



Town and Country Planning Act 1990

Planning and Compulsory Purchase Act 2004

Planning (Listed Buildings and Conservation Areas) Act 1990

Public Inquiry 12th January 2020

**PROOF OF EVIDENCE OF MISS ALEKSANDRA MILENTIJEVIC, BSc MSc
On Planning Policy for Co-Living Schemes & Planning Balance**

Site at:	De Paul House (Panda House), 628-634 Commercial Road, London, E14 7HS
Appeal by:	Rooms and Studios Management Ltd
PINS Reference:	APP/E5900/W/20/3250665
LPA Reference:	PA/19/00804

London Borough of Tower Hamlets
Place Directorate
Town Hall
Mulberry Place
5 Clove Crescent
London E14 2BG

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1. QUALIFICATIONS AND EXPERIENCE

- 1.1. My name is Aleksandra Milentijevic. I hold a BSc in Architecture and Urban Planning from the University in Belgrade and an RTPI and RICS accredited MSc in Spatial Planning from Oxford Brookes University. I am a part-time PhD student at the Bartlett School of Planning, University College London.
- 1.2. I have worked as a planning professional since November 2016 and have gained all of my experience within the public sector, at the London Borough of Tower Hamlets. I am currently employed by the London Borough of Tower Hamlets as a senior planning officer.
- 1.3. In 2018, I was seconded to the Council's planning policy team where I have represented the Council at the Examination in Public hearing sessions.
- 1.4. My experience includes dealing with a number of large-scale and strategic mixed-use developments.
- 1.5. I am a licentiate member of the Royal Town Planning Institute and am eligible for Chartered Membership through my RTPI-accredited degree and having more than 1-2 years of relevant work experience.
- 1.6. I am a Young Urbanist Member of the Academy of Urbanism, a Young Academic of the Association of the Association of the European Schools of Planning and a member of the International Society of the City and Regional Planners.
- 1.7. I give evidence to this inquiry on behalf of Council.
- 1.8. I am familiar with the appeal site and have worked on several schemes in the surrounding area within the eastern part of the borough.
- 1.9. The evidence which I have prepared and provide for this appeal Ref. APP/E5900/W/20/3250665 is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions.

2. SCOPE OF EVIDENCE

- 2.1. My proof is to be read in conjunction with the Local Planning Authority's (LPA) Statement of Case (SoC), and proof of evidence, prepared on behalf of the Council, by Dr Anthony Lee.
- 2.2. This proof discusses the planning policy applicable to the co-living/houses in multiple occupation ("HMOs"). In particular, it examines the interpretation and application of the key relevant Local Plan policy D.H7 which requires applicants for new co-living schemes to show that their scheme meets an identified need for this type of housing in the chosen location and that the housing being provided is either low cost or otherwise makes a contribution to the area's substantial affordable housing needs. I explain why the Council takes the view that the Appeal Scheme does not satisfy this policy. Finally, drawing together the main issues in this appeal, I examine the planning balance of the appeal case. In relation to those issues namely, heritage, and the quality of the proposed accommodation, a detailed assessment is provided within the LPA's SoC and is not repeated here. Those matters will either be considered as part of the roundtable discussion or will be the subject of further representations will be provided in writing. I will refer to these issues for the purposes of planning balance assessment.
- 2.3. The application history, site description, relevant planning history, legislative and policy framework are all summarised in the Statement of Common Ground. As such, I will not repeat these.

3. INTRODUCTION

- 3.1. The application history has been provided in section 1 of the LPA's Statement of Case (SoC) and has been summarised in the Statement of Common Ground (SoCG).

4. THE APPEAL SITE AND SURROUNDINGS

- 4.1. The appeal site and surroundings have been discussed in section 2 of the LPA's SoC and have been summarised in the Statement of Common Ground.

5. PLANNING HISTORY OF THE APPEAL SITE

- 5.1. The planning history has been provided in section 3 of the LPA's SoC, and has been summarised in the Statement of Common Ground (SoCG). I will not repeat that agreed history here.

6. LEGISLATION AND POLICY CONTEXT

- 6.1. Legislation and policy context is provided in section 4 of the LPA's SoC. I will not repeat that in full this proof; however, I highlight the key policies which apply to the Appeal Scheme.

- 6.2. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission and appeals to be determined in accordance with the development plan for the area unless material considerations indicate otherwise. For the purposes of Section 38 (6) the development plan for the London Borough of Tower Hamlets comprises:

- The London Plan 2016 - The Spatial Development Strategy for Greater London
- Tower Hamlets Local Plan 2031: managing growth and sharing the benefits (Adopted 2020)
- The Adopted Policies Map (Reproduced within the Tower Hamlets Local Plan 2031)

7. KEY DEVELOPMENT PLAN POLICIES AND OTHER MATERIAL CONSIDERATIONS

- 7.1. An agreed list of regional and local development plan policies relevant to the appeal proposal is contained within the Statement of Common Ground. The key policies are particularised in the Council's decision letter dated 18 March 2020 refusing planning permission. I will refer to these below.

Other material considerations

The National Planning Policy Framework (NPPF) (2019)

- 7.2. Local planning authorities must also have regard to the NPPF that provides the Government's national objectives for planning and development management and the related guidance in the online National Planning Practice Guidance.
- 7.3. Chapter 2 'Achieving sustainable development', Paragraph 7, highlights the achievement of sustainable development as the purpose of the planning system. It further defines sustainable development as "meeting the needs of the present without compromising the ability of future generations to meet their own needs".
- 7.4. Paragraph 8 sets out the three overarching objectives of the planning system that contribute to the achievement of sustainable development:
- a. **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
 - b. **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
 - c. **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land,

helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 7.5. Paragraph 11 states that plans and decisions should apply a presumption in favour of sustainable development. Approving development without delay where there is an up-to-date development plan is required noting however that Paragraph 12 states that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.

Other relevant documents

7.6. **LBTH Supplementary Planning Guidance**

- Development Viability Supplementary Planning Document (October 2017)
- Planning Obligations Supplementary Planning Document (September 2016)
- St Anne's Church Conservation Area character appraisal and management guidelines (October 2007)

7.7. **London Plan Supplementary Planning Guidance**

- Affordable Housing and Viability Supplementary Planning Guidance (2017)
- Housing Supplementary Planning Guidance (May 2016 and updated August 2017)

Emerging Policy

- 7.8. The following emerging policy documents are relevant to the appeal:

- Draft New London Plan (Intend to Publish, December 2019)

- 7.9. The Examination in Public (EiP) of the Mayor of London's Draft New London took place from January to May 2019. The Draft New London Plan with Consolidated Suggested Changes was published in July 2019. Generally, the weight carried by the emerging policies within the Draft New London Plan is considered significant as the document has been subject to EiP and has incorporated all of the Mayor's suggested changes following the EiP. An 'Intend to Publish' was published by the Mayor of London in December 2019. However, certain policies in the Draft New London Plan are subject to Secretary of State (SoS) directions

made on 13 March 2020 and further directions issued on 10/12/2020, these policies are considered to have only limited or moderate weight.

7.10. I consider that policies included in the SoS's directions made in December 2020 carry very limited weight. These include Policy D9 Tall Buildings and Policy E4 Land for industry. Other policies, which are not subject to or referred to in the SoS' directions and are therefore highly likely to be adopted in an unaltered form, carry moderate to significant weight.

7.11. Where referring to the Draft London Plan policies, I will set out how much weight I attribute to these. The statutory presumption still applies to the London Plan 2016 up until the moment that the new plan is adopted.

8. PLANNING POLICY ON CO-LIVING SCHEMES

8.1. In this section, I will set out the Council's position on how Policy D.H7, the Council's bespoke policy regarding the provision of HMO/Co-living schemes, operates generally in the context of the Local Plan and how it falls to be applied to the Appeal Scheme by the Appellant. I set out below:

- a. the background to the adoption of policy D.H7 and the aims of the policy;
- b. the distinct but interrelated requirements of policy D.H7 which require developers to establish the need for HMOs in the appointed location and to demonstrate how the scheme contributes to Tower Hamlets' acute affordable housing requirements – either by providing low cost housing or by making an appropriate contribution to affordable housing – whilst meeting decent accommodation standards for occupiers and maintaining neighbours' amenity; and
- c. how the Appellant's Scheme and its submitted evidence fails to satisfy policy D.H7, as well as S.H1 and D.H2 of the Tower Hamlets Local Plan 2031 (2020).

Local Plan Context for Policy D.H7

8.2. The Tower Hamlets Local Plan 2031 ("Local Plan") supporting title is 'Managing growth and sharing the benefits'. This is reflected in the Vision and Objectives chapter on pages 24 to 27. In particular, the principles within Key Objectives (Key Objective 1: Managing the growth and shaping change, and Key Objective 2: Sharing the benefits of growth) that underpin the delivery of the Local Plan provide that:

- 1.a. Growth must **contribute positively** to existing identified social, economic and environmental needs, and
- 2.a Growth must deliver social, economic, and environmental **net gains** jointly and simultaneously and reduce inequalities, benefiting the lives of **existing residents**. (emphasis added)

8.3. The delivery of the objectives is envisaged through:

- Positively meeting our [Tower Hamlet's] duties to deliver our strategic and local housing needs...
- Ensuring housing development contributes to the creation of socially balanced and inclusive communities and offers housing choice, reflecting our priorities for genuinely affordable and family homes.

8.4. The borough portrait is found on pages 12 to 18 of the Local Plan and sets the scene for the Local Plan Policies, including policy D.H7. Paragraph 2.2. addresses the range of stresses the borough faces:

*“Tower Hamlets...**still has high levels of deprivation** and its ever-growing population is placing increasing pressure on local services and resources, including the use of land. Providing enough new homes, jobs and services **in the right places** to support the needs of our growing population and other parts of London is one of our key challenges.”* (emphasis added).

8.5. The borough portrait is summarised as follows:

- Tower Hamlets is the second most dense local authority in England, with a combination of significant growth, and a modest sized geographical area.
- The population has doubled in size from 150,200 to 304,900, in the 30 years up to 2016. The population is projected to increase to 370,000 by 2028.
- The borough is the home to a world-class financial district in Canary Wharf, with city wide and international significance, and borders the City of London in the west. The borough has an important land use role, embedded in policy, to safeguard those functions.
- Tower Hamlets is the 50th most deprived local authority in England (of 317), having been the 10th most deprived in 2015.
- The proportion of children in relative poverty is 27% in 2018/19, (an improvement from 60% in 2006). This is the highest rate of child poverty in London and higher than the average for Great Britain.

Policy D.H7 Housing with shared facilities (houses in multiple occupation)

Policy background

- 8.6. A bespoke standalone policy (D.H7) on HMOs is a new addition to the local development plan within the recently adopted Tower Hamlets Local Plan 2031. In the previous local plan, there was no specific approach to the assessment of planning applications for HMOs in Tower Hamlets. Whilst the previous local plan contained standalone policies on specialist housing and student accommodation
- 8.7. Since the previous Local Plan there have been changes with regards to the models of housing. One such change is the proliferation of shared accommodation developments, including large-scale HMOs. This change has been recognised and reflected in the new policy – D.H7 Housing with shared facilities (houses in multiple occupation).
- 8.8. The recent increase in shared accommodation in the borough is evidenced and reflected by the recent changes in HMO licensing and the adoption of Article 4 direction. In April 2019, the Council introduced additional HMO licensing regimes to ensure that smaller HMOs obtain and are subject to the relevant licence. In January 2020, an Article 4 direction for the removal of permitted development rights for the change of use from dwellinghouses (C3 Use Class) to small houses in multiple occupation (C4 Use Classes) was confirmed. The Article 4 direction will come into force on 1st January 2021.
- 8.9. The Appellant’s development is referred to as large-scale HMO and also as a ‘co-living’ scheme. This is a purpose-built shared accommodation scheme, with market rents and shared amenities which (according to the Appellant) is marketed at young professionals and students, to which policy D.H7 applies. In that respect it differs from traditional smaller-scale HMOs.
- 8.10. Chapter 9 ‘Meeting housing need’ of the adopted Local Plan includes policies on different housing types which are needed and expected to be brought forward in the borough, in addition to the traditional housing types. These includes specialist housing policy D.H4, student housing policy D.H6, and housing with shared facilities policy D.H7.
- 8.11. Policy D.H7 (Housing with shared facilities) addresses all new schemes which are brought forward as HMOs. The policy refers to both the traditional role of HMO accommodation in Tower Hamlets, which is often provided through conversion of properties or expansion of existing HMOs, and also to purpose built

HMO accommodation such as co-living, as described in the paragraph 9.68 of the supporting text to policy D.H7:

“9.68 HMOs have traditionally provided lower cost housing, including for those under 35 years of age in receipt of the shared room rate housing benefit. However, there has been a recent growth in London of purpose-built, large-scale, higher quality HMOs charging commercial market rents. This includes, for example, accommodation modelled on student housing but available for a wider range of occupants or accommodation described as ‘co-living’.”

It is this sort of co-living scheme – namely purpose-built, large scale, charging market rent – which we are addressing in this appeal.

- 8.12. During the Examination in Public of the Tower Hamlets Local Plan, draft Policy D.H7, was specifically addressed by the Examining Planning Inspector in the report (Appendix 1). A list of main modifications to the draft local plan (Appendix 2) was considered and reviewed by the Inspector in her report.
- 8.13. The Inspector observed correctly that policy D.H7 *“seeks to address the acknowledged growth in purpose-built large-scale houses in multiple occupation (HMOs) by providing a **criteria based approach** to any new proposals.”* (emphasis added).
- 8.14. The Inspector accepted the Council’s proposed wording changes to policy D.H7 (main modification MM11) by including D.H7 1 (a), which requires new houses in multiple application to show that they meet an identified need, as an additional criterion. The supporting text was also modified to explain that in respect of criteria D.H7 1(a) high-quality HMOs would need to be justified in respect of the specific scheme and location. In addition, the Inspector considered and accepted provision within the supporting text to ensure the policy is aligned with the overall objectives of policy S.H1 (Meeting housing needs) to ensure that any HMO/co-living schemes meet an identified need going forward. That need, for the reasons developed below, which includes the provision of low cost shared accommodation or affordable housing provision specified in D.H7 1(c).
- 8.15. The main modification to the policy also included the addition of a footnote specifically referencing the Tower Hamlets Strategic Housing Market Assessment (2017) (Appendix 3) which sets out an objectively assessed housing

need in the borough based on demographic projections and assessed against market signals. In particular, the SHMA sets out the Council's priority need to be the delivery of affordable housing amounting to 45% of all housing in the borough.

Policy analysis

- 8.16. All policies should be read in a straightforward way according to their plain language and ordinary meaning. The Council's policies consist of high level spatial policies for each chapter, beneath those lie development management policies, and the supporting text that accompanies both, which explains for the reader the context for those policies and how they fall to be understood and applied.
- 8.17. In order to properly construe policy D.H7 one must read the policy as a whole, together with all of the supporting text. Part 1 of the policy makes clear that the proposals will be tested against *each* of the six criteria, from 'a' to 'f'. In order for applications for HMOs to be supported, they must satisfy all six criteria. This is in contrast to part 2 where the proposal is tested *either* against meeting a *or* b.
- 8.18. Only Part 1 of policy D.H7 is relevant to the appeal proposal given that there would be no loss or self-containment of good quality HMOs. Part 1 of the policy provides:
- 1. New houses in multiple occupation will be supported where they:*
 - a. meet an identified need*
 - b. do not result in the loss of existing larger housing suitable for family occupation*
 - c. can be secured as a long-term addition to the supply of low cost housing, or otherwise provides an appropriate amount of affordable housing*
 - d. are located in an area of high transport accessibility*
 - e. do not give rise to any significant amenity impact(s) on the surrounding neighbourhood, and*
 - f. comply with relevant standards and satisfy the housing space standards outlined in Policies D.H3 and D.DH8.*
- 8.19. It is accepted that the Appeal Scheme satisfies criterion (b) and that its location meets criterion (d). No issue is taken by the Council with the information provided

by the Appellant in the DAMA document with regards to the appeal site being in an accessible, sustainable location (pp. 7-8). In addition, with the provision of a suitable and robust management plan, the Scheme is capable of meeting criterion (e). In the context of the roundtable session, the parties will address criterion (f) which relates to the internal amenity of Scheme.

- 8.20. The focus of the following discussion is therefore on the interpretation and application of criteria (a) and (c) of D.H7. In order to satisfy the policy requirements, the Appellant must show that:
- i. There is an “identified need” for its large scale purpose built living scheme in this location;
 - ii. Its Scheme can be secured as a long term addition to the supply of low cost housing; or
 - iii. It otherwise provides an appropriate amount of affordable housing.

- 8.21. In summary, the Council’s case is that the Appellant’s Scheme fails to meet these policy requirements. Firstly, the Scheme is not a primarily a scheme for low cost housing for people on low incomes. Secondly, even if it were (which is not accepted) the provision of low cost housing as a long term addition to housing supply is not secured; the Appellant has not put forward any mechanism for securing its proposed rents as these are market-dependent. Thirdly, given that the Appeal Scheme does not provide low cost housing, it is expected to make a policy compliant contribution to affordable housing. In putting forward a scheme with nil affordable housing without proper justification, the Scheme fails to satisfy D.H7(1)(c).

Criteria D.H7 1(a) – Meaning of “identified need”

- 8.22. The word “need” is an elastic rather than a hard-edged concept which must be considered in the particular planning context of policy D.H7. Need, in this context, does not simply mean a macro-economic demand for HMO/co-living housing – which seems to be the approach which underlines the Appellant’s evidence, particularly the DAMA. The policy’s supporting text and evidence base clearly establishes that there is a demand for HMO housing (just as there is demand for most types of housing in Tower Hamlets). However, if “identified need” simply required the identification of demand for HMO housing then there would be no reason to include criterion D.H7 1 (a) as that criterion would invariably be met.

- 8.23. Need does not equate to “demand/viability/want”. It is not sufficient for the Appellant to show that there is demand for co-living housing and that it would be economically sustainable/viable to deliver such a scheme. Criteria 1(a) requires applicants to show that further HMOs are “necessary” in this location in the interests of the public as whole and in line with the objectives of the Local Plan and policy D.H7, as a whole, which are that HMOs should provide low cost housing or otherwise make an affordable housing contribution and should contribute to mixed and balanced communities (para. 9.70).
- 8.24. The “identified need” requirement thus brings both quantitative and qualitative considerations into play based on the other considerations – namely, affordability, geography and amenity – with which the policy criteria D.H7 is concerned. The test posed by policy D.H7 1(a) is whether an applicant has demonstrated there is a need for this scheme, at these proposed rents, with this design in this location.
- 8.25. There is a distinction between a public “need” (i.e. what is in the public planning interest as identified in the Local Plan and the supporting evidence base) and private “demand” (i.e. an individual’s desire to live in this type of co-living accommodation and what is in the developer’s interest by having this particular type of development). The fact that a development might benefit some members of the public who are able to afford it, does not invariably mean there is a demonstrable public “need” for that development which would contribute towards meeting the borough’s strategic housing need as identified in the TH SHMA and required by policy S.H1.
- 8.26. There is also geographical component to need which requires consideration of a need in this location for a new large scale HMO. The function of the Part 1 (a) need criteria, together with other criteria, recognises both the need for affordability (Part 1 (c)) and transport (Part 1 (d)) considerations, and the fact the large scale HMOs (which house large numbers of occupants, with limited private amenity) can generate particular planning impacts (Parts 1 (e) and 1 (f)) which militates against the over-concentration of this type of housing (see Policy S.H1 which supports housing which contributes to mixed and balanced communities and policy D.H2 2(b) (ii) which guards against the over-concentration of any one type of housing) and which can require planning conditions to control such impacts.

8.27. From paragraph 9.70, it is evident that in order to meet an identified need in the borough for the HMO-type accommodation, any proposal coming forward will need to consider its location and be secured either as *low cost* housing which provides long-term secured housing for people on *low incomes*, or, if the scheme is not a low cost housing scheme, it must provide an appropriate amount of affordable housing contributions in accordance with the requirements of Local Plan policies S.H1 and D.H2 (see below for discussion of meaning of “low cost housing”).

8.28. The context for the criterion D.H7 1(a) is the express recognition in the policy’s supporting text of the the increasing “demand” for HMOs in the borough. The policy acknowledges HMOs can contribute to meeting the housing targets at paragraph 9.69:

*“The Greater London Authority (GLA) household projections suggest there is an **increasing demand for HMO-style accommodation in the borough, particularly among young people.** The number of ‘other type’ households (which includes HMOs) headed by persons aged 16- 34 is projected to rise from 12,295 in 2016 to 16,555 in 2031³⁶. High quality, large-scale HMOs can help meet this need. **This will need to be demonstrated with regards to the specific scheme and location (Part a).**” (emphasis added)*

8.29. The increasing demand for HMO style accommodation mentioned in paragraph 9.69 is reflected in the TH SHMA. The SHMA explains the role played by HMOs in meeting the housing needs of the borough generally but specifically of those who cannot afford self-contained accommodation. The SHMA at paragraphs 6.19 and paragraph 3.35 sets out:

*“6.19 ...The increasing pressures for social housing and rising private rents have seen fewer young households living on their own and more living in **HMO type accommodation.** The number of other type of households, which include HMOs, headed by **persons aged 16-34 years is projected to rise from 12,295 to 16,555 between 2016 and 2031.** Therefore, while there are projected to be more persons aged 16-34 years, there are projected to be fewer living a [sic.] single persons households.”*

8.30. The TH SHMA states at paragraph 3.35 and 3.36:

*“3.35 Nevertheless, shared facilities is a characteristic of HMOs and many people living in this type of housing will only be able to afford shared accommodation (either with or without housing benefit support). Extending the **Local Housing Allowance (LHA) Shared Accommodation Rate (SAR) allowance** to cover all single persons up to 35 years of age has meant that **many more young people will only be able to afford shared housing, and this has further increased demand for housing such as HMOs.**”* (emphasis added)

*“3.36 There is therefore likely to be a **continued (and possibly growing) role for HMOs**, with more of the existing housing stock possibly being converted. ...”* (emphasis added)

8.31. The evidence base for the housing policies within the adopted Local Plan clearly indicates that HMOs represent a housing type which is oftentimes the only available accommodation to young people, particularly those in one person households. Importantly, this includes single persons up to 35 years of age in receipt of housing benefits¹. Given the identified population growth of households who can only afford HMO type of accommodation, proposals which come forward for HMOs should aim to meet the future need of this part of the population (and where that is not the case, should contribute to the provision of affordable housing).

8.32. Further explanation on how HMO proposals can help meet the identified need for HMO-style accommodation is provided in paragraph 9.70 of the supporting text of policy D.H7:

*“9.70 **Part 1(a), (b), and (c)** ensures development contributes towards maintaining mixed and balanced communities...the affordable housing service will assess the proposed rent levels to determine whether the development would primarily provide housing... for **people on low incomes**. Where it would not meet the housing needs of those on low incomes developments will be required to meet the **affordable housing requirements** outlined in Policies S.H1 and D.H2. Affordable housing contributions will be sought from all residential development*

¹ Local Housing Allowance is the amount of a housing benefit a person is eligible to receive if renting from a private landlord. Shared Accommodation Rate refers to a room with shared facilities, i.e. HMO type of accommodation.

(as per the GLA's Housing Supplementary Planning Guidance)." (emphasis added).

- 8.33. From reading paragraph 9.70, it is evident that the policy must be read as a whole and that criteria (a), (b) and (c) must be interpreted and applied together. So where part 1 (a) requires an applicant to meet an "identified need" for this type of accommodation – in addition to demonstrating a need for the specific scheme in the chosen location (paragraph 9.69) – the identification of need will also need to consider the affordability of the scheme in question in accordance with the requirements of part 1 (c) of the policy. Part 1 (b) of the policy is only applicable where proposals would result in the loss of existing larger housing suitable for family occupation, which is not the case for the subject appeal.

Criteria D.H7 1(c) (first limb) – Provision of low cost housing – is the Appeal Scheme a low cost scheme?

- 8.34. The clear thrust of D.H7 is that, whether by providing a long term addition to low cost housing or making an appropriate contribution to conventional affordable housing, HMOs contribute to meeting the LPA's acute affordable housing needs.
- 8.35. HMO schemes will be supported only where they can either (i) be secured as a long-term addition to the supply of low cost housing or (ii) otherwise provide an appropriate amount of affordable housing (D.H7 1(c)). A key aim of policy D.H7 is to ensure that large-scale HMO/co-living schemes, which charge rents which are not targeted at those on low incomes (i.e. market rents or rents for those on medium incomes), do not escape the affordable housing requirements which must be met by other residential development schemes.
- 8.36. For the purposes of policy D.H7, it is essential to understand the difference between the terms low cost housing and affordable housing in this context. Low cost housing is a species of affordable housing but the terms have different meanings within the context of D.H7 1(c).
- 8.37. As set out above, there are two ways in which a developer can satisfy the requirements of Policy D.H7 1(c):

- i. either by providing housing which can be secured as a long term addition to the supply of low cost housing; or,
- ii. where that is not possible or is not part of the proposal, by making a policy compliant contribution to affordable housing.

Definition of low cost housing and low incomes

- 8.38. The definition of 'low cost housing' is defined in the supporting text of the policy at paragraph 9.70 as housing which is aimed at '*people with low incomes*'. Housing which is genuinely and primarily low cost will be housing which primarily caters to people on low incomes.
- 8.39. Low incomes which are typically defined by central Government as 60% of the median income². The median income in Tower Hamlets for 2019³ was £30,760⁴. Therefore, calculated on the basis of the median income, the low income threshold or benchmark in Tower Hamlets for 2019 equates to £18,456.
- 8.40. The median income in Tower Hamlets for 2020 has decreased to £28,769⁵. On this basis, the current low income benchmark Tower Hamlets for 2020 is £17,261.4.⁶
- 8.41. As made clear in paragraph 9.70 of the policy supporting text, rent levels for housing with shared facilities for people with low incomes will be assessed using evidence from the latest TH SHMA. This is relevant to the determination of whether a proposal for a shared accommodation scheme should be treated as being primarily low cost or not.

² <https://www.gov.uk/government/publications/how-low-income-is-measured/text-only-how-low-income-is-measured#the-median-household-income-is-used-to-find-the-number-of-people-in-low-income-households>

³ A typographical error is included in the previous Council's evidence stating £30,370 as a median income in 2019 in paragraph 6.24 of the LPA's SoC.

⁴

https://www.towerhamlets.gov.uk/Documents/Borough_statistics/Income_poverty_and_welfare/income_2019_1.pdf

⁵ Figure obtained within the LPA internally.

⁶ The Appellant's DAMA produced by Knight Frank relies on "average" Borough-wide incomes for its analysis (see pg. 21). No justification for using average incomes is provided. Both the GLA and Council use median incomes for the setting of affordable housing rents. This is for the very good reason that use of average incomes can be distorted as here by either very high or very low incomes.

8.42. The Local Plan does not contain specific guide rent levels for low cost shared accommodation. Scheme-specific rent levels will be determined at the point in time when an application comes forward in accordance with the latest evidence from the TH SHMA. As set out above, D.H7 is very clear that low cost shared accommodation is for people on low incomes. It is therefore housing with a high degree of affordability.

Local Housing Allowance rates

8.43. A helpful indicator for what counts low cost housing targeted at those on low incomes is whether the accommodation in question would be affordable to a single person household in receipt of Local Housing Allowance.

8.44. The evidence base contained in the TH SHMA demonstrates that HMOs have been meeting a need in the private rented sector for people who are not eligible for social housing and are in receipt of housing benefits.

8.45. The Local Housing Allowance is the maximum housing benefit that people on low incomes are entitled to for private rented accommodation. The Local Housing Allowance has increased for 2020/21⁷, and amounts to £136.50 per week/£591.50 per month.

8.46. By way of context, and to understand the relationship between the provision of low cost housing and the LHA rates, the TH SHMA, in a section on '*Future Policy on Housing Benefit in the Private Rented Sector*' states:

*"3.121 It is important to note that private rented housing (with or without housing benefit) does not meet the definitions of affordable housing and as such cannot count toward affordable housing supply. However, **many tenants that rent from a private landlord can only afford their housing costs as they receive housing benefit.** These households aren't counted towards the need for affordable housing (as housing benefit enables them to afford their housing costs), but **if housing benefit support was no longer provided (or if there wasn't sufficient private rented housing available at a price they could***

⁷ <https://lha-direct.voa.gov.uk/SearchResults.aspx?Postcode=e14%2b7ha&LHACategory=999&Month=12&Year=2020&SearchPageParameters=true>

afford) then this would increase the need for affordable housing. (emphasis added)

3.122 The model adopts a neutral position in relation to this housing benefit support, insofar as it assumes that the number of claimants in receipt of housing benefit in the private rented sector will remain constant. The model does not count any dwellings in the private rented sector as affordable housing supply; however it does assume that housing benefit will continue to help some households to afford their housing costs, and as a consequence these households will not need affordable housing.

3.123 ...If households are no longer able to afford to live in private rented housing (or the supply of such housing reduces) then there is likely to be an increased demand for affordable housing..."

8.47. The above extract from the latest SHMA indicates that the rental levels of primarily low cost housing schemes, in order to actually qualify as low cost, will need to set at roughly the same levels as the rates of housing benefit for people on low incomes in order for them to be affordable to those on low incomes. In other words, the maximum level of LHA is a useful and relevant yardstick for determining whether the proposed rent levels are low cost. If the rent levels are higher than the maximum LHA levels, then those on low incomes, even when receiving LHA, would not be able to access the housing in question. The maximum LHA per month for a single person (£591.50 per month) would be nowhere near sufficient to afford a single room in Panda House.

8.48. As highlighted in the evidence base for policy D.H7 (TH SHMA), where those in receipt of LHA are not able to access the private rental housing in question, that in turn generates an additional need for affordable housing. That explains the logic behind criterion 1(c) that if a scheme is not meeting the needs of those on low incomes, who are able to rent in the private sector because they receive LHA, then it should contribute to meeting the Borough's affordable housing need.

Affordable housing definitions and rent levels

8.49. Affordable housing rent levels are targeted at those on medium and low incomes. To establish whether the rent levels proposed at Panda House are low cost it is

helpful to understand the rents for self-contained accommodation in London and Tower Hamlets for those on low incomes.

8.50. The specific definition of affordable housing in the metropolitan area of London is provided within London Plan (2016) policy 3.10 Definition of affordable housing which states the following:

“Affordable housing is social rented, affordable rented and intermediate housing...”

8.51. Local Plan policy D.H2 provides details of affordable housing types and rental levels. Paragraph 9.30 of the supporting text provides:

“Where the development provides up to 35% affordable housing, as per Policy S.H1 above, the affordable housing provision should be comprised of:

- a. 70% rented element, of which 50% should be London affordable rents and 50% should be Tower Hamlets living rent*
- b. 30% intermediate element, which can include London living rent, shared ownership and other intermediate products.”*

8.52. Part 3 of policy D.H2 provides a unit mix requirement for housing developments although this refers to self-contained units. It provides:

“3. Development is required to provide a mix of unit sizes (including larger family homes) in accordance with local housing need, outlined in the table below:”

	<i>Market</i>	<i>Intermediate</i>	<i>Affordable rented</i>
<i>1 bed</i>	<i>30%</i>	<i>15%</i>	<i>25%</i>
<i>2 bed</i>	<i>50%</i>	<i>40%</i>	<i>30%</i>
<i>3 bed</i>	<i>20%</i>	<i>45%</i>	<i>30%</i>
<i>4 bed</i>			<i>15%</i>

8.53. Affordable rented housing products are also referred to as 'low cost rented homes' by the Mayor of London (Homes for Londoners 2016-2021 Funding Guidance, Mayor of London) (Appendix 4). Additional explanation is provided in the GLA's Housing Research Note 5 Intermediate housing: The evidence base (August 2020) (Appendix 5) which provides within Appendix 2: a glossary of affordable housing tenure definitions:

“Affordable rent

A type of affordable home. Introduced by the coalition Government, homes with rents set below market rent, calculated as a percentage of the market rent (including service charge) or linked to income, and capped at 80% of market rent or Local Housing Allowance rates. (emphasis added)

London Affordable Rent

A type of affordable home preferred by the Mayor. Homes aimed at low income households, with rents based on social rent levels that are allocated through local authority allocation policies. Maximum monthly rents (excluding service charges) are published by the GLA on the Homes for Londoners: Affordable Homes Programme 2016-21 webpage. (emphasis added)

Social rent

A type of affordable home preferred by the Mayor. Homes provided to households whose needs are not met by the market, typically by local authorities or Registered Providers, with rents set within guidelines issued by the Regulator of Social Housing and allocated via local authority allocation policies. References in this research note to ‘homes at social rent levels’ include both social rent homes and London Affordable Rent homes.”

- 8.54. As stated in paragraph 9.30 of policy D.H2 (as referenced above), there are two affordable rented products in Tower Hamlets: London Affordable Rent (LAR) and Tower Hamlets Living Rent (THLR). With respect to their rental levels, LAR is set by GLA each year based on the formula rent cap figures for social rents uprated by CPI for September 2016 plus one per cent (Homes for Londoners, Affordable Homes Programme 2016-2021 Funding Guidance, GLA). THLR is set by the Council at borough-wide levels and represent an expenditure of one third of the median local incomes⁸.
- 8.55. There are certain matters which should be highlighted with respect to the two affordable rented housing products. London Affordable Rent (LAR) does not include service charges and as such usually has lower rents whereas Tower

⁸ https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Local-Plan/Guidance_for_developers_and_viability_testers_on_LBTH_2017.pdf

Hamlets Living Rent (THLR) does include service charges. All households eligible for both products need to be registered on the Council's housing list. Neither of these housing products, with the corresponding rental levels, include rents for shared accommodation⁹. In Tower Hamlets, those on the housing waiting list will always be housed in self-contained units.

8.56. With respect to the rental levels for intermediate housing products, the London Living Rent¹⁰ (LLR) is expressly targeted at middle-income households who now rent and want to save in future to purchase a home. In addition, the tenancies for LLR are offered on a minimum of three years with a view to tenants being able eventually to purchase equity in their home on a shared ownership basis during their tenancy. It is important to note that rent levels for LLR are based on local average incomes up to £60,000 per annum and ward-level house prices with a 2-bedroom property being used as a benchmark¹¹. Similarly to LAR and THLR, there are no given rates for shared accommodation at LLR as this housing product is typically delivered as traditional, self-contained housing units.

8.57. A summary table of the affordable housing products available and sought by the development plan is provided below:

Affordable housing product	Product typology	Rental levels	Income levels
London Affordable Rent	Affordable Rented	Updated annually by the GLA	GLA benchmarks based on the formula rent cap figures for social rents updated by CPI for September 2016 plus one per cent (Homes for Londoners, Affordable Homes Programme 2016-2021 Funding Guidance, GLA)

⁹ https://www.london.gov.uk/sites/default/files/affordable_housing_monitor.pdf

¹⁰ <https://www.london.gov.uk/what-we-do/housing-and-land/improving-private-rented-sector/london-living-rent>

¹¹ <https://www.london.gov.uk/what-we-do/housing-and-land/improving-private-rented-sector/london-living-rent>

Tower Hamlets Living Rent	Affordable Rented	Updated annually by the Council	Based on Local median incomes
London Living Rent	Intermediate	Updated annually by the GLA	Based on local median incomes and ward-level house prices for a 2-bedroom property used as a benchmark (1-bedroom 10% lower than the benchmark, 3-bedroom 10% higher than the benchmark and 4-bedroom 20% higher than the benchmark)

8.58. The table below sets out the rental levels for 1-bedroom self-contained residential units for the above defined affordable housing products.

Affordable housing product	Monthly rent level for 1-bedroom unit 2020/21
London Affordable Rent	£690.3 (£159.32 per week)
Tower Hamlets Living Rent	£799.15 (£184.42 per week)
London Living Rent	£1,118

8.59. As discussed further below, it is clear that the proposed rent levels for the Appeal Scheme, which are £1,000 for single room and £1,083 for double room are well in excess of the rent levels for LAR and THLR, and that is before one takes account of the fact that those rent levels are for self-contained units. It is clear, that using the guide rents for affordable rents for self-contained units that the proposed accommodation is not low cost.

8.60. In so far as the proposed rent levels for Panda House are comparable to the rent levels for LLR which are self-contained units. That demonstrates clearly that the accommodation in Panda House is not low cost housing but a type of housing affordable to those not considered to be on low incomes.

Criteria D.H7 1(c) (second limb) – Provision of Affordable housing contributions

8.61. The Council took the policy decision in adopting policy D.H7 that where applications for HMO or co-living spaces do not secure a long term addition to low cost shared accommodation in the borough, such developments should make a contribution (like conventional residential schemes) towards affordable housing, as other market rent housing products do.

8.62. Paragraph 9.69 states:

*“...Applications should seek to address housing need, as outlined in Policies **S.H1 (see paragraph 9.21) and D.H2. It is considered this is best delivered through a mixed tenure scheme which could meet a range of housing needs. In addition reflecting the changing role of HMO-style accommodation in the borough and the acute shortage of affordable housing, it is appropriate that all forms of market housing (including HMOs) contribute towards meeting the high affordable housing need.”** (emphasis added)*

8.63. Policy S.H1 of the Local Plan is a strategic policy which sets out a number of housing supply requirements. With respect to affordable housing, Part 2 of the policy states:

“2. Development will be expected to contribute towards the creation of mixed and balanced communities that respond to local and strategic need. This will be achieved through:

a. setting an overall target for 50% of all new homes to be affordable, to be achieved through:

i. ...

ii. requiring the provision of affordable housing contributions on sites providing 2 to 9 new residential units against a sliding-scale target (subject to viability)

iii. requiring the provision of a minimum of 35% affordable housing on sites providing 10 or more new residential units (subject to viability), and

iv. requiring a mix of rented and intermediate affordable tenures to meet the full range of housing needs.

b. requiring a mix of unit sizes and tenures to meet local need on all sites providing new housing

- c. supporting a variety of housing products in the market and affordable tenures which meet local need, and*
- d. complying with our duty to support local demand for self-build.”*

8.64. Paragraph 9.22 and 9.23 of the supporting text to policy S.H1 emphasises that all types of housing (which includes large scale purpose built HMOs) will be required to deliver affordable housing contributions in line with Policies D.H2 and D.H3.

8.65. Exclusion of specialist and student housing from the supporting text of policy S.H1 indicates that all other housing types, including housing with shared facilities, will need to comply with the relevant affordable housing requirements, including tenures and unit mixes. This is picked up expressly in D.H7 1(c) and in the supporting text to that policy.

8.66. D.H2 addresses the requirements in respect of affordable housing mix and delivery (i.e. whether on site, off site or a payment in lieu). Part 1 of that policy states:

“1. Development is required to maximise the provision of affordable housing in accordance with a 70% rented and 30% intermediate tenure split.

2. Development is required to maximise the delivery of affordable housing on-site.

a. Affordable housing calculations will be based on habitable rooms

b. Off-site affordable housing will only be considered in circumstances where it:

i. is not practical to provide affordable housing on-site

ii. does not result in an over-concentration of one type of housing in any one local area to ensure mixed and balanced communities

iii. can provide a minimum of 50% affordable housing overall, subject to viability, and

iv. can provide a better outcome for all of the sites, including a higher level of affordable rented family homes.

c. If a suitable site cannot be found in accordance with Part 2(b), exceptional circumstances may apply and payments in-lieu will be considered”

8.67. D.H2 requires all development to maximise the delivery of affordable housing. The policy sets out a criteria based approach for alternative ways to deliver affordable housing.

8.68. Paragraph 9.21 of the supporting text to policy S.H1 is specifically referenced within the supporting text of policy D.H7 (at paragraph 9.69). Paragraph 9.21 is concerned with financial contributions towards affordable housing and how such contributions should be calculated.

8.69. Paragraph 9.21 provides:

*“... **Financial contributions will be calculated** using a sliding-scale target starting at 3.5% across the whole site and increasing by 3.5% for each additional home, **reaching 35% for sites of 10 units or more**. Further detail (including on financial viability assessments) is provided in the developer contributions policy (D.SG5) and in the latest Planning Obligations Supplementary Planning Document.”* (emphasis added)

This indicates that policy D.H7 envisages that affordable housing requirements in the context of HMO applications are, subject to viability considerations, are likely to be met through the means of a financial contribution rather than on-site. This is because in schemes such as the Appeal Scheme it may not be practical to provide affordable housing as conventional self-contained C3 accommodation within a co-living scheme.

8.70. The Local Plan’s approach is consistent with the emerging London Plan policy H16 (Large-scale purpose-built shared living) in two key respects: first in terms of setting the policy expectation that large-scale HMOs must contribute to affordable housing needs and second that such contributions will come forward as cash in lieu payments.

8.71. The emerging planning policy is a material planning consideration. Draft London Plan policy H16 represents a new bespoke policy related to large-scale purpose-built shared living (LSPBSL) on a regional level. I consider it should be given significant weight given that the policy has not been subject to any directions that have been issued by the Secretary of State.

8.72. Part 9 of the policy requires LSPBSL proposals to:

9) *[deliver] a cash in lieu contribution towards conventional C3 affordable housing. Boroughs should seek this contribution for the provision of new C3 off-site affordable housing as either an:*

a) upfront cash in lieu payment to the local authority, or

b) in perpetuity annual payment to the local authority

8.73. The practical issue of financial contributions towards C3 conventional housing is therefore also reflected in Draft London Plan policy H16 which clearly requires co-living schemes to deliver a cash in lieu contribution towards conventional C3 affordable housing, either upfront or in perpetuity annual payment. This is the approach followed by the Council and in the evidence of Dr Lee on the question of viability and the affordable housing contribution which the Council considers this scheme can support.

8.74. The policy also seeks to ensure that new LSPBSL developments are of acceptable quality, well-managed and integrated into their surroundings. In relation to the proposal rental levels of this type of accommodation, the policy acknowledges that shared living units tend to be significantly smaller than the minimum house space standard and as such would not be comparable to the rental levels of conventional self-contained housing as shared living tenants typically pay a room rate that includes utility costs and rent. Therefore, the policy advises that if a comparison is undertaken it should be on a square metre rental rate, excluding utility costs, of the private accommodation and not a unit rental rate.

Assessment of Appellant's evidence

8.75. This section assesses the appeal proposal against the policy analysis set out above. Firstly, and as indicated above, I explain why the proposed rental levels are not considered to be low cost and are in fact above average asking rents for shared accommodation. Secondly, I explain by reference to Dr Lee's proof why the Appellant has failed to satisfy D.H7(1)(c) by failing to provide affordable housing contributions. Thirdly, and finally, why in light of the above and the chosen location for the scheme, the Appellant has not shown that its scheme meets an identified need.

8.76. Policy D.H7 does not seek to control or dictate the model of HMO that an applicant may wish to come forward with; this is a matter for the applicant. However, the policy does require an assessment of the proposal to determine whether proposed accommodation is capable of being secured as a long term addition to low cost housing or if the applicant needs to provide appropriate amount of affordable housing, subject to viability considerations.

8.77. Paragraph 3.2 of the Appellant's Statement of Case (SoC) states that:

"The appeal proposal provides low cost flexible housing." The Appellant's SoC goes on to state in paragraph 4.10 that *"affordability is higher for the Panda House rents in comparison to the Tower Hamlets average asking rents and therefore, it is concluded that the proposals provides a supply of low cost housing which can provide housing with shared facilities for low incomes"*. In paragraph 4.11 of their SoC, the Appellant states that *"proposals provide an appropriate option for low cost housing in line with Policy D.H7"*.

8.78. The rent levels for the appeal proposal are £1,000 for a single room and £1,083 for a double room. The proposed rents would be dependent on the market and length of stay as stated in the Appellant's Building Management Plan:

"The rents will vary depending on market and length of stay. The strategy will be to have the rents at affordable rents below the current market rents."

8.79. The proposed rent levels are considerably in excess of the rent levels I have set out as appropriate yard sticks above. Simply because the proposed rent levels are asserted to be "more affordable" than average asking rents for certain housing types in the local area does not make the housing low cost housing (i.e. housing targeted for those on low incomes).

8.80. A single person in receipt of a maximum Local Housing Allowance of £136.50 per week/ £591.50 per month would not be able to afford a room in the proposed accommodation.

8.81. Taking the low income benchmarks set out at paragraph 9.36 above (by reference to median incomes) a person earning £17,261.4 per annum in 2020 in Tower Hamlets would be considered to have low income. The proposed rental level in the appeal scheme would amount to almost 70% of that person's gross income which is not likely to be attainable to them. By way of comparison I note

that Knight Frank have assumed that a single person would allocate 40% of their gross income to renting a property in the DAMA p. 21.

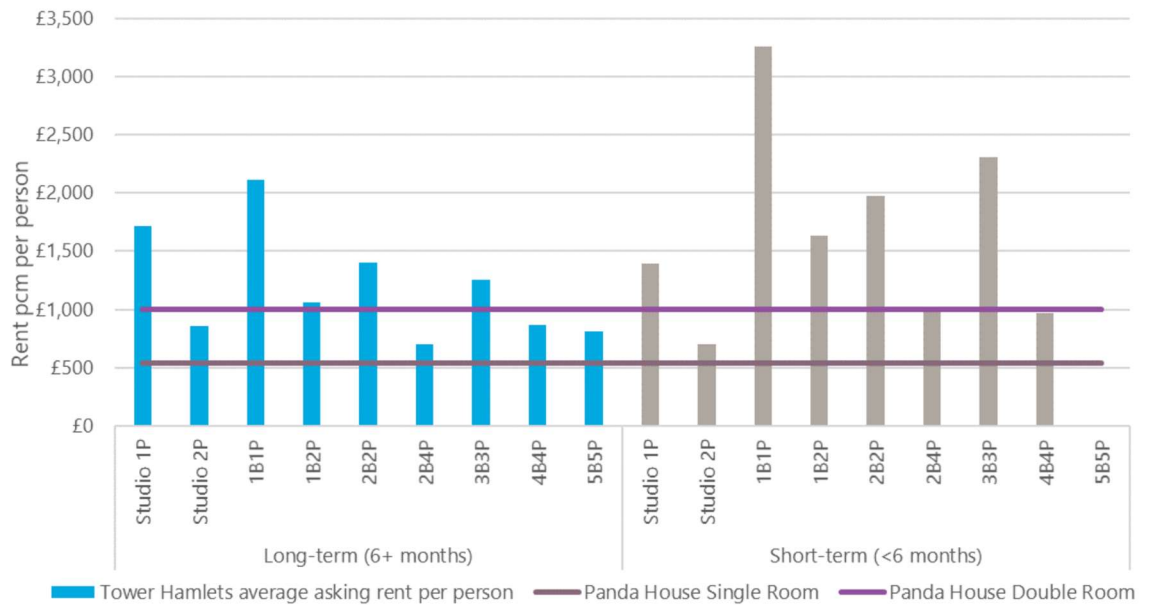
8.82. When the proposed rent levels are compared with the guide rents for LAR and THLR which are affordable rents targeted at those low incomes it is clear that the rents at Panda House are substantially higher than those, especially when acknowledging that Panda House offers shared rather than self-contained accommodation. The proposed rent levels are more akin to LLR levels which is, by definition, a housing product that has not been designed for people on low incomes.

8.83. Therefore, I consider that it is quite clear the proposed rental levels (even if secured on a long term basis, which they are not) would not primarily cater for people on low incomes as required by policy D.H7.

8.84. As referenced above, the Appellant states that the proposed rent levels at the appeal accommodation are 'more affordable than the average asking rents'. This is stated within the affordability analysis Appellant's Demand Assessment & Market Analysis (DAMA) document produced by Knight Frank. Even if it were were accepted that the accommodation at Panda House was 'more affordable' that is not the same as 'low cost' and is not what the policy requires.

8.85. The text explaining Figure 36 (provided below) within DAMA states the following:

"Figure 36, a single room in Panda House, which costs £1,000 per calendar month (pcm) is cheaper than a single person renting a studio flat (£1,721), a one bed flat (£2,118) or renting a room in a two or three bed property (£1,404 pcm or £1,259 pcm respectively). Panda House becomes more affordable still when you compare with the average rents for short-term rental properties in Tower Hamlets, where a single person would have to pay £1,972 pcm on average for a room in a two bed property and £2,313 pcm on average for a room in a three bed property."



8.86. The Appellant’s figure is showing a single room within the proposed accommodation to be slightly over £500 in Figure 36. However, it is stated elsewhere that a single room rent would be £1,000. This is confusing. It is not clear if the number shown in Figure 36 relates to how much a person would pay if potentially renting a double room with a partner as stated on page 23 of DAMA. Even if that is the case that would not render the single person rooms ‘low cost’ (or even affordable). Given that it is the demand from single person households that is critical to the Appellant’s case on the demand for this type of co-living scheme it is unable to show that the rent levels for a single person in Panda House are anything close to being accessible to persons on low incomes (including those in receipt of LHA) or who might be eligible for housing set at LAR or THLR rents:

8.87. *Table 20: Rents used to test affordability* within the DAMA document uses the following evidence to content that the Panda House Rents are affordable (and even low cost):

Tower Hamlets 2019 Average Asking Rents		Panda House Proposed rents	
No. of Beds	Average Rents	Room Type	Average rent
Studio	£1,501	Single room	£1,000
1 Bed	£1,685	Double Room	£1,083
2 Bed	£2,185	Double Room (per bed)	£542

8.88. However, this evidence takes as its comparable levels borough-wide rental levels of self-contained units. That is not a fair comparison. The DAMA affordability assessment does not base its comparison on shared accommodation rates which are likely to be more affordable given the lower levels of amenities than self-contained units (see above). The risk of directly comparing shared accommodation to the conventional self-contained residential units is highlighted in the supporting text to Draft London Plan policy H16 which warns against the sort of comparison of rental levels undertaken by the Appellant.¹²

8.89. The Appellant, including in the DAMA, does not actually look at shared accommodation rental comparables which are the closest to the type of accommodation being proposed here. The London Rents Map¹³ shows indicative average monthly private sector rents for different housing types. The table below shows average rental levels for a room with shared facilities in E14 postcode containing data for the year (last 12 months) to September 2020.

Room lettings in E14	
Postcode (E14) median	£692
Borough (Tower Hamlets) median	£652
London median	£611

8.90. By way of further comparison, I refer to indicative average monthly private sector rents for shared room in E1 postcode given that the appeal site is situated at the western edge of E14 postcode to see how the scheme's location might affect rent levels. Using the data from the London Rents Map, the table below shows average rental levels for a room with shared facilities in E1 postcode containing data for the year (last 12 months) to September 2020.

Room lettings in E1	
Postcode (E14) median	£592
Borough (Tower Hamlets) median	£652
London median	£611

¹² Draft policy H16 supporting text 4.16.9

¹³ <https://www.london.gov.uk/what-we-do/housing-and-land/improving-private-rented-sector/london-rents-map>

8.91. These average rent levels are well below the proposed rent levels for Panda House and reinforce the conclusion that the proposed rent levels are not for low cost housing. The proposed rent levels at Panda House cannot even be considered as a sub-market product when there are clearly shared accommodation rooms available in the local area at substantially lower rents.

8.92. The evidence provided by the Appellant in the DAMA document states on page 23:

*“Overall, Panda House offers short-term accommodation that is more affordable than the current borough averages. This means that Panda House will serve the need for **more affordable accommodation** amongst transient renters, who are often in **lower income jobs**.”* (emphasis added)

8.93. The Appellant acknowledges that more affordable accommodation is often needed by people with low incomes. However, the Appellant fails to provide an analysis of how the proposed rental levels are able to cater for people on such incomes.

8.94. The evidence provided by the Appellant in the DAMA document states on page 23:

“Across all MOSAIC types, 13,541 PRS households (98%) in the local area could afford to rent a single room in Panda House, whilst only 87% could afford to rent the average Tower Hamlets studio. 13,385 PRS households in the local area (97%) could afford to rent a Panda House double room and 100% of the local area’s PRS households could afford to rent a double room on a per bed basis. “

8.95. Knight Frank basis this statement on the data included in Table 15: PRS Households in the Local Area, by MOSAIC Type which shows that 83% of the PRS households in the area has a median household income between £48,535 - £151,200. In particular, almost a third (27%) of PRS households in the local area has a median household income of £151,200. The median household income that the Appellant refers to does not refer to the borough median income, but is in relation to each of the worker groups set out in Table 15. The DAMA does not therefore base its assessment on low incomes and meeting the needs of people on low incomes. It analyses affordability for a different category of

income group. As such, the Appellant had failed to demonstrate that the proposed rental levels are low cost housing as required by policy D.H7.

- 8.96. To conclude, the proposed accommodation is not considered to satisfy the policy as it would be not secured long term as low cost housing which caters for people on low incomes.

Appeal Scheme does not otherwise provide an appropriate amount of affordable housing

- 8.97. Whilst the proposal does not cater for people on low incomes, policy D.H7 does provide an alternative way for the proposal to meet an identified need in the borough. As stated in the policy, this is through the provision of an appropriate amount of affordable housing.

- 8.98. The Council's independent review of the Appellant's viability assessment – set out in the appraisals and evidence of Dr Lee – clearly demonstrate the ability of the appeal proposal to provide affordable housing contributions.

- 8.99. Dr Lee's appraisal shows the appeal proposal can viably provide a range of affordable housing options. Given the impracticalities of providing affordable housing on site, as well as the acknowledgement of policy D.H7 that financial contributions are likely to be the more appropriate way of affordable housing provision, an option of a payment in lieu is considered to be most appropriate and policy compliant option.

- 8.100. Dr Lee's calculations of a payment in lieu demonstrate that the appeal proposal can provide £2.40 million.

- 8.101. The Appellant provides 100% market housing and 0% affordable housing. This is wholly at odds with the objectives of the Local Plan and in particular policies S.H1, D.H2 and D.H7.

Appeal Scheme does not meet an identified need

- 8.102. As set out above, the test is not whether there is a general demand for HMO housing in Tower Hamlets, or even in the local area, but whether the proposed scheme for a large-scale HMO accommodation, at what are effectively market or close to market rents, meets an identified need in this location.

8.103. It is telling that in the Knight Frank DAMA, which repeats in several places that there are no operational co-living schemes within Tower Hamlets (p.3), omitted to mention a recently consented co-living scheme just a few doors down from the appeal site at 767-785 Commercial Road. Whilst the Appellant has since acknowledged this omission in its response to the LPA's SoC (16 September 2020) it has continued to omit other co-living schemes in the Borough, such as the Collective's co-living scheme at nearby Canary Wharf which is operational. These glaring omissions are designed to support the contention that the Appeal Scheme meets a gap in the market. First, the Appeal Scheme will not be the Borough's only co-living scheme and second, a market gap is not the same as an identified need in this context.

8.104. The existence of co-living schemes in close proximity to the Appeal site couple with the pipeline supply of PRS schemes including hostel provision and private rental properties offering short term lets within 20 minute walk of the appeal site (DAMA pp 28-29) present a healthy picture in terms of the provision of short-term and shared accommodation options in the vicinity of the Appeal scheme. The Council's policies are clear that HMO proposals should contribute to mixed and balanced communities (9.70). It is unclear how another large scale HMO, which does not provide low cost housing, a short distance from a similar scheme at 767-785 Commercial Road is contributing to the housing mix; if anything risks an overconcentration of this type of accommodation.

8.105. In short, therefore, the Appellant has not established an identified need for its scheme, particularly given the proposed rent levels which fail to meet the policy's identified need for low cost housing of this kind and the subsequent lack of affordable housing contribution.

Conclusion

8.106. I conclude that there is no identified need for the appeal proposal which provides neither long-term low cost housing nor appropriate amount of affordable housing contributes, as required by housing policies in the Local Plan. As such, the Council's reason for refusal is justified and should be upheld by the Inspector.

8.107. I conclude that the Appeal Proposal fails to meet an identified need as it does not propose to secure rental levels for the proposed shared accommodation which are attainable for people on low incomes. As the proposed rental levels are

considered to be too high to cater for people on low incomes, the Appeal Proposal fails to provide affordable housing contribution. As such, the Council's reason for refusal is justified and should be upheld by the Inspector.

9. THIRD PARTY REPRESENTATIONS

- 9.1. A summary of the representations received from local residents during the application stage is provided within paragraph 4.6 of the Committee Report. I will not repeat these here.
- 9.2. I have provided a summary of representations from interested parties which include the local residents, the Greater London Archaeology Advisory Service and the following amenity societies which have objected to the Appeal Scheme and asked that it be refused namely, the 20th Century Society, the Ancient Monuments Society, the Georgian Group, and the Spitalfields Trust.
- 9.3. Third party representations have raised the following concerns with respect to the appeal proposal:

Heritage and design issues:

- Excessive scale, height and bulk, and poor design of the proposed development
- Assessment of the appeal proposal should take into account wider context and character on the St Anne's Church conservation area
- Harm to the character of St Anne's Church conservation area and its low rise nature
- Scale, height and massing would neither preserve nor enhance the character of the St Anne's conservation area
- Harm to the setting of the Lowell Street conservation area and its relationship to the St Anne's conservation area
- Impact to the long views identified within the Lowell Street Conservation Area Character Appraisal and Management Guidelines
- Church of Our Lady Immaculate with St Frederick (the Church) is considered an undesignated heritage asset and landmark of the conservation area, and its characterful statue of Jesus defines the area's skyline
- Harmful impact to the setting of Church of Our Lady Immaculate with St Frederick (The Church)
- The top two floors of the proposed development are not a mitigation measure to the harm caused to the setting of the Church
- The creation of a 'canyon effect' between the proposed development and the Church

- Detrimental impact to the Church's setting and the wider St Anne's conservation area
- Visibility from and impact to the setting of the former Empire Memorial Sailors' Hostel which is considered a non-designated heritage asset
- The proposed development would block key views of the Church, its windows and rooftop sculpture of Christ the Steersman
- Undermining of the neighbour smaller-scale group of buildings to the east including the Church and grade II listed Limehouse District Library which are the landmarks within the streetscape
- Impact and encroachment to the setting of listed terrace 699-711 Commercial Road on the opposite side of the road
- Scale and poor design of the proposed development would not be an enhancement to the conservation area
- Lack of an archaeological report constitutes a reason for refusal
- Higher weight to be given to heritage issues than the private equity and family trusts which the Appellant's company is based on

Housing:

- Lack of affordable housing should constitute refusal
- Provision of high density high cost housing which is expensive for the area when compared to similar accommodation in the local area within a half mile radius
- Future occupiers of the hostel and HMO units should receive basic levels of daylight
- No proven need or evidence for HMO in this exact locality and the whole borough
- Appellant's statement is merely a reflection of a distorted and unequal housing market and demonstrates the lack of quality of housing
- No evidence that people actively want to live in HMO accommodation or that HMO accommodation would solve the problem of poor quality accommodation
- Appellant's comparison of the costs of renting a room in Panda House and renting a flat in Tower Hamlets is not equivalent due to difference in amenities
- The Demand Assessment and Market Analysis (DAMA) does not adequately or accurately take into account the needs of the private rental sector
- DAMA has no assessment for 12 month tenancies for HMO use, does not acknowledge the consented co-living scheme at 767-785 Commercial Road,

and it considers average/mean incomes in the borough instead of median/middle

- An offer similar to 767-785 Commercial Road is unlikely to diversify the housing offer in the area
- Discrepancy between the Council's and Knight Frank's data set in terms of incomes
- No provision of affordable housing
- Consideration to be given to the BNP Paribas report provided by the Council
- Recent press coverage on the inaccurate estimations of property valuers
- Interrogation over the Appellant's overoptimistic assumptions about the economic recovery and relaxation of conditions surrounding COVID-19, and inappropriateness of hosting large numbers of transient residents from all over the world
- Unlikelihood of people living in close quarters and factors driving down the desirability and need such as the long-term great affordability of more traditional types of inner city housing due to the growth in rural and suburban property searches and transactions
- Small accommodation rooms and no natural light

Legislation and planning policy:

- Consideration should be given to sections 66 (1) and 72 (1) of the Planning (Listed Building and Conservation Area) Act 1990, paragraphs 192, 193, 194, 196, 197 and 200 of the National Planning Policy Framework, policies 7.7 and 7.8 of the London Plan, Tower Hamlets Local Plan 2031 policies D.H7, S.DH3, D.DH4, D.DH8
- A balanced judgement should take into account representations of relevant amenity groups, next door religious community and local residents
- All of the criteria within local plan policy D.H7 need to be met if the development is to be supported by the plan

Amenity impacts:

- A residential area is not an appropriate location for a hostel due to the impact on the local amenity
- Impact of the proposed development to the amenity of surrounding residents including impact on views, loss of light and privacy
- Overshadowing to the Church

- Existing management making little effort to address issues such as noise, litter, anti-social behaviour, and overflowing waste

Transport:

- No provision for ensuring access to private car parks and garage on Mill Place during any works
- No viable plans for traffic around the narrow one way loop of Mill Place and Island Row

Environmental issues:

- The surrounding area has some of the worst air quality in London

General:

- Disagreement with the Appellant's Heritage Statement
- Support the Council's assessment in the Development Committee Report and decision for refusal
- Lack of a section 106 agreement
- Strong opposition to the development from the local community
- Difference amongst applicant's names Interland Group, Room and Studios Management Ltd, Wayview Ltd.
- No acknowledgement of residents' objections by the Appellant or measures to reduce the antisocial behaviour
- An in-house coffee shop at De Paul House is likely to only be used by hostel residents
- Support for demolition and rebuilding of De Paul House to its current height for apartments
- The developer has not addressed the 7 reasons for refusal
- No social value of the proposed building
- Time and resource constraints for the local community and imbalance against developers' resources such as lawyers etc.
- No neutrality or indifference with the paid private consultants
- Coordination of signatures from residents in support by a PR company

10. PLANNING BALANCE

10.1. In this section, I examine the overall planning balance of the Appeal Scheme. Firstly, I consider whether public benefits of the proposed development are capable of outweighing the harm caused to the designated heritage assets. In so far as the harm is not capable of being outweighed I take account of that heritage harm in the overall planning balance. Secondly, I will set out the overall planning balance of the scheme – taking into account the conflicts with policy D.H7 (the failure to demonstrate a need for the scheme and the breach of affordable housing requirements) and the conflict with Local Plan policies relating to the occupants' amenity/housing standards, energy, highways and air quality - to assess whether the proposed development meets the test set out in Section 38 (6) of the Planning and Compulsory Purchase Act 2004.

The heritage balance

10.2. For the reasons set out in the Council's SoC, and as will be explained by the Council's heritage witness, the proposal would result in the less than substantial harm to the St Anne's conservation area. I attach great weight to that harm. That being so, it is important to apply paragraph 196 of the National Planning Policy Framework (NPPF) which provides:

“196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

10.3. In addition, the proposed development will have harmful impact on the non-designated heritage assets, including the Our Lady Immaculate & St Frederick Roman Catholic Church and archaeology. In respect of harm to the non-designated asset paragraph 197 of the NPPF provides:

“197. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

Taken together, the harm to heritage assets is to be afforded substantial weight.

10.4. I next turn to consider the benefits of the scheme and whether they outweigh the identified heritage harm. The following elements are considered to constitute benefits which weigh in favour of the proposal:

- a. Regeneration benefits of replacing the existing building and provision of public realm along the eastern part of the site;
- b. Transport benefits including the provision of a disabled wheelchair space, cycle parking and a more regularised servicing and deliveries arrangement;
- c. Environmental benefits including biodiversity and energy;
- d. Economic benefits including those arising from additional expenditure of future occupants, as well as employment arising from the construction process and from the final occupation of the development;
- e. Section 106 payments and contributions.

10.5. The regeneration benefits associated with a proposal that would replace the existing building should be given only limited weight. This is because an alternative scheme which is compliant with the development plan (ie one which unlike the Appeal Scheme contributes to meeting the borough's identified housing need, takes accounts for the sensitive site context in terms of heritage and conservation) could achieve the same, or similar, benefits without causing the significantly detrimental impact which the appeal proposal does.

10.6. In addition, it should be noted that the Appellant's is proposing to replace an operational hostel with an HMO model that is unlikely to be deliverable given the demonstrated deficit by the Appellant.

10.7. The transport and environmental benefits are, of course public benefits, but they are also a minimum policy requirement which would be required of any scheme. The Council has also identified remaining impracticalities with the proposed cycle parking access in the Appellant's submitted highways written statement on the outstanding issues. This includes the lack of inclusivity for the proposed cycle storage for adapted and larger cycles on Island Row, as well as an inconvenient

access to the lower ground floor cycle storage along the northern section. On that basis, these benefits should be afforded some weight but only moderate weight.

- 10.8. Based on the Appellant's evidence in their Statement of Case, the appeal proposal would generate approximately 125 construction phase jobs and 18 jobs during the operation of the development. In terms of the latter (operational jobs), the existing scheme is likely to support a similar or higher number of jobs already. This is because of the higher number of occupants (or capacity) of the existing hostel staying for shorter stays. Therefore, those 18 operational jobs are not being 'created' in a meaningful sense but merely replicate or potentially decrease what is already there. In addition, the Appellant's submitted Building Management Plan indicates that in the Appeal Scheme the cleaning of individual units will be the responsibility of each tenant in the HMO units, which is not likely to be the case with the existing hostel units. On this basis, the proposed development would only result a temporary increase in construction employment and would support similar numbers of jobs during the operation phase when compared to the existing hostel. However, it should be noted that any proposal coming forward on site would generate temporary construction employment, as well construction expenditure as highlighted in paragraph 4.43 of the Appellant's SoC. For this reason, the employment generation with the proposed development should be afforded some limited weight.
- 10.9. Section 106 payments and contributions would be required for any policy compliant scheme given the policy and legislation requirements. These should be afforded some weight. One would expect such contributions, including any CIL contributions, would flow from alternative, less harmful redevelopment of the site.
- 10.10. I have had regard to the above public benefits. Given the extent of the harm to the significance of designated heritage assets which is explained in the LPA's SoC and will be discussed during roundtable discussions, it is necessary to consider whether the public benefits attached to the proposed development outweigh that harm (NPPF paragraph 196). In carrying out this exercise, I have paid careful attention to the statutory duty and policy requirements which requires great weight and importance to be given to that harm.
- 10.11. As stated in paragraphs 6.70 – 6.78 of the LPA' Statement of Case, which include a balancing exercise against the harm caused to non-designated and designated heritage assets, I do not consider that the public benefits of the appeal proposal

are sufficient to outweigh the identified heritage harm. I would also like to highlight that the lack of information provided by the Appellant regarding the harm caused to the non-designated archaeological assets creates a potential issue of the harm actually being higher than identified.

Overall planning balance

- 10.12. I now turn to the overall planning balance exercise. I have considered the identified heritage harm together with the additional conflicts with the development plan. This includes the appeal proposal's failure to contribute to meeting an identified housing need in the borough for low cost housing and/or its failure to make any contribution towards much needed affordable housing in breach of policy D.H7. In addition, I consider that the proposal would not achieve high quality accommodation for future occupiers as explained in the LPA's SoC.
- 10.13. It is appropriate to refer back to Chapter 2 Achieving sustainable development of the National Planning Policy Framework (2019) which is a material consideration in planning decision. Paragraph 11 requires decision makers to apply a presumption in favour of sustainable development. With respect to decision-taking this means "*approving development proposals that accord with an up-to-date development plan*".
- 10.14. Paragraph 12 of the NPPF states that "*Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed*". I do not consider that there are material considerations, including the above identified public benefits, indicate why an up-to-date plan should not be followed when reaching a balanced decision for the appeal proposal.
- 10.15. The appeal proposal does not accord with the Development Plan in a number of respects. These reasons both individually and cumulatively weigh strongly against the grant of planning permission.
- 10.16. I consider that the failure of the Appeal Proposal to satisfy the Development Plan's housing policies and contribute to the borough's strategic need for low cost and affordable housing should constitute a sufficient reason for refusal on its own. Similarly, the proposal's failure to provide a design response which is sensitive to the surrounding historic environment should constitute a reason for refusal.

- 10.17. In addition the fact that the proposed housing accommodation which is considered to be of poor quality, as well as impractical cycle storage spaces and the lack of environmental information in relation to air quality which is required to inform planning applications in an area of poor air quality, would result in a high degree of non-compliance with the Development Plan, which is not outweighed by other material considerations.
- 10.18. I do not consider the remaining material consideration and identified public benefits to be sufficient to outweigh the conflict with the development plan. Applying section 38 (6) of the 2004 Act, I respectfully request planning permission be refused and that the appeal be dismissed.

11. PLANNING OBLIGATIONS

- 11.1. A list of required planning obligations was set out in the LPA's Statement of Case. The Appellant and the Council are jointly working on a s106 legal agreement that would be in the interests of the proper planning in the event that the appeal is allowed.
- 11.2. Following the submission of the updated energy report by the Appellant, financial contributions towards carbon offsetting as previously set out in paragraph 7.2 of the LPA's SoC have reduced from £222,015 to £65,550.

Conditions

- 11.3. A list of required planning conditions was set out in the LPA's SoC. The Appellant and the Council are jointly working on a final list of conditions that would be in the interests of the proper planning in the event that the appeal is allowed. These will be set out in the updated Statement of Common Ground.

12. OVERALL CONCLUSION

- 12.1. The proposed development gives rise to multiple policy failures. The conflict with the development plan is considered to be significant. I do not consider that there are material considerations that outweigh the multiple failure of the Appeal Proposal.

- 12.2. I therefore respectfully request planning permission be refused and that the appeal be dismissed.

13. APPENDICES

Appendix 1 – Inspector’s Report on the Tower Hamlets Local Plan 2031 (September 2019)

Appendix 2 – Tower Hamlets Local Plan 2031 Main Modifications Schedule

Appendix 3 – Tower Hamlets Strategic Housing Market Assessment (2017)

Appendix 4 – Homes for Londoners, Affordable Homes Programme 2016-2021 Funding Guidance (Greater London Authority, November 2016)

Appendix 5 – Intermediate housing: The evidence base, Housing Research Note 5 (Greater London Authority, August 2020)