

Benchmark Land Viability

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The situation

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- Viability assessments are in the front line of tensions between
 - (a) incentivising release of land for housing
 - (b) deliver sustainable development (including affordable housing)
- BLV is critical part of viability assessment
- Guidance is causing disputes rather than clarity
- Affordable housing need rising and AH delivery rates falling
- Polarisation of perspective between LPAs and private sector (including RICS)
- Danger of loss of public confidence in planning system (“dark arts”)

Benchmark Land Value – intro



- Critical component of viability assessment
 - Baseline against which viability of particular scheme is tested

 - Different methods promoted in different guidance

 - EUV
 - EUV+
 - AUV
 - Market value
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National Planning Policy Context (1) NPPF



Para 173:

- “Pursuing sustainable development requires careful attention to viability and costs indecision-taking..... 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 cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”
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(2) PPG

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- “no standard answer to questions of viability” para 2
- “a range of sector led guidance on viability methodologies in plan making and decision taking is widely available” para 2
- Evidence based judgement – “realistic understanding of the costs and values of development in the local area and an understanding of the operation of the market” – para 4
- “Central to the consideration of viability is the assessment of land or site value. Land 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” (para 23)

PPG

Paragraph: 023 Reference ID: 10-023-20140306

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“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.”***

PPG

Paragraph: 024 Reference ID: 10-024-20140306

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- A **competitive return** for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The **price will need to provide an incentive for the land owner to sell in comparison with the other options available**. Those options **may include** the current use value of the land or its value for a realistic alternative use that complies with planning policy.

EUV and EUV +

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- Mayor's Housing SPG (3/16) at 4.1.4

On balance, the Mayor has found that the 'Existing Use Value plus' approach is generally most appropriate for planning purposes, not least because of the way it can be used to address the need to ensure that development is sustainable in terms of the NPPF and Local Plan requirements, he therefore supports this approach

“‘plus’ element will vary on a case by case basis based on the circumstances of the site and owner and policy requirements”

EUV and EUV+



Part 3 of Mayor's Draft Viability SPG (Nov 2016)

3.43 on EUV +

“The benefit of this approach is that it clearly identifies the uplift in value arising from the grant of planning permission because it enables comparison with the value of the site without planning permission”.

3.46 – different approach to EUV + only in “exceptional circumstances” which must be “robustly justified by the applicant”

EUV and EUV+



- But:-
 - What if no EUV? (no constraint vs resort to other methods)
 - Arguments that there will be insufficient incentive to release land for development at that level (see RICS guidance at para 3.4.1)
 - Shift away from EUV+ (when low) creates paradox that least constrained sites have the highest benchmark land values (eg Parkhurst Road)


AUV

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Mayor's Housing SPG at 4.1.6


if AUV is used "must also reflect policy requirements"

"approach should only be used if alternative use would fully comply with development plan policies and it can be demonstrated that the alternative use could be implemented on the site in question"

- How quantify realistic alternative ?
 - The problems with residual valuations (susceptible to inputs)
 - What assumptions as to planning policy requirements?
 - What assumptions as to planning risk?
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Market Value (1)

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- Royal Institution of Chartered Surveyors (RICS) - Financial Viability in Planning (2012)
 - Within "sector guidance" (PPG para 2)
 - Guidance acknowledges responsibility of LPAs for "promoting policies for sustainable development and decision taking on schemes based on their compliance with sustainable development policies" (p.2 and para 1.3.3)
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RICS (2012) – market value (2)

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The market value subject to the following assumption: that the value has regard to development plan policies and all other material considerations and disregards that which is contrary to the development plan (Para 2.3.1)

Rationale:

- 3.4.1 – problem with EUV and EUV+ “does not reflect the workings of the market as land is not released” [at that level]
- Emphasis on landowner “optionality” (if not sufficiently incentivised will hold on to its land)

Market Value (3)

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- Points to note
 - Special assumption re planning policies
- Para 3.4.7 – guarded language on comparables
- 3.6.1 – health warnings on “actual purchase price”
- Begs critical questions as to comparability and adjustment

Market Value and PPG



- Not expressly referred to in PPG para 23 or 24 (but not ruled out)
- Critical issue is how are tensions resolved when the 3 bullet points in PPG para 23 pull in different directions?
- Also a few other issues:-
 - What does “informed by” mean?
 - What does “whenever possible” mean?
 - How comparable is the market evidence?
 - What adjustments are needed?
 - What is the “market norm” work?
 - What if the market takes a different view from planning policy as to provision of affordable housing?

Criticisms of the application of market value



RICS Research – Financial Viability Appraisal in Planning Decisions: Theory and Practice (April 2015)

“If market value is based on comparable evidence without proper adjustment to reflect policy compliant planning obligations, this introduces a circularity, which encourages developers to overpay for sites and try to recover some or all of this overpayment via reductions in planning obligations.”

- Circularity concern

Criticisms of the application of market value (2) $\frac{L}{C}$

- Mayor's Housing SPG (3/16) at 4.1.5
 - Contains warning about misapplication of market approach
 - "market value approach should only be accepted when it can be demonstrated to properly reflect policy requirements and take account of site specific circumstances."
 - "In many cases this will require an adjustment of market comparables to take account of policy compliant planning obligations"
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Criticisms of the application of market value (3) $\frac{L}{C}$

- Mayor's Draft Viability SPG (Nov 2016) at 3.48 – recent research published by RICS found that the market value approach is not being applied correctly and "if market value is based on comparable evidence without proper adjustment to reflect policy compliant planning obligations, this introduces a circularity, which encourages developers to overpay for the site and try and recover some or all of this overpayment via reductions in planning obligations"
"thus market value will general not be accepted by the Mayor"
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Islington SPD on Development Viability (2016) identifies “practical difficulties” in use of market based evidence (para 6.60) $\frac{L}{C}$

- full facts of past transactions are rarely available and bids for land may have overestimated actual value.
- potential for transactions to not fully reflect current planning policy requirements such as those relating to affordable housing and density
- Sites may have a differing ‘inherent’ value depending on the presence or absence and nature of income generating existing uses.
- Land transactions are typically based on assumptions of growth in values (whereas viability assessments are normally based on current values).
- Transactions may relate to sites of different sizes, densities, mix of uses and costs to facilitate development.
- Reliance on transactions that are not comparable, that do not reflect the Development Plan policies as they relate to the application site, or that are based on assumptions of growth, may lead to inflated site values. This would restrict the ability to secure development that is sustainable and consistent with the Development Plan.

Parkhurst Road appeal Inspector (2015) (para 72) $\frac{L}{C}$

- “...I can understand the wider concern of the Council about the possible effect of inputting purchase prices which are based on a downgrading of the policy expectation for affordable housing on the eventual outcome of a scheme viability appraisal. If such prices are used to justify a lower level of provision, developers could then in effect be recovering the excess paid for a site through a reduced level of affordable housing provision. Such a circularity has been recognised in research for the RICS, and the Council in its SPD and the GLA (in its Development Appraisal Toolkit Guidance Notes of 2014) are alive to this potential outcome of using purchase price as an input in viability assessment. The Council postulates an undesirable scenario of diminishing returns of affordable housing and eradication of the potential to achieve its delivery.”

The Big Tensions



- Does the need to incentivise delivery trump the circularity concern?
- If it does, what will the result be?
- What brake is there on the downward spiral of fewer units of AH (the circularity concern)?
- If a low EUV is a reason for departing from the use of that method in favour of market value; won't the least constrained sites be the ones which are likely to produce the highest BLV?

Pinch points in the analysis



- Proper understanding of affordable housing policy (what does applying AH policy flexibly entail?)
- Proper understanding of extent to which there is an imperative to deliver housing vs delivery of sustainable development
- What is comparable evidence? (*cf* VIP 12 at 4.3 “*high density or complex developments, urban sites and existing buildings with development potential, do not easily lend themselves to valuation by comparison*”)
- What adjustments are necessary?
- How are they shown?
- How should landowner “optionality” be approached?
- Who are the parties to the notional transaction at which the “price” to release the site is set?
- Does the hypothesis require a successful conclusion of negotiations?
- How are the (para 23 if PPG) bullet points weighted?

In short



- Deliverability of AH significantly affected by choice of BLV
 - Guidance unclear (and in conflict)
 - Impacts of small tweaks in viability methodology significant (and often opaque)
 - Mismatch of resources and expertise
 - Danger that the credibility of the planning system is at stake?
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Bigger questions



- Is the idea of delivering AH through private schemes fit for purpose?
 - Is there an unsolvable contradiction between:
 - A planning system whose requirements are a fetter on the market
 - A viability system that emphasises the practical operation of the market?What if the market norm is a flawed understanding of what planning policy requires?
 - Is the housing market efficient or broken?
 - Given the affordability gaps; is there “a” market?
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