**APPEAL BY ROOMS AND STUDIOS MANAGEMENT LTD**

**PINS REF: APP/E5900/W/20/3250665**

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**OPENING STATEMENT FOR THE LONDON BOROUGH OF TOWER HAMLETS**

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**Introduction**

1. Permission is sought[[1]](#footnote-1) for a mixed use scheme which would deliver a substantially remodelled and upgraded hostel, comprising 25 private rooms with en suite bathrooms on the lower and ground floors and a purpose built HMO ‘co-living’ scheme over six floors, comprising 84 rooms with access to a range of facilities including a roof terrace, cinema, gym and reception (“appeal scheme”). The scheme would be under single management with short stay visitors and longer term occupants[[2]](#footnote-2) in the HMO enjoying broadly the same level of amenity.[[3]](#footnote-3) The Appellant’s scheme promises “high quality excellent services” and an “awesome experience” [[4]](#footnote-4). Located within easy access of Canary Wharf and the City of London, the scheme, which will be “mainly single occupancy”[[5]](#footnote-5), is marketed at ‘sharers’ particularly single young professionals wishing to access employment opportunities in these locations and who can afford (at least) rents of £12,000 p.a. for a single room in the HMO.[[6]](#footnote-6)
2. The LPA raises no, in principle, objection to the new hostel which replaces the existing hostel.
3. ‘Co-living’ is a relatively novel type of accommodation which is different from traditional HMOs in terms of its size and the amenities offered. The Appellant presents its scheme as an alternative form of accommodation[[7]](#footnote-7) to a studio or 1 bedroom flat where the amenities, services and sense of community offered are a part of the draw.
4. The main issues in this appeal are:

*Reason for refusal 1*

1. Whether this type of scheme is needed in this location?;
2. And, even if it is needed, whether the appeal scheme provides a policy compliant contribution to affordable housing?

The Appellant is required to show both that the scheme is needed and that it satisfies affordable housing requirements, otherwise it should be refused.

*Reason for refusal 2*

1. In addition, there is the question of whether the appeal scheme would result in harm to the designated and non-designated heritage assets which contribute to the character of the area? If it would, then the question arises whether the public benefits of the scheme are capable of outweighing that harm.
2. The appeal proposal was refused on seven grounds. A number of those issues have been resolved through the provision by the Appellant of additional information which should have been provided at the application stage.[[8]](#footnote-8) Subject to the further provision of details on the air quality matters[[9]](#footnote-9) reasons for refusal 4 and 6 can be withdrawn. With respect to reason for refusal 5 (cycle storage), the LPA welcomes the increased provision of cycle storage, however, it has outstanding concerns over accessibility and location of the cycle storage which are addressed in a written statement. (The LPA does not consider a roundtable discussion is needed). Whilst reason for refusal 7 is partially addressed by agreed draft s106, the LPA is has raised concerns about the Appellant’s proposed voluntary rent cap.[[10]](#footnote-10)

**Reason for Refusal 1 – Application of D.H7, Need and Affordability**

*Policy Framework*

1. The recent proliferation of large-scale purpose built HMOs (co-living), many of which charge commercial rents is addressed in recently developed policies. Both Policy D.H7 of the Tower Hamlets Local Plan 2031 (2020) (“Local Plan”)[[11]](#footnote-11) and draft policy H16 of the new London Plan, to which substantial weight can be given, apply to this scheme. The policies recognise the potential contribution that this type of HMO can make to fulfilling housing need, but like conventional C3 schemes, policy requires that such developments make an appropriate contribution to affordable housing against a background of acute need for such housing in Tower Hamlets and London generally.[[12]](#footnote-12)
2. Policy D.H7, and in particular D.H7 1(a) and (c) are central to this appeal. If the Appellant is in conflict with *either* of those criteria it should be refused.

*Does the appeal scheme meet “an identified need”* (D.H7 1(a))?

1. D.H7 1(a) requires the appeal scheme to “meet an identified need” for this type of scheme (large scale, ‘co-living’, at the Appellant’s rents) in this location.[[13]](#footnote-13)
2. The LPA, through Ms Milentijevic, will show that demonstrating an “identified need” in this context is different from demonstrating whether there is a general demand for HMO-style accommodation in Tower Hamlets. If that was all that was required there would be no reason to include this policy criteria in D.H7 since the policy presupposes that a general demand for HMO accommodation exists.[[14]](#footnote-14)
3. As the policy and supporting text[[15]](#footnote-15) spells out, satisfying this criteria requires a developer to address the specific type of HMO scheme and location. It will need to address the nature of its particular scheme and who it is for, the rents charged, who locally might need this type of scheme and whether other developments already existing in the same location which are meeting that need.
4. The LPA’s case is that the Appellant has not satisfactorily shown that its scheme meets an identified need.

*Does the appeal scheme satisfy D.H7 1(c)?*

1. Policy D.H7 1(c) expects HMO schemes to either secure a long term addition to “low cost housing” – defined as housing attainable to people on “low incomes”[[16]](#footnote-16) – and if a scheme does not provide “low cost housing” then it is expected to make an appropriate contribution to affordable housing. This raises three issues:
2. Is the appeal scheme a scheme for “low cost housing”?
3. If it is, is the “low cost housing” secured?
4. if it is not a secured “low cost housing” scheme, does the appeal scheme nevertheless provide an appropriate amount of affordable housing?

*Is the appeal scheme “low cost housing”?*

1. The Appellant primary case is that its scheme is for “low cost housing”. The LPA disagrees.
2. There is a lack of clarity over what HMO rent levels the Appellant is putting forward. At the application stage, the Appellant proposed rent levels of £1,000 per month for a single room and £1,083 for a double room.[[17]](#footnote-17) The Appellant’s viability appraisal indicates that the double rooms, at least, could command market rents of £1,325.[[18]](#footnote-18) The Appellant proposed capping the HMO rents at 80% of the reasonable market rent for a studio in Tower Hamlets through a unilateral undertaking. This would allow for rents to be charged which are considerably higher than the Appellant’s original proposed rents.[[19]](#footnote-19)
3. Irrespective of which of these rent levels are applied, the LPA’s case is none of these constitute “low cost housing”.
4. “Low cost housing” is “housing with shared facilities for people with *low incomes*”[[20]](#footnote-20). The proposed rent levels are expressly predicated on higher income levels[[21]](#footnote-21). Indeed it is obvious when one looks at who the HMO is targeted at and the rents proposed, that this accommodation would be unattainable to people on low incomes. Even taking the lowest rent suggested by the Appellant (£1,000 per month (unsecured) for a single room), that would require someone on a low income in Tower Hamlets, that is less than £18,000 (gross pay), to spend £12,000 p.a., roughly 70% of their income, on rent for a single room. The position is significantly worse if one considers the higher rents which are now put forward.
5. Put simply, the Appellant’s proposition is not housing for people on low incomes. Nor would the rent levels secured by the unilateral undertaking be “low cost”.

*Does the appeal scheme provide an “appropriate amount” of affordable housing?*

*Policy framework*

1. D.H7 requires a developer, if they are not bringing forward a “low cost housing” scheme, to provide “an appropriate amount of affordable housing”. This engages the affordable housing requirements in Local Plan policies S.H1 and D.H2.[[22]](#footnote-22)
2. Those policies seek affordable housing contributions from all residential developments, including small sites (2 to 9 new residential units). Sites providing 10 or more new residential units require the provision of a minimum 35% affordable housing, subject to viability.
3. Development is required to “maximise” the provision of affordable housing.[[23]](#footnote-23) Lower levels of affordable housing are only acceptable where this is “robustly justified” through viability evidence.[[24]](#footnote-24) There is thus a strong policy imperative to ensure the maximum reasonable provision with the strategic targets in mind. This imperative exists against a background of “acute need” in Tower Hamlets particularly for affordable housing.[[25]](#footnote-25)

*Affordable housing main issues*

1. The Appellant says its scheme provides an appropriate amount of affordable housing. On its viability case, the appeal scheme does not provide *any* affordable housing.[[26]](#footnote-26)
2. At the application stage, the Appellant argued that its scheme produced a deficit of £6.29 million[[27]](#footnote-27), which wiped out the notional profit included in the appraisal, resulting in an overall loss of £2.5 million. It now says that whilst the deficit is reduced to £2.41 million, and this would result in the notional profit being reduced from the target of 15% to around 5% and, therefore, it cannot viably provide any affordable housing. That claim requires robust justification. It is well-established that the evidential burden for demonstrating that the proposed scheme provides “an appropriate amount” of affordable housing lies with the Appellant.[[28]](#footnote-28)
3. The main matters in dispute in respect of viability are:
   1. Development values – the Gross Development Value (GDV) of (i) hostel element (difference of c. £1.86million); and (ii) HMO elements of the scheme (difference of c. £8.3million).
   2. Build costs – (difference of c. £851,883);
   3. Finance rate;
   4. Value attributed to food and beverage revenue (difference £452,941) .
4. Dr Lee will present evidence that the appeal scheme generates a viability surplus and can viably support a range of affordable options. Based on providing 35% of the HMO units let at rents which are discounted by up to 50% from market rents Dr Lee’s expert view is that the scheme can support a payment in lieu[[29]](#footnote-29) which equates to £2.4 million.
5. The issue for you Sir is whether the Appellant can demonstrate that it is unable to viably provide *any* affordable housing. If there is any viability surplus then that should be provided (as a commuted sum) towards affordable housing. Whilst the LPA considers the scheme can support a healthy viability surplus, it is sufficient for the LPA to demonstrate that there is *a* surplus which should contribute to affordable housing.[[30]](#footnote-30)
6. It is necessary to stand back in respect of the overall scheme and consider whether the relationship between the value generated by the development is commensurate with the cost of developing it. When one stands back from the viability evidence presented by the Appellant it becomes clear that the alleged costs and value in this scheme are out of kilter. On the basis of the figures presented by Mr Brown, a rational owner would retain the existing hostel.
7. The LPA’s case is that the appeal scheme is neither “low cost” nor does it provide an appropriate amount of affordable housing. The Appellant has also failed to demonstrate it would meet an “identified need” for this type of scheme in this location. That constitutes fundamental conflict with the main relevant policy D.H7 which is not outweighed.

**Reason for Refusal 2 - Heritage, Character and Archaeology**

1. RFR 2 [[31]](#footnote-31) is that the *“scale, height and massing of the proposed seven storey building”* would fail to preserve or enhance the character of the St Anne’s Conservation Area (“CA”) and would result in harm to the significance of the designated heritage asset (“DHA”).
2. Mr Laurie Handcock will present evidence in respect of the LPA’s case that:
3. the Appellant has understated the significance of the CA and, particularly, the considerable positive contribution made by Our Lady Immaculate Catholic Church to the designated asset. The Church is a landmark in the townscape and contributes to the CA through its architectural and associative qualities*[[32]](#footnote-32)* and as part of a group of significant public buildings which are core to the significance of the designated asset.*[[33]](#footnote-33)*
4. Whilst the existing Panda House is accepted to be an undistinguished building the Appellant overstates its “*negative contribution*”[[34]](#footnote-34) to the CA. In its existing form preserves the historic prominence of the Church.
5. The proposed seven storey building is overbearing in its massing, height and scale and diminishes the prominence of the Catholic Church in the townscape. The LPA’s view is shared by several amenity societies[[35]](#footnote-35) . This harmful impact is not mitigated by the set back of the top two floors.
6. The Appellant says its scheme is a“considerable enhancement”[[36]](#footnote-36)on the existing position. The LPA disagrees. When one considers the *net* effect of the redevelopment the appeal scheme perceptibly and substantially diminishes the prominence of the Church (non-designated asset) and by extension harms the wider significance of the group of public buildings of which the Church is part. Any harm to the conservation area must be given *“great weight”* and gives rise to a presumption against the development which is not outweighed here by the modest public benefits of the scheme (para. 196 NPPF).

*Archaeology*

1. To the heritage balance and overall planning balance needs to be added the potential impact on archaeological assets as a result of the proposed basement works. Archaeological assets are non-designated heritage assets. As things stand the impact on these assets remains unknown (despite LPA’s repeated information requests). In accordance with NPPF para. 189 further appropriate assessment or field evaluation is needed before it is possible to assess the significance of the assets which may be impacted.[[37]](#footnote-37) Para 197 of the NPPF requires any impact to the significance of a non-designated heritage asset to be taken into account in determining the application. At present this cannot be assessed due to the lack of information. The LPA and the statutory consultee Greater London Archaeology Advisory Service do not consider this omission can be addressed Condition 5.

**Reason for refusal 3 - Poor Living conditions**

1. Despite the range of “exceptional facilities” provided, the LPA considers the proposed HMO would not meet policy requirements for good quality shared living accommodation. In particular, and as Ms Milientijevic will explain, the LPA considers:
2. daylight levels to the communal areas, namely to the living space, kitchen and dining areas, on the first and second floor (and one LKD on the third floor) would fall short of the BRE guidelines[[38]](#footnote-38) for expected Average Daylight Factor for these spaces. Given that these areas will serve as the primary living and amenity space for up to 82 occupiers of these floors this amounts to a breach of Local Plan policy D.DH8 1(c)[[39]](#footnote-39) which requires all new residential development to achieve adequate levels of daylight.
3. the HMO also provides insufficient external communal amenity space for the number of HMO rooms in conflict with planning policy D.H3 5(c).
4. These conflicts with policy are relevant to the overall planning balance.

**Overall planning balance and conclusion**

1. The Appellant fails to show that its particular co-living scheme aimed at young professionals with an array of “excellent facilities” meets “an identified need” in this location. It also fails to demonstrate that its scheme is “low cost” or that it provides an appropriate amount affordable housing. That matters because the provision of this much-needed form of housing is critical to achieving sustainable development. The scheme misses the opportunity to provide “low cost housing” or contribute to affordable housing and thereby provide the sort of housing which *would* meet the LPA’s strategic need. The appeal scheme thus conflicts with several policies in the recently adopted Local Plan S.H1, D.H2 and D.H7 and the draft new London Plan to which substantial weight must be given.
2. In respect of the heritage balance, the desirability of preserving the character or appearance of the conservation area must be given “considerable importance and weight”[[40]](#footnote-40). Even if the harm is “limited” this should be given “considerable importance and weight”[[41]](#footnote-41) and the Inspector needs to be satisfied that “clear and convincing justification” exists for this harm. The LPA will present evidence that the harm to the designated asset is not outweighed by the modest public benefits of the scheme. Moreover, consideration should be given to the lack of information on the impact of non-designated archaeological assets.
3. Development plan conflict (in terms of the lack of affordable housing provision, the failure to demonstrate that the scheme meets an identified need, the impact on the character and appearance of the area and poor living conditions) needs to be weighed against the benefits of the scheme. Those benefits include some regeneration benefits, transport benefits and job creation associated with the scheme.[[42]](#footnote-42) However, even accounting for those, under the planning balance required by s.38(6) of the Planning and Compulsory Purchase Act 2004, the benefits of the scheme do not outweigh the conflict such as to justify the grant of permission. Accordingly, the LPA will, in due course, invite the Inspector to dismiss the appeal.

**Sarah Sackman**

**12 January 2021**

1. Consent is sought 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”.*  [↑](#footnote-ref-1)
2. A22 Building Management Plan. 12 month assured shorthold tenancies for HMO occupants. [↑](#footnote-ref-2)
3. A22 p.3 [↑](#footnote-ref-3)
4. A20 [↑](#footnote-ref-4)
5. A22 Building Management Plan [↑](#footnote-ref-5)
6. Actual rents likely to be substantially higher on A’s case. [↑](#footnote-ref-6)
7. A12 [↑](#footnote-ref-7)
8. Including information on transport impacts, energy assessment, waste management [↑](#footnote-ref-8)
9. Including the emission rate of the emergency generator and the location of the exhaust on the roof level [↑](#footnote-ref-9)
10. See LPA note on proposed planning obligation [↑](#footnote-ref-10)
11. B-02 [↑](#footnote-ref-11)
12. B-02, p.81 9.28 [↑](#footnote-ref-12)
13. B-02, p.92 9.69 [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Ibid. 9.69 [↑](#footnote-ref-15)
16. B-02, p.92, 9.70 [↑](#footnote-ref-16)
17. A-19 10.8 [↑](#footnote-ref-17)
18. James Brown rebuttal proof [↑](#footnote-ref-18)
19. See LPA’s note on proposed s.106 obligation filed on 6 January 2021. [↑](#footnote-ref-19)
20. B-02, p.92, 9.70 [↑](#footnote-ref-20)
21. A22 e.g. £39,000 (average income in Tower Hamlets) [↑](#footnote-ref-21)
22. B-02 Local Plan, p92, 9.70 [↑](#footnote-ref-22)
23. B-02, Policy D.H2 [↑](#footnote-ref-23)
24. B-02, p. 78 9.19 [↑](#footnote-ref-24)
25. Ibid. 9.21, 9.28 [↑](#footnote-ref-25)
26. D-02 A’s SoC 4.15 [↑](#footnote-ref-26)
27. A-19 Rapleys ‘Financial Viability Assessment’ 3 December 2019 [↑](#footnote-ref-27)
28. see *Parkhurst Road Limited v Secretary of State for Communities and Local Government* [2018] EWHC 991 Holgate J at [47]-[48] [↑](#footnote-ref-28)
29. Affordable housing cannot be delivered as shared accommodation. A payment in lieu is supported by the Local Plan and the draft London Plan. [↑](#footnote-ref-29)
30. Reflects Local Plan Policy S.H1, 9.21 which makes clear it is necessary and appropriate to seek financial contributions towards the provision of affordable housing sites of less than 10 units. [↑](#footnote-ref-30)
31. E-05 Council’s Statement of Case 6.50 -6.79 [↑](#footnote-ref-31)
32. D02 Appendix 4 Heritage note para. 11 [↑](#footnote-ref-32)
33. B-08 p. 7 St Anne’s Church Conservation Area Character Appraisal and Management Guidelines [↑](#footnote-ref-33)
34. A 21, 2.40 [↑](#footnote-ref-34)
35. I-01 Twentieth Century Society; Georgian Group; Ancient Monuments Society [↑](#footnote-ref-35)
36. A21 Heritage Appraisal 4.15 [↑](#footnote-ref-36)
37. Greater London Archaeology Advice Service Note (4 December 2020) [↑](#footnote-ref-37)
38. Building Research Establishment ‘Site Layout Planning for Daylight and Sunlight’ BR209 Guidance [↑](#footnote-ref-38)
39. B-02 p.62 [↑](#footnote-ref-39)
40. see *East Northamptonshire DC & Barnwell Manor Wind Energy v SSCLG* [2014] EWCA Civ 137 at [26]-[29] [↑](#footnote-ref-40)
41. *Forge Field* at [43] and [45] [2014] EWHC 1895 (Admin) [↑](#footnote-ref-41)
42. H-01, paras. 10.4-10.9, 10.18 [↑](#footnote-ref-42)