BRIEFING NOTE

RICS GUIDANCE NOTE - Assessing Viability in Planning under the National Planning Policy Framework 2019 for England (1st Edition, March 2021)

12 April 2021

Following consultation which closed earlier this year, the long-awaited new RICS Guidance Note 'Assessing Viability in Planning under the National Planning Policy Framework 2019 for England (1st Edition, March 2021)' has been published. A link to the new Guidance is provided at the end of this briefing note.

The note provides a brief overview on some of the key points in the document. Areas where we have interpreted the wider implications are shown in text boxes.

Status and Purpose

This is a Guidance Note and as such it provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners in the field of planning viability.

It is an update to the 2012 RICS Guidance Note, to align with the 2018/19 NPPF and PPG.

Any updates to the NPPF or PPG take precedence over the Guidance. The last updates to the Viability PPG were in 2019, the potential impacts of the Government's draft White Paper with its proposed overhaul of planning contributions will undoubtedly require a revised interpretation of parts of the guidance.

Although referred to in the PPG as viability assessments, for consistency with the previous guidance and the RICS Professional Statement, Financial Viability in Planning: Conduct and Reporting, RICS, May 2019, the assessments are referred to as financial viability assessments throughout (FVAs).

Viability at Plan Making Stage

In line with the PPG, this Guidance emphasises the importance of viability at the plan-making stage with the purpose being to 'inform policy making by LPAs, including policies that require contributions to be made, as well as the deliverability of allocated sites..'

FVAs are required to test the viability of a plan using a typology approach supplemented with individual site FVAs for key strategic sites.

Viability at Development Management Stage

At this stage, the purpose of an FVA is to inform decision taking by LPAs.

It is expected that site owners and land promoters would have engaged with the process at the plan-making stage, so the onus is squarely on the Applicant to demonstrate the circumstances that have changed since the plan-wide viability assessment to justify a financial viability assessment (FVA) being submitted at the application stage. An FVA is not envisaged as necessary where an up-to-date local plan is in place and therefore stronger justification will be required in such cases.

The Guidance provides examples of circumstances where an FVA could be justified:

- where development is proposed on unallocated sites of a wholly different type to those used in the FVA that informed the plan,
- where further information on infrastructure or site costs is required,
- where particular types of development are proposed that may significantly vary from standard models of development for sale, or
- where a recession or similar significant economic changes have occurred.

The Guidance goes on to list other instances where changes in costs might justify an FVA as follows:

- detailed site investigations and surveys after plan making,
- assumptions made in the plan-making FVA on the cost of the infrastructure required to deliver the scheme,
- costs associated with planning contributions but not identified at the plan-making stage, such as those relating to s.106, CIL and Strategic Infrastructure Tariff, and
- directly-related sunk (historic) costs not accounted for in the development and site typologies tested.

This second bullet point list appears to broaden the field somewhat for later FVA based challenges in comparison to the wording on the NPPF, which is limited to the first bullet point list above. Arguably, it is simply an expansion and clarification of the second NPPF bullet but may invite closer scrutiny and justification for an FVA at the decision making stage. It will be interesting to see how this is interpreted through case law.

The weight given to an FVA in the decision making process remains, however, a matter for the decision maker, having regard to all the circumstances of the case.

Transparency

The Guidance re-iterates the PPG's transparency requirements: all FVAs should be prepared on the basis that they will be made publicly available in full. However, there is a concession that commercially sensitive data can be "aggregated in a published FVA in order to avoid disclosure of this sensitive material".

FVA methods and inputs

The Guidance refers assessors to both the PPG and the RICS Guidance Note on the Valuation of Development Property for reference in terms of context and best practice.

Sensitivity testing is addressed in Chapter 4 and the Valuation of Development Property RICS guidance note. All FVAs are required to include testing of alternative economic scenarios and the sensitivity of individual inputs such as projections of values and costs. The use of sensitivity testing in an FVA is a mandatory requirement of the Financial Viability in Planning: Conduct and Reporting RICS professional statement.

The implication here is that the FVA undertaken at the Plan Making stage needs to be robust across normal market cyclical fluctuations and should not set policy at the upper end of market performance. This suggests that Viability Assessors will need to pay attention to trends over time to justify their approach to sensitivity testing, to enable LPA's to demonstrate that the policy level set is reasonably deliverable across a normal scenario range.

Benchmark Land Value (BLV)

The preferred approach to establishing BLV remains Existing Use Value Plus (EUV+), or, where appropriate, Alternative Use Value (AUV).

However, there is a new requirement to follow a 5 step process to assessing BLV:

1. Determine EUV.
2. Where relevant, determine AUV.
3. Assess the premium above EUV.
4. Carry out a policy compliant residual appraisal of the proposals (to serve as the first crosscheck of the BLV).
5. Assess the policy compliant site value based on suitably adjusted comparable land sales evidence (the second crosscheck of the BLV).

Land sales evidence is only to be used as a sense-check for BLVs. **It cannot form the basis of the BLV itself and as such the price paid for a site is not a justification for failing to meet policy.**

No specific guidance is given as to the level of premium. Evidence for premiums can include those adopted in other FVAs in any area of the country.

The lack of clarity around BLV has not been addressed. It would appear that the RICS is struggling here as much as practitioners, as the concept is not based in valuation, but on an assumption that there is a level at which a landowner is likely to sell. This will vary from owner to owner, and site to site, and may not be consistent across all typologies, sites and areas covered by a Local Plan. We anticipate this will remain an area of dispute.

The aim is clear: to drive down development land value in favour of policy delivery over time.

Viability Reviews

The Guidance states (in line with PPG Paragraph 009), that plans must set out circumstances in which viability review mechanisms are appropriate. The unwritten but important flipside to this is that where a plan fails to set out such circumstances, LAs have limited grounds on which to request a viability review mechanism.

London is potentially the exception to this since viability review mechanisms are required under the Mayor's Affordable Housing and Viability SPG. Albeit this requirement has not been upheld at appeal.

The Guidance states that, for schemes that are providing higher than the maximum reasonable amount of affordable housing at the application stage, the viability deficit can be carried through and used as a credit for any subsequent viability review. This has been embedded in London Mayoral guidance for some time, but now formally applies nationwide.

Overall, the new RICS guidance is process heavy. It largely sticks to the principles set out in the NPPF and supporting guidance but seeks to introduce a modicum of reference to market land value (as a sense check only) and pushes the door a little further ajar for viability based challenge at the application/decision making stage. It also voices greater emphasis at the plan making stage to the adjustment of policy requirements to support deliverability. It is silent on how this may detract from development sustainability, other than to point out that some sites identified at SHLAA stage might prove not to be deliverable. The implication here is that LPA's will have to prioritise their policy requirements and identify which can most readily be sacrificed to secure housing delivery.

The playing field remains unlevelled. It is not the role of the RICS to address the underlying truth that poorer areas where viability is more challenging will remain less able to deliver truly sustainable development than their richer counterparts.

https://www.rics.org/uk/upholding-professional-standards/sector-standards/land/assessing-viability-in-planning-under-the-national-planning-policy-framework-2019-for-england-rics-guidance-note-1st-edition/

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