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STATEMENT OF COMMON GROUND

**PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
SECTIONS 32 TO 36**

**LISTED BUILDING PURCHASE NOTICE
SERVED BY MR AND MRS GASS**

**PLANNING INSPECTORATE REF: PUR/3342127
NORTH HERTS COUNCIL REF: 24/00130/PCH**

**LAND AT KEEPERS COTTAGE,
2A ORCHARD WAY, BREACHWOOD GREEN,
HITCHIN, HERTFORDSHIRE,
SG4 8NT**

Point		NHDC Common Ground		Mr and Mrs Gass Common Ground		Comments from both NHDC/Mr and Mrs Gass
		Agree	Disagree	Agree	Disagree	
	Counter-Notice Reason 1 <i>The fact that Keepers Cottage is currently occupied and has been in continued occupation (as far as NHDC is aware) as a dwellinghouse since listing and most probably since C17, indicates that Keepers Cottage has a well-established, reasonable beneficial use as a dwellinghouse. There is no cogent evidence to confirm that the physical characteristics of the building make it impossible to derive any beneficial use, where the land is likely to have no value or that the land is not capable of beneficial use in its existing state but may be rendered capable of a beneficial use if developed or disposed of.</i>					
1.)	Keepers Cottage, 2A Orchard Way, Breachwood Green is a Grade II Listed building, hereafter referred to as Keepers Cottage. A de-listing application was recently rejected and on 07/11/2023 Historic England confirmed that the SofS for Culture, Media, and Sport has amended the list entry, and the building remains listed at Grade II.	✓		✓		Mr Gass comment: The Historic England report highlighted the internal original wooden beams to the main bedroom and fireplace in the living room.
2.)	NHDC provided a renovation grant for work on Keepers Cottage, see NHDC correspondence of 31/07/1979 and 24/08/1979. Alan R Eames claims on behalf of the owner of Keepers Cottage, that the owner is homeless until work that is the subject of a renovation grant has been agreed and that the renovation included the provision of new windows and doors, see letter from Alan R Eames of 27/09/1978, obtained from NHDC microfiche files.	✓		✓		Mr Gass comment: Demonstration that windows are not original, unlike some of the internal wooden beams.
2a.)	Memo from MK Miller, North Herts District council REF MKM/EIB/M.1/10 TP 1/795/77(949) regarding the adjacent plot to Keepers Cottage, confirming that the surroundings of Keepers Cottage (the building on the site to be refurbished), <i>“Having said that one must recognise that the surroundings of the site</i>	✓		✓		

	<i>include a Hitchin and Rural District Council Estate which is if anything worse in character than the designs proposed for this infill site” and “Having urged negotiation for improvement one must recognise that it would be extremely difficult to refuse the details as submitted bearing in mind the surrounding site”.</i>					
3.)	Since the implementation of the renovation grant and since listing (08/02/1988), Keepers Cottage has been in continued occupation. No evidence has been forthcoming to suggest that Keepers Cottage has been incapable of Reasonable Beneficial Use [‘RBU’] either before Keepers Cottage was deemed inhabitable or after the renovations work were complete.	✓			✓	Mr Gass comment: The basis of submitting this purchase notice for Keepers Cottage is the harm being caused to myself and my family as a result of the noise level due to the two previous expansions of London Luton Airport which received planning permission in 2012 and 2023, and the fact that London Luton Airport confirmed that the levels in 2022 had triggering the requirement of noise insulation for Keepers Cottage to protect the Health and wellbeing of the occupants.
4.)	Mr and Mrs Gass bought Keepers Cottage on 12/12/2013 and have attempted to sell their property on the open market from 17/08/2022 to 06/09/2023 over 4 periods totalling 229 days as evidenced from RightMove Plus.	✓		✓		NHDC comment- These details were not submitted with the purchase notice (PN). The Council would have expected a Marketing Report to have accompanied the PN which would normally include valuations, details of viewings and offers. Mr Gass comment: Advice was sought regarding the evidence from estate agents from the Planning Inspectorate, and the requirement to redact commercially sensitive/personal information. Details of the agents was provided with dates the property was marketed.

	Counter-Notice Reason 2 <i>The Guidance on Compulsory Purchase process and The Crichel Down Rules confirms at paragraph 303 that the onus is on the person serving a Purchase Notice to show that the land in its existing state taking account operations and uses for which (in this case) listed building consent is not required is 'incapable of reasonably beneficial use'. Notwithstanding the fact that the proposed Luton Airport expansion is an event that has not taken place; it is noted that you have not provided supporting evidence. The Council would expect an acoustic report to be provided with the Purchase Notice establishing whether an acceptable noise threshold (undetermined) for noise pollution at this property has been exceeded by current air traffic within the flight path or is likely to be exceeded if the further proposed expansion of Luton Airport were to take place. However, Keepers Cottage has been identified as eligible for Noise Insulation and has been selected by London Luton Airport Consultative Committee's Noise Insulation Sub-Committee to be offered insulation, but this applied in 2022. The owners have not sought to address the existing noise pollution from London Luton Airport by way of either installing secondary glazing without the need for listed building consent or seeking listed building consent and implementing suitable timber-framed windows with well-detailed slimlite units. The refusal of listed building consent under application ref: 23/02418/LBC for white Upvc framed double-glazed window of unspecified design does not render this listed building incapable of a reasonably beneficial use.</i>				
5.)	The Compulsory Purchase Process and the Crichel Down Rules from the Planning Inspectorate website state in section 303, that when considering if the land is incapable of 'reasonably beneficial use' "<i>In the case of a listed building purchase notice, no account is taken of any prospective use of the land which would involve the carrying out of new development or of any works which require listed building consent, other than works for which the local planning authority or the 131 Secretary of State have undertaken to grant such consent</i>", as such other remedies other than the Upvc double glazing are out of scope of the Purchase Notice.	✓ (in part)		✓	NHDC comment: It is not common ground that 'other remedies other than the Upvc double glazing are out of the remit of consideration and discussion connected with the Purchase Notice.' Mr Gass comment on NHDC comment: NHDC guided Mr Gass to apply for listed building consent for UPVC double glazed windows as being the next steps in dealing with my complaint regarding failing to provide an alternative remedy for noise insulation. (see later 14.a) below) Historic England confirmed during their visit to evaluate the property for de-listing that Listed building consent would be required for the installation of any noise insulation to the windows., and NHDC also confirmed in their email of 4/7/23 that listed building consent would be required for any alteration to the windows, so any modification to the windows apart from that applied for would need further Listed Building Consent and hence be out of scope of the current Purchase Notice.

5a.)	The Compulsory Purchase Process and the Crichel Down Rules from the Planning Inspectorate website state in section 303 In addition that <i>“For the purposes of section 137(3)(c) Town and Country Planning Act 1990 or section 32(2)(c) Planning (Listed Buildings and Conservation Areas) Act 1990, any permission (or consent) granted, or deemed to be granted, and undertakings given up to the date of the Secretary of State’s determination of the purchase notice, may be taken into account. To be capable of being taken into account, an undertaking should be in unequivocal language, and so worded as to be binding on the local planning authority. The Secretary of State would not regard a promise ‘to give favourable consideration’ to an application for permission to develop, as a binding undertaking.”</i>	✓		✓		
6.)	Letter dated 15/03/2022 from London Luton Airport Flight Operations not only states that Keepers Cottage is eligible for Noise Insulation but it has been selected by London Luton Airport Consultative Committee's Noise Insulation Sub-Committee to be offered insulation in 2022. In addition, it is common ground that London Luton Airport has not installed any wooden double glazing to any listed buildings under this scheme.	✓		✓		
6.a)	The Hertfordshire Mercury of 8 Sept 2020 has an article written by Adam May, in which the following is stated: <i>“Breachwood Green falls under the stewardship of</i>		✓	✓		NHDC comment: This has been introduced by Mr Gass and on 11/09/24 he has provided a link by email to the article he has referred to. However, it is considered that no weight should be given to a newspaper article at the hearing. Therefore, inclusion in the Statement of

	<i>North Herts District Council, and a spokeswoman there says they are in constant dialogue to help ensure the voices of its residents are heard.</i> <i>A statement said: ‘We are a member of the London Luton Airport Consultative Committee, where local residents are represented by County Councillors and our Executive Member for Planning and Transport, and monitoring reports, including monitoring of noise and environmental management, are discussed.’”</i>					Common Ground is not agreed.
6.b)	Clr Steve Jarvis is a member of the London Luton Airport Consultative Committee representing NHDC and is a reserve member of the NHDC Planning Committee, he is listed as being in office for NHDC since before 2011. Clr David Barnard is a member of the London Luton Airport Consultative Committee and a North Hertfordshire District Council councillor who is listed as being in office since before 2011.	√		√		NHDC Comment: The Committee's terms of reference and purpose are as follows: • to enable aerodrome operators, communities in the vicinity of the aerodrome, local authorities, local business representatives, aerodrome users and other interested parties to exchange information and ideas; • to allow the concerns of interested parties to be raised and taken into account by the aerodrome operators with a genuine desire on all sides to resolve any issues that may emerge; and • to complement the legal framework within which the aerodrome operates. ClIr David Barnard represents Hertfordshire County Council.
6.c)	The Noise Insulation Scheme leaflet for Luton Airport states that: 1) “One of the measures involved in reducing noise	√		√		NHDC Comment: London Luton Airport noise insulation scheme includes the installation of double glazing, secondary glazing, ventilation units and loft insulation. Mr Gass Comment: NHDC are members of the

	for our local communities is our Noise Insulation Scheme. Together with an Independent noise analyst and our London Luton Airport Consultative Committee (LLACC) Noise Insulation Sub-Committee, we will be offering Insulation to eligible properties each year.” 2) “The London Luton Airport Consultative Committee (LLACC) Noise Insulation Sub Committee will prioritise the properties for insulation each year”					organisation that selected Keepers Cottage for Noise insulation.
7.)	A Written Representation by Hertfordshire County Council, Dacorum Borough Council and North Herts Council and dated 22/08/2023 was submitted with respect to the London Luton Airport Expansion DCO. Under 2.2.8.3.1 it says: <i>"The technical basis of the Noise Insulation Scheme proposed by the Applicant is considered fundamentally acceptable and to be secured by a Section 106 agreement. There are some matters to be agreed with the Councils, which can be secured in the Section 106."</i>	√		√		
8.)	The Environmental Noise (England) Regulations 2006 appoints Luton Airport as the competent body for noise action plans and compiling noise contour maps which are adopted by DEFRA, and requires external competent bodies (in this case NHDC) to cooperate.	√		√		NHDC comment: These regulations do not supersede Statutory requirements relating to Listed Buildings and therefore do not necessitate granting Listed Building Consent irrespective of the impact that noise attenuation works may have on a Listed Building. Mr Gass comment: This is an appeal hearing about a purchase notice, not an application for listed building consent. The purchase notice has been submitted because Listed Building Consent has been refused. So NHDC comment about the granting of Listed Building

						consent irrelevant to the Purchase Notice.
9.)	The Department of Transport confirm that it is the Airport and Local Council (in this case NHDC) who are responsible for managing noise at Luton Airport, see letters from Department of transport of 20/06/2024.		√	√		NHDC comment: This is a point introduced by Mr Gass. The content of the Department of Transport’s letter of 22/12/2023 is noted (APPENDIX 32d of the Council’s SoC) and it is noted that Department of Transport letter dated 20/06/2024 is an attachment to Mr Gass’s Email B dated 30/07/2024 to Sarah Williams (PINS) in which it states that: <i>“Although the Department sets the overarching noise policy applicable to major airports, the responsibility for any specific noise-related matters at London Luton Airport is a matter for the airport’s management team and the local authority.”</i> Luton Airport lies within Luton Borough not North Hertfordshire District (NHDC). The relevant local authority responsible for managing noise at Luton Airport is Luton Borough Council. NHDC is not the determining authority for the current proposal to expand Luton Airport, this is a Nationally Significant Infrastructure Project and therefore is a process managed by the Planning Inspectorate. The application will be determined by the Secretary of State. NHDC is a consultee and in conjunction with Hertfordshire County Council and Dacorum Borough Council have responded to a consultation. NHDC maintains its on-going in-principle objection to the proposal including concerns over impacts on North Herts’ residents, heritage, and noise exposure. Mr Gass comment on NHDC comment: NHDC is the

						planning authority with responsibility for Listed Building Consent for Keepers Cottage; Luton Borough Council cannot approve Listed Building Consent for Keepers Cottage. NHDC are on record as approving the principles for the Noise Insulation Scheme see 7.) above and are member of the LLACC that selects properties for noise insulation under the Luton Airport scheme.
10.)	The Airport criteria for providing Noise insulation is that houses with habitable rooms within the 63dB daytime noise contour and/or bedrooms within the 55dB contour during the night-time from airborne traffic will be selected. See Page 12 of the Luton Airport Noise Control Scheme of August 2015.	✓		✓		NHDC comment: This is a point introduced by Mr Gass. A noise report was not submitted with the Purchase Notice identifying the noise levels at the property and the mitigating effects of the double glazing the subject of the application for listed building consent, compared to secondary glazing which is considered more effective in terms of noise mitigation. Mr Gass comment: NHDC were consulted on the original planning application in 2012 for the expansion of the airport that led to the Airport Noise Control Scheme of August 2015, clearly they are aware of the details of the current and proposed future noise insulation scheme, they are also member of the LLACC that selects properties for noise insulation.
11.)	On 13/10/2023 there was decision letter and Inspector's Report for a called-in planning application for the variation of conditions (8, 10, 22, 24 and 28) attached to a previous planning permission for London Luton Airport. A joint decision made by the Department for Levelling Up, Housing and Communities and the Department for Transport. The report Page 15 section 7.2 states <i>"Effects on</i>	✓		✓		NHDC comment: This is a point introduced by Mr Gass. A noise report was not submitted with the Purchase Notice identifying the noise levels at the property and the mitigating effects of the double glazing the subject of the application for listed building consent. Mr Gass Comment: NHDC are member of the LLACC that select properties for Noise insulation.

	<i>residents who are exposed to noise at or above the daytime and night-time Significant Observed Adverse Effect Levels (SOAEL) (63 and 55 dB LAeq) will be mitigated by noise insulation which would minimise the increase in noise when windows are closed, avoiding adverse health effects.”</i> The report for section 8.83 page 36 states that The World Health Organisation (WHO) Night Noise Guidelines for Europe refer to adverse health effects above 40dB.					
12.)	The Department of Transport clarify in their letter of 22nd December 2023 that Luton Airport are responsible for noise controls and are the competent body for the creation of the DEFRA adopted noise action plan and are responsible for the noise contour plans and determining which properties should receive Noise Insulation. The letter from Department of Transport confirming that <i>“At other airports, including Luton Airport, we expect that appropriate noise controls should be set locally through the planning system” and that Luton Airport are responsible for the creation of the Noise Action Plan which is adopted by DEFRA on behalf of the government.”</i> The letter clarifies that <i>“London Luton Airport has a Noise Insulation Scheme as part of its 2019-2023 NAP that outlines the areas eligible for insulation within its noise contour mapping. As mentioned in the scheme, the precise contour is calculated annually.</i>	√		√		NHDC comment: This is a point introduced by Mr Gass. NHDC is not the determining authority for the current proposal to expand Luton Airport, this is a Nationally Significant Infrastructure Project and therefore is a process managed by the Planning Inspectorate. The application will be determined by the Secretary of State. NHC is a consultee and in conjunction with Hertfordshire County Council and Dacorum Borough Council have recently responded to a consultation. NHDC maintains its on-going in-principle objection to the proposal, citing concerns which include impacts on North Herts’ residents, heritage, and noise exposure. Mr Gass comment: This has nothing to do with the current proposal to expand Luton Airport but is the current government guidance on the management of the current noise caused by the two expansions approved in 2012 and 2023. NHDC is a member of the LLACC which selects the properties for noise insulation under the Luton Airport scheme

	<i>The management of the scheme, including the determination of the area in which it applies, are matters for Luton Airport."</i>					
13.)	A formal notice under Article 12 (3) (i) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 raising a validation dispute was sent to NHDC Legal Services on 11th November 2023, and NHDC then sent a letter confirming the application was valid on 13th November 2023.	✓		✓		
14.)	Mr Gass was advised on at least four occasions about changing windows at his property: i) Planning Officer email response dated 04/07/2023 (NHDC APPENDIX 13) that making an application for LBC for proposed Upvc double glazed windows, would be unacceptable. ii) Development Management Team Leader's letter dated 06/09/2023 (NHDC APPENDIX 32 m) – first response to complaint af546408728. iii) Development & Conservation Manager's response on 03/10/2023 (NHDC APPENDICES 23 and 32n). iv) Senior Conservation Officer email dated 31/10/2023 (NHDC APPENDIX 14) where options were suggested for either secondary glazing or slimlite double-glazed, timber frame windows with appropriate 'through' glazing bar profiles (i.e., each pane individually glazed), no trickle vents and flush	✓		✓		NHDC comment: Prior to submitting application ref: 23/02418/LBC on 16/10/2023, in his email dated 04/07/23, the Planning Officer informed Mr Gass that like-for-like windows '<i>in appearance and timber framed</i>' would be viewed more favourably. An invalid letter was sent to Mr Gass on 30/10/23 which addressed the description, lack of a Heritage Statement and a request for details of the new windows. The Senior Conservation Officer emailed Mr Gass on 31/10/23 advising on "..... <i>slimlite double-glazed, timber frame windows with appropriate 'through' glazing bar profiles (i.e., each pane individually glazed), no trickle vents and flush casements</i>". Letter sent to Mr Gass on 13/11/23 confirming that appn: 23/02418/LBC is valid. Mr Gass informed twice about timber windows being more appropriate prior to appn: 23/02418/LBC being made valid. Mr Gass comment: NHDC indicated I should apply for listed building consent in their Stage 2 response (see 14a. below),

	casements.					i) In the Planning Officer Response of 4/7/23, again Mr Gass is told that he would need to apply for Listed building consent for UPVC windows. ii) In the Development Management Team Leader's letter dated 6/9/23, again Mr Gass is told he would have to apply for listed building Consent for Upvc windows iii) The Development & Conservation Manager's response on 3/10/23 again directs in the next steps the submission of a Listed Building Consent for Upvc windows. At no stage prior to submitting the Listed Building Consent, which Mr Gass was advised he had to submit on three occasions, did NHDC suggest applying for Listed Building Consent for any other remedy.
14a.)	The Stage 2 complaint response ref AF546408728 by Mr Shaun Greaves on 3rd October 2023 states the following complaint and response: Complaint: An informal response to a general enquiry indicates that Listed Building Consent would not be forthcoming for plastic windows to your property. NHDC response: <i>"I note that you have made a general enquiry concerning the installation of plastic windows to your property. I have reviewed the response and you have been advised to make an application for listed building consent for the proposed windows, albeit the conservation officer's</i>	✓ (in part but not last para)		✓		NHDC comment: Prior to submitting application ref: 23/02418/LBC on 16/10/2023, in his email dated 04/07/23, the Planning Officer informed Mr Gass that like-for-like windows '<i>in appearance and timber framed</i>' would be viewed more favourably. An invalid letter was sent to Mr Gass on 30/10/23 which addressed the description, lack of a Heritage Statement and a request for details of the new windows. The Senior Conservation Officer emailed Mr Gass on 31/10/23 advising on "..... <i>slimlite double-glazed, timber frame windows with appropriate 'through' glazing bar profiles (i.e., each pane individually glazed), no trickle vents and flush casements</i>". Letter sent to Mr Gass on 13/11/23 confirming that appn: 23/02418/LBC is valid. Mr Gass informed twice about timber windows being more

view is that as the existing windows are original and historic that consent is unlikely. However, the only means of obtaining a decision on this matter from this Council is to make an application for listed building consent, at which point any case in support of the proposal would be carefully considered."

Complaint: North Hertfordshire Council has not provided any other resolution to mitigate noise affecting you and your family.

NHDC response: ***"I understand your concerns relating to the matters that you have raised. There are policy considerations and statutory duties placed upon NHC relating to designated heritage assets such as listed buildings. However, you have not made an application for listed building consent to replace the windows to your property, and therefore NHC have not made a formal determination relating to any proposal to replace the existing windows to Keepers Cottage. NHC do not supply grants for such works or administer the application Luton Airport's Noise Insulation Scheme.***

The response includes the following next steps: ***"As I have indicated above, you may apply for listed building consent to replace the windows to your property, and the case that you put forward in support would be carefully considered. However, I should point out that there are relevant planning policies and a statutory duty placed upon local planning authorities when considering such applications, that seek to protect the heritage***

appropriate prior to appn: 23/02418/LBC being made valid.

	<i>significance of listed buildings.”</i> Clearly therefore NHDC did not provide an alternative remedy, and stated the “next step” was to apply for Listed Building Consent which I did on the 16th October 2023, and was, as predicted by Mr Greaves, declined.					
	<i>Counter-Notice Reason 3</i> <i>Not all the 16no. windows considered under application ref: 23/02418/LBC relate to habitable rooms (for example windows W5 and W15) and where the desire to reduce external noise levels may be considered more acute.</i>					
15.)	No further assessment has been made as to how many proposed replacement windows relate to habitable rooms.	√		√		Mr Gass comment: The Listed Building consent application was refused. The next step as highlighted in the decision letter was an application for a purchase notice, not any other assessment. In addition, this is a home not an office, and NHDC confirm this in point 3
	<i>Counter-Notice Reason 4</i> <i>The Listed Building Purchase Notice incorrectly refers to the refusal of planning permission not listed building consent under reference 23/02418/LBC and not all of the land within the owners' interest is subject to the Listed Building Purchase Notice i.e. the separate barn within the same Land Registry title does not form part of the Listed Building Purchase Notice. A Purchase Notice will only apply where the whole of the land has become incapable of reasonably beneficial. Irrespective of this, the council does not accept that the refused listed building consent to replace 16no. existing single-glazed timber-framed windows with white Upvc double-glazed windows has rendered the land in its existing state to become incapable of reasonably beneficial use.</i>					
16.)	North Hertfordshire District Council, hereafter referred to as NHDC, is the Council responsible for dealing with Local Planning and Listed Building Consent for Keepers Cottage, 2A Orchard Way Breachwood Green including applications refs: 23/02418/LBC & 24/00130/PCH.	√		√		

17.)	Listed Building Consent (application ref: 23/02418/LBC) was applied for on 16/10/ 2023, however this was made invalid by NHDC through a letter on 30/10/2023.	✓		✓		
18.)	A formal notice under Article 12 (3) (i) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 raising a validation dispute was sent to NHDC Legal Services on 11/11/2023, and NHDC then sent a letter confirming the application was valid on 13/11/2023.	✓		✓		
19.)	Application ref: 23/02418/LBC was refused on the 18/12/2023.	✓		✓		
20.)	A Purchase Notice was issued in line with the contents of the Listed Building Decision notice on 01/01/2024, sent by email and by special delivery to NHDC.	✓		✓		
21.)	NHDC rejected the Purchase Notice and issued a Counter Notice on the 25/03/2024.	✓		✓		
22.)	On 21/05/2024, the Secretary of State proposed not to confirm the Purchase Notice dated 01/01/2024 (NHDC APPENDIX 37) under section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990.	✓		✓		Mr Gass comment: Planning Inspectorate have subsequently confirmed that the Planning Inspector failed to consider the points submitted by Mr and Mrs Gass before drafting the proposed response. The draft response is in direct conflict with information provided by Mr and Mrs Gass to the Planning Inspectorate.

Signatures to agree Statement of Common Ground

Signed on Behalf of North Hertfordshire District Council

M Simmons

Date: 11 September 2024

Signed by Mr & Mrs Gass

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Date: