PANDA HOUSE, 628 - 634 COMMERCIAL ROAD, LONDON

Appellant's Closing Submissions

Introduction

1. The Appellant's case is simple:

   (i) This is a highly sustainable, previously developed urban location – exactly the kind of place where both national and London-wide policies tell us to make effective use of land to meet needs;

   (ii) There is a huge need for exactly this kind of accommodation in this area;

   (iii) The scheme cannot viably support a payment towards affords housing;

   (iv) The scheme is a high-quality design which will preserve and enhance the character and appearance of the St Anne's Church Conservation Area;

   (v) The Council's various other objections do not support refusal; and

   (vi) The scheme's benefits are many, and they easily carry the planning balance.

(1) The scheme is in a highly sustainable location

2. Land in central London is a scarce commodity. National and London-wide policies tell us it should be used efficiently and effectively, and developments should optimised to meet needs.

3. This site is brownfield. It is previously developed land. Dr Lee for the Council told us about its fantastic connectivity both to Canary Wharf and to the City of London. The parties agree

that it in an accessible location for employment opportunities, local services and public transport links.[1] Indeed the site sits between PTAL ratings of 5 and 6a – i.e. very good and excellent. Which makes it one of the most sustainable locations for new housing not only in Tower Hamlets, but in Greater London as a whole.

4. The Council positively avers in its closings that the appeal scheme is in an excellent location, with a high quality of accommodation which will attract high demand: §66 of the Council's closings.

5. So this is just the kind of site which Chapter 11 of the NPPF promotes when it seeks to prioritise the "*effective use of land in meeting the need for homes*": §117. Indeed, we must give not just significant but **substantial** weight to "*the value of using suitable brownfield land within settlements for homes and other identified needs*": §118(c). And we must "*promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing*": §118(d).

6. The new London Plan tells a similar story. All development must make the "*best use of land by following the design-led approach that optimises the capacity of sites*": Policy D3(A). And "*higher density developments should generally be promoted in locations that are well connected to jobs, services, infrastructure and amenities by public transport, walking and cycling*": Policy D3(B).

7. The new London Plan also tells us that HMOs "*are an important part of London's housing offer, reducing pressure on other elements of the housing stock*": §4.9.4. That is particularly important in Tower Hamlets, whereas the 2020 HDT results show us:

   (i) The overall housing target is the **highest** of all LPAs **anywhere in the Country**; and

[1] SoCG §3.13-14.

(ii) This Council has delivered under 75% of its target, which means that even taken over the last 3 years, its shortfalls in delivery have not been in the hundreds, but the thousands.

8. So reducing pressure on Tower Hamlets' housing stock is very important, even more so after the recent change in the Government's standard housing need methodology will put ever-greater pressure on our largest towns and cities to meet national needs.

9. At present, this site is under-utilised. The existing hostel does not use the land effectively or efficiently to meet needs. It does not optimise the site's capacity in a way that reduces pressure on London's housing stock.

10. It was a remarkable feature of the Council's case that these really important imperatives from national planning policy did not feature <u>at all</u> in its analysis of the appeal. What an omission. We return to it below.

11. In any event, optimising what is currently an under-developed site into one which can play a real role in meeting local needs for this kind of accommodation across Tower Hamlets is a critical benefit for the Inspector's balancing exercise, and we return to that below too.

(2) There is a massive need for this kind of accommodation in this area

12. The Council's plan tells us that:

(i) There is an increasing demand for HMO-style accommodation in the borough; and

(ii) High quality, large-scale HMOs can help meet this **<u>need</u>**: §9.69.

13. We underline that word "*need*" to make clear that this shortfall is defined and referred to as a **need** – not just in the Appellant's materials, not just in the Ms Milentijevic's evidence (e.g. at §8.32) but also in the Council's own plan.

14. Is there a need? Yes. The plans tells us so.

15. Ms Milentijevic agreed in cross-examination that at the Tower Hamlets-wide level the evidence shows (not just a demand but also) a **need** for more HMO accommodation.

16. As Mr Bowen explained, the scale of that need isn't in the hundreds. It's in the thousands. A shortfall of around 15,000 beds today, likely to rise to over 19,000 within a few years.

17. The picture is also bleak within a 20 minute walk of the appeal site. As Mr Bowen explained, within that local area, the shortfall is still not in the hundreds but thousands.

18. **A shortfall of around 2,500 HMO beds. Within a 20 minute walk of the appeal site.**

19. In circumstances where the Council's own evidence base suggests demand is only going to **increase**. And of course, Dr Lee – the Council's valuer – confirmed his view that the evidence showed there will be significant demand for this particular scheme in this particular location.

20. Policy D.H7(1)(a) supports HMO schemes which "*meet an identified need*".

21. That is a simple idea. It should have been simply applied.

22. The evidence before the Inspector not only identifies a need for this scheme. It identifies an enormous need.

23. So why does the Council continue to object on this point?

24. With respect, the answer lies with Ms Milentijevic and her multi-layered, ever-changing theories on what "*need*" should mean:

(i) She says the concept is "*elastic*": §8.22. It's so elastic that she never clearly defined what it means. But in fact, as the Inspector knows, need is a common-place idea which features in local and national housing policies of all sorts all over the country. If a policy thinks it desirable for there to be a particular kind of housing, and there are more takers for that housing than there are units in the pipeline, there will be a residual need. There is nothing "*elastic*" about it.

(ii) She says it's more qualitative than quantitative (that's her gloss – it's nowhere in the policy).

(iii) She says it needs to be public not private (again, her gloss – nowhere in the policy).

(iv) She says the need question has to consider design and proposed rents (yet again, her gloss – nowhere in the policy).

(v) She says need issue must be answered with reference to affordability (and again – her gloss, nowhere in the policy).

(vi) She says need is something different to demand, when the plan frequently uses those terms interchangeably: see e.g. Section 1, p.73 on "*Meeting Housing Needs*".

25. Once she's added that many layers onto the simple idea of "*need*" (and even during the inquiry she wanted the "*debate*" to continue without actually producing firm answers) it's hardly surprising that even now Ms Milentijevic is not satisfied that this test has been met. Every time we try to meet it, she shifts the goal-posts.

26. Over not weeks, not months, but ***years*** this Appellant has tried time after time after time to discern from Council officers what on earth is required to meet their interpretation of this policy. Remarkably, even after Ms Milentijevic's proof, evidence-in-chief and cross-examination we ***still*** have no idea:

(i) She accepted that need had to be assessed in respect of a particular geographical area.

(ii) She accepted that the policy doesn't specify what area that is.

(iii) In her written evidence, and in her evidence in chief, she didn't tell us what she thought the relevant area was.

(iv) I asked her repeatedly in cross-examination what the area should be. Her answer was that it was a matter for "*debate*". But that's the problem. It's all very well knocking down the Appellant's evidence when the Council has not and still refuses to tell us how to go about trying to meet its own policy.

(v) Of course, neither Ms Milentijevic nor the Council has identified a preferred methodology for meeting the need criterion. There is no SPD. There was no indication in pre-app on how the criterion should be met, other than by constant references to Sailmakers scheme where of course Knight Frank successfully met the relevant criteria to the Council's satisfaction. Why the Knight Frank work was good enough for Sailmakers but not for Panda House has still not been explained.

(vi) During cross-examination, Ms Milentijevic suggested – literally for the first time – that the relevant geographical unit should be around a 5 minute walk around the appeal site. That is, with respect, completely untenable. Mr Bowen explained that a 5 minute walk-time is not a functional geography that any expert in this field would recognise. And it bears no relationship whatsoever to the dynamics of the housing market as a whole. It

implies that demand for a high-quality well connected HMO scheme of this sort should only arise within a 5-minute walking radius. That is a nonsense.

27. Amazingly, even in the Council's closings submissions, we are ***still*** not told quite how the Council thinks we should have gone about showing need for this scheme. On the Council's approach, identified need is an ever-shifting game which can effectively never be won.

28. If the Inspector decides a sub-Tower Hamlets area is required for whatever reason, then he has the evidence of Mr Bowen that the shortfall within a 20-minute walk is around 2,500 beds. Again, let's not forget, this is an 84-bed scheme. 84 beds measured against a shortfall of around 2,500. The idea that these monumental shortfalls – not in hundreds but thousands – don't identify a proven "need" within the meaning of the Council's policy isn't just wrong. It's absurd. Even more so when Ms Milentijevic thinks "need" is a flexible concept, which means she agreed it would be wrong for you to dismiss the appeal on an unduly rigid interpretation of that word.

29. In its closing submissions, the Council now makes much of the as-yet-unbuilt Sailmakers scheme being (i) similar, and (ii) close-by.

30. So what?

31. That there is a comparable scheme nearby tells us something (albeit not much) about local HMO supply.

32. But it tells us literally **nothing** about unmet local need. Which – as we have shown, and as the Council does not materially rebut – is enormous. Not in the hundreds, but the thousands. The Sailmaker's scheme doesn't even begin to scratch the surface of this unmet need, as the Knight Frank work has demonstrated. Given that pressing need, the remarkable thing is that

there's *only* 1 comparable scheme the Council can find in close proximity of such a sustainable site. When the Council needs so much more.

33. As we said in opening, in the end, this is a simple question with a simple answer. Is there a need for more HMO units in this part of London? Yes. If this scale of rigorously evidenced unmet local demand for HMO accommodation doesn't meet the policy test for an identified need, then what on earth would?

(3) The scheme cannot viably support a payment towards affords housing

34. For all the many (many) figures before you, this debate is actually very simple.

35. Unless the Council can persuade you to adopt a yield for the HMO part of the scheme for which there is (literally) no evidence **at all**, Dr Lee's case fails and you are left with Mr Brown's case which shows that the scheme cannot viably support a contribution toward affordable housing.

36. We know that because even if you agree with Dr Lee on every single one of the other points, if you accept Mr Brown's 4.5% HMO yield – which itself is right at the optimistic end of what other industry-leading valuers consider appropriate for this sector – then Dr Lee's residual land value would drop to £5.32 million, i.e. **below the agreed benchmark** of £5.89 million. And that's game over for Dr Lee's approach.

37. So yield is the most important point in the viability argument. Which means it is very important to examine the bases on which each side tries to support its figures.

(i) Dr Lee's HMO yield

38. We start with Dr Lee. In July 2020, i.e. before the dramatic collapse of his valuation for the hostel element of the scheme to which we return below, Dr Lee adopted a 4.25% yield for the HMO part of the scheme. That lead him to a total value for the HMO element of the scheme at £16.035 million. He confirmed in his July 2020 report that it represented his true, complete and professional opinion at the time.

39. Move forward only a few months, and by his December 2020 proof, after the collapse of his hostel valuation, that HMO element had ballooned in value from £16.035 million to £27.629 million. It accrued an extra £11.6 million in value. In only a few months. How on earth was that possible? It was possible because Dr Lee bumped up his HMO rents, and then reduced his HMO yield from 4.25% to 3.25%.

40. The Inspector can test the enormous impact of that reduction very simply. Take out Dr Lee's Appendix 10. On that appraisal, we see that the difference between applying a 4.25% yield (and the related 23.5 multiplier) against a 3.25% yield (and the related 30.8 multiplier) at a stroke adds over £6.5mil value to the scheme. Remember, on Dr Lee's best case, residual land value exceeds the agreed benchmark by only £4.35 mil – i.e. Dr Lee's "headroom".

41. How does Dr Lee seek to support this lurch upwards in his valuation of the HMO element of the scheme between July and December 2020?

42. In his proof, there is only 1 reason given to support a change. Some time in 2020, Dr Lee became aware of a 2019 report produced by CBRE – his Appendix 5. He repeatedly told the inquiry that his understanding was that the CBRE report suggested yield between 3.25% - 4% for the HMO element of the appeal scheme. And he had adopted the bottom end of that range.

43. Just to be clear, Dr Lee *still* has produced no comparable transactions **at all** where 3.25% has been agreed between the parties or accepted by a planning inspector. Indeed, his own firm agreed yields of 4.75% in comparable London locations – the Chatfield Road and Haggerston schemes: see Mr Brown's proof at p.22 and rebuttal at p.11. Indeed, the CBRE report itself does not refer to any transactional evidence. And Dr Lee produces no reports from other consultancies which have expressed views on appropriate yields for HMO products of this kind. Indeed, he told us he wasn't even aware of those other reports. So not a promising start.

44. Things didn't improve for Dr Lee when he explained the reasons for his plummeting yield between July and December 2020. He referred the Inspector to:

(i) The fact that there would be high demand for co-living in this particular location.

(ii) The fact that the site is close to major business districts – Canary Wharf and the City – which will make the scheme a desirable proposition.

(iii) Dr Lee valued the scheme on the basis that it would be a popular destination and a "desirable location".

(iv) He also told us that he'd increased its value on the basis of its design, i.e. that it will be a "*high quality building*" and a "*high quality scheme*" with regard to its facilities, rooms, amenity spaces etc. More on that below.

45. But this is the point: **none** of those features had changed **one iota** between July 2020 and December 2020. Still less in a way which could tenably support increasing HMO value by over £11mil. Again, the real reason for that enormous increase stems back to the collapse of Dr Lee's hostel valuation, and we return to that below.

46. The next thing Dr Lee tried to rely on to support a lower yield was his understanding that the scheme would be "*long stay*" – i.e. 12 month+ tenancies. But as the management documents show (Core Document A-11), there will be a flexible range of tenures mixed between licences and ASTs. And the 12 month ASTs will have 6 month break clauses. So there is (literally) **no evidence at all** to support Dr Lee's conjecture – because it is nothing more than conjecture – that this should be valued at lower yields on the basis that it is "long stay". And remember, this is another point which had not changed one bit between July and December 2020.

47. But in the end, the most important point on yield is that Dr Lee's understanding of the key report on which he tries to rely – the CBRE document – is completely **wrong**. That report does not support some kind of 3.25%-4% cap on HMO co-living yields within London Zone 2. Nor does it support the 4.25% cap the Council now refers to in its closings at §64 (not mentioned at all in Dr Lee's evidence). The CBRE report suggests – again without any transactional evidence – that CBRE would *expect* yields to sit **between** BtR and PBSA yields for long stay income. But we have no indicative yield in that document for PBSA in Zone 2. Dr Lee assumed that the document intended to cap PBSA yields in Zone 2 at the same level as Zone 1, i.e. at 4%. The CBRE report could have said that. But it didn't.

48. And you don't just need to take our word for it. The report's lead author – Jo Winchester – has now confirmed to the inquiry that Dr Lee has got totally the wrong end of the stick. See the email at Inquiry Document 5 where she confirms that:

    (i) "*CBRE has never said that yields for co-living would be 3.25% in Zone 2. This would represent an up and built stabilised yield in the more established mainstream build to rent market*" and

    (ii) CBRE think a yield of 3.25% for 85 HMO bedrooms at the subject location is too low as a yield for this kind of property.

49. There we have it. Dr Lee has totally misunderstood the central document on which he has tried to mount his new case on HMO yields. The author of the document has confirmed as much. Without the document, Dr Lee has nothing – literally nothing at all – to support his plunging HMO yield.

50. Of course, Dr Lee *could* have contacted CBRE to establish whether or not they in fact meant what he'd (mis-)understood them to mean. Before deciding to pin his case on yield entirely to his misinterpretation of their report. He didn't do that. The Appellant had to.

51. And how telling it is that the Council is now left asking the Inspector to give no weight at all to a clear view from the expert author of the very report its own expert relies on that he's gotten things so very wrong: see §76 of its Closings.

52. Again, let's be clear. The Council pins its case to that CBRE report, but:

(i) The report refers to no particular market information;

(ii) The report doesn't tell us how many co-living valuations CBRE have actually done (bearing in mind there are only a small number already operational across all of London);

(iii) The report does not tell us what rent levels CBRE were assuming;

(iv) The report does not tell us what sizes of co-living scheme CBRE were assuming (NB many co-living schemes are considerably larger than the appeal scheme); and finally

(v) The report refers to up-and-running operational (rather than prospective or early stage) co-living schemes.

53. So misunderstanding a report which is already very limited in its evidential value, then pinning his case on the most important viability issue in the appeal onto that misunderstanding is not a promising start for Dr Lee's evidence.

(ii) Mr Brown's HMO yield

54. Mr Brown's yield at 4.5% is lower than yields agreed by Dr Lee's firm at e.g. Chatfield Road and Haggerston: see Mr Brown's proof at p.22 and his rebuttal at p.11.

55. It is also supported by the examples of further real-world transactions we find in the Savills report at Appendix 3 of Core Document A19:

(i) For Old Oak – the Collective, Savills report a yield of 4.5% - spot on with Mr Brown's yield.

(ii) For the Greater London Portfolio, Savills report yields of between 5.07% - 6.76% - substantially more than Mr Brown's yield.

56. Bizarrely, the Council criticises Mr Brown for relying on real world examples: see its closings at §81(b). And it calls the CBRE report a "synthesis". But it isn't. Comparable examples are evidence. The view in the CBRE report – not backed up by any comparables – is an opinion. That's the difference.

57. As Mr Brown explained, yields are influenced most of all by risk and uncertainty, the security of income streams, and a valuer's perception on rental growth prospects. In this case, the experts agreed that co-living is a new and unproven form of property investment. That means that risk and uncertainty are a factor. And those influence yield choice. Both risk and uncertainty are high in this sector. Therefore, as Mr Brown explained, that puts upward pressure on yield choice.

58. As Mr Brown explained, 3.25% is a *very* low yield. It would imply little risk and uncertainty over to this co-living proposal. And it would imply that the potential income scheme is highly secure. It would suggest that rental growth prospects based on assumed base rent is very high. It would suggest a prime market, a secure income stream and a strong covenant strength. But none of those things are right. Co-living is new, uncertain and risky.

59. That was so even before this global pandemic. The risk profile is even greater now. The level of risk and uncertainty in London's property market is considerably increased in light of the Covid pandemic. Those are the key matters which influence yield choice. And – remember – the CBRE report **preceded** the pandemic. It is an analysis of a very different housing market.

60. In the end, taking a step back:

    (i) The list of agreed HMO values per room at Mr Brown's table 5 (pp. 26-27 of his proof) supports a range of around £180k-£210k / bedroom. Those figures were agreed by the country's leading consultancies, including BPS, Savills and – of course – BNP! Again, not speculation. Real world figures based on comparable transactions.

    (ii) Which tells us that if anything, Mr Brown's valuation of £230k / HMO bedroom is optimistic.

    (iii) It also tells us that Dr Lee's value per room at over £306k is totally out of kilter with the market. Which is unsurprising of course, because we know he has adopted a unrealistically low yield for which there is no evidence.

61. To suggest – as Ms Sackman sought to – that Mr Brown is some kind of "outlier" in these circumstances is, with respect, nonsense. He is well within – and at the optimistic end of – the industry mainstream for HMO co-living yields. Again, based on real-world transactions.

Not a mis-reading of an unevidenced opinion in a report. If there's an outlier in this case, unfortunately, it's Dr Lee.

62. In the end, the position is as simple and stark as this:

If the Inspector agrees with Mr Brown that 4.5% represents an appropriate yield for the HMO component of this scheme, that is the end of the story. On the agreed maths (see Mr Brown's yields table at Inquiry Document 8) the scheme could not then viably support any affordable housing.

63. The Council posits a notional range between 3.25% and 4.5% at §84-§85 of its closings. But that range does not exist. It is totally unevidenced. The only transactional evidence supports Mr Brown's consistent view that the HMO yield should be at least 4.5%.

64. In those circumstances, the Inspector would not need to consider the other areas of dispute between the experts, or the issue of whether the scheme is "*low cost*". Still, we summarise the key points for completeness.

(iii) Hostel value

65. The parties are £1.865mil apart on the value of the hostel.

66. That dispute turns on the level of rents for – in particular – the single hostel rooms.

67. The starting point is to recall (see the figures in Inquiry Document 6 – the Schedule of Differences table) that:

(i) The value of the existing hostel rooms is agreed at £113,269 / room.

(ii) Dr Lee's first attempt in July 2020 increased that to £430,284 / room – an increase of over 3.5 times. Which created a totally untenable value for the hostel element of the scheme of £14.25mil.

(iii) As Mr Brown explained – and he was not challenged on any of this in cross-examination – he had a discussion with Dr Lee in November 2020. After Dr Lee's July 2020 report, but before Dr Lee's proof. They discussed Mr Brown's Appendix D – which exposed Dr Lee's excessive hostel valuation, i.e. over £430k per room vs. £113k per room existing. Mr Brown told Dr Lee that his numbers were far higher even than the appropriate rates for a budget hotel. And after that conversation, Dr Lee substantially reduced his hostel valuation.

(iv) Dr Lee's valuation now puts the hostel element of the scheme at £7.86mil – a plunge of £6.38 mil in just a few months.

68. The effect of that plunge was to wipe over £6mil from Dr Lee's assessment of the scheme's gross development value. Which presented Dr Lee with a problem. Because the full extent of his headroom is around £4mil. Unless he could find a way of dramatically increasing the value of the HMO component of the scheme, the game was over. Which leads us back to his timely discovery of the 2019 CBRE report, his misreading of it, and his plummeting HMO yields – on which see above.

69. On this, the Council – quite remarkably – accuses Mr Brown of "*chopping and changing*" on his values at §101 of its closings. Let's be clear. It can be seen from the schedule of differences document that Mr Brown's gross rent assumption for the hostel element of the scheme started at £340,000 p.a. and ended up at £359,160 p.a. On the other hand, Dr Lee's assumption started at £651,039 p.a. and ended up at £445,665 p.a. The numbers speak for themselves.

70. In any event, the real difference between the experts is whether or not the appropriate comparator single hostel rooms is a budget hotel. Mr Brown's work shows a range of prices for single-person hostel rooms between £11-£25. He selected £24, so at the top of the range and comparable to other options with en-suite self-contained rooms.

71. Dr Lee tells us there is no material difference between a hostel and a hotel. That is wrong. He has no evidence to support the idea that hostel guests would be just as happy to pay hotel rates. He has no examples of other planning inspectors accepting that hostel rates should be set at hotel levels. And the courts have recognised in cases like *Commercial and Residential Property Development* [2] that hostels are very different propositions to hotels.

72. And to state the obvious, there is no evidence to suggest that single people after single hostel rooms would pay rates comparable to double rooms in a hotel.

73. Again, in the end, unless Dr Lee can persuade the Inspector that single people would be prepared to pay hotel prices for hostel accommodation – something for which he has no evidence at all – this part of the dispute must be resolved in the Appellant's favour.

(iv) Food & Beverage

74. In July 2020, on what he confirmed was his then understanding that there would be a central canteen offering, Dr Lee included £592,941 for income from "*food and beverage*".

75. After that, Mr Brown told Dr Lee that he'd made a further error. There would be no canteen. The facility is self-catering.

[2] *Commercial and Residential Property Development Co Ltd v Secretary of State for the Environment* [1982] JPL 513.

76. One might've assumed that would take £592,941 off Dr Lee's valuation. But no. Even without any canteen, he still suggests – on the basis of quite literally no evidence at all – that the Inspector should add £452,941 to the scheme's value. To account for notional profits from hypothetical breakfast boxes.

77. Let's be clear. Dr Lee has **no evidence** that:

(i) Breakfast boxes would be offered in this scheme;

(ii) That they have been offered in any other hostel scheme elsewhere;

(iii) Even if they were offered, that they would be profitable (or whether the offer would be made e.g. as a loss-leader to maintain rental income); or

(iv) Even if they were profitable, why that profit is certain and secure enough to be capitalised at a 4.25% yield – i.e. the same as Dr Lee's hostel rents.

78. We've entered the realms of total guess-work now. No more or less. Dr Lee has no evidence to support this element of this valuation. The Council's closings call his approach conservative: §117. On the contrary. It has no foundation at all.

79. And recall, on the figures, even if the Inspector is more optimistic than Mr Brown and puts HMO yields at 4.25% - i.e. exactly where Dr Lee had been in July 2020 – if he then excludes Dr Lee's £452,941 for Food & Beverage from the scheme's value, it could not then on the otherwise agreed figures support any contribution toward affordable housing: see Mr Brown's yields table at Inquiry Document 8.

(v) Finance rate

80. The difference between the parties is 6% vs. 7%: see the Schedule of Differences. That amounts to £695,549.

81. As Mr Brown's proof explains, his 7% has the recent support of the Planning Inspectorate: see his proof at §9.3.2. It was also recently agreed by BPS acting for the London Borough of Hounslow for a co-living scheme: see his proof at §9.3.3. This is direct comparable evidence of real-world schemes.

82. Let's be clear: Dr Lee presents **no evidence at all** in his proof which justifies a 6% finance rate.

83. Yet again, the contest is between real-world evidence on the one hand, and mere opinion on the other.

84. If the Inspector accepts that this evidence shows 7% is a reasonable finance rate, then even if he was with Dr Lee on everything else (hostel rents, food and beverage, build costs etc.), then all it would take would be to apply the 4.25% yield which Dr Lee himself supported in July 2020 to exceed the Council's headroom. And to demonstrate conclusively on agreed figures that the scheme cannot viably support a contribution toward affordable housing.

(vi) Conclusions on viability

85. Dr Lee's position was marginal to begin with. After the collapse of his hostel valuation wiping over £6mil from the scheme's value at a stroke, it became untenable. He has tried to plug the gap in value by lowering his HMO yield in a way which is literally unsupported by any of the evidence before this inquiry. We do not go into the other smaller disputes e.g. on build costs etc. because their scale is too small to affect the fundamental point:

If the Inspector agrees with Mr Brown that the evidence supports (at lowest) a 4.5% capitalisation yield for HMO co-living rents, then that would be enough to conclusively demonstrate that the scheme cannot viably support any affordable housing contribution.

86. In consequence, the Inspector does not need to reach final view on the other contested issues in the case e.g. on the detail of build costs, finance rates or the other items in dispute.

87. And in those circumstances, policy S.H1(2)(iii) in the Council's Local Plan would be complied with – i.e. because that policy is "*subject to viability*". As would D.H7(1)(c) because that policy relies on and refers us to S.H1: see §9.69-70 of the Local Plan.

88. On that basis, D.H7 is accorded with whether or not the appeal scheme is "*low cost housing*" within the meaning of D.H7(1)(c). But for completeness, we address that issue too.

(vii) In any event, the scheme is low-cost housing

89. Ms Milentijevic agreed that there are a wide range of HMOs – in terms of quality, affordability, facilities and target market. The Council policy D.H7 must cover them all. It does not only support HMOs which effectively comprise affordable housing. It also supports more large scale, high-quality propositions like the appeal scheme: see §9.69 of the plan. And the policy does not define what it means by "*low cost housing*".

90. Because there is no definition in the policy, the supporting text, the SHMA, any SPD or anywhere else, the Inspector has to make a judgment.

91. It is a judgment which can be informed by Dr Lee's own view in July 2020 that the scheme's proposed rents would qualify as low cost: see §4.5 of Dr Lee's July 2020 report.

92. It can also be informed by the proposed UU, and the Appellant's commitment to keep rents low into the future, i.e. at no more than 80% of average monthly rates for studios in Tower Hamlets.

93. Ms Milentijevic sought to put all kinds of glosses on the policy which are not there. She says it must provide for those on a low income. But the policy doesn't say that, and nor does the

supporting text. She then seeks to apply a series of different levels, e.g. London Affordable Rent. But the policy doesn't require those either, and certainly doesn't ask for "low cost" to be judged against affordable housing rents rather than market rents.

94. The Appellant's case is supported by a detailed affordability analysis: see section 4.4 of Mr Bowen's Demand Assessment and Market Analysis. That confirms that:

(i) Panda House offers short-term accommodation that is more affordable that the current borough averages.

(ii) This means that Panda House will serve the need for more affordable accommodation amongst transient renters, who are often in lower income jobs: see p.23 of the Demand Assessment and Market Analysis.

95. The UU ensures that position will remain into the future. In consequence, the appeal scheme represents low cost housing within the meaning of D.H7(1)(c).

(4) The scheme is a high-quality design which will preserve and enhance the character and appearance of the St Anne's Church Conservation Area

96. Panda House is a 1960s/70s building that is currently used as a hostel.

 [3]

97. The existing building has little historical value other than as representative of the poor architectural quality of the post-war redevelopment of the area. The parties agree it makes no positive contribution to the St Anne's Church Conservation area.

98. As the Inspector will see on site, the reality of the St Anne's Church Conservation Area is that its character and appearance is compromised by the visible, immediately adjacent and directly experienced low architectural and urban quality of their settings.

99. As Mr Collins explained, the bigger picture is the extent of change in this CA since the 2nd World War. Some has been positive. Some has not. There has been a great deal of change even since the CA appraisal. That change is not, as Mr Collins explained, all a negative thing.

[3] Front cover of the DAS.

It has become part of the character of the CA. As has the major arterial road which links the City to Canary Wharf.

100. But what is clear is that there are now a number of tall buildings of considerable scale and massing both within and immediately adjacent to the CA, see the Appellant's Design Revisions Document of 14.10.20:

101. Unfortunately, Panda House typifies the poor quality post-war development that replaced the older urban grain with buildings of bland generic style, in a form with materials that do not relate particularly to the surrounding area and is therefore makes a negative contribution to the character and appearance of the conservation area.

102. In contrast, the appeal scheme is a sensitive and high-quality piece of architecture:

Existing *Proposed* [4]

103. The scheme refers to but does not slavishly imitate surrounding buildings and materials. It is sensitively set back from Commercial Road – with the obvious benefit that brings in terms of amenity and public realm.

104. It sits comfortably in the heterogenous and evolving character of this conservation area. It ensures that the buildings within them – in particular the church – retain their significance. Indeed the scheme will be lower both than the church and Salton Square opposite.[5]

[4] Both images taken from p.9 of the Create 14.10.19 "*Design Revisions Document*".

[5] See the view looking east along Commercial Road at p.27 of the Heritage Appraisal.

105. The Inspector must also have regard to the previously consented scheme:

Previously consented scheme [6]

Comparison between heights of proposed and previously consented [7]

106. That permission:

(i) Pre-dated the CA appraisal; and

(ii) Post-dated the NPPF by several months.

The Council provided no cogent explanation at all on why a height and scale which was acceptable in 2012 has become unacceptable since. That is because there is no cogent explanation.

107. With regard to the church:

(i) The church is not listed. It is only a part of the area as a whole which is a large collective including a series of buildings.

[6] Matthew Williams, 15.9.20 Rebuttal Note on Design Issues, P.5.

[7] CREATE 14.9.19 Design Revisions Document, p.8 section 2.

(ii) The setting of the church has already been dramatically changed by the development of Commercial Road and the other substantial buildings in the area. Nonetheless, it remains a positive contributor to the historic interest of the CA.

(iii) After sensitive design and re-design, the scheme has successfully ensured that the church will retain its existing prominence.

(iv) Travelling along Commercial Road from the west, views of church are obscured already by the bridge until only shortly before the site itself.

(v) And even then, the significance of the tower will be preserved, in particular by the adjustments made the scheme post-application, i.e. setting the building further back from the street edge which moves it out of views of the tower:

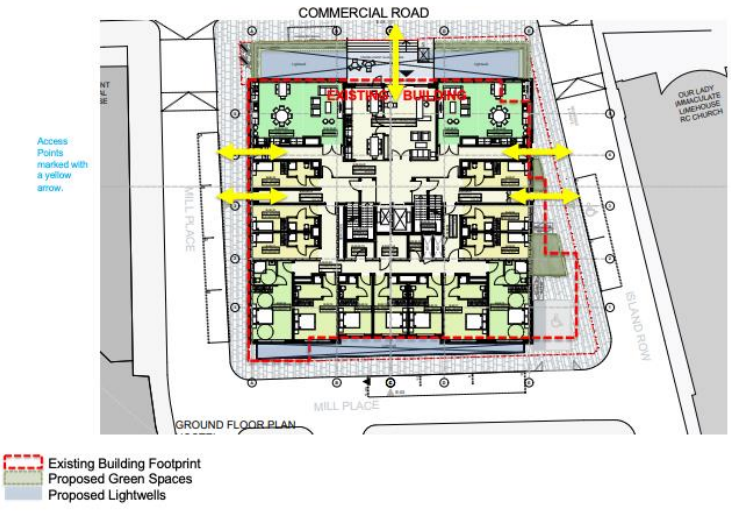
The Inspector will recall that, in terms of metres, Mr Handcock agreed that the 2 upper floors were "*reasonably well set back*".

(vi) Traveling from the east along Commercial Road, the church will remain in the focus and forefront of the view.

(vii) As Mr Williams explained, this building will be a good neighbour. Which sits respectfully into the character of the Commercial Road, see e.g. the photomontage at p.13 of the October 2020 design response:

(viii) The Inspector will recall that the library is Grade 2 listed. Immediately next to the Library is a building on a very similar scale to the appeal scheme. So we can see how such a building integrates successfully into the street scene. As Mr Williams put it, the appeal scheme will be a quiet building which respects the relationship of the church and library, and the rhythm of the street.

108. The Council's argument about a "*pinch point*" (after all that, totally dropped in its closings) was difficult to understand, and became no clearer over the course of the inquiry. The Inspector will recall the diagram at p.10 of the October 2019 design response:



109. There is no material difference between the existing and proposed building footprints. Indeed, as Mr Collins explained, in the urban environment in this part of London, for buildings to fill up to edge of junction is not unusual. The buildings extending to the edge of minor side streets is far more typical than an artificial "*cut-out*".

110. The Council's position was confusing and confused:

(i) Mr Handcock said during the round-table that he put the overall level of harm to the significance of the CA **in the middle** of the spectrum of less-than-substantial harm.

(ii) That is, with respect, absurd.

(iii) The less-than-substantial scale covers everything above "no harm" to immediately below "substantial harm", which is a very high hurdle requiring the impact on significance to be "*serious such that very much, if not all, of the significance was drained away*" *Bedford BC v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin) at §24.

(iv) The idea that this building would, in effect, drain away around half of the CA's historic interest as a whole is totally untenable.

(v) Again, even assuming harm to the unlisted church – which we don't accept – the church is only one of many buildings which contribute toward the significance of the CA. The Council provided no evidence to support such an extreme position. The Inspector should reject it.

111. In the end, there won't be any harm to the historic interest of the CA. On the contrary, by replacing a poor building with a building which one of the Council's witnesses agreed was a "*high quality*" design, the scheme will enhance the character of the CA.

112. In the end, even if the Inspector were to find a small amount of less than substantial harm (noting that there are no allegations of substantial harm), it would easily be outweighed by the public benefits of providing much needed high quality accommodation in a very sustainable part of the city. And we return to that below.

(5) The Council's various other objections do not support refusal

113. This was a "kitchen sink" refusal, but most of the Council's various objections (e.g. on highways, air quality, waste storage and energy) have now fallen away. Most but not all.

114. The Council still contends that there would be inadequate amenity space in the scheme, even though:

(i) Dr Lee valued it as a "high quality" scheme in part because of the quality and quantity of its amenity spaces; and more importantly; and

(ii) As Mr Williams explained, in reality the scheme provides 345 sqm against a policy requirement of 124 sqm. Even on the Council's best case, the "shortfall" against policy is 14 sqm. The Inspector asked at one point what harm would be caused by the Council's notional "shortfall". There isn't any.

115. On daylight and sunlight, the Council makes relies on the BRE guidance – "*Site Layout Planning for Daylight and Sunlight – a Guide to Good Practice*", 2nd edition, by Paul Littlefair. But the Council cannot support a reason for refusal in that way, because the BRE guidance itself tells us that:

> "The guide is intended for building designers and their clients, consultants and planning officials. The advice given here is not mandatory and the guide should not be seen as an instrument of planning policy; its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design (see Section 5)."

Further:

(i) The BRE guidance is for standard residential development, not HMO.

(ii) Even then, the proportion of the appeal scheme which accords with the BRE guidance is 83% at first floor, 89% at second floor and 94% at third floor and 100% at floors four to six inclusive. So, there is a very high degree of compliance with the guidance.

(iii) The British Standards Mr Owens referred to are (a) out of date, and (b) not adopted planning policy.

(iv) In reality, as Mr Williams explained, there is a massive over-provision of space with large, deep rooms. The Council's issue only arises in respect of a couple of rooms, and only then because those rooms are so deep, and the kitchens are shown towards the rear. As Mr Williams explained, if the Appellant had separated the kitchens from the other communal into rooms of 13m2 (i.e. not habitable) the Council's point would fall away.

(v) So really this is an objection to the Appellant's decision to make these rooms open plan, but the Council offers no coherent design rationale for breaking the rooms up.

116. The Council maintains an objection on archaeology, but that can very obviously be controlled by condition. We are talking about the possibility of a hypothetical burial ground of undetermined significance in a location where it might not be present, absent any evidence it's actually there. As RPS explain – see inquiry document 7 - the archaeological interest of

the site would be afforded proportionate protection by the staged GLAAS standard worded planning condition secured to any planning consent.

117. The Council also maintains an objection on the accessibility (but no longer the amount) of cycle storage. Again this is totally misconceived. As the Appellant explains at Core Document D09:

(i) Transport for London who produced the London Cycling Design Standards (LCDS) raised no concerns with regard to the cycle parking provision for the appeal scheme;

(ii) The proposed arrangements are both covered and secure, in line with design requirements for long stay cycle parking, as set out in various design guides including the LCDS.

(iii) In line with policy and design requirements the cycle parking also allows for a minimum of 5% of the total provision being suitable for non-standard cycles such as cargo bikes and adapted cycles for people with mobility problems. This cycle parking is provided in the form of Sheffield stands within an external store which is again covered with access controls for security, in line with policy and design requirements.

(iv) The Council's remaining concerns about distance and inconvenience are unevidenced, but can in any event be met very easily, e.g. through powered doors.

(6) The scheme's benefits are many, and they easily carry the planning balance.

118. The planning balance exercises in the proof of Ms Milentijevic are **unsafe**. We make no bones about it. They are **unsound**. The inspector cannot rely on them. That is because:

(i) Chapter 11 of the NPPF is clear – this Government places great stock in the efficient and effective use of previously developed land (see the extracts above). Achieving a

more effective use of an incredibly well connected urban PDL site to help meet enormous needs for housing is a powerful benefit in favour of this scheme, but it is not even *mentioned* in Ms Milentijevic's evidence.

(ii) The same goes for the London Plan's approach to optimising sites to make the best use of land. A powerful benefit of the scheme not so much as acknowledged in Ms Milentijevic's evidence.

(iii) The regenerative aspects of this scheme – replacing a poor building with one which the Council's own valuer accepted will be a building of high quality – are further powerful benefits. Remarkably, they are benefits to which Ms Milentijevic only gives limited weight. But she does that on the basis that a hypothetical alternative scheme could achieve the same benefits whilst according in full with her understanding of the Council's policies. This approach is **unlawful**. As the Court of Appeal confirmed in *Lisle-Mainwaring v Carroll* [2017] EWCA Civ 1315 at §15-§16, even in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes are not relevant or, if they are, should be given little or no weight. Ms Milentijevic wasn't aware of those principles. But they pull the rug out from her approach to the planning balance.

(iv) Ms Milentijevic also downplays the scale of the scheme's benefits on the basis of her mis-understanding that it is undeliverable. Her proof alleges that the Appellant's viability evidence demonstrates a deficit, but of course that is quite wrong (the point is that the profit is insufficient to make a contribution towards affordable housing viable measured against agreed profit targets).

119. In the end, the Council has under-cooked the benefits and over-cooked the harms (as above, the allegation that any harm to the special interest of the CA is in the middle of the less-than-substantial spectrum is totally untenable).

120. The position is simple. This is a high-quality example (Dr Lee agrees) of a much-needed type of accommodation (the Local Plan and the SHMA confirm). In an incredibly sustainable and desirable location. In the Borough with the highest overall housing target of all LPAs **anywhere in the Country**. Where the need for this particular kind of scheme isn't measured in the hundreds, but the thousands – and that's even within a 20 minute walk time of the site.

121. If this Council is going to come anywhere remotely close to meeting its objectively assessed needs set out in its SHMA, and anticipated through its Local Plan, then planning permission for high quality schemes like this in accessible locations which replace poor buildings must be allowed.

122. In the end, the scheme accords with the Council's local plan taken as a whole (which offers, we should remember, **support** for HMOs through D.H7). Further, the benefits Mr Parr describes at section 10 of his proof are compelling. They more than outweigh any harm to the significance of the CA (of course, the Appellant rejects the idea that any such harm arises). This will be an excellent building in a sustainable location which will make a valuable contribution to meeting needs in Tower Hamlets.

123. In the end, allowing the appeal accords with the statutory development plan taken as a whole, and is further supported by a range of powerful material considerations.

124. And all of that is before we get to the tilted balance.

125. At the outset, and for completeness, we note that it is remarkable that Ms Milentijevic has had another go at her planning balance exercise as part of a supplementary proof when all the Inspector asked for was a "*submission of statement on implications of updated HDT*". Not a fresh go at the planning balance on which I cannot cross-examine her.

126. In any event, as a result of the recent Housing Delivery Test results, we now know that the Council's plan is **deemed out of date**: see §11(d) and footnote 7 NPPF. Which means, if the Inspector agrees that the scheme passes the heritage balance at §196 NPPF, then the tilted balance applies to this case under §11(d), i.e. permission should be granted unless the harms **significantly and demonstrably** outweigh the benefits. That is the nail in the coffin of the Council's case. Because:

    (i) It agrees that there is substantial demand for a scheme of this type in this location.

    (ii) It agrees, as above, there would be significant benefits associated with optimising the site's efficient use.

    (iii) There is, as we know, very substantial unmet need for HMO accommodation in Tower Hamlets.

    (iv) So the idea that any residual harms not only outweigh those benefits, but **significantly and demonstrably** outweigh them on such a fantastically sustainable site on which the Council supports redevelopment for housing, and "*acknowledges the benefits of providing housing on the site, particularly in light of the HDT shortfall and the regeneration benefits of replacing the existing hostel*" (see §201 of its closings) is just untenable.

127. For those reasons, granting permission is supported both by the statutory development plan and the tilted balance at §11(d) of the NPPF, and we ask you to allow the appeal.

ZACK SIMONS

Landmark Chambers

180 Fleet Street

London EC4A 2HG

29th JANUARY 2021