

Report to: Governance Select Committee

Date of meeting: 4 April 2017



Portfolio: Governance and Development Management (Councillor R Bassett)

Subject: Planning Application Requirement Validation Checklist & Viability Guidance for Affordable Housing

Officer contact for further information: N. Richardson (01992 564110)

Democratic Services Officer: S. Tautz (01992 564180)

Recommendations/Decisions Required:

- (1) That the Committee agree the content of the draft revised Planning Application Requirement Validation Checklist and draft 'Guidance Note to Planning Applicants on the Submission of Viability and Financial Appraisals for Affordable Housing';
 - (2) That the draft Validation Checklist and Guidance Note be published on the Council's website for consultation purposes, for a period of 28 days;
 - (3) That any comments submitted during the consultation period be considered by the Assistant Director of Governance (Development Management) and the Director of Communities and that the draft Validation Checklist and Guidance Note be amended as considered necessary and be adopted by way of a formal decision of the Governance and Development Management Portfolio Holder;
 - (4) That the agreed version of the Validation Checklist and Guidance Note be used for the purposes of registration of planning applications and for published on the Council's website as part of the necessary information required to submit a planning application; and
 - (5) That the Validation Checklist be kept under regular review and the Director of Governance be authorised to make minor amendments necessary to reflect changes in Government guidance or Council policy and guidance, without undertaking further consultation or member approval.
1. The Local Validation Requirements List is prepared by the Local Planning Authority to clarify what information is usually required for applications of a particular type, scale or location. Before Development Control Planners begin assessing a submitted planning application, these submissions must be considered to be 'valid', otherwise they are not registered and consulted upon. It is only when it is valid, that the start date of the

planning application begins. The need to revise the local validation requirement every two years is set out in the Town and Country Planning (Development Management Procedure) (England)(Order) 2015.

2. The current local validation requirement list was agreed by the Planning Services Scrutiny Panel in 2014 and put on the Council's website as a final version in March 2015. It has been used since to validate planning applications submitted to the Council. As it is now two years old and before it is consulted upon, there is now the opportunity to review it. This reports recommends that the revised list, attached as an appendix, be agreed by the Select Committee and put on the Council's website for consultation.
3. In addition, the Committee is being asked to agree a "*Guidance Note to Planning Applicants on the Submission of Viability and Financial Appraisals for Affordable Housing*", that has been produced by the Director of Communities which would be annexed to the Checklist. Given there is an increasing relevance of viability in planning and because of its complexity and absence of detailed formal planning guidance on this issue at the national level, there is a need for local guide, which is also requested to be consulted upon.
4. The attached draft revised Local List of Validation Requirement Checklist and Viability Guidance Note, once finalised, will provide guidance and greater certainty to applicants about the information that may be required when submitting planning and related applications and will help to ensure that the Council has all the necessary information to determine applications within set time targets.
5. Amendments will be made if appropriate in the light of representations received during the consultation period. The revised Local List will then used for registration purposes by planning officers and be made available on the Council's website. Failure to review the local validation requirement list after two years and upload it on the Council's website would mean that the Council could only require a planning application submission to have the basic national requirement to make it valid.

Validation Checklist

6. To make a planning application valid, there are national (statutory) and local information requirements. National requirements apply to all planning applications in England and are the basic requirement as set out in The Town and Country (Development Management Procedure)(England) Order 2015 as follows:
 - completed application form;
 - compliance with national information requirements;
 - plans and drawings;
 - ownership certificate and Agricultural Land Declaration;
 - design and access statement; (for some applications);
 - the correct application fee; and
 - provision of Local Information Requirements (See attached)
7. The Local Validation Requirements List is prepared by the Local Planning Authority to clarify what information is usually required for applications of a particular type, scale or location. Its requirements should be specified on a formally adopted 'Local List' which has been published on its website less than two years before an application is submitted. Local Information requirements have no bearing on whether a planning application is valid unless they are set out on such a list. They apply to all planning applications except advertisements; Certificate of Lawfulness existing and proposed; Non material amendments; Prior approvals and works to preserved trees (TPO's).

8. The use of a published Validation Requirements List gives both the Council and applicants more certainty on the type of information required at the outset and also helps to ensure that the information requested is proportionate to the type and scale of any application being made. However, the National Planning Policy Framework at paragraph 193 makes it clear that:

'Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question'.

9. The Council has a current validation requirement which was drawn up in 2014 and approved by this committee. This Council's local validation requirement is now due a further adoption for another two years, but before it is consulted upon, there is now the opportunity to review it.
10. A revised draft Validation Requirements List has been produced for Consultation and is attached as Appendix 1. It generally retains the format of the existing one on the website but to bring the List up to date, changes have been made to reflect updates in planning legislation, policy and guidance upon which the requirements are based. The main changes to the document are:
- more detailed information and links to the relevant policies and guidance that apply to the requested document;
 - some terminology has been revised to make it clear when certain plans and information are required and we have tried to adopt a more pragmatic approach to requests for information and where it can be found;
 - a more straight and quicker way forward for developers to satisfy Land contamination issues, that currently delay development being built out; and
 - details introduced regarding Sustainable Urban Drainage Systems
11. Whilst the Council can insist on an applicant supplying any element of the local list, the applicant can set out in writing reasons why they do not consider it necessary to in the individual circumstances of their proposal. As a Council we would have to consider all such requests and the applicant now has a right of appeal against a non-determination of a planning application if it is not made valid. The aim in each case is to make sure sufficient information is submitted to enable all parties to properly assess the impacts of a planning application.

Viability Planning Guidance

12. The Council has a number of policies, contained within its Draft Local Plan and other supporting documents, relating to the provision of affordable housing on new developments within the District, which are in accord with the National Planning Policy Framework (NPPF). Generally, for developments in excess of 10 dwellings, or where the proposed Gross Internal Area of properties is greater than 1,000m², the Council expects at least 40% of the total number of dwellings to be provided as affordable housing, with at least 70% of the affordable housing being provided as affordable rented housing. The Draft Local Plan proposes that the affordable housing target remains at 40%, with the affordable tenure mix reflecting the need assessed through the Strategic Housing Market Assessment (SHMA).
13. The Draft Local Plan reflects the NPPF's requirements that, if it would be unviable for a development to fully comply with the Council's affordable housing policies and requirements, the Council would accept either a lower amount of affordable housing and/or a different tenure mix - subject to the applicant providing a detailed Viability Appraisal, with adequate and appropriate supporting evidence.

14. Similarly, the Draft Local Plan also recognises that there may be exceptional circumstances that would justify the payment of a financial contribution to the Council for use towards the provision of affordable housing on another site in the District, in lieu of on-site provision. However, this is subject to the applicant providing a detailed Financial Appraisal assessing the difference in anticipated property sales values, other income, construction costs and other costs (including a reasonable developer's profit) between a development with all the dwellings being provided as market housing and a development with the required affordable housing provision on site.
15. Officers have identified a significant increase in the numbers of planning applications that are being submitted for residential development, where applicants assert that it would be unviable to provide the required 40% affordable housing, and providing a Viability Appraisal purportedly backing up this assertion.
16. In such cases, the Council's affordable housing consultants are appointed to review the Viability Appraisal in detail, at the applicant's cost, and to provide the Council with a detailed report on their findings, a copy of which is also provided to the applicant. The report comments on each of the applicant's assumptions within their Viability Appraisal, and advises the Council on whether or not they are of the view that the Appraisal can be validated as being acceptable and sound, and identifies any areas where individual assumptions or evidence cannot be validated or supported.
17. If the Council's consultants cannot recommend that the Viability Appraisal should be validated/accepted, they provide the Council with their own view of the level of affordable housing or financial contribution that would be viable and appropriate to meet the Council's Local Plan affordable housing policies. If the applicant's affordable housing proposals are not acceptable, it usually results in a recommendation to the relevant Area Plans Sub-Committee that the application should be refused on the basis of insufficient affordable housing provision/contribution.
18. Despite the increasing relevance of viability in planning and its complexity, there is an absence of detailed formal planning guidance on this issue at the national level. Various industry guidance documents are available, but no single document satisfactorily addresses all aspects of the viability process. Regrettably, the Council often receives Viability/Financial Appraisals that:
 - contain assumptions that are unsupported by robust evidence;
 - include development values that are under-stated and/or development costs that are over-stated, resulting in an artificially pessimistic outcome; and/or
 - seek to limit planning obligations in order to generate excess profits for a developer and/or landowner above a reasonable level of return that is required for the development to proceed.
19. Therefore, a guidance note for planning applicants on the submission of viability and financial appraisals for affordable housing has been produced by the Director of Communities, in order to:
 - 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/Finance Appraisals; and
 - help minimise delays in determining planning applications.
20. The guidance explains the national planning policies, the Council's key local planning policies relating to affordable housing and viability and its requirements for the

submission of Viability Appraisals and Financial Appraisals by applicants, where either:

- the applicant is of the view that it would be unviable for a development to provide the expected amount and/or tenure of affordable housing – where a Viability Appraisal needs to be provided by the applicant; or
- the Council has accepted that there are exceptional circumstances that justify a financial contribution towards the provision of affordable housing on another site in the District, in lieu of on-site provision – where a Financial Appraisal needs to be provided by the applicant.

21. A copy of the draft guidance note is attached as Appendix 2 to this report.

Recommendations

22. The Select Committee is asked to consider the Planning Application Requirement Validation Checklist and the Viability Draft Guidance and make any comments it may have, prior to a consultation being undertaken.

23. The Assistant Director of Governance (Development Management) and the Director of Communities will then update the Checklist and Guidance Note with any changes required as a result of the consultation exercise and submit a final version to the Governance and Development Management Portfolio Holder for formal approval.

Resource implications: None for this report.

Legal and Governance Implications: The need to review the local validation requirement is set out in the Town and Country Planning (Development Management Procedure) (England) (Order) 2015.

Safer, Greener and Cleaner Implications: None for this report.

Consultation undertaken: Proposal is to make the draft Planning Application Requirement Validation Checklist and the Viability Guidance available for consultation on the Council's website.

Background Papers:

1. National Planning Policy Framework

2. Section 62 (4a) of the Town and Country Planning Act (inserted by The Growth and Infrastructure Act 2013).

3. Article 11(3) of the Town and Country Planning (Development Management Procedure) (England)(Order) 2015

Impact Assessments:

Risk Management *None for this report.*

Equality *No equality implications arise from this report.*