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# Viability in the Planning Process

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# Basis for use of Viability Assessment Tools

- Legal basis – S.19 Planning and Compulsory Purchase Act 2004
- National Policies
  - NPPF replacing PPS3, Circular 05/2005 and Circular 06/1998



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# Understanding the Process

- Spatial development plans and policies – testing policies
- Setting CIL levels
- Site specific allocations – ordering priorities
- Site specific S.106 negotiations



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# The Direction of Travel

## LDF JRs

Persimmon vs Blyth BC – viability must be taken into account

Barratt vs Wakefield MDC – policy needs to provide certainty

## Appeals

Clay Farm, Cambridge – don't overpay for the site

Jericho's yard – a competitive tender is good evidence of MV

Badnalls Pit – abnormal costs of remediation can outweigh other policy considerations

Beaconsfield – zero is acceptable if assumptions are correct

East Lydney – a low offer now is not acceptable on a strategic scheme



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# What Happens Now?

- Viability to be considered in setting targets
- Viability to be considered when allocating sites for development
- Developers having to agree existing use value with the LA before allocation?



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# What Happens Now?

- S.106 Agreements need to take account of market changes – escalator or clawback clauses
  - HCA Guidance August 2009
  - Atlas Guidance January 2010
  - Ministerial Statement March 2012 - Flexibility
  - RICS Draft Guidance May 2012



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# Draft RICS Guidance

- Market value
- or
- EUV / AUV + premium
  - Factors affecting a premium
    - Land owner's needs / aspirations
    - Planning history / status of the site
    - Local authority's need to bring forward development



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# The Future

- Community Infrastructure Levy
  - Double counting
  - Charitable exemptions
  - Councillor views
  - The banker / Facilitator



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# The Future

- ‘Localism’
  - ‘tick box’ procedure?
  - Neighbourhood Plans?
  - Training of those in the process
  - Using viability to explain the ‘art of the possible’
  - Government Sanctions!!



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# THANK YOU

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