Practice guidance: Development viability

How do we approach development viability in our decision-making?
**Practice guidance: Development viability**

**What is practice guidance?**
This guidance sets out our approach to proposals where the viability of development may be a material consideration. It explains our approach to such applications and aims to help applicants understand our expectations. It is one of a series of guidance notes that respond to customer feedback. More information about our planning policies can be found on our website.

**How do we approach viability and commercial interests in our decision making?**
We will determine planning applications in accordance with the provisions of the Development Plan (our policies) unless material considerations indicate otherwise. We will not depart from our policies unless material considerations are proven to be of enough weight to justify departure. In most cases where a proposal is in accordance with our policies it will not be necessary to examine viability issues.

The National Planning Policy Framework tells us that evidence of viability issues will be a material consideration in some cases. Where the deliverability of a development may be compromised by the scale of planning obligations, tenure requirements or other costs, a viability assessment may be necessary. Where viability is a material consideration, it will be just one of a number of factors to be weighted in our decision making. Just because viability is a consideration does not mean it is the only determining matter.

It is essential that any viability assessment takes proper account of the current lawful use of the land and buildings, and potential options which are consistent with Development Plan policies. We will strongly resist attempts to justify non-policy compliant schemes on viability grounds where perceived shortfalls fail to take into account existing uses, or are the result of appraisal against unrealistic future values (e.g. valuations based on open market housing or other uses which are not policy compliant, where no use, or permission for such use, exists).

**Who does what?**

Where an applicant believes that viability issues are a material consideration it is their job to present evidence to convince the Authority on such matters. Fact based evidence is essential. Simple assertions that a development is not viable will not be enough.

The Authority will assess the evidence presented by the applicant. We will afford that evidence such weight as we see fit when making our decision, and in consideration of our policies.

It is not the role of the Authority to attempt to find evidence to justify assertions made by an applicant - we will only assess the evidence provided to us.
What evidence do we expect applicants to provide?

We must make evidence based judgements, informed by robust and relevant facts. We must be provided with evidence which gives us a realistic understanding of the costs and the value of development and an understanding of the operation of the market in the local area. This will normally be presented to us in a viability assessment informed by the particular circumstances of the site in question.

More information about what we would expect to be included in a viability assessment, and the format we recommend for such assessments, is detailed at Annex A.

A developer will need to demonstrate that the evidence which they have provided is robust and can be relied upon. Usually the robustness of evidence would be demonstrated by the submission of an independent appraisal of the viability evidence (undertaken by a suitably qualified consultant) with the application, proving that the evidence has been subject to independent scrutiny. We suggest that the appointment of any independent consultant should be by agreement between the Developer and Authority before any appraisal is commissioned, to minimise the risk of issues at a later stage.

We encourage prospective developers to work in collaboration with us and other stakeholders to secure a shared understanding of deliverability and viability. Our Planning Performance Agreement service offers a collaborative and managed framework which is appropriate for larger or more complex schemes.

Enabling development

In some cases one development may be necessary to allow another development to go ahead – something known as enabling development. We will weight the public interest in a development proceeding against the provisions of the Development Plan in our decision making. We will expect demonstrable benefits to the public interest to be secured as the result of any non-policy compliant enabling development.

Where enabling development is proposed we expect that a legally binding planning obligation (under Section 106 of the Town and Country Planning Act 1990) will be provided which links both developments in terms of timing and finances. It is best practice to submit applications for both proposals (the enabling and enabled development) together. We strongly discourage the submission of an application for an enabling development before the application for the development to be enabled.

Will commercial information you give us be made publicly available?

Openness and transparency of information is strongly valued by local communities, the Authority, and our Committees. It is important to us that our decision making is robust and transparent. We will make strenuous efforts to ensure that all information submitted with a planning application is made publicly available. We will normally place all information submitted with an application into the public realm – both in paper format and online via our website.

If an applicant decides an application includes commercially sensitive information that cannot be made publicly available, they must provide a letter explaining why that financial information should not be in the public domain. They must also provide redacted documents which can remain accessible to the public. We will place the letter and redacted information on our files and website so the public are aware an applicant has requested some information is not disclosed.

We will only withhold information from the public domain if it has been demonstrated that the submitted information is exempt information under the provisions of the Freedom of Information Act, or other legislation. Where information is withheld a member of the public retains the right to appeal to the Information Commissioner’s Office who can instruct us to release the information. More information about the Freedom of Information Act can be found at Annex B.
Discussion of financial and commercially sensitive information at Committee Meetings

We place great value on transparency of process, and we will always endeavour to conduct our Planning Committee meetings in full public session.

On the rare occasions where an applicant has refused to disclose all financial information into the public domain, the Committee may still be provided with the relevant information separately of the public papers.

If at any point during the Committee meeting a member of the Committee feels they must examine facts which have been withheld from the public domain, they will alert the Chair of this fact.

In such circumstances, the Committee meeting will proceed as follows:

1. The Chair will explain that the applicant has chosen not to release all application information into the public domain, and therefore regrettably, to discuss that information in depth the meeting must move into a Part Two Session. A Part Two Session is where the Committee takes place to the exclusion of the public and press.

2. The Committee will vote on whether to move into a Part Two Session.

3. Where the Committee votes to move into a Part Two Session, this outcome will be minuted with reference to the applicant’s decision to withhold information from the public domain.

4. The Chair will explain to any members of the public or press present that, because the applicant has chosen to withhold information from the public domain, the meeting must unfortunately continue (for the time being) to the exclusion of the public and press.

5. The Chair will explain that a full public session will resume at the earliest opportunity.

6. Any members of the public and the press will leave the Chamber.

7. The meeting will resume to the exclusion of the public and press.

8. At the earliest available opportunity following discussion of any commercially sensitive facts members of public and press will be invited back into the Chamber.

9. A public session will resume.

Voting will always be conducted in public session.
Annex A: Recommended contents and format for viability assessments

We recommend that viability information is presented in a concise clearly structured report, accompanied by evidence as appropriate. Due to the nature and volume of information required in a robust viability assessment, it is rarely appropriate to attempt to detail this information in a letter.

We recommend that any viability assessment is prepared by a suitably qualified person.

The Royal Institute of Chartered Surveyors recommends that viability analysis reports use the following outline format:

1. Executive summary
2. Contents outline
3. Introduction and background
4. Description of site location
5. Planning policy context
6. Description of scheme
7. Market information summary
8. Build cost and programme
9. Methodology and approach
10. Outputs and results
11. Sensitivity analysis
12. Concluding statement

A viability assessment must include an appraisal of the following factors:

- Gross development value
- Costs
- Land value
- Competitive returns to developers and landowners

National Planning Practice Guidance: Key factors in viability assessment

Gross development value

Gross Development Value, in simple terms, is the estimated value that a property or new development would realise if it was to be sold in the current market. If it is being argued that a development is not deliverable because of a shortfall or other viability issues, 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 the types of land use, the form of the property, the scale and location of the development, and rents and yields. For housing, historic information about delivery rates can be informative.

**Costs**
To make a realistic assessment of costs robust evidence that is reflective of market conditions will be required. In line with Government advice, we will need to be provided with details of all development costs including:

- build costs based on appropriate data (for example from the Building Cost Information Service)
- abnormal costs (e.g. those associated with treatment for contaminated sites or listed buildings, or historic costs associated with brownfield, phased or complex sites)
- infrastructure costs (e.g. 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 evidenced)
- finance costs (including those incurred through loans)
- professional, project management and sales and legal costs.

**Site Value/Land Value**
The assessment of land or site value is very important in considering the viability of a development. We will apply the following approach to the appraisal of site value:

*Site Value should equate to the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the Development Plan.*

It is important that applications include enough information to allow an appraisal of whether the land has been valued realistically, giving appropriate regard to nature and tenure of development which is permitted by our housing and other policies.

There are some common principles which we will expect to be reflected in a valuation of the land. In all cases, land or site value should:

- reflect policy requirements and planning obligations
- provide a competitive return to willing developers and land owners (including equity resulting from self build developments)
- be informed by comparable, market-based evidence wherever possible

We will not consider transacted bids as evidence in our assessment of land value where these are significantly above the market norm. We will not give weight to inflated valuations. We will not give weight to hope value which has no regard to the provisions of the Development Plan.

**Competitive returns to developers and land owners**
The National Planning Policy Framework states that a viable development will secure “competitive returns to a willing landowner and willing developer to enable the development to be deliverable.” Returns will vary between projects to reflect the size and risk profile of the development and the risks to the project. It is important therefore that evidence uses information based on comparable schemes 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 - for example the current use value of the land or its value for a realistic alternative use that complies with planning policy.

The Freedom of Information Act 2000 (The 2000 Act) provides public access to information held by public authorities. Members of the public can request a range of information from us including printed documents, computer files, letters, emails, photographs, sound or video recordings. The presumption is in favour of disclosure.

There are 23 exemptions set out in Part II of The 2000 Act under which a request for information may be refused. A small number of these exemptions are absolute, however most are “qualified”, because they are subject to a public interest test which balances the public interest for and against disclosure. Qualified exemptions do not justify withholding information unless, on a proper assessment, the balance of the public interest is against disclosure.

Exemptions (with reference to relevant section of The 2000 Act)

Section 21. Information accessible by other means
Section 22. Information intended for future publication
Section 23. Information supplied by, or related to, bodies dealing with security matters
Section 24. National security
Section 26. Defence
Section 27. International relations
Section 28. Relations within the UK
Section 29. The economy
Section 30. Investigations and proceedings conducted by public authorities
Section 31. Law enforcement
Section 32. Court records
Section 33. Audit functions
Section 34. Parliamentary privilege
Section 35. Formulation of government policy
Section 36. Prejudice to effective conduct of public affairs
Section 37. (1)(a): Communications with Her Majesty, with other members of the Royal Household
(1)(b): The conferring by the Crown of any honour or dignity
Section 38. Health and safety
Section 39. Environmental information
Section 40. Personal information
Section 41. Information provided in confidence
Section 42. Legal professional privilege
Section 43. Commercial interests
Section 44. Prohibitions on disclosure

Public Interest Test

There is a general public interest in disclosure. There may also be particular or special public interest considerations in favour of disclosure in a specific case – for example there may be a public interest in the transparency of particular process. Where required we balance the public interests of disclosure against the public interest considerations of refusing a request. Where information is withheld a member of the public retains the right to appeal to the Information Commissioner’s Office who can instruct us to release the information.
Contacting us
You can contact us in a number of ways:

Phone us: For general enquiries there is a duty planner available 9.30am - 12.30pm (Monday to Friday) to talk to on 01539 724555.

Email us: Email us at planning@lakedistrict.gov.uk

See us: We run regular planning surgeries in Glenridding, Gosforth and Keswick where you can meet an officer face to face. These are first come first served, so there’s no need to book, just turn up (although you might need to wait). Check our website or call us for details.