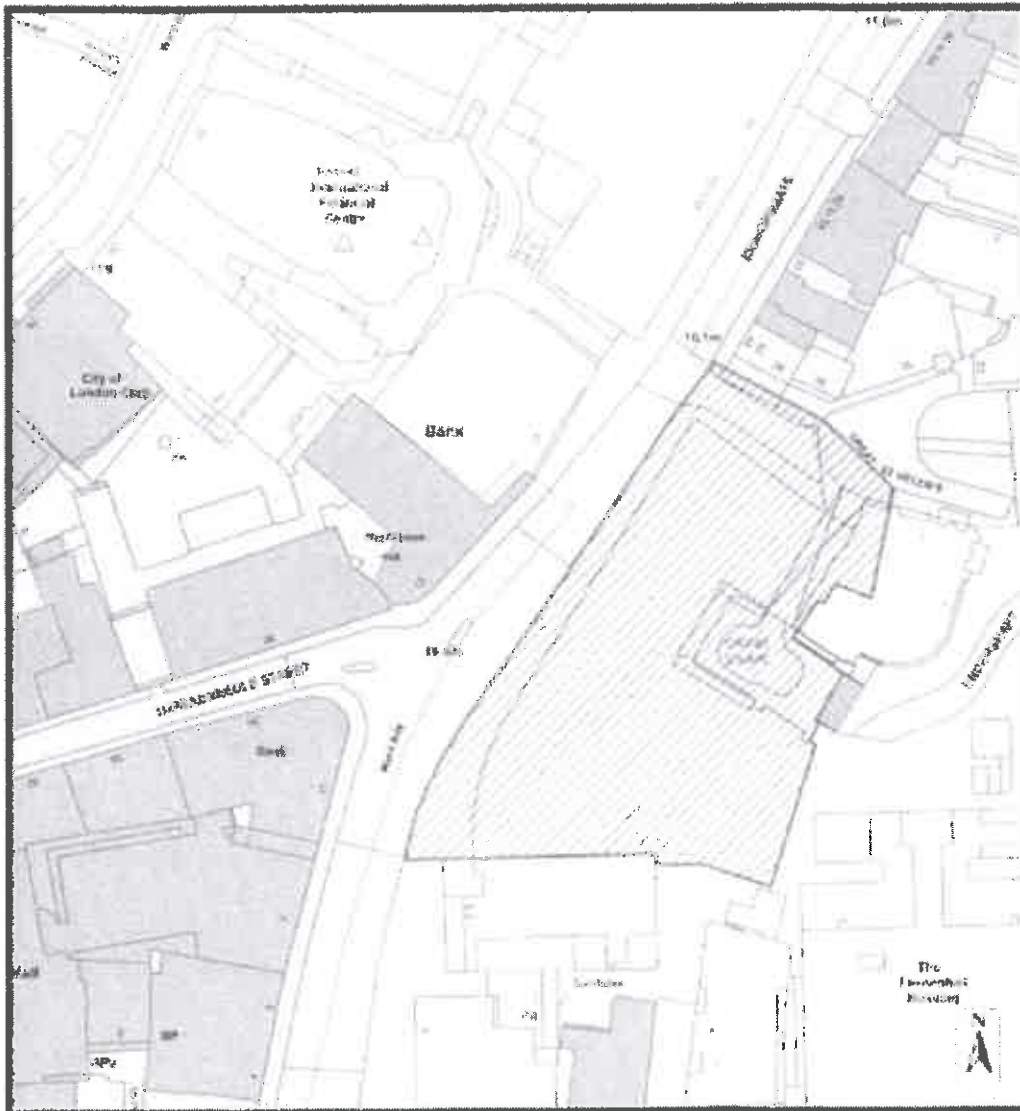


# APPENDIX 1



## Site Location Plan



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ADDRESS

100 Bishopsgate

-  SITE LOCATION
-  LISTED BUILDINGS
-  CONSERVATION AREA BOUNDARY

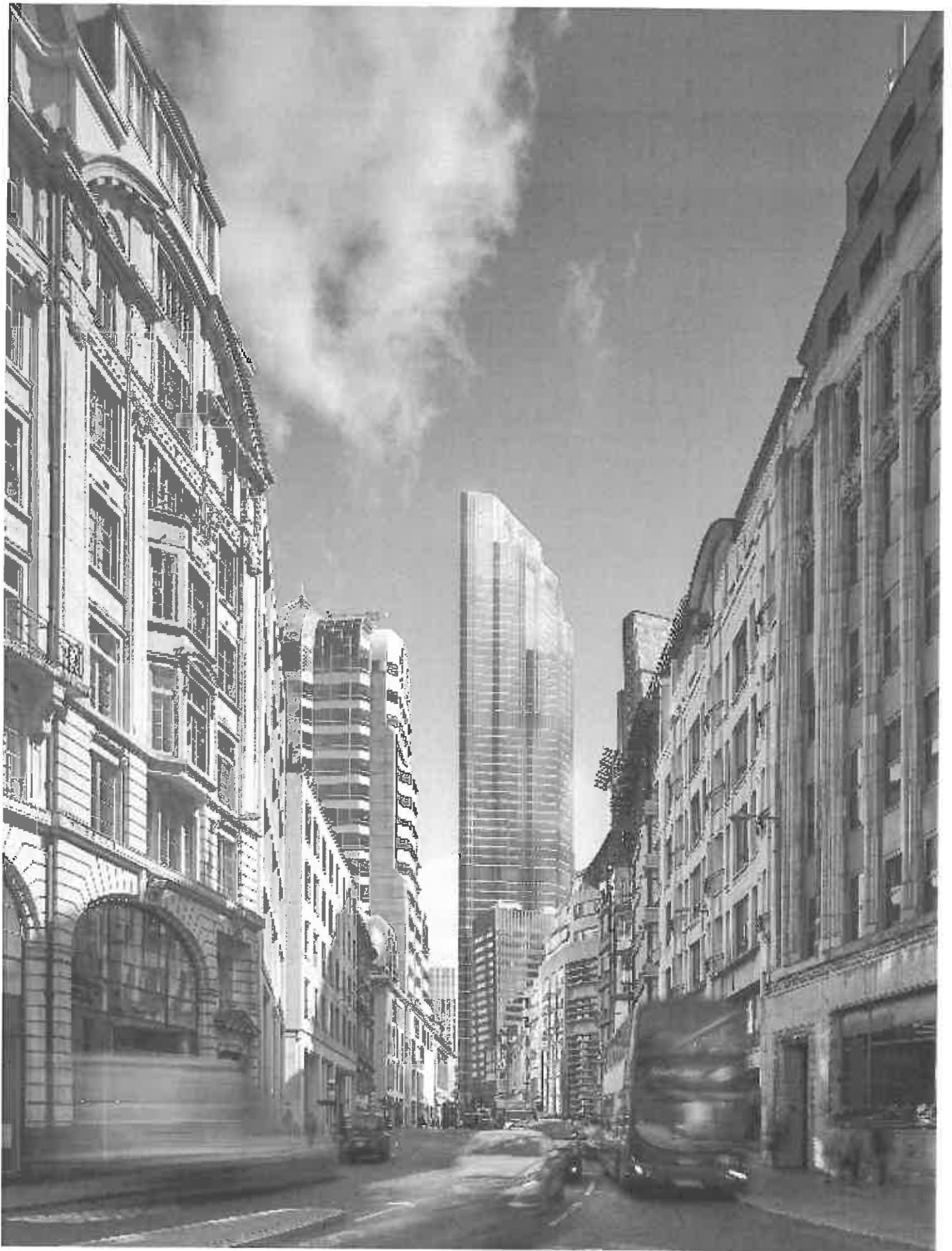
CASE NO  
AS/07/45/01/A



**CITY  
LONDON**

DEPARTMENT OF THE  
PLANNING

APPENDIX 2





HERBERT  
SMITH  
FREEHILLS

APPENDIX 3

The City Surveyor  
City of London Corporation  
Guildhall  
Basingall Street  
London  
EC2V 7HH

For the attention of Simon McGinn

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Our ref  
2129/30968307  
Your ref

Date  
18 January 2016

Dear Sirs

**Commercial in Confidence**

**The Redevelopment of 22 Bishopsgate**

#### **INTRODUCTION**

GIA have been instructed by 22 Bishopsgate Limited Partnership to not only advise upon the rights of light impacts arising from the proposed scheme for the above site but also the potential compensation budgets where actionable injuries occur. The scheme referred to in this letter is the development proposal comprised in planning application Ref No: 15/00764/FULEIA, which secured a resolution to grant planning permission at the meeting of the Corporation's Planning and Transportation Committee held on 17 November 2015, and now has clearance from the Mayor's Stage 2 Report dated 8 December 2015.

The measurement of light diminution or loss, and the law and practice which have built up around rights to light is a very complex and technical area. It often raises sensitivities and risk regarding the establishment of development potential. In relation to the 22 Bishopsgate redevelopment, GIA undertook a full comprehensive technical assessment in order to establish and understand the potential reduction in light created as a result of the implementation of the proposal. This analysis was initially completed on assumed layouts and was updated thereafter on a property by property basis once the internal surveys have been completed.

Based on the initial technical analysis, GIA identified 61 properties (as listed under Appendix 1) which were considered to experience injunctable or potentially actionable alterations in light following successful implementation of the proposed scheme. A total number of 492 interests were identified to begin with within those properties. Following an extensive legal and technical due diligence exercise, this figure was reduced significantly down to 94 legal interests as a result of the "Bad Lease, Bad Window" test which established whether specific leaseholders enjoy a Right of Light within a property and whether the demise they occupy is impacted upon by the proposed development. Please note that the total number of active negotiations is based mainly on the

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accuracy of information obtained from Land Registry, thus this number is subject to change upon receipt of up to date tenancy schedule from particular interests.

For the avoidance of doubt, an actionable loss of light is considered to arise when a well-lit room, i.e. lit to over 50% of the area of the subject room on the working plane has the light diminished to less than 50% of the room area; or where a poorly lit room (lit to less than 50% of the room in the existing condition) experience further loss of light that would be considered "noticeable". In these instances, the dominant owner (affected party) could take out an action against the person causing the injury (servient owner) in the Courts. The primary remedy for an interference with an easement is an injunction against the development so as not to interfere with the easement of light. One must also take into account that an injury to a residential property causes more risk of injunction as the Courts will seek to protect a resident owner more than a commercial owner. Fortunately, the affected parties are mainly commercial owners in this instance.

### **RIGHTS TO LIGHT IN PRACTICE**

If the level of light loss is sufficiently serious to warrant an injunction and the injured party wishes to pursue this remedy, particular tactical considerations come to the fore. If, conversely, the matter is likely to be settled by negotiating for a level of compensation in lieu of an injunction (or runs through the litigation process of a full trial to establish the level of damages to be awarded), the debate switches to entirely different tactical considerations and to the different methods of calculating the level of compensation which should be expected.

As is well known, this too, has been a significant area of controversy in recent years, being unavoidably so closely bound in with the injunction versus the damages-only equation. The law in this area is also in a considerable state of flux, which inevitably means that further change is likely, both in decided cases and as market practice continues to evolve to establish levels of compensation and the method on which they are calculated.

### **PINNACLE V 22 BISHOPSGATE**

A comparison exercise was undertaken in order to establish the scale of the impacts of both the Pinnacle scheme and the current 22 Bishopsgate scheme. This analysis demonstrates the similarity in impacts between the Pinnacle scheme and current 22 Bishopsgate scheme.

GIA identified a total of 61 properties that would experience an alteration to the light enjoyed which would constitute an actionable interference to the easement that the surrounding property owners enjoy over the 22 Bishopsgate site. As part of their due diligence, GIA identified a total of seven properties, located in the immediate vicinity of the site, where Deeds of Release that were previously negotiated for the consented Pinnacle scheme. However, these deeds relate to an agreed profile, which in essence was the profile of the Pinnacle scheme and as a consequence, were only helpful to a degree with respect to the current scheme as clearly the current scheme has a different massing profile.

The Pinnacle Deeds of Release were negotiated between 2005/2008, a time which immediately followed the *Midtown Ltd v City Of London Real Property Company Ltd*, 2005 whereby rights of light surveyors were far more bullish in their approach because compensation was deemed to be a more suitable remedy for commercial premises rather than injunction. Since then, and following the *Heaney* case in 2010, surveyors and their clients have been far more risk averse with respect to dealing with actionable losses of light and as such, have increased the scope of their testing to



include properties within a greater radius to a development site. Indeed, in this instance, GIA have assessed properties up to 250 metres away from the site for the 22 Bishopsgate scheme which identified all the possible interests where potentially actionable injuries occurred. This exercise was also undertaken for the vendor of the Pinnacle site, for whom GIA were also advising via a different internal team, and similar injuries were experienced to properties identified within that assessment as for the current 22 Bishopsgate scheme. As such, if the consented Pinnacle scheme were to be implemented and built out, then a similar amount of owners (bar the ones protected by Deeds) would have to be contacted for the implementation to proceed without the risk of injunction from surrounding property owners who suffer an actionable losses of light.

There are very few exceptions between the two schemes and these are noted in the Appendices. You will note in Appendix 1, which sets out the properties affected by the 22 Bishopsgate scheme and the consented Pinnacle scheme, that the risk level for both schemes is almost identical. The risk register has been undertaken to the same point in negotiation as the current 22 Bishopsgate scheme so that a direct and accurate comparison between the two schemes can be made.

In both accounts, the same number of interests would be affected. However, the seven Deeds of Release that have been negotiated in respect of the Pinnacle scheme mean that these seven interests no longer pose an injunctable risk to the development of the 22 Bishopsgate site in respect to rights of light. If it was not for these Deeds in place, not only would we have virtually the same number of interests affected but it would be to the same degree.

The only exception to this, and where there is a difference on the impact is 40 Threadneedle Street. The 22 Bishopsgate scheme extends past the agreed development profile (of the Pinnacle scheme) and therefore this additional massing means that one additional property will have to be approached. Despite the difference in the massing of the two schemes, this is the only additional property that needs to be considered besides those originally identified for the Pinnacle scheme.

In summary, the comparison exercise demonstrates that even if the consented Pinnacle scheme was to be built today, GIA's advice would be to apply the same level of due diligence as applied for 22 Bishopsgate. If the Pinnacle scheme was to be implemented today we would be looking to negotiate settlements with 53 properties as compared to 61 properties for the 22 Bishopsgate scheme. The additional properties that need to be considered for the 22 Bishopsgate scheme are down to the Deeds of release from the Pinnacle scheme and the altered massing.

## **STRATEGY AND PROGRESS TO DATE**

Contact was initiated with all of the affected freeholders which experienced an injunctable or potentially actionable injury between March and April 2015 and active negotiations have unfolded ever since in hope to reach amicable agreements with all parties.

98% of freeholders have appointed a rights of light surveyor to represent them in the matter and GIA have been in discussion with all surveyors. Where legal due diligence has been conducted and upon obtaining tenancy documentations from the freeholders, GIA have also made contact with the affected leasehold interests, once determined that they enjoy a right to light within the property and upon conclusion that their demise will be impacted by the proposed development.

Satisfactory progress has been made with a number of the interests including technical information being issued to 76% of the interests, mainly based on confirmed layouts of the properties following completion of an internal survey. Consequently, offers of compensation were issued to 80% of the interests for consideration by the surveyors and their respective clients.



## **METHODOLOGY**

The offers have been based on a Book Value Calculation, the most common way for calculating appropriate compensation for rights of light. The formula considers the actual loss of light within the neighbouring properties and values the diminution in the value of the property as a result of the loss of light. The loss of light is then capitalised and where a material injury occurs a multiplier/uplift is often applied to that base figure. The formula is illustrated as follows:

Loss of Light (known as the equivalent first zone – EFZ – i.e. the nett loss) x Light Rental Value per square foot x Years Purchase (YP – to value into perpetuity, the YP is derived from the market yield).

In light of the recent Supreme Court decision in *Coventry v Lawrence* (2014) and the recent Law Commission Report, we believe the appropriate method for evaluating any compensation due is by reference to any legal nuisance caused as a result of the reduction in light. Case Law has, in the past, suggested an uplift of between 2.6 and 3 times is appropriate - something reinforced in the very recent *Scott v. Aimiuwu* decision where an uplift of 2.5 was used (a County Court decision which unfortunately does not set legal precedent). Considering this, we have used 3 times uplift for the basis of our offers. As indicated, however, on instructions we have been perfectly willing to explore negotiated settlements on terms somewhat in excess of opening offers; and it is understood that the owner remains committed to continue to negotiate on this basis, which represents a realistic willingness to use all reasonable efforts to resolve positions in a constructive and timely fashion.

An alternative way of calculating compensation sums can be through conducting a cutback analysis of the scheme. This method eliminates the injury to the affected window by removing the area of the proposed building causing the loss. The profit on this area can be calculated and a percentage of that profit can be awarded to the injured party.

Due to the size and nature of the development, and the large number of properties that may potentially be affected around the site, we feel that it would be highly inaccurate to determine a "reasonable" sum this way as most properties would benefit from the same cutback area. Furthermore, it is to be noted that in the event that this type of analysis is requested, it has established that in order for the injuries to be removed to a de minimis level, i.e. non-actionable, the tower of the scheme would need to be cut off. The exercise has demonstrated that the cutback area would be completely disproportionate to the injury, therefore we deem this type of analysis to be inappropriate for this type of development.

## **COMPLICATIONS**

Despite continued efforts to conclude matters promptly, GIA have only managed to successfully conclude 11% of the active negotiations to date. In most cases, the absence of completed agreements has been primarily due to lack of swift response. A large number of the affected interests have not shown any signs of willingness to settle matters or enter into a deed of release thus we are having difficulty in foreseeing how these negotiations may unfold. The evidence of our attempts to negotiate with the affected parties can be found in the Negotiations Schedule depicted in Appendix 2. The actual correspondence can be disclosed upon request, subject to confidentiality. Please let us know whether you require this information at this stage. GIA are instructed to continue to make every effort to communicate with all affected owners with potentially actionable injury, and will keep you advised on request of steps taken and progress made.



For a number of reasons, our client is becoming increasingly concerned that despite strenuous and persistent effort to resolve matters, the lack of engagement from some of the neighbouring owners poses a significant threat to progressing the scheme. Chief among these reasons are (a) the early need to place very substantial pre-construction orders for materials which in aggregate run to many millions of pounds in order to facilitate construction to provide a continuing pipeline of top quality office accommodation for the City (as set out on the attached Alinea schedule dated 7 October 2015); (b) the very large potential number of parties who may wish to maintain actionable claims yet display no serious intention to negotiate (having a diametrically opposed commercial interest which conflicts with achieving the build out of this scheme); and (c) the risk that despite the application of extremely forensic and detailed analysis in accordance with best practice, some undiscovered claims might surface and imperil the safe progress of the project.

Accordingly we would formally request the City Corporation to consider the use of its powers under section 237 TCPA 1990 for the acquisition of relevant land for planning purposes in accordance with a scheme to be agreed between the City and the owner, unless it rapidly becomes evident that continued strenuous efforts to negotiate render this unnecessary.

It is of course acknowledged, based on (a) the precedents established and consistently followed in previous cases; (b) the legal and surveying advice which the City has received on use of s237; and (c) the criteria endorsed by the Court of Common Council in June 2011, that reliance on s237 procedures must only be progressed with great care and where a compelling case to do so as been made out. In the circumstances GIA's and our advice has been that it is indeed appropriate in this case to give early consideration to requesting that you obtain authority to use section 237 powers to override easements (rights to light) which have the potential to inhibit the scheme covered by the resolution passed on 17 November 2015.

Should you require any further information please do not hesitate to contact Patrick Robinson on 020 7466 2129; email [patrick.robinson@hsf.com](mailto:patrick.robinson@hsf.com).

Yours faithfully

Herbert Smith Freehills LLP

Encs:

**APPENDIX 4**  
**List of Affected Properties**



No	Property Address
1.	12-20 Camomile Street - 100 Bishopsgate
	15 St Helen's Place - 100 Bishopsgate
	16 St Helen's Place - 100 Bishopsgate
2.	5-7 St Helen's Place
3.	25 St Mary Axe
4.	52-58 Bishopsgate
5.	33 Great St Helen's
6.	3 St Helen's Place
7.	17 St Helen's Place
8.	60 St Mary Axe
9.	10 Wormwood Street
10.	83 London Wall
11.	1-3 Whittington Avenue
12.	Leadenhall Court
13.	1-5 Wormwood Street
14.	Camomile Court
15.	Tower 42 -- 20 Old Broad Street
16.	Tower 42 -- 25 Old Broad Street (Tower 42)
17.	Tower 42 - 27 Old Broad Street
18.	Tower 42 -- 15 Bishopsgate
19.	41 Threadneedle Street
20.	13-17 and 18 Old Broad Street
21.	40 Threadneedle Street
22.	Merchant Taylor's Hall
23.	7-9 Bishopsgate
24.	11 Bishopsgate
25.	28 Austin Friars
26.	27 Austin Friars
27.	22-25 Austin Friars
28.	26 Austin Friars
29.	Drapers Hall
30.	The Baltic Exchange
31.	Parish Church of St Helen's
32.	1 Undershaft
33.	Bury House
34.	Cunard Place/House
35.	113-115 Leadenhall Street
36.	Bankside House
37.	22 Billiter Street & 109-144 Fenchurch Street/17-18 Billiter St
38.	11 Leadenhall Street
39.	7-10 Leadenhall Street
40.	140 Leadenhall Street
41.	145-146 Leadenhall Street
42.	85 Gracechurch Street
43.	6-8 Bishopsgate
44.	6 Gracechurch Street
45.	19 Old Broad Street
46.	111-117 Old Broad Street
47.	37-38 Threadneedle Street
48.	36 Great St Helen's
49.	10-11 Austin Square
50.	99-101 Bishopsgate



APPENDIX 5  
PLANNING APPLICATION REPORT (extract)

283. With the development in place areas to the north east would enjoy some protection from wind, notably at St Helens Churchyard and the area around the Church compared to the existing baseline situation.
284. The open space at Crosby Square and outside 1 Undershaft would experience some worsening of conditions from the existing with conditions altered from 'sitting' to 'standing' levels in the summer and to 'leisure walking' in the windiest season. While this would be an adverse impact these levels would not cause unacceptable harm to amenity in this area.
285. Including the proposed development at 6-8 Bishopsgate in the assessment shows a slight improvement of conditions along Bishopsgate particularly around the entrance to the proposed pedestrian passageway on Bishopsgate but a worsening along Leadenhall Street. Levels here, however, would not exceed 'leisure walking' in the windiest season.
286. In conclusion the main wind effect of the proposed development would be to channel some of the prevailing south-westerly wind down to the ground increasing the windiness to the north of the site. With the proposed mitigation measures in place the assessment shows that wind would be diverted at high level before reaching the ground and at no point around the building or in the immediately surrounding area would the building cause conditions to exceed 'leisure walking' criteria. In the summer, conditions would be primarily 'sitting' or 'standing/entrance'. The results confirm that the proposed development would have some adverse impact but not such as to cause unacceptable harm to pedestrian level wind conditions which would remain at a level suitable for the urban environment in which the development is situated.
287. The separate verification assessment described at para 268 gives results which are in line with these results.

Daylight and Sunlight

288. An assessment of the impact of the development on daylight and sunlight to surrounding buildings has been undertaken in accordance with the Building Research Establishment (BRE) Guidelines and considered having regard to Policies 7.6 and 7.7 of the London Plan and DM 10.7 of the Local Plan. While the assessment has been carried out for all the surrounding buildings including commercial offices, only those considered as sensitive in terms of daylight and sunlight (15 in total) are evaluated in this report. These include residential properties at Wormwood Street and Creechurch Lane, (the nearest residential property at 50 Bishopsgate does not have windows that face the site and therefore would not be effected) and other sensitive sites such as the Church of St Helen's, St Andrew Undershaft Church, Drapers' Hall, Merchant Taylors' Hall, 19 Old Broad Street (City of London Club) and Gibson Hall, 15 Bishopsgate.
289. The assessment of daylight and sunlight is a comparative one measured against the current base conditions. As the site presently comprises development at just basement to ground levels and a core structure to

9<sup>th</sup> floor level any impact of the proposed building is likely to be more marked than otherwise would be the case.

### Daylight

290. In terms of impact on daylight the assessment shows that for 9 of the 15 properties identified as being sensitive the effect of the proposed development would be within BRE criteria and thus have a negligible impact. Of the remaining 6 properties, 2 (20-21 Wormwood Street and 18-20 Creechurch Lane) have residential accommodation at first floor and above with commercial at ground level. While the impact on the ground floor commercial element of the two buildings would exceed the BRE criteria, the impact on the residential floors above would be within the criteria and daylight would not be noticeably reduced. The overall effect on residential amenity would be negligible.
291. The remaining 4 properties that would experience noticeable reductions in daylight would be the Church of St Helen's Bishopsgate, Gibson Hall, St Andrew Undershaft Church and 19 Old Broad Street.
292. For the Church of St Helens the impact is regarded as moderate adverse; 26 windows out of 39 would experience noticeable losses of VSC and 4 rooms out of 12 would experience a noticeable reduction in NSL. These results are partly because the existing VSC levels are low meaning any alteration results in a disproportionate percentage change; those rooms affected by the reduction in NSL appear to be ancillary rooms to the main Church and not as sensitive in terms of daylight.
293. The impact on Gibson Hall would be moderate adverse. 46 of 61 windows would experience more than 40% reduction in VSC and 11 of 22 rooms would experience reductions in NSL above 20% although the report identifies the majority of affected rooms as offices and lobbies.
294. For St Andrews Church the impact is regarded as negligible as just one room (a kitchen) would experience a noticeable impact.
295. The impact on 19 Old Broad Street would be minor adverse. 23 of 27 windows would experience more than 20% reduction in VSC and 4 of 11 rooms would experience reductions of more than 40% in NSL. The report states that the impacted rooms and windows experience existing low levels (some are courtyard windows) and so the loss reflects a disproportionate percentage change.
296. The results show the development impact would have a particularly adverse effect on St Helen's Church and Gibson Hall as a number of windows and rooms would experience reductions beyond BRE recommended criteria. At St Helen's Church the spaces affected are predominantly areas ancillary to the main body of the Church; the main space would continue to enjoy light from south and east facing windows which would not be affected by the development. Similarly the main hall in Gibson Hall has a number of windows facing different directions. In conclusion although not compliant with BRE recommendations the proposal is not considered to have such an effect as to cause unacceptable harm.

297. In considering the impact on daylight to the Church of St Helen's and Gibson Hall the extent of impact caused by the proposed scheme would be slightly greater but not significantly different from that caused by the extant scheme.

### Sunlight

298. Eight properties have been identified as being sensitive in terms of sunlight. Of these four (all non-residential) would experience impacts ranging from minor to moderate adverse.
299. Most affected would be the Church of St Helens and Gibson Hall both due to their proximity to the development site. 18 of 33 windows at St Helen's Church would experience significant reductions in sunlight. As many of the affected windows are to the principal internal space, a further assessment was made of the sunlight to the space as a whole. An annual APSH of at least 18% would be retained which, while lower than the 25% BRE minimum criteria, could be considered commensurate with its City centre location. At Gibson Hall 40 of 61 windows would be significantly impacted, most of which are to offices and circulation space.
300. 6 upper level windows at Drapers Hall would experience a noticeable reduction in sunlight as would 7 windows at 19 Old Broad Street at the lower level on the courtyard. This is assessed as having a minor adverse impact.
301. In conclusion the proposed development would not cause unacceptable harm to daylight and sunlight levels to the majority of those properties identified as sensitive and the impact on residential properties would be acceptable. There would be instances of minor to moderate adverse effects to some non-residential buildings as outlined above which would be a breach of policy that tall buildings should not affect their surroundings adversely. The breach is largely caused by the proximity of the buildings to the development site; this is not uncommon in a densely developed area such as the City where a number of properties experience daylight and sunlight levels below recommended BRE Guidelines.
302. The assessment shows that the present scheme would have a greater impact on daylight and sunlight than the 'Pinnacle' scheme but in terms of daylight and sunlight to the 15 identified sensitive buildings the development would not result in significant additional adverse impact.

### Transient Overshadowing

303. The assessment of the impact of transient overshadowing was undertaken according to the BRE Guidelines in respect of several key amenity areas identified in proximity to the site and considered having regard to Policies 7.6 and 7.7 of the London Plan.
304. The assessment shows that in the existing situation much of the City is in shadow for long periods of the day due to the existing surrounding buildings.
305. On March 21<sup>st</sup> the development would cast a shadow at 10am on part of Finsbury Circus and between 1pm and 2pm on St Botolph Bishopgate

