SECTION 106 OBLIGATIONS
VIABILITY ASSESSMENT PROCEDURE NOTE

Where an applicant indicates that they are unable to provide the identified Section 106 obligations on viability grounds, they will need to submit a detailed financial appraisal of the proposed development.

As part of the referral, the applicant agrees to provide all the information required within the Viability Assessment Guidance Notes (see Page 4).

Before commencing the Development Appraisal, the Council will require evidence from the developer that they have fully considered all available options for reducing development costs and increasing scheme revenues with the aim of meeting all s.106 requirements. Such measures may include consideration of alternative site densities, dwelling mixes and tenure, site layouts, landscaping and construction specifications.

Any applicant who is not prepared to submit a Development Appraisal via an open book approach will nullify any rationale for lowering any s.106 obligations. The presumption is that without verifiable evidence relating to site specific economics, there is no justification for reducing s.106 obligations and the scheme will be considered viable and capable of meeting all planning obligations.

The Planning Officer will, where appropriate, offer the applicant the opportunity to refer their appraisal either to the Council’s Valuation Officer or to an independent valuation expert from the Valuation Office. The final decision of whether the assessment is referred to either the Council's Valuation Officer or to the Valuation Office is entirely at the discretion of the Local Planning Authority and the Council’s Head of Property & Regeneration.

Applicants should be aware that even if the submitted viability assessment supports their assertion that the proposed development will not support the identified level of S.106 obligations, this does not mean that planning permission will automatically be granted with reduced S.106 obligations.

The Council, as a Local Planning Authority, has a duty to consider whether allowing the development to proceed with a reduced S.106 obligation will have a negative effect on the wider community by failing to provide for the S.106 obligations necessary to mitigate the impacts of the development.
Therefore, it is unlikely that the Council will consider granting planning permission unless there are exceptional circumstances and the overall public benefit of the proposed development outweighs the need for the full level of S.106 obligations.

Neath Port Talbot County Borough Council’s Valuation Officer

The purpose of this service is to provide a cost-effective route for applicants who are confident that they can provide robust evidence that proves that the proposed S.106 obligations will have an adverse effect on the viability of the proposed development.

This will be subject to the following initial fixed fees:

**Residential**

- 3 to 10 Units - £500
- 11 to 20 Units - £750
- 21 plus Units - £1,000

**Retail / Commercial / Industrial development**

- Net increase in floor space of 1000sqm or more - £1000

Payment is to be paid in advance by the applicant.

Where the applicant does not provide sufficient evidence to allow the Council’s Valuation Officer to make a satisfactory assessment, the Valuation Officer will advise the Planning Officer who will then inform the applicant of the additional evidence required for the assessment to continue. If, at this stage, the applicant still wants the Valuation Officer to assess their Viability Assessment, there may be a charge for any additional work undertaken. The Council will consult with the Applicant before any additional expense is incurred.

If agreement cannot be reached on any part of the applicant’s submission, then the Council’s Valuation Officer will refer the assessment to the Valuation Office for a second opinion. The decision of the Council’s Valuation Officer in this matter will be final and the applicant will have no right of appeal. However, the applicant will be afforded the opportunity to formally withdraw their viability assessment before the Valuation Office are instructed and further costs are incurred.

The cost of any second opinion will be borne by the applicant. If the applicant does not agree to a second opinion then the scheme will be considered viable and the applicant will have failed to prove that the S.106 obligations should be lowered on the grounds of viability.
The applicant should be aware that any reliance on so-called abnormal costs as the basis for requesting a reduction in the S.106 obligations, will require those costs to be considered by an independent specialist at the applicant’s expense.

Valuation Office

The Council offers the applicant the opportunity to have their Viability Assessment considered directly by the Valuation Office without prior consideration by the Council’s Valuation Officer. The full cost of the assessment by the Valuation Office will be borne by the Applicant.

The applicant will be required to provide the same level of information as requested by the ‘Viability Assessment – Guidance Notes’, even if they choose to go directly to the Valuation Office.

Confidentiality / Use of Information

The information provided by any applicant will be handled in accordance with Neath Port Talbot County Borough Council’s Confidentiality and Use of Information Policies. No information will be discussed with any third party. However, in the event of a dispute, external independent valuers will be employed to assess the figures supplied. If this situation arises, the applicant will be notified accordingly.
Section 106 Viability Assessment – Guidance Notes

The following notes are intended to help the applicant provide a comprehensive Viability Assessment. A failure by the applicant to provide all the information specified below will result in unnecessary delays and potentially lead to additional costs.

These Guidance Notes do not alter existing planning policies but instead provide additional guidance on the information required by Neath Port Talbot County Borough Council when assessing viability as part of the planning process, including as a consideration in the determination of planning applications.

These Viability Guidance Notes will continue to be updated to reflect changing circumstances, including any new and relevant policies, guidance and appeal decisions.

If an applicant requests an opportunity to demonstrate that a site is not viable with the identified level of S.106 obligations, then they must provide a detailed Viability Assessment to support their claim. Within the Viability Assessment, the applicant will be expected to provide, where necessary, information from professionally qualified sources at their own expense. Moreover, the applicant will be expected to demonstrate that the Viability Assessment is based upon reasonable and realistic assumptions and expectations.

For ease of reference, a checklist of the information required for all Assessments can be found at Page 11 of this document. Please ensure that this is cross referenced prior to submitting your Viability Assessment.

Viability Test
Viability is defined as follows:
‘An objective financial test of the ability of a development to meet its costs (including the cost of planning obligations), whilst ensuring an appropriate site value for the landowner and a market risk adjusted return to the developer.’

Valuation
The viability appraisal should be undertaken on a residual valuation basis, using a recognised methodology that accords with RICS guidance for assessing the viability of residential developments.

The methodology used will adopt current costs and values in relation to the proposed scheme and assume that affordable housing and other s.106 requirements are met in full within the overall development costs.
Development Proposal – Overview
A brief description of the scheme should be submitted together with a full explanation of why the applicant considers that there is an economic case for lowering the levels of S.106 obligations.

Density
The appraisal and supporting evidence should include the overall gross site area (in hectares), the net developable area, the dwelling and non-residential density per net hectare / sqm and the floorspace per net hectare / sqm.

Number of Units
This will also include the size of each unit in square metres (gross and net), number of beds and mix, car parking provision & number of storeys.

Gross Development Value
The viability appraisal should be supported by evidence from comparable development schemes after taking into account the type of property, location and delivery. Appraisal comparables should be “achieved” prices rather than “asking” prices and should exclude marketing incentives (e.g. fit out, payment of stamp duty). Where comparability is an issue, these can be benchmarked against published sources e.g. Land Registry, Valuation Office Agency or agents’ market reports.

For 100% affordable housing schemes the process for calculating the GDV will be made up of the following three main components:

(a) Rental and capital receipts from the affordable units. Income from this source will be from:
   (i) the capitalised net annual rents (for a given time period at a given discount rate) from the social rented, affordable rented and intermediate rent, and the rental element of the shared ownership units
   (ii) the capital receipts from initial equity sales and future tranche sales of shared ownership and shared equity
(b) any proceeds that may be reinvested from staircasing receipts, Right to Acquire (RTA) or external subsidies, such as capital grants and New Homes Bonus
(c) any internal registered provider subsidy.

Other Values
The value of any ground rents, car parking, temporary income, etc. should be included within the assessment.

Commercial element – Sale Prices
Valuation evidence must be supplied. Whilst in some cases, freehold evidence may be available, most commercial space will be valued on the basis of rents being achieved, capitalised by an appropriate yield. Both rental and yield evidence will be required to substantiate value.
Build Costs
Cost estimates should be provided by a Quantity Surveyor or other suitably qualified professional.

If available, site specific evidence based on reported cost estimates or invoices should be provided by the applicant. Where comparability is an issue, these can be benchmarked against the Building Costs Information Service (BCIS) or other appropriate data sets or verified by independent cost consultants.

The build costs should not exceed the current rates published by the BCIS for New Build units in the appropriate categories and adjusted for location factor. If the build costs for the development exceed the BCIS rates, then the applicant will be required to provide a professionally prepared cost plan, including written evidence to justify the increased costs.

The rates are based on Gross Internal Floor Area (RICS definition) and exclude external works and contingencies; these should be costed and added separately within the calculation.

Site Investigation, Preparation and Infrastructure Costs
The applicant will be required to provide site specific evidence (reported cost estimates or invoices) for site infrastructure costs / external works. These costs may include demolition; ecological, geotechnical, archaeological and other site investigations (including those undertaken before the site purchase or for planning), basic on-site infrastructure and services. These costs may need to be verified by independent cost consultants.

In most cases these costs should be reflected in the land value and the applicant should ensure that these costs are not double counted.

Legal Fees
These should reflect the charging rates of local Solicitors and Conveyancers.

Sale Fees
These should reflect the charging rates of local Agents (although it is recognised that larger house builders may provide this service in-house).

Professional Fees
Where relevant, these can include Architect, Quantity Surveyor, Structural Engineer, Mechanical and/or Electrical Engineer, Project Manager, CDM Management, and other necessary consultants. Evidence should be provided.

Cost of Finance
For most developments, a rate of 3-5% above Bank of England Base Rate is expected but applicants unable to borrow at this level should provide evidence of the actual rate applicable.
**Development Period**
It is accepted that this will vary from project to project, a reasonable and realistic estimate should be provided.

**Contingency**
The more complex the development project, the more potential there is for the site to encounter various difficulties or delays. If the applicant intends to include a contingency, these should be calculated at between 2% and 5% of total costs (i.e. building costs, ancillaries and professional fees). This will depend on the complexity of the development. Where costs are more certain then any percentage should be reduced. If the applicant intends to include a contingency element as part of their assessment, then there should be an explanation of why it is considered necessary for the proposed development.

**Developer’s Return (Profit Margin)**
A typical margin in the region of 15-20% of GDV is expected. However, higher/lower profit levels may be appropriate to reflect the size and risk profile of the developer and the risks related to the development project.

If the applicant requires a higher developer’s return than 15% of GDV, then they will need to provide a full explanation with evidence from comparable schemes or data sources.

Where an applicant is seeking a reduction in s.106 obligations, they should be prepared to be flexible and should not expect to protect a 20% profit margin at the expense of s.106 obligations. A balanced approach should be taken that has regard to both the commercial interests of the developer and the public interest being secured through s.106 delivery.

Any ‘Internal Overheads’ are expected to be paid out of the developer’s return and should not be included as a separate item. This will be considered double counting.

**Landowner’s Return**
This will usually be addressed in the land purchase price or market value and will not normally be included in the appraisal.

**Site Acquisition Costs**
This should include Planning and Survey Costs, Agent and Legal fees, Stamp Duty etc. The fee levels should reflect local rates where appropriate.

**Abnormal/Exceptional Costs**
Any abnormal/exceptional build costs must be itemised in the appraisal and fully explained in the supporting evidence. The Council considers that costs incurred in delivering a workable, high quality development are to be expected and any works which should have been identified prior to acquisition should be reflected in the price paid for the land.
Standard development costs such as demolition works, landscaping, noise bunds, archaeological and ecological surveys, drainage and flood prevention measures, noise and other environmental attenuation, and appropriate infrastructure provision, which may include highway and public transport measures, will not usually be considered abnormal/exceptional site costs.

In the event that an applicant considers that abnormal/exceptional development costs have been incurred, it will be the responsibility of the applicant to demonstrate how the costs have been derived. A site investigation report, remediation statement, detailed drawings and calculations of how the abnormal/exceptional costs have been derived must be submitted with the application.

It is expected that the applicant will have accounted for the costs involved with any site constraints and the requirement of the Adopted Local Development Plan and relevant Supplementary Planning Guidance in the purchase of a site. A reduced contribution will only be considered where the policy requirement is demonstrated to threaten the viability of the development due to exceptional development costs resulting from unusual site constraints such as decontamination, reclamation requirements or access difficulties unforeseen at the time of site purchase.

**Planning Contributions and other Obligations**

Anticipated or agreed costs of delivering planning conditions or obligations for planning and highways agreements should be included.

**Site Value**

Site Value should equate to the market value providing that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan.

Any purchase price should have regard to the development plan policies and all other material planning considerations, including any S.106 obligations, whilst providing a competitive return to a willing landowner and a willing developer to enable the development to be deliverable.

When a site has been acquired by the applicant in advance of planning permission, the basis of the acquisition cost must be fully explained in the supporting evidence.

When a development site is subject to an Option to Purchase agreement, if the development cannot meet policy requirements and the option is subject to fixed returns to the landowner(s); where appropriate, the Council will expect the Option to be re-negotiated.

The cost of providing planning obligations, development constraints and land assembly is expected to be accounted for in the land purchase price. The Council does not accept situations where the applicant purchases land with the
assumption that S.106 obligations, including affordable housing, will automatically be waived or reduced in order to ensure financial viability.

**Current Land Use Value**

Any opinion on site value, which is considered to be the sum required to motivate a reasonable landowner to sell the site for the proposed development, will need to reflect its Current Use Value within the context of any existing benefits and burdens affecting the land. Any information on Current Land Use Value should include the following:

- Description of current lawfully permitted use of the site.

- Description and Schedule of existing buildings, yardage, parking and green areas to include Gross Internal Floor Areas and land areas.

- Written opinion from a suitably qualified professional with relevant experience of the Current Use Value (excluding all hope value for the proposed development) and taking into account any restrictions or liabilities (legal or physical) that apply to the site. Note: It is acceptable to include any additional value for alternative uses that would not give rise to Affordable Homes obligations where there is basis to believe that planning consent would be forthcoming for such uses, or already exists.
### (A) Value

- The gross and net internal area of the properties.
- The value or values used per unit area. This should include ground rents. (Evidence must be provided for deductions for incentives)
- Anticipated sales rate (per month)

### (B) Costs

- Site acquisition costs and date of acquisition (an acquisition cost, which does not reflect current planning policies in the valuation, is not a reason to reduce the affordable housing element required. The amount paid for the site should reflect the requirement for affordable housing provision to be made).
- Costs associated with acquisition (broken down into legal fees, stamp duty etc)
- Build Costs (say whether these are a tendered sum or an estimates.)
- Preliminaries allowed for (state what is included).
- External Works (state what is included).
- Planning Costs (planning and building regulation fees, any commuted sum money for open space etc)
- Fees (architect, designer, QS etc)
- Cost of finance (indicate period and interest rate)
- Community Benefits (if the scheme includes any benefits in kind, for example the restoration of a listed building, include the cost of providing this).
- Abnormal Costs (these are additional costs required to bring the site forward, over and above those that could reasonably be expected. Abnormals exclude all known costs that should have been reflected in the site acquisition cost.)
- Developers Profit Margin.
VIABILITY ASSESSMENT CHECKLIST:

☐ Site plan showing the cleared site (include site size in hectares and square metres)

☐ Full set of plans showing the proposed development

☐ Number of residential units proposed

☐ Schedule of both gross and net internal floor areas

☐ Land price (with proof)

☐ Date of land purchase

☐ Schedule of development costs (normals)

☐ Schedule of development costs (abnormals)

☐ Proof of development costs (normals / abnormals)

☐ Reasons why full costs (including abnormals) were not reflected in the purchase price

☐ Expected sale price of each dwelling and total

☐ Intended profit level/s

☐ Level/s of affordable housing (%) that could be provided

☐ Detailed Section 106 costs

☐ Any other costs or income included within your calculation (with proof)

☐ A residual valuation
The required information should be submitted in a hard copy and digital form.

Please note that even if part of the required information above has already been submitted to the Planning section as part of your planning application, it should be resubmitted with your viability assessment to reduce potential delays and the need to collate information from various sections of the Council.

Viability Report (Basic Outline)

- Summary
- Contents
- Introduction and background
- Description of site location
- Planning policy context
- Description of scheme
- Market information summary
- Build cost and programme
- Methodology and approach
- Outputs and results
- Concluding statement