

Merton Local Plan

Development viability draft supplementary planning document.

For consultation January 2018

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1. Introduction

1.1. This document is written to be used by people and organisations who are submitting planning applications to the council that they believe will not be able to comply with the council's planning policies and still be viable. This document is a technical guide; it assumes knowledge and understanding of planning and property terms.

1.2. The **purpose** of this Supplementation Planning Document is:

- *To endorse the Mayor of London's Affordable Housing and Viability SPG 2017 for the purposes of assessing planning applications and decision making for all planning applications in Merton*
- *To emphasize the importance of transparency in development viability, and to send a clear signal that all information in development viability appraisals submitted with planning applications in Merton should expect to be published.*
- *to provide additional guidance to developers, the public, and other stakeholders, on the approach to assessing viability through the planning process.*
- *to be read in conjunction with the planning application submission requirements for viability appraisals set out in Merton's local requirements within its Planning Application Information Validation Checklist 2018*
- *support relevant policies in the Merton Local Plan, particularly affordable housing policy but also in respect of any other development plan policies (comprising the London Plan and the Local Plan) where viability is a consideration.*
- *Applied as a material consideration in decision-making with respect of planning applications.*

Why are we preparing this guidance?

1.3. Since the publication of the National Planning Policy Framework (NPPF) in 2012 viability has become a central part of the planning system.

1.4. However, there is no single standard for conducting development viability appraisals and there has been much debate amongst property and planning professionals about the best way to do them

1.5. There is also concern that viability assessments are being submitted to local planning authorities which unnecessarily affordable housing or other planning obligations.

1.6. This has resulted in growing recognition of the need for greater consistency in the approach to viability, a need to ensure that viability appraisals are formed of

inputs that are supported by robust evidence, and greater transparency in the viability process.

What is development viability?

1.7. For development to take place it has to generate a return that reflects the risks developers take and also generate a land value that incentivises landowners to release their sites for development.

1.8. The value generated from the development must exceed the costs of undertaking that development.

1.9. There are a number of factors that determine both value (such as how much rent a site might be able to charge or how much a site might sell for) and cost (such as the cost of construction), and the calculation of all of these defines whether a development proposal is economically viable.

1.10. A development is viable if the value generated exceeds the cost of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken. The NPPF 2012 paragraph 173 states:

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the 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.”

1.11. Viability is therefore a key factor in determining whether a development proceeds or not. If developments do not generate reasonable returns for developers and landowners, sites won't come forward for new investment and we won't see new homes, shops and business space built locally.

Greater transparency

1.12. Where residents, businesses, councilors, property owners and others do not have access to viability evidence they are unable to reach their own view of whether the information is reasonable and robust, thus undermining confidence in the planning system. The Environmental Information Regulations (EIR) apply a presumption in favour of information disclosure; the exceptions are limited and even then, in most cases, it is necessary to decide whether the public interest is best served by the information being disclosed.

- 1.13. The importance of the principle of disclosure of viability information in planning cases has also been emphasised in various recent decisions of the Information Tribunal.
- 1.14. One of the key priorities for Merton Council in producing this guidance is to improve transparency in the planning system. Merton's approach is to state clearly that we expect information contained within development viability appraisals to be published in their entirety unless there are very robust reasons for not doing so.
- 1.15. Our approach to ensuring a robust assessment of development viability is also to require development viability appraisals to be submitted with the planning application (for planning applications where the applicant wants to challenge a policy on viability grounds). Planning applications that require a development viability assessment won't be validated unless we receive one at submission to enable the time for a robust assessment without causing any delays to deciding the application. Merton's Validation Checklist is being updated to reflect this approach.

Endorsing the Mayor of London's Affordable Housing and Viability guidance

- 1.16. In a response to the issues set out above and as an initial step in delivering his election pledge to improve the delivery of affordable housing, The Mayor of London developed his Affordable Housing and Viability SPG 2017.
- 1.17. This SPG has been designed to support more informed scrutiny of developer's viability submissions. On 28th November 2017 the Mayor published his new London Plan for consultation, so as to elevate the viability requirements included in his Affordable Housing and Viability SPG 2017 to development plan policy status.
- 1.18. The Mayor's Affordable Housing and Viability SPG applies across all of London, providing comprehensive guidance on development viability.
- 1.19. Merton's approach is to endorse the Mayor's SPG and apply it to all planning applications submitted to Merton Council that are accompanied by a development viability assessment (i.e. not just those that are referable to the Mayor of London)

2. Policy context

- 2.1. The role of the SPD is to set out the Council's requirements in terms of development viability with respect of planning applications. Together with the Merton Local Plan, the London Plan forms the statutory development plan for the borough.
- 2.2. NPPF paragraph 173 states that: *"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"*.
- 2.3. National Planning Practice Guidance (PPG) states that decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.
- 2.4. Current London Plan (2016) policy states, among other things, that negotiations on sites should take account of their individual circumstances including development viability¹. At paragraph 3.71 the London Plan advises, "developers should provide development appraisals to demonstrate that each scheme provides the maximum reasonable amount of affordable housing output" and directs boroughs to "evaluate these appraisals rigorously, drawing on assessments which take account of the individual circumstances of a site, the availability of public subsidy and other scheme requirements".
- 2.5. The new London Plan (consultation draft December 2017) sets out a threshold approach to development viability² whereby:
 - 2.6. proposals which are providing 35% or more affordable housing on site and without public subsidy will not be required to submit a viability appraisals ('Fast Track' route).
 - 2.7. Those proposals not meeting the 35% threshold will be required to submit an appraisal ('Viability Tested' route).
- 2.8. The SPG also sets out the Mayor's approach to review mechanisms, transparency of viability information and Build to Rent schemes.
- 2.9. The Mayor of London published his Affordable Housing and Viability Supplementary Planning Guidance (SPG) in August 2017. The SPG introduces the threshold approach to viability and provides detailed guidance supporting the new and current London Plans.
- 2.10. The London Borough Viability Group² has produced a non-statutory Development Viability Protocol published in November 2016 following public consultation to provide additional advice on the information requirements and approaches to be applied by London boroughs when assessing viability. The

protocol is supported by Merton and much of its guidance is reflected in this SPD.

¹ London Plan March 2016, Policy 3.12

² The new London Plan December 2017, Policy H6 Threshold approach to applications

³ The London Borough Viability Group was formed in 2014 in response to the increasing emphasis placed on development viability in the planning process. The Group draws together planning, housing and surveying officers from councils across London to consider best practice in the assessment of viability.

3. Preparing and submitting a development viability assessment

3.1. In accordance with Merton's Local Plan and Mayor of London policy requirements, developers are required to supply viability information where necessary to demonstrate that a scheme is maximising affordable housing.

3.2. All financial viability appraisals should be accompanied by the following:

3.2.1. An **executive summary** setting out the key findings and conclusions of the financial viability appraisal should be submitted alongside the financial viability appraisal. This should clearly explain why it would not be economically viable for the proposed development to comply fully with Local Plan and Mayor of London requirements.

3.2.2. **a fully working Argus Developer software model** that can be tested. The council will accept alternative models (e.g. Microsoft Excel based appraisals) provided they explicitly show the calculations and can be fully interrogated and the inputs varied.

3.2.3. A table that clearly sets out all the assumptions, inputs, benchmarks finally agreed for the application stage appraisal that together would enable any competent person to rerun the application viability appraisal and get the same result. The table should also contain notes against each assumption, input and benchmark as to how it will be dealt with in the viability review, e.g. whether the assumption/input/benchmark is fixed as per the application appraisal or whether actuals will be reviewed and how estimates will be established, or uplifted based on indices or freely publicly available data sources (list source and public location of source). This table will be appended to the viability appraisal and the viability review sections of the agreement will need to tie in to this table.

3.3. If changes are made to the proposal during the process of assessing the application that could affect viability or there is a material change in circumstances to the scheme, Merton Council will expect to receive a revised viability appraisal.

3.4. In addition to the above, Merton Council endorses the Mayor of London's Affordable Housing and Viability SPG and requires the same level of inputs and approach within it for all planning applications in Merton that require a development viability appraisal. This should be commensurate with the scale of development.

Viability appraisal methodology

3.5. A development is deemed to be viable if the value generated exceeds the costs of the development and also provides sufficient incentive for the land to come forward and the development to be undertaken. The residual land value approach is most commonly used for assessing development viability.

3.6. Merton expects applicants to provide appraisals based on a methodology, inputs and assumptions that meet the requirements of the Mayor of London⁸. Applicants must use all reasonable endeavours to ensure that all inputs and assumptions are evidenced and benchmarked against publically available sources. Applications should set out a list of all assumptions and inputs in a table showing the reference document and benchmark used to support each respective assumption/input.

3.7. Availability of public subsidy to support affordable housing assumptions should be fully evidenced including documentation from the Greater London Authority and Registered Providers

Stage 1 – pre-application (will be kept confidential)

3.8. Applicant to provide draft viability inputs and their preferred methodology to inform their planning application development viability submission, thereby speeding up the planning process.

3.9. The level of information required at this stage will depend on the scale and nature of the proposed development.

Stage 2 – planning application submitted to the council (will be published on the council's website)

3.10. Applicants to provide a full un-redacted financial viability appraisal wherever the applicant states their scheme cannot comply with planning policies for viability reasons

3.11. This is to be provided when the planning application is submitted to the council, as set out in Merton's local requirements within its Planning Application Information Validation Checklist 2018,

Stage 2(a) – varying a planning decision

3.12. Where an application made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission has the effect of increasing the number of residential units and/or varying the tenure mix, and in any other case where the council considers it is warranted, the applicant will be required to submit an updated viability appraisal to assess any associated change in the provision of planning obligations, unless the amendments mean that the revised development now complies fully with planning policy requirements or unless it was approved under the Fast Track route (see Mayor's SPG paragraph 2.14). The need for updated viability appraisals where section 73 applications relate to developments with no residential element will be considered on a case by case basis.

Independent assessment

3.13. Financial viability appraisals will be reviewed by the council or may be referred to council-appointed assessors for independent assessment. Applicants will be expected to meet the reasonable costs associated with reviewing financial viability appraisals. Applicants will also be required to meet the costs of any subsequent reviews that may be needed, including where the application is subject to an appeal.

4. Transparency

- 4.1. Information relevant to plan-making and the planning application process is publicly available. This is consistent with the NPPF (paras 66 and 69) which places a requirement on local authorities to facilitate community involvement in planning decisions.
 - 4.2. The PPG states that transparency of viability evidence is encouraged wherever possible (PPG Viability paragraph 004)
 - 4.3. The Mayor of London also encourages the transparency of viability information to increase understanding and public trust in the planning process. The Mayor's Affordable Housing and Viability SPG 2017 states that there will only be very exceptional circumstances for keeping limited elements of viability information confidential. (Affordable Housing and Viability SPG, (August 2017), para 1.2)
 - 4.4. The Environmental Information Regulations 2004 ('EIR') cover access to 'environmental information' held by public authorities including local planning authorities. 'Environmental information' for these purposes includes information relating to development viability. Under the EIR there is a presumption in favour of disclosure of environmental information. The EIR recognise that there are certain circumstances ('exceptions') where environmental information may fall not to be disclosed. In most cases, a balancing exercise has to be carried out to decide whether the exception should outweigh the presumption in favour of disclosure.
 - 4.5. The availability of information submitted as part of the planning process is important to ensure public participation, confidence in the planning system and the accountability of those undertaking the assessments. The council's starting point is that information submitted as part of, and in support of, a viability assessment should be treated transparently and be available for wider scrutiny. As reflected in Merton's local requirements within its Planning Application Information Validation Checklist 2018 viability appraisals should be submitted without redaction. In submitting information, applicants do so in the knowledge that this may be made publicly available alongside other application documents. Revised or updated appraisals will similarly be treated in accordance with the principles set out in this section with regard to publication.
 - 4.6. In deciding whether there is any reason why the submitted viability information should not be published alongside other planning application documents, the council will draw on the principles of the EIR. The council will depart from the starting point identified above only where there is a convincing case, in relation to specific elements of a viability assessment that one or more of the exceptions to disclose as contained in the EIR would apply so as to outweigh the public interest in disclosure of that information.
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- 4.7. Where an applicant requests that only a redacted version of the development viability appraisal be made public, robust and proper justification for confidentiality will be required and should be made prior to the submission of a planning application.

- 4.8. If an applicant wishes to make a case for an exceptional circumstance in relation to withholding any part of their viability assessment from publication, they will need to identify exactly what material they would wish to be withheld and provide full justification. This should take the form of a schedule or a table clearly identifying the relevant information, together with a marked up copy of the appraisal document. The council will consider the specific circumstances of the case in the light of the principles of the EIR. The council may decide not to accept the applicant's request that information should not be disclosed to the public.
- 4.9. Where a review of an applicant's financial viability appraisal is carried out on behalf of the local authority, requests for disclosure of that review will be considered by the council as and when received and will be informed by the approach taken in relation to the submitted appraisal.
- 4.10. Irrespective of whether viability material is published alongside other application documents, the material may be made available to Members of the council's Planning Applications Committee, or to Members of the council more generally, in accordance with the arrangements for disclosure of information as provided for in the council's constitution.
- 4.11. The council may also need to make information available to a third party organisation where that body has a role in determining an application (e.g. the Mayor of London), has statutory consultee or other duties, is providing public subsidy or is fulfilling their own duties under the EIR and freedom of information legislation.
- 4.12. In the event a request from a third party is received for disclosure of viability information which has not been published online and which falls outside the scope outlined above, for example where the request is made by a member of the public, the council will have regard to the matters arising from the application when applying the EIR to the request.

5. Review mechanisms

- 5.1. Inputs into viability appraisals (e.g. sales values, rental yields etc) are typically determined based on current day values available at the time of the grant of planning permission.
- 5.2. However it may take many months and years between the assessment of the planning application and the day that the development is built and occupied. Review mechanisms address economic uncertainties which may arise over the lifetime of a development proposal.
- 5.3. Provisions for re-appraising the viability of schemes may form part of section 106 planning agreements. Review mechanisms will not be used to reduce the amount of affordable housing agreed when planning permission was granted.
- 5.4. In accordance with Mayor of London requirements⁹ reviews may be sought under 'Viability Tested route' on phased and non-phased schemes. Exactly when the review should take place (known as the "Trigger" for the review) will be agreed between the council and the applicant, having regard to the specifics of the proposed development and this will be determined through the assessment of the application.
- 5.5. The council will normally require viability reviews to take place at the following stages for all schemes not meeting the 35% affordable housing threshold:
- Early reviews to be carried out upon substantial implementation of the development (e.g. commencement of above ground works) triggered in the event construction does not commence within 2 years months of the grant of planning permission.
 - A near-the-end-of-development review, as soon as 75% of units have been sold, occupied or substantially completed in accordance with the Mayor of London requirements.
 - On phased developments, an additional viability review may be required prior to substantial completion of development phases (known as a mid-term review) to secure any uplift on subsequent phases.
- 5.6. In accordance with Mayor of London requirements (New London Plan (December 2017) and Affordable Housing and Viability SPG (August 2017)) for 'Fast Track route' schemes that meet or exceed the 35% threshold, an early review mechanism will be triggered if an agreed level of progress on implementation has not been made within two years of the permission being granted.
- 5.7. Any contribution arising from a review of viability would be capped by relevant policy requirements. In other words, if the Development Plan policy in place at the time was for 50% affordable housing, the council could not insist on more than this. Share of any surplus will be in accordance with Mayor of London requirements.
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- 5.8. Where reviews take place prior to or at an early stage of development delivery the council's priority will be for the delivery of additional on-site affordable housing. Where reviews take place at a later stage, the practicalities of delivering additional affordable housing on site may mean that off-site

affordable housing or a commuted sum will be sought. For example, if the trigger for the late-stage review is the sale of at least 80% of the homes built on site, it would not be practical for the council to then insist on some of these sold homes now becoming affordable housing. Off-site provision must be fully justified and any costs met by the developer (e.g. design, professional / legal fees etc.)