



Note

EALING: REGULATION 19 DRAFT LOCAL PLAN AND CIL DRAFT CHARGING SCHEDULE – VIABILITY ANALYSIS (09.04.24)

1 Purpose

- 1.1 This note provides viability evidence in support of representations submitted on behalf of John Lewis Partnership PLC (JLP) in response to the Ealing Draft Local Plan Regulation 19 Consultation and the Ealing Draft CIL Charging Schedule Consultation.

2 Respondent

- 2.1 The respondent is John Lewis Partnership PLC (JLP). JLP is progressing plans for a mixed use development at its Waitrose store located in West Ealing, within the London borough of Ealing (LBE). The proposed scheme has the potential to deliver hundreds of much needed new private and affordable homes.

3 Context

- 3.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (PPG) sets out how Local Authorities should use proportionate financial viability evidence to support local plan policy requirements and CIL charging schedule rates. It expands on the statutory requirements set out in the Town and Country Planning Act (1990), Planning Act (2008), Localism Act (2011) and CIL Regulations (2010) as amended.
- 3.2 In respect of local plans, the NPPF and PPG confirms in setting local policy requirements and site allocations, an authority must:
- Ensure the plan is 'justified' (based on proportionate evidence) and 'effective' (deliverable over the plan period) (NPPF Paragraph 35);
 - Use a viability assessment to ensure that policies and allocations are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan (Ref ID: 10-002-20190509); and
 - Be informed by a proportionate assessment of viability (ID: 10-001-20190509).
- 3.3 In respect of CIL levy rates, the NPPF and PPG confirms that when setting levy rates, an authority must:
- Ensure they are fairly and reasonably related in scale and kind to the development (NPPF, Paragraph 57);
 - Do not undermine the deliverability of the plan (NPPF, Paragraph 34)
 - Strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments. (ID: 25-010-20190901);
 - Show how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area (ID: 25-010-20190901).



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- Be consistent with, and support the implementation of, up-to-date relevant plans.” (PPG Ref: 25-011-20190901);
- Ensure they are informed by a proportionate assessment of available viability evidence (ID: 25-019-20190901); and
- Avoid setting a charge at the margins of viability (ID: 25-019-20190901);

3.4 Overall, the NPPF and PPG is clear that new local plan policy requirements and CIL levy rates must be evidence based and, critically, strike an appropriate balance with the potential effects on scheme viability.

3.5 The LBE Regulation 19 Draft Local Plan seeks to impose a site allocation to the respondent's site in West Ealing which would limit heights to 13 storeys. The LBE Draft CIL Charging Schedule seeks to introduce various CIL Levy rates including a rate of £200 per SQM for Class C3 residential uses outside of Central Ealing. This would also apply to the respondent's site.

3.6 The LBE Regulation 19 Draft Local Plan and LBE Draft CIL Charging Schedule is supported by a borough wide viability assessment prepared by BNP Paribas Real Estate (BNPPRE) dated December 2023.

4 Representations

4.1 The respondent strongly supports LBE's overall objectives to deliver much needed new homes and social infrastructure across the Council's area.

4.2 It is however the respondents view that the policy requirements set out in Regulation 19 Draft Local Plan and the rates within the Draft CIL Charging Schedule do not presently strike an appropriate balance between the approach to development of the Council's areas and the potential effects on scheme viability.

4.3 They therefore risk inhibiting the delivery of development across the council's area including much needed new homes and affordable homes. This would undermine implementation of the key objectives of the relevant emerging local plan (including the delivery of new housing).

4.4 Further details of these concerns are set out in the submissions below.

Submission 1: The respondent submits that the viability evidence which has been prepared to support the Reg 19 Draft Local Plan and Draft CIL charging schedule is insufficient to determine the potential effects on the viability of development. The reasons for this are set out below.

a) Viability Study Inputs

4.5 Firstly, the inputs and assumptions are not considered to be realistic in the current market and are not supported by proportionate evidence. Table 1 below provides our commentary against each of the key appraisal inputs adopted in the study.



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Table 1 – Financial Study Input Review

| Input | Commentary |
|------------------------------|---|
| Private Residential Revenues | No evidence is provided in the study to support the range of sales values adopted. Achievable residential revenues have reduced considerably as a result of increased interest rates which have reduced mortgage affordability and increased investment yields (reducing revenues achievable in Build-to-Rent schemes). |
| Build Costs | The build costs tested for large scale residential (£2,745 SQM) appear to be significantly lower than achievable for most forms of large scale residential development (£3,500 SQM+). While the RICS BCIS database is widely used for these types of local plan study, it is increasingly being acknowledged that the database suffers from challenges due to its very small sample size (much of which is now very old and pre-dates recent increases in costs due to new fire and sustainability requirements). It also excludes contractors design risk contingency which would form part of any present day tender price. It is for these exact reasons BNPPRE themselves do not rely on the BCIS database for the assessment of application stage viability. The costs which have been verified as part of recently reviewed application stage viability assessment should be analysed and used to adjust the BCIS database outputs. |
| Abnormal Build Costs | No allowances have been included for any abnormal costs in the BNPPRE study. The majority of sites coming forward in the borough are and will be delivered on previously developed land. These sites typically have significant abnormal enabling costs (e.g the need to deliver a podium structure to rehouse existing uses within and/or support the development above). It is unrealistic to assume no abnormal costs would be incurred in a typical large scale residential development. |
| Other Allowances | Many of the other costs allowances made are considered to be at the extremely optimistic end of the potential range. For example, marketing and agent fees have been adopted at 2.5%. These costs are typically in excess of 3.5-4% for private sale schemes and have increased recently due to weakening of market conditions. |
| S106 Costs | The S106 cost allowance (£5k PU) is significantly lower than has been required by LBE on other schemes (c.£10k PU+). It is not presently clear which typical S106 costs will be replaced by the proposed CIL. |
| Finance Costs | The BNPPRE study adopts a 6% finance rate inclusive of all fees. This is significantly lower than the current cost of development finance which is typically in excess of 8.5-10%. The cost of finance has increased in recent months as a result of increased interest rates and risk associated with development. |
| Profit Margin | The BNPPRE study notes at para 2.25 that returns of 15% are required for BTR and at para 3.4 that 17.5% is required for private sale. As a consequence of: i) increased interest rates and the returns which can be obtained on low or no risk |



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| | investments (the risk free rate); and ii) increased risk and uncertainty relating to development - the minimum risk adjusted return (profit) required by investors and funders to bring forward development has subsequently increased. The returns required are now at the upper end of the 15-20% range advocated by national planning policy. |
|--|--|

- 4.6 The above comments suggest that the viability testing conducted by BNPPRE seeks to illustrate the most optimistic potential viability scenario. It is however confirmed in national policy that it is not appropriate for policies requirements and/or CIL to be set at the margins of viability (PPG ID: 25-019-20190901). This approach risks development becoming stalled where economic circumstances adjust (as presently being experienced in the development market).
- 4.7 Our analysis illustrates that where the above inputs are adjusted to more realistic levels the output of the viability study results would change significantly. This evidences the importance of ensuring the assessment inputs are reasonable, supported by proportionate evidence, and/or the application of a significant viability buffer to the results of the testing conducted using more optimistic inputs.

b) Viability Study Testing

- 4.8 Secondly, insufficient scenarios and typologies have been tested. In respect of residential schemes, the study only tests a single large scale typology in excess of 300 homes (Ref: No.19 at 500 homes).
- 4.9 There are however a huge number of variables that impact on the typology and consequently the viability of a large scale flatted residential schemes including but not limited to:
- I. Enabling Site Works (e.g Podium Construction);
 - II. Infrastructure Requirements (e.g Utilities & Open Space)
 - III. Building Height & Construction Methodology; and
 - IV. Building Shape, Efficiency & Wall to Floor Ratio;
- 4.10 It is not therefore possible to draw any useful conclusions by analysing a single large scale residential typology in excess of 300 homes. The respondent recommends a wider range of large scale schemes and typologies be modelled including those which better reflect schemes which are presently in the planning pipeline (including the respondents site at Waitrose in West Ealing).

c) Viability Study Results

- 4.11 Finally, the outputs of the viability study have clearly not been verified against the recent findings of local planning application stage viability assessments and/or any actual case study



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schemes informed by more detailed up to date assessment of design efficiencies, construction costs and achievable values.

- 4.12 Analysis of recent planning applications in LBE evidences that schemes are now unable to afford to deliver in excess of 20-35% affordable housing prior to the introduction of any additional cost burden relating to CIL. For example, the independently verified viability assessment for the application at St James House in Ealing Broadway (Ref: 240012FUL) evidenced in September 2023 the applicant's offer of c.18% Affordable Housing was the maximum viable.

Case Study Analysis – Waitrose West Ealing (Ref: 23076FUL)

- 4.13 The respondent submitted a planning application to LBE on the 4th August 2023 for the demolition of the existing buildings and replacement with a mixed-use development including new homes, flexible commercial space and improvements to road and public realm (LBE Reference: 23076FUL). The application, which is presently under determination, proposes 428 homes of which 20% would be delivered as affordable housing (with a commitment to seek to improve this to 35% as the scheme progresses). The scheme also proposes to provide a c.£5.8m for Mayoral CIL and S106.
- 4.14 An application stage viability assessment was submitted with the planning application. It has been independently reviewed by the DVS on behalf of the Council. The DVS review concluded that: i) the scheme is providing the maximum viable level of affordable housing (20%); and ii) the viability of the scheme with 20% affordable housing is extremely challenging.
- 4.15 The independent findings of the DVS are clearly contradictory to the results of the BNPPRE Local Plan & CIL viability study which appears to suggest in the region of c.30-35% affordable housing would typically be viable for a site of this scale (c.300-500 homes) in this location (£8,136 SQM OMV) without any positive market growth. The DVS report is however substantially more detailed and is informed by a site specific cost review by quantity surveyor.
- 4.16 With the introduction of the proposed draft LBE CIL charging schedule, the cost of delivering the scheme will increase by c.£7m. The analysis set out in Table 2 below illustrates that where positive market growth is assumed within the DVS assessment to generate a viable scheme without CIL (Scenario 1) the inclusion of CIL would subsequently render the scheme unviable (with a return of less than 9%) (Scenario 2).

Table 2 – Financial Viability Analysis (LBE CIL)

| Metrics | Scenario 1 | Scenario 2 |
|-------------------|----------------------------------|---|
| | 20% Affordable Housing No CIL | 20% Affordable Housing LBE Draft CIL |
| Grown Revenues | c.£306m | c.£306m |
| Development Costs | c.£270m | c.£270m |
| LBB CIL Costs | NIL | c.£7m |
| Return (Profit) | c.13% | c.9% |
| Viability | Marginal | Not Viable |



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- 4.17 Site Allocation 15EA (Waitrose, West Ealing) in Regulation 19 Draft Local Plan seeks to impose an arbitrary maximum height of 13 storeys to the site. An architectural study has indicated this would require the number of homes to be reduced from 428 to c.318 assuming all of the towers are reduced to 13 storeys (the highest permitted in the draft allocation which references 7-13 storeys). This will have a significant negative impact on the viability of the scheme due to: i) the reduction in revenues; and ii) the fact many of the costs associated with constructing this scheme will not reduce proportionally in line with the reduction in height/ floor area. This includes costs such as the demolition costs, store replacement costs and the below ground enabling works/ podium.
- 4.18 The analysis set out in Table 3 below illustrates that this would render the scheme entirely undeliverable (with a return of just 2% being achieved). Our sensitivity analysis also shows that where the affordable housing was reduced to NIL (100% Private) the scheme would continue to remain unviable (before the introduction of the additional cost burden that will be created if the LBE Draft Charging CIL is introduced).
- 4.19 Critically, this means even taking account of the flexibility in policy for the affordable housing to be reduced the scheme would be undeliverable. It may also fail to obtain local support without any affordable housing.

Table 3 – Viability Analysis (CIL & Height)

| Metrics | Current Scheme 20% Affordable Housing No CIL | LBE Regulation 19 Plan Max 13 Storeys Schemes 20% Affordable Housing No CIL | Change +/- |
|-------------------|--|---|------------|
| Grown Revenues | c.£306m | c.£233m | -£73m |
| Development Costs | c.£270m | c.£228m | -£42m |
| LBB CIL Costs | NIL | NIL | - |
| Return (Profit) | c.13% | c.2% | -11% |
| Viability | Marginal | Not Viable | - |

- 4.20 The above analysis therefore evidences that the introduction of either the Regulation 19 Draft Local Plan and/or the Draft CIL charging schedule would render the application scheme at Waitrose West Ealing undeliverable and could result in the loss of hundreds of much needed new homes including affordable homes.

d) Viability Study Sense Check

- 4.21 The results of the viability assessment do not appear to have been sense checked against any market indicators. For example, it has been widely reported that as a result of weakened market conditions housing delivery is at unprecedented lows in London. The GLA's most recent market report (February 2024) notes that residential starts are 36% down in 2023 and there are currently 6,000 homes stalled in the capital.



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- 4.22 The results of the BNPPRE study indicate many forms of development should be viable with 40% affordable housing and could support an increased cost burden with the introduction of CIL payment. This is clearly out of kilter with actual market conditions. This further suggests the methodology used in the BNPPRE study needs to be carefully reviewed.

Submission 2: The respondent submits that results of the viability study do not demonstrate how the proposed policies of the Regulation 19 Plan and/or draft levy rates have been formulated and/or will contribute towards implementation of the relevant emerging Local Plan to achieve its objectives. The reasons for this are set out below.

a) Viability Study Results

- 4.23 The emerging Local Plan identifies a pressing need to support the delivery of housing and affordable housing in the borough and sets a target for 2,157 homes per year (in line with the London Plan) of which 1,079 are targeted to be affordable housing (50%).
- 4.24 The GLA's Datahub evidences that in 2022/23 only 783 homes were completed in LBE (36% of the annual target) of which just 169 were affordable homes (21% of those delivered and just 15.6% of those targeted). This highlights the financial challenges already facing the delivery of housing and affordable housing in LBE.
- 4.25 The results of the BNPPRE viability study itself appear to show that large scale residential schemes in the region of 300-500 homes would not be viable with more than c.10-25% affordable housing on brownfield sites in all areas with average values less than £8,136 SQM. The study also shows at Table 7.17.1 that the introduction of the proposed LBE Draft CIL rates alone could reduce the viable levels of affordable housing by up to c.6-7%.
- 4.26 On this basis, many schemes which have recently been consented in these areas (but not yet delivered) either with the maximum viable level of affordable housing or via the 35% Fast Track route will almost certainly become undeliverable as a result of the new Regulation 19 policy requirements and CIL charges.
- 4.27 Moving forward, while there is flexibility in policy for a lesser amounts of affordable housing to be provided (where supported by an application stage viability assessment) the BNPPRE study itself evidences the viable level of affordable housing is unlikely to exceed c.10-20% in many cases. This is less than the c. 21% average achieved in 2022/23 which was already substantially less than the 50% strategic target due to financial constraints.
- 4.28 Critically, these schemes may also fail to obtain local planning consent if, as a result of reductions in viability and affordable housing, they are perceived to have insufficient benefits to outweigh their impacts in the overall planning balance. This would further reduce the total number of both private and affordable homes delivered contrary to the objectives of the local plan.
- 4.29 The introduction a higher 40% threshold for Fast Track compliance may also inhibit some sites form coming forward where their funders are unable to accept a viability review mechanisms.



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- 4.30 In summary, the council has not achieved its housing targets in recent years due to factors including financial viability constraints. The proposed policies and site allocations set out in the regulation 19 Draft Local Plan and the proposed Draft CIL charging schedule will further reduce the ability of sites to meet these targets and of the council to implement the relevant emerging local plan to achieve these objectives.

b) Viability Study Conclusions

- 4.31 It is not clear how the results of the BNPPRE viability assessment have been used to inform the Regulation 19 policies and/or the Draft CIL charging schedule. In particular how the results have informed the proposed building heights across the borough.
- 4.32 It is also not clear, in the absence of any new policies that would positively impact viability, how introduction of the height restrictions set out in the policies of the Regulation 19 Plan, introduction of the height restrictions, and the introduction of CIL could support the council in meeting the objectives set out in the relevant Plan (which it is evidently already finding extremely challenging to meet) noting the increased cost burden.

5 Recommendations

- 5.1 In view of the above the following recommendations are made:
- 5.2 **Recommendation 1:** The viability study underpinning the Reg 19 Local Plan and Draft charging schedule should be reviewed in detail to ensure that: i) the inputs are robust and up-to-date; ii) the results are verified against recent application assessments and current applications and market indicators.
- 5.3 **Recommendation 2:** The introduction of CIL should be delayed until Reg 19 has been adopted and the impact of policies on viability have been determined through application stage assessments. Introduction of CIL ahead of this would be premature.
- 5.4 **Recommendation 3:** The threshold for Fast Track compliance should not be increased above the London Plan to 40%. The policy should also be explicit that where this threshold cannot be met there is flexibility for schemes to progress down the viability tested route.
- 5.5 **Recommendation 4:** Policy requirements for height should be flexible to reflect site specific circumstances including townscape analysis and viability evidence;
- 5.6 **Recommendation 5:** Policy requirements for tenure mix should be flexible to reflect site specific circumstances including local housing need analysis and viability evidence;

6 Summary

- 6.1 The respondent strongly supports Council's overall objectives to deliver much needed new homes and social infrastructure across the Council's area.
- 6.2 It is however the respondents view that it has not been evidenced that the policy requirements set out in Regulation 19 Draft Local Plan and the Draft CIL Charging Schedule would strike an



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appropriate balance with the potential effects on scheme viability. They therefore risk frustrating the delivery of development across the council's area which would undermine implementation of the Local Plan's objectives (critically the delivery of much needed new housing). Specifically, introduction of a maximum height of 13 storeys for Site Allocation 15EA (Waitrose, West Ealing) and/or adoption of the Draft CIL charging schedule would render the respondent's planning application scheme unviable.

- 6.3 The respondent would welcome the opportunity to work with LB Ealing to address these issues before the Regulation 19 Draft Local Plan and Draft CIL Charging Schedule are submitted for Examination. In the meantime, they would like to reserve the right to be represented at any Examination Hearing.