

Dear Miss McDonald

Planning application 26/01416/S73

Section 73 Application : Variation of condition 2 (revised plans) of planning permission 24/02606/FP granted 31.07.2025 for erection of three detached dwellings (1x 3-bed, 1 x 4-bed and 1 x 5-bed) and with associated infrastructure and landscaping.

Land West Of Tuthill House, Kelshall Tops, Therfield, Hertfordshire, SG8 9PT

I refer to the application form with respect to this application, my previous emails to NHDC regarding the above application and in particular my email of 14 July 2026 to you (to which I have received neither response nor acknowledgement), the Statement on Application Validity ("the Statement") from a company called Scene London Limited ("SLL") in response to the contents of my email of 14 July and your officer's report for the Planning Control Committee meeting on 17 September 2026, as it relates to the above application.

Any determination by the Planning Control Committee of this application would be ultra vires and it should not be entertained for the following reasons:

1. Invalidity First Ground

The nominated agent who submitted the application is and was at all relevant times a company in insolvent administration which had ceased to trade, and which purportedly acted by its director/employee notwithstanding that their powers to transact business on behalf of the company had ceased when the company went into administration

Scene Architects Limited is named in the application as agent and the agent's address given is that company's address. Blaine McMahon is given as the contact under the heading "Agent's Details" but it is clear he is not acting in his personal capacity: the agent signatory to the declaration is not Blaine McMahon but another individual purportedly acting on behalf of Scene Architects Limited, David Plant. Blaine McMahon had worked for Scene Architects Limited prior to its going into administration and Mr Plant was a director of Scene Architects Limited.

However, at the time the declaration was signed (1 June 2026) Scene Architects Limited had been placed in insolvent administration, its saleable assets had been

sold, and the company had ceased to trade. The administrators' report indicates that the company was hopelessly insolvent: preferential creditors amounting to an estimated £300,000 were expected to receive between 1p and 5p to the pound with respect to their debts, and unsecured creditors, estimated in excess of £160,000, would receive nothing following the sale of the company's saleable assets to WP Investment Management Limited owned by two of Scene Architect Limited's directors.

The application form completed (purportedly) by Scene Architects Limited as agent did not disclose that the company was at that time in insolvent administration.

The administration commenced on 23 April 2026. At that time, in accordance with the Insolvency Act, all management powers previously exercisable by the directors devolved on the joint administrators. The administrators act as agent of the company and assume full management control over its affairs, business and property (para 59 of Schedule B1 to The Insolvency Act 1986). Directors may only exercise powers with the express prior written permission of the administrators. Such permission cannot properly be given where the company is insolvent and has ceased to trade.

As the agent was at the time of the application a company in insolvent administration which had ceased to trade and, it appears, the individual who signed the declaration on behalf of the agent acted without lawful authority to do so, the declaration - and the application - are void and of no effect.

2. Invalidity Second Ground

No proper notice has been given to owners of land the subject of the application

My email of 14 July 2026 refers.

I have read the Statement submitted by SLL in response. I note that no individual is named in the Statement as its author.

SLL is a limited company formed less than six months ago with a share capital of £100 and forms part of a group whose liabilities exceed its assets. The nature of SLL's business, as submitted to Companies House, is "Professional, scientific and technical activities not elsewhere classified". Companies whose business

includes the provision of legal advice are classified as such. I have been unable to find the company, Blaine McMahon or David Plant on any relevant register of those licensed to practise law in England and Wales.

Messrs McMahon and Plant have already demonstrated their ignorance of the law, in an area much closer to their core business, by submitting to NHDC an unlawful Section 73 application in relation to this site proposing a change not merely to conditions but to the very nature of the permitted development.

It is unusual that an applicant, which has recently purchased this site for a substantial, seven-figure sum and would presumably have had lawyers do the usual due diligence prior to purchase, should choose to present to a local planning authority legal advice apparently from a firm of architects and without identifying the author. It may of course be that the advice was composed by lawyers, but on the understanding that the submission itself would come from SLL. SLL is not under the professional obligations of regulated lawyers to make due and proper enquiry, or under the professional obligation of lawyers not to mislead either as to the law or as to what that due and careful enquiry has revealed.

SLL is also it appears - and conveniently - ignorant of the relevant facts, hence their request that NHDC provide them with information, much of which is already publicly available.

I, by contrast, am a lawyer with decades of practice experience in one of the country's leading law firms, and I have taken a close interest in the evidence as to the extent of the land owned by my neighbour throughout the 38 years I have owned my property.

I have the following specific comments on the Statement:

- Para 3.1: that SLL is not careful to check its stated facts is demonstrated by its assertion, as of the date of the Statement (17 July 2026), that "*The title is now registered to the applicant*". This is demonstrably untrue. I attach a copy of the register for title HD307468 which, as you will see, was provided by HM Land Registry on 11 September 2026, showing that Quanta Homes 6 Limited remained at that time (some two months after the date of the Statement) the owner in fee simple and registered proprietor of the site.

- Para 4.3 is misleading. It claims that the subsoil of a highway is presumed at common law to belong to the frontager, up to the centre line. It goes on to refer - selectively - to HM Land Registry's Practice Guide 40, Supplement 3 and to claim (incorrectly, see above) that the frontager is the applicant as registered proprietor of HD30468 "so the near-side sub-soil is presumed to be the applicant's own"

What this paragraph of the Statement omits entirely is any reference to the fact that the two presumptions referred to in the Land Registry guidance with respect to land abutting a road are merely rebuttable presumptions in the absence of other evidence and, had SLL put the matter before NHDC fairly, they could not have omitted to point out those parts of HM Land Registry's Practice Guide 40, Supplement 3 which relate to this, in particular paragraph 11.1 which provides that:

"Both of these presumptions may readily be rebutted"

Taking first the ad medium filum presumption, that presumption has, to your knowledge, been rebutted on multiple occasions by the long-term owner of this property, Mr Graham Bullard, himself a property professional, and by his legal advisers, in his dealings with NHDC and its officers. Mr Graham Bullard acquired a proprietary interest in the site prior to first registration and owned the property (initially as to one half share and subsequently in its entirety) for some 30 years.

He was clear that he knew what he owned. Periodically throughout his ownership, including in relation to the recent application for the planning permission which this Section 73 application seeks to vary, the question has arisen who owns the land (presumed highway land) north of Mr Bullard's boundary as shown both in his registered title and on the plan submitted with his various planning applications ("the land to the north"). Mr Bullard, applying his own expertise and that of his lawyers, has consistently denied ownership of any such land.

SLL seeks to obfuscate the position by stating that the general boundaries rule applies to the Land Registry plan, and that is true as far as it goes. However, there is no general boundaries rule in relation to plans submitted to NHDC as planning authority in connection with a planning application. Applicants are required to delineate on a scale plan the extent of the application site and, if they own any additional land in the vicinity of the application site, they are required to delineate that land separately, edged blue. In every one of the many applications in relation to this site, apart from this Section 73 application, the applicant has claimed not to own any land north of the boundary as shown on the Land Registry plan.

SLL's suggestion, that the advertisement placed to satisfy the statutory requirement to advertise for unidentified owners when applying for planning permission 24/02606/FP was "out of an abundance of caution", is contradicted by the evidence. At no point

during the consideration of that application did the applicant suggest that they could or may be able to rely on the ad medium filum rule, even when the ownership of the land to the north became a specific issue.

By way of further obfuscation, SLL states in para 4.3 that a frontager also enjoys a common law right of access onto the highway abutting his land. This is irrelevant to the issues raised by the would-be developer's proposals. This common law right does not authorise the frontager to remove a third party's trees, or to carry out engineering works on a third party's land, still less to claim ownership of land beyond his boundary, highway land or no.

For the very first time, in this application, the new site owner - whose title derives entirely from Mr Bullard's title - contends that it can rely on rebuttable presumptions to claim title to the land to the north. The reason for this seems apparent. Planning permission 24/02606/FP cannot be implemented without the consent of the owner of the land immediately north of the boundary of the application site, who has not been identified (by the applicant).

SLL contends - though without offering any authority for its contention - that the burden of identifying a landowner lies with the owner itself or, if the person pointing out that there is an unidentified owner is not themselves the owner, that person. The ludicrousness of such a contention is obvious. In essence, what this requires NHDC to accept is that the unidentified owner - to whom the applicant has not accorded the protections afforded by statute of reasonable enquiry and advertisement - is to be permanently disadvantaged if he does not somehow, and without the benefit of those protections, uncover the existence of the application and identify himself. The landowner's only hope otherwise is that some other person identifies them. But the essence of the situation is that - as the former owner certified - the landowner cannot be identified by reasonable enquiry. The most a third party can be expected to do is to demonstrate that there must be an unidentified owner, given the overwhelming evidence that the site owner is not the owner of the land to the north within the development site/visibility splay. This I have done.

The evidence that the owner of title HD307468 does not own the land to the north is overwhelming and some of it is referred to in the third paragraph of my email of 14 July 2026. This includes a formal legal opinion from Mr Bullard's solicitors, submitted to NHDC in connection with a previous application. The evidence identified in that email is clearly sufficient in itself to rebut the ad medium filum presumption. There is however a wealth of other evidence. This includes the site owner's refusal to deal with dangerous trees immediately north of his boundary on the basis that he did not own the land and NHDC's refusal, when I requested it, to require the site owner to comply with the visibility splay requirements in the planning permission permitting the operation of the site as a depot, on the basis that the site owner had declared unequivocally that he did not own the land in which the trees blocking the required visibility splay were planted.

It should also not be forgotten that for the applicant to claim successfully that it is the owner of the land to the north it must rely on the other presumption referred to in the Land Registry guidance, namely:

“where a conveyance or transfer of land abutting on a road is made by someone owning land on one side of it only, then if they can be proved or are presumed, to own also the road up to the middle line, this half of the roadway is included in the conveyance or transfer.”

Since Mr Bullard was so adamant that he had not acquired title to the land to the north, he can certainly not be presumed to have intended to convey it to a third party.

You claim in your officer's report to the Planning Control Committee that:

“It is for the Local Planning Authority to determine whether a planning application is valid.”

However NHDC as a public authority must act within the limits of administrative law. Any such determination must be based on evidence and must either be consistent with its previous findings or based on identified changes in circumstance or new evidence. It cannot be based on arbitrary preference for one party or another, and in the teeth of all available evidence.

For many years NHDC has accepted declarations from the long-term site owner, in circumstances where the making of a false declaration would constitute a criminal offence, that he did not own any land to the north of the boundary of title HD307468 as shown on the title plan. His lawyers submitted an opinion to NHDC confirming this was the case. NHDC cannot now lawfully accept the say-so of a firm of architects that the presumptions apply in the face of all the rebuttal evidence to the contrary. To do so would be ultra vires.

SLL has adduced no evidence that the long-term owner - who was the first to acquire the depot out of a larger title - and his lawyers, who enquired specifically into the scope and extent of his site ownership, were mistaken.

In your officer's report you merely state that:

“The applicant has provided a legal statement setting out why they consider the application to be valid, to which officers agree.”

If the applicant wishes NHDC now to accept that it has been misled over many years and in multiple ways regarding the ownership position, it must adduce evidence to support this, and would have to consider the consequences.

Your obligation as the case officer is to give sufficient reasons for the Committee and for those affected to understand the basis of the officers' decision. That you and other

unidentified officers agree with SLL's Statement, having regard to the Council's invariable previous position and all the available evidence, is frankly extraordinary and I call upon you formally, if you continue to treat the application as valid - notwithstanding the failure to make reasonable enquiries to determine ownership of the land to the north of the site owner's registered title - to explain on what basis you have come to that conclusion.

3. Invalidity Third Ground

The application is not in proper form as on its face it seeks only variation of condition 2 of planning permission 24/02606/FP but now purports in fact to seek approval for changes to condition 9 which are not apparent from a consideration of the application form, the description of the application on the public register or any other document on the public register

The application form with respect to application 26/01416/S73 states that it is an application for variation of condition 2 of planning permission 24/02606/FP. This is reflected in the title given by NHDC to the application on the public planning portal, namely:

"Section 73 Application : Variation of condition 2 (revised plans) of planning permission 24/02606/FP granted 31.07.2025 for erection of three detached dwellings (1x 3-bed, 1 x 4-bed and 1 x 5-bed) and with associated infrastructure and landscaping.

Land West Of Tuthill House, Kelshall Tops, Therfield, Hertfordshire, SG8 9PT"

This is also the heading on the site notice (as it appears on the planning portal), the heading attributed to the agenda item relating to this site in the agenda for today's Planning Control Committee meeting and the heading attributed by you to the relevant item in your officer's report.

This is however materially misleading.

I note from your report to the Planning Control Committee that you are treating this not as an application confined to variation of condition 2 but also as a valid application to vary condition 9 in two respects, firstly to remove the requirement to provide a pedestrian access to the public footpath which runs along my access lane and secondly to vary condition 9 so that the necessary works to the vehicular access need only be completed before occupation, not (as per the permission) prior to commencement of the works. This is ultra vires the authority.

The conditions attached to a planning permission form part of a formal statutory consent. There is no statutory mechanism for informal variation without an

explicit application identifying all the condition(s) to be varied pursuant to and in accordance with the accompanying document(s).

The 1990 Act sets out the *only* lawful mechanisms for varying conditions in permissions. These are an application under section 73 or under section 96A (for non-material changes) . Planning is a strict statutory regime and public authorities must act within the powers granted by Parliament. This principal is confirmed by the leading House of Lords case of *R v East Sussex County Council ex parte Reprotec*. A planning authority cannot lawfully make, and is not bound by, decisions made otherwise than in accordance with the statutory scheme.

Statute and case law are clear that any purported variation of a condition without a formal application is ultra vires and a planning authority has no power to grant a variation of condition 9 without a formal application, duly advertised and consulted on (see below) to vary that condition.

Furthermore, as the applicant's proposals are contained in a single document (a proposed site layout plan) submitted in support of the application, which includes variations which the applicant seeks to both condition 2 and condition 9, it is not open to the Committee to grant the application as regards condition 2 as the proposals are not severable.

4. Invalidity Fourth Ground

The proposals have not been lawfully advertised or consulted upon

The law stipulates that planning must be a public process and that applications must be fairly and properly advertised and consulted on in accordance with the statutory scheme to enable those directly affected, parish councils and other authorities and the public at large to consider and comment on the proposals.

Advertisement of this application as an application to vary only condition 2 fails to satisfy these requirements. This is particularly so where one of the undisclosed proposed changes to condition 9 (re engineering and other works affecting land to the north of site owner's land, on land belonging to a third party - see 2 above) directly affects the rights of a third party.

It was only when your officer's report was published a few days ago and I read its contents that I realised that you intended to ask the committee to vary condition 9, and the nature of those variations. The heading in your report referred only to

a variation of condition 2. Moreover, prior to publication of your report, nothing had been published on the public planning portal to indicate that the Committee would be asked to approve a variation to condition 9 to allow works required for a safe access to be deferred until first occupation, rather than completed prior to commencement of works. The formulation of such a proposal, and your agreement to put the proposal before the Committee for decision, appears to have been done entirely privately between you and the applicant's agent. It is not mentioned in any published document on the planning portal as it relates to this application.

Your actions in bringing variations to condition 9 before the Committee for determination without any proper, indeed any, publicity are ultra vires the authority.

You recognised the obligation to consult affected persons, and a formal letter dated 16 June 2026 was delivered to my home inviting my comments on application 26/01416/S73. The subject matter identified in bold in that letter referred only to variation of condition 2. As such, it did not constitute proper consultation.

Moreover, following your invitation (dated 16 June 2026) to comment on the application you accepted materially revised proposals in relation to the variation of condition 9 to remove the requirement to provide a pedestrian access to the public footpath to the east of the development site. I was not notified of or consulted on these revised proposals which I consider to be material and on which I have strong views which I would like to have had the opportunity to convey to the Council. Doubtless other consultees would also wish to have been offered the opportunity to consider and comment on any changes to condition 9.

I also disagree that the change does not negatively impact the proposal. You will recall that in determining the parent permission a number of Committee members expressed concern about the lack of safe pedestrian access to the village, which has on more than one occasion been a stipulated ground for refusal of permission for residential development of this site. Pedestrians will now have to exit the main entrance (in competition with vehicles) onto a derestricted 60mph road and walk along that road to reach the public footpath.

I am also very concerned by the proposal to defer the necessary works to provide a safe entrance and visibility splay, which must be agreed by the highways authority and secured by a bond, until first occupation. This proposal came out of the blue, being referred to publicly for the first time in your recently published officer's report.

The entrance is from and onto a derestricted 60 mph road adjacent to the only pedestrian and vehicular access to my home, which is also the only access to the

Therfield Water Tower and allotments beyond. The site entrance currently has no acceptable visibility splay, not least because the site owner disclaimed ownership of the land on which trees block the required splay. I have previously sent you the correspondence between Highways and your former colleague Simon Ellis showing, by reference to a photograph, that a large swathe of trees would need to be removed to provide a safe visibility splay. Use of the access in its current state during the phases of removal of the concrete currently covering the site and construction of the development would constitute a significant danger to my family and our visitors, as well as pedestrians using the public footpaths and road users on the Kelshall Road.

I am also concerned that the applicant may be seeking this variation because it knows that it will not be able to provide the required visibility splay or carry out the required engineering works, as it does not own the relevant land. Specifically I am concerned that the relevant authorities will be less likely to insist on a proper, safe access if the development has already been built out, so that the dangers identified above may become permanent.

Please acknowledge receipt of this email. If I have not heard from you by 11.00am that agenda item 6 will be withdrawn from the Committee's agenda today, I will send a copy of this email directly to the Chair and to Committee Services, so that I can be sure that the issues raised are not overlooked.

Yours

Lynne Bogie