

Affordable housing and viability in London

Reforms to the viability testing process need to be implemented effectively to support the delivery of sustainable development in London says John Wacher

Following the introduction of the National Planning Policy Framework (NPPF) in 2012, viability testing has become a common feature in the planning process in London and across the country. This was despite significant increases in average new build London residential values since the financial crisis of ten years ago, particularly between 2013 and 2016.

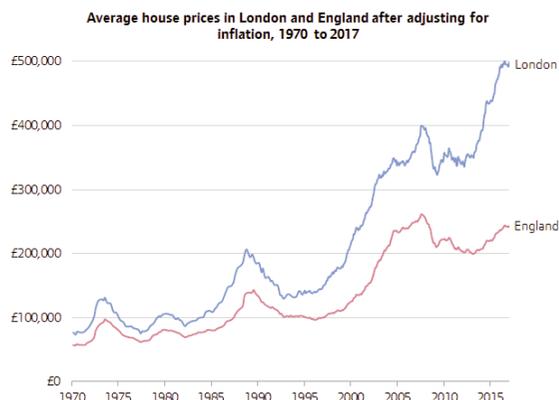
The percentage of affordable housing secured through the planning process fell each year between 2007/8 and 2014/15². The impact that viability assessments have played in reducing the level of affordable housing negotiated by local planning authorities within Section 106 agreements has been recognised in a range of high profile reports³. While the statutory planning framework has remained one which is 'plan-led', the prevalence and influence of viability assessments on affordable housing and other planning outcomes resulted in what could be termed a 'viability-led' planning system.

A range of factors have led to this scenario which include⁵:

- The sensitivity of residual valuation models to a combination of more pessimistic assumptions which individually may be difficult for planning authorities to refute but which collectively have a significant effect on residual value;
- Ambiguities in national and professional guidance which have been used to justify inflated 'benchmark land values' based on market transactions for land;
- The imbalance in resources between the public and private sectors (and respective budgets for obtaining valuation and legal advice).

Simultaneously, consultants and their clients sought to place confidentiality restrictions on viability information, despite most elements of a viability assessment being based on standardised assumptions that are not commercially sensitive. This hindered wider scrutiny and delayed reform of the viability assessment process. As the price of market housing has risen, the need for affordable homes in London has increased substantially. The Mayor's Housing Strategy identified that the declining amount of social housing has left more than a quarter of a million Londoners on housing registers and more than one in eight social housing tenants living in overcrowded conditions⁶. The reduced availability of social housing has also contributed to an increase in homelessness. The number of people seen rough sleeping in London increased significantly between 2010/11 and 2016/17, with an 8 per cent reduction in 2017/18 (see graph below)⁷. 18,060 households were accepted as statutorily homeless in London in 2016/17, down 6 per cent from the year before, but nearly double the figure in 2009/10. Demand has also continued to increase for intermediate affordable housing. The number of Londoners registered on the GLA online portal to access intermediate affordable housing, increased from 70,000 in 2013/14 to over 210,000 in 2017⁸.

Whilst the implicit rationale for the relaxation of planning



RIGHT TOP:
Figure 1: Average house prices in London and England after adjusting for inflation, 1970 to 2017¹

RIGHT BELOW:
Figure 2: Affordable Homes as a percentage of net conventional approvals in London, 2004/05 to 2015/16⁴



John Wacher is strategic planning manager for viability at the GLA

requirements following the 2012 NPPF was to improve affordability by increasing the supply of homes, this has the effect of increasing land values¹⁰. The failure to secure higher levels of affordable housing in this period is a missed opportunity that has fuelled public mistrust in the planning system and is one of the factors driving renewed interest in land value capture.

The Mayor of London's Threshold Approach to Affordable Housing

A key manifesto commitment of the Mayor of London was to increase the provision of homes that are genuinely affordable for Londoners and address the issues that had arisen through the use of viability assessments.

As an initial step to achieving this, the Mayor published the Affordable Housing and Viability Supplementary Planning Guidance (SPG) in August 2017¹¹. This introduced the 'threshold approach' to affordable housing with the intention of increasing delivery above the low levels secured in previous years. The SPG also set out the Mayor's preferred tenures for genuinely affordable homes, as well as detailed guidance on the process and methodology for viability testing and requirements for viability information to be treated transparently¹². Key elements of this approach were >>>

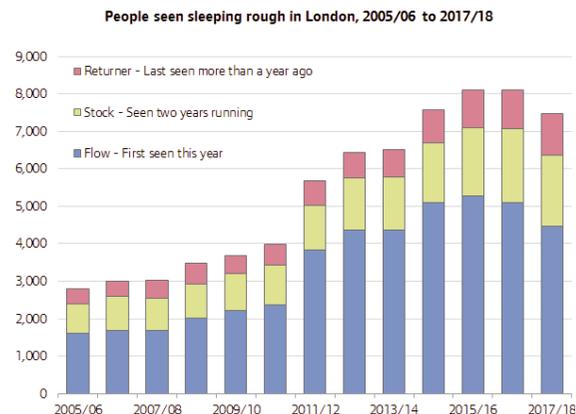
>>> included in the Draft London Plan and now form part of the Mayor's draft spatial development strategy for London which is currently be considered at Examination in Public¹³.

The London Plan includes a strategic target that 50 per cent of new homes should be affordable. These will be delivered through a range of sources including partnerships with registered providers, through the allocation of affordable housing grant as part of the Mayor's Affordable Homes Programme 2016-21¹⁴ and through the threshold approach to affordable housing.

The Threshold Approach to Affordable Housing

The threshold approach enables schemes delivering 35 per cent affordable housing and 50 per cent on public and industrial land, to be assessed under the 'Fast Track Route' without needing to provide detailed viability information¹⁵. These schemes are subject to an 'Early Stage Viability Review Mechanism' if they are not progressed within the specified timeframe, which encourages delivery.

Development proposals that do not qualify for the Fast Track Route are assessed under the 'Viability Tested Route'. These are rigorously tested applying the approach in the Mayor's Affordable Housing and Viability SPG by boroughs and the GLA's Viability Team. They are subject to Early and Late Stage Viability Review Mechanisms to assess whether additional affordable



housing can be provided if viability improves over time. Late Stage Viability Reviews assess changes in gross development values and build costs on disposal of 75 per cent of residential units to determine whether an additional financial contribution can be paid towards the delivery of affordable housing based on the actual values secured and costs incurred, allowing for the target profit to be achieved.

A key benefit of the threshold approach is that it provides greater certainty to the market, particularly when developers purchase land. The threshold approach has also sped up the planning process by reducing the number of schemes which are subject to protracted viability debates. Many developers and councils have therefore welcomed the threshold approach which is being reflected in land bids and is increasing the provision of genuinely affordable homes.

Land value and circularity

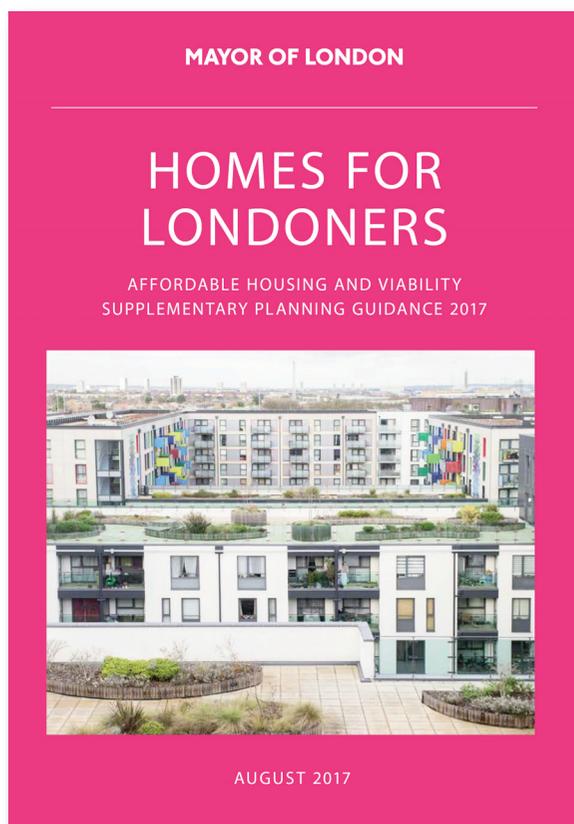
In recent years one of the factors influencing rising land values was the availability of viability assessments as a means of reducing planning obligations. In a competitive bidding process this enabled developers who assumed that they would be able to justify lower levels of affordable housing and other obligations to pay more for land in order to outbid their competitors.

This issue was compounded by an approach which used land transactions to determine benchmark land values in viability assessments¹⁶. Contrary to national and professional guidance some consultancies and valuers sought to establish an approach which relied on land transactions, regardless of whether the transaction had properly reflected policies for affordable housing and other planning requirements.

The argument used to justify this approach was that because planning policies allow for viability testing to ensure that developments are deliverable, any level of affordable housing between zero and 100 per cent could be policy compliant if justified by a viability assessment. On this basis it was said that land prices for development sites providing little or no affordable housing could

RIGHT TOP:
Figure 3: People seen sleeping rough in London, 2005/06 to 2017/18⁹

BELOW:
Figure 4: Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance, 2017





RIGHT:
Figure 5: Cover image of
Draft London Plan, 2017

be used as the basis of determining land values on other sites, even if the value of the transacted site had been inflated due to the low level of affordable housing provided and the characteristics of the proposed development were different.

Such an approach has been widely recognised as being circular¹⁷. A site value which is based on land transactions that do not properly reflect plan policies, and which is inserted as a fixed cost into a viability assessment makes it almost inevitable that planning policies would render a development unviable, even on sites with no particular constraints or genuine barriers to delivery and on public land released for development.

Difficulties can also arise with the use of land transactions when they are based on different assumptions to those applied within planning viability assessments. The price paid for land reflects the specific circumstances of the developer who has submitted the highest bid in a competitive land sale process (or the most favourable terms). This may be based on assumptions of higher development values, higher densities, cost efficiencies or lower profit requirements (or a combination of these and other factors) compared with the rest of the market. Land transactions may therefore be based on more optimistic assumptions (which are rarely known) than those adopted in planning viability assessments, which can result in an inconsistency and can make their use to inform benchmark land values problematic.

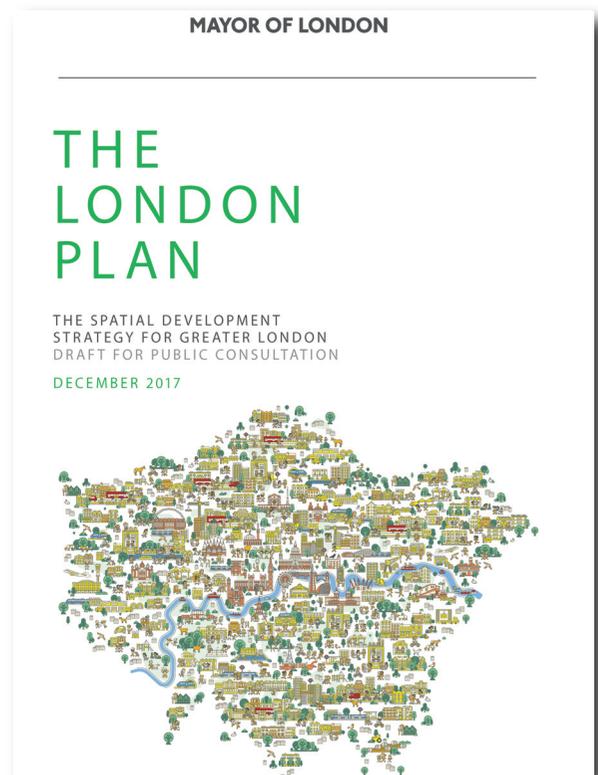
Former Territorial Army Site, Parkhurst Road, Islington

A high profile case which exemplifies this is the Former Territorial Army Site at Parkhurst Road, London Borough of Islington. A proposal for 96 residential units initially included no affordable housing, which was subsequently increased to ten per cent prior to appeal. The appeal decision and subsequent high court judgment following judicial review by the appellant supported the respective decisions by the council and Planning Inspectorate to refuse planning consent.

This was based on the council's evidence that the applicant's viability assessment had overstated the benchmark land value for the site without having properly taken account of Development Plan policies for affordable housing and the quantum of development that could be accommodated on site. The Planning Inspector found that this was contrary to national and Mayoral guidance and the borough's Development Viability Supplementary Planning Document.

In the High Court Judgment Justice Holgate included a postscript recommending that the RICS revise their guidance on viability:

'It might be thought that an opportune moment has arrived for the RICS to consider revisiting the 2012 Guidance Note, perhaps in conjunction with MHCLG and the RTPI, in order to address any misunderstandings about market valuation concepts and techniques, the "circularity" issue and any other problems encoun-



tered in practice over the last 6 years, so as to help avoid protracted disputes of the kind we have seen in the present case and achieve more efficient decision-making. The High Court is not the appropriate forum for resolving issues of the kind which the Inspectors dealing with the Parkhurst Road site had to consider. It is very much to be hoped that the court is not asked in future to look at detailed valuation material as happened in these proceedings.¹⁸

Further to the judgment, the RICS have convened a working group which includes government, GLA, RTPI and Law Society representatives to review the guidance. Parkhurst Road has proven to be a landmark case which was considered in the recent Housing, Communities and Local Government Committee Report on Land Value Capture¹⁹. The High Court Judgment, together with the Mayor's guidance on affordable housing and viability and Draft London Plan have had a significant impact on viability practice in London with applicants rarely now seeking to rely to land transactions to determine benchmark land values. This is enabling higher levels of affordable housing to be secured through the planning process.

Revised national policy and guidance

In 2018 MHCLG revised the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) on viability²⁰. This seeks to address many of the concerns and difficulties arising from viability testing in recent years. Greater emphasis is placed on the plan-led approach with applicants needing to justify instances where a viability assessment for a specific scheme is necessary. The NPPF states that it is for Local Planning Authorities to determine the weight to be given to viability testing alongside other material planning considerations.

Further guidance is provided on the use of viability review mechanisms, which should be used to reassess viability over the lifetime of a development to ensure policy compliance and opti- >>>



>>> mal public benefits through economic cycles. The PPG clarifies that viability review mechanisms are not a tool to protect a return the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over a lifetime of a project²¹.

PPG on Viability also sets out important principles for the approach to determining land value. It states that:

'Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan'.²²

Further guidance is provided on the approach to land values which should be based on Existing Use Value (EUV) plus a premium²³. Key aspects of this include:

- Benchmark land value should be informed by market evidence including current uses, costs and values wherever possible. This should be based on developments which are compliant with policies, including for affordable housing.
- Market evidence to inform the premium can include BLVs from other viability assessments and should reflect the cost of policy compliance, differences in site circumstances and reasonable expectations of landowners.
- The premium above EUV, should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to comply with policy requirements.
- The premium should be the minimum return at which it is considered a reasonable landowner would be willing to sell their land.
- Historic benchmark land values of non-policy compliant developments should not be used to inflate values over time.

The language of the PPG which references current uses, policy compliance and a minimum return to a reasonable landowner, is markedly different from the unconstrained market approach that has been applied in some cases. Mayoral and national guidance now set out the clear intention of avoiding the circularity associated with the use of land transactions and ensuring that the existence of viability testing within the planning system does not have the effect of inflating land values and driving down affordable housing. Importantly the guidance dispels the argument that as affordable housing targets are subject to viability, any other site can be relied on to inform land value, regardless of whether the development met the relevant affordable housing threshold/ target. To suggest otherwise would again result in a circularity that undermines the delivery of affordable housing.

London Mayoral and national guidance have sought to rebalance the viability process. This has been accompanied by a clear message that a rigorous approach should be taken when reviewing viability assessments which is crucial to ensure the effective operation of the plan-led system.

After many years of delays and conflict within the planning process, the revised guidance, together with recent appeal and High Court decisions, are having an impact. It is important to ensure that reforms to the viability testing process are implemented effectively to support the delivery of sustainable development in London. ■

FOOTNOTES

1 Mayor of London, *Housing in London: 2018, The Evidence Base for the Mayor's Housing Strategy*, July 2018.

2 According to the Land Registry House Price Index, average new build residential values in London increased from £209,000 in April 2009 to £460,000 in January 2016, however the percentage of affordable housing secured through the planning process in London steadily reduced since 2007/8 to its lowest point in 2014/5.

3 See for example: House of Commons, *Housing, Communities and Local Government Committee, Land Value Capture*, 13 September 2018; Labour Party Green Paper: *Housing for the Many*, April 2018; Prime Minister Theresa May Speech on Making Housing Fairer, 5th March 2018; *Slipping Through the Loophole: How Viability Assessments are Reducing Affordable Housing Supply in England*, Rose Grayston, Shelter November 2017; Department of Communities and Local Government, *Planning for the Right Homes in the Right Places*, September 2017; London Housing Commission, *Building a New Deal for London*, March 2016; London Assembly Planning Committee, *The need for Supplementary Planning Guidance on Viability Assessments*, February 2016.

4 GLA, London Development Database, 2004/05 to 2015/16, in Mayor of London, *London Housing Strategy*, May 2018.

5 For a comprehensive overview see Professor Pat McAllister (January 2016), *The Calculative Turn in Land Value Capture: Lessons from the English Planning System*, University of Reading.

6 Mayor of London, *London Housing Strategy*, May 2018

7 See footnote 1

8 See footnote 6.

9 See footnote 1

10 Sayce et al, *Viability and the Planning System: The Relationship between Economic Viability Testing, Land Values and Affordable Housing in London* (2016). Commissioned by various London Boroughs. Land values were reported to have increased by 145 per cent between March 2009 and September 2015

11 Mayor of London, *Homes for Londoners, Affordable Housing and Viability Supplementary Planning Guidance*, August 2017.

12 The SPG supported and was informed by the London Borough Viability Protocol (London Borough Viability Group, 2016).

13 Mayor of London, *Draft London Plan*, December 2017. A further version of the plan with minor suggested changes was published in August 2018 following consultation on the plan.

14 Mayor of London, *Homes for Londoners, Affordable Homes Programme 2016-21, Funding Guidance*, November 2016.

15 To qualify for the Fast Track Route schemes must also: provide a tenure split consistent with Policy H7; comply with other policy requirements to the satisfaction of the borough and the Mayor; and explore the availability of grant to increase affordable housing delivery.

16 RICS *Financial Viability in Planning*, 2012

17 See for example, *Financial Viability Appraisal in Planning Decisions: Theory and Practice* (April 2015), Professor Neil Crosby and Professor Peter Wyatt, University of Reading, for the RICS.

18 *Parkhurst Road Limited v Secretary of State for Communities and Local Government and the Council of the London Borough of Islington*.

19 House of Commons, *Housing, Communities and Local Government Committee, Land Value Capture*, 13 September 2018.

20 National Planning Policy Framework, July 2018; *Planning Practice Guidance, Viability*, July 2018.

21 *Planning Practice Guidance, Viability*, July 2018, Paragraph 009.

22 *Planning Practice Guidance, Viability*, July 2018, Paragraphs 006, 011, 014, 018.

23 *Planning Practice Guidance, Viability*, July 2018, Paragraphs 013 to 016.

John Wacher BA, MSc, MRTPI is Strategic Planning Manager for Viability at the Greater London Authority. He leads the Mayor's Viability Team and chairs the London Authorities Viability Group. The views expressed are personal.