

EPPING FOREST DISTRICT LOCAL PLAN

EXAMINATION HEARINGS

HOMEWORK NOTE 12

MATTER 5: SITE SELECTION AND VIABILITY

ISSUE 4: AT THE BROAD STRATEGIC LEVEL, ARE THE PLAN'S ALLOCATIONS FINANCIALLY VIABLE?

**HW12 – NOTE FOR THE INSPECTOR REGARDING
THE CONSIDERATION AND PROPOSED
APPLICATION OF PARAGRAPH 57 OF THE NATIONAL
PLANNING POLICY FRAMEWORK (2019)**

INTRODUCTION

1. This note provides clarification on the Council's position regarding the proposed future application of paragraph 57 of the National Planning Policy Framework (NPPF) (2019) when determining planning applications in the context of the Epping Forest District Local Plan and latest available evidence. This follows hearing sessions held on Tuesday 19 March 2019 in relation to Site Selection and Viability (Matter 5) and on Thursday 21 March 2019 in relation to the Garden Town Communities (Matter 8).
2. In accordance with the transitional arrangements set out within paragraph 214 of the NPPF (2019) the Local Plan Submission Version (LPSV) is subject to independent examination under the NPPF (2012). However, the Council is and will be determining planning applications with reference to the 'Decision-Making' guidance included with section 4 of the NPPF (2019).

3. Therefore, in relation to the consideration of viability matters, the Council recognises that the LPSV will be examined with reference to paragraph 173 of the NPPF 2012 which states:

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”

4. In the future, planning applications will be determined with reference to the policies in the LPSV and paragraph 57 of the NPPF, which states:

“Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

5. The Council is confident that policies included within the LPSV can be found to be 'sound' in relation to viability matters in accordance with paragraph 173 of the NPPF (2012). The primary evidence which underpins the LPSV in this regard is:
 - The Epping Forest District Council Infrastructure Delivery Plan (Parts A and B) – EB1101A and EB1101B; and
 - The Epping Forest District Council Assessment of the Viability of Affordable Housing, Community Infrastructure Levy and Local Plan (Stages 1 and 2) – EB300 and EB301.

6. Since the publication of the above documents, the Council has continued to undertake supplementary work to support the delivery and implementation of the Local Plan. This relates both to the Harlow and Gilston Garden Town, and to the rest of the District.

7. On 15 October 2018 the Council submitted and published an Infrastructure Delivery Plan Topic Paper for the District (ED2).

8. The Council provided an update to the examination on the progression of supplementary documents relating to infrastructure and viability matters concerning the Harlow and Gilston Garden Town on 29 January 2019 (ED9).

9. On 18 April 2019, the Council published the following supplementary documentation in relation to the Harlow and Gilston Garden Town:
 - Harlow & Gilston Garden Town Guidance Note - ED33;
 - Harlow & Gilston Garden Town Infrastructure Delivery Plan - ED34 and ED34A; and
 - Harlow & Gilston Garden Town Strategic Viability Assessment - ED35 and EF35A.

10. The Council contends that, with the addition of the latest available infrastructure and viability evidence in relation to the Harlow and Gilston Garden Town (EB1417 and EB1418), planning applications within the Harlow and Gilston Garden Town (including for allocated sites SP 5.1, SP 5.2 and SP 5.3) should be determined with significant weight being applied to paragraph 57 of the NPPF 2019.
11. The Council has recently published supplementary up to date evidence in relation to infrastructure delivery requirements across the remainder of the District (outside of the Garden Town) in the form of the IDP Topic Paper Addendum Education & Highways (ED36). The Council recognises that it may be necessary to produce and publish further up to date evidence in relation to matters of viability to enable significant weight to be consistently applied to paragraph 57 of the NPPF 2019 when determining planning applications across the remainder of the District.
12. The remainder of this note sets out the Councils position in further detail in relation to these matters, together with proposed amendments to the LPSV to reflect the future approach to matters of viability in light of the latest available evidence. The position is set out both for sites within the Harlow and Gilston Garden Town and sites across the remainder of the District.

HARLOW AND GILSTON GARDEN TOWN

13. For sites within the Harlow and Gilston Garden Town the Garden Town IDP (ED34) and Viability Study (ED35) provide up to date details of specific developer contributions required and associated viability for the Garden Town Communities across East Herts, Harlow and Epping Forest Districts.
14. Both reports have been prepared to comply with the updated National Planning Policy Framework (2019) and Planning Practice Guidance.

15. Section 2 of the Garden Town Viability Study (ED35) sets out the policy context for the production of the Study. It confirms how the Study has been prepared to accord with the NPPF (2019) and PPG:

“the assessment takes a proportionate approach, building on the Councils’ existing evidence, and considers all the local and national policies that will apply to new development” (paragraph 2.12).

“Consultation forms an important part of this assessment. A series of meetings were held with the site promoters in August and September 2018 and a further round of meetings was held in mid-February 2019” (paragraph 2.13).

16. Ongoing engagement and consultation with the Garden Town Developer Forum and specific site promoters has been central to informing the production of both the Garden Town Infrastructure Delivery Plan and Viability Study. The Council considers that the level and nature of engagement has far exceeded expected or ‘required’ levels for the development of evidence of this nature, and that site promoters have been given every possible opportunity to engage with and inform the process. The PPG states:

“It is the responsibility of site promoters to engage in plan making, take into account any costs including their own profit expectations and risks, and ensure that proposals for development are policy compliant. It is important for developers and other parties buying (or interested in buying) land to have regard to the total cumulative cost of all relevant policies when agreeing a price for the land. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan” (Paragraph: 006 Reference ID: 10-006-20180724).

17. The key stages in engagement and consultation with site promoters are set out within the following table:

Date	Form of engagement	Scope of engagement	Outcome
10 September 2018	the Garden Town Developer Forum (Terms of Reference provided at EB1104) was provided with an update on the commissioning of the two studies. The Forum was attended by representatives from each of the Garden Town Communities.	At the meeting the Viability consultants (HDH Planning and Development) provided an overview of the emerging assumptions for key elements of the assessment, including sales values. Officers outlined the scope and purpose of the Infrastructure Delivery Plan.	Site promoters were encouraged to consider these and respond at individual meetings for the site promoters of each Garden Town Community to be held on 26 September 2018.
26 September 2018	Representatives for the Garden Town partner local authorities, together with the IDP consultants (Arup) and Viability consultants (HDH Planning and Development) held face-to-face meetings individually with site promoters representing each Garden Town Community. For site promoters that were unable to attend, teleconferences were arranged.	At the meetings / teleconferences the consultants outlined emerging work and assumptions being taken through the work, and site promoters were encouraged to provide feedback.	Site promoters were invited to provide written feedback on infrastructure matters by 5 October 2018, and written feedback on viability assumptions by 12 October 2018. All comments received were carefully analysed and taken into account, with changes being made in the approaches being taken where appropriate.
4 December 2018	Representatives for the Garden Town partner local authorities, together with the IDP consultants (Arup) held face-to-face meetings individually with site	On 29 November 2018, in advance of the meetings, site promoters were issued with summaries of the emerging	All comments received were carefully analysed and taken into account, with changes being made in the approaches being taken where appropriate.

	promoters representing each Garden Town Community.	Infrastructure Delivery Plan for their Garden Town Community, including the proposed approach to apportionment of infrastructure costs, and invited to provide feedback at the meeting, and after the meeting in writing.	
4 and 5 March 2019	Representatives for the Garden Town partner local authorities, together with the IDP consultants (Arup) and Viability consultants (HDH Planning and Development) held face-to-face meetings individually with site promoters representing each Garden Town Community.	On 25 February 2019, in advance of the meetings, site promoters were issued with the updated emerging Infrastructure Delivery Plan for their Garden Town Community. They were also issued with an updated version of the Garden Town Viability Assessment report and appendices for review in advance of their meetings.	Following the meetings, written comments were then invited on the draft documentation for submission by 12 March 2019. All comments received were carefully analysed and taken into account, with changes being made in the approaches being taken where appropriate.

18. As part of the production of the Garden Town Infrastructure Delivery Plan, an ongoing process of engagement with infrastructure providers was also undertaken. This is set out within Section 4.4 (page 24-25) of the report.
19. The reports are supplemented by the Harlow and Gilston Garden Town 'How To' Guide for Planning Obligations, Land Value Capture and Development Viability (ED33). Section 8 of the Guide concerns the Approach to Development Viability, and confirms that:

“all considerations and approaches to assessing Viability will be based upon the context of the guidance set out in the PPG on Viability and Paragraph 57 of the NPPF (February 2019). The need to deliver strategic infrastructure items across the Garden Town including on a ‘pooled’ basis, through co-ordinated contributions of land and / or infrastructure costs, such as the STC [Sustainable Transport Corridor], mean that it is important to adopt a consistent and transparent approach to viability assessment.”

20. Section 8 of the Guide sets out further details of the approach to viability, including the requirement for a Statement of Delivery to be produced by the applicant. It confirms (at paragraph 8.8) that where applicants fail to demonstrate full compliance with policy requirements through reasons of viability they will be required to provide detailed information to support all assumptions made within the Statement of Delivery in order that the Council can assess the case. The applicant will also be required to commit to re-appraisal and agree a clear process and terms of engagement for how and when viability will be reassessed over the lifetime of the development.

WIDER DISTRICT

21. The IDP Topic Paper (EB1101C) provides a high-level framework for apportionment and pooling arrangements to be taken forward for key infrastructure. As well as a framework for apportionment, this paper provides more information on those external funding sources outlined in the IDP, including the work currently ongoing to progress/secure funding, and any risks of funding not being in place and contingency measures for this. It also considers the potential role of the Community Infrastructure Levy in the future, should the Council decide to pursue its introduction.
22. The Addendum to the IDP Topic Paper provides further clarification in relation to the apportionment of developer contributions associated with education and

highways mitigation requirements to sites across the District. The Council is also producing an addendum to the Topic Paper relating to the provision of Sports Facilities, which will be made available as soon as complete.

23. Following the completion of the addenda, the Council will undertake updated Viability Assessments to provide up to date evidence to inform development management and planning decisions.
24. The Council is in the process of producing guidance in relation to the approach to seeking developer contributions. This will include requirements for a Statement of Delivery which will largely mirror the approach set out within the Garden Town guidance (see paragraphs 19 and 20 above).

PROPOSED AMENDMENTS TO THE LOCAL PLAN SUBMISSION VERSION

25. In order to provide further clarity in relation to the Council's approach to the consideration of viability matters at the development management stage, the Council proposes to make the following amendments to the Local Plan Submission Version:

- i. Amendments to paragraph 3.14 in the supporting text to Policy H 2 Affordable Housing as follows:*

"3.14 The evidence suggests that the provision of 40% of affordable homes on sites of 11 or more homes (including self-contained units in specialist accommodation) would provide the most appropriate balance between achieving a meaningful proportion of affordable homes, as well as accommodating any CIL contributions, to support both the delivery of affordable homes and the necessary strategic infrastructure subject to individual site viability. The Council recognises that the provision of affordable housing in accordance

with Local Plan Policy H 2 may render some development proposals unviable at the time of the application. Where the Council is satisfied that the applicant has demonstrated that the submission of a viability assessment is justified, the Council will give due weight to the assessment having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, any change in site circumstances since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment. Where following independent verification, the Council is satisfied that the viability assessment justifies the provision of affordable housing below the level required by Policy H 2, ~~where appropriate,~~ the Council will expect additional affordable housing provision to be made if viability improves before full completion of the development permitted. ~~Larger scale development proposals for new housing development to be delivered on a phased basis, the Council will require section 106 agreements to include mechanism for viability reviews and 'clawback' clauses (or similar) to ensure the fullest possible compliance with Local Plan policy is achieved where the viability of the scheme improves before completion.~~”

ii. Part D of Policy H 2 Affordable Housing

- “D. Proposals that do not accord with the requirements of paragraph A (above) must be accompanied by a ~~financial and viability assessment appraisal~~ (with supporting evidence), which is transparent and complies with relevant national or local guidance applicable at the time. Where a viability assessment is submitted, it must be based upon and refer back to the viability evidence which informed the Local Plan. The applicant must demonstrate what has changed since the evidence was produced which justifies the need

for a viability assessment. In determining the weight to attach to a viability assessment submitted, the Council will have regard to:

- How up to date the Local Plan and viability evidence underpinning the plan is;
- Any change in site circumstances since the plan was brought into force; and
- The transparency of assumptions behind evidence submitted as part of the viability assessment.”

iii. Part F of Policy H 2 Affordable Housing

- “ii) A ~~financial and viability appraisal~~ assessment has been provided (with supporting evidence) in accordance with paragraph D (above) which is transparent and complies with relevant national and local guidance applicable at the time, properly assessing the level of financial contribution to be provided.”

iv. Part G of Policy H 2 Affordable Housing

- “G. Where a ~~viability and financial appraisal~~ assessment has been submitted in accordance with paragraph D (above) the Council will undertake an independent review of that ~~appraisal assessment~~ for which the applicant will bear the cost.”

v. New paragraphs are to be added in the supporting text to Policy D 1 Delivery of Infrastructure after paragraph 6.14 and directly before the policy, as follows:

- “6.15 Where planning obligations are necessary, the Council will require applicants for major development across the District (including within the Garden Town) to enter into planning obligations that capture the

value of land for consented development to deliver required infrastructure on site and within the relevant wider settlement (or where appropriate across the Garden Town). Applicants are required to support their applications at submission stage with:

I. Proposed draft Heads of Terms for a Section 106 agreement; and

II. A Statement of Delivery confirming the applicants position in relation to the viability and deliverability of the development.

6.16 Applicants should refer to the latest supplementary guidance produced by the Council and Harlow and Gilston Garden Town partner authorities for further details.

6.17 The provision of many items of infrastructure across the District is the responsibility of Essex County Council under its statutory duties. In addition to the District Council's IDP and supplementary guidance, developers will also be expected to refer to the County Council's Developers' Guide to Infrastructure Contributions."

vi. *Amendments to existing paragraph 6.17 [now to be renumbered as 6.19] as follows:*

"6.19 The Council recognises that viability constraints may justify an exception being made to the delivery of infrastructure in full accordance with Local Plan Policy D 1 at the time of the application. Where the Council is satisfied that the applicant has demonstrated that the submission of a viability assessment is justified, the Council will give due weight to the assessment having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, any change in site circumstances since the plan was brought into force, and the

transparency of assumptions behind evidence submitted as part of the viability assessment. Where following independent verification, the Council is satisfied that the viability assessment justifies ~~Where, following the review of an independently verified viability and financial appraisal, the Council is satisfied that there are overriding viability concerns that prohibit the delivery of infrastructure in accordance with Policy D 1, the Council will expect the delivery of additional infrastructure contributions to be made if viability improves before full completion of the development permitted. For larger scale development proposals to be delivered on a phased basis, the Council will require section 106 agreements to include mechanism for viability reviews and 'clawback' clauses (or similar) to ensure the fullest possible compliance with Local Plan policy is achieved where the viability of the scheme improves before completion.~~

vii. *Policy D 1 Delivery of Infrastructure - Part C (ii) to be amended as follows:*

- “(ii) a financial and viability assessment appraisal (with supporting evidence), which is transparent and complies with any relevant national or local guidance applicable at the time, demonstrates that full mitigation is not viable to allow the development to proceed. Where a viability assessment is submitted, the assessment must be based upon and refer back to the viability evidence which informed the Local Plan. The applicant must demonstrate what has changed since the evidence was produced which justifies the need for a viability assessment. In determining the weight to attach to a viability assessment submitted, the Council will have regard to:
- How up to date the Local Plan and viability evidence underpinning the plan is;
 - Any change in site circumstances since the plan was brought into force; and

- The transparency of assumptions behind evidence submitted as part of the viability assessment.”

viii. *A new sub-section is to be included at the end of the Policy D 1 as follows:*

“Statement of Delivery

- I. For any major development proposals (applications for 10 or more homes or more than 1,000m² for non-residential development), unless otherwise advised by the Council, applicants will be required to demonstrate that the application will meet requirements of policies and is considered viable and deliverable. This should be through the provision of a Statement of Delivery, which should accord with relevant guidance produced by the Council and where relevant the Harlow and Gilston Garden Town partner authorities.“

10 May 2019