

Hospital of St John, Newtown, Heytesbury, BA12 0HW

Certificate of Lawfulness for the replacement of existing underground
sewage treatment plant in accordance with planning approval
W/04/02439/FUL

STATEMENT OF CASE

June 2026

Version: 2

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1. Introduction

- 1.1 This statement of case has been prepared on behalf of Wild Capital 1 Ltd (the appellant) against the decision of Wiltshire Council (the LPA) to refuse planning application ref: PL/2026/01565 for a certificate of lawfulness application for the replacement of existing underground sewage treatment plant in accordance with planning approval W/04/02439/FUL at Hospital of St John, Heytesbury, Wiltshire, BA12 OHW (the site).
- 1.2 This statement of case is accompanied by a copy of the original planning application form, forming appendix A.
- 1.3 The following plans and drawings accompanied the application:
- Site, Block and Location Plan ref. OS AC0000813445
 - Proposed Layout ref. PROP 01 at scale A1 @ 1:100
 - Proposed Package Treatment Plant Plans Pack ref. 312_02986 KEBL99X3
- 1.4 It is the appellants understanding that the above plans are what the LPA based their decision on.
- 1.5 The application was also accompanied by a Cover Letter, prepared by Chapman Lily Planning, dated 5th of March 2026.
- 1.6 The planning application was refused on the 5th of May 2026 for the following reasons:
- 1. The Local Planning Authority is not satisfied that the proposed replacement of the sewage treatment plant would be lawful if carried out. Planning permission ref. W/04/02439/FUL authorised a specific instance of development, namely the replacement of the sewage treatment plant as it existed at that time. The current proposal involves the installation of a new and different treatment system requiring fresh engineering operations, including excavation and installation works, which constitute development as defined under section 55 of the Town and Country Planning Act 1990. The W/04/02439/FUL permission does not grant an ongoing entitlement to undertake further replacements beyond that originally approved, and the absence of a plans condition does not extend the scope of that permission. Accordingly, the proposed works would require a new grant of planning permission and cannot be considered lawful. A Certificate of Lawfulness of Proposed Development is therefore refused.*
- The Local Planning Authority is not satisfied, on the balance of probabilities, that the proposed operations would be lawful if begun at the date of the application, having regard to section 192 of the Town and Country Planning Act 1990 (as amended).*
- 1.7 A copy of the decision notice and officers report forms appendix B and C of this statement.
- 1.8 As the Certificate of Lawful Use or Development Appeals: Procedural Guide sets out at section 3.3, “since there is no power to grant planning permission on an LDC application or appeal, the planning merits of the development are not relevant; It rests entirely on whether the development is lawful”.

This statement of case therefore sets out the appeal site and surrounds, relevant planning history, and the lawfulness of the proposed use.

2. The appeal site and surrounds

- 2.1 The appeal site comprises the existing below-ground Package Treatment Plant [“PTP”] serving the Hospital of St John, measuring circa 0.02ha. The PTP is located within the wider curtilage of the Hospital of St John, positioned to the rear of an enclosed courtyard and accessed via the High Street. Owing to its below-ground form and its location within the interior of the site, the PTP occupies a discreet and largely screened position from the properties as shown in figure 2.



Figure 1: Google Maps extract showing the site outlined in red



Figure 2: Google Street View extract showing the existing PTP

- 2.2 The Hospital of St John is a Grade II Listed Building, as are the associated stables to the northeast of the main building, and the walls, railings, gates and piers to the front and east side of the property. The hospital and stables were listed in September 1968, with the walls, railings, gates and piers listed in July 1986. The wider site has been converted into residential accommodation for people in need, but who wish to live independently in a support environment, alongside a Chapel, residents' hall with a kitchen, a laundry room, and a double guest flat for resident's visitors.
- 2.3 The existing PTP forms part of the wastewater drainage infrastructure serving the wider development and is located wholly within the red line boundary as submitted. The surrounding area is predominantly rural and residential in character, comprising the converted hospital buildings and associated grounds. The heritage context of the site is unchanged from that which applied at the time planning permission ref: W/04/02439/FUL was granted in 2005 and is not a matter that is material to the determination of this appeal.

3. Relevant planning history

- 3.1 The site has the following relevant planning history that is important insofar as the permission the CLOPUD is considered to fall within, and context to the appeal.
- 3.2 Planning permission ref. W/04/02439/FUL for the "*Replacement of existing underground sewage treatment plant*" was granted on 17th of February 2005, subject to a single condition requiring commencement within five years of the date of permission. The appellant confirms, and it is not disputed by the Council, that this permission was lawfully implemented within the requisite period. Notably, no condition was imposed requiring development to be carried out in accordance with any specifically approved plans, and no condition was imposed limiting the description of

development or restricting the type, specification or scale of treatment plant which could lawfully be installed pursuant to the permission.

- 3.3 More recently, the appellant submitted a non-material amendment application, ref. PL/2025/09929, seeking to add a condition to the W/04/02439/FUL permission requiring development to be carried out in accordance with the submitted and approved plans. This application was refused by the Council on the 15th of January 2026. It is significant, for the purposes of this appeal, that the Council's refusal of that application confirms that the 2005 permission does not, and has never, carried a condition tying the approved development to a specific plan or technical specification. The lawful scope of the permission therefore continues to be defined by reference to the description of development set out on the decision notice, namely the "*Replacement of existing underground sewage treatment plant*", rather than by reference to any fixed make, model or specification of plant.
- 3.4 It was following receipt of the decision refusing the non-material amendment application ref. PL/2025/09929 that Officers verbally confirmed to the appellant's agent that the Council would not have means to enforce against the proposed replacement of the PTP, on the basis that the extant permission ref. W/04/02439/FUL does not carry a condition requiring development to be carried out in accordance with approved plans. The Council does not dispute that this assurance was given. The appellant does not seek to rely on this exchange as giving rise to any form of preclusion against the Council's exercise of its statutory duty under Section 192 of the Town and Country Planning Act 1990; it is well established that an informal assurance of this kind cannot bind a local planning authority's discharge of a statutory function. The appellant does, however, consider it material that the Council's own position, both in that exchange and as set out in the Officer's report for the application subject to this appeal, is that "*the approved development is still defined by the description of the development*" (appendix C, page 6). The appellant agrees with that proposition, and it is precisely on that basis – this being that the lawful scope of the permission is to be defined by the description of development, rather than by any absently approved plan or technical specification – that the appellant's case in this appeal is founded.
- 3.5 It is against this background that the application, the subject of this appeal, ref. PL/2026/01565, was submitted on the 5th of March 2026, seeking confirmation that the proposed replacement of the existing PTP with a modernised unit would constitute a lawful exercise of the extant and implemented permission ref. W/04/02439/FUL. The Council's reasons for refusing that application, and the appellant's response to those reasons, are addressed in detail in the section below.

4. Consideration of lawfulness of the proposed use

- 4.1 The statutory test under Section 192 of the Town and Country Planning Act 1990 (as amended) requires the Local Planning Authority, and on appeal the Inspector, to determine whether the operations described in the application would have been lawful if carried out at the date of the application. The Planning Practice Guidance confirms that this determination is to be made strictly by reference to the facts of the case, and relevant planning law, with planning merits being

immaterial to that determination. Paragraph 009 states *“In determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”*. The relevant question for this appeal is accordingly a narrow one: does the proposed replacement of the PTP fall within the scope of development authorised by the implemented permission ref. W/04/02439/FUL?

- 4.2 The starting point is the wording of the permission itself. The decision notice for ref. W/04/02439/FUL describes the permitted development as the *“replacement of existing underground sewage treatment plant”*. That description is not qualified by reference to any particular make, model, technical specification or capacity of plant, nor is it tied to any approved plans, since, as confirmed by the Council’s own refusal of the non-material amendment application (ref. PL/2025/09929), no plans condition was ever imposed on the permission. The lawful scope of the permission therefore falls to be construed by reference to the description of development on the decision notice, read together with the application as submitted, and not by reference to the specific unit that happened to be installed pursuant to that permission in 2005.
- 4.3 The Council’s case, as set out in the decision notice, is that the permission authorised only *“a specific instance of development”*, namely the replacement of the plant *“as it existed at that time”*, and that it does not extend to authorising any subsequent replacement of the system installed pursuant to that permission. The appellant respectfully submits that this interpretation is not supported by the wording of the decision notice. The description of development authorises the replacement of the underground sewage treatment plant serving the site; it does not state, expressly or by necessary implication, that it authorises only a single, one-off replacement of the specific unit which existed in February 2005, nor does it claim to restrict the specification of any replacement plant to that available at that time. Had the Council intended to limit the permission in that way, the Council was open to do so by way of condition, for example by tying the development to approved plans or restricting any future works to the specific plant model approved at the time. No such condition was imposed, and none can now be read into after the event.
- 4.4 The proposed development satisfies, in every material respect, the operative description of development. The works comprise the replacement of the existing underground sewage treatment plant with a modernised unit, performing the same function, within the red line boundary, in the same location, and without extension beyond it, as confirmed by the submitted plans and covering letter. The proposed unit is designed to serve the same population equivalent of 70 PE and the same daily flow rate of circa 10.5 m³ per day as the existing, implemented system, and will discharge to the same existing discharge point and sampling chamber, with no new drainage runs required outside the application site. The existing primary settlement tank is to be retained, and no new pumping station is required, with the existing pumping station to remain in use within its existing approved footprint. In these circumstances, the development proposed is, in substance, a faithful exercise of the description of development authorised by the extant permission.

- 4.5 With regard to installation depth, the appellant notes that this point has been mischaracterised in the Officer's report at appendix C. The submitted covering letter confirmed, at page 2, that the proposed PTP would be *"installed at a comparable depth to the existing PTP unit. Any difference in installation depth is anticipated to be marginal at less than 40cm."* During the course of the application, the appellant's agent provided further clarification, confirming *"the new tanks are 2.4m below invert (compared to 2.5m below invert for the existing tank). Therefore, the new tanks are 100mm shallower"* (appendix D). The Officer's report records this as though it were a correction or contradiction of the appellant's original position when it is indeed within the parameters set out in the covering letter; that any difference in installation depth would be marginal and would not exceed 40cm. The confirmed difference of 10cm is accordingly the lesser, not the greater, end of the range originally indicated. The appellant therefore contends that the physical extent and depth of the proposed works are closely comparable to, and indeed, no greater than, those associated with the lawful implementation of the extant permission in 2005. The appellant contends the proposed replacement does not represent a materially different scale or extent of engineering operations.
- 4.6 The Council's contention that the installation necessarily constitutes new development for the purposes of Section 55 of the Town and Country Planning Act 1990, simply because it involves excavation and engineering works, does not assist the Council's case. It is not disputed that the installation of any replacement treatment plant will, by definition, require a degree of excavation and engineering works; that was equally true of the development authorised, and lawfully carried out, under ref. W/04/02439/FUL in 2005. The relevant question for this appeal is not whether the proposed works amount to development in the abstract, but whether those works fall within the scope of the development already authorised by the extant permission. For the reasons set out above, the appellant submits that they do.
- 4.7 The Council further notes, in the Officer's report, that the replacement plant would comprise three tanks in place of the single tank presently in situ and would therefore occupy a larger footprint than the existing installation. The appellant does not accept that this distinction is material to the lawfulness of the proposal. The decision notice for ref. W/04/02439/FUL does not prescribe the number, configuration or footprint of tanks comprising the replacement plant; it authorises, in general terms, the replacement of the underground sewage treatment plant serving the site. Critically, the proposed unit, in whatever configuration, does not extend beyond the approved red line boundary, would not involve excavation deeper than the existing PTP, and continues to serve the same population equivalent and flow rate as the existing system. The number of component tanks within a modern PTP is a function of contemporary engineering design and the pursuit of improved effluent quality, and does not, in the appellant's view, take the proposal outside the description of development originally permitted.
- 4.8 In light of the above, the appellant respectfully submits that the proposed development would, if carried out at the date of the application, have been lawful for planning purposes, and that the Council's refusal of the application ref. PL/2026/01565 was not well substantiated.

5. Conclusion

- 5.1 For the reasons set out in this statement of case, the appellant submits that the proposed replacement of the existing PTP falls squarely within the description of development, and the operational parameters, authorised by the extant and implemented planning permission ref. W/04/02439/FUL. That permission is not subject to any condition tying it to approved plans or to a fixed specification of plant, and its description of development is sufficiently broad to encompass the works subject of this appeal.
- 5.2 The Council's reasons for refusal conflate the general principle that engineering and installation works are capable of constituting development under section 55 of the Town and Country Planning Act 1990 with the distinct question, which is determinative of this appeal, of whether the specific works proposed fall within the scope of development already authorised by an extant permission. For the reasons given above, the appellant submits that they do, such that no fresh grant of planning permission is required for the proposed works to be carried out lawfully.
- 5.3 The appellant has demonstrated, on the balance of probabilities, that the proposed operations would have been lawful for planning purposes if begun at the date of the application, having regard to Section 192 of the Town and Country Planning Act 1990 (as amended) and the proper interpretation of planning permission ref. W/04/02439/FUL. The Council's refusal of the application ref. PL/2026/01565 was not, in the appellant's submission, well founded, and the appellant therefore respectfully requests the Inspector to allow this appeal and to grant a Certificate of Lawfulness of Proposed Use of Development accordingly.