
ESSEX LOCAL VIABILITY PROTOCOL

Providing greater clarity and guidance
on the application of planning policy



EPOA
Essex Planning
Officers Association

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1.0 Introduction

- 1.1** In accordance with National Planning Policy Framework (NPPF), Essex local authorities have produced Local Plans to identify what will be built and where during the lifetime of the plan and beyond. Local Plans contain planning policy requirements and therefore will be used as part of the application process to ensure that developments are deliverable. This will identify the extent to which new proposals meet policy requirements, such as the provision of infrastructure including compliance with environmental policies, encouraging economic growth and delivering needed affordable housing.
- 1.2** This protocol sets out overarching principles for how Essex Local Planning Authorities will approach development viability, where this is a consideration as part of the planning process, in line with the National Planning Policy Framework (NPPF) and the national Planning Practice Guidance (PPG). The protocol should be read alongside local Development Plans and associated guidance.
- 1.3** The protocol does not alter existing policies, but provides additional advice on the information requirements and approaches that local authorities intend to apply when assessing viability.
- 1.4** The protocol will provide applicants with greater clarity and guidance on the application of planning policy; inform applicants of the Council's approach to assessing and validating Viability Assessments and help minimise delays in determining planning applications.



2.0 Delivery of Sustainable Development

2.1 The National Planning Policy Framework (NPPF) establishes that the key purpose of planning is the delivery of sustainable development through a ‘plan-led’ system as set out in statute¹. Planning should:

- help to deliver strong, responsive and competitive economies, by co-ordinating development requirements, including the provision of infrastructure private and affordable housing of all tenure types;
- create sustainable, mixed and healthy communities;
- meet full, objectively assessed needs for market and affordable housing;
- promote sustainable transport;
- require good design;
- conserve and enhance the natural and historic environment; and
- meet the challenge of climate change.

2.2 The Planning Practice Guidance requires that the costs of planning requirements should allow for competitive returns to a willing landowner and willing developer to enable development to be deliverable. The process and methodology for testing this must be accounted for within the context of the NPPF as a whole and the overarching objective of achieving sustainable development.

2.3 The Statutory Development Plan for each authority consists of the individual District, Borough and City Local Plans/ Southend-on-Sea Local Plan, together with the Essex Minerals Local Plan and the Essex and Southend-on-Sea Waste Local Plan.

2.4 Changes to the planning system are set out in the Housing and Planning Act (2016) and revisions to the NPPF. The guidance set out in this protocol is applicable when assessing the viability of proposals under the new arrangements introduced by the Act and the NPPF. The Essex Local Planning Authorities will consider further regulatory changes as they come into effect and may deviate from national policy where justified by local evidence/ material considerations.



¹ NPPF paragraph 15

3.0 Viability Assessment Process

- 3.1** Local Plans reflect the NPPF's requirements to ensure that proposed schemes are acceptable. Practical arrangements are in place for the timely provision of infrastructure, to encourage economic growth and facilitate public transport requirements².
- 3.2** Applicants will also be required to comply with the expected affordable housing requirements of the Local Planning Authority. Applicants must be able to demonstrate that they have consulted with the Local Housing Authority and Registered Providers to agree that the application proposals meet the most effective delivery model which includes the appropriate number of affordable homes having regard to size, type, location, design, tenure and rent levels.
- 3.3** Applicants are encouraged to work innovatively and in partnership with Essex County Council, Local Housing Authorities, Registered Providers, commissioners and providers of care to deliver sustainable inclusive communities in which people want and are able to live and work. Our intention is to create healthy, strong, vibrant, inclusive communities which are well educated and where everybody has an opportunity to achieve high aspirations and success. We want to encourage communities which are inclusive and resilient for everybody. Therefore, proposals which include delivery of both general needs affordable housing and affordable housing to accommodate the frail and elderly, people with learning difficulties, people with physical or mental disabilities could offer added value and should be explored.
- 3.4** Applicants should understand the advantage of promoting schemes that meet Development Plan policies, including the provision of required infrastructure to make a scheme acceptable and fully meeting the Local Planning Authority affordable housing targets. Policy compliant applications will not normally be expected to submit a detailed Viability Assessment. This approach will significantly expedite the application process and save applicant's costs of procuring Viability Assessments.
- 3.5** Applicants are encouraged to discuss scheme proposals with the Local Planning Authority and Essex County Council at the earliest opportunity to discuss the outline scheme proposals. Proposals that do not fully comply with infrastructure requirements and the Council's affordable housing policies and requirements will not be accepted without a fully justified Viability Assessment.
- 3.6** Local Planning Authorities (LPAs) will always require a detailed Viability Assessment when determining applications that do not meet the full range of planning obligations. Any initial or subsequent costs of Viability Assessment including examination incurred by the LPA must be met by the applicant.

² For the two tier authorities, applicable infrastructure provision is agreed by Essex County Council

- 3.7** Planning Practice Guidance (PPG) requires that viability assessments should be evidence based. Development viability issues can be of a complicated nature and therefore can cause delay to the determination of applications when not addressed at an early stage or when insufficient information is provided at the point of application. To enable Local Planning Authorities to properly evaluate assessments:
- Section 106 Heads of Terms and development viability (where this is likely to be a consideration) should be discussed at ‘pre-application’ stage;
 - Proposals submitted should be designed in a form that accords with Development Plan policies and associated guidance, infrastructure requirements and associated guidance;
 - Viability assessments should reflect PPG on viability as well any individual Local Planning Authority guidance relating to methodology and inputs. This would usually be found in the LPA’s validation checklist, in plans or supplementary planning guidance.
 - Assessments should include all relevant information required by the Local Planning Authority, and Essex County Council if development is within Essex rather than Southend-on-Sea. Viability evidence must be robustly justified and Assessment assumptions benchmarked against publicly available data sources, including BCIS and recent local schemes. The inputs and findings of any viability assessment should be set out in a way that aids clear interpretation and interrogation;
 - Applicants should demonstrate that the scheme is deliverable with the proposed level of planning obligations, from the initial proposal and throughout the project. This evidence can then be used to support benchmarking at later stages of a proposal
 - Applicants and/or assessors should confirm that the assessment provides a fair and true reflection of viability and that this complies with professional and ethical standards. This may be reported upon within any delegated or committee report that is produced.
 - A working electronic version of the viability assessment model should be provided to the relevant authority. To avoid accessibility issues, a simple spreadsheet should be supplied.
- 3.8** Local Planning Authorities will consider whether the approach adopted within the submitted viability assessment and the inputs applied are appropriate and adequately justified by evidence. In doing so, the Essex Local Planning Authorities will typically take advice from external consultants. The reasonable costs of this process will be paid for by applicants.
- 3.9** An assessment should be updated, where necessary, to ensure that the assessment reflects current market conditions at the point of determination in-line with the PPG³. Although onsite provision is preferred, with the agreement of the Local Planning Authority overage clauses may be accepted; the most appropriate route will be determined by the LPA.

³ PPG Viability Paragraph 9.

3.0 Viability Assessment Process

- 3.10** In two-tier authorities, where mitigation requested by the County Council is not considered viable or necessary, a Local Planning Authority will consult with ECC to provide an opportunity for further dialogue for the consideration of alternative solutions to mitigate the scheme appropriately. In instances where the County Council is the decision maker, this opportunity for dialogue will also be made available to the district/ borough/city council.
- 3.11** Following consideration of an applicant's viability assessment, the LPA will determine whether to negotiate changes to the scheme to improve viability, determine the application on the basis that the scheme is not policy compliant; or accept that there are mitigation and justifiable circumstances which mean that the scheme cannot be viable and policy compliant.

Transparency

- 3.12** All information relevant to the plan-making and planning application process is publicly available. PPG states that transparency of viability evidence is necessary and that assessments must be publically available⁴. The Environmental Information Regulations (2004) recognise the benefits of public participation and include a presumption in favour of disclosure, to ensure transparency and public participation.
- 3.13** In submitting information, applicants do so in the knowledge that it will be shared amongst the Essex Planning Authorities. The Essex Planning Authorities will therefore adopt a presumption in favour of disclosure, whilst having regard to the circumstances, namely commercial confidentiality, which may apply.
- 3.14** Regardless of the approach taken by an authority in respect of making an assessment publicly available, Local Planning Authorities may make information available to planning committee members or any other member who has a legitimate interest in seeing it.
- 3.15** Authorities may also be required to make information available to a third party, where another body has a role in determining an application or providing public subsidy and when fulfilling their duties under the Environmental Information Regulations and Freedom of Information legislation.
- 3.16** It is generally recognised that there is the potential for significant variations in the outcome of Viability/Financial Assessments depending on the assumptions used. It is therefore essential that Assessments are based on robust information and evidence.
- 3.17** Local Planning Authorities expect high levels of professional integrity from applicants when they submit Assessments. It is important that the information provided to the Council is consistent with the development assessment that applicants have themselves relied on to inform their own commercial decision-making in relation to the development.

⁴ PPG Viability Paragraph 10

3.18 The information provided should include details of actual arrangements in place between landowners and developers, and be the same information provided to any funders to secure development finance. Clearly it would be inappropriate and unacceptable for an applicant to submit an assessment that does not accurately reflect the assessment that they themselves have relied on when determining whether or not to proceed with a development.

3.19 In order to ensure the quality and reliability of information submitted, and to minimise the potential for inaccurate or misleading information being provided, the Council will require a statutory declaration to be signed by a director of the applicant's company confirming that:

- The information provided in the viability assessment is accurate and consistent with the information the applicant is using to inform their own commercial decisions and has or will be submitted to their funder(s) for development finance; and
- The applicant has not instructed any agents to formulate the viability assessment under an arrangement where their fee is increased if they are successful in reducing planning obligations. Members of the Royal Town Planning Institute (RTPI) and the Royal Institution of Chartered Surveyors (RICS) are bound by professional Codes of Conduct and the Council will expect professionals undertaking Assessments to accord with these professional standards at all times. Where the Council considers that this is not the case, the Council's may refer these matters to the relevant body for investigation and consideration.



4.0 Considerations in a Viability Assessment

Development Values

4.1 Assumptions relating to development values should be justified with references to up-to-date transactions and market evidence from comparable new build properties. These comparable examples should be within a reasonable distance to the site and, where relevant, should reflect arrangements with future occupiers. In particular information relevant to comparable properties should be:

- Directly comparable to the site in question or should be adjusted to ensure it is comparable;
 - Be fully analysed to demonstrate how this has been interpreted and applied to the application scheme;
 - For any units with characteristics which justify higher values (e.g. upper floors, south facing units, sea view/river frontages etc.) further details should be provided, with reference to units of similar characteristics in nearby schemes where possible.
 - Applicants should engage with Registered Providers (RPs) and the local housing authority at an early stage. Local housing authorities may have a preferred list of Registered Providers with which to work. Affordable housing values should reflect discussions with and offers made by RPs.
- Affordable housing provision should be maximised making the most effective use of new and existing affordable housing resources. An innovative approach which facilitates the best use of existing social housing stock could benefit the applicant, the RPs and the local housing authority for example providing specifically designed homes to encourage move on for existing tenants who under occupy their existing homes whilst remaining in accordance with local policy in terms of tenure and mix. Values should be evidenced through calculations of rental and capital receipts (including staircasing receipts for shared ownership units) and available external/internal subsidies.
 - Registered providers must agree nomination agreement heads of terms with the local housing authority which details how new build and re-let homes will be rented (rent levels and length of tenancy) and how homes will be allocated on completion and in the future.
 - Proposed equity sharing/shared ownership arrangements should be transparent and agreed by the local housing authority including entry “buy in” levels, rent levels and equity charges which should be reasonable and able to be evidenced through calculations of rental and initial capital receipts.
 - The Registered Provider should reach agreement with the LPA regarding reinvestment of future capital receipts from shared ownership or other equity transfers including for example Right to Acquire/Buy/Purchase in any way this may take place now or in the future.



Development Costs

4.2 Build costs should be detailed and supported by evidence from cost consultants.

- Cost details should generally be provided based on Gross Internal Area (GIA), clearly apportioning costs to different elements of the development i.e commercial, market residential, affordable housing etc;
- Costs should be provided in a detailed elemental form that enables them to be benchmarked against publicly available sources (such as BCIS). The Essex Local Planning Authorities' may seek advice from a Viability Assessor to be paid for by the applicant;
- Local Planning Authorities will expect a clear correlation between a development's specification, assumed build costs and development values, and for there to be consistency with comparable sites;
- Any site-specific abnormal costs should be disaggregated and supported by robust evidence (including contractor costs, which may only be estimates at a preliminary stage, and should be updated once actuals are available). The presence of abnormal costs would normally be expected to influence land value;
- A clear explanation of marketing and professional fees should be provided, which are justifiable, reasonable and fixed for the duration of the development;
- Marketing fees relating to affordable housing must not be considered in the Viability Assessment as these will be considered within the Registered Provider offer;
- A standardised approach will generally be adopted to finance costs that should be justified according to the specific proposal, reflecting varying interest costs (if applicable) throughout the development period.



4.0 Considerations in a Viability Assessment

4.3 In line with PPG, assessments should normally be based on current day costs. In particular, these should not include build cost inflation where current day values are assumed.

Planning Contributions (Infrastructure)

4.4 The likely Section 106 planning obligations and Section 278 Highway Agreement should be included as a development cost and be determined in accordance with the relevant Local Planning Authorities' policies and guidance. The Community Infrastructure Levy (CIL) (or similar) charges should also be included as a development cost and be calculated in accordance with the Local Planning Authorities' Charging Schedules and the CIL Regulations. Any locally adopted CIL instalment policies, and phased payments under the CIL Regulations, which aid developer cash flow, should also be reflected in the assumed timing of payments.

Developer Profit

4.5 Authorities will calculate Gross Developer Profit (GDP) as a percentage of Gross Development Cost (GDC)

Example in Cash terms

Gross Development Value GDV – GDC =
Gross Developer Profit (GDP)

Example in Percentage terms

GDP divided by GDC x 100 = % profit

4.6 The Viability Assessment will be expected to demonstrate separate profit margins by tenure including market sales housing, commercial property, affordable rented housing and shared ownership housing as well as a cumulative profit margin.

4.7 Profit requirements for affordable housing should reflect lower levels of risk when compared to private residential units. Similarly lower levels of return would normally be expected for commercial and private rented accommodation.

Land Value

4.8 Within planning viability assessments there are two ways to assess land value included in the Viability Assessment:

4.9 Within planning Viability Appraisals there are two assessments of land value that are undertaken to determine whether a proposal is viable: the assessment of residual land value and benchmark land value. The residual land value is determined through deducting development costs from development value (see guidance on costs and values above) to ascertain the remaining value that is available to pay for land⁵. This is then compared with the benchmark land value, which is the value below which the current/existing use will be retained onsite and the land will not be released for development.

4.10 The process for establishing an appropriate benchmark land value for a viability assessment is key, because this indicates the threshold for determining whether a scheme is viable or not. A development is typically deemed to be viable if the residual land value is equal to or higher than the benchmark land value, as this is the level at which it is considered that the landowner has received a 'competitive return' and will release the land for development.

The assessment of Existing Land Value plus a premium

⁵ This is the residual method of land valuation

- 4.11** The ‘Existing Use Value plus (EUV+)’ approach to determining the benchmark land value is based on the current use value of a site, plus a premium to bring the site forward. The principle of this approach is that a landowner should receive at least the value of the land in its ‘pre-permission’ use, which would normally be lost when bringing forward land for development. A reasonable premium is added to provide the landowner with an additional incentive to release the site, having regard to site circumstances.
- 4.12** The benefit of this approach is that it clearly identifies the uplift in value arising from the grant of planning permission because it enables comparison with the value of the site without planning permission.
- 4.13** Comparing the existing use value of a site with the residual land value generated by the proposed development (which must be equal to or higher than the benchmark land value) is an appropriate way to determine whether or not a ‘competitive return’ is achieved for the landowner .
- 4.14** This Protocol advocates that the ‘existing use value plus a premium’ approach is most conducive to achieving the goals of the planning system and should be used to determine the benchmark land value in most circumstances⁶.
- 4.15** When determining an appropriate benchmark land value:
- An existing use value should be fully justified with references to comparable evidence, which excludes any hope value associated with development on the site or alternative uses. This evidence should relate to sites and buildings of a similar condition and quality, or otherwise be appropriately adjusted. Where an existing use and its value to a landowner is due to be retained in a development (and not lost as is usually the case), a lower benchmark would be expected.
 - Premiums above Existing Use Value should be fully justified, reflecting the circumstances of the site and landowner. The actual percentage will be determined on a site-by-site basis, depending on the use of the site. For a site that does not meet the requirements of the landowner or creates ongoing liabilities/costs, a lower premium would be expected compared with a site occupied by profit-making businesses that require relocation.
 - As supported in PPG, in all cases land or site value should reflect Development Plan Policies, planning obligations and CIL. When determining a level of premium that would be sufficient to incentivise release of a site for development and ensure that a landowner receives a ‘competitive return’, this should take into account the overarching aim of delivering sustainable, policy compliant development and that an uplift in land value is dependent on the grant of planning consent.

⁶ This approach is also applied within the Homes and Communities Agency Guidance ‘Responding to the Downturn’, and Local Housing Delivery Group ‘Viability Testing Local Plans: Advice for Planning Practitioners’

5.0 Viability Review Mechanisms

5.1 Development values adopted within viability assessments are typically determined based on current day values at the point of the planning permission. However, there is usually a time lag between the planning stage and delivery of the development with applicants normally having up to three years to implement a development and the construction period further delaying the point at which values are realised. During this time, significant changes can occur to the viability of a development.

5.2 Where a Section 106 agreement is not fully policy compliant, as the developer has justified and the LPA is satisfied that at the point of determination a policy compliant scheme was not possible. However, the position may change during the development process with either reductions in costs (as costs become fixed, contingencies are reduced) or increases in income. Any such improvement in viability should benefit the wider community, as well as the developer.

5.3 A review mechanism is intended to ensure that the maximum public benefit is secured over the period of the development:

- Where affordable housing targets and other policy requirements are not met at application stage due to viability considerations, authorities will require applicants to enter into review mechanisms within Section 106 agreements. These will enable a re-assessment of viability to determine whether additional affordable housing and other planning obligations can be provided at a later date. Local Planning Authorities may seek reviews on phased and non-phased schemes.



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- Reviews may take place prior to or at an early stage of development enabling additional onsite affordable housing to be provided, or at a later stage based on actual values / costs. On phased schemes, viability reviews will be required at different stages of the development process. An agreement on the timing and scope of the review must be explicit in the heads of terms at decision stage, and in the final S106 agreement.
- All reviews should be undertaken on an open basis with full working viability assessments which includes:
 - Actual costs incurred to date
 - Adjustments to contingencies, anomalies and other forecasts appropriate to take account of those incurred in the completed works and the scope of the remaining development (*i.e.* actual costs for anomalies which are exclusive to an early phase, should not be forecast for a latter phase)
 - Actual receipts to date
- Where a 'surplus' profit is generated over and above the 'target' or 'base' profit level (which is necessary to ensure a viable development), this will be prioritised for a greater level of policy compliance (to an agreed cap). In some instances, a Local Planning Authority may deem it appropriate for a developer to receive a share of surplus profit to remain incentivised to maximise value. The percentage share of any surplus profit will be agreed as part of the review mechanism.
- The purpose of review mechanisms is to ascertain whether additional policy compliance can viably be achieved at the point of delivery. Review mechanisms should not result in a reduction in policy compliance, which is likely to affect the acceptability of a development proposal. Therefore, each review can be upwards only, unless there are other mitigating circumstances agreed with by the relevant Local Planning Authority.



6.0 Monitoring and Reporting on Contributions

- 6.1** Developers must be accountable to communities and that communities must be given the opportunity to easily see where contributions towards infrastructure and affordable housing have been secured and spent.
- 6.2** Local Planning Authorities will monitor and report on the contributions agreed with developers and details will be published as part of the planning register. In particular Authorities will set out details of the development and site, and what is to be provided by each planning obligation, including any trigger points or deadlines for contributions.
- 6.3** Reporting will be used to inform future strategic planning decisions to ensure that policy requirements for developer contributions remain realistic





Endorsed by EPOA
(excluding Thurrock)
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