

23 May 2018

Viability and developer contributions

Purpose of report

For direction.

Summary

The Government now accepts the LGA's long held view that the viability process is in need of review and has consulted on reforming developer contributions.

In the meantime many councils continue to develop innovative approaches to maximise community benefit from viability negotiations, and the Board will hear from the approach taken by the London Borough of Tower Hamlets in achieving this.

This report introduces issues related to the viability system and the government's proposals for reforming developer contributions and seeks direction for future LGA work in making the case for reform to Government, and in supporting councils to develop and improve.

Recommendation

That the Board consider, direct and agree recommendations set out in paragraph 16.

Action

To be taken forward by officers as agreed.

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Background

1. On 5 March 2018 the Ministry for Housing Communities and Local Government (MHCLG) published proposals for reforming developer contributions to affordable housing and infrastructure.
2. This has long been an issue around which the LGA has called for greater attention.
3. Alongside this the government also published a number of other documents, including proposals for a revised National Planning Policy Framework (NPPF) and revised draft National Planning Practice Guidance (NPPG).
4. The LGA's responses to the NPPF consultation and the developer contributions consultation can be found [here](#).

Issues

Challenges

5. The MHCLG has acknowledged that *'the current system of developer contributions is not working as well as it should. It is too complex and uncertain. This acts a barrier to new entrants and allows developers to negotiate down the affordable housing and infrastructure they agreed to provide'*. The same system also plays a key role in influencing the build out rates of sites with planning permission.
6. This is an argument that has been made by the LGA for some time. For instance in its 'Building our homes, communities and future', the LGA Housing Commission recommended that local and national government work together to *'establish a clear, robust and transparent viability procedure to help manage down the escalation of land values and ensure the delivery of affordable housing and infrastructure communities need to back development'*.
7. There is a need to reform viability because, as one contributor to our Commission put it, *'the ability to lower affordable housing provision through viability arguments is creating uncertainty in the land market. When bidding for land and factoring in the uplift in value that may come from the grant of planning permission, the developer who makes the most bullish assumptions around value growth, minimising affordable housing, and maximising density, will outbid others and acquire the site. This transfers developers' risk onto the planning system and the community.'*
8. Landowners have significant influence in the country's ability to build more new homes. Landowners can choose when to release land at a point and a price that works for them,

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able to negotiate for well above existing use value by the Land Compensation Act which allows them to financially benefit from future uplift. There is growing consensus on the need for a discussion around how the gains of public investment is shared between communities, landowners and house builders, the impact of the planning system on the land market is central to this question.

Proposed reforms

9. The emphasis placed on this issue by the new MHCLG consultations is therefore welcome. The revised National Planning Policy Framework (NPPF), the accompanying National Planning Policy Guidance (NPPG), and developer contributions consultation between them make a number of positive propositions about the future of developer contributions. This includes:
 - 9.1. Transparency – a requirement for all viability assessments to be made publicly available and to reflect the recommended approach in national planning guidance, including standardised inputs
 - 9.2. Reaffirmation of allocations in local plan - an expectation that where sites are allocated in a plan they should be deliverable without the use of a viability assessment at decision-making stage
 - 9.3. Encouragement for early consideration pre-planning, particularly discussions about infrastructure and affordable housing at the pre-application stage to encourage early engagement on these issues
 - 9.4. Clarification that the price paid for land is not a relevant justification for failing to accord with relevant policies in an up-to-date plan and that existing use value is not the price paid for land and should disregard hope value
 - 9.5. A more streamlined consultation process for setting and reviewing CIL
 - 9.6. Partial removal of the pooling restrictions for section 106 contributions
 - 9.7. Flexibility for local authorities to set differential CIL rates based on the existing use of land
 - 9.8. Flexibility for Combined Authorities and Joint Committees with strategic planning powers to charge a Strategic Infrastructure Tariff
10. However, while well-intentioned, the overall propositions for reforming viability need rigorous testing in order to better understand whether or not they address the central issues that would actually enable the delivery of more homes across different housing markets - there are some concerns that the reforms might even lead to fewer affordable rented homes.
11. In particular councils have highlighted concerns that:
 - 11.1. It is proposed that councils will set policy requirements for developer contributions expected from different types of development and, where necessary, from different sites. This will likely place extensive and expensive new burdens on councils to

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determine the viability of many different sites. It also risks creating additional uncertainty that developers can use to push down contributions because, while the proposal is that sites delivered within this requirement would not need further viability assessment, developers may still seek opportunities to pursue a second viability assessment if it is within their interests to.

11.2. In determining the policy requirements for developer contributions, it is proposed that councils must adhere to a model that risks 'locking in' the levels of return currently generated, creating little room for increased investment in affordable homes and infrastructure. For instance the proposals set out how landowners should receive a premium return that they would expect by using '*data from comparable sites of the same type that have recently been granted planning consent*'. While the consultation highlights that these examples should be policy compliant, such examples will often not be available. Similarly, it proposes councils assume a 20 per cent Gross Development Value as a suitable return to developers based on current models, while this level may often be necessary to access finance, it might not be helpful to determine it in planning policy.

11.3. Furthermore, for what availability does exist, it is proposed in the draft NPPF that 10 per cent of all new major sites provide low cost home ownership products. This requirement will have to be factored into viability models, however the product will not meet the needs for all communities in many housing markets and risks displacing the supply of other products for which there is a clear demonstrable need. There is therefore a risk that this will make local discussions between councils, developers and landowners difficult, as councils will seek to enable the delivery the homes needed locally in addition to the 10 per cent requirement.

12. It is important that the LGA continue to shape the debate on what happens next, as the emphasis on reforming viability is a welcome acknowledgement that the current system is not working, and provides a real opportunity to build homes that also deliver in terms of quality, design, tenure, infrastructure, and community.

Local action

13. Nevertheless there is action that councils can take, and are taking, to help ensure viability discussions are positive and ensure developer contributions deliver for the local community.

14. For instance a number of councils have taken steps to introduce greater transparency on viability assessments, to have viability discussions as early as possible, or to equip teams with the confidence, skills and access to information to succeed in negotiations with often very well resourced developers.

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15. The Board will hear a presentation from London Borough of Tower Hamlets on their approach to viability negotiations, what this has achieved for their communities, and how learning might be used elsewhere.

LGA action – proposed next steps

16. The Board is asked to comment on the proposed set of policy recommendations and actions:

- 16.1. Continue to take forward the LGA NPPF and developer contributions response in discussions with councils, partners, officials and Ministers – including a series of workshops with councils together with developers and MHCLG.
- 16.2. Develop detailed policy propositions for what a reformed viability procedure should look like and how it would deliver national and local ambitions for more homes, widely engage councils, developers and the Government in this process.
- 16.3. Deliver a project investigating, capturing and presenting good practice learning from councils that have had success in viability negotiations, developing a resource and events to share the learning across the sector.

Financial Implications

17. None

Implications for Wales

18. There are no specific implications for Wales.

Next steps

19. Officers to take forward actions as directed by the Board.