidance states that the potential to increase densities on a case-by-case basis to enable the delivery of additional affordable homes may only be considered where achieving exceptional design standards. It is for LPAs and the Mayor where relevant to consider the weight to be given to level of additional affordable housing above the threshold, where this arises through increased densities or scale.

Tenure

3.19 Views on the approach to tenure were mixed, with some suggesting that the proposed approach was a departure from the London Plan’s 60/40 split, some felt it was too prescriptive and did not provide enough flexibility to take into
account site specific circumstances, while others felt it was too flexible and did not provide enough clarity about what the mix should be.

3.20 Some respondents were concerned that that the preferred affordable housing tenure mix could result in a reduction in the number of low cost rent homes provided through the planning system.

3.21 Overall it is considered that the preferred tenure split provides the right balance between flexibility and certainty and in most cases will allow boroughs to follow their existing policy tenure splits.

**London Living Rent**

3.22 A number of respondents raised concerns over how London Living Rent was calculated, but this is outside the scope of this SPG as the product has been developed as part of the 2016-2021 funding programme.

3.23 Some respondents commented that while London Living Rent is an intermediate product, the cost of delivery would be higher than that for shared ownership and thus the planning subsidy required would be higher than for shared ownership properties. Given that London Living Rent can be sold as shared ownership after ten years, it is considered that there are similarities between these products which should be taken into account when assessing viability.

3.24 There were a range of views about the proposed income thresholds for shared households — these are updated as part of the Annual Monitoring Report (AMR) as allowed for in the London Plan. Some representations stated that the guidance should confirm that London Living Rent (LLR) is unsuitable for shared households where the total income exceeds £60,000 but no sharer individually earns over £60,000. The final guidance states that eligibility for LLR is restricted to households with a maximum income of £60,000, without sufficient current savings to purchase a home in the local area. London Living Rent may be suitable for house shares of multiple adults, provided the total household income does not exceed £60,000. Any update to this criteria will be provided through the GLA’s Annual Monitoring Reports. This ensures that LLR will not be available to households on incomes that are higher than £60,000 so that they can be accessed by households with lower incomes.

3.25 Some respondents felt that the SPG should provide guidance on large scale purpose built shared living developments. This will be considered as part of the new London Plan, but in the interim the SPG has been updated to make clear that such units cannot be considered as affordable housing and affordable housing contributions should be offsite or cash in lieu. The SPG has also been updated to confirm that student accommodation developments will be assessed under the Viability Tested Route and affordable student accommodation should be provided onsite in line with the Mayor’s Housing SPG.
3.26 The draft SPG included a paragraph on Starter Homes. Some respondents felt that this should be updated given the Housing and Planning White Paper which moves away from the idea that all sites should deliver a proportion of Starter Homes and instead suggests that all sites should deliver 10% affordable home ownership properties. As the exact details of this requirement are not available and London Living Rent can be included as an affordable homeownership product and the preferred tenure splits in the SPG are consistent with ensuring 10% homeownership products on most sites, it is not considered necessary to provide specific guidance on this issue in the SPG. The paragraph on Starter Homes has been removed.

Schemes not suitable for the Fast Track Route

Off-site and cash in lieu

3.27 A number of respondents were concerned that the SPG could be read as suggesting the decision to take an offsite or cash in lieu contribution is only driven by viability factors. The SPG has been updated to be clear that a number of factors must be considered when deciding if onsite affordable housing is not appropriate.

3.28 Some responses noted there are a range of approaches to calculate the appropriate level of off-site and in-lieu contributions where schemes do not provide on-site affordable housing. The amended guidance states that off-site affordable housing provision and in-lieu contributions should provide no financial benefit to the applicant. This clarifies that off-site affordable housing will be calculated as the proportion of affordable housing on the main development site and any linked development sites (the off-site provision). Reviews should be capped at 50% affordable housing provision across the main development sites and any linked sites providing off-site affordable housing. The approach ensures that on-site and off-site provision is considered together. This reduces incentives to provide affordable housing off-site or as an in-lieu payment in line the priority given to onsite affordable housing provision within the London Plan.

3.29 Where in-lieu payments are accepted by a LPA, the guidance sets out an approach to calculating such contributions on the basis of the difference in value of affordable units onsite and their value as market housing. This approach reduces the incentive for off-site provision resulting from an increase in profit that arises when a high proportion of units are for market housing. Where a LPA applies a different approach they may continue to use this where this would result in a higher level of affordable housing delivery.
Vacant Building Credit

3.30 A number of respondents strongly supported the guidance on the application of Vacant Building Credit (VBC) within the SPG. Other responses considered that the approach was not consistent with national policy and that it should be left for LPAs to determine the weight to be given to VBC.

3.31 The Mayor considers that in London VBC is unlikely to bring forward more development given that affordable housing requirements are subject to viability testing and are not preventing sites from coming forward. The SPG provides guidance to LPAs when determining the weight to be given to VBC. This seeks to ensure that VBC operates in a way that delivers the intention of the policy and does not reduce affordable housing requirements on schemes that would have come forward without VBC. This will help to ensure consistency of approach whilst recognising the need to for LPAs to consider the weight to be given to Development Plan policies and VBC taking into account site specific circumstances.

3.32 A number of respondents questioned why the SPG was silent on developments of under ten units. The revised SPG also provides guidance to LPAs when considering the weight to be given to Development Plan policies and the WMS on the application of affordable housing requirements on schemes of 10 or few units. The guidance states that the Mayor considers that affordable housing provision should be required on sites which have capacity to provide ten or more homes in line with London Plan Policy 3.13. LPAs wishing to apply affordable housing requirements on schemes providing fewer than ten homes will be supported by the Mayor where the LPA can demonstrate the role that these sites can play in supporting affordable housing delivery. The Fast Track Route may be suitable for developments providing fewer than 10 homes where borough affordable housing requirements for small sites are met in full.

Opportunity Areas, Housing Zones and Industrial Land

3.33 The draft guidance included a section on Strategic Industrial Locations (SILs), Opportunity Areas (OAs) and Housing Zones (HZs) under Part 3 of the SPG. The guidance has been moved to Part 2 of the revised SPG. This flexibility was welcomed by some respondents and some responses requested greater clarity regarding the process for setting local approaches within these areas and the relationship with the threshold approach within the SPG.

3.34 The SPG clarifies that in OAs and HZs and for industrial land, LPAs may set a different threshold or fixed affordable housing requirements through local plans. A number of respondents supported this approach, while others were concerned that this could lead to reduced levels of affordable housing in OAs. Given the comments and the potential for such areas to deliver higher levels of affordable housing due to lower existing use values, the updated SPG has made clear local approaches to affordable housing delivery should exceed 35% where possible, but continues to recognise that often such sites also require

---

1 This was introduced by Written Ministerial Statement (WMS) in 2014.
significant investment in infrastructure to bring them forward. The SPG has also been updated to be clear that the threshold approach will apply where a local approach has not been progressed.

4. **PART 3 GUIDANCE ON VIABILITY ASSESSMENTS**

4.1 The London Plan requires that viability assessments submitted as part of the planning process are robustly assessed. The Mayor’s intention is to provide a clearer basis for undertaking viability assessments to address a range of issues within the viability assessment process and ensure that schemes providing lower levels of affordable housing are fully scrutinised. The Mayor’s approach draws on the London Borough Viability Protocol produced by the London Borough Viability Group.

4.2 This received strong support from some respondents, although some representations considered elements of the SPG too prescriptive. The final version of the SPG has been amended in response to these comments to strike a balance between providing clear and effective guidance and ensuring the SPG allows for flexibility and the approach to be determined according to the specific circumstances of individual sites.

**Appraisal requirements**

4.3 Some respondents considered that information relating to the applicant company should not be required alongside a financial viability appraisal. The amended guidance removes this requirement in acknowledgement that planning permission is not normally specific to the applicant who secures the permission.

**Scheme Delivery**

4.4 Some responses considered that the draft SPG did not provide sufficient guidance about how schemes would be treated where they proposed a higher level of affordable housing to that which was found to be viable. The Mayor considers that development proposals should be deliverable. The revised SPG requires applicants to demonstrate that this is the case and that approaches to viability are realistic. Where an applicant is seeking to rely on assumptions of growth in values and costs these should be provided. The SPG distinguishes between non-phased and longer term phased schemes in line with PPG. For the latter, growth assumptions should be included within the appraisal to ensure that this is realistic and that affordable housing is maximised.

4.5 This approach will help to ensure that schemes are deliverable and maximise opportunities for on-site affordable housing delivery whilst enabling LPAs to consider the weight to be given to affordable housing provision and other benefits.
Affordable housing values

4.6 Some responses considered the draft guidance regarding affordable housing values to be too prescriptive. The amended guidance has removed the proposed benchmark appraisal inputs to allow for affordable housing values to be determined according to site specific circumstances.

Costs

Build costs

4.7 Some respondents considered that the Build Cost Information Service (BCIS) can provide a useful source of information for benchmarking, however cost plans produced by quantity surveyors would provide a more reliable basis of assessing build costs. The revised guidance provides greater clarity specifying that applicants should submit elemental cost plans that are consistent with the level of detail provided in the drawings in support of planning applications. Wherever possible such assessments should be benchmarked against other similar projects.

4.8 The guidance also encourages the use of cost consultants by LPAs to assess build costs. Consideration should also be given to scheme design and whether development costs could be reduced as part of a cost/value assessment.

Community Infrastructure Levy (CIL)

4.9 The draft guidance requires applicants to reflect CIL instalment policies and phased payments when determining CIL costs. In response to representations the amended guidance adds that applicants should assume affordable housing CIL relief in the value of CIL requirements.

Developer profit

4.10 Some representations considered that the draft guidance was too prescriptive regarding profit levels and profit measures. The revised guidance removes benchmark figures to focus instead on the factors that should be taken into account when reviewing developer profit. The guidance states that the Mayor will normally consider profit as a factor of gross development value (GDV) or costs (GDC). Where an internal rate of return (IRR) approach is taken a full justification must be provided for the assumed development programme and timing of costs and value inputs, given the sensitivity of this approach to the timing of development. The guidance has been amended so that this approach is not limited to large schemes of over 1000 units, however profit should also be considered as a factor of GDV and GDC.

Benchmark Land Value

4.11 The draft guidance states that ‘Existing Use Value plus’ (EUV+) will generally be the appropriate measure of benchmark land values (BLV). This was supported by some respondents while others considered that the guidance is
too prescriptive and does not allow for alternative approaches that may be more appropriate in specific instances. Some responses considered the approach is inconsistent with the NPPF/PPG and RICS guidance.

4.12 The Mayor considers that the EUV+ approach to determining BLVs is appropriate in most circumstances. This enables the uplift in land value arising from the grant of planning consent to be clearly identified and supports the delivery of sustainable development. This approach is also the most appropriate in the context of standardised, objective viability assessments which do not take into account the specific circumstances of developers.

4.13 Moreover, the potential risks associated with a Market Value approach to determining BLVs without properly taking policy requirements into account have been widely reported\(^2\). Reliance on land transactions for sites that are not genuinely comparable or that are based on assumptions of low affordable housing delivery, excess densities or predicted value growth, may lead to inflated site values. This undermines the implementation of Development Plan policies and the ability of planning authorities to deliver sustainable development.

4.14 Furthermore, the adoption of an Alternative Use Value (AUV) approach that does not fully reflect planning policy requirements or that is not realistic can also have the effect of inflating site values, and undermining the delivery of affordable housing. For these reasons the Mayor considers that these approaches should only be applied in exceptional circumstances and in line with the guidance and safeguards set out in the SPG.

Review mechanisms

4.15 The SPG sets out a framework for requiring viability review mechanisms to enable the re-assessment of viability when development is delivered. This enables the implementation of London Plan policies requiring the provision of affordable housing, particularly when a lower level of affordable housing has been justified through the use of a viability assessment at application stage.

4.16 The approach in the guidance incentivises delivery with Early Stage Reviews required in all cases where an agreed level of development has not been achieved within 2 years or as agreed with the LPA. Late Stage Reviews are also required for schemes considered under the Viability Tested Route to enable reassessment when more robust value and cost information is available. This approach incentivises applicants to achieve the Fast Track Route, whilst ensuring that schemes delivering lower levels of affordable housing are rigorously assessed at application stage and at a late stage in the development process.

4.17 Some respondents considered that viability information should not be required for the applications being considered under the Fast Track Route as this

reduces the attractiveness of the route. Furthermore, it could be difficult to agree a Benchmark Land Value for a scheme without undertaking a full viability assessment. The revised guidance states that viability information should not be provided for schemes achieving the Fast Track Route. Where triggered, reviews will be undertaken on the basis of information submitted as part of the review, with changes in values and costs assessed using relevant indices.

4.18 Some consultation responses supported the approach to review mechanisms set out in the draft guidance, while others considered that review mechanisms should be restricted to more limited circumstances (including only for phased schemes and only early implementation reviews) with some stating that the SPG introduces new policy.

4.19 The Mayor considers that it is important that development viability is considered for phased and non-phased schemes that have not reached an agreed level of progress within two years of permission being granted, by which time development values and costs are likely to have changed. Viability should also be reconsidered for phased and non-phased schemes delivering lower levels of affordable housing given the inherent uncertainty with assessing viability at the application stage and the potential for significant changes in values and costs over the period that a development is delivered. This should be based on the most robust and up-to-date information available which will generally be the price paid or rental value and build costs for completed units.

4.20 The Mayor does not consider that the approach to review mechanisms introduces new policy. The London Plan supports the use of review mechanisms to achieve maximum public benefit and is not prescriptive regarding the form that these should take. The SPG sets out an approach to ensure that the maximum reasonable level of affordable housing is provided in line with the plan.

4.21 Some responses indicated that more specific guidance should be applied to determine the level of progress that would be achieved before triggering an Early Stage Review. The revised guidance specifies that this will generally follow substantial implementation, i.e. following the completion of all ground preparation works, the foundations for the core of the development and construction of the ground floor. Some responses also stated that the guidance should allow for the timescale for determining whether the review would be triggered to vary (specified as two years from the grant of planning permission in the draft guidance). The guidance has been amended to specify that this timeframe should be two years or as agreed with the LPA, to allow the circumstances of the scheme to be taken into account where relevant.

4.22 Some responses stated that the requirement for reviews could reduce certainty and affect development finance. The SPG has been amended to allow for a developer’s target return to be achieved prior to any additional affordable housing being required. In addition to this the guidance allows for a share of surplus profit to be retained by the developer within Late Stage Reviews to ensure that the developer remains incentivised to maximise value. The use of Late Stage Reviews has become established practice in a number of boroughs
in recent years on phased and non-phased developments which have subsequently come forward for development. For these reasons the Mayor does not consider that the approach will prevent finance from being secured or the delivery of development.

4.23 The draft guidance stated that where a surplus is identified through an Early Stage Review this will be shared 60:40 between the LPA and the developer (in favour of the LPA). Some respondents considered that a greater level of surplus should go towards the provision additional affordable housing with the level retained by the applicant being closer to 20%. Other respondents considered that a higher proportion of surplus up to the policy cap (after which all surplus is retained by the applicant), should be retained by the developer. Some responses also indicated that the suggested approach to review mechanisms at Annex A should allow for any shortfall in profit at application stage to be achieved prior to additional affordable housing being required.

4.24 The revised guidance has been amended to ensure that the developer’s target profit is achieved prior to an additional affordable housing requirement being generated. This is the basis for identifying whether a scheme is viable and ensures that an incremental improvement in scheme performance results in the developer achieving a higher profit level. For the Early Stage Review, all surplus after the target profit has been achieved will contribute towards additional on-site affordable housing. At this stage an additional developer share of surplus beyond the target profit is not required as the scheme is deemed to be viable at that point. The developer will remain incentivised to maximise value from the scheme as the majority of units will not yet be sold / let. These changes have been reflected in the suggested formulas at Annex 1.

4.25 There was also a range of views about the surplus split for late stage reviews. For Late Stage Reviews the Mayor considers that a developer should retain a proportion of surplus profit however this should not exceed the 60:40 split set out in the draft guidance to ensure that the review is capable of generating additional affordable housing contributions where viability has improved.

4.26 Some respondents thought that the approach to reviews should involve a reassessment of all inputs in a viability appraisal, whilst it was also considered that this should address changes development values only. The Mayor’s approach as set out in the suggested formulas at Annex A of the guidance is to assess changes in development values and build costs which are the most significant variables within an assessment and are most likely to be subject to change. This avoids the need for a full reassessment of viability and reduces information requirements, enabling a shorter review period. The formulas have been updated so that additional affordable housing requirements are calculated in habitable rooms in line with the guidance.

4.27 Some respondents considered there should be downward as well as upward reviews. However, the draft SPG was clear on the rationale for only including upward reviews. The review guidance specifies that lower affordable housing contributions can only be achieved by means of a new application or
amendment to the existing application. Such applications will be considered under the Viability Tested Route.

5. **PART 4 BUILD TO RENT**

*Why the Mayor supports Build to Rent*

5.1 Many responses strongly supported the Build to Rent pathway in particular the flexibility on affordable housing tenure, while others did not support it and considered there should be no differentiation between Build for Sale and Build to Rent affordable housing requirements. The Mayor considers that it is desirable to support the Build to Rent sector to increase housing delivery. However, the Build to Rent Pathway should only be used where there is a clear commitment to the long-term provision of high quality private rented homes. The amended guidance is clear that the Build to Rent Pathway approach to affordable housing requirements will only be given where a development proposal meets the requirements under the Build to Rent pathway including the 15 year covenant and payment of clawback in the event this is broken. All schemes assessed under the Build to Rent pathway must submit a viability assessment as per the Viability Tested Route. This will ensure that affordable housing contributions are maximised on a site-by-site basis.

*Definition*

5.2 Some respondents noted the draft guidance did not address schemes which provide a proportion of homes as Build to Rent alongside a proportion of homes as Build for Sale. The amended guidance clarifies that for larger schemes which propose a proportion of homes as Build to Rent and a proportion as Build for Sale, the Build to Rent Pathway will only be suitable for the Build to Rent element. The Build to Rent Pathway affordable housing provisions will not be available for the Build for Sale element and normal affordable housing requirements will be applied.

5.3 Some respondents considered the draft guidance to be too restrictive in limiting the Build to Rent pathway to proposals providing 50 or more homes. Some representations considered 50 to be an appropriate ballpark figure but that there should be some flexibility to account for local circumstance. The revised SPG states that an LPA may consider a higher or lower threshold to be appropriate based on local circumstances where justified.

5.4 The revised guidance has been amended to ensure that the definition of Built to Rent mirrors the Mayor’s private rented sector management standards.

*Role and operation of covenant*

5.5 Some respondents considered that the Mayor’s minimum covenant period of 15 years is too short whilst others considered there should be no covenant period at all. The Mayor is keen to support the Build to Rent sector but considers that the covenant is necessary to ensure that the pathway is only attractive to
providers with a genuine commitment to long-term investment in the sector. As the sector matures the Mayor expects the covenant to grow in length.

Clawback

5.6 The draft SPG consulted on two clawback mechanisms determining the level of contribution to be paid to the LPA for affordable housing in the event that the covenant is broken. Option 1 was calculated as the difference in scheme value between Build for sale and Build to Rent. Option 2 was calculated as the difference in value between affordable housing secured on the Build to Rent scheme and the equivalent of 35% of the development being affordable housing based on a policy compliant tenure split. Many respondents noted that both mechanisms would be complicated to implement and would result in additional costs at the application stage.

5.7 The amended guidance sets out an approach to clawback that is similar to Option 1 but simpler to administer and only requires viability information relating to the Build to Rent proposal at the application stage. Any clawback, which would be payable in the event the covenant is broken, will be calculated as the difference in the Gross Development Value of the units as rental properties as determined by the LPA at the application stage (index linked to reflect any changes in rental values) and the sale value of units at which the covenant is broken. This approach ensures the clawback mechanism is reflective of difference in value of the units for rent and build for sale.

5.8 Some respondents considered the covenant should be tapered so any clawback amount is reduced over time. The Mayor does not consider this is necessary. The revised guidance confirms that the clawback amount should not reduce over time to ensure that the covenant remains effective for the full period.

VAT

5.9 Some responses considered that the SPG need not reference VAT as it is not a planning consideration. However, the Mayor considers that the reference to VAT is necessary to fully understand relevant considerations of the Build to Rent pathway.

Affordable housing tenure

5.10 Some respondents identified that the draft guidance does not set out an allocation process for Discount Market Rent (DMR) homes. The revised guidance clarifies that DMR is a type of intermediate housing and should be allocated according to intermediate eligibility criteria, which can include locally defined eligibility criteria.

5.11 Responses noted the SPG did not set out how to secure DMR homes in perpetuity and how to ensure the benefit of DMR homes is retained in the event that market rental units are sold. The amended guidance states that where it can be demonstrated that it is not possible to retain affordable DMR units they
should be replaced off-site. Where this is not possible an in-lieu contribution should be provided based on the difference in value of the affordable element of the scheme at the point planning permission was granted and the value of the units at the point of sale as market units.

Design

5.12 Some respondents supported the section on design and mix for build to rent schemes, others felt that the SPG should be clearer about what design standards should be considered as being flexible. The SPG has been updated to provide greater clarity on this issue.

Viability

5.13 Some respondents considered that reviews should not be applicable to Build to Rent schemes, whereas others considered that the approach to Build to Rent schemes was too flexible. The Mayor considers it necessary to require viability reviews on Build to Rent schemes because the sector is new and it is important to ensure that the maximum reasonable level of affordable housing is provided in all instances where viability improves from the point of planning permission to completion. The amended guidance clarifies the approach that should be taken to Build to Rent viability reviews and that where surplus profits are identified through a review this should normally result in a proportion of market rent homes converting to additional affordable homes. Where this is not possible the surplus could enable deeper discounts on the secured affordable units. Suggested formulas have been provided at Annex 1 to provide greater clarity on the operation of viability reviews for Build to Rent schemes.