

RICS PROFESSIONAL STANDARD



Financial viability in planning: conduct and reporting

England

1st edition, May 2019

Effective from 1 September 2019

Financial viability in planning: conduct and reporting

RICS professional standard, England

1st edition, May 2019

Effective from 1 September 2019



Published by the Royal Institution of Chartered Surveyors (RICS)

Parliament Square

London

SW1P 3AD

www.rics.org

No responsibility for loss or damage caused to any person acting or refraining from action as a result of the material included in this publication can be accepted by the authors or RICS.

This document was originally published in May 2019 as an RICS professional statement and reissued in April 2023 as an RICS professional standard.

ISBN 978 1 78321 358 0

© Royal Institution of Chartered Surveyors (RICS) May 2019. Copyright in all or part of this publication rests with RICS. Save where and to the extent expressly permitted within this document, no part of this work may be reproduced or used in any form or by any means including graphic, electronic, or mechanical, including photocopying, recording, taping or web distribution, without the written permission of RICS or in line with the rules of an existing licence.

Typeset using Typefi

Contents

Acknowledgements	iv
RICS standards framework	1
Document definitions	2
Chair's statement	3
Glossary	5
1 Introduction	8
1.1 Updating	8
1.2 Overview	8
1.3 Background	8
1.4 Application	9
2 Reporting and process requirements	10
2.1 Objectivity, impartiality and reasonableness statement	10
2.2 Confirmation of instructions and absence of conflicts of interest	10
2.3 A no contingent fee statement	11
2.4 Transparency of information	11
2.5 Confirmation where the RICS member is acting on area-wide and scheme-specific FVAs	11
2.6 Justification of evidence and differences of opinion	12
2.7 Benchmark land value and supporting evidence	12
2.8 FVA origination, reviews and negotiations	13
2.9 Sensitivity analysis (all reports)	13
2.10 Engagement	13
2.11 Non-technical summaries (all reports)	13
2.12 Author(s) sign-off (all reports)	13
2.13 Inputs to reports supplied by other contributors	14
2.14 Timeframes for carrying out assessments	14
3 Legislation, the development plan and professional guidance	15
3.1 Legislation	15
3.2 RICS professional guidance and information	16
3.3 Additional guidance	16
4 Duty of care and due diligence	18

5	Transparency of information	21
5.1	Confidential information	21
5.2	Exceptions	22

Acknowledgements

Technical author

Robert Fourt FRICS (Gerald Eve LLP)

Working group

Jeremy Edge FRICS (Edge Planning)

Nigel Jones FRICS (Chesters Commercial)

Jacob Kut MRICS (Avison Young)

Simon Radford FRICS, Chair (Lothbury Investment Management)

Charles Solomon MRICS (GLA)

Peter Wyatt MRICS (Reading University)

RICS professional group lead

Tony Mulhall MRICS

RICS publishing

Standards publishing manager: Antonella Adamus

Project manager: Katherine Andrews

Editor: Sarah Moloney

RICS standards framework

RICS' standards setting is governed and overseen by the Standards and Regulation Board (SRB). The SRB's aims are to operate in the public interest, and to develop the technical and ethical competence of the profession and its ability to deliver ethical practice to high standards globally.

The RICS [Rules of Conduct](#) set high-level professional requirements for the global chartered surveying profession. These are supported by more detailed standards and information relating to professional conduct and technical competency.

The SRB focuses on the conduct and competence of RICS members, to set standards that are proportionate, in the public interest and based on risk. Its approach is to foster a supportive atmosphere that encourages a strong, diverse, inclusive, effective and sustainable surveying profession.

As well as developing its own standards, RICS works collaboratively with other bodies at a national and international level to develop documents relevant to professional practice, such as cross-sector guidance, codes and standards. The application of these collaborative documents by RICS members will be defined either within the document itself or in associated RICS-published documents.

Document definitions

Document type	Definition
RICS professional standards	<p>Set requirements or expectations for RICS members and regulated firms about how they provide services or the outcomes of their actions.</p> <p>RICS professional standards are principles-based and focused on outcomes and good practice. Any requirements included set a baseline expectation for competent delivery or ethical behaviour.</p> <p>They include practices and behaviours intended to protect clients and other stakeholders, as well as ensuring their reasonable expectations of ethics, integrity, technical competence and diligence are met. Members must comply with an RICS professional standard. They may include:</p> <ul style="list-style-type: none"> • mandatory requirements, which use the word 'must' and must be complied with, and/or • recommended best practice, which uses the word 'should'. It is recognised that there may be acceptable alternatives to best practice that achieve the same or a better outcome. <p>In regulatory or disciplinary proceedings, RICS will take into account relevant professional standards when deciding whether an RICS member or regulated firm acted appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional standards into account.</p>
RICS practice information	<p>Information to support the practice, knowledge and performance of RICS members and regulated firms, and the demand for professional services.</p> <p>Practice information includes definitions, processes, toolkits, checklists, insights, research and technical information or advice. It also includes documents that aim to provide common benchmarks or approaches across a sector to help build efficient and consistent practice.</p> <p>This information is not mandatory and does not set requirements for RICS members or make explicit recommendations.</p>

Chair's statement

In 2012 RICS published *Financial viability in planning* (1st edition), which provided advice on applying the government's planning policy on viability, introduced through the National Planning Policy Framework (NPPF) 2012.

The 1st edition has been widely referred to in financial viability assessment (FVA) submissions, section 106 agreements, supplementary planning guidance (SPG), planning appeals and High Court decisions as a document that sets out accepted good practice for RICS members.

The emergence in 2014 of the national Planning Practice Guidance provided more detail about the application of the NPPF. In July 2018 a revised NPPF and Planning Practice Guidance (PPG) were issued. The NPPF was further updated in February 2019 and the PPG updated in May 2019. This followed the earlier decision in *Parkhurst Road Ltd v Secretary of State for Communities and Local Government & Anor* [2018] EWHC 991.

This professional standard has therefore been informed by the NPPF, PPG and a High Court decision, as well as practitioner experience. It aims to:

- provide consistency regarding the application of policy and guidance and
- assist the practitioner in individual cases.

Where planning obligations and other costs are introduced during the planning process, ascertaining the viability of a development involves a number of valuation judgements in both the inputs and outcomes of an appraisal of a scheme. In arriving at these judgements, it is a question of whether they are rational, realistic and reasonable in the circumstances. Parties may of course reasonably disagree. The 1st edition encouraged practitioners to seek to resolve these differences of opinion, where possible, in the context of viability being a matter of evidence, valuation and exercising judgement.

The PPG 2019 also emphasises the need for:

- evidence-based judgement
- collaboration
- transparency and
- a consistent, standardised approach.

All these themes were central to preparing this standard, which sets out mandatory requirements that inform the practitioner on what must be included within reports and how the process must be conducted. This is to demonstrate how a reasonable, objective and impartial outcome, without interference, should be arrived at, and so support the statutory planning decision process.

Given that planning applications involve a statutory process that is subject to public scrutiny, the requirements in this professional statement are important in providing public confidence in a process that is inevitably complex, but nevertheless must inform the planning decision-maker.

Since the publication of the NPPF 2018 and PPG 2018 (as updated in 2019) RICS has also been reviewing the 1st edition to align it with the changed emphasis in current government policy; a second edition is forthcoming.

I would like to thank all those who contributed to this professional statement with their comments and suggestions and, in particular, my fellow members of the working group.

Simon Radford

Chair, RICS working group

Glossary

Term	Definition
Benchmark land value (BLV)	A term defined in the Planning Practice Guidance (PPG) and undertaken by a suitably qualified practitioner (see PPG paragraphs 013 (reference ID: 10-013-20190509); 014 (reference ID: 10-014-20190509); 015 (reference ID: 10-015-20190509); 016 (reference ID: 10-016-20190509); and 017 (reference ID: 10-017-20190509)). See also <i>Suitably qualified practitioner</i> .
Decision-maker	The local/regional (where applicable) planning authority, or an inspector(s) as appointed by the secretary of state.
Existing use value (EUV)	<p>The <i>RICS Valuation – Global Standards 2017</i> (the ‘Red Book’) UK national supplement (2018) UK VPGA 6.1 states that:</p> <p>‘Existing use value (EUV) is to be used only for valuing property that is owner-occupied by an entity for inclusion in financial statements.’</p> <p>Using EUV in other circumstances is technically a departure from the Red Book (albeit an acceptable one in the context of the PPG). Where reference to EUV falls within ‘authoritative requirements’, for the purposes of the Red Book PS 1 section 4.2 and PS 1 section 6.3, it is not to be regarded as legislative or even regulatory in character, but nevertheless is a clear government policy requirement/convention (with accompanying guidance). Therefore, it would not need to be formally declared as a departure provided the valuation purpose (financial viability in planning) is made clear, as other parts of PS 1 require.</p>
Financial viability assessment (FVA)	See <i>Viability assessment</i> .
Local planning authority (LPA)	This includes both local and regional (where applicable) planning authorities, including metropolitan cities where a mayor presides in determining, or informing decisions on, planning applications.

Term	Definition
National Planning Policy Framework (NPPF)	Published by the government in July 2018 and updated in February 2019. It supersedes the policies in the previous version of the framework published in 2012.
Planning Practice Guidance (PPG)*	<p>The PPG was introduced in paragraph 57 of the NPPF, which states that all viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in PPG as from July 2018. The PPG was updated in May 2019 and can be accessed at www.gov.uk/guidance/viability.</p> <p>The PPG supersedes the previous viability guidance (also known as Planning Practice Guidance), which was operative from 2014 to July 2018 (see www.gov.uk/government/collections/planning-practice-guidance).</p> <p>* Planning Practice Guidance is also referred to as National Planning Guidance elsewhere.</p>
RICS member(s)	A member of RICS (see also <i>Suitably qualified practitioner</i>).
Section 106 agreement	An agreement (based on section 106 of the <i>Town and Country Planning Act 1990</i>) made between a local authority and an owner/developer, which can be attached to a planning permission concerning planning obligations that make a development acceptable. The section 106 agreement runs with the land to which the planning permission has been granted.
Stand back	Following a detailed component review of the inputs into an FVA and running the appraisal, to stand back is to consider the output(s) objectively, and with the benefit of experience, given the complexity of the proposed scheme. This may often be assisted by reviewing the sensitivity analysis.
Subpractitioners	All parties who may contribute to the carrying out or reviewing of the financial viability of a scheme.

Term	Definition
<p>Suitably qualified practitioner</p>	<p>A term identified in the PPG, paragraph 020 (reference ID: 10-020-20180724):</p> <p>‘In order to improve clarity and accountability it is an expectation that any viability assessment is prepared with professional integrity by a suitably qualified practitioner and presented in accordance with this National Planning Guidance. Practitioners should ensure that the findings of a viability assessment are presented clearly.’</p> <p>An RICS member would be considered a ‘suitably qualified practitioner’ to give an objective, impartial and reasonable viability judgement if they:</p> <ul style="list-style-type: none"> • are experienced in undertaking valuations of development land and/or advising on financial viability of development • understand the application of inputs into the residual appraisal model from other professional disciplines and • have appropriate and up-to-date knowledge of the planning system.
<p>Viability assessment</p>	<p>This means:</p> <ul style="list-style-type: none"> • an assessment originated on behalf of an applicant • an assessment produced by a reviewer (either on behalf of an LPA or by themselves) • an area-wide viability assessment (and representations made in respect of an area-wide viability evidence base before and during an examination in public) and • an assessment that is part of a proof of evidence/ expert’s report before and during an appeal or High Court case.
<p>Viability judgement</p>	<p>Similar to <i>stand back</i> in that an objective, rational and experienced opinion is formed, having regard to the complexities of the circumstances. A viability judgement may equally apply to individual elements of the appraisal, including the benchmark land value as well as the viability output, including interpretation of the resultant sensitivity analysis.</p>

1 Introduction

1.1 Updating

In addition to this professional standard, RICS is producing a second edition of *Financial viability in planning* (1st edition published in 2012), to reflect the changes in the NPPF 2018, as updated in February 2019, and PPG 2018, as updated in May 2019.

1.2 Overview

This professional standard sets out mandatory requirements on conduct and reporting in relation to FVAs for planning in England, whether for area-wide or scheme-specific purposes. It recognises the importance of impartiality, objectivity and transparency when reporting on such matters. It also aims to support and complement the government's reforms to the planning process announced in July 2018 and subsequent updates, which include an overhaul of the NPPF and PPG on viability and related matters.

The new policy and practice advice prioritises the assessment of viability at the plan-making stage and identifies EUV as the starting point for assessing the uplift in value required to incentivise the release of land.

This standard does not reference individual appeal cases. This is because the issues relating to them are often specific to each case, which makes an objective analysis difficult and subject to caveats. Neither does this standard deal with specific local planning policy (see section 3). The assessment of viability **must** be carried out having proper regard to all material facts and circumstances, whether for area-wide or scheme-specific assessments.

The RICS member carrying out the FVA **must** be a suitably qualified practitioner. A list of defined terms can be found in the *Glossary*.

1.3 Background

This professional standard has been written against the background of the High Court decision in *Parkhurst Road Ltd v Secretary of State for Communities and Local Government & Anor* [2018] EWHC 991, which highlighted the need to deal with problems encountered in practice.

While this document focuses on reporting and process requirements, more explicit detail on development viability in planning and providing greater clarity on reporting will be dealt with in the forthcoming second edition of RICS' *Financial viability in planning*.

1.4 Application

The primary policy and guidance on assessing viability in a planning context is provided in the NPPF 2019 and the PPG 2019. These have sought to change the emphasis on how viability should be approached in the planning system and the weight that should be given to viability assessments at the plan-making and development management stages.

2 Reporting and process requirements

The requirements in sections 2.1 to 2.14 set out what **must** be included in all FVAs (scheme-specific and area-wide) and how they **must** be carried out. This concerns all FVAs, whether they are:

- on behalf of, or by, the applicant
- in respect of a review or otherwise of a submitted FVA or
- on behalf of, or by, the decision- or plan-maker.

The following requirements are mandatory in all cases.

2.1 Objectivity, impartiality and reasonableness statement

A collaborative approach involving the LPA, business community, developers, landowners and other interested parties will improve understanding of the viability and deliverability for everyone involved in the process. The report **must** include a statement that, when carrying out FVAs and reviews, RICS members have acted:

- with objectivity
- impartially
- without interference and
- with reference to all appropriate available sources of information.

This applies both to those acting on behalf of applicants as well as those acting on behalf of the decision-makers.

A similar statement **must** appear in area-wide studies and submissions. RICS members **must** also comply with the requirements of *PS 2 Ethics, competency, objectivity and disclosures* in *RICS Valuation – Global Standards* in connection with valuation reports.

2.2 Confirmation of instructions and absence of conflicts of interest

Terms of engagement **must** be set out clearly and should be included in all reports. RICS' *Conflicts of interest* applies, but with the additional requirement that RICS members acting on behalf of all those involved **must** confirm that no conflict or risk of conflict of interest exists (see *Conflicts of interest* paragraph 1.1). The standard allows 'informed consent' management, which, subject to the circumstances, can be both pragmatic and appropriate. This should take the form of a declaration statement.

Where either applicants or decision-makers specify requests of RICS members, either at the start or during the viability process, these **must** be explicitly set out in respective reports. This includes additional requests for testing the viability of the proposed scheme or counterfactual scenarios. RICS members **must**, at all times, satisfy themselves that these requests do not contradict the mandatory requirements of this professional standard.

2.3 A no contingent fee statement

A statement **must** be provided confirming that, in preparing a report, no performance-related or contingent fees have been agreed.

2.4 Transparency of information

Transparency and fairness are key to the effective operation of the planning process. The PPG (paragraph 021, reference ID 10-021-20190509) states that:

'Any viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances.'

Although certain information may need to remain confidential, FVAs should in general be based around market- rather than client-specific information.

Where information may compromise delivery of the proposed application scheme or infringe other statutory and regulatory requirements, these exceptions **must** be discussed and agreed with the LPA and documented early in the process. Commercially sensitive information can be presented in aggregate form following these discussions. Any sensitive personal information should not be made public.

2.5 Confirmation where the RICS member is acting on area-wide and scheme-specific FVAs

Before accepting instructions, if RICS members are advising either the applicant or the LPA on a planning application and have previously provided advice, or where they are providing ongoing advice in area-wide FVAs to help formulate policy, this **must** be declared.

In these circumstances respective parties **must** also ensure that no conflicts of interest arise, particularly where advice in connection with policy is concurrent with carrying out or reviewing the financial viability of a specific scheme. When reporting, RICS members **must** declare whether they have advised an LPA that is considering the planning application that is subject to an FVA. This applies to individuals as well as the firm/company advising either the applicant or LPA, and includes subpractitioners. It applies both before accepting instructions and subsequently when reporting. Refer to the current edition of RICS' *Conflicts of interest* to ensure that you follow the correct process in all cases.

2.6 Justification of evidence and differences of opinion

All inputs into an appraisal **must** be reasonably justified. Where a reviewer disagrees with a submitted report and/or with elements in it, differences **must** be clearly set out with supporting and reasonable justification. Where inputs are agreed, this **must** also be clearly stated. Where possible, practitioners should always try to resolve differences of opinion.

2.7 Benchmark land value and supporting evidence

Stakeholders are often presented with a variety of valuation figures that are not always easy to understand. In particular they will wish to reconcile figures included in FVAs with figures reported in the market. In the interest of transparency, when providing benchmark land value in accordance with the PPG for an FVA, RICS members **must** report the:

- **current use value** – CUV, referred to as EUV or first component in the PPG (see paragraph 015 reference ID: 10-015-20190509). This equivalent use of terms – i.e. that CUV and EUV are often interchangeable – is dealt with in paragraph 150.1 of IVS 104 *Bases of Value* (2017)
- **premium** – second component as set out in the PPG (see paragraph 016 reference ID: 10-016-20190509)
- **market evidence** as adjusted in accordance with the PPG (see PPG paragraph 016 reference ID: 10-016-20190509)
- **all supporting considerations, assumptions and justifications adopted** including valuation reports, where available (see PPG paragraphs 014 reference ID: 10-014-20190509; 015 reference ID: 10-015-20190509; and 016 reference ID: 10-016-20190509)
- **alternative use value** as appropriate (market value on the special assumption of a specified alternative use; see PPG paragraph 017 reference ID: 10-017-20190509). It will not be appropriate to report an alternative use value where it does not exist.

A statement **must** be included in the FVA or review of the applicant's FVA or area-wide FVA that explains how market evidence and other supporting information has been analysed and, as appropriate, adjusted to reflect existing or emerging planning policy and other relevant considerations. If a market value report has recently been prepared, this should be stated with the:

- reason for the report
- assumptions adopted and
- reported valuation.

The onus is on RICS members to enquire about all of the above.

In addition, the price paid for the land (or the price expected to be paid through an option or conditional agreement), should be reported as appropriate (see PPG paragraph 016 reference ID: 10-016-20190509) to improve transparency. Price paid is not allowable evidence for the assessment of BLV and cannot be used to justify failing to comply with policy.

2.8 FVA origination, reviews and negotiations

During the viability process there **must** be a clear distinction between preparing and reviewing a viability report and subsequent negotiations. The negotiations, which take place later and separately, commonly relate to section 106 agreements. This distinction is to retain the objectivity and impartiality of the origination and review of an FVA and to clarify where respective parties, or their practitioners, are seeking to resolve differences of opinion by comparison with subsequent negotiations.

2.9 Sensitivity analysis (all reports)

All FVAs and subsequent reviews **must** provide a sensitivity analysis of the results and an accompanying explanation and interpretation of respective calculations on viability, having regard to risks and an appropriate return(s). This is to:

- allow the applicant, decision- and plan-maker to consider how changes in inputs to a financial appraisal affect viability and
- understand the extent of these results to arrive at an appropriate conclusion on the viability of the application scheme (or of an area-wide assessment).

This also forms part of an exercise to 'stand back' and apply a viability judgement to the outcome of a report.

2.10 Engagement

At all stages of the viability process, RICS members **must** advocate reasonable, transparent and appropriate engagement between the parties, having regard to the circumstances of each case. This **must** be agreed and documented between the parties.

2.11 Non-technical summaries (all reports)

For applicants, subsequent reviews and plan-making, FVAs **must** be accompanied by non-technical summaries of the report so that non-specialists can better understand them. The summary **must** include key figures and issues that support the conclusions drawn from the assessment and also be consistent with the PPG (see paragraph 021 reference ID: 10-021-20190509).

2.12 Author(s) sign-off (all reports)

Reports on behalf of both applicants and the authority **must** be formally signed off and dated by the individuals who have carried out the exercises. Their respective qualifications should also be included.

The authors of FVAs and subsequent reviews **must** come to a reasonable judgement on viability on the basis of objectivity, impartiality and without interference, taking into account

all inputs, including those supplied by other contributors. For more on inputs by other specialists in relation to valuation work, see PS 2 of Red Book Global Standards.

2.13 Inputs to reports supplied by other contributors

All contributions to reports relating to assessments of viability, on behalf of both the applicants and authorities, **must** comply with these mandatory requirements. Determining the competency of subcontractors is the responsibility of the RICS member or RICS-regulated firm.

2.14 Timeframes for carrying out assessments

RICS members **must** ensure that they have allowed adequate time to produce (and review) FVAs proportionate to the scale of the project, area-wide assessment and specific instruction. They **must** set out clear timeframes for completing work. If the timeframes need to be extended, the reasons **must** be clearly stated, both at the time and in the subsequent report.

Where RICS members believe that the timeframes have not been reasonable, they **must** state this and give a brief outline of the issues and consequential impacts.

3 Legislation, the development plan and professional guidance

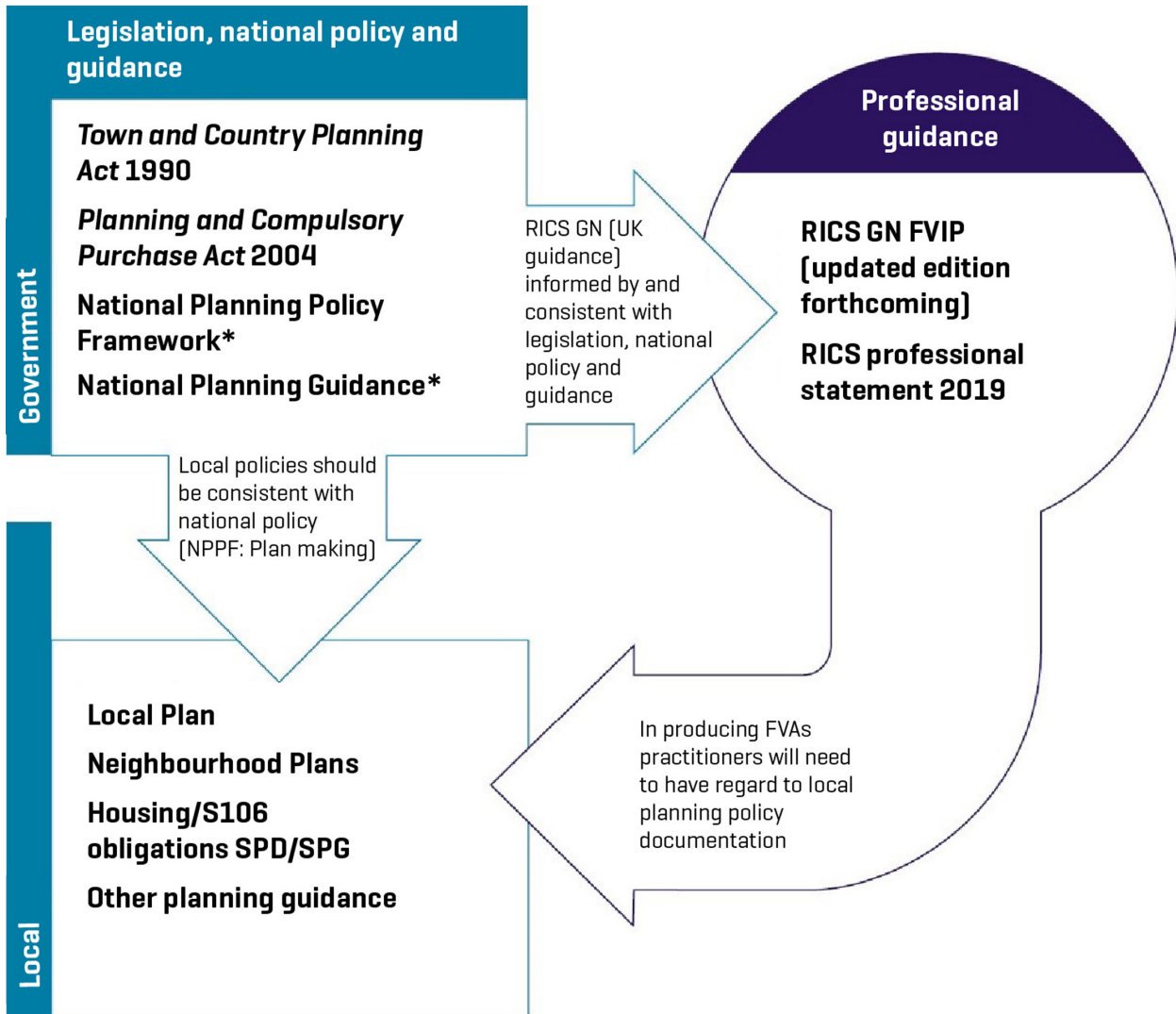
3.1 Legislation

The *Town and Country Planning Act 1990* and the *Planning and Compulsory Purchase Act 2004* are the governing pieces of legislation that regulate development and set out the planning application process in England and Wales.

Policy principles relating to viability assessments are set out in the NPPF and are informed by the PPG. These two documents are the primary sources of guidance when carrying out FVAs. It is the RICS member's responsibility to have regard to all further relevant legislation, government policy and government guidance issued after the publication of this professional standard.

In England the plan-led system operates under the principle that the decisions on planning applications should be made in accordance with the adopted development plan, unless there are other material considerations that may indicate otherwise. In adopting and implementing the plan, national planning policies are a material consideration. Additionally, the government may produce national planning guidance on how the national policy is to be applied. It also is a material consideration in plan-making and decision-making.

In certain circumstances government policies and guidance may need further elaboration to enable practitioners to consistently apply local planning policy in compliance with national planning policy and associated guidance. RICS professional standards and guidance fall into this category. They expand on how government policy and practice advice may be consistently implemented in the context to which it applies (see Figure 1). This PS should be applied reflecting changes to government policies and guidance.



* subject to periodic additions/amendments

Figure 1: Legislation, policy and guidance

3.2 RICS professional guidance and information

The forthcoming second edition of RICS' *Financial viability in planning* (1st edition published 2012) will reflect the 2019 PPG and other related government guidance. Until this second edition is available, refer to section 1.4 of this professional standard.

3.3 Additional guidance

In addition to points of general relevance in judgments from the courts, consideration may also be given to outcomes expressed in decisions from the secretary of state and planning appeals. In considering these cases, it is important to ensure an understanding of the relevance and suitability of the assumptions adopted when applying them to an FVA.

Where the adopted principles and assumptions are considered to have wider application, practitioners should ensure they understand the context of the original decision.

Inputs into the viability appraisal should be objective and reasonable, having regard to the specific scheme being tested at the time of the assessment as well as comparable evidence. As a project progresses, inputs inevitably change. For example, when pricing residential units, the asking price at the time of marketing may differ, sometimes significantly, from those in the original FVA. This is because:

- time has passed since the original assessment
- agents will always seek to get the best price when marketing and
- costs may change through inflation or other causes.

When developers take on a development, they understand there are risks they have to bear in mind following the grant of planning permission.

4 Duty of care and due diligence

When carrying out or reviewing FVAs, members **must** be:

- reasonable
- transparent and
- fair and objective.

Objective means not being influenced by personal feelings, sentiment or by others in considering and representing facts (see section 2.1).

RICS members **must** act impartially. They should not be influenced by whether their role is to originate or to review the FVA. Neither should they bow to commercial or political pressures.

RICS members **must** comply with the principles of professional and ethical standards. These include:

- a duty of care that is particularly pertinent given the public interest and reliance that third parties may have on the content of the information provided and
- disclosure of any circumstances where the RICS member or the RICS-regulated firm will gain from the appointment beyond a normal fee or commission.

All RICS members acting on behalf of parties **must** confirm that no conflicts of interest exist. Figure 2 shows the relevant potential conflicts of interest.

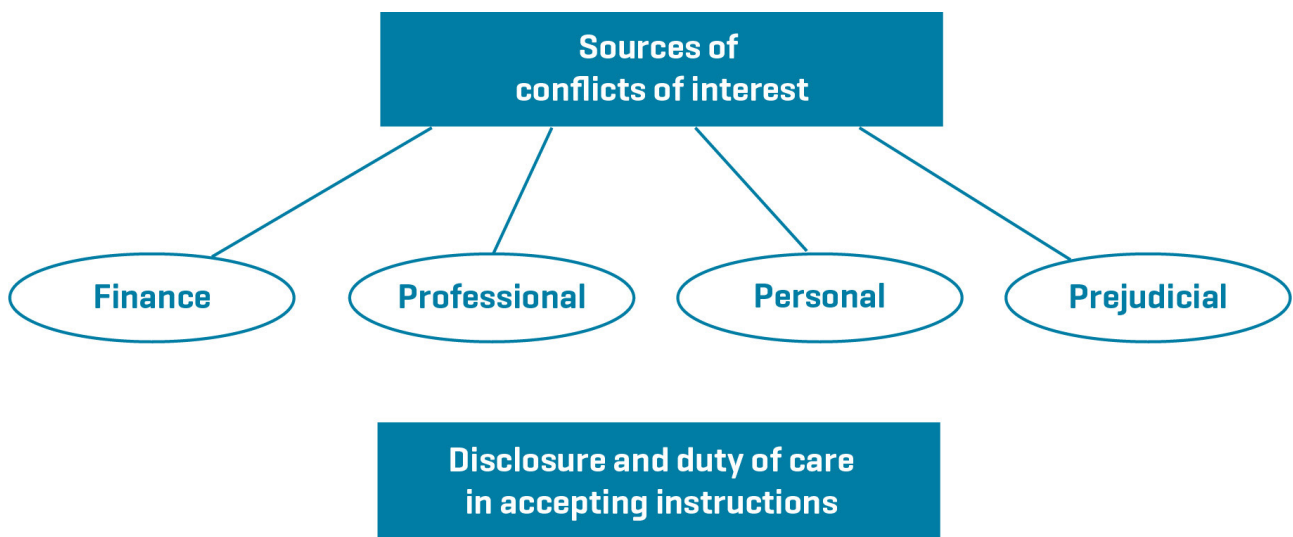


Figure 2: Conflicts of interest and duty of care

Establishing that there are no conflicts of interest includes providing statements from practitioners stating what other advice has been provided to the parties as appropriate and relevant in the circumstances. This may take the form of a declaration statement. Always refer to the current edition RICS' *Conflicts of interest* for the mandatory requirements and

accompanying guidance. This relates both to identifying and managing conflicts of interest and to maintaining confidentiality of information.

Acting with a reasonable standard of care contributes significantly to informed decision-making. RICS members should provide as much good-quality information as they can, whether submitting this on behalf of an applicant or responding on behalf of an LPA. This ensures that information is used to agree or to resolve any differences of opinion.

RICS members, whether on behalf of the applicant or LPA, **must** act as objective and impartial specialists to a professional standard when advising and providing information that can be relied on. In addition, they may be required to rely on highly specialist or technical inputs. This may include planning, legal and financial advice as well as technical development advice, such as build-cost estimates, ground condition surveys, engineering advice, etc. This information can help all parties involved to reach well-informed decisions quickly and without duplicating effort.

The onus is on the RICS members primarily responsible for the FVA, due diligence review or area-wide assessment to ensure that the information provided is balanced, reasonable and reflects an appropriate level of judgement in the circumstances. In practice, this requires all those inputting into the FVA to confirm that they have met those requirements in much the same way as if they were providing expert evidence. Where the originator of the FVA and the reviewer have different views, this should be supported; both should supply appropriate evidence or explanations of why they interpreted the evidence differently and reached an alternative opinion.

RICS members **must** also consider whether the advice they are giving represents the most effective and efficient way to deliver a reasonable development performance proportionate to the scheme being tested. This is sometimes referred to as 'value engineering' and involves quantity surveyors, agents and other professionals. LPAs and their advisers need to be confident that the FVA fully reflects the way the development would actually be carried out. If this is not the case, it should be stated and explained.

RICS members **must** include a statement that these matters have been given full consideration in the FVA. Corresponding statements **must**, where appropriate, be included in other professional and specialist inputs to the FVA.

When carrying out a due diligence review of an FVA on behalf of the LPA, RICS members **must** provide an assurance that the review has been carried out in accordance with this section.

Dependent on the terms of instruction from the LPA, which should be explicitly set out in any review or area-wide assessment, RICS members may be asked to provide additional advice on a range of aspects of viability assessment, such as counterfactual testing and alternative options for delivering the development proposed in the application. While this advice may not be intended for discussion with the applicant, the RICS member's role should be the same as if it were. The principles of due diligence set out in this section **must** be applied.

Case law has recognised that values and costs are not precise figures but may fall within a tolerance. Valuation and costing inputs would therefore not normally be at a level at either end of a possible range but **must** reflect a practitioner's professional viability judgement, having regard to such matters as the risks of development. The same consideration should be applied to resultant outputs to reach a rational, reasonable and realistic conclusion.

Sensitivity analyses (see section 2.9) help set such conclusions in their proper context and allow for adjustments to inputs within a possible range.

5 Transparency of information

The NPPF states that LPAs should publish a list of their information requirements for applications. These should be proportionate to the nature and scale of development proposals and should only request supporting information that is relevant and necessary to the application in question.

There is further guidance in the PPG. This identifies one of the key principles of FVAs as being a collaborative approach to improve understanding of viability and deliverability. Where possible there should be a presumption in favour of transparency of evidence. This is particularly important to reassure the wider community that viability testing has been fully assessed and all known facts have been considered.

An FVA should have enough detailed information to meet NPPF and PPG requirements. Sections 5.1 and 5.2 give further advice about providing confidential information.

5.1 Confidential information

An FVA is based on market information and is not specific to an applicant's circumstances. The PPG at paragraph 021 (reference ID: 10-021-20190509) states that FVAs will be made publicly available other than in exceptional circumstances. However, inputs may include commercially sensitive information, the public disclosure of which could have commercial consequences for the delivery of the application site.

Inputs that could be commercially sensitive typically relate to:

- current or future negotiations on land assembly (including obtaining vacant possession), option arrangements, third-party rights (e.g. rights of way, visibility, ransom, light, oversailing, etc.), disturbance, relocation, compulsory purchase and land compensation, etc.
- specific business information, such as funding details and marketing agreements and
- intellectual copyright, such as development toolkit and build-cost modelling. This can be kept confidential, but consideration should be given to presenting in a standard industry model.

Commercially sensitive information may need to be treated as confidential in pre-application discussions between the applicant and the LPA. This may relate to either market- and/or scheme-specific information. It may follow that such information could be exempt from disclosure to third parties under the provisions of the *Freedom of Information Act 2000* or the *Environmental Information Regulations 2004* (EIR).

5.2 Exceptions

The EIR set out exceptions that allow the LPA to refuse to provide requested information. Some exceptions relate to categories of information; for example, unfinished documents and internal communications. Others are based on the harm that would arise from disclosure; for example, if releasing the information would adversely affect intellectual property rights. There is also an exception for personal data if it would be contrary to the *Data Protection Act 2018*.

Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

Americas, Europe, Middle East & Africa
aemea@rics.org

Asia Pacific
apac@rics.org

United Kingdom & Ireland
contactrics@rics.org



[rics.org](https://www.rics.org)