

## Planning Implications of the Housing Delivery Test - De Paul House, 628-634 Commercial Road

### Supplementary Note prepared by Aleksandra Milentijevic on behalf of LB Tower Hamlets

#### Introduction – the issue

1. On 19 January 2021, the Ministry of Housing, Communities and Local Government published the Housing Delivery Test (HDT) results for 2020. These results show that the London Borough of Tower Hamlets (LBTH) has delivered 74% towards its housing requirement target as calculated over the last three years. As this is “substantially below” the target requirement (footnote 7 of the National Planning Policy Framework), the LPA has, albeit by the finest of margins, been designated as a “presumption” authority.
2. The LPA accepts that as a consequence of the HDT and the operation of footnote 7 of the NPPF that paragraph 11(d) is engaged in this appeal.
3. This note addresses the planning implications of the application paragraph 11(d) to the Appeal Scheme and how that informs the overall section 38(6) Planning and Compulsory Purchase Act 2004 planning balance. The operation of 11(d) informs but does not displace the need to conduct the s.38(6) balance with the statutory presumption in favour of plan-led development which I conduct below. My analysis is based on the latest case law concerning the approach to the tilted balance and the s.38(6) balance<sup>1</sup>. The relevant case law is discussed in greater detail in the LPA’s closing submissions which have been prepared by counsel.
4. In summary, my analysis of the policy and planning position, set out in greater detail below, is as follows:
  - i. The results of the 2020 HDT for the LBTH engages para. 11(d) NPPF via footnote 7.
  - ii. Applying para. 11(d)(i), I consider that undertaking the balance under para. 196 of the NPPF, the public benefits in this case (even when one takes account of the benefit of the additional housing provided in light of the housing delivery shortfall) do not outweigh the heritage harm to the St Anne’s Church Conservation Area. This harm provides a clear reason for refusing the proposed development. That being the case, the tilted balance should not be applied;
  - iii. If the Inspector does not agree with the LPA that there is a clear reason for refusal on heritage grounds, the ‘tilted balance’ under para. 11(d)(ii) is to be applied.
  - iv. The ‘tilted balance’ under 11(d)(ii) (if applicable) is a material consideration to be considered in the context of the s.38(6) overall balance and the presumption in favour

---

<sup>1</sup> See *Monkhill Ltd v SSHCLG* [2019] EWHC 1993 (Admin); *Gladman Developments Ltd v SSCLG* [2020] PTSR 993 (“Gladman”)

of plan-led development. The effect of footnote 7 is that the development plan policies are *deemed* out of date; it does not mean that those policies are *substantively* out of date. An assessment of the weight to be given to the development plan policies which are most important to determining the appeal must be made. Contrary to the Appellant's assertion, in making that assessment it is relevant to consider the extent of LBHT's housing delivery shortfall, the reasons for it and the prospects of it being reduced and whether it is a long term problem or short lived. It is clear, in my view, that when one considers those matters, that the recently adopted development plan policies should be accorded full weight (and if not full weight then very substantial weight).

- v. When the development plan is given full (or substantial weight), the appeal scheme's conflict with multiple important development plan policies outweighs the benefits of the scheme even if the scheme is found to benefit from the '*tilt*' under para. 11(d)(ii). In my view the adverse impacts of scheme would significantly and demonstrably outweigh the benefits of this scheme.
5. For the avoidance of doubt, and leaving aside the LPA's important heritage objection, the LPA has always made clear that it does not oppose the redevelopment of the appeal site for housing. Our objections to this scheme do not prevent housing delivery coming forward at the appeal site provided that the proposed scheme makes an appropriate contribution to affordable housing and demonstrates that it meets an "identified need". Those reasons, arising from the Local Plan, are entirely consistent with the policies in the NPPF and must be considered individually and cumulatively in the overall planning balance. When one understands this, the justification for approving this scheme, which is contrary to plan-led development, on an ad hoc basis, when the delivery shortfall is being addressed and is not caused primarily (or at all) by planning reasons or defects in local planning policy, simply does not exist.

#### **Paragraph 11 d) of the NPPF**

6. Paragraph 11. d) of the National Planning Policy Framework<sup>2</sup> provides:

*'11. Plans and decision should apply a presumption in favour of sustainable development.*

*... For decision-taking this means:*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or*

---

<sup>2</sup> C-01

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*  
(underlining added)

7. Footnotes 6 and 7 provide (as relevant):

*'6 The policies referred to are those in this Framework (rather than those in development plans) relating to:... designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63);*

*7 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.'*

## **Assessment**

### **Paragraph 11 (d) (i) – Clear reason for refusal on heritage grounds**

8. The focus of the LPA's heritage objection is the harm that will result from the appeal scheme to the designated heritage asset, St Anne's Church Conservation Area, as a result of its harm and encroachment on Our Lady Immaculate Church, which is a non-designated asset. Details on the assessment of the harm caused is included in the Council's Statement of Case<sup>3</sup> and was provided through the evidence of Mr Handcock at the roundtable discussion on Tuesday 12th January 2021. He explained that the appeal scheme would result in "a notable degree of harm" to Our Lady Immaculate Church and by extension in harm to the key group of public buildings in the conservation area. Mr Handcock described the level of less than substantial harm as being in "the middle of the spectrum" between no harm and substantial harm and at a considerable but "moderate" level.
9. I attach *great weight* to the harm that the proposal scheme will cause to the designated asset. In addition, I take into account the concerns raised by Mr Single in respect of the potential harm to archaeological assets.
10. I conducted a detailed analysis of the heritage balance under para. 196 of the NPPF in the Council's Statement of Case and in my main proof of evidence.<sup>4</sup> That assessment needs to be adjusted slightly in light of the HDT test, although my overall conclusion on the heritage balance remains unaltered.

---

<sup>3</sup> E-05, p.29-40

<sup>4</sup> H-01 pp 42-45

11. I have assessed what I regard as the modest public benefits of the scheme. The principal benefit of the scheme is that it makes a contribution towards meeting the borough's housing need. I acknowledge the contribution that large scale HMOs, such as the appeal scheme, can make a contribution towards meeting the borough's overall housing need in the Statement of Case<sup>5</sup>. It is appropriate, therefore, that, in the context of the borough's housing delivery shortfall under HDT, additional weight should be given to the benefit that the provision of this HMO housing would make towards meeting the borough's unmet need.
12. However, the benefit of new housing provision still needs to be viewed in the context of the concern that the quality of the accommodation provided is poor, particularly in relation to the quality and size of its communal and amenity spaces, and the fact that it makes no contribution whatsoever towards affordable housing as required by policy. This reduces the weight to be given to the benefit in terms of meeting the housing need.
13. Nevertheless, I acknowledge that benefit, which I have weighed in my revised para. 196 balance, in addition to the other modest public benefits of the scheme (including regeneration, economic, environmental and transport benefits<sup>6</sup>. I consider that the social and economic benefits<sup>7</sup> of the scheme – in terms of the provision of construction jobs, the regeneration benefits and the potential for additional spending on local services – would not be unique to this proposal and would be present in any development proposal that came forward for this site.<sup>8</sup> That is why I consider only modest weight should be given to those benefits of the proposal scheme.
14. Despite the increased weight attaching to the public benefit of the additional housing provided by the scheme, I do not consider that the identified harm caused to the St Anne's Church Conservation Area, to which great weight should be attached, would be outweighed by the public benefits of the Appeal Scheme. The harm to the Church and the Conservation Area as a whole provides a clear reason for refusing the development proposal. Accordingly, the 'tilted balance' should not be applied in this case and there should be no further consideration of para. 11(d)(ii). The appeal should be determined on a straightforward application of the s.38(6) balance.
15. In light of the heritage reason for refusal, in addition to the scheme's multiple other conflicts with the overall development plan which are not outweighed by other material considerations, the appeal should be refused (see my main proof of evidence)<sup>9</sup>.

---

<sup>5</sup> See, for example, E-05 para. 6.9 which cross refers to the Local Plan 9.69 which recognises the contribution HMOs can make.

<sup>6</sup> H-01, p.43-44, paras 10.4-10.9

<sup>7</sup> H-01 p. 44 para. 10.8

<sup>8</sup> That this is capable of being legally relevant to a decision-maker's assessment of the weight to be given to socio-economic benefits was confirmed in *Gladman Developments Ltd v SSCLG* [2020] PTSR 993 *Holgate J* at [123]-[124]

<sup>9</sup> H-01, p.45-46

## **Paragraph 11 (d) (ii) and the overall planning balance**

### *Approach to 11(d)(ii) and the local development plan*

16. If the Inspector disagrees with the LPA's position on heritage matters, it will become necessary to consider paragraph 11(d)(ii) and how the so-called 'tilted balance' interacts with the overall planning balance under s.38(6) and the statutory presumption in favour of the development plan.
17. In this case the application of para. 11(d)(ii) has been triggered by the HDT and the shortfall in the LPA housing delivery. Footnote 7 has the effect of *deeming* those policies important for the determination of the appeal (including Local Plan policies D.H7, D.H2 and S.H1 as "out of date"). This does not mean those policies, which were introduced by the recently adopted and up-to-date in all material respects Local Plan 2031, are substantively out of date. Whether or not those policies are "out of date" and the weight to be given to the development plan needs to be assessed.<sup>10</sup>
18. Relevant to the assessment in this case are the following factors:
- (a) The nature and extent of the housing delivery shortfall (including whether the problems were recent or temporary);
  - (b) The prospects of that shortfall being reduced;
  - (c) The reasons for that shortfall;<sup>11</sup>
  - (d) Steps for remedying the shortfall.
19. Once those factors are taken into account, and for the reasons set out below, the LPA will contend that the Inspector can give full (or at very least) substantial weight to the development plan policies.
20. Whatever the Appellant may suggest, the tilted balance does not automatically lead in this appeal to the grant of planning permission. It is relevant as an "other material consideration" to be weighed in the balance under s.70(2) of the Town and Country Planning Act 1990<sup>12</sup> along with full consideration of the development plan policies, and in particular consideration of policy D.H7, which emphasises the importance of HMO schemes contributing to affordable housing and meeting an identified need. Applying full (or alternatively substantial) weight to the development plan policies (including those which weigh in favour of the appeal), together with the tilt towards granting permission (i.e. the applying the two balances under 11(d)(ii) and s.38(6) together in an overall assessment) I conclude that the benefits of the appeal scheme would be significantly and demonstrably outweighed by the adverse effects.

---

<sup>10</sup> Gladman at [82]

<sup>11</sup> Ibid. [82] and [97]

<sup>12</sup> Ibid [81].

## Assessment of the Housing shortfall

### *(a) Nature and Extent of shortfall*

21. LBTH HDT 2020 results are as follows:

Number of homes required			Total number of homes required	Number of homes delivered			Total number of homes delivered	Housing Delivery measurement
2017-18	2018-19	2019-20	11,002	2017-18	2018-19	2019-20	8,106	74% Presumption
3,473	3,931	3,598		2,010	1,526	4,570		

#### *Housing Delivery Test 2020 – Tower Hamlets*

22. This is the first year of the fully phased HDT. This means that for first time an authority which has met less than 75% of its housing requirement over the last three years will be treated as a “presumption authority” meaning para. 11(d) is engaged. LBTH is only just below the threshold at which the presumption is triggered at 74%. Had LBTH been able to show an additional 146 completed homes over the whole 3 year (or 48 homes/year) period this discussion would not be taking place.
23. It is important that the shortfall is understood in the context of LBTH’s longer term track record of good housing delivery. LBTH has the highest housing requirement of any borough in the London Plan (2016). It is notable that, in recent years, Tower Hamlets has delivered more homes than any other local authority in England<sup>13</sup> and it is one of the fastest growing areas Europe<sup>14</sup>.
24. The Tower Hamlets Strategic Housing Market Assessment (2017)<sup>15</sup> identifies an objectively assessed need of 3,097 homes from 2016-2031 in the borough. Given that the London Plan housing targets are higher than this figure, Tower Hamlets is a borough which is expected to make a contribution to the London’s overall strategic housing need.
25. Tower Hamlets is a borough with a history of healthy housing delivery. In addition to the three years on which the HDT 2020 is based, if one looks at the record of housing delivery for the years prior to 2018-19 (as well as the most recent 2019/20 year which showed delivery of 4570 homes) it is evident that local housing delivery was strong. The years 2017-18 and 2018-19 (for the reasons explained below) were anomalous in their particularly low delivery; however, these are unfortunately, the basis for the HDT 2020 calculation.

<sup>13</sup> Paragraph 2.14 of the Tower Hamlets Local Plan 2031 (2020).

<sup>14</sup> Paragraph 1.2 of the Tower Hamlets Local Plan 2031 (2020).

<sup>15</sup> H-01, Appendix 3.

26. The LPA's good record of housing delivery was recorded by the Local Plan Inspector who noted in her report dated 20<sup>th</sup> September 2019 that on a longer term view, looking back over the previous 5 years [2012-2017] the LPA was not under-delivering on housing, but actually exceeding its delivery targets. In her report at paragraph 33 she noted:

*'33. The Five-Year Housing Land Supply and Housing Trajectory Statement (CD SED27) sets out the approach adopted by LBTH in the context of National policy and the ALP [Adopted London Plan]. In the context of paragraph 47 of the Framework and the buffer requirement, the Council has over the last 5 years exceeded the housing target by some 417 homes.'*

27. In other words, based on the ambitious housing requirements set by the London Plan 2016, the Local Plan Inspector was satisfied that the LPA was not an authority which was under-delivering on housing. Moreover, she was satisfied that the housing delivery strategy and policies put forward in the then draft Local Plan were capable of delivering on this very high target (a target, which for the reasons set out below, is likely to be imminently reduced by revisions in the new London Plan).

28. In the most recent year 2019-2020 of the HDT, LBTH delivered 4570 homes, markedly higher than the two previous years 2017-18 and 2018-2019. Those years pre-dated the adoption of the current Local Plan in January 2020. Prior to that the LPA had maintained its strong record of housing delivery in line with the ambitious targets set for it.

*(b) Prospects of the shortfall being reduced*

29. There are very real prospects of the shortfall being substantially and imminently reduced. That is not just because of the LPA's pro-active housing delivery strategy outlined below but because the borough's housing requirement is expected soon to be significantly reduced downwards.

30. The new London Plan has reached Publication Stage and both sides agree "substantial weight" can be attached to it. The Plan sets out new housing targets for all London boroughs. Tower Hamlets is one of the few London boroughs whose housing targets have gone down. In the Publication version of the London Plan the annual housing target for LBTH is reduced from 3,931 completed homes a year in the London Plan (2016) to 3,473 homes a year.

31. The reduced figure is based on the Strategic Housing Land Availability Assessment (part of the new London Plan<sup>16</sup> evidence base) which takes a capacity-based approach to determine the boroughs' housing targets. As sites in the borough get built out, capacity reduces. This is reflected in the SHLAA which provides the most up-to-date assessment of the available capacity for housing delivery. Although LBTH would still have a high housing delivery target to meet, the reduction in its target from the previous London plan is a recognition of the LPA's reduced capacity (i.e. running out of sites) to deliver those higher numbers.

---

<sup>16</sup> B-01

32. The reduction in the LPA's housing requirement would radically reduce the current shortfall. If the new targets were applied tomorrow, or even included for the last 2019/20 year in the HDT, there would be no discussion about the LPA being a "presumption authority".
33. The difference that will be made by the revised and reduced housing target can be seen if the target for 2019/20 is change to the New London Plan housing target. When measured against that target, the LPA would have reached the 75% threshold<sup>17</sup> and exceeded it if the Covid discount was also applied to that target<sup>18</sup>. In both scenarios, the LPA would no longer be a "presumption authority". This is relevant as the New London Plan housing targets are set for the first ten years up to 2029 and include the 2019-20 delivery year.
34. There is a very real prospect of the shortfall soon being reduced. The new London Plan will soon be adopted and once adopted will become part of the development plan as the Spatial Development Strategy for London from 2019 to 2041. Once the new housing targets become part of the development plan the HDT will be calculated against the new target.
35. That is reflected in the Planning Practice Guidance<sup>19</sup> and the Housing Delivery Test measurement rule book at paragraphs 16-18:

*'16. Any new housing requirement will be used for the calculation of the Housing Delivery Test from the date that it becomes part of the development plan.*

*17. For the purposes of calculating the Housing Delivery Test, the new adopted housing requirement will apply from the start of the relevant plan period (set out in the strategic policies for housing), which may be earlier than the adoption of the strategic policies.*

*18. Following adoption of new strategic policies, the new housing requirement figure can be used to recalculate the Housing Delivery Test results during the year, in collaboration with MHCLG.'*

*(c) Reasons for shortfall*

36. There are number of reasons for the housing delivery shortfall. It is critical to note that those causes pre-date the adoption of the Local Plan, are relatively recent causes (such as Brexit and the impact on international investment) and are unrelated to the operation of local planning policies and planning decision-making. In other words, the principal causes of the delivery shortfall are unrelated to any deficiencies in the planning system and the Local Plan in particular.

---

<sup>17</sup> Based on including the New London Plan figure of 3,473 in 2019/20 for LBTH.

<sup>18</sup> Based on including the New London Plan figure and applying the Covid discount (3,178) in 2019/20, LBTH would have delivered 77% of its target.

<sup>19</sup> PPG Housing supply and delivery, para. 042 Reference ID: 68-042-20190722



37. In fact, it should be noted that only the Council's Development Committee and Strategic Development Committee have granted planning permission for 2,580 new homes since March 2020 using new Local Plan policies. If one is also to look at the permissions under the Council's delegated powers, this figure would be significantly higher.
38. The typology of housing developments in the borough and their pace of construction is relevant to the shortfall. A significant number of the housing units delivered in LBTH are delivered through large, high density buildings. This can lead to more uneven patterns in the annual delivery figures since it can take longer time to complete all of the homes and those homes are only counted when the whole development is completed, rather than on a home-by-home completion basis as is the case in lower density areas.
39. The housing investment in the borough relies on foreign investment. As a result of the uncertainty around Brexit, there is some evidence that foreign investment in development, and in particular housing delivery, fell and it expects that investment will continue to reduce in the coming year<sup>20</sup>. This is likely to have had an impact on housing delivery in a borough like Tower Hamlets which, more than most local authorities, relies on and is subject to overseas investors, as acknowledged in the Tower Hamlets Local Plan (2031) in paragraph 9.18:
- '... Tower Hamlets has the second highest percentage of overseas sales in London<sup>23</sup>.'*
- Footnote 23 to paragraph 9.18 references 'Overseas Investors in London's New Build Housing Market (University of York, 2017)'.
40. There is some evidence that uncertainty about Brexit in the lead up to the Withdrawal Agreement, has impacted on housing delivery, particularly in inner London, given the reduction of buyers and sellers, as well as developers' hesitance to take on new projects due to the uncertainty<sup>21</sup>. This has led to delays in construction starts, house prices and supply of labour and materials.<sup>22</sup> The housing growth investment has particularly weakened over 2018 which has increased uncertainty around the housing market as some large developers have started to scale down projects<sup>23</sup>. With no other significant events identified in the same period to have been likely to impact, this leads to the conclusion that Brexit is likely to have played a role in the lower housing delivery in the borough which is evident in the first two years of the HDT 2020.
41. Finally, Tower Hamlets is a small borough in geographical terms which incorporates a variety of competing land uses and serves a range of functions, meeting London-wide, national and international needs besides housing. The borough has an important role in supporting the London-wide, national and international demand for employment space given that it

---

<sup>20</sup> <https://www.ucl.ac.uk/news/2020/oct/foreign-investment-expected-fall-37-post-brexite>

<sup>21</sup> <https://www.avisonyoung.co.uk/documents/38901/59345308/Brexit+-+Implications+for+Real+Estate.pdf/db9e85ac-7c0e-453e-bdcf-d0953c3fda40>

<sup>22</sup> <https://www.london.gov.uk/moderngovmb/documents/s62936/Potential%2520impacts%2520of%2520Brexit%2520on%2520housing%2520supply.pdf>

<sup>23</sup> <https://www.bankofengland.co.uk/inflation-report/2019/may-2019?s=09>

encompasses Canary Wharf and the City Fringe area which provides significant space for business employment. A borough like Tower Hamlets with good transport networks also includes a variety of visitor attractions which are supported with a visitor accommodation. This is reflected in the high levels of construction of hotels and serviced apartments in the borough. All of these land uses and development needs compete with housing in relation to land availability and affect the overall capacity for housing delivery which reduces as sites are built out. This limited capacity for housing delivery in the borough is reflected in the lower housing targets set out in the emerging London Plan based on the SHLAA.

*(d) Steps for remedying the shortfall*

42. The Council has taken and will continue to take steps towards remedying and reducing the shortfall further into the future.
43. The Tower Hamlets Local Plan 2031 was adopted on 15th January 2020 making it slightly over a year old. The housing delivery results set out in the HDT largely pre-date the Local Plan adoption. The HDT result only included the data up to the end of March 2020, and given that the Covid-19 pandemic and lockdown impacted delivery in March this effectively means that the Local Plan was under two months in its implementation (notwithstanding that it gained more weight leading up to its adoption in January 2020).
44. The Local Plan sets out the vision, strategy and detailed development management policies for delivering the housing growth needed in Tower Hamlets but balanced with the needs of successful place making and social cohesion. Detailed development policies and dedicated supplementary documents (such as the Central Area SPD) ensure areas outside these core growth areas also optimise the contribution they make to the Council's housing objectives.
45. Tower Hamlets Local Plan 2031 (2020), taken as a whole, takes a pro-active approach in a range of ways, to encouraging housing development. Paragraph 9.14 of the Local Plan states the following:  
  
*'9.14 Housing growth will be primarily delivered in the locations specified in Part 1(a)<sup>20</sup> via a number of different mechanisms: the regeneration of previously developed land, intensification of the built form in opportunity areas, and in highly accessible locations along transport corridors, and the delivery of site allocations. Sites which form part of the Poplar Riverside Housing Zone programme are also expected to support the delivery of new homes. A smaller proportion of housing will be delivered through town centre intensification, estate regeneration and infill development, bringing back long term vacant properties into residential use and the development of windfall sites. Further details can be found in Sections 4 and 5<sup>21</sup>.'*

Footnote 21 incorporates into the Local Plan the LPA's Housing Delivery Strategy<sup>24</sup> which sets out our approach to managing housing delivery across the borough to 2031 and supports the delivery of the housing targets set out in the Local plan (i.e. the extant housing requirements).

46. The following list of Local Plan policies are aimed at facilitating housing development and delivery in the borough:

- Policy S.SG1 Areas of growth and opportunity within Tower Hamlets indicates the locations and opportunity areas within the borough where growth and investment will be targeted over the lifetime of the plan;
- Policy S.SG2 Delivering sustainable growth in Tower Hamlets - this policy seeks to ensure that individual developments positively contribute to implementing and delivering the vision and objectives of the plan and delivering sustainable development;
- Policy D.DH6 Tall buildings provides certainty about the location, scale and development of tall buildings in the borough;
- Policy D.DH7 Density - this policy seeks to optimise the use of land of individual development proposals and ensure development takes place in a coordinated manner with neighbouring sites to prevent constraints being imposed to neighbouring sites all with the aim of optimising densities.
- Policy S.H1 Meeting housing need – this sets out the strategic housing supply requirements for the borough, as well the objectives of ensuring the creation of mixed and balanced communities, sustainable places and quality living environments;
- Policy D.H2 Affordable housing and housing mix seeks to ensure new housing maintains mixed balanced and stable communities across the borough and delivers the right range of housing products to meet locally assessed needs particularly for affordable family housing;
- Policy D.H3 Housing standards and quality sets out the minimum design, space and amenity standards to ensure that high density developments necessary to meet the borough's high housing targets provide a quality-driven response and maintain and improve standards of living in the borough;
- Policy D.H4 Specialist housing aims to ensure a sufficient supply of appropriate housing available for older people, homeless people, disabled people and vulnerable people;
- Policy D.H6 Student housing seeks to support the delivery of student accommodation in suitable and appropriate locations in accordance with strategic needs and local priorities;
- D.H7 Housing with shared facilities (houses in multiple occupation) aims to ensure that high quality housing developments with shared facilities meet an identified need and are managed to minimise adverse impacts.

---

<sup>24</sup> [https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Local-Plan/Tower\\_Hamlets\\_Local\\_Plan\\_Housing\\_Delivery\\_Strategy\\_2017.pdf](https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Strategic-Planning/Local-Plan/Tower_Hamlets_Local_Plan_Housing_Delivery_Strategy_2017.pdf)

47. A key part of the Local Plan 2031 and critical to its housing delivery strategy is the Site Allocations (see Figure 18 of the Local Plan for a borough-wide overview of site allocations). Each allocation introduces clarity around the key land use and infrastructure requirements for the site, and a broader more detailed analysis of the Design Principles. This provides a structured approach to delivery of strategic sites, offering more certainty for residents and applicants, and providing a basis for the optimisation of housing delivery. There are 21 allocations across the borough, up to 2031 with a minimum of 10,000 homes to be delivered across the City Fringe; 31,000 homes across the Isle of Dogs and South Poplar, and 5,700 homes across the Lower Lea Valley.

48. In addition to the Local Plan, supplementary planning documents and planning guidance has been adopted and is in the process of being updated and published to supplement the adopted Local Plan and to underpin the Council's housing growth ambitions and provide more certainty to developers. These includes the following:

- **Planning Obligations Supplementary Planning Document<sup>25</sup>** (adopted 2016<sup>26</sup>, currently in the process of consultation review<sup>27</sup>) provides guidance on how planning obligations are secured from new development to promote sustainable development in accordance with Local Plan Policy D.SG5. This provides a clear set of guidelines and certainty in decision-making processes.
- **Development Viability Supplementary Planning Document<sup>28</sup>** (adopted October 2017<sup>29</sup>) provides guidance as to how Development Plan policies should be applied in a development viability context when determining planning applications. This provides greater clarity to both applicants and the general public when it comes to viability considerations for housing development and ensures that the principles of sustainable development are at the forefront of decision-making in Tower Hamlets.
- **High Density Living Supplementary Planning Document** (adopted December 2020<sup>30</sup>) this provides a toolkit for creating successful communities within high density living. This includes a range of considerations: urban design, play, amenity, adaptability, and living environment. The document provides a clear design vision and set of expectations for future housing developments in the borough to ensure the delivery of high density homes and tall buildings support good quality of life for all residents.
- **Tall Buildings Supplementary Planning Document** (currently in draft<sup>31</sup>) this will set out a framework to identify how and where tall buildings can come forward in Tower Hamlets.

---

<sup>25</sup> B-06

<sup>26</sup> [https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Development-control/Planning-obligations/Planning\\_Obligations\\_SPD\\_Sept\\_2016.pdf](https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Development-control/Planning-obligations/Planning_Obligations_SPD_Sept_2016.pdf)

<sup>27</sup> <https://talk.towerhamlets.gov.uk/planning-obligations>

<sup>28</sup> B-07

<sup>29</sup> [https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Development-control/Planning-obligations/Development\\_Viability\\_SPD2017.pdf](https://www.towerhamlets.gov.uk/Documents/Planning-and-building-control/Development-control/Planning-obligations/Development_Viability_SPD2017.pdf)

<sup>30</sup> <https://talk.towerhamlets.gov.uk/highdensity>

<sup>31</sup> <https://talk.towerhamlets.gov.uk/tallbuildings>

This will consider a range of potential impacts and opportunities. Tower Hamlets currently has some of the highest density development in Europe. This will offer key opportunities in respect of contributing to housing need.

- **Central Area Good Growth Supplementary Planning Document** (currently under consultation<sup>32</sup>) sets out a toolkit and communicates area character appraisals for the optimisation of small and medium sites in the borough to help the Council deliver housing growth, outside the main opportunity zones. This SPD recognises the challenges around small and medium development schemes, which are located in well-established lower density neighbourhoods in the borough, found particularly across the central area of the borough. This SPD also recognises the opportunity there is for successful developments of a smaller scale to make a key contribution to housing targets.
- **East of the Borough Area Action Plan** (currently being prepared for Regulation 18<sup>33</sup>) will provide a structured planning framework for this key area of regeneration for the borough, part of the Lower Lea Valley. The document will support the regeneration of key former industrial sites for housing growth delivery, and work to provide a clear sense of connection between communities and legibility, in an area which includes significant highway infrastructure and challenges around public realm.
- **South Poplar Masterplan** (currently in preparation for consultation<sup>34</sup>) will provide a comprehensive strategy for this important area of transition between the high density development of Canary Wharf and the lower lying residential communities of Poplar. This is a strategically significant location, including the large DLR depot to the north, and the Billingsgate Market to the south. This will set out the opportunity for optimising housing delivery on these sites.

49. The Council has a number of other actions and responses to respond to the identified housing shortfall in HDT which will be set out in a Housing Delivery Action Plan which will be formally published. The outline of the plan is set out below.

#### a) Engagement with developers and landowners in the borough

The Council offers developers and landowners in the borough pre-application service<sup>35</sup> to work collaboratively on future schemes from early stages in order to identify and resolve issues and deliver high quality developments. For major and more complex proposals, the Council seeks to agree a programme of engagement structured within a Planning Performance Agreement (PPA) to agree a bespoke service and provide a project management framework.

---

<sup>32</sup> <https://talk.towerhamlets.gov.uk/goodgrowthspd>

<sup>33</sup>

[https://www.towerhamlets.gov.uk/ignl/planning\\_and\\_building\\_control/planning\\_policy\\_guidance/planning\\_guidance.aspx](https://www.towerhamlets.gov.uk/ignl/planning_and_building_control/planning_policy_guidance/planning_guidance.aspx)

<sup>34</sup> <https://talk.towerhamlets.gov.uk/southpoplar>

<sup>35</sup>

[https://www.towerhamlets.gov.uk/ignl/planning\\_and\\_building\\_control/planning\\_applications/Making\\_a\\_planning\\_application/pre-application\\_advice/pre-application\\_advice.aspx](https://www.towerhamlets.gov.uk/ignl/planning_and_building_control/planning_applications/Making_a_planning_application/pre-application_advice/pre-application_advice.aspx)

A regular Developers Forum is organised by the Council on a 6 months basis to be attended by key developers (and or their agents) in the borough to discuss issues with Planning and Development in the borough. During the Covid-19 pandemic, the frequency of Developers Forums has increased to respond to the emerging issues and where appropriate, take action to address these as and when necessary.

In addition to the forum, the Council holds regular meetings with active developers in the borough to discuss issues arising from specific sites and schemes.

#### **b) Strategy to work with housing associations to improve supply of affordable housing**

Tower Hamlets is consistently one of the largest deliverers of affordable housing in London. In 2019/20 Tower Hamlets delivered 1,562 affordable homes in the year. This level of delivery for the year was the highest in London, by a significant amount (Greenwich and Ealing following with 962, and 596 affordable homes respectively). This reflects the borough's efforts and strategy to prioritise affordable housing building through its Local Plan, working with a full range and diversity of delivery partners, including housebuilders, housing associations and the Greater London Authority (GLA). This is supported by the Council's own direct investment in the New Homes Programme.

A number of estate regeneration schemes are considered by Registered Providers to provide opportunities for the delivery of additional housing in the borough and improve the supply of affordable housing. Some examples include the consented scheme at Chrisp Street providing 643 residential units (additionally of 474) and current planning application at Bellamy Close/Byng Street proposing 148 residential units (additionality of 124) which is being recommended for approval. Planned estate regeneration at Teviot, Exmouth, Tiller Road/Barkantine and St John's estates and further estate regeneration at Aberfeldy are expected to deliver a total of 3,000+ additional residential units.

#### **c) Identify sites for new Council homes and commence delivery**

The Council's role as a housebuilder is significant and is growing. Through a New Homes Programme the Council's housebuilding programme is committed to having 2,000 new Council homes in delivery by 2022. This includes strategic sites and infill schemes that make efficient use of the Council's land, while balancing the need for successful placemaking and open space.

From end of 2016 to end of 2020, the Council's Capital Delivery has secured planning permission for 437 homes, out of which 77 homes were completed between July and October 2020, 156 homes are on-site being built with completion due in late 2021/early 2022, and 204 homes are in pre-construction stage. There are further small sites which have been identified for delivery of 1000+ Council homes across the borough and are in the pipeline with some of these proposals registered for planning applications.

**d) Deliver a borough programme for regeneration which enhances the Council’s approach to recovery**

The Council recognises that regeneration will play a key role in managing the borough’s growth and ensuring benefits are shared equally. The LBTH Mayor’s vision for regeneration in the borough<sup>36</sup> seeks to achieve growth and economic benefits for all residents, deliver high quality places and a mix of housing types served by excellent facilities, infrastructure and sustainable transport modes.

The Council has established a Regeneration Team and Board to deliver on the Mayor’s vision for housing growth. The regeneration programme has identified a series of eight ‘regeneration outcomes’ which have been developed to align the regeneration work with the Council’s existing priorities, plans and strategies, including the Tower Hamlets Local Plan 2031 (2020).

*Conclusions on shortfall*

50. The extent of an identified housing shortfall in the HDT in Tower Hamlets needs to be appreciated in its proper context and should not be overstated. The LPA is delivering some of the highest numbers of housing and affordable housing anywhere in the country. Given the nature and extent of the shortfall, the historical housing delivery in the borough, as well as the number of different strategies which are in place and are being put in place to remedy the situation, it is clear that the planning process – whether that is the underlying Local Plan policies and guidance and the planning decision-making which show a strong track record of facilitating development – is not the obstacle to housing delivery.
51. The shortfall (such as it is) is caused primarily by the non-planning market factors discussed above. Moreover, and most importantly, there is a real and imminent prospect of this shortfall being substantially reduced given the new housing targets in the soon-to-be adopted London Plan. In any case, this is not a borough that is sitting back when it comes to housing delivery. The Local Plan and Housing Delivery Action Plan show that LBTH is being extremely proactive when it comes to housing delivery.
52. It is worth reflecting on the aim of the Housing Delivery Test. The genesis of the HDT is in White Paper (2017) ‘Fixing our broken housing market’ White Paper<sup>37</sup> (2017) in paragraph 2.47:

*‘Having given local authorities stronger tools to ensure developers build homes quickly, the Government will introduce **a new housing delivery test to ensure that local authorities and wider interests are held accountable for their role in ensuring new homes are delivered in their area.** This test will highlight whether the number of homes being built is below target,*

---

<sup>36</sup> [https://www.towerhamlets.gov.uk/ignl/community\\_and\\_living/Regeneration-in-Tower-Hamlets/Regeneration-in-Tower-Hamlets.aspx](https://www.towerhamlets.gov.uk/ignl/community_and_living/Regeneration-in-Tower-Hamlets/Regeneration-in-Tower-Hamlets.aspx)

<sup>37</sup> <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

*provide a mechanism for establishing the reasons why, and where necessary trigger policy responses that will ensure that further land comes forward.'*

53. The details and actions set out above demonstrate that the Council is being proactive in seeking to ensure that new homes are delivered in the borough. The delivery of 4,570 homes in 2019/20, the highest in England, on an area of less than 20 km<sup>2</sup> suggests that the Council is very much acting in the spirit of the aims of the delivery test. But as acknowledged by many, the planning system is only one part of the equation<sup>38</sup> and, as outlined, there are factors which greatly affect final delivery which are outside of the Council's control.

#### *Weight to be given the development plan policies*

54. The development plan for the London Borough of Tower Hamlets consists of the London Plan (MALP 2016) and the Tower Hamlets Housing Local Plan 2031 (2020). As mentioned above, the Local Plan has been adopted recently and it includes the most up-to-date local policies for the borough.

55. In terms of the assessment of the weight to be given to the Local Plan, as explained above, the housing shortfall is a result of different factors and variables which pre-date the Local Plan. As such, the housing delivery shortfall is not the fault of and does not undermine the soundness and robustness of the very recently adopted Local Plan policies.

56. In addition (and as set out above) the Local Plan contains a set of policies which aim to provide a pro-active approach to housing, as well as all other types of developments, in the borough consistent with the NPPF. The Local Plan contains most important policies which includes strategic and development management (detailed) housing policies.

57. Therefore, there is no good reason not to afford the full weight to the recently adopted and materially up to date Local Plan. At the very least, the policies should be given substantial weight. The LPA's planning register shows

58. The adopted London Plan (2016) is less than five years old and until it reaches the end of its fifth year in March 2021 it is not considered out of date per paragraph 73 of the NPPF. The emerging London Plan is likely to be adopted soon, and it represents a new set of policies based on the most up-to-date evidence base, including the latest housing targets<sup>39</sup>. The housing numbers in the adopted London Plan are based on an assessment of capacity in 2013 whilst the ones in the emerging London Plan are based on an assessment of capacity in 2017, as stated above.

---

<sup>38</sup> Report of the Examination in Public of the London Plan 2019, Paragraph 135

<sup>39</sup> It is worth noting that the housing targets in the New London Plan were not subject to any formal directions by the Secretary of State.



59. The ‘Publication London Plan’ was approved by the Mayor of London on 21<sup>st</sup> December 2020, and is currently awaiting response from the Secretary of State by 1<sup>st</sup> February 2021 as stated in the Secretary of State’s Response Letter dated 24<sup>th</sup> December 2020<sup>40</sup>. I thus consider that the emerging New London Plan should be given substantial weight.

### Overall Planning balance

60. I now turn to the overall planning balance. I conduct both the para. 11(d)(ii) balance and the s.38(6) balance together in an overall assessment.

61. For the purposes of the s.38(6) planning balance, and in light of the reasons given above, I consider that the development plan policies should be afforded full weight (or at very least, very substantial weight).

62. In this balancing exercise, I have fully take into consideration all of the material considerations, including the benefit of the scheme (particularly in terms of housing delivery) and the tilt towards granting planning permission as a result of engaging paragraph 11 d) (ii)<sup>4142</sup>.

63. To be clear, the LPA has no objection in principle to the redevelopment of the Appeal site for housing delivery provided that such housing – where it is for co-living/HMO – meets an identified need, is of sufficient quality in terms of living conditions and, if it is not low-cost housing, that it makes a policy-compliant contribution towards affordable housing that the LPA most needs. The LPA’s objection does not prevent housing delivery coming forward on the appeal site provided those requirements – which are consistent with the NPPF – are met.

64. The adverse impacts of the development arising from its multiple conflicts with the development plan and the heritage harm under paragraph 196 of the NPPF weigh strongly against the grant of planning permission under section 38(6). I have taken into consideration other material considerations, including the benefits of the scheme and the tilt towards granting permission under paragraph 11 d) (ii) (which included consideration of the development plan policies). Taking both presumption in favour of accordance with the development plan and presumption in favour of sustainable development, I consider that the adverse impacts of the Appeal Scheme (both taken individually and cumulatively) significantly and demonstrably outweigh the benefits of this scheme.

65. On that basis, I conclude that planning permission should be refused and the appeal dismissed.

---

<sup>40</sup> [https://www.london.gov.uk/sites/default/files/sos\\_to\\_mol\\_241220.pdf](https://www.london.gov.uk/sites/default/files/sos_to_mol_241220.pdf)

<sup>41</sup> Gladman at [29]

<sup>42</sup> At [39].