

Threshold Approach to Affordable Housing on Public Land

Practice Note July 2018

Introduction

1. The Mayor's Affordable Housing and Viability Supplementary Planning Guidance (SPG), which provides guidance to ensure the policy contained in the adopted London Plan is as effective as possible, proposes a threshold of 50 per cent affordable housing for schemes on public land. This threshold is also included in the draft London Plan. This recognises the potential for development on surplus public sector land to make a higher contribution to affordable housing delivery than private land. It also reflects the opportunity that public sector land presents to meet the needs of London's essential workers such as those working in health, emergency and other support services.
2. Given the Mayor's long term strategic aim for 50 per cent of new homes to be affordable, a threshold of 50 per cent has been adopted for sites on public land to qualify for the Fast Track Route. This will support delivery of both the adopted London Plan affordable housing policies (i.e. to maximise affordable housing), and the strategic target set out at Policy H5 of the draft London Plan that 50 per cent of new homes should be affordable. This is alongside other measures such as the Mayor's funding agreements with registered providers to deliver 50 per cent affordable housing across their programmes and strategic providers to deliver 60 per cent.
3. This practice note sets out further details on implementation of the affordable housing threshold for public land, establishing principles for how specific circumstances should be approached.

The threshold approach to applications on public land

Fast Track Route

4. The Mayor's Affordable Housing and Viability Supplementary Planning Guidance (SPG), which provides guidance to ensure the policy contained in the adopted London Plan is as effective as possible, proposes a threshold of 50 per cent affordable housing for schemes on public land to enable a scheme to follow the Fast Track Route. This threshold approach is also included in Policy H6 of the draft London Plan.
5. To follow the Fast Track Route schemes should deliver 50 per cent affordable housing without public subsidy and meet other relevant policy requirements and obligations to the satisfaction of the borough (and Mayor where relevant). 35 per cent of habitable rooms across the scheme should meet the relevant tenure split. This is reflected in Draft London Plan Policy H7 Affordable Homes Tenure¹. The

¹ This involves provision of: a minimum of 30 per cent of the affordable housing within the scheme as low cost rent homes allocated according to need and for Londoners on low incomes (Social Rent/ London

tenure of the additional homes above 35 per cent is flexible and should take into account the need to maximise affordable housing provision, along with any preference of applicants to propose a particular tenure.

6. Fast tracked applications are not expected to provide a viability assessment at application stage. To ensure an applicant fully intends to build out the permission and to reflect changing market conditions, an Early Stage Viability Review would be triggered if an agreed level of progress on implementation is not made within two years of the permission being granted (or a period agreed by the borough)².
7. Under this approach, where a public landowner has committed to delivering 50 per cent across a portfolio of sites, individual sites providing 35 per cent or more affordable housing can still be considered under the Fast Track Route.

Viability Tested Route

8. Where an application does not meet the criteria for the Fast Track Route set out above, it should follow the Viability Tested Route. This involves detailed viability evidence to be submitted on a transparent basis using the methodology set out in the SPG, which is reflected in the draft London Plan. This will be scrutinised by the borough and where relevant the Mayor to determine the maximum level of affordable housing.

Definition of Public Land

9. The SPG defines (as does the draft London Plan) public land for the purposes of this approach as:

Land that is owned or in use by a public sector organisation, or company or organisation in public ownership or land that has been released from public ownership and on which housing development is proposed.

10. One of the intentions of this definition is to ensure that the higher threshold cannot be avoided through the transfer of land to a separate company or organisation or through disposal of the land, which would undermine the objectives of the higher threshold for public land. However where sites were disposed of and either have been redeveloped or were subject to a change of use prior to publication of the Mayor's Affordable Housing and Viability SPG, the 35 per cent affordable housing threshold should apply.

Affordable Rent); a minimum of 30 per cent intermediate products which meeting the definition of affordable housing, including London Living Rent and London Shared Ownership (See London Plan Annual Monitoring Report for relevant affordability criteria); and 40 per cent determined by the relevant borough based on identified need, presumed to focus on Social Rent/ London Affordable Rent given the level of need for this type of tenure across London but with flexibility for boroughs to determine an appropriate mix of tenures through their Development Plan process or through supplementary guidance, provided they are consistent with the definition of affordable housing.

² This will comprise substantial implementation consisting of completion of all ground preparation works, the foundations for the core of the development, and construction of the ground/ first floor. For Early and Late Reviews on public land any cap on affordable housing delivery should be higher than 50% to ensure that the review is effective and to support delivery of the strategic target for 50% of all new homes to be affordable.

11. For the purposes of the affordable housing threshold for public land, public sector organisations and companies or organisations in public ownership will be determined with reference to the Public Sector Classifications Guide (PSCG) published by the Office for National Statistics³. This includes a range of national and local government bodies, public non-financial corporations and other organisations specified in the PSCG but excludes housing associations, universities and further education institutions.
12. Further guidance is provided below on the application of the 50% threshold on public land.

Type of Interest in the land

13. On some sites the freehold land interest may be in public ownership, whereas a private landowner may hold a long leasehold interest. In this instance control of the land is primarily in private hands (although the freeholder's consent may be needed in some instances including redevelopment).
14. For these reasons where the public sector land interest is in the form of a freehold or similar interest and a long leasehold is in place which is not held by the public land owner, the 35 per cent threshold would apply in relation to the Fast Track Route.
15. However where a long leasehold has been disposed of by a public sector land owner for the purposes of development, the 50 per cent threshold will continue to apply. This is to avoid the leasehold being disposed in order for the site to be considered under the lower threshold.
16. For sites where a long leasehold interest is held in public ownership, the 50% per cent threshold would apply to qualify for the Fast Track Route.

Proposals involving the re-provision or delivery of public infrastructure or facilities

17. The Draft London Plan and the SPG set an expectation that planning applications for residential development on public land should provide 50 per cent affordable housing.
18. Policy DF1 in the draft London Plan states that in situations where it has been demonstrated that planning obligations cannot viably be supported by a specific development, applicants and decision makers should give priority to the delivery of affordable housing and public transport improvements. Following this, applicants and decision-makers should recognise the role large sites can play in delivering necessary health and education infrastructure; and recognise the importance of affordable workspace and culture and leisure facilities in delivering good growth.

³ The PSCG will be used as a guide for determining public sector organisations for the purpose of the affordable housing threshold on public land. However the threshold may also apply to public sector organisations and companies, or organisations in public ownership, that are not specified in the PSCG, if they are covered by the criteria used by the ONS when classifying public sector bodies.
<https://www.ons.gov.uk/methodology/classificationsandstandards/economicstatisticsclassifications/introductiontoeconomicstatisticsclassifications>

19. Where an application on public land involves the delivery or re-provision of public uses, infrastructure or facilities, and less than 50% affordable housing is proposed, viability evidence should be submitted in line with paragraphs 2.12 and 2.13 of the Mayor's SPG and the methodology set out in Part 3 of the guidance.
20. Applicants should provide information regarding the public benefit of the proposal and the level of affordable housing that could be delivered without provision of the public infrastructure. This will assist the decision maker in attributing weight to the different benefits of the scheme.
21. Where viability information has been submitted in line with the SPG, as reflected in the draft London Plan (and the application does not otherwise depart from the Development Plan) it should be possible to determine planning applications within statutory timeframes or as otherwise agreed between the Local Planning Authority and applicant.

Proportion of the site that is public land

22. Where part of a site comprises public land, but not all, the 35 per cent threshold should apply to the proportion of the site that is not public land. When the site is taken as a whole the overall threshold will be a combination of both thresholds. This will be calculated according to the following formula (site areas to be calculated in square metres):

$$((\text{public land site area} / \text{total site area}) \times 50) + ((\text{private land site area} / \text{total site area}) \times 35)$$

23. For a site that consists of half public land and half private land this would result in a threshold of 42.5 per cent.
24. However where only a small proportion of a site is public land and this does not contain a functional building or land use, the 35 per cent threshold should apply for the whole site.

Sites that are temporarily in public ownership

25. Sites may be held in public ownership on a temporary basis, for example, when land is acquired in the public interest for the purposes of redevelopment or the provision of public infrastructure. Such sites are distinct from surplus public sector land which is no longer required for operational purposes.
26. For sites that have been acquired by the public sector for redevelopment or the provision of public infrastructure less than five years prior to the submission of the relevant planning application the 35% threshold should apply.