

Viability in Planning

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Why?

- To deliver sustainable growth
- Growth supported by infrastructure and providing affordable housing



Planning for the place – Creating the place

- Look at the settlement – quantity of growth, timing of growth – trajectory & impact of growth
- What infrastructure do you need to support the growth
- Transportation, work, going to school, recreation and sport



Planning for the place – Creating the place -2

- Look at the wider area – do you contain your population within your administrative boundaries?
- Growth might be in your administrative boundaries but where is the impact?
- How are you approaching infrastructure planning? And where is the infrastructure located to support the growth? And who is paying for it?
- *Authorities which agree to take additional housing from other areas may in turn require investment in infrastructure provision to support this. Where effective cross-boundary working can be demonstrated in the statement of common ground, this could be used as evidence when trying to secure grants for infrastructure where effective joint working forms part of the assessment criteria.*
- Paragraph: 008 Reference ID: 61-008-20180913 Revision date: 13 09 2018



Planning for the place – Creating the place -3

- How are you approaching infrastructure planning? And where is the infrastructure located to support the growth? And who is paying for it?
- What are your priorities – what are you seeking in developer contributions, what level of affordable housing and what will you seek from other funding pots?



So Understand Your Infrastructure Needs

- Understand the best approach for delivering infrastructure – s106 in kind; s106 contribution CIL delivered by County or District
- Seek estimates for your infrastructure costs
- Identify the infrastructure costing viability inputs and apply them to your plan- wide local plan or CIL viability assessment.



What is viability?

An individual development can be said to be viable if, after taking account of all costs, including central and local government policy and regulatory costs and the costs and availability of development finance, the scheme provides a competitive return to the developer to ensure that development takes place and generates a land value sufficient to persuade a land owner to sell the land for the development proposed. If these conditions are not met, a scheme will not be delivered.

Local Housing Delivery Group. Viability Testing in Local Plans – Advice for planning practitioners. (LGA/HBF – Sir John Harman) June 2012



What is viability?

An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering that project. (Where viability is being used to test and inform planning policy it will be necessary to substitute “a development project” into the wider context)

Financial viability in planning RICS guidance note

1st edition (GN 94/2012) August 2012

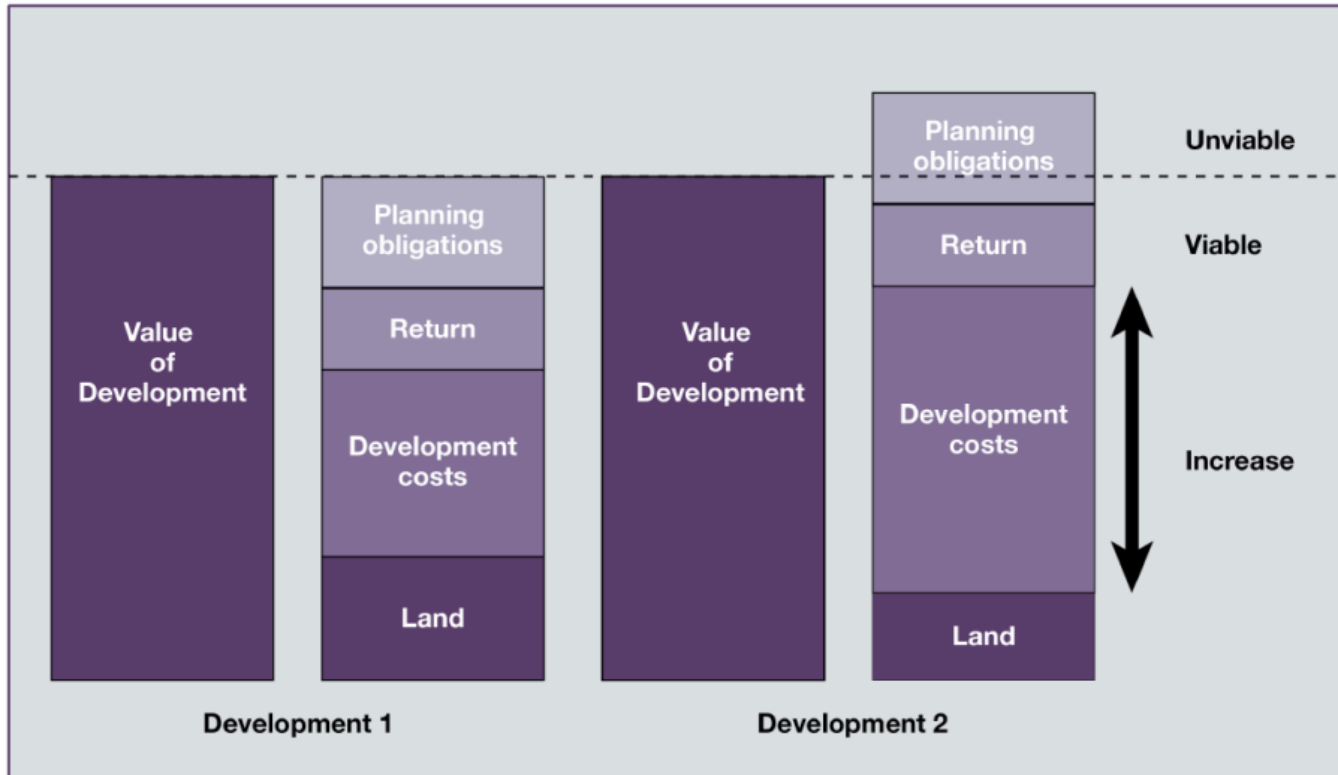


What is Viability ?– NPPF2019 /PPG 2018

- Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.
- Paragraph: 010 Reference ID: 10-010-20180724



Economic viability of a scheme



Source: 'Financial Viability in Planning', RICS

Residual Value - Viability Test

STEP 1

Gross Development Value

(The combined value of the complete development)

LESS

Cost of creating the asset, including PROFIT
(Construction + fees + finance charges)

=

RESIDUAL VALUE

STEP 2

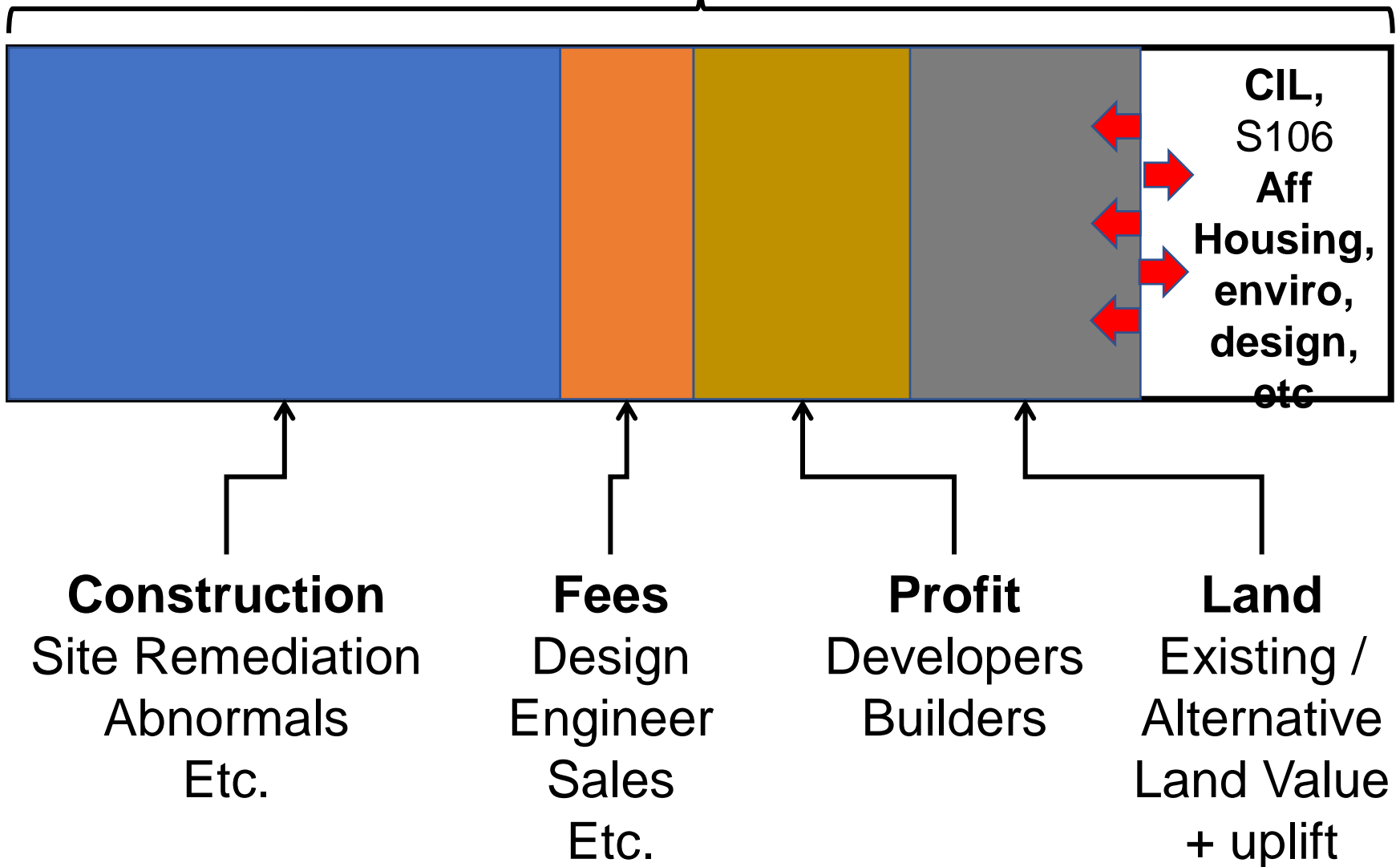
Residual Value v Existing Use Value (EUV)

**Note: EUV + premium = Benchmark land value < residual value
is viable**

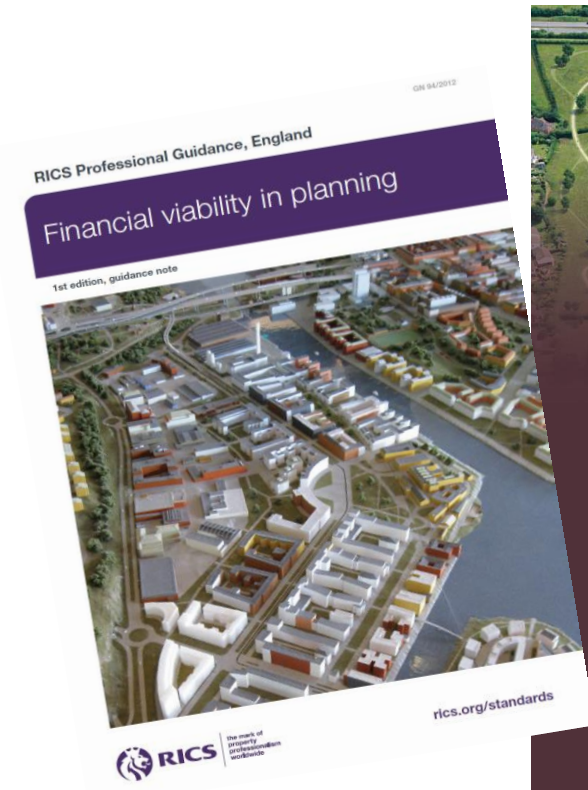


Gross Development Value

All income from a Scheme



Useful background documents



Direction of travel

- Harman Guidance, RICS Guidance, NPPF – 2012 & PPG 2014, Mayoral SPG
- What has been in the news? e.g. Shelter, TCPA
- Issues – communities feeling cheated/mislead, reduced levels of affordable housing, insufficient infrastructure to support growth, circularity (increasing land prices reducing contributions), lack of transparency
- Changes that have taken place- Appeal decisions, Mayoral SPG
- Aim to improve public confidence in planning and delivery the infrastructure to support development and more affordable housing to meet need



NPPF/PPG 2018- Seismic Shift?

- It depends where you are starting...
- Much of the approach was just good practice supported by the available guidance and some key appeal decisions
- Not in London for Development Management- Mayor's approach
- However, the clarity of the PPG and the setting out of the standardise approach is such that there is now no doubt about matters such as plan based, no need for viability appraisal for applications, building in all policy costs into land value, EUV +, price paid irrelevant, market value is the adjusted market value (not price paid for non complaint schemes)



Essex Viability Protocol

June 2018



NPPF 2019 & PPG 2018- viability

- Creates an approach :
 - Proportionate,
 - Simple,
 - transparent &
 - publicly available
- Land value - Price Paid is irrelevant!



National Planning Policy Framework (NPPF)

- *‘Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.’ (para. 34)*
-
- *‘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. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.’ (para.57)*



Viability – Plan making

- When?- site selection, creation of policy and developing CIL
- Engagement and collaboration with site owners/ promoters/ developers
- Iterative process
 - SHLAA /SHELAA- Are the sites viable ?– Is there enough of a premium? - Have the promoters taken into account all costs including infrastructure, abnormal costs & full compliance with existing/proposed policy ?
 - Whole plan viability – typology based, sampling & strategic site assessment
 - CIL/s 106 viability
- Standardised methodology
- Do you want to include a review mechanism?



Engagement and collaboration

- Plan makers should engage with landowners, developers, and infrastructure and affordable housing providers to secure evidence on costs and values to inform viability assessment at the plan making stage.
- It is the responsibility of site promoters to engage in plan making, take into account any costs including their own profit expectations and risks, and ensure that proposals for development are policy compliant. It is important for developers and other parties buying (or interested in buying) land to have regard to the total cumulative cost of all relevant policies when agreeing a price for the land. **Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.**
- Paragraph: 006 Reference ID: 10-006-20180724



Policy requirement – increased focus?

- **Plans should set out the contributions expected from development.** This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure)...
- These policy requirements should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability that takes into account all relevant policies, and local and national standards, including the cost implications of the Community Infrastructure Levy (CIL) and section 106. **Policy requirements should be clear so that they can be accurately accounted for in the price paid for land...**

• Paragraph: 10-001-20180724



Plan making Gross Development Value (GDV) -PPG

- Gross development value is an assessment of the value of development. For residential development, this may be total sales and/or capitalised net rental income from developments. Grant and other external sources of funding should be considered. For commercial development broad assessment of value in line with industry practice may be necessary.
- For broad area-wide or site typology assessment at the plan making stage, average figures can be used, with adjustment to take into account land use, form, scale, location, rents and yields, disregarding outliers in the data. For housing, historic information about delivery rates can be informative...
- Paragraph: 011 Reference ID: 10-011-20180724



PPG - Standard Income

3 elements

- Market Housing
- Affordable Housing
- Other Uses



PPG - Standard Costs

7 headings + 1 extra

build costs

abnormal costs

site-specific infrastructure costs

cost of all relevant policy requirements

finance

fees

contingency

+ developer's return



Developer return (Profit)

- Plan making PPG – Profit - 15-20%
- Alternative figures- require evidence – scale & risk profile
- “Potential risk is accounted for in the assumed return for developers at the plan making stage. It is the role of developers, not plan makers or decision makers, to mitigate these risks...” Paragraph:

018 Reference ID: 10-018-20180724



Land value and Benchmark Land Value



Existing Use Value (& Alternative Use Value)

... EUV is the value of the land in its existing use together with the right to implement any development for which there are policy compliant extant planning consents, including realistic deemed consents, but without regard to alternative uses. **Existing use value is not the price paid and should disregard hope value...** 2018

PPG 10-015

...



Alternative Use Value

- i.e. other permitted uses
- ...alternative use value (AUV) refers to the value of land for uses other than its current permitted use, and other than other potential development that requires planning consent, technical consent or unrealistic permitted development with different associated values... If applying alternative uses when establishing benchmark land value these should be limited to those uses which have an existing implementable permission for that use. Where there is no existing implementable permission, plan makers can set out in which circumstances alternative uses can be used...



The Plus + - The Premium

- Incentive
- Based on available evidence - sources
- Comparable evidence/ adjusted
- collaborative
- iterative



EUV plus?

In order to establish benchmark land value, plan makers, landowners, developers, infrastructure and affordable housing providers should engage and provide evidence to inform this iterative and collaborative process.

Paragraph: 013 Reference ID: 10-013-20180724

- Collaborate process needs to be based on standardised methodology – comparable physical and policy compliant sites (not price paid)



Land Value - Benchmark Land Value

- Benchmark Land Value – EUV + - Existing Use Value plus a premium
- The premium – minimum return at which a **reasonable** land owner would sell.
- The Premium – is the incentive in comparison with other options available (e.g. ...?)
- Iterative processive - collaboration



Benchmark Land Value

- Existing Use value (EUV)
- Premium (incentive to the land owner)
- Reflect abnormal costs
- Site specific infrastructure costs
- Professional fees
- And **be informed by market evidence**

- **Price Paid evidence is irrelevant unless the sites are Comparable**



Informed by Market evidence...

- Market value – is not price paid
- Any market evidence of value needs to be adjusted to make it comparable in terms of:
 - Physical characteristics
 - Policy compliance
- Non comparable sites and values are NOT acceptable: Historic benchmark land values of non compliant development cannot be used as these would inflate the values. This leads to ‘circularity’



Circularity

- The failure to properly ensure that the values for land and the benchmark land value have 'regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan' (RICS) leads to circularity.
- If land value and benchmark land value only take into account the price being paid in the market, then the less policy compliant a development is, the higher the 'market' price. This circularity creates spirals of increasing land value and reduces the ability to meet policy requirements.
- The incorrect interpretation of market value as a comparison has increased the price paid 'market value' and has thus supported the case that the planning policy requirement for infrastructure and affordable housing cannot be met.



Viability Test

EUV Plus a premium

– reality checked against market value (adjusted for comparability)

Will EUV Plus provide acceptable premium for a reasonable land owner?

Land owner's have expectations (*life changing?*)

Will land come forward?

Viability at plan making

- Typologies
- Engage
 - costs (including abnormals)
 - infrastructure
 - Plus/premium
- Iterate



Q & A



Decision making-

- To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see [section 70\(2\) of the Town and Country Planning Act 1990](#) and [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#))
- Viability can be a material consideration- the weight given to it is up to the decision maker



Essex Viability Protocol

June 2018



Decision Making – Viability - PPG

- 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.**
- Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); or where a recession or similar significant economic changes have occurred since the plan was brought into force.
- Paragraph: 007 Reference ID: 10-007-20180724



Viability - Decision Making

- Decision taking- in line with plan making viability
 - Why is a viability assessment necessary?
 - Applicant should demonstrate what has changed since the plan
 - PPG allows for circumstances where viability is required at applications stage
 - Are your policies up to date? Has there been significant change since the plan?
 - Weight given to the viability assessment is up to the decision maker (LPA/PINS/Minister)
 - Approach: Standardised methodology-
 - EUV +
 - Key inputs
 - Land value- price paid irrelevant x6



4 tests (NPPF 2019/PPG 2018)

- where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan;
- where further information on infrastructure or site costs is required;
- where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people);
- or where a recession or similar significant economic changes have occurred since the plan was brought into force.



Decision making- Site Specific Viability

- Gross development value is an assessment of the value of development. For residential development, this may be total sales and/or capitalised net rental income from developments. Grant and other external sources of funding should be considered. For commercial development broad assessment of value in line with industry practice may be necessary.
- ...For viability assessment of a specific site or development, market evidence (rather than average figures) from the actual site or from existing developments can be used. **Any market evidence used should be adjusted to take into account variations in use, form, scale, location, rents and yields, disregarding outliers. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.**

- Paragraph: 011 Reference ID: 10-011-20180724



Viability (or not) in DM?

- Is it necessary?
- Method – relative to plan wide viability
- Transparency
- Weak points
- Weight (or not)



Seismic Shift –TCPA Journal

..Following the clear instruction that ‘price paid’ and ‘hope value’ are irrelevant, there needs to be considerably greater diligence on behalf of site promoters and their consultants to ensure that development sites are purchased at a level that will enable all policy costs – including mitigation, infrastructure and affordable housing – to be met. Landowners, including public landowning bodies, will need to adjust to the land values that may be obtained for sites that meet the requirements of the revised NPPF and PPG...

- Gilian Macinnes, Town & Country Planning Journal September 2018



Compulsory Purchase

- *‘9 Compensation for compulsory purchase is therefore based on the value of land with its current use or any prospect of a planning permission being granted which meets policy requirements including good design, affordable housing and infrastructure. That is, what would be acceptable on the land in the public interest...’*
 - *‘10 So Shelter’s aspirations for compulsory purchase compensation are already met. Market value is assessed under the Land Compensation Act 1961 on the basis of the potential to develop in the public interest as they propose. There is therefore no need to amend the legislation.’*
- R Harwood: Land Value Capture: A New Consensus. Aug. 2018.
 - www.39essex.com/land-value-capture-a-newconsensus-richard-harwood-obe-qc/



Q & A



Useful Background Appeals

- Clay Farm, Cambridgeshire
- Parkhurst Road, Islington



Clay Farm

- Clay Farm:
- The Inspector did not consider the price paid to be the relevant input into the VA, in this case *“the appellants approach to assessing viability(..) has the effect of protecting historic land values as well as insulating the developer against a risk for which he is already indemnified by the profit margins. Put another way, their approach protects them from historic falls and achieves 20% on historic losses..”*
- Clay Farm, Cambridgeshire 2009-APP/Q0505/A/09/2103599



Parkhurst Road, LB Islington

- Territorial Army Centre (£13.25M from MOD)
- Proposed scheme – 96 homes 10% AH
- Council policy 50% AH– accept 34% AH

- The difference was the Benchmark Land Value-
The price needed to incentivise the owner to sell.
- Justice Holgate – it is the developers responsibility
to show why the level of affordable housing is not
viable



Parkhurst Road (cont.)

- Developers argued for market value approach to determining the BLV- in which affordable housing plays no part.
- The LPA called for EUV + (in accordance with the RICS guidance – taking into account policy costs)
- Inspector preferred EUV +
- The judgement supported Islington’s submission that it:
 - reflect policy requirements
 - Provided a competitive return to willing developer and land owner
 - Be informed by comparable market based evidence



Accountability & Transparency

- Viability assessment:
 - prepared by suitably qualified practitioner
 - In accordance with NPPG
 - Clearly presented
 - Executive summary – example?
 - Clearly set out
 - Clearly stated assumptions
 - Deviation from plan viability clearly explained
- Transparency – All VAs ‘should be prepared on the basis that it will be made publicly available other than in exceptional circumstances’



Reviewing consultant's report

- Method
- Transparency
- Weak points



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