



Does Live/work?

Problems and Issues concerning
Live/Work Development in London

A report for the London Borough of
Hammersmith & Fulham by



Acknowledgments

This report uses papers provided by the Live/work Network and the American Live/Work Network and reports on Live/Work in the social sector by Tim Dwelly as source material.

Paul Bowdidge of the Greater London Authority provided monitoring information.

Appeals details from Compass - Development Control Services.

Thanks also to the Association of London Government and Borough officers who provided information for this report, in particular Diana Coppin and Julian Renselar at the London Borough of Hammersmith & Fulham.

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April 2005

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1 Executive Summary

- 1.1 This report assesses the policy vacuum for Live/Work development at the national and regional level and examines practice by London Boroughs.
- 1.2 Growth in homeworking and small businesses is an international trend.
- 1.3 'Live/work' is a relatively new phenomenon in the UK and so far is mainly confined to London.
- 1.4 The concept originated in the United States as a by-product of its zoning codes. Here there has been widespread disillusionment that units simply 'revert' to residential and because of this codes have been tightened.
- 1.5 The concept took off in London during the late 1990s. The concept was initially welcomed by many planning officers as they saw it meeting multiple employment and housing objectives. Initially proposals were by individual and artists, however developers soon became involved as it became seen as a means of securing planning permission in areas where existing zonings made development difficult.
- 1.6 There was a gradual disillusionment with the concept and many planners began to see the concept as a 'fig leaf' for primarily housing schemes. Policies in most boroughs have significantly tightened.
- 1.7 Some developers are quite open that Live/Work is simply a ruse for securing planning permission. There is widespread evidence of large scale residential reversion and little evidence of continued employment occupancy, other than in areas where there is a strong market for small offices where units are more likely to revert to employment use. The search for examples of good 'work/live' practice has proven a largely barren one.
- 1.8 The key concern from planners is that their key planning objectives, of protecting/securing affordable employment and affordable housing uses are undermined by applications for 'live/work' as a means of circumventing policy.
- 1.9 The key issue emerging from this research is the nebulous and diffuse nature of the 'use'. As one developer put to us it is a 'concept' almost a state of mind. However can this be precisely defined, and if not how can it be controlled?
- 1.10 It would appear that the vast majority of proposals which involve an element of 'work' within a 'live/work' scheme fall within the C3 use class due to the scope of guidance on homeworking within PPG4. Although the new circular 03/2005 does confuse this issue to some extent rather than clarifying it as hoped, I conclude that read carefully and as a whole the application of its 'primary-purpose' test must lead to this conclusion.

- 1.11 The study examines the legal status of 'live/work' and shows that there is considerable confusion. Most 'live/work' proposals are straight C3 residential uses. In a few rare cases the size or nature of the work element will take it out of this use class. The new Circular 03/2005 unfortunately does not clarify how and when this change takes place.
- 1.12 The study found little case for a 'live/work' use class. It would not prevent residential reversion as ceasing of an element of a use would not be development. It is only controllable through breach of a condition as to retention of a defined work area on a plan submitted with an application, which is not possible to define within the Use Classes Order.
- 1.13 Given the existing wide scope of the C3 dwelling use class it is difficult to see what benefit if any a separate 'live/work' use class would have, indeed it would pose some risks in potentially leading the C3 use class to be interpreted too narrowly, restricting homeworking and the economic benefits that flow from this. It would also muddy the water about whether national and local policies concerning affordable housing and change of use from employment zoned land, apply. Boroughs have tended to move away a policy 'black hole' concerning 'live/work', where these policies did not apply, a separate use class would reintroduce it.
- 1.14 The planning system has mechanisms that can adequately cope with hybrid/composite uses, although there needs to be a better understanding in the planning profession and the development community about the issues concerning such applications.
- 1.15 'Live/work' does pose enforcement problems, requiring internal inspection of how rooms are used, which is always problematic. Design can help, but not eliminate such problems. Well publicised use of Planning Contravention Notices can have a clear deterrent effect.
- 1.16 The starting point when planners receive a planning application for a 'live/work' scheme is to require the applicant to demonstrate how, if at all, a scheme would be distinguished from a straightforward C3 application. If they cannot show this the application should be treated as C3 in all regards.
- 1.17 This study has examined the economic development issues and claimed employment benefits of 'live/work' development. There are potential savings to the cost base of businesses, but these are likely to be small and are more likely to involve convenience in terms of reduced commuting time rather than genuine gains to the national economy. The study found that those benefits that exist can be mainly realised in premises within the C3 use class with the number of businesses requiring 'live/work' premises outside this very small indeed.

- 1.18 The study also found that there are potential economic disbenefits from 'live/work' in providing a 'comfort zone' avoiding the rat-race of commuting which will deter home-based businesses from growing to larger premises.
- 1.19 Premises operated by registered social landlords are much more likely to secure and retain employment, however there is a risk that 'live/work' may be pursued as a 'fig leaf' use where their normal development programme is frustrated. There is however no current tenure which meets the needs of this sector without the risk of tenants being able to gain security of tenure.
- 1.20 Whilst in many cases it could be argued that zoning policies are out of date and do not allow for mixed uses this is a separate issue from the benefits or otherwise of 'live/work'. If sites are acceptable for residential then this should be permitted, and include the key planning advantage of housing, the provision of affordable housing. An analysis of the appeals evidence shows that most appeals against cases refused on zoning grounds would have been permitted for pure residential use anyway, and in these cases lack of employment demand will also reflect in lack of demand for the 'work' element of 'live/work' schemes. As a result 'live/work' schemes are resulting in significant loss of affordable housing, over 1,000 units over the last 5 years using the conservative figure of 25% of all live/work scheme units of 10 or more units overall in the last 5 years. This is a considerable cost to the public purse when the cost of homeless persons accommodation is taken into account.
- 1.21 Although 'live/work' is supported by some for simultaneously meeting employment and housing policy objectives the study found that the vast majority of proposals have performed poorly against government policy objectives in these fields and that they are not leading to sustainable mixed communities.
- 1.22 It is recommended that development plans or supplementary planning guidance make it crystal clear that affordable housing policies apply to live/work schemes.
- 1.23 It is also recommended that development plans make clear that applications for 'live/work' schemes as opposed to more work orientated 'work/live' schemes must meet the tests for change of use from employment when this is the zoned use. Legitimate concerns about zoning should be addressed through compiling up to date evidence of supply and demand for employment premises, focusing on demand for low cost employment premises.

- 1.24 Where Boroughs had up to date development plans that tackled mixed use development and live/work/work-live development in a positive manner then the study found that these were able to handle applications better than those boroughs that considered applications in a policy vacuum. These boroughs have been had to suffer an appeal-led development process with responses to applications through a political reflex rather than a considered policy approach.
- 1.25 Whilst there have been calls for explicit, as opposed to implicit, policy support for 'live/work' development in national policy guidance the findings of this study would show that this could have the effect of undermining key government policies such as provision of affordable housing and support for small businesses.
- 1.26 If any statement implied that 'live/work' meets objectives of housing provision and workspace then the effect would be to encourage applications and appeals on sites currently zoned for employment use. The effect of this would be the opposite intended. It would push up employment land values to those approaching residential ones. This would cause speculative vacancy and squeezing out of existing businesses from low cost premises. Affordable housing policies would be bypassed and the proportion of overall housing which is affordable would fall. This is no idle speculation, this is what has already been happening in London
- 1.27 National policy on affordable housing should be clarified to make it clear that this policy also applies to most 'live/work' proposals, especially those primarily residential in character.
- 1.28 The study makes recommendations for amendments to development plan policies with the effect of making a clearer distinction between 'live/work' uses, which should be treated as residential and genuine 'work/live' schemes which should be treated as a hybrid use. Policies which simply permit them on sites where residential use would be permitted anyway serve little purpose.
- 1.29 The study recommends a number of measures that the Government can undertake, including reform of leasehold arrangements to provide a suitable tenure form for affordable work/live, applying the 10 year rule on enforcement throughout, enabling enforcement fines on previous developers/owners when they have disposed of their interest, and applying business rates to dedicated work areas, even when partially used for domestic purposes outside working hours and using this as a means of monitoring retention of work areas with less need for intrusive internal inspection. The government can also improve data and co-ordination of policy regarding demand for small business premises and the link to startups.

- 1.30 The study found wild inconsistencies in the treatment of 'live/work' schemes on appeal. In particular they have not treated the application of employment and affordable housing policy on a level playing field. A number of decisions did not look critically about the nature of the use applied for and took the professed benefits for granted although few of these have materialised. It is recommended that planning inspectors adopt a more critical approach based on how these whether benefits are demonstrated and can be secured and that policy is applied more evenly and consistently.
- 1.31 Overall the study revealed that the vast majority of 'live/work' proposals are motivated by a desire to get around planning controls, in particular avoiding contributing to affordable housing. A few examples are given by developers of successful schemes but these were typically developed by the social sector whereas the benefits are much less likely to be secured by speculative developers with no long term interest in securing work use in perpetuity. Therefore proposals for 'live/work' need to be treated with a healthy scepticism, there is no case for responding positively to calls for special pleading.
- 1.32 Although 'live/work' is supported by some for simultaneously meeting employment and housing policy objectives the study found that the vast majority of proposals have performed poorly against government policy objectives in these fields and that they are not leading to sustainable mixed communities.

Key Findings of Study

- 'Live/work' developments are mostly confined to London and most boroughs have become disillusioned with the concept.
- Although 'live/work' is supported by some for simultaneously meeting employment and housing policy objectives the study found that the vast majority of proposals have performed poorly against government policy objectives in these fields and that they they are not leading to sustainable mixed communities.
- The concept is weakly defined and in most cases can be carried out within C3 use class dwellings without planning permission.
- No justification found for a separate 'Live/work' use class. Existing rules over working in dwellings are sufficient. ODPM needs to clarify relationship of paras 78 and 79 of Circular 03/2005.
- Affordable housing policy needs to be consistently applied to 'live/work' schemes. Potential loss of affordable housing due to 'live/work' schemes has been significant and most applications appear to be residential in nature and designed to circumvent affordable housing and other planning policies.
- Business rating rules should be reformed to make genuine 'work/live' schemes easier to monitor and enforce.
- Affordable 'work/live' schemes have a number of benefits, but the demand is small and they lack a suitable form of tenure as the law now stands.
- The vast majority of proposals have performed poorly against government housing and employment policy objectives, consequently the schemes have not lead to sustainable mixed communities.

2 Introduction

- 2.1 This report has been commissioned by the Environment Directorate of the London Borough of Hammersmith and Fulham with the following brief (in Summary).

"The study should provide a comprehensive assessment of the current policy vacuum for live/work units at the national and regional level and the efforts made by several London boroughs to provide a policy either in their UDPs or as Supplementary Planning Guidance. The study should assess how these policies have worked in practice including, where applications have been approved, how they have been controlled, and, where applications have been refused, have they been successfully defended at appeal? The study should examine any monitoring that has taken place of the use of live/work units and any resulting enforcement action including appeals against enforcement action.

The study should investigate examples of both good and bad practice in live/work units to determine if there is a case for permitting schemes and in what circumstances. This should include:

- management and control (including the use of conditions and S106 agreements);
 - the use of housing associations as providers;
 - tenure;
 - provision of affordable housing accommodation as part of the scheme;
 - how schemes for private sale work in terms of funding and future use;
 - the appropriate size of schemes (in terms of overall number of units and the size of individual units);
 - what are appropriate locations;
 - how schemes assist economic regeneration initiatives;
 - how floorspace is split within individual units between live and work (and how much flexibility is required by the user);
 - how much employment is generated over and above the residential"
- 2.2 The report looks at the history and development of the live/work concept in London, and also looks at the longer history of the idea in the USA.
- 2.3 The report focuses on the practical and operational issues concerning the development control of 'live/work' developments.

3 History and Development of the Concept

3.1 Trends in Working

- 3.2 The use of the home for working is not a new phenomenon. Before the Industrial revolution, most people worked at, or close, to their home. Living above the shop was also typical. With the onset of industrialisation, mass production meant that people went to where the work was. This resulted in the building of factories and the creation of new industrial areas. Daily travel or "commuting" then became the norm.
- 3.3 Alongside this have been trends in the way people work. Some people wish to run a business from home rather than from separate commercial premises designed for business use. The business may be the main income earner for a person or family or may be part-time way of earning extra income, perhaps started as a hobby. Recently, many businesses have been encouraging office and mobile staff to use their homes as a base, as a means of reducing overheads. Reducing car commuting can also have environmental and social benefits. These changes are supported by the rapid development of information technology which is encouraging and allowing teleworking and "hot desking" in many professions. Finding premises is a significant barrier to entry for many small businesses, working from home can lower that cost through removing premises and commuting costs.
- 3.4 According to the Labour force survey 2001 over a quarter of the UK workforce now carry out some of their work at home. 61% of those who work at home part time use a telephone and computer. Small businesses, including those without employees, account for over 99 per cent of the UK's 3.8 million businesses at the start of 2002, 56 per cent of employment (12.6 million people) and 52 per cent of total UK turnover (£1,100 billion. However, 1.6 million (69 per cent) businesses are sole traders – that is, self-employed people operating without employees (SBS, 2003). The creation of new businesses also provides a significant source of job creation. In the UK, new businesses, especially smaller new businesses, are the greatest single source of new jobs, providing jobs at all points of the economic cycle.
- 3.5 A study of job creation over the period 1995 to 1999 found that there were 2.3 million extra jobs in new businesses, of which 85 per cent were in small businesses (Dale and Morgan, 2001). Expanding businesses provided 3.5 million new jobs between 1995 and 1999. Although small businesses were less likely to expand than large businesses, because there are so many of them, they accounted for more than 50 per cent of new jobs in existing businesses

- 3.6 It is estimated that around 5.4 per cent of working-age adults in the UK are engaged in either starting a new business or in running a young business. Focusing on the G7 countries, UK performance is on a par with Germany and Italy, higher than Japan and France, but significantly lower than the US and Canada. (UK Global Entrepreneurship Report 2002).
- 3.7 Those working at home will be split between those 'teleworking' for an employer and those working for themselves. There is no statistics about the split between the two. In terms of national statistics there is a dearth of UK information about the number, trends and proportion of small businesses which are home based. Most of the information collected is based on VAT registration which will not apply to most micro-businesses. There is no UK equivalent of the US Small Business Survey, which is now being carried out with one of its key aims to gather evidence on home-based businesses. This is partly an institutional problem with the government small business service not focusing on premises and the regional development agencies focusing on growth sectors of the economy rather than small businesses specifically.

3.8 The Development of Live/work

- 3.9 Live/work in its modern form evolved from artists and others' colonization of under-utilized industrial areas, the most well known being SoHo in New York City. Most of these spaces were illegal. Once it became apparent that a trend was emerging, the phenomenon began to attract the attention of real estate developers and planning departments. Live/work began to be seen as a revitalization tool in inner urban areas made redundant by the decline of the American manufacturing sector. Most of these areas were zoned for industrial purposes and most attempts at regularisation involved adaptation of codes which allowed a limited proportion of space of living or introduction of similar measures. More non-artists began to see the appeal of "loft" spaces, although many who did so did not work in them at all. Living in lofts, the life of a creative was seen as hip and began to populate the TV and Cinema, by the 1980s the phenomena was spreading across the industrialised world.
- 3.10 In the 1980s, so-called "lifestyle lofts," spawned espresso bars, tapas joints and boutiques in these newly gentrified neighbourhoods. By the 1990's, most cities in North America had loft districts, and the familiar successional pattern of: artists pioneering, yuppie colonization, and finally straight residential neighbourhoods has become an accepted truth of the American urban real estate life cycle. Depending on who you ask, this cycle is either feared (by some existing residents) or relished (by developers and speculators). This 'SoHo' Effect is closely mirrored in the UK by the 'Hoxton' Effect in the UK, where a similar pattern of artists colonisation, speculation and displacement has occurred.

- 3.11 Neglected neighbourhoods have been regenerated and essentially higher value residential development has replaced or displaced lower industrial land uses. Along the way, new buildings have begun to be purpose-built for "live/work" although the American experience is increasingly that they are hardly that, ironically often displacing existing artists and small business people – either directly, or more frequently indirectly through raising rents and land values and reducing incentives to renovate or build for employment purposes
- 3.12 This cycle has been seen in particular force in San Francisco. San Francisco was among the first U.S. Cities to experiment with regulating 'Live/Work'. It is also the first city to experience what can only be termed a live/work backlash. The city's Artist Live/Work Ordinance, passed in 1988 to encourage the development of combined residential/studio space, has proven to be a largely unmitigated disaster. The construction of purpose built live/work premises – clearly in response to a real demand combined with lax enforcement of the city's artists' live/work ordinance – increased tenfold in the early 1990s. Property values in industrial areas have erupted, making it impossible for small businesses to buy or expand. Most of the "live/work" buildings are new construction, built without benefit of the design review, required setbacks, and open space ordinances that apply to residential developments. Surveys show that only 15% of owners work in their units. In 2002 the local magazine 'The Metropolis Observed' published an article entitled 'The Death of Live/work' .
- 3.13 Meanwhile, significant numbers of businesses (the exact numbers are debated hotly) are succumbing to the complaints and harassment of "imported NIMBY's" (the "not-in-my-back-yard" attitude of many new live-only loft residents toward the fully legal and pre-existing industrial and commercial activity of their neighbours). Leaders of the city's \$2.2 billion multi-media industry have recently organized to fight back. The city planning commission is beginning to listen, and to introduce some balance into the mix. After ten years of lacklustre enforcement of an ordinance originally written to protect and encourage live/work for artists and small business, some limits are being placed on what is clearly a residential building type being built in industrial areas.
- 3.14 'Residential reversion' is the term used in the USA to describe the tendency for live/work and work/live spaces to be used less and less for work purposes and over time to become primarily residences. Some say this trend is inevitable, and some so-called live/work spaces are never intended as anything more than apartments with mezzanines. San Francisco originally had an ordinance permitting artist live/ work premises in many industrial districts. The problem was that it was almost impossible to enforce that an artist was resident.

- 3.15 In April 2001 the San Francisco Board of Supervisors appointed a task force to investigate a solution. The group recommended a repeal of the 1988 ordinance. *"All of us agreed that the ordinance as it was written-and for the intention it was written-failed because it was unenforceable,"* said Walker, the only artist on the task force. *"You don't need the ordinance for what it was crafted for. You never did. Whether you're an artist or just anyone running a business, you've always been able to take residential occupancy of an industrial space."* Indeed most US zoning ordinances allow residential occupation of a small proportion of a business premises.
- 3.16 A section of the building code that predates the Live/Work Ordinance provides a viable live/work regulation, including requirements that the residential component of an industrial space be no more than 25 percent of total square footage. So the task force made a simple proposal: strengthen and restructure the code that predates the 1988 ordinance, but build in greater code enforcement. *"That way,"* Walker says, *"a building inspector can go in and - instead of having to figure out if somebody is an artist-simply look around and see if the building is being used as a commercial space."*
- 3.17 What remains to be seen is whether a reversion to the regulatory status-quo holds out much hope for San Francisco artists, who have become the urban equivalent of refugees. *"In San Francisco, live/work codes didn't protect artists at all,"* said Abby Wine, program coordinator for ArtHouse, an advocacy group for affordable space for artists. *"To guarantee their continued existence, city government has to put other protections in place."*
- 3.18 The problems of residential reversion has led many US cities to tighten their codes. An influential example has been the City of Oakland in California. This was the first to make the widely copied, not least in the UK, distinction between 'live/work and 'work-live'. This is attached as appendix 1
- 3.19 The regulatory regime in the UK is in many ways the converse of that applying in the United States. Whilst in the States zoning ordinances often prevent the carrying out of a commercial activity from home in the UK this often does not require planning permission. Conversely in the States zoning ordinances often permit a limited level of residential occupancy in industrial premises, whilst in the UK this will require planning permission.

3.20 UK Development.

- 3.21 Live/work schemes had a slow start in the UK with a few schemes being proposed in the early 1990s, sometimes described as 'atelier' units.
- 3.22 The concept did not take off until a number of high profile schemes were proposed as part of regeneration projects, these include the Peabody

Trust projects at London Fields and Westferry and the Chocolate Factory development in Haringey Heartlands. In Hammersmith & Fulham from 1994 onwards there was considerable pressure for schemes.

- 3.23 As the concept developed a number of boroughs developed supplementary planning guidance (SPG), notably Islington and Hackney. These introduced controls on issues such as minimum floor area and minimum proportion to be used as 'work' areas. Hammersmith and Fulham considered and rejected the need for SPG, opting instead for controls in its revised Unitary Development Plan. The introduction of these controls saw a lessening of pressure.
- 3.24 At the end of the 1990s London was experiencing a period of intense housing development, spurred by a shortage of properties. The trend was particularly strong in Inner London and in Boroughs with significant amounts of previously developed land and buildings. Some boroughs such as Hackney and Lambeth were also experiencing problems with planning staffing and budgets. In this environment the development community took advantage of the opportunity that 'live/work' development presented and a explosion in speculative 'live/work' proposals took place. By this time Hammersmith and Fulham had already had its fingers burnt by a number of appeal decisions.



Elastic Space Development Deptford

- 3.25 Faced with a pressurised development control system and in some cases out-of-date policy frameworks that did not properly deal with mixed-use and/or live/work proposals on previously developed land some planners took a positive light to such proposals. Faced with a policy conflict of housing proposed on employment zoned land, and development control backlogs and potential appeals schemes were allowed. At first some boroughs saw them as means of promoting mixed-use development and creative industries in areas in need of regeneration. Notable was a change of policy relating to the 'Shoreditch Triangle' in Hackney where policy had previously resisted residential development but which had increasingly become populated by members of the 'britart' community.
- 3.26 As boroughs began to introduce policies and controls, mostly in supplementary planning guidance, the development community saw an opportunity and the number of proposals exploded. In Hackney more than half of all new units constructed over the past five years were for 'live/work'. Developers also began to challenge the controls and limitations proposed by the Boroughs, including a reluctance to provide the minimum work area or to physically separate the live and work spaces, as well as challenging requirements for more affordable lower cost units. Local authorities also began to discern a trend of developers proposing some housing and some live/work so that on sites that if developed solely for housing would trigger a requirement for affordable housing.
- 3.27 Planners became increasingly sceptical, seeing live/work as a means of getting around policies for affordable housing and protection of employment, and often leading to loss of both in the very boroughs in greatest need of affordable housing and workspaces. Without policies firmly embedded in development plans supplementary planning guidance was successfully challenged by developers in several boroughs, notably Tower Hamlets and Hackney. Hackney withdrew its supplementary planning guidance but as a result left a policy vacuum which meant it could not resist a number of proposals on zoning grounds. There is some evidence that in those boroughs that included firm live/work proposals in their UDPS and maintained policies prioritising affordable housing, notably Brent, Hammersmith & Fulham and Lambeth, the trend abated and slowed in comparison with other boroughs which did not have this policy framework in place. Now very few boroughs have dedicated boroughwide guidance on live/work.
- 3.28 The formation of the UK Live/work network provided useful information and a lobby for enthusiasts and providers of live/work development, including a number of housing associations. This information is frequently paraded by developers of live/work, even in cases where the nature of the proposal bears little if any relationship from some of the well known genuine live/work proposals. Live/Work is now suffering from a severe image problem. Most

planners see it as a scam, a means around planning control with projects swiftly reverting to predominantly or solely residential. A number of property developers have gone public with the same view.

4 National, Local and Regional Policy Issues

- 4.1 There are no specific mention of live/work in national planning policy, however there are plenty of emphasis on some of the objectives that live/work developments often set themselves. The degree of support for such development in National policy will depend on the degree to which the development is capable of meeting those objectives.

4.2 PPS1 – General Policies and Principles (Consultation Draft Feb 2004)

- 4.3 This sets out the Government's high level policy objectives for planning.
- 4.4 The key theme of the staement is the creation of sustainable communities, it stresses that sustainable communities need sufficient, quality housing to meet the needs of the community, a flourishing local economy supported by adequate infrastructure, a high quality, safe and healthy local environment, and the amenities and sense of space and place to support a diverse and vibrant local culture
- 4.5 Unlike its predecessor PPG1, it does not contain a long section on mixed-use development but it does promote the more efficient use of land through higher density, mixed use development and the use of suitable previously developed land and buildings.

4.6 PPS6 – Planning for Town Centres (March 2004)

- 4.7 This replaces PPS6. It encourages encourage higher-density, multi-storey development within and around existing centres, including the promotion of mixed-use areas, where appropriate.

4.8 PPG3 – Housing (2000) – amendments proposed 2004

- 4.9 This guidance encourages appropriate changes of use to housing from non-housing allocations. *'Local planning authorities should ... review all their non-housing allocations when reviewing their development plan and consider whether some of this land might better be used for housing or mixed use developments...*

- 4.10 *'The Government believes that it is important to help create mixed and inclusive communities, which offer a choice of housing and lifestyle. It does not accept that different types of housing and tenures make bad neighbours. Local planning authorities should encourage the development of mixed and balanced communities: they should ensure that new housing developments help to secure a better social mix by avoiding the creation of large areas of housing of similar characteristics...'*
- 4.11 *'Local authorities should promote developments which combine a mix of land uses, including housing, either on a site or within individual buildings such as flats over shops. This is important not only to accommodate new households but also to bring new life into our towns and cities. To increase housing opportunities in town centres, local authorities should identify sites or areas where housing or mixed-use development will be required, including, where appropriate, specifying the proportion of floor space which should be residential within such developments.'*
- 4.12 In Spring 2004 the government published proposed changes to PPG3 on supporting the delivery of new housing and influencing the size, type and affordability of housing. The now introduced change concerns land allocated for industrial or commercial use in development plans but which is no longer needed for such use, or redundant industrial or commercial buildings. Permission should be granted unless a number of test would be met, most relevant in London being it can be demonstrated, preferably through an up-to-date review of employment land, that there is a realistic prospect of the allocation being taken up for its stated use in the plan period or that its development for housing would undermine regional and local strategies for economic development and regeneration. The government has subsequently published a good practice guide on employment land reviews.
- 4.13 It also proposes to increase the delivery of affordable housing through allowing affordable housing to be sought on smaller sites than the normal 15 unit threshold, having regard to the size and type of sites likely to come forward for development derived from an urban housing capacity study, or other assessment; the contribution to be made from smaller sites to meeting the target for affordable housing provision, providing that the development plan can demonstrate that this would result in increased supply of affordable housing; have no adverse effect on the overall supply and pace of housing development to meet a community's needs.

4.14 PPG4 – Industrial and Commercial Development and Small Firms (1992)

- 4.15 This takes a positive approach to small business development, and advises planning authorities not to prevent business development in residential areas where it is of an appropriate scale.
- 4.16 It says: *'It is now generally recognised that it may not be appropriate to separate industry and commerce – especially small-scale developments – from the residential communities for whom they are a source of employment and services. In areas which are primarily residential, development plan policies should not seek unreasonably to restrict commercial and industrial activities of an appropriate scale – particularly in existing buildings – which would not adversely affect residential amenity. Planning permission should normally be granted unless there are specific and significant objections, such as a relevant development plan policy, unacceptable noise, smell, safety, and health impacts or excessive traffic generation. The fact that an activity differs from the predominant land use in any locality is not a sufficient reason, in itself, for refusing planning permission.'*
- 4.17 The PPG also goes on to support in principle small-scale and ICT-based home working in residential areas: *'Many small businesses and other non-residential uses are started by people working in their own homes, and technological innovations are likely to increase the incidence of home-working. Home working does not necessarily require planning permission. Permission is not normally required where the use of part of a dwelling-house for business purposes does not change the overall character of the property's use as a single dwelling. For example, the use by a householder of a room as an office, or childminding complying with the Department of Health's standard recommended ratios, would be unlikely to mean that the character of the house's use as a single dwelling had ceased and would not normally require planning permission.'*
- 4.18 *'Once the business or non-residential use of the property ceases to be ancillary to its use as a single dwelling because, for example, the business has grown and the use of the dwelling for activities related to the business has intensified, a material change of use for which planning permission is required is likely to have taken place. The likelihood of there having been such a material change of use may be indicated where the business or non-residential use generates visitors, traffic, noise or fumes over and above what might be expected if the property were in use as a single dwelling without any ancillary use. Local planning authorities should take steps to ensure that such developments are effectively controlled, and should be prepared to refuse planning permission or to use their enforcement powers where appropriate.'*

4.19 PPG13: Transport (2001)

- 4.20 This recognises the connection between land use planning and transport. It specifically encourages mixed use development, and even encourages home working (although somewhat vaguely). Key passages include: 'Mixed use development can provide very significant benefits, in terms of promoting vitality and diversity and in promoting walking as a primary mode of travel. However, it should not be assumed that the juxtaposition of different uses will automatically lead to less car dependency. Planning policies should therefore aim to:
- produce a broad balance at the strategic level between employment and housing, both within urban areas and in rural communities, to minimise the need for long distance commuting
 - focus mixed use development involving large amounts of employment, shopping, leisure and services in city, town and district centres, and near to major public transport interchanges
 - encourage a mix of land uses, including housing, in town, suburban and local centres
- 4.21 PPG 13 also addresses issues around flexible working and home working, making use of the new ICT: *'The introduction of new information and communications technology (ICT) is enabling rapid changes to be made in the size, specification and location of development, particularly in the service sector and the knowledge based economy with consequent implications for planning policy. Although the effects of ICT are difficult to predict, it is creating opportunities to reduce the need to travel. ICT is facilitating increased flexibility in working patterns, including more home working, which has the potential to reduce daily commuting to work and enable some journeys to take place outside the peak periods. It also has the potential to increase the distance between homes and places of work, resulting in less frequent, but longer, journeys that may make less use of public transport.'*
- 4.22 *Local authorities in both urban and rural areas should be alert to the possibilities for harnessing the use of new technologies to encourage local employment opportunities which reduce the need to travel. They should take a flexible approach to the use of residential properties for home working, consistent with the need to protect the amenity of the area for any neighbouring residential uses.'*

4.23 Speech by Richard Mc Carthey ODPM Director of Sustainable Communities to the Live/work Network– June 2004

- 4.24 The most explicit and specific statement is in this speech. A speech asking for much greater clarity about how live/work developments are distinct from the open operation of the market, and what planning obligation matters concerning affordability should be tendered. He stated:

"...You may be the first to tell me and you may indeed remind me that there is no specific national policy on live work. As far as planning is concerned in PPG3 on housing and in PPG13 on transport it does support live/work housing and developments, they fit with the creation of sustainable communities, mixed uses and mixed communities. Fit with our desire for mixed communities and the opportunities for mixed community developments. Shared space, working from home, where employment use is ancillary to the main housing use, and reducing the need to travel. All of those elements of live/work fit within planning guidance but we don't have explicit planning guidance on live/work.



Woodstock Studios Shepherds Bush

...

Clearly live/work is as much as existing buildings as it is about new, but live/work does require imaginative and thoughtful design. I think my experience tells me clusters don't just happen. You need to think how you manage, how you plan, how you design for a cluster.

If a cluster relies on you as a developer or a landlord to make it happen all the time then I don't think it is working. Clusters should start to develop its own life, to start to go into a direction you didn't plan. It might need some support and facilitation sometime but I do think buildings and the way you plan them as a crucial role to play.

I am delighted to see developments like the Jam Factory in Bermondsey Creative lofts by Places for People in Huddersfield making imaginative use of exiting buildings providing a scale and connectivity that helps to develop that sense of cluster, and business support, an atmosphere that actually breeds entrepreneurship and economic development rather than isolated live/work units that sit effectively on their own. Where I think our experience tells us they are difficult to work and experience tells us there is a limited if not no real market for those.

So there is an issue I recognise for us, about that despite saying those positive words what else do we need to do, is there a need for further guidance. If there is guidance given by government what will that change? What will be the benefit that we will see that you will offer us. It is really important to recognise the challenges and the difficulties that we face issue we face with live/work.

You will know in this room probably better than me, but I know from my own experience that it isn't that easy to deliver. It isn't easy to always sustain the economic use of the homes and the dwellings that are provided

We know that creates a tension and creates a tension particularly with planners. Live/work is allowed as an exception to policy in many places. It enables a change of use from business to mixed-use. But when that happens its is only natural that people get very nervous and very anxious about abuse of that space. When is that abuse, when is that a naturally changing marketplace, when is it wrong, how to you regulate that, how do you enforce that? Are all issues that you need to consider.

New live/work policing officers in local authorities, whatever you want I would suggest is not a winnable concept.

So we do need to think, you think about what are the arguments you can offer. With your feet firmly rooted on the ground of reality. If we promise more than we can deliver one step forward and one maybe two steps backwards in the future.

It is a crucial issue about maintaining economic activity, and enabling effective living opportunities.

May be you have to think about, particularly in the subsidised sector about what do you do about creating opportunities for moving on, both in terms of accommodation for living

and accommodation for work.

We need to also recognise the issue of affordable housing. Live/work often through its exception use often avoids the need for affordable housing. Now that remains an issue. Now there its may be that an individual development has a very good reason why affordable housing doesn't fit within it. But I think that it creates some suspicion and some concern amongst funders, amongst planners, and regulators is this yet another way to get round the system, rather than work though the grain of what we are trying to achieve through sustainable communities.

May be there is an issue to think a little bit harder than affordability because I know that this is a matter of concern for the network. Do we need to think about going further and making an offer about affordable housing meeting housing needs for those showing a spark of entrepreneurship who want to try and make a business happen which might be part of a viable offer in return for clarity of guidance and support? An issue for you to think about rather than allow people to portray live/work as a way of getting round the rules as a way of breaking through from employment use to housing use and a way of avoiding section 106 and planning obligations, because if that's what people think, whether that reality or not, then you will always find that you are not progressing with level of support and guidance you would like to see."

- 4.25 This speech was delivered with care and caution. It did not express unqualified support, only to the extent that it meets sustainable communities plan objectives. Indeed the mentions of national policy also applied to straight housing development, not the reference to PPG4 which refers to when homeworking can be carried out as ancillary to the C3 use class. The key message is an onus on developers to show clarity, especially about meeting economic development and affordable housing requirements.

4.26 The London Plan (2003)

- 4.27 Live/work development is only mentioned in the glossary of the London Plan, which is curious as it does not merit a single specific mention in the body of the plan itself. The definition is '*The flexible use of buildings and spaces to allow both functions within them.*' Being design based as opposed to legally based it is problematic as it makes no mention of any specific requirement for either use.
- 4.28 It contains a number of key objectives including meeting London's housing growth and strengthen the diversity of London's economy, provide for small and ethnic minority businesses and encourage local enterprise, including social enterprise, throughout London; as well as releasing employment land that is no longer needed in its current use for new uses.
- 4.29 The plan provides support for e-business and the development of clusters of creative industries and related activities and environments.

4.30 The key design policy of the plan 2b.1 seeks to ensure that developments provide or enhance a mix of uses.

4.31 The London Borough of Hammersmith & Fulham Unitary Development Plan (2003)

4.32 The plan contains three policies in its employment chapter which are particularly relevant to live/work proposals.

E3 SITES AND BUILDINGS PROVIDING EMPLOYMENT OUTSIDE EMPLOYMENT ZONES AND TOWN CENTRES

Development of sites or buildings currently or last in use for B1 – B8 purposes or other similar use which does not fall within Class B such as yard based industries, will only be permitted if the proposal is for use within Classes B1 – B8 or similar use, or:

...

(b) the proposal is wholly for affordable housing, the site is vacant and the development would not prejudice the continuation of adjacent employment uses; or

...

(d) the proposal is for any other use and the application is supported by a statement of the efforts made to secure re-use for Class B1-B8 or similar uses or other non-residential use that provides employment, which indicates that there is no realistic prospect of the site or buildings concerned being used or re-used including redevelopment for these purposes: or

(e) the site or buildings would be physically unsuitable for re-use for Class B1-B8 or similar use, even after adaptation, refurbishment or redevelopment, in terms of siting, design, access, layout and relationship to neighbouring buildings and uses.

E3A COMBINED LIVING AND WORKING DEVELOPMENT SCHEMES

Combined living and working development schemes will only be permitted on employment sites outside the employment zones in accordance with the requirements of policy E3(d) or (e) and:

- (a) there is no prejudice to the supply of affordable housing; and
- (b) the design, construction and layout of the development would render the workspace of any live/work unit physically unsuitable for use only as living space; and
- (c) the living space is used only by the occupants of the business use or their employees.

"7.52 There is substantial pressure on employment sites to change to residential use. There is also some demand for combined living and working accommodation. This demand is normally for primarily residential accommodation with associated minor workspace for the resident and is similar to changes that would normally be acceptable under permitted development rights. In some limited cases demand is from small

businesses wanting associated residential accommodation. In both cases the demand from developers is generally for at least 60% residential use and for some flexibility in the use of the floorspace between live and work. It is acknowledged that a limited number of combined use schemes can provide a valuable addition to the range of employment premises available and can reduce journey to work movements especially where effectively controlled to prevent significant residential use. However, provision should not be to an extent which conflicts with the priority of retaining the majority of these sites in wholly employment use to meet the demand from economic activity and to continue to preserve the mixed use character of the borough. Therefore, only where a site meets the criteria set out in E3 d) or E3 e) and a residential scheme can be considered as an alternative use, would a combined use scheme be appropriate. In these circumstances schemes will normally be assessed against residential standards set out in the standards chapter. Where a substantial business element is proposed, greater than normally permitted in a dwelling house, schemes should additionally comply with plot ratio standard S1.1 and B1 car parking standards. Live/work schemes that would prejudice the achievement of affordable housing in line with H05 will not be permitted unless affordable housing is included in the scheme on the same basis as if the site were a wholly residential scheme.

7.53 This policy is formulated to cover combined use living and working schemes on employment sites within the borough outside the employment zones. Where schemes are submitted for sites not in employment use, these will be assessed against policy H08 having regard in particular to the need not to displace housing."

E5 PROVISION FOR SMALL BUSINESSES

Development for employment purposes will not be permitted if it would involve the loss of existing Class B accommodation in a range of units of 500 sq. m. or less or fails to provide, in schemes of 5000 sq. m or more:

- (a) within designated employment zones and town centres, 10% of the proposed floorspace in the form of self contained units suitable for small scale class B1 business use in units of 500 sq. m. or less.
- (b) within residential and other areas, 50% of the proposed floorspace in the form of self contained units suitable for small scale Class B1 business use in units of 500 sq. m. or less.

5 Categories and Types of Live/Work Development

- 5.1 One of the reasons that live/work is not an easy category to define precisely is that it is more of a conceptual idea than a precise planning law term. From discussions with the development community the concept of mixing living and working is paramount, for them how it is defined and controlled is a secondary consideration.
- 5.2 Live/work is not a monolithic phenomenon. Clearly, some of what bears that name is predominantly residential in character. The rise of the internet, telecommuting, and even teleconferencing have created unprecedented opportunities and demand for home office and small, at-home business. As set out in the legal section of this report this use will typically fall within the C3 use class and will not require planning permission. Occasionally, such as where the live element is non ancillary including where multiple persons are employed, but where the nature of the work element is low impact and acceptable in a residential area, this will form a distinct 'live/work' category.
- 5.3 This is to be contrasted with more work-driven type of space in which employees and walk-in trade are permitted and more intense and/or more hazardous kinds of work are performed. This has been termed 'work/live' in the United States and by some London Boroughs.
- 5.4 There is a widely demonstrated tendency for live/work or work/live space to revert to purely residential use, regardless of how it was permitted or represented. This tendency is most pronounced in new construction developments of "lifestyle lofts" as opposed to lower specified conversion of existing industrial premises. Whether this is acceptable will vary according to the characteristics and problems of the area.
- 5.5 Each of these three types, home occupation, live/work and work/live, (and subsets thereof, e.g. home office, artists' live/work) is more appropriate in some areas than others. Land-use zoning should be applied to locate and control live/work types suitably.
- 5.6 Residential reversion should be discouraged strenuously in those areas where pure residential use is undesirable due to incompatibilities with other uses, lack of residential amenities, etc..
- 5.7 While it can be a valuable tool for regenerating neighbourhoods this must be balanced with the valid need for the kinds of small and medium-sized businesses that are needed to make a city work. The American experience, and an attitude increasingly shared by some boroughs, is that Laissez-faire approaches to land use controls - which usually leads to wholesale residential

reversion – can spell disaster for these businesses in the form of prohibitive property values and “imported NIMBY’s objecting to commercial expansion.

- 5.8 Residential reversion can be slowed down, if not entirely stopped, through the use of a combination of controls and, perhaps most importantly, the design of units for the appropriate level of proximity between living and working spaces.
- 5.9 Artists began the live/work phenomenon, and they require a kind of affordable space that can (almost) only be found in older industrial buildings. In areas with hot real estate markets, the only way many artists can retain control of their spaces is through ownership, long-term rent subsidies, or the creation of special planning controls providing long-term affordable live/work. It is, in fact, as much of a financial problem than a zoning problem, although certain zoning measures can help (such as designating certain live/work areas as rental only in existing buildings only).
- 5.10 Live/work plays an important part in what The American Live/Work Institute calls The Incubator Cycle. Ideas for small businesses often progress through different work spaces, from a spare room at home, to the garage (of Apple Computer and Hewlett Packard fable and fame), and often next to a live/work space. In fact, for some, the progression from home occupation to live/work to work/live space is part of the cycle. Government and corporate-sponsored incubators are a valuable newcomer on the scene: many have been very successful.
- 5.11 There is, however, a place for lifestyle lofts, especially as part of a lively mixed-use district, often transitioning (spatially) between residential and commercial/industrial areas, between downtown commercial and industrial neighbourhoods, or generally on residential neighbourhood edges.

6 Design and Layout Issues

- 6.1 Live/work poses a number of design challenges as it inverts the traditional assumption that areas for live and work should be consciously designed separately and apart at a settlement scale.
- 6.2 Many of the planning applications for 'live/work' that come before local planning authorities in London do not appear to be designed to any significant degree as distinct from conventional residential units. This raises the overall scepticism of planners.
- 6.3 Genuine 'live/work' schemes do present specific design challenges. The starting points needs to be 'what kind of living?' and 'what kind of working?' and then to look at issues that arise from proximity, integration and separation of these. These constraints and opportunities as perceived by the client and the designer will be mediated through their perception of regulatory authorities such as planning and building control, as well as site constraints.
- 6.4 The more industrial in nature the work element the more that will dictate certain matters such as floor loading, double height ceilings, electricity supply and ventilation. They may also dictate that the work area is fitted out as a basic shell. Loading doors at ground floor level may be more convenient or larger lifts to upper floors. In some cases historic warehousing joists have been re-used. Where sales take place then ground floor street access is much the preferable solution, although where uses present a shopfront then any potentially noisy or dangerous activities may need to have some form of separation. Workshop type areas will need there own water supply and possibly their own toilet and washing facilities. Artists units will need the right kind of light, such as in traditional roof artists studios.
- 6.5 As the sector matures, developers and housing associations are providing an increasingly wide range of accommodation. Research by the Live Work Network indicates that units vary from 50 sq m starter units at Angel Properties' Jam Factory scheme in south London to 200 sq m at Urban Splash's Boxworks development in inner city Manchester. Alan Camp Associates' Empress Row scheme includes 15 new-build live/work two to three bedroom units that range in size from 120 to 170 sq. m. Architects Hawkins Brown say that their firm's designs for live/work units range in size from 70 to 120 sq. m. The typical size of the one bedroom units that the firm has drawn up is 90-95 sq. m. Roughly 40 to 50% of this space is allotted for working purposes in a typical development. How the space is arranged is important.
- 6.6 Building a live/work unit is rarely as simple as adding a work room onto a flat or house. In smaller one bedroom flats, the work area may be an alcove extension off the living area, units which would firmly fall within the C3 use

class. But many one bed developments and the larger two bed plus units have separate rooms equipped. In many two and three floor units, the work area will be housed on a separate floor which is a preferred arrangement by many boroughs. Separate defined work areas is often a key planning requirement to ensure that developments are distinguished from conventional residential development and ensure that conditions on retention of the work element can be enforced.

- 6.7 With employers now obliged to provide disabled loos, up to five sq. m must be allocated to a toilet. Dorothee Raichle-Rhong of Alan Camp Associates says that around 50 sq. m of working space can comfortably accommodate one or two employees. The biggest employment floorspace that the firm has provided is at North Star's Marble Factory scheme in the south London neighbourhood of Camberwell. This scheme, which is designed to provide move-on accommodation for firms that have started up in smaller live/work accommodation boasts units with up to 150 sq. m of employment floorspace. Another way that occupiers may be able to adjust to changing trading circumstances is to exploit the generous floor to ceiling heights in many live/work schemes by installing a mezzanine floor. Architects The Regeneration Practice has been obliged by the local planning authority Tower Hamlets to ensure that all units at its Crown Wharf scheme on Fish Island include double height ceilings to ensure that it can accommodate a wide variety of working uses.
- 6.8 Some flexibility is important to making space work in live/work units. Architect Noel Isherwood has five people working at his one bedroom live/work unit in Islington, north London. Only the bedroom is off limits during the day time. The remaining three quarters of the space, which works out at around 600 sq. ft, is earmarked for office and conference space. *'With five people working, that fits comfortably,'* he says. The living space is set up for conference use during the daytime and is adapted to become a living room after dark. *'You can change the atmosphere by doing things like changing the lights which softens the atmosphere.'* But this is only possible thanks to the firm's laid back style of working. *'We work from ten to eightish, with a break in the early evening to go to the pub for a beer.'* As with so many aspects of live/work, there is no one answer to the space question. What can safely be said is that a true live/work unit will not merely provide a small space for one computer terminal. If that is all that an occupant needs, they don't need a specially designed live/work unit at all. Live/work units will inevitably need more space than an equivalent residential property to successfully incorporate both uses.
- 6.9 The precise size of working area needed will depend entirely on the work activity proposed to be carried out. There are no hard and fast rules. It is possible to run a pc based business in an area of less than 20 sq. m. However workshop type activities may require 60, 70 sq. m. or more. This variation is

often used by developers to argue against minimum work area size restrictions imposed by local authorities. The purpose of these restrictions however is to help distinguish between those ancillary work activities that would still fall within the C3 residential use class, from those that would be of such a scale that they would fall outside it. Restrictions on minimum floor area are therefore justified in those cases where developers argue that the work element is non-ancillary.

- 6.10 The amount of work that people do at home also affects how space is used. For some the home-based work involves preparation for meeting clients off-site. For others, work is almost entirely home-based. These kinds of work patterns can not be entirely prescribed at the design stage – but the design needs to incorporate sufficient flexibility to allow for different kinds of work patterns and family arrangements, or there can be sufficient variety between units to allow for this (and for migration between units when work or family circumstances change). Conditions on use of work areas should be defined to operate during normal working hours, to enable more flexible use of the space at other times.
- 6.11 An issue is storage. Many units have less storage space than the average apartment, while nevertheless also being intended for business use. For artistic



Brandon House Hammersmith

and craft ('cultural') industries, the storage requirements can be considerable, and business items (paints, tools, various kinds of semi-hazardous materials, etc.) can be less well integrated into domestic space than items associated with office-based businesses.

- 6.12 A key design issue how much of the design and fitting of the interior space should be determined by the developer, and how much left to the occupant. Where units have little more than bare walls and power points they are generally known as shell units.
- 6.13 There are some advantages in terms of flexibility in leaving as much as possible up to the occupant. This was the case at WestFerry, where the tenants moved in to what was basically a shell with a bathroom, and the rest left completely open and un-equipped except for very minimal kitchen fittings. It was then up to residents to install flooring, partitions and any other fixtures and fittings that they wanted. As the occupants were on a short lease there was little incentive to fit out the units to a high standard. This was costly to residents, although the fitting out was something to be included in their business plan and for which they could get a loan.
- 6.14 However, it remains an issue with the residents that while their rents are increasing towards market rents with the gradual removal of subsidy, they are unable to get any compensation for the improvements they have made at their own expense, nor will they get any when they leave.
- 6.15 In terms of the functionality of the units, it makes them very flexible and able to cope with a variety of business uses. How much personal domestic space a tenant wants, and how much dual use space is completely up to them. This kind of arrangement, however, does put added pressure on tenants at the time of moving in. If they have an existing business, running that business at the same time as (re)constructing the space was found to be problematic. For the kinds of start-up businesses accommodated by housing associations which require maximum support and minimum start-up costs more turn-key solutions could generally be preferable.
- 6.15 This leads on to the related issue of whether the live and work areas should be physically separated and possibility with separate access. Separation between home and work space is more of an issue where the tenant is not living alone, but shares with a partner and/or children. The intrusion of domestic noise into work and work activity (like phone calls and client meetings) into the domestic space has been an issue in open plan dwellings. Where 'live/work' units are orientated around office type work there will be few problems with family occupancy, but for workshop type units this may be more difficult without a strong degree of separation and insulation of the living and working areas.

- 6.16 The issue of having clients in the unit is an important factor for design. Units that open straight into domestic space, or involve visitors going past bedrooms (for example) to get to the workspace can be disconcerting and impractical. Conversely, having children and family comings and goings through workspace can be both distracting and seems unprofessional. So direct access to workspace (whether through a common entrance or by having separate entrances) is advisable. For quasi medical businesses –a waiting area/lobby is needed as well as the practice room. The requirements here will relate to the whether there are any common facilities (such as meeting rooms and café areas) that can be used as an alternative. Site visits have also shown that frontages that have a more 'business use' type appearance, such as large glass frontages, are more likely to remain in employment use.
- 6.17 It is also an important factor whether live/work businesses are expected to be employing any staff. The scope of additional employment does vary widely and depends to what extent the design, objectives and management of the project involves job creation. In the USA it is estimated that only around 15% of units have someone employed apart from the live/work occupant. At Westferry it is 75%. This is likely to increase the need for a stronger degree of separation between the home and work space, as well as increasing the amount of work space required.
- 6.18 Live/work has been occupied and experimented with (mostly by trial and error, in a relative regulatory vacuum) for most of the last half of the 20th century. Any person who works at home (most do so alone) will agree that it can be a very isolating experience in a suburban single-family house, or even a conventional apartment or condominium. To some extent Live/work projects can be planned to alleviate this isolation in two ways:
- By requiring that live/work projects be designed such that they provide opportunities for spontaneous interaction among residents as they come and go in "interactive spaces" such as courtyards, atriums, etc.;
 - By locating live/work projects in pedestrian-oriented neighbourhoods, on lively mixed-use streets (sometimes above shops) where there are easy opportunities for one to step outside and encounter others in a congenial public realm.
- 6.19 The entrance to the live/work development should accommodate signage for the businesses of each of the occupants. Retention and provision of such signage should be a condition on planning permissions. Lack of such signage is a good indicator of reversion to residential use.

7 Industry Perceptions

- 7.1 'Live/Work' developers are not a single monolithic block. They vary greatly in terms of motivation, scale and intended client group.
- 7.2 Developers have become more outspoken in recent months, making statements that might previously have not been uttered publicly.
- 7.3 For example David Pearl of Structadene one of the largest live/work developers was blunt in an interview with the Independent on the 13/11/2004 *"it was a way around the planning process...Eventually live/work units are bound to become residential – the whole thing is a nonsense."* He also claims the live/work idea is unenforceable *"What happens if the resident works from 9.00 to 9.30 every morning...in the real world we don't go around checking and as long as they pay the rent we don't care."*
- 7.4 Peabody have been praised for its live/work schemes such as Westferry, however David Tannahill its director of commercial operations is frank in the Tim Dwelly report 'Homes that Work' that later schemes such as Raines Dairy, have been 'fig leaf' uses which they originally wished to develop for affordable housing. He considered it a development driven live/work scheme where the success of the live/work element would be a happy accident. The *"site has no particular logic as live/work, it is provided essentially as a planning condition to provide some employment use on site."* The scheme was not a shell scheme following concern at the high fit-out costs at its earlier Westferry scheme and consequently there has been enforcement concerns at the site.
- 7.5 What this case illustrates is that where the aspirations of the social housing sector are frustrated the objectives of the social sector in the provision of affordable workspace will not be pursued with any great enthusiasm.

8 Planning Legal Status

- 8.1 The legal status of 'live/work' developments has been a source of some confusion as such developments do not neatly fall within a single use class.
- 8.2 Broadly there are three possible interpretations as to how to deal with these developments in terms of planning use. The recent publication of circular 03/2005 *Changes of Use of Land and Buildings - The Town and Country Planning (Use Classes) Order 1997* for the first time gives a view as to how live/work development should be classified; unfortunately it further confuses rather than clarifies the situation. This section discusses the appropriateness of these possible interpretations and looks at the implications of the new circular.

8.3 Homeworking within Use Class C3 (residential)

- 8.4 Working at home does not necessarily mean that planning permission is required. Typical residential developments will fall within the C3 use class of the Town Planning (use classes) order 1987.
- 8.5 It has long been an established principle that some work can be carried out within a dwelling without the requirement for planning permission. Over the years the principle has been extended from doctors initially to other health and quasi health related occupations such as acupuncture etc..
- 8.6 The amount of work that can be carried out in a dwelling is a matter of precedent and assessment of individual cases on their merits rather than of set regulation. This means that local planning authorities must judge whether planning permission is required on the basis of the facts of the case past appeal and legal precedents. This is why local planning authorities often ask for prospective homeworkers to submit applications for certificates of lawful use to give a formal assessment as to whether planning permission is required.
- 8.7 Over the years a number of principles have grown up which are often encoded in guidance leaflets produced by local authorities and which have become embodied in advice on the planning status of homeworking in PPG4. Permission is not normally required where the use of part of a dwelling-house for business purposes does not change the overall character of the property's use as a single dwelling. Once the business or non-residential use of the property ceases to be ancillary to its use as a single dwelling because, for example, the business has grown and the use of the dwelling for activities related to the business has intensified, a material change of use for which planning permission is required is likely to have taken place. As PPG4 states *'The likelihood of there having been such a material change of use may be indicated where the business or non-residential use generates visitors, traffic,*

noise or fumes over and above what might be expected if the property were in use as a single dwelling without any ancillary use. The key test is that homeworking activities do not affect the overall domestic character of the building. However, if the non-residential use ceases to be ancillary, because the business has expanded, planning permission will be required for change of use.' Circular 03/2005 states *"The amended Order does not alter the current position: planning permission for working at home is not usually needed where the use of part of a dwelling house for business purposes does not change the overall character of its use as a residence."*(para 78). Further information is provided in the 'Step-by-Step guide to Planning Permission for Small Businesses issued by the ODPM, although this simply repeats the advice given above.

- 8.8 There are two aspects to making the assessment of whether there has been a change of use, assessing whether the use is such to fall within the C3 use class and also assessing whether the character of the use is such as to fall within another use class. For example the B2 (general industry) use class is defined in contradistinction to the B1 (business use) so that it includes industrial activity not suitable for being carried out within a residential area i.e. detrimental to 'the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash or grit'. This means that activities such as car repair when carried out within the curtilage of a dwelling can fall outside the C3 use class and within the B2 use class when it harms the amenities of that area.
- 8.9 Local authorities often set down lists of acceptable and unacceptable activities within a homeworking premises. A good example is a guidance leaflet produced by Milton Keynes. Often, however, these bear little relationship to the tests within PPG4 over the established precedents over what is acceptable within a C3 dwelling. For example the Milton Keynes Guidance states that customers and clients should not need to visit the premises, however it has long been established that for doctors and similar premises clients can visit. This underlines the principle that it is the impact of the activity that is material and some activities with low impact will not take the use out of the C3 use class. For example if people visiting are likely to cause noise and/or nuisance, typically from the volume of visitors, then planning permission will be required. It is generally held that use of one or two rooms for bed and breakfast will not require planning permission. A difficult issue is the number of children that can be cared for by a registered childminder before planning permission is required. This is subject to a separate regulatory regime which sets caps dependent on the age of the children and guidance in PPG4 holds that if these limits are complied with by a single childminder then planning permission will not be required.
- 8.10 The same principle applies to issues often quoted in guidance leaflets such as parking of vehicles, employment of staff, storage of goods and dedicated use of rooms for business. An owner of an ice cream van might acceptably park it

in their garden, but where they park two or more they are effectively running a fleet and permission may be required. Similarly there is a world of difference from someone running a small mail order business from home from someone who turns most of the property and rear garden over to warehouse storage in connection with such a business. Dedicated office rooms are becoming more and more common, even in typical housing, and this alone need not mean that planning permission is required. Such rooms are typically used for other activities outside 'work' hours, in a recent rating case the occasional use for ironing and presence of an ironing board was held to avoid the need for a partial business rating of an office room. Only dedicated space is business rated and the outcome of this case is that lack of business rating can no longer be used as an indicator of a change of use. A difficult issue is the employment of staff other than those living in the premises. Although this can cause a harmful impact in some cases it may not, such as where employees do not drive to work. However it may change the character of the premises to fall outside the C3 use class. This is a difficult issue as the character may change gradually over time and may require a triple test of whether the changes constitute development, constitute a change of use and whether any enforcement action is justified.

- 8.11 By international standards the English practice is relatively deregulated and non-bureaucratic, indeed homeworking is now increasing common amongst public servants, such as planning inspectors. In most American and continental practice a rezoning is required unless special homeworking regulations are in place. This is often cited as a reason why homeworking has become so common in Britain. It also has led to discussions in these other countries as to whether the regulatory regime is harmful to the growth of teleworking and the knowledge sector economy.

8.12 Cases outside the C3 use class

- 8.13 Given the relatively deregulated nature of home working in the UK those cases where a normal C3 consent will not be sufficient should be comparatively rare. This is a separate issue from whether homes on the market are designed to be suitable for homeworking, many are not. Broadly there will be three categories: residential premises where more than one person is employed, premises where only one person is employed but where the work element of the scheme and therefore the character is predominantly 'work' in nature, and/or residential premises that also house activities potentially causing harm to amenity, an example being sculptors using welding and grinding in their work. These three categories both raise very different planning issues. It is important to note however that the vast majority of work activities typically carried out in residential premises, and accruing the sustainability and economic benefits of such activity, can be carried out without planning permission within C3 dwellings and without the need for any special planning dispensation. The

second category of the 'work' area comprising a large area of floorspace will be comparatively rare in the private sector where the general imperative is to minimise the work element, and most home businesses require little more than a small office room. One example though might be artists studios – sometimes called *Atelier* units. Where planning permission is required there have generally been two legal interpretations as to what category they fall.

- 8.14 Thus far the issue is comparatively straight forward in legal terms. The problems arises in terms of when an application is submitted that purports to be outside the C3 use class. Prior to the introduction of Circular 03/2005 two differing interpretations existed. The following sections will list the arguments for each of these views, and will be followed by a discussion as to whether the new circular has clarified or further confused this issue.

8.15 Interpretation (1) 'Live/work' is a sui-generic use.

- 8.16 Sui-generic means a use by itself, a use that does not fall within any specific use class. The use classes order defines a number of specific uses that fall within this category, such as theatres and taxi businesses, however the list is not exclusive.
- 8.17 To be categorised as a sui-generic use it must fall outside any specified use class. Those who hold the view that such uses are sui-generic argue that live/work does not fall wholly within any single use class, that it is a mixed use which is sui-generic.
- 8.18 Some support to this view was given in the case of 2-24 Corbet Place E1 in Tower Hamlets in 1999, which appears to have some influence in East London. Here the inspector concluded that the use proposed was sui-generic and therefore there need not be affordable housing provision as the use was not residential. However this case did not include any detailed or considered consideration as to the scope of the C3 use class and to what degree the proposal fell outside this. This was subject to detailed consideration in the case later that year at 73 Leonard Road Hackney which did consider these issues.
- 8.19 Circular 03/2005 para 79 now supports this view *"They are clearly a mix of residential and business uses which cannot be classified under a single class within the Use Classes Order and would therefore be sui generis."*
- 8.20 If this interpretation is held to apply to live/work developments then conditions requiring permission to be obtained for sub-division will be required, this is because as a result of the Housing and Planning Act 1986, and Article 4 of the amended Order, planning permission is not required for the sub-division of premises other than dwelling houses, provided that both the existing and proposed uses fall within the same use class.

8.20 Interpretation (2) 'Live/work' is a mixed or composite use.

8.21 It is a long established planning principle that in considering the use classes order it is necessary to consider the whole of the unit being used, the whole area on which an activity is being carried on, including uses incidental to, or included in the activity. In the case of *G. Percy Trentham Ltd v Gloucestershire County Council* [1966] 1 WLR 506 the court posited the example of a bakers store with a flour store and dwellinghouse above in one unit. This would be one planning unit, although it could be separated into a butchers shop with meat store, and a separate dwelling unit without the need for planning permission. This issue of separation of uses requires controls on the permission in those cases where there is a planning case for maintaining a single unit.

8.22 This principle of a 'composite' use was much further developed in the key case of *Burdle V Secretary of State for the Environment* [1972] 1 WLR 1207. The judge set down three criteria for determining the planning unit.

- (a) Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary the whole unit of occupation should be considered.
- (b) Even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered.



Dymnock Street Fulham

- (c) Where there are two or more physically separate and distinct uses. Occupied as a single unit but for substantially different and unrelated purposes each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.

- 8.23 The argument is that the third case will apply to most mixed use developments, that is an application for several uses each its own planning unit. Arguably where local authorities insist on separate live and work areas with separate access the application will be for a mixed use development of a C3 dwelling and either a B1 or a B2 unit. The Courts have held that it is the nature of use which is the main factor and that occupation and ownership were not conclusive. This means that in such mixed-use development cases a planning obligation is necessary to ensure that each element is delivered (indeed Circular 1/97 envisages the need for such obligations) and if necessary in the case of live/work developments that the live and work elements are occupied by the same person.
- 8.24 The second category are generally known as 'composite' units, that is two or more uses occupying the same planning unit. This will apply in those cases where the live and work elements are not fully separate and distinct and neither the live or work element is incidental or ancillary to the other. Arguably this will apply to most private sector applications for 'live/work' development where there are not fully distinct areas or proposals for fixed proportions of each use and the description is imply for a 'live/work' development.
- 8.25 These cases will be a composite C3/B1 use or a composite C3/B2 use. It is important for local planning authorities to determine what is being proposed and indeed why planning permission is required. From the earlier discussion ancillary activities of the form that would normally fall within the B1 use class if carried on by themselves would not normally require planning permission. One exception would be where more than one person is employed on site where planning permission may well be required, as a composite C3/B1 use. Somewhat more rarely would be cases where industrial activity are proposed where a development would be a composite C3/B2 use.
- 8.26 One issue with composite uses, aside from that the uses may be split, if physically separate, without the need for planning permission, is that one use may be superseded by the other as permitted development.
- 8.27 This is because of a change introduced in the 1995 General Permitted Development Order Part 3 Class E. This permits a development to change from one use permitted by a planning permission to another use permitted by that planning permission. For example a development for a composite C3/B1

use could change to wholly C3 or B1 without planning permission. It would be a live or work development. An exception is where it would breach a condition or limitation on the original permission. This underlines the need for such conditions or obligations.

- 8.28 It could be argued that a distinctive feature of 'live/work' developments is that the work element is not merely capable of being implemented but that it will be implemented. This does not by itself mean that the proposal will necessarily fall outside the C3 use class. Rather the implementation of the work element would require a condition or planning obligation. The issue then is the reasonableness and enforceability of such a requirement. Setting down a positive requirement on an applicant is much harder to enforce than those which set trigger points and restrictions. There is also the issue of what happens when a business goes bankrupt or when the owner retires. There is an argument that in these cases the normal outcome of the future of business premises would apply, i.e. the owner or occupier would move from the premises.
- 8.29 My conclusions on this matter are confirmed by an enforcement appeal decision at 73 Leonard Road Hackney in 2000. Here the local authority argued that as a live/work development it did not fall within any specific use class and therefore the 10 year rule applied regarding whether the use would be lawful under section 191 of the 1990 Act. The Inspector concluded that the appellants' reference to live/work space in the application was not used as a term of art and that the Council had allowed the concept to confuse its approach to the case. The inspector considered that the relevant issue was whether the business element was sufficiently significant to have brought about a material change of use. Following an internal inspection, the inspector noted that there were elements of office use including filing cabinets, a computer, printer and fax machine, the overall impression was one of residential occupation and since that had commenced more than four years ago a certificate should be granted. The proportion of floorspace is crucial, in the case of 4 Wellington Road NW8 also in 2000 the employment purpose of the use was much more prominent and many rooms had a dual purpose. This was concluded to be a composite use and so the 10 year rule applied as opposed to the 4 year rule.
- 8.30 This second interpretation is that held by Brent, Lambeth, Westminster and Tower Hamlets., at least before the publication of circular 03/2005.

8.31 Implications of Circular 03/2005 on the Classification of Live/Work development

- 8.32 The new Circular contains sections on general principles, including rightly laying emphasis on the principle that determining the appropriate use class is one of deciding what is the primary use of the land, whereby ancillary uses may not need permission. Of course, as paragraph 2 of the circular states, it is an interpretation of the law and only the Courts can give an authoritative view.
- 8.33 Para 13 of the circular goes on "*Where the primary use of land or premises is a mixture of different uses, such mixed use does not fall into any of the classes set out in the amended Order. The use will therefore be sui generis.*"
- 8.34 However this view is not universally shared. This is a view held by some planners and planning lawyers, but many hold that this is inserting in to the law a principle that nowhere in the Order is stated, that there must be a single primary purpose for a defined use class to apply and if there is more than one use and none is ancillary to another that it somehow magically leaps out of the classification scheme offered by the use classes order. Some coffee shops and gastropubs now find themselves trapped in planning purgatory. Where no



Waldo Road College Park

one part of the use is primary we are told they are to be classed as sui-generic uses, with no clarity as to what other uses they may change to.

- 8.35 The alternative approach relies on the tried and tested principle of the planning unit. Rather use classes can be composited below the level of the planning unit, and that a planning unit can compose of a mix of defined use-classifiable uses. This approach relies on the principles set down in the case of *Burdle V Secretary of State for the Environment* [1972] 1 WLR 1207 and as applied by the inspector in the case of 73 Leonard Road Hackney. It is based on the view that use classes are not a thing unto themselves, some kind of ideal platonic classification that cannot be applied unless a use fits perfectly, rather that it is nothing more than what the act states, a collection of similar uses for there is no development to change between. Rather than as a means of defining development they are a means of defining what is not development.
- 8.36 This point is crucial but rarely properly understood. Multiple uses below the level of the planning unit does not mean that a change of use has occurred, unless some other use in another use class, or in none at all has become the primary use to which the other uses are ancillary, or no individual primary purpose can be identified. Use classes can still be used as a means of classification and to determine whether changes within individual parts of the site are development, as part of the overall assessment of the application site as to whether development has occurred, including whether new planning unit(s) have been formed.
- 8.37 Turning now to the text of paragraph 79 of Circular 03/2005 which for the first time attempts to classify 'live/work' *"They are clearly a mix of residential and business uses which cannot be classified under a single class within the Use Classes Order and would therefore be sui generis."* It is interesting to look at this in the context of the preceding paragraph under the same subheading. Paragraph 78 states that *"The amended Order does not alter the current position: planning permission for working at home is not usually needed where the use of part of a dwelling house for business purposes does not change the overall character of its use as a residence."*
- 8.38 The use of the word 'clearly' is unwise for an issue that is complicated and far from clear cut. Although some would claim that the new use classes order now firmly classifies all units described by the applicants as 'live/work' as sui-generic as they cannot be classified under a single class this interpretation is not compatible with the emphasis on the test of primary purpose test in paragraph 13 and the classification of home working in paragraph 78.
- 8.39 Paragraphs 78 and 79 of Circular 03/2005 can only be reconciled where the scale and nature of the 'work' element is of a nature to change the

character of the unit so that it does not have a single primary purpose as a dwellinghouse within class C3. The nature of the work element must 'clearly' fall outside C3 for it to be 'clearly' a live/work unit that cannot fall within that classification - using the logic of the circular. The ODPM should consider clarifying this point.

- 8.40 The alternative view that the mere description of a unit as 'live/work' suffices to remove from C3 is untenable. Planning law does not rely on a mere description - which are in any event often inaccurate. Planners know that applications described on the form as restaurants sometimes have no kitchen and no chef. The real test is that of primary purpose. If a unit with the same split between live and work falls within C3 under paragraph 78 (because the work element is ancillary), it would then be a nonsense to classify it as sui-generic under paragraph 79. The test of primary purpose must be applied consistently and an identical unit cannot be simultaneously within two mutually incompatible use-classes. The work element must be clearly non-ancillary for the interpretation in paragraph 79 to apply. As the inspector warned in the case of 73 Leonard Road, planners must not be misled by the description as live-work, they must apply the primary purpose test to determine the specifically of the use. The view that paragraph 78 only applies to conversions of existing units is also untenable as paragraph 79 makes clear



Westferry Tower Hamlets

live/work units can also arise through changes of use.

- 8.41 A key implication of the view of live/work as sui-generic use concerns the applicability of affordable housing policy. Although some early appeals took the view that national policy on affordable housing does not apply I take the view in section 12 that this is now untenable. Housing can be more than use class C3 in just the same way that retailing is more than just the shop use class A1 (e.g. sui-generic open yard retailing).

8.42 Clarifying what is being applied for

- 8.43 Despite the confusion introduced by the new circular, a clear conclusion of this section, whatever interpretation is held, is that local planning authorities need to be certain as to what is being applied for, what use classe(s) the applicant is applying for and specifically how, if at all, the proposal would differ from a standard C3 dwellinghouse. The vast majority of normal work activities carried out at home can be carried out without planning permission, technological advantages such as the PC and broadband and virtual private networks mean that much office based work can now be pursued from home. Nowadays most of the benefits of live/work can be achieved without any special category or exemption. If it does fall within a separate category then this will raise specific planning issues requiring resolution, including overspill parking from multiple employees onto residential streets and/or amenity issues from activities falling within the B2 use class.

9 Locational Issues

- 9.1 'live/work' is a challenge to the traditional zoning approach of restricting residential properties to areas zoned for such and employment units to employment zones areas.
- 9.2 Laying this to one side there will be an inevitable tension between the locational requirements of what will make a good location for the 'live' element and what will make a good location for the 'work' element. A suitable location will be one that shares both elements.
- 9.3 A key issue is whether 'live/work' units are suitable for location within the traditional industrial estate. Industrial areas have considerably reduced in extent and number in London since the 1950s. Those remaining are often now firmly industrial in character, in terms of physical separation and isolation from residential areas, the bad neighbour nature of the work undertaken or the development of modern industrial sheds. In many of these areas the introduction of a residential population would be problematic. They could be isolated from shops and services. There may also be safety issues from traffic.
- 9.4 The key problem however is often that of amenity. The issue is well summed in PPG4 para. 18. *"Planning authorities should consider carefully whether particular proposals for new development may be incompatible with existing industrial and commercial activities. The juxtaposition of incompatible uses can cause problems for the occupiers both of the new and of the existing development. For example, where residential development is proposed in the vicinity of existing industrial uses, the expectations of the residents may exceed the standards applied by the planning authority, and may give rise to pressure to curtail the industrial use. This may be a particularly acute problem where other legislation, such as that relating to environmental pollution or public health, might subsequently result in costly new conditions or restrictions being imposed on the industry as a consequence of the new neighbouring development."*
- 9.5 Indeed there are examples in London of where some uses have had to close following complaints of noise from new residents and where they have claimed compensation from the local planning authority from them having failed to consider this factor.
- 9.6 In the USA a potential solution to this problem has been found in the form of easements. Here the owners or tenants sign an easement which restricts their scope for complaining about other activities. The potential scope and legality of such easements may need to be investigated. It may be easier to apply them amongst residents of a single development than complaints against the surrounding businesses.

- 9.7 Locational issues become more problematic in areas which are more mixed and varied in character. This is particularly the case in Inner London areas developed before the early planning and public health legislation. These often see a hugger-mugger mix of houses and existing or former industrial premises, some of which may be 'ripe' for redevelopment such as Victorian multi-storey wharf and warehouse buildings.
- 9.8 Many of these buildings are very flexible in form with high ceilings. In some cases they have been available as low cost workshop space, in others converted, sometimes on a short-term basis, as artists space. Planning issues in such mixed and run down areas often revolve around the tensions between protecting uses and communities attracted by low land values and the pressure for investment and rising land prices in an 'up and coming' area.
- 9.9 The planning system in London has traditionally been more amenable to rezoning and land-use change in such areas. Amidst the concern of retaining or providing a mix of uses the provision of 'live/work' has sometimes been seen as sugaring the policy pill. Of more recent concern however has been the issue over the squeezing out of uses attracted by the low rent nature of the area originally.
- 9.10 The introduction of residential uses into such mixed character areas is rarely problematic, other than the occasional presence of a bad-neighbour use. The



Epirus Mews Fulham

position is often taken that such uses are better located elsewhere. Whilst they remain however they are a constraint on residential use. In some cases developers have been encouraged to relocate or buy out bad neighbour uses or even to pay for noise mitigation measures at source.

- 9.11 The introduction of low impact employment uses of a B1 (business) nature would not be problematic however more high impact uses may cause problems in areas with a greater proportion of residential uses. This is a significant issue as higher impact 'workshop' type live/work units may be precluded from areas with a more robustly industrial character and areas with a mixed character may have the most affordable and suitable buildings. Such higher impact uses will rarely be able to afford the much higher prices of purpose-built 'live/work' premises. Good locations may arise in locations with suitable buildings but where the geography reduces proximity of residential properties. These can include canal and some riverside locations, locations on the edges of industrial estates fronting major roads, or alongside railway lines. These locations can be found in areas zoned for industrial uses, and for individual buildings which may or may not be protected in their original employment use.
- 9.12 In residential areas the advice of PPG4 para. 15 applies *"It is now generally recognised that it may not be appropriate to separate industry and commerce- especially small-scale developments- from the residential communities for whom they are a source of employment and services. In areas which are primarily residential, development plan policies should not seek unreasonably to restrict commercial and industrial activities of an appropriate scale - particularly in existing buildings - which would not adversely affect residential amenity. Planning permission should normally be granted unless there are specific and significant objections, such as a relevant development plan policy, unacceptable noise, smell, safety, and health impacts or excessive traffic generation. The fact that an activity differs from the predominant land use in any locality is not a sufficient reason, in itself, for refusing planning permission."*
- 9.13 Such acceptable uses seen on their own are by definition likely to be within the B1 use class. When included as part of a 'live/work' unit however in many cases planning permission will not be required as the area of workspace for office type uses is unlikely to be large and in most cases will be ancillary to the primary purpose of the use as a C3 dwellinghouse.
- 9.14 Two key planning policy issues therefore arise from the locational requirements of 'live/work' uses. Firstly to what extent should they be permitted in areas zoned for industrial B2 uses? Secondly in areas of a mixed use character how the issue of the impact on amenity of 'workshop; type live/work uses should be controlled.

10 Rating and Landlord/Tenant Issues

- 10.1 One of the problems arising from the hybrid nature of 'live/work' proposals is that existing tenancy arrangements may be less than adequate.
- 10.2 There is a risk of accidentally giving security of tenure to tenants of live/work accommodation under the Landlord & Tenant Act 1954.
- 10.3 The 1954 Act gives security of tenure to tenants of business premises. It enables tenants to remain in occupation after their leases/tenancies come to an end. If a landlord wants possession, they must prove grounds for possession to the Court.
- 10.4 The business tenant's rights of security are similar to that of the assured or secure tenant. Falling foul of the 1954 Act can therefore turn into something of a legal nightmare for landlords.
- 10.5 Tenancies of 'live/work' accommodation will most likely fall within the LTA 1954 Part II as business tenancies. Case law under the 1954 Act suggests that a property used for two purposes will fall within the 1954 Act.
- 10.6 Until recently it has been assumed that only if the business is incidental to the main activity carried on at the premises will the letting be outside the 1954 Act. A residential letting of a house to a doctor which permits them to carry on once-weekly consultations from a room in the house is unlikely to make the letting a business tenancy subject to the Act. The business purpose has to be a significant purpose of the letting, rather than incidental to it.
- 10.7 However, the 1954 Act enables landlords and tenants of business premises to contract out of the Act before the business tenancy or lease is entered into. An application to the Court to 'approve' the contracting out must be made.
- 10.8 This is the main way of avoiding the consequences of the 1954 Act and should be used when granting tenancies of work/live accommodation.
- 10.9 Granting anything other than a contracted-out business tenancy could be risky. Nonetheless, some housing associations which run live/work projects grant assured shortholds.
- 10.10 This, one assumes, is on the basis that the 'work use' is incidental to the use as living accommodation. However, the risk is that in any Court proceedings the tenant could claim the protection of the 1954 Act. As to rent regulation of work/live accommodation, business tenancies and business leases are not subject to any rent restrictions and any rent increase will be purely governed by the rent review clause in the tenancy/lease itself – just like any other

business tenancy. The better course therefore is to grant business tenancies/ leases and contract out at the outset.

- 10.11 This arose in a widely reported county court judgement regarding a live/work unit in Nile Street Shoreditch. Here the judge ruled that the term 'live/work' was '*vague and arguably ambiguous*' and meant that the occupant can either live or work there but has no obligation to do both. So even with a business lease there is no breach of that lease if the business use ceases. The consequences are more profound however as the case involved a tenant who wanted to force the landlord to extend the lease, something not possible with contracted out business leases. Therefore the tenant was able to claim security of tenure under the 1954 act.
- 10.12 The consequence of this is a severe blow to registered social landlords who use the tenure of rented units and their landlord status to control the occupancy of live/work units, securing occupancy and ensuring the work element in perpetuity. Following the Nile Street cases they no longer have an appropriate mechanism to secure this. The problem is that there is no business equivalent of an assured short hold tenure suitable for live/work premises. Until there is reform of landlord tenure law there is no appropriate tenure mechanism which can guarantee long-term live/work use and control will entirely rest on planning enforcement.



Arbetus Place Fulham

11 Control and Enforcement Issues

- 11.1 Concerns over whether 'live/work' schemes will present enforcement problems has been one of the key factors in making some local authorities hesitant about the concept.
- 11.2 The concerns are two-fold, firstly over the high risks of residential reversion, secondly that if a compliance problem emerges it will be difficult to enforce against.
- 11.3 Concern over enforceability has been treated inconsistently in the appeal cases examined. Some inspectors have considered that controls on use are relatively easily enforceable requiring only a site visit. Others have considered that they difficult to enforce given that advance notice will be required for any inspection and this would give notice to occupiers to make short terms changes to give the appearance of compliance.
- 11.4 Any regime requiring internal inspection over use will be inherently more difficult to enforce than typical external inspections. This renders enforcement difficult but not impossible. The key is the resources required for enforcement and whether this is an appropriate use of staff time. As Richard Mc Carthey ODPM Director of Sustainable Communities put it in a speech to the Live/work Network– June 2004 *"New live/work policing officers in local authorities, ... I would suggest is not a winnable concept."*
- 11.5 However the existing business rating regime requires internal inspection of shared living and working premises with business rates as opposed to business rates applying to the proportion of the premises used predominantly for business purposes. Indeed the presence of an ironing board after office hours has led one rating tribunal to conclude that premises were not used for predominantly business purposes. Therefore internal inspection is in any event required to demonstrate lack of business use and the enforcement burden could be reduced through sharing of information and/or co-ordinated inspections – in line with government proposes for streamlining the enforcement burden on small businesses. If the rating rules were reformed so that use of a dedicated area for business purposes attracted business rates, even if used for only part of the day, the lack of business rating could be used as proof of lack of business occupancy without the need for intrusive internal inspection. This could be an elegant solution to the 'live/work policing officers' problem.
- 11.6 Some authorities have been concerned over whether the use of conditions is strong enough and have preferred planning obligations. Planning conditions also run with the land and have the advantage of applying to the occupant 'occupancy conditions' whereas planning obligations will only be enforceable

against those having some interest in the land. The only real advantage of obligations would be the power to use injunctions, however these would be difficult to prove, and new powers such as the use of temporary stop notices would have equivalent effect. Therefore in line with government advice conditions should be preferred to planning obligations.

- 11.7 There has now been some considerable experience in the drafting of conditions/obligations. Frequently used conditions include those requiring no subdivision of the living and working spaces and requiring the work space to be used only in association with the occupant of the living space.
- 11.8 There has been some confusion over the issue as to whether the 4 year rule or the 10 year rule applies to the period after which a change of use from live/work to residential is immune from enforcement action under section 191 of the Town and Country Planning Act 1990. Where there is a condition that is breached it is clear that the 10 year rule applies. The four year rule applies in other circumstances as reversion would be a change of use to a 'single dwellinghouse'. Indeed this led Hammersmith and Fulham to halt enforcement action against a scheme at The Courtyard Gowan Avenue as the appellants came forward with evidence that the premises had been occupied for more than four years. However where a change of use is required for a 'live/work development then the 10 year rule applies as this would not be for a 'single dwellinghouse' however so defined. There are arguments for amending the law to see a single across the board test for exemption. Four years is quite a short time and visits by the author to live/work show homes has seen the developer recommend to 'sit tight' for four years to secure lawful use for solely residential purposes.
- 11.9 The issue of enforcement has gained greater prominence due to the decision by the London Borough of Hackney to serve planning contravention notices (PCN) against almost half of their completed live/work stock.
- 11.10 The response has been very interesting with a number of residents complaining that their premises were only advertised for residential purposes and even that conditions on rental or sale prevented use of the premises for rental or sale purposes.
- 11.11 Before planning contravention notices can be used there has to be a prima-face reason to conclude that premises are not used for business purposes. This could include lack of signage for business use. Lack of registration of a company at the premises would not be a good guide, as businesses may

operate as a partnership or be registered at another address, such as that of the Company Secretary.

- 11.12 The advantage of a PCN is that it can ask questions to further enquire as to the activities that are occurring, and seek evidence that business use is taking place. The advantage may be less that enforcement action may follow but more that well publicised notices may have a deterrent effect on future unauthorised occupancy.
- 11.13 An issue that has emerged from the use of PCNs at Hackney is that purchasers have claimed that premises have been marketed as solely residential, and in some cases leasehold premises have lease clauses preventing the running of a business. Where the original developer no longer has an interest in the land it may seem inequitable to pursue enforcement against the occupier. The current enforcement system is based around rectification, rather than around punishment for breaches per-se. This problem would seem to be a good case of where fines for the original developer, not linked to restitution, would be appropriate.

12 Housing and Affordability Issues

- 12.1 Potential loss of affordable housing is one of the main concerns of local authorities when 'live/work' development is proposed.
- 12.2 The concern arises because of potential of schemes to bypass policies on thresholds before affordable housing policy applies and because of the reduction in the amount of housing overall in a scheme for which affordable housing policy would apply. This concern is intensified by the perception that units will be likely to revert to pure residential use.
- 12.3 Site visits and the interviews with London Boroughs have shown this to be a genuine concern, with large numbers, if not the majority of 'live/work' schemes londonwide eventually reverting to solely residential use. A good indicator is the lack of business signage and use of solely residential letterboxes and doorbells on an entry panel. Problems concerning internal inspection and enforcement set out in the previous chapter mean that this observation is inevitably anecdotal, but the concern is so widespread and seemingly shared by the private sector, together with lack of hard evidence of business use, that its veracity cannot be seriously questioned.
- 12.4 This issue needs to be seen in combination with policies concerning provision of employment floorspace in mixed-use schemes. Some boroughs require a minimum percentage of employment development in some mixed-use areas. If, for example, the work proportion of a 'live/work' scheme is counted as employment floorspace then the amount of pure employment floorspace can be reduced, potentially to zero. In addition if affordable housing policy is not applied to the residential component of 'live/work' schemes then the local planning authority could lose affordable housing if the overall live/work proportion of the floorspace is increased to push the pure residential amount of units below the affordable housing threshold. There is also evidenced of unit sizes being artificially inflated to this end. This is what has happened to Hackney on at least one appeal in Shoreditch and has led to it being incapable of securing either of its planning objectives in this area.
- 12.5 It might seem inconsistent to the casual observer to treat 'live/work' as an employment use for purposes of employment policy and not as a residential use for purposes of affordable housing policy. But this is just one of many inconsistencies of appeal decisions.
- 12.6 Whilst this might be the case it should be noted that neither PPG3 or Circular 6/98 on affordable housing specifically mention that affordable housing policy solely refers to the policy applying to dwellings within the C3 use class. Paragraph 14 of PPG3 simply states that affordable housing policy applies to housing development. Indeed Circular 6/98 endnote 1 specifically

refers to new housing development being so defined so as to include special needs housing, which would often be in the C2 use class, therefore it cannot be definition be confined to the C3 use class. Indeed the London Plan, now a development plan, policy 3A.8 on the requirement for affordable housing states that this applies both to private residential schemes and 'mixed-use' schemes, which must mean uses other than C3 private residential if this is to have any meaning.

- 12.7 If live/work is of a type to fall within the C3 use class, as most appear to be, then there is no reason as to why affordable housing policy should not apply. However it is admitted that given the confusion and uncertainty over to which use classes if any 'live/work' applies. For this reason development plans need to be clear that affordable housing policy does apply to the 'live' element of 'live/work' schemes. A number of boroughs, notably Southwark, Haringey, Hammersmith & Fulham, Lambeth and Tower Hamlets specify this, in their UDP or in their affordable housing SPG.
- 12.8 In many cases the assertion that a 'live/work' proposal falls outside the C3 use class appears to have gone unquestioned and unanalysed by planning inspectors.
- 12.9 This is a significant issue as it provides a loophole which can be exploited by the development community to avoid the provision of affordable housing and thus raising developer profits; indeed it is perceived as such by them. This results in a distortion of the market with sites that would otherwise not be proposed for live/work development coming forward, and as a consequence residential social landlords being priced out from bidding on these sites.
- 12.10 Planning policies in some boroughs seek to exploit the uplift in land values from a change of use from employment land to residential, to use it to cross subsidise the provision of affordable housing. Hammersmith & Fulham's exceptions policy for example only permits affordable housing on employment sites outside designated employment areas, effectively allowing registered social landlords to purchase sites at exiting use value plus a premium to secure the release of the land. Some boroughs such as Tower Hamlets use part or all of the uplift to offset against public subsidy for affordable housing, allowing such subsidy to fund additional sites. The rationale for each of these variations is undermined if a 'live/work' scheme allows a general market scheme without affordable housing to be built on a site zoned as a lower land value use such as employment. This undermines both policies on affordable housing and on protection of employment land (see next section).
- 12.11 With the increased emphasis on registered social landlords for 'housing plus', that is activities complementary to the provision of housing such as local

regeneration projects, some RSLs have branched out into workplace provision and/or provision of 'live/work'.

- 12.12 Two reports by Tim Dwelly of the Live/Work network for the Housing Corporation 'Disconnected' and 'Homes that Work' examine the role of registered social landlords in this sector. It is undoubtedly the case that tenants of social housing have not benefited to the extent of owner occupiers in the growth of home working. Partly this is a result of lack of skills, partly due to lower pc ownership, partly due to lack of space and often due to tenancy restrictions preventing home based working.
- 12.13 One of the main advantages of RSL 'live/work' schemes is the lower risk of residential reversion. This is for three reasons. Firstly RSLs are likely to be in it for the longer term, whereas the interest of a commercial developer is likely to end when units are sold. Secondly RSLs are likely to operate some kind of allocation policy, which is likely to target genuine enterprises, finally because of the likelihood of some form of leasing or shared ownership securing helping secure the use in perpetuity.
- 12.14 On several RSL schemes developed as rented property there have been demands from some tenants to purchase all or a share in the equity. This has the advantage of developing a core of established premises but weakens controls exercised through conditions on leases and management policies designed to secure moving on of successful businesses and space for new tenants.

13 Employment and Economic Issues

- 13.1 This section examine the relationship between live/work and public policy issues relating to economic development. A key question is what is the economic case for live/work development?
- 13.2 There is undoubted theoretical cost savings associated with live/work in comparison with conventional separate premises. These are two-fold. Firstly the cost savings associated with less expenditure on commuting, and potential loss of working hours during commuting. Secondly the potential savings on renting separate business space. In this second instance it will only represent a saving if, for a potential occupant, the cost of the 'live/work' space is less than their current living premises plus the cost of potential small business space, plus the cost of commuting to that space. Also most accommodation costs for small businesses, including partial use of a dwelling, can be claimed off tax as a business expense, so the marginal costs accruing to the business may be nonexistent.
- 13.3 In London there is currently a large supply of B1 space available at low cost (as low as £ 5/psf) in some parts of London such as the City Fringe, but clear shortages in other areas (such as Fulham for example), as well as shortages of small B2 spaces, such as facilities for artists. Also new build stock of live/work premises are now well above current average house prices in London, prices of over £350,000 for a unit are entirely typical. It is therefore difficult to see any economic rationale for cost savings in these circumstances; a decision to locate in such a unit is much more likely to be for primarily residential purchase reasons, and/or where there is a strong locational preference. Indeed if a development of 'live/work' premises leads to the loss of existing low cost employment premises it may hinder business startups overall.
- 13.4 A theory frequently propounded by the proponents of 'live/work' is what the American Live/Work institute has called the 'Incubator cycle'. Ideas for small businesses often progress through different work spaces, from a spare room at home, to the garage (of Apple Computer and Hewlett Packard fable and fame), and perhaps next to a live/work space. For some, the progression from home occupation to live/work to work/live space is part of this cycle. Whilst images of Edison or Steve Jobs in their garages are evocative the transition from innovation to manufacturing rarely involves an intermediate stage of home manufacture.
- 13.5 Promotion of innovation amongst small businesses has been a major focal point of public policy intervention in local economies. There have been two

major areas for initiatives, provision of business incubators and promotion of business clusters.

- 13.6 A business incubator is an organization of services designed to nurture young businesses, typically within a premises that offers small business space, which may be subsidised in the initial years. A wide range of services can be offered within an incubator, including management assistance, access to financing, business or technical support services, and shared office services such as access to equipment, flexible and affordable leases, and expandable space
- 13.7 Clustering is the co-operation or efficiency benefits through proximity of businesses, which enable new market opportunities, innovation of existing sectors and/or improved business start up rates.
- 13.8 Clustering and businesses incubators are not necessarily the same in economic policy terms. A business incubator can just offer premises, and clustering effects can operate amongst local businesses in separate premises. However the greatest benefits can operate when both occur together. The importance of this to the government was made clear in the Richard Mc Cartney Speech.

"clusters don't just happen. You need to think how you manage, how you plan, how you design for a cluster.

If a cluster relies on you as a developer or a landlord to make it happen all the time then I don't think it is working. Clusters should start to develop its own life, to start to go into a direction you didn't plan. It might need some support and facilitation sometime but I do think buildings and the way you plan them as a crucial role to play.

I am delighted to see developments like Jam Factory in Bermondsey Creative lofts by Places for People in Huddersfield making imaginative use of exiting buildings providing a scale and connectivity that helps to develop that sense of cluster, and business support, an atmosphere that actually breeds entrepreneurship and economic development rather than isolated live/work units that sit effectively on their own. Where I think our experience tells us they are difficult to work and experience tells us there is a limited if not no real market for those."

Speech by Richard Mc Carthey ODPM Director of Sustainable Communities to the Live/work Network– June 2004

- 13.9 Issues associated with the economic benefits of clustering have been internationally a focal point of government intervention and academic research for over a decade.
- 13.10 The pioneering work of on flexible specialisation (Piore and Sabel 1984) , and 'new industrial spaces' (Scott 1988), and Saxenian (1984) highlighting the linkages between economic growth, the importance of the Small and Medium Sized Enterprises (SME) sector and higher rates of innovation amongst similar firms that cluster together. Essentially it is an updating of Marshall's 19th Century theory of industrial districts '*The mysteries of the trade become no mysteries, but as if they were in the air*' (Marshall 1890). Piore and Sabel saw virtuous networks merging around rival firms, which manage to co-operate around activities of mutual benefit such as training, marketing and research. This European based research however showed that such co-operation was based on networks of trust, and the search for parallels in the United States proved elusive.
- 13.11 Further research looked at the relationship between 'localisation economies' that is benefits of similar firms clustering together, and urbanisation economies, that is advantages to firms from being based in a large metropolitan area. An influential article by Glaeser et .al. (1992) found that industries grow slower in cities in which they are heavily represented. By implication this supported Jane Jacobs contention that diversified cities act as seedbeds for innovation and rapid growth. However classical economics presumes that locational cost savings are greatest in mature specialised sectors. The resolution of these two factors can be found in a product-cycle or industry-maturity perspective. As a recent World Development Report puts it:

"whether an industry benefits most from urbanisation or localisation economies depends on how innovative it is. New, dynamic industries are likely to locate in large urban centres where they can benefit from the cross-fertilisation provided by diverse actors. Older, mature industries concentrate in smaller, more specialised cities, where congestion costs are low and localisation economies can be high."(World Bank 2000).

- 13.12 This is important in terms of the economic justification given for zoning policies. Classically, for larger industrial areas these have been based on localisation economies, however as restructuring has taken place these economies can be greater elsewhere leading to vacancy. By contrast urbanisation economies may occur in different types of areas than those currently zoned for employment. They may occur, for example, in older cheaper premises scattered throughout a mixed use area. Urban economic development policies however must be based on promoting the unique advantages of the locale. For London zoning policies must be based on

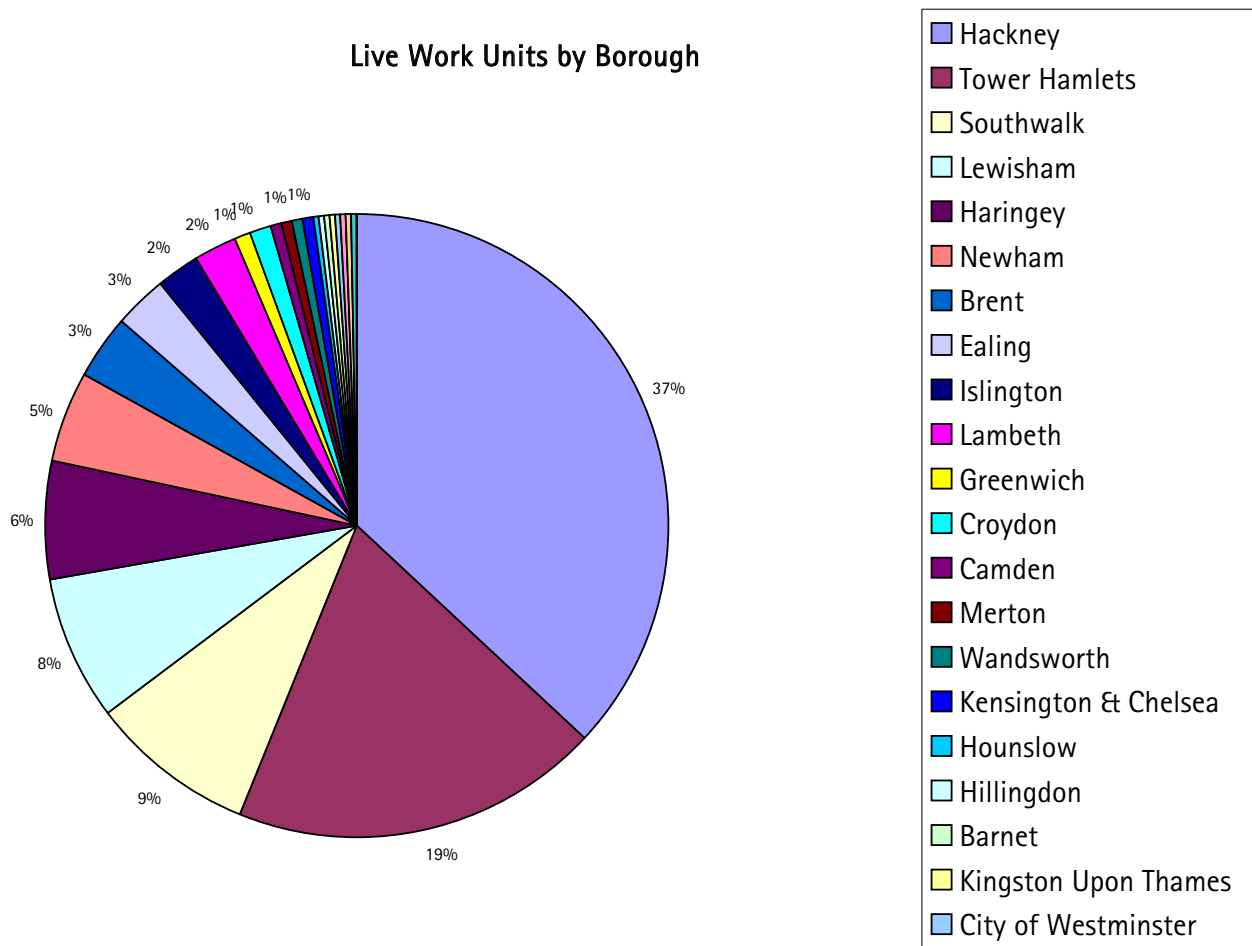
promoting premises for firms that have a locational economic advantage in London.

- 13.13 Cluster theory has been significantly advanced by the work of Porter in *The Economic Advantage of Nations* (1990). A tight geographic locale intensifies information flows and rivalry between competing firms. The spatial proximity of rival – whether they communicate or cooperate or not – spurs competition and innovation. Trust between rival does not enter into it. Proximity permits raids on rival employees who might have just the skills you are looking for. It also spurs spin off and startups by small and other firms who see gaps in the market.



1-12 Alstrop Mews Hammersmith

- 13.14 Proponent of cluster-based development strategies tend to assume that fostering specialised clusters is good for an areas growth prospects. However Porter has more recently postulated that "*When a cluster shares a uniform approach to competing, a sort of groupthink often reinforces old behaviours, suppresses new ideas, and creates rigidities that prevent adoption*



of improvements. Clusters might also not support truly radical innovation, which tends to invalidate the existing pools of talent, information, suppliers and infrastructure." (Porter 2000) Indeed many more recent 'industrial districts' such as Boston's route 128 in the 1980s have proved fragile in the face of fresh innovations.

- 13.15 Porter's approach towards state intervention is two edged, he takes pains to differentiate cluster strategy from industrial policy – which is bad because its involves picking winners "*Although industrial policy aims to distort aims to distort competition in favour of a particular location, cluster theory focuses on removing obstacles*" (Porter 2000). To sceptics however such as Terry Buss in 'The Case against targeted industrial strategies' they are widely practiced not

because of their scientific merit but because of political reasons, including state and local government officials in search of a targeting rationale, as well as because of a herd effect, once some localities practice them other feel so obliged.

- 13.16 The work of Saxenian (1984) highlighted the of role local cultural factors in promoting innovation. Her *Regional Advantage: Culture and Competition in Silicon Valley and Route 128* highlights differences in communications between the two clusters. She argues that the contrasting performances of the two clusters showed that regional external economies could not account for the differences. In Boston the corporate culture led to a lack of a watering hole outside of work hours to gather and talk shop, in contrast in Silicon Valley *'dense social networks and open labour markets encourage entrepreneurship and experimentation'*.
- 13.17 Kenny and Von Burg (1999) look deeper into what was the factor that led to higher economic growth. They consider that start-ups contain 'discrete packets of knowledge', discovering market continuities created by technological advantages. They call this 'Economy 2' institutions fostering new form formation, as opposed to 'Economy 1', institutions supporting established forms. Critical to economy 2 are entrepreneurs and venture capitalists.
- 13.18 These concepts are critical to developing public policy towards small enterprises in general and live/work in particular. Policies solely promoting live/work may realise the small advantages of reduced costs inherent in live/work, however those that focus on promoting the economic advantages of clustering may have wider benefits.
- 13.19 The key issue is whether live/work can boost start-up rates in growth sectors of the economy. If the cost advantages to live/work reduce a barrier to entry in that sector then this will undoubtedly be the case. However high cost premises may reduce or remove these advantages, and without an economic case for the work element of the premises then residential reversion is more likely to take place. It is difficult to see the 'need' for single person business premises costing well over £300,000 as live/work units typically do. Similarly the provision of low cost work only premises may be a more cost effective means of promoting startup rates in growth sectors, and may have more likelihood of benefiting more rapidly growing firms.
- 13.20 Indeed the cost-benefits of sharing living and working space may act as a disincentive to business growth, as these may be lost if a firm moves to larger premises. It can be a barrier to innovation and growth, particularly for those who 'escaped' the corporate world for the freedom of working from home, and fear going back to a more regimented working style.

- 13.21 Research into the demand for employment land is the central focus of employment planning research in London, the importance of which has increased with proposed changes to government policy requiring up-to-date evidence on demand as a precondition of protecting employment land.
- 13.22 The perception is sometime given by the government that it sees the demand for employment premises as an undifferentiated block i.e. if there is vacant land then there is a surplus. This crude neoclassical approach is flawed because of two factors that affect the employment land market in London. Firstly the market is highly segmented with differing demands for buildings of differing sizes, costs and types. For example there can be a surplus of premises in one sector, and a shortage in another. For example a surplus of larger traditional manufacturing



Lifelab Deptford

floorspace and a shortage of modern space suited for small businesses. Secondly because of the potentially higher returns from a change of use – such as to housing – land may not be marketed or brought into productive use for employment purposes, even if there is a market for this. Land may be held speculatively vacant. For this reason vacancy is a poor indicator of lack of demand in much of London.

- 13.23 For these reasons employment studies in London have become increasingly sophisticated, with a focus on supply and demand of lower cost premises in the small business sector, as well as examining marketing evidence and evidence on the quality of premises. They have in some cases been linked to City Growth strategies, lined to Porter's work cited earlier. The recent government good practice guide embodies many of these changes.
- 13.24 It is difficult however to include within such studies examination of the demand for live/work premises. This is because of a lack of data of business enquiries from parties wishing to occupy live/work premises. A number of boroughs and/or sub-regional partnerships include databases of business enquiries but these rarely include data on live/work enquiries. This is done much more commonly in the United States. Another problem is a complete lack of data on employment densities in the live/work sector.
- 13.25 Whilst it has been argued that employment densities are lower in the live/work sector Tim Dwelly of the Live/work network has argued that live/workers are part of the modern online networked economy, with work being shared and subcontracted within and between workplaces. Businesses can grow their turnover by supporting other businesses without necessarily taking on more staff.
- 13.26 There is no doubt that this trend is taking place, indeed this author is part of it, however where work is subcontracted from existing larger enterprises rather than between smaller enterprises this is a classic example of 'jobless growth'. Profit margins are increased through efficiency savings rather than taking on new staff, one of the savings being reduced on-costs from subcontracting. If an aim of public policy is to boost job growth, particularly for those marginalised in the labour market, it is difficult to see the rationale for giving priority to jobless growth involving an already highly skilled sector of the workforce. It may have national benefits in terms of efficiency and economic growth but it would seem not to be a priority for local employment initiatives. Less still if these efficiency savings of the on-line economy can already be enjoyed by those in C3 dwellings without the need for planning permission.
- 13.27 A problem is the lack of move-on premises for successful enterprises that have outgrown their original premises, that is premises with larger than normal work areas able to accomodate a number of employees This is an issue both in

the enterprise unit and live/work sectors. There is only one purpose built live/work move on scheme in the UK, at Camberwell, which has proven successful.

13.28 Just as in the housing sector different live/work products are offered by the general market and social sectors. A number of registered social landlords have provided live/work premises targeted as lower cost premises, and usually as part of wider local employment initiatives. The Peabody Trust has been prominent in this sector.

13.29 This sector is important as experience suggests that employment benefits



Land r/o 153 Hurlingham Road Fulham

are higher and reversion rates are lower. Its success however depends on the availability of land, which may be precluded by policies designed around the problems experienced with the general market live/work sector.

13.30 Some boroughs, such as Tower Hamlets and Hackney, have sought or required 'affordable' live/work as an element within larger live/work developments. A number of schemes have been built and have proved popular. The same problems of definition and securing in perpetuity as in the affordable housing sector occur.

- 13.31 Provision and land and premises for small businesses have been an increasing priority for the London Development Agency. However it is difficult to see how this relates to wider government programmes of small business support such as provided by the Small Business Service, which is not concerned with land and premises related issues in its programmes and objectives.
- 13.32 There will not be a developed and considered public policy towards live/work unless this fits within a joined up approach towards small business development and land and premises needs. To an extent it is wrong to start with planning, the purpose of planning is to facilitate and balance land use demands. If those demands are poorly researched and not properly understood then planning policy may be misconceived and possibly contradictory.
- 13.33 In this context any blanket governmental policy support for live/work may have negative impacts on employment policy objectives. If it had the effect of allowing a quasi-residential use on land designated for employment premises it would lead to speculative loss of existing employment premises, and a crowding out of the social sectors providing affordable work/live and incubator/ lower cost employment premises more generally. The government should therefore be cautious and considered in its response to pressures to 'back' live/work.
- 13.34 Appropriate intervention needs to be a small part of a wider public policy towards small business support and intervention, especially relating to provision of land and premises, and support services within and between businesses. 'Live/Work' will be a part of this, but ultimately a small part within the much larger market for dedicated business premises.
- 13.35 The potential scale of the 'live/work' market is one of the issues in determining the appropriate size of live/work schemes. Very small developments are unlikely to provide any of the benefits of locational clustering, such as social support and shared facilities such as meeting rooms. Design can also play a part in this regard such as units being based around a communal courtyard and/or landings and having units open to the public at ground floor level.
- 13.36 Problems also result when live/work proposals are on a very large scale. Development proposals of 500 units or more are not unknown in London. This begs the question as to whether there is a proven demand for this level of genuine live/work units. There is absolutely no evidence that this is the case. It would be difficult to argue that there would be a lack of demand for premises for employment purposes and at the same time argue that there is demand for this level of live/work, because live/work is just a small sub-sector of the larger market for small business space.

- 13.37 It would be unwise to permit such large developments without firm evidence of demand. Otherwise there would be considerable risk of the local market being saturated and increased risk of residential reversion. For this reason policies in some US cities set quotas on permission based on research on demand. In UK practice research such as that which underpins the London Office Review Panel would be of considerable use.
- 13.38 Where large mixed schemes are proposed there should be no reason why affordable live/work (more properly described as work/live) and dedicated low cost small business premises should not be provided. If residential is environmentally suitable then there is also no reason why affordable housing cannot be provided, as part of the overall mix.
- 13.39 The provision of affordable live/work is a separate but related issue to that of provision of pure affordable housing. Not every business in 'need' of affordable live work space will also be a household in need of affordable housing. However there will be some overlap. These issues seem to have become conflated by the ODPM. The provision of affordable live/work units alone should not obviate a requirement for pure affordable housing, otherwise this could distort the market and lead to excessive loss of affordable housing units. The provision of affordable live/work units however should be a material consideration in allowing a reduced provision of pure affordable housing units on any mixed scheme.

14 The Appeal Experience

- 14.1 This study has examined 61 appeal decisions in London. This is every live/work appeal in London over the last five years other than where design has been the sole issue. These appeals are listed and summarised in appendix 2.
- 14.2 What is noticeable about this analysis of appeal decision is the inconsistency amongst inspectors. They appear to have taken very different approaches towards issues such as classifying the use, the enforceability of conditions/obligations and the application of affordable housing and employment policies. Some inspectors seem to have taken the view that live/work would be a breach of employment policies in UDPs, others that it is a use not covered explicitly in the UDP and that as it would include an employment component would meet employment policy objectives.
- 14.3 In a large number of the cases where appeals have been allowed it is likely that the inspectors consideration of the existing premises would have led them to conclude that pure residential or mixed use development would be suitable in any event, however the employment component proposed made the decision more palatable to them. This is particularly noticeable in a number of the Hackney appeals. The general lesson in those boroughs with out of date development plans that do not properly cover mixed uses will see there planning caseload become 'appeal led'.
- 14.4 In many appeal cases there were a lack up to date employment surveys to support employment policies. Application of employment policies were noticeably more successful in West London boroughs such as Hammersmith & Fulham Kensington & Chelsea and Brent where employment markets are tight, and where there have been up to date UDP policies on Live/work, again in Brent and Hammersmith & Fulham
- 14.5 As in the planning profession more generally decisions can be divided between inspectors who are sceptical of the concept and benefits and those who are enthusiastic. The greatest inconsistency though has been in those decisions where inspector's have treated live/work as employment uses for applying employment policy objectives but not residential uses for applying affordable housing policy objectives.
- 14.6 There appears to be little logic or rationale in this distinction, especially as the predominant use in most proposals is residential. Indeed in few cases except those involving enforcement there appears to have been a lack of a detailed assessment of the nature of classification of the use that is being applied for.

- 14.7 Over time there has been a gradual trend in the decisions whereby inspectors have become gradually more sceptical of the concept, and have begun to apply new policies that some boroughs have introduced in their UDPs to cover live/work. Drawing clear conclusions from the appeal evidence is difficult, the only consistent factor is the inconsistent nature of the decisions. The most telling finding being that in most of the permitted appeals the policy framework would have permitted pure residential in any event. Consistency has been much greater in West London than East London. In West London in recent years existing employment policies have tended to be upheld.

15 The Local Authority Experience of Live/work Development

- 15.1 A database has been compiled comprising all live/work schemes in London appearing on the London Development Monitoring System (LDMS). From 2004 the LDMS was replaced by the more comprehensive London Development Database. There is some gaps in the older data. This does not cover smaller schemes of 10 or less units. They do not include live/work as a distinct category, hence the data was comprised from a free text search. A small number of cases did not record the specific number of live/work units. Superseded and refused (not granted upon appeal) cases, and cases withdrawn or dismissed on appeal were deleted. The results are shown below.

Live/work Schemes in London 1998-2003

Borough	Schemes	Live Work Units
Hackney	146	2781
Tower Hamlets	88	1436
Southwark	84	652
Lewisham	33	565
Haringey	17	466
Newham	11	345
Brent	12	263
Ealing	6	195
Islington	37	179
Lambeth	24	155
Greenwich	6	82
Croydon	7	65
Camden	9	50
Merton	11	50
Wandsworth	8	37
Kensington & Chelsea	1	33
Hounslow	4	28
Hillingdon	2	25
Barnet	3	24
Kingston Upon Thames	2	21
City of Westminster	3	16
Redbridge	1	14
Barking and Dagenham	1	12
Havering	2	12
Richmond Upon Thames	2	9
Waltham Forest	4	9
Harrow	2	4
Total	526	7,528

15.2 This shows that the majority of Inner London Boroughs have experienced pressure for live/work, but this appears to have passed some suburban boroughs such as Bromley by. There is a high concentration in Inner London, especially Inner East London, although some more industrial boroughs such as Newham and Brent have experienced pressure, but this by itself cannot be significant given the lack of activity in other Industrial Boroughs such as Bexley. The greatest activity has been in Inner East London with Hackney having over 1/3rd of all units applied for. The concentration also to some degree reflects the amount of development activity in Inner East London, and possibly trends and fashions amongst developers in some boroughs. Very little monitoring activity on live/work has been carried out by boroughs, although this is an intrinsically difficult activity.

15.3 Hammersmith & Fulham

15.4 There was a spate of live/work proposals here in the mid 1990s with considerable pressure on small mews like sites. The borough was one of the first to receive proposals in 1994. This pressure has abated and recently interest in live/work development in the borough have been low. This reduction in pressure has been due to the introduction of strict policies and the economic conditions set out below.

15.5 Early sympathy for the concept led to abuse and initial thoughts of developing Supplementray Plannuing Guidance were abandoned in favour of strict controls being introduced in the Borough's revised UDP.

15.6 The borough has strict employment policies and since the 1970s has become established as an office location, especially in and around Hammersmith Town Centre. There is a shortage of space for small businesses in the borough especially in Fulham. Also solely affordable housing developments are permitted on some sites. Both policies have led to a moderation of live/work demand. Many schemes were considered during this period but only thirteen were approved and implemented as 'live/work' several other schemes were approved but substituted for b1 offices because of strict controls on retaining the work element in the planning obligation. Hammersmith & Fulham does not show up on the LDMS figures because schemes built have been small in scale. The thirteen schemes approved and implemented in the Borough total

only 47 units. Schemes have been evenly distributed across the Borough with a mix of schemes of just one unit to other schemes in mews type blocks

- 15.7 The borough has found it difficult to require a minimum floorspace for employment on appeal. The boroughs has a policy in its UDP for live/work which effectively only permits them on residential sites.
- 15.8 A number of schemes have reverted to residential use in whole or part and few units continue to be occupied as live/work. In one scheme lawful use was established, in others enforcement action is pending or under investigation. Site visits have revealed that at least one scheme permitted for live/work in the south of the Borough (see below) have reverted to solely employment use, explainable by the strong demand for small business space. In at least two cases in the north of the Borough schemes appear to be in solely residential use and enforcement is being considered.
- 15.9 Of interest is that one scheme at land r/o 158 Hurlingham Road has obtained permission for use of four of the seven units for solely B1 office use meaning that only three live/work units remain, two of which are vacant and all of the office units being occupied. In part this is due to the design, of two open plan floorplates over two floors and large front glass walls, which make the scheme much more suitable for office than residential use.
- 15.10 The reasons for the lack of a significant number of 'live/work' in the borough is the strong demand for B1 units backed by a policy framework that does not permit schemes on sites suitable for continued employment use. The borough's exceptions policy that permits affordable housing on some vacant employment sites has enabled a limited loss of some sites to alternative use (affordable housing).

15.11 Hackney

- 15.12 Hackney has been the focus for the most development pressure concerning live/work, as well as having the most appeals. Almost 40% of all proposed units for live/work in London over the last five years have been in the Borough.
- 15.13 Hackney has been a centre for the creative arts, reputedly having the highest concentration of artists in Europe. Initial pressure for 'live/work' came from this sector, often to authorise existing garrets and studios. Hoxton and South Shoreditch quickly gained the reputation as creative districts.
- 15.14 Initially planning policy resisted loss of employment in these areas. The borough attracted a lot of criticism for this although it is often forgotten that

as in the original SoHo lofts it was the strict zoning that kept prices down which made the space affordable to artists.

- 15.15 There was a gradual shift in approach to permit them in certain areas which were to be allocated for mixed use development in a review of the UDP. The Borough also prepared supplementary planning guidance. for live/work
- 15.16 The borough in the early 'noughties' had to cope with a crisis caused by financial problems and a lack of staff. The review of the UDP did not proceed and its draft replacement plan was withdrawn and never placed on deposit.
- 15.17 The change in attitude was prompted by the sheer scale of applications for live/work with the attention of the development community drawn. With the large number of applications being received at the height of a development boom and the lack of staff to deal with them placed the service under severe stress.
- 15.18 Concern began to grow, including amongst members, that many schemes were in 'a back route for residential development'. There was a strong demand for low cost workshop premises across the borough alongside a clear glut of B1 premises in the City Fringe.
- 15.19 Hoxton and Shoreditch, from being cheap areas, became expensive areas for loft style apartments.
- 15.20 The borough had revised its SPG to require a proportion of affordable live/work units on larger schemes but this was thrown out at an appeal at 293-297 Kingsland Road where the inspector ruled that this had not had consultation carried out in line with PPG12.
- 15.21 The final straw for the borough was an appeal at 11-13 Ebenezer Street where a scheme of very large units where the units had a majority of floorspace as residential was considered by an inspector to qualify as an employment use, and the scheme was below the threshold for affordable housing. This presented the worst of all worlds for the Borough.
- 15.22 The borough withdrew its live/work SPG, but at a later appeal the inspector concluded that live/work had become an 'established pattern' in the Borough.
- 15.23 The borough changed tack, partly at the recommendation of the author of this report, and focussed its approach on the enforcement of existing controls.
- 15.24 Planning contravention notices were served on over half of the schemes permitted in the borough and created responses including that schemes were

only marketed for and bought in good faith as residential units, and even that schemes were sold with covenants preventing business use.

- 15.25 This has clearly had a deterrent effect and the pressure for live/work development has reduced.
- 15.26 Ultimately however the policy vacuum will need to be filled. The borough has commissioned an employment survey from Atkins, focusing on supply and demand for small business use, which should act as a starting point. In December 2004 they also commissioned London Residential Research to review the operation of their policy, and in a change of stance, prepare revised supplementary planning guidance.
- 15.27 The borough has come under considerable criticism for its approach. For example an Editorial in the Dec 2004 issue of Planning in London stated that this was 'an unnecessary bureaucratic interference' arguing that those who had paid for a property should be able to 'do what they like with it', with the Borough 'unnecessarily controlling changes of use for political reasons'.
- 15.28 Whilst there may be a hint of truth in criticisms over zoning controls in the Borough this is an argument for changes in those controls, not for abandonment of those controls altogether. The effect of the editors suggestion would be to push up industrial land values to residential ones, perhaps lowering residential prices but driving many small small businesses out of premises on grounds of increased costs and complaints from new neighbours. As some boroughs know to there cost failure to enforce land-use controls in these cases can lead to accusations of racism and divisiveness in forcing out existing ethnic minority businesses. The editor's suggestion is also highly impractical as affordable housing policies would apply to all development, and not to changes of use to housing. This would reduce the amount of affordable housing and make most new business development in London possibly uneconomic.
- 15.29 The Borough is home to a large number of schemes which have been previously quoted as examples of good practice, for example: Kings Wharf, Peabody London Fields and Raines Dairy. Although these are of quality design unfortunately recent investigations by the borough have shown them to have very high rates of residential reversion.

15.30 Tower Hamlets

- 15.31 The main developments of 'live/work' in the Borough have been in the City Fringe and Fish Island areas, all in predominantly employment zones. Developments in the City Fringe tend to be small, whilst Fish Island is over 50 units. The policy response in the adopted UDP was largely positive, however there was concern that this was 'residential by the back door'.
- 15.32 The boroughs replacement UDP contains a series of employment policies that permit and encourage mixed-use development in certain parts of the borough but protect industrial based employment in certain defined areas. It contains policies on home-based working and mixed employment and residential development that are not contained in a single composite unit. It also contains policies on small businesses and the creative industries.
- 15.33 Puzzlingly however there is no explicit reference to 'live/work' development. The motivations for this are similar to those in Hackney, with a shift in policy response towards it. This also partly reflects a change of interpretation whereas before it was considered a sui-generic use requiring special treatment towards consideration of it as a composite use using existing policies (this was before the 2005 Circular).
- 15.34 A reason shift was the change in members attitudes towards live/work; with them viewing the concept as a means around planning policy. The borough produced a draft SPG in March 2001 (requiring a 60:40 split in favour of the work element and a maximum of two bedrooms) but they now do not intend to progress it. The new UDP though does not make it clear how live/work applications will be treated in terms of application of policy such as affordable housing, although in practice policy is applied pro-rata. Previously affordable housing was not required when it was considered a sui-generic use. This will certainly now need further clarification.
- 15.35 This borough is also home to a large number of schemes which potentially serve as case studies. Visits to some of these as part of this study showed that there was no external evidenced of business occupancy in terms of business nameplates etc.. The exception being the Peabody scheme at Westferry which seemed to be almost entirely in genuine 'work/live' use.

15.36 Lewisham

- 15.37 Lewisham is only one of two Boroughs that still has a broadly positive approach towards 'live/work' development. The background being a report for the Borough called 'Creative Lewisham'.
- 15.38 The borough is very keen to be seen as a place for the creative industries and permitting live/work is seen as part of this.
- 15.39 The emphasis of the borough is on controls to secure business use.
- 15.40 A number of new build live/work developments have sprung up in the borough with the appearance of being wholly residential. one unit has been marketed for over 350,000. Some of the schemes, including where live/work is but part of a much wider scheme, such as the LifeLab scheme in Deptford do appear to be of high quality.
- 15.41 The Borough does not currently carry out any monitoring so it is not possible to discover the scale of live/work development and the success or otherwise of its approach.

15.42 Camden

- 15.43 The borough has relatively limited experience of live/work, with only some 20 applications over the period 1996-Summer 2000. Applications are decided on their merits, in accordance with a general concern for employment retention.

15.44 Islington

- 15.45 Although Islington has supplementary planning guidance the Borough is not one of those where development activity has been concentrated and schemes have mostly been small.
- 15.46 Islington has 'Supplementary Planning Guidance' approved in 1997 on residential use of business premises including a section on live/work. Its revised UDP contains stricter policies on loss of employment premises and 'live/work' schemes are not given any special exemptions. The SPG states that:
- live/work units will not be allowed in wholly or very largely residential areas
 - there should be a maximum of two bedrooms
 - each unit should have a minimum of 85sqm (one-bedroom) or 105sqm (two-bedroom)

- there should always be an identifiable workspace, capable of accommodating the whole range of B1 uses
- the workspace should be at street level where possible.

15.47 Southwalk

- 15.48 The pressure for live/work development has slackened. Previously this was mainly for development in the north of the Borough but the replacement UDP now had a more permissive approach towards residential development and permitted this in preferred office areas provided there was no loss of floorspace.
- 15.49 The Borough did have SPG which applied to Bermondsey Street only, but which was applied informally to other cases. The replacement UDP has a policy applying to live/work but it only applies in any event to sites where residential are permitted anyway and the Borough admits this policy serves little purpose.
- 15.50 A recent scheme for live/work development on the relatively poor road of Walworth Road has units for sale of 240,000. The Bermondsey Street area has a number of schemes in gated mews type blocks, again with little external evidence of business occupancy.

15.51 Lambeth

- 15.52 In Lambeth interest in Live/Work has tailed away following a strong demand in the late 1990s. The borough has been experiencing a strong demand for small business space.
- 15.53 One main reason for this has been clarification of policies on mixed uses and affordable housing in the deposited replacement UDP.
- 15.54 This was the first plan to make the distinction between Live/work and Work/Live which had been discussed and originally derived from America. 'Live/work' units are treated as residential schemes in all respects.
- 15.55 The policy makes clear that affordable housing policy applies to the proportion of the units in 'live' use.
- 15.56 The borough has been successful in defending its position on appeal, bar one case where the inspector considered the units unsuitable for continued employment use. The policy is of interest and is listed below in its revised deposit version.

"Policy 24 Work-Live/Live-work Development

Proposals for live-work or work-live development (composite B1/C3 uses) should be on sites suitable for permanent residential accommodation and will be assessed as follows:

A] work-live Development – where: the development comprises principally employment floorspace which is predominantly residential accommodation with less than two bedrooms: the work areas shall have separate servicing and are be of a design, sufficient size (minimum 60 sq. m.), and adequate floor loading, to take the full range of B1 uses, including light industry. Such developments are permitted on sites in employment use & KIBAs (Mixed-Use Employment Areas only) providing it would not prejudice the operation of nearby B2 premises and would not result in the loss of modern purpose built industrial units. Employment parking and servicing standards apply.

B] Where the requirements of A] are not met, then the development will be considered as live-work development, and treated as residential development for planning policy purposes and as a loss of employment when developed in place of previous employment uses. Residential parking and servicing standards apply.

Conditions will be applied: preventing walk-in trade; preventing physical subdivision; removing permitted development rights for reversion to one or other use and for residential extension; to ensure that work and residential areas are maintained as such; to ensure that the residential accommodation is only used in association with the work area; that no other persons work there, and that the work areas are maintained in perpetuity. Obligations will be used to remove any future established use rights of residential development in place of the work component, where loss of employment use would be contrary to plan policy. The number of habitable rooms units of affordable housing required will be calculated based on the % of residential floorspace in the development.

4.12.21. Live-work/work-live accommodation is the provision of integrated living and working accommodation within a single self-contained unit. Such accommodation comprises C3 (dwelling) and B1 (business) use.

4.12.22. This form of accommodation can provide a means for a new business to establish itself by reducing costs. It also can provide accommodation for a wider range of uses embracing the full range of B1 (business and light industrial) uses and contribute to regeneration by bringing derelict sites and buildings into use. They can also significantly reduce the need to travel. It has proved to be popular elsewhere in London with the new 'creative' industries and there has been substantial interest in developing such units in Lambeth. These benefits will only accrue, however, if the employment areas are of sufficient size and to a proper employment standard – 'work-live' units. Typically a minimum 60:40 floorspace split in favour of employment will be required, or at least 50:50 for two storey units, Where residential use predominates,

– 'live/work' development, the Council will treat such development as residential to avoid circumventing policies protecting employment sites. In the past, poor design has meant that the employment floorspace of such development has seldom been used as such, and problems with enforcement have meant that it has sometimes reverted solely to residential use."

- 15.57 The policy has proved to be effective however the detailed design elements could arguably be contained in an SPG/SPD. The policy also does not fully draw out the basis and implications of developments that fall outside, or inside, the C3 use class.
- 15.58 Elsewhere in the plan the policy on affordable housing makes clear that that this applies 'pro-rata' to the proportion of affordable floorspace. However where the 'work' area is so low as to make the scheme fall within the C3 use class it is not clear why the policy should not apply in full. The restriction on walk-in trade would also appear too strict.

15.59 Westminster

- 15.60 Although applications for live/work units in Westminster are not very common (8 applications received, 7 live work units permitted to date), it recognises the need for a consistent approach to them when applying the affordable housing policy. The priority in Westminster, at least outside certain special policy areas, is to provide residential so loss of employment floorspace is not normally an issue.
- 15.61 It is officers' view that a live/work unit should be counted as one residential dwelling when assessing whether its UDP policy H4 –Affordable Housing should apply. This is a logical approach as a live work unit includes one residential dwelling. Therefore, in proposals of 15 or more live/work units (or a combination of live/work and ordinary residential units), UDP policy H4 will apply and affordable housing will need to be provided.
- 15.62 In the case of proposals of less than 15 live/work units (or a combination of live/work and ordinary residential units) which in terms of the size of the development would normally have been expected to provide a greater number of units (i.e. 15 or more), policy H 4 (B) 3rd bullet point, should not apply, i.e. such developments should not be expected to provide affordable housing, as the additional floorspace in the live work units is not residential but B1.
- 15.63 In addition, it recognises that the special circumstances in the North West Westminster Special Policy Area may justify an exception to the affordable housing requirement when applying the policy to applications for live/work units. This is because the priority in the SPA is to foster local regeneration and

employment opportunities, and it considers that live/work units could make a positive contribution to these aims.

15.64 Brent

- 15.65 Brent is one of the few boroughs to have an adopted UDP policy for 'live/work'. This states:

"Work-live accommodation is the provision of integrated working and living accommodation within a single self-contained unit.

This form of accommodation can provide a means for new business to establish itself by reducing costs as well as providing accommodation for a wider range of uses embracing the full range of B1 (business and light industrial) uses and contribute to regeneration by bringing derelict sites and buildings into use.

They can also significantly reduce the need to travel. They have proved to be popular elsewhere in London with the new 'creative' industries and there has been substantial interest in developing work-live units in Brent. Work-live units are subject to Policy H2.

Work-live units are what is known as a 'composite' B1 (business) and C3 (dwelling) use. Being a composite use there would normally be 'permitted development' rights to change to solely one use or the other; these rights will have to be removed by condition, as would other residential permitted development rights, to prevent the loss of the employment element. In order to ensure that the Plan's strategic aim of protecting employment land is not compromised, proposals on existing or former employment sites will be required to demonstrate that the residential element will be subsidiary to the work element. An indicative ratio of 70:30 in favour of the work element will be sought.

EMP21 WORK-LIVE DEVELOPMENT

Proposals for work-live development (composite B1 / C3 uses) will be permitted where environmental impact is acceptable, including on Local Employment Sites. The work areas must be of a design and sufficient size, and have adequate floor loading, to take the full range of B1 uses, including light industry, as well as having separate servicing.

Where development takes place on an existing or former employment site, the residential element should be subsidiary to the work element.

Conditions will be applied removing residential permitted development rights to ensure that work areas are maintained as such and to ensure that those living there also work there."

- 15.66 This policy including the required 70:30 split has been upheld on appeal. Most approved schemes have been closer to a 60:40 split, although these appear to be mostly residential in nature. The interest in such developments has slackened, in particular due to the application of policy on affordable housing. In one recent case at Kimberley Road NW6 the agent obtained consent for change of use to pure B1 and C3 units claiming lack of demand and difficulty

obtaining mortgages.

15.67 Merton

- 15.68 Merton's 2003 Unitary Development Plan contains policy no MU4 on live/work. It has prepared Supplementary Planning Guidance note (SPG) on live/work to flesh this out. This anticipates typical live/work development as having employment floorspace on the ground floor with goods access, low levels of parking and two floors of residential accommodation above. The employment and residential floors will be internally accessible. In Merton live/work development is seen positively as an innovative way to retain employment capacity outside industrial areas and address the need to provide accommodation for increasingly diverse life-styles.
- 15.69 In May 2001 the Council commissioned consultants Nathaniel Lichfield and Partners to undertake a London-wide research study of trends in live/work development, the local planning authority policy approach and to prepare a draft SPG. Its draft SPG will heavily draw on this work. The borough considers that it is too early to say whether our new detailed policy will be effective. It is interesting that it is one of very few boroughs which would have SPG now that most boroughs with SPG have withdrawn them.

15.70 Richmond

- 15.71 Richmond has a number of examples of live/work, most of which the borough feels are purely residential in use. There were at least half a dozen built by 2003. The only ones the borough feels work are where the developer/landowner retains control of the premises. Vineyard Heights in Mortlake is an example where the property company retains the freehold. Even so one of the live/work units is 100% employment and another is 100% residential.
- 15.72 The amount of applications for live/work is increasing partly because of the Central Government encouragement for mixed use schemes, the weak office market and of course the high housing land values in the area. The borough feels that live/work is used cynically by applicants to get around UDP policy EMP4 and affordable housing policies. The Council's stance is still not to have live/work at the expense of employment land (given its acute shortage of employment land). Inspectors are less consistent on this point. Following the appeal decision on St John's Road, Hampton Wick more proposals have been allowed than perhaps they would have taken a firmer line on.

16 Conclusions and Recommendations

16.1 What is Live/Work?

- 16.2 This is not a trivial question. The key issue emerging from this research is the nebulous and diffuse nature of the 'use'. As one developer put to us it is a 'concept', almost a state of mind. However can this be precisely defined, and if not how can it be controlled?
- 16.3 It would appear that the vast majority of proposals which involve an element of 'work' within a 'live/work' scheme fall within the C3 use class due to the scope of guidance within PPG4. Take the not uncommon example of a scheme of 'live/work' uses where the work area is not defined. In these cases there is nothing to distinguish the scheme from a straight C3 unit. There is no defined area on which to apply conditions.
- 16.4 This report has earlier concluded that even where there is a separate defined work area to which conditions would be applied the unit as a whole will in the majority of cases fall within the C3 use class, unless the nature of the work, or the number of employees would take it wholly outside it. Both of these cases are rare. In these cases the 'live' element is not predominant, and 'live/work' is a misnomer. In these cases the more accurate description of 'work/live' is more accurate. The new circular 03/2005 confuses rather than clarifies this issue in some regard but applying the underlying tests in the circular, and carefully applying it as a whole does not undermine this key conclusion.
- 16.5 It is therefore reasonable for local planning authorities to ask it what ways a 'live/work' proposal is distinct from the C3 use class. If it is not then they would be justified in considering the proposal as simply a 'trojan horse' to overcome planning policies and to treat the proposal in all respects as a straightforward residential proposal. If the 'live' element is predominant then 'live/work' uses should be treated as any other residential scheme.
- 16.6 Local Planning Authorities can use their powers at validation stage to obtain further clarification as to the nature of the use. In many cases a description as 'live/work' will be vague and possibly inaccurate.

16.7 A Live/Work Use Class?

- 16.8 A 'live/work' use class is not necessary to distinguish proposals where the amount of work is such to take the proposal outside the C3 dwelling use class. A distinct danger of a separate 'live/work' use class is that it will lead to the C3 use being interpreted much more narrowly. The current scope of the C3 use class is very wide and liberal by international standards in that work can be carried out from home without planning permission.
- 16.9 Undoubtedly though there is considerable confusion as to the dividing line between C3 and 'live/work' and what use class(es) if any a 'live/work' unit would fall in to.
- 16.10 Under current regulations this ultimately would be a matter for the courts, however this is an issue which has not been tested before them.



Waldo Place College Park

- 16.11 There is confusion over whether 'live/work' which genuinely falls outside C3 is a sui-generic use or a hybrid B1/C3 use, which circular 03/2005 attempts to clarify; however this report concludes that whichever interpretation may make a difference to the wording of conditions but need not make a considerable difference to the application of policy.
- 16.12 Some inspectors have taken the interpretation that if 'live/work' is sui-generic then affordable housing policy does not apply. We have found this to be untenable, as national policy on affordable housing is specifically not confined to uses within the C3 use class and indeed the London Plan applies to more than straight C3 schemes. Indeed national policy more generally is based around the nature of the use and the objectives it meets rather than a narrow legalistic specific application to use classes. A good example being the application of PPG6 to sui-generic warehouse clubs. In any event there is no logic to applying employment policy objectives to live/work developments but not applying affordable housing policy objectives.
- 16.13 So the application of national and local policy objectives to live/work development needs to be interpreted broadly, however in cases of doubt it can be useful to clarify that certain policies do apply to certain uses, such as 'live/work'.
- 16.14 Once a use falls outside the C3 use it goes into the domain where there is no longer a single discreet use but a spectrum of hybrid uses, each in a sense unique (whichever legal interpretation is used). These uses all have in common the factor that the work element is predominant, and where the description of 'work/live' units is more accurate.
- 16.15 Broadly 'work/live' units would fall within two categories, and further clarity would be of benefit in this field. These two categories being Business Work/Live, where the business element would normally fall within B1 but the intensity of the work element takes it outside the C3 use class (e.g. through employment of persons outside the household) and Workshop Work/Live, where the workshop element would fall outside B1 activities. These categories broadly mirror the categories in some American Live/Work zoning codes.
- 16.16 Given the existing wide scope of the C3 use class it is difficult to see what benefit if any a separate 'live/work' use class would have, indeed it would pose some risks in potentially leading the C3 use class to be interpreted too narrowly, restricting homeworking and the economic benefits that flow from this. Residential reversion is only controllable through breach of a condition as to retention of a defined work area on a plan submitted with an application, which is not possible to define within the Use Classes Order. It would also muddy the water about whether national and local policies concerning affordable housing and change of use from employment zoned land apply.

Boroughs have tended to move away a policy 'black hole' when these policies did not apply, a separate use class would reintroduce it.

- 16.17 If a 'live/work' use class is intended to distinguish activities that fall outside C3 then the issue is what the scope of this would be and what controls it would contain to prevent reversion to C3 use. Indeed the 'live/work' network has proposed it precisely to reduce concerns about the risk of residential reversion. These controls are crucial as without these the work element could cease, would not be development (it is not development to end a use, only to change it, include one element of a mixed/hybrid/composite use).
- 16.18 Such controls are in any event necessary at planning application stage, and will depend to a degree upon the design and function of the development. It is difficult to see how they could be incorporated into a single use class.
- 16.19 Those that argue that most live/work units do not need a large area of floorspace dedicated for live use are rather missing the point; this is true, but such units would fall into the C3 use class anyway. The reason for the controls is to **distinguish** uses that fall outside C3 which require units to be predominantly work orientated.
- 16.20 There may be some merit in clarification in PPG4 on the dividing line between C3 and 'work/live' schemes and how to properly treat the legal status of the latter category in terms of the 'primary purpose' test. Clearly a proportion of employment floorspace of less than half and without clear distinction as a work area would have to be considered ancillary. Such a clarification is needed on legal grounds specifically rather than for policy reasons.
- 16.21 There may also be scope in the use of Local Development Orders to classify the two categories we have identified as Business Work/Live and Workshop Work/Live. Local Development Orders are a new innovation introduced in the Planning and Compulsory Purchase Act 2004. They enable locally defined planning controls, reducing, or extending use class and/or permitted development rights. In large degree they enable some of the ability to define local planning controls that are apparent in the continental and US planning systems. Indeed the concept was proposed to the then DETR by this author and accepted.
- 16.22 Such controls will need to be proposed and justified in Local Development Frameworks. Local Development Orders have the distinct advantage of enabling the close alignment of planning policy with development control priorities and local planning regulations. They also have the advantage of enabling detailed controls to be placed into a framework of use related controls, where they more naturally fit, rather than adding length and complexity to local development frameworks which need to deal with the more general principles.

16.23 Economic Development Issues

- 16.24 This study has examined the economic development issues and claimed employment benefits of 'live/work' development. There are potential savings to the cost base of businesses, but these are likely to be small and are more likely to involve convenience in terms of reduced commuting time rather than genuine gains to the national economy.
- 16.25 The study found that those benefits that exist can be mainly realised in premises within the C3 use class with the number of businesses requiring 'live/work' premises outside this very small indeed. It is highly likely that the number of live/work premises developed in London in recent years is many times greater than the number of wholly B1 incubator business units. This would appear to show an inversion of priorities.
- 16.26 There are advantages of clustering of small business activity within an area, and the benefits of this clustering can be maximised by increased opportunities for social interaction, and to a lesser extent by sharing costs such as training and marketing. These benefits are most likely to occur within a diverse mixed-use district, an individual scheme is unlikely to be of a scale to realise these economies.
- 16.27 There may be some disbenefits to home-working in general and 'live/work' premises in particular. The 'comfort factor' associated with such operations may deter business growth which requires employment of extra staff and moving to new premises, especially where the shift to home working was made for lifestyle reasons.
- 16.28 Premises operated by registered social landlords are much more likely to secure and retain employment, however there is a risk that 'live/work' may be pursued as a 'fig leaf' use where their normal development programme is frustrated.
- 16.29 Public policy support relating to small business premises should start with an overall appraisal of demand and supply of premises at different levels of affordability. Live/work will be just a small part of this. It is wrong to consider planning as part of this supply issue without a clear and wider understanding of the market.
- 16.30 It is unlikely that demand for business premises will be low and demand for 'live/work' will be high. In these cases proposals are likely to be residential in nature, and if demand for employment premises is genuinely low then they ought to be permitted.

- 16.31 The issue of providing affordable live/work premises is a separate issue from that of providing affordable housing, it should however be a material consideration in justifying a slightly reduced level of affordable housing.

16.32 Housing Issues

- 16.33 The risk and reality of reversion of 'live/work' premises to solely residential is the biggest concern and threat to the future of the concept.
- 16.34 The attitude of the development community indicates that 'live/work' is perceived as a trojan horse use to allow residential on sites zoned for employment used and to bypass affordable housing policies.
- 16.35 Site visits and the interviews with London Boroughs have shown this to be a genuine concern, with large numbers, if not the majority of 'live/work' schemes londonwide eventually reverting to solely residential use. Visits made as part of this study to find examples of good practice have proven a barren exercise. Abuse appears to be the norm. A key indicator is the way premises are signed, lack of business plates and names at the entrance is a good sign of residential as opposed to business use. The number of schemes in genuine 'work/live' use such as Westferry and the Chocolate Factory in Wood Green are very small in number and managed by the social sector.
- 16.36 Although there have been several cases in Hammersmith & Fulham of schemes reverting to residential use the problem appears to be less than in some other boroughs with at least one case reverting to solely employment use. This can be explained by development economics with the shortage and high values experienced by small B1 office units, especially in Fulham., and restrictions in associated legal agreements.
- 16.37 Retention of the employment element of 'live/work' schemes does present significant enforceability concerns. Enforcement through internal inspection is difficult but not impossible to enforce. The best means of ensuring that employment use remains is through design and the use of a tenancy arrangement, such as development by an RSL, that ensures long-term interest in the provision of employment. Where breaches occur well publicised planning contravention notices can have a significant deterrent effect.

- 16.38 Whilst in many cases it could be argued that zoning policies are out of date and do not allow for mixed uses this is a separate issue from the benefits or otherwise of 'live/work'. If sites are acceptable for residential then this should be permitted, and include the key planning advantage of housing, the provision of affordable housing. The analysis of the appeals evidence shows that most appeals against cases refused on zoning grounds would have been permitted for pure or mainly residential use anyway, and in these cases lack of employment demand will also reflect in lack of demand for the 'work' element of 'live/work' schemes. As a result 'live/work' schemes are resulting in significant loss of affordable housing, over 1,000 units over the last 5 years using the conservative figure of 25% of all live/work scheme units of 10 or more units completed overall in the last 5 years. This is a considerable cost to the public purse when the cost of homeless persons accommodation is taken into account.
- 16.39 It is recommended that development plans or supplementary planning guidance make it crystal clear that affordable housing policies apply to live/work schemes.
- 16.40 Whilst involvement of RSLs can ensure that policy objectives across a number of fronts are met, such as retention of the employment use, provision of affordable workspace, provision of affordable housing and links to wider regeneration schemes; there is a risk that these will be treated as 'fig leaf' uses unless planning policies allow for a strong development programme of housing by RSLs. Hammersmith & Fulham's 'exceptions' policies are a good example of policies that fulfil this aim.
- 16.41 It is also recommended that development plans make clear that applications for 'live/work' schemes as opposed to more work orientated 'work/live' schemes must meet the tests for change of use from employment when this is the zoned use. Legitimate concerns about zoning should be addressed through compiling up to date evidence of supply and demand for employment premises, in line with government good practice guidance, focusing on demand for low-cost employment premises.
- 16.42 Where Boroughs had up to date development plans. E.G. Hammersmith & Fulham, these tackled mixed use development and live-work/work-live development in a positive manner then the study found that these were better able to handle applications those boroughs that considered applications in a policy vacuum. These boroughs have had to suffer an appeal-led development process with responses to applications through, in some cases, a political reflex action rather than a considered policy approach.

16.43 National and Regional Policy

- 16.44 Whilst there have been calls for explicit, as opposed to implicit, policy support for 'live/work' development in national policy guidance the findings of this study would show that this could have the effect of undermining key government policies such as provision of affordable housing and support for small businesses.
- 16.45 If any statement implied that 'live/work' meets objectives of housing provision and workspace then the effect would be to encourage applications and appeals on sites currently zoned for employment use.
- 16.46 The effect of this would be the opposite intended. It would push up employment land values to those approaching residential ones. This would cause speculative vacancy and squeezing out of existing businesses from low-cost premises. Affordable housing policies would be bypassed and the proportion of overall housing which is affordable would fall. This is no idle speculation, this is what has already been happening in London
- 16.47 The effect of any such policy statement would be to take the heat off those promoting 'live/work' to demonstrate the benefits of the use. It would lead to more schemes being designed and eventually intended for eventual pure residential use. It would weaken the hand of local planning authorities in securing local objectives. It could also lead to the scope of the C3 use class being interpreted too narrowly if 'live/work' is perceived to be a separate category, which could hamper the growth of the far larger homeworking phenomenon.
- 16.48 For this reason it is recommended that national government approach the concept of 'live/work' with an attitude of healthy scepticism, an attitude now adopted by most boroughs after their initial enthusiasm. This would keep the pressure on those proposing schemes to come up with genuine proposals.
- 16.49 There are aspects of national planning policy that could do with some clarification. PPG4 deals with the homeworking issue well, however it is silent on the issues that arise in those cases where the scale of homeworking takes the use outside the C3 use class. Any policy statement should be within the context of wider changes to PPG4 on the market evidence on the supply and demand of small business space and the meeting the needs of this much larger sector.

- 16.50 National policy on affordable housing should be clarified to make it clear that this policy also applies to most 'live/work' proposals, especially those primarily residential in character. The exact amount of affordable housing required should be directly proportional to the proportion of residential floorspace proposed.
- 16.51 Although 'live/work' is supported by some for simultaneously meeting employment and housing policy objectives the study found that the vast majority of proposals have performed poorly against government policy objectives in these fields and that they are not leading to sustainable mixed communities.

Appendix 1

	The Oakland Ordinance	
	Live/work	Work/live
Work	live/work are intended to be those that are compatible with residential occupancies and fall in the B Occupancy classification which is the "business" (primarily office) type. Manufacturing type uses are not permitted in live/work	Work activities in work/live are intended to be the dominant pursuit of the occupants, whether they be the residents-- or in some cases employees and customers. Work uses include all B Occupancy activities permitted in live/work, and ADDITIONALLY all activities moderate and low hazard assembly, fabricating, manufacturing, repair or processing operations-basically anything up to but not including Hazardous Occupancy.
Employees	As the more residentially oriented type, employees are less likely to be present in live/work. However, subject to the work activities permitted in the applicable zone, live/work does permit employees subject to the accessibility requirements this entails.	As the most likely category in which employees would be accommodated, work/live is encouraged in commercial or manufacturing zones. Any live/work or work/live which has employees or walk-in trade will need to have disabled access in any areas occupied or used by employees and customers.
Walk-in Trade	Of the two types, live/work is less likely to accommodate walk-in trade due to the intensive impact of customers upon what is intended primarily (or partly) as a residence. One possibility: live-near; live/work with separated living and working spaces. The presence of walk-in trade triggers the accessibility requirements.	Walk-in, i.e. retail trade is a commercial activity usually best suited to areas where consumers of commercial products concentrate. This is most likely to be in a commercial zone. Work/live is the most likely category into which walk-in trade would be accommodated. The predominantly commercial nature of this type makes it most appropriate for walk-in trade when it is desired. The presence of walk-in trade triggers the accessibility requirements.

Hazardous Materials	The levels of hazardous materials permitted in live/work are only slightly higher than those permitted in a residence.	One of the primary purposes for creating a distinction between live/work and work/live was to accommodate different levels of hazardous and toxic materials used in their respective work processes. Work/live permits far greater levels of such materials and processes than live/work, and is a clearer choice for those who would accommodate a wide range of work types.
Heavy Objects & Heavy Equipment	Work activities that are compatible with residential use tend not to employ heavy equipment or require storage or manipulation of heavy objects. Therefore the lesser floor loading requirements of live/work make it a more affordable choice for those who don't expect those heavier uses.	Work/live was conceived as a distinct type to accommodate heavier uses such as equipment, storage and heavy materials. Its higher floor loading requirements are a necessary response to that need.
Noise	While the building code treats noise sources greater than 60 dB identically under the building code in live/work and work/live, the overall intent of the combined Zoning and Building regulations is that live/work be consistent with the "quiet enjoyment" rights of residents. Therefore greater noise generation is discouraged in live/work.	Work/live, being a predominantly work-oriented, more intense occupancy, is more likely to accommodate greater noise generation, mechanical, musical, or otherwise. That having been said, any source of noise 60 dB or greater abutting a residential portion of a neighbouring space must attenuate that sound according to the Oakland Live/Work Building Code.

Appendix 2 Live/work Appeals

Hackney Appeals

Unit 32 Schooner Court 44-48 Wharf Road, London N1 (London Borough of Hackney) 10 Jan 2000

T/APP/U5360/C/99/1021601

Enforcement appeal use as residential. Wenlock Basin Defined Employment Area. No immunity on length of use. Residential would result in the loss of the employment character of Wharf Road and the DEA as a whole. Would conflict with existing employment occupiers carrying out their businesses unimpeded. Live/work appeal on unit 34B not so clear cut, inspector considered counts as employment floor space. Difficult to enforce the subdivision of the unit between residential and employment accommodation.

73 Leonard Street London EC2A 4QS (London Borough of Hackney) 02 Aug 2000

T/APP/U5360/X/00/1035820/P6

Appeal against refusal of certificate of lawfulness of residential use. Not solely residential. 10 year rule applies. Local authority had allowed the concept of live/work to confuse their approach in this case. " The relevant question is not whether there is an element of business use at the premises but whether that business element is sufficiently significant to have brought about a material change of use." Para. 13. Business use has not had a significant effect on its residential character. Residential use is lawful.

No 7/7A Shepherdess Place, London N1(London Borough of Hackney) 17 Jan 2001

APP/U5360/A/00/1051352

20 live/work units, 14 residential in Victorian warehouse vacant for 10 years. Ground floor and basement retained for B1 purposes. Site within a defined employment area. Accepts that phenomenon of 'live/work' would include an element of potential employment space but would be contrary to policy on this occasion. No information about nature, length and terms of marketing arrangements. No other live/work premises in the locality. Appeal dismissed.

Former Defoe Road Depot London N16 (London Borough of Hackney) 14 Mar 2001

APP/U5630/A/00/1049769

10 live/work. 45 residential. Planning brief for a mix of residential and employment uses. Appellants argued that lawful use was sui-generis. Inspector accepted this. Scheme did not provide a satisfactory split between living and working areas and this would limit employment generation. Appeals dismissed.

29 Belfast Road London N16 (London Borough of Hackney) 15 May 2001

APP/U5360/A/01/1059505

Change of use of ground floor place of worship and first floor commercial into 7 live/work units. Site within a defined employment area. Previous appeal precedent. Could be argued that live/work are a form of employment generating use. Loss of community facility would cause harm. Appeal dismissed.

Balmoral Furniture UK Ltd, Florfield Passage, Reading Lane, London E8 1DX (London Borough of Hackney) 4 Jul 2001

Appeal Ref: APP/U5360/A/01/1062682

Loss of employment floorspace sole reason for refusal. Problems with modern manufacturing but building not vacant and not marketed for its current use. "All around the premises lie buildings and sites undergoing a radical transformation to accommodate new uses... A continuation of traditional industrial use of the appeal premises would go against the very visible trend of upgrading old property and finding viable market use." para.6. Proportion of B1 and live/work acceptable.

5 Garden Walk London EC2 (London Borough of Hackney) 24 Jul 2001

APP/U5360/E/01/1058135

General compliance with guidelines for live/work development. Appropriate in an area allocated for mixed use development.

3 Beatty Road and Land adjoining 9 Beatty Road Stoke Newington London (London Borough of Hackney) 26 Jul 2001

APP/U5360/A/01/1062849

Main issue whether need to provide affordable housing. Existing permission on slightly larger site. Number of residential units now reduced to 14. Site below Circular threshold so no requirement.

293-297 Kingsland Road London (London Borough of Hackney) 2 Aug 2001

APP/U5630/E/01/1062908

UDP does not refer to live/work units. Council accepts is a sui-generic use. Interim policy guidance requiring 25% affordable live work units on larger schemes.

Kings Wharf, 9% of the units sold at discount to MHO at 58% of the market value, sold like hot cakes. Policy applied inconsistently and not at all at large Gainsborough Studios development. No substantive evidence of need for affordable live/work units. Residential element not to be

included in calculation of employment floorspace and so not major employment development qualifying for training contributions.

21-22 Tudor Grove Hackney London E9 (London Borough of Hackney) 2 Oct 2001

APP/U5630/A/01/1067107

Application for three flats and three live/work units. 50% residential component is excessive in defined employment area. Serious policy and amenity objections.

Shakespeare Mews, Stoke Newington London N16 (London Borough of Hackney) 4 Jan 2002

APP/5360/01/1072356

Demolition of 11 existing workshops on site. Proposed 3 live/work units. One third of current workshop space. No reduction in number of people employed. Part of site vacant and not suited to employment because of its condition. Meets UDP employment policy objectives. Officers had recommended approval. Costs application against Council successful because members took the view that SPG a 'back route to residential development.'

54-55 St Andrews Road London E8 (London Borough of Hackney) 28 Jan 2002

APP/U5360/A/01/1074860

Outside defined employment area. Increase in employment generating floorspace, so acceptable according to policy.

30-40 Underwood Street London N1 (London Borough of Hackney) 15 Mar 2002

APP/U5360/A/01/1078310

Much of building currently occupied as artists studios. Complies with minor exceptions to guidance on live/work development. Would not harm Underwood Street Conservation Area.

326-328 Kingsland Road E8 (London Borough of Hackney) 9 May 2002

APP/U5630/A/02/1081559

Existing permission for ground and basement use for employment purposes. Issue is potential loss of this floorspace. Vacant for four years. Difficult to convert as listed building. Loss so small as to be insignificant.

10 Ellingford Road London E8 (London Borough of Hackney) 09 Dec 2002

APP/U5360/A/02/1094864

Issue whether unacceptable loss of employment generating floorspace in a defined employment area. Growing residential character of area. Only marginally short of 50% employment floorspace. Circumstances of site justify minor departure from standard.

Builders Yard, Florfield Passage, London E8 (London Borough of Hackney) 31 Jan 2003

APP/U5360/A/02/1097612

Site unused as builder's yard for two years. So long as live/work units are found to be acceptable no unacceptable loss of employment generating floorspace. SPG allows live/work developments in defined employment areas. Fails to meet several of SPG requirements including should not be provided on ground floors in DEA, lifts, double doors, minimum floor area etc.. Would not provide acceptable living and working conditions.

17-33 Westland Place, Hackney, London 25 Feb 2003

APP/U5360/A/02/1099090

B1 use on lower and upper ground floors and three upper floors of 12 live/work units. Did not object to live/work, too much parking, since deleted. Hides attractive chocolate factory, appeal dismissed harmful impact on conservation area. Occupants severe loss of light and privacy.

Britannia Walk Industrial Units, 11-13 Ebenezer St, London N1 7NP (London Borough of Hackney) 04 Mar 2003

APP/U5360/A/02/1101954

South Shoreditch Defined Employment Area. Limited weight given to Live/work SPG given lack of public consultation. UDP policies over seven years old. Weight to more recent national policy on mixed-use development. Inspector felt local authority had asserted but had not presented evidence that work component of live/work schemes would not be used as such. Gaining access to ascertain whether breach of condition on retention of work use not insurmountable. Council have not taken enforcement action elsewhere. Appropriate to consider employment proportion of the floorspace as part of the total employment generating floorspace. No requirement in SPG that employment floorspace exceed residential floorspace. Meets 70 sq. m. minimum for employment floorspace. Appropriate to apply conditions on provision of a lift with a 2 tonne load capacity and 1.5m wide doors. Conflicting evidence on employment demand and viability. Inspector considered that local demand for office floor space would decline but that scheme would provide modern suitable units for local firms. Incorporation of B2 floorspace in a mixed use scheme inappropriate. Approximately half of floor space would be for employment purposes in line with South Shoreditch UDP policy. Below threshold in interim guidance for 20% provision of affordable live/work units. Unconvinced about viability of a scheme involving increased B1 floorspace and affordable housing.

Considered that scheme fell below affordable housing thresholds in circular 6/98.

2-4 Orsman Road, London N1 5QJ (London Borough of Hackney) July 2003

APP/U5360/A/03/1108229

Scheme would increase commercial floorspace and increase residential units. Complies with policies on retaining employment uses. But scheme predominantly residential in nature. Industrial units dominate Orsman Road, noise from air extraction fan next door. Noise control measures would be negated by occupants opening windows. Contrary to PPG4 para. 18. Height and massing inappropriate on canal side location in conservation area.

43-51 New North Road Hackney N1 6JD 10 Oct 2003

APP/U5360/A/03/1109108

19 proposed live/work units. Policy retaining sites in employment use outside defined employment areas. Work space 22% of units. Inspector stated that there was no evidence that a more intensive employment use would not be financially viable. Concludes scheme would not be employment led. As scheme is largely residential and does not constitute a mixed or employment led development affordable housing should be provided. Harms setting of adjoining Georgian listed buildings.

11-23 Downham Road London N1 5AA (London Borough of Hackney) 25 Nov 2003

APP/U5360/E/93/11787&88

One refusal ground relates to the failure to include a pure housing element. Fall back position. Did not agree with Council that development would be unlikely to contribute to employment generating floorspace. Site is allocated for employment use in the adopted UDP. Found PPG3 is couched in permissive terms and is not mandatory. Proposal in full accord with the development plan. "I recognise that the Council is set against any further live/work units in the Borough, but as the Appellants point out, it has granted permission for over 1,000 such units. Live/work development has become an established pattern of use in town and city centres...The fact that the Council has not enforced against any breaches of planning control where misuse has been identified is no reason to deny planning permission for the proposed development." Para 42.

24 Tottenham Road, London N1 4BZ (London Borough of Hackney) 13 Feb 2004

APP/U5360/A/03/1131757

Employment building outside defined employment area. Inspector considered that loss of storage space on upper floors would represent a loss of employment floorspace. Availability of employment floorspace should be made available for other enterprises.

10A Ellingfort Road, London E8 3PA (London Borough of Hackney) 05 Mar 2004

APP/U5360/A/03/1133671

Loss of employment floorspace. Attempts to let the building over two years unsuccessful. However inspector considers that the proposed live/work developments would be in line with developments permitted by the Council in the area. "There clearly is a demand for this type of development which accords with national policies. The regeneration of the area would be assisted by this appeal scheme whereas refusing it could lead to continued vacancy of the building and a reduction in economic activity." Para. 10.

8 Perseverance Works, Kingsland Road, London E2 8DD 14 (London Borough of Hackney) Sept 2004

APP/U5630/A/04/114049

Renewal of earlier expired permission granted when Hackney Live/work SPG was in force. No evidence submitted that there is a shortage of employment premises in the area. Council considered that premises were entirely suitable for live/work in 1996 and no evidence submitted that circumstances had changed since then.

Tower Hamlets Appeals

2-24 Corbet Place London E1 (London Borough of Tower Hamlets) 24 Aug 1999

T/APP/E5900/A/99/1020501/P2

3 additional live/work units to total 21. No objection in principle. Application reported to committee with a recommendation for approval. Three possible affordable housing S106s. In inspectors view live/work units do not fall within any one Use Class of the Town and Country Planning (Use Classes) Order but are sui-generis. Therefore no requirement for affordable housing. Council's views have been fuelled by a suspicion that a live/work permission may be a device to provide residential accommodation by the back door. Evidence of residential conversion at Lana House. Concerns over enforceability of retention condition. Inspectors view are enforceable and tax on residential conversion unnecessary. No conclusive evidence of need for affordable live/work, especially when not backed up by a specific policy. Appeal allowed.

25 Shacklewell Street London E2 7EG (London Borough of Tower Hamlets) 18 Aug 2001

APP/E5900/A/01/1063743

Change of use from a spray booth to a live/work unit. Would be difficult to find a new user due to problems with the building. Proposal would attract investment. Appeal allowed.

59 Cudworth Street Bethnal Green London E1 (London Borough of Tower Hamlets) 23 Oct 2001

APP/E5900/A/01/1064041

Conversion of single light industrial building to a single live/work unit. Cheek by jowl with industrial but no evidence of problems with proximity. Premises would still be used for employment purposes so no loss in this regard. Living accommodation not ancillary to the living accommodation. Conditions on occupancy and use of work area.

94-100 Christian Street, London, E1 (London Borough of Tower Hamlets) 10 Dec 2002

APP/E900/A/02/1094568.

Limited weight to SPG as only in draft form. Site in a transition area between commercial and residential areas. Given small scale of proposal (4 units) and character of area would be unlikely to affect commercial operation of other uses. SPG guidelines, not fixed standards. Inspector did not accept that they would be substandard. Appeal allowed. No need to cover in legal agreement additional powers of monitoring, existing powers adequate.

Southwark Appeals

**33 Pages Walk London SE1 4SB (London Borough of Southwark) SE1 4SB
18 Dec 2003**

APP/A5840/A/03/1126880

Rejected on design grounds. On a crucial corner an inspirational scheme is needed. Inspector felt local authority stance inconsistent as the scheme would lead to an increase in employment floorspace. However inspector not convinced that residential should be introduced into an area zoned for employment contrary to policy.

Kensington & Chelsea Appeals

11 Russell Gardens Mews, London W14 8EU (Kensington & Chelsea) 27 Nov 2003

APP/K5600/A/03/1114618

Mews where majority of premises retain characteristic double doors. Inspector concluded that the Mews taken as a whole were not primarily commercial. "The live/work unit is not subject to a specific UDP policy, and therefore is not as I see it a use to which the statutory force of the UDP could be applied." Para 14. Would meet policy objectives of providing both employment and residential. Combined live/work in two rooms, rest (45% of premises) used solely for residential. "I do not consider that the joint use of these rooms for living and working could be adequately enforced by the Council, either through a planning condition or a legal agreement, such as to ensure that the whole of the areas was not used for residential purposes. I appreciate that there can be no compulsion to use any defined work area for its specified purpose when the remainder of the premises is being occupied residentially, but in my judgment only by the specified delineation of living and working areas would a live/work unit be a practical proposition, such

that the intended joint use of the premises could be enforced. I agree with the Council, therefore, that the revised floor plan arrangements to provide joint live/work rooms are quite unrealistic, and would not result in a feasible solution to the provision of continued commercial use at the appeal premises." (para. 15)

Brent Appeals

Rosemead Hall, Rosemead Avenue, Wembley London HA9 7EE (London Borough of Brent) 13 Jan 2004

APP/T5150/A/03/1127415

Specific policy EMP24 on Live/Work development. UDP inspector concluded that the residential accommodation should be subsidiary to the work element. 70:30 floorspace split in favour of the work element. Inspector gave limited weight to increased employment floorspace, as better use of previously developed land would apply to all uses. Discounting consideration of pure residential element would undermine policy EMP24.

Lambeth Appeals

Empress Works, Kenbury Street, Camberwell, SE5 (London Borough of Lambeth) 25 Oct 2000

APP/N5660/A/0/1045966

Scheme for 17 live/work units. Not significantly less employment floorspace. Does not contravene employment policies. 6 of the units would be incapable of accommodating B2 units. Would undermine aims of employment strategy for the area.

14 and 16 Dolland Street Vauxhall London (London Borough of Lambeth) 31 May 2001

APP/N5660/A/01/1056341

Main issue loss of employment use. Proposal to replace ground floor B1 with 5 live/work units. No evidence that there was no demand. Scale of kitchens with breakfast bar proposed as part of employment use would go beyond that normally provided in a B1 or B2 unit to provide snacks or drinks. "I am area that the proposed open-plan layout might suit an architect, accountant, graphics designer or IT worker, for example. However such activity could take place from a dwelling without the need for planning permission. In my judgement, to be defined as a live/work unit the business or industrial part of the use must be significantly different in scale or type from that which could be carried out from a dwelling as permitted development. Furthermore, the scale and type of activity characteristic of the non-office elements of B1 use would be likely to require some separation from the residential part of the unit." Para 9. Poor servicing and access.

2 Carpenters Place, London SW4 7TD (London Borough of Lambeth) 31 May 2001

APP/N560/A/01/1058874

Proposed 5 live/work units. Whether the proposed development would materially undermine the Council's employment strategy. Marketing flawed, no evidence of scale or price sought. 77/23% split in favour of residential found to be excessive. Acceptable living conditions. Appeal dismissed.

9 Wigton Place London SE11 (London Borough of Lambeth) 13 Mar 2002

APP/N5660/A/01/1071884

Policy Emp6 protecting employment generating use. Shortfall in three car parking spaces acceptable. Drawings show no distinction between work area and living space. As observed by another inspector at Dolland Street (AAP/N5660/A/01/1056341) such activity could take place at a dwelling without the need for planning permission. Marketing exercise not vigorous. Appeal dismissed.

1A Elms Road, Clapham Common, London SW4 9ET (London Borough of Lambeth) 04 Sept 2003

APP/N5660/E/03/1114544

Policy 24 on live/work but given limited weight as plan is at an early stage. Found meets criteria for change of use of vacant employment premises. No loss of employment floorspace, complies with emerging UDP employment policy. Close to 60/40 split sought by local authority.

Wandsworth Appeals

265 Merton Road, London Sw18 (London Borough of Wandsworth) 24 June 2003

APP/H5960/A/03/1108257

Site in defined employment area. Scheme did not include full range of B class uses contrary to UDP. Would undermine the Council's policy objectives to safeguard industrial land.

53 Lydonn Grove, London SW18 4LW (London Borough of Wandsworth) 16 Mar 2001

APP/H5960/A/00/1055602

Industrial Employment Area. Strong demand for industrial and office premises in the Borough. Appeal dismissed.

Greenwich Appeals

The Hall, Peyton Place, London SE10 8RS (London Borough of Greenwich) 11 Oct 2003

APP/E5330/A/01/1065408

B1 building in office use in conservation area. Status of a live/work unit in dispute. 'In the absence of guidance in the development plan or through statute I will regard the proposal as a hybrid use and, therefore, sui generic. Clearly the residential part of the proposal is not an employment use. As such, I consider it is reasonable, given the protective employment policies of the UDP, for the Council to seek to apply them in this case.' Para. 6. Inspector laid great store to local and national policies seeking to encourage small businesses. Proposal could seriously undermine the Council's protective employment policies for premises suitable for small businesses. Appeal dismissed.

Richmond Appeals

17-21 Watts Lane, Teddington, Middlesex (London Borough of Richmond Upon Thames) 30 May 2003

AP/L5810/A/02/1099681

Site in employment use. Criteria based UDP Policy EMP8 on live/work. Concluded that UDP policy did not preclude development of live/work units on employment sites. Converted part represents poor quality and outmoded employment premises. Appeal allowed. Imposed condition requiring use partly for B1 and partly for living accommodation.

13 St Johns Road, Hampton Wick (Richmond Upon Thames) 5 Jul 2001

APP/L5810/A/01/1057100

7 Live/work units on demolished site in conservation area. Argument that buildings are seriously dilapidated and unsuited for modern business needs. 60% of floorspace for employment. No floorspace test in UDP. Inspector considered that re-use unlikely to be financially viable. Council's employment objectives would not be harmed.

Lewisham Appeals

2 Creekside Deptford SE8 (London Borough of Lewisham) 01 Jun 2001.

APP/C5690/A/00/1058698

2 live/work units as part of wider employment and residential scheme. Protected employment area but development framework promoting mixed uses. Not in employment use for 30 years. Significant risk of conflict with nearby industrial occupiers. Inadequate marketing of the site. Unilateral on live/work element not immune under the 10 year rule. Units most likely to be used for residential purposes. "Any enforcement inspection would probably require notice to be given and the occupiers could take any measures necessary to alter the contents of the room, so that breach of the conditions/obligation would

be hard to prove." Para. 35.

Haringey Appeals

28 Lawrence Road London N15 (London Borough of Haringey) 7 Feb 2001

APP/Y5420/A/00/1040019

10 of 30 units occupied. Hybrid use combining C3 and B1 and therefore sui-generis. Considered to be fairly prevalent in other boroughs. Site in a defined employment area. UDP policies when drafted presumed that change of use would apply to a wholly residential unit. Only half of the floorspace technically contrary. Remainder employment generating. Reduction in costs of live/work is likely to generate new economic activity. A more flexible approach to use is required. Market for employment use limited. No data from either side on supply or demand of employment premises. Site on edge of DEA counts in favour of the scheme. Annual inspection reasonable, use can be ascertained by a brief visual inspection. Appeal allowed.

Westminster Appeals

4 Wellington Road London NW8 (London Borough of Westminster) 04 Oct 2000

APP/X5990/C/00/1038770

Enforcement appeal. Residential element cannot be regarded as a separate planning unit. No justification for applying the four year rule here. The residential element is simply part of a mixed use of the whole property for offices and residential. Change of use has resulted in a loss of some residential accommodation and a reduction in the housing stock available in the Council's area. Appeal allowed with variations.

Hammersmith and Fulham

6 Stamford Brook Road London W6 OHX (London Borough of Hammersmith & Fulham) 5 May 1999

T/APP/H5390/E/991018171/P2

Two storey live work units. Appellants found requirement for 50% residential floorspace too restrictive. Wanted 30%. Council felt that schemes like this fail to live up to their employment expectations, particularly where the work floorspace is not clearly defined or protected by a legal agreement. "It appears to me that the existing live/work schemes which are not being used in the manner intended are significantly different from the proposal before me. Most were speculative developments with no specific end-users, and provided smaller units designed in a more domestic style with a shared access to the business and living areas. The bespoke design and larger size of the two units proposed, coupled with a clear demonstration on my visit that the intended businesses (particularly the architectural practice) need more space, convinces me that

there is a high probability that the development would first be occupied in the manner portrayed to me. " (para 10.) Condition not more than two thirds of the floor area used for residential purposes.

Unit 4 Waldo Road London NW10. (The London Borough of Hammersmith & Fulham) 20 July 1999.

T/APP/H5390/A/99/1018496/P2

Issue loss of land from employment. One of a row of five small industrial units. On evidence before the inspector felt that there is a substantial level of Class B1 floorspace with permission or vacant. Dispute over whether 55% or 48% of the floorspace would be available for employment. Considers substantial proportion of the unit would be available for workspace. Subject to conditions would not result in a significant loss of employment land.

Waldo Works, 5 Waldo Road, London NW10 2000

APP/H5390/A/00/1042308

Issue loss of employment floorspace. Proposal for four live/work units. Proportion of living and working space about equal. Council felt that living and working areas not sufficiently well defined to enable conditions enforceable. "I accept in general that some residential proposals may masquerade as proposals for live/work units, presumably in order to circumvent LPA's employment land protection policies. I also accept that it may be difficult in practice to define precisely where the user is, simultaneously and be definition, both resident and a worker." Para 13. Amount of work space would remain much the same as before as most of the 'living' space provided would be in the form of a mezzanine floor.

54-58 Micheal Road, Fulham SW6 (London Borough of Hammersmith and Fulham) 12 July 2000

T/APP/H5390/A/99/1035165/P2

Consent for four atelier (live/work) units. Now proposed as purely residential. In employment zone. Appellants argued site never in employment use and residential in character. Greater affinity with employment area as contiguous with gasworks. Strong evidence of demand for class B1 space in Fulham. Live/work supported on a transitional site. Potential loss of 18 jobs. Appeal dismissed.

1-1A Sotheron Place, London SW6 2EJ (The London Borough of Hammersmith & Fulham) 9 Sept 2003

APP/H5390/A/03/1115952

Council did not provide a statement. Issue the effect of the development on the supply of employment land. Proposal would reduce the area available for employment use by some 50%. No evidence that the site is unsuitable for continued employment use. Appeal dismissed.

1A Barb Mews, Brook Green, Hammersmith, W6 7PA 20 Nov 2003

APP/H5390/A/03/1114103

Single unit. Not vacant for a significant period, not unsuitable for business premises. Site would not be developed to its full employment capacity and would not comply with UDP policy E3(c).



Westferry Limehouse

Appendix 3 Headline Good Practice Design Issues for Work/Live Units

Minimum Work Area

- Provision a separate defined functional work area of at least 50% of the total gross floor area of the premises;
- The defined functional work area should have a gross floor area of least 50 sq. m.. gross floor area, with a minimum total area of at least 90 sq. m..

Conditions will be required for controlling the occupancy of the defined work work area as follows:

- during the hours between 09:00 and 17:00 Monday to Friday inclusive the defined work area as shown on the approved plans shall only be used for work purposes ordinarily falling within the B1 business use class [substitute B2 for workshop work/live units] and shall not be used for any activities ordinarily falling within the C3 dwelling use class.
- Notwithstanding the provisions of the General (Permitted Development) Order and any order which may replace it, the area outside the defined work area as shown on the approved plans shall only be occupied by those working at the premises and their families, partners and/or dependents. This area shall not be subdivided into a separate dwelling/dwellings or other separate units.

The following design requirements should be imposed.

- Separate access for the live and work areas, live and work areas to be separate but connected internally.
- Maximum total floorspace of 150 sq. m.. on any work/live unit and a maximum of two bedrooms.
- Work areas to have small (only) bathroom and kitchette areas.
- Work areas to be provided as an undecorated shell bar minimallly fitted out bathroom and kitchette areas.
- Work areas to have high (preferably double height) ceilings.
- Work areas to have double width loading doors, at upper floor levels accessed from a balcony and industrial lift capable of holding a standard palette. On conversion schemes traditional loading cranes can be used.
- Work areas to have a 2.5 tonne floor loadings.
- No gated access, walk-in trade to be permitted and encouraged.
- Other than on conversions schemes units should have an open and preferably glazed frontage with a clearly marked business entrance.
- workspace at street level (except in mixed-use schemes, where all business units should be at street level)
- Prominant business signage at the scheme entrance.
- On larger schemes joint facilities such as meeting rooms.



Cutting Edge Planning & Design