

Committee(s)	Dated:
Planning & Transportation Committee	25/07/2017
Subject: Viability Appraisals	Public
Report of: Carolyn Dwyer, Director of the Built Environment	For Information
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Summary

At Planning & Transportation Committee on 13 June, Members raised concerns about the approach taken to the assessment of development viability appraisals and asked that a report be brought back to a future meeting addressing:

- the approach to the confidentiality of submitted viability appraisals and Member access to documentation prior to and at Committee.
- The process of selecting consultants to undertake reviews of submitted viability appraisals to ensure that the City Corporation is receiving the best independent advice.

Officers have reviewed the approach taken to confidentiality and arrangements have been updated including on the planning applications website to reinforce the presumption of transparency. The report also clarifies that confidential information is available to Committee members.

Officers are also reviewing the process for selecting and appointing consultants to undertake reviews of viability appraisals and are examining the potential to use the District Valuation Service or seek support from the Mayor of London. A report will be brought back to a future Committee for consideration.

The report also advises on Local Plan policies pertaining to viability, including their review, and seeks guidance from the Committee regarding the preferred scope of future training/workshop arrangements.

Recommendation

Members are asked to:

- Note this report and provide guidance on the format of the requested viability workshop.

Main Report

Background

1. At Planning & Transportation Committee on 13 June, Members raised concerns about the approach taken to the assessment of development viability appraisals and asked that a report be brought back to a future meeting addressing:

- the approach to the confidentiality of submitted viability appraisals and Member access to documentation prior to and at Committee.
 - The process of selecting consultants to undertake reviews of submitted viability appraisals to ensure that the City Corporation is receiving the best independent advice.
2. This report provides a brief outline of the current adopted procedures and progress in reviewing these procedures to address Member concerns.

Transparency of Planning Applications

3. The planning regime requires a public register of planning applications to be kept available¹. This is not required to include an applicant's viability appraisal, but policy and guidance encourages transparency and public involvement in the planning process.² The normal practise is for planning applications and supporting information submitted by the applicant to be kept available for inspection and uploaded onto the City's planning applications website. Applicants are advised at pre-application stage, in notes annexed to the Pre-Application Meeting Request Form, that related information will not normally be treated as confidential, but if they consider any information should be confidential they should explain this in a covering letter which will be considered. The notes also explain to applicants that once a planning application is submitted, the case is treated as "in the public domain".³

Restrictions on Transparency

4. In considering requests to maintain the confidentiality of viability appraisals submitted by applicants, the City will consider whether disclosure will leave it at risk of action for breach of confidence, and whether disclosure would be required by the Environmental Information Regulations 2004 ("EIR") (A requirement to disclose under EIR would provide a defence to a breach of confidence claim). EIR's require a public body to make environmental information available on request. Financial viability appraisals are generally considered to fall within the definition of environmental information. The Regulations allow exceptions to disclosure requirement, including where disclosure would adversely affect the confidentiality of commercial or industrial information necessary to protect a legitimate economic interest. Regulations also require the public body to be satisfied that the public interest in maintaining the exception outweighs the public interest in disclosing the information.
5. When viability appraisals are submitted with planning applications, applicants are expected to indicate if they consider all or part of the appraisals should remain confidential and the reasons for this (see Pre-Application Meeting Request Notes, paragraph 3, above). Where the reasons given are considered to meet the requirements for exclusion from the EIR regulations, all or part of

¹ S.69 Town and Country Planning Act 1990 and Article 40 Development Management Procedure Order 2015

² Planning Practise Guidance paras 004 and 063 and NPPF para 69

³ Link to Pre-Application Meeting Request Form: <https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/planning-applications/Documents/City-of-London-pre-planning-application-meeting-request-form.pdf>

the appraisal will remain confidential and any subsequent review of that information undertaken on behalf of the City Corporation is also considered to be commercially confidential, to the extent that it would disclose the confidential information submitted by the applicant. Applicants are expected to make a summary of their appraisal available for disclosure and inclusion alongside the Committee report, or redact the viability appraisal so that unredacted parts can be disclosed.

6. Where there is no indication regarding confidentiality (or if the reasons given are not accepted by the City as raising a valid exemption to EIR) the viability information is made available on the public planning register, uploaded to the planning application website and will be included in the information reported in the public agenda to Planning & Transportation Committee (either as an appendix in full or in summary, and/or as a background document).
7. In light of concern expressed by Members, officers have reviewed whether current practise should be updated and considered whether further efforts could be made to ensure the public availability of viability reports. It has been re-iterated to developers raising viability issues that the expectation is that such information should be made publicly available unless there is a clear EIR exemptions agreed by the City. It is also proposed to give this greater emphasis on the City's planning application website. In addition, officers have kept recent cases and ICO Guidance under review to assist them in evaluating, on a case by case basis, requests regarding confidentiality (in particular, to help test whether details such as sales values and construction costs are genuinely commercially sensitive, and whether they remain so as they fall out of date, and to help apply the public interest test). Officers have considered whether it would be possible to require all viability appraisals to be made public. Such absolute disclosure would be a change in policy and require stakeholder engagement. There are issues which would need to be considered prior to a policy change, such as potential breach of confidence claims and whether full disclosure might limit the scope of information provided and the potential to challenge figures and pursue an increased contribution. Absolute disclosure of viability could be an issue for further exploration through a workshop and/or the Local Plan review, both of which are addressed later in this report.
8. Where it is accepted that some or all of the viability information should remain confidential, the information will still be available to Planning & Transportation Committee Members under Standing Order 45.1 (and Standing Order 45.6 which requires the Member to preserve the confidentiality of any such information). The format in which the information will be made available will be determined on a case by case basis, having regard to the potential for a Member to have a discloseable pecuniary interest or to be acting for an interested party. Subject to this specific consideration, Committee Members will have electronic or other access to submitted viability reports prior to Committee. Officers will provide a briefing on viability considerations to any Member of the Planning & Transportation Committee prior to the Committee, on request.

Process for Review of Viability Appraisals

9. Members have also requested a review of the process under which submitted viability appraisals are reviewed, to ensure that the City Corporation receives the best and independent advice upon which to make planning decisions.
10. The Planning Obligations and Office Use Supplementary Planning Documents provide for the review of viability appraisals by an independent and suitably qualified consultant, with the costs of this review being met by the applicant.
11. On receipt of a viability appraisal, officers will undertake an initial review to ensure that all the required information and viability inputs have been provided. Where a less than policy compliant level of s106 contributions or a significant loss of office floorspace is proposed, an external consultant will be appointed to review the viability information and provide advice to the City Corporation.
12. Fee quotes will be requested from a minimum of 3 consultants who have experience and expertise in the City residential or office markets. Consultants are asked to advise of any conflict of interest and to undertake the review in accordance with RICS Codes of Conduct. Fee quotations are required to specify timescale for reporting, the methodology to be used, and cost including identifying any additional costs that might be incurred, such as review of the proposed cost programme. As the applicant is expected to meet the cost of the review, fee quotations are forwarded to the applicant for information, but it is made clear that the appointment will be made by, and the report provided to, the City Corporation.
13. Although the use of consultants who work for both developers and the City Corporation may give rise to the potential for a conflict of interest, consultants are required to abide by the RICS code of conduct and to provide impartial and expert advice. Firms generally have their own internal processes to manage any conflicts, and the City's terms of engagement can also impose requirements to address this risk.
14. Recognising that Members have some concerns over conflicts of interest where consultants work for both the Corporation and private City clients, officers have undertaken an initial review of the approach taken by other local authorities and the Mayor of London and considered the potential to widen the range of consultants used. This review is still in progress and it is too early to make firm recommendations to the Committee, but the following are being considered:
 - a. The possibility of inviting the District Valuation Service (DVS) to submit fee quotations to review viability appraisals provided by developers. The DVS is part of the Valuation Office Agency, which falls under the remit of HMRC. The DVS provides valuation and viability advice principally to public sector bodies and has provided advice to a number of local authorities on development viability, including in Southwark, Islington and for the Mayor of London. Further information is being sought.
 - b. The possible availability of the Mayor's Viability Team to provide advice and support. The Mayor has established a small team of viability advisors at City Hall to advise him on affordable housing contributions arising from

planning applications referred to him for his consideration. The Team is small and is currently unable to provide wider viability review services to the London Boroughs, but has an aspiration to expand the scope of their work.

15. Officers will continue to explore these options. Officers will also consider the experience in other local authorities. In reporting back to you on the range of service providers and options, officers will also need to ensure that arrangements for the appointment of consultants (including criteria for their appointment) are compliant with procurement requirements, are not anti-competitive, and ensure that the City can obtain best value in securing the consultancy services it requires. A report will be brought back to this Committee in the autumn recommending a proposed way forward. In the meantime, as part of its exploration of the full range of service providers, the City may consider inviting DVS to bid should the need arise to seek viability advice, subject to further discussion with them and clarification of the range of services that can be offered. Pending this further exploration, the use of consultants on the Corporation's existing list of viability advisers will continue to ensure that advice is available in a timely fashion when considering planning applications.

Policy

16. Viability considerations arise both in the context of affordable housing provision/contributions (Local Plan Policy CS21), and in the context of change of use from offices, where retention of offices is considered unviable (Local Plan Policy DM 1.1). During debate on viability issues Members have expressed concerns that in allowing for consideration of viability constraints, Local Plan policy may encourage unjustified reduction of affordable housing provision/contributions or loss of offices. Opportunities for securing on-site affordable housing have also been queried. These issues are most appropriately addressed in the context of the Local Plan Review, and the concerns expressed, including about ensuring the maximum affordable housing provision/contributions are achieved, will inform the review process.
17. The Local Plan review would provide an appropriate mechanism to consider whether the City Corporation should adopt a policy of absolute disclosure of viability information. It would allow for stakeholder engagement and a full exploration of the pros and cons of such an approach.

Possible Member Training/Workshop

18. Members have also indicated interest in a training session or workshop looking at viability issues to help inform future decisions. This could be in the form of training on the mechanics of viability appraisals and how they should be interpreted, and/or a more participative workshop of wider scope which also explores the procedures for undertaking reviews of such appraisals, and issues of confidentiality and interpretation of Environmental Information Regulations, including absolute disclosure of information. Members may also be interested in guidance on the relevant policies (CS21 and DM 1.1) and their application, or early discussion on potential updates to inform future work on the Local Plan

Review. Members are asked to indicate their preferred options. A training or workshop session can then be arranged to reflect the Committee's preferences, which would most likely take place in the autumn, possibly timed to accord with the proposed update report on review processes outlined above.

Corporate & Strategic Implications

19. Ensuring that the City Corporation's mechanisms for dealing with viability appraisals are robust will help ensure that the City Corporation continues to provide high quality services and retain the City's role as a world leading financial and business services centre.

Implications

This report is for information and there are no financial or other implications arising from the report.

Health Implications

20. There are no health implications arising from this report.

Conclusion

21. Viability appraisals are regularly submitted with planning applications to justify proposed levels of affordable housing and the loss of existing office accommodation, in line with requirements in the Local Plan and adopted Supplementary Planning Documents.
22. Members have asked questions about the confidentiality of viability appraisals and the process used by the City Corporation to appoint consultants to undertake reviews of submitted appraisals. As a result of these questions, officers have reviewed the current arrangements and have adjusted them to clarify to developers that the City's presumption is that viability information reports should be placed into the public arena. Knowledge of EIR's exemptions and the criteria relevant to considering confidentiality requests has been more widely shared and updated. Where it is agreed that reports should remain confidential, Committee Members have access to them.
23. In relation to the process for review of viability appraisals, officers will report back once they have explored the full range of expertise available and any appropriate adjustments to the process for appointing relevant experts. This work is still at an early stage and recommendations will be brought before a future Committee for consideration.

Appendices

- None

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