

London Assembly Planning Committee

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Mayor of London
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Our ref:
Date: 1 February 2016

Dear Mayor Johnson,

The need for Supplementary Planning Guidance on Viability Assessments

I am writing to you on behalf of the London Assembly Planning Committee to urge you to bring forward Supplementary Planning Guidance (SPG) on viability assessments in London.

Viability assessments should be used to assess whether a development can feasibly be delivered with the planning obligations placed on it, especially on sites facing numerous constraints. However, we heard at our meeting on 17 November 2015 that in some cases confidential viability assessments are being used to overestimate costs and avoid providing affordable housing, pulling the wool over the eyes of planners, councillors and communities. We are concerned that changes to the planning system to encourage development should not be abused to the detriment of local communities. Therefore we agree with you that there is a real need to bring the "dark art" of viability assessments into the bright light of public scrutiny.

We believe that there is a strong case to be made for a new approach to viability, in particular one which considers benefits beyond profit for the developer and landowner. Land economist Stephen Hill suggests that a good methodology would include:

- multi-stakeholder engagement and dialogue on objectives;
- option appraisal; and
- shared understanding about the basis of valuation to be adopted, and factors to be taken account of in valuation.

These methods should be used proportionately to the scale and risk of the project/programme.¹

You can deal with this issue with a dedicated SPG setting out the standards expected for viability assessments in London. The Committee previously urged you to produce an SPG in its response to the Draft Interim Housing SPG consultation in August. In the words of Dr Bob Colenutt, an SPG would bring about both consistency and transparency in the viability assessment process, "in terms of the way the modelling takes place, the quality of the data,

¹ Hill, S. (1999), *Capital Action*, 'The Role of Option Appraisal in Urban Regeneration'

[and] the interrogation of the assumptions”.² An SPG could also help speed up the planning process and bring forward more affordable housing for Londoners.

This letter sets out what should be in this SPG. The Committee argues that an SPG should promote transparency, take a strong position on land valuation, endorse a fixed affordable housing target for London and promote the Existing Use Value plus a premium (EUV Plus) approach to valuing land. An SPG should not dictate profit levels, but should seek to encourage skill-building among planners, so that they can critically assess the assumptions being made in viability assessments. Finally we argue that you should use public land to set a new standard for transparency and to maximise delivery of affordable housing.

Land valuation for a plan-led system

The Committee is concerned that viability assessments are being used to undermine the plan-led system. There is currently a lack of clarity on how to value land which can trump the provision of affordable housing and cause an unnecessary lengthening of the planning process. The National Planning Policy Framework sets out that the price paid for land must give a ‘reasonable competitive return’ to the landowner, and that it should ‘have regard to policy requirements’. This wording has led to numerous interpretations over what is meant by a ‘reasonable competitive return’, including the market-based approach advocated by the Royal Institution of Chartered Surveyors (RICS) and the Existing Use Value plus a premium (EUV Plus).

This lack of clarity means that developers are able to pay too much for land, leading to the loss of planning obligations. In the RICS guidance the advised approach is to use the market value, where a ‘landowner should be willing to sell development land when its [market value] is higher than current use value and the price reflects the new use’.³ However, this approach relies on the market to determine a reasonable return which can mean, as Dr Sue Brownill has argued, “people could have already paid an inflated price for those sites and that then becomes part of the benchmark”.⁴ This can mean that the “market signals become self-perpetuating”,⁵ putting affordable housing further at risk.

The Committee heard how overpayment for land on Parkhurst Road in Holloway led to the developer claiming to be unable to pay for affordable housing. In this case, the London Borough of Islington argued that the developer could have paid far less for the land and still have given a return to the landowner.⁶ While the Planning Inspector rejected this, arguing that other developers had made similar bids, the Committee agrees with Islington’s stance that developers should be taking planning policy into proper account when making bids for land. At present “the developer that gains the site is the one that has assumed the lowest level of policy compliance with the development plan”.⁷

² Planning Committee, 19 November 2015, [Transcript](#)

³ Crosby, N. & Wyatt, P., 2015, [Financial Viability Appraisals For Site-Specific Planning Decisions In England](#), p.22

⁴ Planning Committee, 19 November 2015, [Transcript](#)

⁵ *Ibid.*

⁶ The Planning Inspectorate, 2015, Appeal Ref: [APP/V5570/A/14/2227656](#)

⁷ Planning Committee, 19 November 2015, [Transcript](#)

The confidentiality of many viability assessments means that we don't have evidence of the extent of this problem. However, it is known that many developers negotiate lower levels of affordable housing provision than are set out in the original plan targets. There are several large developments where this has occurred, such as Greenwich Peninsula,⁸ the Shell Centre development and the Heygate Estate regeneration.⁹ There may be many more cases- the campaign group '35 Percent' has identified numerous cases where negotiation or renegotiation has reduced obligations in Southwark alone.¹⁰

The Committee is concerned that such activity undermines the plan-led system by effectively determining the outcome of viability assessments before they are even seen by borough planners. This can mean that boroughs are forced to accept developments that, as John Wachter has argued are "effectively crowding out the possibility of securing sustainable development".¹¹ We agree with the RICS guidance that states that 'where development proposals can not be made to comply with sustainable development policies, the planning authority may refuse planning permission'.¹²

The Committee argues that deliberately paying more for land to avoid planning obligations is an unacceptable practice. The Secretary of State has now made it clear in a letter to the London Borough of Islington that 'land or site value... should reflect policy requirements'. We argue that you should seize this opportunity to promote EUV Plus as the best mechanism for valuing land in London. EUV Plus allows for a 'reasonable competitive return' to the landowner to ensure the release of the land and prevents an excessive escalation of the price of land at the expense of affordable housing. This would also create more consistency with the widely-used Harman Guidance for planning practitioners for local plans which promotes EUV Plus as the recommended mechanism for valuing land.¹³ Combined with the Secretary of State's guidance, we are convinced that promoting EUV Plus would prevent the unnecessary escalation of land prices in London.

Recommendation 1

The Committee believes that the Mayor should make a clear case for the Existing Use Value Plus approach to valuing land in a new SPG, and its importance as a mechanism for ensuring that viability is not used to avoid bringing forward sustainable development.

The Committee also argues that the Secretary of State's statement puts you in a stronger position to direct the refusal of applications where it is clear from the draft Section 106 agreement that overpayment for land has led to reduced affordable housing. You should use this opportunity to make it clear that deliberately ignoring affordable housing obligations in London is not acceptable.

⁸ The Guardian, 2015, '[Revealed: how developers exploit flawed planning system to minimise affordable housing](#)'

⁹ Planning Committee, 19 November 2015, [Transcript](#)

¹⁰ 35% Campaign, 2016, '[Developments](#)'

¹¹ Planning Committee, 19 November 2015, [Transcript](#)

¹² RICS. [Financial viability in planning](#), p.2

¹³ LGA, HBF, NHBC, 2012, [Viability Testing Local Plans](#)

Recommendation 2

The Committee recommends that the Mayor should encourage in his SPG the refusal of applications where planning obligations have not been fully regarded and where an excessive price has been paid for land. The Mayor should also refuse those applications referred to his own planning team where this is the case.

Transparency

Confidential viability assessments undermine public confidence in the planning system and the Committee argues that they should be made public. We understand that in many cases viability assessments are made confidential, visible to planning officers but not to councillors or members of the public. In some cases there is no reason for information to be confidential at all particularly, as John Wachter told us, if that information “might be based on publicly available data in the first place”.¹⁴ This means that where a development does not meet planning obligations, the public cannot effectively scrutinise the reason why planning officers decided not to enforce local plan policies. This runs against the guidance set out in the National Planning Policy Guidance (NPPG) which encourages a collaborative approach between stakeholders and ‘transparency of evidence... wherever possible’.¹⁵ Additionally, recent decisions by the Information Commissioner have indicated that viability assessments should generally be released unless there is a compelling reason to do otherwise, such as in North Greenwich.¹⁶ To this end, we argue for the publication of viability assessments as early as possible in the planning decision process.

Nonetheless, the Committee concedes that there may be exceptional circumstances where the release of information would not be acceptable. This would only be where the publication of the information would not be in the interests of the public, as proposed by the London Borough of Islington in its draft Supplementary Planning Document (SPD). Such circumstances should ideally be identified in the pre-application stage and the decision to redact information should be made by the planning authority’s legal officer. The public should be aware of the reason for redacting the information when the viability assessment is published.

Recommendation 3

The Committee recommends that the Mayor, in any new SPG, promotes the full public release of viability assessments in the interests of the public and in line with the NPPG. Such an approach should include a caveat for exceptional circumstances when it can be proven that publication of certain specific information would harm the commercial confidentiality of the developer to no public benefit.

¹⁴ Planning Committee, 19 November 2015, [Transcript](#)

¹⁵ DCLG, 2014, ‘[Viability – a general overview](#)’

¹⁶ Information Commissioner, [FER0524770](#).

The Committee argues that you have the power to ensure that developments ‘reflect policy requirements’ by extending the application of fixed affordable housing targets to major development sites in London. In our response to the Draft Interim Housing SPG consultation, we expressed our support for the Mayor’s trial of such a target in Housing Zones and Opportunity Areas. At the time, we recommended that such an affordable housing target should only be rolled out if there is ‘sufficient evidence to justify a new London Plan policy’.¹⁷

However, the problem of high land value reducing levels of affordable housing could be eliminated if major developments were subject to such targets. This would ensure that schemes are designed with the viability of affordable housing in mind from the very beginning. Therefore the Committee suggests that you should consider going further and extending the targets to major development sites based on the evidence from housing zones and opportunity areas. We also argue that boroughs should retain individual targets with the fixed target serving as the absolute minimum requirement.

Recommendation 4

The Committee recommends that the Mayor and London boroughs should consider extending new fixed minimum affordable housing targets to major developments in London in their local development plans, based on evidence from their use in housing zones and opportunity areas.

Review Mechanisms

The Committee supports your efforts to encourage the use of mechanisms to review planning obligations (‘contingent obligations’), as proposed in the Draft Interim Housing SPG, to ensure that large developments can be revisited to gain increased provision of or funding for affordable housing. One of the benefits is that costs and values which were previously projections will, at the reappraisal stage, be known for certain. As your draft SPG explains: ‘It allows increases in Section 106 contributions to reflect changes in the value of the development from application to a specific point in time/stage of development’.¹⁸

Our meeting outlined the frustration of many community groups that not enough action was being taken to capture the huge uplift in profit that can arise from rising sales or rental values. Peter Eversden from the London Forum informed us that “too few local authorities... [have] legal agreements that will be able to be visited in the future. We need more of that so that we capture the eventual profits and it goes back into homes that we need”.¹⁹ We heard about the case of Saffron Square in Croydon, where the presence of a review mechanism enabled the borough to extract additional payments for affordable housing after Berkeley Homes reported it as one of their most profitable schemes. This just shows the importance of these mechanisms and they should be promoted in any future SPG.

¹⁷ London Assembly Planning Committee, 2015, [Draft Interim Housing Supplementary Guidance Public Consultation: London Assembly Planning Committee Response](#)

¹⁸ [Draft Housing SPG](#), 4.4.35.

¹⁹ Planning Committee, 19 November 2015, [Transcript](#)

Recommendation 5

A new SPG on viability should promote the importance of using contingent obligations on schemes where a viability assessment shows that it is not possible to meet affordable housing targets.

Profit

We do not consider it appropriate for planning authorities to set out the level of profit that a development should make. The Committee understands that it is standard practice to determine what a reasonable profit is on a case-by-case basis. This is the approach proposed by the London Boroughs of Southwark, Greenwich and Islington in their SPDs, as well as the RICS in its guidance. On this basis, we do not think it is appropriate that there is a default profit level of 20 per cent in the widely-used Three Dragons model for assessing viability, and therefore you should not promote a default profit level in an SPG.

Recommendation 6

The Committee recommends that the Mayor should remove any reference to a benchmark profit level in the Three Dragons model. Further, the Mayor should not promote a default profit level in an SPG.

Skills

We heard that many planners do not have the skills to assess the viability of developments. Assessing viability is not a simple task - it involves extensive knowledge of financial appraisal and analysis, development cost, market values and timing, and knowledge of the policy context.²⁰

One of the most important skills is the ability to assess the quality of the inputs. Tony Mulhall argued that the quality of the inputs is just as important as the models used to conduct viability assessments. John Wachter told us that viability assessments are determined “ultimately, [by] the reliability and accuracy of the information that goes into them in terms of what comes out at the end”.²¹ This means that the job of planners is to identify poor quality information and assumptions. However, we understand that at the moment insufficient examination is being given to viability assessments and planners are relying too heavily on external viability appraisal experts. This can lead to a lack of scrutiny and an overreliance on weak assumptions, resulting in poor outcomes for local authorities.

To remedy this you should take the lead in promoting the development of planners’ skills. We appreciate that there have been efforts to increase planners’ knowledge about viability, such as a recent series of workshops by Urban Design London. However, as Robert Fourt explained,

²⁰ Burgess, G., Crook, T. and Monk, S. (2013) [The changing delivery of planning gain through Section 106 and the Community Infrastructure Levy](#), p.10

²¹ Planning Committee, 19 November 2015, [Transcript](#)

planners must be able to challenge assumptions put forward by developers and external experts. To do this effectively, they must know “what questions to ask and indeed how to frame the issues one wants to have a response on”.²²

The Committee previously recommended that the Mayor should work with the Royal Town Planning Institute (RTPI) and the District Valuer Services (DVS) to develop post degree training in maximising Section 106 negotiation skills for planners.²³ We now argue that this should be easily available online and should be signposted in any guidance brought forward by you. We also argue that you should work with RTPI, RICS and other experts to establish a series of guidelines to be included in an SPG, specifically tailored to London, on best practice for planners when assessing viability assessments.

Recommendation 7

The Mayor should work with boroughs and others to identify areas where additional training for planners in assessing the viability of schemes would be useful. This training should be signposted in any new guidance produced and should be easy for planners to access online.

Recommendation 8

The Mayor should work with RICS and RTPI to set out guidelines for best practice when assessing viability, including the use of different viability models, how to test and challenge developer assumptions and the appropriate use of external consultants.

The Committee was also interested to learn about the London Boroughs Viability Group at its meeting. We are pleased that the Group is active, having recommended in 2008 that London boroughs set up a pan-London unit or advisory group with expertise in complex Section 106 negotiations.²⁴ This Group, established by the London Borough of Islington, is seeking to ‘share experiences, challenges and best practice to equip us to take a more robust approach to assessing viability’. We understand that the Group is working on establishing a viability protocol aimed at setting out a range of joint standards when assessing whether a scheme is viable. We urge you to work closely with the Group to inform a future SPG.

Recommendation 9

The Mayor should actively engage with the London Boroughs Viability Group, in order to take account of borough needs when formulating guidance for a new SPG.

²² *Ibid.*

²³ London Assembly Planning and Spatial Development Committee, 2008, [Who gains? The operation of section 106 planning agreements in London](#)

²⁴ London Assembly Planning and Spatial Development Committee, 2008, [Who gains? The operation of section 106 planning agreements in London](#)

Setting an example

We urge you to ensure your work with public sector partners through the London Land Commission is taken with a view to maximising the level of affordable housing provision on public land in London, in addition to maximising value for the taxpayer. As John Wacher argued, “the Mayor can lead the way... and can show how it is done to deliver affordable housing, secure a financial return on that land or retain an equity stake in that process.”²⁵ You could also examine the potential of alternative approaches, such as that employed in the Netherlands where, as Sue Brownhill explained, local authorities are land owners and “get the land at use value. The uplift in value then goes through the authority and it can deliver things like affordable housing.”²⁶

We also urge you to use public land to set a new standard for transparency, including publishing full viability assessments and retaining your commitment to make data available on the final outputs. It would also require an element of caution, such as looking for lessons to be learned from the development of the Olympic site as argued by Tony Mulhall from RICS.²⁷

Recommendation 10

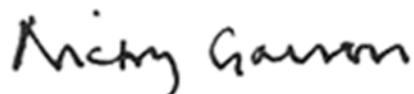
The Mayor should ensure that future public sector land identified through the London Land Commission is developed with a view to maximising the delivery of affordable housing. In this, the Mayor should aim to set a new standard for transparency with all viability assessments and data on final outputs.

The full transcript from the Committee’s meeting is available here:

<http://tinyurl.com/pa9o47m>

I would be grateful to receive a response to the points raised above by 14 March 2016. Please send a copy of your reply to Reece Harris, Assistant Scrutiny Manager at reece.harris@london.gov.uk.

Yours sincerely,



Nicky Gavron AM
Chair of the London Assembly Planning Committee

Cc: Stewart Murray, Assistant Director, Planning
John Lett, Strategic Planning Manager, Planning
Steve O’Connell AM, Deputy Chair, London Assembly Planning Committee

²⁵ Planning Committee, 19 November 2015, [Transcript](#)

²⁶ *Ibid.*

²⁷ *Ibid.*