

NEIL CAMERON QC

**Viability in Planning: Coping with Covid
Local Plans and Section 78 Appeals**

Local Plans

- Local plan preparation
- Local plan examination
- Local plan review
- CIL charging schedules



Local Plan Preparation

Current PPG guidance indicates that the role for viability assessment is primarily at the plan making stage.

One of the main aims is to ensure that policies are realistic.

Housing delivery – paragraph 39 of the Plan Making PPG – the assumptions relating to ‘achievability’ require assessment of economic viability

Planning for business – paragraph 40 of the PPG- LPAs are advised to engage with the business community to understand barriers to investment including “viability”

Developer contributions – policy requirements are to be assessed for viability –paragraph 48

Are the assumptions which informed any assessments still valid? – e.g. profit level.

Are policies realistic?

Local Plan preparation

Sustainability Appraisal

- To include an assessment of potential effects on economic conditions (paragraph 1 of the PPG on SA/SEA)
- Is the assessment up to date?

Assessment Criteria	Question	Site Reference																
		BRA028	BRA029	BRO006	BRO007	BRO008	BRO009	BUR017	CRA005	DES014	DES040	GED003	GED004	KET002	KET015	KET023	KET024	KET025
Yield		Up to 10	Up to 15	1	5	Up to 15	Up to 15	Up to 7	Up to 15	Up to 15	Up to 15	6	3	6-7	12-14	2	4	1
Accessibility to	Facilities	~	~	✓	~	~	✗	✓	~	✓	✓	✓	~	✓	~	✓	✓	✓
	Pedestrian/cycle links	✗	✗	✓	✗	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Public Transport	✓	✗	✓	✗	✓	✗	✓	~	~	✓	✓	~	✓	✓	✓	✗	✓
	Settlement hierarchy	~	✗	~	~	~	~	✓	~	~	~	~	~	✓	~	✓	✓	✓
Health		✓	✓	✓	✓	✓	✓	✓	✓	✓	~	✗	✓	✓	✓	✓	✓	✓
Skills		✓	~	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Liveability	Impact of noise or odour	~	✓	✓	✓	~	~	✓	✓	✓	~	✓	✓	~	~	✓	✗	✓
	Compatible development	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓
	Size of site	✓	✗	✓	✓	✓	✓	✓	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓
Biodiversity impact on	Protected species	✓	✓	✓	✓	✓	✓	✓	✓	✓	~	~	✓	✓	✓	✓	✓	✓
	Ecological features	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Landscape		✓	✗	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	~	~	✓	✓	✓
Cultural		✓	✓	✓	✓	✓	✓	✓	~	~	✗	✗	✓	✓	✓	✓	✓	✓

Local Plan Examination

Soundness

Is the plan deliverable?

Can developers rely on 'subject to viability' wording in policies or should they challenge the LPA's viability assumptions?



- A LPA is required to review a local plan within five years from the date of adoption (regulation 10A T+CP (Local Planning) (England) Regulations 2012)
- One of the factors which a LPA may consider when determining whether a plan should be updated is “significant economic changes that may impact on viability” (PPG on Plan-making paragraph 65)
- The significant changes in economic circumstances which are occurring may be thought to be obviously material
- Those who find that proposed developments are rendered unviable by economic changes can draw that to the attention of a LPA and request that they review their plan
- LPAs should consider the risk of judicial review of decisions relating to the review of local plans

CIL Charging Schedules

A balance must be struck between the desirability of funding infrastructure required to support development and impact on economic viability of development across a local authority area (regulation 14(1) of the Community Infrastructure Levy Regulations 2010)

- Should LPAs review that balance?
- Should developers take a more active part in CIL charging schedule examinations?
- Should developers consider a forum type approach as adopted for housing land issues at local plan examinations?
- Will the measures to allow small and medium sized developers to defer payment be sufficient – see CIL guidance published by MHCLG on 13 05 20

Section 78 Appeals

- The PPG on Viability (paragraph 007) contemplates that viability assessment may be needed at the decision making change “where a recession or similar significant economic changes have occurred since the plan was brought into force.”
- Even if contributions or affordable housing provision were agreed at the LPA decision making stage, they can be open for re-consideration in the appeal.
- Statements of common ground – it may be necessary to consider draft statements submitted with an appeal
- Consider procedural issues arising when seeking to alter an agreement in a SOCG
- Consider any review mechanisms with great care
- Consider the impact of revised viability assessments on whether there is a realistic prospect that housing will be delivered (NPPF definition of deliverable), and the consequent impact on housing land supply calculations.

Thank you for listening

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