

Bringing clarity to viability guidance

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RICS is examining its guidance to address changes to the National Planning Policy Framework and respond to a judicial review decision on affordable housing

When the [National Planning Policy Framework \(NPPF\)](#) was published in 2012, the UK development industry was still severely affected by the banking crisis, but the government was determined to create conditions where the private sector would continue to supply housing of all kinds. Maintaining the business case for development was central to this: viability was declared a material consideration when determining planning applications and testing this became a critical part of the evaluation process in decision-making.

The NPPF was also an expression of the government's desire to withdraw from areas where it felt the market could achieve better results. It was in this spirit of deregulation that it disposed of around 1,000 pages of planning policy and replaced them with a 57-page statement outlining its policy to ensure sustainable development. This was followed in 2014 by [planning practice guidance \(PPG\)](#) elaborating its policy.

Viability was declared a material consideration when determining planning applications

Although still driven by the need to provide more housing, 2018's review of the NPPF and associated PPG has given less weight to viability issues, even questioning the need for them to be tested at the decision-making stage. Settling viability early in the planning process is one of the primary purposes of the PPG revisions and the government would like to see most issues resolved at plan-making stage. The expectation is that, if the market recognises what planning policy aims to achieve, then land pricing will alter accordingly.

Since the introduction of the NPPF, it has been argued that the application of policy has been skewed towards satisfying the economic element of sustainable development at the expense of its social and environmental components. The suggestion is that, by making financial viability a material consideration in decision-making, the government has enabled public goods such as environmental improvements and affordable housing to be squeezed out while protecting a market return for the landowner and developer.

Striking a balance

Striking the balance between policy formulation in a plan-led system and housing supply through a market-based system is bound to create tension. This interplay between the 2 was something Mr Justice Holgate referred to in a postscript to his judicial review decision on Parkhurst Road, Islington, in 2018, when he cited the application of the 3 balancing tests in paragraph 023 of section 10 of the [2014 PPG on viability](#) . While this formulation of advice

is no longer current, the principle of the interplay between planning policy and market conditions is still highly relevant.

Under the 2018 regime, establishing the benchmark land value (BLV) is still an important part of the exercise, even if the reference point is now required to be existing use value (EUUV). In his postscript Mr Justice Holgate stated that, when estimating a BLV, the figure should 'reflect' relevant planning policies and not 'buck' them. On the other hand he said the proper application of those policies should also be 'informed by' and not 'buck' an analysis of market evidence that reflects those policies. He had observed during the proceedings that assessing viability is a valuation skill informed by planning knowledge; it is not simply an application of policy disregarding what is taking place in the market, neither is it about generating valuations based on prices paid and giving little regard to the planning obligations set out in local plans.

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The weight to be given to competing planning and market evidence remains an area of considerable professional judgement in a context where decision-makers exercise a wide range of discretion in a sometimes politically polarised process.

Revised RICS guidance

Although the NPPF makes reference to developer contributions and viability assessments, details on viability have been transferred to the 2018 PPG on the subject and arranged in 4 parts. The revised RICS guidance will focus on the first 3:

- viability and plan-making;
- viability and decision-making;
- standardised viability assessment inputs; and
- accountability.

The overall government objective is to bring greater certainty, clarity, speed and transparency to viability testing in the planning process. The intention was to find a method or measure that could operate easily and be understood by all stakeholders and decision-makers.

The guidance has been formulated to respond to variation throughout the country in socio-economic conditions and affordable housing policies alike; it is not the role of a professional body to go beyond what policymakers have formulated, but to advise how settled policy may be applied. RICS guidance will seek to make practice consistent, based on policies that still have considerable latitude for interpretation. A distinction needs to be made between consistent application by professionals and uniform outcomes in decision-making.

RICS' revised guidance will address 3 important changes.

1.

Viability testing will be conducted mainly at the plan-making stage.

This is a significant shift from the existing regime and is challenging in a number of ways. The Local Housing Delivery Group, under chair Sir John

Harman, issued guidance in 2012 that focused on area-wide viability and to some extent identified the limits of this approach to assessment. The extent to which broad-based viability testing conducted on an area-wide basis at a particular date can substitute for viability testing on a specific site at a later date has been questioned.

Some indication of the government's preferred approach may be derived from area-wide assessments for Community Infrastructure Levy purposes, but these were never intended as a substitute for site-specific assessment. Determining the range of typologies of developments to be tested and how fine-grained the analysis should be to overcome the need for site-specific testing is the particular challenge. Increasing availability of data may help overcome some of these problems, enabling regular updates to evidence bases.

2.

Viability is no longer a material consideration. Whether a viability assessment is admissible at development management stage will be at the discretion of the decision-maker. While viability may no longer be a material consideration in planning, it will always remain a key consideration in development and maintaining the business case at all stages in the cycle will still be critical to ensuring housing supply.

Although PPG 2018 stresses that the review mechanism is not a tool to protect developer's return, it is not clear how a decision by the developer to cease construction for sound commercial reasons is to be balanced with the other objective of maintaining housing construction across all types. Here, an understanding of optionality – the ability to choose between a number of other options or indeed do nothing at all – must underpin any policy.

3.

EUV has a percentage uplift added. Viability assessment at area-wide and site-specific levels should follow the government's recommended approach to assessing viability and is to be based on EUV plus a premium to give an incentive for land to come forward. Data sources to inform the landowner premium should include market evidence and can contain BLVs from other viability assessments.

A legal opinion sought by RICS states that there is no functional connection between EUV and the establishment of BLV. This view was reiterated by Mr Justice Holgate when he stated EUV is a reference point against which the premium may be measured, but that the uplift cannot be derived from EUV. Deriving it instead from market evidence that reflects planning policy is the same as applying a discount to unencumbered market value to reflect planning obligations. Both methods should arrive at roughly the same BLV to encourage land to come forward for development.

The question still remains: what comparable evidence is to be admitted in support of this BLV? How is it determined to be policy-compliant without issues of circularity arising? And how is it to be adjusted to ensure compliance? This is the area where Mr Justice Holgate has asked for more guidance to be provided, which will greatly benefit practitioners and which we hope will contribute to the certainty, clarity, speed and transparency the government and the public are seeking.

While we have been preparing guidance responding to the revised NPPF and PPG, we have been consulting on mandatory conduct and reporting requirements for practising chartered surveyors. The final version will apply to all surveyors who contribute to development viability appraisals for planning purposes. This is a pivotal area of professional practice, in which chartered surveyors' opinions have an immediate impact on a vital public interest policy – that is, affordable housing supply. We want our members to understand what is required to act to the highest standards in serving this sector. It is also a contentious area of practice and adherence to these standards is obligatory.

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Further information

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- This feature is taken from the [RICS Land journal](#) (January/February 2019)
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