



## **GLA Draft Affordable Housing and Viability Supplementary Planning Guidance**

### **CONSULTATION RESPONSE**

**Response From:** London First, Middlesex House, 34-42 Cleveland Street, W1T 4JE

**Date Submitted:** 28 February 2017

#### **About London First**

London First has the mission to make London the best city in the world in which to do business. We work with the support of the capital's major businesses in key sectors such as housing, retail, finance, professional services, property, ICT and education.

#### **Summary position**

The lack of affordable housebuilding and completed new homes in London is part of a wider, historic failure to plan for and build the 50,000 homes a year that London needs. The Mayor must continue to prioritise delivery of all forms of housing, including affordable housing. Ultimately, the success of the policies in the Supplementary Planning Guidance (SPG) will be judged by whether they encourage the delivery of more housebuilding in London.

We welcome the overarching aims of the draft SPG to provide clarity and certainty in the planning process in London, particularly around affordable housing expectations and the development viability process. The proposals regarding build to rent (BTR) represent a significant and positive change in policy.

To encourage uptake of the new threshold approach, the SPG should be less prescriptive and more flexible. Greater emphasis should be placed on the need for the guidance to be applied pragmatically.

#### **1 - London First's view**

##### **The threshold approach**

- We support the principle of the 'threshold' approach, whereby applicants for proposals that meet or exceed 35% level of affordable housing do not have to undertake a viability assessment.
- The 35% threshold is a very ambitious target, representing a significant increase over and above the actual level of affordable housing that has been secured via planning permissions and through developer contributions in recent years.
- Specifying this ambitious target and requiring applications to meet all planning requirements and obligations is likely to be particularly challenging, and could

negate the potential effectiveness of the threshold approach. In practice, applications which are close to meeting the 35% threshold, all planning policy and obligations, and the required tenure mix should be treated pragmatically, on their own merits, rather than being automatically forced to follow Route A.

- The suggested tenure mix of the remaining 40% of affordable homes that is proposed to be at the boroughs' discretion is likely to have a significant impact on the viability of applications. The Mayor must monitor the breakdown of tenures within the 40% set by boroughs, to ensure this part of the threshold approach is not set in isolation or with unrealistic requirements, so that it does not constrain development from coming forward.

### **Guidance on viability assessments**

- We support the overarching aim for more openness and transparency in the planning application process, including the move towards an open book approach to viability assessments.
- The Mayor should recognise that public disclosure of commercially sensitive information, which, for example, could relate to land assembly, occupier negotiations, rates of return or construction contracts can seriously compromise the ability of a developer to agree the commercial arrangements necessary to bring forward developments and act as a brake on new affordable housing delivery. This would not preclude commercially sensitive information being shared with the Greater London Authority's and Local Planning Authority's advisors to assist with the viability assessment process, which we feel best serves the public interest.
- We note Information Commissioner decisions stating that some information in such assessments is commercially sensitive and should remain out of the public domain. The SPG should reflect these decisions in its guidance.
- While we welcome the aim of streamlining the methodology for preparing viability assessments, the draft SPG is overly prescriptive in its approach, particularly for assessing Benchmark Land Value. The proposed use of Existing Use Value plus, as currently proposed (with the premium at 20-30%) will not provide sufficient incentive for land to be released for residential use.
- The SPG's proposed approach conflicts with the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) which states that a developer should be expected to receive competitive returns. The premium in the SPG should reflect the NPPF definition of a competitive return to a willing landowner, which could be based on market value rather than a fixed percentage.
- The SPG should also acknowledge that alternative uses should be considered, if there is a reasonable prospect of any/all of those uses coming forward.

### **Build to Rent**

- The proposals supporting the expansion of the build to rent (BTR) market in London represent a significant and positive change in policy. In particular, we welcome: the draft SPG's acknowledgement of the distinct financial model of BTR; the potential it has to increase London's housing supply; and allowing the affordable housing element of BTR developments to be entirely discounted market rent (DMR).
- We also welcome the continuing action the Mayor proposes to take to support BTR such as: working in partnership with boroughs; bringing forward public

land; and providing a clear and consistent approach to planning permission for BTR schemes.

## **2 – Detailed Comments**

### **SPG Part 1 – Background and Approach**

The introduction of the 35% threshold approach represents a significant increase from the level of affordable housing the market has previously been able to provide via the implementation of planning permissions and s106 obligations. As the draft SPG highlights, only 13% of homes granted planning permission in 2014/15 were affordable. This figure presumably includes development by registered providers and boroughs, as well as the private sector. As such, the private sector's delivery rate of affordable homes is likely to be lower than the 13% figure.

As the draft SPG states, moving towards the Mayor's overall aim of half of all new homes in London being affordable will take time. When the provision of new affordable housing has come close to this level of delivery at a borough level, it has been due to the borough taking a flexible approach to any additional planning conditions which may be required of the applicant. For example, where the developer commits to deliver specific local infrastructure or investment in public realm. The Mayor should follow this example and adopt a flexible approach to compliance with the additional constraints that Route B places on developers, to support this demanding target. Limiting the number of additional pressures such as demanding tenure splits, comprehensive reviews, and other planning constraints placed on developers to focus on delivering the 35%, will be essential in making the transition to the threshold approach.

### **SPG Part 2 - Threshold approach to viability**

Para 2.7 – The SPG should recognise that the 35% threshold will be more difficult to achieve in some boroughs (and parts of boroughs) than others. The economic viability of an individual scheme and its ability to meet the 35% threshold will depend on various matters, from site specific costs to local market conditions, land value and site infrastructure costs. It will also vary according to the borough's specific tenure mix requirements; for example, the more social rented tenure required, the more challenging it will be to achieve the threshold level of affordable housing.

The SPG should acknowledge that, as set out in London First's Report; *The Off-Site Rule*, sometimes, the nature of a development, site characteristics or local housing need mean that off-site delivery can offer better solutions in terms of the quality, quantum and mix of homes built.

Commercial development within the Central Activities Zone (CAZ) is often required to provide an element of housing, including – where large enough – affordable housing. It will often be the case that providing this housing on site is difficult and expensive (for example due to a small site size). Local housing needs may also be better served by providing this offsite or via a commuted payment (which can then be delivered by the GLA). The SPG should support such an approach.

Para 2.8 – We support the proposed methodology by which the percentage of affordable housing on a development should be calculated according to the number of habitable rooms.

### **Affordable Housing Credits**

While not covered in SPG, the GLA should consider what role a system of affordable housing credits such as that operated by Westminster City Council could play in delivering affordable housing. Where new affordable housing is created when it is not a policy requirement credit is created which can then be drawn down against future affordable housing requirements arising from the development of other sites. This encourages early delivery of affordable housing and, as it would be considered an 'offsite' contribution, ensures the maximum reasonable level of affordable housing is delivered according to the individual scheme's viability.

### **Route A**

- I. Review mechanisms beyond the pre-commencement stage should only apply to complex or multiphase schemes where there is limited information available for future phases. If reviews are adopted they should be both upwards and downwards to reflect changes in the market.
- II. The SPG proposals for reviews change the risk profile for investors and lenders, reducing certainty on returns which will inhibit the ability for developers to enter into the commercial agreements needed to allow the development to proceed with certainty and may restrict the ability to obtain development finance. Greater thought should be given to whether reviews, particularly near end, support the intention of the SPG in bringing forward more new affordable homes.
- III. Where a review takes place and more affordable housing is required, the SPG should, taking into account our earlier comment on the benefits of off-site delivery, provide greater clarity about the circumstances in which building affordable housing off-site should be accepted, including where it can be demonstrated that this would result in optimised delivery, e.g. either in terms of the quality or quantum of homes built.
- IV. We support the review mechanism being capped but the level of the cap should be agreed at the pre-planning application stage.
- V. Where there is any uplift in profits, a 50:50 split is more equitable than a 60:40 split in favour of the council as it better incentivises developers, who are bearing the development risk, to deliver an uplift.
- VI. As currently proposed, reviews only allow Gross Development Value and build costs to be considered. This does not allow the developer to capture other costs in the reassessment, nor a full profit return. For example, if the original scheme showed only a 13% return for the developer, the proposed review mechanism would restrict the developer to that return and not allow a higher level of return than the original 13% especially where they have taken a lower return on the original scheme on the basis of full profit returns in the future. This approach is unlikely to incentivise land release in the manner intended and is at odds with the NPPF which states: "*To ensure viability the costs of any requirements likely to be applied to development... should, when taking account of the normal cost of development and mitigation, provide competitive*

*returns to a willing land owner and willing developer to enable the development to be deliverable.”<sup>1</sup>*

## **Route B**

- I. The overarching aim of this approach is positive, but the 35% threshold is a very ambitious one. The draft SPG states that in 2014/15 only 13% of homes given planning permission were affordable. In addition, to support developers to meet the threshold approach, the Mayor and boroughs should actively seek to minimise the demands of ‘all other relevant policy requirements and obligations’.
- II. An applicant should try to ensure that the proposed development meets all policy requirements and obligations, but given that the 35% threshold is a significant increase from historic delivery rates, and the cost of meeting the threshold will differ across London, flexibility is likely to be needed. The SPG should either recognise this point, or the Mayor should discuss with the boroughs how a common-sense approach to the application of the threshold can be introduced in such a way as not to stymie development. For example, where an application scheme is providing 35% affordable housing, with the tenure mix that is being sought, but does not meet all other policy requirements, it would seem appropriate and justifiable to allow the borough to have the discretion to advise an applicant to follow route B.
- III. In respect of the 40% borough proportion of the tenure mix, the Mayor should ensure that the mix set by a borough does not render development unviable. For example, the higher the proportion of social rent housing required, particularly where residential values are low, the more difficult it will be to achieve 35% or more affordable housing. This reinforces the need for both GLA and borough discretion regarding tenure mix, for example if variation from this will enable 35% to be delivered on-site.
- IV. A requirement to agree a benchmark land value for Route B schemes will potentially cause delay to the planning process, as this is often a very difficult matter to agree. This should only be required where a review is triggered.

## **Registered providers and publicly-owned land**

Para 2.24 - Early discussions with registered providers (RPs) are often beneficial and RPs will usually be willing partners in this process. However, it should be noted that it is not always technically feasible to secure formal commitment and agree the details of a transaction until after planning permission has been granted.

Para 2.26 - We welcome the SPG proposals that increased densities could be explored on a case by case basis to make the delivery of affordable homes more viable. The SPG should be clear that this applies to all sites, not just public owned land.

## **Other intermediate housing**

Para 2.36 – 2.43 – Reducing the combined income cap for all forms of intermediate housing to £60,000 could have a negative impact on affordable housing percentages. Higher caps may be appropriate in some areas for example, central London boroughs,

---

<sup>1</sup> NPPF, Paragraph 173

to offset the very low value options provided by some tenures such as social rent, for development viability to stack up and the threshold level of affordable housing to be achieved.

### **Offsite and cash in lieu**

Paras 2.48 - 2.53 - Scrutiny and control over the use of payments in lieu by the Mayor, including proposals to monitor and publish information on how monies are spent is welcome.

The SPG or the London Plan should place a fixed time limit on the borough to commit funds to affordable housing projects, after which the monies would be transferred to the Mayor to be used in one of the GLA's affordable housing programmes. For further information about this, see our report *The Off-Site Rule*.

### **Public Land**

The effective provision of public land has an important role to play in supporting the Mayor's ambitions as set out in the SPG. We believe the Mayor, through Homes for Londoners, should play a key role in the delivery of housing on publicly-owned land. This includes:

- Advising on a strategy for TfL land, from the perspective of maximising housing delivery;
- Advancing the work of the London Land Commission;
- Providing a centralised competency for compulsory purchase powers;
- Providing a source of expertise and guidance in surmounting perceived or real constraints around 'best consideration', procurement and State Aid.

## **SPG Part 3: Guidance on Viability Assessments**

We support the move towards transparency and openness in the viability process but this must not be at the expense of disclosing commercially sensitive information. Likewise, we welcome the aim of trying to streamline the viability process but greater flexibility is required on the methodology and inputs used, in order to allow individual proposals to be treated on a case-by-case basis.

### **Detailed comments**

Para 3.6 – We support the proposed requirement for an executive summary of the report.

### **Appraisal requirements**

Para 3.7 - 3.9 – The viability process is an objective one and not specific to the applicant. Information on the applicant should not be required since the viability is assessed in relation to the site and not the applicant's individual circumstances.

### **Development Values**

Para 3.10 - 3.13 – We query why growth assumptions are required, when the viability review stage proposed would ensure that any future growth or uplift is captured.

### **Affordable Housing Values**

Paras 3.16 – 3.19 - Any offers from an RP are likely to be commercially sensitive. While an RP may wish to come forward at an early stage (i.e. before planning permission has been granted), it may be legally problematic to do so if their financial offer, a commercial deal between the RP and the applicant, is fully disclosed.

Due to constraints created by grant funding, RPs will find it easier to commit to purchase or agree a price if there is certainty on timings e.g. if the scheme is beyond pre-application stage.

### **Build Costs**

Para 3.20 - The draft SPG advocates the use of Building Cost Information Service (BCIS) as the principal source of build costs, supported by evidence from cost consultants. However, greater flexibility is required to consider actual build costs from comparable schemes, as BCIS does not provide reliable data - particularly for schemes in central and inner London. A report by a qualified quantity surveyor should be acceptable to the Borough and GLA and can be examined by the boroughs consultants.

Para 3.25 - The draft SPG assumes that all abnormal costs would be known by the applicant prior to the purchase of the site. This is not a realistic expectation, as there are almost inevitably some abnormal costs that a developer is unlikely to know of until they begin work on-site. For example, higher than expected decontamination costs, and additional costs arising from detailed specifications for highways works, site preparation and so on.

Para 3.27 – The draft SPG sets out that appraisals should be based on current day costs, however, there should also be an allowance for mid-point inflation to reflect how contractors structure their costs.

### **Developer Profit**

Para 3.33 - We disagree that financial returns should be lower than 2008/09, particularly given the current uncertain economic climate. We would expect risk levels for any scheme to be reflected in the profit sought by the developer and suggest that para 3.33 is removed.

Para 3.35 – IRR should be an acceptable proxy for measuring profit (linked to growth).

### **Benchmark Land Value**

Paras 3.36 - 3.41 - the Existing Use Value (EUV) plus approach proposed is unlikely to incentivise the release of land for residential development, especially given the premium the GLA proposes to allow (of 20-30%). If a site is developed at a particularly low density or is low value, it will have a low EUV. The hope value that might be expected from redevelopment, based on planning policies and design considerations, may however be significantly higher than 20-30% above the EUV (e.g. if for a use

other than housing). The 20-30% level of premium above the EUV will, in such circumstances, not encourage the landowner to release the site for residential-led development. This poses a significant risk that the developer will seek to pursue an alternative, non-residential-based scheme (such as for commercial or office development for the site), or simply hold onto the site with the expectation that the EUV plus approach will be revised later, allowing for a higher premium.

### **Alternative Approach**

Para 3.46 - The SPG should allow for alternative uses which have not been granted planning permission but have a reasonable prospect of achieving permission based on their accord with planning policy, or in light of other material considerations. For example, a mix of different uses and different floorspace levels should be taken into account, if planning permission would be granted for them.

Para 3.48 - The SPG should recognise there are circumstances where market value is appropriate in the viability process.

Para 3.49 - The SPG needs to be more flexible to allow for circumstances when it is appropriate to consider alternative approaches to benchmark land value. Otherwise there will be circumstances where there is little incentive for developers to release sites for residential use with the proposed EUV plus approach.

### **Review Mechanisms and Contingent Obligations**

Para 3.51 – In line with our comments on Route A, the SPG's proposals for reviews will discourage the implementation of development schemes and delivery of new affordable homes. Review mechanisms beyond the pre-commencement stage should only apply to complex or multiphase schemes where there is limited information available for future phases. If reviews are adopted they should be both upwards and downwards to reflect changes in the market.

## **SPG Part 4: Build to Rent**

The proposals to expand the BTR market in London represent a significant and positive change in policy. We are pleased the Mayor recognises the potential of this emerging market and is intent on creating a policy context and operating environment for the sector to grow. The policy alignment between the Housing White Paper and the draft SPG reinforces the Mayor's positive work to create this operating environment.

### **Viability**

Para 4.5 & 4.38 - We welcome the SPG's acknowledgement of the distinct financial model of BTR. We agree with the Mayor's measures to support BTR developments where, due to the lower and longer rates of return, prospective developers will not be able to bid for land at the same rate as for sale residential developers. The Mayor's emphasis on providing further support for BTR by working in partnership with boroughs, to bring forward public land, provide a clear and consistent approach to planning permission for BTR schemes and maximise investment into the sector is a positive step.

## **Exemption from the Threshold Approach**

Para 4.7 - We support the exclusion of BTR from the draft SPG's threshold approach. This should help the sector to grow and provide further confidence to BTR developers and investors.

## **Definition**

Para 4.9 – While we expect most developments to be above 50 units, we believe it is important to retain the flexibility necessary to establish whether BTR can operate on smaller or fragmented sites. As such we suggest that 50 units remains as a guideline but with the flexibility to deliver projects at a lower level.

BTR schemes should have high quality professional management. However, this does not always need to be on-site. In many existing good quality affordable and private rental schemes, particularly those below 100 units, on-site management is not universal and a requirement for such could impact heavily on viability and not deliver a higher standard of service. Furthermore, on-site management may result in unwanted cost increases to residents. On-site management is not a blanket regulatory requirement for affordable rented housing and, as such, should not be so for BTR schemes. We suggest this requirement is altered or removed.

## **Clawback**

4.12 - 4.15 – BTR developments are long term products. In time, as in countries with mature markets, a secondary market should develop where companies buy BTR blocks from each other. However, where, for whatever reason, the developers want to sell some individual homes in accordance with the terms of the covenant the clawback should be paid on the proportion of the units sold rather than on the whole building.

## **Design**

Paras 4.19 - 4.29 - We welcome the recognition that local policies on design should be applied flexibly, both to reflect demand for new rental stock and to take account of the viability challenges facing BTR development. Unit size, bedrooms, aspect, units per core and amenity space will all be driven by requirements to attract new and changing customers and operate efficiently over the long-term.

Para 4.28 – Paragraph 1.55 of the government's Housing White Paper: 'Fixing our broken housing market' acknowledges that, with regard to design standards, 'one size does not fit all'. It would be logical to echo this steer in the SPG.

The government's forthcoming review of the national space standards represents a good opportunity to consider the role of space standards in relation to BTR development in London. The Mayor should play a full part in responding to this consultation with a view to securing an appropriate BTR standard for London.

## **Affordable Housing & Discount Market Rent (DMR)**

Paras 4.19 - 4.20 - We support the proposal for the affordable housing provision for BTR schemes to be entirely DMR, managed by the provider and delivered without grant. This will allow for single management of a BTR development which is vital to securing more investment into the sector, and also offers other benefits as noted in the SPG such as the ability to more easily make developments tenure blind.

### **London Living Rent**

Para 4.21 – The affordability measure for London Living Rent (LLR) is based on a single household income. BTR developments will most likely be designed with a key market of sharers in mind. Where properties are designed to be occupied by two couples the current LLR proposals do not take this into account. The Mayor should consider amending the affordability measure to reflect this market.

Para 4.22 - We would welcome clarity on the rationale for London Living Rent increases being limited to CPI. Given the likely rise in costs of materials and labour, having the flexibility to increase rents by CPI+1% would provide greater surety for investors and more resilience for schemes in the development pipeline. Furthermore, there is precedent for this baseline in the previous affordable housing settlement.

Para 4.24 - In stipulating London Living Rent as the preferred DMR product for BTR, the Mayor is in most instances pushing developers to deliver a lower number of affordable homes with higher level discounts against market rent. This approach may create tension with boroughs who are seeking to deliver high numbers of affordable housing, often using lower levels of discount. The Mayor will therefore need to robustly defend this approach if the trade-off outlined above is not being properly understood or implemented at a local level. The wording of the SPG should be strengthened to make this clear.

### **Dwelling Mix**

Para 4.27 - We welcome the Mayor's steer to local authorities to be more flexible on dwelling mix and unit sizes. It is unlikely that the expected mix found in BTR developments (mostly 1 and 2 beds) will meet local authority requirements which will include more 3 bed and family homes.

### **Management Standards**

Para 4.36 – While we support the intention to ensure that suppliers are of a high quality, we do not agree with the following technical measure:

*4.36 'Providers must have a complaints procedure in place and be a member of a recognised ombudsman scheme. They must also have membership of a designated professional body, such as the British Property Federation or Royal Institute of Chartered Surveyors...'*

The British Property Federation (listed as an example) are a trade body and not a professional body: the BPF has no responsibility for professional standards in the sector. We suggest this point is reworded in the finalised SPG.

### **General Support for Build to Rent**

Para 4.38-4.39 – The steps outlined to provide further support for BTR, including through local planning policy and use of public land, are welcome.

As the GLA are aware, we are currently working with London Councils on a publication for councillors about BTR which the GLA. This publication will highlight to councillors the benefits that build to rent development can offer their local areas. The Mayor should consider what more can be done in this space to help explain to councillors the difference between the quality of homes and professional management delivered by BTR developers and the wider PRS market, characterised by small and amateur landlords.