

Planning Committee

07 February 2020

Agenda item number 11

Marketing and Viability SPD Workshop

Report by Planning Policy Officer

Summary

The Marketing and Viability Supplementary Planning Document (SPD) was subject to public consultation late 2019. This report includes the comments received and the proposed responses and proposed amendments to the draft SPD for discussion at February Planning Committee.

Recommendation

None – paper and appendices are for discussion.

1. Introduction

- 1.1. Several policies in the Local Plan will require applicants or agents to carry out a robust marketing strategy and/or a viability assessment if the proposed scheme is promoting something different to the adopted policy position. This SPD explains what is meant by marketing and viability, and which Local Plan policies have this requirement.

2. Public consultation

- 2.1. The SPD was subject to public consultation from 27 September to 22 November 2019. The comments received and the Authority's proposed responses are included at Appendix 1. An amended draft Marketing and Viability SPD is included at Appendix 2.

3. Workshop and discussion

- 3.1. When supporting the SPD for consultation, Planning Committee resolved to hold a workshop on the SPD to discuss comments received during the public consultation. The document at Appendix 1 outlines the comments received and the proposed responses and this is the basis for discussion at this meeting.
- 3.2. A further report including any changes resulting from the discussion will be prepared for the meeting of Planning Committee on 6 March 2020 for approval for further public consultation.

4. Financial implications

- 4.1. The consultation will require a press advert, but it might be at the time of other documents being out for consultation so effectively the cost will be shared. Officer time in producing the SPD.

5. Conclusion

- 5.1. The comments, proposed responses and amended draft SPD are presented for discussion.

Author: Natalie Beal

Date of report: 22 January 2020

[Broads Plan](#) objectives:

Appendix 1 – Comments received from the consultation on the draft SPD, with proposed Broads Authority responses, for discussion.

Appendix 2 – Amended second draft Marketing and Viability Guide for discussion

Appendix 1 – Comments received from the consultation on the draft SPD, with proposed Broads Authority responses, for discussion.

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#1	Laura Waters	Norfolk County Council	The LPA needs to be clear when they will accept a Viability Report's conclusions over provision of flood risk mitigation or SuDS.	<p>Further clarification was sought from NCC and it seems that in some areas surface water flood risk may not have been addressed because of viability concerns in doing so.</p> <p>The Broads Authority has a recently adopted Local Plan with a strong surface water policy. It also has a Flood Risk SPD that is out for consultation at the same time as this and the LLFA seem content with it (and they helped to produce it). So in the absence of suggested text, in the absence of examples of where surface water has not been addressed in the Broads due to viability and in the presence of a recently adopted strong surface water policy and in the presence of a SPD that refers to surface water and is supported by the LLFA it is concluded, with Norfolk County Council LLFA that no change is needed.</p>	No change to SPD
#2	Joy Brown	Norwich City Council	With regards to the length of period for marketing although I would have no objection to the extension to 18 months within a stagnant market, I would suggest that 18 months is a long time to expect someone to market something before a change of use or redevelopment can be considered. Within Norwich City although we don't specify a time within our Local Plan we would only normally expect something to be marketed for around 9-12 months as within this time adjustments can be made to the marketing strategy if there is very little interest initially.	Comment noted. We agree that a longer period if the market is stagnant should be removed from the SPD.	Remove the reference to a longer period if the market is stagnant.
#3	Joy Brown	Norwich City Council	The SPD could clarify how benchmark land value will be calculated and what won't be considered.	The area of the Broads is very mixed. We currently do not specify a process; we rely on guidance and the check by the independent person/district valuer. If the respondent would like to propose some wording and suggest where it goes then we can consider this.	No change to SPD
#4	Joy Brown	Norwich City Council	The SPD could set out what is a reasonable profit level	The area of the Broads is very mixed. We currently do not specify a process; we rely on guidance and the check by the independent person/district valuer. If the	No change to SPD

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
				respondent would like to propose some wording and suggest where it goes then we can consider this.	
#5	Joy Brown	Norwich City Council	The SPD could explain when viability would be reviewed if development hasn't commenced/been occupied i.e. is there a review mechanism built into s106 agreements?	We would expect the developer to come to us if they are experiencing issues. If sites do not come forward we will contact them as part of monitoring process	No change to SPD
#6	Lorraine Houseago	Norfolk County Council	We have no other comments to make.	Noted	No change to SPD
#7	Penny Turner	Norfolk Policy ACLO	We have no comments on the above at this stage.	Noted.	No change to SPD
#8	James Knight	Individual	I am a former member of the RICS Governing Council, a South Norfolk District Councillor, and an appointed member of the Broads Authority and its Planning Committee. I am responding to this consultation in my capacity as a private individual, property developer and company director. I am not responding in my capacity as a member of the Broads Authority or its Planning Committee.	Noted.	No change to SPD
#9	James Knight	Individual	<p>3.1. Viability assessments have a limited and specific scope, which is to determine the level of planning contributions which might be appropriate for a proposed development whilst maintaining its viability and deliverability.</p> <p>3.2. The use of viability assessments to prove that an existing use is not viable appears to be a misuse of the principle of viability assessments as envisaged by the NPPF.</p> <p>3.3. This may simply be a case of semantics (i.e. the SPD means 'marketing assessment' when it says 'viability assessment'). But there is a significant difference between proving that there is no demand for a property, and proving that an existing business which happens to trade from a property is viable. The first is clearly within the ambit of planning, whereas the second is not.</p>	Noted. Perhaps in the next Local Plan we could say 'assessment of the viability of continuing the current use' or something like that. We could also add some explanatory text along those lines in the SPD as well. In general, assessing the viability of an existing use is an accepted approach when considering change of use applications. See response to comment #11 for local examples and National Park examples.	Add a section to clarify what we mean by viability assessments in this instance along the lines of 'assessment of the viability of continuing the current use'

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#10	James Knight	Individual	3.4. The SPD lists 13 policies which contain viability requirements, including changes of use on any historic building, waterside site, employment land or holiday property. This represents a substantial proportion of all land within the Broads Executive Area. Notwithstanding the fact that the Plan has been adopted, this appears to be excessive by comparison with the policies of other local authorities, and demonstrates an overly prescriptive approach to planning which is contrary to the overriding presumption in favour of sustainable development.	Noted. As Mr Knight says, the Local Plan is adopted. The SPD cannot change policy - it seeks to help the implementation. As such, the SPD cannot change policy, but the comment is noted for the next Local Plan. These are important uses which contribute to the special character of the Broads and are protected under planning policy for that very reason. However, we do accept that things change and planning does not seek to stop change, but to facilitate appropriate change where it can be demonstrated that an existing use is no longer viable.	No change to SPD
#11	James Knight	Individual	3.5. In particular, the focus on requiring viability assessments when seeking changes of use in so many different circumstances demonstrates a pre-disposition against change, which is contrary to the principle of ensuring viability and sustainability, and in conflict with other policies designed to protect and enhance the Broads. Preventing or delaying change does not protect businesses. The Broads owes its historical success to its ability to evolve over time, and it must be allowed to continue to do so.	<p>Noted. See answer to previous comment. The use of viability assessments in considering proposals for change is a well-established planning approach which has been used, for example, to protect town centre uses since around the 1980s.</p> <p>We looked at the local plans of our districts and some National Parks. Here are some examples from other LPAs that follow a similar approach.</p> <ul style="list-style-type: none"> • Broadland Council, Development Management DPD, Policy CSU2, page 54. Requires change of use of community facilities to prove no longer viable. 12 month marketing period. • South Norfolk, Development Management DPD, Page 34 onwards. Employment use – evidence not viable and at least 6 months active professional marketing. Page 97 onwards. Community use – 6 months. • North Norfolk, Core Strategy and Development Management DPD, Page 97 onwards. Tourism accommodation – 12 months. Page 103 onwards. Local facilities and services – 12 months • Former Waveney area, Local Plan, Page 58 – change of use of employment at a particular site – 12 months. Page 205, 8.22 – self build plots – 12 months. Page 220 – employment – 12 months. Page 228 – tourist accommodation - 12 months. Page 237 – community facilities -12 months. Appendix 4 – marketing requirements. 	No change to SPD

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
				<ul style="list-style-type: none"> Great Yarmouth, Core Strategy Local Plan, Page 54 – employment – 18 months. Page 97 – community facilitates ‘thorough’ but no timescale. Norwich City, Development Management DPD, Page 155 onwards – community facilities – 9 months Exmoor National Park, Local Plan, Page 195 - local commercial services and community facilities - 12 months. Page 213, employment land, 12 months. Page 228, serviced accommodation, 12 months. Peak district, Development Management Document, Page 109, shops, community services and facilities, 12 months. Page 63, employment sites, 12 months. 	
#12	James Knight	Individual	3.6. Small businesses are rarely cash rich. Owners will often fail to spot the early signs of decline, hoping each year that the next will be an improvement. It is often the case that they can be on the verge of failure before they consider the necessity of making significant changes. The cost and delay of producing a viability assessment could easily be the final nail in the coffin of a business which might otherwise be saved through a (possibly partial) change of use or other development.	This comment seems to suggest that when a business is in decline, the cost and time required to produce a viability assessment could be 'fatal'. It doesn't explain how not doing a viability assessment would alter this trajectory. If it is not viable then the outcome of the viability assessment will be to allow it to change to another use.	No change to SPD
#13	James Knight	Individual	3.7. The same is true in the case of historic buildings - in the absence of grant or charitable aid, historic buildings must continue to have an economic value in order to ensure their future. Resisting 'inappropriate' changes of use must be balanced against the need to ensure that the building has some future. There is a danger that, whilst lengthy viability assessments are being carried out, a building may continue to deteriorate to the point where it is no longer economically viable to save it.	<p>Heritage assets are of importance locally and nationally and it has been long recognised by the planning system that the best way to protect them is keep them in a viable use. For the use to be an appropriate means to protect the building, it does not have to be the most economically viable use (i.e. the most profitable), but it needs to be one that recognises and balances the specific constraints of the building. A viability assessment is a way of doing this.</p> <p>The NPPF is clear in relation to change of use of a heritage asset. 192. In determining applications, local planning authorities should take account of:</p>	No change to SPD

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
				<ul style="list-style-type: none"> a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) the desirability of new development making a positive contribution to local character and distinctiveness. 	
#14	James Knight	Individual	3.8. Whilst recognising the value and importance of policy-led planning, sometimes it is obvious that an existing use is neither viable nor, in many cases, even desirable when considering location and other factors. Under those circumstances, insisting on lengthy marketing or viability periods to “prove” what is already obvious can be an unhelpful box ticking exercise which is of no value to the applicant, future occupiers or the local community.	Planning relies on the presentation and consideration of evidence in favour or against a particular development. It will rarely be the case that something was so obvious that evidence was not needed. If evidence was not required and the planning system accepted assertions made without evidence, it may act as an incentive to run businesses down to get another use. See row #11 that shows the 12-month marketing period is consistent with other LPAs.	No change to SPD
#15	James Knight	Individual	3.9. Great care should be taken to ensure that requirements placed upon applicants to demonstrate viability of existing businesses, as distinct from demonstrating demand (or lack of it) for the property, are reasonable, proportionate and in accordance both with the NPPF and National Planning Guidance.	Noted. The approach of the Local plan is consistent with the NPPG and NPPF as the Local Plan has been assessed by an Independent Planning Inspector who concluded the plan to be sound. Conformity with the NPPF and NPPG is a key consideration.	No change to SPD
#16	James Knight	Individual	4.1. Where a marketing assessment is considered necessary, it is helpful for applicants to know in advance what is required of them, and this fundamental purpose of the SPD is therefore supported.	Support for SPD noted.	No change to SPD
#17	James Knight	Individual	4.2. The marketing instructions in section 5.4 are, however, far more prescriptive than should be expected from a planning document. The guidance significantly over-reaches itself into the detail of the work of an estate agent or surveyor, which is not only beyond the scope of a planning authority but will also rapidly become out of date. This section should simply identify the requirement for the applicant to use their	The SPD clearly says that 'if you do not wish to use a particular method, you will need to fully explain and justify this in your strategy'. So, this allows the marketing strategy to reflect the site being marketed. We can also make reference to the need for proportionality in relation to what is provided.	Make reference to proportionality.

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
			best endeavours to use all appropriate methods to maximise exposure to the market.		
#18	James Knight	Individual	4.3. Paragraph 5.5 is unreasonable in its requirements and exceeds those required by most other planning authorities. Some wealthy landowners holding vacant sites may be able to wait for 12 months, but for a majority of small business owners, this delay could be terminal. The concept of making the marketing period even longer when the market is stagnant – and the occupier is likely already to be suffering financial hardship – shows a breath-taking lack of understanding of the harsh realities facing businesses.	Comment noted. The 12 month period is consistent with many other Local Planning Authorities as set out at the response to comment #11. The SPD cannot change Local Plan policy. We will note this comment for when the Local Plan is reviewed. We agree that a longer period if the market is stagnant should be removed from the SPD.	Remove the reference to a longer period if the market is stagnant. In relation to the 3 month interval, add text that says along the lines of 'unless otherwise agreed with the Broads Authority as LPA'.
#19	James Knight	Individual	4.4. The arbitrary imposition of a 12-month (or even longer) marketing period, regardless of site-specific circumstances or other material considerations, is unnecessary and disproportionate. It would be better to specify a range (from say 3 to 12 months), which allows officers some flexibility in interpretation and the ability to negotiate with the applicant.	Comment noted. The 12 month period is consistent with many other Local Planning Authorities as set out at the response at row #11 and previous answer where we propose to add some flexibility to re-advertising.	No change to SPD
#20	James Knight	Individual	5.1. There are of course times when grants or other external interventions are useful and desirable in order to make improvements to a business which would otherwise be unaffordable. 5.2. It is rare, however, for an unprofitable business to be rendered profitable in the long term through public subsidy, and planning authorities should not – as a matter of policy - be encouraging businesses to seek external financial support in order to make a business viable. “Viable” means making a business capable of standing on its own feet for the foreseeable future, rather than just finding a way of making it last a few years longer in order to satisfy a regressive planning policy.	The planning system does not operate to support individual businesses, but to manage land use and protect land uses that are important to the character and operation of an area. The success or otherwise of a business can be dependent on the activities of its owner; operator 2 may make a success of a business where operator 1 has failed and this needs to be recognised. The reference to the potential for business rate relief came from a Member of Planning Committee who is a Councillor in one of our district councils.	No change to SPD
#21	James Knight	Individual	6.1. The principle of having a guide to assist planning applicants in ensuring that applications contain all relevant information at the outset is supported.	Support for SPD noted.	No change to SPD
#22	James Knight	Individual	6.2. Viability Assessments are a useful tool for determining an appropriate level of planning contributions for new development.	Noted.	No change to SPD

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#23	James Knight	Individual	6.3. Marketing Assessments can be useful under limited circumstances in order to protect historic assets or the underlying character of culture the Broads.	Noted.	No change to SPD
#24	James Knight	Individual	6.4. The need to protect character and culture needs to be balanced against practicality and economic reality. It is not in the interests of residents, businesses or visitors for the Broads to become a decaying museum of past glories.	Noted.	No change to SPD
#25	James Knight	Individual	6.5. Marketing periods must be reasonable and proportionate in relation to the individual site. An arbitrary “one size fits all” period of 12 months (or more) is not conducive to positive planning.	Noted. It is proposed to remove the reference to longer periods if the market is stagnant. Also, this SPD cannot change things in the Local Plan. Interestingly, these are the periods used in our district's local plans: Broadland DC: 12 months South Norfolk DC: 6 months North Norfolk: 12 months WDC/East Suffolk: 12 months GYBC: 18 months for employment; no set time for community facilities Norwich CC: 9 months	No change to SPD
#26	James Knight	Individual	6.6. Good planning means identifying genuinely viable and sustainable uses for land and buildings - which might entail changes of use – rather than relying on public interventions and grants to maintain the status quo.	Noted. Policies allow change of use if certain criteria are met. The reference to public interventions and grants is an option and was suggested a few years ago by a Planning Committee Member as something to consider.	No change to SPD
#27	James Knight	Individual	6.7. The Broads Authority must become less prescriptive and more flexible in its approach to planning, accepting that generalised policies might not be appropriate or desirable in certain locations and could result in perverse outcomes if applied rigidly.	This SPD cannot change policy. We will note this comment down for when we produce the next Local Plan.	No change to SPD
#28	Ben Wright	East Suffolk Council	The Council is broadly supportive of the details in the SPD. East Suffolk has similar requirements but these are set out in the appendices of the Local Plan covering the former Waveney area and the emerging Local Plan covering the former Suffolk Coastal area. The basis for this approach is the Council’s Commercial Property Marketing Best Practice Guide which was published in August 2016.	Support for SPD noted.	No change to SPD

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#29	Ben Wright	East Suffolk Council	Business rate relief (lines 281-284). The SPD highlights that district councils may provide business rate relief. Although this is possible, it is a different approach from that of East Suffolk. Therefore, would suggest that we consider ways to ensure greater consistency particularly in parts of East Suffolk that are within the Broads Authority.	Asked for clarification. This was an observation. ES were saying that seeking business rate relief is not a requirement in their Local Plan. It was explained to ES that the point of this section is for the applicant to consider ways of trying to improve the success of their business by trying the suggested 'interventions'. One of the interventions is to ask the district council for rate relief. The SPD does not say that this relief will be granted, but asks the applicant to consider asking for it. The District may agree or not and that discussion and outcome will help inform any decision making. ES clarified that they were not after any changes and did not suggest any changes; rather they wanted to highlight this.	No change to SPD
#30	Ben Wright	East Suffolk Council	Confidentiality (lines 294-303). The Council support the intention that viability assessments are made available – this is consistent with the approach set out in the Local Plan for Waveney and the emerging Local Plan for Suffolk Coastal.	Support for SPD noted.	No change to SPD
#31	Ben Wright	East Suffolk Council	Proposals relating to Public Houses (lines 318-330). Although we support the requirements set out, the section should probably include reference to public houses that may be identified as Assets of Community Value. My understanding is that the district council would identify these (even if within the Broads Authority) and therefore probably should be referenced in this SPD.	Agree with proposed change.	It is also important to note that some public houses may be listed as Assets of Community Value. These are allocated as such by the District Council, in liaison with the Broads Authority. There are certain requirements relating to these Assets which can be found here: https://mycommunity.org.uk/help-centre/resources/land-and-building-assets/assets-community-value-acv/

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#32	John Walchester and Simon Marjoram	Broadland District Council and South Norfolk District Council	An issue of concern is Para. 5.5 of the “Supplementary Planning Document on Marketing and Viability Assessment Requirements (Draft Consultation Version) September 2019”. This appears to set out a marketing period of a minimum of 15 months. If this were to apply solely to a loss of commercial activity to residential use then this could help protect the potential commercial use of the site. However, Para. 5.1 of the document seems to indicate that this applies to any change of use – even from one commercial use to another (where planning permission is required). If this is the case, this seems excessive and it may be advisable to reduce this e.g. to a marketing period of 6 months. A period of 15 months for a commercial change of use could drive any potential developer/tenant elsewhere and leave the site stagnated and not responsive to economic trends.	Comment noted. We agree that a longer period if the market is stagnant should be removed from the SPD. The period of 12 months is consistent with other LPAS - see row #11.	Remove the reference to a longer period if the market is stagnant.
#33	Charlie Middleton	Beccles Town Council	The Planning Committee, replying on behalf of Beccles Town Council, consider all three documents provide comprehensive support for the planning policies of the Broads Authority.	Support noted.	No change to SPD
#34	Simon Marjoram	South Norfolk District Council	The Council would also highlight that many sites within the Broads Authority area include multiple uses. Some of these uses are core functions, important to the role, function and character of the Broads, and others are more ancillary in nature. As such, the SPD should explicitly include the potential for sites to be subdivided, with its requirements only applied to those elements that are the subject of any application, rather than the whole land holding and also reflecting the greater desirability of retaining those core functions.	On sites in a mixed use where change is proposed, we would always encourage a landowner to submit a comprehensive scheme and information covering the range of activities and always seek to be proportionate.	No change to SPD
#35	Yvonne Wonnacott	Bramerton Parish Council	No comment	Noted.	No change to SPD
#36	Ian Withington	North Norfolk District Council	Section 5.4 implies that the BA may request other ways of marketing. Could usefully say that the marketing strategy will need to be agreed in advance with the Broad’s Authority.	We do say this in section 5.3. But see no harm in adding it again at 5.4.	Add: The Marketing Strategy will be agreed with the Broads Authority in advance.

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#37	Ian Withington	North Norfolk District Council	<p>Section 6.2</p> <p>Early on in the section it should set out that the Local Plan underwent viability testing and the national guidance's states that the assumptions and approach used in the plan wide viability should also form the basis of any site specific viability assessment submitted. The contextual information could also spell out in what circumstances site specific viability appraisals could be submitted.</p> <p>i.e. that where up to date policies have set out the contributions expected from development, planning applications that comply with them will be assumed to be viable. hence no need to include an assessment unless contesting the council's position.</p> <p>Consider adding: The Local Plan Viability Assessment also sets the preferred standard approach to appraisals. Any viability assessment for specific applications must refer back to the assessment of the Plan and the standard methodology used, and be transparent. In all cases, submitted assessments will be made publicly available in accordance with paragraph 57 of the NPPF.</p>	<p>Some text added about the viability assessment for the Local Plan. It should be noted that the Local Plan was assessed against the 2012 NPPF and so the NPPG relating to viability appraisals and Local Plans was slightly different to what is in place now.</p> <p>Section 5 refers to policies that have an element relating to viability assessments and shows the circumstances when site specific viability assessments will likely be required.</p>	<p>Add this text to the start of section 7: It is important to note that the Local Plan and its policies underwent a viability appraisal as part of the production and examination. The viability appraisal and its assumptions should be an important consideration when producing a site-specific viability assessment.</p> <p>Footnote: By way of background, the Local Plan for the Broads was examined using the 2012 NPPF. It is noted that the NPPG and the new NPPF have specific requirements relating to viability appraisals and these are noted. When determining the specifics of a site-specific viability appraisal, the current NPPF and NPPG will be referred to, noting that the Local Plan was examined under the 2012 NPPF.</p>
#38	Ian Withington	North Norfolk District Council	<p>Line 270 – it would be preferable if the optional approach indicated by the word “ideally” is not used. The SPD should clearly set out what is expected and also include an executive summary that brings it all together in descriptive form.</p> <p>i.e. Any assessments submitted should include an executive summary and include a spreadsheet version of the viability assessment model that can be 270 opened and interrogated in Microsoft Excel and similar spreadsheet software applications. We 271 strongly recommend Homes England's Development Appraisal Tool, an open sourced spreadsheet 272 that anyone can use.</p>	Noted. Will amend text.	<p>Amend text to say: Any assessments submitted needs to include an executive summary and ideally, the appraisal will include a spreadsheet version of the viability assessment model that can be opened and interrogated in Microsoft Excel and similar spreadsheet software applications. We strongly recommend Homes England's Development Appraisal Tool, an open sourced spreadsheet that anyone can use.</p>

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#39	Ian Withington	North Norfolk District Council	It would also be useful to place emphasis on the fact that viability assessments must now not be based on information specific to the developer, and therefore need not be treated as commercially sensitive. If commercially sensitive information is included, then it should be aggregated in published viability assessments and executive summaries.	Noted. Will amend text.	Add: Viability assessments must now not be based on information specific to the developer, and therefore need not be treated as commercially sensitive. If commercially sensitive information is included, then it should be aggregated in published viability assessments and executive summaries.
#40	Ian Withington	North Norfolk District Council	You may also wish to include text around land values and the onus now being on site promoters and developers to ensure that the price paid for land does not negatively affect the delivery of this Local Plan's objectives. Government advice clearly states that the "price paid for land is not a relevant justification for failing to accord with relevant policies in the plan" PPG, Section on Viability, para. 002. Reference ID: 10-002-20180724 revision 24.07.18. and where necessary the Local Planning Authority will require submission of viability and option agreements. Where land with planning permission is subsequently sold, the price paid for land should not be inflated to such an extent that it compromises the existing permission. Such land transactions should remain at a price that ensures that the development remains policy compliant.		<p>Add a new section as follows:</p> <p>7.2 Land Values</p> <p>Site promoters and developers need to ensure that the price paid for land does not negatively affect the delivery of this Local Plan's objectives. The NPPG says:</p> <ul style="list-style-type: none"> ‘The price paid for land is not a relevant justification for failing to accord with relevant policies in the plan. Landowners and site purchasers should consider this when agreeing land transactions’ ‘It is important for developers and other parties buying (or interested in buying) land to have regard to the total cumulative cost of all relevant policies when agreeing a price for the land. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan’ ‘Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan’. <p>Where land with planning permission is subsequently sold, the price paid for land should not be inflated to such an extent that it compromises the existing permission. Such land transactions should remain at a price that ensures that the development remains policy compliant.</p>

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#41	Ian Withington	North Norfolk District Council	<p>Section 6.5</p> <p>Disagree planning practice guidance is now clear that viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances. Even when there are exceptional circumstances (i.e. the BA's is satisfied that the information is commercially sensitive) the executive summary should be made public. In such publications the commercially sensitive information should be aggregated into costs in the executive summary. This DOES NOT mean that the information is not split out in the appraisal - just that it is not published in agreement with the BA's. Please see detail in Paragraph: 021 Reference ID: 10-021-20190509 Revision date: 09 05 2019.</p> <p>Suggest that references to the BA's keeping some or all of the appraisal confidential are removed</p>	Noted. Will amend text.	<p>7.6 Confidentiality</p> <p><u>Planning practice guidance is now clear that viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances.</u> In general, viability assessments are published online (as part of the supporting documents for planning applications on the Broads Authority's website) and are kept in the planning application file with the other studies, plans and information contained within the planning application. Members of the public may ask to see these files.</p> <p>In exceptional circumstances, where the publication of information would harm the competitiveness of a business due to the necessity to include commercial information unique to that business, the Authority will consider keeping some or all of the viability assessment confidential. In such cases, the applicant will need to provide full justification as to why the harm caused would outweigh the public interest in publishing the information.</p> <p><u>Even when there are exceptional circumstances (i.e. the Authority is satisfied that the information is commercially sensitive) the executive summary should be made public. In such publications, the commercially sensitive information should be aggregated into costs in the executive summary. This does not mean that the information is not split out in the appraisal; just that it is not published in agreement with the Authority. Please see detail in Paragraph: 021 Reference ID: 10-021-20190509 Revision date: 09 05 2019.</u></p>
#42	Ian Withington	North Norfolk District Council	Section 6.8 – welcome the clarification that independent verification will be at the expense of the applicant.	Support noted.	No change to SPD

Reference	Name	Organisation	Comment	BA Responses	Proposed changes
#43	Ian Withington	North Norfolk District Council	Policy DM34 surely the BA's wish to maximise affordable housing provision. if so the text should stipulate that the viability assessment should show the highest viable percentage and also using the transfer values used in the Local Plan viability testing along with an assessment of each type / mix of tenures to maximize the position and provision. Assessment should not just take the lowest transfer value i.e. social rented.	Noted. Will amend text.	Add text to say: Policy DM34: Affordable housing reasoned justification says that effectively, the district's percentage will be a starting point for assessment. If viability is an issue, the assessment can assess lower percentages. <u>In assessing lower percentages, the assessment should demonstrate at what percentage the scheme becomes unviable. Any assessment should use different tenures as they have different transfer values. For example, shared equity may be 50% market value; Low Cost Home Ownership may be 80 % market value. Where a developer is suggesting a scheme is unviable and seeking to reduce affordable housing they should model the highest transfer values in order to maximise the choice.</u>
#44	Ian Withington	North Norfolk District Council	Consider adding text that if no viability assessment is submitted then it will be assumed that the application is policy compliant and full policy ask is being delivered / not contended	Noted. Will amend text.	Add text to say: <u>If no viability assessment is submitted then it will be assumed that the application is policy compliant and full policy ask is being delivered / not contended</u>

Broads Authority

A Supplementary Planning Document on marketing and viability assessment requirements

Second ~~D~~raft consultation version

~~September 2019~~ February 2020

Contents

1) Introduction	2
2) About this consultation.....	2
3) National Planning Policy on viability and marketing	3
4) When do you need to assess marketing and viability?.....	4
5) Relevant policies in the Local Plan	4
6) Preparing and delivering a Marketing Strategy	5
5.1 Introduction.....	5
5.2 Permitted Development	6
5.3 The marketing strategy	7
5.4 How to market your site	7
5.5 Length of marketing campaign and re-advertising	9
5.6 Expenditure on marketing	9
5.7 Guide Price/Rent	9
5.8 Marketing statement	9
7) Preparing a Viability Assessment.....	11
6.1 Introduction.....	11
6.2 Requirements of viability assessments	11
6.3 Assisting a business to be run in a viable manner - grant funding/financial support	12
6.4 Community Infrastructure Levy (CIL).....	12
6.5 Confidentiality	12
6.6 Likely future demand for the property.....	13
6.7 Circumstances.....	13
6.8 Independent Review	13
6.9 Proposals relating to Public Houses	13
8) Additional requirements relating to specific proposals/policies.....	15
9) Summary	18
Appendix A: Privacy notice	19
Appendix B: SEA Screening	21

1) Introduction

Several policies in the Local Plan for the Broads¹ will require you, as an applicant or agent, to carry out a robust marketing strategy and/or a viability assessment if your proposed scheme is promoting something different to the adopted policy position. This Supplementary Planning Document (SPD) explains what is meant by marketing and viability, and which Local Plan policies have this requirement. It highlights how to carry out these processes and provide information in the way the Broads Authority requires. Following this SPD will reduce the chances of a delay in determining your application in relation to these requirements.

The Broads Authority is the Local Planning Authority within the Broads area and this Supplementary Planning Document (SPD) applies only to land within the Authority's executive boundary.

The NPPF 2018 defines supplementary planning documents as 'documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.'

The Authority considers that this SPD will help applicants consider the issue of marketing and viability in an appropriate way. The SPD should be read alongside relevant policies of the Local Plan for the Broads (adopted 2019). The SPD is a material consideration in determining planning applications. The advice and guidance herein will not add unnecessary financial burden to development.

In the Local Plan, we refer to 'viability assessment'. This effectively has two meanings. The first is an assessment of the viability of continuing the current land use, when a proposal is submitted to change the use. The second is to determine the level of planning contributions that might be appropriate for a proposed development whilst maintaining its viability and deliverability.

2) About this consultation

This version is the draft for consultation. Please tell us your thoughts and suggest any changes you think would make the SPD better and set out your reasons. We welcome any thoughts you have on this document, ~~but we have some specific questions to ask you:~~

- ~~• Question 1: Are we clear with what we need from applicants when they produce a marketing strategy? Do you have any suggestions to improve this document?~~

~~Question 2: We refer to a longer period of marketing of around 18 months if the market is stagnant – do you have any thoughts on that draft requirement?_~~

We consulted on the first draft of this document back in September 2019. We have made some amendments following the comments we received as part of that consultation. As the regulations for producing a SPD require two stages of consultation, we are consulting you again.

¹ The Local Plan is here: <https://www.broads-authority.gov.uk/planning/planning-policies/development>

This consultation runs from ~~27 September to 4pm on 22 November~~xxx to xxxx. We will then read to each of the comments received with our responses. We may make changes if we agree with you. If we do not make changes we will set out why. Please email us your comments: planningpolicy@broads-authority.gov.uk. Please feel free to quote the line number in this document in your response.

This consultation document and consultation process have been developed to adhere to the Broads Authority's Statement of Community Involvement².

Information provided by you in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), and the Environmental Information Regulations 2004). Please see [Appendix A](#) for the Privacy Notice.

Are you satisfied that this consultation has followed the Consultation Principles? If not, or you have any other observations about how we can improve the process, please contact us at planningpolicy@broads-authority.gov.uk.

Historic England, Natural England and the Environment Agency were asked for their opinions relating to the need for a Strategic Environment Assessment. Historic England replied saying 'we would advise that it is not necessary to undertake a Strategic Environmental Assessment of this particular SPD'. The Environment Agency said 'an SEA likely is not required'. Natural England did not response. The SEA Screening is at [Appendix B](#).

3) National Planning Policy on viability and marketing

The National Planning Policy Guidance (NPPG)³ states that: 'Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return'.

The Local Plan for the Broads was examined under the 2012 National Planning Policy Framework (NPPF). However, all planning applications submitted to the Broads Authority will be considered against the most up-to-date version of the NPPF, published in 2019.

Regarding viability, the 2019 NPPF⁴ (para 57) states that: 'Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case,

² Our current SCI is here: http://www.broads-authority.gov.uk/_data/assets/pdf_file/0006/576609/Final-Adopted-Statement-of-Community-Involvement-November-2014.pdf

³ National Planning Policy Guidance on viability: <https://www.gov.uk/guidance/viability>

⁴ NPPF 2019:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740441/National_Planning_Policy_Framework_web_accessible_version.pdf

including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.’

More information from the NPPG relating to viability assessments can be found here: Standardised inputs to viability assessment: <https://www.gov.uk/guidance/viability#standardised-inputs-to-viability-assessment>.

Whilst not necessarily National Policy, the Royal Institute of Chartered Surveyors have a guidance note⁵ and are intending to update it.

Regarding marketing, the NPPF and NPPG seem to only refer to marketing relating to the use of heritage assets (NPPF paragraph 195).

4) When do you need to assess marketing and viability?

If you are required to prepare a marketing and viability assessment, this should be completed before a planning application is submitted. Marketing and viability assessments carried out after an application has been submitted to justify a new use or development, will inevitably lead to a delay in determination of the application due to the sustained period required for marketing.

It will be necessary to provide information on how a site has been marketed and to assess the viability of the site in these circumstances:

- a. When a policy of the Local Plan for the Broads requires appropriate marketing of a site (and evidence of this marketing to be provided) to assist in proving to the Broads Authority that the current use of the site is no longer appropriate.
- b. When a policy requires the submission of viability evidence to demonstrate that a use of a site is not viable.
- c. When a policy requires something to be provided as part of a scheme (such as affordable housing and planning obligations) and a promoter assesses the impact of this provision on the viability of the scheme.

5) Relevant policies in the Local Plan

The following policies of the Local Plan for the Broads refer to marketing/rent and viability requirements. If your scheme is promoting something different to the position set out in these policies, you will need to carry out a marketing strategy and/or a viability assessment. The objective is to assess the economic viability of the existing business/use and, if necessary, market it at a reasonable price to find a new owner/occupier and retain that use.

Policies containing marketing/rent requirements:

⁵ Financial Viability in Planning, 1st edition <https://www.rics.org/uk/upholding-professional-standards/sector-standards/land/financial-viability-in-planning/>. PLEASE NOTE THAT AT THE TIME OF THIS CONSULTATION, THIS DOCUMENT HAS BEEN REVIEWED AND AMENDED AND IS OUT FOR CONSULTATION, WE WILL UPDATE THE SPD ACCORDINGLY TO REFLECT THE SITUATION AT ADOPTION OF THE SPD (<https://consultations.rics.org/consult.ti/financialviabilitygn/consultationHome>)

- Policy DM12: Re-use of Historic Buildings
- Policy DM26: Protecting general employment
- Policy DM30: Holiday accommodation – new provision and retention
- Policy DM38: Permanent and temporary dwellings for rural enterprise workers
- Policy DM44: Visitor and community facilities and services
- Policy DM48: Conversion of buildings

Policies containing viability requirements:

- Policy DM4: Water Efficiency
- Policy DM12: Re-use of Historic Buildings
- Policy SP11: Waterside sites
- Policy DM26: Protecting general employment
- Policy DM30: Holiday accommodation – new provision and retention
- Policy DM34: Affordable housing
- Policy DM38: Permanent and temporary dwellings for rural enterprise workers
- Policy DM43: Design
- Policy DM44: Visitor and community facilities and services
- Policy DM48: Conversion of buildings
- Policy HOR8: Land on the Corner of Ferry Road, Horning
- Policy THU1: Tourism development at Hedera House, Thurne
- Policy SSPUBS: Waterside pubs network

6) Preparing and delivering a Marketing Strategy

5.1 Introduction

This section sets out the detailed requirements for marketing a site to show that there is no demand for the existing use and to justify a change of use.

5.2 The requirement to market tourist accommodation

We note that the marketing requirement is slightly different for tourist accommodation. The policy seeks marketing the accommodation to potential customers for 12 months to understand the demand for the accommodation rather than marketing it for 12 months to sell it on the open market.

If you believe that your tourist accommodation is not successful or not viable enough, then we will need to understand why this is. We need to understand, in order to be successful and take into account the various costs associated with the accommodation, what % occupancy (in days or weeks in a year) is the 'break even' level. When marketing the accommodation for 12 months, we can then see how the occupancy level rates against that 'break even' level in that time.

Tourist accommodation permitted in the first few months of a calendar year may not receive many bookings for the following summer/peak period because people may book their holidays well in advance. Therefore, the 12-month period for marketing is best to start from the following December (1st) to be available for booking when people may book their holidays.

When marketing your accommodation, we would expect the accommodation to be available for rent on at least three well-known holiday accommodation websites. These may include Air BnB and bookings.com for example. You will need to explain and justify the websites you use. We would

expect good quality photos posted on those websites to help the accommodation be attractive to those looking for somewhere to stay.

The price charged per night needs to be reasonable and a level that is acceptable and one that someone is likely to pay to stay at your accommodation. This price will require justifying.

The property should be able to be let for a variety of time periods (for example 1 night, 2 nights, 7 nights etc), in accordance with any planning conditions attached to the property. Again, these time periods need to be justified.

If the property is unavailable for rent during the 12 months, you need to contact the Broads Authority to discuss this. The policy does say that a sustained period of 12 months is required. We may require the time the property is unavailable to be added on to the end of the 12 months.

The marketing report presented to the Broads Authority at the end of the 12 month period will need to detail what bookings were made and for how long. The report needs to say how many days or weeks in a year the accommodation was rented for and how that relates to what was expected to be successful year for the accommodation. This could usefully include information from the websites used to advertise the property. Indeed, information of the reviews received for the holiday accommodation will be of interest and relevance. If a negative review raises issues that can be addressed, how have you addressed those issues?

A different approach as stated above could be acceptable, but would need agreeing with the Broads Authority in advance.

The rest of this section (section 6) may not necessarily apply to changes of use of tourist accommodation, but we advise you to speak to the Planning Team (who offer free pre-application advice).

Specific questions for this section:

a) How do we define a well-known website?

b) Is there a cost associated with advertising on these websites? Is there a fair number to require?

c) Do any website companies have exclusivity demands? Do they say that you should not advertise on other websites?

d) When should the 12-month period start from; as soon as permission is granted, or a date like the following 1 December?

e) How do we address the quality of marketing? For example, should we say something about the standard of pictures on websites that advertise the property? What about the actual provisions of the property itself? How do we consider if a site is run-down and negative reviews on websites?

5.3 Permitted Development

Permitted Development rights allow changes of certain uses to other uses, subject to particular criteria. As part of marketing the site, the site will need to be marketed and/or investigated in terms of its potential for other uses permitted by the General Permitted Development Order⁶ as well as for its current use.

⁶ https://www.planningportal.co.uk/info/200187/your_responsibilities/37/planning_permission/2

5.4 The marketing strategy

How you market the site will vary based on the type of premises being advertised. The scope of the marketing exercise and how you intend to market the site needs to be set out in the marketing strategy and agreed with the Broads Authority beforehand. This will ensure the marketing strategy meets the requirements set out in this SPD/section, and will avoid the need to repeat the marketing exercise should the Authority consider the marketing is not up to standard, saving you time and money.

The marketing strategy will need to explain why the property is being marketed and its location, a description of the site, a summary of the planning history of the site including any restrictions, how the site will be advertised and markets and guide terms. More detail is provided in the following paragraphs.

The strategy will need to include a marketing matrix like the template below.

Marketing initiative	Budget	Year: 20xx											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Marketing board	£xxx												
Targeted mailing	£xxx												
Online advertisement	£xxx												
...etc. etc.	£xxx												

5.5 How to market your site

As a minimum, the following initiatives need to be used for all premises. The Broads Authority may request other ways of marketing. [The strategy will be proportionate to the site/property that is being marketed/proposed for change of use.](#) Your strategy will need to explain how you will use the following methods in marketing your site. If you do not wish to use a particular method, you will need to fully explain and justify this in your strategy. [The Marketing Strategy will be agreed with the Broads Authority in advance.](#)

5.5.1 Method of marketing and approach to advertisement

This will cover:

- Basis of instruction - sole agent or joint agent, etc.
- Method of disposal - private treaty or informal/formal bids.
- Advertisement option - sale boards, internet, PR, publications, mailing, etc.

5.5.2 Marketing board

- A simple 'for sale' board for small commercial premises, single tourist unit accommodation and community facilities.
- For larger commercial units and tourist accommodation sites, larger boards giving details of the property including the guide price are required.
- Boards need to be placed so they can be seen from the main public vantage point (which could be a road and/or river in the Broads) but not so they cause obstructions or inconvenience to the public or neighbouring uses. They should also be designed and located in a way to not impact the special qualities of the Broads.
- Temporary 'for sale' boards do not generally require consent, subject to certain restrictions, and it is the land owner's responsibility to comply with these⁷.

⁷ [The Town and Country Planning \(Control of Advertisements\) \(England\) Regulations 2007, Schedule 3, Part 1, Class 3A; 'Miscellaneous temporary advertisements'](#)

5.5.3 Marketing particulars

- a) The details of the site need to be advertised. The Marketing Strategy also needs to explain how you will advertise these particulars.
- b) For a small site, this could be on the website or be a simple handout.
- c) For larger commercial units and tourist accommodation sites, which are more likely to have a regional or national audience, the particulars need to be set out in a bespoke, well-designed brochure. This needs to include layouts of the building and professional photos.
- d) In all cases, the following information is required:
 - Background –why the property is being marketed.
 - Description – including details on floorspace, number of floors, layout, car parking and yard facilities.
 - Internal and external photographs
 - Location - including information on proximity to regional centres such as Norwich, Ipswich and Lowestoft, links to transport networks and general setting (e.g. Business Park / enterprise zone).
 - Description of accommodation
 - Terms (leasehold, freehold, long lease, etc.) - these should be flexible and consider prevailing market conditions. The length of leases should not be unduly restrictive.
 - Guide price/rent
 - Planning information – a summary of the existing planning use and status, history and restrictions.
 - Services and utilities
 - Energy Performance Certificate
 - Rateable value and business rates
 - VAT status
 - Legal and professional costs
 - Viewing arrangements
 - Contact information for the agent

5.5.4 Advertisement in press/press release

- a) For small commercial units, community facilities and single unit tourist accommodation, an advert is to be placed and maintained (for a period to be agreed with the Authority) in a local newspaper and estate/property agents (including with specialist trade agents if appropriate).
- b) For larger commercial units and tourist accommodation sites, specialist publications are to be used (again for a period to be agreed with the Authority) and estate/property agents (including with specialist trade agents if appropriate).
- c) Advertisements in both local and national publications should include a colour picture of the premises.
- d) For larger commercial units and tourist accommodation sites, a press release could be given to the local and regional press.

5.5.5 Online advertisement

- a) The site needs to be published on the agent's website
- b) Also, if for a commercial site, one national commercial property search engine.
- c) For very large commercial units and tourist accommodation parks, a bespoke website for the property should be created.
- d) The information set out in 6.4.2 needs to be displayed on the website.

5.5.6 Targeted mailing

- a) This would be completed by the agent.
- b) They may mail their contacts and/or purchase a database of contacts and send them the details.

5.6 Length of marketing campaign and re-advertising

The marketing of the site must be for a sustained period of 12 months at a realistic price (see 5.7). ~~A longer marketing period may be required if the market is stagnant.~~

This period may have the added benefit of allowing communities time to develop community led proposals, and will also be relevant if the property has been registered as an asset of community value with Broadland District, Great Yarmouth Borough, North Norfolk, Norwich City, South Norfolk or East Suffolk Council.

If there has not been a willing buyer/occupier in the first three months of marketing, the site/property will need to be re-advertised, using the above strategy, at three monthly intervals unless otherwise agreed with the Authority. This will need to continue for at least 12 months.

The strategy needs to address these requirements.

5.7 Expenditure on marketing

The budget for the marketing campaign should be proportionate to the anticipated return from the property. As a guide, the budget should be about 3% of the anticipated return from the property. The strategy needs to provide details of this.

5.8 Guide Price/Rent

This needs to be commensurate with the current market price for similar premises (which may reflect if the market is stagnant). To provide impartial evidence regarding viability and marketing of the property, an independent valuation is likely to be required. It is expected that the value of the property will be derived from an expert RICS registered valuer (likely to be the District Valuation Office) or accredited member of RICS (Royal Institution of Chartered Surveyors). The marketing must be at a reasonable and realistic value for the current permitted use class and for other permitted use classes (see 5.2) both for sale and rent. The strategy needs to provide details of this.

5.9 Marketing statement

If there has been no success in selling or letting the unit after 12 months of marketing, a marketing statement must be prepared and submitted with any planning application for redevelopment or change of use. The marketing statement should set out the following details:

- a) The original marketing strategy as agreed with the Broads Authority (which is likely to be in accordance with this SPD)
- b) The duration and dates of the marketing campaign
- c) The value of the property used in the marketing campaign and the justification to support this value
- d) Evidence that the marketing strategy was delivered – to include photos of the marketing boards, copies of particulars, screenshots of online advertisements, copies of press articles and adverts
- e) A full record of enquiries received throughout the course of the marketing campaign. This needs to record the date of the enquiry, details of the company/individual, nature of the enquiry, if the property was inspected, details of any follow-up and reasons why the prospective occupier deemed the premises unsuitable. If any offers were rejected, the grounds on which the offers were rejected must be provided. This will be subject to GDPR requirements.

- 309 f) If the record of enquiries indicates a lack of interest during the marketing campaign, the
310 report needs to detail the measure undertaken to alter the strategy and to increase
311 interest.

DRAFT

7) Preparing a Viability Assessment

7.1 Introduction

This SPD gives general information about requirements for viability assessments. It is not intended that this SPD goes into detail about completing viability assessments; instead it discusses viability assessments more generally. For more detailed information, visit the NPPG:

<https://www.gov.uk/guidance/viability>.

It is important to note that the Local Plan and its policies underwent a viability appraisal⁸ as part of the production and examination. The viability appraisal and its assumptions should be an important consideration when producing a site-specific viability assessment⁹.

Viability assessments must now not be based on information specific to the developer, and therefore need not be treated as commercially sensitive. If commercially sensitive information is included, then it should be aggregated in published viability assessments and executive summaries.

If no viability assessment is submitted then it will be assumed that the application is policy compliant and full policy ask is being delivered / not contended

7.2 Land Values

Site promoters and developers need to ensure that the price paid for land does not negatively affect the delivery of this Local Plan's objectives. The NPPG says:

- 'The price paid for land is not a relevant justification for failing to accord with relevant policies in the plan. Landowners and site purchasers should consider this when agreeing land transactions'
- 'It is important for developers and other parties buying (or interested in buying) land to have regard to the total cumulative cost of all relevant policies when agreeing a price for the land. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan'
- 'Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan'.

Where land with planning permission is subsequently sold, the price paid for land should not be inflated to such an extent that it compromises the existing permission. Such land transactions should remain at a price that ensures that the development remains policy compliant.

7.3 Requirements of viability assessments

An independent chartered surveyor must complete the viability assessment.

The level of detail and type of evidence and analysis presented should be proportionate to the scale and nature of the site and/or property in question.

⁸ https://www.broads-authority.gov.uk/_data/assets/pdf_file/0010/1418653/EPS28-Updated-Viability-Appraisal-for-the-Broads-Local-Plan-Nov-2018.pdf

⁹ By way of background, the Local Plan for the Broads was examined using the 2012 NPPF. It is noted that the NPPG and the new NPPF have specific requirements relating to viability appraisals and these are noted. When determining the specifics of a site-specific viability appraisal, the current NPPF and NPPG will be referred to, noting that the Local Plan was examined under the 2012 NPPF.

The assessment must be clear and transparent, setting out robust evidence behind the assumptions that go into the development appraisal. There must be no hidden calculations or assumptions in any model or appraisal.

Viability Assessments need to include details of the proposed scheme including site area, unit numbers, number of habitable rooms (if residential), unit size, density and the split between the proposed tenures/uses. Floorspace figures need to be provided for residential uses (gross internal area) by tenure, and non-residential uses in gross internal area (GIA) and net internal area (NIA). Information needs to be provided relating to the target market of the development and proposed specification, and be consistent with assumed costs and values.

Details of the assumed development programme and the timing of cost and income inputs need to be provided.

Any assessments submitted needs to include an executive summary and ~~Ideally, the appraisal will include~~ a spreadsheet version of the viability assessment model that can be opened and interrogated in Microsoft Excel and similar spreadsheet software applications. We strongly recommend Homes England's Development Appraisal Tool, an open sourced spreadsheet that anyone can use.

7.4 Assisting a business to be run in a viable manner - grant funding/financial support

As part of the assessment, the applicant will need to demonstrate that they have explored all possible options to improve the viability and sustainability of the service/business. It is up to the applicant to investigate and demonstrate the steps they have taken, but it could include the following. Details of the grants or support investigated, whether the application was successful (and if not, why not), and the impact of this funding or support on viability must be provided as part of the viability assessment.

- a) **Business rate relief:** The district council may provide business rate relief. Owners or operators of the site in question should approach the district council to discuss the potential for this, and evidence of any such discussions with the district council will need to be provided with any planning application.
- b) **Interventions to improve the commercial attractiveness:** The owner or operator of the site will need to provide evidence showing how they have considered reasonable interventions to improve the attractiveness of the site, and evidence if these interventions are not feasible (if that is the case).
- c) **Grant funding and financial support:** Information showing that all available opportunities of grant funding and financial support to help retain the current use(s) have been fully explored and that none are viable (if that is the conclusion).

7.5 Community Infrastructure Levy (CIL)

At the time of writing, the Broads Authority does not have a CIL in place.

7.6 Confidentiality

Planning practice guidance is now clear that viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances. In general, viability assessments are published online (as part of the supporting documents for planning applications on the Broads Authority's website) and are kept in the planning application file with the other studies,

plans and information contained within the planning application. Members of the public may ask to see these files.

In exceptional circumstances, where the publication of information would harm the competitiveness of a business due to the necessity to include commercial information unique to that business, the Authority will consider keeping some ~~or all~~ of the viability assessment confidential. In such cases, the applicant will need to provide full justification as to why the harm caused would outweigh the public interest in publishing the information.

Even when there are exceptional circumstances (i.e. the Authority is satisfied that the information is commercially sensitive) the executive summary should be made public. In such publications, the commercially sensitive information should be aggregated into costs in the executive summary. This does not mean that the information is not split out in the appraisal; just that it is not published in agreement with the Authority. Please see detail in Paragraph: 021 Reference ID: 10-021-20190509 Revision date: 09 05 2019¹⁰.

7.7 Likely future demand for the property

The viability assessment needs to assess the current and likely future market demand for the site or property.

7.8 Circumstances

Any Issues relating to the personal circumstances of the applicant or to the price paid for the building cannot be taken into consideration.

7.9 Independent Review

The Authority will need to verify the content of a viability assessment and may need to employ external expertise to do so. The applicant will need to meet this expense.

The independent review will assess and scrutinise the assumptions and assessment and give a view on whether the assessment is robust. If the assessment is not considered robust, this will be discussed with the applicant who may be asked to amend the assessment. Depending on circumstances, the independent review may include a revised viability assessment in accordance with this SPD and again the applicant will need to meet this expense.

7.10 Proposals relating to Public Houses

Owners wishing to pursue other uses of a public house will need to make a planning application and submit a report undertaken by an independent Chartered Surveyor that meets the tests as set out in the CAMRA Public House Viability Test¹¹. The Authority will need to verify the content of the report and may need to employ external expertise to do so. The applicant will need to meet this expense.

The Public House Viability Test does not seek to protect the continued existence of every pub - circumstances can change and some pubs find themselves struggling to continue. It does, however, help all those concerned in such cases – local authorities, public house owners, public house users and Planning Inspectors – by providing a fact-based method to rigorously scrutinise and test the future viability of a pub against a set of well-accepted measures.

The fundamental basis of this viability test is to assess the continued viability of a pub business. The question to address is what the business could achieve if it were run efficiently by management committed to maximising its success.

¹⁰ NPPG: <https://www.gov.uk/guidance/viability>

¹¹ CAMRA Public House Viability Test: www.camra.org.uk/documents/10180/36197/PHVT/725c3a01-9c07-4b2b-b263-a1842bef09b7

It is also important to note that some public houses may be listed as Assets of Community Value. These are allocated as such by the District Council, in liaison with the Broads Authority. There are certain requirements relating to these Assets which can be found here: <https://mycommunity.org.uk/help-centre/resources/land-and-building-assets/assets-community-value-acv/>

DRAFT

8) Additional requirements relating to specific proposals/policies

7.1 Introduction

Some schemes are specific and trigger slightly different approaches to marketing and viability. In these instances, as set out above, the approach to marketing needs to be agreed with the Authority and viability and marketing assessments will be reviewed by external expertise with the cost met in full by the applicant. The specific differences are highlighted in bold.

7.2 Economy section of Local Plan.

The reasoned justification to policy DM26: Protecting general employment says that any assessment needs to consider employment, tourism, recreational and community uses of the site.

‘To prevent the loss of established employment sites and properties, proposals to redevelop them to uses related to community facilities or to sustainable tourism and recreation uses will only be permitted if it can be demonstrated that employment uses (uses within Classes B1, B2 or B8 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010) are unviable. **Only then will alternative uses be permitted, again subject to demonstrating that employment, tourism, recreational or community uses would be unviable**’.

7.3 Heritage section of the Local Plan

The reasoned justification to policy DM12: Re-use of Historic Buildings says that assessments need to consider and detail conversion costs and market for economic, leisure and tourism uses of the site.

‘Applications to convert a historic building to residential use will be expected to be accompanied by a report, undertaken by an independent Chartered Surveyor, **which demonstrates why economic, leisure and tourism uses would not be suitable or viable as a result of inherent issues with the building**. Issues relating to the personal circumstances of the applicant or as a result of a price paid for the building will not be taken into consideration. **Details should be provided of conversion costs and the estimated yield of the commercial uses, and evidence provided on the efforts that have been made to secure economic, leisure and tourism re-use** for a continuous 12-month period’.

7.4 Tourist accommodation section of the Local Plan

Policy DM30: Holiday accommodation – new provision and retention says that the emphasis is on demonstrating no demand for tourist accommodation in the area as well as assessing the impact of a net loss of accommodation that is necessary.

‘Existing tourism accommodation will be protected. Change of use to a second home or permanent residence will only be considered in exceptional circumstances **where it can be fully and satisfactorily demonstrated that there is no demand for tourist accommodation**’.

‘To make sure new holiday accommodation is used for tourism purposes that benefit the economy of the Broads, occupancy conditions will be sought to prevent the accommodation from being used as a second home or sold on the open market. To ensure an adequate supply of holiday accommodation is retained, the removal of such a condition will only be permitted where the proposal is accompanied by a statement, completed by an independent chartered surveyor, which demonstrates that it is financially unviable or **that any net loss of accommodation is necessary to allow appropriate relocation or redevelopment**’.

7.5 Affordable Housing policy

Policy DM34: Affordable housing reasoned justification says that effectively, the district’s percentage will be a starting point for assessment. If viability is an issue, the assessment can assess lower

percentages. In assessing lower percentages, the assessment should demonstrate at what percentage the scheme becomes unviable. Any assessment should use different tenures as they have different transfer values. For example, shared equity may be 50% market value; Low Cost Home Ownership may be 80 % market value. Where a developer is suggesting a scheme is unviable and seeking to reduce affordable housing they should model the highest transfer values in order to maximise the choice. Conversely, for any market housing, the assessment will work up from zero.

‘The independent review process will require the applicant to submit a site-specific viability appraisal (to include a prediction of all development costs and revenues for mixed use schemes) to the Authority’s appointed assessor. **They will review the submitted viability appraisal and assess the viable amount of affordable housing or the minimum number of market homes needed to cross subsidise the delivery of affordable housing on a rural exceptions site.** This review shall be carried out entirely at the applicant’s expense. Where little or no affordable housing would be considered viable through the appraisal exercise, the Authority will balance the findings from this against the need for new developments to provide for affordable housing. In negotiating a site-specific provision with the applicant, the Authority will have regard to whether or not the development would be considered sustainable in social terms’.

7.6 Converting buildings

Policy DM48: Conversion of buildings reasoned justification says that assessments need to consider and detail conversion costs and commercial yield and consider proposals for economic, commercial, leisure and tourism uses.

‘Residential conversions may be appropriate for some types of buildings and in certain locations, providing that it has been demonstrated that **a commercial or community use of the building is unviable** and that the building is of sufficient quality to merit retention by conversion. Applications to convert a building outside of a development boundary to residential use should be accompanied by a report undertaken, by an independent Chartered Surveyor, which **demonstrates why employment, recreation, tourism and community uses would not be viable due to inherent issues with the building.** This should include **details of conversion costs, the estimated yield of the commercial uses, and evidence of the efforts that have been made to secure employment, recreation, tourism and community** re-use for a sustained period of 12 months’.

7.7 Rural enterprise workers dwellings

Policy DM38: Permanent and temporary dwellings for rural enterprise workers addresses what to do if the condition relating to a rural enterprise dwelling is proposed to change to make it market residential.

‘Should a new dwelling be permitted under this policy, the Authority will impose a condition restricting its occupation to a person (and their immediate family) solely or mainly employed in agriculture, forestry or a Broads related rural enterprise, as appropriate.

The **removal of an occupancy condition** will only be permitted in exceptional circumstances where it can be demonstrated that:

- i) There is no longer a long-term need for the dwelling on the particular enterprise on which the dwelling is located; and
- j) **Unsuccessful attempts have been made to sell or rent the dwelling at a price that takes account of the occupancy condition**

517 Applications for the removal of occupancy conditions will also need to be accompanied **by robust**
518 **information to demonstrate that unsuccessful attempts have been made, for a continuous period**
519 **of at least 12 months, to sell or rent the dwelling at a reasonable price. This should take account of**
520 **the occupancy condition, including offering it to a minimum of three local Registered Social**
521 **Landlords operating locally on terms which would prioritise its occupation by a rural worker as an**
522 **affordable dwelling, and that option has been refused. With regards to criterion j), unless there**
523 **are special circumstances to justify restricting the dwelling to the particular enterprise where the**
524 **dwelling is located, an occupancy condition is likely to allow occupation by other workers in the**
525 **locality. In this case it should be considered whether there is other demand locally, not just**
526 **whether the demand for this particular enterprise has ceased’.**

DRAFT

527 **9) Summary**

528 If you intend to submit a planning application to the Broads Authority, please check at an early stage
529 whether your proposal will require marketing of the site and/or a viability. If it does, you must
530 submit the assessment with your application as the Authority cannot validate your application until
531 the assessment is received.

532 Please note that the assessment will be treated as public information in support of the application,
533 along with all the other required documents and plans.

534 During the determination of the application, the Authority will assess the information you have
535 provided against the market and viability requirements set out in this SPD. It will verify the content
536 of any viability assessments and may need to employ external independent expertise to do so. As
537 the applicant, you will need to meet this expense. The Authority will consider the expert advice and
538 let you know whether: (a) the assessment adequately demonstrates the argument you have put
539 forward; (b) further information is required; or (c) the assessment does not demonstrate the case.
540 The application will then be determined accordingly.

Appendix A: Privacy notice

Personal data

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018. Our Data Protection Policy can be found here: http://www.broads-authority.gov.uk/data/assets/pdf_file/0003/1111485/Data-Protection-Policy-2018.pdf.

The Broads Authority will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will be made publicly available as part of the process. It will not however be sold or transferred to third parties other than for the purposes of the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer

The Broads Authority is the data controller. The Data Protection Officer can be contacted at dpo@broads-authority.gov.uk or (01603) 610734.

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters. We will also contact you about later stages of the Local Plan process.

3. Our legal basis for processing your personal data

The Data Protection Act 2018 states that, as a Local Planning Authority, the Broads Authority may process personal data as necessary for the effective performance of a task carried out in the public interest, i.e. a consultation.

4. With whom we will be sharing your personal data

Your personal data will not be shared with any organisation outside of MHCLG. Only your name and organisation will be made public alongside your response to this consultation.

Your personal data will not be transferred outside the EU.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for 16 years from the closure of the consultation in accordance with our Data and Information Retention Policy. A copy can be found here <http://www.broads-authority.gov.uk/about-us/privacy>.

6. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a) to see what data we have about you
- b) to ask us to stop using your data, but keep it on record
- c) to ask to have all or some of your data deleted or corrected

576 d) to lodge a complaint with the independent Information Commissioner (ICO) if you think we
577 are not handling your data fairly or in accordance with the law. You can contact the ICO at
578 <https://ico.org.uk/>, or telephone 0303 123 1113.

579 **7.** Your personal data will not be used for any automated decision making.

DRAFT

Appendix B: SEA Screening

The Strategic Environmental Assessment (SEA) Directive is a European Union requirement that seeks to provide a high level of protection of the environment by integrating environmental considerations into the process of preparing certain plans and programmes. Its aim is “to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”

With regards to a SPD requiring a SEA, the NPPG says:

Supplementary planning documents do not require a sustainability appraisal but may in exceptional circumstances require a strategic environmental assessment if they are likely to have significant environmental effects that have not already have been assessed during the preparation of the [Local Plan](#).

A strategic environmental assessment is unlikely to be required where a supplementary planning document deals only with a small area at a local level (see regulation 5(6) of the Environmental Assessment of Plans and Programmes Regulations 2004), unless it is considered that there are likely to be significant environmental effects.

Before deciding whether significant environment effects are likely, the local planning authority should take into account the criteria specified in Schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004 and consult the consultation bodies.

The following is an internal assessment relating to the requirement of the Draft Marketing and Viability SPD to undergo a Strategic Environmental Assessment.

The Environmental Assessment of Plans and Programmes Regulations 2004 requirement	Assessment of the Marketing and Viability SPD
Environmental assessment for plans and programmes: first formal preparatory act on or after 21st July 2004	
Is on or after 21st July 2004.	Yes. The SPD will be completed in 2019.
The plan or programme sets the framework for future development consent of projects.	No. It elaborates on already adopted policy.
The plan or programme is the subject of a determination under regulation 9(1) or a direction under regulation 10(3) that it is likely to have significant environmental effects.	See assessment in this table.
CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT	
1. The characteristics of plans and programmes, having regard, in particular, to	
The degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating	The SPD expands on adopted policy. It will be a material consideration in determining planning applications. It is considered that the subject of the SPD does not negatively impact this criterion.

The Environmental Assessment of Plans and Programmes Regulations 2004 requirement	Assessment of the Marketing and Viability SPD
resources.	
the degree to which the plan or programme influences other plans and programmes including those in a hierarchy	The SPD does not influence other plans, rather expands on adopted policy. That is to say, it has been influenced by other plans or programmes.
the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development	It is considered that the subject of the SPD does not negatively impact this criterion.
environmental problems relevant to the plan or programme	It is considered that the subject of the SPD does not negatively impact this criterion.
the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).	It is considered that the subject of the SPD does not negatively impact this criterion.
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to	
the probability, duration, frequency and reversibility of the effects	It is considered that the subject of the SPD does not negatively impact this criterion.
the cumulative nature of the effects	It is considered that the subject of the SPD does not negatively impact this criterion..
the transboundary nature of the effects	<p>The Broads Authority sits within six districts so by its very nature there are transboundary considerations, in relation to administrative boundaries.</p> <p>It is considered that the subject of the SPD does not negatively impact this criterion. The requirements will relate to a specific scheme and site.</p>
the risks to human health or the environment (for example, due to accidents)	It is considered that the subject of the SPD does not negatively impact this criterion.
the magnitude and spatial extent of the effects (geographical area and size of the population)	The SPD will cover the Broads Authority which includes 6,000 permanent residents. There are

The Environmental Assessment of Plans and Programmes Regulations 2004 requirement	Assessment of the Marketing and Viability SPD
likely to be affected)	also visitors throughout the year.
<p>the value and vulnerability of the area likely to be affected due to—</p> <ul style="list-style-type: none"> • special natural characteristics or cultural heritage; • exceeded environmental quality standards or limit values; or • intensive land-use; 	<p>The Broads is special in its natural characteristics and cultural heritage.</p> <p>Unsure if standards or limits have been exceeded in the Broads</p> <p>Not relevant</p>
The effects on areas or landscapes which have a recognised national, Community or international protection status.	The area to which the SPD applies is the Broads with an equivalent status to that of a National Park.

Response to consultation with Historic England, Natural England and Environment Agency:

Historic England

In terms of our area of interest, given the nature of the SPD and on the basis of the information provided in this consultation, we would concur with your assessment that the document is unlikely to result in any significant environmental effects and will simply provide additional guidance on existing Policies contained within a Adopted Development Plan Document which has already been subject to a Sustainability Appraisal/SEA. As a result, we would advise that it is not necessary to undertake a Strategic Environmental Assessment of this particular SPD.

Environment Agency

As stated, it elaborates on already adopted policy. We therefore agree with the conclusions you have drawn in that an SEA likely is not required.