

Cabinet 28 November 2016

Report title: Draft Lambeth Development Viability Supplementary Planning Document

Wards: All wards

Portfolio: Cabinet Member for Regeneration, Business and Culture: Councillor Jack Hopkins

Report Authorised by: Strategic Director Neighbourhoods and Growth: Sue Foster

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Report summary

This report presents a draft Lambeth Development Viability Supplementary Planning Document (SPD) and seeks Cabinet approval to publish the draft SPD for public consultation in accordance with the statutory processes set out in national Regulations.

The role of the SPD will be to support relevant policies in the Lambeth Local Plan 2015, particularly affordable housing policy but also in respect of any other development plan policies (comprising the London Plan and the Local Plan) where development viability is a consideration. Its aim is to provide greater clarity to developers, the public, and other stakeholders, on the approach to assessing viability through the planning process and how viability information will be treated. Specifically, the draft SPD sets out guidance relating to the submission of financial viability appraisals as part of the planning application process, viability appraisal methodology and the use of review mechanisms. The draft SPD also makes clear that the Council's starting point is that viability appraisals should be treated transparently and be available for wider scrutiny; appraisals should be submitted without redaction and will be published alongside other planning application documents in all but exceptional cases.

The draft SPD is provided at Appendix 1. A Consultation and Engagement Plan is provided at Appendix 2. A draft Equalities Impact Assessment is provided at Appendix 3.

Finance summary

The production of the draft Lambeth Development Viability SPD will be funded from existing general fund budgets of the planning department.

Recommendations

1. To note and agree the content of the draft Lambeth Development Viability SPD in Appendix 1.
2. To approve the draft Lambeth Development Viability SPD for public consultation.
3. To note and agree the proposals for public consultation.

1. **Context**

- 1.1 Viability is assessed and examined as part of the plan making process and in taking decisions on individual planning applications.
- 1.2 One of the key requirements of the National Planning Policy Framework (NPPF) is that local plan policies should encourage a context in which development will be 'economically viable' and in which developers and landowners can have a reasonable prospect of obtaining 'competitive returns'. The NPPF is clear that the scale of planning obligations and policy requirements that are set out in local plans should not be so high as to threaten development viability or therefore deliverability.
- 1.3 In accordance with national policy, viability testing was undertaken when the Lambeth Local Plan 2015 was developed. The main purpose of this was to test the cumulative impact of the Council's planning policy requirements on development viability, to ensure the Local Plan would be deliverable. The Draft Lambeth Local Plan Viability Assessment 2013 confirmed that the planning policy requirements were set at a level that would be sustainable for most developments, and the Inspector was satisfied on this point during the examination of the Local Plan.
- 1.4 Decision-taking on individual applications does not necessarily require consideration of viability. However, where the deliverability of the development may be compromised by the scale of planning obligations and/or other costs a viability assessment may be necessary. In the assessment of individual planning applications, financial viability appraisals are mostly associated with major schemes which trigger affordable housing requirements. Policy H2(d) in the Lambeth Local Plan 2015 defines the circumstances in which financial viability appraisals are required in relation to schemes with a residential element:

"A financial appraisal will be required if the affordable housing provision is less than the specified policy requirements or where the proportions of social / affordable rented and/or intermediate housing are not in accordance with policy."
- 1.5 Financial appraisals may also be a requirement where a proposed development departs from other planning policy requirements due to viability, for example where policies seek the re-provision of office space, small shop premises on affordable terms, an element of affordable student accommodation or carbon dioxide emission savings or other sustainability measures.
- 1.6 The main purpose of the financial viability appraisal is to determine what a development can viably provide as compared with the 'target' requirements of the relevant development plan policies. Development plan policy may itself reflect the possibility that the level of provision by a development will be different from the 'target' requirements because of viability constraints. For example, in a residential scheme, this could in some cases mean a variation in tenure mix of the affordable housing, an adjustment to the overall quantum delivered by a scheme, or a combination of both.
- 1.7 In accordance with Policy H2(d), provisions for re-appraising the viability of residential schemes following the grant of consent may also form part of section 106 planning obligations where the financial appraisal demonstrates that at the time of granting planning permission, the amount of affordable housing that a scheme can reasonably support is below the policy target. These are called viability review mechanisms.

- 1.8 Since the publication of the NPPF in 2012 viability has become a central part of the planning system, both in terms of plan making and in determining planning applications. However, there has been considerable variation in how viability matters are dealt with in the planning process. There is a range of methodologies and guidance relating to viability nationally, which has led to diversity in approach and no clear view on what constitutes best practice. There is potential for significant variation in the outcome of viability assessments depending on the inputs assumed. There is also concern that viability assessments may be put forward to local planning authorities showing an artificially low surplus from a development proposal (for example through undervaluation of sales values and/or inflated construction or finance costs), with the result that a reduced amount of affordable housing or other planning obligations is proposed. 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.
- 1.9 Where the public do not have access to viability evidence they are unable to reach their own view of whether the information is reasonable and robust. This has the potential to undermine confidence in the planning system. The Environmental Information Regulations 2004 (EIR) apply a presumption in favour of information disclosure; the exceptions to that presumption are limited and even then, in most cases, it is necessary to decide whether the public interest is nonetheless best served by the information being disclosed. 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.
- 1.10 In July 2016 the Council adopted its revised Local Application Requirements (LARs), a document which specifies the Council's local information requirements for applications for planning permission and other consents. The LARs make clear that financial viability assessments should be submitted without redaction unless there are justifiable grounds not to do so, and that in submitting financial appraisals applicants will do so in the knowledge that the information may be made publicly available alongside other application documents.
- 1.11 This draft Supplementary Planning Document (SPD) has been developed in the light of the above issues. Its purpose is to support relevant policies in the Lambeth Local Plan 2015, 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. It also reflects the approach set out in the Lambeth LARs document.
- 1.12 A number of other London boroughs have similarly opted to bring forward SPDs to provide guidance on the approach to be taken to viability at the local level. These include the LB Islington (SPD adopted January 2016), LB Southwark (SPD adopted March 2016), and LB Newham, LB Wandsworth and the Royal Borough of Kingston Upon Thames which all consulted publicly on draft SPDs containing viability guidance in 2016. The London Borough Viability Group¹ has also produced a draft, non-statutory, Development Viability Protocol to provide additional advice on the information requirements and approaches to be applied by London boroughs when assessing viability. The protocol was subject to public consultation between 22 February and 20 March 2016. Much of the guidance contained in the protocol is reflected in the draft Lambeth SPD.

¹ 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.

1.13 Both the government and the Mayor of London have stated their intention to publish further national and London Plan guidance on viability. The timing of the new national guidance is not known, however it is understood that the GLA intends to publish Affordable Housing and Viability Supplementary Planning Guidance (SPG) for consultation in November 2016. From initial discussions with the GLA it is not anticipated that there would be any fundamental differences in approach between the London SPG and the draft Lambeth Development Viability SPD; the two documents should be able to operate in parallel in the same way as existing pan-London and borough planning policy and guidance does presently.

2. Proposal and Reasons

2.1 This report presents the draft Lambeth Development Viability SPD in Appendix 1. Cabinet is asked to note and agree the content of the draft SPD and to approve it for public consultation.

2.2 The NPPF, paragraph 153, states that SPDs should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development. While SPDs cannot establish new development plan policy they are a material consideration in the determination of planning applications and have weight in planning decision-making.

2.3 In accordance with the requirements of national planning policy, the role of the proposed Lambeth Development Viability SPD will be to support relevant policies in the Lambeth Local Plan 2015, particularly affordable housing policy but also in respect of any other development plan policies where development viability is a consideration. The aim of the draft SPD is to provide additional guidance to developers, the public, and other stakeholders, on the approach to assessing viability through the planning process. The guidance will address the information requirements for viability appraisals and the basis on which these will be assessed and shared publicly in Lambeth. Key areas of additional guidance set out in the draft SPD are summarised below.

2.4 Section 3 of the draft SPD explains the Council's requirements regarding the submission of financial viability appraisals, including in what circumstances and at what stage of the planning process. Applicants are advised to submit a draft viability appraisal at pre-application stage where viability is likely to be a relevant consideration in respect of achieving planning policy compliance. The draft SPD makes clear that a full financial viability appraisal is required for all planning applications where the proposed affordable housing provision is below the applicable target level of provision, and/or where the proposed development is said to depart from other planning policy requirements due to viability. The Council will expect a revised appraisal to be submitted where there is a material change in circumstances or changes are made to a proposal prior to determination that could affect viability. An updated viability appraisal for the whole scheme will also be required 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.

2.5 Section 4 explains the Council's approach to transparency and the publication of financial viability information. It makes clear that the Council considers that information submitted as part of, and in support of, a viability assessment should be treated transparently and in principle be available for wider scrutiny. Reflecting the approach set out in the recently revised LARs in relation to affordable housing, the draft SPD states that financial viability appraisals should be submitted without redaction. Applicants

will submit information in the knowledge that this may be made publicly available by the Council alongside other application documents. If an applicant wishes to make a case for an exceptional circumstance in relation to the withholding from publication of any part of their viability assessment, they will need to identify exactly what material they would wish to be withheld and provide full justification. The specific circumstances of the case will be considered in the light of the principles of the EIR and the Council may decide not to accept the applicant's request that information should be redacted.

- 2.6 Guidance on the Council's preferred methodology and expectations regarding appraisal inputs is set out in Section 5 of the draft SPD, including in relation to profit level assumptions, method of calculating land value (with existing use value plus being the preferred approach), development value, and development costs.
- 2.7 Section 6 sets out principles for the use of review mechanisms to determine whether a development is capable of providing additional affordable housing after the grant of consent. In this regard, the draft SPD makes clear that review mechanisms may form part of section 106 planning agreements where the financial appraisal demonstrates that the maximum amount of affordable housing that a scheme can reasonably support is below the policy target. Reviews may be sought on phased and non-phased schemes. The Council will normally require viability reviews to take place at the following stages: prior to implementation (normally in the event construction does not commence within 12 months of the grant of planning permission) if the Council considers there is likely to be a delay in starting on site and/or it is necessary to incentivise delivery; at an advanced stage for all schemes requiring a review, with the trigger for the review usually being 75% of occupation of market units; on phased developments an additional viability review may be required prior to substantial completion of development phases (mid-term review). Where a viability review demonstrates an improvement in a scheme's viability, a percentage split of the increase in the scheme's value between the developer and the Council will be agreed on a case by case basis. The draft SPD proposes that this split should typically be 20% of the increase in the scheme's value returned to the developer and 80% to the Council. Contributions arising from a review of viability would be capped by relevant policy requirements (i.e. in the case of affordable housing, to the equivalent of 40% (without public subsidy) or 50% (with public subsidy)) with additional surplus profits passing to the developer. Where reviews take place prior to or at an early stage of development the Council's priority will be for the delivery of additional on-site affordable housing. Where reviews take place at a later stage, the practical implications of delivering additional affordable housing on site may mean that off-site affordable housing or a commuted sum would be sought.
- 2.8 Subject to Cabinet approval of the draft SPD, public consultation is proposed to be undertaken from 12 December 2016 until 13 February 2017 (two calendar months). Section 5 and Appendix 2 set out detailed proposals for consultation and engagement.

3. Finance

- 3.1 The projected costs for the production of the draft Lambeth Development Viability SPD is £800.
- 3.2 The preparation of the draft Lambeth Development Viability SPD will be funded through existing general fund budgets from the planning department.
- 3.3 The production of the draft Lambeth Development Viability SPD will be undertaken with existing staffing resources.

4. Legal and Democracy

- 4.1 The relevant statutory framework that governs the form and content of supplementary planning documents, as well as the process required to be followed in their preparation, is located chiefly in the Town and Country Planning (Local Planning) (England) Regulations 2012. The 2012 Regulations require that an SPD contains a reasoned justification of the policies within it and stipulate that it must not conflict with adopted development plan policies. The National Planning Policy Framework and the associated Planning Practice Guidance sets out national policy about the circumstances in which SPDs should be prepared.
- 4.2 The 2012 Regulations have to be interpreted as requiring a two stage process of consultation in relation to the preparation of a proposed supplementary planning document.
- 4.3 The first stage of consultation does not include any particular timescale for representations to be made, or specify who must be consulted. Once the first stage has been undertaken, a statement must be prepared in accordance with Regulation 12 of the 2012 Regulations that explains who was consulted at the first stage, what issues were raised and how those issues have been addressed. The second stage of consultation requires that statement, together with the draft supplementary planning document, to be made available to the public. A consultation period of at least four weeks is then required.
- 4.4 This report seeks authorisation to carry out the first stage of consultation. The outcome of that first stage consultation will be reported in due course.
- 4.5 This proposed key decision was entered in the Forward Plan on 30 September 2016 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by Cabinet. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days – the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. Consultation and co-production

- 5.1 A Consultation and Engagement Plan is appended to this report (Appendix 2).
- 5.2 The first stage of consultation provides an opportunity for the community and stakeholders to influence the content of the draft SPD and for the Council to take account of and reflect comments received, if appropriate, in any revisions to the draft SPD. In this regard, a two-month public consultation on the draft SPD is proposed, to take place from 12 December 2016 until 13 February 2017. The consultation mechanisms will reflect those outlined in the Council's Statement of Community Involvement 2015. Electronic notification of the consultation with links to the draft SPD and response form will be emailed to contacts on the planning policy consultation database, neighbouring boroughs and the GLA. Copies of the draft SPD and response form will be made available on the website and in hard copy at Phoenix House and all Lambeth libraries.
- 5.3 Depending on the response to the first stage of consultation and the nature and extent of any issues emerging at that stage, the second stage of consultation would take place after responses to the first

stage of consultation have been considered and any amendments made to the draft SPD. In accordance with the Regulations a consultation statement and the version of the draft SPD proposed for adoption would need to be made available at Phoenix House and all Lambeth libraries and published on the Council's website. Contacts on the planning policy consultation database, neighbouring boroughs and the GLA would also be notified electronically. Representations at this second stage would be invited over a (minimum) four-week period. Whether the draft SPD progresses to this second stage consultation will depend on the outcome of the first stage consultation process.

6. Risk management

6.1 No matters are identified as arising under this heading from the subject of this report. The Council is adhering to the statutory requirements for preparing an SPD. The process of preparation of an SPD specifically requires public consultation, which enables those with an interest in the subject matter of the draft SPD to set out their views for the Council to consider.

7. Equalities impact assessment

7.1 A draft Equalities Impact Assessment has been completed and is appended to this report (Appendix 3).

8. Community safety

8.1 There are no community safety implications arising from the matters that are the subject of this report.

9. Organisational implications

9.1 Environmental

An initial Strategic Environmental Assessment (SEA) screening assessment will be carried out on the draft SPD in order to identify whether there are any significant environmental effects. If the draft SPD is revised following public consultation, a further SEA screening assessment may need to be undertaken.

9.2 Staffing and accommodation

None.

9.3 Procurement

None.

9.4 Health

None.

10. Timetable for implementation

10.1 Subject to Cabinet approval of the recommendations set out in this report, public consultation on the draft SPD will begin on 12 December 2016. Responses to the consultation will be invited over a two-month period. The Council will consider the consultation responses and publish a schedule of comments and the Council's response to those comments. A timetable is shown below, with indicative dates only beyond the consideration of responses shown at step 2, as any action the Council takes thereafter will be dependent on the responses received during the first stage consultation.

Stage	Actual/Indicative dates
Public consultation on draft SPD – 2 calendar months	12 December 2016 – 13 February 2017
Consideration of first stage consultation responses	February/March 2017
Preparation of consultation statement	March 2017
Publication of consultation statement and accompanying proposed SPD - 4 weeks' minimum second stage consultation period	April – May 2017
Cabinet - adoption	July 2017

Audit trail				
Consultation				
Name/Position	Lambeth cluster/division or partner	Date Sent	Date Received	Comments in para:
Cllr Jack Hopkins	Cabinet Member for Regeneration, Business and Culture	09.10.16	10.10.16	
Cllr Clair Wilcox	Chair of Planning Applications Committee	15.09.16	21.09.16	
Sue Foster	Strategic Director Neighbourhoods and Growth	17.18.16	18.10.16	
Peter Flockhart	Legal Services, Corporate Resources	29.09.16 19.10.16	10.10.16 26.10.16	Throughout
David Rose	Democratic Services, Corporate Resources	29.09.16 19.10.16	29.09.16 25.10.16	4.5 3.1
Andrew Ramsden	Head of Finance, Corporate Resources	29.09.16 19.10.16	03.10.16 20.10.16	Finance summary and 3.1-3.3
Doug Black	Interim Assistant Director Planning, Transport and Development	13.10.16	13.10.16	

Report history	
Original discussion with Cabinet Member	14.07.16
Report deadline	16.11.16
Date final report sent	16.11.16
Report no.	325/16-17
Part II Exempt from Disclosure/confidential accompanying report?	N/A
Key decision report	Yes
Date first appeared on forward plan	30.09.16
Key decision reasons	3. Community Impact
Background information	National Planning Policy Framework 2012 National Planning Practice Guidance Lambeth Local Plan 2015 Draft Lambeth Local Plan Viability Study 2013 Lambeth Local Application Requirements 2016 Environmental Information Regulations 2004 Town and Country Planning (Local Planning) (England) Regulations 2012 Draft London Borough Viability Protocol
Appendices	Appendix 1 - Draft Lambeth Development Viability Supplementary Planning Document Appendix 2 - Draft Consultation and Engagement Plan Appendix 3 - Draft Equality Impact Assessment