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Appeal under Section 78 of the Town and Country Planning Act 1990

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Proof of evidence of Anthony Lee PhD MRTPI MRICS

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1 Qualifications and experience

1.1 I, Anthony David Lee BSc (Hons) MSc (Econ) MA (TP) PhD MRTPI MRICS confirm that:

1.2 I am a Senior Director and Head of UK Development Consultancy at BNP Paribas Real Estate, one of the UK's leading real estate consultancies with fifty regional offices in addition to its London offices.

1.3 I am also the Director in charge of the Development Viability Team in the London office with responsibility for the viability service across London, the South and the East of England.

1.4 I have degrees in social policy and town planning and a doctorate in social policy and administration.

1.5 I am a professional member of the Royal Institution of Chartered Surveyors and a professional member of the Royal Town Planning Institute. I am a RICS Registered Valuer.

1.6 I have provided expert valuation evidence at numerous planning inquiries, examinations in public and informal hearings.

1.7 I was a member of the advisory panel drafting the Local Housing Delivery Group 'Viability Testing Local Plans: Advice for practitioners' (June 2012). I was also a member of the 'Developer Contributions Technical Expert Panel' established by the Ministry of Housing, Communities and Local Government to advise on the viability section of the 2019 Planning Practice Guidance.

2 Scope of evidence

2.1 On 11 April 2019, Wayview Limited ('the Appellant') submitted an application to London Borough of Tower Hamlets ('the Council') for: "*Demolition of existing building and erection of a building of seven storeys, inclusive of two set back floors, plus a lower ground floor to provide 109 rooms for short-term hostel and HMO accommodation*" ('the Appeal Scheme').

2.2 The Applicant's Financial Viability Assessment ('FVA') reported that the Appeal Scheme would generate a residual land value of £1.12 million if 35% of units were provided as affordable or £1.71 million with 0% affordable housing. When compared to the benchmark land value in the FVA of £8 million, the Appeal Scheme would generate a deficit of £6.29 million to £6.88 million, depending on the level of affordable housing assumed.

2.3 My evidence considers the financial viability of the Appeal Scheme and its ability to comply with the requirements of Local Plan policies S.H1, D.H2 and D.H7.

3 The Appeal Site and the Appeal Scheme

3.1 The Appeal Site is well located with a Public Transport Accessibility Level ('PTAL') is 5/6a, where 6b is the highest level of accessibility.

3.2 The Appeal Scheme seeks an increase from 52 to 109 rooms, to be configured as 25 hostel rooms and 84 HMO rooms. The hostel would accommodate 41 people and the HMO rooms would accommodate 144 people.

3.3 In addition to the hostel and HMO rooms, the Appeal Scheme provides a gym, a cinema room and a reception on the ground and lower ground floors, as well as large common kitchens and living areas on each floor, an external amenity space.

4 Planning policy requirements

4.1 Relevant planning policies are as follows:

4.2 Local Plan Policy S.H1.

4.3 Local Plan Policy D.H2.

4.4 Local Plan Policy D.H7

4.5 Policies S.H1 and D.H7 apply to the HMO element of the Appeal Scheme only and not to the hostel rooms, as these are treated as sui generis use.

4.6 The Council's recently adopted Local Plan policy for HMOs policy DH.7 expects such schemes to contribute to affordable housing needs, either by contributing to long term low-cost housing, or through a payment in lieu. The Appeal Scheme offers neither.

5 My approach to testing the viability of the Appeal Scheme

5.1 I have appraised the Appeal Scheme using Argus Developer ('Argus'). Argus is a development appraisal software package which is widely used by surveying practices, developers, landowners and others involved in development appraisal.

6 Appeal Scheme appraisal inputs

6.1 It has been possible to reach agreement on some of the appraisal inputs and these are noted in the Viability Statement of Common Ground and summarised below:

- Purchaser's costs (where relevant): 5% of GDV;
- Professional fees: 8% of build costs;
- Sales agent fees (where relevant): 1% of GDV;
- SDLT: at prevailing rates;
- Profit: 15% of GDV;
- Benchmark Land Value based on the value of the existing hostel: £5.89 million;
- Mayoral CIL: Applied at prevailing rates having regard to existing floorspace and Social Housing Relief;
- London Borough of Tower Hamlets CIL: Applied at prevailing rates having regard to existing floorspace and Social Housing Relief;
- Development programme: 4 months pre-construction and 24 months construction period.

6.2 The disputed inputs are as follows:

- The Gross Development Value of the hostel and HMO rooms;
- Value attributed to food and beverage revenue;
- Build costs; and
- Finance rate.

6.3 Although viability assessments are carried out on an 'applicant neutral' basis with standardised inputs, resulting in application of profit, agent's fees and stamp duty in the appraisals. The reality of the situation is that the Appellant will not incur these costs and they could arguably, be removed from the calculation. I have considered the impact removal of these costs has on the residual land values.

7 Development appraisals

7.1 My appraisals are summarised as follows:

Table 7.1.1: Appraisal results – 35% affordable housing

Affordable housing (% of discount to market rent)	Residual land value	Appellant's benchmark land value	Surplus
30%	£8,236,690	£5,890,000	£2,346,690
40%	£7,829,905		£1,939,905
50%	£7,423,119		£1,533,119

7.2 If the appraisals are adjusted to assume no onward sale of the completed development, the results are as follows:

Table 7.2.1: Appraisal results – 35% affordable housing (reflecting no onward sale with profit, purchaser's costs and sales agent fees removed)

Affordable housing (% of discount to market rent)	Residual land value	Appellant's benchmark land value	Surplus
30%	£14,541,056	£5,890,000	£8,651,056
40%	£14,011,722		£8,121,722
50%	£13,482,389		£7,592,389

7.3 A payment in lieu equivalent to 35% affordable housing equates to £2,395,859.

8 Conclusions

8.1 The assessments undertaken by Rapley and Mr Brown result in significant deficits against the value of the existing Hostel. Rapleys argue at paragraph 14.3 of their report that the Appellant is motivated by improving their gross to net rental returns, while Mr Brown seeks to explain away the apparent deficit by suggesting that "*an applicant has a right to take a view (without prejudice) as to whether they are willing and able to progress a development based upon a certain lower than normal level of profit*". On the base appraisal that he is presenting, that profit is actually a loss of £1.3 million.

8.2 Although there is a degree of common ground on the inputs to be used in the appraisals, it is my opinion that Mr Brown has significantly understated the value generated by the completed development.

8.3 The rents used by the Appellant's viability advisors are slightly lower than London Living Rent for one bed units. While recognising that the proposed HMO units in the Appeal Scheme are not a like-for-like housing product and acknowledging the real differences between the two (which are likely to mean lower rent levels for shared living schemes), London Living Rent is in principle an affordable housing tenure that is acceptable under the Council's Local Plan Policy S.H1. However, LLR is an intermediate rent which would not satisfy the requirement under the first limb of Policy DH.7 1(c) to provide low cost housing for those on low incomes. In any event, the rooms at these rents are not secured as affordable by a planning obligation.

8.4 My appraisals indicate that the Appeal Scheme can viably provide a range of affordable options, with 35% of units let at rents that are discounted by up to 50% from market rent.

8.5 Furthermore, I have also drawn attention to costs that will not – in reality – be borne by the Appellant relating to the disposal of the completed development to a third party. Owning an operating rented housing is one of the Appellant's core businesses and there is unlikely to be a disposal, given the stated objectives of improving the overall net income generating capacity of the Scheme. The theoretical costs of disposals and profit to reflect speculative development could in theory be removed from the appraisal, resulting in a significant improvement in the residual land values generated. However, even without discounting those costs the Appeal Scheme would still be capable of making a substantial, policy compliant contribution towards affordable

housing.

8.6 In light of my assessment, I conclude that there are no reasonable grounds for the Appeal Scheme failing to provide 35% affordable housing with a tenure mix that complies with the requirements of Policy D.H2. Still less is it justified for the Appellant to argue that its scheme can provide zero affordable housing.

8.7 It is unlikely that the Council would, in practice, seek on-site affordable housing in a shared living scheme and a payment in lieu would be sought instead. My calculation of a payment in lieu based on the uplift in residual value arising from not providing any affordable housing on site equates to £2.40 million.