

NAVIGATING DEVELOPER CONTRIBUTIONS NEGOTIATIONS POST NPPF 2



ANTHONY LEE
27 September 2018



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INTRODUCTION

- 1. Taking stock of where we are now**
- 2. How critical are planning obligations to viability?**
- 3. Context in which viability negotiations take place**
- 4. What can realistically be negotiated?**
- 5. Potential future changes**

Five years of debate on the three way tussle

GN 94/2012

RICS Professional Guidance, England

Financial viability in planning

1st edition, guidance note



RICS the mark of property professionalism worldwide

Viability Testing Local Plans

Advice for planning practitioners

Local Housing Delivery Group
Chaired by Sir John Harman

June 2012



Research



April 2015
Financial Viability Appraisal
in Planning Decisions:
Theory And Practice



rics.org/research



Ministry of Housing,
Communities &
Local Government

National Planning Policy Framework

July 2018
Ministry of Housing, Communities and Local Government

1

HOW CRITICAL ARE S106 CONTRIBUTIONS TO VIABILITY?

S106 – fine margins can make a difference

Residential	778
Commercial	60
Purchaser's costs	-4
Net Dev Value	784
Acquisition	34
Construction	488
Contingency	12
CIL	35
S106	23
Fees	49
Marketing & disposal	25
Finance	58
Total costs	724
	0
Profit	60

7.58%

S106 – fine margins can make a difference

Residential	778
Commercial	60
Purchaser's costs	-4
Net Dev Value	784
Acquisition	34
Construction	488
Contingency	12
CIL	35
S106	0
Fees	49
Marketing & disposal	25
Finance	58
Total costs	702
	0
Profit	82

10.50%

2

CURRENT STATE OF PLAY



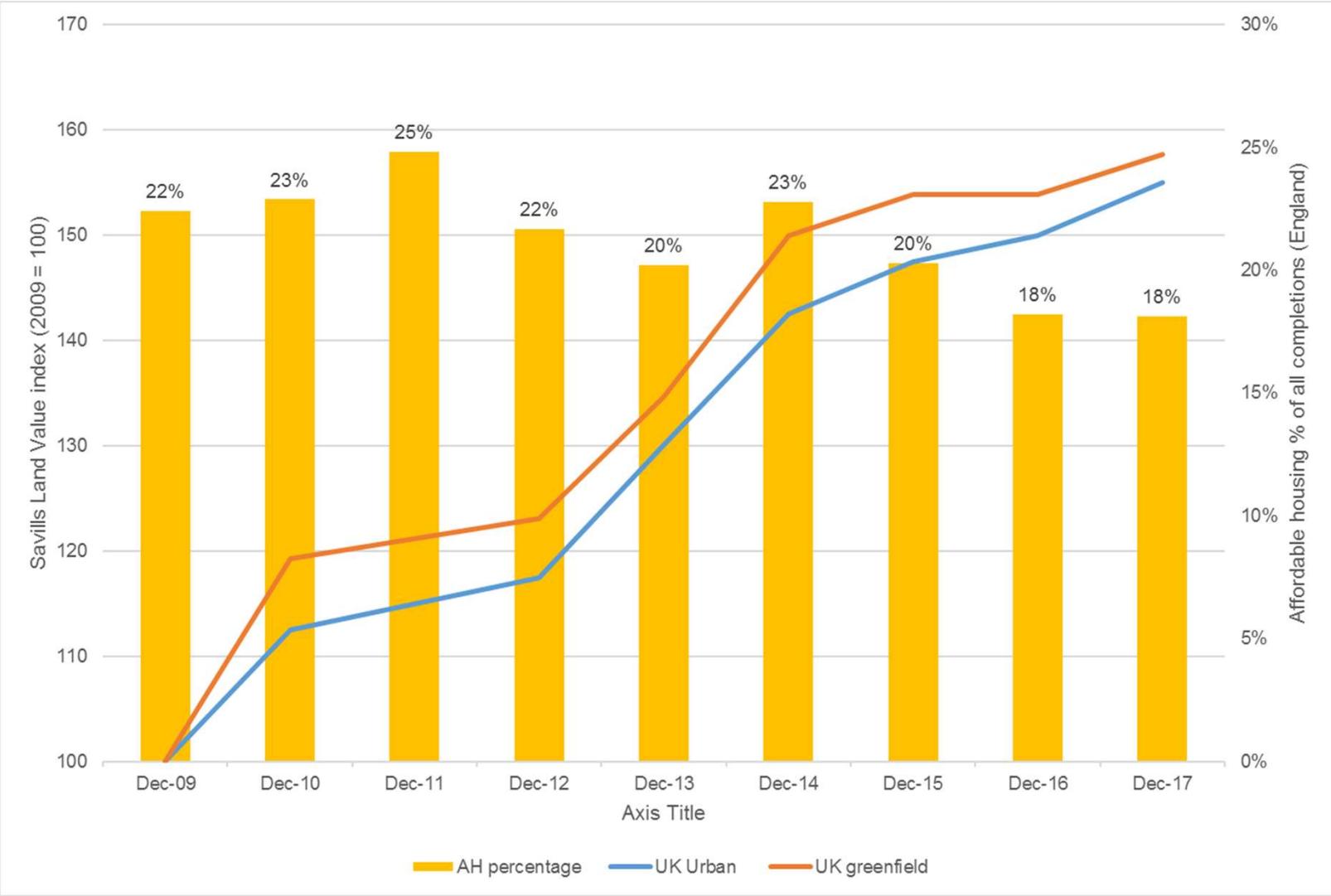
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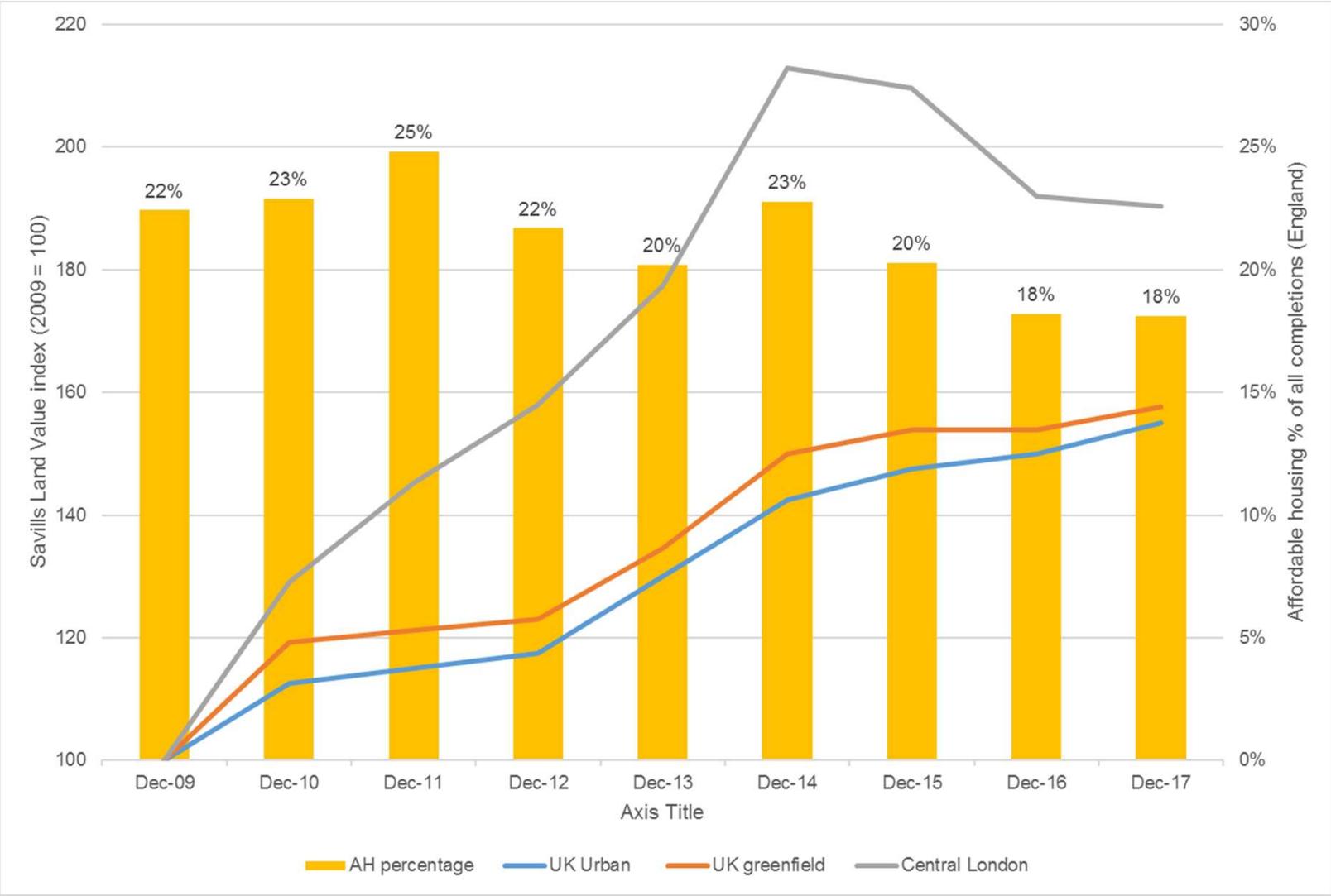
Where are we now?

- Disconnect between planning requirements and market behaviour
- Local frustration that targets are not being met (optimum viable vs quota)
- Inadequate infrastructure funding
- More housing planned but no credible solutions for infrastructure
- Developer contributions have become more, not less, complex post CIL
- Rising land values, falling levels of affordable housing

Where are we now?



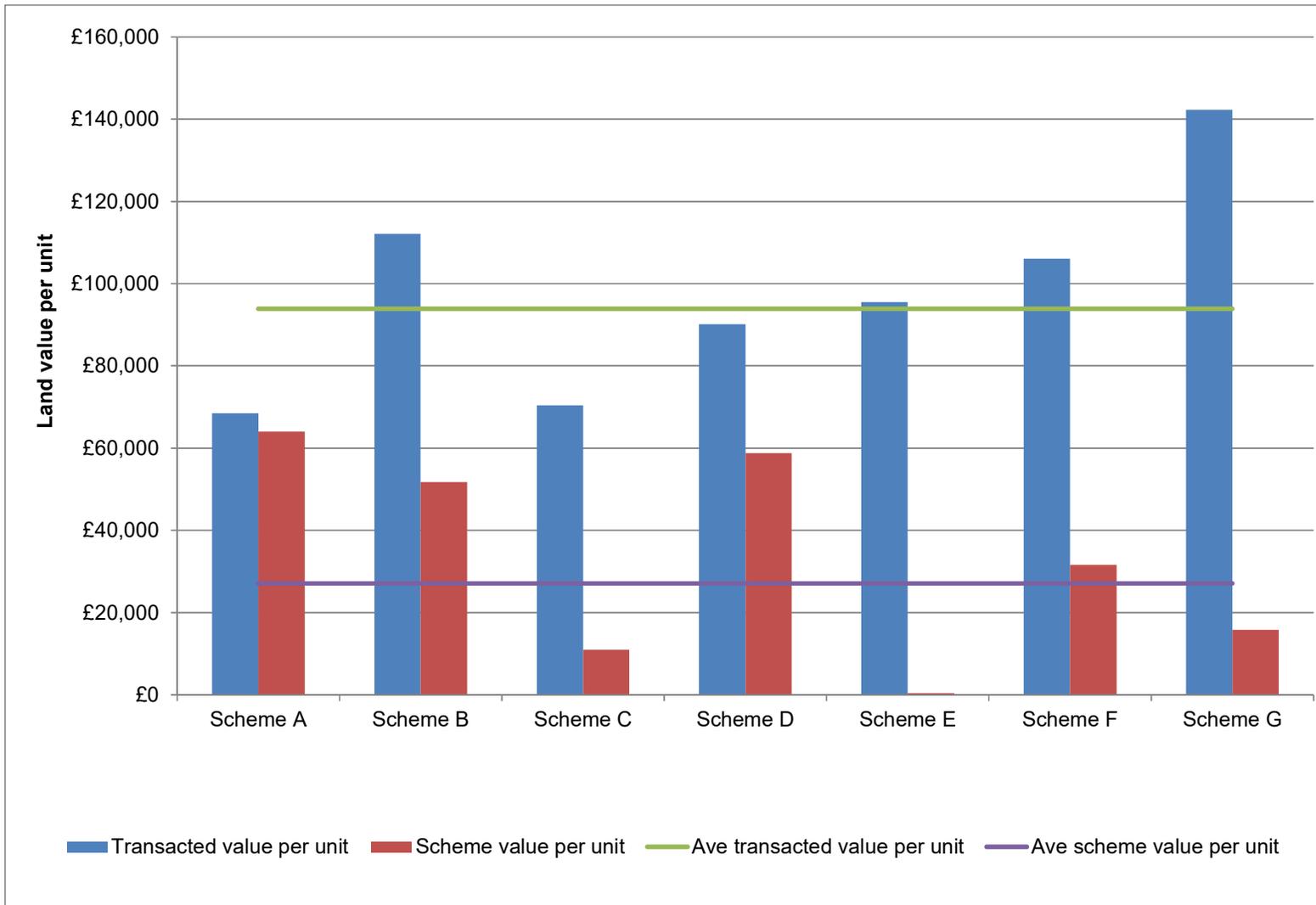
Where are we now?



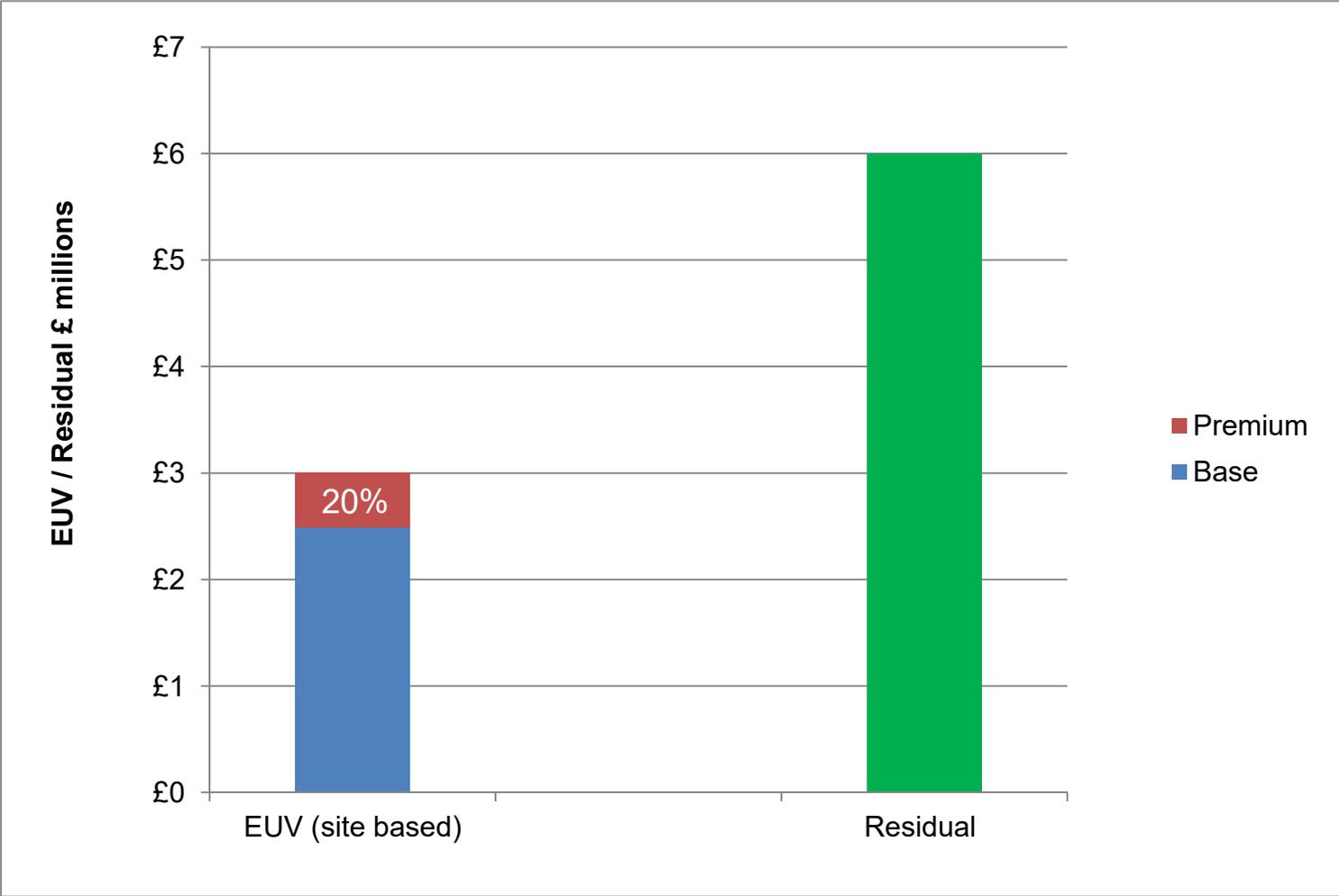
The problems with the current system

- An ever growing gap between policy and delivery
- Too high a proportion of uplift in value being paid to landowners
- Reinforced by guidance – reliance on market signals in viability
- Markets will not voluntarily give up value unless forced to
- Introducing market value into viability was bound to reduce contributions
- Does the new NPPG help solve the problem? – yes and no

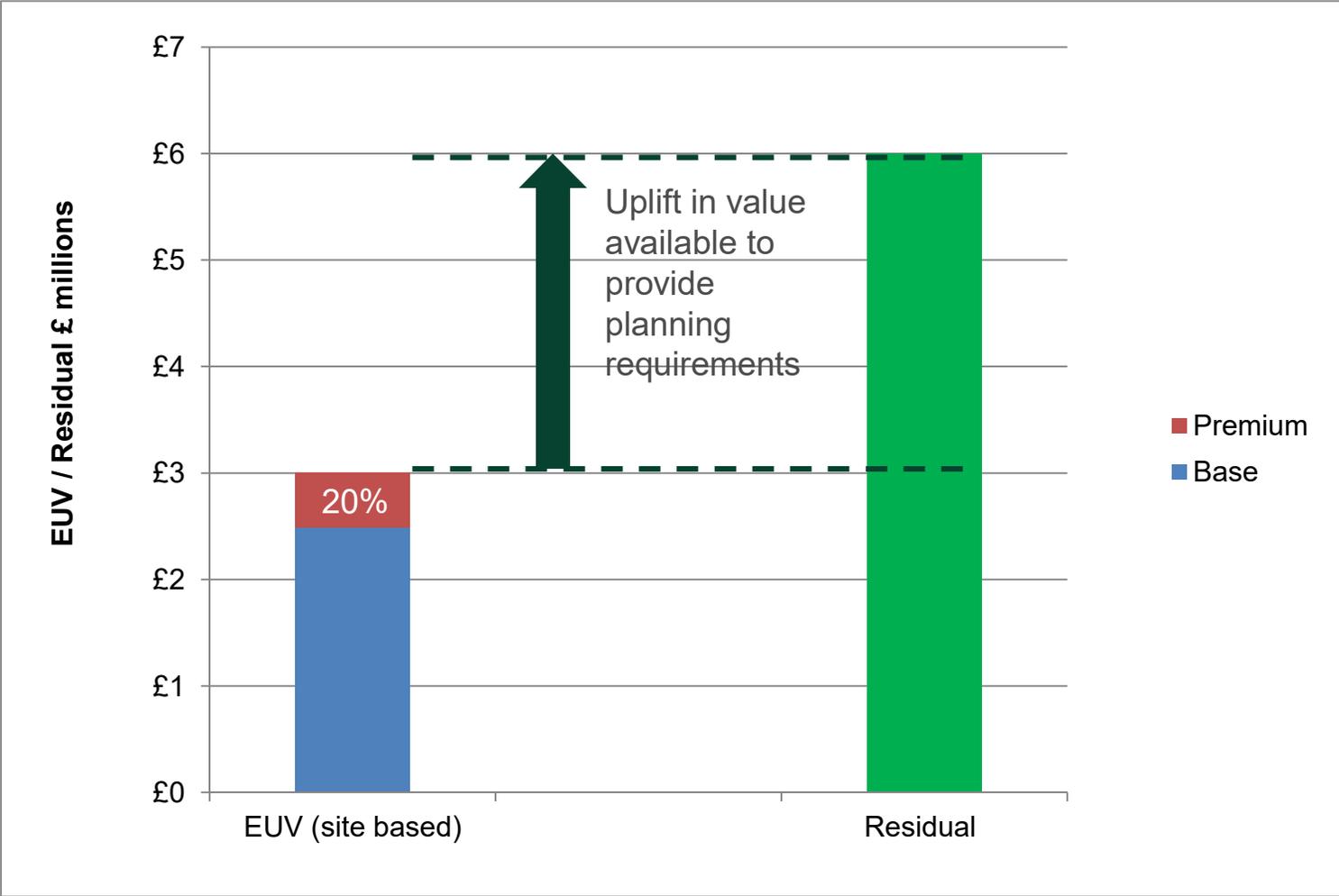
NPPG – EUV ‘plus’ – market determines the ‘plus’



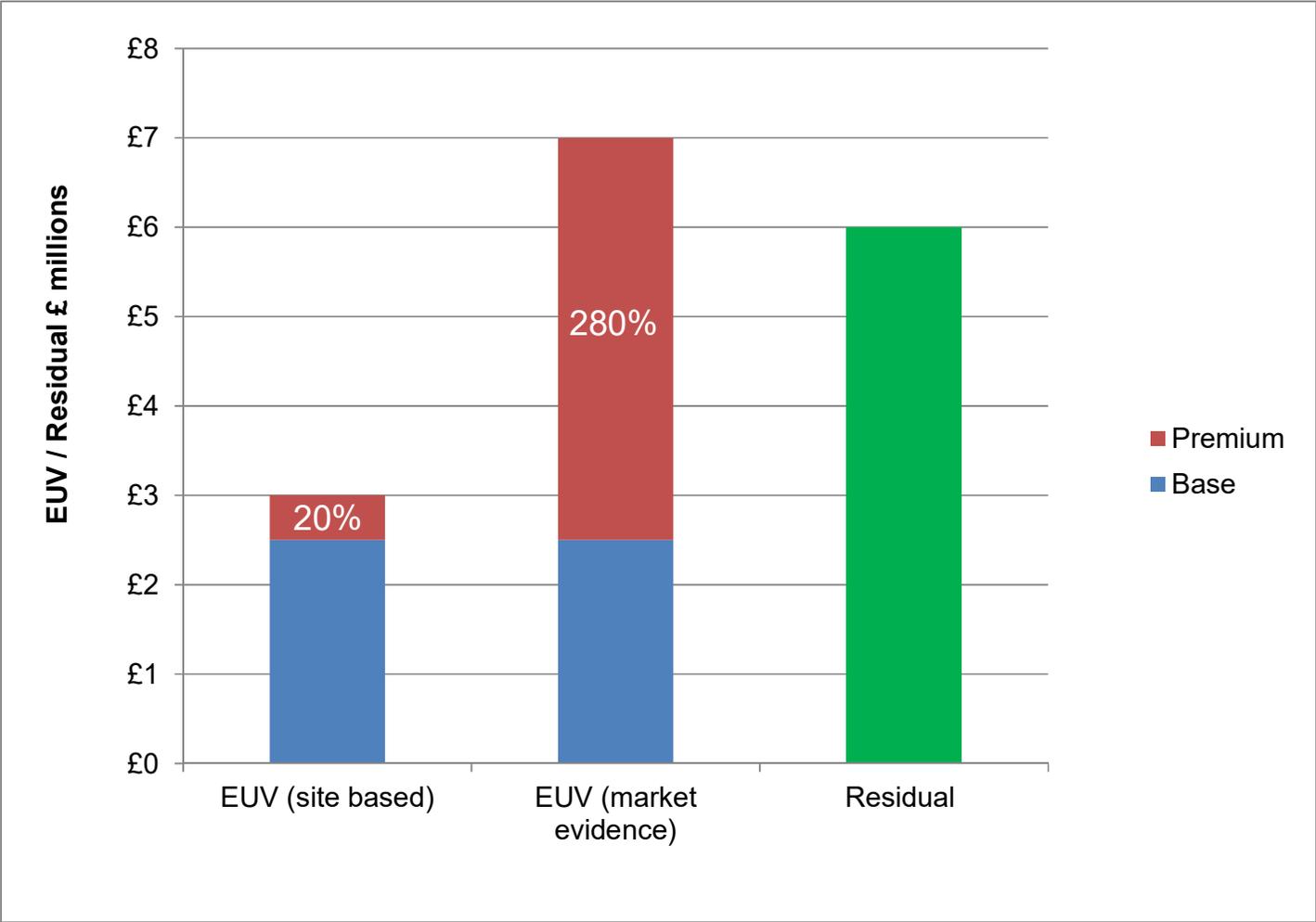
Using market evidence to determine the 'plus'



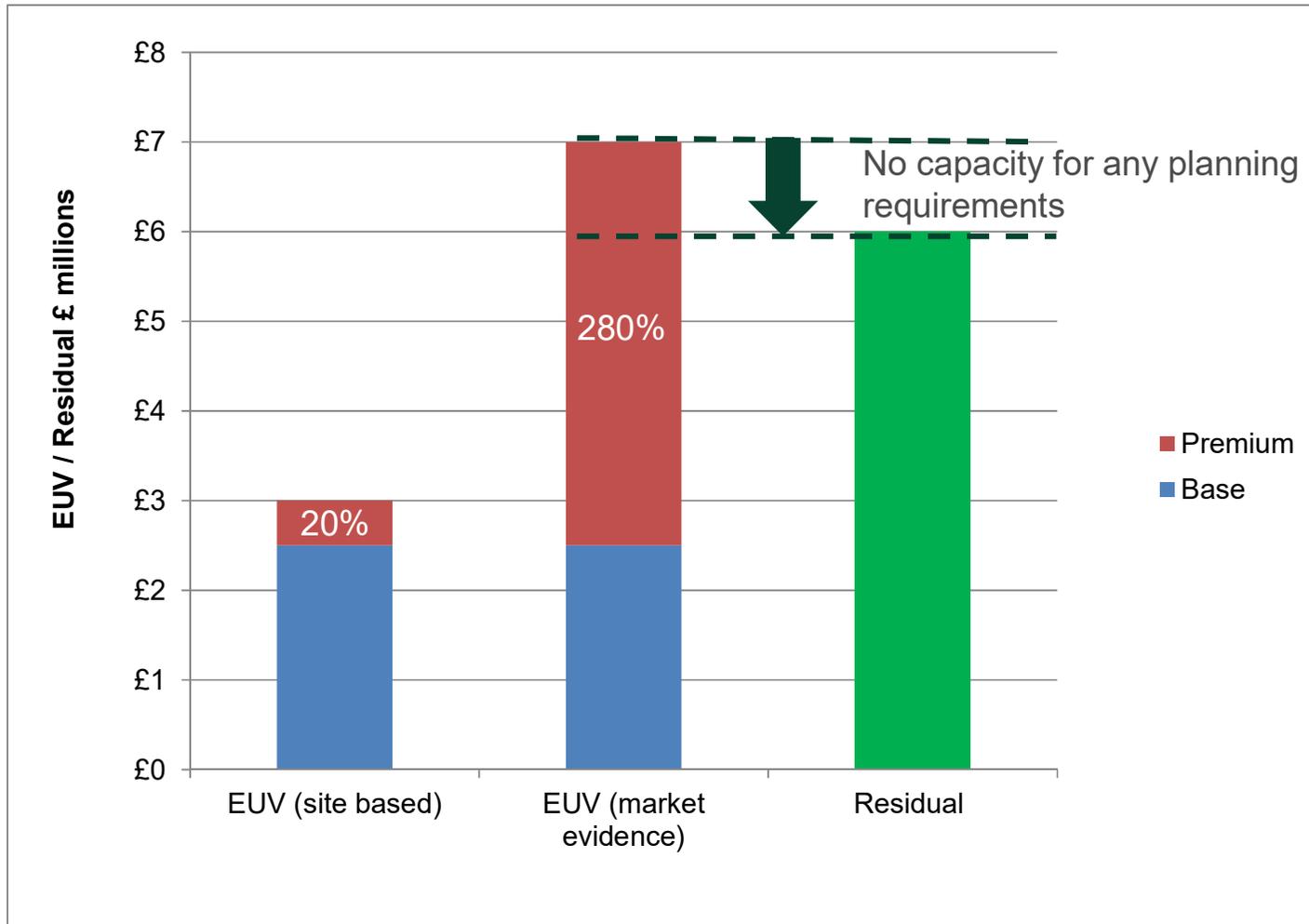
Using market evidence to determine the 'plus'



Using market evidence to determine the 'plus'



Using market evidence to determine the 'plus'



3

WHAT CAN REALISTICALLY BE NEGOTIATED?



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What is and is not on the table?

- S106 – three tests in CIL regulations 122
 - *Necessary to make scheme acceptable in planning terms*
 - *Directly related to the development*
 - *Fairly and reasonably related in scale and kind to the development*
- S106 – restrictions on pooled obligations – should largely prevent ‘tariffs’
- So, if applied regs are applied, S106 should be limited to essential items
- CIL – mandatory
- CIL – Exceptional relief? – Hard to prove CIL will make scheme unviable
- Affordable housing – typically a target ‘subject to viability’

Back to the three-way tussle

- How much can councils realistically capture before stifling development?
 - All depends on context
 - Limited extent of uplift in urban areas – pushing too far will reduce housing supply
 - Greenfield sites – high uplift and limited alternative options for landowners
- So Mayor of London's approach puts housing supply at risk
- 'Zoning' or similar approach would remove alternative options
- Bulk of funding for infrastructure may need to come from greenfield sites

‘Test policy at the plan stage and land values will adjust’

“The role for viability assessments is primarily at the plan making stage”

“... policy requirements ... should be set at a level that allows for sites allocated in the plan to be delivered without the use of further viability assessment at the decision making stage...”

- How realistic is this proposition?
- How good can area-wide testing ever be?
- What about the impact of market cycles?
- Is there a risk of a race to the bottom?

Landowners need to engage in plan making process

- Rubbish in-rubbish out – LPAs need good information
- Two-pronged approach
 - landowners need to prove sites are deliverable
 - But also the extent of viable planning obligations
 - Carries some risk if LPAs have choice of sites to allocate!
- Strategic sites may have bespoke affordable housing targets
- Could in theory reduce the need for negotiations
- But will never resolve the trade-off between land value and obligations

What is left to negotiate?

- If levels of S106 are at their minimum and AH cannot be reduced, what else?
- Timing of obligations
- Tenure of the affordable housing – higher values for alternative tenures
- Affordability – (rents and maximum household incomes)
- Unit mix and size
- Contingent obligations

4

POTENTIAL FUTURE CHANGE



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Potential changes to CIL regulations

- Cross-borough Strategic Infrastructure Tariffs ('SITs') to fund strategic infrastructure
- Formal consultation replaced by statement of engagement, forming part of EIP
- Potential removal of pooling restrictions on Section 106
- Testing of all uses to which CIL may apply on strategic sites
- Setting rates according to existing uses of sites – higher rates for greenfield?
- Changes to indexation, from build cost inflation to value growth

Compulsory purchase reforms

- Current S106/CIL arrangements leave too much 'on the table' for landowners
- Can reformed CPO be used as a tool to capture more value for infrastructure?
- CPO re-enforces the 'unearned increment' – land purchased at market value
- Landowners secure windfall resulting from productive work of others
- Centre for Progressive Capitalism proposed reforms¹:
 - Disregard prospective planning permission when determining land value
 - Land could be purchased close to existing use value
 - LAs could raise bond funding against uplift in land value to fund infrastructure
 - Funding recovered from sales of serviced plots to housebuilders
 - Developers purchase sites with planning permission and clarity on requirements
 - Significant funding for infrastructure
 - CIL and Section 106 no longer required
 - LAs carry risk of uplift being lower than expected

¹Bridging the infrastructure funding gap, 2016

Community land auctions

- LPA invites landowners to put their sites forward for development
- Landowners indicate price they are prepared to accept
- LPA has right to buy the land for an 18 month period at stated price
- LPA selects the sites offering best price and location
- LPA grants planning permission
- Sites sold at auction, with LPA retaining any surplus above landowner price
- Key issue: more sites needed than required to create competitive tension!

4

KEY MESSAGES



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Key issues for negotiating planning obligations

- Central government is seeking to reduce the role of viability – more certainty and less negotiation
- Plan viability testing can never seek to replace scheme specific testing in urban areas
- Does new planning guidance help or hinder?
 - EUV is a good starting point
 - Basing premium on land transactions is just Market Value by another name
 - Does not really help to resolve three-way tussle over value generated by developments
 - Do not import market behaviour into plan making – the plan should influence the market
- CIL is not making significant contribution and there is a clear ambition that it should deliver more
- More radical solutions may be on the horizon to fund infrastructure

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