



The Kent Viability Protocol



KPOG





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Introduction

This Protocol has been developed by **Kent Housing Group, Kent Planning Officers Group, Kent Developers Group, Kent County Council** and the **Homes and Communities Agency**, as a direct result of a recommendation within the Kent Forum Housing Strategy. The Kent Forum Housing Strategy recognised the need for a shared understanding of viability by local authorities and planning applicants, to help ensure that new housing can be delivered in a timely and effective manner.

The Kent Viability Protocol is not a statutory document but a voluntary arrangement with an aim to avoid the often costly and lengthy adversarial approach that can sometimes arise when considering issues of viability. The aim of this protocol is for it to be an effective tool to speed up planning disputes regarding viability.

The focus of this Protocol is about planning applications which are currently not policy compliant.

This protocol should not be used as a tool to delay planning decisions where compliance with local planning policies is highly unlikely to be achieved, even after the mediation review process.

1. Pre Application Discussions & Publication of Information

The Applicant and local planning authorities should whenever possible enter into pre-application discussions with a view to mutually gaining understanding of the viability of a proposed development. In particular local planning authorities should identify physical and social infrastructure that is likely to be essential for a development to proceed in order that the Applicant can take this into account at an early stage.

Prior to the adoption of a CIL (Community Infrastructure Levy) scheme for their area, where appropriate local planning authorities, working in association with Kent County Council should publish generic information regarding anticipated developer contributions on their website so that these costs can be taken into account by the Applicant when negotiating to buy land.

2. Providing Viability Information at the Outset

If an Applicant states that they will meet all policy requirements for contributions and affordable housing it will not be necessary for the Applicant to provide a viability study. However, if the application is non policy compliant then the Applicant will provide all the information necessary, including financial information about viability, at the outset of submitting their planning application. (Refer to Section 4).



3. Speedy Validation of Planning Applications

A local planning authority will only request additional information about a planning application if it is considered essential to the determination of an application; this can be at any point of the planning process. Local planning authorities will undertake registration of valid planning applications in a timely manner.

4. Key Feature and Benchmarks of a Viability Appraisal

Applicants will set out within their submission key elements as set out in the Viability Spread sheet which includes:

- Income & Revenue for the Open Market Homes
(Separated from the anticipated income from affordable and commercial)
- Net profit for Open Market Homes, Affordable Homes and Commercial units
- Planning Application Fee costing
- Construction costs for dwellings, externals, abnormals and prelims
- Contingency
- Community Levy Infrastructure (CIL)
- S106 costs
- Finance costs
- Land values (land fees to be identified separately)
- Margin (Overheads and Profit)
- Overheads
- Profit

The viability assessment submitted to the local planning authority will normally comprise of both a residual valuation that arrives at site value or profit return and a cash flow (discounted if appropriate) that sets out the timings of costs, outlays and revenue receipts and where appropriate show at what point a development does or does not become viable. This might be important for phasing affordable housing or other contributions.

If the residual method of land value is not used then the Applicant should be setting out in a narrative how they have arrived at the land value they have used in the valuation.

5. Affordable Housing

The applicant will set out within their submission the discussions they have held with identified providers of affordable housing regarding housing mix, housing tenure, housing need and financial offers received.



6. Assessing Viability Appraisals

Local planning authorities will whenever possible assess viability appraisals “in house” without reference to external consultants. Local planning authorities will endeavour to ensure that they are up to date on viability issues, and for staff where possible undertake training to assist in this process. On larger and more complex applications local planning authorities will probably engage specialist consultants to advise them on the viability appraisal; but subject to all relevant and up to date information being provided at the outset it will not seek to prolong this process and timely reporting will be built into the consultant’s contract.

7. Mediation Review

Where following assessment of a viability appraisal there is no agreement between the Applicant and a local planning authority, regarding key inputs in the viability appraisal or its conclusion the matter can be referred for mediation review, this must with the mutual agreement of both parties.

The mediation review process can be triggered by either the Applicant or the local planning authority but can only go ahead if both parties agree.

A planning application will not be refused while the peer review is in process. The Applicant will fund any costs of a mediation review which will be fixed in advance of the process taking place.

A mediation review panel will be convened taken from an approved list of mediation review members; this will be an independent panel, with members with knowledge and experience of housing, planning and economics. The panel will also have representation from the Homes and Communities Agency. Panel members will be chosen from a suite of colleagues who have agreed to participate in this process. Once the panel members are selected they will have sight of the papers relating to the dispute and will meet or converse electronically within four to six weeks of a mediation review process being triggered, and must report within two weeks of meeting or corresponding electronically. The panel will provide an advisory view to both parties and will produce a written summary of this view for public consumption. This summary will not contain any commercially sensitive information.

The panel’s recommendation will not be binding upon either party and cannot be used in an appeal without agreement from the applicant.

The secretariat for the mediation review will be provided by the Kent Economic Board.



8. Confidentiality

In order that an informed and transparent assessment can be made by the local planning authority, the Applicant should include within their viability assessment as much information as possible. While the local planning authority should expect to receive a copy of the Applicants own viability, for the purposes of Commercial Confidentiality the peer review should receive it in an anonymous format.

At the very least the main strands and the conclusions of the financial appraisal should be included in a non technical summary that will be included in the public consultation process.

However, local planning authorities recognise that some financial information is commercially sensitive and if access to this is to be restricted to planning officers, consultants, key stakeholders and mediators then this should be set out in a separate document clearly marked as **CONFIDENTIAL** with reasons provided as to what it is necessary to treat as such.

9. Review

The content of the Kent Viability Protocol will be reviewed by all participating parties and amended following case reviews and in the light of changing economic conditions.