

Name of meeting: Cabinet

Date: 2 June 2020

Title of report: Viability Guidance Note

Purpose of report: To seek approval to publish a Viability Guidance Note. The Note is intended to provide clarity to the process of commissioning or undertaking viability assessments in relation to planning applications for new housing development, with particular regard to the provision of affordable housing or other planning applications where compliance with planning policy is subject to a consideration of viability.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes. The Viability Guidance Note covers the whole of the District.
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	Key Decision – Yes Private Report/Private Appendix – No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance? Is it also signed off by the Service Director for Legal Governance and Commissioning?	Karl Battersby - 18.05.20 Eamonn Croston - 20.05.20 Julie Muscroft - 20.05.20
Cabinet member portfolio	Councillor Peter McBride

Electoral wards affected: All wards.

Ward councillors consulted:

Public or private: Public

Has GDPR been considered? Yes. The report does not contain any personal data.

1. Summary

The Viability Guidance Note will provide a guide to the process of undertaking viability assessments in relation to planning applications for new housing development where compliance with planning policy is subject to a consideration of viability. It is particularly relevant to planning applications where the provision of affordable housing is contingent on a viability appraisal although it is equally applicable to other aspects of development where compliance with planning policy is dependent upon viability. These include infrastructure provision, extension/enhancement to the walking/cycling network and open space provision. The guidance would be made available to applicants on the Council's website.

This report seeks endorsement from Cabinet to adopt the Viability Guidance Note as formal guidance.

2. Information required to take a decision

The Kirklees Local Plan (KLP) (2019) establishes the Council's ambitious target to deliver a minimum of 31,140 homes over the plan period from 2013-31 to meet identified needs. On market housing sites of more than 10 homes, Policy LP11 of the KLP requires that 20% of the total units should be affordable homes. However, in accordance with Government guidance within the National Planning Policy Framework (the Framework), Policy LP11 acknowledges that the proportion of affordable housing may be less than 20% where viability evidence for specific applications demonstrates that there are development costs that would otherwise prejudice the implementation of the proposal.

There are also a number of other policies within the KLP, including a requirement for infrastructure provision (Policy LP4 of the KLP) extensions or enhancements to the core walking and cycling network (Policy LP23) and the provision of open space (Policy LP63) that are subject to a consideration of viability.

The Viability Guidance Note provides advice on the level of information that the Council require in order to commence discussions around development viability and how it will be evaluated. It will provide consistency and clarity to the process. It includes the following key points:

- i. The viability assessment should be prepared by a suitably qualified person and it will be independently assessed by a person/organisation approved by the Council;
- ii. It will be made publicly available in the interests of transparency;
- iii. It clarifies the Council's approach to specific appraisal inputs including how to determine land value, gross development values and development costs. It also makes clear that when agreeing land transactions, landowners and site purchasers should have regard to development plan policies and all other material planning considerations;
- iv. It includes a need for the developer to benchmark any costs against publicly available sources (such as the Building Costs Information Service (BCIS));
- v. It confirms that any abnormal costs should be clearly explained and supported by a Quantity Surveyor (QS) Cost Report;
- vi. In terms of developer profit, in accordance with National Planning Practice Guidance, it confirms that an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. This is not intended to be a rigid approach and it will depend upon the individual characteristics of the scheme and supporting evidence to justify why a particular return is appropriate;

- vii. It clarifies that unless there are clear and justifiable reasons not to, viability review mechanisms will be incorporated within Section 106 agreements for major developments. These provide the opportunity to determine whether the required returns have been exceeded and whether planning requirements could, in fact, be met;
- viii. It confirms that the Council will seek 100% of any net profit element (after any agreed developer profit) to be paid to the Council, unless the applicant can robustly justify a different percentage. It will be in the form of a financial contribution towards off-site housing provision or other policy requirements capped to an amount equivalent to the full cost of the mitigating benefit (including affordable housing provision) that has been reduced or waived.

3. Implications for the Council

The Kirklees Local Plan (KLP) sets out a vision and strategic objectives for the development of Kirklees up to 2031. In particular, in seeking sustainable housing and commercial growth, which is consistent with the aspirations of the Council's 2019 Corporate Plan. The KLP states that development will be expected to make a positive contribution towards the District's economic, social and environmental objectives. These include the provision of new homes which meet the housing needs of the community, offering a range of size, tenure and affordability and supports existing communities, as well as access to employment, public transport, shops and services and the protection and improvement of green space. Policies within the Local Plan also facilitate securing required infrastructure to support new development, including education facilities.

The KLP therefore contains policies that set out the specific requirements to achieve these objectives. These include:

Policy LP4: Infrastructure planning for strategic or local infrastructure needs, including highways, drainage, green space and education.

Policy LP11: Housing mix and affordable housing: requires a proportion of affordable homes of 20% of the total units on market housing sites for housing developments of more than 10 homes.

Policy LP23: Extensions of enhancements to the core walking cycling network.

However, the National Planning Policy Framework states that the Local Plan should not include such a scale of obligations and policy burdens that the viability of development is threatened. It also states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Consequently, where an applicant intends to submit a planning application that is not policy compliant with regard to the requirements set out above .e.g. affordable housing, green space, education, off-site highway works etc, it will be supported by a viability assessment for the Council to consider.

This Viability Guidance Note will enable the Council to establish consistency both in the way it assesses viability assessments and in how it secures the required infrastructure to support new development. The introduction of a viability review mechanism and the requirement for the assessments to be made publicly available will ensure transparency in the planning process for the residents of Kirklees. It will also ensure that proposals meet strategic priorities to secure the best outcomes for Kirklees as a whole, whilst taking viability into account.

4. Consultees and their opinions

The development of this interim policy has involved following input from Development Management colleagues as well as advice from colleagues in the Housing Growth team with specific viability expertise.

5. Next steps and timelines

Following endorsement of the officer recommendation to approve the Viability Guidance Note, it would be published on the Council's website as guidance from the date of publication. It will immediately provide guidance to applicants on the level of information that the Council require in order to commence discussions around development viability and the Council's expectations.

At the next available opportunity, the Guidance Note will be brought to the attention of applicants and developers as part of the Council's Developer and Agent forums to guide them through the document.

Approval of the guidance will minimise delays in processing and determining planning applications. It will also give clarity to the viability process to ensure that the opportunities to secure infrastructure as a result of development, to benefit the District, is reasonably, openly and fairly secured.

6. Officer recommendations and reasons

- That Cabinet approve the Viability Guidance Note for publication on the Council's website to provide guidance to applicants on the submission of Viability Appraisals.

7. Cabinet Portfolio Holder's recommendations

Councillor McBride was briefed on the 16th February 2020 and was supportive of the Viability Guidance Note being presented to Cabinet for implementation by the Council as guidance.

8. Contact officer

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9. Background Papers and History of Decisions

None

10. Service Director responsible

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