

Scrutiny Task Group Scoping Paper

Resources and Public Realm Scrutiny Committee

Brent Development Viability – affordable housing

Background

This scoping document draws together issues around financial viability of housing developments. There are concerns and some evidence suggesting that viability assessments are a block to building more affordable houses, and therefore are in need of reform.

Many affordable homes are delivered through the Section 106 (S106) system, also known as 'planning obligations.' S106 agreements are part of the planning system, and derive from the 1990 Town and Country Planning Act. In summary, developers are required to provide a proportion of homes as affordable, as part of a housing development, secured through the S106 system.

Across the country, between 2007-08 and 2011-2012, S106 delivered an average of 27,000 homes a year – amounting to 53% of all new affordable homes. This compares to 2012-13 and 2015-16, when S106 delivered 38% of the new affordable homes built in England, providing an average of 17,000 additional affordable homes each year. A report by Shelter notes that the root of this change lies in reforms to the planning system introduced in 2012.

All planning decisions for developments are underpinned by national, regional and local policies. This comprises the National Planning Policy Framework (NPPF)¹, the current London Plan² and the draft revised London Plan³. Additionally, Brent has its own policies outlining its vision and economic conditions which guide local planning decisions, these can be found in the Core Strategy 2010 and Development Management Policies 2016⁴, along with the Sudbury Neighbourhood Plan⁵.

The NPPF states that plans must be deliverable. Most notably, paragraph 173 states: ***"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."***

This has led to the rise of financial viability assessments being used by developers to negotiate reductions in the proportions of affordable homes they are obliged to provide in developments, and therefore increased profits..

Definition of Affordable housing

Affordable Housing is used differently in certain contexts, however its actual definition in planning terms is set out in Annex 2: Glossary of the NPPF.

Affordable housing is social rented, affordable rented and intermediate housing (see para 3.61), provided to eligible households whose needs are not met by the market. Eligibility

¹ NPPF, (2012), available online at: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

² London plan (2016), available online at: <https://www.london.gov.uk/what-we-do/planning/london-plan/current-london-plan/london-plan-2016-pdf>

³ Draft revised London Plan (2018), available online at: <https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan>

⁴ Brent Development Management policies, available online at: <https://www.brent.gov.uk/services-for-residents/planning-and-building-control/planning-policy/local-plan/development-management-policies/>

⁵ Sudbury Neighbourhood Plan, available online at: <https://www.brent.gov.uk/services-for-residents/planning-and-building-control/planning-policy/neighbourhood-planning/sudbury-town-residents-association/>

is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision⁶ (see link in footnotes for fuller definition).

National and regional context

What are viability assessments?

Viability assessments are financial appraisals conducted on planned housing developments, which estimate the amount of cost to a developer for building homes, and the profit they will make from selling them. When profit levels are too low, the scheme can be considered 'non-viable' – which means the development might not proceed. The local authority may then decide to decrease the proportion of affordable housing required, as well as other contributions for local infrastructure, in order to increase the developer's profit to a viable level.

The 2012 NPPF has defined viability as 'providing competitive returns', which has been commonly interpreted to mean at least a 20% profit margin⁷.

There are genuine and unforeseen reasons when developments are unviable. A developer could make a loss when, for example, a site has an unusually high remediation charge that was not identified in earlier surveys, removing the incentive to build. However, research by Shelter raises concerns that assessments are being used beyond such cases. This cites data from 2015-16, showing that they were submitted on 44% of new housing schemes across nine English cities, and are "cutting affordable homes by 79%⁸". Where viability assessments have been used, new housing sites achieved just 7% of affordable housing, in comparison to the required average of 28% of new homes intended to be affordable.⁹

Along with the consequences for the delivery of affordable homes, other areas of concern include transparency (as the assessments are normally confidential); and the fact that the methodology and judgements of the assessments are, to a large extent, in the hands of developers themselves. As they become normalised, they also become an essential tool for developers to remain competitive with each other.

The Government has acknowledged some issues with viability assessments, and in its recent Consultation Paper 'Fixing Our Broken Housing Market', it proposes a standardised approach to assessing viability and strengthening the viability of the local plan, so that after the plan is adopted, a developer cannot use an application that does not comply with policies and claim viability reasons.

The GLA's recent 'Affordable Housing and Viability Supplementary Planning Guidance'¹⁰ puts forward a new 'fast track approach', whereby if 35% is being approached then a financial viability assessment would not be required, but a review mechanism for later in the sites development would be. This proposal has been generally well received across London by both the public and private sector. For example, Lambeth Council gave support for the proposed threshold to viability. The Draft SPG also provided more guidance on viability assessments, aiming to

⁶ GLA, 2017, available online at <https://www.london.gov.uk/what-we-do/planning/london-plan/current-london-plan/london-plan-chapter-3/policy-310-definition>

⁷ Shelter report, (2017), available online at:

https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/report_slipping_through_the_loop_how_viability_assessments_are_reducing_affordable_housing_supply_in_england pg 5-6

⁸ Ibid, pg 6

⁹ Ibid

¹⁰ (2017) available online here: <https://www.london.gov.uk/what-we-do/housing-and-land/homes-londoners/what-homes-londoners>

establish a standardised approach. Lambeth is in support of this proposal¹¹. Kensington and Chelsea borough also intends to adopt the approach¹².

Brent position

Brent's 'Development Management Policy' states that any developments proposing less than 50% affordable housing, on a development of more than 10 units, require developers to submit a financial viability assessment to demonstrate that it is 50% not economically viable.

The GLA's fast track sets a threshold of 35% for not requiring a viability assessment, and the council is considering whether or not to offer this.

Brent has two officers trained in viability, but commissions an independent expert to review an applicant's financial viability assessment, and advise on if the proposed level of affordable housing is reasonably required to keep the scheme viable. This enables the council to challenge and negotiate on the findings of these.

There are different forms of affordable housing, requiring different levels of subsidy. The greater the subsidy (and therefore the lower the rent), the lower the number that is likely to be provided. Depending on local circumstances, in some cases the council judges that fewer, but more affordable tenures are required rather than a greater number, but higher rental, units.

Currently, viability assessments are not generally made public. However, this is now changing following case law and the GLA's guidance that they ought to be in the public domain, to increase trust in the system. However, developers will have a chance to say what, if anything, in the financial viability assessments is commercially confidential and should not be made public. Brent has so far chosen not to publish viability assessments, although this is now proposed.

Case studies

Research suggests that there are variations in local policies and practices. Some councils such as Cambridge have developed effective strategies for limiting the use of viability assessments, supported by demand from developers to build there. Manchester has provided developers clear grounds for making viability applications in their local planning policies and guidance¹³.

¹¹ Lambeth Viability Planning Document, 2018, available online at <https://moderngov.lambeth.gov.uk/ieDecisionDetails.aspx?AllId=34794>

¹² Kensington and Chelsea Local Plan Partial Review (2018), available online at: <https://www.rbkc.gov.uk/planning-and-building-control/planning-policy/local-plan/local-plan>

¹³ Shelter report, (2017), available online at: https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/report_slipping_through_the_loophole_how_viability_assessments_are_reducing_affordable_housing_supply_in_england

Local authority affordable housing data (2015-16)

Region	Schemes	Homes	% Affordable housing achieved	Affordable housing shortfall
BIRMINGHAM	Birmingham has an affordable housing policy of 35%			
Viability used	20	2916	1%	1003
Viability not used	12	876	36%	-8
BRENT	Brent has an affordable housing policy of 50%			
Viability used	5	612	25%	153
Viability not used	5	73	51%	-1
BRISTOL	Bristol has an affordable housing policy of 20-40%			
Viability used	8	746	8%	196
Viability not used	7	384	30%	3
CAMBRIDGE	Cambridge has an affordable housing policy of 40%			
Viability used	0	0	0%	0
Viability not used	6	438	38%	7
LEEDS	Leeds has an affordable housing policy of 5-35%			
Viability used	8	1654	8%	338
Viability not used	20	1897	17%	-91
LEICESTER	Leicester has an affordable housing policy of 15-30%			
Viability used	2	115	0%	17
Viability not used	4	85	27%	-6
MANCHESTER	Manchester has an affordable housing policy of 20%			
Viability used	17	2362	0%	472
Viability not used	24	1911	11%	178
NEWCASTLE	Newcastle has an affordable housing policy of 15%			
Viability used	1	280	0%	42
Viability not used	10	923	37%	-202
OXFORD	Oxford has an affordable housing policy of 50%			
Viability used	0	0	0%	0
Viability not used	6	497	32%	92
SOUTHWARK	Southwark has an affordable housing policy of 35%			
Viability used	8	1233	26%	117
Viability not used	3	144	19%	23
KENSINGTON & CHELSEA	Kensington & Chelsea has an affordable housing policy of 50%			
Viability used	10	326	0%	163
Viability not used	3	58	0%	29

(Shelter 2017, p15 and 26))

Affordable housing supply from 2013-2015 for London boroughs (%)

	Total net conventional affordable completions	Total net conventional affordable completions	Total net conventional affordable completions		Affordable as % of total net conventional supply	Affordable as % of total net conventional supply	Affordable as % of total net conventional supply	
	FY2013	FY2014	FY2015	Total	FY2013	FY2014	FY2015	All years
Barking and Dagenham	588	14	325	927	68%	3%	41%	43%
Barnet	285	359	143	787	27%	26%	9%	20%
Bexley	166	170	-329	7	31%	21%	354%	1%
Brent	243	706	52	1001	35%	44%	5%	30%
Bromley	140	-62	10	88	20%	-15%	1%	5%
Camden	202	64	182	448	37%	12%	19%	22%
City of London	24	0	0	24	6%	0%	0%	3%
Croydon	179	638	376	1193	14%	42%	18%	25%
Ealing	185	59	239	483	25%	7%	22%	18%
Enfield	164	102	52	318	31%	25%	8%	20%
Greenwich	679	298	786	1763	50%	23%	45%	40%
Hackney	354	498	145	997	35%	31%	18%	29%
Hammersmith and Fulham	229	173	35	437	21%	20%	10%	19%
Haringey	150	453	0	603	33%	56%	0%	40%
Harrow	33	96	-94	35	11%	23%	-10%	2%
Havering	282	392	576	1250	35%	54%	40%	42%
Hillingdon	93	87	96	276	15%	9%	13%	12%
Hounslow	129	401	212	742	13%	37%	42%	29%
Islington	358	223	222	803	28%	26%	22%	25%
Kensington and Chelsea	164	53	67	284	70%	7%	20%	21%
Kingston upon Thames	84	132	-7	209	32%	25%	-3%	20%
Lambeth	346	361	143	850	30%	26%	11%	22%
Lewisham	155	418	211	784	22%	29%	14%	21%
Merton	138	94	65	297	30%	20%	11%	20%
Newham	503	568	423	1494	25%	29%	29%	28%
Redbridge	2	17	0	19	1%	7%	0%	3%
Richmond upon Thames	109	5	99	213	29%	2%	19%	18%
Southwark	483	109	121	713	29%	9%	9%	17%
Sutton	49	180	9	238	13%	38%	2%	19%
Tower Hamlets	213	722	851	1786	13%	32%	35%	28%
Waltham Forest	3	281	671	955	1%	41%	69%	47%
Wandsworth	224	144	516	884	19%	15%	19%	18%
Westminster	47	48	176	271	9%	7%	19%	12%
Total:	7003	7803	6373	21179	27%	26%	20%	24%

(London Datasets, 2018)

Scope of work

Rationale

According to the data above, where viability assessments had been required the delivery of affordable housing has been significantly lower (25%) than where they had not (51%). Due to the factors set out in the preceding sections, members of the Resources & Public Realm Scrutiny Committee have expressed concerns that the current use of viability assessments is inhibiting delivery of more affordable houses.

Purpose

The task group will add value to Brent's planning policies and initiatives to identify ways to prevent viability concerns creating an unnecessary blockage to the council achieving its target for building affordable homes. It will also seek to provide greater transparency regarding the effects viability assessments can have, for the benefit of residents.

Scope of work

The task and finish group will meet up to three times to take evidence from relevant witnesses and consulting key policies and strategies, with a view to producing a detailed report and a set of recommendations for cabinet which examines the national, regional and local context, along with learning from other councils.

Given that the council is already considering adopting proposals from the Draft London Plan and SPG regarding viability assessments, the task group will investigate this. It will also examine the Government's proposals for standardised viability assessments and the viability of local plans.

Sources of evidence will therefore include:

National Planning Policy Framework (NPPF)¹⁴,

- the current London Plan¹⁵
- the draft revised London Plan¹⁶. Brent Core Strategy 2010 and Development Management Policies 2016¹⁷,
- Shelter's 2017 report 'Slipping through the loophole: How viability assessments are reducing affordable housing supply in England'
- The GLA's 'Affordable Housing and Viability Supplementary Planning Guidance'
- Government Consultation Paper 'Fixing Our Broken Housing Market'
- Developers
- Planning officers
- Housing officers
- Other councils.

¹⁴ NPPF, (2012), available online at: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

¹⁵ London plan (2016), available online at: <https://www.london.gov.uk/what-we-do/planning/london-plan/current-london-plan/london-plan-2016-pdf>

¹⁶ Draft revised London Plan (2018), available online at: <https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan>

¹⁷ Brent Development Management policies, available online at: <https://www.brent.gov.uk/services-for-residents/planning-and-building-control/planning-policy/local-plan/development-management-policies/>

Appendix A

Terms of Reference

- To understand the national policy context of subsidising housing and barriers and solutions to affordable house building.
- Gather data on Brent's affordable housing levels and make comparisons with other boroughs.
- Evaluate the effectiveness of current Brent viability policies against the Mayor's new proposals, as well as those being discussed by the Government.
- Highlight case studies where Brent has been successful in building affordable homes, as in the case of South Kilburn, and spot light target areas.
- Learn from other case studies of good practice across the nation.
- Investigate Brent's own viability assessment application process to make any meaningful improvements.
- Explore the option of Brent becoming a developer, as in the case of Birmingham City Council.