

Draft London Plan Affordable Housing

Written statements in response to M24 may be up to 2,000 words in length per policy (H5 to H8).

M24. Would policies H5 to H8 provide a justified and effective approach to delivering affordable housing to meet the good growth objectives set out in Policy GG4? Overall, would they provide an effective strategic framework for the preparation of local plans and neighbourhood plans in relation to affordable housing? In particular, in relation to each policy:

Private sector house builders are responsible for a large part of the overall affordable housing supply in England. According to the latest data from the MHCLG for 2017/18, 47,355 affordable homes were completed last year. Private sector housebuilders were responsible through S106 obligations for the supply of 48.5% of new affordable homes completed last year. Private sector contributions through S106 also provided more than 60% of new social rented homes. The HBF recognises that the rate of affordable housing supply needs to be improved in London. According to Table 2.7 of the AMR there were **7,347** net conventional affordable housing completions in 2016/17, or 18% of the overall supply (notwithstanding our question about the reliability of the GLA's figures for overall net completions). We are nevertheless concerned that if the policy requirement is set too high then this may compromise viability, forcing everything down the Viability Tested Route. This could cause delay and ultimately militate against delivery as viability issues are negotiated.

Policy H5 Delivering Affordable Housing

a) Would the definition of 'genuinely affordable housing' and the Mayor's 'preferred affordable housing tenures', include the affordable homes needed?

The Mayor is challenging the Government's definition of the range of housing products that can be classed as 'affordable housing' as set out in the glossary to the NPPF. Essentially, the Mayor is signalling via Policies H5 and H7 that Affordable Rent will not be regarded as an appropriate form of affordable housing product.

The NPPF 2018 widens the definition of affordable housing further. Therefore, while we agree that it is sensible for the Mayor, via his London Plan, to guide the type of affordable housing that is expected in developments - in order to send price signals as well as address needs - his policy ought to reflect more fully the requirements of the national policy on affordable housing, such as the requirement for 10% of homes to be available for affordable home ownership (NPPF 2018, paragraph 64).

b) Would the strategic target of 50% of all new homes to be genuinely affordable be justified in light of the identified need?

The SHMA calculates that 65% of all homes provided between 2016-2041 would need to be a type of affordable home (see paragraph 7.20 and Table 13 of the SHMA). However, as paragraph 7.22 explains, disaggregating the total housing requirement into types of affordable housing product (based on household incomes) is complicated by the wide array of types of affordable housing 'product'. It is exceptionally difficult to know precisely what affordable housing products are appropriate to promote as policy. For this reason, the HBF considers that it would be more appropriate for the London LPAs to stipulate the forms of affordable tenure they consider appropriate for their areas.

The HBF accepts – on an objective level – that the need for all types of affordable housing is probably at least 50%, and therefore establishing a strategic target for 50% is probably justifiable. Whether the target is viable, and therefore achievable, is another matter. We will explore this point in answer to questions c) and f).

It is also important to recognise that although in theory people may need an affordable housing product based on an objective comparison of incomes and housing costs, it does not necessarily follow that it is their aspiration to live in rented homes. This is why the Government, through planning policy, is placing increased emphasis on the construction of low-cost homes for owner occupation (starter homes, discounted market homes, routes to home ownership – see Annex 2 to the NPPF 2018). It is important therefore not to choke-off the supply of homes for owner occupation through demanding policy goals to increase the supply of affordable homes.

c) In requiring major developments which trigger affordable housing requirements to provide affordable housing through the threshold approach, would the policy be effective in delivering the quantum of affordable housing required?

The threshold-approach has some merit, but the levels of affordable housing required may be too high. We base this on our experience of commenting on affordable housing targets and looking at issues of viability at many London borough local plan examinations over the last three years. We have provided more details on this in our response to the Panel's question (f).

The threshold approach is an interesting idea but one that is still largely untested. It is unclear what implications this might have on housing delivery overall in London. Although the London Plan Viability Study (LPVS) is confident that housing delivery will not be compromised by the cost of all policies, including the DLP's minimum requirement for 35% affordable housing, evidence gathered from London local plans examinations provides a much less reassuring picture. For example, at the Tower Hamlets local plan examination (currently underway), the Council's own viability study demonstrates how the Council will struggle to achieve 35% or 50% affordable housing in most of the development scenarios that were modelled. This is chiefly because the construction of tall blocks of flats does not necessarily result in more profitable schemes. This is because there are two factors at play; firstly, build costs will increase rapidly as densities increase due to deeper foundations, more lifts, more stairwells, tighter fire safety, frame construction, progressive collapse requirements etc and this tends to increase the level of subsidy required for each affordable home, the value of which will not go up as densities increase. Second, where there is a rent plus service charge cap, then the value of the affordable homes will decrease as densities increase, because service charges will increase in line with densities. The 'value' of the affordable home is measured by the RSL as the total value of the home (i.e. the anticipated rent yield and/or possible sales receipt if a shared ownership product) less the cost of buying and managing it.

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Squeezing more dwellings on the site, therefore, will not off-set sufficiently these escalating costs. Super-dense developments come with higher management costs and these are just about viable in high-value areas where the provider is able to sell a proportion to wealthy overseas investors for whom the payment of high service and management charges are less of an issue (Nine Elms is an example of this, although that has its own set of problems). This is unlikely to represent a viable solution for the outer London boroughs. This is another reason why we consider the Mayor's overall housing delivery expectations (that turn on an assumption that there will be an appetite to build much more densely and higher in outer London) is unrealistic.

d) Would the approach to affordable housing providers, public sector land and industrial land be justified and effective?

Yes. The Mayor must avoid being seen to be acting partially by offering more favourable terms to public-sector land owners, when such organisations ought to be prioritising the supply of affordable housing. It is reasonable to seek higher contributions to affordable housing from public-sector agents.

Affordable housing providers

Paragraph 4.5.4A expects 50% affordable housing on schemes brought forward by affordable housing providers. This is reasonable if they are recipients of GLA funding.

Strategic partners

Paragraph 4.4.4A also expects 60% affordable housing on schemes provided by strategic partners. The paragraph curiously refers to this not being a 'planning requirement' but a 'commitment' that gives freedom to the strategic provider to apply their resources flexibly to maximise affordable housing provision. The DLP is unclear here about what type of contribution this is precisely. It appears that the Mayor is trying to create a new category in planning that is neither a planning obligation nor a condition. It is unclear how this paragraph would be interpreted by applicants and decision-takers. Consequently, it lacks the clarity required by the NPPF. The NPPF in paragraph 17 (core planning principles) states that Plans *"should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency"*. Paragraph 152 states that *"only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the Plan."*

Public sector land-owners

It is difficult to justify why public sector land-owners should have a more lenient affordable-housing target of 35% applied to some sites, as explained in paragraph 4.5.4B. Planning obligations are obligations necessary to mitigate the impact of a development proposal. The same viability challenges will confront private-sector developers as well as the public sector. If anything, public-sector land agents ought to be supporting the delivery of more affordable homes.

e) In requiring on site affordable housing generally, would the policy provide adequate flexibility to take account of local circumstances?

It is reasonable to seek the affordable housing on-site as this is necessary to create mixed and balanced communities. This may be difficult to achieve in practice where regeneration schemes or the re-development of industrial sites is involved. National guidance recognises that brownfield land is often more expensive to develop and therefore the policy would benefit from the injection of a little more flexibility. So long as the overall strategic target for affordable housing is achieved, we consider that it would be acceptable for the London LPAs to determine precisely how these affordable homes are distributed. Therefore, we consider that Policy H5 Part B should be redrafted to read:

B Affordable housing should be provided on site ~~Affordable housing must only be provided off-site or as~~ but Boroughs may consider whether alternative approaches involving off-site provision are necessary to help with managing the practical problems of delivery. Cash in lieu contributions will only be accepted in exceptional circumstances.

f) Does the approach taken in Policy H5 provide sufficient flexibility to take account of local circumstances?

There is no flexibility as such. The 50% target and the 35% threshold are universal London targets. While we understand the theory: that the DLP will send price signals and the cost of policy should therefore be deducted from the land value with landowners accepting less money for their land, it is difficult to know how this will pan-out in practice. Land-owners may accept the 'new regime' or they may simply withhold land from development if residual land values (RLV) are only marginally above the benchmark land value (BLV) established by the Mayor (20% above existing use value - EUV). Land-owners will certainly withhold land if the RLV is equivalent to, or only marginally, above the EUV. The Mayor's approach is directly in conflict with the NPPF 2012, paragraph 173, which requires competitive returns to a willing land owner and willing developer to enable the development to be deliverable. We are aware, however, that national policy is about to take a different direction (NPPF 2018, paragraph 57).

Nevertheless, the affordable housing target adopted by the Mayor – which is a political signal – needs to be tempered by some realism. Based on our experience of participating in the examination of London local plans over the past three years looking at the viability evidence prepared by these local authorities to support their own local plan targets, many London boroughs will struggle with the 50% affordable housing target. This is true in the case of Camden, Hounslow, Havering, Hammersmith & Fulham, Tower Hamlets, Brent, and Sutton. These local plan viability studies could be regarded as more authoritative than the Mayor's LPVS because they are able to examine more accurately the values, costs and sales prices that will be achieved in the boroughs concerned, compared to the LPVS which must rely on far more generalised assumptions.

Sutton Council's Viability Report showed that a rate of 50% could not be sustained across the borough. It recommended 40% instead.

Bromley Council's new local plan has a target of 35% affordable housing, although the supporting viability study from 2012 shows that this target depends on 60% of the affordable homes being provided as 'affordable rent' (a type of affordable housing that requires less cross subsidy or grant but is a type of product which is not supported by the DLP). The report has also failed to reflect the cost of the Mayor's policy on M4(2) accessible and adaptable homes and M4(3) wheelchair accessible homes so it is questionable whether even 35% affordable housing is tenable.

Croydon Council's new local plan has adopted a 50% affordable housing target, but its viability assessment illustrated that this was unviable in many instances. For example Table 6.35.1 in Croydon Council's *Local Plan Viability Assessment and Community Infrastructure Levy Review*, November 2015 made it apparent that some of the sample sites are unviable at any level of affordable housing and will be unable to provide a CIL (indeed they are registering negative viability – technically they are 'underwater' and would probably require public subsidy of some form to come forward). Furthermore, it showed that 28 out of the 54 sites were unviable at 50% affordable housing – just over half of all the sites tested. As the examining inspector concluded in his report:

"The Council's own viability assessment (evidence document LBC-02-308) suggests that a number of proposal sites would be unviable at 15% affordable housing. Given that valuation is an art rather than a science, the presumptions inherent in the process mean that its apparent accuracy is sometimes misleading. Expert valuers frequently vary widely in their conclusions and margins of difference can be considerable. I do not attach greater significance to the Council's Local Plan Viability Assessment than it can bear, which is that it is adequate to demonstrate that both the Council's normal expectation of 30%, its absolute minimum of 15% and its negotiating maximum of 50% are all reasonable."

This indicates that the thresholds of 35% and 50% (if you are the public sector) will be unviable in almost every instance. Few developments, therefore, will be able to benefit from the Fast Track Route.

Tower Hamlet's viability report prepared to support its new local plan (currently still at examination) shows that 50% affordable housing – the target in the local authority's plan – would be unviable in 86 out of the 89 scenarios modelled. The report shows that 50% affordable housing, and even the threshold rate of 35% affordable housing, are very rarely achievable.

Havering's new local plan (currently at examination) requires 35% affordable housing based on its viability evidence. It is unviable to go higher than this.

Camden has adopted a 50% affordable housing target, but its viability report shows that this target percentage is unviable in the Kings Cross regeneration area with its very high site decanting, clearance and remediation costs. This area will be responsible for the supply of most of Camden's new homes over the next decade.

Hounslow's local plan adopted in 2015 has a target of 40% but its own viability report observes that viability is challenging at 40% in the lower value parts of Hounslow (paragraph 6.61). This is the case under all scenarios other than when council/public sector benchmark land values are modelled (table 6.58.2). The lower market values struggle to sustain the cumulative costs of national regulations and London Plan and local policy.

Hammersmith & Fulham Council's Viability Study of 2016, prepared to support its recently adopted local plan, observes the following at paragraph 6.11:

"The results of our appraisals indicate that the adoption of a 50% affordable housing target is viable in some of the scenarios that we have tested. Due to the caveat in the emerging plan that determination of applications will have regard to scheme-specific viability, the Council is not required to demonstrate that every single site (or type of site) can meet the full 50% target. However, our appraisals indicate that this target can be delivered in some circumstances and setting a lower target would not result in the optimum outcome in terms of total numbers of affordable units delivered."

Scrutiny of Figure 6.2.1 in the Hammersmith & Fulham Viability Study suggests that viability very much depends on what benchmark land value is assumed and the type of residential

development involved (the typology). The report notes that schemes to the south of the borough with the higher benchmark land values will struggle with viability (paragraph 6.2). This could have consequences for the delivery of the Fulham and South Fulham Regeneration areas.

g) Overall, would the policy be effective in delivering the affordable homes needed?

It is hard to say whether the policy approach will be effective because much depends upon the inputs into the viability assessment and any assumptions about key elements such as benchmark land values, CIL and S106 costs and sales values. The LPVS makes estimates for CIL and S106 costs (the S106 allowance of £1,500 per dwelling is far too low) and its approach to BLVs is questionable. As explored above, when you get down to the level of local plans that do use more detailed and accurate viability evidence, the argument that the threshold approach will help to speed-up the decision-making process and support the provision of more affordable housing is far from compelling.

The Mayor considers his viability assessment to be robust. Many in the development industry would disagree. We consider the Mayor's BLVs to be questionable – they are too low. Given the scale of the task we recognise that it is difficult for the Mayor to undertake anything other than a very general assessment relying on some very broad generalisations (including notional figures for CIL and S106 contributions). However, these generalisations will fail to reflect the problems in some development locations. Therefore, there is a very strong possibility that every scheme in London will be compelled down the viability tested route. This could clog-up the development management system both for referable schemes to the Mayor and within the London local authorities. This would be the opposite of the principle in the NPPF where plans should provide a practical framework whereby decisions on planning applications can be made with a high degree of predictability and efficiency (paragraph 17) and that the weight of policy should not undermine the deliverability of the plan (NPPF 2012, paragraph 173 and NPPF 2018, paragraph 34).

The second complication is the advent of the new NPPF and its assumption that all up-to-date policies are viable, and hence grounds for negotiation are more limited (paragraph 57 of the NPPF 2018). While the threshold approach is already being applied in advance of the adoption of the DLP on the basis that it is 'emerging' policy, it is unclear how the Mayor's threshold approach will fit-in with the new NPPF regime. If the requirement in the DLP or a local plan is for 50% then the threshold of 35% maybe not conform to national policy and negotiation may not be possible.

In short, if the London Plan Viability Assessment is wide-of-the mark in terms of its assessment of the costs and values related to residential development across London – and this is a strong possibility given the considerable variance in housing markets and land conditions, but also because London borough requirements (S106, CIL, local affordable housing targets) are harder to capture accurately, then delivery is very likely to stall. We are not sure that the Mayor can afford to take this risk.

We think it would be better if the affordable housing targets for London were established by the individual London boroughs. A target of 50 or 60% affordable housing would probably be appropriate in RBKC, but it is arguable whether the blanket 50% requirement would be sensible in all parts of Havering or Barking & Dagenham.

Viability assessments carried out at the local level are better able to reflect local costs and values. If a local authority decides upon an affordable housing targets that is unrealistic, then at least the problem is confined to that borough, and it can be remedied easily through a focused review of the local plan if that target is inhibiting delivery. The problem with the DLP target of 50% is that if it is found subsequently to have delayed decisions by forcing most schemes down the fast-track route, its effect will be far-reaching.

Policy H6 Threshold Approach to Applications

a) Would the threshold approach to viability, with a fast track route and viability tested route, as set out in policy H6, be justified and effective? Would the threshold level of affordable housing as set out in Policy H6B be justified and effective?

While we appreciate the theory behind the Policy, it is unclear whether it will have the desired effect: namely speeding-up the decision-making process owing to the benefit of the fast-track route when applicants commit to at least 35% affordable homes as well as satisfy all other policy requirements (Part C 3)). The HBF's concern with policy H6 is that this may push all applications down the viability-tested route. The effectiveness of the Policy needs to be closely monitored to see if it is assisting with housing delivery or deterring it. Scrutiny of local plans in London prepared over the last three years suggests to the HBF that the approach in the DLP to establish inflexible affordable housing targets of 50% and 35% could well stall delivery.

As the HBF argued when the SPG was first issued, one way to avoid this risk would be to restore discretion to the London boroughs to determine what other London Plan policy and local plan policy requirements could be waived. Conversation with our London members tells us that is extremely rare for an application to be policy compliant in absolutely all areas of London and local plan policy. Negotiation is inevitable to come up with a viable scheme. While we understand the thrust of the new national policy and the London Plan this is still an untested area. To this end we recommend that Part C 3) is deleted. This no longer becomes a clause in the policy that must be met by applicants in order to benefit from the fast-track route. It becomes an area of planning judgement that returns to the local authority, or to the Mayor for those schemes that are referred to him.

This is an acceptable compromise because improving the supply of affordable housing is one of the Mayor's top two planning priorities in the DLP.

b) Would it provide a framework to increase delivery of affordable homes to meet the full range of identified need?

As we have argued above, it all depends on the reliability of the LPVS and how much assurance this provides the plan-maker. This study concludes that 50% and 35% affordable housing are achievable targets, but local plan viability studies have concluded otherwise.

The GLA's own *Industrial Intensification and Co-Location Study Design and Delivery Testing* report (GLA, 2018) has also uncovered challenges with providing 50% affordable housing on industrial land. This study deploys the same viability assumptions as the LPVS, including BLVs of 20% above EUV (see page 52). The study concludes that sites with higher BLV are less viable. This is because EUVs for industrial land have increased significantly over the past few years.

Scrutiny of the results of modelling 35% and 50% affordable housing on industrial land, illustrated on pages 66 to 72, are worth consideration. Generally, schemes under all the modelled scenarios will struggle to achieve any level of affordable housing where BLVs are high (see in particular the overall results on page 73). But many of the other development type scenarios modelled on sites with low or medium BLVs also struggle to sustain 35% affordable housing.

The effectiveness of the policy needs to be monitored closely. A review of the effectiveness of Policy H6 may need to be included as part of the immediate review of the DLP as we have recommended elsewhere in our statements. This is especially the case if the evidence suggests that the Policy is a contributing factor to the housing targets are not being achieved. It is also something that the Mayor should monitor as part of the Housing Delivery Test for all of London that we have argued that he should be responsible for. This information should be made publicly available.

c) Would the approach taken to scheme amendments be effective in increasing delivery of affordable homes?

We are concerned that Parts G to J of the Policy could bring many schemes within the ambit of this policy especially those that have secured permission before the policy began to be implemented by the GLA (it is necessary to bear in mind that the policy has been applied by the GLA at least a year ahead of the examination of the DLP – following the adoption of the Affordable Housing SPG). Many amendments made under s73 can be very minor, and there is no legal definition of what constitutes a ‘minor amendment’, and consequently the effect of this policy could result in an administrative log-jam that ultimately undermines the efficacy of the policy. This is clearly not a strategic matter.

The policy should certainly not apply to schemes that were determined before the Fast Track route began to be applied a year.

Whether viability information is needed should be a discretionary matter for the local authority concerned. It is best able to weigh-up the various local issues and judge whether the ‘minor’ amendment is so material that the desired planning outcome may be compromised.

To this end, draft Parts G and H should be amended. A new Part G should be substituted:

G For schemes approved under the Fast Track Route, any subsequent applications to vary consent, will be determined by the relevant local authority.

Part H should be amended to read:

H For schemes approved under the Fast Track Route where the original permission did not meet the threshold or required tenure split, including schemes determined before the threshold approach that would not have qualified for the Fast Track Route...

Parts I and J should be deleted. Whether additional viability evidence should be provided becomes a matter for the local authority to decide.

d) Would the approach taken to determining benchmark land value be justified?

Paragraph 4.6.11 states that the Benchmark Land Value (BLV) used in appraising viability will be Existing Use Value Plus (EUV+). Alternative approaches will only be entertained in exceptional circumstances. While the Mayor's approach outlined in the DLP is broadly consistent with the new NPPF and the supporting PPG (although, arguably, his threshold approach is not) this is one of those instances where the Mayor is cherry-picking bits from the old and new systems where it suits him to do so. The NPPF 2012 (reinforced by the supporting guidance) requires plan-makers to *"provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable"* (NPPF, paragraph 173).

The NPPF 2012 is clear that flexibility over affordable housing and other S106 obligations while also providing a competitive return to landowners and developers is necessary in order to sustain housing delivery.

Critical to this is the question of BLV – the price at which land is likely to be exchanged in the market. It is necessary to examine whether the Mayor's approach to BLV will incentivise residential development.

The London Plan Viability Assessment (LPVS) in chapter 8 outlines in Table 8.1 the BLVs assumed across the range of residential locations. This is repeated in the Addendum Report of November 2018 in Annex J. These are set out as thousands of pounds (£000s) per dwelling. We consider that these BLVs are unrealistically low. For example, a landowner, or householder, in the highest value location in London (like RBKC) is expected to sell his/her land for £300,000 (and this is before capital gains tax is paid). This is not an adequate return to compensate for the aggravation and costs associated with selling a piece of land. Conversely, why would a householder, say in one of the lowest value locations in London such as the outer reaches of Havering, sell his/her bit of back garden to make way for a house or several houses, for a return of just £10,000 before tax. They would not bother. The LPVS only supports the Mayor's case for the viability of all the London Plan policies, because this critical value input has been pitched so low.

Paragraph 4.6.11, moreover does not spell out what the plus element will equate to. Because it does not define this, it is hard to see how the Threshold Approach can be an effective policy. If there is no agreement on what the plus element of BLV+ will be then this may deter many applications for residential development. This is true whether schemes qualify for the Fast Track Route or the Viability Tested Route. This is because even if schemes qualify under the Fast Track route, they could become subject to viability testing if either: a) they fail to progress with implementation (Part D); or b) if a s73 application must be made. The prospect that the Mayor/LPA may determine what it considers the appropriate BLV+ to be without reference to what might originally have been paid for the land may act as a significant deterrent to housing development.

We have noted the *Industrial Intensification and Co-Location Study* report. On page 52 it states that the Mayor considers 20% above EUV is an appropriate BLV. This strikes us as very low for industrial land that is a very valuable commodity in London. Moreover, this figure does not include leasehold buy-out costs. We consider the Mayor's BLVs to be unreliable as a basis on which to justify future policy. What is more, this report shows that even operating on the assumption that land will exchange hands on the basis that the BLV equals EUV plus 20%, viability is still under-mined or is marginal. This is true in the case of many of the scenarios modelled, with a requirement of 50% affordable housing.

e) Would the requirement to seek grants to increase the level of affordable housing to access the fast track route be effective in increasing speed of delivery?

The requirement in Part C 4) that applicants who wish to benefit from the 35% threshold requirement must first demonstrate that they have sought grant with the aim of providing more affordable homes will weaken the potential effectiveness of the policy. If applicants must chase grant funding, and then are then questioned by decision-takers on the basis that they did not try hard enough, the effectiveness of the scheme will be undermined. The policy needs to be kept simple.

The policy requirement has probably been introduced to minimise the risk of underusing grant but it is very unclear how this part of the policy will operate in practice. For example, if a prospective builder seeks grant, but only on the basis that it will subsidise the cost of the construction of more affordable housing to the extent that full market land value is achieved, would that prospective applicant have satisfied this particular requirement of the London Plan if s/he rejects offers of grant that fall short of this? Put another way, it is unclear what level of grant sought or secured would be acceptable to the decision-taker. Moreover, if they did get grant to provide more affordable homes, would the decision-taker be satisfied with the type and tenure of homes provided? Anything that gives power to the decision-taker to dispute the decision taken by the applicant undermines the efficacy and intent of Policy H6. The aim of the policy is to incentivise the delivery of at least 35% affordable housing. Anything that introduces areas of potential dispute will undermine this aim. An obligation imposed on the applicant to pursue grant will make it very difficult for the applicant to know how to arrive at a land offer, and the average land owner will not accept conditionality of this nature.

The aim of Part C 4) is also unclear now that the words “beyond 35 per cent” have been deleted. It is unclear if applicants are required to demonstrate whether grant has been sought to meet or exceed the threshold 35% target or meet or exceed the 50% target? If required to exceed, how much would be acceptable to the decision-taker? This is unclear and needs to be clarified. It is our view that if the threshold approach is to be effective as an incentive, then applicants should only have to demonstrate that they have sought grant where they are required to provide at least 50% affordable housing, i.e. in those cases involving the re-development of public owned land, or where a local authority operates a 50% affordable housing target in an adopted local plan. If the private-sector applicant on private owned land provides 35% then that is all that is required to benefit from the Fast Track Route. There should be no obligation to pursue grant.

The policy must be kept simple. The policy must be clear how the applicant and decision-taker should respond.

We recommend that Part C 4) is deleted.

f) Would the review mechanism as set out in Policy H6E2 be justified and effective in increasing delivery?

The DLP diverges from national policy by insisting on reviews at different stages for schemes that follow the Viability Tested Route. National policy and guidance expect that viability is tested once, at the planning application stage, unless the scheme involves multiple phases where it may be legitimate to re-appraise viability again. The PPG discourages the use of review mechanisms other than on large, multi-phased schemes (Viability chapter, paragraph 16).

In relation to Part D and those schemes that are Fast-Tracked (able to provide 35% AH) we cannot see the justification for an Early Stage Viability Review. This requirement will undermine the attractiveness of the Policy to developers and as a mechanism to simplify and fast-track applications. Any review or overage clause will create significant difficulties for bank lending because it becomes extremely difficult for the developer to predict future market conditions and therefore to build-in a suitable contingency. Whether the Mayor's viability model will permit a contingency is also another matter.

It is also unclear how housebuilders are expected to reflect three potential reviews of land value in their contracts with landowners - who are generally extremely reluctant to entertain anything other than upward only reviews (i.e. more money for their land). The Mayor will no doubt argue that this clause in the policy is not intended to make the housebuilder worse off but this is unlikely. What is known is that it will entail another round of negotiations, associated legal costs and therefore delay in attempting to secure a planning consent at a review stage of a Viability Tested scheme.

For Part E, for those schemes that go down the Viability Tested Route, we consider that viability reviews are acceptable prior to the implementation of new phases on large schemes that require a new application for each phase. We do not support the early and late state reviews however. The point of the Viability Tested Route is to agree an appropriate level of affordable housing at the point that the application is determined. There is no justification in compelling applicants to multiple viability reviews, especially when the Mayor gets to determine the BLV. That would be dis-proportionate and contrary to national planning policy.

Policy H7 Affordable Housing Tenure

a) Would Policy H7 be effective in delivering the tenure of affordable housing to meet the objectives of Policy GG4?

The Mayor has adopted some very ambitious assumptions about the future supply of land for housing. This includes the construction of more tall buildings (disregarding whether there is the public appetite for this), higher densities, a hope that more small sites will materialise (disregarding whether there is the public appetite for this), and the integration of housing and industry in some areas (and whether this will provide an appropriate living environment for the people). At the same time the Mayor is highly prescriptive in terms of the tenure, size and mix of homes and the amount of affordable housing expected on every site. This degree of prescription may work where sites are clearly identified and are uncomplicated greenfield sites, but it will not work in London where all land is recycled and there are myriad of local issues that need to be weighed-up and negotiated by the developer with the local authority and community.

Prescription about the tenure is not a strategic matter. This should be decided by the local planning authority.

The policy does not recognise Affordable Rent as an affordable housing product. Nor does it acknowledge 'affordable home ownership' which will qualify as an affordable housing product under the new NPPF. The supporting text at paragraph 4.7.3 also creates confusion by referring to other types of product such as 'London Living Rent' (a type of intermediate product) and 'London Shared Ownership' (another type of intermediate product) as among the Mayor's favoured types of affordable housing. Paragraph 4.7.8 refers to another product called 'Discounted Market Rent'. It is very confusing. This section of the DLP does not meet the

requirement of the NPPF to provide a clear indication for applicants and decision-takers to know how to comply with the Plan (paragraphs 17 and 154).

We therefore recommend that the policy is redrafted to read:

A ~~The following split of affordable products should be applied to residential development:~~
The tenure of affordable housing should be in general accordance with the following guide:

- 1) 30 per cent low cost rented homes, allocated according to need and for Londoners on low incomes. These should be either London Affordable Rent or Social Rent;
- 2) 30 per cent intermediate products which meet the definition of ~~genuinely~~ affordable housing, including London Living Rent and London Shared Ownership;
- 3) the remaining 40 per cent to be determined by the borough. This can include Affordable Rent. ~~as low cost rented homes or intermediate products...~~

b) In light of the identified need for low cost rental homes, would the split of affordable products in this policy be justified and effective? Would it provide sufficiently for boroughs to determine tenure locally to meet local needs and reflect local circumstances?

See our response below.

c) Would the preferred affordable housing tenures be justified and effective in meeting identified need?

In reply to both questions b) and c) we feel the Mayor is being too prescriptive. This will cause difficulties for London boroughs who have recently adopted local plans where the tenure of affordable homes stipulated in local plan policy is quite different, but where the tenure selected has been dictated by viability considerations. This is often the case where more homes for affordable rent are needed to help improve viability. We do not consider this to be a strategic matter.

d) Would the mechanism for review of the preferred tenures through supplementary planning guidance in 2021 be justified and effective?

No. It would be contrary to national policy to introduce a change to development management policies via SPG. Applications must be determined in accordance with the development plan, in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004. The development plan includes local and neighbourhood plans that have been brought into force and any spatial development strategies produced by combined authorities or elected Mayors (NPPF, paragraph 11). Supplementary planning documents, by contrast, are not part of the development plan (NPPF, glossary).

It is clear why this is the case: to introduce changes to the London Plan through an SPG would not allow for the examination of those changes by an independent third party. This is why the HBF had previously disputed the Mayor's introduction of his threshold approach through his SPG and its concerns in this regard were borne out partly by the subsequent High Court judgement (*McCathy and Stone Retirement and Others v Mayor of London* (2018) EWHC 1202 (Admin)) – namely that the Mayor, had acted unlawfully in introducing material changes HBF/DRAFT LONDON PLAN, DECEMBER 2018

to London Plan policy via the SPG (in connection with early and late stage reviews for all schemes subject to the Viability Tested Route).

The Mayor could, however, undertake a focused partial review of the policy, and submit any changes for examination. The NPPF encourages this in paragraphs 153 and 218.

The London Plan will probably need to be reviewed anyway before 2021. This would provide the opportunity to review the effectiveness of the policy and make any changes, if these are necessary.

Policy H8 Monitoring Affordable Housing

a) Would Policy H8 provide an effective framework for boroughs to monitor affordable housing?

No because it places the onus on the London LPAs to monitor delivery although the Mayor has devised the policy. The Mayor should take ownership of the policy and monitor its effectiveness in supporting housing delivery.

Monitoring the success of the Threshold Approach

We consider that the policy should be amended to include a new Part that requires the London LPAs to monitor how many residential schemes have been directed down the Viability Tested Route, as a proportion of the overall number of residential applications determined. This should be reported on annually. If after two years (by 2020/21) this information shows that 50% or more of residential applications have been forced down the Viability Tested Route, this will indicate that the policy has been unsuccessful. Rather than helping delivery it has become a hindrance. The policy must then be reviewed. Either a lower affordable housing threshold target should then be adopted through a focused review of the London Plan (subject, obviously to fresh viability testing), or else other policies in the London Plan that impose costs on residential development will need to be removed to restore viability. We consider a threshold of 50% as a measure of the effectiveness of the policy is very reasonable, as Policy H5 has been conceived on the basis that the Mayor is confident that most developments should be able to afford 35% affordable housing without recourse to viability testing (section 14.2 of the LPVS).

Monitoring the success of public sector portfolio agreements

The DLP should also be amended to include a requirement for the Mayor to monitor and enforce his 'portfolio' approach to the supply of affordable housing by affordable housing providers and public-land owners. Information on what percentages of affordable housing have been agreed on what sites, and how any shortfall is to be made-good on other sites, should be published as part of the AMR. If this information is showing that portfolio agreements are failing to provide the overall 50% affordable housing required across the range of sites, then the policy must be reviewed. Either a lower affordable housing threshold target should then be adopted through a focused review of the London Plan (subject, obviously to fresh viability testing), or else other policies in the London Plan that impose costs on residential development will need to be removed to restore viability.

Monitoring the success of providing 50% affordable housing on industrial land (all categories)

Paragraph 4.6.6 requires at least 50% affordable housing on industrial land where there is a net loss of industrial capacity. The Mayor should monitor:

- a) how many units of housing have been provided on industrial land where there is no net loss of industrial land and how much affordable housing was provided (percent and actual); and
- b) where there is a net loss, how much of a net loss in industrial capacity, and how many homes were provided, including how many affordable homes (percent and actual).

The Mayor should monitor how often the 50% target is achieved, and how many affordable homes are actually provided, including the percentage on each such scheme.

This analysis will be valuable in assessing the efficacy of the overall approach of integrating housing and industry, and how feasible it is to provide affordable housing on such schemes. We have our doubts, not least because of the results of the Mayor's *Industrial Intensification and Co-Location Study: Design and Delivery Testing* report (October 2018).

The Mayor should then compare how much housing has been delivered via the intensification of industrial land against how much he has expected through his SHLAA. This is a point that may need to be explored further in the hearings as we recognise that the 'constraint modelled approach' in the SHLAA does not identify specific sites as such.

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