

Bespoke Property Group

Viability in the Planning Process



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Basis for use of Viability Assessment Tools

- Legal basis – S.19 Planning and Compulsory Purchase Act 2004
- National Policies
 - PPS3 (para 29) and Delivering Affordable Housing (paras 89-92)
- HCA Guidance on 'Investing in the Downturn'



Understanding the Process

- Spatial development plans and policies – testing policies
- Site specific allocations – ordering priorities
- Site specific S.106 negotiations



The Direction of Travel



LDF JRs Persimmon vs Blyth BC
 Barratt vs Wakefield MDC

- Appeals Lesney Toy Factory
 Jericho's yard
 Badnalls Pit
 Arbury Park
 Key site Godalming
 East Lydney

- Decisions Hunters Avenue, Ashford
 Priors Green, Takeley

Viability in LDFs

Persimmon Homes (North East Ltd) v Blyth Borough Council (2008) PLSCS 152 – Decision given 20.5.08

- BBC had a Housing Needs Survey showing 83% of new developments should be affordable
- BBC fixed 40% target, then reduced to 30% after issue of PPS3, Inspector's report approved the policy

But

- PPS3 (Nov 06) states economic viability to be accounted for within target setting
- S.19 Planning & Compulsory Purchase Act 2004 – have regard to national policies
- BBC's core strategy was quashed as the Court ruled that in setting a 30% target the Council and the inspector had failed to consider the material factor of economic viability



Viability in LDFs

Barratt Homes vs Wakefield MDC

- Set targets based on current values?
- or
- Set targets based on normal market conditions?
 - What are 'normal' market conditions?
 - Assess sites individually against S.106 policies



Viability at Allocation and Application Stages

Appeal Precedents:

- Lesney Toy Factory, Hackney – land value paid did not take account of policy
- Jericho's Yard, Oxford – Land value paid was competitive
- Badnalls Pit, Maidenhead – Remediation costs and benefit outweigh provision of affordable housing



Viability at Allocation and Application Stages

Appeal Precedents:

- Arbury Park, South Cambridge – not taking grant into account does not mean a low offer of affordable housing is acceptable
- Key site, Godalming – Waiting for the market to improve is not an option – off site provision carries limited weight – escalator provision considered but not pursued.
- East Lydney - A fixed low offer of affordable housing (13%) on a strategic site (1,000 units) is not acceptable



Viability at Allocation and Application Stages

Planning decisions:

Hunters Avenue, Ashford

- First completed escalator provision.
- Stepping stone principle based on value per sqft
- Simple monitoring

Priors Green, Takeley

- 'Escalator' provisions negotiated in proposed S.106 Heads of Terms
- Ultimately applicant agreed a higher fixed amount of affordable housing



What Happens Now?

- Viability to be considered in setting targets
- Viability to be considered when allocating sites for development
- Developers having to agree existing use value with the LA before allocation?



What Happens Now?

- Policy needs to provide certainty - Wakefield
- Dynamic viability – ‘The King with no clothes’
 - no one would know where they stood
- Policy needs to allow flexibility to deal with site specifics – Badnalls Pit
- S.106 Agreements need to take account of market changes
 - HCA Guidance August 2009
 - Atlas Guidance January 2010
 - Flexible mechanisms



What Happens Now?

Flexible Mechanisms

- 'Escalators', 'Cascades', 'Clawbacks' – what's in a name?
- LPAs must prioritise
 - S.106 requirements
 - Affordable housing
 - Infrastructure
 - Education / health
 - Community facilities



What Happens Now?

- Simplicity of Review / Monitoring
 - GDV uplift vs full review at key stages
- Are you willing to take risk
 - upward only mechanism
 - grant
 - a 'double dip' market
 - or constant re-negotiation?



The Future

- Community Infrastructure Levy
 - Double counting
 - Charitable exemptions
 - Councillor views
 - The banker / Facilitator



The Future

- 'Localism'
 - 'tick box' procedure?
 - Neighbourhood compensation?
 - Viability assessment of every application?
 - Training of those in the process
 - Using viability to explain the 'art of the possible'

