

STATEMENT OF COMMON GROUND

APPEAL REFERENCE

APP/F0114/C/25/3364346, APP/F0114/C/25/3364347, APP/F0114/C/25/3364348,
APP/F0114/C/25/3364349

**Site Address: Site Of Old Colliery
Fry's Bottom
Chelwood
Bristol
Bath And North East Somerset**

APPELLANT Mr Stephen Willcox

LOCAL PLANNING AUTHORITY Bath and North East Somerset Council

1. Introduction and description of the site

1.1 This is a Statement of Common Ground ('Statement') between the following parties, ('Parties'):

1.1.1 Bath and North East Somerset Council ('the Council')

1.1.2 Mr Stephen Wilcox

1.2 The Statement sets out the confirmed points of agreement and disagreement between the Parties on matters relating to the appeals against four enforcement notices issued by the Council:

1.2.1 23/00023/UNDEV/OD1 - Without Planning Permission, the construction of a dwelling house. This will be referred to as OD1

1.2.2 23/00023/UNDEV/OD2 - Without Planning Permission, the construction of a non-agricultural storage building in the approximate location marked 'A' on the attached plan and Without Planning Permission, the importation of material and carrying out of Engineering Operations in the form of the expansion of a level area of hardstanding. This will be referred to as OD2

1.2.3 23/00023/UNDEV/OD3 - Without Planning Permission, the importation of material and carrying out of Engineering Operations in the form of the construction of access tracks, and construction of dams in a water course. This will be referred to as OD3

1.2.4 23/00023/UNDEV/COU1 - Without Planning Permission, the change of use of land from forestry to a mixed use consisting of forestry, storage, firewood production, motorbike trials practice, equestrian, a waste transfer site and associated structure. This will be referred to as COU1

1.3 The enforcement notices refer to a large parcel of land (8.5 Hectares) known as Fry's Bottom that formed part of an old colliery site. The site is within the Bristol and Bath Green Belt and is designated as a Site of Nature Conservation Interest (SNCI)

1.4 The site is located approximately 1 Kilometre north from the Village of Clutton and is within Clutton Parish and Council Ward.

2. Planning history of site

2.1 99/02213/AGRN - PERMITTED - 23 April 1999 - Detached forestry building.

2.2 15/03966/ADCOU - REFUSED - 28 October 2015 - Prior approval request for change of use from Agricultural Building to Dwelling (C3) and associated

operational development.

- 2.3 21/04150/FUL - REFUSED - 21 January 2022 - Erection of a forestry building for the storage of felled trees/logs and timber (Retrospective).
- 2.4 22/03198/FUL - PERMIT - 13 January 2023 - Erection of a forestry building for the storage of felled trees/logs and timber (Retrospective).
- 2.5 23/01555/COND - DISCHG - 4 July 2023 - Discharge of condition 1 of application
- 2.6 22/03198/FUL (Erection of a forestry building for the storage of felled trees/logs and timber (Retrospective)).
- 2.7 23/02618/NMA - APPROVED - 10 August 2023 - Non-Material Amendment to application
- 2.8 22/03198/FUL (Erection of a forestry building for the storage of felled trees/logs and timber (Retrospective)).
- 2.9 23/03035/AGRN - WITHDRAWN - 8 September 2023 - Creation of forestry tracks.
- 2.10 23/03251/PIP- WITHDRAWN - 5 October 2023 - Permission in Principle Planning Application for the conversion of a rural building into a C3 residential dwelling
- 2.11 23/04785/FUL - REFUSED - 23 August 2024 - Change of use from Forestry to Mixed Forestry and for recreational use as a Trial Bike and E-Bikes (EAPCs) practice area (Sui Generis)

Enforcement

- 2.12 06/00398/UNDEV - CLOSED - 25 September 2008 - Enforcement Enquiry
- 2.13 07/00252/UNAUTH - CLOSED - 9 July 2007 - Enforcement Enquiry
- 2.14 08/00502/UNDEV - CLOSED - 24 February 2009 - Enforcement Enquiry
- 2.15 17/00276/UNDEV - CLOSED - 27 January 2018 - Enforcement Enquiry

3. Development plan (including relevant policies)

The Parties agree the following plans and policies are relevant for the appeal:

The Development Plan for Bath and North East Somerset comprises:

- o Bath & North East Somerset Core Strategy (July 2014)

- o Bath & North East Somerset Placemaking Plan (July 2017)
- o Bath & North East Somerset Local Plan Partial Update (2023)
- o West of England Joint Waste Core Strategy (2011)
- o Made Neighbourhood Plans

CORE STRATEGY:

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The following policies of the Core Strategy are relevant to the determination of this application:

CP5: Flood Risk Management

CP6: Environmental Quality

CP8: Green Belt

SD1: Presumption in favour of sustainable development

PLACEMAKING PLAN:

The Placemaking Plan for Bath and North East Somerset was formally adopted by the Council on 13th July 2017. The following policies of the Placemaking Plan are relevant to the determination of this application:

GB1: Visual amenities of the Green Belt

PCS6: Unstable Land

D2: Local character and distinctiveness

D6: Amenity

Policy PCS3: Air Quality

Policy PCS6: Unstable Land

M1: Mineral safeguarding areas

LCR5: Safeguarding existing sport and recreational facilities

PCS1: Pollution and nuisance

PCS2: Noise and vibration

LOCAL PLAN PARTIAL UPDATE:

The Local Plan Partial Update for Bath and North East Somerset Council was adopted on 19th January 2023. The Local Plan Partial Update has introduced a number of new policies and updated some of the policies contained within the Core Strategy and Placemaking Plan. The following policies of the Local Plan Partial Update are relevant to this proposal:

DW1: District Wide Spatial Strategy

D8: Lighting

NE2: Conserving and enhancing the landscape and landscape character

NE3: Sites, species, and habitats

NE3a: Biodiversity Net Gain

NE5: Ecological networks

NE6: Trees and woodland conservation

PCS5: Contamination

Policy ST1: Promoting Sustainable Travel And Healthy Streets

RE1: Employment uses in the countryside

ST7: Transport requirements for managing development

SUPPLEMENTARY PLANNING DOCUMENTS:

The following Supplementary Planning Documents (SPDs) are relevant to the determination of this application:

Sustainable Construction Checklist Supplementary Planning Document (January 2023)

Transport and Development Supplementary Planning Document (January 2023)

NEIGHBOURHOOD PLANS:

The following Neighbourhood Plan is relevant to the determination of this application:

CLUTTON

CNP5: SUSTAINABILITY BY DESIGN

CNP10: TRAFFIC IMPACTS OF NON-RESIDENTIAL DEVELOPMENT

CNP15: LANDSCAPE AND ECOLOGY

NATIONAL POLICY:

The National Planning Policy Framework (NPPF) and is a material consideration. Due consideration has been given to the provisions of the National Planning Practice Guidance (NPPG).

4. Matters agreed

- 4.1 The lawful use of the land for solely forestry or agriculture could resume at any time.
- 4.2 Any use of the land that is ancillary to the use of the land for forestry would also be lawful, but the Local Planning Authority does not consider the use of the land for fire wood production to be ancillary to a forestry use.
- 4.3 Consistent with the Mansi Principle, the enforcement notice does not remove pre-existing rights, including permitted development rights.
- 4.4 The Appellant has not claimed to the Local Planning Authority that the building subject to Notice OD1 is currently being used as a dwellinghouse
- 4.5 We agree with the legal principle set by *Beach v Secretary of State for Transport and Another* [2001] EWHC. In which it states that if a use is ceased within a mixed use or another use is introduced to a mixed use, a new chapter in the site history is started.
- 4.6 We agree with the legal principles set out in *Oates v Secretary of State for Communities and Local Government* [2018] EWCA Civ 2229. In which it states that demolition of buildings in their entirety, opposed to just 'new' elements leaving the 'lawful. Parts of the original building, was not excessive.
- 4.7 We agree with the legal principle set by *Belmont Farm Ltd v Minister of Housing and Local Government* (1962) 13 P. & C.R. 417 (Divisional Court) and confirmed by *McKay and another v Secretary of State for the Environment and another* [1989] 1 PLR 7. In which it states when determining the purpose of a building, you have to take into account it's physical appearance.

- 4.8 We agree with the legal principle set out in *Sage v SoS & Others* 14/04/2003. In which it states that there must be an objective assessment of what the developer intended the building to be used for, as this will inform what substantial completion would look like. Para 6 of states: “In such a case evidence as to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design.”

5. Matters in disagreement

- 5.1 Given the extent of disagreement between the Parties, the Statement addresses the Parties’ key areas of disagreement. Specific matters of disagreement relating to each of the key areas are addressed in the Parties’ Statements of Case and will be further detailed in Proofs of Evidence.

Appeal A (OD1)

- 5.2 The Appellant does not agree with the Council’s position that the building is a dwellinghouse under construction or that additional elements should be considered as one extended building operation.
- 5.3 The Council does not agree with the Appellant’s position that the building was substantially completed in/around April 2020 and is therefore immune from enforcement
- 5.4 The Council does not agree with the Appellant’s position that planning permission should be granted for “Retention of building for ancillary forestry use”
- 5.5 The Council does not agree with the Appellant’s position that the steps required by the Enforcement notice are in excess of what is necessary

Appeal B (OD2)

- 5.6 The Appellant does not agree with the Council’s position that the storage building has never been brought into its lawful use as a ‘Forestry’ building permitted by 22/03198/FUL amended by 23/02618/NMA. The Council’s position is that the building is, without planning permission, a non-agricultural storage building, The Appellant’s position is that the building is the same as that permitted by 22/03198/FUL amended by 23/02618/NMA , it has simply not been completed due to the Appellant lacking the funds to do so.
- 5.7 The Council does not agree with the Appellant’s position that the hardstanding has not been expanded since at least April 2021 and is accordingly immune from enforcement. The Council’s position is that the Appellant has provided insufficient evidence to demonstrate on the balance of probabilities the

hardstanding is immune from enforcement action.

- 5.8 The Council does not agree with the Appellant's position that the steps required by the Enforcement notice are in excess of what is necessary.

Appeal C (OD3)

- 5.9 The Council does not agree with the Appellant's position that the dams, other than the one marked with a blue line on the enforcement notice plan (BANES SoC Appendix 3), are immune from enforcement. The Council's position is that the Appellant has provided insufficient evidence to demonstrate on the balance of probabilities that the dams are immune from enforcement action.
- 5.10 The Council does not agree with the Appellant's position that the tracks within the woodland are immune from enforcement action. The Council's position is that the Appellant has provided insufficient evidence to demonstrate on the balance of probabilities that the tracks are immune from enforcement action, further, it is the Council's position that several of the tracks were expanded in/around September 2022 by the dumping of general builder's waste.
- 5.11 The Council does not agree with the Appellant's position that the tracks are permitted development. The Council's position is that as no prior approval application was made, the Appellant cannot rely on the permitted development right in Schedule 2 Part 7 Class A of the Town and Country Planning (General Permitted Development) Order 1995.
- 5.12 The Council does not agree that planning permission should be granted for the dams or tracks, whether together or separately. The Council's position that whilst the principle of access tracks would be supported, the principle of the dams would not, and in any event there are numerous there are numerous policy conflicts that would result in the Council recommending the refusal of this application should it have been made to it. In particular, the Council considers that:
- 5.12.1 The tracks align with paragraph 154 of the NPPF. The tracks are contrary to Policy NE3 of the Local Plan Partial Update, Policy CNP15 of the Clutton Neighbourhood Plan, Policy NE3a of the Local Plan Partial Update 2023, Policy PCS6 of the Bath and North East Somerset Placemaking Plan, Policy NE6 of the Local Plan Partial Update 2023, Policy NE2 of the Local Plan Partial Update 2023, and Policy D2 of the BANES Placemaking Plan.
- 5.12.2 The dams are contrary to paragraph 154 of the NPPF, Policy CP8 and DW1 of the Bath and North East Somerset Core Strategy, Policy GB1 of the Bath and North East Somerset Placemaking Plan, Policy NE3 of the Local Plan Partial Update, Policy CNP15 of the Clutton Neighbourhood Plan, Policy NE3a of the Local Plan Partial Update 2023, Policy PCS6 of

the Bath and North East Somerset Placemaking Plan, Policy CP5 of the Bath and North East Somerset Core Strategy, Policy NE6 of the Local Plan Partial Update 2023, Policy NE2 of the Local Plan Partial Update, Policy D2 of the BANES Placemaking Plan and the NPPF, and Policy PCS5 of the Bath and North East Somerset Local Plan Partial Update 2023.

- 5.13 The Council does not agree with the Appellant's position that the steps required by the Enforcement notice are in excess of what is necessary.

Appeal D (COU1)

- 5.14 The Council does not agree with the Appellant's position that the change of use is immune from enforcement. The Council consider that the waste transfer element of the mixed use was only introduced to the land in September 2024 and therefore the start of the relevant 10-year period for immunity from enforcement action would be from September 2024.

- 5.15 The Council does not agree with the Appellant's position that the firewood production on the site is ancillary to the lawful forestry use. It is the Council's position that dried timber is being imported into the site for firewood production and that timber is not capable of being dried on site.

- 5.16 The Council does not agree that the site has been used for storage for longer than 10 years. Insufficient evidence has been presented to demonstrate that this has been continuous. In any event, the Council consider that start of the relevant 10-year period for immunity from enforcement action would be from September 2024 based on when the mixed use commenced.

- 5.17 The Council does not agree that planning permission should be granted for firewood production. In particular the Council considers that:

- 5.17.1 Firwood production accords with policy D6 of the Placemaking Plan for Bath and North East Somerset (2017) and part 12 of the NPPF.

- 5.17.2 Firewood production would be contrary to Policy CP8 and DW1 of the Bath and North East Somerset Core Strategy, Policy GB1 of the Bath and North East Somerset Placemaking Plan, Section 13 of The National Planning Policy Framework, Policy ST7 of the Local Plan Partial Update, Policy NE3 of the Local Plan Partial Update, Policy CNP15 of the Clutton Neighbourhood Plan, Policy NE6 of the Local Plan Partial Update 2023, Policy NE2 of the Local Plan Partial Update, Policy D2 and NE2A of the BANES Placemaking Plan, Policy PCS3 of the Bath North East Placemaking Plan, and PCS5 of the Bath and North East Somerset Local

Plan Partial Update 2023

5.18 The Council does not agree that planning permission should be granted for equestrian without conditions. In particular the Council considers that (without conditions):

5.18.1 Equestrian complies with policy CP8 of the Core Strategy, policies GB1 and GB3 of the Local Plan Partial Update, part 13 of the NPPF, Policy D6 of the Placemaking Plan, part 12 of the NPPF, policy ST7 of the Local Plan Partial Update, the Transport and Development Supplementary Planning Document (2023), and part 9 of the NPPF.

5.18.2 Equestrian would be contrary to Policy NE3 of the Local Plan Partial Update and Policy CNP15 of the Clutton Neighbourhood Plan.

5.19 The Council does not agree with the Appellant's position that the steps required by the Enforcement notice are in excess of what is necessary.

5.20 The Council agrees that, suitably conditioned, equestrian use could be acceptable.

6 List of possible conditions

Please see Appendix SOCG1 for the list of suggested conditions