

Lancaster City Council | Report Cover Sheet

Meeting	Cabinet	Date	1 March 2022
Title	Viability Protocol Supplementary Planning Document		
Report of	Director for Economic Growth and Regeneration		
Purpose of Report			
<p>The purpose of the report is for Members to consider the amendments made to the draft Viability Protocol Supplementary Planning Document (draft SPD) to address representations made during the consultation and seek authorisation for the Service Manager – Planning and Housing Strategy to proceed with formal adoption.</p>			
Key Decision (Y/N)	N	Date of Notice	Exempt (Y/N) N

Report Summary

The SPD 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 information which will be expected when an applicant seeks to reduce affordable housing and contributions required by adopted planning policies or those necessary to make a development acceptable in planning terms.

Members considered a draft SPD on 19th January 2021. Members delegated authority to the Service Manager – Planning and Housing Strategy to advance the draft SPD through informal and statutory defined consultation processes and then proceed with adoption unless the consultation resulted in any significant changes to the SPD, in which case it would be reported back to Cabinet for final endorsement.

The Consultations resulted in objections from the development industry about the Councils approach, the requirements for the submission of information and the use of specified inputs for viability assessments. Amendments have been made to the final SPD to respond to some of the comments received, in particular the setting of specific inputs for viability assessments and the requirement for a warrantee from the applicant have been removed. It was not considered necessary to make amendments in response to all the comments received. The amendments considered to be significant are outlined in the body of this report. A summary of the representations received, and responses made to them is included in the attached Consultation Statement.

The attached SPD incorporates the changes necessary to ensure that it provides a robust and defensible approach to viability assessments. The report therefore recommends that it is adopted for use as a material consideration in planning decisions.

Recommendations of Councillors

(1) It is recommended that Cabinet delegate authority to the Service Manager – Planning and Housing Strategy to proceed with the statutory process to adopt the SPD.

Relationship to Policy Framework

The Corporate Plan 2018-2022 (July 2018) includes ambitions to improve access to quality housing. The Corporate Priorities (updated January 2021) set out the Council's priorities to reach net zero by 2030; transitioning to low carbon and active transport system; increasing biodiversity and reaching net zero carbon by 2030; supporting new enterprises; securing investment in regeneration; develop housing to ensure people of all incomes are comfortable, warm and able to maintain their independence.

The Lancaster Local Plan includes policies which seek to ensure that the new housing developments include a proportion of affordable housing, provide the necessary infrastructure contributions and support sustainable development, biodiversity, active travel.

The SPD will support the implementation of policies within the Local Plan.

Conclusion of Impact Assessment(s) where applicable

Climate

There are no climate change impacts arising from a commitment to progress the draft SPD through the informal and statutory consultation processes.

Wellbeing & Social Value

There are no wellbeing or social value impacts arising from a commitment to progress the draft SPD through the informal and statutory consultation processes.

Digital

There are no digital impacts arising from a commitment to progress the draft SPD through the informal and statutory consultation processes

Health & Safety

There are no Health & Safety, Equality and Diversity, Human Rights, Community Safety, HR implications arising from a commitment to progress the draft SPD through the informal and statutory consultation processes.

Equality

There are no equality impacts arising from a commitment to progress the draft SPD through the informal and statutory consultation processes.

Community Safety

There are no community safety impacts arising from a commitment to progress the draft SPD through the informal and statutory consultation processes.

The impacts of the policies within the Local Plan have been assessed during the statutory Local Plan process. As the SPD provides guidance upon the implementation of policies within the Local Plan, it will not itself have an impact on these matters.

Details of Consultation

The draft SPD and amendments made following the pre-Regulation 12 Consultation were reported to reported to the Local Plan Review Group. The amendments made following the Regulation 12 Consultation and final SPD will be reported prior to the Cabinet meeting.

The SPD has been subject to two consultations in accordance with the statutory consultation processes with stakeholders, each running for a 6-week period. The Pre-Regulation 12 consultation was held between 5th February and 9th March 2021 and the Regulation 12 consultation between 25th October and 6th December 2021.

Legal Implications

The statutory consultation has been carried out in accordance with the process set out in the Town and Country Planning (Local Planning) (England) Regulations 2012. The decision to adopt an SPD is a decision that is subject to public law considerations and accordingly could be subject to judicial review challenge (if sufficient grounds for such a claim are made out). Once adopted the SPD will form a material consideration in the determination of planning applications.

Financial Implications

The SPD is intended to provide guidance on the implementation of Local Plan policy. There are no additional financial implications arising from its progression through the statutory consultation process.

Other Resource or Risk Implications

The main resource implication will be the staff required to support the adoption of the SPD. This support will be minimal.

Section 151 Officer's Comments

The 151 Officer has been consulted and has no further comments.

Monitoring Officer's Comments

The Monitoring Officer has been consulted and has no further comments.

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Links to Background Papers

The Viability Protocol SPD and Consultation Statement are attached to this report.

1.0 Introduction

- 1.1 The Planning Practice Guidance states that SPDs, *'should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material*

*consideration in decision-making. They should not add unnecessarily to the financial burdens on development.*¹

- 1.2 The aim of this SPD is to provide guidance for prospective applicants when they are seeking to reduce affordable housing or other infrastructure contributions due to the impact they have upon the viability of a scheme. It sets out overarching principles for how the council will approach development viability. It provides guidance the information which will be expected when an applicant and the process the Council will follow when seeking independent assessment of viability assessments.
- 1.2 Members may recall considering the initial draft SPD in January 2021 when the Cabinet delegated authority to Service Manager – Planning and Housing Strategy to advance the draft SPD through informal and statutory defined consultation processes. It was also resolved that the SPD would then be adopted unless the consultation resulted in any significant changes in which case the SPD would be reported back to Cabinet for final endorsement.
- 1.3 Since the Cabinet meeting in January 2021, the SPD has undergone two consultation periods. In responding to the comments received, significant changes have been made to the SPD. These changes are considered necessary to provide a robust and defensible position when assessing viability assessments.

2.0 The Content of the SPD

- 2.1 The purpose and format of the SPD remains the same as the draft considered in January 2021. It explains how viability matters will be considered as part of the planning application process and the information required to be submitted when an applicant seeks a reduction in affordable housing provision or contributions. The paragraphs below outline where significant amendments have been made to the SPD to address comments received during the consultations. A summary of the comments received, responses to each issue including an outline of the amendments made can be found in the Consultation Statement that accompanies this report.
- 2.2 Section 2: Viability Assessment sets out when viability assessments are required, how they will be treated to ensure transparency in decision making and the process the Council will take when securing independent review of an applicant's viability assessment. Minor amendments have been made to section 2.
- 2.3 Section 3: Viability Inputs, explains the elements that should be included within a viability assessment. It outlines the evidence required to support the financial information included in a viability assessment and provides advice on

¹ Planning Practice Guidance - Paragraph: 008 Reference ID: 61-008-20190315
<https://www.gov.uk/guidance/plan-making>

expectations when determining development values, land value, development costs, affordable housing and profit.

- 2.4 There have been a number of minor changes to this section to address consultation responses. The use of market data for determining land values has been clarified to ensure it accords with the PPG. Market data may only be used where it reflects a policy compliant scheme, or it has been adjusted for a policy compliant scheme. It has also been clarified that the benchmark land value does need to reflect a minimum value which will result in the land being released for development.
- 2.5 The SPD considered in January 2021 placed the emphasis on the submission of site-specific build costs. Respondents to the consultation highlighted the PPGs emphasis on the use of standardised build costs. The emphasis in the SPD has been amended. It still does, however, allow for site specific costs where a developer wishes to use these but they should be supported by evidence.
- 2.6 Section 4: Revising Affordable Housing Provision and Contributions sets out the ways in which the Council will consider flexible arrangements where a reduction in affordable housing provision and/or contributions is justified. Minor amendments have been made to section 3.
- 2.7 Section 5: Viability Assessment Requirements sets out the information required to be included in a viability assessment. Minor amendments have been made to section 5.
- 2.8 Appendix A sets out an agreement for the payment by the applicant, for the independent review of the submitted viability assessment. The January 2021 version of the SPD included a warrantee to be signed by the applicant which required then to warrant:
 - a. That the information provided in its viability assessment (along with all supporting evidence and documentation) is true and accurate;
 - b. That the information referred to in clause (a) is consistent with the information that has informed its own commercial decisions in relation to the Development;
 - c. That it has not instructed any agent/professional to formulate the viability assessment under any arrangement whereby that agent/professional receives any kind of inducement or benefit (financial or otherwise) should the Applicant be successful in reducing its planning contributions or the extent of the planning obligations linked to the Development.The warrantee also included legal clauses with regard to fraud.
- 2.9 The warrantee generated considerable objection from the development industry. They consider that the requirement was unlawful and goes beyond the requirements of the NPPG, PPG or RICS guidance and referring to the references in these documents to the use of standardised inputs. While the warrantee is not considered to be unlawful, it appears that applicants are unlikely to sign and submit it with an application. If an application is made

invalid or not determined due to the lack of a signed warrantee, the applicant can submit an appeal. It is unlikely that the Inspectorate would decline to determine or dismiss an appeal due to the lack of a signed warrantee. The time and resource needed to argue the point on each application would be better spent dealing with the detail of the proposals. Without the submission of information specific to the applicant, which would usually remain confidential, point b would be difficult to determine. The warrantee together with the legal ramifications have therefore been removed and replaced with a simple declaration from the applicant with regard to points a and c.

2.10 Appendix B sets out the method for appointing independent assessors. The original SPD did not include details of the costs but noted that they would be included at a later date. The Council has procured the services of an independent RICS qualified assessor to carry out the assessment of financial data submitted with an application. When a Quantity Surveyor or Engineer is required to assess specific costs, they will be procured on an application basis with the agreement of the applicant. The scale of charges and details associated with the appointed viability assessor are now included on the website - <https://www.lancaster.gov.uk/planning/planning-advice/viability-assessment>

2.11 Appendix C provides an Example Table for Viability Assessments. It provides an example of how the minimum requirements can be presented. The draft SPD considered in January 2021, specified specific inputs, for example use of the lower quartile BCIS, agent fees at 1% of site value, professional fees at 5% and a maximum profit level of 15%. Respondents objected to the inclusion of specified inputs. It is acknowledged that inputs may differ depending upon the scale and quality of the scheme, the scale of the developer and the risks associated with a development. The Planning Practice Guidance refers to a profit of between 15-20% for plan making purposes. Specific inputs have therefore been removed. In many cases, the independent assessor and the applicant will agree the use of some standardised inputs. Where there is a significant divergence the SPD seeks the submission of evidence to support inputs to ensure that these may be fully assessed.

3.0 Consultation

3.1 The SPD has been subject to the formal process for preparing and adopting SPDs is set out in the Town and Country Planning (Local Planning) (England) Regulations 2012.

4.0 Options and Options Analysis (including risk assessment)

Option 1: Adopt the SPD as a material consideration when determining planning applications.
Advantages: The SPD will provide guidance to applicants about the Council's approach to viability assessments and information required. It will help applicants ensure they provide appropriate information and set a formal agreement for the payment of costs by the applicant. If the guidance is followed it should help minimise delays arising from viability matters.
Disadvantages: No disadvantages.
Risks: The SPD may be subject to a judicial review.
Option 2: Do not adopt the SPD as a material consideration when determining planning applications.
Advantages: No advantages.
Disadvantages: The Council will not have guidance available.
Risks: None.

4. Officer Preferred Option (and comments)

4.1 The officer preferred option is Option 1 – adopt the SPD.