

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 31 January 2018
Report of: David Malcolm: Head of Planning (Regulation)
Title: Publication in Full of Viability Assessments

1.0 Purpose of Report

1.1 To consider a notice of motion submitted by Councillor N Mannion to full Council on 14 December 2017 which has been referred to Strategic Planning Board for consideration.

1.2 The Motion is detailed as follows:

Viability Assessments, introduced under the provisions of the NPPF in 2012, are submitted by developers of larger sites as evidence to justify removing or reducing their contributions, most often with regard to our Local Plan requirement that a minimum of 30% of residential units in a development are designated as 'affordable'.

To date, the content of Viability Assessments submitted by planning applicants to Cheshire East have not been published, nor have any details been shared with the Council's planning committees.

However, a growing number of planning authorities, most recently Greenwich and Southwark councils, joined in November 2017 by Bristol City Council, have started to publish all viability assessments submitted by developers in full.

Therefore, in the interests of openness and transparency it is proposed that:

From 1st February 2018 all Viability Assessments submitted by developers shall be published in full on the Council's planning portal.

2.0 Decision Required

2.1 To note the contents of the report and that members agree to the proposed approach to allow further consideration of this matter as part of the wider Validation Checklist review

3.0 Background

- 3.1 The National Planning Policy Framework (NPPF) requires that the cost of planning requirements should allow for competitive returns to a willing land owner and willing developer to enable development to be deliverable. The method for testing this must be considered within the context of the NPPF as a whole and achieve the overarching objective of sustainable development.
- 3.2 If a scheme does not meet the full policy requirements or the developer cannot meet all the required contributions then an applicant may seek to justify this shortfall on the grounds of viability. Viability is a material consideration and in these circumstances information in the form a viability assessment should be submitted by the applicant.
- 3.3 Viability Assessments often contain sensitive financial information including construction costs, professional fees and land values. As a result they are normally submitted as being confidential and not put on the public register/file.

4.0 Current Approach

- 4.1 Members will be aware that viability assessments have been submitted with a number of major applications over the last few years particularly in relation to residential schemes.
- 4.2 Any such assessment is kept confidential and not published onto the public file – often at the request of the applicant.
- 4.3 When they are received in support of a reduced level of contribution or policy compliance, the Local Planning Authority appoint external surveyors to assess and test the Viability Assessments as to whether there is agreement on the information submitted and whether the costs are reasonable taking account of the industry standards. Discussion between the respective professional surveyors does take place. On occasion the detailed scrutiny of the information does lead to further contributions being secured.
- 4.4 Officers do try and secure a summary public' version of the viability information to enable an element of transparency to be maintained – particularly when reductions in contributions are being supported. However, at best, this often still only leads to the headline figures being referred to in Officer Reports. Therefore while detailed scrutiny of the viability is carried out this could be perceived as being done 'behind closed doors' and not exposed to the normal public scrutiny of other application information.

5.0 Emerging Approach – Other Authorities experience

- 5.1 The National Planning Policy Guidance (NPPG) states that transparency of viability evidence is encouraged wherever possible.

- 5.2 More recently the direction of travel in regards to viability information is for transparency to achieve greater public accountability and trust in the planning process. The *London Borough Development Viability Protocol* (November 2016) and *Homes for Londoners: Affordable Housing and Viability Supplementary Planning Guidance* (August 2017) both set out that Viability Assessment's containing standardised information are expected to be submitted at validation stage and that these should be available to be viewed by the public alongside the rest of the application submission documents. The London SPG states,

...given the importance of wider scrutiny and the direction of travel indicated by information tribunal decisions, the Mayor will treat information submitted as part of, and in support of, a viability assessment transparently. This information should be available for public scrutiny and comment like all other elements of a planning application, as should any review or assessment of the appraisal carried out by or for the LPA. As such, boroughs should implement procedures which promote greater transparency where not already in place.

- 5.3 In September 2017 the Department for Communities and Local Government (DCLG) released a consultation paper titled *Planning for the Right Homes in the Right Places* seeking views on a number changes to planning policy and legislation, much of which was initially set out in the latest housing white paper published in February 2017. This consultation document has sections on viability and transparency and states, 'We propose to update planning guidance to help make viability assessments simpler, quicker and more transparent'.
- 5.4 A number of London Authorities, for example, the Royal Borough of Greenwich and the London Borough of Hackney require Viability Assessments at validation stage with an assumption that these will also be available at certain times to be viewed by the general public. Greenwich's local validation requirements which were adopted in 2016 set out that Viability Assessments are to be published in their entirety with no exceptions.
- 5.5 The London Borough of Hackney, and a number of other London Boroughs such as Islington and Lambeth also publish full un-redacted details of the viability information unless there are exceptional circumstances. In these cases the applicant is required to set out a clear case for the exception. The council will assess the sensitivity against the test of public interest. In most instances it is not considered that commercial sensitivities would override the public interest.
- 5.6 The London Borough of Southwark expects full transparency of documents but only make the full viability details public one week before the decision date of the application. While the practicalities of such a prescriptive approach could be difficult it appears that there is no indication that full disclosure of details has resulted in developers

being dissuaded to submit planning applications in specific boroughs with these policies in place.

- 5.7 Since the publication of *The London Borough Development Viability Protocol* (November 2016) and *Homes for Londoners: Affordable Housing and Viability Supplementary Planning Guidance* (August 2017) it is expected that all London Boroughs will be working towards transparency of viability information in the future.
- 5.8 Brighton and Hove City Council have also just recently agreed to publication of un-redacted Viability Assessments where policy requirements/contributions are not being met. This followed a period of consultation and will be reflected in their updated validation requirements for planning applications.

6.0 Conclusion and Next steps

- 6.1 The Local Planning Authority relies on professional expertise to scrutinise any submitted viability assessments to ensure that any contributions on planning applications are maximised and this will remain the case.
- 6.2 It is however recognised that the process is less than transparent and does not give the open approach to availability of information as the rest of the planning process does. With the odd exception all other planning application documentation is open to the public.
- 6.3 The number of local authorities which are publishing un-redacted viability assessments, although small, does appear to be growing. This is particularly the case where proposals include non-compliance with policy/contributions.
- 6.4 Recent Government consultations such as those within the '*Planning for the Right Homes in the Right Places*' are also advocating a simpler and more transparent approach.
- 6.5 A transparent approach to decision making is a strong justification and it therefore seems timely to review the current process. This will also tie in with a review of the Validation Checklists for applications which is already well under way.
- 6.6 Next steps:
- Draft proposals for review of viability assessments
 - Align with review of Validation Checklists
 - Undertake the appropriate public consultation as part of the wider review
 - Review consultations and prepare future report.

7.0 Recommendation

- 7.1 To note the contents of the report and that members agree to the proposed approach to allow further consideration of this matter as part of the wider Validation Checklist review.

8.0 Risk Assessment and Financial Implications

- 8.1 There are no risks or financial implications at this time.

9.0 Consultations

- 9.1 None.

10.0 Reasons for Recommendation

- 10.1 To ensure that the appropriate approach is adopted in dealing with any future changes to how viability assessments are handled

For further information:

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