

The London Borough of Tower Hamlets – Assessing Development Viability (Procedure)

Practice Note

November 2021



Introduction

1. In accordance with London Plan policy H5 and Local Plan policies S.H1 and D.H2, when a planning application proposes less than the relevant threshold level of affordable housing or less than the contribution for small sites as set out in Tower Hamlets Planning Obligations SPD the Council will require a Financial Viability Assessments (FVA) to be submitted. The FVA will be independently reviewed to check that the maximum reasonable amount of affordable housing is proposed.
2. This practice note sets out the procedure to be followed and provides guidance to applicants when submitting any¹ planning application where development viability is a material consideration.

Tower Hamlets Development Viability

3. The Council's internal development viability service review FVAs submitted to the Council and provide an objective and impartial view to the Council's Planning Officers. Reviews are conducted at both application stage and at points of follow up reviews post planning approval. All Tower Hamlets reviews are supplemented with a detailed cost review undertaken by an external Consultant/Quantity Surveyor. Their advice and report will form part of the overall conclusions.

Pre-application (viability advice)

4. Applicants may seek to discuss specific viability related matters of their application at pre-application stage. Such meetings can be facilitated and will support applicants where a dedicated Viability Officer will offer detailed advice to the applicant ahead of them submitting an application/FVA. Should an Applicant however seek the Council to undertake a full review of their FVA prior to submitting an application this will be charged for in a similar manner to that of when the application is received. Pre-app FVA's will not be voluntarily made publicly available by the Council.

¹ Applies to amending applications e.g., section 73 as well as full/outline applications

Planning applications/amendments: process and protocol

5. Following the validation of a planning application the Council's Planning Service (Development Management) will engage the development viability team to review the FVA. Viability will be assessed in every case for major development where the development would not meet the criteria for the threshold approach set out in the London Plan i.e. less than 35% or 50% affordable housing is proposed (as appropriate). For non-major development of between 2 and 9 new homes, viability will be assessed where the application proposes a financial contribution less than the amount calculated using the formula in the Planning Obligations SPD.
 - I. The submitted FVA will be assessed to determine the estimated time and resources that will be required to provide a formal evaluation of the received documents. The Council will also highlight at this stage if any further information is required ahead of any report being conducted.
 - II. A fee quotation² will be provided to applicants (via the Development Management Team) of the costs entailed for the Council to provide its review. The fee is dependent on the size/complexity of the scheme and the estimated time that will be required to review all documents, conduct research, meetings, reporting and any follow up responses³. Fees are not fixed and will vary in every case. External Cost Consultant fees will be in addition to the fee charged by the Council. All fees are exclusive of VAT.
 - III. The applicant will need to confirm acceptance of the fee to the Council in writing (either through a fee undertaking letter or a Planning Performance Agreement) ahead of any review commencing. Viability reviews often are provided within 10 working days from commencement however this is subject to resourcing and can potentially take longer. Estimated delivery will be discussed at the earliest opportunity.
 - IV. Upon completion of the review and any subsequent discussions, the Council will invoice the applicant for payment of the fees.

6. Note - FVAs, reviews of FVAs, further addendum reports and letters, and any other relevant supporting documents will generally be published on the planning register. In cases where commercially sensitive information has

² The Council may seek to appoint an external consultant within its framework from approved consultants to review FVA's at its discretion however this is not negotiable with the Council. Such circumstance may occur in instances the Council does not have the capacity to conduct a review.

³ Applicants and their respective advisors should be aware that any major changes in approach or significant deviation from initial approaches may incur additional charges due to additional time that will be required for review.

been included the documents may be published in a redacted form, although this will need to be robustly justified by the Applicant, with only the specific sensitive information being redacted.

Viability review mechanisms – process and protocol

7. All planning applications⁴ are subject to early-stage review mechanisms which will not be required should a Developer substantially implement⁵ their scheme within two years from the date of planning permission being granted⁶. A failure to substantially implement the planning permission within this timeframe will result in a review being triggered irrespective of which route they proceeded with at application stage.
8. Importantly, the triggering of an early review itself does not mean the review will take place at that point in time. The review will still be undertaken at the point in which substantial implementation is reached even if that is after the initial two-year period.
9. Mid-stage reviews will be agreed with applicants at the application stage for long term planning applications. They will be undertaken in accordance with the associated legal agreement.
10. Late-stage reviews only apply to schemes that do not meet the minimum criteria for affordable housing contributions at the planning application stage. Schemes which proceeded via the Fast-Tracked⁷ approach to viability will not be subject to any reviews following an early/mid review (if applicable).
11. When a review is due the onus is on the Developer to provide the Council with the relevant information to demonstrate if any further contributions can be provided (correspondence is to be sent to s106@towerhamlets.gov.uk & viability@towerhamlets.gov.uk). This is to be supported with an FVA detailing their position. The Councils Infrastructure Programmes Team will seek to progress the matter forward and liaise with the Developer. At this stage the development viability team will be engaged.

⁴ All schemes which include residential components – 10 or more units.

⁵ Substantial Implementation will be defined within the S106 and will generally require construction to first floor, or a similar milestone (subject to agreement)

⁶ Subject to agreement.

⁷ Fast-Tracked schemes are those which achieve or exceed policy compliance in terms of affordable housing provision, tenure mix, and unit size mix at application stage and therefore do not require viability testing

- I. The respective FVA will be examined to determine the time and resource that will be required to provide a formal evaluation of the received documents. The Council will also highlight at this stage if any further information is required ahead of any report being conducted.
- II. A fee quotation⁸ will be provided to applicants (via the Growth & Infrastructure Team) of the costs entailed for the Council to provide its review. The fee is dependent on the size/complexity of the scheme and the estimated time that will be required to review all documents, conduct research, meetings, reporting and any follow up responses⁹. Fees are not fixed and will vary in every case. External Cost Consultant fees will be in addition to the fee charged by the Council. Fee quotes will also specify where VAT is payable.
- III. The Developer will need to confirm acceptance of the fee to the Council in writing ahead of any review commencing. Viability reviews often are provided within 10 working days from commencement however this is subject to resourcing and can potentially take longer. Estimated delivery will be discussed at the earliest opportunity.
- IV. Upon completion of the review and any subsequent discussions, payment of fees will be sought by the Council from the applicant. The fee for the review and any identified surplus will be charged individually and should not be paid as part of 1 transaction. The Infrastructure Programmes Team will provide details for where payments are to be made.
- V. Where the final contribution is not agreed between the Council and the Developer this will usually need to be referred to a third party for determination, often an Independent Expert. The appointment could be jointly made by both parties and costs will be expected to be covered by the Developer (subject to the clauses within the associated legal agreement).

⁸ The Council may seek to appoint an external consultant within its framework from approved consultants to review FVA's at its discretion however this is not negotiable with the Council. Such circumstance may occur in instances the Council does not have the capacity to conduct a review.

⁹ Applicants and their respective advisors should be aware that any major changes in approach or significant deviation from initial approaches may incur additional charges due to additional time that will be required for review.