

Hearing Statements on behalf of Berkeley Group and St William Homes LLP (Rep ID 45)

Introduction

- 1.1 The urgent need to increase housing delivery is one of the greatest challenges facing London. Increasing housing delivery is critical in its own right but will also create jobs, deliver infrastructure and create new public realm and amenities and environmental improvements. Regeneration and development in London is different to the rest of the country and measures needed to increase housing delivery in the capital will be different to areas outside. Fundamentally, development in London is more complex, expensive and risky. Almost all development is on brownfield sites that are typically highly contaminated from former uses and require significant investment to make them developable.
- 1.2 The Berkeley Group is delivering major developments across London. In Hammersmith and Fulham it has four live development sites Chelsea Creek, Fulham Reach, Sovereign Court and White City Living delivering over 3,500 new homes, Fulham Gasworks is currently in planning proposing 1,365 homes and it has recently acquired a further site in the White City area which will propose circa 450 homes.
- 1.3 The Berkeley Group is proud that its developments are much admired and award winning. This is the result of its meticulous approach, the investment it makes and the risks it takes. At the heart of its approach is placemaking; creating attractive and sustainable places where people want to live, work and spend time, now and in the future, with strong communities that contribute to the areas where they are located. Creating the right place requires significant up-front investment in infrastructure, public realm and landscaping.
- 1.4 In light of the above, we are seeking to ensure the right policies are in place so that the Berkeley Group can continue to deliver new homes in the borough in a sustainable way.
- 1.5 We have set out below a response, on behalf of Berkeley Group and St William Homes LLP (SWH), to some of the Inspector's Issues and Questions in advance of the EiP into the Hammersmith and Fulham Proposed Submission Local Plan ('Plan'). This should be read in conjunction with the previous representations submitted in response to the Regulation 19 consultation.

Week 1 Issue 1 - Legal Compliance, Spatial Vision and Strategic Objectives

Question 6 – Has the Plan been prepared to be consistent with the National Planning Policy Framework (NPPF) and in general conformity with the London Plan?

- 1.6 For reasons explained in greater detail in our representations and this Hearing Statement we are of the view that the Plan is currently unsound as it is not consistent with the National Planning Policy Framework (NPPF): specifically with paragraphs 47, 50, 154, 173, 174.
- 1.7 There are also aspects of the Plan which are not consistent with the London Plan which have been set out in our representations and are addressed in further detail where appropriate in our Hearing Statement.

Question 11 – Is Policy DEL1 positively prepared and justified by the evidence?

Question 12 – Are issues of development viability recognised adequately by the Plan and its evidence base?

- 1.8 We are of the view that Policy DEL1 is not positively prepared or justified by the evidence because the policy wording does not ensure the necessary flexibility to secure viable development. Further, that the issues of development viability are not adequately recognised by the Plan and in its evidence base.
- 1.9 The London Plan and NPPF both positively encourage the delivery of housing. The Plan reflects this in its support for a growth in housing delivery and its aim to exceed London Plan housing targets. However, the Plan and specifically policy DEL1 does not emphasise sufficiently the requirement that the decision maker should strike an appropriate balance between development viability and deliverability and other policy burdens and obligations. A flexible approach is required as set out in the NPPF and National Planning Practice Guidance (NPPG) to ensure housing delivery on key strategic sites (in particular brownfield sites) over the Plan period, even in times of changing economic/market conditions.
- 1.10 Paragraph 47 of the NPPF says that to boost significantly the supply of housing Local Plans should identify deliverable and developable sites critical to the delivery of the Council's housing strategy. Such sites must be capable of being viably developed. These sites must be considered suitable, available and achievable. Achievability is identified in the NPPG (paragraph 021 ref ID: 3-021-20140306) as a judgement about the economic viability of a site and capacity of the developer to complete and let or sell the development over a certain period.
- 1.11 NPPG goes on to say that where constraints are identified to the suitability, availability and achievability it should be considered what actions are needed to overcome said constraints including a review of development plan policy.
- 1.12 In order to avoid making key sites undeliverable, paragraph 173 of the NPPF requires 'careful attention to viability and costs in plan-making and decision taking'. It makes it very clear that plans should be deliverable and that 'the sites and the 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’.

- 1.13 Specifically referencing brownfield land paragraph 025 (ref ID 10-025-20140306) of NPPG confirms that the NPPF ‘sets out a core planning principle that in decision-taking local planning authorities should encourage the effective use of land by re-using land that has been previously developed (brownfield land)’. In order to incentivise re-use of brownfield land it goes on to state that local planning authorities should reflect levels of mitigation and investment required to bring sites back into use in land values and give consideration to impact of land remediation. This approach is also reflected in NPPG guidance para 026 (Ref ID:10-026-20140306 relating to viability in decision taking which states that local planning authorities should ‘take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable’. This guidance also reflects paragraph 173 of the NPPF.
- 1.14 Para 007 (Ref ID 10-007-20140306) the NPPG confirms that ‘Plan makers should consider the range of costs on development. This can include costs imposed through national and local standards, local policies and the CIL, as well as a realistic understanding of the likely cost of section 106 planning obligations and section 278 agreements for highways works. Their cumulative cost should not cause development types or strategic sites to be unviable. Emerging policy requirements may need to be adjusted to ensure that the plan is able to deliver sustainable development’.
- 1.15 The NPPF and NPPG are clear that policies of a Local Plan must be flexible to enable delivery and must have regard to development viability. It is also clear that the NPPF acknowledges that the development of brownfield sites will be more challenging in respect of development viability and therefore a flexible approach to meeting policy and planning obligations is encouraged.
- 1.16 In addition, in “Viability Testing Local Plans Advice for planning practitioners by the Local Housing Delivery Group 2012”(the “Harman Review”) under the purpose and role of availability assessments within plan-making it states:
- “The primary role of a Local Plan viability assessment is to provide evidence to show that the requirements for development set out within the plan do not threaten the ability of the sites and scale of that development to be developed viably. Demonstrably failing to consider this issue will place the Local Plan at risk of not being found sound.”*
- 1.17 The Harman Review states further:
- *The most important action of an assessment is to bring together and consider the cumulative impact of policies;*
 - *Local Plan policies should not be predicted on the assumption that the development upon which the plan relies will come forward at the “margins of viability”;*
 - *The Planning and timing will need to strike a balance between the policy requirements that it deems necessary in order to provide for substantial development and the realities of economic viability; and*

- *It is unlikely that all policy aspirations will be capable of being realised, once a realistic account is taken of the costs associated with those aspirations alongside regulatory and statutory compliance.*

- 1.18 The Plan as currently drafted requires Strategic Sites to come forward in a timely manner to deliver on its Strategic Objectives, support the regeneration of the borough and to meet London Plan housing targets. It is these sites which are predominantly brownfield where development viability will be most challenging and where greater investment is needed to create new places. This is because Strategic Sites are expected to deliver on a number of policy requirements and site specific infrastructure but at the same time are more likely to be faced with other development constraints such as high abnormal costs (such as remediation and site clearance) and the need to provide new utility and services connections. Furthermore, in those locations within the borough where there is a residential CIL charge this will act as a fixed cost and place an even greater emphasis on the need to allow a flexible approach to addressing policy.
- 1.19 In its Submission Local Plan Regulation 22 (1) (c) Statement the Council states that its' *'Housing Viability Assessment has tested all policy requirements, including the current CIL rates. Many scenarios were tested across the borough, based on the 50% affordable housing target with a split of 60% rented housing and 40% shared ownership, which found that development in general is viable. The Council recognises that each planning application will be assessed on its own merits and that viability will vary depending on the specifications of any site. The policy position therefore is considered to be flexibly prepared and consistent with the NPPF'*.
- 1.20 At para 4.11 of the Proposed Submission Local Plan the Council also set out that it considers its policies together with CIL charges are deliverable and allow development to be viable.
- 1.21 We submit that this is not the case, and that there is inadequate flexibility within the Plan to enable viable delivery of strategic sites.
- 1.22 The Housing Viability Assessment produced by BNPP for the Council is predominantly based on generic data sets which are limited and cannot replicate the detailed site specific information which is prepared to support viability appraisals for planning applications. Paragraph 005 (Ref ID: 10-005-20140306) of the NPPG confirms that *'evidence should be proportionate to ensure plans are underpinned by a broad understanding of viability. Greater detail may be necessary in areas of known marginal viability or where the evidence suggests that viability might be an issue – for example in relation to policies for strategic sites which require high infrastructure investment'*. Para 006 Ref ID 10-006-20140306 of the NPPG states that *'more detailed assessment may be necessary for particular areas or key sites on which the delivery of the plan relies'*
- 1.23 We are of the view that the viability evidence has not given appropriate consideration to specific sites with high infrastructure costs and that a more detailed assessment should be carried out on key strategic sites to ensure viability of the plan as a whole. The Plan is therefore unsound as the viability evidence base is not proportionate and has not had regard to

key sites viability only to generic viability across the Borough as a whole. It therefore does not consider the site specific constraints and costs which may affect development of key sites.

- 1.24 In order for the plan to be found sound, either significant further work must be carried out on the viable deliverability of some of the key strategic sites before adoption of the plan, or the plan must acknowledge the limited evidence base and identify the need for flexibility in the determination of applications. If the latter route is adopted then relevant policy wording needs to be included in the Plan to make it clear that site specific viability has not been fully considered in the preparation of the Plan and that in determining applications an appropriately flexible approach will be taken to obligations and planning burdens with a view to ensuring viable delivery.
- 1.25 Whilst Policy DEL1 – Delivery and Implementation confirms that the Council will have regard to the viability of development through plan-making, CIL charge-setting, and negotiating affordable housing and S106 obligations it does not go as far as is necessary to create the flexibility envisaged in the Regulation 22 Statement or within the NPPF and NPPG.
- 1.26 We consider that Policy DEL1 as currently drafted is unsound as it is not consistent with the NPPF requirement to incorporate a flexible approach and to ensure that the ability of sites to be viably developed is not threatened. We are of the view that the fifth bullet point of Policy DEL1 should be amended as set out below in order to make the Plan sound (new text underlined, old text struck through)
- Having regard to the financial viability of development in the following ways:
 - Plan-making;
 - CIL charge setting; ~~and~~
 - Negotiating Section 106 Agreements, ('106s'), including for affordable housing, applying the principles set out in the Viability Protocol in Appendix 9 where appropriate
 - Site specific circumstances including site specific infrastructure;
 - Site size, constraints and characteristics.
- 1.27 This is required for consistency with the NPPF and to ensure that the intention of the policy is clear to the decision maker.

Question 12 - Is the viability protocol a suitable approach to the issue of viability which is consistent with national policy?

- 1.28 For reasons explained in previous representations our client has reservations about the Viability Protocol set out at Appendix 9 of the Proposed Submission Local Plan and remain of the view that it does not provide enough flexibility and therefore is not in line with the NPPF.
- 1.29 The Viability Protocol should in the first instance be acknowledged in policy as a guide and that there may be instances where it is not appropriate to apply to a specific site in full.

- 1.30 The Berkeley Group formally responded to the consultation on the Mayor's Viability Protocol document expressing its reservations about some of its content. A copy of this representation is at **Appendix 1** to this statement and sets out our clients further views on the inclusion of the Viability Protocol in the Plan.
- 1.31 Specifically the requirement to make an FVA publically available would have a significant impact on an applicant's commercial position. Releasing for example an applicant's development model and information about assumed sales and rentals could cause harm to the applicant's own interests which would outweigh public interest in disclosing the information. We maintain that this commercial sensitivity needs to be more clearly acknowledged in the Viability Protocol and that a more suitable approach would be to make clear that where the FVA is made public this must be redacted to remove such confidential information which would harm the applicant's commercial interests.

Week 1 Issue 2 - Regeneration Strategies – White City, Hammersmith, Fulham and South Fulham

Question 1 – Is the Strategic Policy (Regeneration Areas) justified, clearly worded and deliverable?

- 1.32 We welcome the Council's support for major regeneration and growth in the borough's identified Regeneration Areas. The areas identified for regeneration and growth are the correct ones and need to be delivered during the lifetime of this Plan. However, for reasons explained earlier we are of the view that the Council has not had due regard to development viability in its evidence base and policy wording and that greater flexibility needs to be introduced into the plan to ensure development can be viably delivered. This is particularly relevant to the Regeneration Area policies given they rely on development of brownfield sites which are acknowledged in the NPPF as more challenging in respect of development viability and encourages a flexible approach to meeting policy and planning obligations.
- 1.33 We recommend that the Plan must provide greater flexibility to enable deliverability in its Strategic Objectives and certain key policies in order to be found sound because without this provision, such sites could be precluded from coming forward. To be clear and deliverable an additional bullet (as set out below) should be included within the Strategic Policy wording to explain that the Council will be required to have regard to development viability to ensure that sites can be delivered viably.
- Have regard to financial viability of development sites
- 1.34 We also submit that the reference to housing targets in the Strategic Policy and supporting justification should be as a minimum which would reflect the Council's evidence base as to the capacity of the sites and make the intention of the policy clear.

Question 11 – Are Policies SFRRRA and SFRRRA1 justified, with due regard to reasonable alternatives and will they be effective?

- 1.35 As previously stated, national planning policy recognises that brownfield sites are more challenging in respect of development viability and the former Imperial Gasworks site falls within this category. Given the unique nature of this site, its redevelopment was always going to generate significant abnormal costs relating to site clearance, remediation and modernising gas infrastructure. These costs would not have been allowed for in the more generic based viability assessment for the Plan undertaken by BNPP. There is also the added burden of the highest borough CIL charge for residential development in the SFRRRA at £400sqm which is a fixed parameter.
- 1.36 To be effective Policies SFRRRA and SFRRRA1 must address the requirement to have regard to development viability as expressed in the NPPF and NPPG and include adequate flexibility to enable delivery. The development viability of these brownfield sites and site specific considerations has not been given due regard in policy wording in the Plan and has not been properly tested in the viability evidence base. We consider that in such circumstances to make the plan sound and to enable the decision maker to be clear that these factors should be taken

into account in ensuring that development can be viably delivered, the wording of certain key policies (DEL1 and HO3) must be amended to acknowledge the site specific constraints and circumstances which could affect development viability.

- 1.37 The proposed amendments to the Strategic Policy, policy DEL1 and HO3 set out elsewhere in these supporting statements would provide the necessary flexibility required and ensure that the plan is sound along with further recognition proposed in policy SFRRRA1 below.

Question 12 – Is the SFRRRA approach to housing robust in terms of identified numbers?

- 1.38 As set out in our representations our client supports the policy to work with landowners and developers to secure regeneration of the SFRRRA.
- 1.39 Our client supports the provision of high density high quality housing in the SFRRRA and agrees that the evidence base to support the identified housing numbers is robust. However we submit that the housing figures should be identified as a minimum to reflect the Council's evidence base and clarify the intention of the policy and to ensure consistency with the NPPF and London Plan to boost housing supply and optimise development sites.

Question 13 – Is the SFRRRA justified in terms of redevelopment/renewal and the policy wording?

- 1.40 Our client broadly supports the policy wording and is of the view that the redevelopment of the SFRRRA is appropriately justified in the Council's evidence base, and would provide much needed new housing and jobs for the borough.
- 1.41 However, a number of key amendments to the policy wording (noted elsewhere) are necessary to ensure the plan is sound and to ensure consistency with the NPPF and London Plan.

Question 14 – Is the SFRRRA approach to building design and heights robust?

- 1.42 The approach to building heights in the SFRRRA policy is not consistent with the evidence base, namely the South Fulham Riverside SPD, which states that *'higher buildings could be accommodate on the Fulham Wharf / Sainsbury's site, and Chelsea Creek / National Grid sites on Imperial Road'*.
- 1.43 To remain consistent with the evidence base and the NPPF which seeks to boost the supply of housing and London Plan which seek to optimise housing potential we are of the view that the policy wording should reflect that set out in the SPD.

Proposed amendments to SFRRRA and SFRRRA1

- 1.44 To be found sound, in combination with those suggestions made elsewhere in our representations we are of the view that the Policy SFRRRA wording should be amended as follows (new text underlined, removed text struck through):

Amendments to Strategic Policy SFRRRA – South Fulham Riverside Regeneration Area

Indicative Homes
At least 4,000

- 1.45 Amendment to final bullet point:

Be sensitively integrated with the existing townscape, ensuring no substantially harmful impact on heritage assets, and respect the scale of the surrounding residential buildings. Building height can be stepped up toward the riverside, to provide a presence and give definition to the river frontage. Tall buildings could be accommodated on the Fulham Wharf / Sainsbury's site and Chelsea Creek / National Grid sites on Imperial Road, where justified by a full urban design analysis.

1.46 Insertion of new bullet point:

- Seek to optimise housing output of development sites within the SFRRA taking into account local context and character

Amendments to Strategic Site SFRRA1 – Imperial Gasworks National Grid

1.47 Insert new bullet point:

- Seek to optimise housing output of development sites within the SFRRA taking into account local context and character

1.48 Insert additional text at end of policy:

The Council will work with landowners and developers to secure regeneration of the site having regard to the financial viability of the development including the CIL charge and the site specific characteristics, costs and constraints associated with its redevelopment.

Week 1 Issue 3 - Housing

Question 2 – Should housing targets be referenced as minimums?

- 1.49 The NPPF requires local planning authorities to *'boost significantly the supply of housing'* (para 47).
- 1.50 The Council's evidence base identifies the capacity of those sites and key regeneration sites allocated within the Local Plan. However, the policy wording only refers to indicative housing targets for strategic sites across the borough. We are of the view that in order to be consistent with the NPPF requirement to boost significantly the supply of housing, and with the London Plan to optimise housing sites, the housing targets should be referenced as minima.
- 1.51 In KD5 the Council suggest that it is only where there is certainty on housing numbers should a minimum target be applied. Given that the Council have identified said housing numbers in their evidence base and allocated the sites within the Proposed Submission Local Plan to contribute towards exceeding the London Plan target, we are of the view that there is certainty in the delivery of these numbers and therefore they must be referenced as minima. Such a reference would also make clearer the intention of the policy which is to boost the supply of homes.

Question 8 - Is Policy HO3 justified and effective and consistent with national policy?

Question 9 – Is a 50% threshold for affordable housing deliverable and viable? Is the policy consistent with the NPPF, with due regard to positive planning and considerations of viability?

Question 10 – Is the approach for viability assessments for each scheme justified, effective and consistent with national policy?

- 1.52 As previously explained in response to Issue 1 our client submits that the Council's policies together with CIL charges would not provide adequate flexibility within the Plan to enable viable delivery of strategic sites.
- 1.53 Paragraph 50 final bullet of the NPPF highlights that policies on meeting affordable housing need should be *'sufficiently flexible to take account of changing market conditions over time'*.
- 1.54 For the Plan to be found sound it must not be subject to such a scale of obligations and policy burdens that the ability of sites to be developed is threatened.
- 1.55 Policy HO3 states at 'part e' that the Council will seek the maximum reasonable amount of affordable housing and take into account site size and site constraints and financial viability applying principles of the Viability Protocol (Appendix 9) and having regard to individual circumstances of the site and availability of public subsidy.
- 1.56 As currently worded the policies do not go far enough to create the flexibility to enable delivery of key sites and does not acknowledge that regard must be had to all costs and policy burdens on development at local and national level, which includes CIL.
- 1.57 We are of the view as previously explained that the viability evidence has not given appropriate consideration to specific key sites with high infrastructure costs and that given this, and to ensure a sound plan, adequate flexibility must be incorporated into the plan and relevant policy

wording to ensure flexibility to allow key sites can be viably developed and to make it clear to the decision maker how to assess development proposals for such sites.

- 1.58 To provide this we propose that the following amended wording for part 3 of Policy HO3 would assist in making the plan sound and making clear the approach the decision maker should take to site viability, affordable housing and necessary flexibility.

HO3 – Affordable Housing

e. in negotiating for affordable housing in a proposed development, the Council will seek the maximum reasonable amount of affordable housing and take into account:

- site size and site constraints; ~~and~~
- financial viability, applying the principles set out in the Viability Protocol (Appendix 9) ~~and having regard to the individual circumstances of the site~~ where appropriate;
- individual circumstances and characteristics of the site;
- site specific infrastructure;
- availability of public subsidy;
- CIL charge.

Question 11 – Is Policy HO4 justified and aligned with the London Plan? Is it flexible?

- 1.59 The final two paragraphs of this policy relate to Housing Density. These paragraphs do not reflect the London Plan policy 3.4 Optimising Housing Potential and 2.13 Opportunity Areas which seek to optimise housing density, particularly on the Strategic Sites identified in the Plan.
- 1.60 The policy, as proposed to be amended by KD4, has not addressed previous concerns raised with the wording.
- 1.61 We are of the view that the policy wording should include an additional paragraph in order for it to be found sound and to be consistent with the London Plan to recognise and reflect that in particular the strategic sites should optimise residential output. Proposed wording is noted below:

Strategic Sites should optimise residential output taking into account local context and character and London Plan policies.

Question 17 – Is HO11 justified and flexible?

- 1.62 Policy HO11 is not flexible and not consistent with other policies in the Proposed Submission Local Plan (namely policy HO4) in that it does not acknowledge the flexibility in applying the nationally described space standards.
- 1.63 In order to be consistent and to provide a clear indication to a decision maker policy HO11 should be amended to include the referenced flexibility to space standards shown in policy HO4. Part a. of the policy should be adjusted as follows:

- a. Floor areas and room sizes in new build dwellings, conversions and changes of use, including meeting 'Nationally Described Space Standards' unless it can be shown that not building to those space standards is justified by the circumstances of a particular site.

Summary

- 1.64 As currently drafted the Proposed Submission Local Plan is unsound as it is not consistent with the NPPF specifically with paragraphs 47, 50, 154, 173, 174 as it does not incorporate adequate flexibility in policy wording to ensure that development can be viably developed, or to give a clear indication of how a decision maker should react to a development proposal. Further that issues of development viability have not been appropriately recognised in the plan and its evidence base.
- 1.65 We recommend that the Plan must be amended as set out within this statements, to make clear the regard to be had to development viability in decision taking to ensure that key strategic sites can be developed viably in order to contribute towards the necessary homes and infrastructure to be delivered in the borough.
- 1.66 Further amendments have also been proposed to ensure consistency with the NPPF and London Plan and clarity in policy wording.

Appendix 1 – London Borough Viability Protocol – Response from Berkeley Group

1. Berkeley Group accounts for about 10% of new homes delivered in London, including 10% of the affordable homes. We deliver major mixed use developments including estate regeneration projects at Woodberry Down and Kidbrooke and regeneration projects such as Beaufort Park in Colindale and Southall waterside.
2. Placemaking is at the heart of our approach. Our developments deliver a mix of uses, homes in different tenures, commercial space and community spaces, as well as exceptional public realm and new public spaces. As part of our developments we have delivered theatres, community rooms, artists' studios, schools and health centres.
3. On all our developments we consult with the community as we shape our proposals and continue to engage as we deliver the developments.
4. We support the need for greater transparency in the viability process so that there is a clear understanding of how decisions are made. A London-wide protocol should be beneficial in bringing greater clarity and consistency to the approach taken across London.
5. We would be pleased to meet members of the London Boroughs viability group to discuss our response and suggestions. Our response is ordered according to the headings in the protocol.

Viability Assessment Process

6. Early discussion of all aspects of development is critical to the swift and efficient processing of applications and ultimately the delivery of new homes. On major developments the nature, mix and scale of development is likely to evolve considerably as a result of discussions with the planning authority and consultation pre and post application. This will limit the extent to which viability can be discussed at the pre application stage as the proposal is likely to be subject to considerable change.
7. We agree that developments should be designed to be in accordance with development plan policies but the extent to which this can be achieved will be dependent on the site's circumstances and whether it is possible to meet all policy aspirations.
8. There will be instances when the appraisal shows a deficit but the applicant will proceed with the development as they expect the market and values to improve. This is the sort of risk that developers expect to assess and take. Applicants should not be precluded from the ability to do this. Where there is a deficit the review should take effect from the deficit position. In these circumstances the council could require the applicant to set out their growth assumptions to justify their decision to proceed with a deficit.

9. Where the borough or its independent experts do not agree with key appraisal assumptions including costs and values this should be supported by justification and evidence of why they do not support the inputs.

Openness

10. Many assessments include information which is commercially sensitive. For example, this could be allowance for acquisition of third party land, rights of light, vacant possession compensation costs or other information that would severely compromise the applicant's commercial position. If there are elements of the information within the assessment which the applicant considers should not be disclosed on the basis that they are commercially sensitive, we suggest that the applicant is required to provide reasoned justification on why it should be redacted. This reflects recent FOI decisions which recognises that some information is commercially sensitive and there should not be blanket disclosure.

Development Values

11. In most cases registered providers (RPs) are not engaged at the application stage as they are usually secured closer to the delivery of the affordable homes. RPs will not be in a position to make offers at such an early and speculative stage.

Development Costs

12. Where the borough seeks external cost advice this should be from a suitably qualified consultant, with relevant experience.
13. Where a comprehensive project-specific report is provided by a quantity surveyor this should take precedence over BCIS.

Developer Profit

14. The planning application process is applicant-neutral and planning permissions run with the land. It is therefore not appropriate to justify profit levels in respect of an applicant's risk profile.
15. We agree that profit levels should be related to the level of risk. Property development is a cyclical and highly risky business. It is very easy, at the top of the market with high values and strong growth, to ignore the huge investment it takes to make development happen and the risks that developers take.
16. Major regeneration projects require tens and sometimes hundreds of millions of pounds of investment before any cash is returned, let alone profit made. This will include significant early investment in creating a place which benefits the wider area.

17. Development entails significant risks including letting construction contracts, cost inflation, sales and commercial letting, and other external factors such as the wider economy, local issues (such as increased competition and factors affecting the quality of the wider environment) and issues such as rights of light and the physical challenges of demolition and construction. The return sought by shareholders reflects the degree of risk that is taken.
18. The protocol should not comment on current market conditions, rather provide overarching advice that is relevant to all stages of the property cycle.

Land Value

19. We share the boroughs' frustrations about high prices being bid for sites which disregard planning policies and affordable housing, rewarding the land owner at the expense of the public. However, fundamental to calculating the land value is being realistic about the price at which land owners will release land (as exemplified in the NPPF). We agree that this is a highly tricky and sensitive exercise which must balance the need to release land for development with the need to deliver public benefits.
20. Land will not be released at existing use value; a reasonable premium will be expected from landowners to justify sale. If there is a reasonable prospect of land securing planning permission for an alternative, higher value use, the land owner will expect this to be reflected in the land value. Policy compliant alternative use value should therefore be accepted.
21. It is unrealistic to consider that a landowner will sell a site for less if it is perceived that the land no longer meets their needs.

Viability Review Mechanisms

22. We agree that it is reasonable to include review mechanisms prior to implementation when there is a significant lag between the grant of planning permission and development starting.
23. The inclusion of a review linked to reaching a specified milestone, such as completion of the basement works, would be reasonable to incentivise early delivery.
24. Reviews should only be included post implementation (other than where linked to an agreed early milestone) in exceptional circumstances. Typically on long term developments developers will invest significant sums at risk on site preparation and the provision of early infrastructure.
25. Any review must take full account of cost increases, start at the position that the development is not in deficit, and be capped at the outset at the level of affordable housing policy compliance so that the full risk is known to the applicant and their funders.

- 26. Where there is a review the surplus should be shared equally between the developer and local authority.
- 27. Where growth assumptions are included in the assessment we do not think it is reasonable to include a review mechanism as this would effectively be double counting.

Other measures we propose to improve the process

- 28. Publication of a non-technical summary of the viability assessment in advance of the committee meeting, when the viability assessment has been agreed.
- 29. Briefing by the applicant on the viability assessment for the planning committee.
- 30. Member training on viability.
- 31. Structured early engagement of members such as applicant presentations to members in the early stages of determination to garner feedback on members' priorities and objectives. This will shape the application (or where it doesn't the applicant knows that members' priorities are being ignored). Early discussions will enable members to agree the balance between the quantum of development and the level of benefits that will be delivered. A record of this would form part of the officer's committee report.

Further points for consideration

- 32. London needs to deliver at least 50,000 homes a year but is delivering only half of this; the rate of housing delivery needs to increase substantially. Critical to achieving this will be to ensure the quality of the homes and places delivered. Creating high quality places is important to the acceptability of development and the quality of life of the existing community as well as new residents. Creating an attractive place is the result of many factors including the mix of uses, quality of design, public realm and landscaping and quality of materials used. Creating attractive places cannot be achieved cheaply. We recognise the importance of the delivery of affordable housing but it is important that it is not achieved at the expense of all else and there is sufficient emphasis and funding allowed for placemaking.

33. The Housing and Planning Bill, when enacted will have a substantial impact on development and the viability process which will need to be considered before the protocol is finalised and published:

- a) The imposition of a fixed requirement for starter homes will have a fundamental impact on what, if any, other affordable housing can be delivered.
- b) The inclusion of land on a brown field register or with permission in principle is likely to lead to an increase in land values as landowners' expectations of what can be delivered increases.

18/03/16

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