

Mr and Mrs Gass
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our Ref : 24/00130/PCH

Contact : [REDACTED]
Direct Line : [REDACTED]
Email : [REDACTED]@north-herts.gov.uk
Date : 25 March 2024

Dear Mr and Mrs Gass,

**Counter Notice to Listed Building Purchase Notice served on North Hertfordshire District Council (s.32-37, s.74(3), & Regulation 12 Planning (Listed Building and Conservation Areas) Act 1990 as amended)
Keepers Cottage, 2A Orchard Way, Breachwood Green, Hitchin, Hertfordshire, SG4 8NT**

As you are aware, [REDACTED] is grade II listed and is a designated heritage asset for the purpose of applying the aims of the NPPF. [REDACTED] was listed on 8 February 1988. In early 2023, Historic England (HE) received your application requesting that [REDACTED] be removed from the List. HE undertook a full inspection on 15 September 2023 and after examining the available records and other relevant information and having carefully considered the architectural and historic interest of the buildings, HE considered that the criteria for listing continue to be fulfilled, a more detailed entry was confirmed, and [REDACTED] remains grade II listed.

Application ref: 23/02418/LBC was received on 16 October 2023 but initially was made invalid and relates to the replacement of 16no. existing single-glazed timber-framed windows with white Upvc double-glazed windows. On 11 November 2023, you served formal notification to North Hertfordshire District Council under Article 12 of the Town and Country Planning Act, disputing the validation process. The application was subsequently made valid and the received dated was made the start date. Listed Building consent was refused on 18 December 2023.

Under item 1 of the Notes on the Decision Notice for appn ref: 23/02418/LBC you have been made aware that you can appeal to the Secretary of State within 6 months of the date of the decision notice i.e. up until 17 June 2024. There is no record of an appeal being lodged, which is a route that was not exhausted prior to the Purchase Notice being served.

Under Section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990 where listed building consent in respect of a building is refused, the owner may, within the prescribed time and in the prescribed manner, serve on the council (in this case North Hertfordshire District) a notice (in this Act referred to as a "listed building purchase notice") requiring North

Hertfordshire District Council to purchase the owner's interest in the building and land in accordance with sections 33 to 37.

On 1 January 2024, you served a Listed Building Purchase Notice on North Hertfordshire District Council requesting that this council buy your interest in the land. Regulation 12 of the Town and Country Planning General Regulations 1992 requires the Owner to serve the council by delivering it at the offices of the council or by pre-paid posts (and not email); but in any event, the council has waived this prescribed procedural requirement. The Notice refers to planning decision ref: 23/02418/LBC dated 18 December 2023 refusing planning permission. The decision by North Hertfordshire District Council actually relates to the refusal of Listed Building Consent under application ref: 23/02418/LBC to *'Replace 16no. existing single-glazed timber-framed windows with white Upvc double-glazed windows'*.

It is claimed in the Notice that:

- a) the land has become incapable of reasonably beneficial use in its existing state; and
- b) it cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which permission has been granted or is deemed to be granted, or for which the local planning authority or the Secretary of State have undertaken to grant permission.

The onus is on the person serving the notice to show that the land in its existing state, taking into account operations and uses for which planning permission (or listed building consent) is not required, is **'incapable of reasonably beneficial use'** and to supplement the council with sufficient evidence of the fact the land is incapable of reasonable beneficial use.

As stated in the amended entry on the Statutory List of Buildings of Special Architectural or Historic interest, [REDACTED], built in the C17 or earlier, has previously been extended around 1890, 1910, 1979, and 1989. Since the date of listing, conditional planning permission and listed building consent were granted in January 1989 for a side extension for a double garage (88/02006/1 and 88/02007/1LB). Planning permission and listed building consent were sought in 1997 and granted for a single storey link to the existing sunroom and conversion of the garage to provide elderly persons accommodation (97/00827/1HH and 97/00828/1LB). This all points to a building that has undergone several changes over the last 130 years and has continued to enjoy a residential use throughout this period. At no point since listing or indeed prior to listing is there evidence to suggest that [REDACTED] did not benefit from a residential use.

Application ref: 23/02418/LBC was submitted in part as a response to the existing noise pollution from London Luton Airport (as [REDACTED] sits within its flight path) and partly resulting from the proposed expansion of Luton Airport which is a Nationally Significant Infrastructure Project. It should be noted that North Hertfordshire District Council (NHDC) is not the determining authority for the current expansion plans and is a process managed by the Planning Inspectorate.

The London Luton Airport Noise Insulation Scheme is intended to address the Airport's impact on occupiers of properties. [REDACTED] would be eligible for limited assistance towards new double-glazed windows. An acoustic report that indicates that the noise levels are such that the existing residential use cannot continue has not been provided in support of The Notice. You have dismissed two options for improving noise insulation i.e. secondary glazing or well-detailed, timber-frame, slimlite glazed windows. You state that the proposed UPVC double glazed windows are required to provide noise insulation to retain the property in a habitable state, however, not all of the 16no. replacement windows relate to living rooms,

dining rooms, kitchen-diners and bedrooms where the desire to reduce external noise levels may be more acute (for example windows W5 and W15).

The remedy by way of a purchase notice is not intended to be available whereby owners believes that they are unable to realise the full development value of their land. The MHCLG guidance for compulsory purchase gives helpful guidance at paragraph 303, which confirms that planning authorities are to take into account the market value of the land in its existing state, and at paragraph 304, confirms that owners are expected to provide evidence to show that they have attempted to dispose of their interest in the land before it could be said that the land had become incapable of reasonably beneficial use; and there has been no evidence from you to confirm the position.

In compliance with Section 33(2) of the 1990 Act, a notice under subsection (1) must be served before the end of the period of three months (in this case 1 April 2024) beginning with the date of service of the listed building purchase notice.

Under Section 33 (1)(c) of the 1990 Act, for reasons so specified, North Hertfordshire District Council considers that [REDACTED] is found to be capable of 'reasonably beneficial use', therefore, is not willing to comply with the purchase notice and has not found any other local authority or statutory undertakers who will agree to comply with it in its place.

The following statement of reasons form **North Hertfordshire District Council's Counter-Notice:**

Reason 1

The fact that [REDACTED] 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 [REDACTED] 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.

Reason 2

The Guidance on Compulsory Purchase process and The Criche 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, [REDACTED] 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 slimline 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.

Reason 3

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.

Reason 4

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 confirm that a copy of the refused listed building consent, your original purchase notice with supporting documents, a copy of this counter-notice letter and all other relevant documentation has been sent in advance to the Planning Inspectorate on behalf of the Secretary of State to be reviewed in accordance with statute requirements.

Yours faithfully



Development and Conservation Manager

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