

Sustainable Development Select Committee			
Title	Publishing Viability Assessments	Item No	4
Contributors	Planning Service		
Class	Part 1	Date	22 nd October 2015

1. Purpose

- 1.1 As part of their agenda for the meeting on 22nd October 2015, the Sustainable Development Select Committee requested a report on viability assessments as part of the planning system. This report sets out the example approach of two other London boroughs, London Borough of Islington and the Royal Borough of Greenwich on publishing viability assessments in relation to planning applications. It also sets out Lewisham's current approach in relation to viability assessments which are submitted as part of planning applications.

2. Recommendation

- 2.1. The Select Committee is asked to note the content of the report and direct any questions to officers at the meeting on the 22nd October 2015.

3. Background

- 3.1 The economic viability of development has become an important consideration as part of the planning system. The Government sets out national planning policy in the National Planning Policy Framework (NPPF) published in March 2012. The main purpose of the planning system as set out in the NPPF is to secure sustainable development. While the NPPF sets out that local plans should contain policies to meet objectively assessed need for housing, retail and employment, it also states that (paragraph 173) *'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 cost 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 development to be deliverable'*.
- 3.2 Development viability is also an important consideration as part of the process of determining planning applications. The National Planning Practice Guidance states *'where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary.'*

- 3.3 Since national policy requires viability be taken into account in Local Plan policies Lewisham's adopted Local Plans reflect this. Hence, for example, in Lewisham's Core Strategy (adopted in 2011) Policy 1 – 'Housing provision, mix and affordability' requires affordable housing on sites capable of providing 10 or more dwellings. The starting point for negotiations is a contribution of 50%. This is subject to a financial viability assessment.
- 3.4 The requirement for policy to be justified by viability is therefore well established.

4. London Borough of Islington

- 4.1 Islington Council has been concerned about the quality of the viability appraisals it has received with planning applications for some time. Between 22nd September and 20th October 2014 they consulted on a 'Development Viability Discussion paper'. The responses from this consultation informed the production of a draft Development Viability Supplementary Planning Document (SPD), that was consulted upon from 10th July to 4th September 2015. The Council is currently undertaking the analysis of the response to the SPD, and if necessary they will make changes to the document that will then be taken to the Councils Executive for adoption. Islington therefore does not currently implement the policies set out in the SPD.
- 4.2 The draft SPD was very comprehensive and set out policy guidance on the viability assessment process, deliverability and transparency, methodology, information requirements, viability review mechanisms and monitoring. In relation to the deliverability section the draft SPD states (paragraph 4.7) *'if a viability assessment is submitted to the council to be relied on as evidence in determining a planning application, the council will expect that this provides a fair and true reflection of the viability of the development. The council will require the company undertaking the assessment to declare that they have not been instructed on the basis of performance related pay according to the outcome the viability process and the level of planning obligations that the applicant is required to provide.'*
- 4.3 With regard to the transparency section the draft SPD states (paragraph 4.11) that it is typical for applicants to seek to place confidentiality restrictions on viability information. This normally takes the form of requests that the Council does not disclose information to a third party and makes it exempt from freedom of information requests. This is done on the basis that public disclosure would adversely affect the confidentiality of commercial information which protects a legitimate economic interest.
- 4.4 The question of confidentiality and the public interest has been tested in a number of recent Information Commissioner's Office (ICO) and First Tier Tribunal (FTT) decisions following requests to release the information under the Environmental Information Regulations (EIR) 2004. The EIR set out a presumption in favour of disclosure and the ICO and FTT concluded in the case of the Greenwich Peninsula site that there was insufficient information to show that disclosure would cause harm to a commercial interest.

4.5 The draft SPD therefore sets out (paragraph 4.19) that *‘the council considers that information submitted as a part of and in support of a viability assessment should be treated transparently and be available for wider scrutiny. In submitting information applicants do so in the knowledge that this may be made publically available alongside other applicant documents. If an applicant considers that disclosure of an element of a viability assessment would cause harm to both the commercial interests and the public interest and should be kept confidential, they should provide a full justification for this. The council will consider this having regard to the ‘adverse effect’ test and overriding ‘public interest’ test the EIR, decisions of the ICO and the FTT and the specific circumstances of the case.’*

4.6 As stated above the draft SPD recently completed its public consultation stage and Islington council must now consider the responses received and whether or not changes need to be made to the draft SPD prior to adoption. Currently Islington officers expect to put the SPD to the Executive for adoption early in the new year/

5. Royal Borough of Greenwich

5.1 As stated above the case from the ICO and FTT concerned the planning application for redevelopment at the Greenwich Peninsula. The decision was that publication of that particular information, the viability assessment, was in the public interest. In the light of this decision, Royal Greenwich have decided to consult on a revised policy to publish viability assessments.

5.2 The Royal Greenwich approach is different to that of Islington in that they have consulted on changes to the ‘local list’ requirements for planning applications. The local list is the information that a Council requires to be submitted with a planning application in order for it to be validated and considered. The National Planning Practice Guidance on validation requirements states that a local list must be:

- Reasonable, having regard in particular to the nature and scale of the proposed development; and,
- about a matter that it is reasonable to think will be a material consideration in the determination of the application.

5.3 In addition, the local planning authority must consult on a draft local list, formally adopt the local list and publish it on its website, and review the local list every two years. Royal Greenwich consulted on a new ‘local list’ from 11th May to 22nd June 2015. Currently their officers are considering the responses received and will decide if any changes should be made prior to adoption. Similar to Islington, the final local list has not been adopted and the policy on publication has not yet come into effect.

5.4 The importance of requirements in the ‘local list’ is that failure to provide the information specified under the national and local requirements listed will make any planning application invalid and will delay the processing of the application until the information is supplied. The consultation on the ‘local list’ states:

Local information requirement	Application type (and/or location) where local requirement applies	Justification
41. Viability Assessment	All applications where the proposal does not include the necessary policy compliant provision/payments and this failure is being justified on viability grounds.	As required by the planning obligations SPD.

- 5.5 The draft 'local list' goes on to state (paragraph 1.84) *'a full un-redacted viability assessment should be provided at the time of submission. In order to fully assess whether the case made by an applicant for not meeting the policy requirements is reasonable and justifiable the Royal Borough will require the applicant to submit a residual valuation with all the following information:*
- a. Existing Use Value supported by an independent valuation;*
 - b. Land acquisition price and the basis of its purchase; salient terms of acquisition (e.g. subject to planning, soils, ground conditions survey, etc.);*
 - c. Purchase process (e.g. private treaty, open market bid, auction, etc.);*
 - d. Purchase costs including legal and agents fees;*
 - e. Estimated sales values with independent supporting evidence including schedule of unit sizes;*
 - f. Estimated construction costs supported by Tender costs or QS schedule to include a specified contingency, contract related fees and itemised/defined 'abnormals';*
 - g. Itemised preliminary costs;*
 - h. Professional fees presented under each respective heading;*
 - i. S106/CIL costs as advised by the LPA;*
 - j. Financing rate + evidence of financing terms/details (e.g. debt/equity ratio, etc.);*
 - k. Estimated profit together with contextual information appropriate to the developers target returns*
 - l. Value/cost of the affordable housing provision, where relevant, together with tenure assumptions and calculation of any commuted sum.*
- 5.5 At paragraph 1.86 they further state: *This information should be provided to the Royal Borough in its entirety. Applicants should be aware that the assessment will be made available in the same manner as other documents that form part of the submission.* The Royal Borough of Greenwich proposed approach is therefore to publish a full un-redacted viability assessment alongside other planning documents.

6 The Lewisham Approach to Viability Assessments

- 6.1 Currently, Lewisham Planning Service requires a viability assessment for any major application that does not satisfy the Core Strategy affordable housing policy. Officers seek independent expert advice on the viability assessments which have been submitted on planning applications by developers. An independent consultant reviews the viability assessments which have been submitted and provides feedback to the Planning Officer. In some cases more information on viability is requested. A confidential consultant report is then made available to the Members of the Planning Committee to aid decision making at committee.
- 6.2 The Lewisham approach had previously been similar to many other local planning authorities. That is, the officer report to planning committee set out the viability information and conclusions of the independent review but avoided using any confidential figures. This approach was premised on the basis that members are only required to be provided with such information as is necessary to make an informed decision on the planning merits and that there is no requirement to provide the confidential information in order to make that planning judgement.
- 6.3 However, in recent years, members had requested more detailed information and officers have responded by providing a confidential independent consultant report. This confidential report is available only to members of the committee determining the application.
- 6.4 Recently members have expressed concern about this process as they receive information which is confidential that is not available to the public. In view of these concerns the Head of Planning intends, as an immediate interim approach, that Lewisham continues to require the developer to submit confidential viability information to our independent consultants. In the light of that submitted information, the consultants then produce a report which is in a form which is publicly available. It is intended that the Council move to this approach with effect from the next Strategic Planning Committee which is likely to be held on 29th October.
- 6.5 This interim approach will both allow for the immediate introduction of a more transparent process and give the Council the opportunity to assess and learn from the approaches currently under consideration by other authorities.

7. Financial Implications

- 7.1 There are no direct financial implications arising from this report.

8. Legal Implications

- 8.1 The report sets out matters for noting and is an information report, there are accordingly no direct legal implications.

Background Documents:

London Borough of Islington - Draft Development Viability Supplementary Planning Document (July 2015)

http://www.islington.gov.uk/services/planning/planningpol/pol_supplement/Pages/Development-Viability-Discussion-Paper-and-Questionnaire.aspx

Royal Borough of Greenwich - Local Information Requirements List for Planning Applications - Public consultation draft (May 2015)

http://www.royalgreenwich.gov.uk/downloads/file/2748/local_information_requirements_list_for_consultation