

Title of meeting:	Cabinet Member for Planning, Regeneration and Economic Development
Date of meeting:	6 th November 2018
Subject:	Planning Practice Guidance Viability in Planning & CIL Reforms
Report by:	Claire Upton-Brown, Assistant Director of City Development
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1 To report the changes on Guidance on Viability in decision making as agreed at the PRED meeting of the 28 February 2018 in response to the Motion to Full Council 12b Economic Viability Assessments for developers 17th October 2017.
- 1.2 To consider the content contained in the Guidance on Viability published in July 2018 as Planning Practice Guidance (PPG) and implications for the way Viability in decision making on applications and in plan making is managed going forward. Further to consider the Guidance on Viability relating to the collection, monitoring and reporting of contributions through Section 106 and Community Infrastructure Levy (CIL) and suggest how the local planning authority needs to respond to this Guidance.

2. Recommendations

It is recommended that:

- 2.1 **The Viability Guidance in Planning Practice Guidance relating to Local Plan making should be fully embodied in the Local Plan Review work.**
- 2.2 **The Assistant Director of City Development prepares a protocol for developers following the publication of the Standard Templates referenced in the PPG. The protocol will confirm that all viability assessments submitted relating to planning applications accord with the Planning Practice Guidance Viability including the guidance on viability assessments being publicly available.**
- 2.3 **The Assistant Director of City Development is authorised to procure a framework of viability consultants to provide support, should it be required to the planning team, to ensure better and more consistent outcomes for the City.**

2.4 The Assistant Director of City Development is authorised, in line with the new National Planning Policy Framework (NPPF) guidance:

- **To include all planning obligations together with details of any modification or discharge of the planning obligation on its Planning Register.**
- **To review and amend process to ensure that all new Section 106 Agreement include an Executive Summary in accordance with the proposed template that will be published and that all live and future Section 106 are monitored in accordance with the template.**
- **In the interest of accountability and transparency, to produce and publish a report to be published on the Council website by 31 December each year setting out what all CIL contributions have been spent on. CIL spend will also continue to report in the authority monitoring report.**
- **To prepare an Infrastructure Funding Statement using the standard template that is to be published. This Statement will set out infrastructure requirements for both CIL and Section 106 planning obligations, anticipated funding from developer contributions and confirm choices the local planning authority has made with the S151 Officer about how these contributions will be used. In the interest of accountability that this statement is report to PRED before being published on line.**
- **To work with applicants to better promote and publicise the infrastructure that has been delivered through developer contributions through initiatives such as the use of on-site signage, local authority websites or development specific sites.**
- **To review the current mechanism for promoting, allocating and spending Neighbourhood CIL to ensure that there is a robust process in place to ensure that contributions are being spent and sufficient guidance and support is being given to Ward Councillors and communities to identify a range of infrastructure projects suitable for CIL funding to support the development of an area.**

2.5 The Assistant Director of City Development working with the Cabinet Member for PRED will ensure that the planning committee and interested Councillors are supported with training to ensure a better understanding of the new viability proforma and CIL regulations.

3. Background

- 3.1 In response to a Motion to Full Council that requested that the Cabinet Member for Planning, Regeneration and Economic Development commissions the development of a Draft Development Viability Supplementary Planning Document it was agreed that whilst there is clear benefit in agreeing a protocol

on the way that the local planning authority will manage applications where viability assessments are submitted. In light of the consultation and imminent publishing of the revisions to the NPPF which was anticipated to deal with the matter of viability assessments it was proposed that a further paper should be bought back to PRED when the revised NPPF was published.

- 3.2 The revised NPPF was published on the 24 July 2018 on the same date the Planning Practice Guidance on Viability was published in line with the new NPPF. The NPPF itself no longer makes reference to the approach to viability with Paragraph 173, which was the central provision of the NPPF 2012 in respect to viability and talked about the cost of development and competitive return etc. being removed from the revised NPPF. Instead the Planning Practice Guidance (PPG) Viability Guidance sets out how viability should be dealt with in plan making and decision making and sets out accountability including how Section 106 and CIL contributions are monitored and publicised.

4.0 Key areas of Guidance

- 4.1 There are a number of key areas of Viability Guidance contained in the PPG these will be considered in the following paragraphs under the headings of Viability and Plan Making, Viability and Decision Taking, Standardised inputs to Viability Assessments and Accountability.

5.0 Viability and plan making

- 5.1 The guidance confirms that the role of viability assessments is primarily at the Plan Making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan.
- 5.2 Policy requirements, particularly for affordable housing should be set at a level that takes account of affordable housing and infrastructure needs and allows for the planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage. The price paid for land is not a relevant justification for failing to accord with relevant policies in the Plan.
- 5.3 Assessing the viability of plans does not require individual testing of every site or assurance that individual sites are viable. However in some circumstances more detailed assessment may be necessary for particular areas or key sites on which the delivery of the plan relies.
- 5.4 The guidance acknowledges the importance of considering specific circumstances of strategic sites that are critical to delivering strategic priorities of the plan. This is particularly important for the strategic allocations at Tipner and the City Centre; this Guidance will inform the Local Plan Review work.

5.5 Where up-to-date policies set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The Guidance sets out the following circumstances where viability should be assessed in decision making.

6.0 Viability and decision taking

6.1 Where up to date policies set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. These could include where development is wholly different from that used in the viability assessment to inform the plan, where particular types of development are proposed that vary from the standard for sale model or where recession or similar significant economic change have occurred.

6.2 Where a viability assessment is submitted to accompany a planning application this should be based on and refer back to the viability assessment that informed the Plan and the applicant should provide evidence of what has changed since then. The weight to be given to viability assessments is a matter for the decision maker, having regard to all the circumstances in the case including whether the Plan and viability assessment is up to date.

6.3 Plans should set out circumstances where review mechanisms maybe appropriate as well as clear circumstances where viability will be reassessed over the lifetime of the Plan to ensure policy compliance and optimal public benefit through economic cycles. This is a matter for consideration as the work on the Local Plan Review develops.

7.0 Standardised inputs to viability assessments

7.1 The Guidance confirms that any viability assessment at Plan level should be supported by appropriate available evidence informed by engagement with developers, landowners and infrastructure providers and affordable housing providers. Any viability assessment should follow the Government's recommended approach assessing viability as set out in the guidance and be proportionate, simple, transparent and publicly available.

7.2 In plan making and decision making viability helps strike a balance between the aspirations of developers and landowners in terms of return against risk and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.

- 7.3 The Guidance clearly sets out how gross development value should be defined and how costs should be defined for the purpose of viability assessments. In terms of land values for the purpose of viability assessments the Guidance confirms that a benchmark land value should be established on the basis of existing use value (EUV) of the land, plus a premium for the land owner. The premium should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. This premium should provide a reasonable incentive in comparison with other options available.
- 7.4 Benchmarking land value should:
- Be based on existing use value
 - Allow for a premium to landowners
 - Reflect the implications of abnormal costs
 - Be informed by market evidence including current use, costs and values wherever possible.
- 7.5 Where viability assessment is used to inform decision making under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the Plan. Local planning authorities can request data on the price paid for land (or the price expected to be paid through an options agreement).
- 7.6 For the purposes of Plan Making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development.
- 7.7 The economics of build to rent schemes differ from build for sale as they depend on a long term income stream. The guidance gives plan makers options to set out in plans where review mechanisms will be used for build to rent schemes.
- 8.0 Accountability**
- 8.1 This section of the Guidance deals with how viability assessments are presented and published to ensure accountability. It sets out that assessment must be prepared by a suitably qualified practitioner and presented in accordance with the Guidance. An Executive Summary should be used setting out key findings of the viability assessment in a clear way. These reports must clearly state what assumptions have been made about cost and values, if presented at the decision making stage they must set out any deviation from the figures used in the viability assessment of the plan.
- 8.2 Any viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances. Even in those circumstances an Executive Summary should be made publicly available.

Information used in viability assessment is not usually specific to that developer and thereby need not contain commercially sensitive data. Even then this information should be aggregated in published viability assessments and Executive Summaries and included as part of total costs figures. Where any exemption from publication is sought the local planning authority must be satisfied that this is the case.

- 8.3 An Executive Summary as a minimum must set out the gross development value, benchmark land value including landowner premium, costs, as set out in the guidance where applicable, and return to developer. The summary must refer back to the viability assessment that informed the Plan and summarise what has changed since then. The government will be publishing a template in the autumn.
- 8.4 Local planning authorities will now make reference to all planning obligations together with details of any modification or discharge of the planning obligation on its Planning Register. The government has recommended that each Section 106 Agreement includes an executive summary in accordance with the template that will be published. It is further recommended in the guidance that local planning authorities monitor Section 106 in accordance with the template.
- 8.5 The Guidance also sets out new requirements for the way local planning authorities that are charging Community Infrastructure Levy (CIL) must report on the levy. Neighbourhood spend must also be reported and there is now a requirement under the Guidance for charging authorities to publish reports on their website by 31 December each year, they can also continue to report in the authority monitoring report.
- 8.6 Using data on CIL and planning obligations, the Government recommends that local planning authorities prepare an Infrastructure Funding Statement using the standard template that is to be published. This Statement must set out infrastructure requirements (which would accord with or be a trigger for updating the 123 List), and for both CIL and Section 106 planning obligations, anticipated funding from developer contributions and the choices local authorities have made about how these contributions will be used. These Statements should be published on line.
- 8.7 Finally the Guidance recommends that local planning authorities and applicants should work together to better promote and publicise the infrastructure that has been delivered through developer contributions. It is suggested that this could be through the use of on-site signage, local authority websites or development specific sites.

9.0 Reason for recommendations

- 9.1 The issue around lack of transparency when viability becomes a consideration in planning decisions has been a point for considerable debate in Councils across the Country. The Guidance provides a clear guidance on how the matter of

viability should be dealt with in both Plan Making and decision making to ensure that policies are realistic, and that the total cumulative cost of all relevant policies does not undermine deliverability of the plan and at decision making local planning authorities can secure maximum benefits in the public interest through the granting of planning permission.

- 9.2 The Guidance focuses on ways Councils can be more transparent and accountable and suggests mechanisms by which Councils can demonstrate how contributions from Section 106 and CIL are being used to deliver the infrastructure to support the development of their areas. There is a need to review current processes to ensure that they now align with the PPG on Viability.

10.0 Equality impact assessment

- 10.1 An equality impact assessment is not required as the recommendations do not have a disproportionately negative impact on any of the specific protected characteristics as described in the Equality Act 2010.

11.0 Legal implications

- 11.1 Legal Services note the PPG's requirement for future s.106 planning obligations agreements to contain an executive summary. This will require a little extra drafting on each agreement with costs continuing to be borne by the developer.
- 11.2 Legal Services note the front-loading of viability work into the plan-making stage with the intention that viability appraisals should not be the norm at the point of decision-making as developers should work to meet the Local Planning Authority's expectations for development contributions when compiling an application. This process invites a 'then-and-now' comparison, and it is noted that although any excuse of having paid too much for land has been prohibited, loosely defined "economic change" is cited as a reason for exception.
- 11.3 Legal Services also note the expectation that where viability appraisals are produced this will be done in a fashion that is publicly transparent, allowing for aggregation of data to preserve commercial sensitivity. This should reduce the amount of exempt items liable to be considered by the Planning Committee in closed session. However, it is noted that applications for novel uses or build-to-rent models are likely to still require viability appraisals and these may still produce exempt items.

12.0 Director of Finance's comments

- 12.1 There are no direct additional financial implications of approving the recommendations within the report, all costs of developing the Viability protocol will be met from existing cash limits.

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Signed by:

Appendices:

None

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Guidance Viability	www.gov.uk/guidance/viability
National Planning Policy Framework (NPPF)	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: