

Planning and scheme viability: Transparency and the publication of reports.

The Council is reviewing its processes relating to Planning and Housing delivery to ensure there is as much transparency in the process as is legally possible. Part of this involves consideration of the way in which residents and Associations/Forums interact with planning officers, Councillors and developers during the consideration of development proposals and the ways in which engagement can be further fostered under the umbrella of the Statement of Community Involvement. It is also recognised that with this desire for increased engagement comes a greater need to consider revised processes that will enhance fairness and transparency throughout the planning process.

On 16th October 2018 the Council's Cabinet considered a report on 'Delivery Strategy for 2,500 Genuinely Affordable Homes'. The main report contained an 'Appendix 1 - Draft Statement on Affordable Housing in Ealing'. This 'position statement' set out the Council's approach to the provision of affordable housing requirements and its general direction of travel.

The report included this statement:

In the interests of transparency, the Council will publish Viability Statements alongside other application documents submitted with a planning application. Applicants must provide a second redacted copy (concerning information that is considered commercially sensitive) if appropriate.

The report (which was approved) and papers can be found at:

<https://ealing.cmis.uk.com/ealing/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/4985/Committee/3/Default.aspx>

The process of considering financial information submitted by applicants (through Viability Statements) as part of planning applications, has been the subject of considerable discussion within the planning sector. It is fair to say that the planning system has moved away from a position where such information is always regarded as confidential (and thus not published) to one where the presumption is towards publishing such information, unless the applicant can demonstrate a need to retain confidentiality, on part or all the Viability Statement submitted.

The move towards transparency has had a number of drivers.

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 cover the data that should be freely available to the public. Recent decisions by the Information Commissioner's Office regarding confidentiality and transparency in the planning process support the presumption for disclosure of information. This direction of travel has been reflected in the Mayor of London's Supplementary Planning Document (August 2017) – 'Homes for Londoners – Affordable Housing and Viability' (a relevant extract is attached as Appendix 1) and

the policy approach of the Draft London Plan 2018. The SPD specifically promotes transparency in the way in which Council's deal with viability information.

In light of this:

As from 1st March 2019, LB Ealing will publish without redaction all viability statements and information submitted as part of a planning application. It is expected that planning Agents will submit such information in a format suitable for immediate publication as part of the initial validation process.

Where applicants or their agents consider there are 'exceptional circumstances' for keeping some elements of viability statements confidential they must justify their position. In adopting this approach, the Council considers:

- **There will be few exceptions to the requirement for disclosure and requests for confidentiality will only be allowed in very limited circumstances**
- **In such cases there must be a convincing argument that disclosure would cause an 'adverse effect' and harm to the public interest that is not outweighed by the benefits of disclosure. The council will consider each request for continued confidentiality on the circumstances of the case.**
- **Requests for confidentiality should be raised as early in the pre-application process and applications will not be validated until such requests have been formally considered by the Council, as Local Planning Authority.**

Appendix 1

Mayor of London's Supplementary Planning Document (August 2017) – 'Homes for Londoners – Affordable Housing and Viability'

Part One

Transparency of Information

1.18 The Mayor wants to lead the way in openness and transparency in the planning system. In particular he considers that information relevant to planning determinations should be publicly available alongside other application documents in order to foster a greater understanding of and trust in the planning system.

1.19 This approach is consistent with the Freedom of Information Act 2000 (FOIA) which gives the public the right to request information held by public authorities and which aims to ensure that public sector bodies are open and accountable. The Environmental Information Regulations 2004 (EIR) which relate to environmental information held by public authorities provide a similar public right to access information. The guiding principle is that all information should be accessible, although the legislation sets out certain exceptions to this general rule. These exceptions are, however, qualified by a public interest test and recent decisions⁶ by the information tribunal have demonstrated that the public interest in maintaining confidentiality rarely outweigh the public interest in disclosing the information.

1.20 Therefore, given the importance of wider scrutiny and the direction of travel indicated by information tribunal decisions, the Mayor will treat information submitted as part of, and in support of, a viability assessment transparently.

1.21 This information should be available for public scrutiny and comment like all other elements of a planning application, as should any review or assessment of the appraisal carried out by or for the LPA. As such, boroughs should implement procedures which promote greater transparency where not already in place. Where the required viability information is not published by the LPA as part of the application documents, the Mayor reserves the right to refer to, and publish, the information as part of his referral Stages 1 and 2 consideration of the application.

1.22 In very exceptional circumstances there may be legitimate reasons for keeping limited elements of viability information confidential. For this to be the case the LPA, or the Mayor where relevant, would need to be convinced that the public interest in maintaining the exception outweighs the public interest in disclosing the information.

1.23 If an applicant wishes to make a case for an exceptional circumstance in relation to an element of their assessment, they should provide a full justification as to the extent to which disclosure of a specific piece of information would cause an 'adverse effect' and harm to the public interest that is not outweighed by the benefits of disclosure. Boroughs

should consider this carefully, with reference to the 'adverse effect' and overriding 'public interest' tests in the EIR and FOIA, as well as the specific circumstances of the case. If an applicant considers that an exceptional circumstance is likely to arise, this should be raised with the LPA and the Mayor at an early stage within the pre-application process.

1.24 In submitting information, an applicant does so in the knowledge of the approach set out in this SPG and that the LPA or Mayor may not accept the applicant's claims that information should not be disclosed to the public.

1.25 Applicants should also provide a summary of the financial viability assessment which outlines key findings, inputs, and conclusions to assist review by the LPA, Mayor, and members of the public.

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