From:	Francisca Muonweokwu-Egbunike <FMuonweokwuEgbunike@eppingforestdc.gov.uk>
Sent:	11 March 2020 12:33
To:	App Comment; Marie-Claire Tovey
Subject:	Re: Playing Field Site Epping Forest College Borders Lane Loughton IG10 3SA. Planning Application reference number-EPF/0379/20
Attachments:	Guidance Note to Planning Applicants - Viability Financial Appraisals - Jan 2018.pdf; Table of Fees - Validation of Viability Appraisals 2018.pdf; Preferred HA Partners - Amended Dec. 2019doc (002).doc

Dear Marie-Claire

Thank you for consulting me on the planning application advice sought by the applicants for the development of the above site.

Context:
As usual, I will contain my comments only to the affordable housing aspects of the proposal and not make any comments on the planning or other merits of the proposal. This advice is therefore provided on the assumption that all other planning requirements are met and planning permission would otherwise be recommended which, of course, may well not be the case.

Level of Affordable Housing:
As you are aware, under Policy H2 - Affordable Housing of the Local Plan (Submission Version) 2017, development sites which provide for 11 or more homes or residential floorspace of more than 1000m² (combined gross internal area), the Council will require 40% of those homes to be for affordable housing and provided on site.

This is a significantly large development which proposes to deliver 285 units, therefore, the applicant needs to provide at least 114 units of the overall number of homes as affordable housing to comply with the above policy. However, I note the following:

- From their affordable housing statement enclosed with this application, the applicant indicated that they will provide 85 units as their affordable housing offer. Although, welcomed, it does not comply with the policy in the emerging Local Plan.
- The applicant suggested that this offer is above what is supported by their viability assessment and the tenure and proposed mix is what can be viably delivered.
- We have sight of their viability report; this will be validated accordingly and thus understand why a compliant affordable housing scheme was not proposed.

Tenure, Mix & Design:
The District Council expects new housing developments to include a range of house types and sizes to address local need including downsizing. It also expects the affordable housing mix to reflect that of the market housing, in terms of types, sizes, the overall number of habitable rooms and for completeness, requires the affordable housing mix to reflect the local need.

As indicated above, the expectation is that new housing developments should deliver a range house types and sizes to address local need. I note the following:

- The proposal delivers a mix of 1, 2 and 3 bedroom units but again no 4 bedroom units, as in their previous development; the Epping Forest College Site.
- As indicated on that site; although the need for 4 bedroom units is 10% of the overall need in the District(SHMA – 2015), it is, nonetheless, one that should be catered for. For Loughton, where this development site is situated, and as in the previous one, the housing register showed that 17 applicants were on the waiting list for 4 bed units and 1 applicant for a 5 bed unit.
- I note from the planning statement that perhaps the viability of the scheme may have been a reason for the lack of 4 bedroom units

- For completeness, I note that although 21 x 3B4P units were proposed for affordable rent; it will nonetheless be useful to include 3B5P units.

Further, it should be noted that the following are not required for affordable housing, therefore, should not be included within the mix for the affordable housing:

- Studio flats
- 1 bed 1-person unit
- Properties larger than 3 bedrooms; although these may be provided where necessary and in accordance with local need.
- Garages

The applicant should note that the Council's Shared Ownership Policy requires at least 75% of the affordable housing to be provided as affordable rented housing, and no more than 25% to be provided as shared ownership:

- As indicated earlier, the applicant's tenure split is 67% shared-ownership and 33% affordable rent; although welcomed, does not satisfy the Council's requirement.
- The need for the higher % for the affordable rented units is underpinned by the need of those applicants on the housing register.
- It will be useful to understand how this particular split maximises delivery of the affordable housing units and makes the development viable

.

Further, the Council's Local Plan (Submission Version) 2017 sets out required design and quality requirements for new housing developments including space standards. Policy DM10-Housing Design and Quality requires all new housing development to meet or exceed the nationally described space standards.

In addition, all new housing is also required to meet the accessible and adaptable homes standards as defined by the current Building Regulations and mixed tenure residential developments must be designed to be 'tenure blind' to ensure homes across tenures are indistinguishable from one another in terms of quality of design, space standards and building materials.

Delivery of Affordable Housing:

The Council would want to see the affordable housing provided by (i.e. sold by the developer to) one of the Council's Preferred Housing Association Partners. These are:

- Catalyst Housing Group
- B3Living
- CHP
- Habinteg
- Hastoe Housing Association
- Moat Housing Group

The applicant may want to contact one or more of the above to discuss the delivery of the affordable housing offer including the sale price. We encourage early engagement with these partners and any offer and funding should be factored into the applicant's financial viability assessment. The Council's expectation is that the affordable housing is agreed before submission of the planning application. I have, therefore, attached their contact details, which can be provided to the applicant.

Although, this proposed development incorporates flats it is acknowledged that a portion of the service charge applicable to the scheme will be shared with the housing association partner who then passes that to their tenants and shared-owners, however, it is useful to ensure that the service charge payable is affordable and continues to be affordable for future tenants and shared-owners.

However, the landowner should note that the purchase price, even if agreed through a competitive process amongst the preferred housing association partners, would be much lower than the open market value, and reflects the net present value(NPV) of the affordable housing based on the difference between the income the housing association receives from (subsidised) rents (and any grant) over a period of time and the costs of purchase, management, maintenance, loan interest payments and other costs over the same period of time.

It should also be noted that the service charges would not be subsidised in any way.

Viability:
The applicant has provided their viability appraisal for this scheme; it will be validated accordingly by the Council's consultant to understand why a non-compliant scheme was proposed. It is necessary to note that the applicant will be charged for the validation exercise.
In view of the non-compliant scheme proposed and further to the validation process, It is useful to note that the District Council may apply a review mechanism to ensure that the maximum affordable homes or contribution is secured if viability improves before completion of the development.

A local Guidance Note to Planning Applicants on Viability & Financial Appraisals has been produced, which should be followed by the applicants if they decide to submit a viability appraisal, a copy of the Guidance Note is attached also is a copy of the preferred partners list.

Recommendations:
The application as currently presented does not deliver the full quantum of affordable housing, does not provide the right tenure split and mix in accordance with policy. Our expectation is as follows:

- That the development provides 40% affordable housing which is 114 units
- That the affordable housing offer is in the following tenure split; 75% affordable rent and 25% shared-ownership.
- That the provision of 3B5P units should be included for affordable rented units.
- A consideration of how some 4 units can be delivered.

Given the above and in the interim, this development cannot be supported from an affordable housing point of view until the issues raised above are addressed and the applicant's viability assessment is validated.

Further Advice:
If the applicant would like to discuss the Council's affordable housing requirements in more detail, they are welcome to do so. I confirm that I have no objections to forwarding this advice and attachments to the applicant for their information.

Please let me know if you need any further advice or information.

Yours sincerely,

Francisca M-Egbunike

Attachments

(1) Preferred Housing Associations Contact Details
(2) Guidance Note to Planning Applicants – Viability and Financial Appraisals
(3) Table of Fees

Housing

Guidance Note to Planning Applicants on the Submission of Viability and Financial Appraisals for Affordable Housing

January 2018

Epping Forest District Council

Contents

1. Introduction

1.1 The Council has a number of policies, contained within its Local Plan Submission Version 2017 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).

1.2 Generally, for developments in excess of 10 dwellings, or where the proposed Gross Internal Area of properties is greater than 1,000m^2, 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.

1.3 However, the Local Plan Submission Version 2017 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.

1.4 Similarly, the Local Plan Submission Version 2017 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. Again, adequate and appropriate supporting evidence must be provided.

1.5 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.

1.6 Therefore, 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;

this Guidance Note to Planning Applicants explains the national planning policies the Council's key local planning policies relating to affordable housing and viability and sets out the Council's 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.

2. The Local Plan Submission Version 2017 – Affordable housing

2.1 The Council agreed the submission version of its Local Plan on 14th December 2017 (in accordance with Regulation 19 of the Town and Country Planning (Local Planning) (England)Regulations 2012 (as amended),

following two extensive consultation exercises. The Local Plan Submission Version 2017 contains a number of proposed planning policies relating to affordable housing, including the following:

"Policy H2 – Affordable Housing

A. On development sites which provide for 11 or more homes, or residential floorspace of more than 1,000 sq m (combined gross internal area), the Council will require 40% of those homes to be for affordable housing provided on site. The mix of affordable homes will be required to reflect the latest available housing need. All new homes will be required to meet accessible and adaptable homes standards as defined by the Building Regulations applicable at the time of the application.

B. The management of the affordable housing provided will be undertaken by a Registered Provider which is a Preferred Partner of the Council unless otherwise agreed by the Council. Any relevant scheme will need to demonstrate that the design, siting and phasing of affordable homes provides for its proper integration and timely provision as part of the wider development.

C. The mix of units in respect of size will be determined on a site by site basis dependent on the overall needs for the local area and on the specific characteristics of the individual site. However, the Council will generally expect the mix of the affordable homes to reflect the mix of the market housing, in terms of the ratios of types, sizes and the overall number of habitable rooms.

D. Proposals that do not accord with the requirements of paragraph A (above) must be accompanied by a financial and viability appraisal (with supporting evidence), which is transparent and complies with relevant national or local guidance applicable at the time.

E. Where, it has been demonstrated to the Council's satisfaction that the provision of affordable housing in accordance with the above levels and tenure mix would render the scheme unviable, the Council will determine the approach to be taken to achieving viability, where appropriate, having regard to the following available options:

- *(i) reviewing the tenure mix;*
- *(ii) reviewing the extent of other site specific planning obligations; and*
- *(iii) reviewing the proportion of affordable housing.*

F. In exceptional circumstances, where the Council agrees that it would be inappropriate for the required affordable housing to be provided on-site as part of the development, the Council will accept a financial contribution to fund the provision of affordable housing on another site in the District, provided that the Council is satisfied that:

- *(i) The financial contribution is at least equivalent to the increased development value if affordable housing was not provided on-site, subject to such a contribution being viable; and*
- *(ii) A financial and viability appraisal has been provided (with supporting evidence) in accordance with paragraph D (above) which is transparent and complies with relevant national and local guidance applicable at the time, properly assessing the level of financial contribution to be provided.*

G. Where a viability and financial appraisal has been submitted in accordance with paragraph D (above) the Council will undertake an independent review of that appraisal, for which the applicant will bear the cost."

"Policy H3 Rural Exceptions

A. Planning permission may be granted for small-scale affordable housing schemes which are related to smaller settlements, where planning permission for housing development will not normally be granted, where the Council is satisfied that:

(i) there is a demonstrable social or economic need for affordable housing for local residents which cannot be met in any other way and which can reasonably be expected to persist in the long term. Planning applications will be expected to be supported by a local housing needs assessment;

(ii) the development is well-related to the existing settlement and there is no significant detrimental impact to the character of the nearby settlement and the surrounding countryside, or would cause significant harm to Green Belt objectives. Proposals involving extensions into the open countryside or the creation of ribbons or isolated pockets of development are unlikely to be considered acceptable and should be avoided. There should be no significant material grounds for objection including on highways, infrastructure, environmental or amenity matters; and

(iii) suitable arrangements have been secured to ensure that all of the affordable homes built are available only for initial and subsequent qualifying occupiers whose total income is insufficient to enable them to afford to rent or buy a dwelling of a sufficient size on the open market in the specified parish.

B. The management of the affordable housing provided will be undertaken by a Registered Provider which is a Preferred Partner of the Council unless otherwise agreed by the Council.

C. For the purpose of this Policy 'local resident' is defined as:

(i) Persons who have been permanently resident in the specified parish for at least two years; or

(ii) Persons who are no longer resident in the specified parish but who have been resident there for at least three years during the last five years; or

(iii) Persons who are in permanent employment in the specified parish and have been for a minimum of two years and are working at least an average of 24 hours per week; or

(iv) Persons who have close relatives (i.e. parents, grandparents, children, brother or sister) living in the specified parish who have lived there for at least five years.

D. Should there be insufficient applicants from the specified parish when the homes become available for occupation, then applicants from neighbouring parishes who comply with the eligibility criteria set out above will be considered.

E. The Council will consider the provision of a small proportion of market housing within the proposal site if it can be demonstrated through a financial and viability appraisal (with supporting evidence), which is transparent and complies with relevant national or local guidance applicable at the time, that such housing is financially necessary to ensure the delivery of the affordable homes.

F. Where a viability appraisal has been submitted in accordance with paragraph D (above) the Council will undertake an independent review of that appraisal for which the applicant will bear the cost."

3. The National Planning Policy Framework (NPPF)

3.1 Paragraph 173 of the NPPF includes the following requirements relating to the viability of developments:

"To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."

3.2 Part of the NPPF includes Planning Practice Guidance (PPG) on Viability, which sets out the policy principles relating to viability assessments.

3.3 Paragraph 001 of the PPG states the importance of Viability Appraisals, as follows:

> *"Decision-taking on individual schemes does not normally require an assessment of viability. However, viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth."*

3.4 Paragraph 016 defines viability, as follows:

> *"A site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken."*

3.5 Paragraph 004 sets out the underlying principles for understanding viability in planning, which includes the following statements:

- *"Assessing viability requires judgements which are informed by the relevant available facts. It requires a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market."*

- *"Understanding past performance, such as in relation to build rates and the scale of historic planning obligations can be a useful start. Direct engagement with the development sector may be helpful in accessing evidence."*

- *"A collaborative approach involving the local planning authority, business community, developers, landowners and other interested parties will improve understanding of deliverability and viability. Transparency of evidence is encouraged wherever possible."*

3.6 Paragraph 017 explains the period at which costs and values should relate:

> *"Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances.*
>
> *However, where a scheme requires phased delivery over the medium and longer term, changes in the value of development and changes in costs of delivery may be considered. Forecasts, based on relevant market data, should be agreed between the applicant and local planning authority wherever possible."*

3.7 Paragraph 021 gives guidance on the assessment of "Gross Development Value (GDV)", as follows:

> *"On an individual development, detailed assessment of Gross Development Value is required. On housing schemes, this will comprise the assessment of the total sales and/or capitalised rental income from the development. Grant and other external sources of funding should be considered. On retail and commercial development, assessment of value in line with industry practice will be necessary.*
>
> *Wherever possible, specific evidence from comparable developments should be used after adjustment to take into account types of land use, form of property, scale, location, rents and yields. For housing, historic information about delivery rates can be informative."*

3.8 Paragraph 022 explains how costs should be assessed, as follows:

> *"Assessment of costs should be based on robust evidence which is reflective of market conditions. All development costs should be taken into account including:*

- *Build costs based on appropriate data, for example that of the Building Cost Information Service;*

- *Abnormal costs, including those associated with treatment for contaminated sites or listed buildings, or historic costs associated with brownfield, phased or complex sites;*

- *Infrastructure costs, which might include roads, sustainable drainage systems, and other green infrastructure, connection to utilities and decentralised energy and provision of social and cultural infrastructure;*

- *Cumulative policy costs and planning obligations. The full cost of planning standards, policies and obligations will need to be taken into account, including the cost of the Community Infrastructure Levy.*

- *Finance costs including those incurred through loans;*

- *Professional, project management and sales and legal costs."*

3.9 Paragraph 023 explains how land values should be assessed, as follows:

"Central to the consideration of viability is the assessment of land or site value. Land or site value will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected. In all cases, land or site value should:

- *Reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;*

- *Provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and*

- *Be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise."*

3.10 Paragraph 024 provides guidance on the NPPF's requirement that viability should consider "competitive returns to a willing landowner and willing developer to enable the development to be deliverable", as follows:

"This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.

A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy."

4. Viability appraisals and financial contributions in lieu of on-site affordable housing provision - Housing Background Paper

Introduction

4.1 The technical *Housing Background Paper*, published at the same time as the Local Plan Submission Version 2017, provides more detailed information about the Council's approach to providing new housing within the District up until 2033.

4.2 The *Housing Background Paper* explains (Para 1.79) that, in developing its affordable housing policies, the Council recognises that not all development sites that come forward will be capable of delivering affordable housing on-site, and that in some instances this may not be desirable in terms of the form and location of development.

Development viability

4.3 It is recognised (Para 1.80) that not all private sector developments that come forward for housing will necessarily contribute to the delivery of affordable housing. This includes some proposals for market housing that, because of site-specific complexities and costs, would not generate sufficient development value to be viable if the full proportion of affordable housing sought under Draft Policy H2(A) were to be provided. The *Housing Background Paper* therefore explains that, in such circumstances, the Council will take a balanced approach to the provision of affordable housing so that:

- The level of affordable housing that is needed is delivered;
- The level of affordable housing sought is viable and does not prevent the delivery of homes; and
- Sufficient flexibility is built in to take account of site-specific circumstances.

4.4 To help understand what level of affordable housing would be appropriate on sites, whilst ensuring that those developments would still be viable, as part of the evidence base for its Local Plan the Council commissioned a *Stage 1 Assessment of the Viability of Affordable Housing, Community Infrastructure Levy and Local Plan* ("Stage 1 Viability Report"), which was completed in June 2015.

4.5 The report considered the level of affordable housing that could reasonably be sought from developments across the District, taking into account the possibility of the Council introducing a Community Infrastructure Levy (CIL) if considered appropriate. The report assessed this against a range of options for affordable housing and CIL levels, site sizes and locations for development (both geographic, and in relation to both greenfield and brownfield sites).

4.6 The *Housing Background Paper* explains (Para 1.82) that the Council recognises that there needs to be sufficient land value to generate a sufficient surplus to developers once all the costs of development have been met. The assumptions used in the Stage 1 Viability Report take into account not only planning obligations (e.g. Section 106 agreements), CIL and affordable housing, but also any policy requirements that may have a cost impact on development – including sustainability, density, unit mix, affordable housing type/tenure and housing standards.

4.7 The methodology basis is the same for all parts of the Stage 1 Viability Report – it uses Residual Land Valuation (RLV) techniques (see Section 8 below). The outcomes of the study indicate that an affordable housing target of 40% on *all* sites across the District of 11 or more dwellings would be viable and would support the delivery of a meaningful level of affordable housing, as identified in the Council's Objective Assessment of Housing Need (OAHN). The report also identifies that, in addition, there would also be sufficient scope to achieve a reasonable combination of both affordable housing and CIL on some sites in those areas of the District with higher values, bearing in mind that CIL rates would need to be "buffered".

4.8 As recognised in the Council's District-wide Stage 1 Viability Report, there may be occasions where a site would not be deliverable if the required level of affordable housing and tenure split were sought. The *Housing Background Paper* explains (Para 1.86) that, in such cases, the applicant will be expected to provide a full Viability Appraisal (in accordance with both national guidance and any local guidance) to demonstrate the case and the level and type of affordable housing that could viably be provided.

4.9 The *Housing Background Paper* also explains that Viability Appraisals will be reviewed by an expert appointed by the Council, the cost of which will be borne by the applicant. If the Council is satisfied that the Appraisal confirms that the affordable housing cannot be provided in line with Draft Policy H2, the *Housing Background Paper* explains (Para 1.87) that the Council will agree either an alteration in the tenure split requirement or a reduction in the overall affordable housing requirement, whichever the Council considers is most appropriate – and that the Council will apply this approach until the proposal is considered viable.

4.10 The *Housing Background Paper* also explains that the Council may require the inclusion of a viability review mechanism to be secured through a planning obligation at appropriate stages of the development (see Section 10 below).

Financial contributions in lieu of on-site affordable housing provision

4.11 The *Housing Background Paper* also explains that the Council's 'default' position for the provision of affordable housing on all sites of 11 or more homes will be that it should be provided *on-site* as part of the development. However, it goes on to acknowledge that there may be exceptional circumstances that would justify a financial or other contribution towards the provision of the required element of affordable housing on another site in the District.

4.12 In such circumstances (Para 1.85), financial contributions towards the provision of affordable housing off-site will be based on the difference in development values (in terms of 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 provided on-site, with adequate and appropriate supporting evidence. In so doing, account should be taken of the potential enhanced value of not making the affordable housing provision on-site as well.

4.13 The *Housing Background Paper* explains that, for sites in excess of 10 dwellings, financial contributions to provide affordable housing off-site will only be accepted where the developer can demonstrate exceptional reasons for not providing the affordable housing on site. It strongly advises that, if a developer considers that this route is the only realistic option for the development to be delivered, early discussions should take place with Council officers to determine the sufficiency of the justification and the level (and timing) of the contribution to be provided.

5. Assessing viability and financial contributions – The Council's general approach and requirements

5.1 Where applicants are of the view that viability issues do not allow for the full range of planning obligations to be met, the Council requires applicants to provide a detailed Viability Appraisal, which should provide adequate and appropriate supporting evidence, in accordance with the requirements of this Guidance Note.

5.2 The Viability Appraisal must clearly demonstrate a lack of viability, before any consideration will be given to granting planning permission for residential developments where less than the expected 40% affordable housing would be provided, or with a different tenure mix than would ordinarily be required.

5.3 Similarly, where the Council has accepted in principle that there are exceptional circumstances that would justify a financial contribution towards the provision of affordable housing on another site in the District, in lieu of on-site provision, the Council requires applicants to assess, through a detailed Financial Appraisal, the level of financial contribution that should be provided to the Council. Subject to viability, this sum should be equivalent to the difference in:

- Anticipated property sales values;
- Other income;
- Construction costs;
- Other costs; and
- A reasonable developer's profit

between a development;

- With all the dwellings being provided as market housing; and
- A development with the required affordable provision on site.

5.4 A consequence of the current absence of national planning guidance in respect of Viability/Financial Appraisals is that there is wide scope and discretion in how matters relating to viability and financial contributions in lieu of on-site affordable housing provision are dealt with. The Council's experience prior to the publication of this Guidance Note was that, in some instances, it led to the use of inappropriate approaches to assessing viability, which came into conflict with the principle of sustainable development and the "plan-led" planning system.

5.5 As the Local Planning Authority, it is the Council's role to determine the most appropriate approach to be taken in each case. The Council receives a large number of Viability Appraisals in support of planning applications where it is suggested that it is not possible to meet the Council's affordable housing requirements, and occasional Financial Appraisals, in agreed cases, where Financial Contributions would be considered in lieu of on-site affordable housing provision.

5.6 It is important in both cases that the inputs and assumptions used for Viability and Financial Appraisals are appropriate, due to the direct impact on the outcome of the appraisal and determination of the application, as well as the potential implications of failing to meet the Council's usual policy requirements.

5.7 This Guidance Note therefore seeks to provide clarity on the nature and extent of information required by the Council to enable it to robustly scrutinise Viability and Financial Appraisals.

6. The Council's approach to discussions with applicants and consideration of Viability and Financial Appraisals

6.1 Where applicants are of the view that either:

- It may not be possible to meet the Council's requirements for the provision of affordable housing due to a potential lack of viability; or

- For exceptional reasons, a financial contribution should be provided to the Council to help fund affordable housing on another development in lieu of on-site affordable housing provision

the Council encourages applicants to discuss these issues with Council officers at the earliest possible stage, through the pre-application process.

6.2 Applicants are advised to ensure that planning applications have regard to the advice given by the Council at the pre-application stage. If a subsequent planning application does not reflect the advice given by the Council at a pre-application stage, the risk of planning permission not being granted will be increased. However, for the avoidance of doubt, it does not necessarily follow that an application that is in accordance with advice given at the pre-application stage will receive planning permission.

Pre-application stage

6.3 The Council's Communities Directorate leads on discussions with applicants about affordable housing provision and its comments on development proposals are included in the Council's overall pre-application advice. Representatives from the Communities Directorate are generally available to attend meetings with applicants during the pre-application process.

6.4 The pre-application stage offers the opportunity to scope out the requirements of the Viability/Financial Appraisal and to discuss the proposed methodology and assumptions to be adopted.

6.5 It is often beneficial to applicants to submit Viability/Financial Appraisals at the pre-application stage, since it enables the Council to validate the Appraisal (or not), on the advice of its affordable housing consultants, early in the application process and to provide early comments to applicants before their development proposals are formulated and finalised for the submission of a planning application. However, applicants need to weigh up this benefit 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. If this is the case, 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.

Review and validation of Appraisals

6.6 Where an applicant is of the view that it would not be viable to meet the Council's Local Plan affordable housing policies, or that it would be more appropriate to provide a financial contribution to the Council, either a Viability Appraisal or a Financial Appraisal (as appropriate) must be submitted respectively.

6.7 Before a Viability/Financial Appraisal can be reviewed, applicants must pay to the Council the fee that the Council itself must pay its own affordable housing consultants to review and advise the Council on the validation of the Appraisal. Details of the fees, and how payments should be made, can be obtained from either the Planning Case Officer or the Senior Housing Development Officer dealing with the application. The fees are based directly on the fees submitted by the Council's affordable housing consultants through a prior competitive tender process. No additional costs (e.g. for administration) are added to the fees. VAT is not charged to applicants.

6.8 Following receipt of payment, the Viability/Financial Appraisal (together with the required accompanying supporting evidence and information) must be submitted to the Planning Case Officer in accordance with this Guidance. The Council's Communities Directorate will then arrange for the Appraisal to be reviewed in detail by the Council's affordable housing consultants.

6.9 If the Council's affordable housing consultants require any further supporting information or evidence to back-up assumptions used for the Appraisal, they will contact the applicant direct to obtain this information. Where an Appraisal does not include all the relevant information required by the Council, it will cause delays to the determination of the application. If details requested by the Council's consultants are not provided by the applicant, this is likely to undermine the validity of the Appraisal and limit the weight that can be given to it.

6.10 It is important that applicants understand that the Council's affordable housing consultants are reviewing the applicant's own Viability/Financial Appraisal to advise the Council on whether or not the Appraisal can be validated (or otherwise). Therefore, all the information and evidence that the applicant considers necessary to support their Appraisal should be provided *at the time of submission*, or in response to the Council's consultants' request for information. Once the Council's consultants have issued their report (see 6.12 below), applicants will not have any further opportunity to provide any new information or evidence subsequently – unless a completely new Viability/Financial Appraisal is submitted by the applicant, which will not only result in the applicant having to pay a further validation fee in full, it will also result in a delay in the determination of their planning application.

6.11 When the Council's consultants have all the required evidence and information, they will review the Appraisal and provide the Council with a detailed report on their findings, usually within 10 working days. The report will comment on each assumption and will advise the Council on whether or not they are of the view that the Appraisal can be validated as being acceptable and sound and will identify any areas where individual assumptions or evidence cannot be validated or supported. If the Council's consultants cannot recommend that the Viability/Financial Appraisal should be validated/accepted, they will 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.

6.12 A copy of the Council's consultants' report will be provided to the applicant and will be also used to inform the Communities Directorate's recommendation to the Planning Case Officer on whether or not the affordable housing proposals are acceptable. If they are not considered acceptable, a recommendation will be made to the Planning Case Officer that the application should be refused on the basis of insufficient affordable housing provision/contribution. Where planning applications are determined by a Committee of the Council, the Planning Case Officer's report will include the comments of the Communities Directorate and its recommendations.

6.13 If material changes are made by an applicant to their application after submission of a Viability Appraisal, and a significant amount of work has already been undertaken by the Council's affordable housing consultants in reviewing the Appraisal, a revised Appraisal must be submitted - which the Council will need its affordable housing consultants to consider and report upon, which will be at the applicant's further cost.

6.14 Occasionally, the Council receives Viability Appraisals for proposed developments where none of the proposed dwellings would be suitable as affordable housing (e.g. large "luxury" houses and/or properties with garages), on the basis that it would be "unviable" to provide any affordable housing on the site. From experience, this assertion is rarely correct and the validation process often establishes that it would be viable to provide at least some on-site affordable housing. The applicant then finds themselves in the position of having to redesign the scheme to provide the level of affordable housing that would be viable, submit a revised appraisal and meet the Council's additional costs of validating the revised Appraisal. It is for this reason that, if an applicant considers that it would be unviable to meet the Council's affordable housing requirements, they have early discussions with Council officers to avoid delays and additional costs. Further information relating to this issue is provided at Section 8.13 below.

7. Professional accountability and transparency

7.1 It is generally recognised that there is the potential for significant variations in the outcome of Viability/Financial Appraisals depending on the assumptions used. It is therefore essential that Appraisals are formulated based on robust information and evidence.

7.2 The Council expects high levels of professional integrity from applicants and their agents when they submit Appraisals. It is important that the information provided to the Council is consistent with the development appraisals that a developer has themselves relied on to inform their own commercial decision-making in relation to the development.

7.3 The information provided should include details of actual arrangements in place between landowners and developers, and be the same information provided to banks 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 and the assessment provided to their funders.

7.4 Regrettably, the Council occasionally receives 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.

7.5 Such cases will be identified during the Council's consultants' review and validation process and will result in a recommendation being made that planning permission is refused, due to an insufficient level of affordable housing or financial contribution being provided.

7.6 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:

(a) The information provided in the Appraisal 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

(b) The applicant has not instructed any agents to formulate the Appraisal under an arrangement where their fee is increased if they are successful in reducing planning obligations.

7.7 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 Appraisals to accord with these professional standards at all times. Where the Council considers that this is not the case, the Council may refer these matters to the relevant body for investigation and consideration.

8. Appraisal methodology

Use of Agents

8.1 Undertaking a Viability/Financial Appraisal, and the sourcing and provision of appropriate supporting information and evidence, is a complex task and requires appropriate expertise and experience. Applicants are therefore strongly advised to engage an appropriate agent to undertake the Appraisal.

8.2 In some cases involving small-scale developments only, and on the request of the applicant, the Council may agree to a required Viability/Financial Appraisal being *jointly* produced by the Council's affordable housing consultants on behalf of the Council and the applicant, on the basis that both the applicant and the Council is prepared to be guided by the Appraisal, without the need for any further validation. The fee for such work has been pre-agreed with the Council's affordable housing consultants through a competitive process, and the benefit to the applicant of such an approach is that it avoids the need to meet the cost of both the applicant's Appraisal and the Council's validation review. It also avoids the potential for disagreements between the applicant and the Council and associated delays in determining the planning application. If applicants would like to request that a Viability/Financial Appraisal is jointly produced, they should submit a request to the Planning Case Officer in the first instance.

Viability and Financial Models

8.3 There are a range of standard models that are typically used for undertaking Viability/Financial Appraisals, including the Three Dragons Toolkit and the Homes and Communities Agency's (HCA's) Development Appraisal Tool (DAT). Although applicants are free to use whichever model they feel most appropriate, the Council has a preference for the HCA's DAT, which is the model used by the Council's affordable housing consultants.

8.4 It is essential that applicants use the most up-to-date version of the relevant model and that the Council is provided with a working electronic version of the Appraisal model used, so that it can be fully tested and interrogated by the Council's affordable housing consultants.

Residual Land Value (RLV)

8.5 The Residual Land Value (RLV) valuation methodology should be used by the applicant to determine the available 'residual' value that is available to pay a landowner, once the costs of undertaking the development and a reasonable developer's profit are deducted from the Gross Development Value (GDV) generated by the proposed development.

8.6 Use of the RLV approach is consistent with the longstanding principle that policy requirements are paid for from the additional value generated by the grant of planning permission for a development, or change of use on the land. Applied properly, this approach is appropriate for assessing viability as part of the planning process, given that the purpose of the planning system is to achieve sustainable development, as determined by the Council's Local Plan Submission Version 2017.

8.7 Since any additional value associated with a development above the value of the site, for either its existing use or an alternative (policy compliant) use, is dependent on the grant of planning permission based on the Council's affordable housing policies within its Local Plan Submission Version 2017, the requirements of the Council's affordable housing policies should be included as part of the overall

development costs, which are then deducted from the GDV to determine the residual value that is available to pay for the land.

Benchmark Land Value (BLV)

8.8 For a development to be financially viable, any uplift from its Existing Use Value (EUV) to the RLV that arises if planning permission is granted should be able to meet the cost of planning obligations (including the provision of affordable housing), whilst ensuring an appropriate return for both the landowner and the developer. Clearly, the return to the landowner from the sale of the land needs to be greater than the Existing Use Value (EUV). However, the EUV will normally be less than the Open Market Value for development land for which planning permission has been secured and planning obligation requirements are known. The land value, with this uplift in value from the EUV, is generally referred to as the Benchmark Land Value (BLV). A key factor that must be taken into account when assessing the BLV is the Council's affordable housing target that 40% of the total residential housing should be provided as affordable housing.

8.9 The Council will generally deem a development to be viable if the RLV is equal to, or higher than, the Benchmark Land Value (BLV) - as this is the level at which it is considered the landowner has received a 'competitive return' and will release the land for development.

8.10 A common approach to assessing the BLV is to use the EUV plus a landowner's premium (sometimes referred to "EUV+"). The justification for the premium is that it provides a landowner with an incentive to release the site for development, having regard to the circumstances of the site. Although the Epping Forest District is outside London, and in the absence of any other planning guidance, the Council has had regard to the Mayor of London's Housing Supplementary Planning Guidance (SPG) that states:

> *"On balance, the Greater London Authority has found that the 'Existing Use Value plus' based approach is generally more helpful for planning purposes, not least because of the way it can be used to address the need to ensure that development is sustainable in terms of National Planning Policy Framework and Local Plan requirements."*

8.11 The Council will therefore generally adopt the EUV+ approach when assessing and validating Benchmark Land Values.

8.12 Some applicants may seek to adopt an Alternative Use Value (AUV) approach to the BLV. However, it should be noted that this will only be accepted where there is a valid consent for the alternative use, or if the alternative use would clearly fully comply with the Local Plan, including the requirement to provide at least 40% affordable housing.

Policy Compliant Scheme

8.13 By implication, Viability Appraisals are only necessary if the applicant is of the view that it would not be viable to undertake a development that fully complies with all of the Council's planning policies, particularly the provision of the required amount of affordable housing. In order to demonstrate this, the applicant's Viability Appraisal should provide <u>two</u> analyses, as follows:

- One analysis that shows the financial effects if a fully policy-compliant development was to be provided (i.e. the amount of negative RLV or how much the RLV is below the BLV).

  This is to demonstrate:

  - (and support) the applicant's assertion that a policy-compliant development is not viable;
  - the extent to which the proposed development is unviable; and
  - that the applicant has sought to take into account all of the Council's required planning policies and requirements, including the provision of affordable housing, at the design stage, and to confirm that the only reason a planning application for a non-policy-compliant development has been submitted is because it had initially been established that a policy-compliant scheme would be unviable; and

- Another analysis that shows the financial effects of the proposed, viable, development – which may differ in terms of design and layout from the first analysis.

Evidence

8.14 Local authorities are required to ensure that both their local plans and their planning decisions are based on robust evidence. It therefore follows that the use of robust evidence to determine planning applications extends to the viability and financial information submitted with planning applications. This helps to ensure:

- Good planning outcomes;
- That there is consistency in the way planning applications are assessed; and
- That the planning process operates fairly and does not advantage or disadvantage other applicants.

8.15 The Council therefore requires that all viability and financial evidence is robustly justified and that assumptions are benchmarked against publicly-available data sources. Applicants will also be expected to be transparent about the arrangements that are in place between parties involved in the development, to ensure that the viability and financial information presented can be properly tested.

9. Appraisal assumptions

9.1 It is essential that realistic and appropriate assumptions are used for Viability/Financial Appraisals, based on *actual* costs and values where possible, since small variations in assumptions used can have a significant impact on the outputs. Wrong or inappropriate assumptions can result in either:

- An applicant committing to provide more affordable housing or a higher financial contribution than would be viable, causing difficulties for the applicant and therefore the delivery of the development; or

- An insufficient affordable housing or financial contribution being provided than could be afforded, up to a fully policy-compliant scheme

9.2 The following sub-sections set out the Council's expectations in terms of the approach taken by applicants to the main assumptions used, which is based on good practice and for which the Council's affordable housing consultants will be checking for compliance when they undertake their validation review:

Development values

9.3 Information that is provided to support assumed development values should be directly comparable to the site in question, so that it can be given appropriate weight. Transactions or market data should be:

- Up to date (from at least within the last 6 months);
- Within an appropriate distance from the site; and
- Relate to new build properties.

9.4 If there is a lack of new build data available, the provision of information for existing properties, with an appropriate additional premium for new build included within the assumption, would be acceptable.

9.5 Comparable sales information should be fully analysed and explained, to demonstrate how sales information has been interpreted and applied to the application scheme. Where an assessment refers to indices or other information sources generated by third parties, a full explanation of the data and methodology used to inform the index must be provided.

Affordable housing values

9.6 Applicants are advised to undertake Viability Appraisals in liaison with one of the Council's Preferred Housing Association Partners, who will be able to give an indication of the price that they would be able to pay to an applicant to purchase the completed affordable housing.

9.7 In order to ensure that affordable housing values used for the Viability Appraisal are truly reflective of the income that an applicant is likely to receive for the affordable housing provision, details of Preferred Housing Association Partners' offers should be included as part of the supporting evidence for the Viability Appraisal. This should also include details of any subsidy or grant that is available to the Housing Association, either from the Homes and Community Agency, the Housing Association itself (e.g. recycled capital grant funding – RCGF) or elsewhere.

9.8 It may be necessary to seek further offers from housing associations, if the tenure mix needs to be amended as a result of offers received and the outcome of the first iteration of the Viability Appraisal.

9.9 Rents for affordable rented housing should be based on whichever is the lower of:

- 80% of market rents in the locality of the proposed development (including service charges); or
- The Local Housing Allowances (LHAs) for the sizes of properties proposed, within the relevant Broad Rental Market Area (BRMA)

9.10 Offers for shared ownership housing should be based on the Council's standard Heads of Terms for Section 106 Agreements involving shared ownership, which are as follows:

- Average initial equity shares sold to applicants across all of the shared ownership properties on the development should be no more than 35%;

- Initial equity sales to individual applicants should be no less than 20% and no more than 75% of the open market value of the purchased properties;

- The rent charged for the equity retained by the Preferred Housing Association Partner should be no more than 2.0% of the value of the unsold equity per annum; and

- An appropriate value should be included in Appraisals representing expected "staircasing" (where shared owners purchase additional tranches of equity over time, eventually to 100% equity).

Build costs

9.11 An assessment of build costs (i.e. a cost plan) should be undertaken by a qualified building surveyor or quantity surveyor and provided in an elemental form that enables the Council's affordable housing consultants to benchmark against publicly-available sources of information, such as the Building Cost Information Service (BCIS) or SPON's Architects' and Builders' Price Book. Where assumptions diverge from such benchmarks, applicants must explain the reasons for the divergence within their supporting information. The cost plan should be accompanied by a detailed specification of the proposed development. This information is essential to underpin the analysis of both costs and values.

9.12 It is essential that any site-specific abnormal costs (e.g. for de-contamination) are fully supported by evidence and/or by relevant quotes and that only associated works that are directly required in order to enable the development to proceed are included.

Developer's Profit

9.13 It is an accepted principle that applicants must receive:

- A competitive return for a scheme to proceed; and
- A level of profit that is sufficient for finance to be secured.

9.14 The most common approach for calculating a developer's profit is as a percentage of the Gross Development Value (GDV) or, in some circumstances, the Gross Development Cost (GDC). This is therefore the approach that the Council expects applicants to use in their Viability/Financial Appraisal.

9.15 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.

9.16 However, for the guidance of applicants, based on current market conditions and knowledge of the development industry, the Council would expect the level of developer's profit to be between 15% and 17.5% of the GDV. Since expectations/assumptions of the developer's profit are likely to be higher for developments that involve abnormally higher risks, applicants must provide sufficient justification for assuming a developer's profit at the higher end of this range. In view of the lower levels of risk associated with occupying affordable housing and the positive impact on developers' cash flows (through the payment of up-front, interim and completion payments throughout the build contract), the Council would expect the level of developer's profit associated with the affordable housing provision to be lower than for the market housing. Indeed, applicants' attention is drawn to the fact that the Homes and Communities Agency (HCA) uses a default level of 6% of the GDC for the developer's profit in respect of affordable housing in its own Development Appraisal Tool (DAT). If a higher level is included in an applicant's Viability Appraisal, the Council requires justification for this higher level to be provided as part of the supporting information.

9.17 Some mixed tenure developments include an element of commercial development, for which the level of risk is also reflected in the level of developer's profit. Most experienced and prudent developers seek to establish 'pre-let' arrangements with future tenants as a means of reducing risk, as opposed to proceeding on a speculative basis. This reduced risk usually warrants a lower level of developer profit. Again, the Council avoids having a rigid approach to commercial profit levels and will consider the individual characteristics of each scheme when determining an appropriate level of developer's profit. However, again for the guidance of applicants, based on current market conditions and knowledge of the development industry, the Council would expect the level of developer's profit to be no more than 15% of the Gross Development Value (GDV) for any commercial element of developments, and applicants must therefore provide sufficient justification for assuming a developer's profit higher than this level. In any event, the Council requires full details of discussions with future occupiers to be provided as part of the supporting information, including details of rent and lease arrangements.

Development finance

9.18 Development finance generally relates to the short term loan(s) that the applicant or a developer requires to fund the development, which are generally repaid on occupation of all the dwellings. An exception to this may be where a housing association is the developer and utilises longer term finance to fund the development (usually at a lower interest rate), with rental income used to repay the loan, either over a period of time or on maturity of the loan. The cost of development finance is therefore a legitimate development cost to include within Viability/Financial Appraisals.

9.19 Development finance is a complex area, with lots of different products and arrangements which differ according to:

- The organisation providing the funding;
- The type of funding required; and
- The circumstances of the developer receiving the funding.

9.20 Availability and costs of development finance vary through economic and market cycles, and the Council expects applicants to have regard, as the Council will, to the current availability and costs of development finance for inclusion within their Appraisal.

9.21 There are two main approaches to development finance commonly adopted by applicants within Viability/Financial Appraisals, as follows:

- To assume that all developers will incur generic average finance costs based on 'standard' market rates – the benefit of this approach is that it avoids a situation where a small developer, incurring high finance costs, secures a planning consent, perhaps for a development that does not meet the Council's policy requirements due to viability issues, but then sells the site to a larger developer who is able to acquire cheaper finance, but benefits from the same planning consent without fully complying with the Council's Local Plan requirements.

  However, applying 'standard' borrowing costs to all developers favours larger developers and housing associations, who are able to access cheaper finance or, in the latter case, may even have access to public subsidy or loans. Developers that have access to their own equity and who incur lower or no finance interest payments are also likely to benefit.

- To use actual finance costs – the benefit of this approach is that the true and accurate finance costs can be included in the Appraisal. However, this can only apply if the development is to be undertaken by the person or organisation that has arranged finance.

9.22 The Council's preference is that, wherever possible, applicants should use actual finance costs, since these provide a true representation of the applicant's costs. In these circumstances, the Council will require full details of the lender(s) and the terms of the development finance for the scheme to be provided. The Council will also require the finance provider to confirm that they will lend on the basis of the Viability/Financial Appraisal that has been provided.

9.23 Where the applicant will not be the eventual developer, and the developer has not yet been identified, the Council will accept a generic average finance cost to be included within the Appraisal. However, the applicant must provide within their supporting information detailed information on the assumptions used, and the Council's affordable housing consultants will form a view on whether or not they consider them acceptable, based on the size and nature of the proposed development.

Site Promotion and Consultation Costs

9.24 Particularly for large strategic sites, applicants may have to incur significant costs in promoting, publicising and undertaking public consultation on their proposed development site. These costs are legitimate ones to include within a Viability/Financial Appraisal. However, applicants must provide as much detail as possible on the breakdown of costs, with appropriate evidence provided where necessary, which will be then be assessed by the Council's consultants.

Other Section 106 and Planning Obligations

9.25 Applicants should have early discussions with the Council's planning officers, through the pre-application process, about other Section 106 and planning obligations that are likely to be required from the development (e.g. financial contributions for health, highway or education services). These costs can then be included within the Viability Appraisal as a legitimate development cost.

Other Assumptions

9.26 There are a number of other assumptions relating to costs and values that are usually included within Viability/Financial Appraisals, for which applicants are required to justify within the supporting information for the Appraisal. All of these other assumptions will also be reviewed and either validated or not by the Council's affordable housing consultants.

10. Review mechanisms

10.1 Development values used within Viability and Financial Appraisals are usually based on current day values (i.e. at the point of the planning permission being granted). However, there is then usually a significant time lag between planning permission being granted and completion of the development.

10.2 During this time, significant changes can occur which would affect the viability of the development, in particular, build costs and development values. Therefore, for certain types of developments, the Council will require, through the S106 Agreement, a review of the actual viability of a development, either when the development has been completed or at agreed stages during the development period. This is to enable any affordable housing requirements that were reduced due to an apparent lack of viability demonstrated through the original Viability Appraisal to be corrected once the actual costs are known, in order to ensure that the maximum affordable housing contribution is achieved, up to that required for full policy compliance.

10.3 However, since the purpose of review mechanisms is to enable policy requirements that have previously been forgone to be met (and not to enter into an open-ended profit share arrangement with a developer), the S106 Agreement will include a cap on the level of additional affordable housing provision to be provided - which will be the level assessed to ensure full compliance with the Council's Local Plan Submission Version 2017 requirements.

10.4 It is likely that review mechanisms will be sought for the following types of developments:

- Large developments;
- Phased developments;
- Developments to be completed over an unusually long period of time;
- Developments that stall; and
- Developments where the actual viability is truly uncertain at the time of producing the original Viability Appraisal.

10.5 Where appropriate, the Council will seek to include mechanisms within S106 Agreements enabling some reviews to carried out at an early stage in the development or, for phased schemes, prior to implementation of each phase, that require an appropriate amount of the properties earmarked for market housing to be provided as affordable housing. Where this is not possible, the Council would accept a financial contribution to fund affordable housing provision elsewhere in the District, in lieu of on-site provision.

10.6 When determining the viability of second and subsequent phases of larger developments, further re-appraisals will take account of the actual costs and values from previous phases of the development.

11. Confidentiality of information

11.1 Some applicants seek confidentiality in the disclosure of some or all of the information contained in Appraisals and supporting information provided to local planning authorities. In such cases, this usually takes the form of seeking an exemption from disclosure under the Environmental Information Regulations 2004 and/or the Freedom of Information Act 2000, on the basis that such disclosure would adversely affect the confidentiality of commercial information that protects a legitimate economic interest.

11.2 However, the Council is unable to commit to keep such information confidential as its duty to comply with the legislation may require it to disclose the information, unless an exemption applies. Whether or not an exemption applies is usually determined around the issue of public interest. The Environmental Information Regulations apply a presumption in favour of disclosure, with exceptions only applying if retaining confidentiality would serve the public interest better than disclosing the information.

11.3 There is already case law relating to these issues, and the Council will always have regard to the most recent precedents from the courts.

11.4 If an applicant is of the view that any element of a Viability/Financial Appraisal should be kept confidential, they should provide a justification for why disclosure would cause harm to their commercial interests and also, crucially, harm the public interest. Justification must be provided for each individual component of an Appraisal that the applicant considers should not be disclosed.

11.5 The Council will only publish or disclose information submitted in support of an application where it is either necessary or appropriate to do so (for example, to justify officers' recommendations to a Council Committee) or if it is requested by a member of the public. Any information which the Council considers should not be disclosed, having regard to the legal position at the time, will be redacted. In this case the applicant may be required to provide a redacted version of the information, in a form specified by the Council.

11.6 Notwithstanding any decision by the Council not to disclose information, the Council may still need to release information to a third party where another body has a role in determining the application (e.g. where the application is subject to a planning appeal).

11.7 The Council reserves the right to provide information to external parties advising the Council on viability matters (e.g. the Council's affordable housing consultants) where this is necessary to ensure due diligence in assessing the application and to properly fulfil its statutory requirements as Local Planning Authority.

12. Further information

12.1 For further information relating to any planning aspects of proposed developments, applicants should contact the Planning Case Officer that has been allocated to their application.

12.2 Any queries relating to affordable housing or the submission or validation of Viability/Financial Appraisals should be directed to the Council's Senior Housing Development Officer (Tel: 01992 564746).

Epping Forest District Council

Fees for the validation of Viability Appraisals and Financial Appraisals by the Council's Affordable Housing Consultant for planning applications where either
(a) Applicants assert that it is unviable to meet the Council's policy-compliant affordable housing requirements
or
(b) The Council has agreed to the payment of a financial contribution in lieu of on-site affordable housing provision

(1st April 2018 – 31st March 2019)

	No. of Residential Dwellings		
	11 - 49	50 -149	150 +
Residential use only	£5,000	£5,500	£6,000
Supplement for 1 additional use	£550		
Supplement for 2 additional uses	£825		
Supplement for 3 additional uses	£1,000		

Notes: (1) VAT is not payable on the above fees.

(2) The above fees are the same fees that the Council's Affordable Housing Consultant charges the Council for their services, and were the lowest fees overall received from consultants in response to a competitive fee tender exercise undertaken by the Council in January 2018.

Epping Forest District Council
Communities Directorate

PREFERRED HOUSING ASSOCIATION PARTNERS

Catalyst Housing Assoc.	6 Houghton Hall Porz Avenue Houghton Regis Bedfordshire LU5 5UZ	***Contact:*** Helen.Pearson (01582) 869280 / 07773089693 Helen.Pearson@chp.org.uk
B3Living	Scania House 17 Amwell Street Hoddesdon Herts EN11 8TS	***Contact:*** Dean O'Regan (01992) 453 723 / 07484526810 Dean.O'regan@b3living.org.uk
CHP	Myriad House 33 Springfield Lyons Approach Chelmsford Essex CM2 5LB	***Contact:*** Helen Shackleton (01245) 613 164 Helen.Shackleton@chp.org.uk
Habinteg	20-21 Red Lion Court London EC4A 3EB	***Contact:*** Matthew Kelly (020) 7822 8718 mkelly@habinteg.org.uk
Hastoe Housing Association	Eastern Region Office Rectory Farm Barns Little Chesterford Saffron Walden Essex CB10 1UD	***Contact:*** Isobel Wright (01799) 533 175 iwright@hastoe.com
Moat Housing Society	Mariner House Galleon Boulevard Crossways Kent DA2 6QE Dartford	***Contact:*** Natasha Luchmun-Heather (0845) 359 6394 / 07711 438532 Natasha.Luchmun-Heather@moat.co.uk