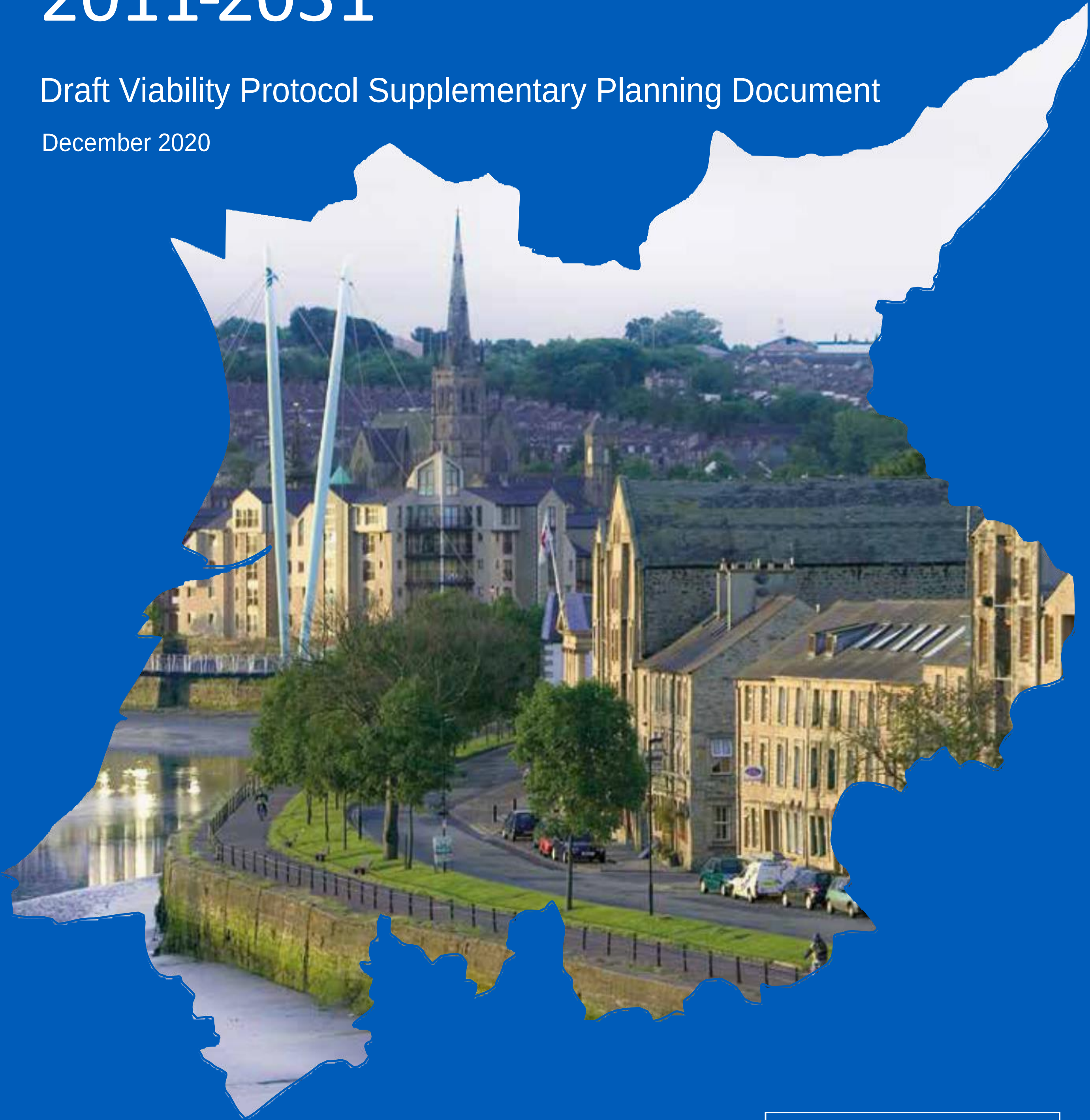
A Local Plan for Lancaster District

2011-2031

Draft Viability Protocol Supplementary Planning Document

December 2020



LANCASTER CITY COUNCIL

Promoting City, Coast & Countryside

Contents

Executive Summary

This Viability Protocol Supplementary Planning Document sets out overarching principles for how the council will approach development viability, where this is a consideration as part of the planning process. It provides guidance on the details that should be included in Viability Assessments and the councils approach to considering viability matters. The advice and the approach are consistent with the National Planning Policy Framework (NPPF) and national Planning Practice Guidance (PPG).

Where an applicant wishes to reduce the affordable housing and/or S106 contributions required by planning policies, the onus is on the applicant to provide evidence to support the case. The evidence must be made publicly available, an approach which supports accountability for communities by enabling them to understand the key inputs to and outcomes of viability assessments.

This SPD provides detailed guidance about the information and evidence which must be submitted with an application. It must be accompanied by an executive summary which should include the following information:

- Gross development value
- Benchmark land value including landowner premium
- Costs:
  - Build costs
  - Abnormals
  - Site Specific infrastructure
  - Policy requirements (Section 106/Community Infrastructure Levy)
  - Financing (e.g. loans)
  - Professional fees (e.g. marketing, legal, architects, overheads)
  - Contingency
  - Other (Please Detail)
- Developer return
- An explanation of how the values and costs have been arrived at
- How the viability assessment has informed the planning application
- Developer contributions compared to policy requirements

Further detail is provided within the body of this document.

1.0 Introduction

1.1 The Lancaster Local Plan (the Local Plan), consists of the following documents:

- Strategic Policies and Land Allocations Development Plan Document (DPD)
- Development Management DPD
- Arnside and Silverdale Area of Outstanding Natural Beauty DPD
- Morecambe Area Action Plan DPD

1.2 There are also a series of Neighbourhood Plans which contain policies for development management purposes.

1.3 The Local Plan can be viewed on the Council website: http://www.lancaster.gov.uk/planning/planning-policy/about-local-plan

1.4 The policies in the Local Plan seek to ensure that development is sustainable. It does this by focusing development in locations which reduce the reliance on the private car and ensuring that new development provides the infrastructure it needs, such as education places and schools, sustainable travel including cycleways, footpaths and public transport and outdoor recreation space. Policies also seek to ensure development meets environmental criteria and provides for affordable housing.

1.5 The Local Plan is supported by an evidence base, including the Local Plan Viability Assessment (Stage One and Stage Two) and the Arnside and Silverdale AONB DPD Viability Assessment. These documents considered the combined effect of the policy requirements in the Local Plan to ensure that their impact does not threaten the delivery of housing and employment growth together with the associated infrastructure envisaged in the Local Plan.

1.6 There may be exceptional circumstances when the abnormal costs associated with a scheme, result in it not being considered viable by the developer. In such cases, the developer may ask for policy requirements to be relaxed to enable a development to go ahead. It is up to the developer to provide robust viability evidence to support their case.

1.7 This Viability Protocol Supplementary Planning Document (SPD) sets out the overarching principles for how the council will approach development viability, where this is a consideration as part of the planning process. The protocol does not alter planning policy but provides guidance on the details that should be included in Viability Assessments and the councils approach to considering viability. Using this SPD should help minimise delays in determining a planning application. The advice and the approach are consistent with the National Planning Policy Framework (NPPF) and national Planning Practice Guidance (PPG).

1.8 The SPD is being producing in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012. Once adopted, this SPD will be afforded weight in decision making.

2.0 Viability Assessment

When Is A Viability Assessment Required?

2.1 The Local Plan includes a range of policies to ensure that development is sustainable, makes appropriate arrangements for the provision of infrastructure and does not adversely affect existing services and infrastructure. The PPG is clear that the onus is upon the applicant to justify why they seek to reduce affordable housing and S106 contributions. It states, “It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.”[1]

2.2 Where an applicant does not wish to meet the policy requirements for potential viability reasons (such as those set out in policy DM3: Affordable Housing), the Council will require applicants to submit an open book viability assessment in line with government guidance as part of the planning application submission. This will allow the Council to determine whether the proposed reduction in the provision of infrastructure is justified. Where contributions or off-site works are necessary to ensure that a proposal is sustainable, such as off-site works or contributions towards highway safety or flood mitigation work, applications will normally be refused, unless alternative appropriate arrangements can be made.

2.3 The applicant must discuss the scope of the Viability Assessment as part of the pre-application advice process. The requirements below reflect those necessary for major development schemes. A pared down version which simply includes the development value and costs (supported by evidence), may be appropriate for minor development where affordable housing is required in the districts two Areas of Outstanding Natural Beauty.

2.4 A Viability Assessment should include:

- An executive summary.
- A written assessment setting out the required and proposed affordable housing and other contributions and an explanation of the reasons why the proposal would be unviable if a policy compliant scheme was to be provided.
- A detailed financial viability appraisal in the format attached in Appendix C.
- Supporting evidence, sources and an explanation which demonstrates how the assumptions have been determined to inform the viability appraisal.

Further detail is provided in Section 5.

2.5 Where the viability case is supported by an independent review, the Council will negotiate changes to the scheme to improve viability. It will consider a range of options to ensure that the development provides the highest level of affordable housing and infrastructure provision viably possible. The Council will determine the application on the basis that it is not policy compliant. It will consider this in the context of proposed mitigation, justifiable circumstances which result in a policy compliant scheme not being viable, benefits arising from the scheme and the Local Plan and national planning policies as a whole.

[1] Planning Practice Guidance – Paragraph:007 Reference ID: 10-007-20190509

Transparency

2.6 The NPPF states, '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.'[2]

2.7 The Planning Practice Guidance (PPG) states that viability assessments should be 'transparent and publicly available'[3]. The Environmental Information Regulations (2004) recognise the benefits of public participation and include a presumption in favour of disclosure. This approach has been upheld in the High Court.[4]

2.8 It is important to note that this information will be made available in the public domain. In submitting development viability information, applicants do so in the knowledge that this will be made publicly available. A planning application will not be made valid, unless it is accompanied by an 'open book' viability assessment.

2.9 As viability appraisals should contain standardised inputs in line with the PPG, data will not usually be specific to a developer and they will not contain commercially sensitive information. Even if some elements are commercially sensitive, they can be aggregated and published to avoid disclosure of sensitive material. In exceptional cases, where the disclosure of commercially sensitive data is necessary and an applicant requests that redacted version is made public, clear justification for the sections to be omitted must be given.

2.10 As land value should be reached in accordance with the guidance in the PPG and not on the price agreed between the applicant and landowner, this information will not be considered commercially sensitive.

2.11 The information provided should use the same information that the applicant has used to decide whether to proceed with the development and the information provided to funders to secure development finance. The Council will require a statutory declaration signed by a Director of the Company to minimise the submission of inaccurate or misleading information. The statement should confirm that:

- The information provided is accurate and reflects that used to make their own commercial decisions.
- The applicant has not instructed any agent to formulate the viability assessment under an arrangement where their fee is increased if they are successful in reducing planning contributions and affordable housing provision.

2.12 An executive summary should be included which explains the costs and gross development value in layman's terms to ensure that the financial data is accessible to members of the public without a financial or development background.

2.13 The weight to be attached to a Viability Assessment will take into account the transparency of the applicant's approach.

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[2] National Planning Policy Framework (Feb 2019) – Paragraph 57
[3] Planning Practice Guidance - Paragraph: 010 Reference ID: 10-010-20180724
[4] The Queen on the application of Holborn Studios Limited and London Borough of Hackney and GHL (Eagle Wharf Road) Limited - [2020] EWHC 1509 (Admin)

Independent Review

2.14 Where an applicant seeks to reduce the necessary contributions/affordable housing they must be prepared for the financial data and supporting evidence to be independently reviewed, the cost of which must be met by the applicant. The applicant must enter into an agreement to reimburse the cost to the Council when the application is submitted.

2.15 The Council will commission an independent review which will appraise the assumptions made in the financial data, the proposed construction work costs and supporting documents supplied by the applicant. The appraisal will review the sales prices, costs including site specific abnormal/development costs, engineering proposals and site value to determine whether the assumptions and proposals are acceptable or whether revisions are required which may result in an increased amount of contributions.

2.16 The independent review will require one or all of the following:

- Appraisal of the viability assessment/financial data submitted by the applicant, by a RICs qualified viability consultant.
- Appraisal of the build costs, abnormal and external costs by an Engineer and/or Quantity Surveyor.

2.17 The scope of the Independent Review should be determined as part of the pre-application advice service.

2.18 A template agreement for cost reimbursement and statutory declaration are attached at Appendix A. Indicative costs are included at Appendix C.

3.0 Viability Assessment Inputs

Development Values

2.19 Assumptions should be justified with references to up-to-date transactions and market evidence comparable to new builds within a reasonable distance of the site. Where directly comparable information is not available, transactions should be adjusted to ensure it reflects site circumstances.

2.20 Applicants should engage with Registered Providers (RPs) early on in the process to ensure that the type, size, tenure and specification of new the homes are appropriate for transfer. Affordable housing values should reflect discussions with and offers made by RPs. RPs generally pay 70% for shared ownership properties and 50% for affordable rented properties and these figures should be used in viability assessments unless evidence and justification for a lower figure is provided.

Land Value

2.21 Benchmark Land Value (BLV) should be determined in accordance with the PPG using the ‘existing use value plus’ (EUV+) approach. The plus or premium, is generally accepted to be 10-15 times the existing use value but this may be subject to adjustment to ensure development is policy compliant.

2.22 BLV should take into account the existing use value of the site, for example agricultural land and the fact that any additional value on the site arises from its allocation in the Local Plan and / or from the prospect of planning permission. The value should therefore be assessed with all the policy requirements, including the full affordable housing requirement in mind and take account that previous land sales would not necessarily reflect the policy requirements in the current Local Plan.

2.23 Development costs, including abnormal costs, site specific infrastructure costs should be taken into account when defining BLV and deducted from the land value calculation.

2.24 Market evidence must be adjusted to take account of planning policy requirements to comply with paragraph 16 of PPG which states, 'any data used should reasonably identify any adjustments necessary to reflect the cost of policy compliance (including for affordable housing)[5] This approach has been supporting in the High Court[6].

2.25 Research published by RICS24 found that the 'market value' approach is not being applied correctly and "if market value is based on comparable evidence without proper adjustment to reflect policy compliant planning obligations, this introduces a circularity, which encourages developers to overpay for site and try to recover some or all of this overpayment via reductions in planning obligations"[7] Use of a market-based approach for determining land value is therefore not acceptable.

2.26 In accordance with the RICs guidance, when presenting BLV, the following should be reported:

- Current Use Value or Existing Use Value.
- The Premium.
- Market Evidence.
- Alternative Use Value.

2.27 "A statement must be included in the FVA[8] or review of the applicant's FVA or area-wide FVA that explains how market evidence and other supporting information has been analysed and, as appropriate, adjusted to reflect existing or emerging planning policy and other relevant considerations."

2.28 The price paid or agreed to be paid for land through an option or agreement, 'is not allowable evidence for the assessment of BLV and cannot be used to justify failing to comply with policy.'[9]

[5] Planning Practice Guidance - Paragraph: 016 Reference ID: 10-016-20190509 Revision date: 09 05 2019
[6] Parkhurst Road ltd v Secretary of State for Communities and Local Government and London Borough of Islington – [2018] EWHC 911 (Admin)
[7] RICS 201525
[8] Financial Viability Appraisal
[9] Financial viability in planning: conduct and reporting 1st edition, May 2019

2.29 Alternative Use Value (AUV) can be used to determine BLV. In using AUV, the Viability Appraisal must:

- Explain how the proposed use would comply with planning policy.
- Provide evidence that there is market demand for the alternative use.
- Provide evidence that it could be implemented.
- Explain why the alternative has not been pursued.
- Take account of the development costs for the alternative use.
- Take account of cost savings arising from Vacant Building Credit.

2.30 Land value based on AUV already includes the premium for the landowner, this should not be included to prevent double counting.

Development Costs

2.31 The NPPF[10] and PPG recommends the use of standardised inputs into a viability assessment.[11] Build costs should be provided as follows:

- Using the Lower Quartile BCIS figures and quoted per internal square metre and for each house type. It should be stated when the BCIS figures were dated, what they were rebased to and whether this was based on the default or 5year figure, or
- If a developer seeks to use a higher BCIS figure, evidence from a Quantity Surveyor should be provided to support the revised costs, or
- If a developer prefers to use actual build cost data, this should be provided per square metre and for each house type. The build costs should be supported by evidence from a Quantity Surveyor.

Abnormal and External Costs

2.32 Abnormal costs should be taken into account when agreeing the value of the land. Abnormal costs include those relating to the treatment of contaminated sites, listed buildings or brownfield site.

2.33 Abnormal and external costs must be accompanied by robust and costed specialist reports (Engineer/Quantity Surveyor reports), including full technical data and justification to support the costs. Simply including costs will not suffice. All the supporting information should be submitted at the outset with the planning application.

Affordable Housing

2.34 Affordable housing values should be based upon 70% for shared ownership and 50% affordable rented. Where proposed values fall below these figures, confirmation from the RP will be required together with details of the transfer agreement.

2.35 Details of the transfer agreement will be required to ensure that where a lower value is accepted, a developer does not then transfer the homes to an alternative RP at a higher value.

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[10] National Planning Policy Framework (Feb 2019) - Paragraph 57
[11] Planning Practice Guidance - Paragraph 010 Reference ID: 10-010-20180724 Revision date: 24 07 2018

Profit

2.36 Where a developer is seeking to reduce affordable housing or infrastructure requirements/contributions, the profit level used in the viability appraisal should not exceed 15%. The profit should be applied to the net sales revenue.

2.37 Profit levels for affordable housing should reflect significantly lower risk levels, generally accepted to be at 6%. Lower levels of return would also be expected for commercial and private rented accommodation.

4.0 Revising Affordable Housing Provision and Contributions

4.1 Where it is agreed that a reduction in the affordable housing provision is justified, the Council will first consider amendments to the tenures, size and type of housing to determine if an alternative mix would improve viability and provide the affordable housing to meet local needs.

4.2 In some cases, flexible arrangements relating to the timing and level of planning obligations may be considered if the scheme would otherwise not be able to proceed.

4.3 On large sites that are expected to be built out over a period of time or in phases, viability may need to be re-assessed at different points (such as prior to the commencement of each phase). The Council will consider whether viability needs to be assessed at various stages throughout the development and may include requirements for a review of the assessment prior to the commencement of each stage.

4.4 Where a developer seeks an extension to a site they are developing, or have recently developed, and they wish to reduce the policy compliant affordable housing or contributions, a new viability assessment will be required. The viability assessment must re-assess the whole site. Actual build and sales costs arising from the original site can be used and should be supported by evidence.

5.0 Viability Assessment Requirements

5.1 Viability Appraisals submitted in support of a reduction in affordable housing or other infrastructure contributions should contain the following information, all of which should be supported by evidence:

Land values – for the existing use and the benchmark land value (per acre/hectare and for the site as a whole)
Gross and net area of development (in hectares and acres)
Number of and floor area of units (in metric)
Build costs based up in lower quartile BCIS per square metre or actual build costs where supported by evidence and compared with published BCIS costs
Abnormal or external costs should be supported by robust and costed specialist reports, including full technical data to support the costs.
Costs such as design, legal, consultants, planning etc
Build programme and phasing
Interest rates, loans, cash flow
Developers profit and an explanation of what it is made up of – company or financiers' requirements
Marketing and legal costs
Anticipated sales price for each unit type – supported by evidence of market sales prices for similar products and locations
Assessment showing the development finances with the affordable housing requirements within the Local Plan and any associated infrastructure contributions
Evidence of engagement with RPs
The RP price agreed for purchase
Confirmation that the applicant will pay the cost of the independent review prior to it being commissioned
Statutory Declaration signed by a Director of the Company

5.2 An Executive Summary must also be provided. The summary will be made publicly available on the Council website. The Executive Summary must include the following:

- Gross development value
- Benchmark land value including landowner premium
- Costs:
  - Build costs
  - Abnormals
  - Site Specific infrastructure
  - Policy requirements (Section 106/Community Infrastructure Levy)
  - Financing (e.g. loans)
  - Professional fees (e.g. marketing, legal, architects, overheads)
  - Contingency
  - Other (Please Detail)
- Developer return
- An explanation of how the values and costs have been arrived at
- How the viability assessment has informed the planning application
- Developer contributions compared to policy requirements

5.3 In some cases, the following information may also be required:

- Developers market analysis report
- Details of company overheads
- Financiers offer letter
- Board report on scheme
- Letter/report from auditor re land values
- Sensitivity analysis showing different assumptions/options
- Information about the costs of non-residential uses (to be provided in the same format as residential data)

Appendix A –Agreement to pay for Independent Review and Statutory Declaration

Agreement to pay the costs of Independent Review

The Council will appoint a suitably qualified RICS surveyor and Quantity Surveyor or Engineer to review any viability information submitted by the developer and the developer will pay the reasonable costs of such an appointment.

The applicant will pay for an independent review of the viability appraisal and associated evidence prior to the instruction of the review.

Statutory Declaration

- The information provided is accurate and reflects that used to make their own commercial decisions.
- The applicant has not instructed any agent to formulate the viability assessment under an arrangement where their fee is increased if they are successful in reducing planning contributions and affordable housing provision.

The wording to be included following agreement with Legal Services

Appendix B – Independent Review Costs

The Council is seeking tenders from independent consultants to carry out the appraisal of viability assessments and associated development costs. Once available, a range of indicative costs for the use of Viability Consultants, Quantity Surveyors and Engineers will be included within this Appendix.

Appendix C – Example Table for Viability Appraisal

Viability Appraisal Spreadsheet	
Site Address	
Application Number	
Number of Units	
Number of Affordable Units	
% of Affordable Units	
Gross Site Area	
Net Site Area	

Gross Development Value										
Unit Type			Floor Area (ft2) (per unit)	No of Units	Total Floor Area (ft2)	Sales Value (per ft2)	OM Sales Value (per unit)	Sales Value for Affordables	Total Sales Value for Unit Type	Clarification of Details
Detached /flat etc	Bed No.	OM/AR/ SO								Include affordable houses as separate house types Affordable unit values – 70% of OMV for shared ownership, 50% of OMV for rented – unless evidence to the contrary is provided
Totals										Gross Sales/Development Value (GDV)

Gross Development Costs				Clarification of Details
Acquisition Costs	£/Acre	Area in Acres	Totals	
Existing Site Value				
Proposed Premium (£ per acre & %)				
Total Site Value				Site value to be based upon EUV+ to take full account of all costs, including abnormals, planning policy requirements and contributions
Residualised Price				
Stamp Duty				Actual based on HMRC current rate
Agent Fees	1% of Site Value			
Legal Fees	0.50% of Site Value			
Planning Fees				
Survey Fees				
Total Acquisition Cost				

Construction Cost				
Build Cost Per Unit Types	Total Floor Area (ft2)	£ Per ft2	Totals	Basic build costs to be the BCIS lower quartile figure. Additional costs may be added as abnormals if evidence is supplied to justify an alternative build cost figure.
Garages				
Total Build Cost				
Contingency on Build Cost	3% of Build of Basic Cost			
Total Build plus Contingency				

External Works		
Description of Item	Totals	12% of basic build costs. Alternatively provide detailed costs supported by evidence.
Total External Costs		

Abnormal Costs		
Description of Item	Totals	Abnormal costs to be supported by evidence.
Total Abnormal Costs		

Total Construction Costs		Total of Build, Abnormal, External and Contingency Costs

Other Costs				
Description of Item				S106 / S278 Contributions
				Affordable housing contributions are not to be included here
Professional and Regulatory fees	5% of total construction costs			Actual fees may be included if known and supported by evidence
Sales Agent Fee	1% of GDV			
Marketing (Open Market)	0.5%			Incentives
Total Other Costs				

Finance			
Timescale	Duration (months)	Commencement Date	
Pre-Construction			
Construction			
Sale			
Total Duration			
Debit Rate 6% Credit Rate 0% Nominal		Totals	
Land			
Construction			

Total Finance Costs			

Totals – GDV / GDC / Profit / Residual		
Gross Development Value		Total Sales
Gross Development Cost		Total of all costs
Developer Profit		The profit level should not exceed 15%
Residual		GDV – GDC – Developer Profit

Performance Measures		
Profit on Cost%		
Profit of GDV%		
Profit on NDV%		
IRR		
Profit Erosion (finance rate 6%)		In years / months