

DRAFT S.106 OBLIGATIONS SCHEME TESTING VIABILITY

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Prepared for

**Peterborough City
Council**

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**Peterborough City Council draft S.106 Planning Obligations Scheme
Testing Viability**

Introduction

- 1.1 Where it has been demonstrated to the Council's satisfaction that the development proposed is acceptable in all other respects, but is unviable due to the level of contributions it would be expected to make through the S.106 Planning Obligations Scheme, the Council may consider a discount or the deferral of payment of contributions. This may also be the case where viability issues arise relating solely to market conditions.

Viability Analysis

- 1.2 In order to assess whether such a concession might be made, an 'open book' viability analysis may need to be undertaken of the development proposed. This will be at the cost of the applicant, and will include the costs of the Council should the Council seek specialist independent advice to assess the viability of the development.
- 1.3 The Council will expect applicants for planning permission who are suggesting that exceptional circumstances exist that are a material planning consideration, to provide a robust development appraisal calculation, together with appropriate supporting evidence, to justify their case. If requested, the Council will treat any information provided by the applicant as commercially confidential.
- 1.4 In order to simplify and standardise submissions of this nature as far as possible, the Council has drawn up guidelines to submitting a viability appraisal, which should be adopted by applicants.
- 1.5 Any analysis will be based on land values as set by the application of planning policy in determining the permissible scope of development, rather than on the price actually paid for the land. For this reason valuations will be done on a residual basis where the value of land is an output of the process. Arguably no allowance should be made for the original cost of purchasing the land or for payments that are contracted to be made to the landowner or third party under an existing option, conditional land sale agreement, profit share (overage) or clawback arrangement. If it is suggested that the viability of the development is comprised as a result of an allowance for these items then it will be at the discretion of the Council as to what extent, if any, obligations under the S.106 Planning Obligations Scheme are amended in recognition of them.
- 1.6 A Development Appraisal will follow the principle as set out below:

$$\begin{aligned} &\text{Gross Development Value} - \text{Total Build Costs} - \text{Developer's Profit} \\ &= \text{Residual Land Value.} \end{aligned}$$

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- 1.7 The Residual Value i.e. the payment to the landowner, is the critical variable to take into account, assuming that sufficient positive land value is required for implementation of a permission. The Residual Land Value should exceed the Existing Use Value (EUV) and any Alternative Use Value (AUV) based on an extant planning permission for that use.
- 1.8 Key variables that should be considered by the developer include:
- **Value of residential sales**
Independent evidence and evaluation will be required to justify the values used.
 - **Value of affordable housing**
The Council will require a statement setting out the assumptions made in terms of target rents and likely / agreed levels of Social Housing Grant if any.
 - **Commercial values**
Independent evidence and evaluation will be required to justify the values used, including rents, capital values and investment yields
 - **Build Costs**
A professional cost plan may be required, including justification from a recognised quantity surveyor. Build costs must set out the quality of construction to be adopted including, if applicable, adopting building sustainability performance measures such as the Code for Sustainable Homes or Building Research Establishment Environmental Assessment Method. Any abnormal or exceptional costs that are said to arise must be explained and evidence provided.
 - **Planning obligations**
Planning obligations in line with the Council's S.106 Planning Obligations Scheme should be provided for, including affordable housing in compliance with the Council's adopted policy.
 - **Finance Costs**
Including borrowing rate and period of borrowing.
 - **Developer's Profit**
 - **Existing Use Value or Alternative Use Value**

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A formal valuation in compliance with the requirements of the RICS Valuation Standards (the Red Book) will be required in support of the Existing Use Value and/or Alternative Use Value.

Viability Toolkits

- 1.9 The Council has the option to utilise standard valuation methodologies such as the Three Dragons Toolkit and the Housing Corporation Economic Appraisal Toolkit. These toolkits are essentially best suited to single phase residential schemes. In order to cover larger schemes and commercial or mixed-use development we recommend that the Council stipulates the use of either Prodev Development Appraisal Program or ARGUS Developer. We proffer no opinion as to which programme is preferable, and we suggest the Council accepts the use of either model.

Additional Notes

- Where the scheme delivers significant social benefits, special account may be taken of this in assessing the appropriate level of contribution.
- The Council accepts that additional exceptional financial circumstances may arise in individual cases, evidence of which can be appended to any Viability Report.
- If the assessment reveals to the satisfaction of the Council that a scheme would be unviable then an assessment should be made as to whether the scheme would still be acceptable in planning terms with a reduced level of contributions.
- With regard to Option to Purchase agreements, providing fixed terms to a landowner post the grant of planning, the Council would expect the Option Agreement to be renegotiated with the landowner if policy requirements could not be met.
- Where viability issues arise relating solely to a market downturn, the Council may consider a clawback arrangement, to take account of increased returns should market conditions improve.
- The Council accepts that information included in an Open Book appraisal will be commercially sensitive and therefore will enter into appropriate confidentiality agreements with developers.