



TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

STATEMENT OF CASE

Appeal Reference: 6012122

LPA Reference: PL/2026/01565

Site Address: Hospital Of St John, Newtown, Heytesbury, BA12 0HW

Appellant: Wild Capital 1 Ltd

Development Description: *Please refer to the supporting cover letter that explains why the proposed works constitute a lawful exercise of the aforementioned permission.*

Procedure: Written Representations

Prepared by: David Cox Planning Officer

Date: 24 August 2026

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1. Introduction

1.1 This Statement of Case is submitted on behalf of the Local Planning Authority in response to the appeal lodged by Wild Capital 1 Ltd against the decision of the Council to refuse Certificate of Lawful Development Certificate for the proposed replacement of the sewage treatment plant at Hospital of St John, Newtown, Heytesbury, BA12 0HW.

1.2 The purpose of this statement is to set out the Council's case and explain the reasons why the certificate application was refused. The decision was issued on 5 May 2026 following consideration of all relevant material planning matters. The refusal was based on the following reason:

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).

1.3 This statement has been prepared in accordance with the Planning Inspectorate's Procedural Guide for Planning Appeals and complies with the requirements of the Town and Country Planning Act 1990 (as amended) and associated regulations. It provides a clear and robust justification for the Council's position, referencing relevant planning policy, guidance, and material considerations.

2. Site Description

- 2.1 There have been no material changes to the site since the application was determined. Accordingly, the site description set out in the original Officer Report, already provided to the Planning Inspectorate, remains accurate and relevant for the purposes of this appeal.

3. Planning History

- 3.1 The planning history set out in the original Officer Report reference PL/2025/09929 – *Replacement of existing underground sewage treatment plant* – but does not set out why the application was refused. The delegated report and the decision notice are included in this statement as appendices.

4. The Proposal

- 4.1 There have been no amendments to the proposed development since the application was determined. Accordingly, the description of the proposal set out in the original Officer Report, already provided to the Planning Inspectorate, remains accurate and relevant for the purposes of this appeal.

5. Relevant Planning Policy and Guidance

- 5.1 There have been no changes to the relevant national or local planning policies, nor to associated guidance, since the application was determined. All applicable policies and guidance are set out in the original Officer Report, which has already been provided to the Planning Inspectorate.

6. The Council's Case

- 6.1 The Council relies principally upon the reasoning set out in the Officer Report submitted with the appeal documentation. The purpose of this section is to clarify the Council's position in response to matters raised by the appellant and to explain why the Local Planning Authority remains satisfied that the proposed development would not be lawful if commenced on the application date.
- 6.2 The Council's position remains that planning permission ref. W/04/02439/FUL authorised a specific act of development, namely the replacement of the sewage treatment plant that existed at the site at the time the permission was granted and subsequently implemented. Once that development was carried out, the permission

was implemented. The Council does not consider that the permission provides an ongoing or rolling entitlement to undertake further replacement works many years later.

- 6.3 The proposed development involves the removal of the existing treatment plant and installation of a replacement treatment system requiring excavation, installation and associated engineering operations. The Council relies upon those works as evidence that fresh operational development is proposed. The Council's case does not depend upon any particular threshold of dimensional, technical or design change, but on the fact that a new engineering operation requiring the installation of replacement infrastructure is proposed.
- 6.4 The appellant places significant emphasis on the fact that planning permission ref. W/04/02439/FUL was granted without a condition requiring development to be carried out in accordance with approved plans. The Council accepts that no such condition formed part of the permission. However, the absence of an approved plans condition is not determinative of the issue before the Inspector. The Council's case is not that the proposed development departs from approved drawings associated with the 2005 permission. Rather, the issue is whether that permission continues to authorise replacement works after the development originally permitted has been carried out.
- 6.5 The Council accepts that the lawful scope of the development authorised by planning permission ref. W/04/02439/FUL is informed primarily by the description of development. The Council considers that the description authorised a single act of replacement development and not an indefinite series of future replacements. The absence of an approved plans condition may affect the detailed form of development authorised in 2005, but it does not alter the temporal scope of the permission once implemented.
- 6.6 The Council acknowledges the planning history associated with application ref. PL/2025/09929, which sought a non-material amendment under section 96A of the Town and Country Planning Act 1990 to introduce an approved plans condition. That application was refused because it was considered that the proposed amendment would materially alter the legal effect of the original permission. The Council refers to this matter only because it forms part of the relevant planning history. The refusal of that application is not determinative of the issue before the Inspector in this appeal.

- 6.7 The Council further acknowledges that planning permissions granted at the time permission ref. W/04/02439/FUL was issued did not always contain the approved plans schedules and conditions commonly associated with modern permissions. However, that historical context does not alter the legal effect of the permission itself. The development authorised by the permission was subsequently carried out and the Council does not consider that the permission now extends to authorise further replacement works requiring fresh operational development.

7. Comments on Appellant's Statement of Case

- 7.1 The Council has reviewed the Appellant's Statement of Case and notes that there is no substantive dispute regarding the planning history of the site, the implementation of planning permission ref. W/04/02439/FUL, or the fact that the permission was granted without an approved plans condition. The principal disagreement concerns the legal effect of that permission and whether it authorises the development now proposed.
- 7.2 The appellant's submissions focus primarily on the absence of an approved plans condition and the proposition that the description of development should be interpreted as providing an ongoing entitlement to replace the sewage treatment plant. The Council does not accept that interpretation. The principal issue is whether planning permission ref. W/04/02439/FUL, having been implemented, continues to authorise further replacement works requiring fresh operational development. The Council's position remains that it does not.
- 7.3 The Council accepts that the proposed treatment plant would serve the same population equivalent, utilise the same discharge arrangements and be capable of improved environmental performance. However, these matters do not determine the outcome of a section 192 application. The question for the Inspector is not whether the proposed system would operate more efficiently or perform the same function as the existing installation, but whether the proposed operations would be lawful if begun on the application date.
- 7.4 The Council also notes the appellant's references to application ref. PL/2025/09929 and its refusal. As explained above, the Council does not regard the outcome of that application as determinative of the present appeal. The relevant question remains whether planning permission ref. W/04/02439/FUL authorises the development now proposed.

- 7.5 The appellant refers to informal discussions and suggests that the Council would have limited ability to enforce against the proposed development because the original permission did not contain an approved plans condition. The Council does not accept that characterisation. In any event, any informal officer comments could not alter the legal status of the development, modify the scope of planning permission ref. W/04/02439/FUL, or bind the Local Planning Authority in its determination of an application under section 192 of the Town and Country Planning Act 1990.
- 7.6 The Council considers that undue emphasis has been placed on the absence of an approved plans condition within planning permission ref. W/04/02439/FUL. The Council's case is not that the proposal departs from approved drawings or technical details associated with the 2005 permission. Rather, the Council's position is that the permission authorised a specific act of development which has already been carried out and does not provide an ongoing entitlement to undertake further replacement works requiring fresh engineering operations.
- 7.7 The appellant's interpretation provides no clear basis for determining at what point a replacement installation would fall outside the scope of the original permission. The Council considers that such an interpretation would create uncertainty as to the limits of the permission and is therefore not a persuasive basis upon which to conclude that the proposed development is lawful.
- 7.8 As this is an application under section 192 of the Town and Country Planning Act 1990, the burden rests with the appellant to demonstrate, on the balance of probabilities, that the proposed development would be lawful if commenced on the application date. The Council submits that this burden has not been discharged. For the reasons set out in the Officer Report and this Statement of Case, the Council remains satisfied that the proposed development falls outside the scope of planning permission ref. W/04/02439/FUL and cannot therefore be certified as lawful.

8. Planning Balance

- 8.1 The Council notes that this appeal relates to a Certificate of Lawfulness of Proposed Development under section 192 of the Town and Country Planning Act 1990. The determination of such applications does not involve an assessment of planning merits

or the weighing of planning benefits against harms. The sole issue is whether the proposed operations would be lawful if begun on the date of the application. The Council's position on that matter is fully set out within the Officer Report and Sections 6 and 7 of this Statement of Case. Accordingly, no separate planning balance arises.

9. Summary and Conclusions

- 9.1 The Council relies principally on the Officer Report previously submitted to the Planning Inspectorate. The Council respectfully submits that the appeal should be dismissed. The principal issue is not whether planning permission ref. W/04/02439/FUL contained an approved plans condition, nor whether the proposed treatment plant would perform the same function as the existing system. The issue is whether that permission continues to authorise replacement works more than twenty years after it was implemented. For the reasons set out in the Officer Report and this Statement of Case, the Council maintains that it does not.
- 9.2 As this appeal relates to a Certificate of Lawfulness of Proposed Development under section 192 of the Town and Country Planning Act 1990, the Council does not propose planning conditions. Should the Inspector be minded to allow the appeal, the Council requests that any certificate issued clearly identifies the approved plans, drawings and supporting documents to which it relates, for the avoidance of doubt.

10. Appendices

Appendix 1: PL/2025/09929 Non Materials Amendment - Delegated Report

Appendix 2: PL/2025/09929 Non Materials Amendment - Decision Notice

Appendix 1: PL/2025/09929 Non Materials Amendment - Delegated Report

APPLICATION FOR A NON-MATERIAL AMENDMENT CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2025/09929
APPLICATION TYPE:	NON-MATERIAL AMENDMENT
SITE ADDRESS:	Hospital Of St John, Newtown, Heytesbury, BA12 0HW
DEVELOPMENT DESCRIPTION:	Non Material Amendment to W/04/02439/FUL - Replacement of existing underground sewage treatment plant
RECOMMENDATION:	That the non-material amendment be REFUSED

PROPOSAL

The proposal seeks to add a 'plans list' condition to the approved application W/04/02439/FUL which was given permission on 17 February 2005. The permission was granted with one condition – the 5 year time limit.

The applicant's agent has confirmed on 8 January 2026 that the works were carried out within the 5-year time limit. However, it is worthy of note that no Certificate of Lawful Existing Development has been applied for or issued.

The approved plans would be those to which application W/04/02439/FUL was determined (and already implemented).

PLANNING HISTORY

W/04/02439/FUL - Replacement of existing underground sewage treatment plant – Approved with conditions – 17 February 2005

RELEVANT LEGISLATION AND GUIDANCE

Town and Country Planning Act 1990 (as amended):

- Section 96A: This section provides the legal basis for non-material amendments to an existing planning permission. It allows Local Planning Authorities (LPAs) to make changes to a planning permission without the need for a new application, provided that the changes are considered to be "non-material."
- The Act does not define "non-material," and it is at the discretion of the LPA to determine whether a proposed amendment qualifies as such, considering the specific context of the development and its impacts.

CONSULTATION

As an application for a non-material amendment is not a full planning application, the provisions under the Town and Country Planning (Development Management Procedure) (England) Order 2015 relating to statutory consultation and publicity do not apply.

ASSESSMENT

Non-material amendments are changes that do not significantly alter the scheme's overall impact. They can involve minor adjustments to the design or other aspects of the development but should not fundamentally change its character, scale, or overall effect on the surrounding area.

The proposal would introduce a new controlling condition after the development has been implemented. While no physical changes are proposed, the addition of an approved plans condition would materially alter the legal scope and interpretation of the original permission by retrospectively tying it to specific drawings.

It is considered that the context and nature of this application is therefore material and cannot be considered as a non-material amendment.

CONCLUSION AND RECOMMENDATION

The Local Planning Authority is not satisfied that the proposed amendment is non-material. The application falls outside the scope of section 96A and it is recommended that the non-material amendments application be refused for the following reason:

- 1) The proposed amendment would materially change the legal structure of the original planning permission reference number W/04/02439/FUL and does not constitute a non-material amendment under section 96A of the Town and Country Planning Act 1990.



The Town and Country Planning Act 1990
Refusal of non-material change to a planning permission
Application Reference Number: PL/2025/09929
Decision Date: 15/01/2026

Applicant:	Wild Capital 1 Ltd c/o Agent, Chapman Lily Planning, Unit 5 Designer House, Sandford Lane, Wareham, Dorset, United Kingdom, BH20 4DY
Particulars of Development:	Non Material Amendment to W/04/02439/FUL - Replacement of existing underground sewage treatment plant
At:	Hospital Of St John, Newtown, Heytesbury, BA12 0HW

I can confirm that having had regard to the effect of the proposed change, the Council concludes that the amendment is material and accordingly has **REFUSED** the request for a non-material change to the planning permission. The Council considers that the proposed change is material for the reason(s) given below

If you wish to pursue these changes, you will need to apply for planning permission.

Refusal Reason

- 1 The proposed amendment would materially change the legal structure of the original planning permission reference number W/04/02439/FUL and does not constitute a non-material amendment under section 96A of the Town and Country Planning Act 1990.

Nic Thomas - Director of Planning, Economy and Regeneration

