

**Consultation on EFDC's Draft Guidance Note to Planning Applicants
on the Submission of Viability and Financial Appraisals for Affordable Housing**

SCHEDULE OF COMMENTS RECEIVED AND OFFICERS' RESPONSES

Ref.	Comment Received	Officers' Response
General	The consultation document is welcomed by Pigeon in recognising the issues around viability and how this is this fundamental to housing delivery.	No comment.
General	We feel it would be a useful exercise to organise a viability workshop with landowners, developers and other stakeholders to discuss the process further	We do not feel that this would be useful, since there was very little response from landowners and developers to the consultation exercise.
2.1	References affordable housing management to be undertaken by a Registered Provider (RP) which is a Preferred Partner of the Council (and again at 9.6). Pigeon would suggest a choice of wider choice of RPs and that they should be selected at an appropriate time in the process. Like developers, the approach from RPs will be cyclical as part of the industry and dependant on cashflow and other factors. Therefore a wider selection should be permitted and it may be more appropriate for them to be formally engaged once the planning permission has been granted.	<p>We disagree. This part of the Guidance reflects the Regulation 19 Local Plan Submission, on which there has been extensive consultation.</p> <p>It is the Council's view that it is appropriate for affordable housing to be delivered by its Preferred Housing Association Partners, in accordance with its Housing Association Partnering Scheme, since they have a good understanding of the housing and planning policies in the district and a proven track record of delivery.</p> <p>However, it is officers' intention to shortly recommend to members an increase in the number of Preferred HA Partners by an additional two or three associations.</p>
2.1	With regard to tenure, again a more flexible approach should be brought forward recognising that tenure can change for a range of reasons as well as viability. Accordingly the tenure should not be fixed from the outset.	<p>The wording reflects the Council's planning and housing policies.</p> <p>Policy H2 (Affordable Housing) of the Council's Regulation 19 Submission states that "the mix of affordable homes will be required to reflect the latest available housing need".</p> <p>The Council's recently adopted Housing Strategy 2017-2022 states that one of the Council's objectives is "On developments which provide for 11 or more homes (or on land in excess of 1,000sqm gross floor space), to generally seek up to 25% of the affordable homes as shared ownership homes, to assist first time buyers to gain access to home ownership and to meet the National Planning Policy Framework's requirement for the provision of affordable home ownership properties".</p>

4.0	There is no reference in the document to split sites for allocations. For example if development is split across greenfield and brownfield sites then differing viability will come into play.	The applicant's Viability Appraisal should reflect the overall viability of developments on such "split sites".
4.0	There is no reference to the clustering of affordable housing within the consultation. The level this is set at will have implications for the viability of development.	The layout of developments that include affordable housing will be planning-led, and form part of the planning considerations and discussions. Applicants' Viability Appraisals should be based on the proposed layout.
5.3	The assessment in the bullet points should include a reasonable market land value.	<p>We disagree, since it is generally accepted that the open market value of the land is not a factor taken into account for viability appraisals, except when assessing the Benchmark Land Value, which is covered in Paragraph 8.8 of the Guidance.</p> <p>However, following receipt of this comment, Paragraph 5.3 of the final version of the Guidance has been slightly amended to make it clear that the basis of the contribution needs to be subject to viability.</p>
6.3 and 6.5	<p>Section 6 defines the approach to discussions, with Paragraph 6.3 onwards setting out pre-application consultation and Paragraph 6.5 defining that it would be beneficial to submit appraisals at this stage.</p> <p>In our opinion it would be preferable to make this pre-application process less formal and more an on-going discussion and negotiation rather than formally submitting a draft document, particularly as the scheme may continue to evolve as part of the pre-application and stakeholder discussions.</p>	<p>It is officers' view that most applicants would benefit from an early view from the Council on developments that the applicant considers to be unviable to deliver with full policy compliance. However, it is accepted that developments do sometime change over a period of time, based on the feedback received through the pre-application process.</p> <p>It is for the applicant to determine at which time their Viability Appraisal should be submitted (subject to it being received with/before, their planning application is submitted).</p> <p>Therefore, Paragraph 6.5 of the final version of the Guidance has been extended to make it clear that applicants need to weigh up the benefit of getting an early view on a development's viability, with the possibility that the proposed development may change significantly between the time of the pre-application process and when a planning application is made - which may affect the viability, and for which it may be necessary for the applicant to submit a revised Viability / Financial Appraisal and to meet the Council's cost of the further validation.</p>
8.8	Reference is made to the Benchmark Land Value (BLV) as being normally less than the Open Market Value. However it is not considered that if the BLV is lower, that this would sufficiently incentivise landowners to bring forward sites for development.	<p>In officers' experience, the BLV usually is lower than the Open Market Value. However, Paragraph 8.8 of the Guidance states that the cost of planning obligations should ensure an appropriate return for both the landowner and the developer, and that the return to the landowner from the sale of the land needs to be greater than the Existing Use Value (EUV).</p> <p>This is articulated further in Paragraph 8.10, which refers to the BLV being based on an "EUV+" approach.</p>

9.9	<p>It is stated that affordable rents should be based on whichever is the lower of 80% of market rents, or the Local Housing Allowances. For a location such as Epping, this would bring down the existing land value, and could see market housing cross subsidising affordable delivery, with the potential for impact on the delivery of the 40% target.</p>	<p>It is Government policy that the rents for “affordable rented” housing should be no more than 80% of local market rents. It is also important that such rents are no higher than the Local Housing Allowance for the local area (which is the maximum amount for which housing benefit will be paid to tenants), to ensure that they can be occupied by housing applicants in housing need who are in receipt of housing benefit.</p> <p>Viability Appraisals submitted by planning applicants should have regard to the payment that will be received from the housing association that will purchase the affordable housing. If the effect is to make a policy-compliant development unviable, requiring a reduced amount of affordable housing, it will be at the District’s cost, not the applicant’s. It is better to have a lesser amount of affordable housing than have housing that is not affordable to a key client group (i.e. housing applicants in receipt of housing benefit).</p>
9.11	<p>States that build costs should be based on BCIS or SPON. However it should be noted that these figures will see a lag, which could see actual rates very different to those set out as a result. It also does not reflect geographical differences as to where labour is resourced.</p>	<p>Applicants are encouraged to base their build costs on a cost consultant’s bespoke assessment for their development. Such an assessment would then be validated by the Council’s consultants’ own cost consultant.</p> <p>However, in the absence of any such bespoke assessment, and in light of the need for some assessment of costs to be provided by applicants, it is considered that BCIS or SPON figures are the most appropriate. Indeed, Paragraph 022 of the NPPF’s Planning Policy Guidance (PPG) on Viability explains states that build costs should be based on appropriate data, “for example that of the Building Cost Information Service”.</p> <p>The BCIS provides costs for individual local authority districts, which should therefore take account of local labour costs.</p>
9.16	<p>The expected level of developer’s profit is defined as 15%-17.5%. However this ‘one size fits all’ approach is not suitable and does not recognise a significant breadth of different developers and their models. RICs have also published an expected level of profit that is in excess of the figures set out in the consultation document. Similarly a 15% profit on commercial development is too rigid and does not reflect the nature of the letting process.</p>	<p>Paragraph 9.15 of the Guidance states that “the level of developer’s profit will vary from scheme to scheme, which is determined by a range of factors including property market conditions and the development’s risks. In accordance with the National Planning Practice Guidance (NPPG), the Council avoids having a rigid approach to profit levels and will consider the individual characteristics of each scheme when determining an appropriate level of developer’s profit and, where necessary, will require supporting evidence from the applicant’s lenders to justify the level”. Therefore, this recognises that “one size does not fit all”.</p> <p>However, it is officers’ experience, having considered many Viability Appraisals over recent years, that applicants tend to state their expected developer’s profit at the higher end of what officers would consider appropriate, having regard</p>

		to appeal decisions by independent planning inspectors. Therefore, it seems appropriate, and only reasonable, for the Council to state what its expectations are from the outset.
9.21	Two main approaches to development finance are stated. This is too restrictive and there are a range of differing approaches.	It is officers' experience that the two stated approaches are the <u>main</u> ones adopted to assess development finance. However, the Guidance does not prohibit any other reasonable approach being adopted which, of course, would be validated by the Council's consultant.
9.24	The developer's promotion costs need to be taken into account in the appraisal. The current document only includes the planning application costs, which are a snapshot at the end of the process but do not reflect what could be a lengthy and expensive process. This is particularly true of strategic scale development, which would incur significant cost to assemble and bring forward through the Local Plan process.	This is accepted. Accordingly, a new Paragraph 9.24 has been inserted in the final version of the Guidance to have regard to these costs.
10.0	This assesses review mechanisms. We are of the view that that review mechanisms should be forward looking only, capped at whatever the current policy requirements are, and only related to affordable housing.	We are of the view that the review mechanism is, indeed, only forward looking. Paragraphs 10.1 and 10.2 refer to the fact that significant changes can occur usually a significant time lag between the time planning permission is granted and completion of the development, which could affect viability. It is accepted that review mechanisms should only relate to affordable housing - so this has made more explicit in Paragraph 10.3 of the final version of the Guidance. However, of course, any review would need to take account of all material changes in development values and costs.
11.0	This deals with the confidentiality of information and advises the Council may have no option other than to disclose information. Pigeon would stress that scheme viability can be highly commercially sensitive and would urge the Council to keep this confidential where at all possible.	There have been a number of adjudications by the Information Commissioner relating to what information within Viability/Financial Appraisals should be kept confidential, and which should be disclosed on receipt of a Freedom of Information (Fol) request. Although the Council will not actively publicise this information, it will always be guided by previous Information Commissioner adjudications.