Statement In Support of an Application for a Certificate of Lawfulness Under Section 192 of the Town and Country Planning Act 1990

Site: Collmart Growers Ltd, The Drove, Pondersbridge, Huntingdon, PE26 2TP

Applicant: Collmart Growers Limited

Permission: 24/00066/S73 (granted 17 July 2024)

1. Introduction

1.1. This statement has been prepared in support of an application under Section 192 of the Town and Country Planning Act 1990 (the "1990 Act") for a Certificate of Lawfulness in respect of the proposed construction of the access road authorised by planning permission 24/00066/S73, granted by Huntingdonshire District Council on 17 July 2024.

1.2. The certificate is sought to confirm that the construction of the access road would be lawful by reason of the relevant planning permission having been lawfully commenced through material operations undertaken on 4 September 2026, prior to the expiry of the permission's implementation period, and consequently remaining extant.

1.3. The road is identified on the approved plans and its alignment is shown on the accompanying drawings.

1.4. The material operations comprised the excavation of the road formation and the placement of hardcore. They were undertaken before the commencement deadline of 22 September 2026 specified by Condition 1 of the permission.

1.5. Furthermore, the details required by Conditions 4, 5, 6 and 7 of the planning permission were formally approved and discharged by the Local Planning Authority on 10 September 2026, within the implementation period. The circumstances surrounding the timing of the works and the subsequent approval of these conditions are considered in detail within this statement.

2. The Site and Planning History

2.1. The application site forms part of the existing Collmart Growers Ltd premises at The Drove, Pondersbridge, Huntingdon. The site is situated adjacent to the

company's existing onion storage and packaging buildings and forms part of the wider agricultural and processing operation. The access road subject to this application connects the approved development with the existing site access and hardstanding.

2.2. Planning permission was originally granted on 22 September 2023 under application reference 22/01107/FUL for a proposed anaerobic digestion plant and associated infrastructure at Collmart Growers Ltd, The Drove, Pondersbridge.

2.3. Subsequently, planning permission 24/00066/S73 was granted on 17 July 2024 under Section 73 of the 1990 Act. This permission varied Conditions 2 (Approved Plans) and 13 (Feedstock Limit) of the original permission, allowing amendments to the approved design and layout. The permission granted under Section 73 carried forward the time limit imposed by the original permission, with the result that the development was required to be begun before 22 September 2026.

2.4. The relevant planning history is summarised below:

- 22 September 2023: Planning permission 22/01107/FUL granted for the proposed anaerobic digestion plant and associated infrastructure.
- 17 July 2024: Planning permission 24/00066/S73 granted, varying Conditions 2 and 13 of the original permission.
- 23 June 2026: Application reference 26/80160/COND submitted to discharge Conditions 4, 5, 6 and 7 of permission 24/00066/S73.
- 15 July 2026: Non-material amendment 26/01110/NMA granted, amending Condition 4 of permission 24/00066/S73.
- 20 August 2026: Revised landscape bund and surface water drainage information submitted in support of application 26/80160/COND.
- 4 September 2026: Material operations carried out on the access road.
- 10 September 2026: Conditions 4, 5, 6 and 7 formally approved and discharged by Huntingdonshire District Council under application reference 26/80160/COND.
- 22 September 2026: Commencement deadline specified by Condition 1 of permission 24/00066/S73.

2.5. Condition 1 of planning permission 24/00066/S73 expressly states: "The development hereby permitted shall be begun before 22nd September 2026". The reason for the condition is to comply with Section 91 of the Town and Country Planning Act 1990, as amended.

2.6. Accordingly, the permission required the authorised development to be commenced before 22 September 2026. The material operations undertaken on 4

September 2026, together with the circumstances surrounding the discharge of the relevant conditions, form the basis of this application.

3. The Pre-Commencement Conditions

3.1. Planning permission 24/00066/S73 contains several conditions relating to the commencement and subsequent implementation of the approved development. Of relevance to this application are Conditions 4, 5, 6 and 7, which required the submission and approval of landscaping, surface water drainage, drainage maintenance and construction drainage details.

3.2. Condition 4 – Hard and Soft Landscape Works

3.2.1. Condition 4 required details of a hard and soft landscaping scheme to be submitted to and approved in writing by the Local Planning Authority before development commenced, other than the exceptions expressly identified in the condition.

3.2.2. By non-material amendment 26/01110/NMA, granted on 15 July 2026, the first paragraph of Condition 4 was amended to read: "No development, other than demolition, site clearance works and below ground excavation, shall commence until details of a hard and soft landscaping scheme have been submitted to and approved in writing by the Local Planning Authority." The effect of the amendment was to exclude below ground excavation from the operations prohibited by the condition. The amendment took effect on 15 July 2026, some seven weeks before the material operations relied upon in this application.

3.3. Condition 5 – Surface Water Drainage

3.3.1. Condition 5 restricted the commencement of development above or below ground level, including the laying of services, until a detailed surface water drainage scheme had been submitted to and approved by the Local Planning Authority.

3.4. Condition 6 – Surface Water Drainage Maintenance

3.4.1. Condition 6 required details of the long-term maintenance arrangements for the surface water drainage system, including Sustainable Drainage Systems (SuDS), to be submitted to and approved in writing by the Local Planning Authority before the permitted use commenced.

3.5. Condition 7 – Construction Drainage

3.5.1. Condition 7 required details of measures to prevent additional surface water run-off during construction to be submitted to and approved in writing by the Local Planning Authority before development, including preparatory works, commenced.

3.6. It follows that, at the date of the material operations relied upon, Condition 6 restricted the commencement of the use hereby permitted rather than the commencement of development, and had no bearing on commencement. Conditions 4, 5 and 7 restricted the commencement of development and are considered below.

3.7. An application to discharge Conditions 4, 5, 6 and 7 was submitted to Huntingdonshire District Council on 23 June 2026 under reference 26/80160/COND. Following consultation and the submission of revised information on 20 August 2026, the Local Planning Authority formally approved the details on 10 September 2026.

3.8. The decision discharged the submission element of each of the four conditions.

3.9. The works relied on were carried out on 4 September 2026, after the application to discharge had been made but before the details were approved.

3.10. Operations that breach a condition requiring approval before development starts do not normally count as starting the development: *FG Whitley & Sons Co Ltd v Secretary of State for Wales* (1992) 64 P&CR 296. There are recognised exceptions. In *Greyfort Properties Ltd v SSCLG* [2011] EWCA Civ 908, at [8], the Court of Appeal described the one that comes from *Whitley* itself. Where the developer has applied for approval in time, and approval is later given so that no enforcement action could be taken, work done before the deadline and in accordance with the scheme ultimately approved can amount to the commencement of development.

3.11. The exception applies here in respect of Conditions 4, 5 and 7:

- (a) The application to discharge was made on 23 June 2026, three months before the deadline
- (b) The details were approved on 10 September 2026, before the deadline
- (c) The works were undertaken along the approved access-road alignment and formed part of the development authorised by planning permission 24/00066/S73.

4. Lawful Commencement of the Permission

4.1. On 4 September 2026, material operations were carried out on part of the access road authorised by planning permission 24/00066/S73.

4.2. The operations comprised the excavation of the road formation and the placement of hardcore within it, at the point where the approved access adjoins the existing hardstanding.

4.3. The location and extent of these operations are identified on the accompanying plan, which plots the works against the approved site layout and demonstrates their relationship with the approved access-road alignment.

4.4. *Section 56(4)(d)* of the Town and Country Planning Act 1990 provides that development is to be taken as begun by any operation in the course of the laying out or construction of a road, or part of a road. The excavation of a road formation along the approved alignment, together with the placement of hardcore within that formation, constitutes an operation in the course of the construction of part of a road for the purposes of *Section 56(4)(d)*.

4.5. Furthermore, *Section 56(2)* of the 1990 Act provides that development is taken to be begun on the earliest date on which any material operation comprised in the development is carried out. Accordingly, the development authorised by planning permission 24/00066/S73 was begun on 4 September 2026, through the material operations undertaken in connection with the construction of the approved access road.

4.6. These operations were undertaken before the commencement deadline of 22 September 2026 specified by Condition 1 of the permission.

4.7. The application is supported by a plan showing the location of the works against the approved site layout, photographic evidence of the access-road formation works undertaken on 4 September 2026, and relevant email correspondence dated 11 and 14 September 2026. These documents provide supporting evidence of the location, nature and timing of the operations relied upon in this application.

5. The Statutory Test Under Section 192

5.1. Section 192(1) of the Town and Country Planning Act 1990 provides that any person wishing to ascertain whether any proposed operations or use of land would

be lawful may make an application to the Local Planning Authority for that purpose.

5.2. Under Section 192(2), where the Local Planning Authority is provided with information satisfying it that the proposed operations or use would be lawful if begun at the time of the application, it shall issue a certificate to that effect.

5.3. For this application, the relevant question is whether the proposed construction of the access road would be lawful by reason of the existing planning permission having been lawfully commenced and remaining extant.

5.4. The burden rests with the applicant to demonstrate, on the balance of probabilities, that the proposed operations would be lawful.

5.5. The access road forms part of the development expressly authorised by planning permission 24/00066/S73. The proposed operations are therefore within the scope of that permission and are not separate or unrelated development.

6. Conclusion

6.1. This Statement demonstrates, on the balance of probabilities, that:

(a) The construction of the access road forms part of the development authorised by planning permission 24/00066/S73, granted on 17 July 2024

(b) Material operations comprising excavation of the road formation and placement of hardcore were undertaken on 4 September 2026, constituting operations in the course of the construction of part of a road under *Section 56(4)(d)* of the Town and Country Planning Act 1990

(c) These operations were undertaken before the commencement deadline of 22 September 2026 specified by Condition 1 of the permission

(d) The details required by Conditions 4, 5, 6 and 7 were formally approved and discharged by the Local Planning Authority on 10 September 2026, within the implementation period

(e) Having regard to the relevant legal authorities and the circumstances of the case, the planning permission was lawfully commenced and remains extant

6.2. Accordingly, the proposed construction of the access road authorised by planning permission 24/00066/S73 would be lawful for the purposes of Section 192 of the Town and Country Planning Act 1990.

6.3. Huntingdonshire District Council is therefore respectfully invited to issue a Certificate of Lawfulness in the terms sought by this application.

David Mead MRTPI

The Planning Partnership

November 2026