

VIABILITY APPRAISAL OF LOCAL PLANS

The Highbury Group on housing delivery has considered the HCA sounding board draft guidance on the viability testing of local plans. In addition, the RICS has circulated a guidance note on viability for which it is seeking government endorsement. It should be noted that this comment, as is the case for all notes submitted by the Highbury group, represents a consensus of views of group members, and does not necessarily represent the views of individual group members or their organisations.

These papers raise a number of issues:

1. The principle of viability testing local plans

The requirement that plans demonstrate plan deliverability has given additional importance to the issue of viability appraisal. However there is also a requirement that plans should be soundly based on evidence of need and demand. In a context of limited resources, there is therefore a potential conflict between setting policies and targets which are based on evidence of need and demand, and setting policies and targets which are demonstrably deliverable. One of the key purposes of planning is to assess these identify the extent of such conflicts.

However the issue of how to respond to such a conflict is more problematic. One approach is to respond to a negative viability assessment by constraining policies and targets to what is deliverable. An alternative however is to assess different mechanisms, including funding mechanisms, to achieve the delivery of needs based targets. This is one of the central purposes of an implementation plan.

Any viability assessment needs to have regard to the availability of both public and private funding. There is a risk that in the current context of severe public funding constraints and uncertainty as to the ability of a volatile private market to fund plan implementation, that targets will be set significantly below those identified from a needs based approach. To take one example, the fact that public funds are no longer available for social rented housing, may be used to justify a zero target even where a strategic housing market assessment demonstrates a significant need. The current emphasis in the NPPF on planning policy requirements not being imposed on schemes which make schemes non viable could be used to justify this position.

2. Use of viability testing for CIL

While the HCA paper focuses on local plans, there is a separate requirement in legislation and the draft CIL regulations that local authority proposals for CIL need to be tested for viability, in terms of not making development as a whole across a planning area non-viable. A LPA is required to assess the potential impact of pipeline schemes of a proposed CIL levy. While such assessments have been used to support

CIL proposals, it could be argued that the assessment by inspectors has not been very rigorous. This no doubt reflects the difficulty of assessing impact on schemes over a 5 year period (or longer) when the details of scheme proposals are not yet known and when future costs, values and subsidy cannot be predicted. The inspector's assessment of the development impact of the Mayoral CIL, to take an example, is somewhat cursory. The Redbridge CIL, the first in London, was assessed through written representations without a public hearing. Assessments have been particularly cursory in relation to the effect of CIL on affordable housing, although during the debate on the Localism Bill the Government committed to revising the CIL Guidance to emphasise that CIL should not prejudice development plan policy requirements for affordable housing.

3. Viability testing for plan making and viability testing of application to individual schemes.

These are two separate issues. Once a borough wide target is set, a financial assessment should be part of a process for assessing the potential for applying the target to an individual scheme if (and only if) there is a proposed departure from policy¹. This assessment can then relate to the specific costs and values of a known development proposal based on the facts available at a specific point in time. An assessment can model different development options and scenarios for different costs and values over a development period. It should be noted that the London Plan as adopted in 2004, and as amended in 2008 and 2011, separates the scheme assessment from the overall target setting process. This was intentional as the draft plan in 2002 had originally proposed differential borough affordable housing targets based on borough level modelling of development viability. These were removed in favour of a London-wide target related primarily to an assessment of need and development capacity. There was a concern that to base borough targets solely on a viability assessment at a fixed point in time would prejudice a LPA's ability to negotiate a higher proportion where this was justified by an appraisal of a specific development proposal. This was in recognition that costs and values could vary widely between different schemes within an LPA area, and would also vary over time depending on a range of external factors.

4. Planning policy requirements and land value

The land market does not operate independently of planning policy. In fact planning policy requirements, such as a requirement for affordable housing, or a density policy, or a requirement to contribute from development value to transport and social infrastructure, may constrain the value of land. Any developer should have regard to these constraints before committing to acquiring a development site. Any relaxation in density constraints will enhance residential land value, as would any removal or reduction in an affordable housing target or requirement for planning contributions. Any tightening of policies could reduce residential land value with the potential consequence of either increasing developer profit or reducing sale prices – or potentially a combination of the two.

¹ If a proposal is policy compliant there is no need to review a scheme's financial details

5. Land value and existing use.

In areas where most residential development is on brownfield land, the use value of a potential residential site in its pre-existing use (assuming this can be operationalised) or an alternative use for which planning consent may be granted, is a critical factor in determining the relative profitability of residential use. Financial appraisals of residential sites on brownfield land must therefore have regard to existing or alternative uses. In viability assessment at the development plan level it is evidentially better to base assessments on the market values for land, adjusted to take account of emerging policies that have yet to be fully reflected in the market.

6. Return to developers and landowners

Any financial appraisal needs to have regard to the level of return to both landowner and developer, both to bring the site onto the development market but also to attract private investment into the development (where this is necessary). The current NPPF draft which refers to willing landowner and willing developer implies that it is primarily for the landowner and developer to determine the return that they are seeking. This would imply that it is not the role of a public body to question such assumptions – a position to a certain extent supported by the RICS draft guidance. While financial appraisal toolkits generally have a baseline assumption as to a reasonable rate of return for a developer (and also for a building contractor who is not taking any speculative risk)², there is no guidance on a reasonable value uplift for a landowner in relation to existing use. Previous guidance in relation to a 20% norm was withdrawn. It is essential that this guidance is reviewed. It is recognised that this will vary from site to site – clearly a 20% uplift on a site with an EUV of £200m a hectare is a different order of profit from a 20% uplift on a site with an EUV of £20,000 a hectare, but any guidance which does not deal with this issue, is of limited use to both LPAs and potential public funding bodies such as the HCA, who are seeking to ensure the most cost effective use of development capacity and public funding. There is of course the risk that a development site may be frozen where agreement cannot be reached. Where landowners are unwilling to proceed with development on the terms acceptable to the LPA, the LPA does have the power to seek to compulsorily acquire land, in which case there is a process for determining the compensation value.

7. Some other relevant considerations.

As the planning status of land clearly has an impact on its value. Local planning authorities in making land allocations within local plans, often allocate land as mixed use without being specific about residential components and without a detailed brief. Mixed use allocations often have the consequence that a developer brings forward a project which is most profitable for them. The more specific the brief, the greater the constraint imposed on development options and therefore on the land value. A local

² Great care needs to be taken with how profit is expressed in all financial appraisals. Too often profit is allowed on the purchase of the land asset (in relation to which there is scant risk), profit levels are the same on all expenditure regardless of whether it is debt or equity funded, and similar profit levels are applied throughout the planning and development process. There is, possibly, a good argument for a 20%+ margin on the costs of the planning allocation/application process; there is no such argument for the lower risk costs associated with the development phase.

planning authority could however make a specific land use allocation for affordable housing, or specify the proportion of a site to be used for affordable housing. Any such allocation or planning brief would need to be specific as to the form of affordable housing sought, in terms of type, mix, tenure and affordability.

There is a greater potential for local planning authorities to compulsorily acquire potential residential development sites. This is most usefully applied to greenfield sites or other sites with low value (for example vacant or underused industrial sites) where these site is appropriate for residential development, but where no residential zoning has been as yet declared. Where a site has been allocated for residential development, but no scheme has been brought forward, the local authority could 'auction' their ability to CPO the site to the best bidder – based on a judgement as to which bidder is most able to comply with policy requirements in relation to affordable housing mix and tenure, space requirements and design standards. The possibility of the purchase price being based on the valuation at designation needs to be considered as this would avoid land owners benefiting from land value inflation relating to any subsequent period – in essence avoiding any benefit to the developer arising from delay in bringing a scheme forward for development.

The issue of deferred planning obligations needs to be more fully discussed, both in the context of the CIL regulations allowing for deferral of CIL payments and in the context of the anticipated CLG guidance on reviewing planning obligations. Reviewing planning obligations in the light of changes in viability over time has to be a two way street. Cascade agreements need to reflect the potential of improved viability arising from increases in values or availability of public funding as well as the inverse. If a revised appraisal demonstrates an increase in viability and increase in return to developer above an agreed threshold, the agreement should require a developer to make up any policy deficit identified by the revised assessment as deliverable.

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