

Planning Inspectorate Ref: APP/E5900/W/20/3250665

LPA Reference: PA/19/00804

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

Appeal

**DE PAUL HOUSE (PANDA HOUSE), 628-634 COMMERCIAL
ROAD, LONDON, E14 7HS**

VIABILITY AND AFFORDABLE HOUSING

REBUTTAL

By:-

James R Brown BSc (Hons) MRICS
Registered Valuer.

(James R Brown & Company Ltd – “JRBC” - regulated by the RICS).

On behalf of the Appellant
(Rooms and Studios Management Ltd)

30th December 2020

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There are no appendices to this rebuttal.

1.0 Introduction

- 1.1 This is a rebuttal relating to Dr Anthony Lee's proof of Evidence dated 15/12/2020.
- 1.2 Dr Lee was aware of my approximate Appeal Scheme GDV (and its components) before he issued his Proof whereas Mr Lee would not reveal his approximate GDV in the conversation I had with him on 20/11/2020 whereupon we were seeking to establish common ground.

2.0 Key Initial Observation 1 - Dr Lee's Substantial Valuation 'Shifts':-

- 2.1 In his Statement dated 27/7/2020, Dr Lee said at S.1.9 that the opinions he expressed therein represented his "true and complete professional opinions on the matters to which they refer".
- 2.2 In that report, his GDV component valuations for the proposed hostel and HMO bedrooms for the Appeal Scheme (without accounting for any S.106 affordable housing restriction) equated to:-

GDV Element	Value per Room	Comment
Hostel	£430,284	<p>Ascertainable from Appendix 5 in Dr Lee's 27/7/2020 Statement.</p> <p>Dr Lee's total hostel GDV = £13,338,797 on what Dr Lee incorrectly assumed to be 31 rooms.</p>
HMO	£209,683	<p>Ascertainable from a mixture of Appendix 5 in Dr Lee's 27/7/2020 Statement and his Table 7.4.1 on page 18.</p> <p>Dr Lee's total HMO GDV = £16,355,254 on what Dr Lee incorrectly assumed to be 78 rooms.</p>

- 2.3 On 20/11/2020, I sent Dr Lee a rent and value analysis of the existing hostel (for which we had agreed a BLV) and the hostel element of the Appeal Scheme which we discussed by telephone. I pointed out that it was clearly not credible for Dr Lee to agree a BLV for the existing hostel equivalent to £113,269 per room but claim that the hostel element of the Appeal Scheme is worth the equivalent of £430,284 per room (i.e. 280% higher) - notwithstanding an improved specification. Dr Lee's viability case (i.e. a claim that the Appeal Scheme drives a viability surplus in absence of any S.106 affordable housing restriction) would have completely collapsed if he had reduced the hostel value element of his GDV to a credible level whilst leaving his HMO valuation alone.

- 2.4 In his Proof dated 15/12/2020, Dr Lee has shifted his valuations for the proposed hostel and HMO bedrooms for the Appeal Scheme (without accounting for any S.106 affordable housing restriction) which equate to:-

GDV Element	Value per Room	Comment
Hostel	£294,557	<p>Ascertainable from Appendix 10 in Dr Lee's 15/12/2020 Proof.</p> <p>This is a 31.54% downward shift on his opinion as at 27/7/2020.</p> <p>Dr Lee's total hostel GDV = £7,363,929 on what Dr Lee has now correctly assumed to be 25 rooms.</p>
HMO	£307,978	<p>Ascertainable from Appendix 10 in Dr Lee's 15/12/2020 Proof.</p> <p>This is a 46.88% upward shift on his opinion as at 27/7/2020.</p> <p>Dr Lee's total HMO GDV = £25,870,139 on what Dr Lee has now correctly assumed to be 84 rooms.</p>

- 2.5 After needing to reduce his valuation of the hostel element of the Appeal Scheme, Dr Lee's substantial upward HMO valuation shift has enabled him to maintain a claim that the Appeal Scheme drives a viability surplus (in absence of any S.106 affordable housing restriction). Dr Lee's hostel valuation shift was unavoidable because his previous valuation was not credible with reference to the agreed BLV for the existing hostel. Without shifting his HMO valuation substantially upwards per bedroom, Dr Lee would have been forced to agree with my viability conclusion and the related reason for refusal would have been entirely undermined.

2.6 Dr Lee's GDV component valuation shifts are so substantial in such a short space of time that, in context, they are not credible. Furthermore, his revised HMO valuation (per bedroom) is much higher and substantially out of kilter with what he and other viability consultants have agreed on other similar co-living/HMO schemes in London over the last 18 months (after accounting for any location differences).

2.7 I discuss Dr Lee's valuations in more detail herein.

3.0 Key Initial Observation 2 - Food & Beverage 'F&B' Value:-

3.1 In a discussion with Dr Lee on 20/11/2020, I questioned why he had accounted for a substantial F&B value as part of his GDV assessment for the Appeal Scheme within his Statement dated 27/7/2020. I had assumed no value in this regard. Dr Lee insisted that there was a central commercial type kitchen/canteen in the Appeal Scheme (i.e. i.e. similar to the one in the existing hostel and which could generate a commercial profit) whereas I maintained that there were/are just kitchens on each floor for communal use by the residents. However, I said I would check and, after some confusion, I confirmed that there is no central commercial type kitchen/canteen in the Appeal Scheme as is evident from the plans and application details.

3.2 Despite this, Dr Lee has maintained a significant net rent (i.e. £19,250 p.a.) and significant consequential value (i.e. £424,102) as a component of his revised GDV in his Proof dated 15/12/2020.

3.3 Dr Lee has maintained a significant value in this regard by switching to a manufactured assumption that 'breakfast boxes' would be bought and sold for a profit to residents by the operator of the Appeal Scheme.

3.4 I discuss this in more detail herein but I do not consider it reasonable to account for any significant value in this regard.

4.0 Further & More Detailed Comment on Dr Lee's Proof:-

- 4.1 I comment upon and rebut (where necessary) Dr Lee's Proof in more detail in the following sections.
- 4.2 I have done this sequentially starting from Page 14 of Dr Lee's Proof.
- 4.3 Pages 1-13 of Dr Lee's Proof do not specifically address viability.

5.0 Gross Development Value – Value of Hostel Rooms:-

- 5.1 My valuation of the proposed hostel element of the Appeal Scheme as provided in my Proof dated 15/12/2020 equates to £240,828 per room. This is marginally higher than the value I had indicated to Dr Lee in our conversation on 20/11/2020 and the existing/proposed hostel value comparison analysis I sent him at that time (see **Appendix D to my Proof dated 15/12/2020**).
- 5.2 Dr Lee was aware that I was assuming a gross achievable rent for the hostel element of the Appeal Scheme of £356,003 p.a. on 20/11/2020 based upon £8,863 per person p.a. (and/or £23.79 per person per night) albeit I subsequently increased this slightly in my Proof dated 15/12/2020 to £359,160 p.a. (and/or £24 per person per night) after further consideration. I can see that I did make an error on a calculation on Page 14 of my Summary Update & Rebuttal dated 23/9/2020 but that had become historic by 20/11/2020 as Dr Lee knew when he issued his Proof. As such, Dr Lee's comments in this regard are irrelevant. If there is to be a weighing up of historic 'relevant' errors, Dr Lee will be found considerably wanting.
- 5.3 In his Sections 6.2 to 6.9 Dr Lee again dwells on assumptions I was making in September 2020 (whereas he was fully aware of my reasonably updated opinion on 20/11/2020) and again incorrectly suggests multiple significant errors on my part (and/or that of Rapleys) as has been Dr Lee's approach since his first report dated 27/7/2020.

- 5.4 My opinion as to achievable rents from the hostel element of the Appeal Scheme are clearly set out in my Proof and Dr Lee was aware of what my approach in this regard was going to be on 20/11/2020. I have clearly assumed that achievable rents are £24 per person per night (with reference to local hotel rates) and with up to 41 people accommodated within the Appeal Scheme hostel element, my assumed gross rent of £359,160 p.a. is; simple, evidenced, reasonable and without error.
- 5.5 The evidence in Sections 6.3 and 6.4 of my Proof dated 15/12/2020 confirms that, whether a single person, two people and/or a couple wanting accommodation on a 'per night' rate basis, £24 per person is a reasonable rate to assume for the hostel element of the Appeal Scheme. Dr Lee has not provided any evidence to justify his opinion that this should be higher at £29.78 per person per night.
- 5.6 At Dr Lee's S.6.9, he claims that a hotel comparable I indicated to him on 20/11/2020 is significantly less well located with regard to transport links but these differences in the context of this one comparable are marginal and a number of the comparables in my Proof are better located than the subject property.
- 5.7 At Dr Lee's S.6.10 he claims that "there are no material reasons why the rates charged in a hostel providing private rooms with en-suites would be any lower than rates charged by budget hotels for comparable accommodation". Whilst I have not used lower rates (based upon the comparables in my Proof), I consider that most people would indeed prefer to choose a hotel over a hostel as most people would perceive a hotel as better.
- 5.8 Lastly, Dr Lee avoids any comparison of the BLV we have agreed for the existing hostel (i.e. £113,269 per room) and his valuation for the hostel element of the Appeal Scheme (i.e. £294,557) remains excessive (using reasonable professional judgement) even though Dr Lee has dropped this from his original and extremely excessive £430,284 per room (i.e. as per his report dated 27/7/2020).

6.0 Gross Development Value – Value of HMO Rooms:-

6.1 As indicated in Sections 2.2 and 2.4 above, Dr Lee has substantially 'shifted' his valuation opinion for the HMO element of the Appeal Scheme. Whilst I have moderately revised my opinion since June 2020, Dr Lee's upward HMO valuation shift of 46.88% since his 27/7/2020 Statement (i.e. from £209,683 to £307,978 per room = £8.26m on 84 bedrooms) is not reasonable or evidentially justified because:-

- Although Dr Lee may suggest that his opinions as at 27/7/2020 were based upon the Appellant's rents for the HMO, Dr Lee had the opportunity of reviewing these as he did for the hostel rents (which he increased) and his lack of concern about the Appellant's assumed HMO rents suggests that he considered them reasonable (especially as the purpose of his report was to provide a comprehensive review and opinion). Furthermore, the issue with Dr Lee's valuation increase is more on account of his substantially lower yield choice compared to his opinion as at 27/7/2020 as we are almost aligned on achievable gross rent now. In fact, I am at a slightly higher gross rent.
- Dr Lee's equivalent value per bedroom (i.e. £307,978) is substantially higher than anything BNP Paribas and/or other viability consultants have recently agreed per bedroom in terms of co-living/HMO values per room on other schemes in London as confirmed by the evidence in S.7.9 of my Proof dated 15/12/2020.

6.2 To arrive at his substantially increased HMO value, Dr Lee has:-

- shifted his capitalisation yield from 4.25% (as indicated in Appendix 10 to his Statement dated 27/7/2020) to 3.25% which increases the net rent multiplier from 23.53 to 30.77, and;
- increased his gross rent assumption from £12,690 per bedroom p.a. to £14,253 p.a. although I do not take issue with this as I have assumed a slightly higher gross rent of £14,814 p.a. and;
- used an OPEX cost assumption of only 25% even though Dr Lee's department at BNP Paribas have recently used up to 35% on other London co-living schemes such as the example below.

6.3 A 4.25% capitalisation yield was already optimistic bearing in mind the yields BNP Paribas and other viability consultants have agreed on other co-living/HMO schemes across London (e.g. as identified in S.7.9 of my Proof dated 15/12/2020). Another example is the review carried out by Dr Lee's department at BNP Paribas on a co-living/HMO led scheme at 305a Kingsland Road, Haggerston, E8. Here, an extract from the last appraisal carried out in December 2019 by BNP Paribas available on the Hackney planning portal and where they used 4.75% is:-

APPRAISAL SUMMARY							
305A Kingsland Road							
Appraisal							
Appraisal Summary for Phase 1							
Currency in £							
REVENUE							
Rental Area Summary							
	Units	ft ²	Rent Rate ft ²	Initial MRV/Unit	Net Rent at Sale	Initial MRV	Net MRV at Sale
Co-living residential	121	33,756	67.10	18,720	1,481,388	2,265,120	1,481,388
Workspace	1	41,326	23.75	981,493	981,493	981,493	981,493
Totals	122	75,082			2,462,881	3,246,613	2,462,881
Investment Valuation							
Co-living residential							
Current Rent	1,481,388	YP @	4.7500%	21.0526	31,187,126		
Workspace							
Market Rent	981,493	YP @	5.7500%	17.3913			
(6mths Rent Free)		PV 6mths @	5.7500%	0.9724	16,598,895		
Total Investment Valuation					47,786,021		
GROSS DEVELOPMENT VALUE					47,786,021		
Purchaser's Costs		6.80%	(3,249,449)				
Effective Purchaser's Costs Rate		6.80%			(3,249,449)		
NET DEVELOPMENT VALUE					44,536,571		

Source: [file:///C:/Users/Acer-I5/Downloads/74475611607946077 - 305A-Kingsland-Road-Co-living-Appraisal-360-pw%20\(1\).pdf](file:///C:/Users/Acer-I5/Downloads/74475611607946077%20(1).pdf)

- 6.4 The appraisal extract above not only indicates that BNP Paribas used a capitalisation yield of 4.75% for the co-living element, their valuation conclusion equated to £241,334 per bedroom. Even this is the highest valuation opinion expressed by a viability consultant I have seen to date excluding the £307,978 per bedroom Dr Lee is claiming to be reasonable for the Appeal Scheme.
- 6.5 Dr Lee also refers to a CBRE yield guide in his S.6.18 and claims that this suggests a rate of 3.25% as relevant to co-living in Zone 2. However:-
- there is no evidence to back up the CBRE yield guide and/or any explicit explanation of what parallel rental assumptions interact with their yield choice (which would have an impact on yield as yields implicitly account for rental growth potential from a certain starting rent assumption), and;
 - CBRE also state that they would expect co-living capitalisation yields to be between their build to rent and PBSA sector yields for long stay income and, whilst they indicate a yield of 3.25% for build to rent in Zone 2, they do not provide a yield guide for PBSA in Zone 2. Therefore, it is not clear where between 3.25% and 'x%' (i.e. not specified but higher than 3.25%) CBRE think co-living yields should be. However, it is relatively clear that CBRE think yields for co-living should be more than 3.25%
- 6.6 Dr Lee has therefore used a yield which is far too low and has not provided any evidence to support this. Indeed, evidence of yields BNP Paribas and other viability consultants have agreed for co-living valuations point to substantially higher yields. Dr Lee has also used an OPEX cost which is too low. Again, I have provided evidence above and in my Proof that BNP Paribas have recently used much higher OPEX costs for co-living schemes and as agreed between viability consultants on recent co-living planning applications in London.

6.7 In conclusion, Dr Lee's HMO valuation is evidentially unjustified and is evidentially proven to be far too high. As evident from my Proof dated 15/12/2020, my reasonable valuation is £8.31m lower than DR Lee's.

7.0 F&B Income & Value:-


7.1 As Dr Lee has had to appreciate that there will be not be a central commercial kitchen/canteen in the Appeal Scheme from which a profit could be made, he has assumed that a profit could and will be made by selling 'breakfast boxes' to residents.

7.2 This is a remote and extremely uncertain opportunity with no evidence to justify what profit (if any) could be made. Furthermore, Dr Lee's department at BNP Paribas have not accounted for such income in their other recent appraisals of co-living schemes in London. For example, they did not account for any such income at 305a Kingsland Road (see S.6.3 above) or at Chatfield Street (see page 23 of my Proof dated 15/12/2020).

7.3 Generally, Dr Lee's claim that £450,000 of value should be accounted for in this regard is not justified and is far too remote to be accounted for.

8.0 Other

- 8.1 Dr Lee discusses build costs on page 21 of his Proof and I have commented on this to the extent I can in my Proof.
- 8.2 At his S.6.28, Dr Lee says he has seen finance rates of less than 7% used and that he has used 6%. In response, please see S.9.3 in my Proof dated 15/12/2020. I would add that in 2 recent reports prepared by Dr Lee's department at BNP Paribas relating to co-living/HMO led schemes in London at 305a Kingsland Road and Chatfield Street (Wandsworth), BNP Paribas said the following (which Dr Lee should be aware of):-



- Agency fees: 1.5% of GDV;
- Legal fees: 0.5% of GDV;
- Commercial letting agency fees: 10% of net rental income;
- Commercial legal fees: 5% of net rental income; and
- Commercial marketing fee: £1.50 per square foot.

It should be noted that we do not a marketing allowance to be required or the hotel and Shared Living element of the scheme. Whilst we consider the majority of the disposal fees to be reasonable, we have reduced the sales agency fees from 1.5% of GDV to 1% of GDV reflecting current market expectations.

4.2.7 Interest

DS2 have assumed an all-inclusive finance rate of 6.5% within their appraisal. We consider this assumption to be reasonable in the current market and have adopted an all-inclusive finance rate of 6.5% within our assessment.

Although a bank would not provide 100% of the funding required for the proposed Development it is conventional to assume finance on all costs in order to reflect the opportunity cost (or in some cases the actual cost) of committing equity to the project.

4.7 Finance Rate

The Applicant has adopted a 6.5% finance rate and we do not consider that this finance rate is unreasonable as it falls within current day lending requirements. Although a bank would not provide 100% of the funding required for the proposed Development it is convention to assume finance on all costs in order to reflect the opportunity cost (or in some cases the actual cost) of committing equity to the project.

- 8.3 At his Sections 6.29, 6.30 and 6.31, Dr Lee hypothesises about costs that might not be relevant if the Appellant retains ownership of the Appeal Scheme when built. However, as Dr Lee knows, viability appraisals are carried out from a hypothetical developer's perspective as planning consents run with the land and so these observations are peripheral.

- 8.4 At Section 6.32, Mr Lee assumes that I think the Appeal Scheme development makes a loss. This is incorrect as confirmed by my Proof dated 15/12/2020.
- 8.5 In his Section 7, Dr Lee discusses his various development appraisals but these are all contaminated by his excessive GDV as discussed herein. The most significant appraisal he has prepared is in his Appendix 10 which appraises the viability of the scheme without accounting for any affordable housing restriction. If Dr Lee's GDV of £33,502,534 is reduced to a reasonable level (i.e. which necessitates a reduction by over £8m), his residual land value would drop to below the agreed BLV thus confirming that it would not be reasonable to impose a S.106 affordable housing restriction.

9.0 Conclusion

- 9.1 Dr Lee's hostel and HMO valuations (both as components of his GDV) assuming no affordable housing S.106 restrictions are evidentially unjustified and evidentially proven to be excessive.
- 9.2 I remain confident that the residual land value appraisals in Appendices E, F & G to my Proof dated 15/12/.2020 were/are reasonable.
- 9.3 The viability conclusion in my Proof is entirely justified and reasonable meaning it would not be appropriate to impose any formal S.106 affordable housing requirement and/or payment in lieu.

10.0 Statement of Truth & Declaration:-

10.1 Statement of Truth:-

10.1.1 I confirm that I have made clear which facts and matters referred to in this Rebuttal are within my own knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

10.2 Declaration:-

10.2.1 I confirm that I have drawn attention to all material facts which are relevant and have affected my professional opinion.

10.2.2 I confirm that I understand and have complied with my duty as an expert witness which overrides any duty to those instructing or paying me, that I have given evidence impartially and objectively, and that I will continue to comply with that duty as required.

10.2.3 I confirm that I am not instructed under any conditional or other success-based fee arrangement.

10.2.4 I confirm that I have no conflicts of interest.

10.2.5 I confirm that my opinion complies with the requirements of the RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement ‘Surveyors Acting as Expert Witnesses’.