



**Draft Development Viability  
Supplementary Planning Document  
(SPD)**

**Consultation Report**

**April 2017**

## **CONTENTS**

	<b>Page</b>
<b>Section 1: Introduction</b>	
What is the Development Viability SPD?	3
What is this Consultation Report?	3
Where to get more information	3
What happens next?	4
<b>Section 2: Draft Development Viability SPD consultation</b>	
Who was consulted and how?	4
<b>Section 3: Representations on the draft SPD</b>	
Responses received in respect of the consultation on the draft SPD	5
Summary of the changes made to the SPD	7
<b>Appendices</b>	
<b>Appendix A</b>	
Detailed summary of Representations and the Council's responses	
<b>Appendix B</b>	
Consultation Notification – advertised in East End Advertiser	

## **Section 1: Introduction**

### **What is the Development Viability Supplementary Planning Document (SPD)?**

- 1.1 Paragraph 173 of the National Planning Policy Framework (NPPF) requires that Development Plan Policies and Planning Obligations are considered in terms of their impact on the viability of a development.
- 1.2 The Development Viability SPD sets out a number of important measures the Council considers will:
  - Enhance public participation in planning;
  - Support the compliance of planning regulations and guidance;
  - Provide certainty to applicants and developers;
  - Help maximise the benefits of development for local people.
- 1.3 The SPD sets out the Council's requirements for Financial Viability Assessments (FVAs) to be made public and the process for assessing these appraisals. It will ensure the assessment of the viability of planning applications is efficient, consistent and transparent.
- 1.4 The document supports the Development Plan by providing further detail on how we will implement our planning policies where viability is an issue.

### **What is this Consultation Report?**

- 1.5 This report explains the consultation on the Draft SPD that took place from the 31/01/2017 to 14/03/2017 and how comments that individuals and organisations have made have been taken into account and how they have influenced changes to the SPD.
- 1.6 The consultation undertaken was done so in accordance with both local and regulatory requirements. The Council's local requirements are set out in our Statement of Community Involvement (SCI) (2012) which explains how the Council consults on planning policy documents and also on planning applications. The Council's Regulatory requirements arise from Town and Country Planning (Local Planning) (England) Regulations 2012.

### **Where to get more information**

- 1.7 The draft Development Viability SPD and associated documents can all be viewed at our website:

<http://www.towerhamlets.gov.uk/viability>

- 1.8 Copies are also available by contacting the Infrastructure Planning Team at:

Infrastructure Planning Team  
London Borough of Tower Hamlets  
Mulberry Place  
5 Clove Crescent  
London  
E14 1BY  
Email: [viability@towerhamlets.gov.uk](mailto:viability@towerhamlets.gov.uk)  
Tel: 020 7364 2343 / 0207 7364 1666

### **What happens next?**

- 1.9 The SPD will be the subject of one further consultation from 27/04/2017 to 08/06/2017. Following this, the consultation responses received will be considered and the final version of the SPD will be formed and referred to the Mayor in Cabinet for approval to adopt. If adopted, the impact and effectiveness of the SPD will be monitored on an ongoing basis.

### **Section 2: Draft Development Viability SPD Consultation**

- 2.1 The Council has undertaken an initial (Regulation 12) consultation on the SPD for a period of six weeks from 31/01/2017 to 14/03/2017.

### **Who was consulted and how?**

- 2.2 We consulted a wide range of residents, developers, land owners and planning agents on the draft Development Viability SPD. The parties consulted consisted of statutory consultees as well as parties who have been active in Tower Hamlets in the past few years and all parties on the Council's consultation list which included all of the parties who were consulted as part of the Council's Regulation 18 version of its new draft Local Plan.
- 2.3 The extent of consultation described in the paragraph above means the Council met the requirements of the Statement of Community Involvement (2012) (SCI) and the requirements of the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 2.4 The draft SPD was accompanied by a Consultation Statement which outlined how the Council consulted on the document and how parties were able to make representations.
- 2.5 Copies of the SPD and supporting documents were made available at the Town Hall and the Council's Idea Stores and main Libraries.
- 2.6 In addition, the Localism Act 2011 requires co-operation between local authorities and a range of other bodies and organisations as an integral part of the preparation of planning policy and guidance. This is called the "Duty to co-operate". The Town and Country Planning (Local Planning) (England) Regulations 2012 and the National Planning Policy Framework (2012) set out these prescribed bodies and further information on the need for local

authorities to work with these bodies and also their neighbouring boroughs on strategic planning issues and cross boundary issues. The Council engaged with these bodies as part of the consultation already undertaken.

### **Section 3: Representations on the Draft SPD**

#### **Responses received in respect of the consultation on the draft SPD**

- 3.1 Thirteen formal representations were received in respect of the initial consultation on the SPD, from the following parties:

DVSPD01 – DS2 on behalf of Bishopsgate Goods Yard Limited  
DVSPD02 - Gerald Eve on behalf of Crest Nicholson London  
DVSPD03 - Carter Jonas on behalf of National Grid Property Holdings  
DVSPD04 - Rolfe Judd Planning on behalf of various clients  
DVSPD05 - The Canal & River Trust  
DVSPD06 - Berkeley Group  
DVSPD07 - DS2 on behalf of The Ballymore Group  
DVSPD08 - Port of London Authority  
DVSPD09 - Greater London Authority  
DVSPD10 - CMA Planning on behalf of various clients  
DVSPD11 - Environment Agency  
DVSPD12 - Metropolis Planning and Design  
DVSPD13 - Health and Safety Executive

- 3.2 The Council has endeavoured to distil the main points made in each representation and respond to each one. Please find attached at Appendix A a schedule of the main points made in the representations received and the Council's response to each point.

- 3.3 A number of matters were raised consistently in the representations received. Please find below a selection of the matters consistently raised alongside the Council's response to these points:

**Matter 1: The Council's move towards transparency is welcomed.**

The Council's Response: The Council notes the general welcoming of the move towards transparency and considers this key in encouraging public participation in the planning process.

**Matter 2: Transparency: The SPD describes that in very limited circumstances information may not be disclosed to the public, or can be aggregated to protect legitimate claims of commercial sensitivity. This is not considered a flexible enough approach to deal with legitimate claims of commercial sensitivity.**

The Council's Response: The Council's transparency requirements as described by the SPD have been formed in recognition of the importance of public participation. The Council considers the public availability of viability

information as key to ensuring confidence in the planning system and that the process is open to scrutiny.

The SPD describes that in very limited circumstances information may not be disclosed to the public, or can be aggregated to protect legitimate claims of commercial sensitivity. The Council does not consider that changes to the proposed SPD are required in this regard.

**Matter 3: Deliverability: Concern has been raised in respect of the SPDs requirement for any financial deficit a proposed scheme demonstrates to be shown in terms of its impact on profit.**

The Council's Response: The requirement in paragraph 5.6 of the SPD to express any deficit against a benchmark land value in terms of an impact against the scheme's profit is to better inform the Council of the position of applicants where schemes demonstrate a deficit. The SPD has been amended to provide better clarity in this regard and wording has been added to allow the inclusion of growth to account for deficits.

The wording of paragraph 5.6 has been amended slightly for clarity.

**Matter 4: Benchmark Land Values: Some Representors consider the SPD is too definitive in terms of its preference for an 'Existing Use Value plus' approach.**

The Council's Response: The SPD describes that in most cases Benchmark Land Values will be assessed with reference to an Existing Use Value plus approach. The Council considers this is consistent with emerging and adopted guidance from the Mayor of London and provides greater certainty to applicants.

**Matter 5: Benchmark Land Values: Some Representors consider the SPD is too definitive in terms of it describing that the Council would generally not expect the level of premium above Existing Use Value for benchmark land values to exceed 20%.**

The Council's Response: The Council acknowledges the issue highlighted in establishing an appropriate level of premium. In the Council's experience a premium of 20% is most commonly applied hence the SPDs reference to this level of premium generally.

**Matter 6: Benchmark Land Values: The SPD describes that the use of Alternative Use Values will only be considered in the event of a planning permission for the alternative use being in place. Representors consider that this should not be the case.**

The Council's Response: Whilst having a planning permission in place for the alternative use is not required, it is preferred. The SPD has been amended to reflect new requirements of when an Alternative Use Value can be adopted.

**Matter 7: Viability Reviews – 60/40 surplus split: The SPD describes that any surplus identified as part of a viability review should be split 60/40 in favour of the Council. Representors consider a split in favour of the Council is not justified.**

The Council's Response: The split described in the SPD is consistent with the split described in the Mayor of London's draft Affordable Housing and Viability

Supplementary Planning Guidance (SPG). It also provides an incentive for developers to maximise sales within their development and ensures sufficient additional contributions are provided in order to meet planning policy.

**Matter 8: Viability Review: Representors raised concerns regarding the application of review mechanisms to smaller development, and the application of a review mechanism where a development has not reached substantial implementation in 24 months.**

The Council's Response: The SPDs approach to Viability Reviews is consistent with the draft Mayor of London's Affordable Housing and Viability SPG. The Council will work with applicants/developers in respect of review mechanisms drafted in specific S106 agreements but consider it important to set out a framework in the SPD for the basis of the formation of these parts of the agreements.

**Summary of the changes made to the SPD**

3.4 A number of changes have been made to the SPD following consultation, including:

- A number of minor grammatical and spelling changes have been made to make the document more consistent and easier to understand.
- Paragraph 2.10 has been amended slightly so that it more accurately reflects the wording of the Viability and Decision-Taking Planning Practice Guidance.
- Section 3 (Key Requirements) has been amended to reflect changes made to the SPD as described above, as well as to remove a duplicate key requirement.
- Paragraph 4.7 has been amended to reflect the fact Financial Viability Assessments are required to be submitted where the application triggers a planning policy requirement and where the policy requirement is not met.
- Paragraph 4.7 has been amended to provide further clarity on where a Financial Viability Assessment is required to be submitted in respect of a Section 73 application.
- Paragraph 4.8 has been amended to reflect that an FVA may be required to be submitted in respect of a proposal that will lead to less than substantial harm to the significance of a designated heritage asset and that applicants should engage with the Council in relation to specific schemes. This is as opposed to a submission being required.
- Paragraph 4.12 has been amended to reflect that a revised FVA should be submitted prior to referral for decision as opposed to prior to decision. This is to ensure that fuller public participation can take place ahead of a scheme being referred to one of the Council's Development Committees.

- Paragraph 4.14 has been amended so that it clarifies that conclusions described in reviews of submitted FVAs should be backed up by evidence.
- Paragraph 5.7 in the initial version of the SPD has been deleted. The content has been added to paragraph 5.6 so that the SPD better reflects that where schemes would otherwise demonstrate a deficit that either growth assumptions or an adjustment of a profit assumption should be included.
- Paragraph 6.10 has been amended to reflect that build cost assumptions should reflect planning policy and where they don't justification should be provided.
- The wording of the table under paragraph 6.16 has been amended slightly to reflect the fact that economies of scale in respect of marketing costs may not occur in every case.
- A new paragraph (6.25) has been added to reflect the fact that the Council generally expects profit allowances related to residential development, including affordable housing, to be expressed as a % of GDV.
- The paragraph relating to the circumstances under which an alternative use value (AUV) may be used as a benchmark land value (paragraph 6.30 in the updated draft SPD) has been amended to reflect the fact that a planning permission is not necessarily required to apply an AUV. A number of criteria for when an AUV can be used have also been added.
- Paragraph 7.7 has been amended to reflect that profit will be accounted for in review mechanisms. In addition an amendment has been added to clarify how finance costs will be treated as part of a review.
- Paragraph 7.8 has been amended slightly to correct an error: It previously referred to surplus split allowances for review mechanisms should be split between the Council and the developer according to the profit agreed at application stage whereas the rest of the document referred to a 60/40 split in favour of the Council.
- A new paragraph (7.10) has been added to reflect the fact that the outcomes of triggered review mechanisms will be fed back to either the Council's Development Committee or Strategic Development Committee (or equivalent).
- A glossary of key technical terms has been added.
- The 'payments in lieu' equation in section 8 has been amended so that the payment required is specific to the development site in question.

- Formulas 1, 3 and 5 of Appendix B have been amended so they better reflect all of the matters that need to be considered as part of a review mechanism, as described in paragraph 7.7 of the SPD.
- Formulas 2 and 4 in Appendix B have been amended to reflect known London Affordable Rent and Intermediate values as opposed to averages.
- A new paragraph (5.12) has been added to reflect some further procedural and ethical requirements.

### **Summary of changes to supporting documents**

3.5 The following amendments have been made to supporting documents:

#### SEA Screening Determination and Sustainability Appraisal Review (2017)

- This document has been reviewed. No substantial changes are required to the document which will be made available for comment as part of the second consultation on the SPD.

#### Consultation Statement (2017)

- A new Consultation Statement has been formed to describe how representations can be made in respect of the second consultation on the SPD.

## Appendix A - Detailed summary of Representations and Council response

	Representation	Councils Response
1	<b>DVSPD01 - DS2 on behalf of Bishopsgate Goods Yard Limited</b> <b>DVSPD07 - DS2 on behalf of The Ballymore Group</b>	
2	<b>A threshold approach to viability:</b> BGY Regeneration Limited would question whether the 35% figure is too high for the large strategic sites, with notable constraints, such as The Goodsyard. There is also limited incentive to get to 35%, where schemes are less viable, and the LBTH must recognise that whilst an incentive is helpful, ultimately, a scheme must meet a range of developers and funders' criteria to be delivered. There is a long term linear relationship between consents and starts in the Borough, and to break this and get more schemes on site and ultimately more homes delivered, the LBTH should recognise the relationship between planning obligations and CIL, development profit and land value.	<p>The Mayor of London's draft Affordable Housing and Viability Supplementary Planning Guidance sets out the 'Threshold Approach' and describes that the 'threshold proposed is 35% of a scheme'.</p> <p>In addition the Council's affordable housing target is 35% - 50%.</p> <p>For these reasons the Council considers the 35% figure to be appropriate.</p>
3	<b>Pre application advice</b> - The SPD encourages the submission of a draft financial viability assessment. Whilst BGY Regeneration Limited support the initiative of early engagement, the level of detail known in terms of costs and values of the scheme during the pre-application stage varies on a scheme by scheme basis, especially for a scheme such as the Goodsyard, as the design constantly evolves up until the point of the planning submission. Depending upon the length of time from pre-application to planning submission, costs and values could substantially change due to reasons outside of the Applicant's control and therefore the affordable housing provision indicated at the pre-application stage could then be subject to change. These changes would then have to be further justified. BGY Regeneration Limited would like the SPD to reflect the level of information known at the time of pre-application will inform what information is made available in regards to the financial viability assessment.	<p>The Supplementary Planning Document (SPD) aims to encourage early submission of viability information to lessen the likelihood of viability discussions causing delays in decision-making. It does not require the submission of viability information at the pre-application stage.</p> <p>Paragraph 4.6 of the SPD acknowledges that the levels of detail that can be provided will vary from scheme to scheme. The Council does not consider any change to the document is necessary.</p>

4	<p><b>Transparency</b> - The shift towards transparency is welcomed. BGY Regeneration Limited are very willing to share certain information as part of the planning process be it through the publication of information or through presentations on viability matters to Officers and Members. Certain information will not be made available; for example, information relating to funding agreements, rights to light liabilities or joint venture agreements. There is a real risk that too onerous application of this element of the SPD threatens a developer's commercial interests which is contrary to the tests as set out in the 2014 Environmental Regulations.</p>	<p>Noted that the shift towards transparency is welcomed.</p> <p>The Council's transparency requirements as described by the SPD have been formed in recognition of the importance of public participation. The Council considers the public availability of viability information as key to ensuring confidence in the planning system and that the process is open to scrutiny.</p> <p>The SPD describes that in very limited circumstances information may not be disclosed to the public, or can be aggregated to protect legitimate claims of commercial sensitivity. As such, the Council does not consider that changes to the proposed SPD are required in this regard.</p>
5	<p><b>Deliverability</b> - BGY Regeneration Limited are willing to provide this as a sensitivity analysis within the FVA. BGY Regeneration Limited and their funders would be unwilling and unable to reduce their profit expectations at the expense of delivering planning obligations nor should they be asked to in accordance with the NPPF which explicitly states a competitive return to a willing developer should be provided to enable the development to be deliverable. By reducing the profit expectations to satisfy LBTH that the development is deliverable simply increases the risk of the development not coming forward in the foreseeable future. Not all sites will be technically viable on a present-day basis. It is the Applicants decision to commit to the proposed level of planning obligations, should this indicate in the current day viability appraisal that the scheme is unviable, this doesn't necessarily mean that the scheme will be unviable in the foreseeable future. This is also key for determining viability reviews as the level of profit will need to be agreed at the date of consent so that once a viability review is undertaken it will still allow for a competitive return to the developer.</p>	<p>Noted. The requirement in paragraph 5.6 of the SPD to express any deficit against a benchmark land value in terms of an impact against the scheme's profit is to better inform the Council of the position of applicants where schemes demonstrate a deficit.</p> <p>The wording of paragraph 5.6 has been amended slightly for clarity.</p>
6	<p><b>Build costs</b> - Whilst BCIS is a helpful indicator for more straight forward projects, given the source and general scarcity of the data, it is not reliable for larger multi-phased projects. BGY Regeneration Limited believe wherever possible such assessments should be</p>	<p>The SPD does state that "In most cases it is likely to be more appropriate to rely on a specific assessment of build costs ('Cost Plans')." However, the Council still considers it appropriate that these costs are benchmarked against BCIS or Spon's information.</p>

	<p>benchmarked against other similar projects however benchmarking against BCIS or Spon's is only appropriate for smaller more straight forward projects and would not be appropriate for developments such as The Goodsyard.</p>	
7	<p>In regards to abnormal development costs, whilst it is accepted that some abnormal costs are likely to result in a lower land value that could be achieved on a site, the SPD does not recognise that not all abnormal costs are known by the Applicant until the land has been purchased and detailed site investigations have been carried out. Furthermore, the land value, as stated in the NPPF, should still provide a competitive return to the landowner in order to bring forward the site for development and this should be taken into consideration when considering abnormal costs and site value together. Where abnormal costs take the land value below the landowner's reasonable expectation, it may only be flexibility that is permissible in planning gain contributions, that ultimately allows the site to be delivered.</p>	<p>The Council considers the wording of the SPD to be appropriate in respect of the impact of abnormal costs on land value. The terminology used in the SPD is not absolute in terms of abnormal costs needing to be borne by land values.</p>
8	<p>BGY Regeneration Limited disagree with the statement in the SPD that marketing costs for larger developments, economies of scale are expected to occur, resulting in proportionally lower costs. Large developments involve significantly greater levels of marketing in order to meet the off-plan sales target imposed by funders such as banks to release developer funding. This can involve overseas marketing, marketing suites and greater levels of advertising so that the development stands out from the many other developments being marketed over a long-period of time, which is the case for Canary Wharf and the Isle of Dogs at present with a significant amount of units being sold. For multi-phased schemes, such as The Goodsyard, that require constant marketing over a period of time and also the refurbishment of marketing suites that could, for some large schemes, be 3 or 4 years old this all results in significantly higher marketing costs which are generally above the market average for large multi phased schemes.</p>	<p>Noted. Whilst the Council considers economies of scale in terms of marketing costs will apply in many instances, the SPD has been re-worded so that it reflects that this may not be the case in every instance.</p>

<p><b>9</b></p>	<p><b>Developer's profit</b> - The level of profit allowed should not be adjusted so that the scheme becomes viable when providing the proposed level of planning obligations. Profit is related to a range of variables including mix, scale and geographical location and is derived from the market and the prevailing conditions. Profit cannot arbitrarily be fixed at a certain level simply to manufacture a particular outcome.</p>	<p>The requirement in paragraph 5.6 of the SPD to express any deficit against a benchmark land value in terms of an impact against the scheme's profit is to better inform the Council of the position of applicants where schemes demonstrate a deficit.</p> <p>The wording of paragraph 5.6 has been amended slightly for clarity.</p>
<p><b>10</b></p>	<p><b>Benchmark land value</b> - The one size fits all approach to land values does not reflect the unique nature of development sites and the SPD seems to acknowledge this by recognising a number of ways of establishing an appropriate BLV. The SPD recognises that the CUV+ to viability is the preferred approach. However, it is the 'plus' in the equation that is relevant and should reflect the particular characteristics of the site and therefore a premium above 20% could be exceeded depending upon the characteristics of the site.</p> <p>As an example, a site with an existing tenanted office building with good rents may yield a reasonable CUV and with limited scope for a greater amount of space on the site, the uplift from CUV required to release the site may be very limited. Conversely, a cleared site or one with low-density and low-grade industrial uses, with an allocation for mixed use development, perhaps increasing site coverage multiple times, will not likely be released with a premium above CUV of 20% to 30% and it is highly probable that the release value will be a multiple of CUV rather than a margin above.</p> <p>Landowners in this latter scenario will feel entitled to a reasonable return for their asset. In the case of the office building it may be that land value represents, say 30% of GDV whereas in the case of the low-density industrial building, the land value may be no more than 10%. Valuers should use their professional judgement to assess the value of land for planning viability purposes, ensuring that there is a reasonable split between land value, development profit and</p>	<p>The SPD describes that in most cases the Benchmark Land Value will be assessed with reference to existing use value. The Council considers this is consistent with emerging and adopted guidance from the Mayor of London.</p> <p>The Council acknowledges the issue highlighted in establishing an appropriate level of premium. In the Council's experience a premium of 20% is most commonly applied hence the SPDs reference to this level of premium generally.</p>

	<p>planning obligations / CIL.</p> <p>BGY Regeneration Limited are very supportive that Market Value is acknowledged in the SPD due to the fact that The Goodsyards which has a low CUV, but with an allocation for a mixed use development wouldn't come forward if assessing the BLV on a CUV or AUV basis as this wouldn't reflect a premium to the landowner and in this case Market Value, reflecting policy requirements, would be the most appropriate BLV.</p>	
<p><b>11</b></p>	<p><b>Viability Reviews - Timings</b> - The SPD recognises that review mechanisms can contribute to additional planning gain based on future market improvements. Reviews have been incorporated on longer-term schemes, the RICS suggest a five-year development programme might be appropriate or where there are multiple phases. The SPD should seek to avoid the use of reviews on shorter term projects, unless exceptional circumstances exist, as reviews on smaller projects decrease the prospects of funding opportunities and ultimately, deliverability. The time taken to negotiate reviews, particularly on smaller schemes, can also be disproportionate.</p> <p>Reviews can also be time consuming in terms of their collation and their execution. In a single-phase scheme with a development programme of say two to three years, the potential for significant upside is relatively limited.</p> <p>The period of 24 months for the pre-implementation review should not be fixed and should be considered on a site by site basis. Clearly for large strategic sites such as The Goodsyard a longer period is required to reach substantial implementation than for a smaller, less complex site. This should form part of the S106 negotiations.</p>	<p>The SPDs approach to Viability Reviews is consistent with the draft Mayor of London's Affordable Housing and Viability SPG.</p> <p>The Council will work with applicants/developers in respect of review mechanisms drafted in specific S106 agreements but consider it important to set out a framework in the SPD for the basis of the formation of these parts of the agreements.</p> <p>In order to mitigate the potential issue of it taking a disproportionate amount of time to agree the scope of viability reviews, the Council will, in due course, undertake further work to standardise the approach to viability review mechanisms.</p>
<p><b>12</b></p>	<p><b>Viability review process</b> - The SPD doesn't recognise that the Site</p>	<p>The Council's approach to Viability reviews is consistent with the draft Mayor of</p>

	Value forms part of the viability review and clearly should a review take place 2 or 3 years from the date of the signing of the S106 there needs to be an up to date assessment of the Site Value to make sure that it is still providing a competitive return to the landowner so that the site would still come forward. Therefore, this is not consistent with the NPPF's reference to a reasonable return to a landowner.	London's Affordable Housing and Viability SPG.
13	<b>Pre-Implementation</b> - BGY Regeneration Limited accepts the principle of a pre-implementation review. It does not, however agree with the reference to a further review if development stalls for a further period of 12 months after substantial implication. Factors outside of the Applicant's controls could result in the developer stalling and clearly the implications of a further review would further stall the development.	The Council does not agree that a further review would necessarily further stall a development if carried out in a timely and collaborative manner.
14	<b>Mid-term reviews</b> - The SPD states that where build costs were based on BCIS in the applications stage assessment, these will be index linked from the date of the previous review. BGY Regeneration Limited believe any costs should be based upon actual costs if known and not indexed. As well as with regard to whether	In some cases it may be appropriate to base build costs on BCIS information. Where this is the case any related review mechanism should reflect the same basis as the original assessment.  Where original viability submissions are based on specific costs plans the Council acknowledges that any related review mechanism should reflect the same basis as the original assessment.
15	<b>Advanced stage reviews</b> - BGY Regeneration Limited would highlight the implications of imposing a viability review once the sale of 75% of residential units have been achieved. The main risk is in regards to securing funding due to the risk that an advanced stage review would cause to the developer. Banks would be reluctant to provide funding if there is a risk that an unforeseen payment could be made at the end of the project and therefore it is likely that the bank would provide funding on the worst case i.e.. the affordable housing contribution cap is payable. This is likely to result in more onerous conditions on the developer.	Potential implications are noted.  The Council's proposal regarding advanced stage reviews is consistent with the requirements described in the Mayor of London's draft Affordable Housing and Viability SPG.

16	<p><b>Formula 1</b> - BGY Regeneration Limited would question why any surplus determined as a result of the viability review is split 60/40 in favour of the Council. The developer takes all of the risk in delivering the project whilst any surplus as an outcome of the developer striving to improve the schemes performance of the scheme is weighted in favour of the Council. If anything, the split should be on an equal 50/50 split if not in favour of the developer.</p>	<p>The split described in the SPD is consistent with the split described in the Mayor of London's draft Affordable Housing and Viability SPG.</p>
17	<p><b>Formula 2</b> - The formula should be calculated on the scheme specific details such as affordable rent floorspace and intermediate floorspace, if known. Affordable rent and intermediate values should be based upon the scheme specifics rather than London average.</p>	<p>The Council considers it appropriate for formula 2 to seek additional onsite floorspace to be delivered in accordance with the tenure mix requirements as described in the Council's Local Plan.</p> <p>Noted with regard to affordable rent and intermediate values being based on scheme specifics rather than the London average. Wording in the SPD has been amended to reflect this.</p>
18	<p><b>DVSPD06 - Berkeley Group</b></p>	
19	<p><b>Pre Application Advice</b> - It is understood that in order to verify whether a proposed affordable housing offer is the 'maximum reasonable', the Council will require a viability assessment early in the determination process; however, given the complexity and evolving nature of viability assessments we consider that they should be submitted only when key aspects of the application have been firmly agreed. Seeking viability assessments at the pre application stage, even if in draft, and requiring them as part of validation will cause significant delay to the application and development process. A solution could be to include details of when and how the viability assessment should be submitted in the planning performance agreements that accompany major applications. This would set clear deadlines for the applicant and also provide clarity for when the council should appoint an independent assessor.</p>	<p>The Supplementary Planning Document (SPD) aims to encourage early submission of viability information to lessen the likelihood of viability discussions causing delays in decision-making. It does not require the submission of viability information at the pre-application stage.</p> <p>Paragraph 4.6 of the SPD acknowledges that the levels of detail that can be provided will vary from scheme to scheme so the Council does not consider any change to the document is necessary.</p> <p>The Council does not agree that requiring the submission of viability assessments at the application stage will cause significant delay – this is a longstanding requirement of the Council who have found this has been key to preventing delays in the decision-making process.</p>
20	<p><b>Planning Applications</b> - The specific reference to the Mayor's 'Threshold Approach' in KR2 is supported and on this basis we</p>	<p>Noted. The SPD has been amended to clarify that where housing policy is met that a viability assessment will not be required to be submitted.</p>

	<p>consider that the SPD should make it clear that, where affordable housing policy is met it will not be appropriate to request a viability assessment.</p> <p>Commutated sum payments for off-site affordable housing should contribute towards the 35% provision. This would provide flexibility for the developer and the Council in delivering and maximising the provision of affordable homes from new development.</p>	<p>The Council's adopted Managing Development Document describes that off-site affordable housing (which can be delivered using payments in lieu) will only be considered where the scheme can provide 50% affordable housing overall. Therefore commuted sums should contribute to affordable housing policy requirements overall as opposed to specifically 35% provision – the Council considers that the SPD already makes this clear.</p>
<b>21</b>	<p>With regards to Section 73 applications, it would be useful to clarify whether it is the Council's intention that this could result in a reduction in affordable housing where viability has worsened since the original permission. It is often the case that amendments to developments are sought in order to amend the mix, for example to provide homes suited to the market at that stage and for developments to remain viable. In these circumstances reductions in affordable housing should also be considered. Any viability review of a S73 application should only be applied to the uplifted quantum rather than the whole development.</p>	<p>It is the Council's position that a reduction in the provision of affordable housing could not usually be considered a minor material amendment and therefore be addressed under a S. 73 application.</p>
<b>22</b>	<p>The details of a major application will evolve and can change considerably as an application is taken through the planning application process. These changes will impact on viability. Rather than submit and publish different iterations of an assessment, from the validation stage (which would be time consuming and costly and not aid public understanding of the assessment), assessments are more appropriately submitted and published when they are agreed. To aid community understanding it might be preferable to publish a summary of the assessment and the independent assessor's review of it. On this basis, the requirement for an applicant to submit a full FVA, Executive Summary and Appraisal Inputs Summary Sheet to ensure validation is considered unhelpful and overly onerous.</p> <p>It is important to ensure that local lists and validation requirements meet Government policy to be proportionate to the nature and scale</p>	<p>The Information Requirements described in the SPD are to encourage and assist with public participation through the course of a planning application. The Council considers that amending the SPD in accordance with the comment will harm public participation so the Council is not proposing to change the SPD in this regard.</p>

	<p>of development (NPPF, para 193). Given the risk of the validation process to delay the consideration of applications it is important that requirements reflect the nature of the planning process, particularly in areas which are typically subject to negotiation following submission such as planning obligations. This is recognised in Planning Practice Guidance which advises against requirements for too great a level of detail on these matters on local lists.</p> <p>On this basis, requiring and a full viability assessment as a validation requirement would be not only impractical, but also unhelpful as they would contain untested assumptions about the borough's and other consultees requirements which could cause uncertainty and confusion with consultees. The proposed requirement will in practice slow down validation and consideration of applications without achieving the LBTH's aims of greater transparency for members and the public. Furthermore, continued reassessment will prove a significant drain on valuable Council resource.</p>	
23	<p>Where the borough or its independent experts do not agree with key appraisal assumptions including costs and values this should be supported by justification and evidence of why they do not support the inputs.</p> <p>In terms of submitting editable electronic/software models, this is already the case; however, any alterations made to the model assumptions by the Council should be made clear to the applicant and justification for such changes should be set out by the Council.</p>	Noted. The SPD has been amended to ensure the need for conclusions in Council instructed reviews to be backed up by evidence.
24	<p>Whilst it is encouraged to see that the Council propose a different process for 'Build to Rent' schemes, it would be useful at this stage if the Council provided further clarity at this stage regarding the likely process.</p>	The Council will be considering a process in more detail in due course and in particular when the results of the Government's <i>Planning and affordable housing for Build to Rent</i> Consultation that is to close on May 1 <sup>st</sup> 2017.
25	<p><b>Transparency and Deliverability</b> - We support the need for</p>	Noted.

	<p>greater transparency in the viability process, however, given the complex and sensitive nature of viability appraisals, it is important that this is addressed at the right time and that the most sensitive information remains confidential.</p>	
26	<p>Many assessments include information which is commercially sensitive. For example, this could include allowance for acquisition of third party land, rights of light, vacant possession compensation costs or other information that would severely compromise the applicant's commercial position. In line with previous FOI decisions (which recognises that some information is commercially sensitive and there should not be blanket disclosure), the SPD does suggest that if an element of a viability assessment would cause harm to the public interest the Council 'may' allow for exceptions in 'limited circumstances'. Whilst this is acknowledged, it is considered that a more flexible approach should be adopted when there are elements of commercially sensitive information within the FVA which the applicant considers should not be disclosed and it should be for the applicant to provide reasoned justification on why it should be redacted.</p>	<p>The Council's transparency requirements as described by the SPD have been formed in recognition of the importance of public participation. The Council considers the public availability of viability information as key to ensuring confidence in the planning system and that the process is open to scrutiny.</p> <p>The SPD describes that in very limited circumstances information may not be disclosed to the public, or can be aggregated to protect legitimate claims of commercial sensitivity. The Council does not consider that changes to the proposed SPD are required in this regard.</p>
27	<p>We agree that it would be helpful to provide a non-technical executive summary of the viability assessment explaining the key factors and conclusions. This should be prepared at the time when the assessment is agreed so that the inputs are settled and conclusions agreed. Earlier publication 'as soon as practicable following validation' as currently proposed in the SPD, could complicate matters, for example the public will not understand why the assessment has changed through the course of the application, it too would be a drain on valuable resources, not least officer's time as members of the public query elements of the assessment. To aid community understanding it might be preferable to publish a summary of the assessment and the independent assessor's review of it.</p>	<p>The Information Requirements described in the SPD are to encourage and assist with public participation through the course of a planning application. The Council considers it key that an executive summary be submitted as a validation requirement to enable effective public participation.</p>

28	<p>Key Requirement 11 in the draft SPD states that ‘<i>FVAs cannot demonstrate that schemes as proposed are technically unviable</i>’; this is somewhat ambiguous. It is often the case that the viability assessment will show a deficit but the applicant will proceed with the development as they expect the market and values to improve over time. It is for the developer to take into account the level of risk which is assessed and presumed with the FVA demonstrating what the developer considers a viable position. In certain cases, this could (for example) result in a reduced infrastructure delivery. It is therefore considered that the SPD should not preclude the ability of applicants to do this. Where there is a deficit, the review should take effect from the deficit position. In these circumstances the council could require the applicant to set out their growth assumptions to justify their decision to proceed with a deficit.</p>	<p>This matter is described in more detail under the ‘Deliverability’ heading in section 5.</p> <p>The Council is not supportive of viability assessments demonstrating significant deficits as this raises questions regarding the commercial basis of the proposed scheme and the terms under which development finance is likely to be secured.</p> <p>Where a scheme would otherwise have demonstrated a deficit, the viability assessment should account for growth projections and/or the deficit should be demonstrated in terms of the impact on the current day profit of the scheme. A change to wording of paragraph 5.6 of the SPD has been made to clarify this point.</p>
29	<p><b>Methodology</b> - Where high values and strong market growth have been seen in recent years up to the Referendum (June 2016), the significant investment developers make and the high risks undertaken can often be overlooked. Indications of market slow down needs to be considered, if increased housing delivery and regeneration is to continue. On this basis, the SPD should relate level of profit to risk levels.</p>	<p>The Council considers paragraph 6.24 (of the second consultation version) of the SPD already relates profit to risk levels.</p>
30	<p>Given the challenging market conditions and the abnormal costs associated with bringing former gasworks sites forward as well as other site constraints, we do not anticipate that this is likely to improve viability prospects compared to when this was considered for the 2013 MDDPD or the Council’s CIL Examination.</p> <p>The Council should not be seeking to place additional burdens on sites. The draft SPD proposal to simply adjust the level of profit where a scheme is identified as unviable amplifies the need for the Council to adequately test the viability of policy and site allocations in the emerging Local Plan. Furthermore,</p>	<p>The requirement of the SPD to express any deficit against a benchmark land value in terms of an impact against the scheme’s profit is to better inform the Council of the position of applicants where schemes demonstrate a deficit.</p>

31	<p>We disagree that 60% of surplus profit should be paid to the Council. As outlines above, development is a high risk business and we consider that there is no justification for a 60:40 split in favour of the Council.</p>	<p>The split described in the SPD is consistent with the split described in the Mayor of London's draft Affordable Housing and Viability SPG.</p>
32	<p><b>Benchmark Land Values (BLVs)</b> - Land will not be released at existing use value; a reasonable premium will be expected from landowners to justify and incentivise sale. If there is a reasonable prospect of land securing planning permission for an alternative, higher value use, the land owner will expect this to be reflected in the land value. On this basis we accept the proposed Key Requirement 19; however, there should be no cap on the level of premium as this would not allow the expectations of paragraph 173 of the NPPF to be met.</p> <p>We acknowledge Key Requirement 19 and the Mayor's preference for a EUV 'plus' premium approach when determining land value. When using this approach we consider market evidence should be used to advise on the extent (%) of the premium as recommended in paragraph 23 of the PPG. This allows for a 'sanity check' of the EUV particularly where land value is calculated to be much lower than recent transactions in the local area. This also meets the requirements of the NPPF by recognising the need for a competitive return for the land owner.</p>	<p>In the Council's experience a premium of 20% is most commonly applied in the borough hence the SPDs reference to this level of premium generally.</p> <p>There is limited value in using market evidence as a 'sanity check' as the development plan advocates the existing use value plus approach. However, if applicants would like to submit this information they are able to. The Appraisal Input Summary Sheet requires the provision of Land Acquisition Costs information against which comparison against the Benchmark Land Value can occur.</p>
33	<p>We welcome a realistic alternative scheme may be used to form a BLV; An AUV helps to provide more context in terms of what is an appropriate land value and is very relevant to a land owner in seeking the highest sale price. Given the mixed use nature of London it is appropriate to accept alternative use values and this should not be restricted to where there is an existing planning permission as currently proposed by the draft SPD. It is possible to promote an AUV without obtaining a planning consent (permitted development rights etc). Having to obtain a separate planning permission will potentially delay development coming forward and</p>	<p>The Council has reconsidered its position with regard to when it will accept an Alternative Use Value as a Benchmark Land Value. It is not necessarily the case that a planning permission for the alternative use must be in place (however this is preferred), however the application of a particular alternative use will need to meet a number of criteria, such as:</p> <ul style="list-style-type: none"> <li>• The alternative use would be policy compliant and would secure permission;</li> <li>• There would be no additional costs or delay in securing that permission – or those additional costs and delays are assessed;</li> <li>• The <i>detailed</i> alternative proposal is required to be worked up to an</li> </ul>

	accrue unnecessary fees particularly where there is a very strong likelihood that the promoted use would secure permission.	<p>equivalent level of detail as the proposed housing-led scheme, incorporating realistic current day costs and values;</p> <ul style="list-style-type: none"> <li>• There is a real world demand for the alternative at the values assumed;</li> <li>• In the real world the landowner would really develop out the alternative rather than use it as a negotiating lever to force down affordable housing.</li> </ul>
34	<b>Viability reviews</b> - The SPD proposal to trigger a Pre Implementation Review if substantial implementation occurs after 24 months raises some issues. The definition of 'substantial implementation' can vary and time taken to reach this point can be frustrated by the number and details of pre commencement conditions linked to a permission and the extent of site remediation required. In light of this, the Council should not over impose the number of pre-commencement conditions and must ensure that any planning condition discharge applications are dealt with in a timely manner.	Noted. The Council will always seek to ensure the discharge of any planning conditions are dealt with in a timely manner.
35	<p>Advance Stage Reviews as proposed (on sale of 75% of market homes) should only be included in exceptional circumstances and the SPD should be amended to reflect this. Where there are reviews the proposed 'cap' (as set out in paragraph 7.9) of the SPD, should be at the average level of affordable housing that has been achieved locally over a five year period.</p> <p>Typically on longer term developments developers have to invest significant sums at an early stage for site preparation and any provision of early infrastructure as well as CIL payments. The inclusion of review mechanisms is likely to increase the cost of capital as it is seen as an increased risk by funders. Therefore, any review must take full account of cost increases, start at the position that the development is not in deficit, and be capped at the outset at the level of affordable housing policy compliance so that the full risk is known to the applicant and their funders.</p>	<p>The Council's proposal regarding advanced stage reviews is consistent with the requirements described in the Mayor of London's draft Affordable Housing and Viability SPG.</p> <p>The Council does not agree that the proposed 'cap' in reviews should reflect affordable housing levels achieved locally over a 5 year period, the Council is firmly of the position that that the cap should be reflective of affordable housing levels described in the Development Plan.</p> <p>The Council disagrees that any review should start at a position that the development is in deficit. The Council has set out measures in the SPD to ensure applications are deliverable. Where schemes are below policy compliant levels, and where additional value has been identified via a review mechanism it is appropriate, in a plan led system, for additional value identified in respect of an already deliverable project to reasonably contribute to achieving the objectives of the Local Plan.</p>
36	If an advance review indicates a further requirement for affordable	The Council considers it is better to establish whether any surplus identified in

	homes, the SPD needs to make it clear that this is likely to be in the form of a commuted sum payment towards off-site provision given that the development will be close to completion and accommodating further affordable housing on site would be complex and add further costs.	advanced stage review mechanisms should be provided via on-site delivery or via a commuted sum payment on a case by case basis, taking account of the circumstances of the specific scheme.
<b>37</b>	<b>DVSPD04 - Rolfe Judd Planning on behalf of various clients</b>	
<b>38</b>	We urge the Council to confirm that the threshold approach to viability will be adopted in accordance with the process set out in the Mayor of London's draft Affordable Housing and Viability SPG. It is vitally important that there is consistency between strategic and local levels on this issue.	Noted. The SPD confirms that the Council currently intends to adopt the threshold approach. The Council is working closely with the Greater London Authority to ensure consistency in this regard and with respect to the SPD as a whole.
<b>39</b>	Whilst we note the Council's preference that a draft financial viability be submitted to the Council for review at the pre-application stage, this will not always be possible or practicable, particular given that the scheme may not be fixed until close to the submission of the application. Furthermore, we are acutely aware that the Council's own external viability consultants do not always respond quickly to submitted viability information. To be effective and to ensure there is no delay in the submission of planning applications, we would recommend an alternative approach, where information on key assumptions (i.e. EUV/AUV, build costs, abnormals (if known, anticipated values etc) is submitted for agreement at the pre-application stage. This will ensure key principles are agreed, thus limiting potential delays when the viability assessment is submitted as part of the final planning application.	The SPD aims to encourage early submission of viability information to lessen the likelihood of viability discussions causing delays in decision-making. It does not require the submission of viability information at the pre-application stage.
<b>40</b>	Para.4.7 – the Council should clearly define what constitutes a 'change in economic circumstances of the scheme'	Noted. The Council has amended the wording of paragraph 4.7 to provide more clarity in this regard.
<b>41</b>	Para 4.13 – It is not clear why the Council is requesting a fully working software model. This implies that the Council is intending to manipulate or scenario test any viability assessment submitted. However, in our view, the Council should only be considering whether	The Council considers it is the role of the Council and its consultants to: <ul style="list-style-type: none"> <li>• Interrogate proposals in detail;</li> <li>• Carry out sensitivity testing to identify alternative affordable housing mixes the Council considers may be viable, to assist with discussions.</li> </ul>

	the various assumptions/inputs are considered acceptable/appropriate, it is not the role of the Council to alter the applicant's business/commercial model underpinning the viability assessment.	These matters can be more efficiently addressed with a fully working software model.
42	Para 4.14 – we urge the Council to identify (within the SPG) the anticipated costs likely to be incurred in either the Council or appropriated assessor reviewing any viability assessment. Furthermore, the requirement for a solicitors undertaking is considered to be excessive (and adding additional cost to the process). In our view, the inclusion of an agreement to pay any costs can reasonably be set out within a PPA	<p>It will not be possible for the Council to describe anticipated costs in the SPD as these could vary significantly on a case-by-case basis. The Council has procurement protocols in place to ensure the costs incurred are reasonable.</p> <p>Paragraph 4.14 of the SPD describes that an undertaking to pay costs incurred may also be expressed in a Planning Performance Agreement. A Solicitor's undertaking is important because it is not the case that a Planning Performance Agreement will be agreed in respect of every application.</p>
43	<p><b>Section 5 (Transparency)</b> – whilst we acknowledge the need for greater transparency in producing/assessing financial viability assessment, this is a particularly sensitive area. As per the London Mayor's draft Affordable Housing and Viability SPG, we would recommend the Council adopt the threshold approach towards the submission of viability information. We would also remind the Council that sensitive commercial information will always be included within a viability assessment and it is important that this information remains confidential. Regulation 12(5)(e) of the Environmental Information Regulations 2004 provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. According to the Information Tribunal in <i>Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association (EA/2010/0012, 24 May 2010)</i><sup>2</sup>, the construction of the exception can effectively be read as imposing a four-stage test. All four of the following conditions must be met for the exception to be engaged:</p> <ul style="list-style-type: none"> <li>• The information is commercial or industrial in nature.</li> <li>• Confidentiality is provided by law. This will include confidentiality</li> </ul>	The Council has sought substantial advice on the matter of disclosure and transparency and, in the context of this, the need to encourage community involvement and the agenda of transparency of the current administration, it is confident the approach proposed is appropriate.

	<p>imposed on any person by the common law of confidence, contractual obligation, or statute.</p> <ul style="list-style-type: none"> <li>• The confidentiality is protecting a legitimate economic interest. Where the arguments refer to the economic interests of a third party, it will not be sufficient for a public authority to speculate on the potential harm attached to disclosure. Instead, the public authority must have evidence that demonstrates the arguments genuinely reflect the concerns of the third party.</li> <li>• The confidentiality would be adversely affected by disclosure. It should be noted that, the Information Tribunal in the aforementioned Bristol City Council case considered that the disclosure of truly confidential information into the public domain would invariably harm the confidential nature of that information. As such, if the preceding three stages of the test are fulfilled, it will follow that the exception is engaged. Where this is found to be the case, a public authority must next go on to assess whether the balance of the public interest required disclosure.</li> </ul>	
44	<p>Para 5.10 – We do not consider the Council’s requirement that evidence be provided from an experienced developer that a development scheme is viable to be appropriate. The Council (and appointed viability assessor) should be able to form a professional view on the likely deliverability of any development based on the evidence base submitted in support of the proposed development (and its relation to comparable schemes in the area). Seeking views from a developer is likely to result in a significant conflict of interest (with a developer able to choose whether to support or not any viability information). Added to this, developers often operate under very different business models, which are not directly transferrable to one another. Ultimately, there is no benefit to a landowner spending a significant amount of money in preparing/submitting a planning application for a development proposal is not deliverable.</p>	<p>The Council considers it important that assurances are provided regarding deliverability. The Council has received applications where it has subsequently been the case that there was limited intention to deliver the application in question.</p>
45	<p>Para 5.12(2) – we note that the list of inputs to be included within a development viability assessment has omitted CIL;</p>	<p>For the purpose of this paragraph, CIL is defined as a ‘Planning Contribution’.</p>

46	Para 6.30 – The SPG should also acknowledge that Alternative Use Value may also be established via changes which could appropriately be made under permitted development	Noted. The SPD has been amended in a way that can ensure permitted development rights can be accounted for in alternative use value benchmark land values.
47	Section 7 ( <b>Viability Reviews</b> ) – we have a number of comments in relation to this section:	
48	<ul style="list-style-type: none"> <li>Viability Reviews should not be required on schemes which commit to the provision of 35% of accommodation as affordable;</li> </ul>	The Council disagrees with this point. This is not consistent with the current provisions of neither the 'Threshold Approach' nor the Council's Local Plan affordable housing policy.
49	<ul style="list-style-type: none"> <li>Where a viability review is required (due to an under provision relative to policy), the requirement to provide any additional affordable housing (either on-site or by way of a payment in lieu) should only come into force once any identified deficit (or reduction in developer profit below 20%) has first been recovered by the developer;</li> </ul>	The Council disagrees with this point. The Council has set out measures in the SPD to ensure applications are deliverable. Where schemes are below policy compliant levels, and where additional value has been identified via a review mechanism it is appropriate, in a plan led system, for additional value identified in respect of an already deliverable project to reasonably contribute to achieving the objectives of the Local Plan.
50	<ul style="list-style-type: none"> <li>Where a viability review has been undertaken and identified an increase in GDV has been identified, the proportion of surplus GDV to be provided towards additional affordable housing should not exceed a 50:50 between the Council and developer. Given that the Council do not share the developer's risk, it is unreasonable to skew the split in favour of the Council. Such an approach will discourage funding partners and will not encourage a developer to increase scheme revenue post grant of consent;</li> </ul>	The split described in the SPD is consistent with the split described in the Mayor of London's draft Affordable Housing and Viability SPG.
51	<ul style="list-style-type: none"> <li>Where a viability review has been undertaken and identified an increase in GDV has been identified, the provision of additional affordable housing (either on-site or by way of a payment in lieu) should be capped at a policy compliant provision (i.e. where the consented development with any additional affordable housing reaches a 35% provision);</li> </ul>	The Council agrees that additional affordable housing provision identified via a review mechanism should be the subject of a policy cap and this is accounted for in the formulas described in the SPD.
52	<ul style="list-style-type: none"> <li>Any payment in lieu received by the Council (following a viability</li> </ul>	The Council does not agree with this approach. For larger schemes it can take

	<p>review) should ring-fenced towards the delivery of affordable housing within the Borough. Where that payment is not spent within 5 years from the grant of planning permission, it is reasonable for the Council to repay the money (if requested by the developer);</p>	<p>longer than 5 years from the grant of planning permission to the payment of in-lieu contributions.</p>
53	<ul style="list-style-type: none"> <li>We would also urge the Council to publish records of where money (received from the above process) is spent within the Borough and those projects benefiting (including the number of affordable units delivered).</li> </ul>	<p>The Council will consider this proposal moving forward but does not consider it appropriate that this process should be set out in the SPD.</p>
54	<ul style="list-style-type: none"> <li>Mid-term viability reviews should only be undertaken on significant development proposals, where a proportion of the development in outline only and a deliverable level of affordable housing have not been identified beyond the first phase.</li> </ul>	<p>Noted. The Council considers the current provisions of the SPD are appropriate in this regard.</p>
55	<ul style="list-style-type: none"> <li>Where detailed schemes have been consented (based on a defined tenure and housing mix), it will not often be possible to provide additional affordable housing on-site (post implementation) without making significant changes to the approved scheme. In such cases, any additional affordable housing to be provided should be via a payment in lieu. The Council should also give consideration to whether a commercial agreement is already in place with an RSL – which again may preclude the provision of additional affordable housing.</li> </ul>	<p>The Council considers the SPD is appropriate in this regard and considers that it is better to establish whether any surplus identified in post implementation review mechanisms should be provided via on-site delivery or via a commuted sum payment on a case by case basis, taking account of the circumstances of the specific scheme.</p>
56	<p><b>DVSPD12 - Metropolis Planning and Design</b></p>	
57	<p>The London Plan policy refers to ‘phased development’ and ‘pre-implementation reviews’ and there is no development plan policy for post implementation review on single phase schemes.</p> <p>All references to ‘advanced stage review’ must therefore be deleted from the SPG as they are contrary to policy, will carry no weight, and will be mis-leading.</p>	<p>Noted regarding the wording of the London Plan.</p> <p>Policy 3.12 of the London Plan states “The maximum reasonable amount of affordable housing should be sought...”. The Council considers its approach to review mechanisms is a way of complying with this policy.</p> <p>The Greater London Authority also considers that the approaches to reviews</p>

		set out are consistent with the Development Plan and the SPD's approach to Viability Reviews is consistent with the draft Mayor of London's Affordable Housing and Viability SPG.
<b>58</b>	<b>DVSPD10 - CMA Planning on behalf of various clients</b>	
<b>59</b>	We consider that some context should be provided on actual affordable housing delivery in the borough. It is understood that one of the aims of the SPD is to support Local Plan policies that seek to maximise the delivery of affordable housing; however, when providing a narrative on the need for affordable housing in the borough, a fundamental element of this narrative is how much affordable housing has historically been delivered, and we consider that a summary of the affordable housing delivery figures in recent years should be provided in this section of the SPD.	This is the purpose of the Council's Annual Monitoring Report which can be found on the Council's website.
<b>60</b>	At KR6 we would seek for the text to be amended as follows (our proposed new text is shown as underlined – no existing text is to be deleted):  <i>"Revised appraisals (with revised Executive Summary and the Appraisal Inputs Summary Sheet) should be submitted to the Council prior to determination where the financial viability assessment changes <u>significantly</u> throughout the planning application process."</i>	The Council disagrees with the addition of the word 'significantly'. It is difficult to quantify the meaning of this term. The Council will of course be pragmatic in the application of this approach.
<b>61</b>	We consider that KR22 should be deleted as it duplicates the provisions of KR20.	Noted. Change will be made.
<b>62</b>	At KR27 and within the formulae set out in Appendix B we query how the 60% figure has been arrived at. The proportion of surplus profit to be paid to the Council following a viability review must be evidence based and that evidence should be provided, or at the very least be referenced (where the information is publicly available) within the SPD.	The split described in the SPD is consistent with the split described in the Mayor of London's draft Affordable Housing and Viability SPG.
<b>63</b>	Process - We strongly disagree with the proposed approach set out	The provisions of paragraph 4.1 are consistent with the approach described in

	<p>in the first bullet point at paragraph 4.1, which should be deleted. The 35% threshold represents a discreet figure in terms of the proportion of habitable rooms that are to be provided as affordable housing within a given development proposal. We have serious concerns that introducing a requirement for the 35% threshold to take into account local residential mix and tenure split policies would muddy the water and provide less, not more, clarity on whether the threshold has been met, and thus whether an application would be validated without being accompanied by a financial viability appraisal (FVA).</p>	<p>the Mayor of London's draft Affordable Housing and Viability SPG. The Council considers it is absolutely appropriate to take account of local residential mix and tenure split policies as part of the Threshold Approach.</p>
<p><b>64</b></p>	<p>At paragraph 4.7 we consider that greater clarity is needed on the point at which it would be considered that a S73 minor material amendment <i>"alters the economic circumstances of the scheme"</i>. Technically, almost all S73 minor material amendments that include physical alterations to the scheme (including changing the cladding material or fenestration details) would result in a change in built cost and thus alter the economic circumstances of a scheme, albeit in a limited manner for the afore mentioned examples.</p> <p>If economic circumstances are to be considered in this manner, then a threshold approach should be applied and this paragraph should be explicit on the point at which a FVA would be required (for example, for S73 amendments resulting in an increase in floorspace of over 100sqm). We would also advise that the threshold would need to be evidence based and justified.</p>	<p>Noted. The Council is proposing an amendment to clarify where an FVA is required to be submitted with a S. 73 application. However, it is difficult to establish wording that will cover all circumstances and individual applications should be considered on a case-by-case basis.</p>
<p><b>65</b></p>	<p>The submission of FVAs to demonstrate optimum viable use is rare and the appraisals are often complex. Requiring an FVA for any proposals resulting in less than substantial harm to the significance of a designated heritage asset, which could include proposals for very minor internal alterations to a listed building, would place an unreasonable burden on most applicants through the requirement to commission a costly appraisal and cover the costs of the Council's review of said appraisal for minor works which could be policy compliant, despite not demonstrating that the optimum viable use</p>	<p>Noted.</p> <p>The Council would like to maintain a reference to the submission of a viability assessment to demonstrate that the proposal is securing the heritage asset's optimum viable use, but has amended the wording to make it clear that this may not apply in all instances.</p>

	<p>would be secured.</p> <p>Whilst securing the optimum viable use of a designated heritage asset constitutes a public benefit (with reference to paragraph 134 of the NPPF), it is but one of a wide range of public benefits that could be brought by a development proposal. As such, in cases where paragraph 134 of the NPPF is relevant the Council can still carry out its statutory duty under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and a proposal can still meet the policy tests at paragraph 134 of the NPPF and within the Council's Local Plan, despite an application failing to demonstrate that the optimum viable use has been secured. On this basis, we consider that paragraph 4.8 should be deleted. However, if you were to retain text on FVAs relating to optimum viable use, we would suggest that this text be provided under its own heading and it should be made clear that it is not a policy or validation requirement, but rather guidance on how such FVAs should be prepared in the event that an applicant wished to demonstrate that they would be securing the optimum viable use of a designated heritage asset. Such FVAs are complex as they require multiple development scenarios to be detailed, costed and appraised so as to determine which scenario causes the least harm to the significance of the designated heritage asset whilst remaining financially viable. If retained, this section of the SPD should therefore set out in detail the Council's technical requirements for such FVAs.</p>	
66	<p>At paragraph 4.9 we consider that the reference to the failure to submit a FVA in the event of paragraphs 4.7 and 4.8 being triggered likely resulting in the application failing to meet validation requirements is unacceptably inflexible and should be omitted. As set out above, whilst we do not object to the principle of FVAs being required for S73 minor material amendments, greater clarity is required on the point at which an amendment is considered to alter the economic circumstances of a scheme before this could be appropriately enforced as a validation requirement. In addition, as the optimum viable use test is not a policy requirement, and as</p>	<p>The Council does not agree. It is important that Viability Assessments are submitted where required by planning policy. The Council will be pragmatic in terms of the extent of information it requires and will be decisions in this regard on a case-by-case basis.</p>

	consideration of the degree of harm cause to a heritage asset it subjective, together with other reasons set out above, we consider that FVAs cannot be a validation requirement for applications relating to designated heritage assets.	
67	At paragraph 4.14 and KR4 we object to the requirement for the submission of an undertaking to cover the Council's costs of reviewing the FVA before an application can be validated, which is unreasonable and should be deleted.	The Council does not agree. It is important that the Council is able to cover its cost of considering viability submissions.
68	Methodology - At paragraph 6.26 and KR15 we object to the stipulation that profit levels should be adjusted in the event that schemes are identified as unviable at the proposed level of planning obligations. We consider it would be both unreasonable and contrary to Paragraph 173 of the NPPF to require a reduction in developer's profit in the event that a scheme was identified as being unviable at the proposed level of planning obligations. In such an event, the NPPF is clear that the level of planning obligations should be adjusted to ensure a 'competitive return' to a willing landowner and a willing developer. As such, we consider that paragraph 6.29 and KR15 should be deleted.	Noted. The requirement in paragraph 5.6 of the SPD to express any deficit against a benchmark land value in terms of an impact against the scheme's profit is to better inform the Council of the position of applicants where schemes demonstrate a deficit. This requirement is not intending to replace the need for the adjustment of planning obligations as described by the NPPF.  The wording of paragraph 5.6 has been amended slightly for clarity.
69	At paragraph 6.30, KR20 and KR22 we object to the requirement for Alternative Use Value (AUV) benchmark land values to be established by a valid planning permission only. Submitting an application for an alternative use in order to determine a site's value is extremely burdensome and should not be required where it can otherwise be demonstrated to the Council's satisfaction that an alternative scheme would be policy compliant. Notwithstanding our objection, if this requirement were to be retained we consider that it should be expanded to include Prior Approvals and Site Allocations within the acceptable AUV criteria.	The Council has amended the wording of the SPD regarding the extent to which Alternative Use Values will be accepted.
70	<b>Viability Reviews</b> - At paragraph 7.3 we object to the stipulation that no viability review can result in a scheme providing a reduced level of	The Council is proposing to maintain its position in this regard.

	<p>planning obligations from those of the original consent. After the last financial crash in 2008 a large number of developments across London and the country stalled as the diminished land values rendered the schemes unviable. This resulted in, amongst other things, the government responding by providing a greater deal of flexibility in the planning process through the introduction of S73 and S96a applications, together with applications to extend the time limit for implementing permissions. Provisions to extend the time limit for implementing permissions were subsequently rescinded after the market had stabilised and moved into growth.</p>	<p>Any reduction in the provision of affordable housing that might be identified as part of a review would not be able to be accounted for in a formal decision-making process that may otherwise decide that, on balance, the application with the reduced level of affordable housing is not acceptable in planning terms. This is why review mechanisms can't lead to a reduction in affordable housing – there are other routes, such as appeal mechanisms and the ability to submit a new application that deal with changes in macroeconomic circumstances making schemes unviable.</p>
<b>71</b>	<b>DVSPD02 - Gerald Eve on behalf of Crest Nicholson London</b>	
<b>72</b>	<p>GE considers that commercially sensitive confidential information should remain out of the public domain but should still be made available for consultants and Officers to review as part of the viability assessment process.</p>	<p>The SPD makes some provisions to deal with commercially sensitive information, such as through aggregation.</p>
<b>73</b>	<p>Regarding the assessment of Site Value (Benchmark Land Value) the SPD sets out a strict preference for “Existing Use Value plus” (“EUV+”) as the default methodology. EUV+ ignores the market, is inconsistent with PPG and is in conflict with the NPPF which sets out a requirement for competitive returns to willing landowners and willing developers to enable development to be deliverable. GE considers that an over-reliance on EUV+ across all sites in the Borough is likely to prevent some sites being delivered, particularly those sites with low EUVs.</p>	<p>The SPD describes that in most cases the Benchmark Land Value will be assessed with reference to existing use value. The Council considers this is consistent with emerging and adopted guidance from the Mayor of London as well as the NPPF and NPPG.</p>
<b>74</b>	<p>The SPD should state that there is no absolute requirement for planning permission to be secured in order for an alternative use value (AUV) to be adopted as the basis for Site Value, in accordance with established valuation principles.</p>	<p>Noted. The Council has amended the SPD in this regard.</p>
<b>75</b>	<p>The SPD includes provisions for affordable housing review mechanisms to be used more widely and in circumstances which GE feels may not necessarily be appropriate by virtue of scheme size. As</p>	<p>The approach of the SPD in this regard is consistent with the Mayor of London's draft Affordable Housing and Viability SPG.</p>

	<p>set out in the RICS Guidance Note 'Financial Viability in Planning' ("the RICS GN"), review mechanisms should be reserved for use on large, phased schemes, not across the board. There is a general consensus in the development finance sector that review mechanisms generally tend to increase down-side risk. Reviews can act as a barrier to bank lending on certain sites, which can in turn, prevent sites from coming forwards for development.</p>	
<p><b>76</b></p>	<p><b>Transparency</b> - It is clear that LBTH wishes to increase levels of transparency in the viability process and GE welcomes this in principle. GE considers, however, that there should be a clear statement of understanding that commercially sensitive information as set out in the EIR 2004 should remain confidential as part of the viability assessment process.</p> <p>GE would welcome a clear explanation Regulation 12 of the EIR, rather than an interpretation that leads the reader to believe disclosure should be the norm in all circumstances.</p> <p>It would be helpful to note that the Information Commissioner's Office (ICO) and the Information Tribunal have both consistently determined that information regarding commercial rents should be considered commercially sensitive as it would unacceptably prejudice the commercial interests of applicants</p> <p>The SPD should recognise the adverse effect that incorrect disclosure could have on applicants. A worst case scenario could see developers' abilities to negotiate third party payments (right of light compensation for example) or construction contracts limited by unwarranted disclosure. This could result in more protracted viability negotiations, an inadvertent decrease housing and therefore affordable housing delivery <i>in extremis</i>. Adversely impacting upon development economics could, in the round, result in developers being able to afford less affordable housing on a site specific basis.</p>	<p>In accordance with Regulation 12(1) of the EIR, the extent to which the Council can refuse to disclose commercially sensitive information relates to whether there is a public interest in non-disclosure. The Council's default position is that the public interest will generally lie in disclosure but the wording of the SPD means specific circumstances can be considered on a case by case basis.</p>

77	At paragraph 5.2 the SPD proposes to disclose viability material (or make it available) to the public and elected Members if requested. GE considers that in the event of such requests, LBTH should notify the applicant of such a request. If the disclosure is agreed to by the applicant then the process can be managed accordingly. There should be no general assumption of sharing commercially sensitive viability information without express permission from applicants.	Concerning the making of information available to elected Members, the council has received legal advice that advises that elected Members have both a Common Law and Statutory right to see information, in which they have a legitimate interest, submitted to a Council. Information will be made available to Members as a matter of course so there is no requirement for the Council to seek consent from applicants to make information available to relevant elected Members.
78	<b>Benchmark Land Value (Site Value)</b> - GE notes that the third bullet point of PPG paragraph 023 regarding the usage of comparable, market-based evidence, has been tailored to remove the word 'significantly' from the sentence " <i>where transacted bids are significantly above the market norm, they should not be used as part of this exercise.</i> " GE considers that the sentence should be quoted in full and in accordance with its intended meaning.	Noted. The SPD will be amended accordingly.
79	<b>KR18:</b> GE notes that this statement is in effect re-stating the first bullet point of PPG paragraph 023. GE would welcome reference to the second two bullet points of PPG paragraph 023 in addition which highlight the importance of both competitive returns and being informed by comparable, market-based evidence (such evidence to not be used if significantly above the market norm). Equal weighting of all three factors is suggested in PPG.	The wording of paragraph 23 of the PPG is already substantively reflected in the SPD so the Council doesn't consider it necessary to amend the wording of the SPD in this regard.
80	<b>KR20:</b> AUV is an established valuation basis and GE agrees that a realistic AUV can be used to form a basis for the assessment of Site Value. GE agrees AUVs should be in accordance with policy requirements. GE notes that a premium should not be placed on top of an AUV as AUV can be synonymous with Market Value. Therefore the competitive return is already accounted for in the Site Value when adopting AUV as the basis. It is however too onerous a requirement that an AUV will only be acceptable where there is an existing implementable planning permission for this use. This goes against common valuation practice and theory within which there is no absolute requirement for planning permission to be secured in order	Noted. The Council has amended the wording of the SPD in relation to the circumstances under which Alternative Use Values will be sought.

	for an AUV to be adopted as the basis for Site Value. The correct test for AUV is whether there is a reasonable prospect of securing planning permission for that use, which is as recognised by PPG.	
81	<b>KR21:</b> GE disagrees with the above Key Requirement. The concern about circularity raised in the SPD in respect of the use of Market Value stems from a lack of understanding of how comparable market evidence should firstly be analysed and then secondly applied. In considering market evidence, the valuer should take account of all relevant factors that affect the Site Value and reach an informed and balanced valuation judgement in respect of the subject site. The comment is therefore inconsistent with valuation methodology and should be removed from the SPD.	This key requirement is consistent with the approach described in the Mayor of London's adopted Housing SPG and the draft Affordable Housing and Viability SPG.
82	GE considers that the SPD should quote PPG in this section, which on the subject of Site Value states: <i>"Central to the consideration of viability is the assessment of land or Site Value. Land or site value will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected. In all cases, land or site value should:</i> <ul style="list-style-type: none"> <li>• <i>reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;</i></li> <li>• <i>provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and</i></li> <li>• <i>be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise."</i></li> </ul>	The Council is not against the inclusion of this paragraph in principle, however it does not see how this is useful, particularly given the paragraph is referenced in paragraph 2.10.
83	PPG is clear therefore that the assessment of Site Value will vary from case to case. Furthermore, in the assessment of Site Value there are a number of market signals of which planning policy is just one. This matter was highlighted in the Parkhurst Road (2015) and	Paragraph 2.10 clearly sets out that paragraph 23 of the PPG states that there are a range of acceptable approaches to establishing benchmark land values. The Council does not consider that the SPD is inconsistent with national guidance or that it is creating uncertainty – in describing a generally preferred

	<p>King Street appeal decisions (Appeal refs: APP/V5570/A/14/2227656 and APP/H5390/A/13/2209347) where the respective Inspectors acknowledged how the market would approach the value of sites for development in adopting alternative methods of valuation and competition for land. Should the SPD be trying to vary from national guidance this would create uncertainty and would potentially result in it being unsound.</p>	<p>approach the Council considers it is providing greater certainty.</p>
<p><b>84</b></p>	<p>LBTH should note that utilising EUV+ for the purposes of benchmark land value or Site Value can often inaccurately land as it is not based on market evidence. The RICS GN states:  “One approach has been to exclusively adopt current use value (CUV) plus a margin or a variant to this, i.e. existing use value (EUV) plus a premium. The problem with this singular approach is that it does not reflect the workings of the market as land is not released at CUV or CUV plus a margin (EUV plus).”</p> <p>The approach favoured by LBTH (and the Mayor in his SPG) therefore ignores the market, is inconsistent with PPG and is in conflict with the NPPF which sets out a requirement for competitive returns to willing landowners and willing developers to enable development to be deliverable. An over-reliance on EUV+ across all sites in the Borough is therefore likely to prevent some sites being delivered, particularly those sites with low EUVs.</p>	<p>The Council is aware of the contents of the referred to RICS Guidance Note but would note that it does not constitute part of the Development Plan.</p> <p>The Council does not consider the approach advocated is inconsistent with national guidance or the NPPF.</p>
<p><b>85</b></p>	<p>A further, established criticism of EUV+ is that there is no consensus on how practitioners are to arrive at an appropriate premium. Such premiums are purely arbitrary, cannot be market tested and lack relationship with the development and therefore the market. This is a further reason why EUV+ is flawed and not in accordance with PPG para. 023</p>	<p>The Council notes the issue with the establishment of premiums and will monitor the matter closely. However, the Council does not consider that the issue regarding premiums means the approach described in the SPD is inconsistent with national guidance.</p>
<p><b>86</b></p>	<p>On the subject of Alternative Use Value (AUV) the SPD should state that there is no absolute requirement for planning permission to be secured in order for an AUV to be adopted as the basis for Site</p>	<p>The Council has reconsidered its position with regard to when it will accept an Alternative Use Value as a Benchmark Land Value. It is not necessarily the case that a planning permission for the alternative use must be in place</p>

	<p>Value. The correct test is whether prospects of securing planning permission are realistic and the scheme is feasible as recognised by PPG.</p>	<p>(however this is preferred), however the application of a particular alternative use will need to meet a number of criteria, such as:</p> <ul style="list-style-type: none"> <li>• The alternative use would be policy compliant and would secure permission;</li> <li>• There would be no additional costs or delay in securing that permission – or those additional costs and delays are assessed;</li> <li>• The detailed alternative proposal is required to be worked up to an equivalent level of detail as the proposed housing-led scheme, incorporating realistic current day costs and values;</li> <li>• There is a real world demand for the alternative at the values assumed;</li> <li>• In the real world the landowner would really develop out the alternative rather than use it as a negotiating lever to force down AH.</li> </ul>
<p><b>87</b></p>	<p><b>Review Mechanisms</b> - In response GE considers that the necessity of viability reviews, if any, should be considered on a scheme by scheme basis in order to determine whether such a mechanism is appropriate having regard to the NPPF, PPG and London Plan. There will be many cases where schemes are not of a sufficient size or construction duration to necessitate a viability review and, indeed if applied could have a detrimental effect on delivery. Larger schemes may have been appraised using growth models in order to determine the maximum reasonable level of affordable housing and other planning obligations where again it would be inappropriate to require the addition of a review mechanism, assuming the scheme proceeds in a timely manner having regard to the particular circumstances.</p> <p>Concerning the type of review mechanism appropriate to a specific scheme, where it is agreed between the applicant and LBTH that a review mechanism is appropriate, such a review should only be undertaken prior to implementation of the scheme or particular phase in order to be in accordance with the PPG, London Plan and RICS GN.</p> <p>Regarding timings, GE considers the mid-term and advanced stage</p>	<p>The SPDs approach to Viability Reviews is consistent with the draft Mayor of London's Affordable Housing and Viability SPG.</p> <p>The Council will work with applicants/developers in respect of review mechanisms drafted in specific S106 agreements but consider it important to set out a framework in the SPD for the basis of the formation of these parts of the agreements.</p>

	reviews set out in the SPD at paragraphs 7.16 to 7.19 are unduly prescriptive and restrictive and fail to deal with the fact that the timing for delivery/occupation of the market housing will be dependent upon the market. GE considers that a more appropriate review trigger should be a period of time rather than a percentage of occupation.	
88	Notwithstanding GE's concern regarding the principle of overage-style review mechanisms that can serve to increase development risk on sites should they be enforced, the proposed 40%/60% surplus split in favour of the Council is considered overly punitive for developers. Such a mechanism could act as a disincentive to develop in the Borough and is likely to comprise a barrier to obtaining finance.	The split described in the SPD is consistent with the split described in the Mayor of London's draft Affordable Housing and Viability SPG.
89	GE considers that a formulaic approach to pre-implementation reviews may be appropriate in some situations but not in others. The type of review mechanism should be considered on a case by case basis. Post-implementation reviews are in most cases inappropriate, as set out in the RICS GN.	The Council will of course be pragmatic in terms of the application of its position but consider it important to set out a framework in the SPD for the basis of pre-implementation reviews.
90	GE welcomes reference to how Build to Rent schemes will be treated in accordance with the requirements set out in the Mayor's Draft Affordable Housing Viability SPG (November 2016). The SPD should also reference the Government's Housing White Paper (February 2017). Both of these documents aim to encourage institutional investment in the private rented sector thereby diversifying the housing market.	<p>Noted.</p> <p>The Council is conscious that the White Paper does not say anything substantive with regard to the approach to viability for Build to Rent development so does not see the value in making a reference to this document in this context.</p> <p>The Council is monitoring both national and regional approaches to the treatment of Build to Rent development and will form its approach accordingly in due course.</p>
91	<b>DVSPD13 - Health and Safety Executive</b>	
92	<b>DVSPD09 - Greater London Authority</b>	
93	We welcome the borough's intention to adopt the threshold approach to viability in line with the Mayor's draft Affordable Housing and Viability Supplementary Planning Guidance.	Noted.

<b>94</b>	<b>DVSPD03 - Carter Jonas on behalf of National Grid Property Holdings</b>	
<b>95</b>	<p><b>Transparency</b> - In principle NGPH is supportive of the transparency approach. However, the exceptions to this “in very limited circumstances” as referenced in paragraph 5.3 seems to be inflexible. A number of these assessments will include commercially sensitive information which could include items such as rights of light information, vacant possession compensation costs or allowance for acquisition of third party land etc. that could genuinely compromise an applicant’s commercial position. It is very important that these commercially sensitive elements are retained as confidential information and that this is considered in the context of the guidance in paragraph 5.3. Therefore, the wording should be amended to provide greater flexibility, which ensures that this commercially sensitive information can remain confidential.</p>	<p>Noted that the shift towards transparency is welcomed.</p> <p>The Council’s transparency requirements as described by the SPD have been formed in recognition of the importance of public participation. The Council considers the public availability of viability information as key to ensuring confidence in the planning system and that the process is open to scrutiny.</p> <p>The SPD describes that in very limited circumstances information may not be disclosed to the public, or can be aggregated to protect legitimate claims of commercial sensitivity. The Council does not consider that changes to the proposed SPD are required in this regard.</p>
<b>96</b>	<p><b>Developer’s profit</b> - Paragraphs 6.25 and 6.26 suggest that where schemes are unviable at the proposed level of profit allowed for, the level of profit should be adjusted to the extent that the scheme as proposed becomes viable. This seems to contradict the planning policy context elements referred to in Section 2 of the report, which reaffirms the NPPF’s commitment to ensure there are competitive returns for a willing landowner or a developer to enable a development to be deliverable. If profit levels are being driven down, this drives up risk and in the current context where there is a degree of uncertainty in the financial markets (with Brexit etc.) this will raise the risk profile for banks and prospective lenders who would otherwise support a scheme. If the funding is limited and lenders see too much risk in this process, there is a real danger that development will not come forward. Therefore, if this point is progressed the end result could inadvertently be less housing and affordable housing coming forward as a result of certain schemes being seen as too ‘risky’ from an investment perspective. Therefore, NGPH object to this element of the FVA methodology.</p>	<p>Noted. The requirement in paragraph 5.6 of the SPD to express any deficit against a benchmark land value in terms of an impact against the scheme’s profit is to better inform the Council of the position of applicants where schemes demonstrate a deficit.</p> <p>The wording of paragraph 5.6 has been amended slightly for clarity.</p>

97	<p><b>Pre implementation reviews</b> - Paragraph 7.10 confirms the circumstances around when a pre-implementation review would be required. Paragraph 7.11 is supported as it provides details behind what constitutes 'substantial implementation' to ensure that the requirement for pre-implementations reviews is totally clear. There are occasions when circumstances beyond a developer or applicant's control, can slow down the commencement of development. The discharge of pre-commencement conditions can sometimes cause a 'block' to the commencement of development on sites and therefore, there does need to be some sort of assurance from the LB of Tower Hamlets, that it will use best endeavours to ensure that a developer can start promptly on-site through assurances that the Council will progress this paperwork in a timely fashion. Ultimately any delays with pre-commencement conditions could prevent developers from meeting the preimplementation review threshold. This should be reflected in the wording of this section.</p>	<p>The Council will always use its best endeavours to respond to paperwork in a timely fashion.</p> <p>The Council does not consider it appropriate to describe this in an SPD.</p>
98	<p><b>Mid-term Reviews</b> - Paragraph 7.16 suggests mid-term reviews which show that where more affordable housing can be provided, it should be provided on-site. It is suggested that the words 'where possible' should be inserted into this section, as this will provide some flexibility should on-site provision prove difficult to provide half way through a phased development. Every site has a unique set of circumstances and some flexibility here would be sensible to cater for these unique circumstances.</p>	<p>The Council would in most cases encourage the provision of affordable housing on site, to encourage the objective of achieving mixed and balanced communities.</p> <p>The Council cannot foresee instances where it would not be possible to provide additional affordable housing on site following a mid-term review. The fact that it may be inconvenient to a developer is not a reason for amending the SPD according to the comments provided.</p>
99	<p><b>Advance Stage Reviews</b> - It is noted that any surplus generated by a review at 75% sale of market residential units will be capped according to the level of contribution required by policy and associated guidance. However, the intention is to re-provide 60% of the surplus profit to be attributed to the delivery of additional affordable housing. Given that there is considerable risk inherent in development, NGPH would suggest that any surplus should be shared 60/40 in favour of the applicant, rather than the other way</p>	<p>The split described in the SPD is consistent with the split described in the Mayor of London's draft Affordable Housing and Viability SPG.</p>

	around. This should be amended within the SPD.	
<b>100</b>	<b>DVSPD11 - Environment Agency</b>	
<b>101</b>	<p>Viability Assessments are being used to justify not complying with planning policies to improve and enhance the environment. An obvious example of that might be river restoration and enhancements for the River Lee or Thames. This may also relate to requirements for the safeguarding and provision of flood defence raising from the Thames Estuary 2100 Plan. We have a better chance of securing this if involved at the pre-application stage but at the planning application it is harder to make the case unless the development would cause deterioration or prevent future improvement (thus resulting in an objection). It would be good if there was something in the SPD to state that applicants should aim to factor these costs into their schemes at the outset where they are a requirement of planning policy and justification should be provided in instances that it is considered policy requirements e.g. on the natural environment, cannot be met. There should also be an opportunity to discuss the Viability Assessment with the applicant (and Local Authority) to see if any reasonable adjustments can be made to cost assumptions which could accommodate enhancements to the natural environment.</p>	Noted. The Council has amended paragraph 6.11 to add a requirement for build costs to reflect policy requirements.
<b>102</b>	<p>The SA review concludes that many of the SA objectives for the Core Strategy fall outside the remit of the SPD e.g. on biodiversity, water quality and resources etc. Whilst we understand the comment given the purpose of the SPD is simply to provide a framework and guidance on Viability Assessments, we also struggle with that in the sense that it can have a detrimental impact on these environmental objectives, if more weight is placed on 'affordable housing' and 'viability' in general by the applicant and Local Authority in determining applications.</p>	Noted.
<b>103</b>	<b>DVSPD08 - Port of London Authority</b>	
<b>104</b>	It is noted that the draft SPD focuses specifically on the	Noted.

	requirements for financial viability assessments and the basis on which submitted assessments will be assessed by the Council. The SPD includes development proposals which do not provide a policy compliant level of affordable housing.	
<b>105</b>	<b>DVSPD05 - The Canal &amp; River Trust</b>	

## **PUBLIC CONSULTATION: DEVELOPMENT VIABILITY SUPPLEMENTARY PLANNING DOCUMENT**

The Council is consulting on a draft Development Viability Supplementary Planning Document (SPD) from 5pm 31st January 2017 to 5pm 14th March 2017.

The SPD provides clear guidance on the information requirements for financial viability assessments and the basis on which these will be assessed and made public. The SPD will ensure that all planning applications are dealt with efficiently, consistently and with transparency.

Once adopted, the Development Viability SPD will be a material consideration in the determination of planning applications in Tower Hamlets.

The documents can be viewed on the Council's website: [www.towerhamlets.gov.uk/viability](http://www.towerhamlets.gov.uk/viability) and at the locations listed below (right):

A consultation event for the public will be held in respect of the consultation. Please refer to the web page listed above or contact the Infrastructure Planning Team for more information on this event.

### **How to make Comments**

Comments should be made electronically or in writing in the following ways:

#### **Email:**

[Joseph.Ward@towerhamlets.gov.uk](mailto:Joseph.Ward@towerhamlets.gov.uk)

#### **Post:**

Development viability SPD Consultation  
Infrastructure Planning Team  
London Borough of Tower Hamlets  
2nd Floor Mulberry Place  
PO Box 55739  
5 Clove Crescent  
London E14 1BY

### **More Information**

For more information please refer to the Council's website, [www.towerhamlets.gov.uk/viability](http://www.towerhamlets.gov.uk/viability), or contact the Council's Infrastructure Planning team on 020 7364 5009 or by email to [Joseph.Ward@towerhamlets.gov.uk](mailto:Joseph.Ward@towerhamlets.gov.uk). Please note, the consultation closes at 5pm 14th March 2017 and the Council is not able to consider any late responses.

### **Documents can be inspected at:**

Tower Hamlets Town Hall, Mulberry Place,  
5 Clove Crescent, London E14 2BG

Idea Store Bow, 1 Gladstone Place,  
Roman Road, Bow, London E3 5ES

Idea Store Canary Wharf,  
Churchill Place, London E14 5RB

Idea Store Chrisp Street,  
1 Vesey Path East India Dock Road,  
London E14 6BT

Idea Store Whitechapel,  
321 Whitechapel Road, London E1 1BU

Idea Store Watney Market,  
260 Commercial Road, London E1 2FB

Bethnal Green Library,  
Cambridge Heath Road, London E2 0HL

Cubitt Town Library,  
Strattondale Street, London E14 3HG

