

## **VIABILITY GUIDANCE NOTE**

**June 2020**

With effect from 10<sup>th</sup> June 2020

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## 1.0 BACKGROUND

- 1.1 The Kirklees Local Plan (KLP) (2019) establishes the Council's ambitious target to deliver a minimum of 31,140 homes over the plan period from 2013-31 to meet identified needs. On market housing sites of more than 10 homes, Policy LP11 of the KLP requires that 20% of the total units should be affordable homes. This figure has been examined through the plan-making process and found to be a sound approach. It is based upon affordable housing needs evidence and a district wide assessment of the economic viability of land for housing.
- 1.2 Whilst the Council encourages a higher proportion of affordable housing on these market housing sites, Policy LP11 does acknowledge that the proportion of affordable housing may be less than 20% where viability evidence for specific applications demonstrates that there are development costs that would otherwise prejudice the implementation of the proposal. This document principally provides general advice to applicants on the level of information that the Council require in order to commence discussions around development viability.
- 1.3 The guidance is primarily intended for use in relation to applications for new housing development and the provision of affordable housing. However, the principles are also applicable to other applications where policy compliance is subject to a consideration of viability. Whilst not an exclusive list, these include infrastructure provision (LP4 of the KLP) extensions or enhancements to the core walking and cycling network (LP23) and the provision of open space (LP63).
- 1.4 In the context of national planning guidance, Paragraph 57 of the National Planning Policy Framework (the Framework) provides the following advice:
- 'Where up-to-date policies have 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 weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.'*
- 1.5 This document is therefore intended to help applicants needing to commission or undertake viability assessment in order to minimise delays in processing and determining planning applications.

## **2.0 WHAT INFORMATION IS REQUIRED?**

- 2.1 Planning Practice Guidance (PPG)<sup>1</sup> defines viability assessment as a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. It should be based upon the current cost of building out the site, including the key elements of gross development value, costs, land value and developer return.
- 2.2 The Council expect the viability assessment to follow the guidance on viability published in the PPG, alongside the Framework. A suitably qualified person, such as a RICS surveyor, should prepare it. A basic checklist of information to be included within a viability assessment is set out in Appendix 1.
- 2.3 The Council will also expect that it will be independently assessed by a person/organisation approved by the Council. The cost of the independent financial assessment shall be borne by the applicant as a separate cost to the planning application fee as set out at Appendix B of the Kirklees Interim Affordable Housing Policy – January 2020<sup>2</sup>.

## **3.0 VIABILITY ASSESSMENT INPUTS**

### **Land Value**

- 3.1 The PPG clarifies that to define land value for any viability assessment, a benchmark land value (BLV) should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. This uplift is often referred to as 'existing use value plus's (EUV+).
- 3.2 BLV should be based upon the EUV. It should allow for a premium to landowners and also take account of the implications of abnormal costs, site-specific infrastructure and professional site fees. In accordance with the PPG, the cost of fully complying with policy requirements should be accounted for in the benchmark land value. In respect of potential risk, this is provided for in the assumed return for developers at the plan making stage and it is the role of developers to mitigate these risks.
- 3.3 EUV is the value of the land in its existing use. It is not the price historically paid or the price that may have been contractually agreed to be paid by the developer to the landowner. EUV is determined by assessing the value of the specific site or type of site using published sources of information such as agricultural or industrial land values, or if appropriate, capitalised rental levels at an appropriate yield (excluding any hope value for development). It should be informed by market evidence of current uses, costs and values.

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<sup>1</sup> Planning Practice Guidance: Viability Paragraph: 010 Reference ID: 10-010-20180724 <https://www.gov.uk/guidance/viability>

<sup>2</sup> <https://www.kirklees.gov.uk/beta/planning-policy/pdf/interim-affordable-housing-policy.pdf>

Sources of data can include land registry records of transactions; market reports; estate agent websites; property auction results; valuation office agency data; public sector estate/property teams' locally held evidence. EUV should be benchmarked against both market values and sales prices of comparable sites in the locality.

- 3.4 The premium (the+ in EUV+) should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. It should provide a realistic incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to fully comply with policy requirements. What is reasonable will be determined from market evidence. It might include benchmark land values from other viability assessments. It should then identify any adjustments necessary to reflect the cost of policy compliance (including for affordable housing), or differences in the quality of land, site scale, market performance of different building use types and reasonable expectations of local landowners.
- 3.5 When agreeing land transactions, landowners and site purchasers should have regard to development plan policies and all other material planning considerations, including any Community Infrastructure Levy (CIL) requirements (refer to Paragraph 3.17). Applicants are also reminded of guidance within the PPG that under no circumstances should the price paid for land be a justification for failing to accord with relevant plan policies.

### **Gross Development Values**

- 3.6 Gross development value (GDV) is an assessment of the value of development. For residential development, it will be derived from any/all of the following: the sales values of any units, and any other buildings to be sold; the rental value of any units be rented out which are capitalised using a yield, ground rents, and any rents generated by commercial floorspace; or any other use to give an overall capital value. Grant and other external sources of funding should be considered where relevant.
- 3.7 Assumptions relating to development values should be justified with reference to up-to-date transactions and market evidence. These should relate to comparable new build properties that are within a reasonable distance from the site (where available). It should include a brief summary to explain how the identified sites are comparable and how the values have been interpreted or adjusted (as appropriate) to take into account any variations in, amongst other matters, scale, location, rents and yields.
- 3.8 Affordable housing mix, tenure and the proportion and affordability of specific affordable products (such as Starter Homes), as well as transfer values, should be based upon guidance within the Kirklees Interim Affordable Housing Policy – January 2020 referred to above.

## Development Costs

- 3.9 Development costs can be defined as the total of all costs incurred from the start of the development project through to the construction phase and on to the final sale of the units. They should be based on current day figures.
- (a) *Build Costs*
- 3.10 A detailed breakdown of build costs should be provided to include at least the following:
- Preliminaries;
  - Demolition/ site clearance/ site preparation;
  - Base build costs;
  - Abnormal costs;
  - On-site infrastructure and utilities;
  - Offsite infrastructure;
  - Contractor's overheads and profit;
  - Design fees and professional fees; and
  - Contingencies
- 3.11 These should be benchmarked against publicly available sources such as the Building Costs Information Service (BCIS) or other appropriate data sets, or verified by independent cost consultants. Please note that BCIS excludes external areas, infrastructure and service provision costs, which will need to be added.
- 3.12 For the purposes of the assessment, abnormal costs are dependent on site-specific circumstances and may include decontamination, land stabilisation and land forming or raising.
- 3.13 Any abnormal costs should be clearly explained and supported by a Quantity Surveyor (QS) Cost Report. This should quantify the cost breakdown for the entire project and, if necessary, costed value engineering exercises looking at alternative design solutions prepared by a QS to demonstrate that the most cost-effective and appropriate design solution has been presented in the viability assessment.
- 3.14 The Council may, at the applicant's expense, request a QS cost report to justify the figures given in the viability, if one is not provided. Failure to provide a suitable cost report within a reasonable timescale may be deemed a breach of the "transparency" obligations set out in the PPG and, as such, the council may consequently choose to reject the applicant's viability claim.

(b) *Professional fees, marketing and finance*

- 3.15 These costs should be fully evidenced and validated having regard to the complexity of the proposal and the development.
- 3.16 When considering finance costs as part of the viability process, it will typically be assumed that all developers will incur generic average finance costs based on 'standard' market rates. The benefit of this standardised approach is that planning consent runs with the land, which may be sold to another party with different finance arrangements. It is also noted that any viability model should reflect that finance costs vary throughout the development period, with the majority of interest costs typically incurred during construction.
- 3.17 Where the applicant is submitting a viability appraisal to demonstrate that the proportion of affordable housing may be less than the 20% required by Policy LP11 of the Kirklees Local Plan as a consequence of development costs, evidence should also be provided by the applicant to demonstrate whether or not grant funding has been considered or could be available in order to deliver a policy compliant scheme.

(c) *Planning obligations and Community Infrastructure Levy (CIL)*

- 3.18 CIL is a system to charge developers to help pay for extra infrastructure across the district. The money can be spent on strategic infrastructure that benefits the Council's communities, including new schools, roads, transport services, sports facilities, playgrounds and green spaces. In accordance with the 2019 CIL Regulations, CIL and S.106 planning obligations can now be used to fund the same infrastructure projects. The Council's indicative Charging Schedule approved by the Planning Inspector within the Examiner's Report dated January 2020 is set out at Appendix 2.
- 3.19 Within any viability appraisal, any likely S106 planning obligations should be included as a development cost and be determined in accordance with the Kirklees LP and relevant guidance. These 106 requirements will need to be agreed with the Council before any assessment of the viability appraisal is commissioned. CIL charges, once adopted, should also be included. The appraisal should set out the amount of floorspace used to calculate the CIL liable development as well as the CIL rate used.
- 3.20 In the event that the required planning obligations/CIL render the scheme unviable, the Council may consider flexible arrangements in respect of their timing over the lifetime of the development. However, in accordance with guidance within the Framework and the PPG, where safeguards are necessary to make a development acceptable in planning terms and these cannot be secured, planning permission will not be granted for unacceptable development.

## **Developer Profit**

- 3.21 The Council recognise that developers must receive a competitive return in order for a scheme to proceed. It is further appreciated that a sufficient level of profit is required in order to secure finance. However, as the PPG clarifies, viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.
- 3.22 For the purposes of plan making, the PPG confirms that 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. However, there are a number of factors that determine what a reasonable level of profit might be, including the availability of development finance, the state of the market and the consequent risk in proceeding with schemes, as well as development values and demand.
- 3.23 Consequently, the Council do not intend to adopt a rigid approach to profit levels. Whilst it is expected that it will fall within the 15-20% range of GDV, in determining the appropriate level for an individual scheme, regard will be had to the individual characteristics of that scheme. Supporting evidence must be provided from applicants and lenders to justify why a particular return is appropriate, having regard to site specific circumstances, market conditions as well as profits achieved on comparable schemes.

## **4.0 REVIEW MECHANISMS**

- 4.1 The viability process is typically based upon presumed costs and values, as actual costs are generally unknown until after the scheme is built. Any subsequent reduction in planning requirements at application stage allows for a competitive return to a development and it can reasonably lower the development risk in order to bring a site forward. The PPG provides the following guidance:

*'Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project'.*

- 4.2 A review mechanism therefore provides the opportunity to determine whether the required returns have been exceeded and whether planning requirements could, in fact, be met. It will be based upon an accurate



assessment of viability at the point of delivery using the same methodology as the original assessment but based on current market conditions and the most reliable data available, including evidenced build costs and actual sale/rental values of completed units.

- 4.3 Consequently, unless there are clear and justifiable reasons not to, viability review mechanisms will be incorporated within Section 106 agreements on the following schemes:
- a) All major residential/mixed use applications<sup>3</sup> which do not meet the strategic affordable housing target; and
  - b) All major applications where policy requirements are not met in full at the time permission is granted.
- 4.4 The trigger for the review will be set out within a Section 106 agreement at a stage to be agreed with the developer. On larger sites or phased developments, more than one review trigger may be appropriate. It must be prior to sale of the whole development to ensure that the review and any additional contribution arising from this are enforceable. It will typically be no later than the point at which 75% of homes are sold.
- 4.5 The general approach will be to seek 100% of any net profit element (after any agreed developer profit) to be paid to the Council, unless the applicant can robustly justify a different percentage. It will be in the form of a financial contribution towards off-site housing provision or other policy requirements. It will also be capped to an amount equivalent to the full cost of the mitigating benefit (including affordable housing provision) that has been reduced or waived.

## **5.0 VACANT BUILDING CREDIT**

- 5.1 Vacant Building Credit (VBC) was introduced by the Government to provide an incentive for brownfield development on sites containing vacant buildings. Following two legal challenges in the High Court and Court of Appeal in 2015 and 2016, the policy was subsequently restored.
- 5.2 Paragraph 63 of the Framework provides advice on the approach to vacant buildings. It confirms that to support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount, equivalent to the gross floorspace of the existing buildings. The Council also

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<sup>3</sup> The threshold for a major residential development is the provision of 10+ dwellings or if the site area exceeds 0.5ha if the number of units is unknown. Major non-residential development includes development in excess of 1000 square metres or a site area of 1ha or more as well as the winning and working of minerals and waste development.

encourage the re-use or adaptation of vacant properties and the efficient use of previously developed land in sustainable locations. It will therefore look favourably upon VBC to encourage applicants to bring forward vacant buildings on brownfield sites along with sufficient evidence that any referenced building is vacant.

- 5.3 Any applicant wishing to claim VBC should state this clearly as part of their planning application and provide a justification for its application. If it is being claimed as part of a submitted viability assessment, it should set out the amount of VBC being applied for and how this has been calculated. VBC does not apply to vacant buildings that have been abandoned.

## **6.0 CONFIDENTIALITY**

- 6.1 In accordance with the Framework, any viability assessment should be prepared on the basis that it will be made publicly available in the interests of transparency.

## APPENDIX 1: BASIC CHECKLIST OF INFORMATION REQUIRED

<b>Section A</b>	<b>Proposed Scheme Details</b>	✓
	A brief explanation of the background and history of the scheme and why viability is an issue.	
	Gross Site Area, and calculation of net developable site area with explanatory table of areas used to calculate the net area.	
	Development density expressed in terms of dwellings per gross hectare. If the density is less than the minimum 35dph required in the LP then a supporting narrative as to why this is the case should be provided.	
	Number of residential units.	
	Number of habitable rooms.	
	Unit sizes.	
	Type and Mix of Unit numbers i.e. number of bedrooms, terrace, detached, semi etc. Supporting narrative to justify the choice of mix and comparison with SHMAA.	
	Scaled Floor plans and floorspace areas: Gross Internal Area (GIA) Net Saleable Area (NSA) Gross area of internal garages.	
	Split between proposed tenures	
<b>Section B</b>	<b>Development programme</b>	
	Timing of cost and income inputs including project/construction plans, land/development/letting information relating to pre-build, construction and marketing and sales/lettings periods. This information should be provided in the form of a sufficiently detailed cash flow spreadsheet that allows individual costs and income streams in the assessment to be tracked over time.	
	Growth assumptions for longer-term schemes informed by recognised market sources for the relevant area.	
<b>Section C</b>	<b>Gross Development Value</b>	
	Residential sales values, ground rents, sales rates (per month), assumptions regarding forward sales, grant or other income and supporting market evidence.	
	Rental values, yields and supporting evidence.	
	Anticipated value of affordable units based on evidence including details of discussions with Registered Providers and RP offers.	
<b>Section D</b>	<b>Costs</b>	
	A clear and evidenced explanation of all build and in particular abnormal costs associated with the development should be provided. This should be supported by a quantified cost report and value engineering exercise prepared by a suitably qualified Quantity Surveyor with explanations of costed	

	potential alternative design solutions that demonstrate the adopted solution is the most appropriate and cost effective.	
	Build costs.	
	Abnormal costs (including supporting evidence).	
	Details of other costs such as demolition (including supporting evidence)	
	Fees: Sales/ letting and marketing fees and professional fees (including supporting evidence).	
<b>Section E</b>	<b>Profit</b>	
	Profit on cost and value (value and percentage).	
	Return on Gross Development Value with supporting evidence based narrative (value and percentage).	
<b>Section F</b>	<b>Benchmark Land Value</b> If the site has already been purchased or is under contract at an agreed purchase price. The purchase price excluding Stamp Duty and VAT MUST be declared. A search at the land registry will be made as a matter of course to verify the purchase price.  The Benchmark land value has to be established on the basis of Existing Use Value plus the <b>MINIMUM Premium (EUV+)</b> required for a reasonable landowner to treat. Market evidence justifying the existing land value and suggested premium must be provided	
<b>Section G</b>	<b>Planning Contributions</b>	
	CIL	
	Section 106 costs	
<b>Section H</b>	<b>Development Finance</b>	
	Finance Costs for the project and supporting market evidence based narrative for the adopted interest rate, arrangement fees	
<b>Section I</b>	<b>Conclusion</b>	
	Set out the findings of the appraisal and what affordable housing and other required policy contributions the scheme can support.	

**Notes:** Electronic as well as paper copies of the assessments should be submitted and in the interests of transparency, these should include the formula used to calculate outputs.

Cashflows should be provided to explain the timing and quantum of costs and income streams.

**APPENDIX 2: INSPECTOR APPROVED CIL CHARGING SCHEDULE  
(Not yet adopted as of June 2020)**

**Rates per square metre**

Residential Development (C3) zones	Charge in £
Zone 1	£80
Zone 2	£20
Zone 3	£0
All other uses	£0 District wide
Dewsbury Riverside Strategic site	£0
Bradley Strategic site	£5

The zones are broadly set out (subject to the Inspector's requested modifications in relation to the strategic sites) on the charging map within the Council's Community Infrastructure Levy Draft Charging Schedule (Map 2019)

<https://www.kirklees.gov.uk/beta/planning-policy/pdf/cil-draft-charging-schedule.pdf>