APPENDIX C

THE LAWFUL USE OF THE APPEAL SITE

1. As part of its appeal statement of case, the Appellant has stated that it does not accept the decision of Inspector M Bale dated 11 July 2025 (PINS ref. APP/H5960/X/25/3358768) in which he dismissed the Appellant's appeal against the LPA's refusal of a certificate of lawfulness which sought to confirm that use of the site as temporary accommodation was lawful ('**CLEUD Appeal**').

2. The decision was made only three months ago. It is subject to legal challenge. The Secretary of State and the LPA consider that challenge to be unarguable. In any event, unless quashed the decision should be treated as lawful.

3. It is entirely unclear from the appeal material how far the Appellant wishes to pursue its case on its asserted lawful use of the site as part of this appeal. Re-running its case on lawful use would undoubtedly mean extending the necessary time for the Inquiry beyond its current listing. Further, given this matter has been recently determined following a five day planning inquiry, it would patently be unreasonable for the Appellant to pursue this matter again as part of this appeal and it would undoubtedly cause the Council to incur wasted expense.

4. It is noted that the Appellant has put forward no real positive case on the matter as part of its appeal material, other than that it disagrees with the previous inspector. It has not, for example, provided the vast majority of the evidence it relied upon before the CLEUD Appeal or indicated that it will rely upon such evidence. However, as the Appellant has indicated that it maintains its position on the lawful use of the site, the Council considers that it is necessary for it to respond and for the information of the Inspector. It does so in a proportionate manner in light of the paucity of material which has been submitted by the Appellant and the lack of clarity as to whether and how the Appellant intends to pursue this point. The Council will respond to additional material submitted by the Appellant as necessary.

5. The Appellant is therefore requested to confirm as soon as possible whether it intends to pursue its case on the lawful use of the site as part of this Appeal.

6. At the CLEUD appeal, the Appellant argued that its proposed use was lawful based upon two 'routes':

    a. Route 1

        i. The historic planning permission for the site was for a 'hostel';
        ii. There has been no material change of use since that time; and
        iii. Its proposed use falls within this lawful use.

    b. Route 2

i. The lawful use of the appeal site is as student accommodation; and
ii. Its proposed use would not be a material change of use.

7. Both of these arguments were rightly rejected by the Inspector in the CLEUD Appeal. However, given the fact that the Appellant appears to be maintaining its position it is necessary to briefly set out the Council's case on each of the above points.

The Historic Permission

8. The historic documents before the CLEUD Appeal indicated that permission was granted in c.1960 to facilitate Garnett College.

9. At DL[17] of the decision in the CLEUD Appeal ('**CLEUD Decision**') it is recognised that it was unclear how permission was granted for the site but noted that the actual route for granting permission matters little because of the absence of documentation.

10. The Inspector considered the relevant documentation, together with what he termed 'typical planning layout drawings' (DL[18]) and noted at DL[23] that the historic records showed that the site was 'intended to provide accommodation for students, alongside the teaching facilities at Downshire House'.

11. The Inspector then considered the particular documents to which the Appellant argued greater weight should be given:

"25. Of these, a report of 19 February 1959 by the London County Council ("LCC") architect to an education and Town Planning sub-committee referred to development for hostel purposes. However, even in that planning report, terms are used somewhat freely and later the report refers to the provision of accommodation for 240 students 'in the halls of residence', and clearly describes the second element of the proposal as being for the provision of 'hostel accommodation for training college students'. The ultimate recommendation was (so far as relevant) to approve plans for 'training college and students' hostel purposes'.

26. On 9 March 1959, a LCC Town Planning Committee minute notes that outline proposals for the development of Downshire House and Mount Clare for training college and students' hostel purposes were approved. On 16 May 1960 the LCC Town Planning Committee minutes record a recommendation for approval of a scheme for a training college and hall of residence.

27. It appears that the Council of the London Borough of Wandsworth's ("WBC") Town Planning Committee were consulted on the proposals on 8 July 1960. A report to that committee contains un-headed columns that generate some uncertainty over the meaning of their contents, but the subsequent report referred simply to hostel buildings. However, it appears that LCC were responsible for the decision-making process, and their documents refer to halls of residence or student hostels. In any event the WBC report was describing a training college and ancillary buildings with the proposals for the two sites related to one another.

28. Thus, the terms used by LCC – notably including the minute recording approval of the outline proposals – consistently refer to either a student hostel or student accommodation. It is that description rather than a label on the plan that is more likely to define the scope of any permission or deemed consent given. While, where a broad use is permitted, it is usually necessary to place any restriction on that use with planning conditions (and there is no evidence of any in this case), it has not been shown that such should apply where, like here, a clearly qualified sui generis use is involved.

29. It is relatively uncontentious that the evidence then appears to indicate that the development was carried out, the Site was occupied as accommodation for Garnett College, and this continued for a period of time. Therefore, in the absence of any actual record of the permission or consent sought or given, **I find it more likely than not that the development of the Site was permitted for a student hostel rather than an unqualified one**." (emphasis added)

12. This finding of the Inspector is not challenged by the Appellant as part of its High Court proceedings (Appendix 7 to Appellant's Statement of Case).

13. As part of these proceedings the Appellant has produced an additional historic document which it says is the deemed planning consent for the Alton Estate (Appendix 6 to Appellant's Statement of Case). It seeks to argue that this demonstrates the likely absence of conditions upon a permission. This takes the Appellant nowhere. The issue is not what conditions would have been attached to a consent but what the consent was actually for.

14. As was stated in the LPA's closing submissions to the CLEUD Appeal:

"66. The use for which a planning permission is granted must be ascertained by the words in the planning permission itself (per Sullivan LJ in *Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563 at para. 26).

67. In *I'm Your Man v Secretary of State for the Environment* (1999) 77 P. & C.R. 251, the High Court established that limitations on a planning permission must be provided by condition. However, that case and the line of jurisprudence following it deals only with the 'interpretation of planning permissions that truly fall within their reach' (see Lindblom LJ in *Barton Park Estates Ltd v Secretary of State for Housing Communities and Local Government* [2022] EWCA Civ 833 and the discussion of *Winchester City Council* at paras. 32-38). Thus, the *I'm Your Man* line of jurisprudence is not relevant where the allegation is that there has been a material change of use. This is not addressed at all in the appellant's counsel opinions.

68. The facts of *Winchester City Council* are instructive. In that case the description of development in the relevant permission was 'change of use of agricultural land to a travelling showpeoples' site'. No occupancy condition was imposed. The enforcement action alleged a material change of use from 'use as a Travelling Showperson's site to a use for the siting of caravan/residential mobile homes for occupation by persons who

are not Travelling Showpersons'. Sullivan LJ highlighted that the unifying feature in the *I'm Your Man* authorities was that the use had remained the same. Whereas, in *Winchester*, the allegations were that there had been a material change of use and therefore the question in every case would be: 'has the alleged change of use taken place and, if so, is it a material change of use for planning purposes?'

69. At paragraph 26, Sullivan J stated:

> '26. […] The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission. If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use.'

70. Here, it is clear that it is more likely than not that the permission would have been for a training college including halls of residence/student accommodation. The question is whether the provision of a use which amounts to 'temporary accommodation' (in all its potential guises, see above) would be material or not. That question does not depend on what conditions were or were not applied to any permission. The *I'm Your Man* jurisprudence therefore simply does not assist the Appellant in the way it suggests. The failure of their legal opinions to deal with *Barton Park* and *Winchester City Council* is notable and material."

15. The CLEUD Appeal Inspector found that permission would have been for a student hostel. Thus, evidence of whether or not a permission granted in 1960 would or would not have been subject to planning conditions simply does not assist the Appellant.

16. Overall, there is nothing to displace the conclusion of the CLEUD Appeal Inspector with regards to the use which was permitted in 1960.

17. In the event that the Appellant continues to argue that permission was granted for a bare hostel use then the Council reserves the right to rely upon all of the evidence before the CLEUD Appeal, including all of the historic documents.

Has there, in any event, been a material change of use of the Site since 1960?

18. The Appellant and LPA agree that the relevant planning unit against which a material change of use should be considered is the entirety of the site.

19. The University of Roehampton ('**UoR**') has been in occupation of the site since c.2001. As noted by the Inspector there was "very little clarity over what the University of Roehampton were doing on the rest of the Site" (i.e. other than the accommodation blocks) (DL[32]).

20. At DL[34] the Inspector addressed a 2014 photograph which was produced by the LPA as part of its planning evidence. He stated:

"34. However, a 2014 photograph from the London Parks and Gardens website shows a totem sign to the front of Mount Clare House. Care should be taken when relying on a single photograph of the outside of the building at one snapshot in time. Nevertheless, the sign appears to announce the occupation of Mount Clare House by the University of Roehampton Department of Property & Facilities Management. It describes a meeting room on the lower ground floor, alongside the environment team. On the ground floor, the conferencing & hospitality team, accommodation office and finance team are listed. On the first floor a visitor reception, university head of security, projects team, university domestic services and university ground & waste management team, as well as another, illegible, team are listed.

35. The names of the various teams on the sign are of a type often aligned with administrative functions. The sign supports Mr Curtin's description of Mount Clare House as having evidence of a previous office use. It also aligns with local resident Mr Mills' recollection of visiting a former lecturer of his, now involved in what he described as the 'greening of the university', in an office there, and Mr Sahota's understanding that there were once administrative functions there.

36. The University of Roehampton may have very many buildings available to house its administrative functions. However, Mount Clare House would have been one such building at its disposal, able to house a department with specific responsibilities. There is no substantive evidence from the University of Roehampton about how they used the site and Mr Sahota confirmed that he has not asked them about their use. The university's own letter of 13 March 2025 makes no detailed reference to Mount Clare House or Picasso House and blandly states that 'the buildings at Mount Clare have been used for a number of purposes over the years in addition to student accommodation'. No further detail is given.

37. While some functions may have related to activity at the Site, it seems rather unlikely that whole teams of the type described would be needed to provide support ancillary only to the accommodation blocks, or related to works only at the Site. Indeed, while he did not know how the office space had been used, or whether it would have been ancillary to the accommodation blocks, Mr Curtin confirmed that he had not needed to provide space for such facilities in other student accommodation projects with which he had been involved."

21. The Inspector then went on to address some other uses at Picasso House:

"38. At the site visit, it was evident that large parts of the ground floor of Picasso House also appear to be in use for storage. Some of the items appear to be kitchen appliances and the like that may well be for use in the ongoing refurbishment of the accommodation blocks at the Site. Other items appear to include university branded paraphernalia relating to the control of Covid-19 that could have been used in connection with the accommodation units at the Site, or elsewhere. However, other parts are laid out as filing

rooms (labelled as University of Roehampton storage) and there is no substantive evidence about what this relates to.

39. In addition, one corner of Picasso House has been refurbished and laid out as office/consultation space for the Citizens' Advice Bureau ("CAB"). Google Street View photographs show that it has been at the site since 2019 and there is no particular evidence that it was an ancillary support service specifically for the residents of the accommodation units at the Site. Indeed, there is currently no residential occupation of the site and the CAB office use has clearly continued beyond vacation of the accommodation blocks, given that it was open and operating at the time of my site visit."

22. Ultimately the Inspector concluded:

"41. With regard to the above, | conclude that the evidence makes it more likely than not that during the University of Roehampton's occupation, uses have been brought onto the Site that are related to wider university functions (both the office uses of Mount Clare House and storage uses of Picasso House), and also to private business operations (CAB) within Picasso House.

42. At this time, those spaces ceased to be used for purposes ancillary to the accommodation units. While the overall spaces/numbers of rooms in these other uses are relatively small compared to the available floorspace on the Site as a whole, these are disconnected uses. Thus, even if the uses have not continued for long enough to have become lawful in their own right, I find it more likely than not that this caused a material change of use of the Site to a mixed use including student accommodation, storage, and office uses."

23. At the CLEUD Appeal the Appellant agreed that a mix of uses which included offices would be a material change of use away from the historic permitted use. It is noted that it does not seek to argue any differently as part of this appeal. The Council would simply state that a change of use from either a hostel or student hostel to a mixed use including student accommodation, storage and office uses would obviously be material. If necessary, the Council will address this point further in evidence.

24. As part of this Appeal, the Appellant has submitted an additional letter from the UoR dated 21 August 2025 (Appendix 9 to its Appeal Statement of Case). It is noted that this letter does not state that any of the Inspector's appeal decision findings were wrong with regards to the UoR's previous use of the site. At paragraph 5 it states:

"Throughout the University's occupation, the Mount Clare site was operated as a residential facility. <u>All buildings were used in direct support of student accommodation and related functions</u>, <u>with associated administrative functions situated in Mount Clare House</u>. None of the buildings were used for university teaching and research." (emphasis added)

25. This statement is not inconsistent with the Inspector's findings and it is notable that the UoR does not dispute the fact that Mount Clare was in an office use which served the

wider university. Further, the statement at paragraph 5 wholly leaves out of account the Citizens Advice Bureau on the ground floor of Picasso House which is a separately leased area of the site which serves the wider community.

26. Further, at paragraph 10, the letter sets out a table which it states are the historic uses of the individual buildings. With regards to Mount Clare it confirms that it was used as office space 'in support of our student accommodation' but it does not state that this was exclusive to the Mount Clare campus or solely ancillary to the student use of the site (such a position would obviously be inexplicable given the evidence of office use which was before the CLEUD Inquiry). Further, it confirms that since 2021 Mount Clare house has been used for other uses, including as a filming location. This is obviously not ancillary to a student accommodation use. The table further confirms the Citizens Advice Bureau and storage use of the ground floor of Picasso House. Again, neither of these is ancillary to the student accommodation. In particular, it can be noted that these uses are continuing despite the fact that students have not been accommodated at the site since 2021.

27. Overall, it is considered that the UoR letter does not gainsay any of the findings of the CLEUD Appeal Inspector on the fact that the site has been the subject of a material change of use during the tenure of the UoR.

28. As with the issue of the historic permission, it is not considered proportionate at this stage for the Council to introduce to this Inquiry all of the evidence which was called on this issue before the CLEUD Appeal Inquiry. Particularly given the fact that it is unclear how far the Appellant wishes to pursue this case and the fact that the Appellant has not relied upon the evidence it previously provided. In the event that the Appellant does wish to pursue a case that there has been no material change of use of the site then the Council reserves the right to re-present all of the evidence it relied upon before the CLEUD Appeal Inquiry.

29. At paragraph 4.6 of its Appeal Statement of Case the Appellant states:

"The Appellant contests that whilst the Inspector noted other uses on Site, he did not conclude that these were in any way the lawful uses and the recent University of Roehampton letter would point to these uses not being lawful".

30. It appears from the above that the Appellant does not dispute the fact that there has been a material change/material changes of use at the appeal site but argues that these uses must be lawful (i.e. have persisted for ten years) in order to supplant the previously permitted use of the site. That is simply wrong as a matter of law.

31. The fact that there has been a material change of use at the site to a mixed use is fatal to the Appellant's case on lawful use which depends upon the site being in a lawful hostel use. This is the case even if that mixed use has not persisted for ten years. This was explained at the CLEUD Appeal as part of the LPA's closing submissions:

"86. …section 55(1) TCPA 1990 provides that 'making any material change in the use of any buildings or other land' is development. Section 57 provides some exceptions to this. It provides, for example at s57(4) that '[W]here an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out'. In *Young v Secretary of State for the Environment* [1983] 2 AC 662 the House of Lords confirmed that this only allows reversion to the use which was immediately before the development which was the subject of the enforcement notice and only if that use was lawful.

87. What s57(4) and *Young* indicate is that once a material change of use has been made from one use to another which is different in character, there is no 'automatic' right to revert to a previous lawful use (as confirmed by HHJ Hickinbottom (as he then was) in *R(oao William Newland) v Secretary of State for Communities and Local Government* [2008] EWHC 3132 (Admin) at para 15(iii)). The reversion itself will be a material change of use unless it falls within one of the exceptions in s57, of which s57(4) is one. In other words, a material change of use away from an unlawful use is still a material change of use and therefore development under s55(1) TCPA 1990 unless it falls within an exception under the statutory scheme. Here the exception in s57(4) cannot apply because no enforcement notice has been served. If it were to be served then the occupier could revert to the use which was immediately preceding the use enforced against but only if that use is lawful."

32. The evidence clearly demonstrates that the site has been the subject of at least one material change of use since its occupation by the UoR and this does not appear to be disputed by the Appellant. Even if the Appellant were correct that the historic permission was for a 'hostel' (which it is not for the reasons set out above) then its lawful use case would fail due to the fact that it has not remained in a hostel use since that date and there has been at least one material change of use away from that use.

33. It is further necessary to state that the Appellant has not demonstrated that the site benefits from any lawful use. Whilst the student accommodation blocks appear to have been used as such up until 2021, the uses of Mount Clare house and Picasso House, which form substantial parts of the same planning unit, have changed over time. With regards to Mount Clare, as noted in the CLEUD Appeal Inspector's decision this has been in a university-wide office use (not ancillary to student accommodation) but it has also more recently been used as a film location. The exact makeup of uses within Picasso House also appears to have changed. It is notable that the Citizens Advice Bureau has only been present since 2019.

34. On that basis it is the Council's position that the Appellant has not demonstrated that the site benefits from any lawful use (i.e. one which has persisted in excess of ten years and is immune from enforcement).

In any event, is the proposed use for temporary accommodation materially different from student accommodation?

35. Even if it were the case that the lawful use of the entire planning unit was as student accommodation by virtue of the UoR's long use (which is obviously not the case for the reasons set out above) then it would be necessary for the Appellant to demonstrate that its proposed use would not amount to a material change of use.

36. This was considered by the Inspector at DL[45]-[63] and the Inspector concluded that:

"63. Therefore, even in a scenario where a mixed use of the site had not been instituted, the use as a hostel for temporary accommodation would result in a material change of use of the Site. In any event, the change from a mixed use to the single use described certainly is. The making of a material change of use is development requiring planning permission and none has been obtained. The proposed use would not, therefore be lawful."

37. Ultimately, it is obvious that the proposed use would be materially different to student accommodation. In the event that the Appellant intends to pursue this case before this appeal then the Council will call evidence on this issue. Its evidence will explain that the CLEUD Appeal Inspector's ultimate conclusion was correct. The material differences between the uses include:

a. Demographics;

i. The student use has been by individuals all in individual rooms. The proposed use would host couples and families and can be configured to facilitate this. The presence of children in the proposed use is clearly indicative of a material change of use given their particular needs for facilities and services (the provision of play equipment is indicative of this);

ii. The presence of couples (and families) has the potential to significantly intensify the use of the site even over and above the increase in room numbers; and

iii. With regards to age, an undergraduate is likely to be under the age of 21, whereas the age of those in temporary accommodation is a much broader range,

b. Common Endeavour;

i. The residents in temporary accommodation would have no connection to each other save for the fact that they are housed in the same location. This is in stark contrast to a university cohort which arrive into university at the same time and would live together for the next year. They are united in common endeavour.

c. Configuration of accommodation;

i. As set out above, the student accommodation was configured as individual bedrooms with shared bathrooms and kitchens. The students were sharing their living spaces. The proposed use involves self-contained stand-alone units of accommodation which include bathrooms and small kitchenettes. Again, this points to a different character and a material change of use,

d. Length of Stay and Pattern of Stays;

i. A university cohort is likely to arrive at the same time and remain for a year (save for university holidays). A temporary accommodation use will have people coming and going at different times of the year and throughout the year; and

ii. The fact that university students are likely to leave for the holidays is clearly materially different from the temporary accommodation residents. Of course, the temporary accommodation residents may well leave to visit relatives or friends throughout the year but this is highly unlikely to occur for all residents at once,

e. Primary vs Secondary Residence;

i. A student bedroom is likely to be a secondary place of residence for a student. This is not the case for those who are housed in temporary accommodation. This has implications for the appropriateness of room sizes;

f. Trip generation/centre of gravity;

i. The university campus is host to a number of facilities. These include lecture halls, shops, cafes, bars, a library and very attractive grounds. The main centre of gravity of students is likely to be the main campus buildings. Whilst students would use some local facilities their lives are likely to centre around the university, as opposed to the Danebury Avenue shops, for example. This is clearly different in character from the temporary accommodation residents who have no access to the university campus and whose lives and patterns of movement will be entirely different;

g. Use of facilities and services including in light of likely needs of residents;

i. Students would have access to various facilities as part of the University Offer including health services, libraries, bars, cafes, sports facilities etc. This is not the case with regards to temporary accommodation residents who would rely solely upon local services; and

h. The two uses are treated differently in policy terms.

38. The LPA has considered the latest letter from the UoR in this regard. It is noted that it makes very general comments with regards to the nature of the University's use of the site and its accommodation generally, and provides very little detail of the actual use of the student accommodation at Mount Clare. The information provided does not significantly add to the material which was before the CLEUD Appeal Inspector, nor does it gainsay the findings of the Inspector.

Concluding Remarks

39. Overall, it is clear that the Appellant's proposed use is not lawful and requires planning permission to be granted. Further, the Appellant has not demonstrated that the site benefits from any lawful use.

40. As stated above, the Appellant's appeal material is unclear as to whether and how far it wishes to pursue its case on the lawful use of the appeal site as part of its appeal. In the event it is seeking to re-run the case it has already recently had decided, then the Council will address this in full within its evidence. However, it is considered that such behaviour on behalf of the Appellant would be unreasonable and would result in the Council incurring wasted costs.