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# Interrogating viability assessment in planning and housing

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## Quotes

On developers providing a percentage of affordable housing as a planning obligation:

- *“We are here to build houses. To make money for our shareholders. Its a it like telling Ferrari they should give away half of their cars because some people cant afford them”*. Andrew Whittaker, Home Builders Federation, Inside Housing, 26/2/15
- <http://www.northamptonchron.co.uk/news/local/developers-in-northamptonshire-too-often-plead-poverty-over-money-for-cheap-housing-firefighters-and-libraries-1-6803824>
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## The scope of the presentation

- Origins of viability in the planning system
- Current policy and practice
- Viability – the concept
- Unpicking the viability model
- The viability assessment industry
- Viability and Freedom of Information
- Arguments for and against open book
- Conclusions

# Viability and the Planning System

- The purpose of planning is to designate land use in the public interest. The personal circumstances of the landowner, developer or user of the land or property do not determine its use. Planning permission goes with the land or buildings not with the owner or occupier
- There has always been a fierce debate about how to capture the increase in land value created by the granting of planning permission. Taxation measures failed. The growth of planning gain and “planning obligations” from the 70’s.
- Planning gain – planning obligations - were determined by policy (mitigation, mixed use, social facilities etc); until 2006 Guidance on Housing where there was the first mention of viability assessment as a test of the validity of planning obligations
- At that time a split view - the public sector wanted to assess viability to get more in negotiation; from the property sector viability assessment was intended to provide less than the requirement of the planners
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## Viability as a planning requirement - the NPPF 2012

- *“Plans should be deliverable. Therefore, the sites and scale of development 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 should, when taking account of the normal costs of the development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable” (DCLG 2012, para 173).*

## 2013/14 Review of Planning Obligations

- *“An application may be made to the local planning authority for a revised affordable housing obligation. This application should contain revised affordable housing proposals, based upon prevailing viability and should be supported by relevant viability evidence” Para 6 Review and Appeal. This measure is to apply until 2016*
- *The developer will need to demonstrate to the local planning authority and to the Planning Inspectorate on Appeal that the affordable housing obligation as currently agreed makes the scheme unviable in current market conditions” Para 11 Growth and Infrastructure Act 2013*
- It provides a Review and Appeal system if local authorities are unwilling to agree to lower levels of affordable housing contributions.
- Recent change to exclude all planning obligations for housing developments under 10 units and for changes of use applications (DCLG, 2014)

## Why has this happened?

- Long standing resistance from developers to paying “planning gain” or section 106 contributions or obligations to the local planning authority for infrastructure or community facilities
- Additional pressure from developers to reduce obligations because of the impact of the recession on the property market
- Government concern about housing delivery, seeking to reduce “burdens” on developers such as planning obligations under the assumption that housing supply was limited by local authority planning obligations
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## Why is it important?

- Government spending on affordable housing has fallen over the last 10 years. Developer contributions to affordable housing through section 106 is now one of the main ways in which it is provided (Delivering Affordable Housing through section 106, JRF, 2006)
- Viability testing has reduced the percentage of affordable housing especially of social rented homes (In the Mix; The Need for a Diverse Supply of New Homes, Shelter, 2014, p.21)
- Viability testing of affordable housing contributions is undermining statutory local plan policies for affordable housing contributions (Bureau of Investigative Journalism, in the Guardian, 18.6.13; and see web site of 35% Campaign in Southwark)

## Viability Assessment - the concept

- What is viability in Planning? It is the financial viability of planning proposals; it is not a measure of the holistic viability (sustainability) of the proposals
- Residual land Value method is the principal method:
- **Development costs Minus Development Value = Residual land value**
- The level of RLV determines
- (a) the land value and whether this is high enough to encourage the landowner to sell the site
- (b) whether the developer can achieve a “competitive return” after “reasonable” land costs have been taken out
- (c) to test more specifically whether the Planning Obligations required by the LA makes the scheme “unviable” for the developer i.e. reduces land value too much for the landowner and developer

# Unpicking the Viability model

- **The model is a spread sheet with costs on one side of the equation and development value on the other**
- **Costs**
- Build cost per sq metre
- Finance
- Professional Fees and marketing
- Ground Infrastructure (minus grant money)
- Developers Profit/risk
- Planning Obligations
- **Development Value**
- The market value of lettable space
- Market value of ground rents
- **Output** is RLV; or IRR (income minus outgoings) if land costs are known

## Methodological problems

- There is no agreed methodology; usual models are Three Dragons/GLA model; ARGUS; Developer bespoke models
- Models are highly sensitive to input data e.g. construction costs; sales prices; finance costs; fees. These data are scheme specific not standardised in the model -a small change in one can make a big impact on RLV, profit and viability i.e. *there is a wide distribution of probable viability values so that results can be easily manipulated.*
- How do we know what level of RLV is sufficient to make the scheme viable? It must generate a “competitive return to a willing landowner and developer”. But who decides what level is competitive?

## Some Specific problems with the model

- Convention on using current prices for construction costs and house prices can be very misleading
- Construction costs are consistently higher in the models than in actuality
- Where RLV or IRR are based on cash flow over the long time scales that are normal in development they are unreliable.
- Average viability figures for large sites are not meaningful
- A viability assessment for an initial planning application does not reflect the reality of subsequent land trading in the market place
- 20% profit for the developer (as convention) is highly contentious particularly in booming markets (actually 12-15% is sufficient for developers in most parts of the country)

## The Viability Industry

- So great are the financial benefits of reducing planning obligations, there is a “viability Industry” of consultants selling their skills in reducing developer obligations; and agents getting incentives for reducing them
- There is an incentive for developers and their agents to systematically undervalue their schemes
- For example, Section 106 Management Ltd. Advertises their services in this way: “Is your scheme stalled by difficult market conditions? Why not use the time, otherwise wasted reviewing your section 106 payments and unilateral undertakings, and improve the profitability of your scheme”
- Some local authorities are alert to this. For example, LB Islington is cracking down on “artificially pessimistic viability assessments” 2014 (LBI Discussion paper on Development Viability, 2014)

## Example: Greenwich Peninsula

- 121 ha. on west side of the Peninsula; Land reclamation by EP £225M
- Total scheme 10,000 housing units, 32,000sq m of commercial, plus other
- GLA sold to Quintain then to Knight Dragon for £50m plus £50m of Affordable Housing Grant
- Knight Dragon asked for a variation in the planning consent (a) To reduce affordable housing requirement of 38% of units in RBG policy to 25% of habitable rooms (b) To change the mix of uses – 4 plots on the riverfront would have no affordable units

## VA for Greenwich Peninsula

- VA by BNP Paribas for Knight Dragon
- VA based on lower range of house prices in 2012; high professional fees (13%); high finance costs; developer profit put in at 20%. Commercial space not included in the valuation.
- Independent assessment for RBG by Marsh and Co that did not interrogate BNP
- Full BNP report was not shown to the Planning Committee and community campaigners were given only a redacted version (later appealed to the FOI)
- Council agreed to accept variation in full
- Result: loss of 527 affordable units at a estimated cost of £150m
- Campaigners subsequently won the FOI Tribunal releasing the un-redacted VA. Our own analysis suggests an undervaluation of £250m



## Freedom of Information Issues

- *“There is a reason for secrecy in viability studies and that is house-building is a competitive market” Andrew Whittaker HBF, Inside Housing 26.2.25.*
- *“Developers must be made to show their sums. Hiding behind commercial confidentiality to keep viability assessments secret is a public betrayal”*  
Guardian Leader Jan 1<sup>st</sup> 2015
- *“We find it particularly hard to accept that the pricing and other assumptions embedded in a viability appraisal are none of the public’s business”*  
Freedom of Information Tribunal Decision on the Greenwich Peninsula.  
February 5<sup>th</sup> 2015

# FOI Legislation

- FOI Act 2000
- Environmental Information Regulations 2004 12 (5) (e) for larger schemes
- The EIR states that “there should be disclosure except where the disclosure would adversely affect or is likely to prejudice the commercial interests of the council or any third party”. (EIR applies only to the decisions of public bodies not to private developers).
- Reliance upon the exception is always subject to the requirement under 12(1)(b) that the public interest in maintaining the exception outweighs the public interest in disclosing the information i.e what is the balance between the public interest in protecting a legitimate economic interest and the public interest in disclosure. It is for the public authority, usually the LPA, to define this public interest and assess this balance.

## Arguments against full disclosure

- **Developer view**
- A threat to “legitimate economic interests”
- It has been independently assessed e.g. by the DV
- Competitors would be placed at an advantage
- Bespoke models are a company secret
  
- **LPA view**
- They are democratically elected to make these decisions
- DV has checked it
- Viability assessments are too complicated for the public to understand
- Developers would not be as frank with local authorities
- Disclosure would make it difficult to negotiate

## Arguments for Full Disclosure

- Viability model is flawed and needs full exposure and interrogation
- Input and output data are highly contested
- There is a major impact on the level of affordable housing from relatively small changes in the modelling inputs
- No evidence that full disclosure would damage commercial interests
- Open competition between developers is surely a good thing
- Closed book encourages manipulation

## Conclusions: Marketisation of the Planning system

- VA has significance for the whole planning system because it makes the individual circumstances of the developer and landowner a material consideration; it undermines statutory local plan policies that apply across a local plan area. Viability places profit above the planning merits of development
- The VA model, because of its weaknesses, requires extra vigilance and interrogation; communities need access their own counter valuation experts;
- Open book is essential to reveal the secrets of developer/local authority partnerships over development plans and schemes
- We must campaign for scrapping VA in plan making and planning control; No finessing of the methodology – or open book - can overcome the damage caused by VA