BUSINESS LDN

The London Plan and Growth Strategies
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By email

24 July 2023

Dear Sir or Madam

LONDON PLAN GUIDANCE CONSULTATION:
AFFORDABLE HOUSING AND DEVELOPMENT VIABILITY

Introduction

We welcome the opportunity to respond to the draft London Plan Guidance (LPG) on Development Viability and Affordable Housing published in May 2023. BusinessLDN is a business membership organisation with the mission to make London the best city in the world to do business, working with and for the whole UK. We work with the support of the capital's major businesses in key sectors including major residential and mixed-use developers, registered providers and their professional advisors.

In London, the plan making process is difficult from a viability perspective as the majority of development is on brownfield land. Such redevelopment is costly, and complex, having to take into account the disparate nature of development typologies, prevalence of mixed-use development and variation in land values across the capital. As such, even in a positive economic climate, there remains a need for viability tested projects. This requirement for viability testing has increased over the last two years aligned with the challenging economic environment and difficult property market conditions. The new LPG, and any changes compared to the existing Affordable Housing and Viability Supplementary Planning Guidance (SPG) adopted in 2017, must be seen within this context. The LPG should be used to help stimulate more housebuilding while ensuring public policy priorities are also delivered over the longer term.

Summary of key concerns

Our key concerns with the draft LPG, primarily though not exclusively with the Development Viability Guidance, are:

- It is too complicated for what should be strategic guidance, adding further complexity to the development process and potentially more delay in a period where residential development is already facing significant challenges.
- Parts of the LPG (highlighted in our detailed response attached as **Appendix One**) conflict with national planning policy and guidance and in some instances introduce new policy,

which is beyond the scope of the document. Furthermore, parts of the LPG conflict with professional valuation and viability guidance.

- Planning should be applicant neutral with permission running with land. The focus on who the applicant is, and the development typology, is likely to create overly long and complex discussions about finance costs and developer returns, amongst other matters. This will ultimately delay the delivery of new homes.
- New provisions pose a particular risk to the delivery of Build to Rent and Co-living developments at a time when these uses should be supported to maintain, and diversify, the supply of much needed new homes as for sale development comes under pressure due to rising mortgage costs.

Keeping guidance strategic in nature

The Affordable Housing and Viability SPG 2017 was introduced before the adoption of the London Plan 2021 to provide guidance on the Mayor's approach to securing affordable housing, bridging a perceived gap between affordable housing policies in the London Plan 2016 and the then new Mayor's policy aspirations for affordable housing delivery. Consequently, the SPG included a level of detail beyond what would usually be expected in guidance, and in some instances was perceived (and found by the Planning Court) to stray into policy.

Now that the London Plan 2021 includes much of the key affordable housing and viability policy included in the SPG, the superseding guidance should be kept high level; allowing for more (and much needed) flexibility while ensuring key principles of the London Plan can be applied. However, the draft LPG includes greater detail in extent and complexity than the SPG. For example, the proposed LPG is significantly more onerous than the existing SPG for viability tested projects at a time when the development pipeline is already facing significant risks.

In many cases, the proposed open book, applicant / development typology approach to the review mechanism will create too much risk for developers – and crucially – their funders, and this will deter planning permissions from being implemented. The approach to specialist housing types, such as Build to Rent and Co-Living, could also derail projects. The overarching concern about the draft LPG is that it could cause significant delay and financial jeopardy in an already challenging environment for development.

Scope of the LPG

In addition to being strategic, it is important context that the LPG should not introduce new policy. In particular, the LPG:

- should support and assist application of adopted policies in the London Plan 2021;
- must not be a substitute for proper review of the London Plan;
- must avoid contradicting, or being inconsistent with, policies in the London Plan 2021 unless that plan is otherwise out of date and such conflict can be justified accordingly;
- should avoid inconsistencies with up-to-date Government advice as contained in the NPPF and NPPG; and

- will not form part of the statutory development plan, but instead be a material consideration to which regard may be had.

More specifically in relation to the draft LPG, it should align with guidance produced by the Royal Institute of Chartered Surveyors (RICS), which informs and guides the application of a professional standard to which surveyors need to abide by as part of their working practices.

With those points in mind, we respectfully request that the GLA review the terms of the LPG to ensure it complies with the necessary legal requirements and is aligned with the relevant RICS guidance. Deviations in the draft LPG are highlighted in our detailed response in **Appendix One**. We further respectfully request that some detail is stripped out and/or flexibility and 'case-by-case' wording is inserted to avoid stifling development.

The economic context

The property industry is currently facing significant headwinds driven by high inflation, which has seen interest rates rise from 0.1% in December 2021 to 5% as of today. This is the highest they have been since April 2009. The cost-of-living crisis and growing concerns regarding the affordability of mortgages is creating downwards pressure on residential pricing and sales rates.

Costs for residential developers, in respect of construction inflation, and debt and equity financing and risk, have increased significantly at a time when there are also new regulatory changes that have significant development efficiency and cost implications. There has been a dramatic decline in residential applications submitted over the past two years, with the number of new homes applied for in London reducing from 21,895 for the period January to May in 2021 to 11,667 for the same period in 2023[1]. The decline in applications is matched by a lack of schemes commencing on site and, ultimately, new homes being built.

There are also significant challenges facing residential and mixed-use schemes already in the planning system arising from ongoing changes to building safety regulations, particularly in relation to fire safety measures. This has necessitated a raft of S73 applications over recent months and greater sensitivity and flexibility is needed to deal with the viability impacts arising from the design changes needed if these homes are to be built out.

GLA figures show completions against the London Plan's housebuilding target have been in decline since 2018/19 as set out below.

Year	Completions	Target	% of target
2021/22	39,973	52,287	76%
2020/21	32,757	42,388	77%
2019/20	32,675	42,388	77%
2018/19	37,190	42,388	88%

Source: Residential completions dashboard - London Datastore

[1] Based upon information provided by the GLA and for the period Jan-May in each year.

Not only is this a declining figure, but it is against a target that doesn't reflect actual housing need, which the London Plan sets out as being 66,000 new homes a year. In addition to the clear social reasons to deliver more homes, housing development delivers significant benefits including affordable housing, community uses and environmental and public realm enhancements. Residential development is also important to the London and national economy and through direct and indirect employment.

Increasing development in a challenging environment

If the GLA want to encourage permitted schemes to be built out during this difficult market juncture, then there are interventions that could significantly boost supply. For example, a two-year moratorium on reviews on projects that make a substantial start on site within that time period would help developers, and their funders, manage risk and allow projects to be financed and commenced which would otherwise not come forward. An intervention to help mitigate longer term risk in this way would stimulate supply whilst the headwinds recede. Whilst the counter argument might be that Londoners could miss out on affordable housing and other planning gain opportunities that could potentially be secured by a viability review process, no benefits can be yielded from a scheme that isn't implemented and homes that are not delivered.

We would welcome the opportunity to discuss our response with you in more detail.

Yours sincerely,

Sarah Bevan
Director Planning & Development, BusinessLDN

APPENDIX ONE

DETAILED COMMENTS RELATING TO DRAFT DEVELOPMENT VIABILITY LONDON PLAN GUIDANCE

Reference	Response
Section One	
Section 1 – *viability should be used at the Plan making stage and Applicants should follow the Fast Track Route by committing to provide the relevant threshold of affordable housing wherever possible*	Viability assessment at plan making stage is generally high level and based on a limited range of development typologies. Policy evidence is rarely updated, despite changing market conditions, and the majority of local plan evidence bases across the capital are now significantly out of date and do not reflect current market conditions or regulatory requirements. In many cases, whilst landowners and developers seek to deliver policy compliant schemes in respect of affordable housing and other planning obligations, this is simply no longer economically viable in the current context.
Section Two	
Para 2.1.4 - *Viability testing at application stage is not likely to be acceptable unless there has been a material change in economic conditions or sites; or typologies similar to the application scheme were not tested as part of the plan-making process.*	In many cases the typologies tested at the plan making stage are extremely limited as referred to above. National planning guidance does not preclude the testing of planning viability at the development management stage to ensure that obligations are optimised, and sites continue to come forward. Therefore, this statement should not be included in the LPG. If a Local Plan's evidence base is limited in scope, this should not be detrimental to a developer wishing to bring forward an innovative project that, for genuine reasons, cannot meet the full policy expectation in terms of affordable housing. In many evidence bases, Co-Living / Build to Rent (BtR) are not assessed and so this should not preclude the viability testing of such uses at the development management stage. Both plan making and application viability assessments need to fully account for alternative residential models, such as Co-Living and BtR, where the economics of provision are fundamentally different to for sale products - national planning policy recognises the differing

	economics of such development. A longer-term Internal Rate of Return based assessment could be appropriate, in accordance with the RICS Professional Statement 'Valuing residential property purpose built for renting'. The approach to viability reviews for BtR and Co-Living also need to be carefully considered given the implications of treating BtR /Co-Living, which generate a long-term income stream rather than a large capital sum at practical completion, in the same way as a for sale development. Those appointed to undertake BtR / Co-Living / Purpose Built Student Accommodation Financial Viability Assessments or reviews should have a track record of undertaking what are specialist valuations / appraisals in order to meet the requirements of the RICS Conduct and Reporting Professional Standard.
Para 2.2.1 - *Where it is accepted that the applicant can submit a viability assessment as part of the application process, this should be provided to the LPA and the GLA (for referable applications) at an early stage and no later than submission of the application*	An applicant should retain the right to follow the viability tested route if they wish to do so, accepting that this will delay their application negotiations. The wording of this paragraph should be amended accordingly. Furthermore, there needs to be greater collaboration between the GLA viability team (VT) and the LPA advisors. In too many cases, agreements at a local level are challenged causing significant risk and delays to projects. The process could be improved and streamlined through a more collaborative, evidence-based approach. Where the GLA VT disagrees with the LPA advisor, as required by the RICS Conduct & Reporting 2019 (section 2.6) and the National Planning Policy Guidance (NPPG) 'evidence-based judgement', the rationale and evidence should be set out clearly.
Para 2.2.2 - *reference to specialist advice in respect of EUV*	This paragraph should also make reference to specialist advice in respect of alternative use value (AUV) in appropriate circumstances. This would accord with the NPPG para 17 where AUV is cited as being a possible informative to EUV plus.
Para 2.2.3 – *the evidential burden lies within the applicant.*	The applicant's responsibilities are detailed in the RICS Professional Standard 'Conduct and Reporting'. The onus is on the reviewer to clearly evidence why they disagree with the assumptions made by the applicant. The financial viability in planning: conduct and reporting, May 2019 (RICS professional statement) explicitly states that, *"All inputs into an appraisal must be reasonably justified.* ***<u>Where a reviewer disagrees with a submitted report and/or with elements in it, differences must be clearly set out with supporting and reasonable justification</u>****. Where inputs are agreed, this must also*

	be clearly stated. Where possible, practitioners should always try to resolve differences of opinion".
Para 2.3.6 - *If the LPA or the GLA have raised concerns that the applicant's approach is not considered to be objective, evidence-based or realistic, and these concerns have not been adequately addressed, the applicant's viability assessment may be given less weight by the decision-maker as part of the decision-making process.*	The RICS Conduct and Reporting Professional Standard sets out the requirements for objectivity and impartiality in relation to undertaking an FVA which practitioners must adhere to. Where the LPA or GLA do not agree with inputs, then there is a requirement to articulate the concerns through using evidence and work together in a collaborative manner to ensure differences in opinion can be resolved (as required by the ((National Planning Practice Guidance (NPPG) and RICS Professional Standard)). The drafting of 2.3.6 is essentially reducing the weight that can be applied to a viability assessment where the GLA VT do not agree with the outputs (and in many cases where there is an agreement with the LPA). The wording of this paragraph should be reviewed in the context of the RICS guidance above.
Para 2.4.3 - *LPAs should treat viability information – including information on review mechanisms – transparently*	This paragraph and wider section (2.4) imply that information submitted in relation to review mechanisms should be made publicly available, however there are legitimate circumstances where this should not be the case, and this should be more evenly reflected in the LPG. Both the NPPG and RICS Professional Statement explicitly state that FVAs, and the information submitted in support of them, should be publicly available as they are based upon market information, and not information specific to a developer's commercial operations. Para 021 of the NPPG states that, *"**<u>Any viability assessment</u>** should be prepared on the basis that it will be made publicly available other than in exceptional circumstances. Even in those circumstances an executive summary should be made publicly available. **<u>Information used in viability assessment is not usually specific to that developer and thereby need not contain commercially sensitive data.</u>** In circumstances where it is deemed that specific details of an assessment are commercially sensitive, the information should be aggregated in published viability assessments and executive summaries, and included as part of total costs figures".* Para 2.4 of the RICS financial viability in planning conduct and reporting states, *"Where information may compromise delivery of the proposed application scheme or infringe other statutory and regulatory requirements, these exceptions must be discussed and agreed with the LPA and documented early in the process. Commercially sensitive information can be presented*

	*in aggregate form following these discussions**. Any sensitive personal information should not be made public**".* A review mechanism will include developer specific information, and in the case of a full re-appraisal will also look at actual development costs such as finance costs and commercially sensitive payments such as rights of light. In respect of BtR and Co-Living developments, disaggregated information relating to operational costs should not be made public. Information submitted in support of a review mechanism that is developer specific should be treated as commercially sensitive, as stated in the RICS Professional Statement which states that "*Any sensitive personal information should not be made public".*
Section Three	
Para 3.2.3 - *inputs should be fully justified and evidence-based; and should always be subject to sensitivity testing and, where appropriate, growth testing.*	As with all valuation-based exercises, the use of sensitivity analysis is key. However, sensitivities should be wherever possible, based on reliable robust market facing data sources, including both upside and downside scenarios in order to undertake a 'stand back' sense check., This is explained in the RICS Valuation of Development Property Professional Standard(1 February 2020) and the Financial Viability in Planning: Conduct & Reporting Professional Standard (September 2019).
Para 3.3.5 – *Viability assessments should include a declaration by the assessor that these standards have been met, and in particular that: the assessment is objective and a true and fair valuation of the site.*	The RICS Professional Standard is extremely clear on the reporting requirements for **both** advisors of an Applicant, the LPA and the GLA. Such statements of adherence to the Professional Standards should be made by all parties when reporting.
Para 3.4.1 - *Applicants should demonstrate that their proposal is deliverable and their approach to viability is realistic. The assessor should provide evidence to show how the scheme is likely to be delivered, which should include an appraisal with supporting explanation and evidence".*	Reference to the approach to viability being realistic is subjective. The NPPG and RICS Guidance is clear that FVAs should be informed by standardised inputs which should be objective and not applicant specific. Sensitivity analysis is required to illustrate the impact on the results arising from any changes in costs and values.
Para 3.4.2 - *Viability assessments should take into account the way that the development would actually be carried out. It is not appropriate to*	Policy and guidance are clear that viability appraisals should be undertaken on an objective basis, informed by market information and not specific to an applicant's circumstances. Therefore this paragraph cannot be supported. The viability assessment should not take into account the

assume a speculative development model in all cases.	manner in which the applicant intends to deliver the scheme, but instead reflect how schemes of a similar nature are coming forward in the market. The RICS Professional Statement states at para 3.3 "*Inputs into the **<u>viability appraisal should be objective and reasonable, having regard to the specific scheme being tested at the time of the assessment as well as comparable evidence</u>**".* This is further emphasised at section 5.1 which states *"**<u>An FVA is based on market information and is not specific to an applicant's circumstances</u>**".*
Para 3.4.4 - *Value and cost assumptions should be consistent with those relied on by the applicant for the purposes of commercial decision-making and securing development finance.*	The NPPG, RICS Professional Statement and Guidance are clear that information supporting the FVA should be based on market information and should not be specific to an applicant's circumstances. The paragraph should be amended to better reflect this. Para 021 of the NPPG is clear that, "*Information used in viability assessment is not usually specific to that developer and thereby need not contain commercially sensitive data".* This is supported by the RICS Professional Statement which states at section 5.1 that, *"An FVA is based on market information and is not specific to an applicant's circumstances*" and RICS Assessing Viability In Planning, which states at para 4.2.7, *"Market information concerning costs, values and optimal assumptions can be used. This means that standardised inputs are market, not individual developer, orientated."*
Para 3.4.5 - *The weight given to the assessment should be considered alongside the proposed level of affordable housing and other planning obligations. If an assessment indicates that the proposed development is less viable than alternative options, including the value of the site in its current use, or an alternative development proposal, the decision-maker may give it less weight.*	Para 008 of the NPPG states the following in reference to the weight that should be applied: *"The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment".* If an application is being viability tested because of adverse economic conditions, high existing or alternative use values, high costs / abnormal costs, or for any other reason, then national policy allows for a viability appraisal so that the level of obligations sought at the point of consent can be reduced and a proposal can be brought forward. This proposal will deliver a whole range of economic and social benefits, not just affordable housing. The LPG is seeking to afford less weight to the viability process where less than the headline policy amount of affordable housing is proposed.

	It is also significant to note that a decision to develop may not be based solely on financial grounds. The wider social and environmental benefits of a development must also be considered. Accordingly, it is not necessarily always appropriate for development to always be the highest value use irrespective of social/other value.
Para 3.4.6 *- Appraisals are expected to indicate that the target return and the BLV can be achieved with the level of planning obligations proposed. If a deficit and/or shortfall in land value or developer's return is assessed by an applicant, this may indicate that development values have been understated, costs have been overstated and/or that the scheme has been sub-optimally designed. If this is the case, it is likely that viability inputs and assumptions will need to be amended to ensure that the assessment is realistic.*	The viability appraisal is undertaken on an objective, non-applicant specific basis with the assessor identifying the maximum viable amount of affordable housing. The applicant may make a commercial decision to deliver more affordable housing than that which is deemed viable by taking a long-term view on the viability of the scheme. The RICS Guidance Note, 'Assessing Viability in Planning under the NPPF 2019 for England' recognises at para 3.11.15 that where schemes come forward with a higher level of policy compliance than that agreed to be viable, it may be appropriate for an earlier viability deficit to be factored in. Site by site viability testing optimises the level of planning obligations that can be sought from development whilst seeking to ensure delivery of the scheme. In many cases the viability yields a greater quantum of obligations that the viability position allows for. This is at the Applicant's risk and should continue to be recognised through appropriate wording in s106 agreements.
Para 3.5.2 - *Where required by the LPA or the GLA, for schemes that are referred to the Mayor, growth in development values and costs should also be modelled and taken into consideration when assessing the maximum amount of affordable housing and other policy requirements that the scheme can provide. Growth rates should be informed by recognised relevant market sources. Higher target returns that offset the benefits of this approach should not be assumed.*	Further guidance should be provided on when the LPA or the GLA may consider it appropriate to look at a growth model for schemes such as unit threshold / length of programme etc. The RICS Guidance Note, 'Assessing Viability in Planning under the NPPF 2019 for England' states that the approach to sensitivity testing should be set out, which may include modelling growth if appropriate. Growth modelling should be treated with caution and should not underpin the base affordable housing provision given the uncertainty around future value growth and cost inflation. The purpose of the viability reviews is to capture any value uplift / cost savings between the application stage and viability review.
Para 3.6.4 – *Schemes should exclude elements that do not make a positive contribution to viability unless these are required for other planning reasons, for example, the provision of community facilities. Schemes should not include elements with significant costs that have*	Para 010 of the NPPG states that *"Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return".*

a negative impact on viability, such as basements, unless there is a planning reason to do so. It may also be necessary to test different residential typologies, such as build to rent (BtR) and build for sale.	It is important to note that good planning and design should not be solely driven by viability, but rather what is right for the site and community where it is located. There will be instances where uses are incorporated for place making and community reasons as required by local plan policies and/or the process of community engagement. A developer will clearly seek to optimise the value of a project to enhance the prospects of delivery. If a planning application proposes covenanted BtR or for sale housing – which rely on completely difference economic models – it is not clear what the benefits are of testing the delivery of different housing typologies. Such an approach will lengthen the planning process, creating greater uncertainty and potentially points of contention, and ultimately risking delivery. A BtR scheme would need to be redrawn if designed (and revalued and re-costed) as a for sale scheme and vice versa.
Para 3.6.6 - *When assessing outline and hybrid planning applications, an illustrative masterplan should be tested that reflects the upper parameters of the permission being sought.*	Where an outline application is being proposed, the FVA generally mirrors the other planning documentation in assessing an illustrative scheme, which is one way the planning consent could be delivered. In many cases, the maximum parameters, relating to multiple phases, cannot be delivered in aggregate nor would it be considered appropriate in planning or design terms. We propose that paragraph 3.6.6 is amended as follows: *When assessing outline and hybrid planning applications, an illustrative masterplan should be tested ~~that reflects the upper parameters of the permission being sought~~. If the application seeks consent for a flexible range and proportion of different uses, the assessment should be based on the most viable overall mix.*
Para 3.7.1 - *Assessors should undertake a 'stand back and check' exercise to consider whether the outputs of the residual valuation are realistic based on experience and the market. This could include a cross-check of the reported RLV with comparable market bids and transactions, including the development site and the wider market.*	The use of comparables is the preferred method of estimating market value as stated in the RICS Professional Standard 'Valuation of Development Land' (February 2020). However, the Professional Standard and the RICS Comparable evidence in Property Valuation identifies development property as one where direct comparison is rarely valid. Land transactions are generally opaque and very little information is known about the circumstances of how it was acquired. Further, an FVA is not seeking to establish the market value of land whereas planning viability is an objective assessment that seeks to identify a range of reasonable market norms to establish the level of planning obligations that a development can support in accordance with policy.

Para 4.2.4 - *Where bulk sales of residential units have taken place, the assessor should consider whether the value should be adjusted to remove any discount applied in relation to the bulk sale.*	A bulk sale of residential properties is often secured at a discount to market value and in advance of practical completion and may be necessary to secure delivery. The market price at completion may be higher or lower depending on the circumstances of the market. The forward sale secures other benefits such as a reduction in risk and the availability of debt funding. Adjusting a forward sale would be unreasonable and contrary to professional guidance; it would potentially overinflate the NDV and level of obligations that can be reasonably secured.
Para 4.2.5 - *The value of other future receipts should also be included where this is market practice – for example, payments to the landlord on sale of leases in specialist older persons' housing.*	Future receipts for specialist older persons housing are often related to high occupational running costs and shouldn't necessarily be simply seen as additional development value.
Para 4.2.11 states *"OPEX should be supported by detailed information, including an itemised list of cost headings based on comparable completed and occupied schemes. The figures should be provided as a percentage of gross rent, on a per-unit and per-square-foot/metre basis".*	In accordance with policy and guidance, the viability assessment should be informed by standardised inputs based upon the best available market evidence. Securing detailed information on completed or occupied schemes is not generally possible and valuers should use their judgment and professional experience as well as professional RICS valuation guidance, in making an estimate on market norms.
Para 4.2.12 - *Investment yields should be based on market evidence with the nature of the transaction stated where known – for example, whether this was forward-funded or a sale at practical completion. Yield evidence should be consistent with the development model appraised, which should usually reflect the most common types of transactions taking place in the market. The transactions referred to should be for comparable properties, based on market value and should be analysed on a per-unit and per-square-metre/foot basis to enable accurate comparison.*	It needs to be recognised that information underpinning comparable yield evidence such as assumptions on purchaser's costs, income timing and funding arrangements is not available, and the Valuer should use their judgement with the benefit of professional valuation guidance.
Para 4.2.14 - *The primary approach to assessing affordable housing values should be through the use of comparable market transactions. This will include the sale of*	Affordable housing is generally valued on a discounted cashflow (DCF) basis to derive a net present day value (NPV). NPV calculations vary significantly depending on location, mix of units, affordable tenure and size of units. A Registered Providers (RPs) cashflow will differ in terms of

affordable units to registered providers (RPs) where the price paid is available through Land Registry data.	their assumption around costs and their discount rate. This should be the primary methodology. The use of comparable offers / transactions should only be as a sense check given the sensitivities associated with long term DCF valuations. The availability of transactional evidence is also very restricted. We are unfamiliar with affordable housing transactions for s106 housing being available through Land Registry data.
Para 4.2.15 - *However, where there is only one offer or the transaction is not arm's-length – for example, where the RP and the developer are in a partnership arrangement – this evidence should be given less weight and cross-checked against open-market transactions.*	It is unclear why joint venture (JV) agreements should be given less weight as this represents the best evidence. The LPG is seeking to take a detailed assessment of different typologies and information pertinent to a JV delivering estate regeneration is the best possible market evidence.
Para 4.2.17 - *In build-for-sale developments, London Living Rent homes should generally be assumed to be sold on a shared-ownership basis, to either a tenant (or tenants) renting the home within 10 years, or to another eligible purchaser at the end of that period. In BtR schemes, London Living Rent and Discount Market Rent (DMR) homes should be valued on an investment basis in perpetuity.*	London Living Rent (LLR) is generally a product that is not in high demand from RPs and many have opted for alternative products. Where LLR is being delivered, commonly, the reversion to a for sale product after year10 of a tenancy is not being included. This is because of the obvious affordability constraints and significant inherent risks in adopting an assumption ten years into the future that may result in the RP ultimately paying a price for affordable housing that is not economically sustainable.
Para 4.2.19 - *If no offers have been received, details regarding the terms of marketing and the procurement process should be provided.*	It is not clear why this is required. At the point at which planning is submitted with an FVA, the developer will, in most instances, not have undertaken a formal marketing process. If this requirement is relevant to the review timings, the developer will have needed to agree an alternative affordable housing proposal with the LPA.
Para 4.2.21 - *Income from commercial property should be assumed at practical completion of the relevant block unless evidence is provided to support a different approach.*	In accordance with valuation guidance and Section 4 of the RICS Professional Standard 'Assessing viability in planning under the NPPF for England', an allowance should be made in the cashflow for voids, incentives and rent-free periods.
Para 4.2.22 - *Grant and any other form of public subsidy should be included in the appraisal cashflow when this is or is likely to be made available by the relevant authority.*	Grant funding should be inserted into the cashflow for the development vehicle when it becomes available to that vehicle (i.e. generally upon the point at which an RP can take a legal interest in the affordable housing).

Para 4.3.4 - *If an appraisal is based on current-day values, costs should not include build-cost inflation.*	This may be appropriate in some cases but where the LPA or GLA are seeking sensitivity analysis based upon reasonable forecasts, the outputs should be considered alongside growth on values, for example.
Para 4.3.6 - *Consideration should also be given to scheme design and programme, and whether development costs could be reduced as part of a value-engineering or cost-reduction exercise.*	Clearly, where a cost consultant's elemental breakdown is provided any assessment of value engineering will need to be undertaken in the context of cost inflation in the market at that time and the requirement to strip out mid-point cost inflation from any FVA cost budget. Sensitivities should be fair and reasonable as advocated in valuation and planning viability professional practice.
Para 4.3.8 - *Economies of scale would be expected to apply to larger schemes. Professional fees should be assumed to include costs such as project insurances.*	Economies of scale do not always exist in larger projects, as they may be more complex and many larger projects require a greater number of consultants with specialist expertise. Project insurances are a standalone liability and are generally not included in the professional fees budget.
Para 4.3.10 - *finance costs should be justified according to the specific development proposal.*	The NPPG and planning viability guidance from the RICS is clear that standardised inputs should be used and guidance states that applicant specific inputs should not be used to inform the viability assessment. Finance costs should be based upon the best available market evidence, taking into consideration the market approach to assessing finance costs for the purposes of viability assessment.
Para 4.3.11 - *The finance costs should be evidenced with reference to:* *• the likely interest rate throughout the development period, taking into account the type of development and the likely structuring of finance for the scheme.* *• the cash flow including assumptions on the timing of income and expenditure, including any pre-sales or forward-funding of the development.*	These are contrary to professional guidance on planning viability. The cost of debt, as with other valuations, is assessed as a weighted cost, considering all factors and to date, in a planning viability context, debt costs have been agreed generally without too much delay. The LPG approach risks introducing a significant area of contention in terms of present and future interest rates as well as structured finance approach, the latter of which is extremely complex and should not be addressed as part of the planning viability process. The last year has shown that it is not possible to anticipate interest changes, even over a relatively short period. In terms of cash flowing of development and the implication on debt costs, income and cost is already profiled adopting a reasonable market approach.
Para 4.3.12 - *finance rates should take into account the likely type of developer of the site / where a scheme is likely to be delivered by a large developer who will have access to*	The identity of the applicant and or the developer or future developers is not relevant to the planning viability process and is contrary to the RICS Professional Standard 'Assessing viability in planning under the NPPF for England'. To take such an approach would also create additional risk and uncertainty.

preferential rates of finance, this should be reflected.	The reference to estate regeneration where a local authority or RP might provide access to lower finance rates through public sector borrowing, as a general market facing assumption, is incorrect. Private partners are commonly brought into such projects to assist with their development expertise including securing development funding predicated on their track record of delivery.
Para 4.3.24 - *Purchaser's costs should be based on costs likely to be incurred, taking account of the probable nature and timing of any transaction, economies of scale and any reliefs that may be available (for example, multiple dwellings relief on Stamp Duty Land Tax). Percentage-based allowances for fees should always be sense-checked with reference to the overall monetary amount. Purchaser's costs are not always incurred if the developer and operator are the same entity so it may be appropriate to carry out sensitivity testing without purchaser's costs or at lower rates. The total monetary cost should also be sense-checked as realistic and should reflect the scale of the scheme.*	This is contrary to valuation guidance. The RICS Professional Standard, 'Valuation of development property' (February 2020), states that "normal assumptions should be made within the market sector concerning the treatment of purchaser's costs". The approach is also contrary to the RICS 'Assessing viability in planning under the NPPF for England' Professional Standard (page 9). If there are savings from the gross development value to net development value then this will be assessed at the point of the review.
Para 4.3.25 - *Land assembly costs can be included in assessments for estate regeneration schemes, including the buy-back of residential leasehold interests, and tenant and leaseholder compensation costs where it is likely that a compulsory purchase order will be required. These should be applied as development costs (rather than BLV) and should be clearly itemised and evidenced.*	It is not clear why land costs such as leaseholder buybacks would not be treated as benchmark land value as these clearly meet the definition of landowner return as per paragraph 13 of the NPPG. Tenant and leaseholder compensation would be a development cost.
Para 4.3.27 - *Risk items such as Rights of Light costs or potential asbestos removal cannot be generally included as development costs, as they are assumed to be allowed for in the construction contingency or the developer's return.*	This is contrary to the RICS Professional Standard 'Assessing viability in planning under the NPPF for England' section 4.4. Rights of Light, in particular, can be a significant cost, and one where there is significant risk that liabilities could increase. This is dealt with (by reference to expert's advice) as a separate line item in FVAs. The London Plan Viability Study – Technical Report recognises rights of light, asbestos and other items as costs as they are explicitly referenced as being excluded from the base build costs. Annex G – Analysis of Developer Returns of the Technical Study includes a breakdown of what

	is assumed to be included in developer return. In an urban area like London, rights of light is a necessary cost of development and should be treated as such. The purpose of contingency is to address unknown costs/changes.
Para 4.3.28 - *Evidence should be provided by applicants to justify the target return, and to demonstrate that this is in line with the minimum level of return necessary for the scheme to proceed.*	This approach is not supported and contrary to the NPPG. There is no reference within policy or guidance that states that the return should be the minimum level required to proceed with the development. The level of developer return required should be based upon the level of risk in bringing forward the development and to date, a reasonable range has been established that meets the NPPG and professional guidance requirements and is commonly agreed without significant delay. The approach advocated in the LPG has regard to the specific applicant and their funding arrangements, none of which are relevant to the specific policy test. The approach taken risks significant disagreements, delays and ultimately non-delivery. Paragraph 018 of the NPPG states, *"For the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development. A lower figure may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk. Alternative figures may also be appropriate for different development types*".
Para 4.3.29 - *The percentage and total monetary amount of target return should be cross-checked and evidenced with reference to market evidence including comparable land transactions.*	The NPPG sets the range of appropriate return as a percentage. The monetary sum is a factor of the scale of development and is not relevant. It Is unclear why the total monetary amount of target return is required to be cross-checked when it is a product of the target rate of return (in percentage terms) and the scheme GDV. Current rates adopted are within the NPPG range and that advocated in professional guidance and based on valuer's experience. It is also unclear why a cross check to land transactions would be beneficial and the inference is that developer returns will be reduced if land evidence is higher than residual values which is clearly incorrect and contrary to guidance.
Para 4.3.30 - *The level of return required for affordable housing should reflect significantly lower levels of risk when compared to private*	Whilst is it accepted that a lower return would be required for affordable housing compared to market sale, there are other elements within developer return that mean that a return is also required to bring forward affordable housing, such as overheads, governance, build cost risk, land

residential units. Where affordable housing or community uses are to be re-provided, any developer's return would be expected to be nominal as there is little or no sales risk.	risk as set out in the London Plan Viability Study – Technical Study. Furthermore, the delivery of affordable housing may not have market risk where pre-sold, but is still subject to finance and construction risk.
Para 4.3.33 - *The likely type of developer should also be taken into account. For example, where councils and RPs bring forward estate-regeneration schemes as the lead developer or as part of a partnership, they are able to do so without requiring the levels of returns required by private developers, and these schemes are often supported by grant and other forms of subsidy.*	Planning should be applicant neutral and be linked to the land in question. As referenced above, there is a misunderstanding regarding the delivery of complex estate regeneration projects. Market returns should be allowed for estate regeneration as the projects are generally more complex, capital intensive and time consuming than more straightforward single-phase development or phased redevelopment. Estate regeneration requires the demolition and reprovision of homes which must be taken into account in the phasing and configuration of development. The process of rehousing residents is complex and sensitive. In most instances, there will be leaseholders whose interests will need to be bought out which can be costly and time consuming. The purpose of estate regeneration is to deliver socio-economic and wider environmental benefits, as well as more homes. This is likely to require the provision of community facilities and public realm improvements.
Para 4.3.36 - *An 'internal rate of return' (IRR) approach of measuring profitability may also be considered as a measure on larger, or longer-term, or phased schemes. A full justification must be provided for the assumed development programme and the timing of cost and value inputs. The target IRR should be evidenced and cross-checked against other measures of return.*	Agreed, the cross check as advocated in the valuation guidance is essential. The use of IRR is also very scheme specific and should be assessed against the project to which it is being applied (i.e. risk adjusted) and with regard to other investment options.
Para 4.3.38 - *All target returns should be cross-checked through analysis of land transactions.*	This is fundamentally incorrect and contrary to the professional standard on planning viability and planning policy guidance. The comments above relate to concerns regarding the use of land transactions to inform an objective viability process.
Para 4.4.9 - *The applicant will need to fully justify any value attributed to existing buildings that are proposed for demolition and replacement. A detailed assessment of any likely major maintenance works required over at least a 30-year period should be provided alongside the costs of routine maintenance.*	It is unreasonable for an applicant to present a 30-year property, plant and equipment budget to demonstrate an EUV. This is onerous and will simply lead to further disputes and delays. The current process for establishing value for an EUV as is outlined in the policy tests in the NPPG is sufficient and commonly results in agreements on rents, yields and capital expenditure. Events in the past few years have shown that it is not possible to anticipate all costs such as the need for cladding removal.

Para 4.4.12 - *When considering the requirement for a premium, the RLV of the proposed scheme should also be assessed based on a policy-compliant scheme. If the RLV is lower than the EUV, it is unlikely that a premium would be justified as any premium needs to both take into account a return to the landowner and allow a sufficient contribution to fully comply with policy requirements.*	An FVA is only generally submitted where there are viability concerns and the RLV for the proposal will be below the EUV. If under this scenario no premium is allowed, it is difficult to envisage a scenario where a premium would be allowed. The approach is contrary to NPPG para 16 and professional guidance. The landowner return is for the incumbent landowner to incentivise delivery of an alternative use. If no incentive is offered, the likely result will be that the land is not released.
Para 4.4.12 - *A premium should not be applied in the case of estate-regeneration schemes, given that the typical owner of a housing estate will not require an additional monetary incentive to release a site for development. This is because the proposed scheme will be fulfilling their primary objective of enhancing affordable housing provision.*	There are components of estate regeneration projects that might be in private ownership (residential and commercial leaseholders for example) and the landowner premium as stipulated in national guidance should apply.
Sense checking the outcome of viability assessments	
Para 4.5.3 - *This could include comparing RLV with comparable land transactions (including agreements for sale), which provide an alternative method for assessing the value of development sites. If the RLV is lower than comparable market transactions, including the application site, this may indicate that the value and cost assumptions applied within the viability assessment do not reflect the market and need to be reviewed.*	As stated above, this is not consistent with existing guidance or policy and, in any event, is applied incorrectly. It is an extremely crude measure that the RICS Professional Standards raise as an issue and is open to significant misinterpretation. It is comparing an objective market facing appraisal with the best price in the market with little regard to the circumstances of that price (many of which cannot be known). The viability review process now provides a safety net for changes in market conditions and applicant's particular circumstances. Taking the LPG example in paragraph 4.5.4, how can the assessor be sure on what basis the site was acquired, whether there were unrealistic expectations in terms of values use or massing for example, whether debt was involved, what the profit expectations were and so on?
Section 5 - *Review mechanisms (general comments)*	It should be recognised that there are certain inputs at the review stage that should be redacted as they are commercially sensitive when considered against the 2014 Environmental Regulations test. **Paragraph 5.1.14** states that reviews might pick up appropriate adjustments where a scheme has been delivered in a different manner to that anticipated, i.e. a C3 open market for sale scheme

	delivered as BtR. In this instance, all reasonable costs including costs to stabilisation should be included, to ensure the process is robust and equitable and indeed does not preclude the delivery of innovative outcomes. **Paragraphs 5.4.2-5.4.4 and Footnote 15** suggest that a mid-term review will be required upon the delivery of every 500 units for larger schemes. It is submitted that the number and timing of mid-term reviews should be closely linked to the number of phases, plots or buildings in a scheme, not just quantum thresholds that may not coincide with practical stages of a development. Given London Plan Policy H5 (F)(2)(c) links the need for mid-term reviews to the implementation of phases for larger phased schemes, further clarity in the LPG wording would be welcomed. Accordingly, we recommend that Footnote 15 is deleted, and the following wording is added to paragraph 5.4.4: *More than one Mid-Term Review may be required depending on the size of the scheme and the number of phases, plots or buildings with such reviews being linked to implementation of phases for larger schemes.* **Paragraph 5.6.3** states that estate regeneration projects should benefit from a 50 percent cap on affordable housing over and above the reprovision of existing housing to provide some level of certainty for stakeholders. There should be a share of the surplus at the mid-stage review to incentivise maximisation of value, for example through amendments to the planning permission to increase the delivery of new homes. This is reasonable and equitable, and in the interest of all parties. **Paragraph 5.6.5** states that review mechanisms should be flexible to ensure that stakeholders are able to capture costs that are currently potentially significantly understated in the objective FVA that is agreed at the point of planning consent. The LPG provides flexibility on open book reviews and where accepted this should be for all reasonable development costs to be included. The costs of undertaking both LPA and GLA reviews will be borne by the applicant, however the process needs to be better aligned. Where the GLA are deviating from an agreed LPA position, the points of variance should be evidenced and clearly set out in writing in accordance with the RICS Conduct and Reporting Professional Standard.

	Annex A1.5 – where the review takes place on an investment property basis (i.e. BtR) and the review takes place towards the point of stabilisation, where a stabilised yield is adopted and not a discounted forward fund yield / or an NDV that reflects a discount, then the costs of stabilisation need to be fully reflected in the review.

DETAILED COMMENTS RELATING TO DRAFT AFFORDABLE HOUSING LONDON PLAN GUIDANCE

Reference	Response
Para 2.3.2 - *In addition to developments that do not meet the required affordable housing threshold and/or tenure split, the types of schemes listed below must follow the VTR:* - *those proposing off-site affordable housing, or a cash-in-lieu contribution* - *those where other relevant policy requirements are not met to the satisfaction of the LPA or the Mayor*	There may be scenarios where a payment-in-lieu could provide a better affordable housing outcome or indeed where the delivery of on-site accommodation for certain living uses may not be desirable. Under such circumstances an incentive of the Fast Track Review (FTR) could yield the optimum outcome, and so should not be automatically ruled out. In respect of the overarching, 'other relevant policy requirements clause' this is very vague and all-encompassing; ambiguity and uncertainty runs counter to the clarity established within existing London Plan policy. It represents an unreasonable risk and uncertainty for applicants and therefore should be better defined. For most complex developments in London, it is not possible to meet all planning policies. This is where decision makers exercise planning judgement, which should not be to place further obstacles during the planning process.
Para 2.8.4 - *if the threshold level of affordable housing is not provided on additional homes, or proposed amendments result in a reduction in the proportion of affordable housing, affordability or other obligations or requirements of the original permission, this should be rigorously assessed under the VTR. In these instances, a full viability review should be undertaken that reconsiders all value and cost inputs as*	This is onerous and disproportionate and could disincentivise permissions being amended to improve a development or respond to changed circumstances. If a scheme is subject to FTR and then an amendment is proposed in, for example, a differing economic environment, then it is unreasonable to expect to re-test the whole of the scheme. It is also highly unlikely that funders will accept this condition, and the resulting impact would probably be to inhibit the delivery of additional much needed new housing. It is submitted that this approach should be tempered to take account of the stage a project has reached and to be proportionate to the proposed change to the approved development.

well as profit requirements and land value of the scheme.	
Para 3.12 - *As such, Social Rent should be assumed to be the main product to satisfy the requirement for low-cost rent homes.*	London Affordable Rent is recognised in the London Plan and local policies. Social Rent is the lowest value form of affordable housing from a valuation perspective and whilst it qualifies for grant funding under the AHP programme, the overall 2021-2026 programme has limited funding (and nowhere near what is required to deliver the quantum of affordable housing London needs). LPAs and the GLA must recognise the financial implications of seeking such an outcome.
Para 3.2.1. – *The Mayor's preferred intermediate housing products are London Living Rent (LLR) and Shared Ownership (SO). Given that LLR is a more affordable intermediate product, developments should include this wherever possible.*	Shared Ownership is also recognised in the London Plan and provides an important housing choice for a significant number of lower to middle income households. The product also cross subsidises the delivery, in many cases, of other forms of low cost rented homes and there is a viability concern relating to its demotion in the hierarchy of intermediate products. There are significant concerns with London Living Rent as a product as it is essentially a deferred shared ownership product, however understanding the value of a possible sale in say 10 years' time is problematic. LLR eligibility criteria is also relatively restrictive limiting access to a range of households.
Para 3.2.3 – *(London Living Rent) Rents should not be increased above the rate of the Consumer Price Index (CPI) including housing costs within tenancies; and on re-let the rent should revert to the applicable LLR level (or lower).*	Affordable housing is valued on a long term discounted cashflow basis and factoring in potential rent reductions as and when new tenancies are issued creates significant financial risk and uncertainty. Affordable housing investment has traditionally been sourced on a range of pillars one being a secure long-term inflation linked indexation. Under the proposed scenario, equivalent properties in a development let as social rented tenancies, could well have higher rents within a relatively short period of time than the LLR equivalent.
Para 3.2.7 – *The maximum income caps are as follows:* • *affordable intermediate homes for rent: LLR and other Discount Market Rent (DMR) homes – households with gross incomes of up to £60,000* • *affordable intermediate homes for sale: SO and intermediate sale homes where they meet the definition of affordable housing – households with gross incomes of up to £90,000.*	We recognise that there is a proposal to increase the DMR cap to £67,000 for household income but this is not represented in the main consultation document. The £60,000 cap on intermediate homes is very restrictive for BtR developments and prices out a significant number of households, for example a household on two key worker salaries. BtR homes can be let to a range of households with a range of incomes and a higher level of affordable housing could be provided if the affordability cap was increased. The shared ownership cap has not moved in line with inflation for 7 years and given current significant increases in service charge costs and mortgage rates, the ability to offer shared ownership as a product, which has been very popular, is being constrained. The affordability caps should be increased on a more regular basis to reflect the current market issues and inflation. Alternatively, the wording of

	relevant S106 agreements could permit increases to the cap at the time of execution of the deed in line with an agreed inflation tracker such as the Retail Price Index.
Para 3.2.16 – *For DMR homes that are not at LLR benchmarks, maximum total housing costs should not exceed those calculated using the latest income cap published by the GLA when the homes are first occupied*	There needs to be the ability within the S106 agreement for rents set at the latest income cap published by the GLA at the application stage to be able to be indexed by CPI into the foreseeable future. If not, developers bringing forward BtR schemes with Discounted Market Rent (DMR) will be signing up to a depreciating asset whereby rents remain the same but operating costs increase into the future. This would create significant funding issues.
Para 3.3.1 – *Service charges - These, and any other fees or charges, should be agreed with the LPA prior to entering into an agreement with an affordable housing provider.*	A developer will need to provide a service charge budget including elemental breakdown to the RP when negotiating the terms of the lease. It is not clear why this needs to be agreed with the LPA. The statutory framework ensures that residents for all homes are not burdened with unfair costs. Developers will work with RPs to ensure that the demise of the lease mitigates the impact of service charge for affordable residents whilst allowing the scheme to be delivered in a sustainable and inclusive manner.
Para 3.3.3 – *Residents of affordable housing should be given the same rights of access to amenities and facilities within the scheme as occupiers of market housing at no additional charge other than service charges. If an LPA agrees that access to a facility would make service charges unaffordable for residents of affordable housing, this should be excluded from standard service charges and they should be given full optional rights of access at a fair and reasonable charge.*	This proposal raises challenges which require further exploration with developers and RPs. It is often the case that RPs do not support access to some amenities and facilities due to the additional cost burden for their tenants and, also, the significant liability issues arising for the RP where facilities are located in other buildings on site that are owned and managed by another organisation.
Para 6.1.4 – *affordable housing should be sold to an RP approved by the LPA on a freehold basis or a leasehold of 990 years*	Further justification is required regarding the extension of a leasehold term to 990 years. This is considered to be unnecessarily onerous given it has previously been standard practice for a leasehold term to be 125 years.
Appendix 2.3 - *Estate regeneration*	A 50 percent cap on the uplift in affordable housing over and above the reprovision would be a reasonable insert and provides some level of certainty to landowners, developers and funders.