

Report of: Executive Member for Housing and Development

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| Executive | Date: 14 1 2016 | Ward(s): All |
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SUBJECT: Adoption of the Development Viability Supplementary Planning Document**1. Synopsis**

- 1.1 The purpose of this report is to recommend adoption of the Development Viability Supplementary Planning Document (SPD) following public consultation, and to outline its content and the key changes made following consultation.
- 1.2 The Council conducted a consultation on the draft Development Viability SPD for an eight week period from 10 July to 4 September 2015, which has informed the final version of the SPD.
- 1.3 The SPD sets out guidance on how Islington Development Plan policies should be applied in relation to development viability when determining planning applications, in accordance with the National Planning Policy Framework (NPPF). Since the introduction of the NPPF, viability has become an increasingly central part of the planning process. Issues have however been encountered in relation to the use of viability assessments by applicants to reduce policy requirements and in particular the delivery of affordable housing. This has in part been exacerbated by inconsistencies between different sources of guidance.
- 1.4 The SPD will provide greater clarity to applicants regarding the Council's approach to assessing viability, help to safeguard the delivery of the Council's adopted development plan including the provision of affordable housing, and help to avoid delays in the decision making process.
- 1.5 Following adoption by the Executive, the Development Viability SPD will be a material consideration in the determination of planning applications for all classes of development where viability considerations are relevant.

2. Recommendations

- 2.1 To note the summary of comments received during public consultation on the draft Development Viability SPD (see Appendix 2 for Consultation Statement), the Council's responses and proposed

changes to the SPD.

- 2.2 To agree to adopt the Development Viability SPD (as attached at Appendix 1).
- 2.3 To further agree to delegate authority to the Corporate Director of Environment and Regeneration in consultation with the Executive Member for Housing and Development, to make and adopt minor revisions to the SPD if necessary, prior to final publication (see paragraph 3.19 below).

3. Background

- 3.1 Since the introduction of the National Planning Policy Framework (NPPF) in 2012, the assessment of development viability has become an important part of the planning process. The NPPF establishes that local planning authorities should (amongst other things): promote resilient, mixed and balanced communities, meet objectively assessed housing needs, support competitive economies (for example through the provision of infrastructure), and address environmental issues. The NPPF also specifies that the costs of policy requirements should allow for competitive returns to a willing land owner and willing developer to enable development to be deliverable. Further national guidance on the application of viability to the decision making process is set out in the Planning Practice Guidance.
- 3.2 The Statutory Development Plan forms the starting point for determining planning applications. In Islington this consists of the London Plan and the Islington Local Plan (comprising the Core Strategy, Development Management Policies and Site Allocations).
- 3.3 The key policies in the Development Plan for the consideration of viability in planning decisions are London Plan (LP) Policy 3.12, Core Strategy Policy CS12 (affordable housing) and Development Management Policy DM9.2 (planning obligations). LP 3.12 states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes. Policy CS12 requires that individual housing and mixed use developments should provide the maximum reasonable level of affordable housing that can be achieved, taking in to account the borough wide target that 50% of new housing should be affordable. DM9.2 establishes that the Council will use planning obligations to deliver sustainable development.

Purpose of the SPD

- 3.4 Viability assessments are typically submitted as part of planning applications to help determine the level of affordable housing to be provided and the extent to which a proposal can comply with other policy requirements.
- 3.5 The main objective of the Development Viability SPD is to provide greater clarity to applicants by providing guidance on the application of these, and other planning policies relating to development viability. The SPD should thus help to minimise delays in determining any applications where viability is a factor and help to deliver the policies of the development plan as well as the objectives of Council's Corporate Plan and Housing Strategy.
- 3.6 Due to a variety of different guidance, there has been relatively wide scope and discretion for how viability matters are dealt with, which in some instances has led to the use of approaches which have come into conflict with the principle of sustainable development and the plan-led system. The SPD sets out further guidance on the approaches and methodologies that are considered to be most appropriate in the context of the delivery of the development plan. On adoption, this will update and supersede viability guidance in the Islington Planning Obligations SPD (2013). The SPD will also provide clarity on the nature and extent of information required by the Council to enable it to robustly scrutinise viability assessments.
- 3.7 The SPD outlines the policy framework for the consideration of viability in the planning process (Section 2) and the proposed procedure for assessing viability at pre-application and at validation/application stage, stating the importance of early engagement with the Council (Section 3).

- 3.8 Section 4 of the SPD sets out approaches to help ensure that assessments are supported by robust evidence and that they are verified by applicants and assessors. Transparency and public participation is promoted through the requirement that assessments will be made publically available, save for exceptional circumstances where there is a convincing case that disclosure of aspects of an appraisal would cause an 'adverse effect' and would not be in the public interest.
- 3.9 Section 5 sets out that the 'Residual Land Value' methodology is most appropriate to use when undertaking an assessment in support of a planning application, rather than the use of a fixed land value as an input within an appraisal. Section 6 discusses the Council's information and evidence requirements regarding key inputs within an appraisal relating to: development value, build costs, profit, benchmark land value, Community Infrastructure Levy (CIL) and planning obligations, and development finance.
- 3.10 Section 7 provides guidance on the use of viability review mechanisms which are used to reassess viability at the point of delivery to ensure the maximum level of policy compliance can be achieved. These will apply to developments where policy requirements are not met in full at time of permission and will be required: at an advanced stage of development for all schemes requiring a review (generally resulting in financial contributions); additionally at pre-implementation stage for *phased* schemes and also, at mid-term stage for *large phased* developments (the latter two types of review typically resulting in additional on-site affordable housing).
- 3.11 Section 8 sets out that the Council may undertake reviews of viability at an advanced stage of construction or after completion regardless of whether a formal review mechanism is in place. The purpose of this is to ascertain the accuracy of the original information submitted and to assist the Council in monitoring implementation of its policies. Appendices A, B & C respectively contain a summary of key requirements, a list of information and evidence requirements, and more detail regarding Islington's approach to affordable rented housing.
- 3.12 The SPD is one of the first of its kind and as such has attracted wide coverage in the press, in debates and at events¹, and in several national reports on housing supply and viability².

Consultation

- 3.13 The Council undertook a preliminary consultation on matters considered in the Development Viability SPD through the Development Viability Discussion Paper and Questionnaire. This set out the scope of the proposed SPD and discussed the issues that it proposed to cover. This preliminary consultation took place between 22nd September and 20th October 2014 and informed the production of a draft SPD. The pre-consultation on the discussion paper prompted 21 responses.
- 3.14 Consultation on the Draft SPD was undertaken from 10th July to 4th September 2015. Thirty one responses were received from a variety of consultees including residents, community groups, local authorities, academics, consultants, landowners and developers.
- 3.15 Respondents generally welcomed further guidance on the subject and thus supported the production of an SPD. Excluding the responses from statutory bodies (who had no significant comments), approximately half of the responses were from residents, local authorities, resident/action groups, forums and some academics/consultants who expressed support for the SPD. The remainder of the responses were from private consultancies, developers/landowners/industry representatives and the GLA, and raised concerns or objections.
- 3.16 The matters which received the most support related to the Council's proactive approach to providing guidance on methodology and processes, to its promotion of early engagement, its support for the

¹ Such as the London Assembly Planning Committee (see <http://www.london.gov.uk/moderngov/documents/s50013/Minutes%20-%20Appendix%20-%20-%20Transcript.pdf>) "By far the best document I have read on guidance by a body", "really thoughtful, really comprehensive" (Professor Patrick McAllister, Professor in Real Estate, University College London); "a model of what a document like that should be like" (Oliver Wainwright, Architecture and Design Critic at the Guardian). The SPD also received a High Commendation at the Planning Awards 2015.

² For example, The Lyons Housing Review: Mobilising across the nation to build the homes our children need (2014); Joseph Rowntree Foundation (JRF) Rethinking Planning Obligations (2015)

EUV+ approach (Existing Use Value plus landowners premium approach) to determining benchmark land values and ensuring that policy requirements are fully reflected when determining land value, its support for affordable housing delivery, its proposed process for reviewing appraisals to maximise overall delivery of affordable housing, and in particular, its promotion of greater transparency and public involvement.

3.17 Matters which received the most/more significant comments indicating concerns or suggested changes are summarised as follows:

- Issuing guidance - the changing regulatory environment and whether it is appropriate to issue guidance in this context. The flaws and problems of the viability assessment process in general, including issues associated with considering individual inputs in isolation and the potential for bias. Whether or not the Council should issue guidance promoting the use of viability assessments rather than striving for a change in approach.
- Delivery and Transparency - that applicants' appraisals used internally or submitted to finance providers are specific to the applicant in question, are more complex than those submitted to the Council, are highly changeable and make different assumptions; whether viability information ought to be kept confidential due to commercial sensitivity; whether transparency could be damaging or act as a deterrent to applicants and could thus restrain bidding and discourage openness; and how the consideration of disclosure versus confidentiality should be assessed.
- Methodology/ Land value – whether the Council's preference for the land residual value approach and basis of determining benchmark land values are appropriate; how the uplift in value resulting from planning permission can be established and should be apportioned; and that it is often necessary to produce and support bespoke models for assessment.
- Information requirements – that the extent of information and associated justifications required by the Council must be appropriate to the scheme in question, its scale and complexity; that some information required could be unreliable or difficult to obtain and may risk discouraging development in the borough; that some information requirements are too specific to the developer rather than the proposed scheme or site and should therefore be standardised (e.g. build costs, finance costs etc); and that it is unclear/unpredictable what levels of affordable housing provision may be policy compliant on a given site.
- Affordable housing values – that early Registered Provider (RP) involvement is often difficult to achieve; and that it is not always possible to secure RP 'offers' for affordable housing at planning stage.
- Affordable rented housing – that the guidance should not seek to set rents for affordable rented housing or try to impose restrictions on the type and choice of affordable housing in the borough;
- Developer profit – that profit levels are justified due to the high risk, cyclical nature of property business; and disagreement about whether or not internal rate of return (IRR) forms an appropriate basis for determining profit within planning viability assessments.
- Review mechanisms – whether aspects and the extent of the proposed approach (including the proposed formulae) are correct, realistic, in compliance with policy, and proportionate.

SPD revision and adoption:

3.18 Officers have carefully considered the comments received which are summarised in the Consultation Statement along with Council responses (see Appendix 2). Where appropriate, the SPD has been revised to take account of issues raised. The most significant changes to the SPD can be summarised as follows:

- The borough and policy context have been updated to reflect current circumstances.
- The SPD recognises the changing regulatory environment and further regulatory changes will be considered and monitored as they come into effect.
- Clarification that assessments should be balanced, internally consistent and coherent as a whole, rather than individual inputs being considered in isolation.
- Delivery and verification requirements have been amended to place greater emphasis on consistency of current day costs and values used (in line with Planning Practice Guidance), rather than requiring appraisals provided to the Council and appraisals used for internal purposes to be identical.

- Further clarification is provided on the Council's approach to addressing issues of confidentiality and transparency and the reasons for its approach.
- The Council has provided further clarification in relation to proposed methodology, especially its approach to determining land value and the use of market value and market evidence.
- Greater emphasis is placed on the use of publically accessible data and standardised inputs (where fully justified and scheme specific), which is consistent with the Council's approach of requiring greater transparency (see also below regarding approach to build and finance costs).
- The SPD continues to encourage early engagement with Registered Providers (RPs), in line with the Mayor's Housing SPG. However, where affordable housing values are not informed by details and 'offers' from RPs, the Council will apply values based on typical RP offers for affordable housing in the borough.
- Commentary related to affordable rented housing has been amended to ensure that this does not give the impression of providing new guidance but simply cross references to and quotes from existing relevant documents, such as the Council's Housing Strategy.
- Applicants can rely on appropriate Build Cost Information Service (BCIS) figures as the basis for build costs or otherwise these should be supported and fully justified by open book evidence. If BCIS figures are relied on, these would also be applied and index linked within a review mechanism, rather than seeking an open book review of costs.
- The SPD clarifies that the Planning Practice Guidance approach to determining land value should be applied. Any approach that does not fully reflect of Development Plan policies is considered to be inconsistent with national policy and guidance and therefore inappropriate.
- The SPD clarifies that profit inputs must be consistent with other inputs to the particular viability model, such as its risk profile, contingency measures etc.
- The Council will apply standardised finance costs, justified with reference to the specific proposal, rather than seeking disclosure of developer specific finance arrangements.
- While setting out a clear basis for calculating how additional requirements can viably be provided through review mechanisms, the guidance recognises that the requirements and process may need to be adjusted according to the circumstances of the relevant proposal.
- Mid-term reviews will now relate to 'large phased schemes' only (see SPD for definition).

3.19 Significant changes to the planning system are proposed in the Housing and Planning Bill which is currently being considered by Parliament. It is anticipated that further details will be published in the form of draft Regulations around the time of the consideration of the SPD by Executive. In light of this, Executive is requested to delegate authority to the Corporate Director of Environment and Regeneration in consultation with the Executive Member for Housing and Development to make and adopt minor revisions to the SPD (not requiring further public consultation) as necessary, prior to final publication.

4. Implications

Financial implications:

4.1 The costs of producing and consulting on the Development Viability SPD have been met through existing budgets within the Planning and Development Division. Once adopted, the SPD will be used in determining all planning applications where viability considerations are relevant. The greater clarity afforded by this SPD will support implementation of the Islington Development Plan and help to ensure that the impacts of development are addressed and that associated costs do not fall to the Council.

Legal Implications:

4.2 The Development Viability SPD has been prepared in line with relevant planning legislation. The SPD has been subject to consultation in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). Following adoption, the SPD will be a material consideration in the determination of all planning applications where viability is a consideration.

Environmental Implications

4.3 A Screening Statement to determine the need for a Strategic Environmental Assessment (SEA) has been prepared. This concluded that an SEA does not need to be prepared as the SPD does not introduce new policies, but provides further guidance on adopted Local Plan policies. These policies

have been appraised in the Sustainability Appraisals of the Local Plan documents adopted by the Council. It is considered that the Development Viability SPD will not result in any additional significant effects to those already identified through the Sustainability Appraisals.

- 4.4 The SPD aligns with adopted environmental, sustainability and heritage policies as set out within the statutory development plan. These policies will help to ensure that new development in the borough accords with the principle of sustainable development. The SPD will provide guidance which is relevant to and will assist with the implementation of these policies.

Resident Impact Assessment:

- 4.5 The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.
- 4.6 An initial screening for a Resident Impact Assessment (RIA) was completed in November 2014. A pre-consultation update of screening was completed in July 2015 and this did not identify any negative equality impacts for any protected characteristic or any human rights or safeguarding risks. The RIA was revisited post consultation but no changes in the projected impacts for any protected characteristic or any human rights or safeguarding risks were anticipated.

5. Reasons for the recommendations / decision:

- 5.1 The purpose of the Development Viability SPD is to provide guidance on the implementation of Council policies in relation to development viability. It will offer increased clarity to applicants, helping to avoid delays and support delivery of sustainable development.
- 5.2 Once adopted, the SPD will be a material consideration for all classes of development where viability considerations are relevant. Adoption of the SPD by the Council will also provide greater certainty to the local community and interested parties about the Council's approach to viability matters.
- 5.3 Executive are recommended to note the summary of comments received during consultation, the Council's responses and proposed changes, and to agree to the adoption of the SPD.
- 5.4 The Executive is further requested to delegate authority to the Corporate Director for Environment and Regeneration in consultation with the Executive Member for Housing and Development to make and adopt minor revisions to the SPD as necessary, prior to final publication.

Signed by:



22 December 2015

Executive Member for Housing and Development

Date

Appendices

Appendix 1: Development Viability Supplementary Planning Document (SPD)

Appendix 2: Development Viability SPD Consultation Statement

Background papers: N/A

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