

Homes for Londoners: Affordable Housing Provision in London

This will be of interest to those involved in the delivery of housing schemes or mixed use schemes containing housing in London.

29 November saw the release of the draft SPG "Homes for Londoners", which as the document readily acknowledges, does not and cannot introduce new policy. So it has a twofold aim:

- to speed up planning decisions; and
- to increase the amount of affordable housing delivered through the planning system.

In the election campaign Sadiq Khan promised 50% affordable housing. But just 13% of homes given permission in 2014/15 were affordable. So there is immediate acknowledgement that the desire for 50% of new homes to be affordable can only be a long term aim which the Mayor will work towards together with the Boroughs. However, expectations that developments will suddenly be able to sustain more than 35% affordable housing seem unrealistic.

The SPG is described as a nudge. But it is much more than that. The majority of schemes will fall under the 35% threshold. So the draft SPG will mean publicity of viability appraisals and the provision of viability models to the LPA and Mayor. There is the potential of call in by the Mayor. Review mechanisms will heavily incentivise early delivery, and will in any event seek to clawback a share of surplus as a contribution towards affordable housing delivery in a near end of development review.

A 35% threshold: why is this important?

The Mayor proposes a threshold of 35% affordable housing (based on habitable

rooms), which will dictate whether your application goes down Route A or Route B. The headline is that applications that:

- meet or exceed that level (without public subsidy), **and**
- meet the specified tenure mix; **and**
- all other requirements and obligations

are not required to submit viability information. Let's contextualise that:

- 13% average affordable housing levels in 2014/15;
- 35% threshold.

And even if you get to 35%, you have also got to be meeting the specified tenure mix and "all other requirements and obligations". Unsurprisingly, the SPG terms this "Route B". But that is not all.

So you reached 35%? Now get on with it: the early review mechanism

For those that do manage to get onto Route B, there is a further nudge to build out promptly. In an attempt to stimulate delivery, an early review will apply where an "agreed level of progress" on implementing the permission is not made within two years of the permission being granted.

Any surplus above the initial agreed profit level will be split 60 (LPA)/40 (developer). The uplift should be applied to identifying market units on site to switch to affordable. If the agreed level of progress is made, the review is not triggered.

An awful lot of developers will be scurrying past this Wonderland good news section and moving straight to what this will mean for the vast majority of housing developers.

Route A: Applications that do not meet the 35% threshold

To justify the level of affordable housing provision, viability evidence will need to be submitted in a standardised and accessible format (which is set out in Part 3 of the draft SPG).

Review mechanisms capped at a maximum exposure of 50% affordable housing will then later apply to encourage prompt delivery and clawback contributions wherever surplus arises.

The early review mechanism applies

The same early review mechanism as above applies where an “agreed level of progress” on implementing the permission is not made within two years of the permission being granted. Any surplus will again go towards switching on site units to affordable. If the agreed level of progress is made, the review is not triggered.

Clawback: the near end of development review

Having assumed all that development risk, once 75% of units are sold (or if unsold, 3 months prior to practical completion) a review will occur, again with a 60/40 split in surplus. Where surplus arises, a payment in lieu will normally go towards off site affordable housing provision.

There is also the potential that monies captured through this process might instead be redistributed to other priority policy contributions which may not have been viable according to the original assessment.

Referable applications

Because of the strategic importance of affordable housing, the Mayor will consider directing that he is to be the Local Planning Authority for the purposes of determining or refusing an application when:

- he is not satisfied with the viability information submitted by the applicant, the assumptions that underpin the information, or the level of scrutiny given by the LPA;
- he considers the viability information submitted may suggest a higher level of affordable housing could reasonably be provided;
- the chance of significant contribution to affordable housing could be forgone due to other grounds and the Mayor wants to review the weight the LPA has given to competing planning objectives.

Viability transparency

The Mayor is intending to treat viability information transparently. Resting his position on case specific ICO decisions on FOIA/EIR requests¹, the SPG suggests that viability information relevant to planning determinations should be publically available. To the extent that the LPA has not published the information, the Mayor reserves the right to refer to/publish the information as part of his stage 1 and 2 consideration. He concedes he will consider on a case by case basis exceptional circumstances that require non-disclosure of elements of a viability assessment, by reference to the usual FOIA/EIR tests. But the indication is that concerns in relation to the information need to be raised with the Mayor before the information is submitted.

Viability Standardisation

Part 3 of the SPG provides 10 pages of detailed Guidance on Viability Assessments. It aims to be consistent with the London Borough Viability Protocol. It sets out the specific approach the Mayor will use, addressing build costs, justification of developer profit, and emphasises his preference for an Existing Use Value + approach to determining benchmark land value.

¹ Royal Borough of Greenwich vs ICO & Shane Brownie EA/2014/0122.RB and Clyne vs ICO & Lambeth EA/2016/0012

Developers will take time to digest what the Part 3 Guidance means for the way viability assessments are prepared, substantiated and scrutinised. Not least because the SPG states that the full working model, assumptions and calculations included in the modelling should be provided to the LPA or, for referable schemes, the Mayor, so that they can properly assess their validity.

Tenure mix

The SPG suggests a preferred tenure split as follows:

- at least 30% low cost rent (social/affordable rent);
- at least 30% intermediate (London Living Rent and/or shared ownership being the default tenures); and
- the remaining 40% to be determined by the LPA.

London Living Rent (LLR) features as a new type of intermediate housing. LLR is proposed to be based on one-third of median gross household income for a local borough, and to vary in line with house prices within a ward. Caps will have further variation based on bedroom numbers within a home. Eligibility is restricted to existing tenants with maximum household incomes of £60,000.

Starter Homes are an omission, in relation to which the Mayor will provide an update following once the Government clarifies its position.

Build to Rent

The draft SPG is supportive of the considerable role build to rent/PRS provision can play in London, for the reasons already enunciated in the Housing SPG. There is continued recognition of the distinct economics of build to rent schemes, but there are new clarifications on how PRS will be treated in the application determination process. First, the Mayor proposes defining Build to Rent as follows:

- a development, or block/ phase within a development, of at least 50 units;

- the homes to be held as Build to Rent under a covenant for at least 15 years;
- all units to be self-contained and let separately;
- unified ownership and unified management of the development;
- professional and on-site management;
- longer tenancies offered (ideally three years or more) with defined in-tenancy rent reviews; and
- property manager to be part of an accredited Ombudsman Scheme and a member of a recognised professional body.

The SPG approaches build to rent viability. Generally, the same Route A/B approach applies to build to rent schemes. The Mayor seeks views on the operation of the clawback mechanism in the event units are sold out of PRS in the covenant period:

Option 1: submission of market sale and build to rent viability appraisals, where the clawback represents the initial loss of affordable housing based on a traditional market sale scheme, less any affordable homes already provided (our emphasis); or

Option 2: build to rent only viability appraisal, but fixed clawback equivalent to 35% affordable housing.

So if under Option 1 a 'for sale' viability appraisal is submitted, the applicant will need to show they would have been able to provide 35% under for sale so that the amount of affordable housing in the build to rent appraisal can be accepted without the need for a Route A viability review. But again, even in that case, the Route B early review mechanism will apply. Otherwise, you are into Route A territory.

The SPG addresses build to rent design. It also addresses possible affordable housing tenure. It acknowledges that the affordable housing offer in PRS schemes can be entirely discount market rent. Any affordable housing delivered as part of a build to rent scheme would need to be secured in perpetuity. Where the Mayor pushes this is towards that discount market rent being rent at LLR at the

start of the relevant tenancy, with rent rises limited to CPI.

Five key management standards are also enunciated (p45.):

- longer tenancies (three years or more);
- formula-linked rent increases with rents reset on each new tenancy;
- on-site management with prompt issue resolution systems and some daily onsite presence;
- provision of a complaints procedure and membership of a designated professional body, such as the British Property Federation or Royal Institute of Chartered Surveyors; and
- properties to be advertised on the GLA's London-wide portal.

Vacant Building Credit

The SPG sets out the Mayor's view is that in most circumstances, it will not be appropriate to apply VBC in London, unless the following applies:

- the building is not in use at the time the application is submitted;
- the building is not covered by an extant or recently expired permission;
- the site is not protected for alternative land use; and
- the building has not been made vacant for the sole purpose of redevelopment.

Consultation

The new SPG will supersede section 3.3 (Build to Rent) and Part 5 (Viability) of the March 2016 SPG. The rest of that SPG will remain relevant and sit alongside the new draft SPG.

Consultation runs from 29 November 2016 to 28 February 2017.

Next steps

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