

Cabinet 2 October 2017

Report title: Lambeth Development Viability Supplementary Planning Document

Wards: All wards

Portfolio: Councillor Matthew Bennett: Cabinet Member for Planning, Regeneration and Jobs

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

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Report summary

In November 2016, Cabinet agreed to consult on a Draft Lambeth Development Viability Supplementary Planning Document (SPD) and noted the process for considering consultation responses, preparing a consultation statement and publishing this and a proposed Revised Draft SPD for a minimum four week second stage consultation period. The first stage consultation took place over six weeks between 12 December 2016 and 13 February 2017. The second stage consultation took place between 5 April and 5 May 2017.

Consideration of both sets of representations is set out in the Consultation Statement included in Appendix 1 of this report. Changes have been made to the wording of the emerging SPD at various stages and this is explained in the Consultation Statement. Consideration of amendments to the wording of the emerging Lambeth Development Viability SPD has also taken account of the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance (SPG), published in draft in November 2016 and in final form in August 2017.

Cabinet are asked to adopt in the light of consultation responses the Final Draft Lambeth Development Viability SPD set out in Appendix 3 of this report and to note how it is envisaged the Lambeth SPD, if adopted, and the Mayor's SPG would work together.

Finance summary

Costs associated with adoption of the Lambeth Development Viability SPD will be funded from existing general fund budgets of the planning department.

Recommendations

1. To note the representations received in response to public consultation on the Draft Lambeth Development Viability SPD and subsequent Revised Draft Lambeth Development Viability SPD; and to note officers' assessment of the representations set out in the Consultation Statement in Appendix 1.
2. To note how it is envisaged the Lambeth SPD, if adopted, and the Mayor's Affordable Housing and Viability Supplementary Planning Guidance (August 2017) would work together.
3. To adopt the Final Draft Lambeth Development Viability SPD set out in Appendix 3.
4. To instruct officers to take the necessary steps to publicise its decision in the event that Cabinet resolves to adopt the Final Draft Lambeth Development Viability SPD.

1. Context

- 1.1. On 28 November 2016, Cabinet approved the Draft Lambeth Development Viability Supplementary Planning Document (SPD) for public consultation and noted the process for considering consultation responses, preparing a consultation statement and publishing this and a proposed Revised Draft SPD for a minimum four week second stage consultation period. The first stage consultation took place over nine weeks between 12 December 2016 and 13 February 2017. The second stage consultation took place over four weeks between 5 April and 5 May 2017.
- 1.2. For clarity, the full titles of the different versions of the SPD at different stages of its preparation are set out in the table below, along with the corresponding shortened titles used throughout this report.

Stage of preparation	Full document title	Shortened title
First stage consultation	Draft Lambeth Development Viability SPD (November 2016)	Draft SPD
Second stage consultation	Revised Draft Lambeth Development Viability SPD (April 2017)	Revised Draft SPD
Adoption	Final Draft Lambeth Development Viability SPD (October 2017)	Final Draft SPD

- 1.3. The Mayor of London published Draft Affordable Housing and Viability Supplementary Planning Guidance (SPG) for public consultation on 29 November 2016, one day after the Cabinet decision about the Draft SPD. The final version of the Mayor's SPG was published on 16 August 2017. The Mayor's SPG provides guidance on implementation of policies in the London Plan 2016 (consolidated with alterations since 2011). Together the London Plan 2016 and Lambeth Local Plan 2015 constitute the statutory development plan for the borough of Lambeth. Planning legislation requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Supplementary Planning Guidance to the London Plan and Supplementary Planning Documents to the Lambeth Local Plan are material considerations in the determination of planning applications.
- 1.4. The wording of the Draft SPD considered by Cabinet in November 2016 did not take account of the Mayor's emerging SPG because that had not been published in time to be included. However, the content of the Mayor's emerging SPG was subsequently taken into account and, along with consideration of consultation responses on first stage consultation on the Draft SPD, informed the wording of the Revised Draft SPD published for second stage consultation in April-May 2017.
- 1.5. The outcome of the two rounds of public consultation on the emerging Lambeth Development Viability SPD and the implications for Lambeth's SPD of the Mayor's Draft and final Affordable Housing and Viability SPG are set out in Section 2 below.

2. Proposal and Reasons

Response to first stage consultation on the Draft SPD

- 2.1. 23 representations were received in response to the first stage public consultation on the Draft SPD. The majority of the responses were from developers and planning agents. Responses were also received from statutory consultees, a private individual and a neighbourhood planning forum. Each representation was considered by officers and in some cases amendments to the wording of the Draft SPD were proposed to address the points raised. In other cases, no amendment to the wording of the Draft SPD was considered necessary. The representations, officers' assessment of them and resulting amendments to the wording of the Draft SPD are set out in full section 2 of the Consultation Statement included in Appendix 1 of this report.
- 2.2. The content of the representations can be summarised into six main issues set out below. In each case officers' assessment and amendments made to the wording of the Draft SPD are also summarised.

1. *The requirement to submit appraisals of development viability at pre-application stage and for section 73 planning applications is too onerous*

An amendment to the wording of the Draft SPD was made to make clear that the level of information required at pre-application stage will depend on the scale and nature of the development and is an opportunity to agree the appraisal methodology. The Draft SPD required an appraisal for section 73 applications in certain circumstances but the reference to assessing the whole scheme was removed.

2. *The SPD is not in conformity with the National Planning Policy Framework (NPPF), national Planning Practice Guidance (PPG) and the Royal Institution of Chartered Surveyors (RICS) Viability Guidance*

The wording of the Draft SPD was consistent with both the NPPF and PPG, particularly in relation to the transparency of information, Existing Use Value Plus and review mechanisms. The 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. The NPPF places a requirement on local authorities to facilitate community involvement in planning decisions and the PPG states transparency of viability evidence is encouraged wherever possible. The guidance set out in the Draft SPD reflected these core principles. The RICS Viability Guidance does not have the status of planning policy or guidance and there is no requirement to be in conformity with it. No change was made to the wording of the Draft SPD in this respect.

3. *Confidential information contained in the appraisals should not be published*

National PPG states that, for viability, transparency of evidence is encouraged wherever possible. The Draft SPD stated that the starting point is that all information submitted as part of viability appraisal is to be made public and that the redaction of information will only be agreed to in exceptional circumstances. The Draft SPD also set out that the Council would rely on the principles of the Environmental Information Regulations 2004 when deciding whether there was any reason

why the submitted information should not be published. No change was made to the wording of the Draft SPD in this respect.

4. *Existing Use Value Plus should not be used as the benchmark land value*

Existing Use Value Plus is the preferred approach for calculating a site's benchmark land value as this approach clearly identifies the uplift in value arising from the grant of planning permission. The approach is consistent with national PPG by allowing a competitive return to the landowner. The Draft SPD set out the limited circumstances in which a different approach will be accepted. No change was made to the wording of the Draft SPD in this respect.

5. *A different approach should be taken for student accommodation and healthcare/education facilities*

The representations sought exemption for student housing from review mechanisms on the basis that student housing developments use a different development finance model from other types of residential development; and that the benchmark land value approach should not be applied to educational and health facilities because of difficulty in valuing their uses and because they are considered to provide essential infrastructure. The approach taken to student accommodation is consistent with the Lambeth Local Plan and any change to this approach would need to be made through a review of the Local Plan and not in an SPD. Student housing schemes would only be subject to review mechanisms where they were required to include conventional affordable housing. Proposals involving healthcare/education facilities would be required to meet the requirements of the Draft SPD but in certain exceptional circumstances it may be possible for land and/or infrastructure to be provided in kind, instead of a financial contribution, to satisfy a charge arising from CIL. In such a case, this would be taken into account in the assessment of development viability. No change was made to the wording of the Draft SPD in this respect.

6. *The Council should amend its approach to review mechanisms to be consistent with the London Plan and the RICS Viability Guidance Note*

The Council's approach to review mechanisms in the Draft SPD was consistent with both the Lambeth Local Plan and the London Plan, with the aim of achieving policy-complaint levels of affordable housing. The London Plan states that in making arrangements for assessing planning obligations, boroughs should consider whether it is appropriate to put in place provisions for re-appraising the viability of schemes prior to implementation. To take account of economic uncertainties, and in respect of schemes presently anticipated to deliver low levels of affordable housing, these provisions may be used to ensure that maximum public benefit is secured over the period of the development. Additional guidance was provided in the Mayor's Draft Affordable Housing and Viability SPG and amendments to the wording of the Draft SPD were made to take account of this.

The RICS Viability Guidance does not have the status of planning policy or guidance and there is no requirement to be in conformity with it. No change was made to the wording of the Draft SPD in this respect.

Implications of the Mayor's Draft Affordable Housing and Viability SPG for the Draft SPD

- 2.3. The Mayor's Draft Affordable Housing and Viability SPG was published for public consultation on 29 November 2016. This proposed the introduction of a 'threshold approach to viability' whereby development proposals providing 35% affordable housing on site (based on habitable rooms), without public subsidy and meeting all other policy requirements (including borough-level tenure splits for affordable housing) would not be required to submit a financial appraisal of development viability as part of the planning application. Proposals meeting these criteria were proposed to be known as 'Route B' schemes. The Draft SPG included a sanction for Route B schemes such that if agreed levels of progress were not made towards delivery of the scheme, there would be an early stage review of the affordable housing provision. Proposals that did not meet the Route B criteria (to be known as 'Route A' schemes) would be subject to normal borough local plan policy requirements for affordable housing and an assessment of development viability where these could not be met. The stated intention behind the proposed threshold approach was to provide greater certainty and offer an option for developers to move away from protracted and uncertain viability negotiations, seeking to 'nudge' them to deliver more affordable housing through the planning system and at the same time provide a greater incentive for permissions to be implemented. The Draft SPG made clear that where a local planning authority currently adopted an approach which delivered a higher average percentage of affordable housing (without public subsidy) the local approach should continue to apply.
- 2.4. The Draft SPG also provided more detailed guidance on viability assessments, aiming to establish a standardised approach to viability. It set out the Mayor's expectation that all viability information should be made public, with the onus on the applicant to make a case for partial non-disclosure. In addition, the Draft SPG provided specific guidance on Build to Rent developments, recognising that they differ from the traditional build for sale model. Build to Rent developments were excluded from the proposed Route B approach to viability. It was proposed that the SPG, once published, would supersede Sections 3.3 (Build to Rent) and 5 (Viability) of the Mayor's Housing SPG (March 2016).
- 2.5. Lambeth's response to the public consultation on the Mayor's Draft Affordable Housing and Viability SPG gave in principle support for the proposed threshold approach to viability, although it raised concerns about use of habitable rooms for calculating percentages and about aspects of the proposed approach to Build to Rent developments. Lambeth also asked to be allowed to adopt a locally-specific approach to surplus profit split – 80:20 rather than 60:40 proposed in the Draft SPG. The Lambeth response made clear that Lambeth was not currently achieving a higher than 35% average percentage of affordable housing without public subsidy (as set out in the Authority's Monitoring Reports) and that the proposed threshold approach, if accepted by developers, would therefore be likely to result in higher levels of affordable housing provided through the planning system in Lambeth.
- 2.6. As a result, the wording of the Draft SPD was amended to take account of the Mayor's Draft Affordable Housing and Viability SPG. In particular, this included acknowledgement of the proposed threshold approach to viability and that viability appraisals would not be required if the criteria of a Route B scheme were met. References to the Mayor's Draft SPG were added throughout and the Mayor's proposed approach to assessing viability in Build to Rent schemes was accepted. These amendments were included in the Revised Draft SPD, which was published for second stage consultation.

Response to second stage consultation on the Revised Draft SPD

- 2.7. 17 representations were received in response to the second stage consultation. Of these, 13 were from people who had made representations during the first stage consultation. The second stage representations and officers' assessment of] those representations are set out in full section 3 of the Consultation Statement included in Appendix 1 of this report.
- 2.8. The content of the second stage representations can be summarised into nine main issues set out below. In each case officers' assessment of the issues arising is set out. One minor further change to the wording of the Revised Draft SPD has been made.

1. *No exceptions to the publication of viability appraisals should be permitted*

Exceptions will be permitted in very limited circumstances where it is demonstrated that the public interest in maintaining confidentiality is considered to outweigh the public interest in disclosing the information, drawing on the principles of the Environmental Information Regulations 2004. No change has been made to the wording of the Revised Draft SPD in this respect.

2. *The approach to section 73 applications should be made clearer*

A minor amendment to paragraph 3.8 of the Revised Draft SPD has been made to include the word "typically". It therefore now makes clear that for section 73 applications the consented scheme will *typically* be used as the benchmark land value. This is to clarify the Council's approach to viability appraisals and section 73 applications and to allow flexibility where provision of affordable housing in the original scheme was not viable at the time consent was granted.

3. *The surplus profit split of 80% to the council and 20% to the developer has not been tested*

The proposed surplus profit split to be used in review mechanisms reflects the primary purpose of review mechanisms which is to secure policy compliant levels of affordable housing. The wording in the Revised Draft SPD states that the surplus profit split will typically be 80:20, which allows flexibility where this can be justified, and the 20% allows developers to benefit in the event of higher development values and lower costs, but ensures that maximum public benefit is secured over the period of the development. No change has been made to the wording of the Revised Draft SPD in this respect.

4. *The SPD should make clearer the role of planning obligations*

The focus of the SPD is development viability and obligations relating to the provision of affordable housing. It is not necessary to explain the role of planning obligations more generally in this SPD. No change has been made to the wording of the Revised Draft SPD in this respect.

5. *A different approach should be taken for student accommodation and healthcare/education facilities*

See the response under paragraph 2.2 (point 5) above.

6. *Reference should be made to certain costs, such as implementing sustainable urban drainage (SuDS) and investing in heritage assets*

It is not considered necessary for the SPD to include an exhaustive list of potential development costs. No change has been made to the wording of the Revised Draft SPD in this respect.

7. *Confidential information contained in the appraisals should not be published and further information should be provided on what is considered an exception to full transparency*

See the response under paragraph 2.2 (point 3) above.

8. *Existing Use Value Plus should not be used as the benchmark land value*

Existing Use Value Plus is the preferred approach for calculating a site's benchmark land value as this approach clearly identifies the uplift in value arising from the grant of planning permission. The approach is consistent with the PPG by allowing a competitive return to the landowner and is also consistent with the Mayor's Draft Affordable Housing and Viability SPG. The Revised Draft SPD sets out the limited circumstances in which a different approach will be accepted. No change has been made to the wording of the Revised Draft SPD in this respect.

9. *The SPD should not rely on the Mayor's Affordable Housing and Viability SPG as this is only in draft form*

Lambeth's Revised Draft SPD cannot ignore other relevant draft policy documents that are in development so it is appropriate for references to the Mayor's Draft SPG to have been included in it. The Mayor's final Affordable Housing and Viability SPG was published on 16 August 2017 and the references to the Draft SPG included in the Revised Draft SPD have been updated to take account of the Mayor's final published SPG.

Implications of the Mayor's final published Affordable Housing and Viability SPG for the Final Draft SPD

- 2.9. The Mayor's final Affordable Housing and Viability SPG was published on 16 August 2017. There is no fundamental change to the threshold approach to viability from that proposed in the draft document, although the terminology 'Route B' and 'Route A' has been changed to 'Fast Track Route' and 'Viability Tested Route'. The final SPG clarifies that for Fast Track Route schemes viability information will not be required at application stage and, if an early stage review is triggered, changes in values and build costs will be determined at the point of review. It also states that 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. The use of habitable rooms to calculate percentages of affordable housing remains. Further guidance has been added on dealing with scheme amendments; on scheme delivery under appraisal requirements; on the content of s106 agreements and formulae to be used for different types of review mechanism; and on review mechanisms specific to build-to-rent schemes. None of this additional guidance is inconsistent with the content of the Revised Draft SPD. On surplus profit split, the final SPG refers to 60:40 but the wording of the Revised Draft SPD is not prescriptive at 80:20 and the GLA raised no objection to this in its representation on the Revised Draft SPD. As a result, no further changes to the content of the Revised Draft SPD are considered necessary

arising out of the finalised SPG, other than updating references to the Mayor's SPG from 'Draft' to final version (with associated changes to page and paragraph number references), updating the terminology on the two routes for applications, and adding in cross references to the additional guidance on section 73 applications.

- 2.10. The Final Draft SPD in Appendix 3 and the Mayor's Affordable Housing and Viability SPG (August 2017) are therefore complementary and intended to be applied jointly to the assessment of development viability in planning applications in Lambeth. Cabinet is asked to note that this is how it is envisaged the Lambeth SPD, if adopted, and the Mayor's SPG would work together.

3. Finance

- 3.1 The projected cost for the adoption of the Lambeth Development Viability SPD is £500.
- 3.2 This cost will be funded through existing general fund budgets from the planning department and will be undertaken within 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. In accordance with the Regulations, a consultation statement was prepared after the first stage consultation. This set out who was consulted on the Draft SPD, officers' assessment of the representations received and resulting amendments made to the Draft SPD, and a summary of the main issues raised. This consultation statement was published and consulted on alongside the Revised Draft SPD for a four week period. Following this second stage consultation, the consultation statement was updated to include assessment of the second stage representations received and resulting amendments made to the Revised Draft SPD. The updated consultation statement is set out in Appendix 1.
- 4.3 If adopted, the Council must make a copy of the SPD and adoption statement available at Phoenix House during normal office hours and on the Council's website. A copy of the adoption statement must also be sent to anyone who has asked to be notified that the SPD has been adopted. The adoption statement, in accordance with the Regulations 2012 must set out the date on which the SPD was adopted and must specify that anyone with sufficient interest in the decision may apply to the High Court for permission to apply for a judicial review of the decision. This application must be made promptly and no later than 3 months after the date on which the SPD was adopted.
- 4.4 This proposed key decision was entered in the Forward Plan on 28 July 2017 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 The SPD has been subject to two rounds of consultation, in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012. The consultation methods used reflect those outlined in the Council's Statement of Community Involvement 2015. The following methods of consultation were used for both first and second stage consultations:

- Copies made available on the council's consultation webpages and the planning policy-supplementary planning documents and other planning guidance webpages
- Notification of the consultation to those on the planning policy consultation database (including businesses, community groups, amenity societies, residents, developers, landowners and individuals who have asked to be kept informed)
- Notification of the consultation to neighbouring boroughs and the Greater London Authority
- Copies of the draft SPD made available at Phoenix House and all of Lambeth libraries
- A press release

5.2 The outcome of these consultations is set out in section 2 of this report.

6. Risk management

6.1 The subject matter of the report does not give rise to the need for any particular risk management measures because the process for preparation of an SPD is governed by legislative provisions.

6.2 Adoption of the SPD is subject to a three month period during which legal challenges can be made.

7. Equalities impact assessment

7.1 An Equalities Impact Assessment of the Draft SPD was reported to Cabinet in November 2016. This has been updated to reflect the outcome of the two rounds of public consultation and resulting amendments to the Draft and Revised Draft SPD and is included in Appendix 2 of this report. The assessment concludes that by providing clear guidance the SPD will promote a more consistent and transparent approach to the viability appraisal process, which should ultimately lead to the delivery of additional affordable homes through the planning system and therefore have a positive impact on all groups in need of affordable housing.

8. Community safety

8.1 None

9. Organisational implications

9.1 Environmental

In accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, an initial Strategic Environmental Assessment (SEA) screening assessment of the Draft SPD was carried out in November 2016 and the views of the three statutory bodies were sought (Environment Agency, Historic England and Natural England). The initial screening assessment concluded that the Draft SPD would not have any significant environmental effects so a full SEA would not be required. The three statutory bodies agreed with this conclusion.

9.2 The initial SEA screening assessment has been updated to take account of the amendments made to the Draft and Revised Draft SPD. In view of the nature of the changes that have been made as between the Revised Draft SPD and the Final Draft SPD, as noted at paragraph 2.8 (point 2) and paragraph 2.9, it is considered that the outcome of the updated screening assessment can be relied upon as regards the Final Draft SPD. The conclusion to the screening process, which is unchanged from the initial screening assessment, is that there would be no significant environmental effects. The views of the three statutory bodies on the updated screening assessment were sought: they agreed with the conclusion of the updated assessment. The SEA screening assessments (initial and updated) have been published on the Council's website.

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, within one week an adoption statement will be prepared and made available, along with the SPD, on the Council's website and at Phoenix House during normal office hours.

10.2 If adopted, it is proposed that the SPD will be implemented following the expiry of the one week period for call-in of Cabinet decisions, that is, from 9 October 2017..

Audit trail				
Consultation				
Name/Position	Lambeth cluster/division or partner	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director Neighbourhoods and Growth	5.9.17	6.9.17	
Sandra Roebuck	Director Planning, Investment and Growth	5.9.17	6.9.17	
Doug Black	Interim Assistant Director Planning, Transport and Development	25.8.17	25.8.17	
Peter Flockhart	Legal Services	25.8.17	31.8.17	Throughout
Henry Langford	Democratic Services	25.8.17	5.9.17	
Andrew Ramsden	Corporate Resources	25.8.17	29.8.17	
Cllr Matthew Bennett	Cabinet Member for Planning, Regeneration and Jobs	6.9.17	7.9.17	
Cllr Clair Wilcox	Chair of Planning Applications Committee	8.9.17	13.9.17	

Report history	
Original discussion with Cabinet Member	27 July 2017
Report deadline	20 September 2017
Date final report sent	
Report no.	N/A
Part II Exempt from Disclosure/confidential accompanying report?	N/A
Key decision report	Yes
Date first appeared on forward plan	28 July 2017
Key decision reasons	1. Will amend Community Plan Outcomes Framework or Budget and Policy Framework
Background information	National Planning Policy Framework National Planning Practice Guidance Lambeth Local Plan 2015 Town and Country Planning (Local Planning) (England) Regulations 2012 London Plan 2016 (consolidated with alterations since 2011) London Plan Affordable Housing and Viability SPG August 2017 Environmental Assessment of Plans and Programmes Regulations 2004 SEA screening assessment of the Final Draft Lambeth Development Viability SPD
Appendices	Appendix 1 - Consultation Statement

	Appendix 2 - Equality Impact Assessment Appendix 3 – Final Draft Lambeth Development Viability Supplementary Planning Document (October 2017)
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