

MAYOR OF LONDON

HOMES FOR LONDONERS

**DRAFT AFFORDABLE HOUSING AND VIABILITY
SUPPLEMENTARY PLANNING GUIDANCE 2016**



NOVEMBER 2016

How to give your views on the Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG)

Public consultation on this draft SPG is open for a period of three months from 29 November 2016 to 28 February 2017.

Please respond in writing by email or by post.

Email – to housingspg@london.gov.uk

By post (no stamp required) to:

Affordable Housing SPG
FREEPOST LON15799
GLA City Hall, Post point 18
The Queen's Walk,
London SE1 2AA

All responses should be received by midnight on 28 February.

Please note that all responses may be made available for public inspection.

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FOREWORD

London is open. We are a leading global city with a strong economy, with businesses that trade internationally, and with people drawn from all over the world.

Our city's success is reflected by the number of people becoming Londoners. With 70,000 new Londoners every year, we are a bigger city than we have ever been, and our population is set to top 10 million within 25 years.

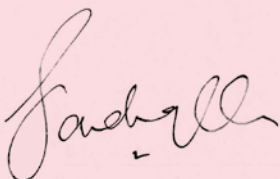
But our city's great success has brought huge challenges too. In recent years, we know that London has built nowhere near the number of new and affordable homes we need. As a result, too many Londoners can't afford a decent home to rent or buy.

We know we won't be able to turn round London's housing crisis overnight. It'll be a marathon, not a sprint. But I'm determined to get started, working with councils, housing associations, the development industry, central government, and Londoners themselves.

That's why I am pleased to set out my draft supplementary planning guidance, 'Homes for Londoners: Affordable Housing and Viability'. My ambition is to boost the overall supply of new homes by making the planning system clearer, quicker, and more consistent. It aims to increase the amount of affordable housing coming through the planning system, and reward those who deliver more.

My long-term aim is for half of all new homes to be affordable, up from just 13 per cent in planning permissions given towards the end of the previous Mayor's term. This guidance offers an ambitious and practical first step to raise the amount of affordable housing coming through the planning system ahead of my new London Plan in 2019. I will also invest more in affordable housing, and bring forward more public land for affordable homes. Together, these steps will set us in the direction I want us to take.

I want to build a city for all Londoners. A place where no community feels left behind, and where everyone can benefit from the opportunities London has to offer. New and affordable housing is essential to this goal, and together, we can build the homes that Londoners need.



Sadiq Khan
Mayor of London

EXECUTIVE SUMMARY

BACKGROUND

- 1 The Mayor is committed to a long-term strategic aim of half of all new homes in London being affordable. The Mayor intends to move towards this goal by investing more in affordable housing, bringing forward more public land for affordable homes, and by increasing the amount of affordable housing delivered through the planning system.
- 2 Moving towards this goal will take time, not least considering only 13% of homes given planning permission in 2014/15 were affordable. The new London Plan (consultation draft expected 2017) will be based on an updated assessment of housing need and a comprehensive understanding of London's capacity to meet it within the context of all of London's competing land uses. The approach to affordable housing will be a key consideration of the London Plan review. It will consider appropriate approaches, levels for any tariffs or thresholds, and whether these should vary spatially.
- 3 In the meantime this SPG provides guidance to ensure that existing policy is as effective as possible. It does not and cannot introduce new policy. The SPG's main aim is to speed up planning decisions and increase the amount of affordable housing delivered through the planning system. Importantly, it will help embed the requirement for affordable housing into land values and make the viability process more consistent and transparent, as well as speeding up the planning process for those schemes which are delivering more affordable homes.
- 4 The SPG sets out the Mayor's preferred approach and Local Planning Authorities (LPAs) are strongly encouraged to follow this approach for all schemes of ten or more units.

WHAT THE SPG COVERS

- 5 The SPG focuses on affordable housing and viability and includes four distinct parts: background and approach; the threshold approach to viability appraisals; detailed guidance on viability assessments; and a specific approach to Build to Rent schemes. These sections are summarised below.
-

BACKGROUND AND APPROACH

6 The first part of the SPG sets out the rationale and aim of the SPG. It also clearly sets out how the Mayor wants to lead the way in openness and transparency. In particular he considers that information relevant to planning determinations should be publicly available alongside the other application documents in order to foster a greater understanding of and trust in the planning system.

THE THRESHOLD APPROACH

7 The second part of the SPG sets out the 'threshold approach to viability', which is where the approach to viability information differs depending on the level of affordable housing being provided. The threshold proposed is 35% of a scheme as affordable housing based on habitable rooms. Schemes which do not meet the 35% threshold or require public subsidy to do so, will be required to submit detailed viability information (in the form set out in Part Three) which will be scrutinised by the Local Planning Authority (LPA) and where relevant the Mayor, and treated transparently. In addition, comprehensive review mechanisms will be applied to schemes that do not meet the threshold in order to ensure that affordable housing contributions are increased if viability improves over time.

8 Applications that meet or exceed the 35% threshold without public subsidy, provide affordable housing on site, meet the specified tenure mix and all other requirements and obligations are not required to submit viability information. Such schemes will be subject to an early review mechanism, but this is only triggered if an agreed level of progress is not made within two years of permission being granted.

9 The idea of this approach is to provide greater certainty and offers an option to move away from protracted and uncertain viability negotiations, seeking to 'nudge' developers to deliver more affordable housing through the planning system and at the same time ensuring that permissions are implemented.

10 The Mayor wants to see a mix of affordable housing tenures that include low-cost rent (general needs rented accommodation), London Living Rent, and shared ownership. This SPG asks LPAs to provide the Mayor with information about their preferred split of tenures as part of this consultation.

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

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

13 This part also sets out the Mayor's approach to the national Vacant Building Credit policy. The intention of the Government's policy is to bring forward sites containing vacant buildings which would not otherwise come forward for development. However given that in London such sites already come forward for development and affordable housing requirements are already subject to viability testing and thus are not preventing sites from coming forward the Mayor's view is that in most circumstances in London it will not be appropriate to apply the Vacant Building Credit.

VIABILITY ASSESSMENTS

14 The third part of the SPG provides detailed guidance on viability assessments, aiming to establish a standardised approach to viability. The SPG clearly sets out what information and assumptions should be included in a viability appraisal. It builds on the London Borough Development Viability Protocol¹ and aims to provide a clear approach that can be consistently applied across London.

15 It sets out the Mayor's expectations when it comes to the publication of viability information, requiring all information to be made public, including council and third party assessments. Applicants will have the opportunity to argue that limited elements should be kept undisclosed, but the onus is on the applicant to make this case.

16 The SPG is explicit about the Mayor's preference for using Existing Use Value Plus as the comparable Benchmark Land Value when assessing the viability of a proposal. The premium above Existing Use Value will be based on site by site justification reflecting the circumstances of the site and landowner.

¹London Borough Development Viability Protocol November 2016

BUILD TO RENT

17 The SPG provides specific guidance on Build to Rent developments, recognising that they differ to the traditional build for sale model.

18 The SPG defines Build to Rent and explains how the distinct economics of Build to Rent should be taken into account when assessing applications. It provides guidance on the requirement for covenant and clawback arrangement if units are sold out of the Build to Rent sector. It sets out an alternative pathway which applicants can choose to follow, which promotes London Living Rent (or similar level Discounted Market Rent) as the affordable housing offer, highlights the Plan's existing flexibility when it comes to mix and design standards where schemes are of exemplary design and requires applicants to offer longer term tenancies.

19 Some guidance is provided on how Build to Rent viability appraisals differ from traditional appraisals. It also reinforces the requirement that any onsite affordable housing must include provisions to remain at an affordable price or for the subsidy (this includes the Section 106 'subsidy') to be recycled for alternative affordable provision in line with the national definition of affordable housing.

RELATIONSHIP WITH THE 2016 HOUSING SPG

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

PART 1

BACKGROUND AND APPROACH

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

1.2 Moving towards this goal will take time, not least considering only 13% of homes given planning permission in 2014/15 were affordable. The new London Plan (consultation draft expected 2017) will be based on an updated assessment of housing need and a comprehensive understanding of London's capacity to meet it within the context of all of London's competing land uses. The approach to affordable housing will be a key consideration of the London Plan review. It will consider appropriate approaches, levels for any tariffs or thresholds, and whether these should vary spatially.

1.3 In the meantime this supplementary planning guidance (SPG) provides guidance to ensure that existing policy is as effective as possible. It does not and cannot introduce new policy. The SPG's main aim is to accelerate overall housing delivery and increase the amount of affordable housing delivered through the planning system. It will help embed the requirement for affordable housing into land values, make the viability process more consistent and transparent, and speed up the planning process for those schemes which are delivering more affordable homes. It provides a key first step towards delivering more affordable homes through the planning system.

1.4 The SPG sets out how public subsidy should be used to ensure additional affordable homes are delivered, above that which can be secured through the planning system alone.

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

LONDON PLAN POLICY

1.6 The current London Plan seeks to maximise affordable housing provision in London – this is set out in Policy 3.11 (affordable housing targets) and 3.12 (negotiating affordable housing on individual private residential and mixed used developments). These policies seek to ensure an average of at least 17,000 additional affordable homes are delivered per year and also recognise the importance of the “plan, monitor, manage” approach to planning. This figure is significantly lower than London’s actual need for affordable housing, which in 2013 was assessed to be approximately 25,600 homes a year.

1.7 Affordable home building has been falling significantly short of meeting this minimum target. Combined net affordable housing units delivered across 2012/13, 2013/14 and 2014/15 was only 21,529 units (an average of 7,176 a year). In 2015/16 early figures suggest only 5,299 were delivered². If no changes are made to the way the current policy is implemented, this trend is likely to continue, particularly with affordable housing comprising only 13% of units approved in 2014/15.

1.8 This shortfall has significant implications for meeting the current plan’s policy expectations around the delivery of affordable housing over time. The shortfall in recent years would imply that efforts should be made over the remaining life of the plan to deliver planning approvals for affordable housing well above the minimum 17,000 affordable units a year.

APPROACH OF THE GUIDANCE

1.9 The London Plan is clear that boroughs should take account of supplementary planning guidance when implementing Policy 3.11 and 3.12.

1.10 In order to increase the delivery of new and affordable housing, increase transparency in decision making, and to help better implement Policies 3.11 and 3.12 of the London Plan, the Mayor will, and Local Planning Authorities (LPAs) are strongly encouraged to, follow the approach set out in this guidance. The basis of the guidance is a clearer and more consistent approach to assessing and scrutinising the development appraisals of schemes to establish the viable level of affordable housing provision.

1.11 Further to this, the SPG also provides a means to move away from protracted and uncertain viability negotiations by introducing a ‘35% threshold’ approach to affordable housing on mixed-tenure schemes (build-to-rent schemes are dealt with separately in Part 4). This approach refines the way viability information is requested and used depending on whether the threshold has been met or exceeded.

2. Source London Development Database – 2015/16 completions data provisional and subject to change.

1.12 The guiding principle of the SPG is that the further any development falls short on the affordable housing offer, the greater the burden should be to demonstrate why a lower level of affordable housing is necessary for the scheme to go ahead, and the more that should be done to increase the affordable housing contributions through the implementation of the scheme should viability improve.

VIABILITY AND PLANNING

1.13 Since the publication of the National Planning Policy Framework (NPPF), viability has taken an elevated role in the planning process, both at the plan making and planning decision stages. The NPPF requires all development plans to be deliverable. The cumulative impacts of standards, obligations and requirements have to be tested to ensure that they do not put implementation of a plan at serious risk, and they should facilitate development throughout the economic cycle (NPPF para 174). Plans adopted post NPPF should be considered viable - negotiations to reduce obligations based on site specific viability considerations should only be necessary where the site circumstances suggest exceptional or abnormal costs³ that will make policy compliance unviable.

1.14 In line with London Plan Policy 3.11 almost all LPAs have an affordable housing target set out in their Local Plan. In most cases this is expressed as a percentage strategic target – rather than a target which is applied on a site by site basis. All but one borough has a post-2004⁴ core strategy/local plan. Nineteen boroughs have a strategic target for 50% of homes delivered to be affordable, and seven of these boroughs adopted their targets after the introduction of the NPPF and thus were assessed as meeting the requirements of para 173 of the NPPF, which requires plans to be deliverable and states that:

“the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable”

3. Exceptional or abnormal costs may include issues such as high levels of contamination, requirement to divert major utilities, poor ground conditions necessitating special foundations/ ground works. However, it should also be noted that the presence of such issues will also impact land value and the cost should not necessarily be born through a reduction in Planning Obligations.

4. Planning and Compulsory Purchase Act 2004

1.15 This SPG sets out in what circumstances a viability appraisal will be needed to support an application, what information must be included in the appraisal, and makes clear that the information should be treated transparently. Boroughs are strongly encouraged to adopt the same approach to viability information and assessment to provide London wide consistency.

THE MAYOR AND REFERABLE APPLICATIONS

1.16 Given the strategic importance of affordable housing delivery and the significant impact of reduced levels of affordable housing on the delivery of the London Plan, the Mayor will consider directing that he is to be the Local Planning Authority for the purposes of determining an application (often referred to as a '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;
- he considers the viability information submitted may suggest a higher level of affordable housing could reasonably be provided;
- the chance of significant contribution to affordable housing could be forgone due to other grounds and the Mayor wants to review the weight the LPA has given to competing planning objectives.

TRANSPARENCY OF INFORMATION

1.17 The Mayor wants the GLA to lead the way in openness and transparency. In particular he considers that information relevant to planning determinations should be publicly available alongside the other application documents in order to foster a greater understanding of and trust in the planning system.

1.18 This approach is consistent with the Freedom of Information Act 2000 which gives the public the right to request information held by the GLA and which aims to ensure that public sector bodies are open and accountable. The Environmental Information Regulations 2004 which relate to environmental information held by public authorities provide a similar public right to access. The guiding principle is that all information should be accessible, although the legislation sets out certain exceptions to this general rule. These exceptions are, however, qualified by a public interest test and recent decisions⁵ by the information tribunal have demonstrated that the public interest in maintaining confidentiality rarely outweigh the public interest in disclosing the information.

5. Royal Borough of Greenwich vs ICO & Shane Brownie EA/2014/0122.RB and Clyne vs ICO & Lambeth EA/2016/0012

1.19 Therefore, given the importance of wider scrutiny and the direction of travel indicated by information tribunal decisions, the Mayor will treat information submitted as part of, and in support of, a viability assessment transparently.

1.20 This information should be available for public scrutiny and comment like all other elements of a planning application, as should any review or assessment of the appraisal carried out by or for the LPA. Where the required viability information is not published by the LPA as part of the application documents, the Mayor reserves the right to refer to, and publish, the information as part of his referral stage 1 and 2 consideration of the application.

1.21 In very exceptional circumstances there may be legitimate reasons for keeping limited elements of viability information confidential. For this to be the case the Mayor would need to be convinced that the public interest in maintaining the exception outweighs the public interest in disclosing the information. If an applicant considers that an exceptional circumstance is likely to arise, this should be raised at an early stage within the pre-application process.

1.22 If an applicant wishes to make a case for an exceptional circumstance in relation to an element of their assessment, they should provide a full justification as to the extent to which disclosure of a specific piece of information would cause an 'adverse effect' and harm to the public interest that is not outweighed by the benefits of disclosure. The Mayor will consider this carefully, with reference to the 'adverse effect' and overriding 'public interest' tests in the EIR, as well as the specific circumstances of the case.

1.23 In submitting information to the Mayor, an applicant does so in the knowledge that the Mayor may not accept the applicant's claims that information should not be disclosed to the public. Therefore if an applicant is particularly concerned that information which it is intended to submit should not be disclosed, these concerns should be raised with the Mayor, and the Mayor's views ascertained, before the information is submitted.

PART 2

THRESHOLD APPROACH TO VIABILITY

2.1 This SPG does not and cannot set a fixed target for affordable housing in developments. Instead it provides a framework for delivering the maximum reasonable amount of affordable housing in the context of current London Plan policy (3.11 and 3.12) and past delivery. It specifically focuses on viability by developing a more consistent and transparent process to increase the contribution from Section 106 obligations.

2.2 As set out in the introduction to Part 1, the Mayor is committed to a long-term strategic aim of half of all new homes in London being affordable. The approach to affordable housing will be a key consideration of the London Plan review, which will explore the merits of fixed tariff approaches, the current maximum reasonable approach, or an approach which builds on this SPG. The new Plan will consider appropriate levels for any tariffs or thresholds, and whether these should vary spatially.

2.3 This SPG introduces a 'threshold approach', whereby schemes meeting or exceeding 35 percent affordable housing without public subsidy⁶ are not required to submit viability information. Schemes that do not meet this threshold or require public subsidy to do so will be required to submit detailed viability information which will be scrutinised and treated transparently (see transparency of information section in paragraphs 1.17 - 1.23). In addition, comprehensive review mechanisms will be applied to schemes that do not meet the threshold or require public subsidy to do so, in order to ensure that affordable housing contributions are increased if viability improves over time.

2.4 The introduction of a 'threshold approach' provides certainty and consistency, as well as a clear incentive for developers to increase affordable housing delivered through the planning system above the level in planning permissions granted in recent years.⁷

2.5 Where the level of affordable housing offered meets the threshold, this should normally⁸ be considered the maximum reasonable amount of affordable housing which can be delivered through the planning system (subject to an early stage review mechanism to help ensure delivery – see Route B guidance below). However, this will only apply where the affordable housing threshold is met without public subsidy. Where public subsidy is used, this should ensure a greater level of affordable housing is delivered. All schemes are expected to make the most efficient use of available affordable housing resources to achieve this objective.

6. Public subsidy includes grant, public loans (including those referred to in the Mayor's Homes for Londoners: Affordable Homes Programme 2016-21) and any public land at a reduced cost.

7. The 'minimum threshold' is not a fixed target; instead the approach to justifying the levels of viability information will differ depending on what level of affordable housing is being offered.

8. See paragraph 2.7 for advice on existing approaches.

APPROACH TO PLANNING APPLICATIONS

2.6 The Mayor strongly encourages LPAs to apply the affordable housing threshold approach to applications for sites which are capable of delivering ten or more units. In addition, when developing future affordable housing policy (and other policies on planning obligations and CIL levels) LPAs are strongly encouraged to take account of this SPG and the importance the Mayor places on increasing the numbers of affordable homes.

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

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

2.9 Some schemes are only suitable for Route A (see below) due to site specifics, the type of product, and the need to have viability information to assess the application. This includes:

- applications which propose affordable housing off-site or as cash in lieu contribution;
- applications which involve demolition of existing affordable housing (in particular estate regeneration schemes);
- applications where the applicant claims the vacant building credit applies.

2.10 Build to Rent schemes where a bespoke affordable housing mix is being proposed is covered separately in Part 3. Guidance on tenure, working with a Registered Provider (RP) and grant is also provided below.

ROUTES FOR APPLICATIONS UNDER THE 'THRESHOLD APPROACH'

ROUTE A: APPLICATIONS THAT DO NOT MEET THE 35% THRESHOLD

Where an application does not meet the threshold level, supporting viability evidence should be submitted in a standardised and accessible format (as detailed in Part 3). It should be submitted as part of the application and the information will be treated transparently as set out in this SPG.

Where permission is granted, review mechanisms should be applied to these developments to ensure that any future uplift in values contributes to the delivery of the maximum reasonable amount of affordable housing. Review mechanisms will only apply if a 'surplus' is generated over and above the returns necessary for a scheme to be deemed viable.

The following reviews should apply to all Route A schemes and for each phase of phased schemes (for more information on review formula's see annex A):

- *an early review* where an agreed level of progress on implementing the permission (this will be agreed by applicant and LPA, and the Mayor where relevant, on a site-by-site basis) is not made within two years of the permission being granted. Where a surplus above the initial agreed profit level is identified, this should be split 60/40 between the LPA and developer. It is expected that in most cases any uplift in affordable accommodation at this early stage will be accommodated on-site. Thus plans should identify which units would switch to affordable accommodation in the event of an increase in viability at this early stage. If the agreed level of progress has been made, this review will not be triggered. All signatories to the Section 106 need to commit to making their best endeavours to fulfil their relevant requirements (setting out key milestones and requirements) to deliver the scheme and account may be had of the market situation at time of review;
- *a near end of development review* which will be applied once 75% of units are sold⁹. Where a surplus profit is identified this should be split 60/40 between the LPA and developer. The outcome of this review will typically be a financial contribution towards off-site affordable housing provision.

The reviews should assess changes to gross development value and build costs. The Mayor encourages the use of the formula set out in Annex A. The formula should be embedded in the Section 106.

The review mechanism should be capped so that the on-site affordable housing and financial contribution are, when taken together, equivalent to 50% affordable housing. Although additional affordable housing up to 50% will generally be a priority, the review mechanism may also be used to contribute to other policy contributions which may not have been viable according to the initial assessment.

All applicants should explore the use of grant and other public subsidy to increase the level of affordable housing (see section on grant below in paragraphs 2.20 - 2.23).

9. Where units are not being sold, the trigger should be 3 months before practical completion.

ROUTE B: APPLICATIONS THAT MEET OR EXCEED THE 35% THRESHOLD

Applications will not be required to provide viability information, nor be subject to review mechanisms if agreed level of progress is made, where they:

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

To ensure an applicant fully intends to build the permission, an early review mechanism will be triggered if an agreed level of progress on implementation is not made within two years of the permission being granted.

This level of progress should be agreed in the section 106 agreement and will differ depending on the scheme. If the agreed level of progress has been made, the review will not be triggered. All signatories to the Section 106 would need to commit to making their best endeavours to fulfil their relevant requirements (setting out key milestones and requirements) to deliver the scheme.

The Section 106 agreement should set out an agreed Benchmark Land Value which will form the comparison for the viability assessment if triggered by the review mechanism. If the review is triggered, the cost of the viability appraisal should be met by the applicant.

Where a surplus profit is identified this should be split 60/40 between LPA and developer, and it is expected that in most cases any uplift in affordable accommodation at this early stage will be accommodated on-site.

The review mechanism should be capped so that the on-site affordable housing and any financial contribution, when taken together, are equivalent to 50% affordable housing. Any financial contribution will be capped accordingly.

All applicants should explore the use of grant and other public subsidy to increase the level of affordable housing (see grant section below in paragraphs 2.20 - 2.23).

2.11 In order to follow Route B the application must also meet all other relevant obligations and requirements taking into account the priority given to affordable housing in Policy 8.2 of the London Plan.

2.12 It is understood that applications on particular sites may not be able to meet affordable housing requirements due to the requirements for significant investment in other contributions (such as major transport projects, schools and hospitals, cultural venues, affordable work space etc.). Where this is the case the applicant is required to provide viability information as per Route A.

2.13 In the case of such circumstances, on the basis of this information provided under Route A it will be for the LPA, and where relevant the Mayor, to decide to what extent the requirements and evidence produced by the applicant justify a lower level of affordable housing and whether there is a case to be made for applying an alternative approach to review mechanisms for such schemes. However, it should be noted that (as set out in the planning obligations section of Part 3), the requirement to deliver investment in other infrastructure will generally be set out in the development plan and CIL charging schedules and thus should be taken into account by the applicant and the land owner and should not therefore usually lead to a reduction in affordable housing.

RATIONALE FOR 35%

2.14 This SPG sets the threshold at 35% of habitable rooms as affordable provision. This is a pan-London figure, the development of which was informed by analysis of past completions and approvals. It is set at a level which is ambitious and practical and will encourage increased affordable housing delivery through the planning system. This approach will start to embed affordable housing requirements into land values across London.

2.15 As stated previously, it is not a fixed level of affordable housing, but a threshold at which the approach to viability information changes. This means schemes which cannot deliver the threshold can still gain permission where the lower level of affordable housing is fully justified through site-specific viability appraisals. There is therefore no requirement for the threshold level to be tested for viability as part of this SPG. In addition, as set out above, where an LPA can demonstrate that it will consistently deliver a higher average through the planning system on nil-grant schemes, then they can continue with their local approach.

2.16 A single threshold has been proposed to create consistency and certainty across London while providing the flexibility to follow the traditional route of viability negotiations where the threshold cannot be met.

INCREASING AFFORDABLE HOUSING TO 50%

2.17 The Mayor has made clear his long-term strategic aim for 50% of new homes to be affordable. The approach to assessing viability and the threshold approach proposed in this SPG are the first step towards increasing the level of affordable housing delivered via the planning system. As set out above, the approach to affordable housing will be a key consideration of the London Plan review, with the new Plan considering appropriate levels for thresholds or any other approaches.

2.18 In order to increase affordable housing delivery generally the Mayor will, in addition to delivery through the planning system, use his funding powers to increase affordable housing, and expect higher proportions of affordable housing on schemes developed by RPs or those on publically owned land.

2.19 All schemes are expected to maximise the delivery of affordable housing and make the most efficient use of available resources to achieve this objective in accordance with the London Plan. Where grant or other public subsidy is available and would increase the proportion of affordable housing, this should be utilised. The higher proportion should be enshrined in the Section 106 agreement as being subject to grant availability, alongside the proportion viable without grant.

Grant

2.20 To enable the delivery of more affordable homes the Mayor will make funding available to increase the proportion of affordable homes above that which is viable on a nil-grant basis. Funding will be available on a tariff basis, details of which are set out in the Mayor's *Homes for Londoners: Affordable Homes Programme 2016-21*.

2.21 For Route A schemes, if the affordable proportion with grant is below 40% then grant will only apply to the additional units over and above the baseline level of affordable housing shown as being viable on a nil-grant basis. If the total meets or exceeds 40%, then the tariff may apply to all affordable units in the scheme. The proportion of affordable housing viable with and without grant will be recorded in the Section 106 agreement.

2.22 For Route B schemes, grant will only be available if it increases the proportion of affordable housing above the nil-grant position to a level of 40% or more. In this case, grant will be applied to all of the affordable units in the scheme and in accordance with Route B, no viability information will be required. The Section 106 agreement will record the accepted proportion of affordable housing without grant (35% or above) and with grant (40% or above).

2.23 Grant for these purposes will be available to all private sector-led schemes, including schemes that are not referable to the Mayor. The GLA will publicise the assumptions that should be used for grant top up. It would then be for the RP to draw down grant from the GLA as appropriate.

Registered providers and public owned land

2.24 As set out in para 3.71 of the London Plan, to expedite the planning process, and improve design and integration of different tenures, developers should engage with a RPs prior to progressing the scheme and secure from them a commitment to affordable housing provision at an agreed purchase price. At the very least applicants are strongly encouraged to have a RP on board when engaging in pre-application discussions with the LPA and the Mayor (see affordable housing values section in paragraphs 3.14 - 3.19).

2.25 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.

2.26 All applicants are expected to work with the LPA, the Mayor, and RPs to ensure affordable housing delivery is maximised from all sources. On private sites this will include exploring the availability of grant and RPs' own funding to increase the numbers of affordable homes. On public sector land this will include forgoing land value to increase the number of affordable units. On a case-by-case basis it may also be appropriate to explore the potential to increase densities to make the delivery of more affordable homes viable.

TENURE

2.27 The London Plan sets out the definition of affordable housing in Policy 3.10 and the Mayor has made clear his commitment to delivering genuinely affordable homes. This means homes that are affordable to the types of households that they are aimed at and are below market prices.

2.28 Policy 3.11 sets the current strategic affordable housing target for London as at least an average of 17,000 additional affordable homes a year. It states that, in order to give "impetus to a strong and diverse intermediate sector, 60% of the affordable housing provision should be for social and affordable rent and 40% for intermediate rent or sale." However, the policy provides flexibility and LPAs are asked to set separate targets for social/affordable rent and intermediate housing in their local plans, taking account of all of the factors set out in Policy 3.11C. The Mayor is keen to maintain this flexibility to meet local needs while ensuring the delivery of his preferred affordable products. The preferred tenure split is for schemes to deliver:

- at least 30% low cost rent (social rent or affordable rent) with rent set at levels that the LPA considers 'genuinely affordable' (this will generally be significantly less than 80% market rent). As part of this consultation, LPAs are being invited to give guidance on what rent levels they consider to be genuinely affordable if above the benchmarks for London Affordable Rent¹⁰. These units are to be made available as general needs or supported housing and allocated in accordance with the statutory allocations framework and established nominations agreements;
- at least 30% as intermediate products, with London Living Rent (see definition below in paragraphs 2.32 - 2.35) and/ or shared ownership being the default tenures assumed in this category. For viability purposes, London Living Rent homes in mixed-tenure schemes can be treated similarly to shared ownership, as it can be assumed that they will be sold on a shared ownership basis after a period of 10 years. The split between these products should be determined by the applicant (in discussion with their RP partner) on a site-by-site basis. LPAs may prioritise other intermediate products that are genuinely affordable where they better meet the needs of their area; and
- the remaining 40% to be determined by the relevant LPA (see below).

2.29 As part of the consultation on this document, LPAs are asked to inform the Mayor of:

- guidance on rent levels for those homes to be delivered for low cost rent if above benchmark London Affordable Rent levels, with clear justification for how these are genuinely affordable;
- robust evidence, on the grounds of affordability, for prioritising alternative intermediate products over the options of London Living Rent and shared ownership set out above; and
- their preferred tenure(s) for the remaining 40%. This is encouraged to be drawn from the products listed above, but could include other products where they are evidenced as genuinely affordable and are consistent with the London Plan's definition of affordable housing.

2.30 When setting a mix, LPAs should take account of the values generated by different types of affordable tenures and implications on delivering the 35% threshold and thus the attractiveness of Route B. Once agreed between boroughs and the GLA, this tenure mix information will be published as part of the final SPG to ensure applicants have clear guidance on the expected tenure split within each LPA.

2.31 Applicants wishing to follow Route B should conform to this tenure split, though on specific applications LPAs may wish to allow a degree of flexibility. A more flexible approach to tenure may be particularly important in Opportunity Areas (See Opportunity Area section in paragraphs 3.55 - 3.57).

10. See definition in Homes for Londoners: Affordable Homes Programme 2016-21

Definition of London Living Rent

2.32 London Living Rent is a new type of intermediate affordable housing that will help, through low rents on time-limited tenancies, households with around average earnings save for a deposit to buy their own home.

2.33 Eligibility for London Living Rent is restricted to existing tenants with a maximum household income of £60,000, without sufficient current savings to purchase a home in the local area. It is aimed at single people, couples and other households with more than one person, but is unlikely to be suitable for house shares of multiple adults due to the household income limit. Any update to this criteria will be provided through the GLA's annual monitoring reports.

2.34 The GLA has calculated ward-level caps for London Living Rent homes based on one-third of median gross household income for the local borough. The cap varies from the Borough median by up to 20 per cent in line with house prices within the ward. The caps have further variation based on the number of bedrooms within the home. RPs have the flexibility to let homes at lower rents if they wish. Further information on how the London Living Rent will be set is available from the GLA website.

2.35 RPs are expected to actively encourage London Living Rent tenants into home ownership. They will be expected to assess the ability and inclination to save of prospective tenants and, where part of mixed-tenure schemes, offer tenants the right to purchase their London Living Rent home on a shared ownership basis. Further information on this product is available in Homes for Londoners: Affordable Housing Programme 2016-2021.

Affordability of other intermediate products

2.36 Both London Living Rent and shared ownership are classed as intermediate products and LPAs are encouraged to allow flexibility between the two products depending on demand.

2.37 The Mayor will, and LPAs should, seek to ensure that intermediate provision provides for households with a range of incomes below the upper limit.

2.38 As allowed for in the London Plan, the Mayor will update the income ranges eligible for intermediate products in the annual monitoring report. Currently the top of the range (or 'income cap') for all intermediate products is £90,000. Given the Mayor's commitment to delivering a range of genuinely affordable homes and the target need that London Living Rent is designed to meet (see approach to setting London Living Rent explained above), the Mayor intends to limit eligibility for London Living Rent and other intermediate rent products to households on incomes of £60,000 a year or less in the forthcoming (2017) annual monitoring report.

2.39 As set out in the current annual monitoring report, for intermediate dwellings to be considered affordable, annual housing costs, including mortgage (assuming reasonable interest rates and deposit requirements), rent and service charges should be no greater than 40% of net household income.

2.40 For shared ownership properties, to ensure mortgage costs assumptions are reasonable, boroughs, developers and registered providers are advised to assume buyers will access RPs, with a term of 25 years and a 90% loan to value ratio. The prevailing average interest rate being offered to lenders based on the terms above should be used to calculate the monthly payments. Generally shared ownership is not appropriate where unrestricted market values of a unit exceed £600,000.

2.41 The Mayor will, and LPAs and applicants should, ensure that intermediate housing provision is for households within the full range of incomes below the relevant upper limit, and provide a range of dwelling types in terms of a mix of unit sizes (measured by number of bedrooms).

2.42 It should be noted that these income ranges and calculations only apply to self-contained accommodation. As set out in the 2016 Housing SPG, new types of non-self-contained accommodation can play a role in meeting housing need where they are of a high quality and well designed. However, non-self-contained accommodation and hostels should not be classed as affordable provision and it is not appropriate to apply the rent calculations for London Living Rent to such units. Neither can it be claimed that they can be classed as intermediate based on the income ranges of those that access the rooms.

2.43 Where self-contained studios are provided as part of the affordable housing offer, they must meet the London Plan's minimum space standards (as set out in Policy 3.5).

Affordable housing in perpetuity

2.44 For all affordable housing types, LPAs should ensure that affordable housing provision is secured for future eligible households through a legal agreement. Provision of social/affordable rented housing through a housing association or cooperative registered with the Mayor, with rent levels consistent with the appropriate rent regime, will normally achieve this objective. Schemes funded by the Mayor will also need to meet his investment criteria.

2.45 Intermediate products must be secured as such through a Section 106 agreement. The Section 106 should provide for the recycling of any subsidy for alternative affordable provision in the event of the affordable unit being lost. For the avoidance of doubt, subsidy includes all forms of subsidy that are required to enable the sale or letting of the property at sub-market value. This includes, among others, subsidy from reduced land costs and the developer contribution gained through a Section 106 as well as grant funding.

STARTER HOMES

2.46 The Housing and Planning Act 2016 introduces a requirement for Starter Homes, details of which will be set out in regulations. The Mayor will provide an update on how any Starter Homes requirement might affect the details of this SPG once the Government's position has been made clear.

SCHEMES NOT SUITABLE FOR ROUTE B OF THE THRESHOLD APPROACH

2.47 There are a number of circumstances where Route B of the threshold approach is not appropriate. These are set out below:

Off-site and cash in lieu

2.48 All schemes which propose off-site provision or a cash in lieu payment are required to provide a detailed viability appraisal to justify this approach.

2.49 Policy 3.12C and para 3.74 of the London Plan state that "affordable housing should normally be provided on-site. In exceptional cases where it can be demonstrated robustly that this is not appropriate in terms of the policies in this Plan, it may be provided off-site. A cash in lieu option should only be accepted where this would have demonstrable benefits in furthering the affordable housing and other policies in this plan and should be ring fenced, and if appropriate, pooled, to secure efficient delivery of additional affordable housing on identified sites elsewhere or as part of an agreed programme for provision of affordable housing".

2.50 Therefore, an off-site provision or a financial contribution must be of broadly equivalent value and be robustly justified. Consideration should only be given to off-site provision where an alternative site or sites have been identified which would enable affordable housing provision more appropriate to the identified needs to be met.

2.51 Cash in lieu of exceptional off-site provision should be held in a separate “affordable housing pot” – where resources can be pooled and ring fenced to enable more additional, or more appropriate, new provision to be made off-site, either on an identified site or as part of an agreed programme – in compliance with the statutory tests for use of planning obligations¹¹.

2.52 To avoid incentivising off-site provision, agreements for this should be financially neutral in terms of the benefit to the applicant relative to on-site provision and should include review mechanisms where appropriate, based on the approach set out in Route A. Therefore, appraisals should include the detail of the cost of delivering affordable housing on-site (this could be based on the difference between the build costs for affordable units and the unit’s open market value).

2.53 It is important that cash in lieu contributions are used to maximise affordable housing delivery. In 2008-2016, £1.2bn was collected in lieu of affordable housing across London. The Mayor will work with boroughs to ensure the money is spent in line with his affordable housing objectives. The Mayor does not consider it appropriate for boroughs to use cash in lieu of affordable housing for any purposes other than maximising the delivery of additional affordable housing. Contributions should be administered by boroughs in a clearly identifiable manner so as to meet the objectives of Policy 3.12C and boroughs should publish an annual report on how contributions have been expended. The Mayor will monitor and publish this information through the London Plan annual monitoring report.

Loss of existing affordable housing (including estate renewal)

2.54 Policy 3.14 and paragraph 3.82 are clear that schemes which include the loss of affordable housing will be required to ensure that existing affordable housing is replaced by better quality accommodation, providing at least the equivalent floor space of affordable housing¹². The threshold approach therefore does not apply in these circumstances. The Mayor expects existing affordable housing to be replaced on a like-for-like basis, meaning there should be no net loss of existing affordable housing tenures (including social rented accommodation). Where market housing units (including those sold under the Right to Buy) have been used as temporary affordable accommodation on an estate, the units should be considered as market housing for the purposes of like-for-like re-provision.

11. Community Infrastructure Levy Regulations 2010 (SI 2010 No 948), Regulation 122(2). Crown Copyright, 2010
12. Further guidance can be found in the 2016 Housing SPG (Sections 5.1.13 -5.1.18).

Vacant building credit

2.55 In 2014 the Government introduced a vacant building credit (VBC), which applies to sites where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building. The VBC reduces the requirement for affordable housing contributions based on the amount of vacant floor space being brought back into use or redeveloped. This has significant implications for delivery of affordable housing in London where a high proportion of development is on brownfield land where there are existing buildings. It is estimated that as many as 18,000 affordable housing approvals would have been lost had VBC been allowed over the past five years.

2.56 VBC was introduced in a Written Ministerial Statement (WMS) together with updates to the National Planning Policy Guidance (NPPG), alongside a policy which sought to restrict planning obligations (including those for affordable housing) from sites providing ten units or less (and which have a maximum combined gross floor space of no more than 1000sqm).

2.57 It is important to note that Sections 38(6) and 70(2) of the Town and Country Planning Act 1990 are clear that the determination of an application must be made in accordance with the development plan unless material considerations indicate otherwise. The Court of Appeal decision which upheld the VBC states that “the policy’s unqualified terms do not demonstrate that it was intended to countermand or frustrate the effective operation of the statute”. This reinforces the position that legally it is for the decision maker to assess how much weight the Written Ministerial Statement has.

2.58 In London, VBC is unlikely to bring forward more development. Brownfield land already delivers the majority of London’s housing, and affordable housing requirements are already subject to viability testing, so affordable housing requirements are not preventing sites from coming forward. The policy could undermine key existing policies in the London Plan and Local Plans, which have been tested through examination in public, are based on robust evidence, and take account of the pressing need for affordable housing across London.

2.59 To ensure that the VBC operates in a way that delivers the intention of policy and does not simply reduce the affordable housing requirement of schemes that would have come forward without the VBC (and thus reduce the ability to meet objectively assessed needs), this SPG provides guidance on application of the policy in London. Boroughs are also encouraged to reflect this approach in policy in their forthcoming local plans.

2.60 Decision makers are encouraged to take account of: the current need for affordable housing in London (both at the local and strategic level); the rate of past delivery against local and strategic targets; the requirement of the NPPF to seek to meet objectively assessed need; the fact that brownfield sites come forward for development without such an incentive; and the requirement in the NPPF to provide competitive returns to a willing land owner and willing developer which already addresses the issue of the impact of affordable housing requirements on viability.

2.61 Given the above, the Mayor's view is that in most circumstances it will not be appropriate to apply the VBC in London. However, there may be some limited circumstances where the credit should be applied and would, in line with the intention of the policy, provide an incentive for brownfield development on sites containing vacant buildings that would not otherwise come forward for development. As part of assessing whether this is the case, decision makers are advised to take account of the criteria below as well as locally specific factors influencing the site.

2.62 In addition to the above, when assessing the applicability of the VBC, boroughs are advised to consider applying the credit only where all of the following criteria are met:

- the building is not in use at the time the application is submitted;
- the building is not covered by an extant or recently expired permission;
- the site is not protected for alternative land use; and
- the building has not been made vacant for the sole purpose of redevelopment.

2.63 To demonstrate that a building has not been made vacant for the sole purpose of redevelopment, an applicant will be required to demonstrate that the relevant buildings (i.e. those for which they are claiming the credit) have been vacant for a continuous period of at least five years before the application was submitted and will also be required to provide evidence that the site has been actively marketed for at least two of those five years at realistic prices.

2.64 It should be noted that if an applicant is claiming that the scheme qualifies for VBC, it cannot also claim CIL relief through the vacancy test.

2.65 Where the decision maker believes the VBC applies because the above criteria are met, the relevant local affordable housing target (including strategic targets) should be applied to the proposal and the calculated VBC taken from that figure. All schemes where the applicant argues that the VBC should be applied will be required to submit viability information which will be published as part of the application.

Build to Rent

2.66 See Part 4 of this SPG on the Mayor's approach to Build to Rent applications.

PART 3

GUIDANCE ON VIABILITY ASSESSMENTS

3.1 The Mayor supports the London Borough Viability Protocol and the guidance below is considered consistent with that protocol, while providing more detail on the specific approach the Mayor will use. The Mayor encourages LPAs to do the same.

3.2 For referable schemes that do not meet the 35 per cent threshold the Mayor will review both the viability information submitted by the applicant and any review or assessment carried out by or for the LPA. The Mayor will consider whether the approach adopted and inputs used are appropriately and adequately justified by evidence. When reviewing the information the Mayor's team may ask the applicant and LPA for clarification and additional information.

3.3 Overall the Mayor aims to establish whether the proposed level of affordable housing and other contributions are the maximum that can be reasonably supported or whether further obligations and/or a greater level of policy compliance could be achieved. This assessment process will inform the Mayor's comments at referral Stage 1 and subsequent decision at referral Stage 2.

3.4 The Mayor will use the residual land value methodology to determine the underlying land value once the costs of the development (including developer's profit) are deducted from the gross development value.

3.5 There are a number of viability models used in the industry such as the GLA's own Affordable Housing Toolkit, the HCA model, Argus Developer, and many bespoke models. Where viability information is required, the LPA, and for referable schemes the Mayor, should be provided with the full working model and/or all the assumptions and calculations included in the modelling so that officers can test and interrogate the information. There must be no hidden calculations or assumptions in the model. This will allow officers to vary assumptions to ascertain impact on the conclusions. Without this the LPA and Mayor cannot properly assess the validity of the appraisal and the assumptions used.

3.6 In addition, the applicant should provide a detailed narrative to support inputs and assumptions. An executive summary version of the supporting report, which summarises the key findings and conclusions, should also be provided. Where scheme details change during the application, new information should be provided to the LPA and the Mayor where relevant.

APPRAISAL REQUIREMENTS

3.7 Development appraisals should include details of the proposed scheme including site area, residential unit numbers, number of habitable rooms, unit size, density (by units and habitable rooms) and the split between the proposed tenures. Floorspace figures should also be provided for residential (by tenure) and non-residential uses in Gross Internal Area (GIA) and Net Internal Area (NIA).

3.8 Information should be provided relating to the applicant company, the target market/ occupiers of the development and proposed specification, which should be consistent with assumed costs and values.

3.9 Details of the assumed development programme and the timing of cost and income inputs should be provided, with reference to: project/ construction plans and contracts; and land/ development/ letting agreements (as relevant). The development programme should include information relating to pre-build, construction, and marketing and sales/ lettings periods.

DEVELOPMENT VALUES

3.10 Gross development value is derived from the sales values of any units, car parking spaces and any other buildings to be sold, the rental value of any units being rented out which are capitalised using a yield, ground rents and any rents generated by commercial floorspace, to give an overall capital value. In line with the NPPG, development values used in viability appraisals are typically present day values.

3.11 Assumptions relating to development values should be justified with reference to up-to-date transactions and market evidence relating to comparable new build properties within a reasonable distance from the site (where available) and, where relevant, should reflect arrangements with future occupiers.

3.12 In particular, information relevant to comparable properties should be directly comparable to the site in question or should be adjusted to ensure it is comparable. It should be fully analysed to demonstrate how this has been interpreted and applied to the application scheme. For any units with characteristics which justify higher values (e.g. upper floors, south facing units, river frontage etc.) further details should be provided, with reference to units of similar characteristics in nearby schemes where possible.

Growth assumptions

3.13 In addition, applicants should provide information on their growth assumptions. While this information is not included in the main appraisal (as, in line with the NPPG, this should be based on current day figures), it should be included as a scenario test.

This is particularly relevant where a traditional appraisal appears to suggest that little or no affordable housing is viable but the applicant is offering an element of affordable housing provision as part of the application, or where the scheme appears to be in a deficit position from the outset. This information helps the decision maker understand if the scheme is deliverable.

Affordable housing values

3.14 In line with the London Plan¹³, applicants should engage with RPs at an early stage and an RP should be involved in pre-application discussions. Affordable housing values should reflect discussions with, and the offer made by, the RP. Values should be evidenced through calculations of rental and capital receipts (including staircasing receipts for shared ownership units) and availability of RP cross-subsidies where applicable. For viability purposes London Living Rent homes in mixed-tenure schemes should be assumed to be sold, on shared ownership basis, after a period of 10 years with the relevant subsidy recycled. This will mean the planning subsidy required will be similar to shared ownership homes.

3.15 For referable schemes the Mayor reserves the right to investigate high assumed payments for affordable housing as should LPAs. In particular, the Mayor will and LPAs should request more detail where the price assumed or paid for a unit is above 14 times the annual gross rent (for rented homes) or 75% Open Market Value for shared ownership or London Living Rent homes.

3.16 The timings of payments by RPs should also be reflected in the appraisals as an RP will often pay for the units in instalments starting at commencement of construction and this will reduce the developers' finance costs. The timings of payments by RPs, which should be agreed at an early stage, should be clearly set out to support the appraisal, including the name of the RP involved. If no offers have been received, details regarding the terms of marketing and the procurement process should be provided.

3.17 The price the RP has agreed to pay for each unit should be used in the viability appraisal and should be enshrined in the Section 106 agreement (for phased schemes the price in the Section 106 should be inflation linked).

3.18 The above approach to valuation and Section 106 should also be applied to schemes where affordable housing tenures are not being provided by an RP.

3.19 See Part 2's section on tenure for guidance on the affordability of the affordable housing offer and the section on grant for availability of public subsidy.

13. Policy 3.12 and paragraph 3.71, 3.72

COSTS

Build costs

3.20 Build costs should be provided in an elemental form based on a detailed specification of the proposed development that enables them to be benchmarked against publicly available sources such as BCIS and supported by evidence from cost consultants. They should include detail setting out the separate costs for:

- preliminaries;
- demolition/ site clearance/ site preparation;
- base build costs;
- abnormal costs;
- on-site infrastructure and utilities;
- off-site infrastructure;
- contractor's overheads and profit;
- design fees and professional fees;
- contingencies.

3.21 Cost details should generally be provided based on Gross Internal Area (GIA), clearly apportioning costs to different elements of the development (i.e. commercial, market residential, affordable housing etc).

3.22 Explanation for scheme costs should also be set out in the executive summary, particularly where costs exceed BCIS benchmarks by 10% or more.

3.23 There should be a clear alignment between a development's specification, assumed build costs and development values, and there should be consistency with comparable sites.

3.24 A relationship between professional and marketing fees and development values and/or complexity should also be evident.

3.25 Any site-specific abnormal costs should be disaggregated and supported by robust evidence (including contractor costs). The presence of abnormal costs would normally be expected to influence the land value – the applicant should have been aware of any abnormal costs prior to purchasing the site, therefore the presence of abnormal costs (alongside relevant requirements of the development plan) are assumed to have influenced the level of premium above the existing use value a land owner would expect. Thus, it should not be assumed that abnormal costs will be offset at the expense of compliance with the Development Plan.

3.26 A standardised approach will generally be adopted to finance costs which should be justified according to the specific proposal, reflecting varying interest costs (if applicable) throughout the development period and presales (including to RPs). The standardised approach assumes that all developers will incur generic average finance cost based on standard market rates.

3.27 Appraisals should be based on current day costs. In particular, these should not include build cost inflation.

Planning obligations

3.28 As set out in the NPPG, likely S106 planning obligations should be included as a development cost and be determined in accordance with Plan policies and guidance. CIL charges should also be included as a development cost and should be calculated in accordance with borough/ Mayoral Charging Schedules and the CIL Regulations. Account must also be taken of the strategic Crossrail S106 contributions (which does not apply to housing but can apply to some other elements of a mixed use development).

3.29 Borough and Mayoral CIL instalment policies, and phased payments under the CIL Regulations, which aid developer cashflow should also be reflected in the assumed timing of payments.

3.30 Applicants and land owners are expected to take account of relevant planning obligations and CIL requirements relevant for the scheme.

3.31 When reviewing plans and setting CIL charging schedules LPAs should take account of Policy 8.2 of the London Plan which places the highest strategic priority on contributions to affordable housing and transport infrastructure, and ensure that the cumulative impacts of requirements do not prevent affordable housing from being delivered.

Developer profit

3.32 Developers will be seeking a competitive return in order to proceed with a scheme and to secure finance where required. The appropriate level of profit is scheme specific; evidence should be provided from applicants to justify proposed rates of profit taking account of the individual characteristics of the scheme, the risks related to the scheme and comparable schemes.

3.33 Target profit levels should be appropriate to current market conditions and will reflect the level of risk being taken. They would currently be expected to be lower than levels that were typical following the financial downturn of 2008/9. Profit requirements for affordable housing should reflect significantly lower levels of risk when compared to private residential units. Similarly lower levels of return would normally be expected for commercial and private rented accommodation.

3.34 It should be made clear how the profit level has been adjusted taking into account other assumed inputs within an appraisal. For example, the adoption of cautious assumptions such as the inclusion of contingencies and other costs at the upper end of typical parameters may warrant a lower target profit. The application of a review mechanism should not be used as a justification for a higher initial profit level.

3.35 The Mayor will normally consider profit as a factor of gross development cost (GDC) or gross development value (GDV). An 'internal rate of return' (IRR) approach of measuring profit, which is associated with a long term development programme and assumed growth in values and build costs, is sensitive to the timing of costs and income. If IRR is relied on, a full justification must be provided for the assumed development programme, the timing of cost and value inputs and the target IRR. We would not expect the IRR measure of return to be used on schemes providing fewer than 1,000 units. In addition, where IRR is relied on, the LPA (and/or the Mayor where relevant) will also consider profit as a factor of GDC and/or GDV.

BENCHMARK LAND VALUE

3.36 Within planning viability assessments there are two assessments of land value that are undertaken to determine whether a proposal is viable: the assessment of residual land value and benchmark land value. The residual land value is determined through deducting development costs from development value to ascertain the underlying land value. This is then compared with the benchmark land value. The benchmark land value can be considered as the value below which the land owner (acting rationally) is unlikely to dispose of a site for redevelopment.

3.37 The process for establishing an appropriate benchmark land value for a viability assessment is key, because this indicates the threshold for determining whether a scheme is viable or not. A development is typically deemed to be viable if the residual land value is equal to or higher than the benchmark land value, as this is the level at which it is considered that the landowner has received a 'competitive return' and will release the land for development.

3.38 The NPPF's benchmark for viability appraisal is that it should "take account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable"¹⁵.

3.39 The NPPG is clear that "in all cases, land or site value should: reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge"¹⁶.

15. NPPF paragraph 173

3.40 This is a key requirement because if it is assumed that the granting of planning permission will increase the value of the site, but the costs of meeting planning requirements are not factored in, the site value will be over inflated.

3.41 It is for this reason that the Mayor does not consider it appropriate within a development appraisal to apply a fixed land value as an input which is based on price paid for land or a purely aspirational sum sought by a landowner. Land transactions reflect the specific circumstances of the developer whereas planning viability appraisals are typically undertaken on a standardised basis. 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.

Existing Use Value plus premium

3.42 The 'Existing Use Value plus' (EUV+) approach to determining the benchmark land value is based on the current use value of a site plus an appropriate site premium. The principle of this approach is that a landowner should receive at least the value of the land in its 'pre-permission' use, which would normally be lost when bringing forward land for development. A premium is added to provide the landowner with an additional incentive to release the site, having regard to site circumstances.

3.43 The benefit of this approach is that it clearly identifies the uplift in value arising from the grant of planning permission because it enables comparison with the value of the site without planning permission.

3.44 The NPPG confirms that comparing the current use value of a site with the residual land value generated by the proposed development is an appropriate way to determine whether or not a 'competitive return' is achieved for the land owner¹⁷.

3.45 When determining the EUV+ benchmark:

- The existing use value (EUV) is independent of the proposed scheme. The EUV should be fully justified based on the income generating capacity of the existing use with reference to comparable evidence on rents, which exclude any hope value¹⁸ associated with development on the site or alternative uses. This evidence should relate to sites and buildings of a similar condition and quality or otherwise be appropriately adjusted. Where an existing use and its value to a landowner is due to be retained in a development (and not lost as is usually the case), a lower benchmark would be expected.

16. NPPF paragraph 173

17. NPPG Viability Paragraph 24

18. Hope value is defined by RICS as "any element of open Market Value of a property in excess of the current use value, reflecting the prospect of some more valuable future use or development". This prospective, more valuable use is usually a use for which planning permission has not yet been obtained.

- Premiums above EUV should be justified, reflecting the circumstances of the site and landowner¹⁹. For a site which does not meet the requirements of the landowner or creates ongoing liabilities/ costs, a lower premium would be expected compared with a site occupied by profit-making businesses that require relocation. The premium could be 20% to 30%, but this must reflect site specific circumstances and may be considerably lower.
- As set out in NPPG, in all cases land or site value should reflect Development Plan Policies, planning obligations and CIL²⁰. When determining a level of premium that would be sufficient to incentivise release of a site for development and ensure that a landowner receives a 'competitive return', this should take into account the overarching aim of delivering sustainable, policy compliant development and that an uplift in land value is dependent on the grant of full planning consent.
- If there is an extant permission on the site, this 'alternative use' can be taken into account when determining the benchmark land value. However, there is no requirement for a 'premium' above this figure. It is for the applicant to weigh up the different options and risk profiles of the potential policy compliant schemes for a site and decide which one to pursue.

3.46 The Mayor considers that the 'Existing Use Value plus' (EUV+) approach is usually the most appropriate approach for planning purposes. It can be used to address the need to ensure that development is sustainable in terms of the NPPF and Development Plan requirements, and in most circumstances the Mayor will expect this approach to be used.

3.47 An alternative approach will only be considered in exceptional circumstances which must be robustly justified by the applicant. The circumstances in which an alternative approach can be justified are likely to reduce over time as the preferred approach becomes embedded in the market. There is unlikely to be a justification for any other approach for land purchased following the adoption of this SPG, and given EUV+ was also favoured in the existing 2016 Housing SPG, there will be limited justification for land purchased after May 2016. Where an alternative approach is agreed to be justified it must, in line with the NPPG, reflect all policy requirements and planning obligations and any CIL charge.

3.48 An alternative approach determines the benchmark land value using the market value of land, having regard to Development Plan policies and material considerations²¹. However, recent research published by RICS²² found that the 'market value' approach is not being applied correctly and "if market value is based on comparable evidence without proper adjustment to reflect policy compliant planning obligations, this introduces a circularity, which encourages developers to

19. This is considered further in: the GLA Development Appraisal Toolkit Guidance Notes (2015)

20. NPPG Paragraph 23

21. See RICS Guidance Financial Viability in Planning (2012)

22. RICS Financial Viability Appraisal in Planning Decisions: Theory and Practice. April 2015

overpay for site and try to recover some or all of this overpayment via reductions in planning obligations" (RICS 2015²³ p26). Thus a market value approach will generally not be accepted by the Mayor. In the very limited circumstances where an alternative approach may be justified (see above) and market value is proposed, an applicant must demonstrate that the value properly reflects policy requirements and take account of site specific circumstances. Market land transactions used must be fully evidence and justified as being genuinely comparable and not based on growth assumptions.

3.49 If an applicant seeks to use an 'alternative use value' (AUV) approach it must fully reflect policy requirements. In addition, the approach should only be used if the alternative use would fully comply with development plan policies and it can be demonstrated that the alternative use could be implemented on the site in question and there is market demand for that use. Where all these conditions are met and the AUV is being used, there is no requirement for an additional 'plus' element. It is for the applicant to weigh up the different options and risk profiles of the potential schemes for a site and decide which one to pursue. Generally the Mayor will only accept the use of AUV where there is an existing implementable permission for that use.

CONTINGENT OBLIGATIONS AND REVIEW MECHANISMS

3.50 To maximise affordable housing delivery in the longer term and acknowledging the potential for significant changes in values in the housing market, the London Plan supports the use of review mechanisms and contingent obligations.

3.51 Contingent obligations/ review mechanisms provide a reappraisal mechanism to ensure that maximum public benefit is secured over the period of the development. These mechanisms recognise the need to maximise affordable housing provision and address the economic uncertainties which may arise over the lifetime of a development proposal and can encourage the build out of schemes. They allow increases in Section 106 contributions to reflect changes in the value of the development from the date of application to a specific point in time/ stage of development and help ensure that affordable housing need is met. Such approaches are intended to support effective and equitable implementation of planning policy while also providing flexibility to address viability concerns such as those arising from market uncertainty.

3.52 Review mechanisms should be based on the most robust data available; this generally will be the price paid for the completed units. However, this will depend on the timing and specifics of the review. More than one review trigger may be appropriate, i.e. an early implementation review if an agreed level of progress has not been made by a certain date and a review later in the process taking account

of values achieved (see Part 2). The relevant triggers must be clearly set out in the Section 106. All signatories to the Section 106 must commit to making their best endeavours to fulfil their relevant requirements (setting out key milestones and requirements) to deliver the scheme.

3.53 The Mayor supports the use of review mechanisms as set out in Part 2.

Whenever review mechanisms are used the Section 106 should:

- identify the point(s) at which the reappraisal review should be carried out (bearing in mind the price paid for the completed unit provides the most robust data on values);
- establish whether the review looks forwards or backwards. Backwards looking reviews can be based on actual values;
- establish on a case-by-case basis a threshold level(s) of viability at which additional planning obligation contributions will be required. The Mayor will apply review mechanisms where a 'surplus' is generated over and above the returns necessary for a scheme to be deemed viable;
- establish what the review will assess - the Mayor will assess changes to gross development values and build costs;
- set a 'cap' on the additional provision that will be sought - generally the strategic target or 50%;
- be based on the most robust and up-to-date information available - this will generally be the price paid for the completed unit. However this will depend on the timing and the specifics of the review(s);
- agree the 'split' of any surplus profit between the developer and borough once the threshold level of viability has been reached;
- set out the expectation for additional homes on- or off-site, or for receiving a financial contribution. The London Plan prioritises on-site affordable housing. For early reviews, affordable should be sought on-site (with the Section 106 agreement identifying the units which would change to affordable units in the event of an increase in viability). However, for later reviews, account should be taken of the potential practical implications of delivering increased amount of affordable housing on-site which may mean an off-site or commuted sum contribution would be acceptable.

3.54 Affordable housing requirements are applied where they are required to make an application acceptable in planning terms. Thus, review mechanisms should not be used to reduce the base level of affordable housing contributions which are required as part of the planning permission. This would require a new or modified planning permission.

APPROACH TO OPPORTUNITY AREAS AND HOUSING ZONES

3.55 Opportunity Areas are key sources of housing supply in London. They are, by their nature, complex to bring forward and often require significant investment in infrastructure. They are also of a scale that can create fundamentally new places and communities. Significant research and an in-depth understanding of the area, its strengths and weaknesses, and how to deliver a successful place underpin the development of an Opportunity Area Framework.

3.56 In these circumstances LPAs are encouraged to consider a more bespoke approach to affordable housing taking account the nature of the specific sites. In particular, LPAs may want to consider applying a fixed percentage affordable housing target for Opportunity Areas and Housing Zones, and consider what affordable housing products may be most suitable.

3.57 This approach could help provide certainty to developers and land owners about the affordable housing requirements and help prevent land price rises based on hope value. The percentage and mix of tenures should be based on an understanding of the maximum reasonable amount of affordable housing based on the specifics of that area (including social infrastructure, utilities and transport requirements).

STRATEGIC INDUSTRIAL LOCATIONS

3.58 Strategic Industrial Locations (SIL) are protected by the Mayor as they contain uses and activities that are essential to London's economic function and well-being. They include logistics hubs, waste management and transport facilities, important industrial uses providing services to the 'service' sector, and relatively low cost workspace suitable for small and medium-sized enterprises. Many are located in Opportunity Areas. They are also regularly reviewed by the Mayor to make sure that sufficient land is protected to meet London's current and future industrial needs, but when they are surplus to requirements they can instead be used to provide sites for the new housing, new schools, open spaces and health facilities that London's growing population needs.

3.59 Existing use values are generally lower within SIL and a change of use can significantly increase land values – thereby allowing higher levels of affordable housing and new social infrastructure to be provided. The release of surplus Strategic Industrial Land should therefore be carefully managed through Local Plans (taking into account evidence in strategic and local employment land assessments) in line with London Plan policies 2.17, 4.4 and 3.7. This development plan-led process should ensure that where the release of SIL is deemed appropriate, it fully contributes to other important planning objectives, in particular new affordable housing.

PART 4

BUILD TO RENT

WHY THE MAYOR SUPPORTS BUILD TO RENT

4.1 The private rented sector (PRS) has been the fastest growing housing tenure in London in recent years. It is now home to 28% of all households in London, nearly double the 15% it housed in 2004²⁴. The sector is essential in supporting labour market mobility, with four in five of those coming to London finding their first home in the private rented housing sector²⁵.

4.2 The Government and the Mayor support the provision of more high quality private rented homes. Policy 3.8B a1 of the 2016 London Plan recognises that the planning system should take a more positive approach to enabling this sector to contribute to the achievement of housing targets. The London Plan goes on to say that positive support should be given for purpose-built private rented products through the land use planning system at local as well as at strategic level. This may, for instance, involve Local Plans recognising how this tenure can increase supply, meet a range of needs, and be particularly suitable for certain locations, as well as through development management.

4.3 These purpose-built private rented homes, held in the longer term for private renting, are variously referred to as Build to Rent, Multi-Family Accommodation, Private Rented Communities, Institutionally-Backed Private Rent or Apartment Living and many developers also have increasingly well-known individual brand names. While there is a great deal of diversity in the sector, for ease of reference this section of the SPG will refer to purpose-built self-contained homes for private rent that meet the criteria set out in below as 'Build to Rent'.

4.4 The Mayor believes that Build to Rent developments can make a particular contribution to increasing housing supply and are beneficial in a number of ways. They can:

- attract investment into London's housing market that otherwise would not be there;
- accelerate delivery on individual sites as they are less prone to 'absorption constraints' on build-out rates;
- more easily deliver across the housing market cycle as they are less impacted by house price downturns;
- provide a more consistent and at scale demand for off-site manufacture;
- offer longer term tenancies/ more certainty over long term availability;

24. Housing in London 2016, Greater London Authority

25. Quarterly Labour Force Survey, 2014-16

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- ensure a commitment to, and investment in, place making through single ownership; and
 - provide better management standards and higher quality homes than much of the mainstream private rented sector.

4.5 To encourage the development of this type of housing, the London Plan has made clear that LPAs should recognise the distinct economics of the sector relative to mainstream 'build for sale' market housing, and should take account of this when considering planning applications for Build to Rent schemes.

4.6 These distinct economics are normally taken to mean two separate but connected things: firstly, a reliance on a revenue income through rent rather than upfront return on sales; and secondly, that Build to Rent often cannot compete on an equal footing with speculative build for sale when competing for land, as it can have inherently lower returns.

INCREASING THE NUMBER AND QUALITY OF BUILD TO RENT HOMES

4.7 To help level the playing field for this product, the Mayor is proposing a Build to Rent 'pathway' through the planning system. This is set out in detail below, its key principles being:

(1) Definition: a clear definition of Build to Rent with guidance on how and when a covenant through planning should apply to a Build to Rent scheme.

(2) Affordable housing tenure: the pathway recognises the need for all homes on the Build to Rent development to stay under single management and as such will encourage affordable homes on the development to be delivered as discounted market rent (preferably at London Living Rent levels), managed by the Build to Rent provider (or possibly via another designated manager).

(3) Design: how the flexibility set out in Policy 3.5d of the London Plan could be applied to Build to Rent.

(4) Viability: the 'threshold approach' for affordable housing, set out in Part 2 of this SPG for build for sale developments, would not be applied to Build to Rent developments. Instead viability information would be required and assessed under a specific Build to Rent viability approach, recognising the distinct economics of the sector.

(5) Management standards: Build to Rent developments should showcase the best management practice in the rented sector.

4.8 These principles are set out in greater detail below.

(1) DEFINITION

4.9 In the absence of a distinct planning use class, a clear definition of Build to Rent is essential to define which developments should be treated as Build to Rent for planning purposes. The definition to be used for the purposes of this SPG is:

- a development, or block/ phase within a development, of at least 50 units;
- the homes to be held as Build to Rent under a covenant for at least 15 years;
- all units to be self-contained and let separately²⁶;
- unified ownership and unified management of the development;
- professional and on-site management;
- longer tenancies offered (ideally three years or more) with defined in-tenancy rent reviews; and
- property manager to be part of an accredited Ombudsman Scheme and a member of a recognised professional body.

4.10 The definition requires all homes in a development to be Build to Rent, but it is recognised that this might apply, for example, to just one block on a larger mixed tenure development. The most important principle is single ownership and single management of the Build to Rent homes, as this underpins the need for the distinct approach to affordable housing.

Role and operation of covenant

4.11 The simplest way to secure new homes as Build to Rent for a minimum period, and to enable the distinct economics to be taken into account in planning decisions, is through a covenant in a Section 106 agreement. During this period the homes are retained in single ownership; individual homes cannot be sold and overall ownership of the scheme can only change if the scheme stays as Build to Rent. While the appropriate covenant length will differ, to date these have typically been for 15 years or more. Given that the market is now maturing, the Mayor expects to see all schemes having a covenant of at least 15 years.

Clawback

4.12 Section 106 agreements should include a 'clawback' mechanism in the event of units being sold out of the Build to Rent sector during the covenant. We are consulting on two options for the clawback approach and are seeking views on the practical application of the different options.

26. For guidance on non-self-contained accommodation please see section 3.5 of the 2016 Housing SPG

4.13 *Option one:* As part of the viability testing process, to provide an understanding of the distinct economics of the scheme, an applicant should submit a 'build for sale' viability appraisal alongside the appraisal for the covenanted Build to Rent scheme (see viability section below in paragraphs 4.30 - 4.35). Where these viability appraisals show that covenanted Build to Rent schemes can support less affordable housing than build for sale because of their distinct economics, 'clawback' mechanisms which apply during the covenant period should be included as part of the planning permission. These should seek to recoup the initial loss of affordable housing if the homes are sold out of the Build to Rent sector - to ensure schemes deliver the maximum reasonable level of affordable housing in line with Policy 3.12.

4.14 The agreement could base the clawback amount on the level of affordable housing that would have been viable on the scheme had it been a traditional market sale, less any on-site affordable homes already delivered as part of the scheme. The clawback could be either in the form of additional on-site affordable homes or in the form of a commuted sum.

4.15 *Option two:* A potential similar alternative to the above, as it removes the need for two viability appraisals, is where the applicant submits a Build to Rent viability appraisal only, which will be scrutinised in the usual way. But rather than comparing this to a for sale appraisal to calculate the clawback amount, the clawback amount would be based on the equivalent of 35% of the development being affordable housing (based on the tenure split set out in Part 2). This amount would be enshrined in the Section 106 agreement and only paid in the event of the covenant being broken. This approach may be particularly attractive for any Build to Rent providers who see no likelihood of their developments breaking the covenant.

Affordable housing in perpetuity

4.16 Separately to the covenant and clawback on the Build to Rent homes, all affordable housing secured through planning will need to be secured in perpetuity as set out in paragraphs on on-site affordable housing below.

VAT

4.17 Section 106 agreements and covenants should be carefully worded in order that the construction of the units would be VAT zero-rated, which they would not be, were the covenant to require the homes to be Built to Rent in perpetuity. In addition to meeting the other VAT conditions, it is also necessary that the separate use or disposal of a unit is not totally prohibited by any covenant, statutory planning consent or similar provision.

4.18 This means that, within the granting of any planning consent, it must be clear that buildings or individual units can be sold out of the long term PRS market, but that this will result in a clawback as described above. The Section 106 should also clearly set out how the clawback will operate, including how it will be calculated. Additionally, overall ownership of the building(s) in which the units are located may be allowed to change over the covenanted period without triggering 'clawback' if they remain in single ownership and management as Build to Rent.

(2) AFFORDABLE HOUSING TENURE

4.19 The second element of the Build to Rent pathway is the affordable housing offer, in which the aim is to maintain the integrity of the Build to Rent development, with unified ownership and management of all the homes. Where a developer is proposing a Build to Rent development which meets the definition set out above, the affordable housing offer can be entirely discounted market rent (DMR), managed by the Build to Rent provider and delivered without grant, i.e. entirely through planning gain. As it is not necessary to be a Local Authority or a Registered Provider to deliver or manage intermediate rented homes that are delivered without grant, these units can be owned and/or managed by Build to Rent landlords themselves.

4.20 Discounted market rent is also better suited to Build to Rent than other affordable products because units can more easily be tenure blind and "pepper potted" through the development. In addition, some discounted market rented products not let by local authorities/ registered providers can also qualify for mandatory CIL relief.²⁷

4.21 The Mayor would prefer the discounted market rent to be at London Living Rent levels, to ensure city-wide consistency in approach. Unlike other discounted market rent products London Living Rent has the advantages that it has a London-wide electoral mandate, can be consistently understood and applied across London, can earn the public's trust as being genuinely affordable, and will be backed by the GLA who will uprate it every year.

4.22 Homes may be let at the GLA's current London Living Rent levels at the start of each new tenancy. Alternatively, the discount to market should be fixed at a rate that makes the rent equivalent to London Living Rent for the initial letting, with this discount then being applied to the current market rate for the development at the start of each new letting. In either case rent rises should be limited to CPI within tenancies. For the avoidance of doubt, homes delivered for London Living Rent rates in Build to Rent developments are not expected to be offered to the tenants to buy.

27. The Community Infrastructure Levy (Amendment) Regulation 2015 – amendment to Part 6 – exemptions and reliefs.

4.23 Alternatively, where the LPA and developer identify a specific local need, a wider mix of discounted market rent products may be provided. If not delivered as London Living Rent, then the LPA must ensure that the discounted market rent units fully meet the London Plan definition of intermediate housing and are affordable to those eligible for intermediate rented housing in London.

4.24 In providing London Living Rent, it is recognised that this will usually represent a deeper discount on rents for Build to Rent homes than the common metric of 80% of full market value of that home. This will have impacts on the quantum of affordable housing that can be obtained through the viability process described below.

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

(3) DESIGN

4.26 The third element of the Build to Rent pathway is mix and design, in which the aim is to utilise the flexibilities that already exist in London Plan policies to support high quality Build to Rent developments.

4.27 Build to Rent can be particularly suited to higher density development within or on the edge of town centres or near transport nodes. Local policies requiring a range of unit sizes should be applied flexibly to Build to Rent schemes in these locations to reflect demand for new rental stock, which is much greater for 1 and 2 beds than in the owner-occupied or social rented sector. In addition LPAs should take account of the distinct viability challenges faced by Build to Rent, where potential yields and investment risk can be affected by increases in the number of large units within a scheme.

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

4.29 It should also be noted that space standards are not prescriptive regarding the layout of dwellings. When assessing a scheme in relation to design LPAs are encouraged to take into account the value of on-site management and purpose-built design in dealing with some of the challenges that would otherwise arise were it a build for sale scheme and which may therefore allow some flexibility on design standards. The length of covenant may influence the level of flexibility that is acceptable - the longer the covenant the more justification there may be for flexibility on some standards.

(4) VIABILITY

4.30 The fourth element of the Build to Rent pathway is the viability process, in which the aim is to clearly recognise the distinct economics of the Build to Rent sector and undertake viability assessments that are specifically designed to deal with this model.

4.31 Route B of the threshold approach to viability, set out in Part 2 of this SPG, may not be appropriate for Build to Rent schemes because of the required mix of tenures required for Route B. A specific threshold approach for Build to Rent has not therefore been proposed as part of this SPG as there are currently insufficient Build to Rent schemes completed for any such threshold to be set with the certainty that it is not either too high and will reduce development, nor too low and will fail to maximise affordable housing delivery.

4.32 As a result, each scheme should be assessed on its own viability with the intention of maximising the supply of intermediate rent, preferably at London Living Rent levels. When considering viability information, the approach to review mechanisms set out in Route A should be applied to during the implementation of Build to Rent schemes.

4.33 If the approach to viability testing set out in option one (see paragraph 4.13) is taken and the applicant submits a 'for sale' viability appraisal alongside the appraisal for the covenanted Build to Rent scheme, and if the applicant can show they would have been able to provide 35% under the former, the amount of affordable housing in the latter may be accepted without the need for a Route A viability review mechanism. In this case, the Route B early review mechanism will apply, that will only be triggered if an agreed level of progress on implementation is not made within two years of the permission being granted.

4.34 The general viability approach set out in Part 3 of this SPG should be followed for Build to Rent schemes. However it is recognised that there are some elements of the traditional build for sale viability assessment approach that needs to be adjusted to take into account the distinct economics of Build to Rent. This difference arises

in part from Build to Rent schemes being founded on long term revenue income from rents (taking account of management and maintenance costs) rather than short term receipts from sales (more akin to commercial appraisals).

4.35 Viability assessment should recognise this different starting point and take account of it when valuing Build to Rent units. In addition, Build to Rent viability assessments may need to take account of:

- a different approach to profit (often lower than a build for sale scheme);
- different approaches to sales and marketing;
- rate of sale/disposal – this will generally be faster for a Build to Rent scheme (generally a build to rent appraisal will assume a development period and then a sale to an investor or operator); and
- potentially lower risk compared to for sale schemes.

(5) MANAGEMENT STANDARDS

4.36 The Mayor is keen to support Build to Rent through planning and investment policy and on the landholdings of the GLA group, and he wants such developments to showcase best management practice in the rented sector. In order to achieve this, the following five key management standards should be wrapped into the definition of Build to Rent:

- Longer tenancies (three years or more) should be available to all tenants. These should have break clauses for renters, which allow the tenant to end the tenancy with a month's notice any time after the first six months.
 - Within these tenancies there should be formula-linked rent increases. The LPA should not stipulate the level of rent increases on market rate tenancies, but these should be made clear to the tenant when the property is let and LPAs should ensure they are not set to discourage tenants from taking longer tenancies. Rents should normally be reset on each new tenancy.
 - There must be on-site management. This does not necessarily have to mean full time dedicated on-site staff in every case, as this could be unviable and unnecessary on small schemes. However all schemes need to have prompt issue resolution systems and some daily onsite presence.
 - Providers must have a complaints procedure in place and be a member of a recognised ombudsman scheme. They must also have membership of a designated professional body, such as the British Property Federation or Royal Institute of Chartered Surveyors.
 - Finally, properties must be advertised on the GLA's London-wide portal, in due course, which can be in addition to any advertising the provider may already be undertaking.
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4.37 The Mayor also expects Build to Rent providers to charge zero lettings fees, but recognises this may not need to be specified as it is likely to be covered by recently announced national legislation.

GENERAL SUPPORT FOR BUILD TO RENT

4.38 Further support for Build to Rent can be given through broad-based spatial planning policies, Local Development Frameworks or local housing and other related strategies. Such support could include:

- encouraging long term institutional investment, with boroughs working with the GLA and delivery partners;
- supporting institutional investment on public land, including exploring the use of joint ventures or deferred receipts;
- maximising the potential of Real Estate Investment Trusts and other vehicles to attract investment into the sector.

4.39 In addition to measures to support Build to Rent in the forthcoming London Plan, the Mayor will also set out policies in his new London Housing Strategy to promote institutional investment in Build to Rent and to improve its overall quality and management.

ANNEX A

SUGGESTED REVIEW FORMULAS

This annex sets out the suggested formulas for calculating the review mechanisms proposed in Routes A and B above.

It should be noted that affordable housing requirements are applied where they are required to make an application acceptable in planning terms. Thus, review mechanisms should not be used to reduce the base level of affordable housing contributions which are required as part of the planning permission. This would require a new or modified planning permission.

EARLY REVIEWS (ROUTES A AND B)

The early review operates in two stages – firstly the review calculates the surplus available for on-site affordable housing (and other policy requirements where relevant) and secondly to determine the additional on-site affordable floorspace.

FORMULA 1: EARLY REVIEW SURPLUS

To calculate the 'policy surplus' available for onsite affordable housing (or other policy requirements) at pre-implementation review stage

$$\text{'Policy Surplus'} = ((A - B) - (C - D)) \times 0.60$$

A = Updated Gross Development Value (GDV)*

B = GDV determined as part of the assessment of viability at application stage

C = Updated Build Costs**

D = Build Costs determined as part of the assessment of viability at application stage

Notes:

(A - B) is the change in GDV at the point of review

(C - D) is the change in Build Costs at the point of review, which is subtracted from the change in GDV to establish whether there is additional value generated as a result of increased values or reduced costs

x 0.60 calculates the reduction in the additional value available for on-site affordable housing, accounting for the proportion of additional value to be retained by the applicant as an additional profit allowance (i.e.40%)

* determined as part of the review

** determined as part of the review, or, where based on application stage BCIS build costs, and agreed by council, linked to the Tender Price Index (TPI)

FORMULA 2: EARLY REVIEW ADDITIONAL FLOORSPACE

To determine the amount of additional onsite affordable housing floorspace

'Additional Social /Affordable Rented Floorspace' = $E \div (G - H)$

'Additional Intermediate Floorspace' = $F \div (G - I)$

E = 'Policy surplus' proportion of surplus to be used for social /affordable rented housing

F = 'Policy surplus' proportion of surplus to be used for intermediate housing

G = Average market housing values per sq m*

H = Average social /affordable rented housing values per sq m*

I = Average intermediate rented housing values per sq m*

Notes:

Policy surplus is calculated from Formula 1

(G – H) is the cost of converting a market housing unit to social/affordable rented

(G – I) is the cost of converting a market housing unit to an intermediate unit. If there are more than two affordable housing tenures on a scheme – a further calculation should be run as above using the values and proportion for that tenure.

E is the proportion of surplus to be used for social/affordable rented

F is the proportion of surplus to be used for intermediate housing

E and F are divided by **(G – H)** and **(G – I)** respectively to establish the floorspace available for additional affordable housing

The additional social/ affordable rented and intermediate floorspace figures will be used to determine those units identified in the Additional Affordable Housing Schedule to be converted to affordable housing

NEAR END OF DEVELOPMENT REVIEWS (ROUTE A)

Advance stage reviews should take place near the end of a development; it is suggested this should be when 75% of the units are sold, or where applied to schemes where units are not being sold, 3 months before practice completion. This enables the assessment to be based on up-to-date, accurate information. Advance stage reviews will generally deliver a cash in lieu contribution.

The contribution will be capped as set out in Route A.

*determined as part of the review

FORMULA 3: ADVANCE STAGE REVIEW CONTRIBUTION

To calculate the additional financial contribution payable to the council at advanced review stage towards affordable housing or other policy requirements not viable at application stage

$$\text{'Contribution'} = ((A + B - C) - (D + E - F) - P) \times 0.60$$

Where:

A = Gross Development Value (GDV) achieved on sale of 75% of residential units and GDV from other parts of the development sold/ let and other income receipts*

B = Estimated GDV for parts of the development that are yet to be sold/ let and other income sources*

C = GDV determined as part of the assessment of viability at application stage (or for phased schemes as determined in previous review)

D = Actual Build Costs incurred at point of review**

E = Estimated Build Costs for remainder of the development**

F = Total Build Costs determined as part of the assessment of viability at application stage (or for phased schemes as determined in previous review)

P = $(D+E - F) \times y\%$

Y% = the developer's profit as a percentage of [costs] determined by the LPA as part of the application stage viability process.

Notes:

(A + B - C) is the change in GDV at the point of review

(D + E - F) is the change in Build Costs at the point of review, which is subtracted from the change in GDV to establish whether additional value has been generated as a result of increased values or reduced costs

x 0.60 calculates the reduction in the contribution required, accounting for the proportion of additional value to be retained by the applicant as an additional profit allowance (i.e.40%)

*determined as part of the review. ** determined as part of the review, or where based on application stage BCIS build costs and agreed by the council, linked to the Tender Price Index (for phased schemes, linked to Tender Price index from the date of the previous review.

FORMULA 4: ADVANCE STAGE REVIEW CAP

To calculate the 'advanced stage cap' which is the maximum additional affordable housing contribution payable at advanced review stage

$$\text{'Advanced Stage Affordable Housing Cap'} = ((G - H) \times (K - L)) + ((I - J) \times (K - M))$$

Where: G = 50% of total residential floorspace x social rent proportion

H = Total social/affordable rented housing floorspace determined at application stage (or for phased schemes as determined in earlier reviews)

I = 50% of total residential floorspace x intermediate proportion

J = Total intermediate housing floorspace determined at application stage (or for phased schemes as determined in earlier reviews)

K = Average market housing value per sqm*

L = Average social/affordable rented value per sq m*

M = Average intermediate value per sqm*

Notes:

G is the proportion of affordable housing floorspace to be social/ affordable rented based on policy tenure split

I is the proportion of affordable housing floorspace to be intermediate based on policy tenure split
(G – H) is the additional social/ affordable rented floorspace cap based on overall 50% affordable housing provision

(I – J) is the additional intermediate floorspace cap based on overall 50% affordable housing provision

(K – L) is the cost of converting a market housing unit to social/ affordable rented

(K – M) is the cost of converting a market housing unit to intermediate

(K – L) & (K – M) multiplied by

(G – H) & (I – J) respectively to establish maximum additional contribution

*determined as part of the review

THRESHOLD APPROACH TO VIABILITY

