

## Appendix NS/1

### Extract from 2004 Housing Act relating to HMOs



# Housing Act 2004

## 2004 CHAPTER 34

### PART 7

#### SUPPLEMENTARY AND FINAL PROVISIONS

##### *Meaning of “house in multiple occupation”*

###### **254 Meaning of “house in multiple occupation”**

- (1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—
  - (a) it meets the conditions in subsection (2) (“the standard test”);
  - (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
  - (c) it meets the conditions in subsection (4) (“the converted building test”);
  - (d) an HMO declaration is in force in respect of it under section 255; or
  - (e) it is a converted block of flats to which section 257 applies.
- (2) A building or a part of a building meets the standard test if—
  - (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
  - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
  - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
  - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
  - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
  - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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- (3) A part of a building meets the self-contained flat test if—
  - (a) it consists of a self-contained flat; and
  - (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).
- (4) A building or a part of a building meets the converted building test if—
  - (a) it is a converted building;
  - (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
  - (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
  - (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
  - (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
  - (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.
- (5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.
- (6) The appropriate national authority may by regulations—
  - (a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
  - (b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
  - (c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.
- (7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.
- (8) In this section—
  - “basic amenities” means—
    - (a) a toilet,
    - (b) personal washing facilities, or
    - (c) cooking facilities;
  - “converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;
  - “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
  - “self-contained flat” means a separate set of premises (whether or not on the same floor)—
    - (a) which forms part of a building;

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- (b) either the whole or a material part of which lies above or below some other part of the building; and
- (c) in which all three basic amenities are available for the exclusive use of its occupants.

**Commencement Information**

**11** S. 254 wholly in force at 18.1.2005; s. 254 in force for certain purposes at Royal Assent and in force otherwise at 18.1.2005, see s. 270(2)(b)(3)(a)

## 255 HMO declarations

- (1) If a local housing authority are satisfied that subsection (2) applies to a building or part of a building in their area, they may serve a notice under this section (an “HMO declaration”) declaring the building or part to be a house in multiple occupation.
- (2) This subsection applies to a building or part of a building if the building or part meets any of the following tests (as it applies without the sole use condition)—
  - (a) the standard test (see section 254(2)),
  - (b) the self-contained flat test (see section 254(3)), or
  - (c) the converted building test (see section 254(4)),and the occupation, by persons who do not form a single household, of the living accommodation or flat referred to in the test in question constitutes a significant use of that accommodation or flat.
- (3) In subsection (2) “the sole use condition” means the condition contained in—
  - (a) section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test), or
  - (b) section 254(4)(e),as the case may be.
- (4) The notice must—
  - (a) state the date of the authority’s decision to serve the notice,
  - (b) be served on each relevant person within the period of seven days beginning with the date of that decision,
  - (c) state the day on which it will come into force if no appeal is made under subsection (9) against the authority’s decision, and
  - (d) set out the right to appeal against the decision under subsection (9) and the period within which an appeal may be made.
- (5) The day stated in the notice under subsection (4)(c) must be not less than 28 days after the date of the authority’s decision to serve the notice.
- (6) If no appeal is made under subsection (9) before the end of that period of 28 days, the notice comes into force on the day stated in the notice.
- (7) If such an appeal is made before the end of that period of 28 days, the notice does not come into force unless and until a decision is given on the appeal which confirms the notice and either—
  - (a) the period within which an appeal to the [F1Upper Tribunal] may be brought expires without such an appeal having been brought, or

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- (b) if an appeal to the [<sup>F1</sup>Upper Tribunal] is brought, a decision is given on the appeal which confirms the notice.

(8) For the purposes of subsection (7), the withdrawal of an appeal has the same effect as a decision which confirms the notice appealed against.

(9) Any relevant person may appeal to [<sup>F2</sup>the appropriate tribunal] against a decision of the local housing authority to serve an HMO declaration.

The appeal must be made within the period of 28 days beginning with the date of the authority’s decision.

(10) Such an appeal—

- (a) is to be by way of a re-hearing, but
- (b) may be determined having regard to matters of which the authority were unaware.

(11) The tribunal may—

- (a) confirm or reverse the decision of the authority, and
- (b) if it reverses the decision, revoke the HMO declaration.

(12) In this section and section 256 “relevant person”, in relation to an HMO declaration, means any person who, to the knowledge of the local housing authority, is—

- (a) a person having an estate or interest in the building or part of the building concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or
- (b) a person managing or having control of that building or part (and not falling within paragraph (a)).

[<sup>F3</sup>(13) For the purposes of this section and section 256, “appropriate tribunal” means—

- (a) in relation to a building in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
- (b) in relation to a building in Wales, a residential property tribunal.]

#### Textual Amendments

**F1** Words in s. 255(7)(a)(b) substituted (1.6.2009) by [Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 5(1)(2), **Sch. 1 para. 277** (with Sch. 5)

**F2** Words in s. 255(9) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 178(a)** (with Sch. 3)

**F3** S. 255(13) inserted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 178(b)** (with Sch. 3)

## 256 Revocation of HMO declarations

(1) A local housing authority may revoke an HMO declaration served under section 255 at any time if they consider that subsection (2) of that section no longer applies to the building or part of the building in respect of which the declaration was served.

(2) The power to revoke an HMO declaration is exercisable by the authority either—

- (a) on an application made by a relevant person, or
- (b) on the authority’s own initiative.

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- (3) If, on an application by such a person, the authority decide not to revoke the HMO declaration, they must without delay serve on him a notice informing him of—
  - (a) the decision,
  - (b) the reasons for it and the date on which it was made,
  - (c) the right to appeal against it under subsection (4), and
  - (d) the period within which an appeal may be made under that subsection.
- (4) A person who applies to a local housing authority for the revocation of an HMO declaration under subsection (1) may appeal to [F4the appropriate tribunal] against a decision of the authority to refuse to revoke the notice.

The appeal must be made within the period of 28 days beginning with the date specified under subsection (3) as the date on which the decision was made.
- (5) Such an appeal—
  - (a) is to be by way of a re-hearing, but
  - (b) may be determined having regard to matters of which the authority were unaware.
- (6) The tribunal may—
  - (a) confirm or reverse the decision of the authority, and
  - (b) if it reverses the decision, revoke the HMO declaration.

**Textual Amendments**

**F4** Words in s. 256(4) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\), art. 1, Sch. 1 para. 179](#) (with Sch. 3)

## 257 HMOs: certain converted blocks of flats

- (1) For the purposes of this section a “converted block of flats” means a building or part of a building which—
  - (a) has been converted into, and
  - (b) consists of, self-contained flats.
- (2) This section applies to a converted block of flats if—
  - (a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and
  - (b) less than two-thirds of the self-contained flats are owner-occupied.
- (3) In subsection (2) “appropriate building standards” means—
  - (a) in the case of a converted block of flats—
    - (i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and
    - (ii) which would not have been exempt under those Regulations,

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building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and

- (b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).

- (4) For the purposes of subsection (2) a flat is “owner-occupied” if it is occupied—
  - (a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,
  - (b) by a person who has the freehold estate in the converted block of flats, or
  - (c) by a member of the household of a person within paragraph (a) or (b).
- (5) The fact that this section applies to a converted block of flats (with the result that it is a house in multiple occupation under section 254(1)(e)), does not affect the status of any flat in the block as a house in multiple occupation.
- (6) In this section “self-contained flat” has the same meaning as in section 254.

## 258 HMOs: persons not forming a single household

- (1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.
- (2) Persons are to be regarded as not forming a single household unless—
  - (a) they are all members of the same family, or
  - (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
- (3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if—
  - (a) those persons are married to [<sup>F5</sup>, or civil partners of, each other or live together as if they were a married couple or civil partners];
  - (b) one of them is a relative of the other; or
  - (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
- (4) For those purposes—
  - (a) a “couple” means two persons who <sup>F6</sup>... fall within subsection (3)(a);
  - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
  - (c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
  - (d) the stepchild of a person shall be treated as his child.
- (5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.
- (6) In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

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#### Textual Amendments

**F5** Words in s. 258(3)(a) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\), reg. 1\(2\), Sch. 3 para. 26\(4\)\(a\)](#)

**F6** Words in s. 258(4)(a) omitted (2.12.2019) by virtue of [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\), reg. 1\(2\), Sch. 3 para. 26\(4\)\(b\)](#)

#### Commencement Information

**I2** S. 258 wholly in force at 18.1.2005; s. 258 in force for certain purposes at Royal Assent and in force otherwise at 18.1.2005, see s. 270(2)(b)(3)(a)

### 259 HMOs: persons treated as occupying premises as only or main residence

(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.

(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person—

- (a) as the person’s residence for the purpose of undertaking a full-time course of further or higher education;
- (b) as a refuge, or
- (c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) In subsection (2)(b) “refuge” means a building or part of a building managed by a voluntary organisation and used wholly or mainly for the temporary accommodation of persons who have left their homes as a result of—

- (a) physical violence or mental abuse, or
- (b) threats of such violence or abuse,

from persons [<sup>F7</sup>who are or were their spouses or civil partners] or with whom they are or were co-habiting.

#### Textual Amendments

**F7** Words in [s. 259\(3\)](#) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\), reg. 1\(2\), Sch. 3 para. 26\(5\)](#)

#### Commencement Information

**I3** S. 259 wholly in force at 18.1.2005; s. 259 in force for certain purposes at Royal Assent and in force otherwise at 18.1.2005, see s. 270(2)(b)(3)(a)

### 260 HMOs: presumption that sole use condition or significant use condition is met

(1) Where a question arises in any proceedings as to whether either of the following is met in respect of a building or part of a building—

- (a) the sole use condition, or
- (b) the significant use condition,

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it shall be presumed, for the purposes of the proceedings, that the condition is met unless the contrary is shown.

(2) In this section—

- (a) “the sole use condition” means the condition contained in—
  - (i) section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test), or
  - (ii) section 254(4)(e),  
as the case may be; and
- (b) “the significant use condition” means the condition contained in section 255(2) that the occupation of the living accommodation or flat referred to in that provision by persons who do not form a single household constitutes a significant use of that accommodation or flat.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172](#) Regulations
- s. 1(3A) inserted by [2025 c. 26 s. 100\(2\)](#)
- s. 1(4)(e) inserted by [2025 c. 26 s. 100\(3\)](#)
- s. 1(4A)(4B) inserted by [2025 c. 26 s. 100\(4\)](#)
- s. 1(9) inserted by [2025 c. 26 Sch. 4 para. 2\(3\)](#)
- s. 2A2B and cross-heading inserted by [2025 c. 26 s. 100\(5\)](#)
- s. 4(2)(aa) inserted by [2025 c. 26 Sch. 4 para. 3\(3\)\(b\)](#)
- s. 4(5A) inserted by [2025 c. 26 Sch. 4 para. 3\(4\)](#)
- s. 4(6)(aa) inserted by [2025 c. 26 Sch. 4 para. 3\(5\)\(b\)](#)
- s. 6A inserted by [2025 c. 26 Sch. 4 para. 6](#)
- s. 9(1A) inserted by [2025 c. 26 Sch. 4 para. 9\(3\)](#)
- s. 19(10) inserted by [2025 c. 26 Sch. 4 para. 15\(4\)](#)
- s. 28(9) inserted by [2025 c. 26 Sch. 4 para. 21\(8\)](#)
- s. 29(9) inserted by [2025 c. 26 Sch. 4 para. 22\(7\)](#)
- s. 66(1A) inserted by [2016 c. 22 s. 125\(3\)\(a\)](#)
- s. 66(3A)(3B) inserted by [2016 c. 22 s. 125\(3\)\(c\)](#)
- s. 72(1)(1A) substituted for s. 72(1) by [2025 c. 26 s. 105\(2\)](#)
- s. 72(4A)-(4C) inserted by [2025 c. 26 s. 105\(3\)](#)
- s. 89(1A) inserted by [2016 c. 22 s. 125\(6\)\(a\)](#)
- s. 89(3A)(3B) inserted by [2016 c. 22 s. 125\(6\)\(c\)](#)
- s. 95(1)(1A) substituted for s. 95(1) by [2025 c. 26 s. 105\(6\)](#)
- s. 95(3A)-(3C) inserted by [2025 c. 26 s. 105\(7\)](#)
- s. 136(5)(aa) inserted by [2025 c. 26 Sch. 2 para. 65](#)
- s. 139(7A)(7B) inserted by [2016 c. 22 s. 127\(3\)](#)
- s. 212A(5)(aa)(ab) inserted by [2025 c. 26 s. 134\(2\)](#)
- s. 214(1ZA)(1ZB) inserted by [2025 c. 26 s. 26\(4\)\(b\)](#)
- s. 235(1)(aa) inserted by [2025 c. 26 s. 135\(1\)\(a\)](#)
- s. 237(1)(aa)(ab) inserted by [2025 c. 26 s. 134\(5\)](#)
- s. 239(5A)-(5C) inserted by [2025 c. 26 s. 135\(2\)](#)
- s. 250(2A) inserted by [2025 c. 26 Sch. 4 para. 33\(2\)](#)
- s. 250(6)(za) inserted by [2025 c. 26 Sch. 4 para. 33\(3\)](#)
- Sch. A1 inserted by [2025 c. 26 Sch. 4 para. 34](#)
- Sch. 1 para. 2(2)(c) inserted by [2025 c. 26 s. 106\(c\)](#)
- Sch. 1 para. A1B1 inserted by [2025 c. 26 Sch. 4 para. 35\(2\)](#)
- Sch. 2 para. 1(2A)-(2C) inserted by [2025 c. 26 Sch. 4 para. 36\(2\)\(a\)](#)
- Sch. 2 para. 2(2A)-(2C) inserted by [2025 c. 26 Sch. 4 para. 36\(3\)\(b\)](#)
- Sch. 2 para. 16(1)(d) and word inserted by [2025 c. 26 Sch. 4 para. 36\(6\)\(b\)](#)
- Sch. 14 para. 3A inserted by [2025 c. 26 s. 62\(2\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172](#) Regulations

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(3A) inserted by [2025 c. 26 s. 100\(2\)](#)
- s. 1(4)(e) inserted by [2025 c. 26 s. 100\(3\)](#)

- s. 1(4A)(4B) inserted by [2025 c. 26 s. 100\(4\)](#)
- s. 1(9) inserted by [2025 c. 26 Sch. 4 para. 2\(3\)](#)
- s. 2A2B and cross-heading inserted by [2025 c. 26 s. 100\(5\)](#)
- s. 4(2)(aa) inserted by [2025 c. 26 Sch. 4 para. 3\(3\)\(b\)](#)
- s. 4(5A) inserted by [2025 c. 26 Sch. 4 para. 3\(4\)](#)
- s. 4(6)(aa) inserted by [2025 c. 26 Sch. 4 para. 3\(5\)\(b\)](#)
- s. 6A inserted by [2025 c. 26 Sch. 4 para. 6](#)
- s. 9(1A) inserted by [2025 c. 26 Sch. 4 para. 9\(3\)](#)
- s. 19(10) inserted by [2025 c. 26 Sch. 4 para. 15\(4\)](#)
- s. 28(9) inserted by [2025 c. 26 Sch. 4 para. 21\(8\)](#)
- s. 29(9) inserted by [2025 c. 26 Sch. 4 para. 22\(7\)](#)
- s. 66(1A) inserted by [2016 c. 22 s. 125\(3\)\(a\)](#)
- s. 66(3A)(3B) inserted by [2016 c. 22 s. 125\(3\)\(c\)](#)
- s. 72(1)(1A) substituted for s. 72(1) by [2025 c. 26 s. 105\(2\)](#)
- s. 72(4A)-(4C) inserted by [2025 c. 26 s. 105\(3\)](#)
- s. 89(1A) inserted by [2016 c. 22 s. 125\(6\)\(a\)](#)
- s. 89(3A)(3B) inserted by [2016 c. 22 s. 125\(6\)\(c\)](#)
- s. 95(1)(1A) substituted for s. 95(1) by [2025 c. 26 s. 105\(6\)](#)
- s. 95(3A)-(3C) inserted by [2025 c. 26 s. 105\(7\)](#)
- s. 136(5)(aa) inserted by [2025 c. 26 Sch. 2 para. 65](#)
- s. 139(7A)(7B) inserted by [2016 c. 22 s. 127\(3\)](#)
- s. 212A(5)(aa)(ab) inserted by [2025 c. 26 s. 134\(2\)](#)
- s. 214(1ZA)(1ZB) inserted by [2025 c. 26 s. 26\(4\)\(b\)](#)
- s. 235(1)(aa) inserted by [2025 c. 26 s. 135\(1\)\(a\)](#)
- s. 237(1)(aa)(ab) inserted by [2025 c. 26 s. 134\(5\)](#)
- s. 239(5A)-(5C) inserted by [2025 c. 26 s. 135\(2\)](#)
- s. 250(2A) inserted by [2025 c. 26 Sch. 4 para. 33\(2\)](#)
- s. 250(6)(za) inserted by [2025 c. 26 Sch. 4 para. 33\(3\)](#)
- Sch. A1 inserted by [2025 c. 26 Sch. 4 para. 34](#)
- Sch. 1 para. 2(2)(c) inserted by [2025 c. 26 s. 106\(c\)](#)
- Sch. 1 para. A1B1 inserted by [2025 c. 26 Sch. 4 para. 35\(2\)](#)
- Sch. 2 para. 1(2A)-(2C) inserted by [2025 c. 26 Sch. 4 para. 36\(2\)\(a\)](#)
- Sch. 2 para. 2(2A)-(2C) inserted by [2025 c. 26 Sch. 4 para. 36\(3\)\(b\)](#)
- Sch. 2 para. 16(1)(d) and word inserted by [2025 c. 26 Sch. 4 para. 36\(6\)\(b\)](#)
- Sch. 14 para. 3A inserted by [2025 c. 26 s. 62\(2\)](#)

Appendix NS/2

Homes for Londoners SPG 2017

**MAYOR OF LONDON**

# **HOMES FOR LONDONERS**

**AFFORDABLE HOUSING AND VIABILITY  
SUPPLEMENTARY PLANNING GUIDANCE 2017**



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## MAYOR'S FOREWORD

**London is open. We are a leading global city with a strong economy, businesses that trade internationally, and a population drawn from all over the world.**

Our city's success is reflected by the number of people becoming Londoners. With 70,000 new Londoners every year, we are a bigger city than we have ever been, and our population is set to top 10 million within 25 years.

But our city's great success has brought huge challenges too. In recent years, we know that London has built nowhere near the number of new and affordable homes we need. As a result, too many Londoners can't afford a decent home to rent or buy.

We know we won't be able to turn round London's housing crisis overnight. It'll be a marathon, not a sprint. But I'm determined to get started, working with councils, housing associations, the development industry, central Government, and Londoners themselves.

That's why I am pleased to set out my supplementary planning guidance, 'Homes for Londoners: Affordable Housing and Viability'. Its approach will make the planning system clearer, quicker, and more consistent. It will increase the amount of affordable housing coming through the planning system, and accelerate delivery for those who deliver more.

My long-term aim is for half of all new homes to be affordable, up from the low of just 13 per cent in planning permissions given towards the end of the previous Mayor's term. This guidance offers an ambitious and practical first step to raise the amount of affordable housing coming through the planning system ahead of my new London Plan in 2019.

Since this guidance was published in draft last November, we have seen developers already starting to adopt its principles – including by routinely taking account of affordable housing expectations when paying for developable land. Along with my greater investment in affordable housing, and my approach to developing public land, this guidance will continue to move us in the direction I want us to take.



I want to build a city for all Londoners - a place where no community feels left behind, and where everyone can benefit from the opportunities London has to offer. New and affordable housing is essential to this goal, and together, we can build the homes that Londoners need.

A handwritten signature in black ink, appearing to read "Sadiq Khan".

Sadiq Khan

Mayor of London

## EXECUTIVE SUMMARY

1. This supplementary planning guidance (SPG) focuses on affordable housing and viability. It includes four distinct parts: background and approach; the threshold approach to viability assessments; detailed guidance on viability assessments; and a specific approach to Build to Rent schemes. These sections are summarised below.

### PART ONE: BACKGROUND AND APPROACH

2. The first part of the SPG sets out its rationale and aim. The Mayor is committed to a long-term strategic aim of half of all new homes in London being affordable – a goal he intends to move towards by investing more in affordable housing, bringing forward more public land for affordable homes, and by increasing the amount of affordable housing delivered through the planning system.
3. Moving towards this goal will take time, not least considering that when the Mayor took office, figures showed affordable housing had fallen to just 13 per cent of homes given planning permission. The new London Plan will be based on an updated assessment of housing need and a comprehensive understanding of London's capacity to meet it within the context of all of London's competing land uses. The approach to affordable housing will be a key consideration of the London Plan review.
4. In the meantime this SPG provides guidance to ensure that existing policy is as effective as possible. It aims to provide a consistent approach across London, though it does not and cannot introduce new policy. The SPG's main aim is to increase the number of affordable homes delivered through the planning system. Importantly, it will help embed the requirement for affordable housing into land values and make the viability process more consistent and transparent. It will help ensure that where development appraisals take place, they are robustly and consistently scrutinised, whilst its innovative approach will also reduce the risk and increase the speed of the planning process for those schemes which deliver more affordable homes.
5. The SPG sets out the Mayor's preferred approach to implementing London Plan Policies 3.11 (Affordable housing targets), 3.12 (Negotiating affordable housing on individual private residential and mixed use schemes), and 3.13 (Affordable housing thresholds). The approach set out in this SPG has been subject to significant consultation which has demonstrated clear support for its objectives and the consistency that it seeks to establish. Local Planning Authorities (LPAs) are strongly encouraged to follow this approach for all schemes providing 10 or more homes.

6. Given the strategic importance of affordable housing delivery and the significant impact of reduced levels of affordable housing on the delivery of the London Plan, this SPG sets out situations in which the Mayor may consider directing that he is to be the Local Planning Authority for the purposes of determining an application (often referred to as a 'call in'), or directing refusal. These situations include where he considers that opportunities for affordable housing may have been missed for reasons such as the unsatisfactory provision or insufficient scrutiny of viability information.
7. The Mayor considers that information relevant to planning decisions should be publicly available alongside other application documents in order to foster a greater understanding of and trust in the planning system. The SPG sets out the Mayor's expectations when it comes to the publication of viability information, requiring information to be made public, including council and third party assessments. Applicants will have the opportunity to argue that limited elements should be confidential, but the onus is on the applicant to make this case.

## PART TWO: THE THRESHOLD APPROACH

8. The second part of the SPG sets out the 'threshold approach' to viability, which is where the approach to viability information differs depending on the level of affordable housing being provided.

### Fast Track Route

9. Applications that meet or exceed 35 per cent affordable housing provision without public subsidy, provide affordable housing on-site, meet the specified tenure mix, and meet other planning requirements and obligations to the satisfaction of the LPA and the Mayor where relevant, are not required to submit viability information. Such schemes will be subject to an early viability review, but this is only triggered if an agreed level of progress is not made within two years of planning permission being granted (or a timeframe agreed by the LPA and set out within the S106 agreement).

### Viability Tested Route

10. Schemes which do not meet the 35 per cent affordable housing threshold, or require public subsidy to do so, will be required to submit detailed viability information (in the form set out in Part three) which will be scrutinised by the Local Planning Authority (LPA), and where relevant the Mayor, and treated transparently. Where a LPA or the Mayor determines that a greater level of affordable housing could viably be supported, a higher level of affordable housing will be required which may exceed the 35 per cent threshold. In addition, early and late viability reviews will be applied to all schemes

that do not meet the threshold in order to ensure that affordable housing contributions are increased if viability improves over time.

11. The different approaches between these two routes provide a strong incentive for applicants to meet the 35 per cent affordable housing threshold, which offers far greater certainty and the opportunity to move away from protracted and uncertain viability negotiations. This will help to deliver more affordable housing through the planning system whilst also ensuring development comes forward at a faster rate.
12. In all cases applicants should determine whether grant and other forms of subsidy are available which should be used to increase the level of affordable housing delivered.
13. The Mayor's preferred affordable housing tenure mix includes a range of products to meet different needs – principally low cost rented accommodation to meet general needs, and London Living Rent and shared ownership to meet intermediate needs.
14. The SPG must be understood in the context of the Mayor's other key tools for increasing affordable housing. Referencing the Mayor's Affordable Homes Programme 2016-21, the SPG explains how grant should be used to increase the amount of affordable housing delivered on private sites to at least 40 per cent, and to support Registered Providers deliver programmes with at least 50 or 60 per cent affordable housing. The SPG further sets out guidance for public land which the Mayor sees as playing an important role in delivering 50 per cent affordable housing overall.
15. The SPG is clear that where an LPA currently adopts an evidenced approach which will deliver a higher average percentage of affordable housing (without public subsidy) the local approach can continue to apply.
16. This part also sets out the Mayor's approach to the national vacant building credit policy. The intention of the Government's policy is to bring forward sites containing vacant buildings which would not otherwise come forward for development. However, in London such sites already come forward for development. Furthermore, their affordable housing requirements are already subject to viability testing and thus are not preventing sites from coming forward. The Mayor's view is therefore that in most circumstances in London it will not be appropriate to apply the vacant building credit.

### PART THREE: VIABILITY ASSESSMENTS

17. The third part of the SPG provides detailed guidance on viability assessments, aiming to establish a standardised approach. The SPG clearly sets out what information and assumptions should be included in a viability assessment. It builds on the London Borough Development Viability Protocol<sup>1</sup> and aims to provide a clear approach that can be consistently applied across London.
18. The SPG is explicit about the Mayor's preference for using Existing Use Value Plus as the comparable Benchmark Land Value when assessing the viability of a proposal. The premium above Existing Use Value will be based on site specific justification reflecting the circumstances that apply.

### PART FOUR: BUILD TO RENT

19. The fourth part of the SPG provides specific guidance on Build to Rent developments, recognising that they differ to the traditional build for sale model.
20. The SPG defines Build to Rent and explains how its distinct economics should be taken into account when assessing applications. It provides guidance on the requirement for covenant and clawback arrangements if homes are sold out of the Build to Rent sector. It sets out an alternative pathway which applicants may choose to follow. This pathway: promotes Discount Market Rent (DMR) as the affordable housing offer and expresses the Mayor's preference for DMR homes to be let at London Living Rent levels; highlights the Plan's existing flexibility when it comes to mix and design standards where schemes are of exemplary design; and requires applicants to meet the Mayor's five key Build to Rent management standards.
21. It reiterates the requirement, in line with the national definition of affordable housing, that any on-site affordable housing must include provisions to remain at an affordable price in perpetuity or that the subsidy (this includes the Section 106 'subsidy') must be recycled for alternative affordable provision. Guidance is also provided on how Build to Rent viability assessments differ from traditional appraisals.

### RELATIONSHIP WITH THE 2016 HOUSING SPG

22. This SPG supersedes section 3.3 (Build to Rent) and Part 4 (Affordable Housing – Viability Appraisals) of the March 2016 Housing SPG. The rest of that SPG remains current.

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<sup>1</sup> London Borough Development Viability Protocol November 2016

## PART ONE

# BACKGROUND AND APPROACH

- 1.1 The Mayor is committed to a long-term strategic aim of half of all new homes in London being affordable. The Mayor intends to move towards this goal by investing more in affordable housing, bringing forward more public land for affordable homes, and by increasing the amount of affordable housing delivered through the planning system.
- 1.2 Moving towards this goal will take time, not least considering that when the Mayor took office, figures showed just 13 per cent of homes given planning permission were affordable. It is clear that previous approaches have not delivered the homes that Londoners need. The new London Plan (consultation draft expected late 2017) will be based on an updated assessment of housing need and a comprehensive understanding of London's capacity to meet it within the context of all of the capital's competing land uses. The approach to affordable housing will be a key consideration of the London Plan review, which will consider appropriate levels for thresholds or any other approaches.
- 1.3 In the meantime this supplementary planning guidance (SPG) provides guidance to ensure that existing policy is as effective as possible. It does not and cannot introduce new policy. The SPG's main aim is to accelerate overall housing delivery and increase the amount of affordable housing delivered through the planning system. It will help embed the requirement for affordable housing into land values, make the viability process more consistent and transparent, and speed up the planning process for those schemes which are delivering more affordable homes. It provides a key step towards delivering more affordable homes through the planning system.
- 1.4 The SPG sets out how public subsidy should be used to ensure additional affordable homes are delivered, above that which can be secured through the planning system alone. Its approach is integrated with the approach to funding set out in the Mayor's guidance to his Affordable Homes Programme 2016-21.
- 1.5 The SPG has been subject to extensive consultation including a formal consultation period between 29 November 2016 and 28 February 2017 which has informed the development of the SPG. The consultation process has demonstrated clear support for the objectives of the SPG and the consistency which it seeks to provide.
- 1.6 This SPG supersedes section 3.3 (Build to Rent) and Part 5 (Viability) of the March 2016 SPG, the rest of that SPG remains current.

## VIABILITY AND PLANNING

1.7 Since the publication of the National Planning Policy Framework (NPPF), viability has taken an elevated role in the planning process, both at the plan making and planning decision stages. The NPPF requires all development plans to be deliverable. The cumulative impacts of standards, obligations and requirements have to be tested to ensure that they do not put implementation of a development plan at serious risk, and they should facilitate development throughout the economic cycle (NPPF para 174). Plans adopted post-NPPF should be considered viable - negotiations to reduce obligations based on site specific viability considerations should only be necessary where the site circumstances suggest exceptional or abnormal costs<sup>2</sup> that will make policy compliance unviable.

1.8 In line with London Plan Policy 3.11 almost all LPAs have an affordable housing target set out in their Local Plan. In most cases this is expressed as a percentage strategic target – rather than a target which is applied on a site-by-site basis. All but one borough has a post-2004<sup>3</sup> core strategy/ local plan. Nineteen boroughs have a strategic target for 50 per cent of homes delivered to be affordable; seven of these boroughs adopted their targets after the introduction of the NPPF and thus were assessed as meeting the requirements of para 173 of the NPPF, which requires plans to be deliverable and states that:

*“the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. 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”.*

1.9 This SPG sets out in what circumstances a viability assessment will be needed to support an application, what information must be included in the appraisal, and makes clear that the information should be treated transparently. Boroughs are strongly encouraged to adopt the same approach to viability information and assessment to provide London wide consistency.

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<sup>2</sup> Exceptional or abnormal costs may include issues such as high levels of contamination, requirement to divert major utilities, poor ground conditions necessitating special foundations/ ground works. However, it should also be noted that the presence of such issues will also impact land value and the cost should not necessarily be born through a reduction in Planning Obligations.

<sup>3</sup> Planning and Compulsory Purchase Act 2004

## LONDON PLAN POLICY

1.10 The current London Plan seeks to maximise affordable housing provision in London and deliver mixed and balanced communities – as set out in Policy 3.9 (mixed and balanced communities), 3.11 (affordable housing targets), and 3.12 (negotiating affordable housing on individual private residential and mixed used developments). These policies seek to ensure an average of at least 17,000 additional affordable homes are delivered per year and also recognise the importance of the “plan, monitor, manage” approach to planning. This figure is significantly lower than London’s actual need for affordable housing, which in 2013 was assessed to be approximately 25,600 homes a year.

1.11 Affordable home building has been falling significantly short of meeting this minimum target. Combined net affordable homes delivered across 2012/13, 2013/14 and 2014/15 was only 22,426 units (an average of 7,475 a year)<sup>4</sup>. In 2015/16, 6,675 were delivered. If no changes are made to the way the current policy has been implemented, this trend is likely to continue, particularly with affordable housing comprising only 13 per cent of units given planning permission when the Mayor took office<sup>5</sup>.

1.12 This shortfall has significant implications for meeting the current plan’s policy expectations around the delivery of affordable housing over time. The shortfall in recent years would imply that efforts should be made over the remaining life of the plan to deliver planning approvals for affordable housing well above the minimum 17,000 affordable homes a year.

## APPROACH OF THE GUIDANCE

1.13 The London Plan is clear that boroughs should take account of supplementary planning guidance when implementing Policies 3.9 (Mixed and balanced communities), 3.11 (Affordable housing targets), and 3.12 (Negotiating affordable housing on individual private residential and mixed use schemes).

1.14 In order to increase the delivery of new and affordable housing, increase transparency in decision making, and to help better implement Policies 3.11 and 3.12 of the London Plan, the Mayor will, and Local Planning Authorities (LPAs) are strongly encouraged to, follow the approach set out in this guidance. The basis of the guidance is a clearer and more consistent approach to assessing and scrutinising the development appraisals of schemes to establish the viable level of affordable housing provision.

<sup>4</sup> London Plan Annual Monitoring Report 13 (2017)

<sup>5</sup> GLA analysis of London Development Database, August 2017

1.15 Further to this, the SPG also provides a means to move away from protracted and uncertain viability negotiations by introducing a 'threshold approach' to affordable housing on private mixed-tenure schemes (Build to Rent schemes are dealt with separately in Part four). This approach refines the way viability information is requested and used depending on whether a minimum threshold has been met or exceeded.

1.16 The further any development falls short of the relevant affordable housing threshold, the greater the importance of a robust viability assessment to demonstrate why a lower level of affordable housing is necessary for the scheme to go ahead, and the more that should be done to increase the affordable housing contributions during the implementation of the scheme should viability improve.

### APPLICATIONS REFERABLE TO THE MAYOR

1.17 Given the strategic importance of affordable housing delivery and the significant impact of reduced levels of affordable housing on the delivery of the London Plan, the Mayor will consider directing that he is to be the Local Planning Authority for the purposes of determining an application (often referred to as a 'call in'), or directing refusal when:

- he is not satisfied with the viability information submitted by the applicant, the assumptions that underpin the information, or the level of scrutiny given by the LPA;
- he considers the viability information submitted may suggest a higher level of affordable housing could reasonably be provided; or
- a significant contribution to affordable housing could be forgone due to other grounds and the Mayor wants to review the weight the LPA has given to competing planning objectives.

### TRANSPARENCY OF INFORMATION

1.18 The Mayor wants to lead the way in openness and transparency in the planning system. In particular he considers that information relevant to planning determinations should be publicly available alongside other application documents in order to foster a greater understanding of and trust in the planning system.

1.19 This approach is consistent with the Freedom of Information Act 2000 (FOIA) which gives the public the right to request information held by public authorities and which aims to ensure that public sector bodies are open and accountable. The Environmental Information Regulations 2004 (EIR) which relate to environmental information held by public authorities provide a similar public right to access information. The guiding principle is that all information should be accessible, although the legislation sets out certain

exceptions to this general rule. These exceptions are, however, qualified by a public interest test and recent decisions<sup>6</sup> by the information tribunal have demonstrated that the public interest in maintaining confidentiality rarely outweigh the public interest in disclosing the information.

- 1.20 Therefore, given the importance of wider scrutiny and the direction of travel indicated by information tribunal decisions, the Mayor will treat information submitted as part of, and in support of, a viability assessment transparently.
- 1.21 This information should be available for public scrutiny and comment like all other elements of a planning application, as should any review or assessment of the appraisal carried out by or for the LPA. As such, boroughs should implement procedures which promote greater transparency where not already in place. Where the required viability information is not published by the LPA as part of the application documents, the Mayor reserves the right to refer to, and publish, the information as part of his referral Stages 1 and 2 consideration of the application.
- 1.22 In very exceptional circumstances there may be legitimate reasons for keeping limited elements of viability information confidential. For this to be the case the LPA, or the Mayor where relevant, would need to be convinced that the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- 1.23 If an applicant wishes to make a case for an exceptional circumstance in relation to an element of their assessment, they should provide a full justification as to the extent to which disclosure of a specific piece of information would cause an 'adverse effect' and harm to the public interest that is not outweighed by the benefits of disclosure. Boroughs should consider this carefully, with reference to the 'adverse effect' and overriding 'public interest' tests in the EIR and FOIA, as well as the specific circumstances of the case. If an applicant considers that an exceptional circumstance is likely to arise, this should be raised with the LPA and the Mayor at an early stage within the pre-application process.
- 1.24 In submitting information, an applicant does so in the knowledge of the approach set out in this SPG and that the LPA or Mayor may not accept the applicant's claims that information should not be disclosed to the public.
- 1.25 Applicants should also provide a summary of the financial viability assessment which outlines key findings, inputs, and conclusions to assist review by the LPA, Mayor, and members of the public.

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<sup>6</sup> Royal Borough of Greenwich vs ICO & Shane Brownie EA/2014/0122; RB and Clyne vs ICO & Lambeth EA/2016/0012

## PART TWO

# 'THRESHOLD APPROACH' TO VIABILITY

- 2.1 This SPG does not and cannot set a fixed affordable housing requirement. Instead it provides a framework for delivering the maximum reasonable amount of affordable housing in the context of current London Plan Policies (3.10, 3.11, and 3.12) and past delivery. It specifically focuses on viability by setting out more consistent, certain and transparent processes for the assessment of planning applications to accelerate planning decisions, thereby enabling more rapid delivery of new and affordable housing.
- 2.2 The Mayor is committed to a long-term strategic aim of half of all new homes in London being affordable. The approach to affordable housing will be a key consideration of the London Plan review, which will build on this SPG.
- 2.3 This SPG introduces a 'threshold approach', whereby schemes meeting or exceeding 35 per cent affordable housing without public subsidy<sup>7</sup> (or 50 per cent where on public land, without grant) can follow a 'Fast Track Route'. This means applicants are not required to submit viability information at the application stage, and applications are subject to review mechanisms only if an agreed level of progress on implementation has not been achieved within two years of consent being granted or as agreed with the LPA. Schemes that do not meet this threshold are required to follow a 'Viability Tested Route', under which applicants must submit detailed viability information which will be scrutinised and treated transparently. In addition, comprehensive early and late stage review mechanisms will be applied to schemes that do not meet the threshold or require public subsidy to do so, in order to ensure that affordable housing contributions are increased if viability improves over time.
- 2.4 The 'threshold approach' provides certainty and consistency, as well as clear incentives for developers to increase affordable housing delivered through the planning system above the level in planning permissions granted in recent years.<sup>8</sup> This is also consistent with PPG which states that decision-taking on individual applications does not normally require consideration of viability<sup>9</sup>.

<sup>7</sup> Public subsidy includes grant, public loans (including the Mayor's London Housing Bank) and public land.

<sup>8</sup> The 'minimum threshold' is not a fixed target; instead this will determine whether viability information is required depending on the level of affordable housing that is being offered.

<sup>9</sup> PPG, Viability and decision taking, Paragraph 16.

2.5 Where the level of affordable housing offered meets the threshold, this should normally be considered the maximum reasonable amount of affordable housing which can be delivered through the planning system (subject to an early review mechanism to help ensure delivery). However, this will only apply where the affordable housing threshold, relevant tenure split and other requirements are met without public subsidy. All schemes are expected to determine whether grant and other forms of subsidy are available and to make the most efficient use of this to increase the level of affordable housing delivered. All applicants are expected to work with the LPA, the Mayor, and Registered Providers (RPs) to ensure affordable housing from all sources is maximised.

### APPROACH TO PLANNING APPLICATIONS

2.6 The Mayor strongly encourages boroughs to apply the affordable housing threshold approach to applications for sites which are capable of delivering 10 or more homes. In addition, when developing future affordable housing policy (and other policies on planning obligations and CIL rates), LPAs are strongly encouraged to take account of this SPG and the importance the Mayor places on increasing the numbers of affordable homes.

2.7 Where a borough currently adopts an approach which they can evidence will deliver a higher average percentage of affordable housing (without public subsidy), the local approach can continue to apply.

2.8 The percentage of affordable housing in a scheme should be measured by habitable rooms to ensure that a range of sizes of affordable homes can be delivered, including family sized homes, taking account of local mix policies and having regard to site specific circumstances. Habitable rooms in affordable and market elements of the scheme should be of comparable size when averaged across the whole development. If this is not the case, then it may be more appropriate to measure the provision of affordable housing using habitable floorspace. Applicants should present affordable housing figures as a percentage of total residential provision by habitable rooms, by units, and by floorspace to enable comparison.

2.9 Some schemes are only suitable for the Viability Tested Route due to the need to have viability information to assess the application. This includes:

- applications which propose affordable housing off-site, or through a cash in lieu contribution;
- applications which involve demolition of existing affordable housing (in particular estate regeneration schemes); and
- applications where the applicant claims the vacant building credit applies

2.10 The approach for Build to Rent schemes where a bespoke affordable housing mix is being proposed is covered separately in Part four. Guidance on tenure, working with an RP, and grant is also provided below.

## ROUTES FOR APPLICATIONS UNDER THE 'THRESHOLD APPROACH'

### 'FAST TRACK ROUTE': APPLICATIONS THAT MEET OR EXCEED THE 35 PER CENT THRESHOLD

Applications will not be required to provide viability information, nor be subject to review mechanisms provided an agreed level of progress is made following the grant of planning permission, where they:

- deliver at least 35 per cent affordable housing on-site without public subsidy;
- are consistent with the relevant tenure split (see section on tenure below) and meet other obligations and requirements to the satisfaction of the LPA and the Mayor where relevant; and
- have sought to increase the level of affordable housing beyond 35 per cent by accessing grant.

To ensure an applicant fully intends to build the permission, an Early Stage Viability Review will be triggered if an agreed level of progress on implementation is not made within two years of the permission being granted or as agreed with the LPA.

Viability information will not be required at application stage for schemes following the Fast Track Route – if the review is triggered, changes in values and build costs will be determined at the point of review. Further details on review mechanisms are set out in Part three of this guidance.

Land in public ownership or public use that is used for housing development will be expected to deliver at least 50 per cent affordable housing without grant to benefit from the Fast Track Route. See section on increasing affordable housing to 50 per cent below.

### **'VIABILITY TESTED ROUTE': APPLICATIONS THAT DO NOT MEET THE 35 PER CENT THRESHOLD**

Where an application does not meet the threshold level, a viability assessment should be submitted in a standardised and accessible format with full supporting evidence to substantiate the inputs and assumptions used (as detailed in Part three). It should be discussed with the LPA and Mayor (where relevant) at pre-application stage and submitted as part of the application. The information will be treated transparently in line with the guidance in Part one.

The viability assessment will be scrutinised by the LPA and the Mayor (where relevant) who will determine the level of affordable housing that is viable on the site. This may exceed the threshold level.

All applicants should explore the use of grant and other public subsidy to increase the level of affordable housing (see section on grant below).

Where permission is granted, review mechanisms should be applied to these developments to ensure that if there is an improvement in viability, this contributes to the delivery of the maximum reasonable amount of affordable housing up to 50 per cent.

The following Viability Reviews should apply to all schemes which follow the Viability Tested Route:

- an Early Stage Review; and
- a Late Stage Review.

To ensure an applicant fully intends to build the permission, an Early Stage Viability Review will be triggered if an agreed level of progress on implementation is not made within two years of the permission being granted or as agreed with the LPA. This will result in additional onsite affordable housing in the event that viability has improved since the application stage<sup>10</sup>.

A Late Stage Review will be required on all developments which follow the Viability Tested Route at the point at which 75 per cent of units are sold or let. This will result in a financial contribution for additional affordable housing provision in the event that viability has improved since the application stage.

For longer-term phased schemes it may also be appropriate to secure mid-term reviews prior to implementation of later phases and an updated Early Stage Review in the event that a scheme stalls for a period of 12 or more months following an Early Stage Review.

Further details on review mechanisms are set out in Part three of this guidance. Review clauses should be set out in the Section 106 agreement.

<sup>10</sup> Schemes considered under the Viability Tested Route should be assessed to determine the maximum reasonable level of affordable housing up to 50 per cent based on the required tenure split. Where a borough has a different strategic affordable housing target, this could be the basis for the cap, but generally the Mayor will expect the cap to be at least 50 per cent. This should also form the basis of affordable housing caps within review mechanisms. Local Plan minimum affordable housing targets should not be used as the basis for the affordable housing cap as part of an application stage assessment or within a viability review mechanism.

2.11 In order to follow the Fast Track Route the application must meet all other relevant obligations and requirements to the satisfaction of the LPA, and where relevant the Mayor, taking into account the priority given to affordable housing and public transport improvements in Policy 8.2 of the London Plan. If the LPA or Mayor is not satisfied that the scheme meets the other policy requirements then the scheme would need to follow the Viability Tested Route.

2.12 It is understood that development proposals on particular sites may not be able to meet affordable housing requirements due to the requirements for significant investment in other contributions to support growth, particularly for public transport (but also for schools and hospitals, cultural venues, affordable work space etc.). Where this is the case the applicant is required to provide viability information as per the Viability Tested Route.

2.13 In the case of such circumstances, on the basis of this information provided under the Viability Tested Route it will be for the LPA, and where relevant the Mayor, to decide to what extent the requirements and evidence produced by the applicant justify a lower level of affordable housing. However, it should be noted that (as set out in the costs section below), the requirement to deliver investment in other infrastructure will generally be set out in the development plan, relevant planning frameworks and CIL charging schedules. It should be taken into account by the applicant and the land owner, and should not necessarily lead to a reduction in affordable housing.

#### **Scheme amendments - Section 73 applications and deeds of variation**

2.14 For schemes that were approved under the Fast Track Route, any subsequent applications to vary the consent will not be required to submit viability information, provided that the resulting development continues to meet the 35 per cent threshold and required tenure split, and does not otherwise result in a reduction in affordable housing or housing affordability.

2.15 For schemes where the original permission did not meet the 35 per cent threshold or required tenure split, or where a proposed amendment would cause it to no longer meet these criteria, viability information will be required where an application is submitted to vary the consent and this would alter the economic circumstances of the scheme (for example resulting in a higher development value or lower costs). Such schemes will be assessed under the Viability Tested Route to determine whether additional affordable housing can be provided.

2.16 Proposed amendments that result in a reduction in affordable housing, affordability or other obligations or requirements of the original permission should be rigorously assessed under the Viability Tested Route. In such instances a full viability review should be undertaken that reconsiders the value, costs, profit requirements and land value of the scheme. The Mayor should be consulted where a scheme amendment is proposed that changes the level of affordable housing from that which was secured through the original planning permission.

### RATIONALE FOR 35 PER CENT

2.17 This SPG sets the threshold at 35 per cent of habitable rooms as affordable provision, the development of which was informed by analysis of past completions and approvals and the aim to have a threshold that will increase delivery of affordable housing. The approach will start to embed affordable housing requirements into land values across London.

2.18 As stated previously, it is not a fixed level of affordable housing, but a threshold at which the approach to viability information changes. This means schemes which cannot deliver the threshold can still gain permission where the lower level of affordable housing is fully justified through site-specific viability assessments.

2.19 A single threshold ensures consistency and certainty across London while providing the flexibility to follow the Viability Tested Route where the threshold cannot be met.

### INCREASING AFFORDABLE HOUSING TO 50 PER CENT

2.20 The Mayor has a clear long-term strategic aim for 50 per cent of new homes to be affordable. The approach to assessing viability and the threshold approach in this SPG are steps towards increasing the level of affordable housing delivered via the planning system. As set out above, the approach to affordable housing will be a key consideration of the London Plan review, with the new Plan considering appropriate levels for thresholds or any other approaches.

2.21 In order to increase affordable housing delivery generally, the Mayor will, in addition to delivery through the planning system, use his funding powers to increase affordable housing, and expect higher proportions of affordable housing on schemes developed by Registered Providers or those on publicly-owned land.

2.22 All schemes are expected to maximise the delivery of affordable housing and make the most efficient use of available resources to achieve this objective in accordance with the London Plan. All applicants are expected to work with the LPA, the Mayor, and Registered Providers (where the applicant

is not themselves an RP) to determine whether subsidy is available and ensure affordable housing delivery is maximised. Where grant or other public subsidy is available and would increase the proportion of affordable housing over that which could otherwise have been provided, this should be utilised. The higher proportion should be set out in the Section 106 agreement as being subject to grant availability, alongside the proportion viable without grant.

### **Grant**

- 2.23 To enable the delivery of more affordable housing the Mayor will make funding available to increase the proportion of affordable homes above that which is viable on a nil-grant basis. Funding will be available on a fixed grant-per-unit basis, details of which are set out in the Mayor's Homes for Londoners: Affordable Homes Programme 2016-21.
- 2.24 Where developer-led schemes can provide or exceed 40 per cent affordable housing (with grant) then the fixed grant per unit will be available on all affordable housing units in the scheme.
- 2.25 Where developer-led schemes are delivering less than 40 per cent, grant will only be available for the additional affordable homes over and above the baseline level of affordable housing shown as being viable on a nil-grant basis.
- 2.26 In all cases the higher proportion should be set out in the Section 106 agreement as being subject to grant availability, alongside the proportion viable without grant. Where the proportion viable without grant is at least 35 per cent, it may benefit from the Fast Track Route.
- 2.27 Grant will be available to all private developer-led schemes, including schemes that are not referable to the Mayor. In developer-led schemes, the applicant should have engaged a Registered Provider (RP) at an early stage (see below) and it would then be for the RP to draw down grant from the GLA as appropriate.
- 2.28 Where public subsidy is available to increase the level of affordable housing on a scheme the tenure of additional affordable homes above the 35 per cent is flexible but should take into account the need to maximise affordable housing provision through the available public subsidy.

### **Registered Providers**

- 2.29 As set out in para 3.71 of the London Plan, to expedite the planning process, and improve design and integration of different tenures, private developers should engage with a Registered Provider (RP) prior to progressing a scheme and secure from them a commitment to affordable housing provision at an agreed purchase price. At the very least applicants are strongly encouraged

to have an RP on board when engaging in pre-application discussions with the LPA and the Mayor (see section on affordable housing values below).

- 2.30 Generally the Mayor expects RP-led schemes to seek to deliver as much affordable housing as possible within the context of the requirements of London Plan policy 3.12. RPs with agreements with the Mayor have to deliver at least 50 per cent affordable housing across their programmes, and in the case of strategic partners 60 per cent.
- 2.31 The approach to grant funding for approved provider-led schemes is set out in Mayor's Homes for Londoners: Affordable Homes Programme 2016-21.
- 2.32 RP-led schemes are likely to benefit from programme grant as set out in 2.30. Individual schemes which are led by RPs with an agreed programme with the Mayor can follow the Fast Track Route if they can commit to delivering a minimum of 35 per cent without grant. This should be set out in the Section 106 agreement along with the proportion of affordable housing which can be delivered with grant.

### **Public land**

- 2.33 It is widely recognised that land in public ownership should make a significant contribution towards the supply of new affordable housing. Land that is surplus to public sector requirements typically has a low value in its current use, allowing higher levels of affordable housing to be delivered. For these reasons the Mayor has an expectation that residential proposals on public land should deliver at least 50 per cent affordable housing to benefit from the Fast Track Route.
- 2.34 Where a public landowner has an agreement in place with the Mayor to provide 50 per cent affordable homes across a portfolio of sites, individual sites which meet or exceed the 35 per cent affordable housing threshold and required tenure split may be considered under the Fast Track Route. Where such an agreement is not in place, schemes that do not provide 50 per cent affordable housing will be considered under the Viability Tested Route.
- 2.35 Where 50 per cent affordable housing is delivered on public land, the tenure of additional affordable homes above the 35 per cent is flexible and should take in to account the need to maximise affordable housing provision.
- 2.36 This will apply to land that is owned or in use by a public sector organisation, or a company or organisation in public ownership, or land that has been released from public ownership and on which housing development is proposed.

### Density

2.37 Where a scheme meets the 35 per cent affordable housing threshold it may also be appropriate to explore the potential to increase densities on a case-by-case basis to enable the delivery of additional affordable homes where this meets exemplary design standards. It is for LPAs, and the Mayor where relevant, to consider the weight to be given to the benefit of additional affordable housing above the threshold, where this arises through increased densities or scale.

### TENURE

2.38 The London Plan sets out the definition of affordable housing in Policy 3.10 and the Mayor has made clear his commitment to delivering genuinely affordable homes. This means homes for households whose needs are not met by the market and are demonstrably affordable to Londoners with reference to the eligibility criteria for the Mayor's preferred affordable housing tenures.

2.39 Policy 3.11 sets the current strategic affordable housing target for London as at least an average of 17,000 additional affordable homes a year. It states that, in order to give "impetus to a strong and diverse intermediate sector, 60 per cent of the affordable housing provision should be for social and affordable rent and 40 per cent for intermediate rent or sale." However, the policy provides flexibility and LPAs are asked to set separate targets for social/ affordable rent and intermediate housing in their local plans, taking account of all the factors set out in Policy 3.11 C.

2.40 The Mayor is keen to maintain this flexibility to meet local needs while ensuring the delivery of his preferred affordable products. The preferred tenure split is for schemes to deliver:

- at least 30 per cent low cost rent (social rent or affordable rent). London Affordable Rent<sup>11</sup> should be the default level of rent, and should be assumed by applicants in the absence of alternative guidance from LPAs on the rent levels that they consider to be genuinely affordable. An LPA may specify other levels of affordable rent they consider genuinely affordable, and the Mayor will generally expect this to be significantly less than 80 per cent market rent. These homes are to be made available as general needs or supported housing and allocated in accordance with the statutory allocations framework and established nominations agreements;
- at least 30 per cent as intermediate products, with London Living Rent (see definition below) and/ or shared ownership being the default tenures assumed in this category. For viability purposes, London Living Rent homes

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<sup>11</sup> See definition in Homes for Londoners: Affordable Homes Programme 2016-21

in mixed-tenure schemes can be treated similarly to shared ownership, as it can be assumed that they will be sold on a shared ownership basis after a period of ten years; and

- the remaining 40 per cent to be determined by the LPA taking account of the relevant Local Plan policy. Applicants should consider local policies and consult with LPAs to determine the relevant approach.

2.41 If assessing a scheme under the Viability Tested Route the evidence demonstrates that the threshold cannot be met, the preferred tenure split should be considered as the starting point for negotiations, but it will be for the LPA, and the Mayor where relevant, to decide if a different tenure mix could support a greater number of affordable homes.

2.42 To incentivise schemes that are largely or entirely affordable, those that propose 75 per cent affordable housing or more as defined by the NPPF may be considered under the Fast Track Route whatever their tenure mix, as long as the tenure and other relevant standards are supported by the LPA.

### DEFINITION OF LONDON LIVING RENT

2.43 London Living Rent is a new type of intermediate affordable housing that will help, through low rents on time-limited tenancies, households with around average earnings save for a deposit to buy a home of their own.

2.44 Eligibility for London Living Rent is restricted to households renting privately or socially with a maximum household income of £60,000, without sufficient current savings to purchase a home in the local area. London Living Rent is generally aimed at single people, couples, and families, but it could be suitable for house shares of multiple adults, provided the total household income does not exceed £60,000. Any update to these criteria will be provided through the GLA's Annual Monitoring Reports.

2.45 The GLA has calculated ward-level caps for London Living Rent homes based on one-third of median gross household income for the local borough. The cap varies from the Borough median by up to 20 per cent in line with house prices within the ward. The caps have further variation based on the number of bedrooms within the home. RPs have the flexibility to let homes at lower rents if they wish.

2.46 RPs are expected to actively encourage London Living Rent tenants into home ownership. This will include a requirement to assess the ability and inclination of prospective tenants to save, and offering tenants the right to purchase their London Living Rent home on a shared ownership basis. Further information on this product is available in Homes for Londoners: Affordable Homes Programme 2016-2021.

## AFFORDABILITY OF OTHER INTERMEDIATE PRODUCTS

2.47 The Mayor will, and LPAs should, seek to ensure that intermediate homes are provided for households with a range of incomes below the upper limit.

2.48 As allowed for in the London Plan, the Mayor will update the income ranges eligible for intermediate products in the Annual Monitoring Report (AMR). As set out in the current AMR, for intermediate dwellings to be considered affordable, annual housing costs, including mortgage (assuming reasonable interest rates and deposit requirements), rent and service charges should be no greater than 40 per cent of net household income.

2.49 For shared ownership properties, to ensure mortgage costs assumptions are reasonable, boroughs, developers and Registered Providers are advised to assume buyers will access a repayment mortgage, with a term of 25 years and a 90 per cent loan to value ratio. The prevailing average interest rate being offered to lenders based on the terms above should be used to calculate the monthly payments. Generally shared ownership is not appropriate where unrestricted market values of a home exceed £600,000.

2.50 The Mayor will, and LPAs and applicants should, ensure that intermediate housing provision is for households within the full range of incomes below the relevant upper limit, and provide a range of dwelling types in terms of a mix of unit sizes (measured by number of bedrooms).

2.51 It should be noted that these income ranges and calculations only apply to self-contained accommodation. As set out in the 2016 Housing SPG, new types of non-self-contained accommodation, such as purpose-built shared accommodation, can play a role in meeting housing need where they are of a high quality and well designed. However, non-self-contained accommodation and hostels should not be classed as affordable provision. Affordable housing contributions on these schemes will be assessed through the Viability Tested Route, and should be provided as separate or off-site self-contained provision, or cash in lieu payments.

2.52 Student accommodation developments will also be assessed under the Viability Tested Route. Affordable student accommodation should be provided onsite in line with the Mayor's Housing SPG.

## AFFORDABLE HOUSING IN PERPETUITY

2.53 In line with the NPPF, for all affordable housing types LPAs should ensure that affordable housing provision is secured for future eligible households through a legal agreement. Provision of social/ affordable rented housing through a council, housing association or cooperative registered with the Mayor, with rent levels consistent with the appropriate rent regime, will normally achieve this objective. Schemes funded by the Mayor will also need to meet his investment criteria.

2.54 Intermediate products must be secured as such through a Section 106 agreement. The Section 106 should provide for the recycling of any subsidy for alternative affordable provision in the event of the affordable unit being lost (such as when shared ownership homes are fully staircased by an occupier purchasing 100 per cent of the property). For the avoidance of doubt, subsidy includes all forms of subsidy that are required to enable the sale or letting of the property at sub-market rates, such as subsidy from reduced land costs, developer contributions, grant funding, and any other relevant sources.

### SCHEMES NOT SUITABLE FOR THE FAST TRACK ROUTE

2.55 There are a number of circumstances where the Fast Track Route is not appropriate. These are set out below:

#### Off-site and cash in lieu

2.56 All schemes which propose off-site affordable housing or cash in lieu payments are required to provide a detailed viability assessment as part of the justification that off-site or cash in lieu is acceptable, in-line with the London Plan and relevant local policies. Viability alone is insufficient justification for off-site affordable housing provision or a cash in lieu payment.

2.57 Policy 3.12c and para 3.74 of the London Plan state that "affordable housing should normally be provided on site. In exceptional cases where it can be demonstrated robustly that this is not appropriate in terms of the policies in this Plan, it may be provided off-site. A cash in lieu option should only be accepted where this would have demonstrable benefits in furthering the affordable housing and other policies in this plan and should be ring fenced, and if appropriate, pooled, to secure efficient delivery of additional affordable housing on identified sites elsewhere or as part of an agreed programme for provision of affordable housing".

2.58 Therefore, an off-site provision or a financial contribution must be robustly justified. Consideration should only be given to off-site provision where an alternative site or sites have been identified which would enable affordable housing provision more appropriate to the identified needs to be met.

2.59 Cash in lieu of exceptional off-site provision should be held in a separate "affordable housing pot" – where resources can be pooled and ring fenced to enable greater, or more appropriate, new provision to be made off-site, either on an identified site or as part of an agreed programme – in compliance with the statutory tests for use of planning obligations<sup>12</sup>.

<sup>12</sup> Community Infrastructure Levy Regulations 2010 (SI 2010 No 948), Regulation 122(2). Crown Copyright, 2010

2.60 To avoid incentivising off-site provision or in-lieu contributions, agreements for this should provide no financial benefit to the applicant relative to on-site provision and should include review mechanisms, based on the approach set out in the Viability Tested Route.

2.61 Off-site affordable housing requirements will be calculated by reference to the total housing provision on the main development site and any linked sites providing off-site affordable housing. For the purposes of the initial assessment and viability reviews the policy target would equate to 50 per cent affordable housing provided across the main site and any linked sites providing affordable housing when considered as a whole.

2.62 The starting point for determining in-lieu contributions should be the maximum reasonable amount of affordable housing that could be provided on-site as assessed through the Viability Tested Route. The value of the in-lieu contribution should be based on the difference in Gross Development Value arising when the affordable units are changed to market units within the appraisal. This is to ensure that where the on-site component of market housing is increased as a result of the affordable contribution being provided as a cash in-lieu payment, this does not result in a higher assumed profit level for the market homes within the assessment which would have the effect of reducing the affordable housing contribution.

2.63 The maximum value of any in-lieu contribution, for the purposes of the initial assessment and viability reviews (the policy cap), will be based on the equivalent of 50 per cent affordable housing provision. As with off-site affordable housing provision (see above), the target will be a percentage of the on-site market housing taken together with additional affordable housing provided off-site.

2.64 Where an LPA has established a locally based approach for determining in-lieu contributions, such as a tariff based approach, this may be applied where this would result in a higher level of affordable housing provision (or higher policy cap).

2.65 It is important that cash in lieu contributions are used to maximise affordable housing delivery. From 2008 to 2016, £1.2bn was collected in lieu of affordable housing across London. The Mayor will work with boroughs to ensure the money is spent in line with his affordable housing objectives. The Mayor does not consider it appropriate for boroughs to use cash in lieu of affordable housing for any purposes other than maximising the delivery of additional affordable housing. Contributions should be administered by boroughs in a clearly identifiable manner so as to meet the objectives of Policy 3.12C. The Mayor expects all boroughs to publish an annual report on how contributions have been spent and will monitor and publish this information through the London Plan AMR.

### **Loss of existing affordable housing (including estate regeneration)**

2.66 London Plan Policy 3.14 and paragraph 3.82 are clear that schemes which include the loss of affordable housing will be required to ensure that existing affordable housing is replaced by better quality accommodation, providing at least the equivalent floor space of affordable housing<sup>13</sup>. The Mayor expects existing affordable housing to be replaced on a like-for-like basis, meaning that, for example, homes at social rent levels should be replaced with homes at the same or similar rent levels, or that specialist types of affordable housing should be replaced with the same type of housing. The Fast Track Route does not apply in these circumstances, and all estate regeneration schemes should follow the Viability Tested Route to deliver the re-provision of the existing affordable floorspace on a like-for-like basis and maximise additional affordable housing.

2.67 Where a borough is redeveloping an estate as part of a wider programme then it may be possible to re-provide a different mix of affordable housing on the estate, taking account of the wishes of people who want to return to the estate, if the affordable housing is re-provided like-for-like or increased across the programme as a whole. This must also take account of the affordable housing requirements on the linked sites (i.e. it must be in addition to what the linked site would have delivered on its own). Further information on Estate Regeneration can be found in the Mayor's Good Practice Guide.

### **Vacant Building Credit**

2.68 In 2014, Government introduced a vacant building credit (VBC) which applies to sites where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building. The VBC reduces the requirement for affordable housing contributions based on the amount of vacant floor space being brought back into use or redeveloped. This has significant implications for delivery of affordable housing in London where a high proportion of development is on brownfield land where there are existing buildings. It is estimated that as many as 18,000 affordable housing approvals would have been lost had VBC been allowed over the past five years.

2.69 VBC was introduced in a Written Ministerial Statement (WMS) together with updates to the National Planning Practice Guidance (PPG), alongside a policy which sought to restrict planning obligations (including those for affordable housing) from sites providing 10 homes or less (and which have a maximum combined gross floor space of no more than 1,000sqm).

2.70 It is important to note that Sections 38(6) and 70(2) of the Town and Country Planning Act 1990 are clear that the determination of an

<sup>13</sup> Further guidance can be found in the 2016 Housing SPG (Sections 5.1.13 -5.1.18).

application must be made in accordance with the development plan unless material considerations indicate otherwise. The Court of Appeal decision, which upheld the VBC, states that "the policy's unqualified terms do not demonstrate that it was intended to countermand or frustrate the effective operation of the statute". This reinforces the position that legally it is for the decision maker to assess how much weight the WMS has.

- 2.71 In London, the VBC is unlikely to bring forward more development. Brownfield land already delivers the majority of London's housing, and affordable housing requirements are already subject to viability testing, so affordable housing requirements are not preventing sites from coming forward. The policy could undermine key existing policies in the London Plan and Local Plans, which have been tested through examination in public, are based on robust evidence, and take account of the pressing need for affordable housing across London.
- 2.72 To ensure that the VBC operates in a way that delivers the intention of policy and does not simply reduce the affordable housing requirement of schemes that would have come forward without the VBC (and thus reduce the ability to meet objectively assessed needs), this SPG provides guidance on application of the policy in London. Boroughs are also encouraged to reflect this approach in policy in their forthcoming local plans.
- 2.73 Decision makers are encouraged to take account of: the current need for affordable housing in London (both at the local and strategic level); the rate of past delivery against local and strategic targets; the requirement of the NPPF to seek to meet objectively assessed need; the fact that brownfield sites come forward for development without such an incentive; and the requirement in the NPPF to provide competitive returns to a willing land owner and willing developer which already addresses the issue of the impact of affordable housing requirements on viability.
- 2.74 Given the above, the Mayor's view is that in most circumstances it will not be appropriate to apply the VBC in London. However, there may be some limited circumstances where the credit should be applied and would, in line with the intention of the policy, provide an incentive for brownfield development on sites containing vacant buildings that would not otherwise come forward for development. As part of assessing whether this is the case, decision makers are advised to take account of the criteria below as well as locally specific factors influencing the site.
- 2.75 In addition to the above, when assessing the applicability of the VBC, boroughs are advised to consider applying the credit only where all of the following criteria are met:
  - the building is not in use at the time the application is submitted;
  - the building is not covered by an extant or recently expired permission;

- the site is not protected for alternative land use; and
- the building has not been made vacant for the sole purpose of redevelopment.

2.76 To demonstrate that a building has not been made vacant for the sole purpose of redevelopment, an applicant will be required to demonstrate that the relevant buildings (i.e. those for which they are claiming the credit) have been vacant for a continuous period of at least five years before the application was submitted and will also be required to provide evidence that the site has been actively marketed for at least two of those five years at realistic prices.

2.77 It should be noted that if an applicant is claiming that the scheme qualifies for VBC, it cannot also claim CIL relief through the vacancy test.

2.78 Where the decision maker believes the VBC applies because the above criteria are met, the relevant local affordable housing target (including strategic targets) should be applied to the proposal and the calculated VBC taken from that figure. All schemes where the applicant argues that the VBC should be applied will be required to submit viability information which will be published as part of the application.

### **Minor Residential Development**

2.79 The WMS which introduced the VBC also stated that affordable housing planning obligations should not be sought on schemes providing 10 homes or fewer. It is the Mayor's view that affordable housing provision should be required on all sites which have capacity to provide 10 homes or more, as set out in London Plan Policy 3.13. The Mayor also supports LPAs that wish to apply requirements for affordable housing contributions on sites providing fewer than 10 homes where the LPA can demonstrate the role that these sites can play in supporting affordable housing delivery, and that sites would remain viable. The Fast Track Route may be suitable for developments providing fewer than 10 homes where borough affordable housing requirements for small sites are met in full.

### **Opportunity Areas, Housing Zones and Industrial Land**

2.80 Opportunity Areas and Housing Zones are key sources of housing supply in London. They are, by their nature, complex to bring forward and often require significant investment in infrastructure. They are also of a scale that can create fundamentally new places and communities. Significant research and an in-depth understanding of the area, its strengths and weaknesses, and how to deliver a successful place underpin the development of an Opportunity Area Planning Framework.

2.81 Strategic Industrial Locations (SILs) are protected by the London Plan as

they contain uses and activities that are essential to London's economic function and well-being. They include logistics hubs, waste management and transport facilities, important industrial uses providing services to the 'service' sector, and relatively low cost workspace suitable for small and medium-sized enterprises. They are also regularly reviewed by the Mayor to make sure that sufficient land is protected to meet London's current and future industrial needs, but when they are surplus to requirements they can instead be used to provide sites for the new housing, new schools, open spaces and health facilities that London's growing population needs.

- 2.82** Locally significant industrial sites and other industrial sites also perform an important role in supporting the local economy by providing land and premises that meet the needs of different industrial and related uses.
- 2.83** Existing use values are generally lower for industrial land thereby allowing higher levels of affordable housing and new social infrastructure to be provided. The release of surplus industrial land should therefore be carefully managed through Local Plans (taking into account evidence in strategic and local employment land assessments) in line with London Plan policies 2.17, 3.7, and 4.4. This development plan-led process should ensure that where industrial land is deemed suitable for release for housing, it fully contributes to other important planning objectives, in particular new affordable housing. The Mayor is also considering increasing the affordable housing threshold for industrial sites suitable for release to benefit from the Fast Track Route to 50 per cent in the London Plan.
- 2.84** When considering Opportunity Areas, Housing Zones and industrial land, LPAs may wish to apply a localised affordable housing threshold for the Fast Track Route or fixed affordable housing requirements that maximises affordable housing delivery. This approach could help provide certainty to developers and land owners about the affordable housing requirements and help prevent land price rises based on hope value. Localised affordable housing thresholds, or fixed affordable housing requirements, should increase affordable housing provision beyond 35 per cent where possible. LPAs may also consider a local approach in terms of housing mix and tenure through the plan process. The SPG threshold approach will apply in Opportunity Areas, Housing Zones and for industrial land where a local approach has not been progressed.

## PART THREE

# GUIDANCE ON VIABILITY ASSESSMENTS

- 3.1 The Mayor supports the London Borough Development Viability Protocol<sup>14</sup> and the guidance below is considered consistent with that protocol, while providing more detail on the specific approach the Mayor will use. Where viability assessments are submitted as part of the planning process, LPAs should review these rigorously as required by the London Plan<sup>15</sup>, in line with the guidance in this SPG.
- 3.2 For referable schemes that do not meet the relevant affordable housing threshold the Mayor will review both the viability information submitted by the applicant and any review or assessment carried out by or for the LPA. The Mayor will consider whether the approach adopted and inputs used are appropriately and adequately justified by evidence. When reviewing the information the Mayor may ask the applicant and LPA for clarification and additional information.
- 3.3 Overall the Mayor aims to establish whether the proposed level of affordable housing and other contributions are the maximum that can be reasonably supported or whether further obligations and/ or a greater level of policy compliance could be achieved. This assessment process will inform the Mayor's comments at referral Stage 1 and subsequent decision at referral Stage 2.
- 3.4 The Mayor will use the residual land value methodology to determine the underlying land value once the costs of the development (including developer's profit) are deducted from the gross development value.
- 3.5 There are a number of viability models used in the industry such as the GLA's own Affordable Housing Toolkit, the HCA model, Argus Developer, and bespoke models. Where viability information is required, the LPA, and for referable schemes the Mayor, should be provided with the full working model and/ or all the assumptions and calculations included in the modelling so that officers can test and interrogate the information. There must be no hidden calculations or assumptions in the model. This will allow officers to vary assumptions to ascertain impact on the conclusions. Without this the LPA and Mayor cannot properly assess the validity of the appraisal and the assumptions used to underpin the affordable housing offer.

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<sup>14</sup> London Borough Development Viability Protocol, London Borough Viability Group (2016)

<sup>15</sup> London Plan 2016, Paragraph 3.71

3.6 In addition, the applicant should provide detailed evidence to support inputs and assumptions. An executive summary version of the supporting report, which summarises the key inputs, findings, and conclusions should also be provided. Where scheme details change during the application, new information should be provided to the LPA and the Mayor where relevant.

### APPRAISAL REQUIREMENTS

3.7 Development appraisals should include details of the proposed scheme including site area, residential unit numbers, number of habitable rooms, unit size, density (by units and by habitable rooms) and the split between the proposed tenures. Floorspace figures should also be provided for residential uses (by tenure), and non-residential uses in Gross Internal Area (GIA) and Net Internal Area (NIA).

3.8 Information should be provided relating to the target market of the development and proposed specification, which should be consistent with assumed costs and values.

3.9 Details of the assumed development programme and the timing of cost and income inputs should be provided, with reference to: project/ construction plans and contracts; and land/ development/ letting agreements (as relevant). The development programme should include information relating to pre-build, construction, and marketing and sales/ lettings periods.

### Scheme delivery

3.10 Applicants should demonstrate that their proposal is deliverable and that their approach to viability is realistic. As such appraisals would normally be expected to indicate that the scheme does not generate a deficit, and that the target profit and benchmark land value can be achieved with the level of planning obligations provided. If an appraisal shows a deficit position the applicant should demonstrate how the scheme is deliverable.

3.11 Where an applicant is seeking to rely on assumptions of growth in values these should be provided. For shorter-term non-phased schemes which are based on current day values and costs, growth assumptions should be included as a scenario test.

3.12 For phased or longer-term schemes, it may be appropriate to include growth assumptions within the appraisal to ensure that this is realistic and that affordable housing is maximised. These should be informed by recognised market sources for the relevant area. Where this is the case viability review mechanisms will be required as set out in this guidance given the uncertainty in determining viability at the application stage. Higher profit targets should not be assumed which offset the benefits of this approach.

## Development values

3.13 Gross development value is derived from: the sales values of any units, car parking spaces, 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.

3.14 Assumptions relating to development values should be justified with reference to up-to-date transactions and market evidence relating to comparable new build properties within a reasonable distance from the site (where available) and, where relevant, should reflect arrangements with future occupiers.

3.15 In particular, information relevant to comparable properties should be directly comparable to the site in question or should be adjusted to ensure it is comparable. It should be fully analysed to demonstrate how this has been interpreted and applied to the application scheme. For any units with characteristics which justify higher values (e.g. upper floors, south facing units, river frontage etc) further details should be provided, with reference to units of similar characteristics in nearby schemes where possible.

## Affordable housing values

3.16 In line with the London Plan<sup>16</sup>, applicants should engage with Registered Providers (RPs) at an early stage and an RP should be involved in pre-application discussions. Affordable housing values should reflect discussions with, and the offer(s) made, by the RP. Values should be evidenced through calculations of rental and capital receipts (including staircasing receipts for shared ownership units) and availability of RP cross-subsidies where applicable. For viability purposes London Living Rent homes should be assumed to be sold, on shared ownership basis, after a period of 10 years to the occupying household as a first priority, or another eligible household, with the relevant subsidy recycled<sup>17</sup>.

3.17 The Mayor will, and LPAs should, investigate assumed payments for affordable housing where the price assumed or paid for an affordable unit is significantly higher than typical values.

3.18 The timings of payments by RPs should also be reflected in the appraisals as an RP will often pay for the units in instalments starting at commencement of construction which will reduce finance costs. The timings of payments by RPs, which should be agreed at an early stage, should be clearly set

<sup>16</sup> Policy 3.12 and paragraphs 3.71, 3.72

<sup>17</sup> Where discount market rent homes are provided at London Living Rent equivalent rents within Build to Rent development there is no assumption the homes will be sold.

out to support the appraisal, including the name of the RP involved. If no offers have been received, details regarding the terms of marketing and the procurement process should be provided.

- 3.19 The price the RP has agreed to pay for each unit should be used in the viability assessment and should be set out in the Section 106 agreement (for phased schemes the price in the Section 106 should be inflation linked).
- 3.20 The above approach to valuation and Section 106 should also be applied to schemes where affordable housing tenures are not being provided by an RP. See Part two for guidance on affordable housing tenures, affordability, and public subsidy/ grant.

## COSTS

### Build costs

- 3.21 Build costs should be provided in an elemental form based on a detailed specification of the proposed development that enables them to be benchmarked against publicly available sources such as BCIS and supported by evidence from cost consultants. They should include detail setting out the separate costs for:
  - 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.
- 3.22 Cost details should generally be provided based on Gross Internal Area (GIA), clearly apportioning costs to different elements of the development (i.e. commercial, market residential, affordable housing etc). The gross to net floorspace ratio of the development should be set out.
- 3.23 There should be a clear alignment between a development's specification, assumed build costs, and development values, and there should be consistency with comparable sites. Applicants should submit elemental cost plans that are consistent with the level of detail provided in the drawings in support of planning applications (i.e. RIBA Plan of Works Stage C). Wherever possible such assessments should be benchmarked against other similar

projects. Where an appraisal is based on current day values, costs should not include build cost inflation.

- 3.24 LPAs are strongly encouraged to use cost consultants to rigorously assess scheme proposals and verify whether costs are appropriate taking into account pricing, quantities, specification, and assumed development values. Consideration should also be given to scheme design and whether development costs could be reduced as part of a cost/ value assessment.
- 3.25 Any site-specific abnormal costs should be disaggregated and supported by robust evidence (including contractor costs). The presence of abnormal costs would normally be expected to influence land value. The applicant should have been aware of abnormal costs prior to purchasing the site, therefore the presence of abnormal costs (alongside relevant requirements of the development plan) are assumed to have influenced the level of premium above the existing use value a land owner would expect. Thus, it should not be assumed that abnormal costs will be offset at the expense of compliance with the Development Plan.

### **Professional Fees, Marketing, and Finance Costs**

- 3.26 Professional and marketing fees should be justified taking account of the complexity of the development and development values. Costs applied on a percentage basis should be realistic when considering the monetary value of the assumed cost.
- 3.27 A standardised approach will generally be adopted to finance costs which should be justified according to the specific proposal, reflecting varying interest costs (if applicable) throughout the development period and presales (including to RPs). The standardised approach assumes that developers will incur generic average finance costs based on standard market rates, though this may vary according to the scale and nature of the scheme.

### **Planning obligations and Community Infrastructure Levy**

- 3.28 As set out in the PPG, likely S106 planning obligations should be included as a development cost and be determined in accordance with Plan policies and guidance, including planning frameworks. CIL charges should also be included as a development cost and should be calculated in accordance with borough/ Mayoral Charging Schedules and the CIL Regulations. Account must also be taken of the strategic Crossrail S106 contributions (which does not apply to housing but can apply to some other elements of a mixed use development).

- 3.29 Borough and Mayoral CIL instalment policies, phased payments, reductions for occupied floorspace and affordable housing relief under the CIL Regulations should also be reflected in the assumed timing and value of payments.
- 3.30 Applicants and land owners are expected to take account of relevant planning obligations and CIL requirements relevant for the scheme.
- 3.31 When reviewing plans and setting CIL charging schedules, LPAs should take account of London Plan Policy 8.2 (Planning obligations) which places the highest strategic priority on contributions to affordable housing and public transport infrastructure, and ensure that balancing the need for these requirements does not prevent affordable housing from being delivered.

### **Developer profit**

- 3.32 Developers will be seeking a competitive return in order to proceed with a scheme and to secure finance where required. The appropriate level of profit is scheme specific; evidence should be provided by applicants to justify proposed rates of profit taking account of the individual characteristics of the scheme, the risks related to the scheme, and comparable schemes. In line with PPG a rigid approach to assumed profit levels should be avoided and applicants cannot rely on typically quoted levels.
- 3.33 Factors that may be relevant when assessing scheme-specific target profit levels include the scheme's development programme, and whether it is speculative or provides pre-sold/ pre-let accommodation. Market forecasts and stock market trends may also provide an indication of perceived market-wide risk.
- 3.34 Profit requirements for affordable housing should reflect significantly lower levels of risk when compared to private residential units. Lower levels of return would normally be expected for commercial and private rented accommodation.
- 3.35 It should be made clear how the profit level has been adjusted taking into account other assumed inputs within an appraisal. For example, the adoption of cautious assumptions such as the inclusion of contingencies and other costs at the upper end of typical parameters may warrant a lower target profit. The application of a review mechanism should not be used as a justification for a higher profit level.
- 3.36 The Mayor will normally consider profit as a factor of gross development cost (GDC) or gross development value (GDV). An 'internal rate of return' (IRR) approach of measuring profit, which is associated with a long term development programme and assumed growth in values and build costs, is sensitive to the timing of costs and income. If IRR is relied on a full

justification must be provided for the assumed development programme, the timing of cost and value inputs and the target IRR. Where this is the case profit should also be considered as a factor of GDC and/ or GDV.

### BENCHMARK LAND VALUE

3.37 Within planning viability assessments there are two assessments of land value that are undertaken to determine whether a proposal is viable: the assessment of residual land value and benchmark land value. The residual land value is determined through deducting development costs from development value to ascertain the underlying land value. This is then compared with the benchmark land value. The benchmark land value can be considered as the value below which a reasonable land owner is unlikely to release a site for redevelopment.

3.38 The process for establishing an appropriate benchmark land value for a viability assessment is key, because this indicates the threshold for determining whether a scheme is viable or not. A development is typically deemed to be viable if the residual land value is equal to or higher than the benchmark land value, as this is the level at which it is considered that the landowner has received a 'competitive return' and will release the land for development.

3.39 The NPPF's benchmark for viability appraisal is that it should "take 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"<sup>18</sup>.

3.40 The PPG is clear that "in all cases, land or site value should: reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge".<sup>19</sup>

3.41 This is a key requirement because if it is assumed that the granting of planning permission will increase the value of the site, but the costs of meeting planning requirements are not factored in, the site will be over-valued.

3.42 It is for this reason that the Mayor does not consider it appropriate within a development appraisal to apply a fixed land value as an input which is based on price paid for land or a purely aspirational sum sought by a landowner. Land transactions reflect the specific circumstances of the developer whereas planning viability assessments are typically undertaken on a standardised basis. Reliance on land transactions for sites that are not genuinely comparable or that are based on assumptions of low affordable

<sup>18</sup> NPPF, para 173

<sup>19</sup> PPG, para 023

housing delivery, excessive densities, or predicted value growth, may lead to inflated site values. This undermines the implementation of Development Plan policies and the ability of planning authorities to deliver sustainable development.

### EXISTING USE VALUE PLUS PREMIUM

3.43 The 'Existing Use Value plus' (EUV+) approach to determining the benchmark land value is based on the current use value of a site plus an appropriate site premium. The principle of this approach is that a landowner should receive at least the value of the land in its 'pre-permission' use, which would normally be lost when bringing forward land for development. A premium is usually added to provide the landowner with an additional incentive to release the site, having regard to site circumstances.

3.44 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.

3.45 The PPG confirms that comparing the current use value of a site with the residual land value generated by the proposed development is an appropriate way to determine whether or not a 'competitive return' is achieved for the land owner<sup>20</sup>.

3.46 When determining the EUV+ benchmark:

- The existing use value (EUV) is independent of the proposed scheme. The EUV should be fully justified based on the income generating capacity of the existing use with reference to comparable evidence on rents, which excludes any hope value<sup>21</sup> associated with development on the site or alternative uses. This evidence should relate to sites and buildings of a similar condition and quality or otherwise be appropriately adjusted. Where an existing use and its value to a landowner is due to be retained in a development (and not lost as is usually the case), a lower benchmark would be expected. Where a proposed EUV is based on a refurbishment scenario, or a redevelopment of the current use, this is an alternative development scenario and the guidance relating to Alternative Use Value (AUV) will apply (see below).
- Premiums above EUV should be justified, reflecting the circumstances of the site. For a site which does not meet the requirements of the landowner or creates ongoing liabilities/ costs, a lower or no premium would be

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<sup>20</sup> PPG Viability Paragraph 24

<sup>21</sup> Hope value is defined by RICS as "any element of open Market Value of a property in excess of the current use value, reflecting the prospect of some more valuable future use or development". This prospective, more valuable use is usually a use for which planning permission has not yet been obtained.

expected compared with a site occupied by profit-making businesses that require relocation. The premium could be 10 per cent to 30 per cent, but this must reflect site specific circumstances and will vary.

- The level of premium can be informed by benchmark land values that have been accepted for planning purposes on other comparable sites where determined on a basis that is consistent with this guidance.
- As set out in PPG, in all cases land or site value should reflect Development Plan Policies, planning obligations and CIL<sup>22</sup>. When determining a level of premium that would be sufficient to incentivise release of a site for development and ensure that a landowner receives a 'competitive return', this should take into account the overarching aim of delivering sustainable, policy compliant development and that an uplift in land value is dependent on the grant of full planning consent.

**3.47** The Mayor considers that the 'Existing Use Value plus' (EUV+) approach is usually the most appropriate approach for planning purposes. It can be used to address the need to ensure that development is sustainable in terms of the NPPF and Development Plan requirements, and in most circumstances the Mayor will expect this approach to be used.

**3.48** An alternative approach will only be considered in exceptional circumstances which must be robustly justified by the applicant. One alternative approach determines the benchmark land value using the market value of land having regard to Development Plan policies and material considerations<sup>23</sup>. However, research published by RICS<sup>24</sup> 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 site and try to recover some or all of this overpayment via reductions in planning obligations" (RICS 2015<sup>25</sup> p26). Thus a market value approach will generally not be accepted by the Mayor.

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<sup>22</sup> PPG Paragraph 23

<sup>23</sup> See RICS Guidance Financial Viability in Planning (2012)

<sup>24</sup> RICS Financial Viability Appraisal in Planning Decisions: Theory and Practice (April 2015)

<sup>25</sup> ibid

3.49 In the very limited circumstances where this approach may be justified, an applicant must demonstrate that the site value fully reflects policy requirements, planning obligations, and CIL charges, and takes account of site-specific circumstances. Market land transactions used must be fully evidenced and justified as being genuinely comparable and consistent with the methodology applied in the viability assessment. These should also be used to determine whether the residual value of the scheme and cost and value inputs are realistic. The applicant should also consider the:

- EUV;
- the Residual Land Value assuming a policy compliant affordable housing offer;
- the Residual Land Value based on an assumption of no affordable housing; and
- the Residual Land Value based on evidence from recent comparable market transactions.

3.50 Land is valued on a current day basis; changes in circumstances since a site has been purchased are a factor of development risk<sup>26</sup>. Land transactions may also be based on unrealistic assumptions regarding development density, changes of use, or planning obligations. Where site value does not take full account of the Development Plan or CIL charges, where market land transactions are not fully evidenced and genuinely comparable, or where transactions are based on a different methodology and have not been appropriately adjusted, reliance on market transactions will not be supported.

3.51 If an applicant seeks to use an 'alternative use value' (AUV) approach it must fully reflect policy requirements. Generally the Mayor will only accept the use of AUV where there is an existing implementable permission for that use. Where there is no existing implementable permission, the approach should only be used if the alternative use would fully comply with development plan policies, and if it can be demonstrated that the alternative use could be implemented on the site in question and there is market demand for that use.

3.52 In order to demonstrate the value of a policy compliant alternative that does not benefit from an implementable permission but does have a realistic prospect of achieving planning permission, the applicant should provide a detailed alternative proposal, incorporating current day costs and values. The applicant should also explain why the alternative use has not been pursued. Where all these conditions are met and the AUV is being used, there is no requirement for an additional 'plus' element. It is for the applicant to weigh up the different options and risk profiles of the potential schemes for a site and decide which one to pursue.

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<sup>26</sup> RICS Guidance: Financial Viability in Planning (2012)

## REVIEW MECHANISMS

3.53 To maximise affordable housing delivery in the longer term and acknowledging the potential for significant changes in values in the housing market, the London Plan supports the use of review mechanisms.

3.54 Review mechanisms provide a reappraisal mechanism to ensure that maximum public benefit is secured over the period of a development and can encourage the build out of schemes. These mechanisms recognise the need to maximise affordable housing provision and address the economic uncertainties which may arise over the lifetime of a development proposal. They allow increases in Section 106 contributions to reflect changes in the value of a development from the date of planning permission to specific stages of the development programme. Such approaches are intended to support effective and equitable implementation of planning policy while also providing flexibility to address viability concerns such as those arising from market uncertainty.

3.55 Review mechanisms should be based on the most robust data available; this generally will be evidenced build costs and the sale price or rental value of the completed units and other uses. However, this will depend on the timing and specifics of the review. More than one review trigger may be appropriate, i.e. an early implementation review if an agreed level of progress has not been reached by a certain date, and a review later in the process taking account of values achieved. The relevant triggers must be clearly set out in the Section 106 agreement.

### Early Stage Reviews – Fast Track and Viability Tested Routes

3.56 To incentivise delivery both Fast Track and Viability Tested schemes should be subject to an early review which is triggered where an agreed level of progress on implementing the permission has not been reached after two years of the permission being granted or as agreed with the LPA, and the Mayor where relevant, on a site-by-site basis. This will follow substantial implementation, i.e. following the completion of all ground preparation works, the foundations for the core of the development, and construction of the ground floor. If the agreed level of progress has been made, the review will not be triggered.

3.57 Where the early review is triggered, the review will take place at the point that the agreed level of progress is reached<sup>27</sup>. It is expected that in most cases any uplift in affordable accommodation at this early stage will be

<sup>27</sup> For example, where a review is triggered because the agreed level of progress has not been reached within two years of the grant of permission, and the agreed level of progress is achieved after three years, the review will take place three years after the grant of permission.

accommodated on-site. Plans should identify which homes would switch to affordable accommodation in the event of an improvement in viability at this early stage.

- 3.58 Where a review identifies a surplus that is insufficient to augment on-site affordable housing then the surplus should be paid to the LPA as a financial sum prior to occupation of the development.
- 3.59 Fast Track Route - To encourage applicants to take the Fast Track Route, the Mayor's approach is that viability information should not normally be required for schemes that meet the affordable housing threshold at application stage. Values and costs will be assessed at the point of the viability review. The Mayor supports the use of indices to assess the change in values and build costs since permission was granted.
- 3.60 Viability Tested Route - Early reviews for Viability Tested Route schemes also consider market changes in Gross Development Value and build costs between the point of planning permission and the point of the review. The estimated Gross Development Value and build costs submitted as part of the original planning application will be compared against an updated scheme valuation and elemental cost plan.

### **Late Stage Reviews – Viability Tested Route**

- 3.61 Viability Tested schemes should be subject to late reviews which will be applied once 75 per cent of homes are sold, or at a point agreed by the LPA<sup>28</sup>. The benefit of this approach is that the review can be based on values achieved and costs incurred. The review takes place prior to sale of the whole development to ensure that the review and any additional contribution arising from this are enforceable. The outcome of this review will typically be a financial contribution towards off-site affordable housing provision.

### **Other reviews**

- 3.62 In addition to the reviews referred to above, for longer-term phased schemes consideration should be given to requirements for an updated early stage review, in the event a scheme stalls following an early stage review, particularly for schemes that have not met the threshold level of affordable housing.
- 3.63 On larger developments that will be built out over a number of phases LPAs should also consider mid-term reviews which are triggered prior to the implementation of phases. These would take a similar approach to the early review, taking account of any additional affordable housing provided through earlier reviews.

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<sup>28</sup> Where units are not being sold, the trigger should be occupation of 75 per cent of units or as agreed with the LPA.

### Terms of viability review mechanisms

3.64 The Mayor's approach to viability review mechanisms is set out in Annex A to this guidance. Boroughs are encouraged to use the formulas in Annex A when setting out and implementing viability reviews in S106 agreements.

3.65 Whenever review mechanisms are used the Section 106 agreement should:

- identify the point(s) at which the reappraisal review should be carried out (bearing in mind the price paid for the completed unit or rental value provides the most robust data on values);
- establish a threshold level(s) of viability at which additional planning obligations will be required based on the target profit agreed by the LPA, or Mayor as relevant, at the application stage. The review mechanisms should determine whether a 'surplus' is generated over and above the returns necessary for a scheme to be deemed viable<sup>29</sup>;
- establish what the review will assess - the Mayor will assess changes to gross development values and build costs;
- be based on the most robust and up-to-date information available - this will generally be the price paid or rental value for the completed unit. However this will depend on the timing and the specifics of the review(s);
- set a 'cap' on the additional provision that will be sought which should be 50 per cent affordable housing<sup>30</sup>;
- determine whether any surplus profit<sup>31</sup> should be split between the developer and borough once the threshold level of viability has been reached to ensure that a developer remains incentivised to maximise value from a scheme. This will not typically be appropriate for Early Stage Reviews at which point the majority of sales and lettings will not have taken place. For Late Stage Reviews this should be split 60/40 between the LPA and developer with 60 per cent of surplus profit used for additional affordable housing;
- set out the expectation for additional homes on- or off-site, or for receiving a financial contribution. The London Plan prioritises on-site affordable housing. For Early Stage Reviews, additional affordable housing should be provided on-site where a sufficient surplus profit is identified through the review (with the Section 106 agreement identifying the units which would change to affordable units in the event of an increase in viability). However,

<sup>29</sup> If a scheme provides a higher proportion of affordable housing to that which has been demonstrated to be viable at application stage, it may be necessary to specify that a deficit is overcome before any surplus value is used towards the provision of additional affordable housing.

<sup>30</sup> Alternatively the cap could be set at the Local Plan strategic target level.

<sup>31</sup> Surplus profit is profit above the developers' initial target profit.

for Late Stage Reviews on residential build for sale schemes, account should be taken of the potential practical implications of delivering an increased amount of affordable housing on-site in which case an off-site or commuted sum contribution would be acceptable. Although additional affordable housing must be the priority, the review mechanism may also be used to improve the affordability of secured affordable homes or contribute to other policy requirements which may not have been viable according to the initial assessment; and

- make provision for the full costs of the LPA, and Mayor where relevant, of negotiating, undertaking and assessing a viability review which should be borne by the applicant.

**3.66** Affordable housing requirements are applied where they are required to make an application acceptable in planning terms. Thus, review mechanisms should not be used to reduce the base level of affordable housing contributions which are required as part of the planning permission. This would require a new or modified planning permission.

## PART FOUR

### BUILD TO RENT

#### WHY THE MAYOR SUPPORTS BUILD TO RENT

- 4.1 The private rented sector (PRS) is the only housing tenure in London to have seen growth in recent years. It is now home to 28 per cent of all households in London, nearly double the 15 per cent it housed in 2004<sup>32</sup>. The sector is essential in supporting labour market mobility, with four in five of those coming to London finding their first home in the private rented sector<sup>33</sup>.
- 4.2 Government and the Mayor support the provision of more high quality private rented homes. Policy 3.8 (B a1) (Housing choice) of the 2016 London Plan recognises that the planning system should take a more positive approach to enabling this sector to contribute to the achievement of housing targets through accelerating housing delivery rates. The London Plan goes on to state that positive support should be given for purpose-built private rented homes through the land use planning system at the local as well as the strategic level. This may, for instance, involve Local Plans recognising how this tenure can increase supply, meet a range of needs, and be particularly suitable for certain locations, as well as through development management.
- 4.3 Purpose-built private rented homes, held in the longer term for private renting, are variously referred to as Build to Rent, Multi-Family Accommodation, Private Rented Communities, Institutionally-Backed Private Rent or Apartment Living and many developers also have increasingly well-known individual brand names. While there is a great deal of diversity in the sector, for ease of reference this section of the SPG will refer to purpose-built self-contained homes for private rent that meet the criteria set out in below as 'Build to Rent'.
- 4.4 The Mayor believes that Build to Rent developments can make a particular contribution to increasing housing supply and are beneficial in a number of ways. They can:
  - attract investment into London's housing market that otherwise would not be there, particularly since Build to Rent is attractive to institutional investors seeking long-term, inflation-tracking returns;
  - accelerate delivery on individual sites as they are less prone to 'absorption constraints' that affect the build-out rates for market sale properties;

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<sup>32</sup> Housing in London 2016

<sup>33</sup> Quarterly Labour Force Survey, 2014-16

- more easily deliver across the housing market cycle as they are less impacted by house price downturns;
- provide a more consistent and at-scale demand for off-site manufacture;
- offer longer-term tenancies and more certainty over long-term availability;
- ensure a commitment to, and investment in, place making through single ownership; and
- provide better management standards and higher quality homes than other parts of the private rented sector.

4.5 To encourage the development of this type of housing, the London Plan has made clear that LPAs should recognise the distinct economics of the sector relative to mainstream 'build for sale' market housing, and should take account of this when considering planning applications for Build to Rent schemes.

4.6 These distinct economics are normally taken to mean two separate but connected things: first, a reliance on a revenue income through rent rather than upfront return on sales; and second, that Build to Rent often cannot compete on an equal footing with speculative build for sale when competing for land, as it can generate lower returns.

### INCREASING THE NUMBER AND QUALITY OF BUILD TO RENT HOMES

4.7 To help level the playing field for this product Build to Rent schemes should be assessed under a Build to Rent 'pathway' through the planning system. This is set out in detail below, its key principles being:

**(1) Definition:** a clear definition of Build to Rent with guidance on how and when a covenant through planning should apply to a Build to Rent scheme.

**(2) Affordable housing tenure:** the pathway recognises the need for all homes on the Build to Rent development to stay under single management and as such will encourage affordable homes on the development to be delivered as discounted market rent (preferably at London Living Rent levels), managed by the Build to Rent provider (or possibly via another designated manager).

**(3) Design:** how the flexibility set out in Policy 3.5d of the London Plan could be applied to Build to Rent.

**(4) Viability:** the 'threshold approach' for affordable housing, set out in Part two of this SPG for 'build for sale' developments, would not be applied to Build to Rent developments. Instead viability information would be required and assessed under a specific Build to Rent viability approach that recognises the distinct economics of the tenure.

**(5) Management standards:** Build to Rent developments should showcase the best management practice in the rented sector.

4.8 These principles are set out in greater detail below.

### (1) DEFINITION

4.9 In the absence of a distinct planning use class, a clear definition of Build to Rent is essential to define which developments should be treated as Build to Rent for planning purposes. For the purposes of this SPG, a Build to Rent development must:

- be a development, or block/phase within a development, of at least 50 units<sup>34</sup>;
- hold its constituent homes as Build to Rent under a covenant for at least 15 years<sup>35</sup>;
- provide units that are all self-contained and let separately<sup>36</sup>;
- operate under unified ownership and management;
- offer longer tenancies (three years or more) to all tenants, with break clauses that allow the tenant to end the tenancy with a month's notice any time after the first six months;
- offer rent certainty for the period of the tenancy, the basis of which should be made clear to the tenant before a tenancy agreement is signed, including any annual increases which should always be formula-linked;
- include on-site management, which does not necessarily mean full-time dedicated on-site staff, but must offer systems for prompt resolution of issues and some daily on-site presence;
- be operated by providers who have a complaints procedure in place and are a member of a recognised ombudsman scheme; and
- not charge up-front fees of any kind to tenants or prospective tenants, other than deposits and rent-in-advance.

4.10 The definition requires all homes in a development to be Build to Rent, but it is recognised that this might apply, for example, to just one block on a larger mixed tenure development. The most important principle is single ownership and management of the Build to Rent homes, as this underpins the need for the distinct approach to affordable housing. On schemes which propose a proportion of homes as Build to Rent and a proportion for market sale, the

<sup>34</sup> LPAs may set their own thresholds to reflect local housing market circumstances and affordable housing need. However, it is important that where a lower threshold is set Build to Rent schemes operate according to the stipulations in this guidance in order to qualify for the Built to Rent pathway.

<sup>35</sup> Schemes must also be subject to a clawback provision in the event of sale out of rented tenure in line with the approach set out in this guidance.

<sup>36</sup> For guidance on non-self-contained accommodation please see section 3.5 of the 2016 Housing SPG

Build to Rent pathway will only be suitable for the Build to Rent element. The affordable housing provisions of the Build to Rent pathway will not be available for any market sale element. The scheme should be assessed as a whole, with affordable housing calculated as a proportion of total habitable rooms across the scheme and will need to follow the Viability Tested Route.

### **Role and operation of covenant**

- 4.11 To ensure new private rented homes are secured for the rental market for a minimum period, and to enable the distinct economics to be taken into account in planning decisions, Build to Rent homes must be secured through a covenant in a Section 106 agreement. During this period the private rented homes must be retained in single ownership and overall ownership of the scheme can only change if the entire scheme stays as Build to Rent.
- 4.12 Individual homes cannot be sold or the covenant would be broken. This would trigger a 'clawback' review that may result in a payment owed to relevant LPA. While the appropriate covenant length will differ, the minimum covenant length should be 15 years. Given that the market is now maturing, the Mayor expects to see all schemes having a covenant of at least 15 years<sup>37</sup>.

### **Clawback**

- 4.13 As part of the viability testing process applicants should submit a Build to Rent viability assessment, which will be scrutinised in the usual way to determine the maximum reasonable amount of affordable housing that can be provided.
- 4.14 In line with the Mayor's approach to affordable housing on Build to Rent schemes, and to ensure that there is no financial incentive to break a covenant, planning permission should only be granted where the scheme is subject to a clawback agreement. The appropriate clawback amount will be the difference between the total value of the market rent units based on the viability assessment at application stage<sup>38</sup>, and those units valued on a 'for sale' basis at the point of sale. The LPA should be notified of the sale price of units that are sold and this should inform the market value of remaining units to determine the clawback<sup>39</sup>. The clawback amount must demonstrate a sufficient difference in the value of units between rented and for sale tenures, consistent with the 'distinct economics' of build to rent, for the scheme to qualify for the Build to Rent pathway.

<sup>37</sup> The covenant period should commence from the date of occupation of the relevant block, or the date on which the entire block is available for occupation, whichever is the latter.

<sup>38</sup> This may be index linked according to local rental values.

<sup>39</sup> The market value of remaining units should be informed by the sale of any units at market value which must be genuine arms-length transactions.

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- 4.15 The clawback amount will be payable to the LPA for the provision of affordable housing in the event that market rented units are sold within the covenant period, which would break the covenant. For larger phased schemes the LPA should consider whether the clawback amount should be disaggregated to the relevant block in which units are sold. The clawback amount should not reduce over time to ensure that the covenant remains effective for the full period.
- 4.16 In the event that a share of rented units are sold, and the remaining units are retained within the rental market, an LPA may determine that the clawback is calculated based on the units sold. The other units will remain under covenant and the clawback will apply at the point of sale if disposed of within the covenant period.
- 4.17 The clawback does not relate to any affordable units provided as part of the scheme. Affordable units are not subject to a minimum covenant period and must always be secured in perpetuity. Additionally, overall ownership of the building(s) in which the units are located may change during the covenanted period without triggering 'clawback' if the units remain in single ownership and management as Build to Rent.

## VAT

- 4.18 Section 106 agreements and covenants should be carefully worded in order that the construction of the units would be VAT zero-rated, which they would not be if the covenant were to require the homes to be Built to Rent in perpetuity.
- 4.19 This means that, within the granting of any planning consent, it must be clear that buildings or individual units can be sold out of the long term PRS market, but that this will result in a clawback as described above. The Section 106 should also clearly set out the how the clawback will operate in accordance with this guidance, including how it will be calculated.

## (2) AFFORDABLE HOUSING TENURE

- 4.20 The second element of the Build to Rent pathway is the affordable housing offer, in which the aim is to maintain the integrity of the Build to Rent development, with unified ownership and management of all the homes. Where a developer is proposing a Build to Rent development which meets the definition set out above, the affordable housing offer can be entirely discounted market rent (DMR), managed by the Build to Rent provider and delivered without grant, i.e. entirely through planning gain. As it is not necessary to be a Local Authority or a Registered Provider to deliver or manage intermediate rented homes that are delivered without grant, these units can be owned and/ or managed by Build to Rent landlords themselves.
- 4.21 Discounted market rent is also better suited to Build to Rent than other

affordable products because units can more easily be tenure blind and "pepper potted" through the development. In addition, some discounted market rented products not let by local authorities/ Registered Providers can also qualify for mandatory CIL relief.<sup>40</sup>

- 4.22** Schemes that do not meet the Build to Rent definition and that do not provide a clawback agreement in line with the approach set out above will not qualify for the Build to Rent pathway. These will be treated as build for sale developments for the purposes of determining affordable housing delivery.
- 4.23** The Mayor would prefer the DMR homes to be let at London Living Rent levels, to ensure city-wide consistency in approach. Unlike other discounted market rent products London Living Rent has the advantages that it has a London-wide electoral mandate, can be consistently understood and applied across London, can earn the public's trust as being genuinely affordable, and will be backed by the GLA who will uprate it every year.
- 4.24** Homes may be let at the GLA's current London Living Rent levels at the start of each new tenancy. Alternatively, the discount to market should be fixed at a rate that makes the rent equivalent to London Living Rent for the initial letting, with this discount then being applied to the current market rate for the development at the start of each new letting.
- 4.25** Where the LPA and developer identify a specific local need, a wider mix of discounted market rent products may be provided. If not delivered as London Living Rent, then the LPA must ensure that the discounted market rent units fully meet the London Plan definition of intermediate housing and are affordable to those eligible for intermediate rented housing in London.
- 4.26** Rent rises should be limited to the Consumer Price Index within tenancies. For the avoidance of doubt, homes delivered in Build to Rent developments at rates equivalent to London Living Rent are not expected to be offered to the tenants to buy.
- 4.27** DMR and LLR are intermediate products and as such should be allocated according to intermediate eligibility criteria, which can include locally defined eligibility criteria. Where the LPA has an intermediate or DMR waiting list they should agree with the applicant a process for providing priority access to the DMR units for those on the waiting list.
- 4.28** All affordable housing secured through planning, including discounted market rent, must be affordable in perpetuity, in line with the requirements of the NPPF. As such, Build to Rent schemes should be designed to enable affordable units to be retained as affordable units in perpetuity, regardless

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<sup>40</sup> The Community Infrastructure Levy (Amendment) Regulation 2015 – amendment to Part 6 – exemptions and reliefs.

of whether the full market rent units are sold out of the rental market at any point. In the event that private rent units are sold, sale of the affordable units will only be accepted if it can be fully demonstrated that the units cannot be retained as affordable housing. In such cases the equivalent level of affordable housing and discount should be provided in the vicinity of the site.

4.29 In line with London Plan policy 3.14 (existing housing stock), it would only be in exceptional cases and in the event that it can be robustly demonstrated that it is not possible to retain or re-provide the affordable housing, that an in lieu contribution for new affordable housing be acceptable. This should not be of financial benefit to the developer/ owner. The value of any such in lieu contribution should be calculated on the same principle as the clawback mechanism outlined above. The contribution will be the difference in value of the affordable units within the scheme as determined as part of the application stage viability process<sup>41</sup>, and the sale price of the units at the point of disposal. If the affordable units benefited from any form of subsidy at the point of planning permission the subsidy must be repaid in full in addition to the in-lieu contribution.

### (3) DESIGN

4.30 The third element of the Build to Rent pathway is unit mix and design, in which the aim is to utilise the flexibilities that already exist in London Plan policies to support high quality Build to Rent developments.

4.31 Build to Rent can be particularly suited to higher density development within or on the edge of town centres or near transport nodes. Local policies requiring a range of unit sizes should be applied flexibly to Build to Rent schemes in these locations to reflect demand for new rental stock, which is much greater for one and two beds than in owner-occupied or social/ affordable rented sector. In addition LPAs should take account of the distinct economics of Build to Rent, where potential yields and investment risk can be affected by increases in the number of large units within a scheme.

4.32 With regard to design, London Plan Policy 3.5 (Quality and design of housing developments) sets out the approach to delivering good quality housing. The Policy includes the space standards set out in table 3.3 of the Plan and links to further guidance on standards required to achieve good quality development which are set out in the 2016 Housing SPG. These standards apply to all tenures. However, Policy 3.5D of the London Plan provides flexibility to consider innovative designs where they meet identified need and are of an exceptional design and standard.

<sup>41</sup> This will be determined on the basis of the discount on market value of the affordable units as set out in the application stage viability appraisal and assessed by the LPA or Mayor.

4.33 All schemes are expected to meet the minimum space standards, but it should also be noted that space standards are not prescriptive regarding the layout of dwellings. When assessing a scheme in relation to design LPAs are encouraged to take into account the value of on-site management and purpose-built design in dealing with some of the challenges that would otherwise arise were it a build for sale scheme. This may therefore allow flexibility on some design standards, such as the number of homes per core per floor, and number of single-aspect homes. The length of covenant may influence the level of flexibility that is acceptable - the longer the covenant the more justification there may be for flexibility on some standards.

#### (4) VIABILITY

4.34 The fourth element of the Build to Rent pathway is the viability process, in which the aim is to clearly recognise the distinct economics of the Build to Rent sector and undertake viability assessments that are specifically designed to deal with this model.

4.35 The Fast Track Route set out in Part two of this SPG is not appropriate for Build to Rent schemes, since the certainty of this route relies on two key factors: the level at which the affordable housing threshold is set; and the mix of affordable housing types within the threshold amount.

4.36 A relatively small number of Build to Rent schemes have been completed so far, meaning it cannot be determined with confidence what a separate threshold would be that is neither too high and would reduce development, nor too low and would fail to maximise affordable housing delivery. Furthermore, an acceptable mix of affordable housing that would be needed for the Fast Track Route has not yet been established.

4.37 As a result, each Build to Rent scheme should be assessed on its own viability with the intention of maximising the supply of affordable homes, preferably provided at London Living Rent levels. As the sector develops, the Mayor will keep under review whether it may be possible to set out a Fast Track Route specifically for developments following a Build to Rent pathway through the planning system.

4.38 The general viability approach set out in Part three of this SPG should be followed for Build to Rent schemes. However it is recognised that there are some elements of the traditional 'for sale' viability assessment approach that need to be adjusted to take into account the distinct economics of Build to Rent. This difference arises in part from Build to Rent schemes being founded on long term revenue income from rents (taking account of management and maintenance costs) rather than short term receipts from sales.

4.39 Viability assessment should recognise this different starting point and take account of it when valuing Build to Rent homes. In addition, Build to Rent viability assessments may need to take account of:

- a different approach to profit (Build to Rent schemes often require a lower level of profit compared to 'for sale' schemes);
- different approaches to sales and marketing;
- rate of sale/ disposal – this will generally be faster for a Build to Rent scheme, as generally a Build to Rent appraisal will assume a development period and then a sale to an investor or operator; and
- potentially lower development risk compared to 'for sale' schemes.

4.40 Where a level of progress on implementing the permission agreed by the applicant and the LPA, and the Mayor where relevant, on a site-by-site basis, is not reached after two years of the permission being granted, the scheme should be subject to an Early Stage Review at the point the agreed level of progress is reached. A Late Stage Review will be required for Build to Rent schemes following occupation of at least 75 per cent of the market units within the development or at a date agreed by the LPA at a point when market rents have stabilised.

4.41 Build to Rent viability reviews will normally be based on changes in the value of the development and build costs between the point of planning permission and the point of the review. It is expected that in most cases any uplift in affordable accommodation will be accommodated on-site. The Mayor's preference is for any surplus to contribute towards additional affordable homes in the development. Where this is not achieved the surplus should allow for deeper discounts on the secured affordable housing provision. A cash in lieu payment will only be acceptable in exceptional circumstances.

4.42 The S106 agreement should specify the approach to the review which should be in line with the guidance set out in Parts two and three, including the timing of the review, the target profit that should be achieved prior to additional affordable housing being provided, and an affordable housing target after which all surplus value will be retained by the developer. LPAs are encouraged to use the relevant formulas in Annex A for early and late stage reviews on build to rent schemes.

4.43 Viability reviews for build to rent schemes are distinct from and serve a different purpose to the clawback amount which arises if rented units are sold out of rented tenure within the covenant period, as set out above. Separate provisions for review mechanisms and the clawback amount should be included within the S106 agreement.

## (5) MANAGEMENT STANDARDS

4.44 The Mayor is keen to support Build to Rent through planning and investment policy and on the landholdings of the GLA group, and he wants such developments to showcase best management practice in the rented sector. In order to achieve this, the following five key management standards should be wrapped into the definition of Build to Rent:

- longer tenancies (three years or more) available to all tenants, with break clauses that allow the tenant to end the tenancy with a month's notice any time after the first six months;
- any rent increases within these tenancies should be formula-linked, and made clear to the tenant before a tenancy agreement is signed;
- on-site management, which does not necessarily mean full-time dedicated on-site staff, but must offer systems for prompt resolution of issues and some daily on-site presence;
- providers must have a complaints procedure in place and be a member of a recognised ombudsman scheme; and
- providers must not charge up-front fees of any kind to tenants or prospective tenants, other than deposits and rent-in-advance.

## GENERAL SUPPORT FOR BUILD TO RENT

4.45 Further support for Build to Rent can be given through broad-based spatial planning policies, Local Development Frameworks, and local housing or other related strategies. Such support could include:

- encouraging long term institutional investment, with boroughs working with the GLA and delivery partners;
- supporting institutional investment on public land, including exploring the use of joint ventures or deferred receipts;
- maximising the potential of Real Estate Investment Trusts and other vehicles to attract investment into the sector.

4.46 In addition to measures to support Build to Rent in the forthcoming London Plan, the Mayor will also set out policies in his new London Housing Strategy to promote institutional investment in Build to Rent and to improve its overall quality and management.

## ANNEX A

# SUGGESTED REVIEW FORMULAS

1. This annex sets out the suggested formulas for calculating the review mechanisms for Fast Track and Viability Tested schemes.
2. Proposals delivering the threshold level of affordable housing under the Fast Track Route will be required to provide Early Reviews. Applications that do not achieve the threshold level of affordable housing and that are assessed under the Viability Tested Route will be required to provide Early and Late Reviews.
3. It should be noted that affordable housing requirements are applied where they are required to make an application acceptable in planning terms. Thus, review mechanisms should not be used to reduce the base level of affordable housing contributions which are required as part of the planning permission. This would require a new or modified planning permission.
4. The approach to review mechanisms has been designed to assess changes in development values and build costs which are the most significant variables within an assessment and are most likely to be subject to change. This avoids the need for a full reassessment of viability and reduces information requirements thereby enabling a shorter review period. Information submitted as part of a review should be assessed by the LPA in line with the guidance set out in Part three.
5. The Mayor intends to publish resources to assist LPA's implementation of viability reviews.

### Early Stage Reviews

6. Fast Track schemes and Viability Tested schemes should be subject to an Early Review where the agreed level of progress has not been made within the time period and the affordable housing contribution secured at the time of planning permission was less than 50 per cent. Schemes progressed under either route should identify units that will convert from market housing to affordable housing in the event that an early review is triggered that demonstrates a sufficient improvement in viability. The convertible units and the secured affordable housing units should, when taken together, equate to 50 per cent of the scheme or the Local Plan strategic affordable housing target.
7. The principle of the early review is the same for Fast Track schemes and Viability Tested schemes. Formula 1 (early review surplus) identifies any surplus profit available to increase on-site affordable housing. This is calculated as the difference in scheme value from the time planning

permission was granted to the time of the viability review less any changes in build costs. Formula 1 is calculated differently for Fast Track schemes to Viability Tested schemes because Fast Track schemes do not submit viability information when making the initial application for planning permission. Formula 2 (early review additional affordable housing) calculates how many market homes can be converted to affordable tenures.

#### **Formula 1a: Early review surplus for Fast Track schemes**

8. Fast Track schemes do not provide viability information as part of the application process for planning permission. In the event an early review is triggered there will be a requirement to provide viability information relating to scheme Gross Development Value (GDV) and build costs at the time of the review. This information will be used to determine any changes in development values and/or build costs between the grant of planning permission and the date of the early review.
9. The early review will calculate any changes in value for the private residential component of a scheme between the grant of planning permission and the time of the review by reference to the Land Registry House Price Index (HPI) for the relevant market area and property type, working back from the date of the review. Rental data for the relevant area will be used for Build to Rent schemes as published on the London Datastore. On mixed-use schemes it may be appropriate to consider changes in the value of commercial or other uses as part of the review with reference to an appropriate market-tracking index or other relevant information sources.
10. The review will calculate any change in build costs between the grant of planning permission and the time of the review by reference to the BCIS All-in Tender Price Index (TPI). For example if the TPI shows build costs have risen by 5 per cent from the time planning permission was granted to the time of the review it will be assumed that build costs for the scheme would have also risen by 5 per cent since the date planning permission was granted.
11. To calculate the surplus scheme profit the review will subtract any difference in build costs between the date of planning permission and the date of the review from any difference in scheme value between the date of planning permission and the date of the review. Following this a developer profit is subtracted which will be determined as part of the review in line with the guidance in Part three. The remaining surplus scheme profit will be available for additional on-site affordable housing.

<b>X = Surplus profit available for additional on-site affordable housing</b>
<b>X = <math>((A - B) - (D - E)) - P</math></b>
A = Estimated GDV for private residential component of development as determined for the time of review (£)
B = $A \div (C + 1)$ Assumed application stage GDV for private residential component at the date of planning permission (£)
C = Percentage change in value for the private residential component of the development from grant of planning permission to review date (HPI) (%)
D = Estimated build costs as determined at the time of review (£)
E = $D \div (F + 1)$ Assumed application stage build costs at the date of planning permission (£)
F = Percentage change in build costs from grant of planning permission to review (BCIS TPI) (%)
P = $(A - B) * Y$ Developer profit on change in GDV of private residential component (£)
Y = Developer profit as a percentage of GDV for the private residential component as determined as part of the review (%)

Notes:

(A – B) = Change in GDV of the private residential component of development from the date of planning permission to the date of review (£)<sup>42</sup>

(D - E) = Change in build costs from the date of planning permission to the date of review (£)

<sup>42</sup> The formula may be adjusted for mixed-use schemes with commercial or other uses that should be factored into the review in addition to the private residential element using a relevant index or other source of information.

**Formula 1b: Early review surplus for Viability Tested schemes**

12. Viability Tested schemes must provide detailed viability information as part of the application process. This will identify the estimated scheme Gross Development Value and build costs at the time of planning permission. These figures should be set out in the S106 Agreement. The early review surplus will require an updated scheme valuation at the time the review is undertaken and evidenced build costs for the scheme.
13. This information will be used to determine whether any change in development values and/ or build costs since the grant of planning permission results in a surplus scheme profit. To calculate the surplus scheme profit the review will deduct any difference in build costs between the date of planning permission and the date of the review from any difference in scheme value between the date of planning permission and the date of the review. After an allowance for developer profit on the additional scheme value has been deducted, the remaining surplus scheme profit will be available for additional on-site affordable housing.

**X = Surplus profit available for additional on-site affordable housing**

**X = (A - B) - (C - D) - P**

A = Estimated GDV of development as determined at the time of review (£)

B = Estimated GDV of development as determined at the grant of planning permission (£)

C = Estimated build costs as determined at the time of review (£)

D = Estimated build costs as determined at grant of planning permission (£)

P = (A - B) \* Y; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the application stage (%)

Notes:

(A - B) = Change in GDV from the date of planning permission to the date of review (£)

(C - D) = Change in build costs from the date of planning permission to the date of review (£)

### Formula 2: Early review additional affordable housing requirement (Fast Track and Viability Tested Routes)

14. The second stage of the review (Formula 2) determines the additional amount of on-site affordable housing to be provided where Formula 1 identifies a surplus profit available for additional affordable housing. This allocates the surplus profit to low cost rent housing and intermediate housing and calculates the level of additional affordable floorspace based on the difference in average value of the market housing component and the relevant affordable housing tenure. This is then converted into habitable rooms based on the average habitable room size for the scheme.
15. The early review additional affordable housing should be capped at 50 per cent affordable housing or the borough strategic affordable housing target and the relevant local plan tenure split.

**X = Additional low cost rent housing requirement (habitable rooms)**

**X =  $((E * F) \div (A - B)) \div D$**

**Y = Additional intermediate housing requirement (habitable rooms)**

**Y =  $((E * G) \div (A - C)) \div D$**

**A = Average value of market housing per m<sup>2</sup> (£)**

**B = Average value of local cost rent housing per m<sup>2</sup> (£)**

**C = Average value of intermediate housing per m<sup>2</sup> (£)**

**D = Average habitable room size for scheme (m<sup>2</sup>)**

**E = Surplus profit available for additional affordable housing (as determined in Stage 1a or Stage 1b early review) (£)**

**F = Percentage of surplus profit available for additional affordable housing to be used for low cost rent housing (%)<sup>43</sup>**

**G = Percentage of surplus profit available for additional affordable housing to be used for intermediate housing (%)<sup>44</sup>**

<sup>43</sup> To be determined with reference to the relevant local plan policy tenure split.

<sup>44</sup> To be determined with reference to the relevant local plan policy tenure split.

Notes:

$(A - B)$  = Difference in average value of market housing per m<sup>2</sup> and average value of low cost rent housing per m<sup>2</sup> (£)

$(A - C)$  = Difference in average value of market housing and average value of intermediate housing per m<sup>2</sup> (£)

$(E * F)$  = Policy surplus to be used for low cost rent housing (£)

$(E * G)$  = Policy surplus to be used for intermediate housing (£)

$(E * F) \div (A - B)$  = Additional low cost rent housing requirement (m<sup>2</sup>) (£)

$(E * G) \div (A - C)$  = Additional intermediate housing requirement (m<sup>2</sup>) (£)

#### **Late Stage Reviews (Viability Tested Route only)**

16. Late Stage Reviews should take place at an advanced stage of development. This should be when 75 per cent of the units are sold or let, or at a point agreed with the LPA. This enables the assessment to be based on values achieved and build costs incurred by the development, whilst enabling the review provisions to be enforced. Late reviews generally deliver a cash in lieu contribution.

**Formula 3: Late Stage Review Contribution**

17. The Late Stage Review calculates the additional financial contribution payable to the LPA for affordable housing or other policy requirements not viable at the application stage.

**X = Late Stage Review Contribution**

**X =  $(((A + B) - C) - ((D + E) - F) - P) \times 0.6$**

A = GDV achieved on sale/ lease of 75 per cent of residential units and GDV from other parts of the development sold / let and other income receipts (£)

B = Estimated GDV for parts of the development that are yet to be sold/ let and other income sources (£)

C = GDV determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)

D = Build costs incurred at the time of review (£)

E = Estimated build costs for remainder of the development (£)

F = Total build costs determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)

P =  $(A + B - C) * Y$ ; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the time planning permission was granted (%)

Notes:

$(A + B) - C$  = The change in GDV from the grant of planning permission (or previous review) to the late stage review (£)

$(D + E) - F$  = The change in build costs from the grant of planning permission (or previous review) to the late stage review (£)

P = Developer profit on change in GDV (£)

0.6 = Any surplus profit, after deducting the developer profit (P), will be shared between the LPA and the developer with 60 per cent used for additional affordable housing.

#### Formula 4: Late Stage Review Cap

18. Contributions determined under the Late Stage Review will be capped by the equivalent of 50 per cent affordable housing provision, or the local plan strategic affordable housing target, at the required tenure split. The following formula sets out the approach to determining the late stage review cap. This is the maximum affordable housing contribution that will be payable as a result of the Late Stage Review.
19. The late stage review cap is calculated based on the cost of converting a market housing unit to affordable housing as determined by the difference in average value of market housing and average low cost rent/ intermediate housing value per habitable room. This is multiplied by the shortfall in the relevant tenure of affordable housing by habitable room in the consented scheme, when compared with the policy target and local plan tenure split.

**X = Late Review Cap**

**X =  $(((A * D) - (B * D)) * E) + (((A * D) - (C * D)) * F)$**

A = Average value of market housing per m<sup>2</sup> (£)

B = Average value of local cost rent housing per m<sup>2</sup> (£)

C = Average value of intermediate housing per m<sup>2</sup> (£)

D = Average habitable room size for scheme (m<sup>2</sup>)

E = Low cost rent shortfall on-site (habitable rooms)

(Determined at the time planning permission was granted or as updated following previous review)<sup>45</sup>

F = Intermediate housing shortfall on-site (habitable rooms)

(Determined at the time planning permission was granted or as updated following previous review)<sup>46</sup>

<sup>45</sup> Shortfall in the relevant tenure of affordable housing by habitable room in the consented scheme, when compared with the policy target and local plan tenure split.

<sup>46</sup> Shortfall in the relevant tenure of affordable housing by habitable room in the consented scheme, when compared with the policy target and local plan tenure split.

**Mid-term reviews (Viability Tested Route)**

20. Mid-term reviews operate on the same principle as early reviews. These may be suitable for longer term schemes which will be built out over several phases spanning a long development programme.

**Stop/ Start Viability Review (Viability Tested Route)**

21. For longer-term phased schemes that do not achieve the threshold level of affordable housing, LPAs should consider whether an updated early stage viability review should be required in the event that a scheme stalls for a period of 12 or more months following an Early Stage Review.

**Build to Rent Reviews**

22. Where a level of progress on implementing the permission agreed with the LPA is not reached after two years of the permission being granted (or as agreed with the LPA), the scheme should be subject to an Early Stage Review at the point the agreed level of progress is reached. A Late Stage Review will be required for Build to Rent schemes following occupation of at least 75 per cent of the market units within the development or at a date agreed by the LPA at a point when market rents have stabilised. It is expected that in most cases any uplift in affordable accommodation will be accommodated on-site.

23. Build to Rent viability reviews will normally be based on changes in the value of the development and build costs between the point of planning permission and the point of the review. An updated valuation of rental units should be submitted as part of the review based on rental values for units that have been leased and a valuation for any units that are not yet leased. Evidence should also be provided of the appropriate yield to derive a capital value to inform the GDV.

24. Early and Late Stage Reviews for Build to Rent schemes will operate on the basis of two formulas: the first to determine the level of surplus value generated as a result of changes in GDV and build costs (Formula 5); the second will determine the level of additional affordable housing to be provided as discounted market rent (DMR) with the available surplus (Formula 6).Formula 5: Build to Rent surplus (Early and Late Stage Reviews)

**Formula 5: Build to Rent surplus (Early and Late Stage Reviews)**

**X = Surplus profit available for additional on-site affordable housing<sup>47</sup>**

**X = (A - B) - (C - D) - P**

A = Estimated GDV of development as determined at the time of review (£)

B = Estimated GDV of development as determined at the grant of planning permission (£)

C = Estimated build costs as determined at the time of review (£)

D = Estimated build costs as determined at grant of planning permission (£)

P = (A - B) \* Y; Developer profit on change in GDV (£)

Y = Developer profit as a percentage of GDV as determined at the application stage (%)

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<sup>47</sup> For Build to Rent late stage reviews the surplus profit should be multiplied by a factor of 0.6 so that any surplus profit will be shared between the LPA and the developer with 60 per cent used for additional affordable housing.

**Notes:**

(A - B) = Change in GDV from the date of planning permission to the date of review (£)

(C - D) = Change in build costs from the date of planning permission to the date of review (£)

### Formula 6: Build to Rent additional affordable housing (Early and Late Stage Reviews)

25. The second stage of the review (Formula 6) determines the additional amount of on-site affordable housing to be provided where Formula 5 identifies a surplus profit. This calculates the level of additional discount market rent (DMR) housing based on the difference in average value of the market housing component and the DMR (at the relevant discount to be provided). This is then converted into habitable rooms based on the average habitable room size for the scheme<sup>48</sup>.

**X = Additional affordable housing requirement (habitable rooms)**

**X =  $A \div (B - C) \div D$**

A = Surplus profit available for additional DMR (as determined in Formula 5) (£)

B = Average value of market housing per m<sup>2</sup> (£)

C = Average value of DMR housing per m<sup>2</sup> (£) at the required level of discount determined by the LPA

D = Average habitable room size for scheme (m<sup>2</sup>)

Notes:

(B - C) = Difference in average value of market housing per m<sup>2</sup> and average value of DMR housing per m<sup>2</sup> (£)

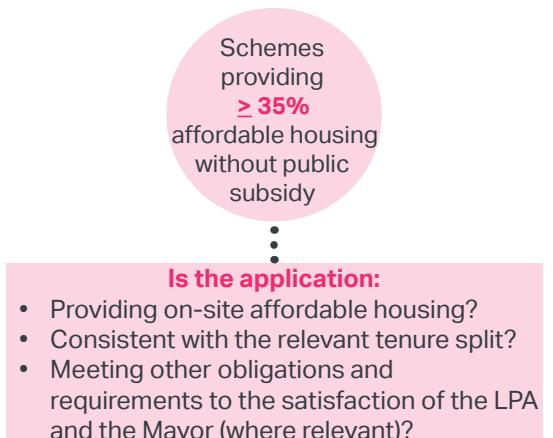
$A \div (B - C)$  = Additional DMR requirement (m<sup>2</sup>) (£)

<sup>48</sup> For instances where a LPA accepts that additional affordable housing arising from a Late Stage Review should be provided as an in-lieu contribution, Formula 3 should be used to determine the Late Stage Review contribution.

## ANNEX B

### THRESHOLD APPROACH TO VIABILITY DIAGRAM

## Fast Track Route



**Developer engages with RP and the LPA** to explore the use of grant funding to increase the proportion of affordable housing

Planning permission **may be granted** subject to an early review

**Early review triggered** if agreed level of progress is not reached in 2 years

**NO**

## Viability Tested Route



**Developer engages with RP and the LPA** to explore the use of grant funding to increase the proportion of affordable housing

**Scheme provides the maximum viable amount of affordable housing**  
As determined by the LPA and the Mayor (where relevant)

**YES**

Planning permission **may be granted** subject to early & late stage reviews

**Early review triggered** if agreed level of progress is not reached in 2 years

**Late review triggered** once 75% homes are sold / let

**NO**

Planning permission **refused**



Appendix NS/3

BPS Report, December 2025

Mount Clare Campus  
Minstead Gardens,  
Roehampton Gate SW15 4EE  
Payment In Lieu Calculations

Prepared on behalf of Wandsworth  
Council

Issued: 18<sup>th</sup> December 2025 (v2)

Planning Reference: 2025/0074



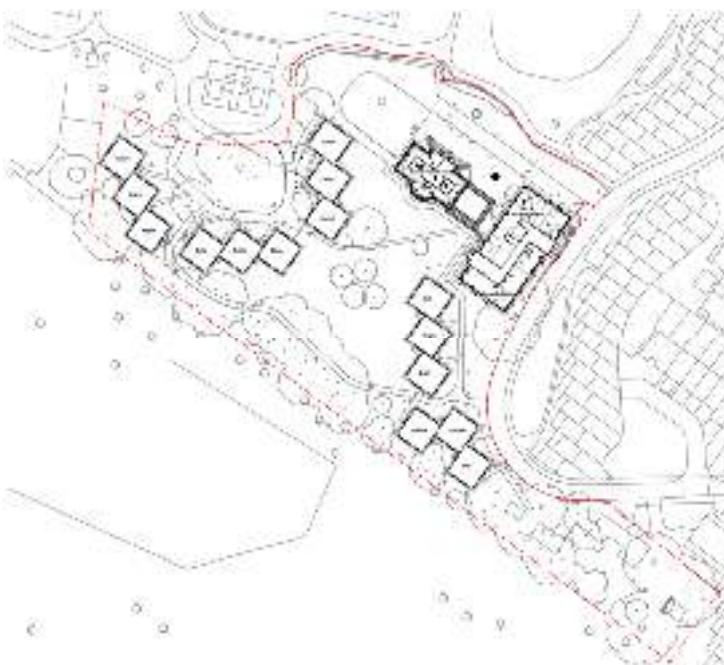
215a High Street, Dorking RH4 1RU  
[www.bps-surveyors.co.uk](http://www.bps-surveyors.co.uk)

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## 1.0 Introduction & Conclusions

- 1.1 BPS Chartered Surveyors have been instructed by Wandsworth Council ('the Council') to provide our opinion of the appropriate Payment In Lieu of an off-site affordable housing contribution in relation to the proposed scheme.
- 1.2 We have been informed by the Council that the site was previously used as student accommodation for Roehampton university however, the lease to the university expired and was not renewed. The site has since remained vacant.
- 1.3 The location is predominantly residential in nature, being characterised by 20<sup>th</sup> century flats and terraced housing, and is bounded by Richmond Park to the south east. The existing site is located within the Alton Conservation Area, in the London Borough of Wandsworth. We include a site plan below sourced from the Council website:



- 1.4 The proposals are for:

*'Use as hostel accommodation (Sui generis) with associated landscaping and cycle parking'*

- 1.5 We have downloaded documents available on the Council's planning website.
- 1.6 Policy LP23 of Wandsworth Local Plan, dated January 2025, describes the assessment of off-site affordable payments in the following paragraph:

*"Payments in lieu of and any financial contributions towards affordable housing must be at least equivalent to the increased gross development value resulting from affordable housing not being provided on-site"*

1.7 We have now been requested by the Council to calculate an appropriate Payment In Lieu of off-site affordable housing. We have been instructed to calculate the equivalent of 50% affordable provision (in line with emerging policy), as well as the 35% contribution required under existing policy, both at 50% of open market rent. Our conclusions are summarised in the table below:

AH Provision	OMS GDV	OMS and Affordable GDV	Payment In Lieu (OMS GDV-Affordable GDV)
35% AH	£29,494,382	£24,227,528	£5,266,854
50% AH	£29,494,382	£21,067,416	£8,426,966

1.8 We have not been instructed to test the viability of the scheme at this stage and, therefore, we are not aware whether the scheme could viably provide the above PIL.

1.9 We have been instructed to base our assessment on the rental values generally attributed to temporary accommodation by the Council for single person accommodation. This is due to the recommendation for a condition to be applied to the development which would limit it to Temporary Accommodation and should such a condition be at any point removed, the value of the site and Payment In Lieu would need to be re-assessed.

1.10 We understand from the Council that they consider that the accommodation is unsuitable for temporary housing. However, we have been instructed to carry out this calculation on the assumption that the Council's position on this has been rejected by the Inspector and therefore that the site would be used as temporary accommodation.

## 2.0 Design of the proposed scheme & limitations to our approach

2.1 The existing site comprises the following components:

- **Picasso House** - two-storey building built in the 1960s as accommodation. According to the Planning Statement, the ground floor comprises ancillary facilities serving the adjacent accommodation. There are eight flats at first floor (32 rooms) and further accommodation over ground and lower ground floor. The proposal aims to convert the ground floor into accessible flats and upgrade the first floor accommodation. The building would comprise communal facilities for the site at ground floor and in the basement inclusive of bike store, laundry room, common room, kitchens and dining spaces.
- **Mount Clare Residences** - five, identically designed two-storey housing blocks, which have fallen into disrepair. The proposal envisages refurbishment to each block to provide a mix of single and two-bed units with ensuites and small kitchenettes.
- **The Bungalow** - An existing bungalow that has fallen into a state of disrepair and is currently boarded up is proposed to be internally restored to provide a self-contained, 4-bedroom house.

2.2 As we understand from the plans, Picasso House, together with the Bungalow, would comprise a number of self-contained flats.

2.3 The proposed Mount Clare Residences units would be substantially smaller. According to the Design and Access Statement, each unit would include an en-suite as well as a small kitchenette, however it appears that no actual, full-size kitchen would be available in each block, as demonstrated on the plans below.

PROPOSED TYPICAL BLOCK FIRST FLOOR PLAN



PROPOSED TYPICAL BLOCK GROUND FLOOR PLAN



2.4 The only communal kitchens and common spaces at the proposed scheme are located in Picasso House, which would be accessible to residents of Mt Clare only via an external (outdoor) pathway. We have not tested the suitability of the scheme in the planning terms.

2.5 The proposed Accommodation Schedule is summarised in the table below:

		1-Bed	2-Bed	3-Bed	4-Bed	6-Bed
<b>Picasso House</b>	Unit No	-	4	9	2	1
<b>Mount Clare Residences</b>	Unit No	135	45	-	-	-
<b>The Bungalow</b>	Unit No	-	-	-	1	-
<b>Total</b>		<b>135</b>	<b>49</b>	<b>9</b>	<b>3</b>	<b>1</b>

2.6 We have not been provided with cost information by the Council. For the purpose of PIL calculations, we have assumed that units would be refurbished to a modern standard.

2.7 According to the scheme's planning description, the proposed scheme would comprise hostel accommodation use "Sui Generis".

2.8 We are of the view that the way the scheme is currently designed, it does not resemble typical hostel accommodation. Part of the scheme, including the flats at Picasso House and the bungalow, comprise self-contained accommodation, which more aligns with C3 residential use (BTR). Communal kitchens, designated to be used by residents of Mt Clare, are accessible via an external entrance, which is also not a typical hostel feature.

2.9 We are of the view that the proposed scheme most closely resembles Co-Living accommodation. It would, however, be considered an inferior scheme to modern co-living

developments, most of which typically include a wide range of amenity provisions such as gyms, co working spaces etc. In addition, an external kitchen is not a typical feature of co-living accommodation and would likely be considered inferior.

2.10 Overall, we consider the layout of the proposed scheme to be somewhat unusual and the level of like-for-like evidence available on the market, especially transactional sales evidence, to be limited. Both occupier and tenant demand for the completed units remains uncertain, a factor which is has been considered as part of this assessment.

### 3.0 Gross Development Value

#### Private Residential GDV

3.1 As per our instruction, we have assumed that the units would be let at the value generally attributed to single person temporary accommodation by the Council. We have been informed by the Council that the rent payable by them on single person Temporary Accommodation would be as follows: - Self-contained 1 bed units = £1,200 p.c.m. - Non self-contained studios = £1,000 p.c.m

- Self-contained 1 bed units = £1,200 p.c.m.
- Non self-contained studios = £1,000 p.c.m.

3.2 As instructed, we have assumed that the larger units (2-, 3-, 4- & 6- bedroom flats) would be let on a “per room” basis and, therefore, achieve the same rent as non self-contained studios.

3.3 Our assessment of the total achievable rent for the site is summarised below:

		1 Bed/ Studio	2-Bed	3-Bed	4-Bed	6-Bed	Total Unit No
<b>Picasso House</b>	Unit No	-	4	9	1	1	15
<b>Mount Clare Residences</b>	Unit No	135	45	-	-	-	180
<b>The Bungalow</b>	Unit No	-	-	-	1	-	1
<b>Total</b>		<b>135</b>	<b>49</b>	<b>9</b>	<b>2</b>	<b>1</b>	<b>196</b>
<b>Monthly Rent P/U</b>		<b>£1,200</b>	<b>£2,000</b>	<b>£3,000</b>	<b>£4,000</b>	<b>£6,000</b>	<b>£15,200</b>
<b>Annual Rent</b>		<b>£1,944,000</b>	<b>£1,176,000</b>	<b>£324,000</b>	<b>£96,000</b>	<b>£60,000</b>	<b>£3,600,000</b>

3.4 Given the type of accommodation, we understand that rooms would be subject to a fairly high turnover. Therefore, general maintenance costs would be expected to be slightly higher in comparison to a typical co-living or student scheme. We assume rent would be inclusive of all bills. The Council have informed us that this type of accommodation, which would have a large number of single households, largely facing challenging circumstances, would require 24 hr staffing arrangements, provided at the operator's cost, which would result in higher running costs.

3.5 On this basis we would expect a higher OPEX than a similar sized co-living scheme, therefore in our assessment, we assume an OPEX of 30%, which reflects c. £5,510 p/u per annum and reflects the operating model described above.

3.6 Having searched local market transactions, we found no evidence of sales of temporary accommodation. We have outlined limitations surrounding the current design of the proposed scheme in an earlier section of this report. In order to establish an appropriate yield for the proposed scheme, we have considered the Knight Frank Prime Yield Guide dated October 2025, where Co Living yields range between 4.25% for Prime London and 5% for Prime Regional.

3.7 We are of the view, however, that the proposed scheme would likely be less attractive than a typical co-living scheme on account of the reduced communal space and assumed quality of the proposed accommodation. As the proposed scheme would not be new build, the risk of future repairs and maintenance costs would be increased. In addition, the unusual layout of studios at Mount Clare Residences, with the communal kitchen only being accessible via an external entrance, would likely have an overall negative impact on its potential value.

3.8 Given there is a pan-London Inter-Borough Accommodation Agreement (IBAA), which was first established in 2011 and updated in 2014, to avoid local authorities outbidding one another in relation to Temporary Accommodation, and in view of the Temporary Accommodation condition it is unlikely this rent would vary significantly. The IBAA now covers all placements and rates, and are monitored at a pan-London level.

3.9 The restricted use of the scheme as temporary accommodation would have a negative impact on the yield, which has been factored into our appraisal.

3.10 The remaining letting terms for the accommodation have not been confirmed, and the related additional risks have been accounted for. Should any additional information be provided from the Applicant on this point, such as confirmation from an interested party, we would need to reassess our values.

3.11 Having considered the above, and in the context of a scarcity of close comparable evidence, we have applied yield of 8% in our assessment.

3.12 Generally, we consider the proposed scheme's OMS GDV equates to £29,494,382, having accounted for 6.8% Purchaser's Costs.

3.13 We consider this value to be subject to greater than normal valuation uncertainty and we have sensitivity tested the yield by +/- 1%. The potential impact of such a yield shift is provided in Appendix 2.

Affordable GDV

3.14 In line with the GLA's "Large-scale purpose-built shared living London Plan Guidance" dated February 2024:

*"The expected contribution will be assessed in relation to either 35 per cent of the units, or 50 per cent where the development is on public-sector land or industrial land appropriate for residential uses, in accordance with Policy E7. The contribution is to be based on 50 per cent of the market value or rental income of the relevant proportion of units."*

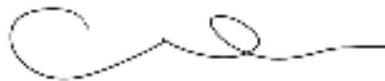
3.15 We have also been requested by the LPA to model the outcome of the PIL with a 50% contribution, in line with emerging planning policy.

3.16 Having assumed a 50% rent discount, OPEX of £5,510 p/u and a 8% yield, we assess the following GDVs for each affordable scenario:

	<b>35% AH</b>	<b>50% AH</b>
Affordable Units No	69	98
Private Units No	127	98
Total Rent	£2,376,000	£2,160,000
<b>GDV</b>	<b>£24,227,528</b>	<b>£21,067,416</b>

## 4.0 Author Sign Off

- 4.1 This report is provided for the stated purpose and for the sole use of the named clients. This report may not, without written consent, be used or relied upon by any third party.
- 4.2 The author(s) of this report confirm that there are no conflicts of interest and measures have been put in place to prevent the risk of the potential for a conflict of interest. In accordance with the RICS Professional Statement *Financial Viability in Planning: Conduct and Reporting* September 2019, this report has been prepared objectively, impartially, and with reference to all appropriate sources of information.
- 4.3 The following persons have been involved in the production of this report:



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For and on behalf of  
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December 2025

## Appendix 1: Sensitivity Analysis

Equivalent Yield	7%	8%	9%
PIL (35% AH)	£6,019,262	£5,266,854	£4,681,648
PIL (50% AH)	£9,630,819	£8,426,966	£7,490,637

Appendix NS/4

Marked-up typical floorplan showing measurements



1 Typical Ground Floor Residencies Layout

1 : 50



Rev: Description: Date: By:  
 Status:

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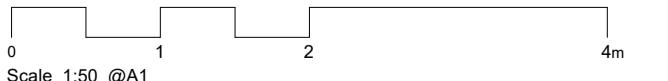
Drawing Title:

Proposed plans - Ground floor

Date of first issue: 14/11/24 Scale: 1:50 @A1

Drawn By: AB Checked By: DC © KSR Architects

Drawing No: 23047-P1-120



Appendix NS/5

Note relating to consultation draft NPPF

## **Appendix NS/6 – Note relating to consultation draft National Planning Policy Framework.**

1. On 18<sup>th</sup> December 2025, the Government published a consultation draft of an updated NPPF. The policies of that draft Framework, whilst attracting limited weight at the time of writing, reinforce the conclusions I have reached in my evidence. Relevant draft policies are summarised below.

### Paragraph 18.

2. Paragraph 18 of the draft Framework describes the objectives of sustainable development, as:

*“a. An economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure.*

*b. A social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible community facilities, public service infrastructure and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and*

*c. An environmental objective – to support efforts to mitigate and adapt to climate change, including moving to a low carbon economy; and to protect and enhance our natural, built and historic environment, including making effective use of land, improving biodiversity, using natural resources prudently, and minimising waste and pollution.”*

3. I note that the definition of sustainable development is slightly amended in the draft NPPF. However, it remains the case that the economic limb of sustainability should ensure sufficient land of the right types is available in the right places.
4. For the reasons set out in my proof this development would not achieve that. The social objective continues not to be met by this proposal in particular it would not support strong, vibrant and healthy communities. It is not well-designed, beautiful and safe and its design does not support communities health, social and cultural wellbeing. Finally the heritage harm and the failure to make effective use of land in a manner which would preserve and enhance the important heritage assets on site would mean that the proposal does not meet the environmental objective.

## Chapter 2 ‘Plan-making policies’.

5. I note that the NPPF continues to provide strong support for a plan-led system.

### Policy S4.

6. Policy S4 says that:

*“1. Development proposals within settlements should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in this Framework.*

*2. In applying policy S4, the circumstances in which the benefits of approving development are likely to be substantially outweighed by adverse effects include (but are not restricted to) situations where the development proposal would:*

*a. Have an unacceptable impact in relation to:*

*i. the allocation or safeguarding of land for particular uses in the development plan, unless there is no reasonable prospect of an application coming forward for the allocated use, or there is evidence that the safeguarding is no longer appropriate; or*

*...*

*c. Fail to comply with one of the national decision-making policies which state that development proposals should be refused in specific circumstances.”*

7. In the case of the appeal scheme, the development is within the settlement.

However, its benefits would be substantially outweighed by adverse effects when assessed against the national decision-making policies in the Framework. Those effects are as described in my proof and include heritage impacts, the provision of substandard accommodation in an unsustainable location, the failure to provide a mixed and balanced communities and the failure to provide any affordable housing. Any one of these factors is sufficient to substantially outweigh the benefits.

8. In particular, the appeal scheme will have an unacceptable impact in relation to the allocation of the site through PM7 and RO2. It would also fail to comply with national decision-making policies as I set out further below.

### Policy CC2.

9. Policy CC2 provides that:

*“1. In order to contribute to climate change mitigation and the transition to net zero, development proposals should, where relevant to the proposal:*

- a. Be located where a genuine choice of sustainable transport modes exists, and improve opportunities for walking, wheeling, cycling and public transport, in accordance with policies TR3 and TR4;*
- b. Support good access to facilities to limit the need to travel, whether through the development's location, through development densities which improve catchment populations for local services, or by incorporating community facilities and premises to support local employment opportunities;*
- c. Use design approaches which conserve energy and other resources in accordance with policy DP3(1)(c)...”*

10. Here the proposal is not located with a genuine choice sustainable transport modes. Nor does it support good access to facilities to limit the need to travel.

Policy HO7.

11. HO7 says that:

*“1. In applying the policies in this Framework, substantial weight should be given to the benefits of providing accommodation that will contribute towards meeting the evidenced needs of the local community, taking into account any up-to-date local housing need assessment, and other relevant evidence (including the extent to which there is a five year supply of deliverable housing and traveller sites, and performance against the Housing Delivery Test).”*

12. For the reasons explained in my evidence, it is considered that this accommodation would not meet the evidenced needs of the local community. This is because it is substandard and is not suitable (as set out in the evidence of the Local Housing Authority).

13. As set out in my planning balance, even if substantial weight were given to the meeting of need planning permission should still not be granted due to the adverse effects of the proposal which would include housing those people low quality housing in a location with such poor public transport connections.

Policy HO8.

14. HO8 requires that:

*“1. Development proposals should meet or exceed up-to-date development plan requirements for the proportion and mix of affordable housing tenures relevant to the location, including the minimum proportion of Social Rent. This should be provided on-site unless:*

- a. Off-site delivery on an alternative nearby site would optimise the quality or quantity of homes built; or*
  - b. A cash payment in lieu of on or off-site provision can be justified robustly, and the agreed approach contributes towards the objective of creating mixed and balanced communities.”*
- 15. The Draft NPPF continues to support the provision of affordable housing in line with up to date development plan requirements. I note that the framework supports the need to create mixed and balanced communities. Which is something that this proposal would not achieve.

Policy HO9.

- 16. Policy HO9 requires that:
  - 1. *Development proposals to address specialist housing needs should provide living conditions and access to services which are appropriate to the needs of their residents and users. This includes:*
    - ...
  - b. Specialist community-based accommodation:*
    - i. being supported by a management plan or other supporting evidence which shows how the development will provide a safe and secure environment for residents; and*
    - ii. being located where residents will be able to access frequently-used services (such as education facilities) easily and safely*
  - c. Purpose-built student and large-scale shared living accommodation:*
    - i. being located where residents will be able to access frequently-used services (and, for student accommodation, relevant education facilities) easily and safely by walking, wheeling or public transport;*
    - ii. providing adequate living and storage space and sufficient shared cooking, laundry and amenity areas (other than where cooking and laundry facilities are provided within student rooms, in which case these do not need to be available on a shared basis); and*
    - iii. being supported by a management plan which shows how the development will be managed and maintained to ensure the continued quality of the accommodation, communal facilities and services (and which should be secured by means of a planning condition)”*

17. I note that the NPPF is clear that living conditions for this type of accommodation should be appropriate for the needs of residents. My proof and the evidence of Mr Worth explains that the living accommodation would not be appropriate due to size and layout. This includes concerns regarding size, density and disabled access.
18. The NPPF further stresses the need for such accommodation to be located where residents will be able to access frequently used services (including education) easily and safely. My evidence and that of Mr Worth explains that this is not the case with the proposal.
19. The NPPF is clear that there should be a safe and secure environment. This proposal has not demonstrated that it would provide a safe and secure environment. In particular, I note the evidence of Mr Worth with regards to the density of the units and the likely difficulties of managing such a facility. It is also entirely unclear how families/children would be safeguarded.
20. The policy with regards to large-scale living accommodation also makes clear that there should be adequate living and storage space and sufficient shared cooking, laundry and amenity areas. It is clear from my evidence and that of Mr Worth that there is not adequate living and storage space nor are there sufficient shared areas.

#### Policy L2.

21. Policy L2 says that:
  - 1. Substantial weight should be given to the benefits where a development proposal would achieve one or more of the following:*
    - a. ...*
    - b. Making better use of vacant and under-utilised land and buildings (such as by bringing back into residential use empty homes and other suitable buildings; converting space above shops; redeveloping under-utilised retail sites; and building on or above service yards, lock-ups, car parks and other transport infrastructure);”*
22. I note that the proposal would make use of currently vacant buildings. I have given this factor weight in my planning balance. However, it is necessary to note that the retention of the 1960s buildings on site is not beneficial from a heritage perspective.

### Policy L3.

23. Policy L3 requires that:

1. *Development proposals should make efficient use of land, taking into account the identified need for different types of housing and other development, local market conditions, the availability of infrastructure (including sustainable transport options) and its scope for improvement, a site's connectivity and the importance of securing well designed, attractive and healthy places.*
2. *Within this context development proposals for residential and mixed-use development within settlements should contribute to an increase in the density of the area in which they are situated. The existing character of an area should be taken into account, in accordance with policy DP3, but should not preclude development which makes the most of an area's potential.*
3. *Minimum densities for residential development proposals are appropriate in locations which provide high levels of connectivity to jobs and services. Where development proposals for housing or mixed-use schemes are within reasonable walking distance of a railway station<sup>44</sup>, a density of at least 40 dwellings per hectare should be achieved within the net developable area of the site, or 50 dwellings per hectare where the station or stop is defined as 'well-connected'<sup>45</sup>.*
4. *Development proposals that do not make efficient use of land in accordance with this policy should be refused.”*

24. This policy requires the achievement of appropriate densities. I note that it is necessary to take into account the availability of sustainable transport and connectivity and the need to achieve well designed, attractive and healthy places.

25. For the reasons set out in my evidence, and that of Mr Worth, the squeezing of so many individuals and households (often with particular vulnerabilities) into the existing buildings is too dense. It is likely to result in problems for the management of the site. It also means that the unit sizes are unacceptably small. This is further compounded by the fact that the development is in a poorly connected location. The proposal does not achieve an appropriate density for the site.

### Policy DP3.

26. Policy DP3 says that:

1. *To respond to their context and create well-designed places development proposals should:*

- a. Context: respond to the history, character and features of the site and its setting, so that it integrates into and enhances its surroundings (such as through the arrangement of development plots and buildings, the use of materials and architectural features, and the restoration, reuse and integration of heritage assets). This should not preclude innovation and change where appropriate, especially where an increased scale or density of development is justified in accordance with policies L2 and L3;*
  - b. Liveability: support healthy, mixed, vibrant and integrated communities, which will function well over the lifetime of the development, by incorporating a range of uses and tenures, employing features which promote social interaction, and which are robust, durable and easy to look after...*
- 2. Development proposals that are not well designed should be refused, when assessed against this policy and local design policies, guides, codes and masterplans set out in the development plan. Substantial weight should be given to compliance with these policies when assessing the design quality of proposals.”*

27. For all of the reasons set out in my proof this proposal is not well designed. It would not respond to the history, character and features of the site and its setting so that it integrates into and enhances its surroundings. Nor would it support healthy, mixed, vibrant and integrated communities. On that basis consent should be refused.

Policy HC3.

28. Policy HC3 requires that:

- 1. Proposals for housing, employment or other development which would give rise to significant numbers of additional people living in, working in or visiting an area should:*
  - a. Be informed by an understanding of the need for any associated improvements to community facilities and public service infrastructure, whether on or off-site; and*
  - b. Provide for community facilities and improvements to public service infrastructure which are necessary for the development to be acceptable in planning terms, whether by direct provision or a contribution to off-site improvements (which may be through Community Infrastructure Levy payments, where applicable)...”*

29. The Appeal proposal is not informed by an understanding of the need for any associated improvements to community facilities and public service infrastructure.

Policy HE4.

30. Policy HE4 says that:

*1. Heritage assets, as an irreplaceable resource, should be conserved and enhanced in a manner appropriate to their significance. To achieve this, development proposals which would affect the significance of heritage assets, including any contribution made by their setting should:*

- a. Maintain or secure a use consistent with their conservation, taking into account the importance of maintaining the assets, the positive contribution they can make to sustainable communities including local economies, and the positive contribution they can make to local character and distinctiveness;*
- b. Avoid harm to the significance of heritage assets, and instead preserve and enhance this significance.*

*2. If harm to the significance of heritage assets cannot be minimised or avoided, there should be a clear and convincing justification in accordance with the policies in this chapter.”*

31. The draft NPPF is clear that development proposals should maintain or secure a use consistent with the conservation of heritage assets. This strongly supports the Council’s concerns with regards to the fact that this proposal has not provided any long-term solution for Mount Clare and the Temple. It is insufficient to simply state they would be managed and maintained. As Mr Sellers highlights the best approach to Mount Clare in particular would be to bring it back into use. Further, the site allocation policies clearly envisage a holistic approach to the site which would necessarily respond sensitively to the heritage assets.

Policy HE6.

32. Policy HE6 requires that:

- 1. When considering the potential effect of a development proposal on a designated heritage asset, substantial weight<sup>74</sup> should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential effect amounts to a positive effect, harm, substantial harm, or total loss of its significance.*

2. *Development proposals which would have a positive effect on designated heritage assets should be approved.*
3. *Where a development proposal would harm the significance of a designated heritage asset the effect on the asset and its significance should be weighed against any public benefits resulting from the proposal. Important public benefits can include securing the long-term re-use of a vacant or underused listed building, and enabling energy efficiency and low carbon heating measures to be employed.”*

33. The Draft NPPF maintains the requirement that harm to heritage assets should be weighed against public benefits.

34. I note also that the NPPF expressly acknowledges that securing the long-term re-use of a vacant or under used listed building is an important public benefit. This supports the Council’s concern that the appeal proposal fails to do this.

Policy HE9.

35. Policy HE9 says that:

1. *Development proposals within or affecting the significance of conservation areas should:*
  - a. *Retain and restore buildings and other features which make a positive contribution to the character or appearance of a conservation area wherever possible; and*
  - b. *Consider the area’s special architectural or historic interest (as identified as part of the designation of the conservation area) in the design of development.*
2. *Not all elements of a conservation area will necessarily contribute to its significance. Where a development proposal would result in the loss of a building or other element which contributes to the character or appearance of a conservation area that is desirable to preserve or enhance, the assessment of impact should take into account the relative significance of the element affected and its contribution to the significance of the conservation area as a whole, and the effects of this considered in accordance with policies HE5 and HE6.*
3. *Proposals that preserve those elements of a conservation area that make a positive contribution to it (or which better reveal its significance) should be approved.”*

36. The proposal would harm the conservation area for the reasons described in Mr Seller’s evidence.