

**LONDON BOROUGH OF TOWER HAMLETS
COMMUNITY INFRASTRUCTURE LEVY SCHEDULE EXAMINATION
HEARING SESSION 1:**

**WRITTEN STATEMENT
ON BEHALF OF
BISHOPSGATE GOODSYARD REGENERATION LIMITED**

Introduction

1. This Written Statement is submitted by DP9 and DS2 on behalf of Bishopsgate Goodsyard Regeneration Limited ('BGY Regeneration Limited'). It follows representations submitted by BGY Regeneration Limited' at the following stages in the preparation of the Council's Charging Schedule.
 - a. Preliminary Draft Charging Schedule – representations submitted January 2013.
 - b. Draft Charging Schedule – representations submitted June 2013.
 - c. Revised Draft Charging Schedule – representations submitted December 2013.
2. BGY Regeneration Limited is a joint venture between Hammerson plc and Ballymore: they jointly own Bishopsgate Goods Yard which is the largest development site in the City Fringe Opportunity Area (as designated in the London Plan (2011)). The site (as well as the wider Opportunity Area) extends into the neighbouring London Borough of Hackney. The City Fringe Opportunity Area is allocated for substantial new homes and jobs.
3. Bishopsgate Goods Yard is strategically important. It is allocated within the Council's Managing Development DPD (2013). A planning application for the comprehensive regeneration of the site is currently being prepared. It is due to be submitted to both the London Borough of Tower Hamlets and the London Borough of Hackney shortly. The emerging development proposals comprise approximately 270,000 sqm of mixed use floorspace, including approximately 1,400 residential units. Clearly a scheme of this scale will play a very important role in meeting Development Plan objectives.
4. BGY Regeneration Limited's overriding concern is that insufficient focus has been given to the designated Opportunity Areas and Strategic Sites that are critical to the Council's Development Plan. Inappropriate evidence has been produced: a common theme amongst consultees commenting on the Charging Schedule is that the evidence base is too broad-brush and light-touch and is especially inappropriate when considering the viability/deliverability of the Opportunity Areas and Strategic Sites.
5. In light of the above, BGY Regeneration Limited's focus is on Hearing Session 2, Question 9. However, Hearing Session 1 provides important context and there are a number of key points BGY Regeneration Limited would like to highlight in relation to Questions 2-6 and 8.

6. As already noted above, BGY Regeneration Limited has submitted representations at each consultation stage in the Council's production of its Charging Schedule. The representations have been substantial and are relevant to many of the questions posed by the Examiner for debate at the Examination. Of course, BGY Regeneration Limited do not wish to simply repeat the representations here. What is set out below – as well as the Written Statement prepared for Hearing Session 2 – serves to draw attention to the main points – it effectively acts as a key point summary, as relevant to the specific Examination questions.

Response to Questions

Question 2

7. The question of market value versus existing use value is addressed fully in BGY Regeneration Limited's representations and it is noted that the matter has been widely commented on by other consultees. Whilst the topic of land value is potentially a complicated one, the key point made in representations is straightforward. In essence, no market sense-checking or sensitivity-testing has been undertaken.
8. The BNP Paribas Viability Study adopts a Current Use Value 'plus' approach. The common and well versed problem with this approach is that it is general, broad-brush, arbitrary and does not reflect the value of land that is transacted in the market i.e. the willingness of landowners to release sites for development. For this reason the Council ought to have considered marketing sensitivity testing the appropriateness of the viability assessment inputs assumed by the Viability Study.
9. BNP Paribas has acknowledged the complications and timings of delivering strategic development by noting that an Internal Rate of Return ('IRR') is a more appropriate measure of return than a simple profit on cost, and that an appropriate target rate of return must be achieved in order for development to be undertaken. Following representations submitted at the Preliminary Draft Charging Schedule stage, BNP Paribas provided a revised Viability Study including 'high level appraisals' of a selection of allocated strategic sites. These assume an IRR. The IRR assesses the time weighted cost of capital and is particularly relevant to large development sites. However, whilst recognising that developers seek a minimum 20% IRR for these types of projects, the BNP Paribas Study (at paragraph 7.15) adopts a 13% IRR on the basis that they are 'aware' of larger sites being delivered at this target return. BGY Regeneration Limited is unaware of such returns on strategic sites. The BNP Paribas study should have assessed the impact on viability at the target 20% rate or, as a minimum, with sensitivities against the BNP Paribas assumed minimum return. It is important to note that the National Planning Policy Framework (2012) ('NPPF') and National Planning Practice Guidance (2014) ('NPPG') are extremely clear that a reasonable risk adjusted market return is required in order to incentivise development.
10. Sensitivity testing is consistent with a range of policy and guidance documents including the NPPF, NPPG, Local Housing Delivery Group publication 'Viability Testing Local Plans' (2012) and the RICS publication 'Financial Viability in Planning' (2012). By way of example, the NPPG states 'in all cases, land or site value should – be informed by comparable, market based evidence where possible' (paragraph 014).

11. It is unclear, for example, in the context of representations submitted by BGY Regeneration Limited and others, why the Council has not looked at sensitivities particularly on the major inputs in the strategic site appraisals related to, in particular the build costs, target profit returns and site value. Whilst there is an element of sensitivity testing on build costs, the base assumptions are extremely low – as our previous representations and those of others state – and as such a greater range of analysis should have been undertaken. Strategic development sites are simply not delivered at the level at which the BNP Paribas Viability Study assumes and the adopted BCIS rates are not robust for such analysis.
12. The process of testing these inputs should have been done as part of greater analysis of the strategic sites, given their importance, with the results informing the justification for the viability ‘buffers’.
13. The degree of sensitivity testing is important: the Council should identify which type and nature of development is most important to sensitivity test. As explained above in paragraph 4, BGY Regeneration Limited is primarily concerned with Opportunity Areas and strategic development. This is to be focused on during Hearing Session 2. But, it is important to highlight here that clearly sensitivity testing against market factors is especially relevant to understanding the viability implications of CIL in respect of strategic development i.e. the very development that is critical to the successful delivery of the Development Plan.
14. Importantly, without appropriate sensitivity testing it is difficult for the Council to draw any meaningful conclusion from the viability work that has been undertaken by BNP Paribas. This links directly to understanding the sufficiency and robustness of the viability ‘buffers’ that have been applied (refer to Question 3): these being central to how the rates set out in the Council’s Charging Schedule have been derived.

Question 3

15. In the context of what is said above in relation to Question 2, BGY Regeneration Limited consider that the reality as to the robustness / sufficiency of the ‘buffers’ that have been adopted is in serious doubt. In the absence of viability sensitivity testing as referred to above, it is inevitable that the scale of buffers has been over-estimated. In essence, BGY Regeneration Limited is concerned that the Council does not appear to have sensitivity tested the implications of different viability buffers.
16. The Council has provided no justification for the viability buffers that have been used. This is an issue raised by BGY Regeneration Limited in all of their submitted representations.
17. Paragraph 30 of the Government’s CIL Guidance (2013) requires that charging authorities should ‘avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area’. There is no guidance on the ‘buffer’ that should be allowed below the margin of viability. The Local Housing Delivery Group in their publication ‘Viability Testing Local Plans’ (2012) note that ‘the decision on what cushion might be appropriate will rest with planning authorities...having taken a view on the level of risk to delivery’ (page 30).

18. The extent of viability buffer varies between different authorities and is clearly to be determined as a result of the particular nature of development associated with each authority on a case by case basis. The nature of development clearly ought to determine the nature of risk and, therefore, the nature of the buffer(s). Put simply, one would expect an authority whose Development Plan is based upon a significant amount of strategic and complex development to take a more cautious approach to risk compared to an authority whose Development Plan is primarily dependent upon smaller, more straightforward, developments. Indeed, in determining the varying levels of risk between standard and strategic development, variances should be applied to the viability buffers when calculating the appropriate discounted CIL rates. A one size fits all approach is not correct in this instance and completely discounts the respective risk profiles.
19. Ascertaining the nature of development upon which a Development Plan is based is clearly important and critical to understanding the robustness / appropriateness of viability buffers. This should be done at the very outset of preparing a CIL Charging Schedule. This has not been done in the case of LBTH. The development of Opportunity Areas / strategic sites is a matter for Hearing Session 2, but BGY Regeneration Limited propose that the Council in this particular case has not approached the viability buffers correctly or appropriately.
20. The viability work undertaken by the Council in relation to the Opportunity Areas / strategic development has been an afterthought – whereas it should have been central to the viability analysis from the outset – and does not appear to have any relationship with the viability buffers. It appears that the buffers relate to generic non-strategic development types and not the strategic nature of development that is so critical to the successful delivery of the Development Plan.
21. A blanket borough-wide approach has been taken by the Council in applying viability buffers. The buffers do not alter to reflect the nature and type of development associated with the delivery of the Development Plan. Importantly, in this respect, the buffers do not differentiate between development types. This is concerning in relation to Opportunity Areas and strategic development. Strategic development – especially that within designated Opportunity Areas – is distinctly different to non-strategic / more ‘standard’ development: the risks, costs and contingencies are substantially greater. It is BGY Regeneration Limited strong opinion that this ought to be reflected in the approach to the buffers. The Council should have looked at assessing risk differently for strategic development and adopting a more cautionary approach in order to safeguard the Development Plan. As it stands, put simply, it is unclear and illogical as to why a development of say circa 10 residential units would be attributed exactly the same viability buffer to a mixed use development that includes more than circa 1,000 residential units. BGY Regeneration Limited consider that the Council’s approach in this respect is flawed.

Question 4

22. This matter has been covered thoroughly in representations. In summary, there are two important issues that need to be considered, as set out below.
23. Firstly, it is unclear how the Council’s assumptions regarding ongoing Section 106 payments have been derived. There does not appear to be any evidence that the Council

has drawn upon in this respect. This has been an issue BGY Regeneration Limited has raised in representations at every stage in the production of the Council's Charging Schedule.

24. Secondly, the Council has assumed a standard generic allowance for ongoing Section 106 across Tower Hamlets irrespective of the nature and type of development. BGY Regeneration Limited has asked the Council to undertake thorough analysis in relation to Section 106 because, especially for strategic development, it is currently and substantial cost and, therefore, needs to be approached with a great deal of care and caution.
25. As explained in representations submitted to the Preliminary Draft Charging Schedule (i.e. from the very outset of the consultation process), BGY Regeneration Limited has stressed the need for the Council not to simply – in a blanket fashion – assume that Section 106 costs will be scaled back significantly once the Charging Schedule comes in to effect. The reasons for this are clearly set out in representations and do not need to be repeated here, but it is again a particular issue in respect of strategic development. In simple terms, once a CIL charge takes effect it obviously remains that a development needs to mitigate its impact. This will be done through the provision of infrastructure improvements, the extent of which will clearly relate directly to the nature and scale of development proposed. The extent of infrastructure improvements necessary for large-scale complicated strategic development is usually significant. This will remain to be dealt with and secured through planning obligations in a Section 106 Agreement i.e. no change between pre- and post- CIL Charging Schedule taking effect.
26. The Council's assumptions for ongoing Section 106 costs appear to be very low when compared to the reality of what is currently anticipated for strategic development.
27. To look at Bishopsgate Good Yard as an example case study. The current emerging scheme being discussed with the Council is substantial. The planning application that will shortly be submitted to the Council for their determination will include a suite of supporting documents (including, for example, an Environmental Statement and Transport Assessment). These documents will set out the infrastructure improvements necessary to mitigate the scheme. These will be committed to through a Section 106 Agreement. The extent of mitigation will not change pre or post the Council adopting its CIL Charging Schedule. The infrastructure improvements will be significant. The cost of these items will be substantially greater than the inputs assumed by BNP Paribas. BGY Regeneration Limited consider that the anticipated Section 106 costs would not be substantially scaled-back in a scenario where a borough CIL was charged. The simple reason for this is that the Section 106 costs are specific to the mitigation of the scheme and owing to the criteria provided in Regulations 122 and 123 it would not be possible for these costs to be replaced by CIL: the scheme would not be mitigated. Sensitivity testing Section 106 costs for strategic development should have been undertaken.
28. Overall it is BGY Regeneration Limited's opinion that the Council's assumptions in respect of ongoing Section 106 costs are fundamentally flawed. The above is clearly important context for Hearing Session 2.

Question 5

29. BGY Regeneration Limited has undertaken a benchmarking exercise regarding build costs. This clearly demonstrates that for strategic sites, such as Bishopsgate Goods Yard, the costs assumed within the BNP Paribas Viability Study are inappropriate. This work can be shared with the Examiner and can be provided under separate cover.

Question 6

30. The phasing of development is clearly a critical factor to its viability and deliverability. This is obviously particularly the case in respect of complicated multi-phased strategic developments. Understanding phasing assumptions, including sensitivity testing these, will have a bearing on how viability is assessed from a CIL perspective.
31. The strategic site appraisals contained in the BNP Paribas Viability Study do not explicitly consider phasing. Clearly a phasing has been assumed and BGY Regeneration Limited is concerned that this has been over simplified as is akin to non-strategic development types. BGY Regeneration Limited has requested greater detail from the Council and BNP Paribas (refer to requests made in writing that are appended to the Preliminary Draft Charging Schedule representations) as to the assumed phasing for the strategic sites. No information has been provided by the Council or BNP Paribas.
32. Looking at Bishopsgate Goods Yard as an example, it would appear that the BNP Paribas Viability Study assumes a flat line development programme that does not reflect the reality of how strategic development is brought forward. The viability needs to be modelled on a phase by phase basis. In essence, the approach taken by BNP Paribas is overly simplistic: it is fine for considering the viability of a development of say circa 100 residential units, but certainly not something of the scale of Bishopsgate Goods Yard (or the other strategic sites). The approach understates the complexity of how costs and values are phased and interrelate.
33. In summary there are four distinct phases on BGY, comprising a mixture of residential and commercial property components that will be delivered on a current timetable from start on site to completion that is in excess of ten years. The cash flowing of the various obligations and CIL liabilities is one of the critical inputs that will have a significant bearing on whether the site owners are able to bring forward each of the intended phases.

Question 8

34. This question is difficult to answer because the Council has not made available the necessary appraisal detail that underpins the work that has been undertaken in relation to the strategic sites. The BNP Paribas Viability Study explains, at paragraph 7.4, that high level appraisals have been run for a selection of the designated strategic sites. The appraisals that are attached at Appendix 6 of the Study are essentially a list of appraisal inputs. BGY Regeneration Limited (as well as others) has requested the actual appraisals. These have not been provided. The Council effectively has not made available evidence it is relying on. BGY Regeneration Limited consider that the appraisals for each of the strategic sites need to be released in order to properly assess whether there are any errors that are fundamental to how the Council has considered the strategic sites.

End.

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