

REPORT OF THE MAYOR		
EXECUTIVE RESPONSE TO LIVING IN HACKNEY COMMISSION SCRUTINY REVIEW INTO AFFORDABLE HOUSING Cabinet: June 2015	Classification Public	Enclosures
	Ward(s) affected All	

1. Introduction

- 1.1 The Corporate responses to the recommendations of the Commission reflect the collective position of a number of service areas across the Council, all of whom have a role to play in ensuring that the delivery of affordable housing in the borough is maximised. The responses have been reviewed by Cllr Philip Glanville (Cabinet Member for Housing) and Cllr Guy Nicolson (Cabinet Member for Regeneration) who have led on the compilation of this response.
- 1.2 The Living in Hackney Scrutiny Commission undertook a detailed and wide ranging review of the delivery of affordable housing in Hackney. Evidence was collected over a six month period from a wide range of individuals and organisations engaged in housing delivery across the planning and direct housing delivery fields. Specifically, aside from Council officers (who all worked to support and provide evidenced to the Commission), this included seven registered providers working in the Borough, members and officers from five other inner London authorities, independent planning consultants and an independent planning academic. A wide ranging survey was undertaken of Hackney residents seeking their views on the delivery of affordable housing as well as a review of a number of data sources concerning the Borough's performance nationally and regionally. The commission also undertook a site visit to a Council housing regeneration scheme.
- 1.3 During its work the Commission received evidence and recognised that Hackney delivered the fourth highest number of affordable housing units in London and the third highest in terms of new housing units delivered against population size, with 10.6 affordable housing units per thousand residents. Relative to other London boroughs, nationally and within London, Hackney is a high performer in terms of the overall delivery of affordable housing but also in the context of delivering homes itself, with over 1000 affordable homes being delivered by the Council. This delivery is evidence of the Council's long standing and strategic approach towards housing delivery within the borough. This work has been assisted by the Council making best use of its HRA borrowing headroom and successfully bidding for an additional £10m to fund additional borrowing to bring forward new housing delivery.
- 1.4 In summary, the Commission has successfully undertaken a substantial and wide ranging piece of work encompassing two major service delivery and policy areas. The focus and range of the recommendations are evidence of the Commission's focus and clear and detailed grasp of the housing and planning fundamentals underlining affordable housing delivery in the Borough. The bespoke, targeted nature of its recommendations addresses national, regional and local issues and will add significant value to the Council further developing the delivery of affordable housing in the Borough

in the future in what are likely to be challenging times for the delivery of social and affordable housing.

2. RECOMMENDATION

2.1 Cabinet are asked to approve the content of this response.

3 EXECUTIVE RESPONSE TO SCRUTINY COMMISSION RECOMMENDATIONS

Recommendation 1: A clearer position on when a review will be required as part of a planning consent for a development.

The Commission recommends that the Council produces a clear policy stating the circumstances and criteria where conditionality should be added to a planning application to allow for a planning re-appraisal, should a development not be implemented (started) or completed within a defined period.

We would suggest that this defined period should be less than the 18-month – 2-year period, which the service reported as being an appropriate time period for a re-appraisal should the scheme not have been implemented.

We note the difference between the implementation of a scheme (the start of it being built) and completion (the finished article).

As a preference, the Commission would suggest that re-appraisals are done at the point of completion, rather than initiation. In the current climate of rising prices, this could help better ensure that all acceleration in property values are translated into affordable housing gain.

We ask that a progress update on this work is given to the Commission in January 2016.

We ask that the work is complete by June 2016.

Response:

Officers agree with the Commission that viability review mechanisms are a key issue and will take action to explore the scope and feasibility of introducing appropriate triggers for requiring a reappraisal scheme. This will incorporate and build upon the existing work Development Management and Property Services have undertaken in successfully negotiating inter-review mechanisms in recent schemes such as Woodberry Down.

In a strong property market such as Hackney the viability of development in terms of the price paid for residential units or the rental level achieved for commercial space can increase significantly between the time at which planning permission is granted to the time development starts on site and then again to when the development is occupied.

For this reason viability review mechanisms are agreed within the s106 agreements as appropriate. This is confirmed within the Council's soon to be adopted (subject to Cabinet approval in July 2015) new Planning Contributions Supplementary Planning Document (SPD). Officers are of the view that the principle should also be taken forward in more detail within a guidance note on viability that would support the SPD. This would assist in providing consistency and clarity to developers and Council Officers when negotiating review mechanisms. The Council will also seek to include review mechanism requirements in the emerging Local Plan Review to reinforce support in statutory

planning policies and consistency with the National Planning Policy Framework.

As being proposed by Islington, Hackney Planning Service agrees that development implemented quickly after the grant of planning permission, say within 6 months, should not trigger a review as the values should be broadly similar. However for long and multi-phased developments specific trigger points and review mechanism methodologies will be addressed and identified in the future guidance note.

As suggested by the Commission one option is to implement reappraisal trigger points based on a specified time period. Another option that is currently being considered by officers is trigger points based on when the majority of the private units are sold. It's at this point the value of private sales is best known and any uplift in values can be renegotiated by the Council to provide more affordable housing. In this regard Hackney Planning Service is currently reviewing the approach being put forward by London Borough of Wandsworth (LBW) in their recently adopted Planning Obligations SPD. In summary their approach includes for phased development to seek a revised appraisal which compares the difference between the Baseline Residual Land Value (at the time of planning consent) with that in revised appraisals. Should the revised appraisal demonstrate that an increased or improved provision of Affordable Housing is possible, LBW seek to negotiate this based on a set formulae for a commuted sum (should the Affordable Housing units not be deliverable onsite).

Officers will begin work on the guidance note taking into account the above with a view to having a published version in place by January 2016.

Recommendation 2 – Keeping under review Islington's acceptable expectations of profit from new developments

A view widely expressed during the review has been that a 20% return from new developments is a generally accepted expectation. This is to allow for developer profit and to satisfy the criteria of financial institutions lending money to enable development. Council services said that rejecting a viability appraisal based on there being a profit level of 20% would not be seen as a sound approach if the case went to appeal. Another borough specifically mentioned a 20% profit as an accepted minimum return from developments, and said that developers could negotiate where they were able to show that providing affordable homes at policy target levels would impact on their ability to generate sufficient returns. A Planning Consultant advised the Commission that a 20% profit level was the norm but that this could be higher in some cases.

In addition, during this short review we have heard of one example of the Planning Inspectorate deciding in a developer's favor when the developer claimed a 20% profit level to constitute a fair return. We are also aware of a high profile case highlighting the ability of the Mayor of London to take over planning jurisdiction on applications of 'strategic importance' to London, including in cases where a developer makes a request for him to do so. This could conceivably include in cases where the Council rejects applications due to a view that the profit levels expected from them are excessive.

This said, the Commission welcomes Islington's approach of challenging the assumption that a 20% profit level is an accepted benchmark. Members share a view that in areas where there is a buoyant land and housing market, and in an environment where the financial environment has improved, that a 20% level of return could conceivably be established as constituting an excessive demand.

As Commission Members we certainly feel that it is excessive.

We fall short of asking that the Council moves to immediately adopt a similar stance. We

appreciate that there is a balance to play in terms of seeking as much affordable housing as possible while not opening the way for losses at appeal nor preventing development (it remains the case that the private sector remains the largest deliverer of affordable homes in Hackney).

However, the Commission does recommend that the Islington approach on profit levels is kept under review. If Islington's Development Viability Supplementary Planning Document is implemented we ask that after a 6 month period the Council works with Islington to ascertain its effectiveness, and to feedback to the Commission on whether we can or should take a similar approach on the profit levels which we deem to be appropriate.

Response:

Officers agree with the Commission that the use of 20% profit on costs (or Gross Development Value) may not be appropriate for all schemes.

Further action will be undertaken to explore the scope and feasibility of adopting the 'Islington' approach and establish whether it would be beneficial and appropriate in the Hackney context.

This profit level became the norm during the recent global financial crisis in response to the increase in developer risk and increased difficulty in securing development finance. Since the end of the recession property values in Hackney have outstripped the buoyant wider London market with values now well in excess of their pre-recession peak from 2007. Such a strong property market will have helped to reduce the risk profile of many schemes in Hackney but not all as land prices have increased significantly adding significant costs to development.

In terms of Affordable Housing specifically officers agree that the case for a 20% profit margin should be particularly scrutinised for schemes where the Council's Affordable Housing policy requirements are not met. In these instances the site will need to be demonstrated as being difficult to bring forward (contamination, onsite infrastructure requirements etc.) and therefore justifying the profit level included in the appraisal. Profit requirements for Affordable Housing are much lower than those for market sale units given lower levels of risk associated with securing occupation of affordable units compared with the sale of market units which should be reflected in appraisals.

Hackney Planning Service is a member of a Pan London viability group where this issue is being discussed. As suggested by the Commission Hackney Planning Service will continue to actively participate in this forum and learn from the experiences of the London Borough of Islington and others when preparing a Hackney guidance note on viability. As noted in the Commission's report discussions with the GLA will also need to be undertaken given their appraisal tool defaults to the 20% profit level.

Recommendation 3 – A ceiling level of profit at 20%

The Commission notes national planning policy guidance that demands should not be put upon developments which prevent them from being viable, including allowing for a competitive return. In general, the Commission has heard that a 20% developer return is widely regarded as a level equal to a competitive return. As per recommendation 2, we do maintain a keen interest on any ability to challenge this level downwards.

However the Commission also asks that the Council consider the impact on housing development in the Borough of the Council introducing an absolute cap on levels of developer returns on schemes. This would be with the objective of introducing a cap of 20% (subject to considering national policy constraints).

We ask that a progress update on this work is given to the Commission in January 2016.

We ask that the work is complete by June 2016.

Response:

Officers agree to look into the suitability, appropriateness and overall effectiveness of a cap but cautions that no two sites are the same. Site characteristics; market condition and sales values; build costs; finance arrangements can all have a significant impact on the risk profile of development which will need to be considered when determining the appropriateness of a cap.

While it is agreed that on some schemes a 20% developer return or less reflects the risk profile of bringing forward development in Hackney, there are instances where a higher return may be appropriate based on the risk profile of a development. For instance, large developments built out over multiple phases on heavily constrained sites. In most cases these schemes will be subjected to Discount Cash Flow or Internal Rate of Return (IRR) viability appraisals that factor in growth assumptions over the life of the scheme.

Hackney's experience through the successful adoption of its Community Infrastructure Levy (CIL) Charging Schedule is that a 20% Internal Rate of Return (IRR) is currently being targeted by developers for larger multi-phase developments but can be higher in some instances. Regardless of whether profit is expressed as profit on Gross Development Value (GDV) or as an IRR, the Council should be requiring applicants to justify the level of profit chosen which is a position supported by London Borough of Islington in their emerging SPD. Again this issue will be taken forward as part of a Hackney guidance note on viability for use by officers and applicants and will take into account the shared experiences of other local authorities.

Recommendation 4 – More substantial sharing of Economic Viability Appraisals and the review of them by the Council within public planning documentation.

Planning applications for developments of 10 units of more units which do not meet a Hackney borough wide of requirement of 50% affordable housing, are subject to a Financial Viability Appraisal submission to the Council. This appraisal needs to lay out the evidence to show why 50% is not viable, and give a position on the level of affordable housing which is deliverable as part of a scheme.

The Council carries out checks of the assumptions and data within these assessments to gauge whether any additional affordable housing could be gained from a development while not undermining the deliverability of the scheme.

The Commission has been advised during the review that in almost all cases, Appraisals proposing less than 50% affordable housing are challenged and that negotiation then follows on a true level of affordable housing that is possible. We have been persuaded during the last few months that the service area of the Council responsible for carrying out these reviews or procuring a review to be made by an external provider, are thorough and committed to gaining levels of affordable housing as close to policy targets as is viable.

However, we appreciate and share the concerns of some residents around the transparency of a process which shields from view both the details of Viability Appraisals and, to some extent, the work of the Council in challenging the initial assessments and proposals put forward.

Ideally, the Commission would welcome full transparency; full disclosure of Viability Appraisals and the details of the challenges made. However, we appreciate the view that information within them can be subject to commercial confidentiality. This may limit the extent to which the Council is able to share the information submitted, in cases where the party submitting the assessment states that they are not willing for it to be made public.

4A – Requests for full disclosure

As a first part of this recommendation we ask that as a policy, the Council always seek agreement from parties submitting a viability assessments to make them available within relevant public planning application documents. For assurance and transparency purposes, public planning documents for development applications of 10 units or more but offering less than 50% affordable housing should have two standard sections of wording added to them with room for officers to designate a yes or a no to each.

The first should be named 'Request made for full viability assessment to be published'. The second should be named 'Permission granted for release of viability assessment'.

Full viability assessments and appraisals should be enclosed within the public planning documents where the developer has agreed to this request.

We ask that a progress update on this work is given to the Commission in January 2016.

We ask that this policy be in place by June 2016.

The elements of the recommendation below would be effective in cases where the developer has not agreed to the request for disclosure

4B – Identifying an approach to share as much viability assessment detail as is possible

We have been made aware of examples of approaches that other boroughs take towards the sharing of details of viability assessments. These include:

- Enclosing full details within public planning documentation but with details that are not possible to publish without the consent of the developer, redacted.
- Giving as detailed a summary of viability assessment details within the report as possible, which is not deemed to impact on the duty of the Council around commercial confidentiality.

We ask that the Planning Service, (informed by legal guidance) establish the most effective approach to enable further information to be shared than is the case currently where full disclosure is not possible, and that this be added to public planning documentation. This could be through one of the examples mentioned above (the enclosure of a full viability assessment within an application but with confidential information redacted or a summary of the viability assessment and work done in challenge of it).

We ask that by June 2016 the Council has an approach in place around the levels of information from viability appraisals that it will publish in instances where the developer has not agreed to full disclosure.

We ask that a progress update on this work is given to the Commission in January 2016.

Response (4A):

Officers fully accept this recommendation and share the Commission's concerns on this issue.

Again an appropriate way to take these issues forward will be through the preparation of a guidance note on viability. The Planning Service will liaise with Legal Services as to the wording proposed and where this wording should be presented potentially via a letter between the Council and the applicant; within s106 agreements or both.

Response (4B):

Again officers will take forward the Commission's recommendation as part of a guidance note on viability and agree with the sentiments of the London Borough of Islington outlined in their Development Viability Discussion Paper which states –

'5.20 In accordance with the Heygate Estate decision, the council recognises that some components of viability assessments could be considered to be commercially confidential. However it considers it unlikely that all aspects of a viability assessment would have a true "quality of confidence". Another key issue is whether the public interest would be better served through preventing release or disclosure.'

Officers are of the view that applicants should submit both a full and redacted version of viability appraisals, along with a justification for the components of the report that have been redacted, and the period of time for which they should remain redacted. If an applicant considers that any element of a viability assessment should be kept confidential, they should provide a justification for why disclosure would cause harm to their commercial interests and also importantly harm the public interest. This should be provided for each individual component of an appraisal. This approach would align with that adopted by City of Westminster. The above would be taken forward as part of the guidance note to be issued on viability and possibly be included on the Council's local list of validation requirements.

In addition to the above, Officers will also continue to observe and monitor the stance taken by other London Boroughs on this issue, such as LB of Greenwich who are currently consulting on a new '*Local Information Requirements List*,' which includes a requirement for the full disclosure of an unredacted viability assessment up front with their planning applications. The outcome of this consultation will be used to help inform any decisions the Council may take in the future regarding the disclosure of viability appraisals submitted in support of planning applications determined by Hackney.

Recommendation 5 – Considering Member Involvement in any expanded Pre Application Advice Service.

The Commission was recently advised by the Cabinet Member for Regeneration that a redesign of the Council's Planning Service would start in early 2015. The Commission was advised that this would look to enlarge and broaden the Pre Application Advice Service.

While the Commission is generally persuaded of the benefits that this change would offer both Developer and the Council, we would be concerned to ensure that this larger function be fully transparent to residents, through Member Scrutiny and or public meetings.

We are aware of a current approach being piloted, where larger proposed developments receiving the Pre Application Advice Service are subjects of presentations to Planning Sub Committee. This approach appears to be a sound one.

We only ask that the Planning Service gives consideration to how the newly broadened Pre Application Advice function can continue to offer transparency and accountability. Options could

include making the current pilot model permanent, or involving relevant Ward Councillors and or the Chair of Planning Sub Committee in one or more Pre Application Meetings. It may be appropriate to apply different processes according to development size.

The Commission asks that a response be available by June 2016.

We ask that a progress update on this work is given to the Commission in January 2016.

Response:

Officers fully accept the Commission's aspiration to maximise transparency in the planning process, and the appropriate engagement of members in the planning process.

However with regard to new development proposals, particularly large-scale development schemes, Hackney Planning Service recognises the need to display the highest level of transparency, accountability and probity to residents and Members, ideally from the stage that pre-application advice is sought.

There is an expectation that pre-applications received by the Council should not be made available to the public as there are often commercial interests involved which if compromised could discourage developers from coming forward and working collaboratively with officers to develop proposals. This could then prejudice the Council's ability to implement its policies.

Notwithstanding this, the Council always encourages applicants to start engaging with the public and Ward Councilors at the earliest opportunity, ideally at the pre-application stage. The introduction of the Pre-application Sub-Committee meeting has proved to be a useful vehicle for this purpose; it enables Members and the public to view presentations on large scale or sensitive development proposals which are subject to pre-application discussions with officers; it also allows Members of the Sub-Committee to ask the Developer questions about the proposals in an open and transparent forum.

The Chair of the Sub-Committee has also made it clear that Developers should be encouraged to undertake their own consultation with Members and local residents in advance of the meeting as there will be an expectation that feedback will be provided on this as part of their presentations.

The Chair of the Planning Sub-Committee has also advised that all pre-application discussions should be kept between the developer and officers and that it is only appropriate for Members of the sub-committee to be briefed about pre-applications at the Pre-application Sub-Committee meeting. This has worked very effectively to date and aligns with Hackney's Code of Governance.

Recommendation 6 – Present land value measures used within viability assessment and policies to best allow local residents to benefit from changes in planning conditions applied to land.

The Commission understands that a measure of the value of the land where a development is proposed forms a key determinant of the amount of affordable housing, which may be seen to be viable. The higher that it is, and the shorter the 'gap' between the value before development and the value of a development on completion, the lower the affordable housing gain is likely to be.

We are keen to try to ensure that the 'starting' values included within Economic Viability Appraisals are as fair as possible. The approach to determining starting values, while fitting within national policy, should also be the most conducive as possible towards the Council's aim of 50% affordable housing gain from development.

We are not experts on viability, but our interpretation is that in terms of calculating the current land value within a viability appraisal, that different measures can be applied. These are Existing Use Value (plus a premium) and Alternative Use Value.

- Existing Use Value – the current value of a site plus an incentive
- Alternative use Value – a valuation being applied to a site informed by it being used for a different purpose than currently.

We feel that any uplift in land value due to a local authority giving planning permission for a redevelopment of a site should benefit not only the developer but also residents of the borough in need of affordable housing.

The Commission asks that the Council works towards establishing an approach or a set of policies, which are most conducive to allowing local residents to benefit from changes in planning conditions applied to land. We suggest that the Council asks that Existing Use Value measures form the basis of the benchmark value for Economic Viability Appraisal processes.

We ask that proposed policies are in place by June 2016.

We ask that a progress update on this work is given to the Commission in January 2016.

Response:

Officers agree to provide further clarification around this important issue as part of a guidance note on viability. It is agreed that the 2 most appropriate methods of determining land value are either: existing use value plus a suitable, rationally-based premium; or an alternative use value based on a viable proposal that fully complies with the policies included in Hackney's Local Plan, including the 50% Affordable Housing requirement.

The existing use value plus a 20% premium has been successfully used in the adoption of Hackney's CIL Charging Schedule and is being used to support the Development Management Local Plan (DMLP) and Site Allocations Local Plan (SALP). Planning Inspectors have therefore accepted this approach. Unfortunately in many cases applicants when submitting planning schemes are valuing development sites based on a standard assessment of market value based on 'hope value' having regard to sale transactions on nearby sites. This approach does not reflect the different site specific characteristics of individual sites such as the existence of contamination; listing buildings; site access etc; nor does it take into account any recent changes in Hackney policies or the differences between Hackney planning and housing policy compared to that of other adjacent boroughs.

For this reason, and similar to the approaches being taken forward by Islington and Wandsworth, the Hackney guidance note on viability could confirm the acceptable approaches to determining land value as being –

- Existing use value plus an acceptable, rationally-based premium to the land owner; or
- Alternative use value based on a policy compliant scheme in accordance with

Hackney's Local Plan.

Hackney has already begun to clarify its preference for existing use plus premium or alternative use value based on the Local Plan within Appendix 4 of the DMLP and within the Affordable Housing Chapter of the soon to be adopted Planning Contributions SPD. Appendix 4 of the DMLP states (albeit in relation to employment land) –

'1.4 For all schemes affecting employment land and floorspace it will be expected, in addition to the marketing evidence specified under paragraphs 1.8 to 1.10 below, that evidence is provided which demonstrates that the site has been marketed for policy compliant uses in the first instance and if found not be possible then for alternative generating employment uses (refer to DM14 and DM17). A site's 'existing use value' should accurately reflect the site's existing use so as to assist the Council in the robust assessment of financial viability information submitted (as required by Core Strategy Policy 17 and DM 14 and DM17). For instance the purchase of an employment site based on generally higher non employment values will not be considered adequate justification to reduce employment land and floorspace within any proposed development. Furthermore, applicants are required to demonstrate market testing of a number of policy compliant land use scenarios (i.e. looking a range of commercial uses) as part of clearly demonstrating that the proposed land use mix incorporates the maximum amount of employment floorspace possible on a site. Where the above cannot be demonstrated, proposed schemes will not be considered to have met policy DM14 and DM17.'

In relation to Affordable Housing Chapter 9 of the soon to adopted Planning Contributions SPD –

'9.20 Where the 50% target of Affordable Housing is not met, a viability assessment will be required. Independent viability assessments carried out by the Council, or a consultant employed on their behalf, are to be paid for by the applicant. Viability reports are to be based on existing use value plus a reasonable premium or an alternative use value which assumes full compliance with Hackney's Local Plan policies and all other material planning considerations and disregards that which is contrary to the Local Plan. The Affordable Housing Development Control Toolkit (Three Dragons), or an agreed alternative such as Argus, should be used and further details are to be found on the Council's website in relation to the validation of planning applications.'

Recommendation 7 – Exploring a joint viability appraisal model with other boroughs.

The Commission feels that a joined up approach to the assessment of Economic Viability Appraisals with boroughs with similar aims as this one on affordable housing, could be beneficial. We wonder if pooling resources and mutually agreeing on the external agencies used for advice and procured services, could give boroughs a greater voice in the market, and through an approved provider scheme, reduce the risk of conflicts of interests arising. Based on the evidence heard during the Commission meeting where other boroughs attended, we would suggest that Islington and Lambeth might be supportive of this proposal.

The Commission has also reached a view that the Council faces challenges in ensuring that the external input which feeds into the checking of Viability Appraisals, is impartial. We have been advised by officers working in the field that there is a reliance on the knowledge base in the service to ensure that work is not procured from, and advice not received from, private agencies who have a relationship with the developer in question.

We have also heard of another borough's (Southwark) experience in procuring the Government's District Valuer Services (part of the Valuation Agency Office) to carry out assessments of the Economic Viability Appraisals submitted for larger schemes. This Government body provides property advice and valuations across the public sector and services.

Considering all the above we ask that the Council:

- *Considers the merits or otherwise of establishing a joined up approach to Viability with other boroughs with similar aims.*
- *Considers whether the suggestions above around using a set of approved providers, or District Valuer Services, could benefit a joined up scheme.*
- *Feeds back to the Commission on the above, and, if applicable, a plan to engage other boroughs in this approach.*

If a joined up approach is not deemed to be appropriate, we ask that the Council still investigate and feedback to the Commission, the benefits or otherwise that our use of District Valuer Services could offer. This should include a discussion with Simon Bevan, the Director of Planning, London Borough of Southwark who championed the service.

We ask that a response to the above be available by June 2016.

We ask that a progress update on this work is given to the Commission in January 2016.

Response:

Officers accept the Commission's concerns on this issue and will both raise these concerns and propose this line of enquiry at the next pan London Viability Form and will report back the benefits or otherwise of this approach. If a more joined up approach is pursued it is vital that it appreciates the Hackney context including for instance site values and Hackney's Local Plan policies.

Recommendation 8 – Lobbying for a fairer subsidy for inner London affordable housing units.

Registered Housing Providers looking to develop here are operating within a difficult environment. Principal issues appear to be a large reduction in subsidy from government in tandem with land costs and competition for available sites in Hackney rising sharply.

However, the prohibitively high cost of development is not restricted to Hackney alone. We have heard during this review that the reduction in delivery of affordable housing by Registered Providers in Hackney in forthcoming years would be replicated in other inner city areas as providers found it increasingly difficult to deliver within these areas under the new affordable housing funding model.

One Registered Provider said that their focus had needed to move away from development in inner London, to development in outer London areas.

We understand that, at present, the amount of subsidy received by Registered Housing Providers to enable them to develop affordable housing units in London, does not differ according to cost of land in the location that the unit is being delivered within.

We are concerned that at present the Mayor of London's affordable housing regime does not

take into account the higher costs of delivering within inner London, and will lead to a more uneven spread of affordable housing in the capital.

The Commission asks that the Council considers a piece of work which highlights to the Mayor of London the impact that the current funding arrangements have, and makes suggestions as to how it should be improved.

We consider that taking into account the varying land costs in inner and outer London within funding allocations, would be a fairer approach, and one which would be more likely to help secure a better spread of affordable housing across all the areas of London in need of it.

We ask that this work be in place by June 2016.

We ask that a progress update on this work is given to the Commission in January 2016.

Response:

Officers note this recommendation, which requires some further exploration. Officers are taking forward consideration of this issue in the context of the impending Housing Bill and opportunities that might develop in the run up to and after the London Mayoral Election. This includes exploring the impact that the proposal to extend RTB to housing associations and the compulsion for Councils to sell 'high value' Council homes, and in particular the need to ensure that sales receipts are retained in London and that true one for one replacement of lost social homes is finally delivered.

The implications of this recommendation do not solely affect Hackney and have a much wider pan London dynamic. As a result Officers will take soundings from other boroughs and London Councils over the viability and potential success of a piece of work of this nature. The results will be fed back to the Commission in line with the timescales set out.

Recommendation 9 – Review of the Section 106 mortgagee exclusion clause

More than one Registered Housing Provider mentioned a standard section – the mortgagee exclusion clause - contained within Section 106 Agreements written by the Council, as being a hindrance to their being able to access loans with which to develop affordable housing. Our understanding is that this clause is included to protect the council from financial loss in the event of a Registered Provider entering receivership.

The concern that Registered Providers had was around the clause giving a period of six months for the Council to seek another provider in the case of a developing Registered Provider entering receivership. Providers advised the Commission that, in their view, setting a period of 28 days to do this would not bring any additional risk to the Council; it was very unlikely that any Registered Provider would enter receivership, and if this did happen, it would be very possible to find an alternative provider within the 28 day period.

It was estimated by one Registered Provider that setting a 6 month period in the clause had the effect of preventing Registered Providers from borrowing around two thirds of what would be possible if the clause gave a period of 28 days. This made the existing challenge of competing with private developers for land, a greater one.

As a Commission we do not have the knowledge to make an assessment of any detrimental effect that a review of the Section 106 mortgagee exclusion clause could have. We would not recommend any action which would risk the sound financial practice which the Council has

achieved.

However, we would ask that by June 2016 the Council gives consideration to the views expressed, and makes an assessment of whether it can amend the wording to make it more conducive to the borrowing capabilities of Registered Housing Providers.

We ask that a progress update on this work is given to the Commission in January 2016.

Response:

Officers fully accept this recommendation, to explore the merits and risks attached to reducing the mortgagee exclusion clause time periods for RPs and the Council.

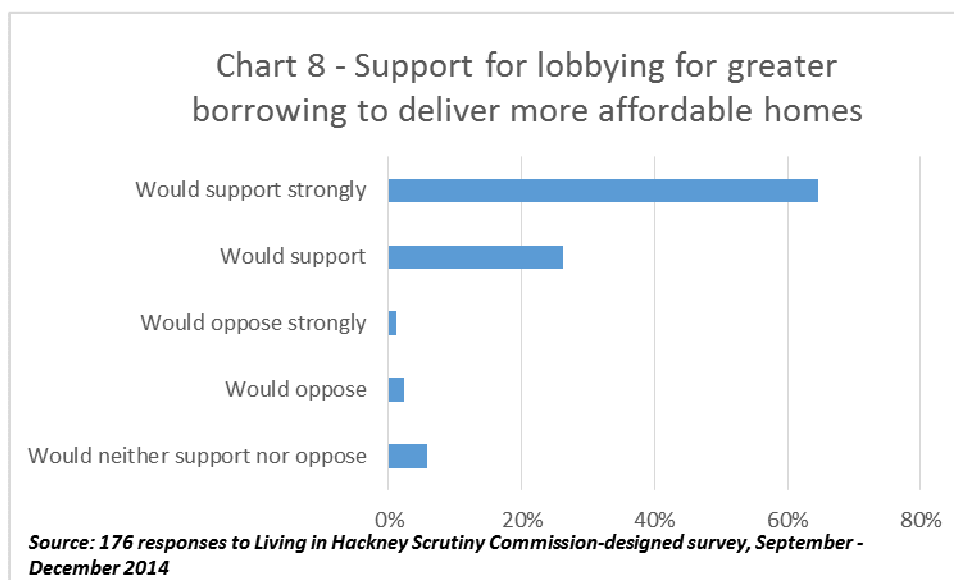
Recommendation 10 – That the Council continues to make a case for greater borrowing with which to deliver its own new affordable housing

There appears to be a united view amongst residents that more affordable housing is needed in Hackney.

We are also aware that the Council would welcome greater borrowing capacity; which would allow it do more affordable house building, more quickly. There was also a widespread view from the boroughs attending the Commission meeting in December that Councils could be more effective in their delivery of affordable housing if the HRA borrowing cap was raised or removed.

Respondents to the survey were asked the question ‘would you support the Council lobbying the government to lift certain restrictions on borrowing limits and, if successful, using this added freedom to build more council homes for social rent and Shared Ownership/equity housing.

Support for this was high; 91% of respondents said that they would strongly support or support this action. Only 3% said that they would be opposed.



The survey evidence combined with other data collected during this review indicates that there is a united view - within the Council, other similar Councils, and amongst our residents - that local authorities should be given greater freedom around borrowing limits, if this freedom enabled greater delivery of affordable housing.

We appreciate that any additional borrowing should be supported by valid and sound business

plans. The sound financial management practices of the Council and its current record of delivery on direct affordable house building gives us strong confidence that greater borrowing would not bring an intolerable level of risk.

Using the evidence gained from this review, and from any other relevant sources, the Commission asks that the Council develops a lobbying campaign, drawing on the support of other boroughs, to raise or remove the Housing Revenue Account borrowing cap.

This campaign should be in place by June 2016.

We ask that a progress update on this work is given to the Commission in January 2016.

Response:

Officers fully accept this recommendation. The Mayor, the Cabinet Member for Housing and officers have been actively working with other authorities, London Councils and the Local Government Association to promote the removal of the HRA borrowing cap and the benefits which would accrue from its removal (or relaxation), indeed this issue will be raised when the Council provides its views in the near future if the Government consults on its proposal to extend RTB to housing Associations and the proposed forced sale of Council houses.

Additional borrowing powers would increase the Councils' scope to speed up affordable housing delivery and build more new homes overall. This work will continue. It is proposed that the Council continue to support appropriate national and regional HRA campaigns, whilst working to raise the profile of the impact that the removal or relaxation of the HRA borrowing cap would have in both speeding up the delivery and increasing the overall number of new homes the Council could build.

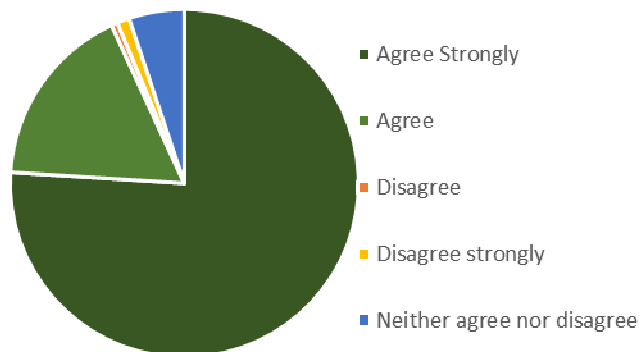
Recommendation 11 – That the Council continues to make a case for being able to better protect residents from the affordable rent (up to 80% of market rent) model from accounting for shares of overall affordable housing provision in Hackney.

The Commission is aware and supportive of the steps that the Council has taken aiming to prevent the delivery of housing units in the borough which, while labelled under national policy as affordable housing, can charge rent levels of up to 80% of market rent. The Council does not see housing of this type as genuinely affordable to many residents, and the Commission is in agreement with this.

We feel that on a wider level more formal powers should be available to the Council to better insist that the housing delivered in Hackney under the affordable housing category should be of a type that is genuinely affordable to more of our residents. This would require legislative changes.

This view appears to be one shared by our residents, with 93% of respondents agreeing that the Council should lobby the Mayor of London to return the power to councils to require 50% of homes in all new developments be for social renting and shared equity/ownership.

Chart 9 - Response to the Statement: The Council should lobby the Mayor of London to return the power to councils to require 50% of homes in all new developments be for social renting and shared equity/ownership



Source: 176 responses to Living in Hackney Scrutiny Commission-designed survey, September - December 2014

Using the evidence gained from this review and elsewhere, the Commission asks that the Council develops a lobbying campaign to allow Councils to insist that the affordable housing delivered as part of new development encompasses units for Social Rent and Shared Equity housing, and not units for rent at up to 80% of market rents.

Other boroughs should be involved with this campaign, which should be in place by June 2016

We ask that a progress update on this work is given to the Commission in January 2016.

Response:

Officers accept this recommendation, which will require some further exploration. Officers are taking forward consideration of this issue in the context of the impending Housing Bill and opportunities that might develop in the run up to and after the London Mayoral Election, and in particular the impact that the proposals to extend RTB to housing associations and the proposed requirement for Councils to sell 'high value' Council homes will have.

Members have expressed their concern over the overall affordability of some 'affordable rent' levels. With this thought in mind, the Council developed negotiated and signed a framework agreement with the GLA, relating to the 2015-20 programme, which is designed to optimise the number of genuinely affordable new homes built in Hackney.

Under the framework agreement 50% of Affordable Rent homes in the borough will be 'capped' at 50% of local market rents. Through negotiation with the GLA it has been agreed that these will be capped at 50% lower quartile market rents (rather than median), in recognition of the relatively high rental values in Hackney.

The Council, through its Housing and Planning Services working in tandem, always promotes the case for maximising the supply of homes for social renting from new RP developments - grant funded or otherwise. In addition the Council actively supports residents through the housing benefit and debt advice it provides to tenants. However as the Commission has found through the course of its deliberations and the evidence it has received, RPs are bound by the strict parameters of the nationally set, but regionally

delivered, Affordable housing Programme, and developers will be bound by the realities of the market with respect to ensuring the overall viability of any scheme. Officers are mindful that taking this recommendation forward would involve making the case and securing significant and fundamental changes to the Government's National Planning Policy Framework and the Mayor of London's London Plan as a minimum. It would also involve identifying a rationale and set of arguments that would have to be additional to those used (unsuccessfully) recently by Hackney and other boroughs in a failed Judicial Review of the Further Alteration to the London Plan in 2014 regarding the same issues. In this context it is suggested that the Council continues its already effective approach of making the case within the existing delivery framework to both RPs and developers of the need to deliver wherever possible the maximum number of homes for social renting.

Lead member: Cllr Guy Nicholson, Cabinet member for Regeneration
Cllr Philip Glanville, Cabinet Member for Housing

Director: Gifty Edila, Corporate Director of Legal, HR, and Regulatory
Services

Appendix 1	Living in Hackney Scrutiny Commission report into Affordable Housing
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