



Appeal Decision

Inquiry held on 9 January 2024

then on 14, 15, 16, 17, 21, 31 January, 27 and 28 February 2025

Site visits made on 14 and 17 January 2025

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2025

Appeal Ref: APP/B0230/C/22/3296488

Land at Shire House, 400 Dallow Road, Luton LU1 1FF

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the Act). The appeal is made by Devonhurst Investments Limited against an enforcement notice issued by Luton Borough Council.
 - The notice was issued on 25 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission:-
 - (1) the change of use of the Land from an employment use to a residential use comprising of approximately 109 self-contained residential units.
 - (2) the erection of three two storey structures used to accommodate multiple self-contained residential units on the Land, in the approximate position shown cross-hatched black on the attached plan reference 001.
 - The requirements of the notice are to:
 - (i) Cease the residential use of the Land.
 - (ii) Demolish the three two storey structures shown in the approximate position cross-hatched black on the attached plan reference 001.
 - (iii) Remove all kitchens and all associated fixtures and fittings from the Land.
 - (iv) Remove all bathrooms and all associated fixtures and fittings from the Land.
 - (v) Remove all items ancillary and/or incidental to the residential use from the Land; including but not limited to: beds, wardrobes, sofas, and other home furnishings.
 - (vi) Remove all associated building materials and rubble and waste materials arising from compliance with steps (ii) to (v) above from the Land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - Within paragraph (3)(1), the insertion of “material” between “the” and “change of use”; and the deletion of “approximately”
 - The replacement of the plan attached to the notice with the Replacement Plan “001 – amended” attached to this decision.

The appeal is allowed and planning permission is granted in part on the application deemed to have been made under s177(5) of the 1990 Act as amended, insofar as it relates to the material change of use of the land from an employment use to residential use, demolition of the central blocks and retention of 81 residential units within the retained buildings, as shown hatched in black and labelled “Existing structure retained” on ‘Plan 2’ attached to this decision and subject to the schedule

of conditions at the end of this decision, on at land at Shire House, 400 Dallow Road, Luton LU1 1FF.

The notice is also varied by the deletion of “six calendar months” within section 6 (time for compliance) and its substitution with “seventeen months”.

Subject to the corrections and variation, the appeal on ground (a) is dismissed and the enforcement notice is upheld as corrected and varied and planning permission is refused under s177(5) of the 1990 Act as amended, in so far as it relates to the 2 buildings shown hatched in red on ‘Plan 2’ attached to this decision labelled “Existing Structure to be Demolished”.

Applications for costs

2. Applications for costs were made by both the appellant against the Council and the Council against the appellant. These are the subject of separate decisions.

Preliminary Matters

3. The inquiry initially opened on 9 January 2024 but was adjourned because of concerns about the notification of residents within the dwellings that are subject to the notice. The inspector who had opened the inquiry was not available to continue with the rescheduled inquiry and so I was appointed. The previous inspector provided me with a handover note but has had no input into this decision.
4. The inquiry was held over a number of weeks and there was then a period to allow for closing submissions and costs matters to be dealt with in writing. The inquiry was formally closed in writing on 2 April 2025.
5. My first site visit involved me entering the site as well as a selection of the flats accompanied by representatives of both main parties as well as the occupants of those flats. I then visited the area again without going onto private land, on my own to consider the site in the context of the surrounding area.
6. After the inquiry, I noticed that there were ambiguities on the plans submitted by the appellants to show how the buildings could be altered in what is referred to below as ‘Option 2’. I gave the appellant an opportunity to correct the ambiguities and to the Council to comment on those plans.

The notice

7. I have broad powers under s176(1) of the Act to (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice. I can do that where I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority. Notwithstanding the grounds of appeal, the appellant company (the appellant) has raised concerns regarding the wording of the notice.
8. Firstly, the appellant says that the word “material” needs to be inserted before “change of use”. That would reflect the meaning of “development” within s55(1) of the Act. Secondly, they say that the use of the word “approximately” with respect to the number of units is insufficiently precise when it is not disputed that there are 109. The Council agreed to these changes at the inquiry. I consider that it would more accurately reflect the relevant legislation and the development if these changes were made. It would not cause injustice to either main party to make the

changes and I will do so.

9. The appellant also considers that the allegation does not need to include a description of the former use as “employment use” before the material change of use within the allegation. The Council are content with the description as set out. My view is that whilst the former use does not have to be referred to it is often good practice to do so and it helps to give some indication of why the change of use is material. I will not change that part of the allegation.
10. I also raised a matter regarding the red-line shown on ‘Drawing 001’ attached to the notice which seems to me to be inaccurate by incorporating adjoining land to the west. That land appears to have been historically part of the same parcel as the land to which the notice relates but it was agreed that the buildings and use as alleged are not within that adjoining site. The red-line should run along the line of the western elevation of the building and that is shown on ‘Plan 1’ which is within ‘Schedule 1’ of the submitted planning obligation. Rather than incorporate that other plan as I had suggested, I have revised the boundary on the original plan because I wanted to retain the hatched areas showing approximately where the alleged new buildings are positioned. I have deleted the original plan and substituted the revised version.

Procedures and evidence

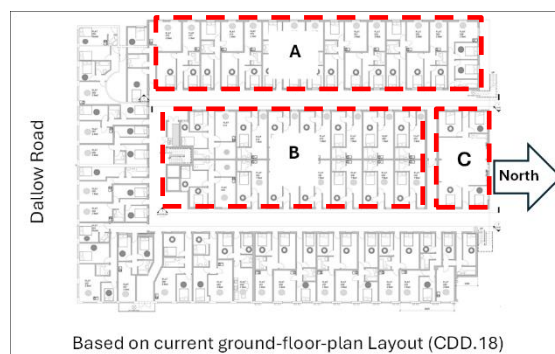
11. Evidence by the main parties’ witnesses at the inquiry was given under solemn affirmation. When it became known to me that some witnesses could not effectively and fairly give evidence because their first language was not English, translation was provided. In 1 case, the translation was provided by a friend of the witness but I adjourned to enable the Council to find a person who could understand that language to verify what was being said. In other cases, the Council found an employee who spoke that language. In each case, there was agreement by both main parties that it was an acceptable way to proceed. I am satisfied that reasonable adjustments were made for those witnesses who each have the protected characteristic of their race. I had a duty to ensure that they were not discriminated against, under the provisions of the Equality Act 2010.
12. I also heard from Mr Taylor of Landlord and Tenant Support Ltd at the inquiry who represents some residents in Shire House. I asked whether he had any financial connection to the appellant and he said that he didn’t. However, on day 6 of the inquiry, Mr Stemp for the appellant made me aware of a matter that had only recently been brought to his attention. The charity that funds some of Mr Taylor’s work had received funds from the appellant which had however been reimbursed. Mr Taylor through another company has also represented the appellant to appeal prohibition notices against Luton Borough Council. Hearing about these circumstances late in the proceedings is very unfortunate. I canvassed views of the main parties about whether Mr Taylor should be recalled and it was accepted that the matter could be dealt with in written submissions. The Council may have chosen to more rigorously test those connections and other evidence had they known about them. I also may have asked more questions. Mr Taylor affirmed his evidence and what he said does nevertheless have some weight in my decision in support of the appellant’s case whereas it may have had more weight had the inquiry been made aware of the connections between him and the appellant earlier.

Factual Background

13. On 15 April 2016, a submission was made to the Council by the appellant (16/00677/COM). That submission was an application under the provisions of Article 3, Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). That provides for changes of use from offices within Use Class¹ B1(a) to dwellinghouses within Use Class C3. The procedures for applications for prior approval under Part 3 are set out in paragraph W. Amongst other things, the Council had 56 days to confirm that prior approval is not required. The Council sent a 'decision notice' for the prior notification on 15 April 2016 which is beyond the 56 days. For this reason prior approval is deemed to have been granted for the development proposed.

The Appeal on ground (b)

14. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact. I need to reach a view on the balance of probabilities.
15. In this case the appeal on this ground only relates to section 3(2) of the notice. That is the alleged "erection of three two storey structures used to accommodate multiple self-contained residential units on the Land, in the approximate position shown cross-hatched black on the attached plan reference 001". As a matter of fact, there are 4 distinct elements to the buildings now and that much is not in dispute. The existence of the 3 buildings is not challenged. The matter in dispute is whether the notice is correct in alleging that their erection was an act of development or whether they have come about by way of adaptation of the previous structures. I will continue to consider these matters under this ground of appeal although there is a cross-over with whether what has taken place would require planning permission, which is also relevant to the appeal under ground (c).
16. I have inserted a diagram below which is helpful to show the layout of the buildings on site. The frontage of the appeal site within Dallow Road is dominated by the 3 storey red-brick building which also returns into the site on the eastern side, where there is also a car parking area as well as a timber enclosure where refuse bins are stored. That is an older 3 storey building which I have at times referred to as the 'L' shaped original building. Behind that, there are 3, 2-storey buildings. The buildings are connected by walkways and steel-work but also have a degree of separation with circulation areas between them at ground floor level and gaps between the elevations at first floor level.



¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

17. The elements marked 'A', 'B' and 'C' on the above diagram are the parts of the building to which paragraph 3(2) of the notice refers and the 'L' shaped older building surrounds them on 2 sides. To assess whether the allegation is correct, it is necessary to understand how these structures have come about as well as the legislative context.
18. The Act at s57(1) defines that planning permission is required for the carrying out of any development of land with "*development*" being defined, in s55(1), as "*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*" Section 1(A) confirms that for the purposes of the Act "*building operations*" includes— (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. However, s55(2) provides for operations and uses which shall not be taken to involve "*development*" and they include: (a) the carrying out for the maintenance, improvement or other alteration of any building of works which - (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground.
19. What is also clear is that prior to what is on site now, the 3-storey red-brick part of the building had existed and behind this, attached and connected integrally to it, there had been a single portal-framed structure. The portal frame structure had a ridged roof covering the area of the site now occupied by the elements 'A', 'B' and 'C'. The appellant's evidence (JA.06) shows that in profile, this ridged roof had previously been set behind a parapet along the western side and behind the older building. It covered a substantial part of the site.
20. The appellant has provided a document with photographs and descriptions which show the 'construction sequence' (CDH.04 Hephher Appendix 3 and CDH.02 Akbar Appendix JA.06). With respect to block 'A', prior to any construction work taking place, the west elevation had included a facing material for what appears to be roughly the top half. That has been a typical industrial grey or, as it appears in the photographs provided by the appellants as well as by Mr Dunne for the Council, a dark shade of grey with a slight green hue, cladding which had distinct vertical dark-lines which appears to be due to ribbing or corrugation. Within the cladding, there were 9 rectangular window-openings with a horizontal emphasis as well as 3 roller-shutter doors, 2 of which were clearly red in colour. The bottom half of the external cladding on this western elevation was red-brickwork.
21. The western elevation of block 'A' has been altered. The appellant has provided details of how the western elevation was changed which included the removal of the previous cladding, insertion within a largely retained timber frame which has had insulation and windows inserted. After that, this elevation has been entirely re-clad. The external wall colour at a higher level is now a distinctly different shade of grey. The smoother grey render is now interrupted by dark linear features including rainwater goods. The lower level is also now a dark shade of grey instead of the previous brickwork. Furthermore, the number of windows at the upper level has been substantially increased and the openings are now rectangular with a vertical emphasis. At ground floor level the roller shutter doors have been replaced with walling and windows. These changes are noticeable and there is no dispute about that or that the western façade in public view is now different.

22. It is clear from photographs taken from Dallow Road that before and since the works have taken place, the adjoining land has been subject to change with structures erected which have interrupted views of the site from the street. However, that does not change the fact that those changes have occurred. The changes are likely to be noticeable from that adjoining land as well. Although I could not enter that land, from what I saw from the footway alongside Dallow Road, there is space where cars are parked on that land where people on that site can see the result of the work that has been undertaken to the western elevation.
23. Mr Hepher confirmed when I asked him, that it is a matter of fact and degree whether the changes would have materially affected the external appearance of the building. This western block has been altered in a manner which as a matter of fact and degree has involved “development” within the meaning of the act. It has included the retention of some of the original fabric of what previously existed at least within the western wall, behind the substantially altered external elevation. This therefore involved development requiring planning permission but the pertinent point with this ground of appeal is whether that has resulted in the erection of a new building as 1 of the 3 new buildings as referred to in the allegation.
24. Looking then at ‘the central blocks (‘B’ and ‘C’), it is very clear that their construction was commenced when the portal frame roof was still in place as that is shown on the construction sequence. Mr Hepher did not dispute that these are 2 new buildings albeit that he considers that they were constructed within the previous structure, therefore not constituting development.
25. Mr Dunne’s evidence from the Council includes aerial images in Appendix 1 (CDI.02) which are taken from an on-line resource and whilst the dates of these are not verified, there is no dispute about them. Mr Dunne’s aerial images show that on the stated date of 25 March 2017 the ridged roof of the portal frame building appears complete. By the time of the image shown as 7 May 2018, much of the industrial building’s roof had been removed and the former frame had been removed in those parts. At that time, a substantial part of block ‘A’ to the west of the site had what appears to be an uncovered decked roof. There is a large gap between that part and the remaining part of the portal frame-roof and a substantial part of block ‘B’ was in existence albeit not with the final roof covering that can be seen in later images and block ‘C’ which also appears partially completed with a similar interim roof-covering. The image dated 26 September 2018 shows the roofs of blocks ‘A’, ‘B’ and ‘C’ having what appears to be the grey surface similar to what I could see when I looked from the raised walkway at the southern end of those blocks. At that time in September 2018, the roof of the southern end of block ‘B’ is not complete and the higher stair-well structure is also incomplete at this stage.
26. The removal of the roof was not done as one operation to reveal structures that were completed underneath its cover. It has apparently, from the photographic evidence, been removed in stages as the construction of the lower new buildings have then been then. Whilst more difficult to see what was below the roof from street-level I do not find it credible to consider that these were only visible from above. Furthermore, the removal of the roof was in effect part of the operational development involved in constructing the 3 blocks, connecting them via walkways with the older ‘L’ shaped building and such not being completely severable from those other works.
27. From the facts that can be ascertained and the degree of changes, the works that

have been undertaken were clearly extensive. They have not involved just a minor change to a small part of the building, they have involved substantial alterations to much of what previously existed albeit not noticeable from all sides of the building. I disagree however with Mr Hepher's opinion that the new appearance of the western elevation is "strikingly similar" to what existed before and this expression is difficult to reconcile at all with the facts.

28. Considering the building as a whole such as in the context of *Boroughs Day*², as the appellant has, these works have covered an extensive part of the previously existing building. They have been perceptible from public viewpoints as well as from adjoining land. Even though they have not been entirely visible from some vantage points where for instance, they were screened by the original 3-storey part of the building, from other positions the differences were clearly noticeable and therefore material to the building as a whole.
29. Looking at the alternative just in the context of part of the building, as in the later *Haringey*³ case, the former portal-framed part of the building has been diminished to a small remnant. That has been incorporated, as a matter of fact and degree, within 1 of the newly constructed buildings albeit also retaining an integral link to the original 'L' shaped building.
30. As such, I consider that there had been a single building which had been materially changed partly through demolition and partly through new building operations. With reference to 3(2) of the notice and in addition to the remaining older 'L' shaped building, there are also 3, 2-storey buildings have been erected as alleged. The appeal on ground (b) therefore fails.

The Appeal on ground (c)

31. The appeal against the notice on ground (c) is that what is alleged does not constitute a breach of planning control. The claim on this ground of appeal is that the development as alleged is permitted development under the GPDO provisions.
32. As I explain above, there is no dispute that an application to confirm whether prior approval on the matters covered by the GPDO at Schedule 2 Part 3, Class O, paragraph O.2. would be required, was made on 15 April 2016. The proposal was described as being for 130 dwellings. The Council issued a decision notice on 15 June 2016 which in summary confirmed that they considered that prior approval was not required. A great deal of evidence has related to the prior approval process in this case. However, given my determination in relation to the appeal under ground (b), the building which was subject to that prior approval process has had substantial building operations undertaken which have involved its partial demolition and the replacement of those demolished parts by the construction with 3 new buildings. Together, the older part of the building has been substantially changed and new buildings erected have involved development within the meaning of s55 of the Act.
33. There is no dispute in this case, that Class O permitted development rights do not extend to operational development. Those operations were extensive and affected the older 'L' shaped part of the building as well as a substantial part of the portal frame structure. I consider that looking at the development as whole and in the

² CDE.08 *Boroughs Day v Bristol CC* [1996] 1 PLR 78; 1 EGLR 167

³ CDJ05 *Haringey LBC v SSHLG & Muir* [2019] EWHC 3000 (Admin)

round, both elements of the allegation, the alleged material change of use and the erection of the 3, 2-storey structures constituted a breach of planning control.

34. As such, the appeal on ground (c) therefore fails.

The Appeal on ground (a) and the deemed planning application

35. Section 177(1) of the Act provides that on the determination of an appeal under section 174, the Secretary of State may (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.
36. In this case, a number of alternative options are suggested to me. Firstly, (Option 1), I am asked by the appellant to allow the appeal and grant a planning permission for the development as exists in its entirety. Secondly (Option 2), the appellant has suggested that an alternative would be to grant planning permission for a development that would involve the demolition of the central part of the development (those marked 'B' and 'C' in the diagram).
37. Plans have also been submitted showing one way that an alternative could be carried out in some detail. The plans that were submitted which are similar to those referred to within Mr Hepher's original proof of evidence as the "Courtyard Design Document" (Appendix 7 of CDH04) show the removal of block 'B' only. However, plans within the "EB7 Daylight and Sunlight Report" which is also appended to Mr Hepher's original proof of evidence (Appendix 5 of CDH04) shows the removal of block 'C' as well and that is the basis upon which the inquiry proceeded. It is these ambiguities that resulted in me asking for amended plans after the inquiry closed to resolve that discrepancy.
38. With respect to whether the Option 2 proposal can be considered, it is incumbent upon me to consider whether it is possible to grant planning permission for part-of the development as built under the provisions of s177(1) of the Act. Doing so may, according to the appellant, overcome the planning difficulties set out on the notice. It would do so at less cost and disruption than total compliance with the requirements of the notice. This option would involve the demolition of the central blocks, landscaping a resulting courtyard and retention of 81 residential units.
39. In considering this option, the starting point is the notice which alleges in (3)(2) the erection of 3 buildings. I agree with that broad description. The situation is a little more nuanced though because these 3 buildings are inter-related with one another. They are connected by the means of access and the metal walkways which are supported on metal posts which in turn appear to be part of the fabric of the buildings. The three buildings are identified approximately on the notice and this is acceptable with respect to identifying them to ensure the notice is sufficiently precise. I would not expect an enforcement notice to show refined detail of the buildings. The evidence presented shows some detail of the construction sequence which provides some insight into the manner of construction.
40. It is clear from this evidence that the removal of block 'B' in its entirety would remove the stair-well that provides the means of accessing the first and second floor walkways. The plans show that this would be retained. From what I could see, this is connected to the southern wall of the 2-storey flats in block 'B' the submitted demolition plan shows it as being a free-standing structure "to be

retained". The plans do not specify what other works would be necessary to undertake to make the stair-well secure. However, it is clear what is proposed to be removed and retained. With respect to the terms of s177(1)(a) as a matter of planning judgement, I consider that retaining block 'A' and the flats within it, as well as the flats within the retained original buildings and the stairwell at the southern end of block 'B' do form part of the matters as alleged and can therefore be considered.

41. Lastly, I am asked to consider approving the whole development but on a temporary basis (Option 3) if I have considered that it is unacceptable to be retained permanently. I will first of all consider the proposal in its entirety (Option 1) then whether it should be approved for a temporary period (Option 3) and lastly whether Option 2 should be granted planning permission.

Main issues

42. The main issues were agreed at the CMC and when I resumed the inquiry. I have added to the second main issue relating to living conditions due to matters that emerged in the giving of evidence and also due to my experience at the site visit.
43. The main issues in each of the scenarios, based upon the reasons for issuing the notice are:
- The effect of the development on the availability of employment sites within the area and any associated effect on the spatial and economic strategies of the Luton Local Plan 2011-2031, adopted November 2017 (LP);
 - Whether the development provides satisfactory living conditions, having regard to noise associated with nearby business units, natural light levels, ventilation, outlook and access to external amenities for residents; and
 - Whether any harm arising from the development is outweighed by other considerations, including any need for the accommodation provided by the development.

Reasons – employment sites

44. Dallow Road leads out from Luton town centre westwards and parallel with Hatters Way which links the town with nearby large town of Dunstable. The site is not far from the M1 motorway junction 11. The nearest train station is within the town centre to the east and London-Luton Airport is on the opposite side of the town out to the east and is also served by Luton Airport Parkway train station. The appeal site is within a well-established industrial estate with a wide variety of commercial activities nearby including light-industrial, warehousing, retail and office uses. There are however large areas of housing as well as community facilities and shops nearby.
45. There is no dispute between the main parties that the appeal site falls within a 'Category A' employment area as defined within Appendix 3 of the LP. LP Policy LLP14 states that changes of use or redevelopment within these employment areas and sites that would result in a loss of floorspace for economic development uses will be resisted. This therefore protects B1, B2 and B8 uses as defined within the

Use Classes Order⁴ (UCO). Since the LP was formulated, the UCO has been amended and Class B1 has been incorporated within the new Class E.

46. The Council has been concerned about losing control of developments resulting in the loss of employment land due the permitted changes within the GPDO Part 3, Class O offices to dwellinghouses. As a result, they confirmed a direction under Article 4 of the GPDO on 25 January 2023 removing those specific permitted development rights. The Evidence Base (EB) document that justified that order ('EB'-CDD.08) along with the Employment Report ('ER'-CDD.09) were updated in July and April 2022, respectively.
47. Those studies were based upon an Employment Land Review (ELR) from 2013 which had been part of the evidence base for the LP. The EB document refers to the ELR having assessed 5 scenarios for future requirements for employment space under a range of employment growth modelling. Even though the process of drafting the Article 4 direction did not receive any challenge, according to Mr Oteng, I have limited evidence about that process or any representations that it may have received. Office space requirements were noted within the ELR as reported in the EB to be in shortfall in all of those growth scenarios ranging from 5,300m² (5,7048.72ft²) to 38,600m² (415486.94ft²). I have no evidence from the Council to show whether the realities of what has happened aligned with any of those scenarios or predicted shortfalls.
48. Since the adoption of the LP, there have been significant factors that have resulted in national and global economic changes. The appellant commissioned an office market commentary study by Savills dated December 2023 (Appendix 4 to Mr Hepher's first proof of evidence CDH.04). This described some of those broader economic influences including the rise in home-working and other factors that have affected office take-up in recent years. The total supply of office stock in Luton in 2022 stood at 24,739m² (266,295ft²). Vacancy rates at the same time were 10.05% which the report says has risen from 5.3% in 2014. Mr Hepher has referred to this indicating an 8 year vacant office floorspace availability, which he based on the 10 year average demand figure of 3,130 m² per year.
49. The argument proffered by Mr Hepher that office space within modern developments such as Capability Green are more attractive generally than properties such as the appeal site, is evidenced by the relative numbers of "office deals" within different parts of the town. Looking at office floorspace "deals" over 464m² (5,000ft²) since 2016, the town centre has seen 6, Capability Green 10 and Dallow Road only 1. There may be several influences over these matters such as the amenities contained within more modern developments as well as the kudos for incoming business into some areas. The Dallow Road area close to the appeal site, whilst well connected by road, is more peripheral to both the town centre, the main train station, Luton Airport Parkway train station and London-Luton Airport. Capability Green on the other hand is better connected to those as well as being close to junction 10 of the M1 motorway. The cost of office space in different areas will also vary but I have limited evidence about the relative costs in Dallow Road compared to other areas.
50. The above evidence concentrates upon the need for and supply of offices within light industrial Class E. Given the scope and preference within LP Policy LLP14 on

⁴ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Category A sites for industrial rather than other uses, it is also reasonable to consider B2 and B8 uses even if planning permission may be required for those alternatives because they are industrial uses which this policy defines as being preferable to non-industrial uses.

51. The appellant commissioned a further report by Lichfields dated December 2024 regarding industrial needs (Appendix 2 to Mr Hephher's second supplementary proof of evidence CDH.09). This report indicates that for industrial floorspace generally there was 0.97 years' supply between 2014 to 2023 which reduced to 0.68 years' supply between 2019 to 2023 across the town. The 2024 average vacancy rate across the town quoted in the report is 5.5%. The planned closure of Vauxhall Motors, close to the airport, will mean that more industrial space will be available.
52. In the specific area around Dallow Road, the vacancy rates are significantly higher at 17.5%. The Lichfields report also criticises the location not performing well in comparison with other areas of the town. It is also critical of the layout and suitability of the building for industrial use particular the access and parking with respect to industrial use generally.
53. Mr Oteng in giving his evidence referred to the general market churn of properties and the changes in demands. He could not however pinpoint or draw on particular up to date evidence of current supply and demand for industrial floor-space across the town or in this part of Luton or how that is likely to vary in the course of that churn. From the above reports, it is clear that there is a substantial amount of available office floorspace in the town and there is evidence of the location and type of building not fulfilling modern aspirations particularly for larger concerns. However, with respect to other industrial land requirements, the situation is less clear-cut.
54. The LP aim to safeguard land for industrial purposes is understandable. Once lost, for example by changing to residential use, it may be difficult to replace. Although Dallow Road has more existing vacant units than other parts of the town, the strategic objectives of the LP in particular to retain and enhance Luton's sub-regional role as a place for economic growth and opportunity, may rely upon a range in terms of size and costs of industrial floorspace. Whilst the recent studies from the appellant indicate that there is a significant amount of headroom with office floorspace there is less headroom when it comes to other industrial uses.
55. In relation to this main issue the development has had a harmful effect on the availability of some types of employment sites within the area and an associated effect on the spatial and economic strategies of the LP. The loss of commercial land and buildings that has resulted from the unauthorised development means that LP Policy LLP14 is not complied with as this seeks to protect Category A existing employment sites. Due to a loss of a use for which there is a recognised local need, LLP15 is not supportive in this respect. LP Policy LLP13 states that applications will be granted where they deliver sustainable economic growth and prosperity to serve the needs of Luton and the wider sub-region. Paragraph C goes on to refer to "employment areas" of categories A and B which is states will be protected to retain and deliver jobs and that policy is not complied with.

Reasons – living conditions

56. I carried out my accompanied site visit on a typically grey, over-cast January day.

The external environment around the margins of the eastern side of the older 3-storey 'L' shaped is open with some landscaping. The car-parking area on that side is located along a driveway which is a little lower than and set-back from the busy vehicular activity in Dallow Road. The background of the site northern side includes a substantial area of trees and shrubs that rises up beyond the boundary. The original commercial character of the building, the appeal site and neighbouring land is very apparent, however the approach to the buildings from the car-park provides an agreeable setting for occupants of the buildings.

57. This is however in contrast to the environment once going through the older buildings into the area where the 3 new buildings have been constructed. There are narrow walkways between the buildings at ground-floor level. Above those are raised walkways around the first-floor. On the southern end of 'block B' a stairwell block enables access up to the first-floor walkways and also the 2nd floor walkways above those. There is limited space between block 'B' and the fronts of the buildings in the older part of the building as well as the western block 'A'. Similarly, there is not much space the northern end of 'block B' and 'block C'. The raised walkways largely cover the walkways below them which causes a degree of additional shading and also an oppressive sense of enclosure. The high buildings, harsh materials, industrial design and this sense of oppressive enclosure gives the external areas the feeling of a residential institution rather than development with self-contained accommodation. This sets the whole context for the living environment here. This is not a pleasant external environment for the occupants of the flats and the lack of outside space leads to no relief from the harsh environment with no scope for landscaping to help make it a more pleasant.
58. The buildings and spaces are not therefore of high-quality design, as required by LP Policy LLP25. That policy requires proposals to demonstrate adherence to best practice principles of urban design which for the above reasons is not achieved. As a part of that as well, the policy refers to external amenity standards within LP Appendix 6. For flatted developments it states that a minimum of 5m² of "private outdoor spaces should be provided for 1 – 2 bed flats and maisonettes" with an extra 1m² for each additional occupant. Appendix 6 acknowledges that private space may not always be achievable due to plot-size or character. However, it goes on to require provision in the form of communal amenity space, grassed or hard-surfaced with some landscaping. The final sentence of the appendix notes that flat occupiers generally do not seek or expect the same level of garden amenity space as house dwellers but "nevertheless an enclosed area of communal amenity/play space should normally be provided where feasible." Furthermore, LP paragraph 9.8 sets the context of LLP25 and it states that the look and feel of the built environment is a key determinant of health and fundamental to the creation of sustainable environments.
59. Shire House contains 109 units of residential accommodation many of which are or have been rented out to tenants placed by local authorities, mostly but not entirely from Greater London. Many of the units are therefore occupied by people who were placed because they had been either homeless or at risk of being homeless. Councils when considering using units such as these have duties to assess the suitability of the accommodation. Mr Griffiths for the appellant has explained some of the legislative background.
60. Some of the occupants have been housed at Shire House on a temporary basis.

Mr Griffiths explained that Local Housing Authorities (LHAs) generally assess the condition of temporary accommodation using the Housing Health and Safety Rating System (HHSRS). That was introduced under the Housing Act 2004 and involves checking for defects or deficiencies which could potentially harm the health and safety of any occupants or visitors to the property. Each hazard is given a score from band A to J with band A being the most severe. 'Category 1' hazards (band A to band C) are those where a LHA is obliged to take action.

61. A HHSRS was carried out for Shire House in July 2023. Mr Griffiths referred to this although did not carry out that assessment. He had first visited on 9 October 2023 having first considered the HHSRS. With respect to the outside space, he gave a view that it would not warrant a category and if it did, in this case, the development in this respect would be a 'J' which is the least severe. Ms Davies also for the appellant explained that she is Director and joint owner of 'Reloc8 UK Ltd', an agency which procures properties to house people in need of accommodation. This includes working with Local Housing Authorities (LHAs) and private landlords to find permanent homes for people living in temporary accommodation. She said that outdoor space is not generally taken into account when considering offering accommodation to people in need under the regime she works within. She also confirmed that she does not deal with or know about planning standards.
62. It is not feasible to provide outdoor amenity space at the site given the space taken up by the new buildings, for parking and other external functional requirements. However, there is no evidence that developing at this density was essential, for example, due to viability concerns. As Mr Oteng said on a number of occasions that a design-led approach was not adopted by the appellants. Outdoor space does not appear to have been considered when deciding on the scale and scope of the development. The lack of outdoor space for amenity needs of residents has resulted in the poor quality of the external environment. Young children currently have little or no space to play outside close to where they live that they can access without supervision other than on the walkways which are restricted.
63. The extensive open space at Foxdell Recreation Park is easily accessible on-foot from the site and is undoubtedly a useful amenity for residents in the area including those at Shire House. From what I heard, Foxdell Recreation Park is a useful recreation area in terms of its quality of the amount of space it currently provides. However, that is not an adequate substitution for outdoor amenity space close to the flats where children can play easily and for all residents to enjoy the open-air close to and over-looked from their own homes. Whilst different residents will put more emphasis on space than others, this accommodation is targeted at many people who have little choice and where there are no apparent legislative safeguards about those matters.
64. With respect to internal space within the flats, I did not visit all of the 109 units but visited a selection agreed by the main parties. I have been referred to the government document the "Technical Housing Standards – Nationally Described Space Standards" (NDSS) which the document itself explains "*sets out requirements for the Gross Internal (floor) Area of new dwellings at a defined level of occupancy.*" Those standards are guidance and the Framework at footnote 51 states that "*Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.*"

65. The NDSS were in existence when the LP was going through its process towards adoption in 2017 and the Council did not incorporate them within any policy. National Planning Policy Guidance (NPPG) states that local planning authorities should provide justification for requiring internal space policies and should take account of, in summary, need, viability and timing. The use of the standards therefore clearly should be carefully considered through the development plan preparation process with the evidence and scrutiny of that process. Reference to “Homes England Space Standards” in the Council’s Affordable Housing Supplementary Planning Document (AHSPD) may well be the same standards, although that has not been clarified, but also the context of the reference can only be guidance. That does not make up for the lack of explicit reference within a development plan policy.
66. There is however no dispute that the NDSS are a material consideration and the weight to attribute to them is for the decision maker to determine. In my view the NDSS is an important aspirational guideline to use when designing new developments but is not necessarily the end of the matter. The exercise of comparison with those standards is also subject to nuanced judgements. For example, a small “study” could be considered as a bedroom particularly when homeless people are being re-housed on an emergency basis. The overall suitability of accommodation can depend on a number of factors rather than just size which should be considered in the round.
67. However, only 5 units meet or exceed the NDSS floor-space requirements. Most therefore do not and Mr Griffiths refers to the majority of the units being an average of 77% of the NDSS floor-areas. The smaller studio units are far below the standard being between 34% - 42% of the guideline floor space. Those studio units are around the size of what I would expect in a basic hotel room with the additional need to incorporate kitchen facilities.
68. With respect to daylight and sunlight, when I visited, many of the rooms particularly bedrooms, required the use of artificial lighting in order for me to read my own notes. However, this was a dull January day when there was limited ambient daylight and very little if any direct sunlight. The EB7 report (Mr Hephher Appendix 5, CDH.04) assessed the flats for daylight and sunlight amenity, with reference to the Building Research Establishment Report 209, ‘Site layout planning for daylight and sunlight: A guide to good practice’ - the BRE guidance). This is general guidance which can help identify problems with these factors in how they affect the living conditions of dwellings. The EB7 report explains that with respect to daylight illuminance, kitchens require the most with living rooms next and then bedrooms. Within that, there is discretion to be applied for instance where a kitchen is not a habitable space. The guidance is based upon typical or average climatic conditions at points across an assumed grid at around desk height. With respect to sunlight, the guidance requires that at least one room within a unit should receive a minimum of 1.5 hours of direct sunlight on a selected date between 1 February and 21 March with cloudless conditions. The EB7 report assumed 21 March.
69. I saw that many units have non-openable windows and some have high-level windows and some roof-lights have been incorporated where possible. For the development as it stands now however, 154 of the 310 habitable rooms do not meet the standards for daylight illuminance. Of the living rooms and studio units,

only 71(65%) of the 109 rooms meet the daylight illuminance targets within the BRE guidance. With respect to direct sunlight, 91 (83%) meet the target).

70. Ms Davies visited Shire House on 16 May 2020 to help settle a particular tenant. She visited a handful of the flats and spoke to some of the tenants. She was not at that time qualified to carry out HHSRS inspections but has since been accredited to do so. Her proof of evidence states that she did not observe anything that caused her to have concerns and she confirmed this when giving evidence. She also referred to other visits that would have been undertaken by officers from the LHAs that had placed people at Shire House and that this included a representative of the partnership of several London Boroughs. Furthermore, Ms Davies confirmed that her assessments relate to the existing housing stock rather than planned developments. Whilst Shire House is in existence, it is not lawful under the planning Act for reasons I have set out in my conclusions on the ground (b) and (c) appeals. There is a duty for Councils to ensure the suitability of accommodation under the housing acts. Mr Griffiths refers to the number of inspections that had been made including by 'Reloc8', an officer on behalf of the HLAs who placed people in the flats, the appellant's own HHSRS officer and himself. His conclusion is that these properties were suitable for occupation as residential accommodation and do not contain any Category 1 Hazards and meet the requirements of Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2003.
71. I heard from a number of tenants and former tenants. I heard how some tenants enjoy living at Shire House and this area. One of the former tenants who was objecting overall to the development admitted that even though they experienced damp and mould as well as pest infestations, poor ventilation and general poor conditions in No 25, they were happy in terms of space. That unit is 74% of the NDSS guidance. It is a unit which the Council has not been concerned about in terms of daylight and sunlight.
72. The evidence from the Council does not point to particular harm to the quality of life for residents due to the proximity of nearby industrial premises or how having residents here are likely in future to hinder nearby industrial activities. I had no expert noise expert or analysis of the background noise levels in a busy urban area where there are also a lot of residential premises is nearby.
73. In relation to this main issue with respect to Option 1 and Option 3, the development fails to provide satisfactory living conditions. This is in particular due to the lack of any outdoor amenity space, inadequate natural light levels within many of the flats combined with the small size of many of the properties. LP Policy LLP25 is not complied with. That requires high quality design and the delivery of new housing in accordance with external amenity space standards. Whilst LP Policy LLP15 encourages higher density housing developments, that is only where it would not result in over-intensification of the site. This policy is not therefore complied with. The development does not adhere to the advice in the Framework to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
74. In relation to Option 2, the removal of blocks 'B' and 'C' would create a courtyard within the development. This would make the development overall substantially different. Opening up of this space up would create a very different context for the flats providing a more welcoming and significantly less intimidating environment. It would provide external space for children to play close to where they live, allowing

for people to sit-outside within a landscaped area. Planning conditions as discussed at the inquiry could ensure that the space is laid out and landscaped. Rather than the harsh institutional external environment that the development currently possesses these changes would, if carried out similar to how it is shown on the plans submitted to support this option, provide a light and airy external environment within a landscaped courtyard.

75. This space would also be contained within the remaining buildings which would help to shield that area from the noise, hustle and bustle of the nearby industrial premises as well as the traffic in Dallow Road. The improvements in these terms would, I feel, also therefore lead to an environment where people from different households would be more likely to enjoy being outside of their own homes, particularly in good weather and would socialise more with one another. These factors would make a considerable difference to how it would feel to live here and the sense of community cohesion.
76. The removal of blocks 'B' and 'C' would also enable more daylight and sunlight to reach the remaining flats as well as improving the outlook from many of these flats. There would be some over-shadowing from retained buildings interrupting the path of the sun and external raised walkways will need to remain which has an effect upon daylight and sunlight reaching the fronts of some units. Notwithstanding those factors, there would be a significant improvement with respect to openness as well as daylight and sunlight at the fronts of the flats where they would face towards the courtyard. However, some units on the ground and first floors, would remain affected by the overhead walkways. A high proportion (78%) of living rooms in the units would meet the BRE target for daylight illuminance. In terms of direct sunlight, most (80 of the 81) would meet or exceed the BRE guidance. This is a significant improvement for most of the remaining units.
77. The demolition of the central block makes no difference to the floor-areas of the units that would remain. In terms of the NDSS, the 6 smallest units which are between 34% - 42% of the guideline floor space would be amongst the units being retained. Only 18 of the remaining units would have a floor area above 80% of the NDSS requirement for the respective size of unit, only 4 would meet the standard although another is 99% of the recommended floor area.
78. The revised development would provide substantially improved living conditions compared with the development as exists. The remaining flats would however not meet the NDSS that are a general aspiration for a new development. In my view the evidence from Mr Griffiths and Ms Davies explains how the accommodation at least meets minimum standards within the context of their regimes.
79. I have concerns about the size of some of the units that would remain which would only be suitable for single people (the very small studio units). To some extent I am reassured from the evidence of Mr Griffiths and Ms Davies that if those units were proposed as emergency accommodation on a short-term basis, that would be acceptable. However, there are no proposed planning controls over who will occupy them or in what circumstances they would be occupied. I do not consider that this could be achieved through an additional planning condition. Whilst it cannot be guaranteed therefore, I consider that a prospective tenant would only choose to occupy those smallest units if suitable for their lifestyle in comparison with other available market housing which is in short supply and given their circumstances at that time. If tenants being housed by a local housing authority, it

also seems likely that the authority would not place them in those units if the space was not suitable for the person or people being considered.

80. Even though the scheme has not been subject to a design-led approach and Option 2 is an afterthought following the proposed enforcement action, in relation to this main issue, it would produce a pleasant living environment for the occupants of the remaining flats. Appendix 6 of the LP acknowledges that flat dwellers do not seek the same levels of garden amenity space as house dwelling. It also accepted that an enclosed area of communal amenity/play space should normally be provided and does not specify the amount of that. Overall, the design would be of a sufficiently high quality as required by LLP25. This would not be an over-intensification of the site and LP Policy LLP15 would be complied with. This option would create a place which is safe, inclusive and accessible and which promotes health and well-being, with a high standard of amenity for existing and future users as required by the Framework.

Reasons – other considerations

Housing needs

81. The position on housing is agreed between the main parties. The Council's most recent published position is a housing land supply figure of 3.36 years. Revisions to the standard method in the PPG and latest Framework give Luton a housing need of 1,082. Based the new standard method, Luton therefore has a need over five years of 5,410 homes. The total deliverable number of homes over five years is 4,912 and adding the 5% buffer as required by the Framework increases the housing need of 1,082 to 1,136. The need over five years is therefore 5,680 dwellings. Luton has a pipeline of 4,912 dwellings resulting in supply for 4.32 years.
82. The Option 1 and Option 3 development, as built, therefore provides 109 dwellings which is significant benefit in this context. Additionally, 30% of those units would be affordable dwellings. The s106 planning obligation provides that the "affordable housing dwellings" would be provided to eligible households at discount market rent in line with a formula which the Council has accepted. The Council has not disputed how the affordable housing units are defined within the s106 and I consider that the proposed restrictions on rents are in compliance with the definition of "other affordable housing for rent" within the Framework. The amount of affordable housing provision is 10% higher than the LP Policy LLP16 and the AHSPD. The units that would be restricted to affordable rents are mainly 2-bed flats and the appellant has in that way targeted the needs set out within the 2018 Central Bedfordshire Council and Luton Strategic Housing Market Assessment.
83. In addition, as well as the general housing needs being catered for at Shire House, a substantial number of the tenants have been placed here by Councils some from London boroughs. As such, Mr Oteng for the Council referred to a cycle of importation of people from London boroughs worsening the housing needs in Luton. Luton's own housing list appears from what Mr Griffiths said in cross-examination, to be 1,078 households. Ms Davies also refers to 68 of the flats being occupied by April 2021 were placed by her company on behalf of the London boroughs. Whatever administrative area the people living at Shire House originated from and the broader reasons for that, there seems to be no dispute that there is a serious lack of supply for accommodation for vulnerable people who may

otherwise be homeless and in temporary accommodation at best in the absence of the accommodation within Shire House.

84. Luton's advantages due to its close location to and transport connections with London are plain to see. I was not carrying out a local plan examination with the evidence that may come forward about these factors which were raised late in the process. At face value, this appears to be another symptom of the current housing crisis. Furthermore, the Framework is clear that in addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.
85. The mix of circumstances of the people living here is not static and will vary over time but there has also been agreement from both main parties that people living in Shire House are often vulnerable given their economic and other circumstances. In relation only to the need for the accommodation, the appellant has reacted to a number of factors which include the housing market and also the way in which the needs of such people are dealt with generally under the housing legislation and guidance. Alternative accommodation for many would, it would seem from evidence given by Ms Davies as well as some former tenants, be within hotel rooms for far longer than the 6 week target. The provision of the self-contained accommodation within Shire House to meet these needs is therefore a significant positive factor to take into the overall planning balance.

Accessibility of the location

86. The location of the appeal site is in a busy urban area which contains a wide range of facilities within walking and cycling distance. There are large shopping outlets as well as neighbourhood shops nearby, places to work, schools, and Foxdell park nearby. There are bus routes within Dallow Road with stops near to the site connecting it with the town centre, railway stations wider destinations. This is an accessible location for residential development which is another positive factor.

Previously developed land and buildings

87. The development has involved the re-use of previously developed land. Furthermore, the land has been used to a very full extent. Although a large proportion of what is on site now is newly constructed, there would be advantages in terms of re-using the retained older buildings. Requiring the demolition of what has been newly constructed would result in some waste material and potentially the release of embedded carbon within the materials, although I have heard no evidence that enables me to quantify that. Nevertheless, the re-use of the land and buildings is an advantage of retaining the development in whole or in part.

Maintenance and other quality considerations

88. The statements from tenants that have been provided by Mr Taylor are signed and dated but are not statutory declarations. I have taken those into account as I do other written representations where the correspondent did not give evidence in person.
89. I heard a lot from witnesses and also have read within written submissions from tenants and former tenants about the quality and maintenance of the general environment at Shire House as well as within individual flats. There have been instances when problems such as damp and mould have occurred within some

units. Some units only have mechanical ventilation which I heard from Mr Griffiths is acceptable and all of the flats have been passed for Building Regulations. Sometimes the ventilation seems to have been switched off which has not helped with these problems. It seems to me that these points about maintenance are not only controlled under separate procedures and checks such as those explained by Mr Griffiths and Ms Davies but they are personal to the practices of particular owners or occupiers. I need to primarily be concerned with the more generalised land use planning issues rather than how specific tenants or the landlord behave. I do however consider that the living conditions of the environment which I have addressed under the first main issue may well make these matters feel more acute to the occupiers such as for example the lack of space, daylight and sunlight. Looking at these matters in the round, I also consider that Option 2 will make for a more positive environment.

90. I also heard how the lack of rent controls has seemed at times to tenants, like they have been exploited. I did hear that some of the former tenants had lived at Shire House within the terms of initial contracts and then rents were sharply increased which led to disputes, evictions and attempted evictions. Other than where some units through the s106 planning obligation are proposed to have controlled rents to make them more affordable, rents are determined in the longer term by the market along with any other non-planning controls.

Human rights, equality duty and children's rights

91. The development currently contains 109 dwellings many of which are occupied by families who, whatever their origin, have made their lives in Luton. Refusal of planning permission would seriously interfere with their lives. Article 8 of the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is however a qualified right and interference may be justified in the public interest with the concept of proportionality being crucial. I return to this in the overall balance.
92. It is also incumbent on me to have due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED and it is clear that many people who live at Shire House are from various ethnic groups. There is no universal ethnic origin of the people who live here but nevertheless many of the groups of residents share the protected characteristic of race under the provisions of the PSED.
93. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Many of the 109 dwellings contain families with children. They go to nearby local schools and use the nearby recreation park. If I were to uphold the enforcement notice and the requirements of the notice came back into effect, those children would lose their homes eventually (notwithstanding the other grounds of appeal).
94. The loss of the homes will therefore seriously impact upon the lives of the occupants of these dwellings including the children living here. I do not know what the alternative accommodation would be but from what I heard there is a strong chance that it would be in even worse conditions within temporary hotel

accommodation given the lack of supply of more appropriate homes in the area. Furthermore, many of the residents living here have been decanted from London boroughs and may not have family and friend connections other than within Shire House. I did gain a strong sense when I heard from current and previous tenants that in spite of the stated problems with the living conditions, there is a sense of community between occupants at Shire House.

95. With all of these issues, there is not a static make-up of the population with respect to ethnicity. The nature of the accommodation means that many of the homes are meant for short term occupation where people are placed in an emergency but I did also hear that some people are longer term occupants. The numbers of children living here will also vary from one moment to another. However, many of these flats are aimed particularly at occupants who are families or single parents with children. Dismissing the appeal in its entirety would therefore have very serious detrimental impacts upon the people living at Shire House.

Other matters

96. There may be advantages in terms of a reduction in traffic or the nature of the traffic as a result of the change from business use to residential. However, I have little evidence to know whether the differences are significant within this area which is heavily trafficked.
97. I did also hear about another possibility that as an alternative to office use, the building could be utilised for other uses within Use Class E such as a gym or creche. These and other commercial, business and service activities are less preferable to 'industrial' uses in terms of LP Policies LLP14, LLP13, LLP15. Some of those uses may be more harmful with respects to other policies in the LP as well. I have no direct evidence about the up-to-date need for other uses or whether there is a realistic prospect of those alternative uses of the buildings taking place. I give these possible alternatives very limited weight in favour of the development to such alternatives which may be less desirable in policy terms.
98. The appellant had, at the start of this long saga, attempted to utilise the provisions of Class O permitted development rights which I mention at length above. I do not know entirely why the appellant chose to proceed in the way they did following that although they were given some positive encouragement from senior Council officers once, from what I heard, it may have become too late to rely upon those permitted development rights. Some of this on both sides of it may relate to the complexity of the process at a time when some lessons about how to utilise the rights had not been frequently used.
99. I have no evidence that the appellant purposefully chose to go beyond the limitations of this particular GPDO right and the prior approval process. They did do so however and given my conclusions on the appeal under grounds (b) and (c), the permitted development rights cannot now be relied upon and that cannot form a fall-back position. These unfortunate background circumstances only have limited weight in this decision.

The planning obligation

100. The additional residents at Shire House will have impacts upon the Council's education, libraries, museums and waste management services. Additional residents will also utilise the Council's existing open spaces. Contributions are

proposed therefore to fund education, libraries, museums, waste management and open space and I consider these are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonable related in scale and kind to the development.

101. The monitoring fee set out in the planning obligation of £10,000 for major developments is considered by the Council as CIL compliant given the number of financial obligations to be monitored in terms of payment and then that payment to be administered by the Council and its various departments. They are also of the view that the affordable housing element to be provided and monitored in perpetuity requires significant monitoring as there are various obligations within paragraphs 7, 9 and 10 of Schedule 2. Finally, the overarching concerns that the Council has with the standard of accommodation being provided is likely to result in more monitoring to ensure compliance, over and above what would be considered a usual level of monitoring.

102. At the inquiry I asked where the monitoring fee is set out in policy terms. This is the only element of the planning obligation that is disputed by the appellant who said that they included it in order to ensure that it did not provide a potential stumbling block to their case if it were acceptable in all other respects. I am concerned about the lack of transparency about asking for such management fees. However, upon questioning, I was provided with a report that was discussed at the Council's Development Management committee on 29 June 2022. This sets out the relevant guidance from the PPG which explains that authorities can charge a monitoring fee through s106 planning obligations to cover the cost of monitoring and reporting on delivery of that obligations. Fees should either be a fixed percentage of the total value of the obligation or fixed monetary amount. In this case, the Council's committee report states that "*It is considered that for any S106 that includes an Affordable Housing requirement exacts a S106 monitoring fee of £10,000 (per agreement).*" There is a clear rationale to requiring that fee in this case.

103. I am satisfied that the obligation meets the tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations and paragraph 58 of the Framework.

The overall planning balance for each option

104. I am required to determine this application in accordance with the development plan unless material considerations indicate otherwise. That is the starting point. However, the failure of the Council to have a 5 year supply of housing land means, due to paragraph 11(d) of the Framework, that the most important development plan policies are deemed to be out of date. As such, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

Option 1 (retaining the development as constructed)

105. With respect to the main issues, due to the effects upon the availability of employment land, I have determined that the development would not comply with LP Policies LLP13 and LLP14 and due to the overall unsatisfactory living

conditions, the development does not comply with LP Policies LLP15 and LLP25. LLP15 encourages higher density housing development, the development plan as a whole is not complied with to which I give substantial weight.

106. The Framework requires good design which it states is a key aspect of sustainable development. It goes on to say that creating better places in which to live and work helps to make development acceptable to communities. The development as it stands does not comply with this advice and this must also carry substantial weight.

107. On the other hand, there is a considerable shortfall of housing provision in Luton. In addition, there is a serious and pressing shortage of housing for vulnerable people particularly those in need of emergency accommodation. There are demonstrable difficulties that people in such need have in finding alternative accommodation and what appears to be reliance on hotel accommodation where families find themselves in overcrowded conditions. The government's objective as confirmed within the Framework is to significantly boost the supply of homes. I consider that these factors carry substantial weight in the overall balance.

108. The Framework states that the planning system should actively manage patterns of growth. Furthermore, significant development should be focused on location which are or can be made sustainable through limiting the need to travel and offering genuine choice of transport choices. The 109 flats are in a very accessible area which I consider is sustainable in the terms of this advice in the Framework. This carries moderate additional weight.

109. To refuse the retention of the development as it stands and uphold the notice in full would have serious consequences for the vulnerable people including families with children that live here and go to school in the local area, many of whom are connected by way of their culture and race. These factors carry substantial weight in favour of retaining the development.

110. Overall however, I consider that the adverse impacts of the development as it stands significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Option 3 – retaining the development as built for a temporary period

111. I am being asked to consider the retention of the development for a temporary period and 5 years has been suggested.

112. The PPG states that it may be appropriate to grant planning permission for a specified temporary period including when a trial run is needed although in this case, in effect a trial run has already been undertaken for several years. Any effects of the development should by now be fully apparent. The guidance also suggests that a temporary period may be appropriate for temporary use of vacant land also known as "meanwhile uses". However, notwithstanding the evidence I heard about industrial and office buildings, it is not clear that the premises would be vacant if the use ceased or that even if it were for a period, that the vacancy should be given much weight.

113. The main justification provided for this option is that the housing would be available for the next 5 years, including provision through the planning obligation of 30% of the flats being affordable. It would avoid the uprooting of children and a generally more orderly transition of the site towards full compliance by allowing the

re-homing of people. Whilst such a temporary solution may limit the longevity of the harms I have already identified, it would not reduce those harms enough to tip the balance in favour of this suggested solution.

Options 1 and 3 - Conclusion

114. As such, the appeal on ground (a) is dismissed with respects to retaining the development as alleged whether permanently or for a temporary 5 year period.

Option 2 – removal of the central blocks and retention of 81 units

115. With respect to the main issues, due to the effects upon the availability of employment land, I have determined that the development would not comply with LP Policies LLP13 and LLP14. Conversely, I consider that the changes proposed would bring about overall satisfactory living conditions and as such the proposed development would comply with LP Policies LLP15 and LLP25. The requirements of LP Policy LLP16 relating to affordable housing provision would also be met and in fact exceeded by 10% within the s106 planning obligation. However, I consider that the policies to protect employment land are fundamental to the strategic aims of the LP and its emphasis on retaining Category A employment sites in particular. The other policies are there to permit development where it is in a location that the LP allows for. The LP read as whole is therefore not complied with and I give this substantial weight.

116. The amended development would function well, be sympathetic to the local area creating a safe, inclusive and accessible environment for existing and future users as required by paragraph 135 of the Framework. This carries substantial weight.

117. The scheme would not contribute as many dwellings as a proportion of the shortfall in housing provision as the existing development but it would still retain a significant number of flats, 81 in total. This number of units would contribute to the pressing housing needs in the area contributing to boosting the supply of homes as required by the Framework.

118. The development has been used and will continue to be occupied for many vulnerable people particularly those in need of emergency accommodation and would continue to reduce the reliance on hotel accommodation to meet such needs. Furthermore, 30% of the units would be subject to the affordable rents set out within the planning obligation. Most of these affordable units would be 2 bed accommodation but there would be a 1-bed flat. These would contribute to identified local needs for social rented properties as encouraged by the Framework. These factors therefore carry substantial weight.

119. The development would make efficient use of land in a very accessible area close to a range of public transport services, shops, schools and places of employment. This meets the advice in the Framework at paragraphs 129 and 130. This carries moderate additional weight.

120. Approving the reduced development would have less impact upon the people who already live at the site than full compliance with the enforcement notice which would result in the removal of the buildings and cessation of the current use. Whilst retaining the whole development would be more advantageous in this regard, these factors still carry substantial weight in favour of this option.

121. The Framework is an important material consideration. Paragraph 11d) ii applies here such that the balance is that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The benefits that I have considered for Option 2 would be significant in their degree of positive weight that I have attributed to them. Those benefits comply with the policies in the Framework taken as a whole.

Planning conditions

122. I have attached the conditions which were discussed at the inquiry bearing in mind the tests for conditions contained in the Framework. I also consulted the main parties about these before closing the inquiry as there is some necessary complexity when it comes to requiring the submission of details. I have made some relatively minor but important tweaks to some wording following consultation with the main parties.

123. I have not included the suggested waste and recycling facilities condition I had originally drafted. Although there is an existing enclosure for that purpose on the site, it is not explicitly labelled on any of the up-to-date drawings. I have therefore included it as a matter to be submitted along with the scheme of secure cycle storage to ensure there is no ambiguity about this. As well as vehicular parking, cycle storage is necessary to ensure cycling is a real option for residents.

124. The conditions are framed in relation to the drawings for option 2 that were submitted with the appeal documents although these needed to be updated to reflect the demolition of block 'C' as well as 'B'. I have therefore referred to the updated plans. It is important to ensure that a timetable for the demolition work on site is agreed in accordance with the submitted plans. This will require careful consideration given that people will still be living at the site. Further details are required of the hard and soft-landscaping of the site as well as external furniture and play equipment to ensure the site provides for a pleasant living experience.

Option 2 - Conclusion

125. My conclusion overall, is that the adverse impact of granting the deemed planning permission for Option 2 would be significantly and demonstrably outweighed by the benefits. This conclusion therefore outweighs the conflict with the development plan. The deemed planning application should therefore be approved.

The Appeal on ground (f)

126. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The Council has confirmed that the purpose of the notice is to seek to remedy the breach of planning control. The appellant considers that the notice goes too far in its requirements.

127. In relation to what had been initially submitted in the appellant's grounds of appeal, they did not consider it was necessary to seek demolition of the 3 new building but that is predicated on their ground (b) case succeeding. Given my conclusion on that, it is necessary to achieve the purpose of remedying the breach of planning control to require demolition of those buildings.

128. With respect to the remaining elements of this ground, the appellant considers that it is excessive to require the removal of "all kitchens and all associated fixtures and

fittings” [requirement 5(iii)] as well as all bathrooms and all associated fixtures and fittings [requirement 5(iv)]. As they point out, the requirement to demolish the 3 new buildings covers this for those buildings. However, the original ‘L’ shaped building would remain.

129. It is not in dispute that an enforcement notice may require the removal of works integral to and solely for the purpose of facilitating the unauthorised material change of use. That is the case even if such works on their own, may not constitute development. The material change of use was facilitated by the inclusion of kitchens and bathrooms and so it is valid to require their removal.

130. However, it has been held that I should consider whether there is any obvious alternative or lesser step which would achieve the purposes of the notice with less cost and disruption. It seems highly likely that the building prior to the material change of use had included kitchens and bathrooms to serve the previous use. Once compliance is achieved, it is possible that such facilities would be required for any further use of the building with Class E of the UCO. A notice should also not go further requiring the removal of what has been involved in causing the breach.

131. The internal space of the original building being retained has been radically altered since it has been redeveloped. There is no argument by the appellant that any bathrooms or kitchens with the building previously still exist. There is also no dispute that once complied with, it would not be a contravention of the notice to install new bathrooms and kitchens if they were part and parcel of the lawful use of the premises.

132. As I have discussed above within the appeal under ground (a), there is no clear plan of what alternative use within Class E of the UCO would be viable or likely to take place. I am also not provided with any detail about how many facilities would need to remain or whether the current layout or any part of it would be feasible for the possible future use of the building. I am concerned that to vary the notice to allow for the retention of any such facilities is not fully justified given the need to remedy the breach of planning control. There is not an obvious alternative or lesser step that would achieve the purposes of the notice.

133. For the above reasons, the appeal on ground (f) is dismissed.

The Appeal on ground (g)

134. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice requires 6 months for compliance.

135. The effect of granting the deemed planning permission for Option 2 means that in my view it is necessary to provide for a longer period to comply with the notice. The notice would only need to be complied with if the deemed planning permission and its conditions are not adhered to. In particular, some of the planning conditions require the submission of further information for consideration by the Council. The ‘cascade’ style conditions that require those details to be submitted and agreed also allow for an appeal against the refusal or non-determination of the details, with 11 months being the applicable date by which an appeal should be submitted. Overall, those conditions allow for the residential use to cease within 6 months of the failure of any of the steps with the 11 month period being the longest.

136. Additionally, whether the notice requires full compliance or whether the deemed planning permission is completed, many people will need to be found alternative accommodation which, as the evidence to the inquiry made clear, is not easy to come by. They may also not want to move which raises various legal issues but even if the appellant puts necessary resources into securing evictions, that may not be straightforward. I did hear from former and current occupiers of the appeal site. One of those explained how the court proceedings, by the time of the resumed inquiry, had taken almost 2 years. Court proceedings can get complicated particularly when English is not the first language of the person being evicted and where the best interests of any children need to be a primary consideration.

137. Whether or not the notice needs to be complied with or whether the deemed planning permission for option 2 is implemented, demolition will be required amongst all of the above complications. People will probably still be living at the site when demolition works need to take place.

138. For the above reasons, I need to reach a more reasonable and proportionate period within which the notice needs to be potentially complied with. The Council say that more than a year is tantamount to the issuing of a temporary planning permission. However, whilst I understand their concerns, I consider that a more reasonable and proportionate period would be in excess of a year to allow the best chances of the bureaucratic processes to take place and the needs of the occupants to be properly considered, particularly given the need to find alternative accommodation. A period for compliance in excess of a year is exceptional but, in this case, justified. I consider a more appropriate period would be 17 months.

139. The appeal on ground (g) is allowed.

Conclusion

140. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the material change of use of the land from an employment use to residential use, demolition of the central blocks and retention of 81 residential units within the retained buildings, as shown hatched in black and labelled “existing structure retained” on ‘Plan 2’ below. Otherwise, I will uphold the notice with corrections and a variation and refuse to grant planning permission in respect of the 2 buildings shown hatched in red on ‘Plan 2’ and labelled “Existing Structure to be Demolished” on “Plan 2”. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Andy Harwood

INSPECTOR

SCHEDULE OF CONDITIONS:

1. The residential occupation of the buildings hereby permitted shall cease within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision a detailed dismantling scheme shall have been submitted to, for the written approval of the local planning authority, the scheme shall include a timetable for its implementation and shall comply with the following submitted plans (save for any landscaping indicated therein, which is to be provided in accordance with condition 3 below):
 - 'Elevation 1 & 2 Proposed Balustrading/Landscaping' Ref '16836-CHQ-ZZZ-ZZ-DR-A-0301' – '2 Courtyard extended to suit comments 4/6/25';
 - 'Elevations 3 & 4 Proposed Balustrading/Landscaping' Ref '16836-CHQ-ZZZ-ZZ-DR-A-0302' – '2 Courtyard extended to suit comments 4/6/25';
 - 'L_00 & L_01 Proposed G.A. Demolition Plan' Ref 16836-0100-2' – '2 revision 2 4/6/25'; and
 - 'Proposed site plan' Ref '16836-CHQ-ZZZ-ZZ-DR-0011' – '2 Courtyard extended to suit comments 4/6/25'.
 - ii. If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved dismantling scheme specified in this condition, the buildings shall thereafter be maintained in that state subject to the further requirements of this condition.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2. Within three months of the conclusion of the dismantling in accordance with the Detailed Dismantling Scheme, the land shall be laid out in accordance with the 'Proposed site plan' Ref '16836-CHQ-ZZZ-ZZ-DR-0011' – '2 Courtyard extended to suit comments 4/6/25'.
3. The residential occupation of the buildings hereby permitted shall cease within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision a detailed hard and soft landscaping scheme, including proposed surfacing materials, all proposed external furniture, any other proposed amenity/play equipment, proposed planting plans and specifications, a construction/planting/maintenance schedule and a management plan, shall have been submitted to for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved hard and soft landscaping scheme specified in this condition, that land shall thereafter be maintained in accordance with the agreed details and the courtyard shall not be used for any other purpose other than as an amenity space for residents of Shire House.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4. The residential occupation of the buildings hereby permitted shall cease within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision schemes for the provision of at least 25 secure cycle parking spaces and details of waste/refuse storage areas

(including the existing enclosure to the east of the building) shall have been submitted to for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii. If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable

Upon implementation of the approved cycle parking and the waste/refuse storage areas schemes specified in this condition, the secure cycle parking and waste/refuse storage areas shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined

5. No fewer than 32 vehicle parking spaces shall be kept available at all times within the site for the parking for private motor vehicles by the occupiers of the dwellings at Shire House and their visitors and thereafter not used for any other purpose.

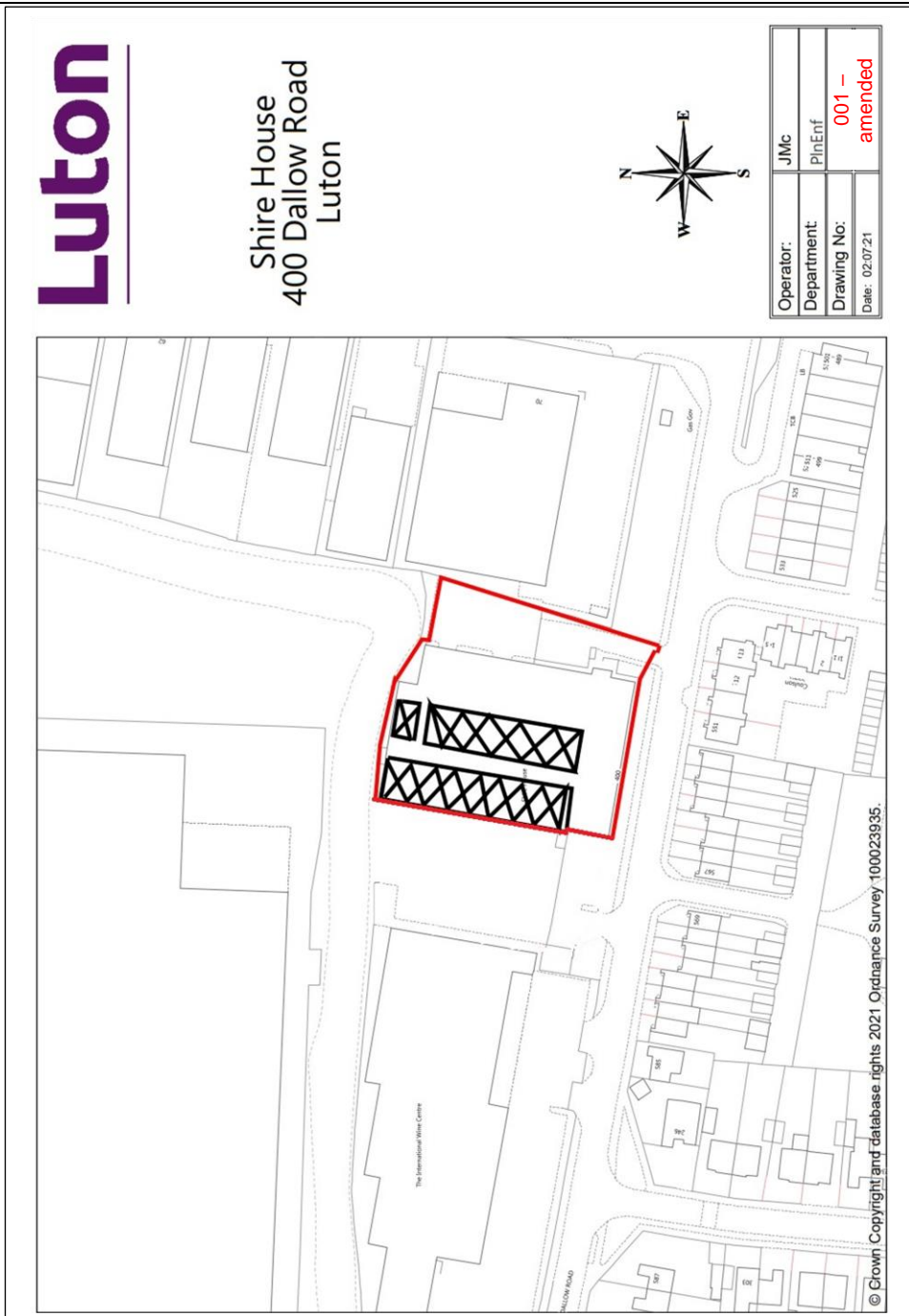
Replacement Plan

This is the plan referred to in the enforcement notice appeal decision

by **Andy Harwood CMS MSc MRTPI**

Land at Shire House, 400 Dallow Road, Luton LU1 1FF

Appeal Ref: APP/B0230/C/22/3296488



Plan 2

This is the plan referred to in the enforcement notice appeal decision by Andy Harwood CMS MSc MRTPI

Land at Shire House, 400 Dallow Road, Luton LU1 1FF

Appeal Ref: APP/B0230/C/22/3296488



APPEARANCES

FOR THE APPELLANT:

Scott Stemp and
Stephanie Bruce-Smith of Counsel Instructed by Simon Ricketts of Town Legal

They called:

Kelly Davies	Director, Reloc8 UK Ltd
Jahid Akbar	Director, Devonhurst Investments Ltd
Peter Griffiths CMCIH	Consultant, Bespoke Property Consultants
Roger Anthony Hopher	
BA (Hons), MTP FRICS MRTPI FRSA	
AAoU	Executive Chairman, HGH Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Wayne Beglan of Counsel Instructed by senior planning solicitor for
the Council

They called:

Gary Dunne	Planning Enforcement Team Leader, the Council
Edward Oteng BA (HONS) DIPUPI	Planning witness for the Council
Patricia Balusa	Former resident at Shire House

INTERESTED PARTIES:

Desmond Taylor	Landlord & tenant support Ltd
Shams Ul Abdeen (with translator)	Local resident
Sheerez Fasihi	Local resident
Naima Stitou	Resident at Shire House
Shalina Thangarasa (with translator)	Resident at Shire House
Anna Nara Souza Ambrosio Silva	Former resident at Shire House
Makata Sivaakumar (with translator)	Resident at Shire House
Mary O Leigh	Resident at Shire House

INQUIRY DOCUMENTS

There is an on-line library of all appeal documents and the Inquiry Documents are contained at:

<https://planning.luton.gov.uk/online-applications/appealDetails.do?activeTab=documents&keyVal=R9Z7Q3KG00U00&documentOrdering.orderBy=description&documentOrdering.orderDirection=ascending>

- CDJ.01 List of appearances for the Appellant
- CDJ.02 List of appearances for the Council
- CDJ.03 Opening submissions on behalf of the Appellant
- CDJ.04 Opening submissions on behalf of the Council
- CDJ.05 LB Haringey v Secretary of State for Housing, Communities and Local Government [2020] 1 P. & C.R. 13
- CDJ.06 Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020/1243
- CDJ.07 Extract - paragraph 55.17 of the Encyclopaedia of Planning Law and Practice
- CDJ.08 Appeal decision at 63 Berry Road, Paignton
– ref. APP/X1165/W/17/3185474
- CDJ.09 Appeal decision at 19 The Parade – ref. APP/B5480/W/21/3268824
- CDJ.10 Appeal decision at 48 Russell Road – ref. APP/J1535/W/23/3319655
- CDJ.11 Appeal decision at Breydon View – ref. APP/U2615/W/23/3320442
- CDJ.12 Appeal decision at 14 Milton Park – ref. APP/Z0116/W/24/3338032
- CDJ.13 39 x witness statements filed on behalf of residents of Shire House by Landlord and Tenant Support
- CDJ.14 Letters addressed to the Inspector provided to the Appellant
- CDJ.15 Statement made by Ana Mara Souza Ambrosia Silva
- CDJ.16 Statement made by Mary Leigh
- CDJ.17 Signed statement of common ground between the Appellant and the Council
- CDJ.18 CIL Compliance Statement
- CDJ.19 Statement of Shalini Thangarasa (in English)
- CDJ.20 Documents and photographs spoken to by Shalini Thangarasa
- CDJ.21 Documents and photographs spoken to by Makatha Sivakumar
- CDJ.22 Revised draft unilateral undertaking (including plans)
- CDJ.23 Drawing indicating 20mph speed limit zone on Dallow Road
- CDJ.24 Report to Development Management Committee on 29 June 2022 concerning the Council’s monitoring fee for legal agreements.

Closing submissions and costs applications were also submitted in writing after the inquiry sitting days.

CORRECTED PLANS REQUESTED BY INSPECTOR FOLLOWING INQUIRY Submitted 9 June 2025

Proposed site plan Ref `16836-CHQ-ZZZ-ZZ-DR-0011` - 2 Revised 4/6/25
L_00 & L_01 Proposed G.A. Demolition Plan Ref 16836-0100-2 - 2 Revised 4/6/25
Elevation 1 & 2 Proposed Balustrading/Landscaping Ref `16836-CHQ-ZZZ-ZZ-DR-A-0301` - 2 Revised 4/6/25
Elevations 3 & 4 Proposed Balustrading/Landscaping Ref `16836-CHQ-ZZZ-ZZ-DR-A-0302` - 2 Revised 4/6/25
Proposed Axonometric View Ref `16836-0800-1`
Courtyard Views Ref `16836-CHQ-ZZZ-ZZ-DR-A-0900` – 2 Revised 4/6/25