

Manchester City Council Report for Resolution

Report to: Executive – 30 May 2018

Subject: Planning and Viability

Report of: Deputy Chief Executive (Growth and Neighbourhoods)
Strategic Director (Development)

Summary

In March 2018 Members debated a Motion before Council on Transparent Viability Assessments. There were three principle elements to the Motion:

- Amending planning policy in relation to viability criteria
- A requirement that viability assessments be required on certain types of application and for these to be made public
- That all information including where this is considered to be sensitive be made available to the Planning Committee and other relevant members before the application is determined.

Prior to the meeting Government had issued its draft Planning Practice Guidance Note on Viability sets out how transparency in the process will be dealt with in the future.

The Motion was agreed unanimously and it was agreed a report would be presented to the Executive.

This report sets out how viability assessments are used as part of the planning process to maximise the contribution that a development makes in support of a wide range of key priorities, the current national policy framework, Manchester's approach and the emerging approach by other authorities. It also sets out the draft guidance recently issued by Government consultation which has implications for reviewing current practice in Manchester.

The report concludes with work being undertaken to improve transparency in the planning system and how the approach to viability will be taken forward through a formal review.

Recommendations

That Members:

1. Endorse the changes proposed in relation to achieving greater transparency regarding viability through changes to the local list as set out in section 7.
2. Agree to officers formally reviewing the Council's approach to viability in advance of any change to the Government's position on this issue following its recent consultation with a view to:

- i producing a Supplementary Planning Document on viability, and
- ii aligning the process with a full policy review of the local plan.

3. Ask officers to report again on the progress of the review.

Wards Affected: All

Manchester Strategy Outcomes	Summary of the contribution to the strategy
A thriving and sustainable City: Supporting a diverse and distinctive economy that creates jobs and opportunities	The planning system plays a significant role in the delivery of key outcomes to support economic growth and sustainable neighbourhoods. This includes the right mix of homes affordable across a range of tenure and income levels to support the growth of the city.
A highly skilled city: world class and home grown talent sustaining the city's economic success	New and existing homes will be well connected to employment opportunities and schools.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	Through supporting growth and enabling the supply of good quality affordable homes for sale and rent through the planning process will provide the opportunity for Manchester residents to raise individual and collective aspirations.
A liveable and low carbon city: a destination of choice to live, visit and work	Improving transparency will support a robust planning process to deliver quality new developments that are designed to be inclusive, energy efficient and contribute to place making.
A connected city: world class infrastructure and connectivity to drive growth	A transparent and robust planning system will improve confidence in decision making that recognises the importance of a well-connected city and the part it plays in driving growth.

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

There are resource implications involved in the review of viability assessments; these are likely to increase as viability becomes more of a focus although this has yet to be quantified.

Financial Consequences – Capital

Financial contributions received from S106 Agreements are used to support a range of environmental improvements, physical infrastructure and affordable housing. The latter will contribute to the Housing Affordability Fund; the fund will bring together in one place a range of funding streams targeted at the provision of affordable homes to complement the development of higher value homes in and around the city.

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Manchester's Local Development Framework – Core Strategy Development Plan Document Adopted 2012.

1.0 Introduction

- 1.1 The publication of the National Planning Policy Framework (NPPF) in 2012 has increased the importance of assessing viability in the determination of planning applications. This is now a critical consideration when local authorities negotiate planning obligations or where other costs are being requested or required from individual schemes. In these cases decisions should be underpinned by an understanding of viability to ensure realistic decisions are made to support development and promote economic growth. Viability is therefore a tool to help the decision maker in its consideration of a wide range of policy outcomes, including for example environmental infrastructure, place making and off-site or on site affordable housing.
- 1.2 However, how viability matters are addressed does vary and current national guidance acknowledges that there is no single approach for assessing viability and there is a range of methodologies available. This is set out in more detail below.
- 1.3 There is a growing recognition of the need for greater consistency in the approach to viability and greater transparency in the process and the Government has recently issued its draft guidance for viability in planning.
- 1.4 The question of how viability is being approached at a local level and transparency in Manchester has also been under discussion. This was first raised in a Motion to full Council on tenant's rights in July 2017; it was agreed that the Council would explore the possibility of requiring property developers building housing in Manchester to publish their financial viability assessments to encourage the building of more affordable housing.
- 1.5 More recently this was highlighted through a Motion discussed at full Council in March 2018. It was agreed a report would be presented to the Executive in response to the Motion and the discussions that had been taking place.

2.0 Current National Policy Framework

- 2.1 The National Planning Policy Framework clearly states that plans.... should be deliverable and that sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened..... Further this should not undermine ambition for high quality design and wider social and environmental benefit but such ambition should be tested against the realistic likelihood of delivery.
- 2.2 At decision making level on individual schemes, the NPPF states that planning applications should not normally require an assessment of viability. However, as set out in 1.1 above where planning obligations or other costs are being introduced viability becomes an important consideration. The NPPF states that where specific requirements may effect a scheme authorities should look to be flexible in applying policy requirements wherever possible.

- 2.3 There is currently no standard or single approach to viability. The NPPF does set out are some broad principles for understanding viability; this includes needing to have an evidence based judgement and a realistic understanding of costs and values, an understanding of past performance (such as build rates), a collaborative approach with developers and landowners, and a consistent approach which involves ensuring the evidence base for housing, economic and retail policy is fully supported by a full understanding of viability across the area.
- 2.4 The NPPF states viability should consider “competitive returns to a willing landowner/developer to enable the development to be deliverable”. It steers away from a rigid approach to assumed profit levels as it does in relation to prescribing how land value and costs should be calculated. Instead it talks in more general terms, for example on land value it suggests this should reflect emerging policy requirements, provide a competitive return and be informed by comparable, market based evidence where ever possible.
- 2.5 Viability should also be based on current costs and values, ie today’s circumstances; although on multi phased development to be delivered over long term, there may be scope to factor in changes in costs and value where agreed with an applicant.
- 2.6 Although viability is an important factor which goes beyond affordable housing, on this matter the NPPF states that viability will vary with housing type, including housing for sale or rent, those looking to self-build and older people’s housing. It is also specific in that affordable housing contributions should not be sought without regard to individual scheme viability.

3.0 Manchester’s approach to viability

- 3.1 Manchester has clear priorities for delivering policy outcomes and the planning system has a key supporting and enabling role in this regard. Core principles and priorities are set out in the development plan (the Core Strategy) and a range of endorsed frameworks that cover areas of strategic importance. These provide a clear platform and focus on the outcomes required to deliver growth and sustainable neighbourhoods and are at the heart of negotiations on all planning applications. Place making and design quality are key components of this.
- 3.2 There are occasions where a schemes deliverability may be compromised by the scale of obligation being sought or through other costs associated with the development; where this is the case viability is tested through a viability assessment in line with the NPPF. Usually such assessments are requested upfront when an application is being validated although this could be required at any time during consideration of a proposal where and if the issue arises.
- 3.3 Assessments are scrutinised and challenged using skills and expertise within the Council to ensure any contribution on a planning application is maximised

- 3.4 To date viability assessments have been submitted in confidence and current practice is that these are not published as applicants have stated that they contain commercially sensitive information. As such only those officers involved in the application process and those being asked to carry out a review have access to the information.
- 3.5 The current process has allowed for financial obligations to be successfully negotiated to a range of key outcomes; this includes public realm, infrastructure, recreation facilities, space for health and schools, leisure facilities together with affordable housing. Each obligation having demonstrated a policy compliance.
- 3.6 Questions raised nationally about viability have primarily focussed on affordable housing. This is also the case in Manchester.
- 3.7 Manchester's planning policy supports the Council's objectives for growth. This aims to ensure that the city not only delivers the homes that are central to the successful execution of our economic growth ambitions, but critically, to add value to the creation of a city that can continue to provide a housing and neighbourhood offer that can retain and attract new residents. For new homes the focus is on how developments contribute to the overall housing offer in the city, with an objective of ensuring that 20% of new homes are affordable.
- 3.8 The policy allows for either an exemption from providing affordable housing, a lower amount or for an off-site contribution. This is where viability has been tested and/or where an exception in policy has been demonstrated:
- There is a very high level of affordable housing in the immediate area
 - There is either a high proportion of social rented or low house prices in the area
 - Affordable housing would prejudice the delivery of other key objectives (as set out for example in regeneration frameworks or other approved programmes)
 - It would financially undermine significant development proposals critical to economic growth
 - The financial impact of the provision of affordable housing, together with other planning obligations would affect scheme viability
 - There is a need for additional provision for older people or disabled people.
 - The policy itself also talks about thresholds changing to reflect economic circumstances.
- 3.9 All applications are robustly tested against all parts of the policy and applicants are required to provide a viability assessment where on site provision is not being proposed.
- 3.10 As part of the approach to deliver new homes, a new Housing Affordability Framework was approved in December 2016. The primary aim is to increase the proportion of new homes in the City that are affordable and as part of this a fund is being established. The Framework recognises that key to delivery is our relationship with developers, investors and our registered providers and

that the planning system has a role in this. Over the last 12 months the planning service has negotiated a number of obligations that involve a financial contribution towards affordable housing through the S106 agreement process which, when triggers are met, will be used to support the Affordable Housing Fund.

- 3.11 We have therefore already adopted an approach that all major planning applications that do not provide for key policy requirements such as environmental infrastructure, contributing to place making or affordable housing on site or off site should be accompanied by a viability assessment.

4.0 Transparency in the planning process and confidentiality

- 4.1 The vast majority of Information relevant to a planning application process is usually publicly available. The benefits of transparency in the system allows increased public access to environmental information and more effective participation and confidence in decision making.
- 4.2 Unlike other documents necessary to support an application, the experience in Manchester and across the Country is that applicants have sought to place confidential restrictions on viability information. This is usually through requests that the Council does not disclose information to a third party and seek an exemption from disclosure under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000. This is on the basis that disclosure would adversely affect the confidentiality of commercial information which protects a legitimate economic interest.
- 4.3 This lack of transparency of viability assessments has come under increasing criticism as there is a concern that more needs to be done to prevent development that is not sustainable and to ensure social and environmental factors are given equal weight to those of an economic nature.
- 4.4 The importance of public participation and the availability of information on viability in the planning process is recognised. This would enable members and the public to see if the evidence being presented is reasonable and robust, whilst helping to maintain confidence in the system and the accountability of those carrying out the assessments. This importance is particularly relevant where it is being argued that a Council's specific policy requirement cannot be met due to financial viability.
- 4.5 It is also now acknowledged that some viability information is likely to be based on or similar to that already publicly available and/or standard assumptions (for example information that is not specific to a development). Where this is not the case it is likely developers could have a legitimate basis for claiming disclosure would cause adverse effect (either in part or as a whole).
- 4.6 A number of authorities are now reporting on how they are publishing viability assessments; Lambeth, Islington, the Royal Borough of Greenwich and Bristol are amongst those who have confirmed this to be the case. However, each

have acknowledged that following a review of relevant policy which provided the platform for the release of the documents, in addition to requiring assessments to be submitted in a standardised format, the applicant can make a case for redacting commercially sensitive information.

- 4.7 Where this arises, the applicant is asked to provide a full justification as to why an exceptional case should apply to any element of the assessment. The context though is that information submitted is done so in the knowledge that this may be made publicly available.

5.0 Emerging Approach – Other Authorities experience

- 5.1 The National Planning Policy Guidance (NPPG) states that transparency of viability evidence is encouraged wherever possible. Without more substantive guidance and a developer's legitimate claim of confidence, local authorities have largely withheld publicising viability assessments.
- 5.2 More recently though there has been a move to look at transparency to achieve greater public accountability and trust in the planning process, this is particularly due to questions of how residential developments are contributing to an affordable homes offer. Although the number of authorities seeking to publish un-redacted assessments is small and predominantly in London and the south west, those reviewing the matter is growing.
- 5.3 The London Borough Development Viability Protocol (November 2016) and Homes for Londoners: Affordable Housing and Viability Supplementary Planning Guidance (August 2017) both set out that Viability Assessment's containing standardised information are expected to be submitted at validation stage and that these should be available to be viewed by the public alongside the rest of the application submission documents.
- 5.4 The London SPG states, given the importance of wider scrutiny and the direction of travel indicated by information tribunal decisions, the Mayor will treat information submitted as part of, and in support of, a viability assessment transparently. This information should be available for public scrutiny and comment like all other elements of a planning application, as should any review or assessment of the appraisal carried out by or for the LPA. As such, boroughs should implement procedures which promote greater transparency where not already in place.
- 5.5 A number of London Authorities, for example, the Royal Borough of Greenwich and the London Borough of Hackney require Viability Assessments at validation stage with an assumption that these will also be available at certain times to be viewed by the general public. Greenwich's local validation requirements which were adopted in 2016 set out that Viability Assessments are to be published in their entirety with no exceptions.
- 5.6 The London Borough of Hackney, and a number of other London Boroughs such as Islington and Lambeth also publish full un-redacted details of the

viability information unless there are exceptional circumstances. In these cases the applicant is required to set out a clear case for the exception.

- 5.7 The London Borough of Southwark expects full transparency of documents but only make the full viability details public one week before the decision date of the application. While the practicalities of such a prescriptive approach could be difficult it is still not clear if full disclosure of details has resulted in developers being dissuaded to submit planning applications in specific boroughs with these policies in place.
- 5.8 Since the publication of The London Borough Development Viability Protocol and Homes for Londoners: Affordable Housing and Viability Supplementary Planning Guidance, it is expected that all London Boroughs will be working towards transparency of viability information in the future.
- 5.9 Brighton and Hove City Council have also just recently agreed to the publication of un-redacted Viability Assessments where policy requirements/contributions are not being met. This followed a period of consultation and will be reflected in their updated validation requirements for planning applications.
- 5.10 In Bristol appraisals have been published on relevant applications submitted from 1 December 2017 when it introduced a new Local List for Validation. Redactions are dealt with on a case by case basis.
- 5.11 In terms of redacting commercially sensitive information, Bristol have taken the line in the draft Government guidance which is that an assessment should be prepared on the basis that it will be made public other than in exceptional circumstances. Such circumstances should be clearly set out to the satisfaction of the decision maker.
- 5.12 In April 2018 Bristol also approved an Affordable Housing Practise Note; whilst this does not change policy it provides some flexibility in certain parts of the city. For example Bristol's policy target is 40% affordable housing, however, 20% will be accepted in some parts of the city and this will not be subject to viability testing provided work commences within 18 months.

6.0 Emerging National Guidance

- 6.1 The Government issued its draft Planning Practice Guidance for Viability in March 2018.
- 6.2 The key message in the guidance is that viability is assessed in detail by a local authority at the stage of setting its development plan, in Manchester this is the Core Strategy, and in allocating land for certain uses. It also proposes that specific assumptions should be made at this stage regarding land value and what is a reasonable return for a developer – using the 'existing use value plus' (EUV+) land valuation method and assuming a return of 20% of gross development value (GDV) for the developer in appropriate circumstances.

This is on the basis that it could then be more difficult for a developer to re-open negotiations on viability at a later stage.

- 6.3 As part of the EUV+ calculation, a premium for the landowner and separately a suitable return for the developer calculated. As noted the draft guidance sets out that an assumption will be made that the return to the developer “may be 20% of GDV” for the purposes of plan making, in order to establish viability of the development plan policies. A lower figure of 6% of GDV “may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces the risk”. It is also acknowledged that different figures may be appropriate for different development types, for example build to rent.
- 6.4 No viability assessment will need to be submitted with a planning application for a policy-compliant scheme (this is the current position but is now also confirmed in a new paragraph in the revised NPPF). Where a viability assessment is required with a planning application (for non-policy-compliant schemes or certain defined types of application), this will need to refer back to the original viability assessment that informed the authority’s development plan, and if anything has changed, the developer will need to provide evidence of that change.
- 6.5 The guidance and the revised NPPF state that where viability assessments are required, they should follow a standardised format with a non-technical summary which should usually be made publicly available. Consistency between the approach to viability assessment for plan making, decision making, section 106 planning obligations and CIL is also required.
- 6.6 It also advocates that review mechanisms could be used in section 106 agreements where appropriate, to adjust certain contributions, and the draft guidance states that the circumstances for their use should be set out in local plan policies.
- 6.7 Review mechanisms may also be used to capture increases in the value of a scheme over time, and to allocate this between the local authority and developer. This is intended to give more certainty around delivering infrastructure (and this is likely to tie in to the Government’s recent inquiry on land value capture).
- 6.8 Whilst there are elements of the draft guidance which are welcomed, for example the potential to make assessments public, the provision for a standardised approach to such documents and clarity that the existing use value is not the price paid and should disregard hope value, there are concerns about assessing viability at the plan making stage together with the 20% assumed return for a developer.

7.0 Conclusion

- 7.1 Whilst viability is being assessed properly, a process that allows all of those involved to understand the basis upon which recommendations are formulated would give greater transparency and confidence to the process.
- 7.2 There is no consistent approach being adopted by other authorities and there is no apparent evidence at this time to the impact of releasing information is having on delivering other key priorities; for example supporting community benefits like infrastructure and/or increasing the supply of quality affordable housing units. This clearly merits further investigation and review to establish what, if any implications have arisen.
- 7.3 In the meantime we have started a review of the local validation list (the tool for ensuring all documents and plans required to assess an application are provided at validation stage) with both quality and enhanced transparency at the heart of this. As part of this we are looking at the approach adopted by other authorities (not just in relation to viability assessments) and the intention is to continue with this work.
- 7.4 Once information has been collated and draft proposals are established there would need to be a period of consultation (usually 8 weeks) before a further review is carried out and a new list adopted. It is envisaged this work could be complete by September 2018.
- 7.5 As noted the Government has also now issued its draft guidance which is likely to be formally produced later in the year. It seems clear that the Government's intention is that viability will generally be dealt with as part of the local plan process and indeed some of the authorities mentioned elsewhere in the report have introduced their approach to publicity of assessments through the local plan or a supplementary planning document.
- 7.6 The Council is looking to undertake a review of its local plan (the Core Strategy), this is a lengthy process and would not be completed until after the Government's consultation on the revised NPPF, including the new approach to viability assessments has concluded and final guidance has been issued on the subject. The current indicative timeline for the Manchester local plan is adoption in 2021 following approval of the Greater Manchester Spatial Strategy.
- 7.7 However, given the importance of the issue, in parallel with the on-going work on the local list, officers will begin a more formal review of its approach to viability now. In the first instance this will be to produce a Supplementary Planning Document (SPD). A SPD would not constitute a formal change in policy but would enable the Council to set out a new approach to the assessment of viability and the procedures to follow; including the publicity given to assessments. This is the approach adopted, as noted in the report, by other authorities. It is estimated this would take 12-18 months.
- 7.8 We will seek to align this process with a full policy review of the local plan as viability is core to all Council key priorities including affordable housing and the provision of community/environmental infrastructure.

- 7.9 Finally, one of the questions posed by Members back in March is how much information on viability could be provided to the Planning Committee or other key members before an application is determined. Once the local list is reviewed, the assumption will be that as much information as possible will be publicly available. However, currently we need to recognise that developers still have a legitimate claim regarding commercially sensitive information as acknowledged by Government. It is also noted that to date developers have submitted assessments in Manchester with an expectation of confidentiality
- 7.10 In addition briefings will be held with the Planning and Highway Committee Members to provide a better understanding and insight into the:
- legal and wider strategic context for planning
 - development control and development management processes including viability assessments
 - factors to be taken into account in determining a planning application

8 Contributing to the Manchester Strategy

(a) A thriving and sustainable city

The planning system plays a significant role in the delivery of key outcomes to support economic growth and sustainable neighbourhoods. This includes the right mix of homes affordable across a range of tenure and income levels to support the growth of the city.

(b) A highly skilled city

New and existing homes will be well connected to employment opportunities and schools

(c) A progressive and equitable city

Through supporting growth and enabling the supply of good quality affordable homes for sale and rent through the planning process will provide the opportunity for Manchester residents to raise individual and collective aspirations.

(d) A liveable and low carbon city

Improving transparency will support a robust planning process to deliver quality new developments that are designed to be inclusive, energy efficient and contribute to place making.

(e) A connected city

A transparent and robust planning system will improve confidence in decision making that recognises the importance of a well-connected city and the part it plays in driving growth.

9 Key Policies and Considerations

(a) Equal Opportunities

- 9.1 The Planning process seeks to deliver key priorities for the city; this includes driving growth and opportunities for residents to access jobs, and the creation of sustainable neighbourhoods which provides homes that are affordable.

(b) Risk Management

- 9.2 The process set out in the report will need to be managed in accordance with appropriate legislation and regulation.

(c) Legal Considerations

- 9.3 The proposed changes set out in the report are subject to a formal process. Subject to the endorsement of the Executive, a further report will be brought back setting out the required steps and more definitive timescales.