

Subject:	Planning Application Validation Requirement – Viability Assessment and Affordable Housing Statement		
Date of Meeting:	11 January 2018		
Report of:	Executive Director - Economy, Environment and Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report recommends alterations to the local validation requirements for planning applications to increase openness and transparency in the planning process and speed up the determination of applications. An 'open book' approach is proposed. This is for an un-redacted viability assessment to be provided as a validation requirement for planning applications that do not meet the necessary planning policy requirements or contributions on viability grounds
- 1.2 For policy compliant residential schemes an Affordable Housing Statement will be required.
- 1.3 There has been a 4 week consultation on the proposal and a summary of this is set out within the report and appendices 3 and 4.

2. RECOMMENDATIONS:

- 2.1 That the Committee agrees to the following additional planning application validation requirements which will be published on the public planning register:
 - An un-redacted Viability Assessment for schemes that do not include the necessary planning policy requirements or contributions which is being justified on viability grounds.
 - An Affordable Housing Statement to be provided for policy compliant residential schemes.

3. CONTEXT/ BACKGROUND INFORMATION

Background

- 3.1 The National Planning Policy Framework (NPPF) requires that the cost of planning requirements should allow for competitive returns to a willing land owner and willing developer to enable development to be deliverable. The method for

testing this must be considered within the context of the NPPF as a whole and achieve the overarching objective of sustainable development.

- 3.2 If a scheme does not meet the full policy requirements or developer contributions then an applicant may seek to justify this shortfall on the grounds of viability. In these circumstances information in the form a viability assessment should be submitted by the applicant.
- 3.3 The testing of viability assessments is undertaken by the Local Planning Authority (LPA) and forms part of the application process to assess to what extent plan requirements and contributions can be provided whilst ensuring a deliverable scheme.

What the Local Planning Authority is proposing

- 3.4 The LPA is proposing, in relation to all planning applications where the scheme does not include the necessary policy requirements or contributions justified on viability grounds, that an un-redacted viability assessment is submitted with the application as a validation requirement. There will be an assumption that the information in the viability assessment is un-redacted, however, where an applicant can make a compelling exceptions case some redaction may be allowed. The tests for exception will be set out in validation requirements guidance.
- 3.5 It will be required that viability assessments include a specific level of information and use a standard methodology. This will be set out in the proposed validation requirements.
- 3.6 The viability assessment and any supporting material (e.g. appraisals) will be available publicly on the planning register on the council's website alongside all of the other information submitted by the applicant. For all policy compliant residential schemes an Affordable Housing Statement would be required.

Transparency

- 3.7 The reason for introducing this approach is to ensure that there is openness and transparency in the planning process. It is therefore considered that information relevant to planning decisions should be publicly available alongside other application documents in order to foster a greater understanding of, and trust in, the planning system.
- 3.8 All other information relevant to the plan-making and planning application process is publicly available. This is consistent with the NPPF which places a requirement on councils to facilitate community involvement in planning decisions. National Planning Policy Guidance (NPPG) states that transparency of viability evidence is encouraged wherever possible.
- 3.9 This approach is consistent with the Freedom of Information Act 2000 (FOIA) which gives the public the right to request information held by public authorities and which aims to ensure that public sector bodies are open and accountable.

- 3.10 The Environmental Information Regulations 2004 (EIR), which relate to environmental information held by public authorities, provide a similar public right to access information. The guiding principle is that all information should be accessible, although the legislation sets out certain exceptions to this general rule. These exceptions are, however, qualified by a public interest test. In addition recent decisions by the Information Tribunal have demonstrated that the public interest in maintaining confidentiality rarely outweighs the public interest in disclosing the information.
- 3.11 It is noted that the direction of travel in regards to both national and local policy is towards greater transparency in regards to viability information and this is set out in Appendix 1.
- 3.12 Therefore, given the importance of wider scrutiny and the direction of travel it is considered that information submitted as part of a Viability Assessment should be publicly available. This will allow information to be available for public scrutiny and comment as are all other elements of a planning application. Any review or assessment of the appraisal carried out by or for the LPA will also be made available.

A Consistent Standardised Approach

- 3.13 As existing, the viability assessments received often differ in methodology, scope and level and type of information submitted. This can result in delays if further information that could reasonably have been expected to have been provided initially is required later in the process.
- 3.14 The changes will introduce a standard set of requirements that must be addressed within a viability assessment, which are set out in Appendix 2. As a consequence of this it will be clearer for every applicant exactly the information required. This will help to streamline the decision making process.
- 3.15 A standard approach will help to ensure that applicants will have considered policy requirements and contributions before submitting their application.

Timeliness

- 3.16 The LPA rarely receives Viability Assessments as part of the initial application submission. If they are received late in the application process this can result in delays, especially when further information or clarification is required during determination of the application. In addition, important issues, for example the number / type / tenure and location of affordable units, are often not adequately considered at an early stage to the detriment of the submission.
- 3.17 Requiring Viability Assessments at validation stage will make for more complete and considered applications and this will help streamline and speed up the decision making process.

Affordable Housing Statement

- 3.18 For residential schemes that do provide policy compliant levels of affordable housing in accordance with policy CP20 Affordable Housing of the City Plan Part One, the specific details of the affordable offer proposed is not always set out clearly in the application submission.
- 3.19 It is considered an Affordable Housing Statement for policy compliant schemes should be submitted at validation stage. This statement would contain for example; details of the specific size, tenure, type and location of the affordable units alongside information on the number / percentage of affordable habitable rooms within the scheme. For schemes where a financial contribution is required, the statement would be expected to contain the specific amount sought clearly within the statement.
- 3.20 The submitted Affordable Housing Statement would demonstrate that the applicant had thoroughly assessed whether their scheme complies with relevant planning policy and guidance and would provide the necessary information to allow the LPA to make an informed decision in a timely manner.

The Local Information Requirements List

- 3.21 The local information requirements list, also known as the local validation list, sets out the information that the Council will require to be able to register, assess and determine planning applications. The amount of information required will vary, depending upon the type and complexity of the proposed development, including any specific site constraints.
- 3.22 The proposal is for an additional requirement to the local list, in the form of a Viability Assessment or Affordable Housing Statement on specific schemes as set out above when applying for planning permission.

Consultation

- 3.23 A four week public consultation took place from 9 October to 5 November 2017. The comments received played an important role in informing the proposed requirements including final content of the viability checklist document. Groups consulted include planning agents, developers, landowners, residents' group, utility companies and local councillors. A link to the consultation information was also added to the front page of the planning homepage on the council website and a consultation meeting took place with the local Planning Agent's Forum.
- 3.24 A total of 22 responses were received from a range of individuals, local groups, consultees and developers / agents. These relate to transparency, the validation checklist and the affordable housing statement. This is set out in Appendix 4.
- 3.25 This proposal was fully supported by residents associations and individuals, who felt it was necessary in order to ensure transparency and allow resident's the opportunity to consider the economic viability of developments.

- 3.26 A number of developers and their agents have set out a number of concerns. The main concern was in relation to the transparent approach proposed (un-redacted documents) for all viability information. This is due to commercial sensitivities in that full disclosure could be financially damaging and may potentially put off developers from working in the City.
- 3.27 The sensitivities around full transparency have been carefully considered in regards to commercial interests and the public interest. Whilst the LPA will expect full disclosure of information, however, in response to concerns raised there may be exceptional circumstances where some viability information could remain confidential (re-dacted). A full justification of this harm should be submitted to the LPA alongside the viability assessment based on the public interest test.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Retaining the current approach of keeping all viability information confidential has been fully assessed and dismissed as contrary to the aim of providing a fully transparent and accountable approach to decision making in planning.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The changes to the local validation list and the proposed Viability Assessment checklist have undergone a public consultation, the results of which are summarised in Appendices 3 and 4.

6. CONCLUSION

- 6.1 The report recommends that the additional validation requirements proposed, comprising a viability assessment or an Affordable Housing Statement should be agreed.
- 6.2 The report recommends that the viability assessment shall be provided in an un-redacted format and shall be available on the public planning register with the rest of the planning application documents.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The proposed alterations to local validation requirements for planning applications will have no direct financial implications. The cost of introducing the un-redacted Viability Assessments and Affordable Housing Statements will be met from existing revenue budgets. Planning application fees support the cost of the service and are set nationally and reported to this committee in advance of the financial year. There are no alterations to the proposed fees for next year as a result of these recommendations. The Local Planning Authority may take advice from external consultants and the reasonable costs of this process will be paid for by applicants.

Finance Officer Consulted: Rob Allen

Date: 12/12/17

Legal Implications:

- 7.3 Section 62 (3) of the Town and Country Planning Act 1990 allows local planning authorities (LPA) to require planning applications to include such particulars and evidence in support as they consider necessary. However, such a requirement must be reasonable having regard, in particular, to the nature and scale of the proposed development and the LPA may require particulars of, or evidence about, a matter only if it is reasonable to think that the matter will be a material consideration in the determination of the application (s62 (4A) of the 1990 Act).

The requirements must be published in a list which is available on the Council's website (Article 11 (3) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) and the Planning Practice Guidance advises that any proposed requirements should be subject to a period of consultation.

Reference to disclosure under the Environmental Information Regulations 2004 is contained in the body of the report.

It is not considered that any adverse human rights implications arise from the recommendations of the report.

Lawyer Consulted: Hilary Woodward

Date: 5/12/17

Equalities Implications:

- 7.2 A transparent and accountable approach will enable equal opportunities for all to view viability information and will provide a clear framework for the assessment of viability in relation to the provision of affordable housing and other financial contributions that are necessary to support successful and equitable local communities.

Sustainability Implications:

- 7.3 None identified.

Any Other Significant Implications:

- 7.4 None identified.

SUPPORTING DOCUMENTATION

Appendix 1

Other Authorities with Open Book Approach and Government Guidance

Appendix 2

Viability Checklist

Appendix 3

Viability Consultation Outcomes - Summary of concerns from developers and their agents and LPA response

Appendix 4

Table of Consultation Responses

