

## GUILDFORD DEVELOPMENT MANAGEMENT POLICIES SUBMISSION LOCAL PLAN EXAMINATION

### MARTIN GRANT HOMES (RESPONDENT ID 8944737)

### HEARING STATEMENT: MATTER H1 – POLICY H7 REVIEW MECHANISMS

**Main Question: Whether Policy H7: Review Mechanisms is positively prepared, justified, effective and consistent with both national policy and the LPSS.**

No. Specifically, the policy as drafted fails to be effective, justified, and consistent with national policy and guidance, for:

- It does not provide clarity as to the exceptions whereby a scheme or site would not require a review mechanism and underpinning justification for inclusions or exclusions.
- It does not provide a definitive threshold (by units) below which a review mechanism would not apply and hence there is a disconnect and inconsistency between the draft policy and Policy H2: Affordable Homes within the LPSS.
- It is not sufficiently clear in the methodology to be applied in a whole scheme review or a formula-based review, with the supporting text as drafted potentially giving rise to errors in interpretation or adverse and unintended consequences.
- The late-stage review mechanism includes no incentive for the developer to generate a surplus beyond the agreed developer's profit, which will fail to maximise the prospects for the Council to secure policy compliant levels of further contributions from schemes.
- There is presently no commitment from the Council within the policy or supporting text to prepare supplementary guidance for applicants.

Further details are provided in responses to supplementary questions 1.2-1.4.

#### **Supplementary Question 1.2: Is the scope of the policy sufficiently clear? Should small scale development (to be defined) be exempt?**

No. The policy is not sufficiently clear in respect of the Council's approach to introducing reviews, particularly in relation to small scale development.

The reference in (1) within Policy H7 that, "...the Council will, where it considers appropriate, require a viability review mechanism to be secured", should be removed.

It should be replaced with wording to complete the sentence that states, "...the Council will require a viability review mechanism in all but the following circumstances:"

This should be followed by a list of exceptions and a definitive threshold (by units) should be clearly stated to demonstrate to applicants the circumstances in which a review mechanism will (and will not) be appropriate. It will be necessary for the Council to clarify its intentions and expectations in this regard whilst also providing consistency with and connection to Policy H2: Affordable Homes within the LPSS.

Failure to do so falls short of compliance with paragraph 009 (Reference ID: 10-008-20190509) within Planning Practice Guidance ('PPG') Viability.

**Supplementary Question 1.3: Would 'late stage' reviews be effective? What would happen in the event of disagreement?**

No. As drafted there is no incentive for the developer to generate a surplus beyond the agreed developer's profit, which would be secured by the Council towards additional housing provision. The reason for this is that the current drafting secures 100% of any profit surplus as payable to the Council up to the cap (which is equivalent to policy compliance).

An equitable approach, whereby the developer and Council share any surplus up to the payment of the cap, provides an effective incentive to the developer to maximise scheme performance, which is to the mutual benefit of both parties. In CBRE's experience, this approach is typical of late-stage reviews. For example, as set out in para. 3.65 bullet 6 on p.45 of the Greater London Authority's ('GLA') Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance 2017, which supports the adopted London Plan 2021.

From prior experience, it would be CBRE's recommendation that the Section 106 Agreement or Unilateral Undertaking incorporates a clause (or clauses) that permit recourse to independent binding dispute resolution in the event of a disagreement between the Council and the developer over any viability review. This should have tight and fixed timescales attached to avoid it unduly delaying delivery.

CBRE has set out proposed modifications to Policy H7 and the 'reasoned justification' supporting text that address these issues, which are included in Appendix 1 to this Hearing Statement. Text to be deleted is struck out. New text proposed for inclusion is underlined.

**Supplementary Question 1.4: Should further details of the review process be included?**

Yes. The Council's 'reasoned justification' text supporting Policy H7 is inadequate. It fails to set out the process clearly and effectively as proposed. The specific issues were identified within Martin Grant Homes' representations submitted to the Regulation 19 consultation by Barton Willmore and are not repeated here for brevity.

CBRE has set out proposed modifications to the 'reasoned justification' text supporting Policy H7 that address these issues, which are included in Appendix 1 to this Hearing Statement.

Even with CBRE's proposed modifications, this falls short of the necessary practical detail for applicants. To avoid the supporting text to the policy becoming too unwieldy, CBRE recommends that the Council prepares, and published for consultation, further guidance for applicants within a Supplementary Planning Document confirming the viability review process, methodology, terms of engagement and viability review formulas for incorporation in Section 106 Agreements or Unilateral Undertakings.

## Appendix 1: Proposed Modifications to Policy H7 and 'reasoned justification' supporting text

### Policy H7: Review Mechanisms

5) Any surplus developer profit calculated through the late-stage review, after deducting the agreed developer profit, will be shared equitably between the developer (50%) and the Council (50%).

6) Any further contributions secured via this review mechanism will be capped at the extent of additional contribution necessary to meet the minimum Local Plan affordable housing policy requirement considering what was already secured at the time of determining the planning application.

2.38 It is recognised that in certain cases it may be appropriate to include provision for a further trigger points for viability review in legal agreements. This is considered to be relevant to large-scale phased development where delivery will occur across different stages in an economic cycle, justifying additional points where viability could be reviewed. A further viability review may thus be sought at a mid-stage in the delivery of schemes before the later phases are implemented. This provides an opportunity to secure additional affordable housing on-site as part of the later phases of the development.

2.39 At the point of review, applicants should submit an updated full scheme viability assessment consistent with the format and methodology submitted at planning application stage. ~~and any supplementary information that the Council requires. Whilst such a full viability assessment using the same methodology as the original assessment may be best suited to the circumstances of the case, A more limited formula-based approach to the review, focussing on any changes to submitted values and build costs, may also be considered~~ will also be acceptable where this is agreed in advance by the applicant and the Council at the time that planning permission is granted, with the terms of the review and relevant formulas incorporated within a Section 106 Agreement or Unilateral Undertaking. The Council's reasonable costs associated with commissioning an independent review of this assessment will be met by the applicant with these costs agreed with the applicant at the time planning permission is granted and the sum(s) stated within a Section 106 Agreement or Unilateral Undertaking. The approach should be agreed with the Council prior to submission of an updated viability assessment with the terms set out at the time that planning permission is granted, usually as part of the Section 106 agreement. Any viability assessment should follow the government's recommended approach to assessing viability as set out in National Planning Guidance.

2.40 The full scheme viability review ~~should~~ will assess the entire development, taking into account the achieved gross development value ('GDV'), realised development costs prior to the date of review, as well as estimates for any remaining subsequent stages to identify any surplus that exists, after deducting the developer profit (consistent with the rate (%) of developer profit agreed at the time planning permission is granted).

2.41 The formula-based review will ~~include assessing~~ changes to GDV and total development costs, ~~(the key variables that are most likely to be subject to change)~~ at the review stage, from the totals agreed at the time that planning permission was granted ~~what were assumed to be the case at the planning application stage~~, allowing for developer profit on any changes in GDV (consistent with the rate (%) of developer profit allowance agreed at the time planning permission is granted ~~application stage~~). It ~~should assess the entire development, taking into account values, build costs that have been realised in the initial stages of the development as well as estimates for the subsequent stages to identify any surplus that exists.~~

2.42 If a deficit against the rate (%) of developer profit exists in the viability assessment submitted at the planning application stage, and this is agreed between the Council and applicant, this deficit will be reflected in the formula-based review by the setting of a 'breakeven GDV' as the base position from which any change in GDV

will be determined via subsequent review. The breakeven GDV will be stated in the Section 106 Agreement or Unilateral Undertaking.

2.43-2.41 Should a surplus developer profit be identified through a review, the level of affordable housing contributions that will need to be provided will be capped at the minimum Local Plan affordable housing policy requirement. If this cap is met through a mid-stage review it will discharge the requirement for a late-stage review.

2.44 Any surplus developer profit calculated through the late-stage review, after deducting the agreed developer profit, will be shared between the developer and the Council and with 50 per cent used for additional affordable housing up to the cap.

2.45. Viability reviews should be prepared on the basis that will be made publicly available, other than commercially sensitive or personal information in line with National Planning Guidance.

2.46. In the event of a disagreement between the Council and developer over the review process or outcome, there will be recourse to follow a dispute resolution process, which will be detailed and controlled via the Section 106 Agreement or Unilateral Undertaking.

2.47. Prior to seeking to introduce review mechanisms under Policy H7, the Council will set out further guidance for applicants within a Supplementary Planning Document confirming the viability review process, methodology, terms of engagement and viability review formulas for incorporation in Section 106 Agreements or Unilateral Undertakings.