

<p>Cabinet</p> <p>19 September 2017</p>	
<p>Report of: Ann Sutcliffe, Acting Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>The Adoption of a Development Viability Supplementary Planning Document</p>	

Lead Member	Councillor Rachel Blake, Cabinet Member for Strategic Development
Originating Officer(s)	Owen Whalley, Divisional Director, Planning and Building Control
Wards affected	All
Key Decision?	Yes
Community Plan Theme	A great place to live

1. EXECUTIVE SUMMARY

- 1.1 This document has been prepared in order to seek approval from the Mayor in Cabinet to adopt a Development Viability Supplementary Planning Document (SPD).
- 1.2 The SPD provides guidance as to how Development Plan policies should be applied in a development viability context when determining planning applications. It aims to provide greater clarity to both applicants and the general public, and ensures that the principles of sustainable development are at the forefront of decision-making in Tower Hamlets. The SPD would also ensure the assessment of the viability of planning applications is efficient, consistent and transparent, and would help to avoid delays in the decision-making process.
- 1.3 In particular, the SPD will generally allow the Council to only accept the submission of Financial Viability Assessments on the basis that they can be made available to the public. Therefore, this SPD is key to achieving the Council's transparency objectives.
- 1.4 Two six week public consultations on the SPD have been carried out, each in accordance with the Council's Statement of Community Involvement.

2. RECOMMENDATIONS

2.1 The Mayor in Cabinet is recommended to:

- Approve the adoption of the Development Viability Supplementary Planning Document attached at Appendix A;
- Note the Report on the Second Consultation attached at Appendix B, and approve the publication of this document on the Council's website;
- Note the Adoption Statement (Appendix C) and Strategic Environmental Assessment Screening Determination and Sustainability Appraisal Review (Appendix D) and approve the publication of these documents on the Council's website;
- Note the Equality Analysis Quality Assurance Checklist (Appendix E) completed in respect of the Development Viability Supplementary Planning Document.
- Note the Report on the First Consultation attached at Appendix F;
- Note that the Supplementary Planning Document states that the Council "will have regard" to the "Threshold Approach to Viability" as described in the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance document. See paragraphs 5.18 to 5.21 below for more information on this matter.

3. REASONS FOR THE DECISIONS

3.1 There are several reasons for the decisions sought in this report:

1. The SPD enables the Council to declare that it will generally only accept Financial Viability Assessments, submitted alongside relevant planning applications, on the basis that they can be made publicly available. This will ensure the Council can make Financial Viability Assessments and reviews undertaken by the Council are generally made available to the public. This is important to achieving the general objectives of the Mayor's Transparency Protocol.
2. The adoption of a Development Viability SPD will ensure the Council's approach to viability is clearer for applicants and the public, helping to improve understanding of viability matters and helping to avoid delays in the decision making process for planning applications.
3. Adopting the SPD will help the Council be compliant with with the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance which forms part of the Development Plan hierarchy.

4. ALTERNATIVE OPTIONS

4.1 The only realistic alternative options are:

- To not adopt a Development Viability SPD: This is not considered an appropriate option because this would mean the Council would have a less transparent and standardised approach to dealing with development viability in the context of planning applications.
- Adopt a different Development Viability SPD containing alternative measures: This is not considered to be a suitable option as Planning and Building Control consider the measures described in the proposed SPD are appropriate. In addition, the proposed SPD has been the subject of two public consultations.

5. BACKGROUND AND CONTEXT

The Challenge of Providing Affordable Housing

- 5.1 The delivery of homes is a huge challenge for Tower Hamlets, as the borough's population is expected to increase from 291,300 in 2015 to 388,600 by 2030. The delivery of housing in the borough is required, not only to respond to local need, but also to fulfil the borough's duty to cooperate with neighbouring boroughs and help meet strategic housing needs identified in the London Plan. Tower Hamlets is expected to deliver 39,310 new homes, which is approximately 10% of the London Plan total London Housing target, by 2025.
- 5.2 The challenge for Tower Hamlets is that high levels of deprivation and poverty exist in the borough, which provides a stark contrast to the wealth and prosperity that has grown around Canary Wharf and the City fringe areas of the borough. There are nearly 20,000 households on the Common Housing Register with over 50% in high priority need. Evidence from both the Greater London Authority and the Tower Hamlets Strategic Housing Market Assessment estimate a need for an additional 46,458 homes by 2031.
- 5.3 The shortage of affordable homes has led to an extremely heated housing market. The private rented sector has doubled in size over the past 10 years but rents are beyond the reach of households on average incomes are well above Local Housing Allowances. Private market sales start at a minimum of £300,000 for an ex local authority right to buy flat and so even the lowest level of home ownership is beyond the mean of average income households.
- 5.4 In April 2017 the average house price in Tower Hamlets was £470,021; this is an increase of 2.9% from the year before (£456,740 in April 2016). Dips in residential values in the borough over the last 20 years have been relatively short lived, and have been more than offset by subsequent increases.

- 5.5 The adoption of a Development Viability SPD, following the example of boroughs including LB Southwark and LB Islington, will hopefully increase the Council's ability to maximise planning obligations and in particular the provision of affordable housing.

Viability in the Planning System

- 5.6 The National Planning Policy Framework (NPPF) requires that careful attention to viability should take place to ensure that the burden of required or necessary planning obligations, such as affordable housing, do not threaten the viability of development, and provide a competitive return to willing land owners and developers when taking the normal costs of development into account.
- 5.7 Assessing viability demonstrates the scale of planning obligations which are appropriate. However, the NPPF is clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.
- 5.8 The SPD was formed in response to these challenges, and the adoption of a Development Viability SPD would ensure the assessment of the viability of planning applications is efficient, consistent and transparent; and would help to avoid delays in the decision making process.

Transparency

- 5.9 Financial Viability Assessments are currently submitted on the basis that they must remain confidential. This means that the Council can't make these assessments publicly available unless:
- It is confident that the public interest in publishing an assessment outweighs the commercial harm to the developer (as per the 'public interest test' set out in the Environmental Information Regulations);
 - A decision by the Information Commissioner's Officer (ICO) prescribes that the assessment should be published.
- 5.10 The Mayor of Tower Hamlets' Transparency Protocol which was adopted by the Mayor in Cabinet in November 2015 and described the following action that needed to be carried out by Planning and Building Control (P&BC):

Explore the possibility of requiring developers to publish Planning Viability Assessments, which have previously been restricted due to commercial sensitivity.

- 5.11 P&BC explored how the Council could publish Financial Viability Assessments by seeking Counsel Advice in respect of the matter. The advice received confirmed that the Council could implement a position of transparency by making a public declaration that the Council will not receive Financial Viability

Assessments from here onwards on any basis other than that information can be made freely available to all members of the public.

5.12 One of the main purposes of the SPD is that it enables the Council to declare that it will only accept Financial Viability Assessments on the basis that they can be made publicly available. The SPD makes an allowance for exceptions to the position of transparency in very limited circumstances and only in the event that there is a convincing case that disclosure of an element of a FVA would cause harm to the public interest to an extent that is not outweighed by the benefits of disclosure. In this regard the Council may accept the submission of a FVA that aggregates potentially commercially sensitive inputs.

5.13 Please note that Planning and Building Control are exploring the use of the Council's Open Data system in terms of the publication of Financial Viability Assessments.

How the SPD has been formed

5.14 The SPD was formed through a Working Group that comprised members of the Council's Infrastructure Planning, Strategic Planning, Development Management, Housing Strategy and Legal teams.

5.15 The formation of the SPD has taken account of:

- The Development Plan (the Local Plan, London Plan, NPPF and associated guidance);
- SPDs formed by other boroughs (LB Southwark and Islington);
- The London Boroughs Viability Protocol: This is a document formed in collaboration with thirty London Boroughs. The protocol draws on best practice to set out overarching principles for considering development viability within the planning process.
- The Mayor of London's Affordable Housing and Viability SPG. The Greater London Authority (GLA) are in the process of adopting this document and the Council has engaged with them to ensure appropriate consistency between the two documents.

5.16 Two public consultations, carried out in accordance with the Council's Statement of Community Involvement (SCI), have been undertaken on the SPD:

Consultation	Dates
Consultation 1	31/01/2017 – 14/03/2017
Consultation 2	27/04/2017 – 08/06/2017

5.17 The SPD will be published alongside Consultation Reports (attached) that set out the representations received in respect of the consultations carried out. The Consultation Reports also set out the Council's response to the representations received as well as the amendments the Council is proposing to make to the adoption version of the SPD following the consultation.

The Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance

5.18 The Mayor of London is in the process of adopting an Affordable Housing and Viability Supplementary Planning Guidance (SPG) document. The Council's SPD has been formed to be consistent with this document.

5.19 One thing to note about the above referenced guidance is that it is proposing a "Threshold Approach to Viability". This is a process whereby schemes that meet or exceed 35% affordable housing (accounting for local unit and tenure mix requirements) without public subsidy, are not required to submit detailed viability information alongside relevant planning applications.

5.20 The Council's SPD states, with regard to the "Threshold Approach to Viability":

The Council will have regard to the threshold approach to viability in accordance with the process set out in the Mayor of London's Affordable Housing and Viability SPG. The Council will keep this matter under review to ensure it is effectively meeting its objectives.

5.21 The Mayor of London's SPG is regional level guidance that the Council is expected to comply with. In order for the Council to justify a deviation from the "Threshold" approach, the Council would have to demonstrate that it consistently achieves in excess of 35% affordable housing on market-led schemes. The Council would not currently be able to demonstrate this but the SPD commits to keeping this position under review.

Associated Documents

5.22 The SPD (Appendix A) is being adopted alongside the following supporting documents:

- Report on Second Consultation (Appendix B): This documents sets out the Representations received in respect of the second consultation carried out, the Council's responses to the representations made, as well as the changes the Council made to the SPD following the consultation.
- Adoption Statement (Appendix C): This document clarifies the status of the adoption for the public and provides information on where the SPD can be viewed.
- Strategic Environmental Assessment Screening Determination and Sustainability Appraisal Review (Appendix D): This document considers the potential impacts of the SPD on the environment, the economy and

society. It does this by assessing the extent to which the SPD will contribute to a series of objectives that cover a range of issues, including air quality, landscape, water, health and the population. This document finds that the SPD is unlikely to have any significant effect on any of the objectives.

- Report on First Consultation (Appendix F): This document sets out the Representations received in respect of the first consultation carried out, the Council's responses to the representations made, as well as the changes the Council made to the SPD following the consultation. In accordance with legal requirements, it also provides a summary of the main issues raised and describes the persons who were consulted.

5.23 In addition to the above stated documents, an internal Equality Analysis Quality Assurance Checklist (Appendix E) has been carried out. This document examines whether the implementation of the SPD will have any adverse impact on equality groups. It found that the SPD will not have any adverse impacts on any particular equality group.

Content of SPD

5.24 Please find below a list of the chapters incorporated within the SPD and a summary of the contents:

1. **Introduction:** This chapter introduces the SPD, defines its purpose and sets out how it has been formed.
2. **Local and Policy Context:** This chapter summarises the local context including the relevant socio-economic considerations. It also sets out the relevant policy context in terms of the SPD.
3. **Key Requirements Overview:** This chapter sets out the key requirements of the SPD.
4. **Process Overview:** This chapter provides an overview of how FVAs should be submitted and how they will be considered.
5. **Transparency, Deliverability and Information Requirements:** This chapter makes it clear that FVAs can be made publicly available. It also requires that FVAs cannot be submitted where they show a proposed scheme to be technically unviable. It also defines the documents that must be submitted by applicants alongside planning applicants.
6. **Methodology: Financial Viability Assessments:** This chapter defines the overall methodology for FVAs and sets out how the inputs should be treated.
7. **Viability Reviews:** This chapter clarifies the Council's proposed approach to review mechanisms which is where the viability position of a scheme is reviewed at various points in the construction programme.

8. Affordable Housing: Payments in Lieu and Off-Site Delivery: This chapter clarifies the Council's approach to accepting payments in lieu and the off-site delivery of affordable housing.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 Following the conclusion of the consultation process, this report seeks the approval of the Mayor in Cabinet to adopt the Development Viability Supplementary Planning Document (SPD) as a document to support the Local Plan.
- 6.2 The submission of viability assessments is an essential requirement in the consideration of planning applications. Viability assessments include the evaluation of a range of factors as set out in Table 3 'Statement of Reasons' of the SEA Screening Determination Letter and Sustainability Appraisal Review included as Appendix D of this report.
- 6.3 A major element of the assessment relates to the financial viability of proposed developments. Currently the Council uses specialist consultants to review the financial viability assessments that are submitted in relation to major planning applications. These companies have been appointed under a framework agreement at an estimated total cost of £234,000 over a three year period, funded from within the fees generated by the planning service. In order to ensure that costs are fully recovered, the Development Viability Supplementary Planning Document (Appendix A) specifies in paragraph 4.14 that *"FVAs will be reviewed by the Council or referred to appointed assessors. Applicants will be required to meet the costs, as specified by the Council, associated with FVAs, including legal fees and additional cost consultancy fees if appropriate. We recognise that requiring payment of these costs prior to the work being carried out might be difficult and could delay the planning application process. Therefore, the Council will require the submission of a solicitor undertaking to pay the fees at the planning application validation stage. Such an undertaking may also be expressed in a Planning Performance Agreement."*
- 6.4 In addition to providing data to support the evaluation of the viability of a project, the financial assessments assist the Authority in determining and prioritising contributions due from developers as part of the Planning Obligations (Section 106) system.
- 6.5 The costs of the consultation process were met from within existing revenue resources.

7. LEGAL COMMENTS

- 7.1 This report recommends that the Mayor in Cabinet approves the adoption of a Development Viability Supplementary Planning Document.

- 7.2 Supplementary Planning Documents (SPDs) provide detail to support planning policy set out in higher level Development Plan Documents (DPDs) (i.e. the Local Plan and the London Plan). They do not and cannot introduce new planning policy, however, once the SPD is adopted it will be considered to be a material consideration which is to be taken into account in the development control process. They undergo a simpler preparation process than DPDs and in particular they are not subject to independent scrutiny by a planning inspector. SPDs are subject to statutory preparation procedures under Regulations 12 to 14 of the Town and Country Planning (Local Planning) (England) Regulations 2012, with the requirement to undergo a process of public consultation and engagement with relevant parties for a period of not less than 4 weeks.
- 7.3 Pursuant to the above regulations, before the Council adopts a supplementary planning document we are required to prepare a statement setting out: (a) the persons the local planning authority consulted when preparing the supplementary planning document, (b) a summary of the main issues raised by those persons, (c) how these main issues have been addressed in the SPD. This statement was prepared as required and made available during the statutory consultation period.
- 7.4 Separate reports on the first and second consultations detail the two rounds of consultation that have been undertaken and Legal Services are satisfied that the statutory requirement for consultation has been met. Before taking a decision Cabinet should consider the representations made during the consultation periods as set out in Appendix B and F.
- 7.5 Pursuant to section 9D of the Local Government Act 2000 all functions of an authority are executive functions unless they are specified as not, in either the Local Government Act 2000 or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Whilst some Planning functions cannot be the responsibility of the Executive, the adoption of a SPD is not a specified function and therefore the adoption of the SPD is an executive function and can be approved by Cabinet.
- 7.6 When considering whether to adopt the Development Viability Supplementary Planning Document (SPD), the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). An equality analysis is required which is proportionate to the functions in question and the potential impacts.

8. ONE TOWER HAMLETS CONSIDERATIONS

- 8.1 This report explains the details of the SPD and how it provides guidance as to how Development Plan policies should be applied in a development viability context when determining planning applications. The SPD allows for the

objectives of One Tower Hamlets and those of the Community Plan to be accounted for in decision-making and infrastructure delivery.

- 8.2 It is intended to provide greater clarity to both applicants and the general public, and ensures that the principles of sustainable development are at the forefront of decision-making in Tower Hamlets.

9. BEST VALUE (BV) IMPLICATIONS

- 9.1 The proposals set out in this document align with the Council's Best Value Duty and have been formed with consideration of the Best Value Strategy and Action Plan.
- 9.2 The formation of this new SPD represents an improvement in the way the Council's functions are exercised. The proposals have regard to economy, efficiency and effectiveness in that they add layers of oversight when determining planning applications to deliver viable infrastructure.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 10.1 The proposed SPD is accompanied by a Strategic Environmental Assessment Screening Determination and Sustainability Appraisal Review (Appendix D) which considers the effect of the proposed SPD on environmental matters, amongst other things.

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 The proposals set out in this report seek to adopt a more standardised and transparent approach to managing Financial Viability Assessments submitted in support of planning applications. The measures described will help mitigate against risks associated with viability negotiations.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 12.1 Whilst the proposed SPD is not likely to have any direct impact on crime and disorder reduction, the SPD aims to maximise the delivery of affordable housing in the borough and therefore reduce inequality which can have a positive impact in terms of crime and disorder reduction.

13. SAFEGUARDING IMPLICATIONS

- 13.1 Not applicable.
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Appendices

Appendix A: Draft Development Viability Supplementary Planning Document;

Appendix B: Report on Second Consultation;

Appendix C: Adoption Statement;

Appendix D: Strategic Environmental Assessment Screening Determination and Sustainability Appraisal Review;

Appendix E: Equality Analysis Quality Assurance Checklist.

Appendix F: Report on First Consultation.

Linked Report

- None

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

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