



Appeal Decision

Inquiry held on 29-30 April & 1 May 2025

Site visit made on 29 April 2025

by **Peter Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 August 2025

Appeal Ref: APP/B0230/C/24/3354644

Land at Wells Court, 106-108 Wellington Street, Luton, Bedfordshire LU1 5AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Sewardstone Park Limited against an enforcement notice issued by Luton Borough Council.
 - The notice was issued on 18 September 2024.
 - The breach of planning control as alleged in the notice is the change of use of the Land from an office building to 14 self-contained residential units including a five bedroom unit of multiple occupation.
 - The requirements of the notice are:
 - (i) Cease the residential use of the Land.
 - (ii) Remove all living facilities from the Land including but not limited to: all kitchens, bathrooms and sleeping accommodation together with all associated fixtures and fittings.
 - (iii) Remove all associated building materials and waste materials arising from compliance with step (ii) 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), (d), (f) and (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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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - The deletion of all wording at section 3 of the notice (The matters which appear to constitute the breach of planning control) and its replacement with the following: *'The material change of use of the Land from an office building to 14 self-contained residential units.'*
 - The deletion of 6 months as the period for compliance at section 6 of the notice and its replacement with 12 months.
2. Subject to those changes, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by the Council against the appellant. The costs application is the subject of a separate decision.

Preliminary Matters

4. As originally made, the appeal included ground (c) but not ground (a). At the request of the appellant, and having also considered the views of the Council, I

accepted that ground (a) could be added in this case, following the payment of the fee. Ground (c) was subsequently withdrawn.

5. Section 319A of the 1990 Act as amended establishes that the Secretary of State must make a determination as to the procedure by which appeals are to be considered, which can include one or more of the inquiry, hearing and written representations procedures. In this case, an inquiry was deemed appropriate for grounds (b) and (d), given the need for evidence to be given on oath and tested by questioning, but the written representation method was considered appropriate for grounds (a), (f) and (g). Accordingly, only grounds (b) and (d) were considered at the Inquiry sessions.
6. All evidence at the Inquiry was taken on oath/affirmation. The burden of proof on grounds (b) and (d) falls on the appellant and the standard of proof is the balance of probability.
7. It is clear that construction works, including the addition of a roof and wall to elements of the pre-existing building, were necessary in order to create Unit 8. The notice does not target the operational development involved in the creation of Unit 8, but both parties regard the change of use associated with this unit as part of the wider residential scheme, a view I share.
8. The appellant submitted a Unilateral Undertaking under section 106 of the Act. This is a material consideration and I have had regard to it, as discussed later.

Ground (b)

General approach to ground (b)

9. The basis of the appellant's case is that Unit 1¹ is (and was, when the enforcement notice was issued) a residential flat rather than a House in Multiple Occupation (HMO)². In considering that matter I have had regard to the physical characteristics of the building and how it is occupied.
10. There was discussion at the Inquiry as to the correct approach to defining an HMO in planning terms. An HMO is not defined in the 1990 Act. However, it is defined within *The Town and Country Planning (Use Classes) Order 1987* (as amended) as follows:

'For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004'.
11. I have not been referred to any other definition of an HMO and, since it is specifically cited in relevant planning legislation, the Housing Act definition seems to me an appropriate starting point for deciding the matter.
12. There are several strands (or 'tests') to the definition at s254 of the Housing Act, but in all cases it is clear that the living accommodation must be occupied by persons who do not form a single household. The appellant says that Unit 1 is occupied by a single household, all occupants being members of the same family. On that basis, it is argued, Unit 1 cannot be an HMO. The Council's case focuses instead on the physical characteristics of the building.

¹ Elsewhere referred to as Flat 1, but I have used this more neutral term, given the dispute about its use

² The notice refers to a 'unit' of multiple occupation, but there is no suggestion that this has any different meaning in this context

The physical characteristics and layout

13. It appears that work on the conversion of Unit 1 began in September 2019. While I am told that the appellant company always intended Unit 1 to be a single flat, the fact is that shower rooms and kitchen units were installed into each of the 6 rooms, which would certainly have given the impression of something unlike a normal family dwelling.
14. However, from around June 2021 further works were carried out to the property, including the removal of a chimney breast (affecting ground and first floors) and the removal of the kitchen units from the first floor rooms. This appears to have left the property broadly as it was when I viewed it with a kitchen/dining room on the ground floor and 5 rooms, each with toilet/shower rooms but no cooking facilities on the first floor. That layout appears to have been in place from around January 2022. The unit was first let in February 2022 and the enforcement notice was not issued until September 2024. In these circumstances, the initial layout of the property is of little relevance to the matter enforced against. Similarly, the possibility that there had previously been locks on the bedroom doors does not alter the position at the relevant points in time.

Occupation

15. The appellant's case is that the unit is a flat occupied by a single household, comprised of 6 people, including 1 child, all related to one another. People may be regarded as a single household if they are all members of the same family, in accordance with s258 of the Housing Act 2004.
16. I have been provided with an Assured Shorthold Tenancy (AST) Agreement dated 27 November 2023. The term of the agreement is 6 months from 27 November 2023 to 26 May 2024. Five tenants are named. I have been provided with written evidence in the form of a family tree indicating a family relationship between those five people. A letter from Peter Griffiths, a Corporate Member of the Chartered Institute of Housing, states that the family tree was provided after the residents of Flat 1 were visited and interviewed, although not by him.
17. None of the residents or Mr Griffiths or Mr Des Taylor, who carried out the interview, provided evidence in person to the Inquiry. To that extent, the evidence has not been tested. That said, the evidence is not challenged by the Council and I have no reason to doubt its veracity.
18. Although the AST is for only a 6 month term, that does not necessarily mean that the tenancy ended after 6 months, and I am told that the same occupants remain at the property. This is supported by Mr Griffiths' letter, which indicates that the 5 named individuals were interviewed on 28 October 2024, shortly after the enforcement notice was issued. Overall, therefore, it appears that those people are related to each other and occupied the property from around the end of November 2023 until and beyond when the notice was issued.

Assessment

19. As things stand, a number of characteristics of the building are contrary to normal expectations for a shared flat. Most notably, there is no communal WC or bathroom, each room having its own facilities instead. While it is common enough for bedrooms in dwellings to have en-suite facilities, that is generally something

associated with spacious accommodation. Such accommodation would ordinarily have shared facilities as well. Here, the facilities have been crammed into modest rooms out of necessity, since there are no shared facilities. Furthermore, the unit has only very limited shared space (one room combining the kitchen and dining areas). Again, this is not typical of a 5 bedroomed dwelling.

20. The Council also raises various other features, such as smoke alarms, an intercom system to each bedroom, CCTV in the hallway, fire exit signage and individual fuse boxes in the upstairs rooms. However, while I agree that these are features that are consistent with an HMO, I do not regard them as necessarily incompatible with a flat. It may well be that some of those features were installed to facilitate individual units within Unit 1 in line with the initial conversion, but that does not, in itself, show the current use of the property. The fact that the unit is arranged over 2 floors is not relevant and does not mean this is not a flat.
21. I have no detail about how the occupiers interact on a day-to-day basis. However, the layout of the unit is such that all occupiers will need to use the shared cooking facilities. It also seems likely that they will make at least some use of the dining area in the same room. Regardless of any previous situation, I saw no security locks on any of the bedroom doors to suggest a need for security from other individuals within the unit. Overall therefore, given their family relationships, and on the balance of probability, it appears to me that the unit is occupied by a single household.
22. While the physical characteristics of the building (now and when the notice was issued) are such that it is capable of operation as an HMO without significant physical alterations, those characteristics are not so compelling, or wholly inconsistent with use as a family dwelling, as to lead me to conclude that it is (or was in the lead up to the enforcement notice being issued) actually operating as an HMO. In my judgement, looking at matters as a whole, it was a flat rather than an HMO when the notice was issued.

Conclusion – Ground (b)

23. For the reasons set out above, the appeal succeeds on ground (b). I will correct the notice to remove the reference to the HMO. That change can be made without causing injustice to either party, a view shared by both parties. Since on any view this is a residential unit, the reference to 14 residential units in the notice can remain unchanged.

Ground (d)

The appropriate time limit and general approach

24. The time limits for taking enforcement action are set out at section 171B of the Act. Although this was amended last year, the changes do not apply retrospectively, and the relevant periods here are those set out previously, which include:
 - (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach, and
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
25. The allegation in the notice does not include operational development, and so s171B(1) is not relevant here.
26. There is disagreement as to which subsection applies in respect of the change of use, the appellant arguing that s171B(2) applies³. I have been referred to the decision of the Court of Appeal in *Van Dyck v SSE, Doncaster MBC v SSE [1993] JPL 565*. In that instance, a similar question arose in relation to two separate cases of sub-dividing a house into two flats. The judgement pointed out that the word 'building' may include part of a building⁴ and each of the units created may be regarded as a single dwellinghouse. It concluded '*Section 172(4)(c) is, I believe, capable of being construed and applied so as to benefit all new separate residences after four years. That being so, having regard to the broad policy which I conceive to underlie this provision, in my judgement it should be thus construed and applied*'. Thus, the four year period specified in s171B(2) (or s172(4)(c) as it then was) applied.
27. In this current appeal, it is clear that a number of new dwelling units have been created by the conversion of parts of the pre-existing building and the 4 years of s171B(2) applies to each of them (excluding Unit 8). I can see no reason to reach any contrary view to that taken in the above cases. While the facts of this case are different in that it does not involve the subdivision of an existing dwelling (to which s55(3)(a) of the Act applies), it is clear from the judgement that it was not to be taken as applying to the very narrow facts of that case. Indeed, the judgement (page 72 of the copy provided to me) examines, with apparent approval, the application of the 4 year rule to the example of an office building converted to dwellinghouses.
28. I agree that this development was carried out as a single project, since the conversion of the various units were carried out concurrently by contractors for a single client. However, that does not alter the fact that there has been the change of use of a building to use as single dwellinghouses. As *Doncaster/Van Dyck* makes clear, there is no requirement for the dwellings to be created at different times in order for s171B(2) to apply.
29. Nor am I persuaded that s171B(2) is disapplied on the basis that a mixed use involving storage has occurred. While building materials have evidently been stored on the site during the construction works, that is not uncommon during a building project. It may be that storage took place outside the period when works were taking place at the site and that materials for other sites were stored there as well. However, the evidence before me does not show that any such storage took place at such a scale or duration as to amount to a primary use of the land.

³ Other than in respect of Unit 8 – the appellant accepts that this falls outside the scope of s171B(3) due to the extent of operational development involved in its creation.

⁴ See s336 of the 1990 Act

30. I therefore conclude that the proper period for assessing the lawfulness of the use in respect of the disputed units is 4 years.
31. The appellant's central claim is that the change of use had occurred by September 2020 and continued such that the 4-year immunity period was passed before the enforcement notice was issued on 18 September 2024. In assessing that I have considered both the physical works to the units and also the evidence relating to occupation, since both are relevant to my decision. The Council does not directly dispute the appellant's claim that the units have been occupied since early 2022. Nor is there anything to suggest significant physical changes since that time. The dispute instead focuses on the period September 2020 to January 2022.
32. I have been referred to a number of judicial authorities. It was accepted in *Gravesham BC v SSE & O'Brien [1983] JPL 306* that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
33. In *Impey v SSE & Lake District SPB [1981] JPL 363, [1984] 47 P&CR 157*, the High Court accepted that a change to residential use could take place before the premises are actually occupied, depending on the conversion works that have been carried out. The judgement contemplates the relevance of usability, stating 'It may be that the test is whether [the premises] are usable, but that is a question of fact and degree'.
34. The Supreme Court held in *Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15* that 'too much stress... [has] been placed on the need for "actual use"... it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is.'
35. In *Sage v SSETR & Maidstone BC [2003] UKHL 22* the House of Lords considered the question of when a building could be said to be 'substantially completed' (for the purpose of s171B(1) of the Act) and found that the matter needed to be looked at holistically, having regard to the totality of the operations that were intended.

Assessment of the evidence relating to units 2-14 prior to February 2022

36. The appellant states that units 2-14 were all let by 18 September 2020. Nine units were let to Studlet and 4 units were taken by KCUK. Evidence for this is provided in the form of Assured Shorthold Tenancy Agreements (ASTs).
37. In his statutory declaration, Mr Akhtar states '*After some negotiation, I arranged to let the other completed flats to Studlet Limited, who signed AST leases on 3 August 2020 and 1 September 2020. I can confirm they moved occupiers in almost straightaway. They still have tenancies on some units even today.*'
38. In his statutory declaration, Mr Czecheniuk states, '*By June 2020, the small flats were effectively complete and I agreed to take shorthold tenancies on four of them (Flats 3, 7, 8 and 9). I used the flats to house workers who did not live locally, as they finished off work at Wells Court and also worked on other projects in the area. We finished work on Wells Court in September 2020. However, my workers carried on living in the four flats whilst they worked on other sites in Luton.*'
39. However, Studlet is a company that rents out units itself. Consequently, letting the units to Studlet does not show that they were occupied, just that a different landlord had taken control of them. I have no details of any individuals to whom Studlet let

the units. Moreover, Mr Akhtar's reference to occupiers moving in 'almost straight away' does not actually indicate whether or not this took place before or after the critical date of 18 September 2020, 4 years before the notice was issued. I am told that the units taken by KCUK were occupied by people working for the company, but I have no details of specific individuals or when they were actually in occupation of the units. By contrast to this earlier period, there are details of multiple individuals who have occupied units within the development since early 2022.

40. There is little other evidence to support the claims of occupancy during the disputed period. There are no payments or contracts relating to sub-letting to occupiers, no details of utility bills, Council Tax payments or other miscellaneous paperwork that the occupation of multiple dwellings would generate. It is also noticeable that there are no obvious signs of occupation, such as blinds or curtains on the windows, in the Building Control photographs of 14 December 2021⁵, giving the impression of unoccupied units. Even if there was some occupation of units, I do not know the extent of it or the degree of continuity during this period to early 2022. Overall, the claims relating to occupancy during that period are vague and generalised.
41. Viewing the evidence as a whole, it has not been shown, on the balance of probability, that the units were occupied to any significant extent, beyond occasional use by people working at the site, during the disputed period prior to early 2022. I am told that the Covid 19 pandemic made it difficult to find new tenants, but that does not explain the lack of contemporaneous evidence of actual occupation of the units during the disputed period.
42. The appellant has provided evidence to suggest that the units were physically ready for occupation by September 2020. The most persuasive of this evidence are time-stamped photographs dated 17 June, 3 August and 1 September 2020 in 'Tenancy Check-in Reports' for each of the units. These are numerous and show the units complete with fitted-out shower rooms and kitchen areas, each with a sink, cooker and fridge. Floor coverings are in place and notes in the report describe minor areas of damage and so on. The report and photographs suggest that the units were ready for occupation. Indeed, it appears that someone may already have been using Unit 4, judging by the items in the flat.
43. Other evidence, such as details of the building materials supplied, paperwork for building works, the installation of services and electrical connections, and the Certificate of Practical Completion of 15 June 2020, are consistent with the Check-in reports. Superficially, therefore, it appears that the units would have provided the facilities required for day-to-day private domestic existence, thus meeting the characteristics of a dwellinghouse established in *Gravesham*, and had the appearance of being ready for occupation by the beginning of September 2020.
44. However, it is difficult to reconcile the apparent readiness of the flats for occupation with the lack of detailed evidence of actual occupation. Moreover, I am left with some uncertainty about the usability of the flats at that time, because there was no certification to show compliance with Building Regulations. Indeed, it does not appear that a final certificate was issued until 23 February 2022. Even then, I am left in some doubt as to precisely what was being approved, since that refers to a 'Change of use to convert existing building to 20 Dwellings'.

⁵ See Dunne Appendix 13 and SOCOTEC Site Inspection Report – CDK.07

45. The reference to 20 dwellings recurs repeatedly throughout a range of documents relating to Building Regulations. I was not offered any convincing explanation for this. If it was simply a mistake, as the appellant suggests, it was a mistake made not only by Butler and Young, the company who issued an initial notice on 26 January 2021, but one repeated by SOCOTEC who, I am told, were brought in because the appellant was unhappy with Butler and Young. It seems surprising to me that a mistake about so basic a piece of information as the number of units to be developed should be repeated throughout an extended period without the appellant or anyone else apparently noticing. Consequently, it is not clear to me that this is a straightforward case of a development of 14 units being carried out and effectively completed by September 2020. Rather, the scheme appears to have evolved as it has progressed beyond that date.
46. But regardless of that, the Building Regulations documentation is not entirely consistent with the claim that the scheme was finished in September 2020. A Building Control Site Inspection Record dated 5 July 2021 and issued by SOCOTEC stated 'Carried out inspection on single occupancy flats. Some units at 99% complete with fire detection and extract ventilation to shower room and cooking facility. Electric hob with sink combined to all units'. By implication, if only some of the single occupancy units were '99% complete', others were at an earlier stage of completion at that time.
47. Moreover, it proved necessary to rearrange the kitchen facilities in some units, because the cookers were unsafely located. Although that work alone may have been fairly straightforward, it raises a question mark as to whether the units were genuinely ready for occupation before such necessary safety work was complete. Furthermore, the actual details of the work carried out to the studio flats at that time are not set out in any detailed schedule of works, a sub-contract order dated 17 May 2021 simply stating 'Other areas: Relocate kitchens, relocate wall and related reworks as required' and 'any general related works as required'.
48. Overall, I am left with significant uncertainty as to the physical state the units were in throughout the period up until 2022 and the extent to which works were ongoing across the site. While Building Control approval is not a pre-requisite to show a change of use, the fact that the layout of some units needed to be reorganised to an extent is an indication that they may not have been genuinely ready for use as flats.

Assessment of the evidence relating to Unit 1 prior to February 2022

49. It is common ground that Unit 1 was not occupied until February 2022.
50. It appears that work on the conversion of Unit 1 began in September 2019. Mr Akbar's evidence indicates that the intention was always for this to be a family unit as part of a 14 unit scheme, and that is supported by the statutory declarations of Mr Czczeniuk, Mr Akhtar and Pervez Akbar. Be that as it may, it is clear that kitchen units were fitted to all rooms within Unit 1. That suggests that 6 self-contained units were being created, as opposed to a single flat. That would have been consistent with a 20 unit scheme across the whole site. Unit 1 was not occupied at the time, and the way it is now occupied can have no bearing on the question of the use of the property at that time.
51. Between around June 2021 and January 2022, further works were carried out to the property, including the removal of a chimney breast (affecting ground and first

floors) and the removal of the kitchen units from the first floor rooms. This appears to have left the property broadly as it was when I viewed it, with a kitchen/dining room on the ground floor and 5 rooms, each with toilet/shower rooms but no kitchen facilities on the first floor. That layout appears to have been in place from around January 2022.

Overall assessment and conclusion on Ground (d)

52. From the above there is no clear picture regarding matters at the site throughout the relevant 4-year period. It is clear, however, that there were changes in the period September 2020 to February 2022.
53. In September 2020, it seems probable that, so far as units 2-14 are concerned, the buildings had the physical appearance of flats. Unit 1 might perhaps also have appeared ready for occupation, but that has not been clearly demonstrated by the evidence. If it was ready for occupation, it was not occupation in its current form, given the kitchen facilities within each room. The evidence does not suggest to me, on the balance of probability, that any of the units across the site would have been occupied on a regular basis at that time, and it is common ground that Unit 1 was not.
54. During the latter half of 2021, works took place across the site. In the case of units 2-14, that might have been limited to fairly straightforward work concerning the relocation of kitchen items. In the case of Unit 1, more substantial works were being carried out. Overall, the works across the site carried on for around 6 months until January 2022. I cannot be sure of the state of the external areas of the site during this period, but there would have been building materials stored on it at times, as confirmed in Mr Czaczeniuk's statutory declaration and by Mr Akbar during cross examination. The stored material would have included construction waste, building materials and equipment such as scaffolding towers. The position regarding occupation of the units at that time is unclear.
55. By February 2022, all 14 units were in their current, completed form. From that point onwards, more detail becomes available as to the occupation of the units. Prior to that, however, the slightly confused trail of paperwork relating to the Building Regulations, together with significant gaps in the evidence of occupation and the continuation of the works, leaves an unclear picture during a significant period, long after September 2020. Accordingly, it has not been demonstrated, on the balance of probability, that it was too late to take enforcement action when the notice was issued in September 2024.
56. I appreciate that the change of use is not dependant simply on occupation, but it remains an important consideration. The evidence before me does not demonstrate any clear, consistent occupation of any of the units prior to February 2022, some 16 months into the 4 year period the appellant relies on. Nor is it clear whether all the flats were in a usable condition throughout that time, given the works being carried out within units and the extent to which the external areas were being used in connection with the building works at this and other sites.
57. While I can accept that, for example, a new flat may still be a flat while it is being marketed, that is to be contrasted with the situation here, where it is not clear what was being done with the units for more than a year after the appellant says they were ready for occupation. That is in clear contrast to *Welwyn*, in which occupation took place within a matter of days of the completion of the building. Furthermore,

while it is probable that Unit 1 was always intended for some kind of residential use, the nature of that residential use, and therefore the matter to be enforced against, appears to have changed during the course of the project.

58. I have been referred to the Bronze Works appeal decision⁶ from 2020, in which a Lawful Development Certificate for the use of a building as 8 flats was granted. The inspector approached that decision on the basis that there was a 'trajectory of change' on which, at some point, the material change of use occurred. In that case the inspector determined that that had taken place at a point when only one of the 8 flats was completed.
59. However, the facts of that case are different, and it was common ground that one of the units was completed and occupied by the critical date. The inspector also emphasises that that appellants' clear intentions played a part in the decision, whereas the intentions in relation to this site appear to have evolved as the project was carried out.
60. For these reasons, I conclude that it has not been demonstrated, on the balance of probability, that it was too late to take enforcement action when the notice was issued. Accordingly, the appeal on ground (d) fails.

Ground (a)

Main issues

61. The main issues are:
- Whether the units provide satisfactory living conditions for their occupiers, with particular regard to their size, outlook, levels of natural light and ventilation and external amenity space;
 - Whether the mix and size of the units undermines local policies designed to achieve an appropriate mix of housing types or harms the character or amenity of the locality; and
 - Whether any harm arising from the development is outweighed by other considerations, including any need for the accommodation.

Living conditions

Size

62. Units 2-14 are all studio flats, with a single room for living/sleeping/dining and a separate shower room/WC. I looked inside a selection of the units during my site visit. All of the units are small and provided very cramped accommodation for their occupants, with the available space tending to be crammed with personal possessions. Despite their size, some of the units contained double beds, leaving very limited remaining floorspace. In my judgement the units are so small that they provide inadequate living accommodation.
63. The appellant has provided a schedule of accommodation, which shows that rooms vary in size (GIA) from 9.22 m² to 25.19m². The Council has compared this with the floor areas set out in the Nationally Described Space Standards (NDSS). The figures show that all of the rooms fall well short of the 37m² minimum for a 1 bed, 1 person unit. In fact, Unit 11 would only be about 25% of that amount and most are below 50%.

⁶ Ref APP/G5180/X/18/3200876

64. The space standards are not incorporated into the local plan and, consequently, there is no requirement in policy for them to be adhered to. Nevertheless, these comprehensive, national standards provide a useful yardstick in assessing the quality of the accommodation, and reinforce my impression of accommodation which is generally far too cramped, even if only occupied as single occupancy flats.
65. The appellant refers to a standard of 11m², which would be met by all but one of the flats. However, that is a standard for housing enforcement purposes, whereas the NDSS have been specifically derived for planning purposes, and are a better indication of appropriate levels of floorspace in my view. Similarly, standards relating to statutory overcrowding in The Housing Act 1985 are not intended as planning guidance and are of little relevance.
66. Although the units each have adequate kitchen and bathroom facilities, with laundry facilities provided in a separate building, that does not alter my view that they provide excessively cramped and unsatisfactory accommodation.
67. Unit 1 is unusual, mainly due to the very constrained ground floor and the lack of a shared bathroom/WC. However, it is very different to the other units in terms of its overall spaciousness, and it appears to me that there would be scope to alter the internal layout to create a bathroom and more shared living space if so desired. Thus, unlike the other units, it is not intrinsically flawed as residential accommodation due to a lack of floorspace.

Outlook

68. The studio units each have a window with an opening light. However, the outlook tends to be poor. In particular, a number of ground floor units to either side of the narrow courtyard face each other at close quarters, resulting in a very limited, bland outlook from the single window serving each unit. The window to two of these, Units 7 and 10, is positioned below the first floor elements that bridge across the development, restricting the outlook further still. The window serving Unit 6 faces the bland side wall of the outbuilding, again at close quarters.
69. Furthermore, the layout and intensive nature of the development is such that many of the units, particularly those ground floor units facing onto the narrow courtyard/access, have little privacy unless the blinds to the windows are lowered. Thus, in practice, outlook generally tends to be more limited still.
70. Other units, including Unit 1, have a less restricted outlook, but that does not alter my concern regarding those highlighted above.

Natural Light

71. The appellant has commissioned a Daylight and Sunlight Report. This indicates that 5 of the 13 studio flats would fail to achieve compliance with the British Research Establishment (BRE) guidance of 100 Lux for bedrooms. Although the studio rooms also serve as kitchen and living space for the occupants, the study suggests that the 100 Lux standard is appropriate because the rooms are predominantly used as bedrooms, with compact, non-habitable kitchenettes forming part of the layout. Even so, since these rooms are the only living space available to the occupants, failure to meet even the 100 Lux standard in some of the units is indicative of a significant deficiency in my view.

72. The report suggests that light levels for a number of flats could be improved. However, the modifications proposed include the installation of fully glazed doors to units 5 and 10. This would not be desirable in my view, since the area immediately outside the doors is used by people and vehicles. Fully glazed doors, even if obscure glazed, would result in a lack of separation between what should be a private internal area and the outside world. Thus, I am not persuaded that even the 100 Lux standard can be achieved by measures that are appropriate for those two flats. Even with that modification, Unit 10 would fall well below the 100 Lux standard.
73. Moreover, the Living/Kitchen/Diner in Unit 1 performs very poorly, being a deep room with a single window at one end. While light levels at one end of the room are satisfactory, the whole of the kitchen area is gloomy, with only 26% of the room meeting the 150 Lux target for a living room. Since this room is the only shared living space within this 5 bedroomed flat, this detracts very significantly from the quality of the accommodation.
74. Furthermore, while many of the rooms have adequate levels of sunlight, the report shows that 7 of the 13 studio flats fail to meet the 1.5 hours BRE target, with 6 getting no sunlight exposure at all.
75. The BRE guidelines are not intended to be rigid standards, and I accept that a degree of flexibility will often be required in order to achieve a satisfactory overall outcome, particularly in a converted building. Here, however, even with the introduction of rooflights to some of the units as proposed, the inadequacies in respect of daylight and sunlight are such that living conditions in many of the units are materially compromised.

Ventilation

76. I do not share the Council's concerns regarding the adequacy of ventilation within the units. While it may be that blinds are often kept down in the interests of privacy, the opening windows nevertheless appeared to me to be adequate to ventilate the modest rooms within the development.

External areas

77. The site is accessed via a doorway within wooden gates and then metal gates, which lead to an internal 'courtyard'. The gates create a distinctly commercial feel to the site entrance rather than something more appropriate and welcoming for a residential development. The courtyard is a narrow area, flanked by some of the flats, which leads to the parking area to the rear of the development. The narrowness of the courtyard and the 'tunnel' created by the first floor element over part of it creates a claustrophobic feel, such that the courtyard really only serves as an access rather than as any kind of amenity area. The fact that vehicles travel across this area to reach the car park at the rear detracts further from any sense of providing a pleasant domestic environment.
78. The site widens out at the rear, but this space is set aside for car parking and refuse bins, and part of it is occupied by an outbuilding as well. There is no soft landscaping of the external areas.
79. Local Plan Policy LLP25 seeks to secure high quality design for buildings and spaces and applies standards for external amenity space, as set out in Appendix 6 of the Plan. It sets out standards for private outdoor space, but also indicates that,

where private outdoor space is not achievable, communal amenity space should be provided. While a degree of flexibility is appropriate in considering the application of amenity space standards, there is not any external area that could be regarded as suitable amenity space in this instance, and this adds to my concerns regarding the development as a whole.

80. It may well be that improvements to the external area could be made with landscaping, restrictions on vehicles and the creation of amenity space within the area currently set aside for car parking. However, there is no scheme before me to show what could be achieved. Given the constraints of the site, it appears to me that any usable amenity space would be quite limited in terms of its size and quality.
81. I accept that the site falls within a generally dense urban area, but that does not justify an excessively dense, cramped development of this nature, given the unsatisfactory living conditions it provides. While there may be no policy specifically relating to density, here the development is so cramped and dense that living conditions have suffered as a result.
82. Overall, the external area provides a poor quality environment which detracts further from the living conditions within the development. The fact that there is a park within walking distance does not strike me as an especially notable feature that reduces the need for amenity space to serve the development, particularly given that Unit 1 provides family accommodation.

Conclusion – living conditions

83. I conclude that, to varying degrees, the units are unsatisfactory due to their size, outlook, light levels or a combination of all three. Viewed as a whole, and taking account also of the poor quality of the external areas and lack of suitable amenity space, the development provides unsatisfactory living conditions for its occupiers.
84. The site has been inspected by qualified Housing Health and Safety Rating System (HHSRS) inspectors, who concluded that the units were reasonably fit for human habitation. However, that does not show that they provide satisfactory living conditions in planning terms, having regard to local and national planning policy. Similarly, the development cannot be justified on the basis that the accommodation meets the standards required for temporary accommodation for homeless people.
85. I am told that other developments in the area offer comparable standards but, even if that is so, it would not justify unsatisfactory living conditions here. While certain improvements could be secured with planning conditions, the harm I have found would not be adequately addressed. Accordingly, there is conflict with policies LLP1, LLP15 and LLP25 of the Luton Local Plan 2011–2031, which between them seek to secure high quality development and design and avoid over-intensive development.

Dwelling type and character

86. Local Plan Policy LLP15 seeks to secure a mix of housing in new development to meet local needs. The requirements are based on the 2015 *Strategic Housing Market Assessment* (SHMA) and are set out in Tables 6.2 (Market Housing Mix) and 6.3 (Affordable Housing Mix) of the Local Plan. These show a requirement very heavily weighted towards 3 bedroom houses. The requirement for 1 bedroom flats

is just 1.5% for market housing and 3.6% for affordable units. Despite this, delivery has been skewed in the other direction. Figures from the Council's *Strategic Housing Land Availability Assessment* (SHLAA) indicate that, between 2011/12 and 2018/19, 2,307 one bedroom units were provided, compared to just 383 three bedroom units. The *Luton Housing Strategy 2022-2027* also stresses the need for larger houses

87. This development, with 13 very small studio flats and just one multi-bedroom unit, would continue the trend of providing small units rather than addressing the need for larger ones. That said, this is a constrained site and there is nothing before me to show that a satisfactory development of larger units could be achieved on it. Consequently, it is not clear that any significant opportunity for the provision of larger units has been lost and I am not persuaded that the aims of LLP15 have been compromised in that regard.
88. I am not persuaded either that the development harms the character or appearance of the locality, given the limited views into the site and the lack of significant change to the road frontage. Thus, there is no further conflict with Policy LLP25 as a result of the visual impact of the development.

Housing Land Supply and Need

89. It is common ground that the Council is unable to demonstrate a 5-year supply of deliverable housing land. The agreed figure is 4.32 years – a significant shortfall. In accordance with Paragraph 11 and Footnote 8 of the Framework, this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken 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. I consider this later in the planning balance.
90. Furthermore, the appellant argues that there is no sign of the shortfall being addressed in the near future, arguing that a reliance on other authorities bringing forward housing land in order to meet local need is not proving successful. Regardless of that, there is currently a pressing need for housing within the borough, and this decision must be taken against that background.

Impact on current occupiers

91. Mr Griffiths, a housing professional who has prepared a report for the appellant, advises that all but two households of Wells Court have rented the property directly from the landlord themselves or via a letting agent. One has been placed there via the Home Office in partnership with Hertfordshire County Council and one via a Care Agency. The studio flats are occupied by single people and Unit 1 is occupied by 6 members of the same family (5 adults and a child).
92. For the resident placed at the property via a care agency, should the units no longer be available for let, then the Care Agency would be responsible for finding alternative accommodation within the local marketplace. The Home Office would be responsible for finding alternative accommodation within the local marketplace for the resident housed by Hertfordshire County Council. Remaining residents not considered a priority by Luton Borough Council would have to find alternative accommodation themselves.

93. It must be assumed that the current residents would prefer to have the option of remaining in their current accommodation if they so wish, and this must be weighed in the overall planning balance. It appears to me that the best interests of the child at this site will lie in being able to continue living at the site in accordance with the apparent wishes of those caring for them. There is no planning consideration inherently of more importance than the best interests of a child, although the weight to be given to it will ultimately depend on the circumstances of the individual case.

Unilateral undertaking

94. The appellant has provided a unilateral undertaking. This would address affordable housing and provide financial contributions for primary and secondary education, libraries, museums, waste and open space.
95. The financial contributions have been calculated with regard to the approach set out in the Council's Planning Obligations supplementary planning document (SPD) and following some discussion with the Council. Notwithstanding some concerns raised by the Council I am satisfied overall that the contributions are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. Consequently, the tests set out in Regulation 122(2) of the *Community Infrastructure Levy Regulations 2010* are met and I have taken these contributions into account. By providing support for local services in accordance with local policy, the contributions would be a benefit of the development.
96. I am not persuaded that the affordable housing dwellings proposed amount to a benefit of the development, given the poor quality of the accommodation. Nothing in local or national policy suggests that poor-quality affordable housing should be encouraged.
97. However, the undertaking also includes the option of a financial affordable housing contribution as an alternative to the affordable housing dwellings. The appellant says this uses the formula set out in the Council's Affordable Housing SPD. The Council, however, calculates a higher figure. The fundamental difference in approach appears to be that the appellant's figure has been calculated based on the floor area of the dwellings, whereas the Council bases its figures on the floor areas for dwellings set out in the Nationally Described Space Standards.
98. While I have found the units proposed to be inadequate in terms of their size, it seems to me that basing the affordable housing contribution on what is actually proposed means that it passes the threshold of being fairly and reasonably related to the scale of the development, even if it falls short of the sum the Council calculates. The other Regulation 122(2) tests are met, and I have taken the affordable housing contribution into account in my assessment of the development. Given the acknowledged need for affordable housing within the Borough, this is a benefit of the development.

Other matters

99. This is a brownfield site in a highly sustainable location. However, I am not persuaded that this development makes efficient or effective use of such land, given my concerns regarding its poor quality.

100. Although there is no cycle parking provision within the development, as required by Policy LLP32, it appears to me that suitable provision could be made, something that could be required by a planning condition.

101. I understand that there are various obligations on the local authority relating to homelessness, imposed by relevant legislation, but the authority is best placed to take account of the effect of the notice on this and such obligations do not alter my overall assessment of the planning merits of the development.

Planning Balance

102. I have found that the development provides unsatisfactory living conditions, contrary to local policies. This leads me to conclude that there is conflict with the development plan as a whole.

103. Set against that is the pressing need for housing in the locality. The provision of housing of an adequate standard would be a particular benefit in those circumstances. Unfortunately, however, the poor quality of these units means that I do not regard them as making a valuable contribution to meeting local housing need. Local and national policy are consistent in their support for securing high quality development. That said, I recognise that they provide homes for the current occupiers, and take account of that in the overall balance.

104. The financial contributions to local services and affordable housing, as set out in the planning obligation, are benefits of the development, and I attach some weight to that. Nevertheless, my concerns regarding the quality of the units is such that, viewing the case as a whole, the adverse impacts of the development significantly and demonstrably outweigh its benefits.

105. The unilateral undertaking contemplates the possibility of the development being allowed in part. However, this is an integrated scheme, with a shared vehicular access, and no case has been put to me to show that there would be merit in allowing the scheme in part only. In any event, each of the units is unsatisfactory in one respect or another, and my concerns would not be addressed by allowing individual elements of the scheme.

106. I have no doubt of the important implications of upholding the notice for the occupiers of the site, which include a child. Loss of their home would represent a serious interference with their right to respect for their private and family lives and homes in accordance with Article 8 of the European Convention on Human Rights, as set out in Schedule 1 of the Human Rights Act 1998.

107. However, the right under Article 8 is a qualified right. The interference in this case is in accordance with the law, given the provisions of the Town and Country Planning Act 1990. While the notice would result in people losing their current homes, that must be weighed against the public interest of ensuring the proper planning of the locality, including ensuring that new housing is of a satisfactory standard. I cannot see that the legitimate planning aim of addressing the significant planning harm arising from this case could be achieved by any other means which would cause less interference with their rights under Article 8.

108. In my judgement, dismissal of the appeal in these circumstances is a necessary and proportionate response, and would not result in any violation of the rights of the individuals concerned. My decision to lengthen the compliance period under ground

(g) will provide additional time for alternative accommodation to be sought and, to that extent, tempers the impact of the notice on the current occupiers.

109. For these reasons, the appeal on ground (a) is dismissed.

Ground (f)

110. The appellant's case on ground (f) concerns the requirements to remove features such as kitchens and bathrooms from the buildings, together with the waste arising from that (requirements (ii) and (iii)). This would leave only the requirement to cease the residential use of the land. It is said that the removal of these items would be wasteful and unnecessary, and that they might be needed in connection with a reversion to a Class E use in the future, or perhaps in connection with an HMO use.

111. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, it is clear that the kitchens, bathrooms and sleeping accommodation together with the associated fixtures and fittings have been installed as part and parcel of the conversion to residential use. Consequently, their removal is consistent with remedying the breach of planning control in accordance with s173(4)(a), and I do not regard the requirement as excessive. Section 173 establishes that the requirements of a notice may include the alteration or removal of any buildings or works.

112. Furthermore, I have no evidence of any likely need for units of this type, complete with all the facilities currently installed, in connection with any specific lawful use. Nor can I make any assumption regarding the acceptability of any future residential use of the site. Thus, it has not been demonstrated that the requirement to remove the facilities is excessive on the basis of any specific future need.

113. For these reasons, the appeal on ground (f) fails.

Ground (g)

114. The appellant suggests that the compliance period be doubled to 12 months. The flats are all occupied on AST leases, and time is said to be needed to address contractual matters, including any court proceedings arising from the need to secure the vacation of the units.

115. In considering the matter, I am mindful of the desirability of addressing the breach of planning control without undue delay. However, I understand that the units are all occupied. The occupants include 1 child and a person described as vulnerable. In my view, securing vacation of 14 units in these circumstances is not an entirely straightforward matter, and a longer period may legitimately be needed than the 6 months allowed in the notice.

116. A longer period will also allow further time for alternative accommodation to be sought in what is evidently a difficult housing market. In my judgement, 12 months strikes an appropriate balance and would be a proportionate approach in all the circumstances of the case. Accordingly, the appeal succeeds on ground (g). I appreciate that the Council itself has the power to extend the compliance period

using its powers under s173A, but it is appropriate to give the appellant the certainty that varying the notice brings.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

James Corbet Burcher, Barrister

Who called:

Roger Hephner BA (Hons) MTP FRICS MRTPI FRSA AAoU – Director and Executive Chairman of hgh Consulting

Jahid Akbar, Director of Sewardstone Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Wayne Beglan, Counsel

Who called:

Gary Dunne – Planning Enforcement Team Leader

DOCUMENTS SUBMITTED DURING THE INQUIRY⁷

1. Appellant appearances list
2. Summary opening observations on behalf of the local planning authority
3. Opening submissions of the appellant
4. Statutory Declaration of Krzysztof Czeczaniuk
5. Statutory Declaration of Mohammed Sajad Akhtar
6. Statutory Declaration of Pervez Akbar
7. Council officer's (NGL) Notes of site meeting of 14 March 2024
8. Gravesham BC v SoS and Another
9. Class C4 – Town and Country Planning Use Classes Order 1987
10. Class C3 – Town and Country Planning Use Classes Order 1987
11. S171B – TCPA 1990
12. Doncaster V SoS and Dunnill & Van Dyck v SoS and Southend on Sea BC
13. Appeal Decision APP/Z4718/C/22/3296605
14. JPL Extract – Beach v SoS
15. Sage v SoS and Another

⁷ These are documents submitted at the event – other documents were submitted after the event in accordance with a prescribed timetable.