

MAYOR OF LONDON'S AFFORDABLE HOUSING SPG

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Introduction



Pending translating his policy ambitions on AH into the new London Plan (2017 draft), the new Mayor has issued draft AH and Viability SPG in Nov 2016 and consultation is now closed.

The SPG when adopted will be a central element in decision making on housing and mixed use applications (until the new London Plan). It also gives us major hints as to the direction of travel of the Mayor for the new London Plan (2.2) and for exercise of his "recovery"/call in powers.

The overarching aim can, I think, be summarised as follows:

To significantly increase delivery through s.106 obligations by introducing a carrot and stick approach designed to embed affordable housing requirements at a 35% (habitable rooms) threshold into the London housing market which will then ensure that land values reflect that requirement thus removing the "circularity" which has led to delivery of just 13%.

The SPG is a bold statement of intent - and elements of it are highly contentious. The direction of travel is clear.

KEY THEMES



It has the following key themes:

1. current delivery is well below policy requirements and falling – and a step change is required even to achieve the requirements of the existing London Plan
2. Strategic long term aim that half of all new homes to be AH policed by an active use of intervention powers when necessary
3. A threshold approach – if you exceed the threshold no need for viability testing – “the carrot” - and if you do not, rigorous testing and reviews - “the stick”
4. An open and transparent approach to viability testing
5. Adoption of the RLV methodology; benchmark land values and EUV+ not AUV
6. Review mechanisms
7. 10 threshold flexibility and changed VBC approach
8. Support for build to rent



The Context: Law



The Essential (and obvious) Starting Point:

- (1) a community’s need for AH is a material planning consideration at both plan making and decision making stages: *R v. Tower Hamlets ex p Barratt Homes* [2000] JPL 1050.
- (2) S.38(6) - determination in accordance with development plan unless other considerations indicate otherwise. correct application of AH policies is thus central to lawful decision making;
- (3) Development Plan comprises the London Plan and Local Plans of each London borough
- (4) SPG can supplement but not change the development plan. Subject to that hurdle, SPG is a material consideration in planning decision making



Context - National Policy



NPPF: Para 47

“To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing.... so far as consistent with the policies in this Framework...”***

Central imperative – to plan to meet need (*St Albans City and District Council v. Hunston* [2013] EWCA Civ 1610; [2014] JPL 599 @ [6], [25 – 26]; and *Solihull MBC v. Gallagher Estates* [2014] EWCA Civ 1610; [2015] JPL 713 @ [9-10]).

Para 154/156 Local Plans should be “aspirational but realistic” [154] and should include strategic policies “to deliver the homes....needed in the area” [156].



National Policy and Viability



NPPF158 – “take full account of relevant market and economic signals” and NPPF205 be flexible to changes in market conditions.

NPPF173: plans should be deliverable

To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing owner and willing developer to enable the development to be deliverable.”

NPPG 016:

“A site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken.”



Land Values



NPPG023 is the crucial paragraph and addresses how land value should be assessed.

“Central to the consideration of viability is the assessment of land or site value. Land or site value will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected.

In all cases, land or site value should

- *reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;*
- *provide a competitive return to willing developers and landowners; and*
- *be informed by comparable, market based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.”*



“The Circularity”



NPPG 2014	RICS 2012
<p>In all cases land or site value should</p> <ol style="list-style-type: none">1. reflect policy requirements and planning obligations and where applicable CIL2. Provide a competitive return to willing developers and landowners; and3. Be informed by comparable market based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used. <p>No mention of purchase price - deliberate</p>	<p>Site value should equate to the “market value” (standard definition) subject to the following assumption:</p> <ul style="list-style-type: none">- that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan.- “market value” formulation leads to reliance on comparables and actual sale price.



The Correct Approach?



- Development plan is concerned with assessing needs and meeting them in a viable way
- NPPF: para 49 – assess and plan to meet AH need. This is intrinsic part of what sustainable development means [14]. Viability [173] has to be understood in this context
- NPPG properly understood necessarily puts “policy compliance” as the starting point for land value. Basic economics. Necessary to limit hope value of avoiding AH obligations. NPPG does not rely on actual sales price and only relies on comparables if they themselves are “policy compliant”
- RICS guidance - pre-NPPF/NPPG puts “market value” and therefore comparables first and policy compliance as a factor to have regard to. RICS 2015 recognises problems with approach - circularity
- To secure compliance with statutory scheme and NPPF, land value in viability appraisals must start from policy compliant scheme.
- **This is what the SPG is trying to get back to**

LONDON PLAN 2016



Policy 3.11 Strategic – “maximise AH” and “ensure an average of at least 17000” average per annum over life of plan.

Policy 3.12 – Planning Decision Making:

“The maximum reasonable amount of affordable housing should be sought having regard to”

- a. ***current and future, local and regional AH need and having particular regard to the guidance provided by the Mayor through the London Housing Strategy, supplementary guidance...”***

“Negotiations on sites should take account of their individual circumstances including development viability, the availability of public subsidy, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation (‘contingent obligations’), and other scheme requirements.”

Factual Context – Need and Delivery



The Need:

The London SHMA (2014): 23,200 market homes a year and 25,600 affordable homes – more than 50% of a high total annual figure. Note how much higher the need is than the 17000 – policy already takes into account delivery concern: see LP para 3.64

Routes to Delivery

1. Investing more public money in AH
2. Bringing forward more public land for AH
3. Increasing the amount of AH delivered through the planning system

Actual Delivery

MOL Nov 2016 – “just 13%” AH in planning permissions.

Average of 7,176 over three years to 2015 (cp 17,000 policy requirement/25,600 need) and falling (5,299 2015/16) - all in a buoyant market. Causes?

Therefore just to achieve the current policy average (17000) step change required.



A (partial) explanation of the under-delivery



The SPG seeks to address some possible drivers of the under-delivery:

1. the downward spiral or “circularity” – land values based on assuming less than policy compliant AH therefore making delivery of policy compliant AH impossible in a downward spiral – RICS 2012 paper; Territorial Army Islington
2. lack of transparency to allow assumptions to be tested openly;
3. inadequate review mechanisms for when viability is better than assumed in viability appraisals
4. some local authorities sacrificing AH to secure other s.106 benefits
5. VBC unnecessary to incentivise development in London



The SPG Overall Approach



1. No fixed target for AH in developments (but not departing from fixed thresholds in Local Plans)
2. Robust framework for maximising delivery as part of the strategic aim of 50% with attendant changes in processes, recovery and methodology
3. Focus on viability by
“developing a more consistent and transparent process to increase the contribution from s.106 obligations” – 2.1
“clearer and more consistent approach to assessing and scrutinising development appraisals... to establish the viable level of affordable housing provision.”
4. All decision makers and plan makers “strongly encouraged” to follow the approach on the SPG – 1.10.
5. A major strengthening/hardening of approach?



The SPG - Transparency



Recall the issue: MoL and LBs obtain viability information on a “commercially confidential” basis and public and councillors to not see it and cannot test it.

FOIA requests have led to disclosure but often too late – “the public interest in maintaining confidentiality rarely outweighs the public interest in disclosing the information” - 1.18.

A major change in approach – “Therefore... given the importance of wider scrutiny... the Mayor will treat information submitted as part of or in support of a viability assessment transparently” – even if the LA’s do not publish it.

A very limited exception – “very exceptional circumstances” – raised at outset; and demonstrating on the specific facts why the information must be kept confidential.

If this approach survives consultation it will result in much more rigorous examination of viability assessments and assumptions including by objectors.



Transparency – Possible Consequences



On the upside:

1. The scope for some of the more “surprising” decisions of authorities and the MoL (historically) on AH will be limited because the public as well as the LBs will be looking over his shoulder;
2. over time, some of the more questionable assumptions (by both LAs and Developers) will be exposed and rejected;
3. A level playing field
4. Land transactions will be based on a proper understanding of what and what will not be accepted
5. Less scope for JR?

On the downside:

1. use of generic assumptions – lowest common denominator – highest costs, lowest values?
2. unintended consequences/responses – unpredictable response by industry
3. Scope for “deals” between experts reduced – more appeals?

SPG – the Threshold Approach – The Carrot



The “Nudge” or Carrot - where schemes meet or exceed 35% of habitable rooms on site, meet tenure split and meet all other policy requirements without public subsidy – no need to submit viability information. Route B.

The basic idea - “**to embed** affordable housing requirements into land values across London”

Developers thus have certainty and consistency – if agreed level of progress in 2 years. If not review and 60/40 split. So strong incentive to earlier delivery.

If the SPG is adopted, limited risk of being required to provide more either by LA or on appeal. (But is that a real risk given 13%?)

The 35% approach expressly does not “trump” local approaches where requirement is more than 35% - 2.7

The Threshold Approach – the Stick



The Stick: if not meeting 35% (or only meeting it with public subsidy) or off site in lieu

1. Full viability assessment in a standardised form without hidden formula and provided in format that can easily have assumptions adjusted;
2. The appraisal rigorously assessed;
3. The viability assessment made public – with wide ranging and unpredictable consequences
4. review mechanism if outputs at 75% completion different from those in original viability appraisal
5. review mechanism if inadequate progress in 2 years
6. **60/40** split of uplift to AH offsite
7. “off site in lieu” only in exceptional circumstances where will have “demonstrable benefits in further the affordable housing and other policies of London Plan.



The Threshold Approach and Public Subsidy



1. Public subsidy may be used to top up the 35% towards the 50%
2. If available “should be utilised” – 2.18 – built into s.106
3. Criteria for grant – 40% and Affordable Homes Programme 2016 – 2021
4. Different approach for route A and route B schemes



Vacant Building Credit



In *West Berks* the status of the WMS on VBC and crucially the ability of plan makers to depart from it on the facts of their particular areas was clarified. The Mayor is robustly using that ability on the facts of London:

“the Mayor’ view is that in more circumstances it will not be appropriate to apply the VBC in London.”

The exception is where it would provide an incentive for brownfield development that would not otherwise come forward for development subject to strict criteria and anti-avoidance measures. (2.61 – 2.62)



The Viability Appraisal



Very important on approach to Land values - DK. But other key matters:

1. Support for the London Borough Viability Protocol thus giving that document enhanced status;
2. Focus on “evidence” to support inputs – “appropriately and adequately justified by evidence”. Expert views will have to be backed up by evidence
3. Requirement to provide full working model – no hidden calculations/inputs
4. Requirement for detailed narrative to explain inputs
5. Information on target market and consistency between spec and values
6. use of present day values
7. comparables should be directly comparable – see circularity above
8. Scenario testing of growth assumptions
9. Rigorous testing of AH values (and 14x cap)
10. Developers profit to be justified on a scheme specific basis - reflecting risks based on relevant comparables – lower returns on private rented

