

SOUTH NORFOLK COUNCIL

APPEALS UNDER S.78 & 174 OF THE TOWN AND COUNTRY PLANNING ACT 1990

APPEALS BY: Deal Farm Biogas Limited against (1) the refusal of planning permission for Construction of an Anaerobic Digestion facility (part retrospective), comprising: 1 no. digester tank and 1 no. secondary digester/digestate storage tank, silage clamps, liquid and dry feed system; digestate separation, handling and pasteurization, biogas upgrading and mains gas-grid connection; carbon capture, CHP, agricultural building; office buildings, weighbridge, 2 no. covered digestate storage lagoons, and associated plant, vehicular accesses, roads and landscaping (including earth bunds) and (2) the serving of an enforcement notice issued under reference 2021/8158 by South Norfolk Council following refusal of the planning application.

APPEAL SITE: Deal Farm, Kenninghall Road, Bressingham, Norfolk

PLANNING INSPECTORATE REFERENCE: APP/L2630/W/23/3324060 & APP/L2630/C/23/3327112

LOCAL PLANNING AUTHORITY REFERENCES: 2022/1108 (refused planning application) and 2021/8158 (enforcement notice)

LOCAL PLANNING AUTHORITY STATEMENT OF CASE

1. INTRODUCTION

1.1 This Statement of Case relates to: (1) the appeal (“the Planning Appeal”) against the decision of South Norfolk Council (“the Council”) to refuse Deal Farm Biogas Limited’s (“the Appellant”) application for “*Construction of an Anaerobic Digestion facility (part retrospective), comprising 1 no. digester tank and 1 no. secondary digester / digestate storage tank, silage clamps, liquid and dry feed system, digestate separation, handling and pasteurization, biogas upgrading and mains gas-grid connection, carbon capture, CHP, agricultural building; office buildings, weighbridge, 2 no. covered digestate storage lagoons, and associated plant, vehicular accesses, roads and landscaping (including earth bunds)*” (Council reference 2022/1108; “the 2022 Application”; “the 2022 Application Scheme”) at Deal Farm, Kenninghall Road, Bressingham (“the Site”) and (2) the appeal (“the Enforcement Appeal”) against the enforcement notice issued under reference 2021/8158 (“the Enforcement Notice”) served on the Appellant by the Council following refusal of the planning application which required, inter alia, the permanent ceasing of the use of all parts of the Site as a partially built anaerobic digestion facility and the removal from the Site of the unauthorised development which consisted of a partially built anaerobic digestion facility (“the Unauthorised Scheme”) (together, the Planning Appeal and the Enforcement Appeal referred to as “the Appeals”).

1.2 This Statement of Case should be read in conjunction with:

- The planning permission with reference 2015/0595 ("2015 Permission") relating to the construction of an anaerobic digestion facility ("2015 Permission Scheme");
- The Officer Report to Committee (including update) relating to the 2022 Application ("First Committee Report");
- The minutes of the Council's Development Management Committee;
- The Council's Decision Notice in respect of the 2022 Application ("Decision Notice").
- The Officer Report to Committee ("Second Committee Report") relating to the CLOPUD application with reference 2023/1375 ("CLOPUD Application");
- The Council's Decision Notice in respect of the CLOPUD Application ("CLOPUD Decision Notice");
- The consultation responses of the highway authority (Norfolk County Council) to the 2022 Application dated 25 August 2022 and 28 November 2022;
- The Enforcement Notice dated 12 July 2023 ("Enforcement Notice");
- The Appellant's Statement of Case in relation to the 2022 Application ("Appellant's First Statement"); and
- The Appellant's Statement of Case in relation to the Enforcement Notice ("Appellant's Second Statement").

1.3 The 2022 Application was assessed on the basis that the 2015 Permission had not been lawfully implemented and had, therefore, expired. This was the conclusion reached by the Council in the CLOPUD Decision Notice. The baseline vehicle movements were therefore considered to be those associated solely with the agricultural use of the Site. Further information regarding the 2015 Permission is set out in below in this Statement of Case.

1.4 Even if it had been determined that the 2015 Permission could be built out, the Council would nevertheless have refused the 2022 Application and served the Enforcement Notice on the basis that the landscape and highways impact would be more substantial if the 2022 Application Scheme or the Unauthorised Scheme were built out when compared with the scheme under the 2015 Permission Scheme. The Council would also have concerns about the capacity of the anaerobic digestion facility under the 2022 Application Scheme and in particular whether the Council would be able to enforce conditions restricting capacity of the same.

2. **LOCATION AND DESCRIPTION OF SITE**

2.1 The Site is located in the parish of Bressingham and Fersfield around 1.5km north of the main part of the village of Bressingham. The location of the Site is rural in character and is accessed through a network of narrow country lanes.

2.2 At the Inquiry, the Council will provide a detailed description of the Site and its surroundings. This will include reference to views of the Site from the surrounding public rights of way network together with an assessment of the impact of the proposed development on the landscape, character and quality of the area.

2.3 The Council will also provide a detailed description of the local highway network in order to support the understanding of the concerns raised by the Highway Authority about the impact of the proposal on highway safety.

3. **RELEVANT PLANNING POLICIES**

3.1 Confirmation of the planning policies in the Local Plan and the National Planning Policy Framework ("NPPF") that are relevant to the Appeals are set out in the First Committee Report that was forwarded to the Planning Inspectorate with the Appeal questionnaire

for the Planning Appeal. In addition to the policies listed in the First Cabinet Report, the Council consider that policies DM3.14 (Pollution, health and safety) and DM4.2 (Sustainable drainage and water management) of the South Norfolk Local Plan Development Management Policies document are relevant. Relevant policies are taken from the South Norfolk Local Plan, Joint Core Strategy (JCS) for Broadland, Norwich and South Norfolk Councils (known as the Greater Norwich Authorities) and the NPPF.

- 3.2 The Written Ministerial Statement dated 17 December 2015 is also relevant. This states that intentional unauthorised development is a material consideration which is to be weighed in the determination of planning applications and appeals.

4. **THE PROPOSAL**

- 4.1 The Planning Appeal seeks to gain retrospective permission for the construction of two digester tanks, three silage clamps and various items of plant that have been constructed, as well as a new access and bund on the eastern boundary. In addition, the Planning Appeal seeks planning permission for the erection of some remaining elements of plant, plus the construction of two lagoons, one proposed 385 metres to the north-east and one proposed 640 metres to the south.

- 4.2 The Appellant has submitted with the Planning Appeal a range of new material which has also been submitted in relation to a new planning application with reference 2023/1375 ("2023 Application"). The Council also notes that at paragraph 12 of the Appellant's First Statement it states:

"It should be noted that the Appellant is not formally proposing any alternative scheme to that contained in the Refused Application, or that any alternative details or options are considered as part of this appeal at the current stage. However, discussions with the Council concerning the Resubmission are ongoing and therefore the Appellant reserves its position in this regard."

- 4.3 The Council notes that the Appellant therefore remains uncertain as to the acceptability of the 2022 Application Scheme and seeks to reserve the ability to make further amendments to the 2022 Application Scheme as part of the Planning Appeal. The Council reserves the right to respond to any applications which the Appellant may make in relation to amendments or alterations to the 2022 Application Scheme.

5. **RELEVANT PLANNING HISTORY**

- 5.1 The majority of the planning history is as set out in the First Committee Report. However, since the refusal of the 2022 Application in December 2022, Storengy UK Limited submitted the CLOPUD Application under s.192 of the Town and Country Planning Act 1990 ("the TCPA") for "*Demolition and removal of the anaerobic digestion facility and the construction of another anaerobic digestion facility in accordance with planning permission 2015/0595*" which was refused on 22 June 2023 for the reasons set out in the CLOPUD Decision Notice.

- 5.2 In paragraph 22 of the Appellant's First Statement, the Appellant asserts that there is a "*legitimate fallback development that may be built out pursuant to the 2015 permission*". The Council does not consider that the 2015 Permission represents a fallback and to support this assertion will rely on the refusal of the CLOPUD Application referred to and will rely on expert anaerobic digestion advice to demonstrate that there

is no “real prospect” that the 2015 Permission can be brought forward (*Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314).

- 5.3 At the time of drafting this Statement of Case, no appeal has been lodged against the refusal of the CLOPUD Application.
- 5.4 Following the refusal of the Application, the Enforcement Notice was served on 12 July 2023 in respect of the Site. The Enforcement Notice requires the removal of the Unauthorised Scheme from the Site and the cessation of the use of the Site as a partially built anaerobic digestion facility. The Enforcement Notice provides a compliance period of 15 months.
- 5.5 The Appellant appealed the Enforcement Notice under sections 174(2)(c) and 172(2)(f) of TCPA on 2 August 2023. Paragraph 21 of the Appellant’s Second Statement says *“The Appellant’s arguments in respect of this Appeal against the Enforcement Notice are based on the Appellant’s firm view that the 2015 Permission has been lawfully implemented, and therefore such implementing works (and any further development carried out in accordance with the terms of the 2015 Permission) would be lawful and hence immune from enforcement action.”*
- 5.6 A further part retrospective application (ref: 2023/0087) (“2023 Application”) was validated by the Council in June 2023. This is described as a *“revised application following refusal of planning application 2022/1108, to include revised digester roof design and lagoon options”*. The 2023 Application is currently undetermined. At the time of preparing this Statement of Case, a number of technical issues relating to environmental impacts have been raised by consultees which remain unresolved. These concern, amongst other things, noise, and the impact of the pipeline routes on ecology. In addition, some key consultees are yet to respond with their comments including the highway authority.

6. **EXPLANATORY COMMENTS**

- 6.1 The Council considers the main reasons for refusal for the 2022 Application are likely to be main issues for consideration in the determination of the Planning Appeal:-
- (a) The inadequacy of the highway network serving the Site;
 - (b) The inadequacy of the transport information to demonstrate that the proposed development will not be prejudicial to the satisfactory functioning of the highway and highway safety;
 - (c) The visual and landscape character impact of the domes and the West Lagoon; and
 - (d) That these detrimental impacts outweigh the benefits of the renewable energy generated by the proposed development.
- 6.2 Further, as set out below, the Council has been advised that the 2022 Application does not appear to include a biofilter which would be required in order to control smells from the pasteurisation stage of the anaerobic digestion. The Council therefore asks the Appellant to clarify its position in relation to this. If such a unit is required and is not provided then the Council considers that odour may also form a main issue in relation to the appeal.

- 6.3 In regard to the Enforcement Appeal, the Council considers that the main issues for consideration are whether a breach has occurred and the extent of the requirements of the Enforcement Notice to remedy any such breach.
- 6.4 Since the Appellant lodged the Appeals, the Council has sought the advice of an expert in the field of anaerobic digestion and he has provided advice in relation to the 2015 Permission Scheme and the 2022 Application Scheme.
- 6.5 The Council's expert has advised that, even if the 2015 Permission has been implemented and remains extant, it is unlikely that the 2015 Permission Scheme could be built out because:
- (a) It is unlikely that the 2015 Permission Scheme would be financially viable due to amendments to the Government's support tariffs regime for anaerobic digestion facilities (the Green Gas Support Scheme);
 - (b) The plans for the 2015 Permission are inconsistent with one another (this is addressed further below);
 - (c) There are various practical issues that have not been addressed by the Appellant including the proximity of the proposed 2015 Permission Scheme to a fresh water pond and changes to the Government green gas support scheme;
 - (d) The 2015 Permission Scheme omits engineered infrastructure which would be required in order for the 2015 Permission Scheme to be permitted by the Environment Agency this includes silage clamp perimeter drainage; and
 - (e) There are concerns (which have been acknowledged by the Appellant at paragraph 2.2 of the Planning Statement to the 2022 Application) about the ground conditions where the tanks would be situated under the 2015 Permission Scheme.
- 6.6 The Council's expert has also raised some additional issues with the 2022 Application:
- (a) the calculations relating to feedstock input and electrical output in the 2022 Application are incorrect and in fact approximately 83,825 tonnes of feedstock would be required in order to produce the targeted 39,000MWh of electricity per year, which is around 3.5 times more than the feedstock limit proposed by the Appellant under the 2022 Application;
 - (b) the proposal does not appear to include a biofilter which would be required to manage odours from the pasteurisation stage of the AD process.
 - (c) that the Appellant has not factored water into its calculations for the operation of the AD facility and this will be likely affect the transport movements predicted to occur to and from the Site; and
 - (d) that if the scheme is dependent upon the Green Gas Support Scheme GGSS financial support then it is unlikely to be viable based upon the proposed feedstock.

7. LOCAL PLANNING AUTHORITY (LPA) RESPONSE TO THE APPELLANT'S APPEAL STATEMENTS

APPEAL AGAINST REFUSAL OF PLANNING APPLICATION 2022/1108 – THE PLANNING APPEAL

Inadequacy of the Highway Network

- 7.1 The Council will demonstrate the inadequacies of the local highway network, highlighting the restricted width, no or limited formal passing provision and no designated pedestrian facilities on all routes that access the Site. The Council will highlight that these deficiencies make the location of the Site unsuitable for a development that would result in an increase in large vehicles, with resultant highway safety impacts for other road users, including vulnerable users such as pedestrians, cyclists and horse riders.
- 7.2 The Council will also set out why it is not satisfied with the information submitted in relation to the Appellant's proposed scheme for improvements along a series of roads to form of a proposed haul route to the A1066 to the south of the site ("Road Scheme"). Based upon the information submitted, there is significant uncertainty in relation to whether the Road Scheme can be delivered due to failure by the Appellant to demonstrate land ownership and the extent of the public highway. The Council will also note that the Road Scheme could adversely affect the rural character of area.
- 7.3 The Council will also outline why it not satisfied that, even if the improvements could be delivered, the Appellant could ensure all movements to the proposed development are by this route given the wider traffic movements associated with Deal Farm and other nearby linked agricultural operations.

Inadequacy of the Transport Information

- 7.4 The Council relies upon the consultation responses of the Highway Authority which have been made in relation to the 2022 Application and paragraphs 5.25-5.59 of the First Committee Report.
- 7.5 The Council will explain why the information submitted with the 2022 Application and in the Appellant's First Statement does not satisfactorily demonstrate that the proposed development will not result in impacts such as an increase in traffic movements resulting in unacceptable harm.
- 7.6 In particular the Council will outline that it is not satisfied with the baseline information about current traffic movements to and from the Site. The Council will outline its concerns with the assumptions that underly many of the figures given by the Appellant. The Council will also set out that there are significant discrepancies between figures that have been submitted at different stages during the 2022 Application process.
- 7.7 The Council will also set out its concerns with the proposed traffic movements including the viability of relying on crops from the proposed catchment area from which crops will be sourced, the number and types of vehicle movements to deliver crops to the Site, the reliance on a reduction in traffic in association with other activities and the assumptions made in regard to figures on vehicle movements for the removal of digestate from the Site.
- 7.8 The Council will also demonstrate why it is not satisfied that the controls on routing and limit of traffic movements can be achieved through the conditions and other measures proposed by the Appellant, nor the ability to cap the amount of feedstock below the known capacity of the facility.¹

¹ The Council will rely upon the decisions at Crouchland Farm, Plaistow Road, Kirdford dated 21 November 2017 with regards to the enforceability of conditions APP/L3815/C/15/3133236

- 7.9 As mentioned above, following the refusal of the 2022 Application, the Council has taken expert advice on the 2022 Application documents. It is concerned that the traffic movements which the Appellant predicts have been underestimated as the Appellant has not factored into its calculations the large amount of water which will be required for the proposed development to operate. The result of this is that the lagoons which have been applied for will not provide sufficient storage for 6 months of digestate meaning that digestate will inevitably need to be transported from the Site more frequently.

Visual and landscape impact

- 7.10 The Council will demonstrate why the harm from the domes of the anaerobic digestion plant and the proposed West Lagoon was such that it justified refusal of the 2022 Application. The Council will set out that this would result in permanent adverse effects.
- 7.11 The Council is aware that a new LVIA including additional mitigation has been submitted with the 2023 Application and the Appellant has requested that the Inspector consider this new LVIA as part of the Planning Appeal. The Council will set out the unacceptable level of visual harm that will result from the proposed development even if this mitigation could be delivered.
- 7.12 The Council will also set out that it does not consider that this mitigation can be delivered by condition. This includes the majority of the planting proposed which falls outside of the red line on land not controlled by the Appellant. Similarly, the Council will demonstrate how the acceptable delivery of the pipelines within the landscape, which could impact on protected trees, can also not be satisfactorily controlled.

Other issues

- 7.13 As has been set out above and in the First Committee Report, the Council is concerned that the development of an AD facility twice as big as is necessary for the proposed feedstock will mean that the feedstock and transport movements cannot be adequately controlled.
- 7.14 The Council has sought expert advice on the 2022 Application documents. As set out below in paragraphs 7.16 to 7.18 below, it is concerned that certain calculations presented by the Appellant are wrong in terms of the operation of the AD facility.
- 7.15 The Council's expert has raised further issues with the application which require further information from the Appellant. These are:
- (a) the 2022 Application documents do not provide sufficient information to explain how odour will be controlled in the 2022 Application Scheme. For example, the odour could be controlled by linking the headspace of the pasteurisation tanks to the biogas system, or by use of a biofilter and/or chemical scrubber. However, it is unclear how odour will be controlled, and the Appellant has not explained this;
 - (b) the Appellant has not explained the role which water will play in the anaerobic digestion process. The process will require significant amounts of water. It is unclear where this water will come from and it appears that this has not been factored into the Appellant's calculations. If water has not been factored in then this has implications for the storage capacity of the lagoons and the transport calculations;

(c) the Appellant has not specified the equipment for the CO2 capture. CO2 capture equipment is characterised by high parasitic electrical loads. This will require continual electricity import if carbon capture is implemented with the feedstock levels fixed as per the 2022 Application. This does not appear to have been included in the Appellant's calculations; and

(d) there is doubt that the facility will be financially viable with the proposed feedstock (due to the availability of GGSS). The Council considers that if the proposal is not viable then this is likely to result in an incentive to increase the throughput of the Anaerobic Digestion facility. Therefore, the Appellant is asked to provide evidence that its facility would be financially viable taking into account the build costs and the feedstock proposed.

- 7.16 The Council's expert continues to review the application materials submitted by the Appellant, and therefore the Council reserves the right to raise further issues once identified at the Proofs of Evidence stage.

Benefits

- 7.17 At the time of considering the 2022 Application, the Council had no reason to doubt the assertions made by the Appellant regarding the amount of energy which the proposed development would produce (set out at paragraph 5.8 of the First Committee Report).

- 7.18 Since the determination of the 2022 Application, however, the Council has taken expert advice and understands that the Appellant's calculations are incorrect. The Appellant claims that the proposal would produce up to 39,000MWh of renewable energy (biomethane) which is enough energy to serve approximately 3,250 homes (see paragraph 4.7.1 of the Planning Benefit and Needs Analysis prepared by Quod and submitted as part of the Planning Appeal).

- 7.19 The Council understands that this is a significant overestimate and that the proposed plant would instead produce 25,000MWh. This would provide gas to approximately 1,754 medium to large homes (based on OFGEM figures which indicate a home uses 14.25 MWh per year).

Planning balance

- 7.20 It will be the Council's case that the harm arising from the proposed development is significant and cannot be controlled by planning conditions and planning obligations (and no planning obligation is offered by the Appellant in any event).

- 7.21 The Council accept that the proposed development will provide benefits in regard to the provision of renewable energy in the form of the production of biomethane as well as carbon dioxide capture and storage and the production of digestate as an alternative to chemical fertilisers. However, as set out above, it appears that these are not as great as claimed in the Appellant's 2022 Application documents.

- 7.22 Whether or not the Appellant's benefit figures are correct they are clearly outweighed by the harms identified above.

- 7.23 The Council will also set out that the AD facility in the proposed development has been built with a capacity greater than the throughput proposed, resulting in development that is of a larger scale than required creating greater harm than is strictly necessary. This impacts upon the weight to be given to the benefits of the scheme.

- 7.24 The Council will demonstrate that the proposed development conflicts with the development plan as a whole and there are no material considerations which indicate that a decision should be taken other than in accordance with the development plan. In particular, there is a breach of development plan policies DM3.11, DM4.1, DM4.5 and there is also a breach of NPPF paragraphs 8, 110, 111 and 158. If the appeal scheme will not adequately control odour (and further information on this is requested) then the following local and national policies would additionally be breached including policies DM3.13 and DM3.14 of the Local Plan and NPPF paragraph 8.

Consideration of the position if the 2015 Permission is a fallback

- 7.25 For the reasons set out in the Second Committee Report for the refusal of the CLOPUD Application the Council considers that the 2015 Permission is not a fallback position as it cannot lawfully be built out.
- 7.26 Even if the Council were wrong about that then the 2015 Permission should be given no weight in the planning balance. The Design and Access Statement submitted with the 2022 Application states:

“2.2 Planning permission was most recently granted by notice dated 22 October 2015 (ref. 2015/0595) for the construction of an anaerobic digestion plant. Pre-commencement conditions have all been discharged and the development commenced. However, further ground investigation work identified that ground conditions where the tanks were to be constructed were not adequate, and so it has been necessary to transpose the location of the tanks and the clamps. In addition, changes to legislation/Regulations, developments in technology, system enhancements and the need to address amendments to Environment Agency standards, have led to the proposed changes to the layout and plant configuration.”

- 7.27 Therefore, on the basis of the Appellant’s own evidence, the 2015 Permission cannot practically be built out even if it were lawful for the Appellant to do so. The issues concern ground conditions, regulatory issues, and permitting. In light of the Appellant’s own evidence, the Council sought expert anaerobic digestion advice to consider the 2015 Permission and in particular whether the 2015 Permission is likely to be built out. As set out in paragraph 6.5 above, the Council’s expert has advised that the 2015 Application documents are inconsistent with one another, the design omits infrastructure which would now be required under the permitting regime, and he has also raised an issue with regards to the likely viability of the 2015 Permission due to amendments to the feed in tariff regime.
- 7.28 The Council will put the Appellant to proof on the issue of whether the 2015 Permission is a financially viable option for the Appellant to build out given (a) the build cost and (b) the income which it would receive from the plant’s operation including through any Government tariffs. The Council considers that due to changes in Government subsidies since 2015 the 2015 Permission is unlikely to be financially viable.
- 7.29 Further, the Council considers that if the 2015 Permission were capable of being built out then this would be preferable to the proposed development under the 2022 Application for the following reasons:
- (a) It would have less harmful landscape and visual impact;
 - (b) Its capacity would serve to control traffic movements. As stated in the First Committee Report ‘the most appropriate means of controlling the level of feedstock

would be to design the plant to have a capacity matching what the applicant states it the intended maximum annual feedstock.'

APPEAL AGAINST SERVING OF THE ENFORCEMENT NOTICE – THE ENFORCEMENT APPEAL

Implementation of the 2015 permission

- 7.30 As detailed in paragraphs 5.1 and 5.2 above and also acknowledged in the Appellant's First Statement, the Council has determined an application submitted under s.192 of the TCPA for "*Demolition and removal of the anaerobic digestion facility and the construction of another anaerobic digestion facility in accordance with planning permission 2015/0595*" submitted by the appellant in which the Council concluded that the implementation works are not comprised in the development authorised by the 2015 and therefore that permission has not been validly implemented and has expired. The Council notes that the appellant has expressed no intention to appeal this decision.
- 7.31 As such the Council will maintain for the reasons set out in detail in Second Committee Report that the 2015 Permission cannot be lawfully built out. They are not repeated here.
- 7.32 The Council, however, adds a further issue which is that the approved plans for the 2015 Permission are inconsistent with one another. Condition 2 of the 2015 Permission states:
- 'The development shall be constructed in accordance with drawings ref: L-AVE-001-BP-PAR and the design and access statement submitted on 13 March 2015, PL1, 2, 3, 5, 6, 7, 8, 9, 10, 11 submitted 16 March 2015 and PL04 and L-AVE-001-LP REV A submitted 16 July 2015'
- 7.33 There is a conflict between PL04 submitted on 16 March 2015 (Proposed Site Layout) and PL-05 also submitted on 16 March 2015 (Proposed Site Elevations and Sections). Each plan gives conflicting diameters of the tanks. In *Choiceplace Properties Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 1070 (Admin) Mr Justice Dove considered that an Inspector was correct to hold that a development could not be built out in accordance with its approved plans where two of those plans were inconsistent with each other. The same issue applies here.

Whether there has been a Breach of Planning Control

- 7.34 The Council will set out that as it does not believe the 2015 Permission can be lawfully built out there has been no lawful change of use and therefore the lawful use of the land remains agricultural. As such the Council does not consider that the Enforcement Notice overstates the extent of the breach of planning control.

Whether the steps required by the Notice exceed what is necessary

- 7.35 In regard to Action 1 (cessation of use) the Council will set out that for the reasons set out above it does consider that the use is unauthorised and therefore the requirements of Action 1 are appropriate.
- 7.36 In regard to Action 2 (demolition of development) the Council will set out that as it considers for the reasons set out above that the 2015 Permission is no longer capable

of being implemented, the requirement to remove all elements of the unauthorised development is appropriate.

- 7.37 In regard to Action 5 (Return the land to its form before the subject of the unauthorised development commenced) will set out that for the reasons above it does not consider that there is any extant consent for the reinstatement of the excavations and concrete slab and therefore the suggested amendment in paragraph 53.6 of the Appellant's Second Statement is inappropriate.

8. **CONCLUSION**

- 8.1 The Council consider that at the time of writing, all the stated reasons set out in the Decision Notice and the CLOPUD Decision Notice continue to be robust and that planning permission should not be granted for the proposed development and that the Enforcement Notice is correctly and appropriately worded in its requirements to remedy the breach of planning control.

Birketts LLP
16 October 2023