



# SCENE

## Statement on Application Validity

Application 26/01416/S73 — Land Ownership Certificate

Land West of Tuthill House, Kelshall Tops, Therfield

SCENE London Ltd.

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| <b>Document ref</b>             | 1549A-SCN-ST-A-90.001-P01                             |
| <b>Date</b>                     | 23 July 2026                                          |
| <b>Application</b>              | 26/01416/S73 (variation of conditions on 24/02606/FP) |
| <b>Local planning authority</b> | North Hertfordshire District Council                  |
| <b>Prepared by</b>              | SCENE London Ltd.                                     |
| <b>Status</b>                   | For submission to the local planning authority        |

### 1. Purpose and status of this statement

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This statement is submitted on behalf of the applicant in response to the representation of Ms Lynne Bogie of Tuthill Manor dated 14 July 2026, which contends that the above application is invalid and that the Council “must not entertain” it.

The application has been validated and is properly before the Council. The representation is, in substance, an invitation to revisit a validation already made. For the reasons set out below that invitation should be declined, and the application determined in the usual way.

Nothing in this statement constitutes an admission of, or acceptance of, any boundary, ownership, access or planning position asserted in the representation. All such matters are disputed and all of the applicant’s rights in respect of them are expressly reserved.

### 2. The premise on which the objection depends

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The objection rests entirely on a single proposition: that the land within the application red line lying north of the boundary of registered title HD307468 — the land coloured blue on the objector’s plan — is owned by an un-notified third party, with the result that the ownership certificate is defective and the Council is barred from entertaining the application.

That premise is wrong, and the objection falls with it.

### 3. Two distinct parcels of land

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The representation runs together two different pieces of land, which must be distinguished.

**3.1 The depot land.** This lies within registered title HD307468. It was owned by the vendor, from whom the applicant purchased it, at the date 21 days before the application was made — the date prescribed for these purposes by Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order

2015, made under section 65 of the Town and Country Planning Act 1990. For those purposes an “owner” is the estate owner in respect of the fee simple, or a person entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired (section 65(8) of the 1990 Act). That owner was notified, and the certificate required by Article 14 of the 2015 Order was given accordingly. The title is now registered to the applicant. No issue arises on this land.

**3.2 The access strip.** This is the “step forward” north of the title boundary, being the access onto Kelshall Tops. It is the only land in dispute, and it is public highway. Kelshall Tops is recorded in Hertfordshire’s Highways Gazetteer as an unnumbered classified Class C road maintainable by Hertfordshire Highways, and the Highway Authority’s own Highway Boundary Plan treats the access and visibility splays as falling on highway land.

## 4. The disputed strip is public highway

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That the strip is public highway is fatal to the objection, for the following reasons.

### 4.1 The Highway Authority has confirmed the strip is highway

Kelshall Tops is an adopted public highway maintainable at public expense, recorded in Hertfordshire's Highways Gazetteer as an unnumbered classified Class C road (feature C2/10, Therfield Road to Stump Road), maintained by Hertfordshire Highways. In its consultation response of 18 March 2025 on the parent permission (HCC ref NH/23170/2024), the Highway Authority records that, on its most updated Highway Boundary Plan, the proposed visibility splays fall onto highway land, and it requires the access works to be secured by an agreement under section 278 of the Highways Act 1980. The land attributed in the representation to an un-notified neighbour is, on the Council's own highway records, part of the public highway.

### 4.2 The surface is vested in the Highway Authority, which was notified

The surface of a highway maintainable at public expense is vested by statute in the highway authority (section 263 of the Highways Act 1980). Hertfordshire County Council was notified as highway authority. That the authority holds no registered title to the road is to be expected — the surface is held by statute, not by registration — and says nothing against its status as highway.

### 4.3 The subsoil is presumed to belong to the applicant

Section 263 takes only the surface. The freehold in the subsoil is presumed at common law to belong to the frontager, up to the centre line (the *ad medium filum viae* presumption; see HM Land Registry Practice Guide 40, Supplement 3). The frontager here is the applicant, as registered proprietor of the abutting HD307468 land, so the near-side subsoil is presumed to be the applicant's own.

Between the highway authority (surface) and the applicant (subsoil), every interest in the disputed land is accounted for. There is no un-notified owner. The representation identifies no such person, and the burden of identifying an owner said to have been omitted lies with the party alleging the omission.

A frontager also enjoys a common-law right of access onto the highway abutting its land, which does not depend on ownership of the road subsoil. Further, if any part of the road subsoil had a separate and untraceable owner, the answer provided by the Order is the reasonable-enquiries and advertisement procedure — as used on the parent permission 24/02606/FP — not invalidation. An application does not fail because an owner cannot be traced.

## 5. The registered title plan does not establish third-party ownership

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The representation invites a comparison of the red line on the HD307468 title plan with the application boundary. That comparison proves nothing about ownership. Under section 60(1)–(2) of the Land Registration Act 2002 the boundary shown on the register is a general boundary only, and does not determine the exact line of the legal boundary. HM Land Registry's published guidance (Practice Guide 40, Supplement 3) addresses the position directly: it records the presumptions as to ownership of the soil of a roadway — including the *ad medium filum* presumption, and the vesting of the surface in the highway authority under section 263 of the Highways Act 1980 — and explains that such presumptions are displaced only where the boundary has been determined under section 60(3) of the 2002 Act. No determined boundary is in evidence here, and it follows that land held under the presumption will not be delineated within the title plan's edging. The title plan cannot, therefore, demonstrate that any part of the application site falls outside the applicant's ownership.

## **6. The statutory bars on entertaining the application are satisfied**

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Two provisions restrict a local planning authority from entertaining a non-compliant application, and both are addressed. Section 65(5) of the Town and Country Planning Act 1990 provides that a local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of that section have been satisfied. Section 327A of the same Act, inserted by the Planning and Compulsory Purchase Act 2004, applies where that Act or any provision made under it imposes a requirement as to the form or manner in which an application must be made, or as to the form or content of any document accompanying it, and provides that the authority must not entertain the application if it fails to comply with the requirement. Both provisions are mandatory, and neither is treated here as unimportant.

The requirement engaged by each is the same: that notice be given to any person who was an owner of the land at the prescribed date, and that the appropriate certificate accompany the application (section 65 of the 1990 Act; Articles 13 and 14 of the 2015 Order). That requirement has been satisfied. Notice was given to the owner at the prescribed date, the appropriate certificate has been provided, and — for the reasons given above — it is not shown to be inaccurate, there being no un-notified owner. There is accordingly no failure to comply on which either provision can bite.

It should be added that a contested assertion by a third party that a duly-completed certificate is factually inaccurate does not, without more, establish non-compliance with a requirement as to the form or content of the certificate. Here the assertion is not merely unproven but wrong, being contradicted by the Highway Authority's own records.

Were the position otherwise, a certificate defect does not in any event render a permission a nullity — relief being a matter for the court's discretion, assessed by reference to prejudice — and the appropriate course in respect of any genuinely untraceable owner would be re-notification by advertisement, not a refusal to determine.

It is noted that the notice and certification requirements are now contained in Articles 13 and 14 of the 2015 Order; the 2010 Order relied upon in the representation has been revoked.

## **7. The Council is entitled to rely on the certificate**

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The Council is, in the ordinary course, entitled to rely on a duly-completed ownership certificate, and is not obliged to investigate or adjudicate contested questions of private title at the validation stage. The narrow exception — for a certificate the authority actually knows to be false — is not engaged. On the correct analysis the certificate is accurate, and an objector's assertion of a contested (and incorrect) ownership position does not fix the case officer with knowledge of falsity. The Council is not required to resolve a boundary dispute in order to validate this application.

## **8. The two certificate routes are reconcilable**

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To the extent that reliance is placed on the use of the advertisement procedure on the earlier application 24/02606/FP, that reflected an abundance of caution in respect of an owner who, on the better view, does not exist separately from the frontager. Where road-subsoil ownership is unregistered and uncertain, more than one course is legitimately open: an applicant may rely on the *ad medium filum* presumption and certify by reference to the identifiable owner and the highway authority, or may treat the subsoil owner as untraceable and use the advertisement procedure. The use of one route rather than the other is not evidence of a false certificate.

## **9. Standing and the purpose of the certificate machinery**

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The certificate procedure exists to ensure that owners entitled to notice may make representations. The grant of planning permission does not affect any person's property rights and is not a licence to enter or build on land the applicant does not own. The objector is not the owner of the disputed land and does not claim to be. Any complaint of non-notification would belong to the owner said to have been omitted — who, for the reasons above, does not exist separately from the parties already notified.

## 10. Conclusion and request

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The objection depends on a single factual premise that is contradicted by the Highway Authority's own records. The disputed land is public highway; the surface is vested in the highway authority, which was notified; the subsoil is presumed to belong to the applicant as frontager. There is no un-notified owner, the certificate is correct, and the requirements of section 65 and section 327A of the 1990 Act are satisfied.

It is accordingly requested that the Council:

- (a) confirm that the application remains validly made and continue to determine it, declining the invitation to revisit validation; and
- (b) if, contrary to the above, the Council is minded to treat the certificate as defective or to withdraw its validation, first notify the applicant in writing of the precise legal and evidential basis for doing so, and allow a reasonable opportunity to respond before any decision is taken.

In so far as the objector or the Council relies upon (i) any conclusion of the Council's legal officer as to ownership of the land north of the HD307468 boundary; (ii) any earlier certificate or correspondence said to be inconsistent with the present certificate; or (iii) any evidence said to establish third-party ownership of the disputed land, it is requested that copies be placed on the public file and provided to the applicant, so that they may be considered and, where appropriate, addressed. The applicant reserves the right to comment further once any such material is available.

Confirmation of the Council's position is requested within 14 days. In the meantime all of the applicant's rights and remedies are reserved.

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### SCENE London Ltd.

On behalf of the applicant

17 July 2026 – 1549A-SCN-ST-A-90.001-P02