

De Paul House, 628-634 Commercial Road – Supplementary Note by LB Tower Hamlets

Appellant's proposed obligation – proposed shared accommodation rooms to be capped at 80% of the average studio rental levels in the borough

Introduction

1. In order to provide a long term addition to low cost housing Policy D.H7 requires that such housing is “secured” as “low cost housing” in the long term. Until now, the Appellant’s proposed rent levels have been entirely unsecured which could indicate their change if the scheme were approved.
2. For the first time in the context of this appeal, following discussions on the draft s106 agreement, the Appellant put forward a proposed mechanism for securing the rent levels in its HMO. If the purpose of the proposed cap is to show that the Appeal Scheme HMO is “low cost housing” it fails to do so.

The Appellant has proposed a planning obligation by which it would agree to cap the rents of all shared accommodation rooms within the proposed HMO at 80% of average market rents for studio flats in the borough. The Appellant has proposed a planning obligation in the following terms:

Addition to “SCHEDULE THREE “Financial contributions”

- 1) *The Owner agrees and covenants with the Council that the rents charged for the Rooms shall be no more than 80% of the Market Rent.*

Addition to DEFINITIONS

"Market Rent"	<i>means the average monthly rent at which studio accommodation within Use Class C(3)(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended) within the London Borough of Tower Hamlets could reasonably be let at.</i>
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3. The cap, as worded, would apply to all the rooms in the HMO, irrespective of whether those rooms are currently designated as single or double rooms. That means that the operator of the HMO would be entitled to charge up to 80% of market rent for a self-contained studio in Tower Hamlets, for all of the HMO rooms.

Analysis of the obligation against the Appellant's evidence

4. For the reasons set out below the Council considers that such an obligation would not achieve compliance with policy D.H7 1 (c) which seeks a long term addition to “low cost housing”.
5. Table 1 and Table 20 in the Appellant’s Demand Assessment and Market Analysis (DAMA) document sets out average studio rental levels in Tower Hamlets as follows:

Table 1: Average Asking Private Rents in Tower Hamlets by Property and Bedspace 2019/20

Type	Long terms (6+ months)		Short term (<6 months)	
	Average Property Rate	Average Bedspace Rate	Average Property Rate	Average Bedspace Rate
Studio	£1,721	£1,721	-	-
1 bed	£2,118	£2,118	£2,807	£2,807
2 beds	£2,808	£1,404	£3,558	£1,779
3 beds	£3,777	£1,259	£4,818	£1,606
4 beds	£3,465	£866	-	-
5+ beds	£4,070	£814	-	-

Source: Rightmove, Knight Frank Residential Research

Table 20: Rents used to test affordability

Tower Hamlets 2019 Average Asking Rents		Panda House Proposed Rents	
No. of Beds	Average Rent	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

Source: Knight Frank Research, Rightmove

Average studio rental level	Shared accommodation rent levels (secured 80% of the studio market rent)	Originally proposed rental levels (unsecured)
£1,721 (Table 1, DAMA)	£1,376.8	Single room - £1,000 Double room - £1,083
£1,501 (Table 20, DAMA)	£1,200.8	

- It is not clear to Council why different average market rents are given for a studio in Tower Hamlets for 2019/2020. In any event, whichever rent figure for studio is used, whether £1,721 (Table 1, DAMA) or £1,501 (Table 20, DAMA), the potential rent levels for the HMO rooms which could be charged by an operator under the proposed obligation are substantially higher than the Appellant's originally proposed rent levels in its planning application. These new proposed secured rents are also not "low cost".
- For the reasons set out in the Council's Statement of Case and Ms Milentijevic's Proof of Evidence the rent levels originally proposed (£1,000 for a single; £1,083 for a double) were not low cost. The rent levels that could be charged under the proposed cap are even higher than the originally proposed rents and are, therefore, plainly not "low cost" rents.
- This can be illustrated by calculating the annual rent for an HMO room in the appeal scheme subject to the proposed cap and then comparing that annual rent that to low income levels in Tower Hamlets.
- The annual rents for an HMO room based on the figures above are as follows:

£1,376.8 x 12 months = £16,521.6 (Table 1, DAMA)

£1200.8 x 12 months = £14,409.6 (Table 20, DAMA)

- As stated in Ms Milentijevic's Proof of Evidence, a low income in Tower Hamlet in 2020 (i.e. 60% of local median income) is £17,261.40. That is a gross income figure (Milentijevic, PoE, 8.81). The amount that a person on a low income could expect to take home after tax is therefore actually substantially lower.

11. Even based on gross income figures, it is clear that for a single person household on a low income (and there will be lots of people on substantially lower incomes) that person would be spending between 96-83% of their income on housing costs if the proposed rent levels were approved. Given that this type of HMO accommodation is targeted at single person households it illustrates the degree to which the proposal is not “low cost”.
12. Policy D.H7 1(c) makes clear that “low cost housing” is housing for those on low incomes. It is clear that the proposed rent levels under the proposed obligation are not “low cost”.
13. There is therefore no planning policy basis for the proposed rental levels. Policy D.H7 seeks a long term addition to “low cost housing” and, if that is not provided, then a market rent HMO scheme is expected to make an appropriate contribution to affordable housing. The policy does not ask for intermediate rents, aimed at those on middle incomes. If the scheme is not a low cost housing scheme (which clearly it is not), there is no basis for a cap at all. An operator is free to charge what it likes provided it complies with affordable housing requirements.
12. As stated previously, there is no evidence that the Appellant has considered rent levels affordable to those on “low incomes” in accordance with D.H7. It would appear that the Appellant considers that 80% of *studio* market rents meets the NPPF definition (Annex 2) of “affordable housing for rent” which is defined as ‘*at least 20% below local market rents (including service charges where applicable)*’. That definition of affordable housing is repeated in the London Plan (2016). However, that definition is not referring to “low cost housing” but refers to intermediate affordable rents i.e. those rents which are aimed explicitly at those on medium rather than low incomes. Affordable housing for rent and low cost housing are two different things as policy D.H7 1 (c) makes clear.
13. The Council makes two further observations about the rent levels now proposed under the obligation. First, it is notable that the rent levels under the proposed obligation are similar to the *market* rent levels for HMO double rooms which James Brown now applies in his appraisals for HMO double rooms and accessible rooms (£1,325 and £1,350 per month respectively). In other words, the rent levels under the obligation are *market* level rents for HMO rooms rather than discounted or “low cost”.
14. Second, it is unclear why the proposed obligation bases the rent levels for shared accommodation on rents for studio accommodation which is self-contained. The rent levels for shared accommodation are generally lower than self-contained studios which enjoy greater privacy and amenity. It is not clear why the proposed cap is not linked to shared accommodation rent levels.

Conclusion

15. The proposed obligation fails to satisfy the requirements of Policy D.H7, which seeks “low cost” rents.
16. Indeed, there is no proper policy basis for capping the rents in this way. The proposed obligation would not meet the requirements of policy D.H7 1(c) and would result in higher rental levels than those which have been proposed so far (see tables above). The obligation would make the proposed shared accommodation more expensive and even further from low-cost housing.
17. Given the absence of a proper policy basis for the proposed obligation, the proposed obligation is neither necessary, fair and reasonable. As such, the proposed planning obligation does not meet the relevant tests as set out in Regulation 122 of the Community Infrastructure Levy regulations 2010 (as amended) and paragraph 56 of the National Planning Policy Framework (2019).