

CROOKED HOUSE PLANNING ENFORCEMENT NOTICE

APPEAL BY ATE FARMS LTD

APP/C3430/C/24/3341483

**STATEMENT OF CASE**

November the 8<sup>th</sup> 2024

## Table of Contents

Introduction .....	4
Details of Alleged Breach of Planning Control.....	5
Reasons for Serving of the Enforcement Notice .....	5
Actions Required by the Enforcement Notice.....	8
Timeframe for Compliance With the Enforcement Notice .....	11
Grounds of Appeal.....	12
Main Issues .....	13
Witnesses and Scope of Evidence .....	14
Statement of Common Ground .....	16
Detailed Response to Enforcement Notice .....	17
The Appellant’s Grounds of Appeal.....	19
Ground (b) Matters identified in the Enforcement Notice have not occurred, and breaches of planning control have not occurred .....	19
Ground (a) Where any matters identified within the Enforcement Notice constitute a breach of planning control, planning permission ought to be granted.....	24
Commentary on the Notice.....	28
Appellant Response .....	28
Appellant Response .....	29
Appellant Response .....	30
Appellant Response .....	33
Appellant Response .....	33
Ground (f) Proportionality of the terms of the Notice .....	36
Appellant Response .....	37
Ground (g) that any period specified in the Notice falls short of what should reasonably be allowed .....	39
Wider Environmental, Sustainability and Planning Matters.....	40
Environmental Matters - Flood Risk .....	41
Environmental Matters – Ground Stability .....	42
Environmental Matters – Pedestrian Accessibility .....	42
Environmental Matters – Vehicular Accessibility .....	43
Planning Matters - Heritage Significance of Setting .....	44
Planning Matters – Financial and Operational Viability .....	44
Planning Matters – Overall Sustainability of the Location .....	45
Planning Policy.....	46
NPPF – Relevant Sections .....	46
NPPF - Appellant Response.....	47

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**Appellant Statement of Case**

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The South Staffordshire Local Plan (December 2012).....49  
Relevant Sections.....49  
South Staffordshire Local Plan - Appellant Response.....49  
Historic Assets Policy .....49  
Community Assets Policy .....50  
The Planning Balance .....51  
    Planning Balance Summary .....53  
Conclusion .....53

## Introduction

1. This Statement of Case accompanies an appeal by ATE Farms Ltd (the 'Appellant') against the Enforcement Notice by South Staffordshire District Council requiring the reinstatement of the former Crooked House Public House on land at The Crooked House, Crooked House Lane, Dudley, DY3 4DA.
2. It is prepared in accordance with Annex J of the Planning Inspectorate Procedural Guide, Planning Appeals – England<sup>1</sup>.
3. In accordance with the relevant procedure a Statement of Common Ground (SoCG) has been prepared by the Appellant and South Staffordshire District Council and is served alongside the parties' Statements of Case.
4. The background to the case is the fire which occurred at The Crooked House on the evening of 5<sup>th</sup> August 2023. The Appellant's primary position is that it is wrong for this Appeal to be heard by way of Public Inquiry when a criminal investigation is still taking place. Neither South Staffordshire District Council nor the Appellant are in possession of the evidence which has been gathered by the fire service and by Staffordshire Police concerning the cause of the fire. Also, the uncertainty as to whether a criminal prosecution may follow affects the ability of the Appellant to call witnesses and/or the ability of witnesses to answer questions. The Appellant set out its position in its written submissions on postponement which were sent to the Planning Inspectorate in April 2024. The Appellant maintains the position set out in those submissions, and for the reasons which were detailed therein.
5. This position was subsequently supported by South Staffordshire Council in its email to the Planning Inspectorate on 27<sup>th</sup> September 2024, which requested that the hearing of the appeal be adjourned until after the conclusion of any criminal proceedings. Further, on 18<sup>th</sup> October 2024, the Crown Prosecution Service wrote to the Planning inspectorate with an update on the criminal investigation. The letter refers to the potential 'impact' of the appeal on criminal proceedings if there is a decision to charge.
6. The Appellant's position, with respect, is that the decision of South Staffordshire Council to issue an enforcement notice was premature. The Appellant has invited the LPA to withdraw the Enforcement Notice without prejudice to its ability to serve a fresh notice at an appropriate date in the future. The applicable time limit for enforcement action in the present case is four years. The LPA has failed and refused to withdraw the notice, but as noted it has supported the request for a postponement. In the circumstances, the Appellant reserves the right to renew the request

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<sup>1</sup> Published 6 April 2015, Last updated 13 October 2021

for a postponement of the appeal in the light of the LPA's Statement of Case and its evidence, and in the light of any further update from the CPS.

7. The Appellant further wishes to highlight the potential impact of a decision by the CPS not to bring charges. There is a possibility that evidence concerning the circumstances of the fire will become available to the parties at a late stage of these proceedings. Either the Appellant or the LPA or both may wish to obtain independent expert evidence on the issues raised.

### Details of Alleged Breach of Planning Control

8. An Enforcement Notice was served by South Staffordshire District Council on the Appellant, George Adam Taylor and Carly Taylor on 27<sup>th</sup> February 2024. That Notice states that the following matters constitute a breach of planning control;
9. *'Without planning permission, demolition of an unlisted building, formerly known as the Crooked House...'*

### Reasons for Serving of the Enforcement Notice

10. The reasons for serving the Enforcement Notice are given as;

*1. It appears to the council that the above breach of planning control has occurred within the last four years.*

*2. The Building is a non-designated heritage asset which is listed on the Staffordshire HER (Historic Environment Record) and its significance and historic importance is set out in the Heritage Statement (Appendix 1).*

*3. The demolition of an unlisted building constitutes development within the meaning of section 55 of the Town and Country Planning Act (as amended) and demolition was not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 due to paragraph B.1(c) of Part 11 of Schedule 2.*

*4. The main pub structure and extensions have been demolished*

*5. The unauthorised demolition of the Building resulted in the loss of a community facility of local historic significance and interest which was included in the Historic Environment Record (HER) as further detailed and set out in the Heritage Statement annexed to this Notice at Appendix 1. At the time of*

demolition, Historic England was in receipt of an application to list the Crooked House. However, due to its demolition, Historic England did not have the opportunity to assess it and determine if it was suitable for listing. The Local Planning Authority was progressing the Building to be included on the “Locally Listed Buildings” register. Had the Building not been demolished it would have been included in the Locally Listed Buildings register as the Building would have met the criteria for local listing as set out in the Heritage Statement.

6. National Planning Policy Framework Chapter 16 Conserving and enhancing the historic environment: Paragraph 195 states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Paragraph 200 notes in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. The demolition of the Building is contrary to these policies as the Building is listed on the Historic Environment Record and is therefore considered to have the same level of protection as a non-designated heritage asset. There was no ability for the Local Planning Authority to fully assess the implications of its loss as no desk-based assessment or field evaluation was carried out to assess the potential impact of the demolition on the non-designated heritage asset.

7. The loss of this community facility is contrary to Chapter 8, Paragraph 97 of the National Planning Policy Framework which sets out the need to “provide the social, recreational and cultural facilities and services the community needs, and planning policies and decisions should:

a. plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

*b. take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;*

*c. guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;*

*d. ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community;”*

*8. Demolition of the Building is contrary to Policy EQ3 of the 2012 South Staffordshire Council adopted Core Strategy which is to protect and enhance the historic environment. The development that has been undertaken has resulted in the loss of a focal building due to its siting, design and historical association with the area, which although was in a remote location, had a socially prominent position and therefore is contrary to policy EQ3*

*9. The demolition of the Building is contrary to Core Policy 10 of the South Staffordshire Council adopted Core Strategy: Sustainable Community Facilities and Services. Policy EV9 of Core Policy 10: Provision and Retention of Local Community Facilities and Services does not support the loss of community facilities and services including public houses as a local community facility and service. Community facilities should be sought to be retained wherever possible where they make an important contribution to the vitality of the place and quality of life/wellbeing of local communities and the maintenance of sustainable communities.*

## Actions Required by the Enforcement Notice

11. The Enforcement Notice requires the following;

*Rebuild the Building, located in the position outlined in blue on the Plan attached to this notice, so as to recreate it as similar as possible to the demolished Building as it stood prior to the start of demolition on 5 August 2023, to include the original pub building and later additions of the rear-extension and toilet block. For the avoidance of doubt such restoration shall include, but not be limited to steps (i) and (ii) as set out below:*

- i) Construction works as are required in order to reinstate the Building to its former dimensions and style as a public house including the provision of customer toilets within the Building and all necessary services and utilities. The construction and style of the Building are illustrated on the plans and photographs annexed to the enforcement notice (Appendix 2); and*
- ii) Reconstruct the Building in design and materials to match those used in the original structure including but not limited to:*

*Walls and bricks:*

*Reclaimed bricks from the Crooked House should be used for the construction of the exterior walls or modern alternative to match in colour and texture. These should be laid in a bond based upon the photographic evidence of the elevations (Appendix 2 pages 1-5) (principal building in a variety of bonds). Where additional materials are required, suitable reclaimed bricks should be sourced to match to existing materials.*

*Front elevation:*

*Unpainted brick finish.*

*Side (right):*

*Unpainted brick finish.*

*Side (left):*

*Unpainted brick finish with tile hanging to top of gable.*

*Rear elevation:*

*Unpainted brick finish.*

*Roof:*

*The roofing should be of a traditional slate to match the appearance of the roof prior to the demolition of the building.*

*Principal Building (the two-storey building as shown in Appendix 2 pages 1-4)*

*Ground Floor:*

*Rectangular in form and three bays wide with central doorcase with rectangular fanlight above and black painted timber door. Timber six over six sashes with horns to other two bays to the front elevation. White painted windows, reveals and sills. Rear elevation of original 1765 building with two timber casement windows in arch headed openings. Originally central plain door with arched head in line with door to front. Five black cast iron pattress plates and tie rod at top of ground floor level externally*

*Front elevation with three timber six over six sashes. The central bay with a smaller, plainer sash without horns. The left and right bay with large sashes with horns matching those on the ground floor. White painted windows, reveals and sills. Gilt letter signage ("The Crooked House") between central doorcase and first floor window. Signwriting ("Banks's Ales") at first floor level between windows.*

*Eaves:*

*Round profile black rainwater goods and mesh along front of roof to prevent tile slip.*

*Right elevation:*

*The right-hand side elevation with attached single storey addition with slate roof. Two stacks set inside gable wall.*

*Left elevation:*

*Three substantial buttresses supporting the gable end. Two small modern rooms containing plant and stores located between the buttresses. Plant stores of modern matching brick with slate roofs to match rest of building. One louvred and one timber door painted to match woodwork to rear of building. The upper portion of the gable with tile hanging to match roof. Two stacks set inside the gable wall.*

*Single storey extension*

*Single storey brick building (stretcher bond) of the 1980s with pitched slate roof, forming the toilets of the public house.*

*Walls:*

*Unpainted red brick (modern 1980s). Reclaimed materials from the demolition should be re-used based upon the photographic evidence (Appendix 2 photograph 1) or matching materials sought.*

*Roof:*

*Pitched slate roof to match principal building.*

*Windows:*

*Small square timber window with obscured glazing and white painted frame to the elevation facing the car park (as per the photographs on page 1 and Section D-D page 23 in Appendix 2).*

*Restaurant extension:*

*Walls:*

*Unpainted brick finish in modern brickwork matching to the original masonry of the main building.*

*Roof:*

*Mono-pitch slate roof to match others on main building and toilet block. Central glazed section with projecting timber and glass gable. Second small gable above clad in lead.*

*Windows:*

*Timber screen wall with central projection formed by French doors to patio area. Timber panelling below windows with etched and stained glass. All timber work painted black.*

*Doors:*

*Arch topped timber double doors to end furthest from main building and modern timber doors to end closest to main building. Both painted black*

## Timeframe for Compliance with the Enforcement Notice

12. The Enforcement Notice requires compliance within 3 years of the notice taking effect, which is on the 28<sup>th</sup> of March 2024 unless an appeal was registered beforehand. An appeal was lodged on 26<sup>th</sup> March 2024

## Grounds of Appeal

13. This appeal is made under Section 174 of the Act on the following grounds:

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy and breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which had been caused by any such breach.
- And
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should be reasonably allowed.

## Main Issues

14. The main issues in this appeal are considered to be:

- Whether in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted;
- Whether those matters (identified in the Enforcement Notice at paragraph 3) have occurred;
- Whether those matters (if they occurred) constitute a breach of planning control;
- Whether the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which had been caused by any such breach.
- Whether the period specified in the notice in accordance with section 173(9) falls short of what should be reasonably allowed.

## Witnesses and Scope of Evidence

15. The Appellant will call expert witnesses covering the following subjects: -

- Planning, including policy, proportionality of the Enforcement Notice, general acceptability of development in the Appeal Site location, and matters not addressed by other witnesses.
  - The planning witness will present planning evidence covering the Development Plan and other material planning considerations, and the proportionality of the effect of the Enforcement Notice as drafted. Their evidence will consider the likelihood of the grant of planning consent for a Public House to be both built and operated in this location in the current planning context. It will consider in detail matters related to whether the actions involved in the removal of the Crooked House structure constituted development, whether these actions were authorised if they did in fact require such authorisation, and if in fact planning consent should be granted retrospectively if any of those actions required such authorisation and that such authorisation was found to not have been granted at the time, de facto or otherwise. Their evidence may cover the desirability in planning terms of rebuilding the structure in a separate location.
- Ground Stability.
  - A geotechnical engineering expert will provide evidence on the history of the site, expert opinion on why the building was 'tilted', evidence to demonstrate that the nature of the ground under the site of the former Crooked House Public House is unsuitable for the erection of a replacement structure, and that, if it is possible to do so, it would involve excessive costs to achieve the stabilisation of the site.
- Structural Engineer.
  - A structural engineering expert will provide evidence on the building structure at the date of the fire and subsequent works, and demonstrating that the process of rebuilding the structure of the Public House to match the visual appearance of the former Crooked House Public house will require non-standard construction techniques on the land, will be unduly onerous financially, and that furthermore the future maintenance and insurance of structure will be potentially problematic and again unduly expensive.
- Heritage Expert/Reconstruction of Historic Buildings Specialist.
  - A heritage expert will present evidence to the effect that the heritage value of the former Crooked House Public house was in not in any significant manner linked to the setting it previously occupied, and that as such any requirement to rebuild the

structure need not be tied to the original location in order to retain the historical value of the asset.

- Viability.
  - An expert in the economic viability of Public Houses will provide evidence to the effect that should the Crooked House be rebuilt and opened for business on the original site and in its original form, the medium to long term prospects for profitability are such that it is highly unlikely to prove viable in either outright financial terms or in terms of ongoing operational viability. Put simply, even ignoring the wholly disproportionate capital cost of stabilising the land reconstructing the building with its historic 'tilt', the pub business would be likely to fail if rebuilt at its current location.
- The Appellant reserves the right for its expert witnesses to provide evidence from other areas in addition to those outlined above in response to the Council and any third party representations once the evidential basis for the Enforcement Notice case becomes clearer.

16. The Appellant also reserves the right to call further expert witnesses to deal with specific points raised by the Council or the interested parties, of which the Appellant is currently unaware, and that do not fall within the expertise of its proposed witnesses. In particular, the Appellant reserves the right to call a Fire Expert to answer any allegation that the fire which destroyed the Crooked House Public house was a deliberate act of destruction. At the time of preparation of this Statement of Case, neither the LPA nor the police have provided any evidence whatsoever concerning the cause of the fire which destroyed The Crooked House on 5<sup>th</sup> / 6<sup>th</sup> August 2023. The Appellant is unable to instruct a Fire Expert unless or until evidence has been disclosed for that expert to consider. The Appellant's position in this appeal is that the onus is on the LPA to show that development has been carried out without the required planning permission. At the time of writing, we are not aware whether the LPA intend to call a Fire Expert in support of their case.

17. The Appellant will also call witnesses of fact – a witness on behalf of the landowner, a witness as to discussions which took place at the time of, and after the fire and witnesses from the contractor who carried out the works on the site.

## Statement of Common Ground

18. The SoCG that is submitted alongside the statements of case has been prepared through a collaborative process involving the planning and legal representatives of both the Appellant and South Staffordshire District Council during the months of July – November 2024. It represents an effort by both parties to narrow down the issues at the Public Inquiry to only those pertinent matters on which there is no agreement between the Parties to the Appeal.

19. The SoCG includes details relating to the: -

- Particulars of the Enforcement Notice
- Description of the Site
- Planning History
- Development Plan Policies
- Matters agreed
- Matters not agreed

20. The SoCG has been reviewed and signed by both parties prior to submission to the Planning Inspectorate.

## Detailed Response to Enforcement Notice

### Background – The Crooked House

21. A number of sources state that The Crooked House was originally built as a farmhouse in 1765 and was converted into a pub in the 1830s. The Appellant cannot locate any evidence to confirm the 1765 date. The 1816 OS 1"/mile 1<sup>st</sup> ed. Survey and 2"/mile hand drawn survey show no house, no mill and no mill pond. The coppice mill to the east below the Coppice mill pond dam is shown on the 1816 map. The November 1840 Oak Farm Estate map shows the first appearance of the building in the location where the Crooked House stood.
22. The 1851 census names the building as 'Oak Farm Mill' but it is not mentioned as a public house. Sally Cartwright, widow of John Cartwright was in occupation. This is the last dated reference to a mill on the site. The 1861 census gives the name of the building as the Glynne Arms with Joseph Woodcock as innkeeper. The 1881 census then shows the building as being unoccupied. The 1881 OS 1/10,560 map shows the northern extension in place.
23. It appears that works took place to the building in approximately 1908 – 1910 (when the southern wall had two buttresses installed, the upper part of the southern wall had been rebuilt and the parapet removed with the replacement of chimneys). By 1940/50 the ground floor rear windows had been rebuilt. Extensive repairs then took place in 1954 which included an extra buttress inserted between pair at the southern end, internal steel frame support, 5 tie-bars from front to back and a new roof. In 1986 a fire destroyed half of the roof which was subsequently rebuilt.
24. The Appellant's geotechnical expert will produce evidence in relation to the mining workings in the area, the subsidence and possible causes of the 'tilt', with mining subsidence not the only possible cause. One possible explanation is that the ground beneath the building became too soft (due to seepage of water from the mill race) to support the weight of the building at the southern end. However, expert evidence will state that the more likely cause is settlement initiated by loose fill under the building, with further tilting due to eccentric loading on soft clay. This fill would be prone to settlement due to flooding (which has certainly happened at least twice in the past 120 years). It would also be prone to settlement above normal amounts when affected by mining subsidence, giving rise to greater subsidence at the southern end. The Appellant states that this is relevant in considering the viability and logistics of any rebuild and the future stability of any building on the land.
25. The location and current surroundings are also, the Appellant would submit, highly relevant. The Crooked House pub stood in an isolated position at the end of Crooked House Lane, which leads off the B4176 Himley Road, 5km to the west of the centre of Dudley, in the West Midlands,

on the border with Staffordshire. Crooked House Lane is a 'dead-end' road, approximately 690 m long, leading from the B4176 at its northern point and terminating at the pub which stood at its south-western end. Crooked House Lane is bordered by tracts of woodland. Much of the approach and the surrounding area is a former colliery site and still retains the appearance of semi-industrial land.

26. There are three different landfill sites immediately adjacent to the site. To the East of the building and land are two separately permitted landfill sites, Oak Farm Quarry Landfill and Oak Farm Quarry Northeast Landfill. Historically, several collieries operated on the Oak Farm quarry landfill sites which were abandoned in the early 20th century. Brick working of clay on parts of those sites also took place. The clay works were abandoned by about 1937 but then recommenced in the 1960s. Subsequently, the landfilling of different parts of the quarry sites commenced from the mid 1980s and from 2013 they were operated as a landfill for inert and biodegradable (non-hazardous) waste. Infilling of those sites ceased in early 2019.
27. To the South-West of the building and land is the Himley Wood Landfill site, Lower Gornal which was operated by Biffa Waste Services. That landfill is now closed. However, whilst operational it was one of 37 sites in England and Wales used for the burial of hundreds of thousands of animal carcasses which had been killed during the foot and mouth crisis in 2001.
28. Crooked House Lane also provides access to Lower Gornal Sewage Treatment Works operated by Severn Trent Water to the south-east of the site, about 500m from the site of the pub. The Sewage Treatment Works have been in use for a considerable period of time and operational since at least 1937. This is classified by Ofwat as a 'large' STW and comprises 27 settlement tanks.
29. To access the pub, patrons would need to traverse around 0.6 miles of unlit pathway. Parking outside of the pub is limited. The lanes leading to The Crooked House are blighted by fly tipping. The lane leading to the pub has mounds of fly tipped waste, discarded needles, cans of alcohol, black bag waste and other paraphernalia associated with anti-social behaviours and fly tipping. The lane leading to the ex-Biffa landfill site has extensive fly tipped waste, fridges, mattresses, earth, black bag waste and numerous waste piles which have been set alight, burnt out (including burnt out fridges, mattresses and sofas, with rows of trees blackened through being set alight).

The Appellant will state that given its location, rebuilding in the same place is neither viable in terms of the re-construction of the building and in terms of the feasibility and financial viability of the building as a public house.

## The Appellant's Grounds of Appeal

### Ground (b) Matters identified in the Enforcement Notice have not occurred, and breaches of planning control have not occurred

30. Section 4 of the Notice sets out the reasons for its issue. Paragraph (iii) states:

*'The demolition of an unlisted building constitutes development within the meaning of section 55 of the Town and Country Planning Act (as amended) and demolition was not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 due to paragraph B.1 (c) of Part 11 of Schedule 2.'*

31. Paragraph (iv) states:

*'The main pub structure and extensions have been demolished.'*

32. Section 55(1) of the Act provides:

*"...“development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."*

33. Section 55(1A) provides:

*"For the purposes of this Act “ building operations ” includes - (a) demolition of buildings ...".*

34. Section 171A(1) provides:

*"(1)For the purposes of this Act—*

*carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control."*

35. In March 2023, the Land was listed for sale by its owner, Marston's. That listing came about as a result of 'Project Aramis', a decision taken by Marston's to dispose of a selection of properties within their portfolio across England and Wales. The Crooked House was listed within the Project Aramis brochure, as having been subject to a 'Pillar Tenancy At Will' agreement.

36. In July 2023, the press reported that the then landlord of the pub had confirmed that following a burglary on 25th June which caused tens of thousands of pounds worth of damage, the pub had shut its doors. The Appellant purchased the freehold to the Land on 21st July 2023. The building was not occupied and not trading as a public house when the Appellant took ownership.

37. On the evening of 5th August 2023, a fire broke out within the Building which took hold and destroyed a substantial part of its structure. The Appellant was not in any way responsible for the start of the fire. Its officers did not cause the start of the fire, whether by themselves, or by instructing or encouraging any other person, or by any neglect on their part. As far as the Appellant and its officers are aware, the fire was either due to entirely accidental causes or a fire lit by an unknown trespasser which got out of control or some other malicious conduct. Although investigations have taken place, there has been no disclosure by the police, fire service or LPA of any evidence relating to the cause of the fire. As a point of context, as noted above, the area surrounding the Crooked House pub is greatly affected by fly tipping. The heavily fly tipped mounds of waste lining the lanes, and surrounding trees which line the path, are blackened with soot having been set alight by persons unknown. Several fires have been lit (and continue to be lit) by persons unknown on the land. Where a building is damaged by a fire which was not started nor caused by the owner or occupier, it is the Appellant's case that this does not constitute 'development' or a 'breach of planning control' for the purposes of Sections 55, 171A and 172 of the Act. The definition of development in Section 55 uses the words "carrying out" and "operations", both of which indicate that this means a deliberate action. Accidental damage to a building, however extensive, is not "development" within the meaning of the Act because it does not arise from the "carrying out of ... operations".
38. Further and in any event, to hold an entirely blameless owner responsible for a fire, and subsequently require them to rebuild a property due to permission not being granted for an event which is due either to accidental causes or possibly the reckless actions of a third party would only serve unjustly to punish that owner. That is all the more so in the circumstances of the present case in that the cost of rebuilding in the manner required by the notice is wholly disproportionate to the true economic value of the building and once completed the premises are unlikely to be financially viable as a public house. The cost of rebuilding is wholly out of proportion to the benefit to the community of reinstating the pub in its 'tilted' condition and in this location. For a public authority to seek to impose such a requirement would amount to the imposition of an 'individual and excessive burden' on the innocent property owner and therefore amount to an unlawful interference with their economic rights<sup>2</sup>. The fire took until the 6th of August 2023 to be extinguished by the fire brigade. By this point, a substantial part of the main

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<sup>2</sup> Whilst the TCPA permits an LPA to take enforcement action in respect of a breach of planning control, it is an interference with property rights and each case must therefore satisfy the overriding requirements of Art 1 Protocol 1 ECHR and Section 6 HRA 1998. This is recognised by the LPA's enforcement policy. This imports the requirement of proportionality. ECtHR case law provides that a fair balance must be struck between the interests of the public and the rights of the individual. That fair balance will not have been struck where an individual is made to bear '*an individual and excessive burden*'. See for example: James v UK [1986] ECHR 2 at para 50; Hutten-Czaspsa v Poland [2007] 45 EHRR 4 at paras 167-168; R (Mott) v EA [2018] UKSC 10; [2018] Env. L.R. 20 at paras 17 to 22.

pub structure and extensions had been destroyed. What remained was effectively the shell of the building. Again, the Appellant states that the destruction caused by the fire was not 'development' or 'a breach of planning control'.

39. The Appellant understands that South Staffordshire District Council decided to issue the enforcement notice when it was not in possession with the detailed evidence which has been gathered by the Fire Service and by Staffordshire Police relating to the causes of the fire. Whilst the Appellant acknowledges the pressure which the strong public feelings relating to this case must have caused, the decision to issue the notice before the conclusion of the investigation was clearly premature.
40. At the present time, neither the Appellant nor the LPA are in possession of the evidence relating to the causes of the fire. The Appellant acknowledges the decision in Nelsovil Ltd v Ministry of Housing and Local Government [1962] 1 WLR 405 that the burden of proof in an appeal relating to unlawful development generally rests on the person appealing. However, it is important to look at the rationale for that decision [at p. 408], namely that in most cases it is 'the developer' who knows what has occurred and when. That is not the case here, where the Appellant has no direct knowledge of the cause of the fire. In Hill v Secretary of State for Transport, Local Government and the Regions [2003] EWCA Civ 1904 the Court of Appeal [at paras 42 – 47 and 54 – 55] followed the decision in Nelsovil but with important qualifications. The Court held that it may not be difficult for an Appellant to discharge the burden if the LPA is unable to support its case with any evidence, or any strong evidence, to justify its decision to issue the enforcement notice. Also, the Appellant will submit that Nelsovil must now be read in the light of the statutory right to the protection of private property under Human Rights Act 1998 and A1P1 ECHR. The Appellant's case is that it would be wholly wrong to place it under a substantial financial burden to carry out reconstruction works without any, or any adequate, evidence that the statutory pre-conditions for the exercise of enforcement powers are met.
41. As detailed below, following a site meeting on 7th August 2023 between officers of the Council and contractors engaged by the Appellant, the Council considered that, in order to make the building safe, it was urgently necessary that works were carried out to certain parts of the remaining structure.
42. A meeting took place between Mr Taylor of the Appellant and representatives of the Council on 8th November 2023. During that meeting, it was confirmed by the Council that it was their view that under the Act, a building can be demolished if it is considered unsafe and this was what the Council wanted to understand in order to establish whether there had been any breach. It is clear that (at that stage at least) the Council considered that any breach arose, not during the fire, but as a result of the activities which took place on 7th August 2023, following the fire.

Further, in a press release dated 8th August 2023, South Staffordshire Council leader Cllr Roger Lees issued the following statement:

*'Our officers carried out a site visit yesterday (August 7th), prior to demolition of the building...'*

43. The Council were of the view that demolition took place on the 7th of August, which is agreed by the Appellant<sup>3</sup>.
44. The Appellant's primary case is that no aspect of the fire and its direct effects upon the Appeal Site constitute demolition or development, and as such, such acts do not constitute a breach of planning control. The Appellant anticipates that reference will be made to other cases heard by the Secretary of State where pubs that have been demolished have been ordered to be rebuilt. The Appellant distinguishes each of those cases.
45. In the case of The Carlton Tavern, Maida Vale, which was demolished by its owners in 2015, an enforcement notice was issued on 19th June 2015, requiring the pub to be rebuilt. A planning inquiry was held between the 17th-20th May and 24th May 2016, to consider two conjoined appeals by the Appellant. The first appeal concerned an appeal against the enforcement notice (APP/X5990/C/15/3130605) under section 174 TCPA 1990 on grounds (a), (f), and (g). The second appeal was an appeal against Westminster City Council's decision to refuse to grant planning permission for redevelopment of the site to provide a commercial unit and 10 residential units (APP/X5990/W/15/3025122). The Appeal decision, issued on 8th July 2016, allowed the appeal against the enforcement notice on ground (g), with the effect that the enforcement notice was upheld, with a variation allowing a longer period for compliance. The appeal against the Council's refusal to grant planning permission was dismissed. The decision document sets out the relevant factors which informed the Inspector's decision. There are some factual similarities between The Carlton Tavern case and the instant case; like the Crooked House, The Carlton Tavern Pub was not a listed building at the time of its demolition and was not formally identified as an Asset of Community Value. Historic England was in the process of listing the building, but that process had not concluded. Whilst there are some similarities between the two cases, the material circumstances are entirely different. In the case of the Carlton Tavern, demolition was deliberate; in its closing submissions the Appellant accepted that the demolition was unauthorised and that it should not have occurred the way it did. No explanation or excuse was given for the demolition. Furthermore, the Carlton Tavern, whilst not

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<sup>3</sup> For the avoidance of doubt, the Appellant's position is that the events of 7<sup>th</sup> August 2023 are not relevant to the determination of the present appeal. This is for two reasons: (a) the enforcement notice seeks to require the Appellant to reinstate the building to its condition *prior* to the fire; (b) in any event, it is now clear that substantial ground stabilisation works are required, and it would have been inevitable that the remaining walls would have to be demolished before this or any building is constructed on this site.

located in in the Maida Vale Conservation Area, was within the setting of that Area. The Inspector noted that 'It provided a facility for users of the park and I accept that it would have been perceived as part of the 'village' together with the nearby church and recreation ground. Its demolition is a loss to the character and appearance of the area and harms the setting of the conservation area.'

46. In the case of the Punch Bowl Inn, Longridge Road, Hurst Green, Lancashire BB7 9QW (Appeal Ref: APP/Q2371/F/22/3296097), the pub which was demolished was a Grade II Listed Building located in the open countryside and directly adjacent to the boundary of the Forest of Bowland Area of Outstanding Natural Beauty. The Crooked House is not a listed building and is not located within close proximity of an Area of Outstanding Natural Beauty. The Appellant in the case of the Punch Bowl Inn initially appealed against the issue of an Enforcement Notice on grounds (d), (g), and (j) of subsection 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, before the appeal was heard, the Appellant and its co-defendants had been prosecuted in the Magistrates' Court and found guilty in respect of the unlawful demolition of the building. Following the guilty verdicts, the Appellant confirmed at the hearing for the appeal against the enforcement notice, that it would not be pursuing ground (d), which was the ground that 'works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary.' As with the Carlton Tavern, it was a case involving deliberate demolition by its owners.

Ground (a) Where any matters identified within the Enforcement Notice constitute a breach of planning control, planning permission ought to be granted.

47. This ground is advanced without prejudice to the Appellant's primary case under ground (b) that no breach of planning control has occurred.
48. For the avoidance of doubt, the Appellant is not relying upon Ground (a) to argue that planning permission ought to have been granted to the Appellant to permit the demolition of the building as it stood prior to the fire on 5th August 2023. The Appellant's case is that the fire was an accident, or possibly due to the actions of a third party. The damage caused by the fire on 5th and 6th August 2023 was not a breach of planning control. Ground (a) is relied upon for two purposes in this appeal:
49. If (contrary to the Appellant's primary case) the Secretary of State determines (i) that the fire was caused by the actions of a third party; (ii) the Appellant is not culpable for the fire but (iii) it amounts nonetheless to a breach of planning control, the Appellant's case is that using a s.172 Enforcement Notice to require the Appellant to carry out works at excessive cost for limited community benefit would be a disproportionate and unlawful interference with its A1P1 economic rights; in those circumstances, Ground (a) would be an appropriate route to quash the enforcement notice;
50. Further, if the Secretary of State determines that any actions of the Appellant or its contractors following the fire (in particular in the events of 7<sup>th</sup> August 2023) constituted a breach of planning control, permission should be granted for those works.
51. If and in so far as it may be found (contrary to the Appellant's primary case) that any of the actions taken following the fire (whether as directed by the Council or otherwise) constitute a breach of planning control, the Appellant's case is that planning permission for that demolition should be granted. No purpose would be served by requiring the Appellant to reinstate the building either to its condition following the emergency works directed by the Council or otherwise to its condition at any point following the fire.
52. Nothing in the NPPF or in any of the other advice and guidance documents referred to by the Council supports the suggestion that the building should be restored to its post-fire condition. This would involve the recreation of parts of a building which was in an already damaged and dangerous condition, both uninhabitable and unusable.
53. The Notice alleges that the breach of planning control occurred on 5th August 2023 (i.e. the start of the fire). The Notice purports to require the Appellant to rebuild the building so as to return it to its condition "as it stood prior to the start of demolition on 5th August 2023". The

Appellant therefore considers that the central issue on this appeal is whether the occurrence of the fire constitutes a breach of planning control. The Appellant is aware that the Council considers that both the fire and the works following that fire which took place on the 7<sup>th</sup> of August 2023, were part of one 'demolition' event and that the cause of the fire is irrelevant to this. This is a fundamental point of disagreement between the Appellant and the Council. As stated above, to hold an entirely blameless owner responsible for a fire, and to require them to rebuild a property, due to permission not being granted for an unforeseen, potentially malicious event, would only serve to punish that owner. As per Carnwath LJ at paragraph 46 in Tapecrown Ltd v First Secretary of State and another [2006] EWCA Civ 1744 [2007] 2 P&CR 7, 'On the other hand the inspector should bear in mind that the enforcement procedure is intended to be remedial rather than punitive. If on his consideration of the submissions and in the light of the site view, it appears to him that there is an obvious alternative which would overcome the planning difficulties, at less cost and disruption than total removal, he should feel free to consider it.'

54. The overriding consideration in this case, in respect of context and the purposes of the works that took place on the 7<sup>th</sup> of August 2023, was the safety of members of the public who continued to access the site, despite extensive measures to attempt to prevent this. The land accessing the site had been the location of anti-social behaviour for a number of years. The interest in the land following the fire was unprecedented.
55. The agents of the owner determined that there was an ongoing risk to health and life posed by the structure both in the immediate aftermath of the fire, and following the carrying out of the initial works<sup>4</sup> as discussed with the Council. A decision was taken during those works in light of the structural stability of the building that the only appropriate response in the circumstances to mitigate the risk sufficiently was to remove the remaining unstable structure.
56. A witness of the contractor who carried out these works will give evidence at the Inquiry that during the discussions that took place on site on the 7<sup>th</sup> of August 2023 which preceded the works, a quantity of bricks fell from the building. The police cordon which was in place at the site on the morning of 7<sup>th</sup> of August whilst investigations were undertaken was removed, and a decision taken to remove the officers from the site, because of concerns that the building was structurally unsafe. This corroborates the appellant's view that the building was in fact in an extremely dangerous condition.
57. The key agreement during the discussions that took place between the contractor and the Council was that the building needed to be made safe. Council officers were of the view that

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<sup>4</sup> Works to make the building safe following the fire as discussed in the Statement of Common Ground.

removing three front sections of the building should achieve this, however, the Appellant will submit that what did not appear to have been considered when advising on works required was the internal steel frame (which had been added into the structure in the 1950's) which was connected to some of the areas initially proposed by the council for removal. The building was already in a dangerous state, as borne out by the police decision to stand down, and the brick collapse during the site discussions.

58. As soon as works to the front sections started it became clear that the steel frame had been compromised (either through removal of these front sections, or through the action of the fire) which left the building completely unsafe. The decision was made, on an emergency basis, that in order to make the building safe it would need to be taken down. Unfortunately, the council officers who had been involved in the discussions and advising in relation to the works had chosen to leave the site whilst the works took place. Had they been present, they would have been in a position to observe the works and the issue which presented itself to the contractors during those works.

Further, Sections 77 and 78 of the Building Act 1984 deal specifically with dangerous buildings. Section 77 provides a local authority with a power to apply to a court or tribunal for an order requiring the owner to execute works, if it appears to it that a building or structure, or part of a building or structure, is in such a condition to be dangerous. Works under the order carried out by the owner may be such that are necessary to obviate the danger, or, under Section 77(1)(b)(ii), 'if he so elects, to demolish the building or structure, or any dangerous part of it, and remove any rubbish resulting from the demolition.' Section 77(3) provides that, 'This section has effect subject to the provisions of the Planning (Listed Buildings and Conservation Areas) relating to listed buildings, buildings subject to building preservation notices and buildings in conservation areas', which does not apply in the current case. This section therefore leaves the nature of the works required to the owner's discretion based upon a judgement as to the state of the building.

The Appellant would submit, given the immediacy of the works required and the situation on site, Section 78 of the Act was a more appropriate power. That section relates to emergency measures in relation to dangerous buildings and provides:

- ' (1) If it appears to a local authority that—
- (a) a building or structure, or part of a building or structure, is in such a state, or is used to carry such loads, as to be dangerous, and
  - (b) immediate action should be taken to remove the danger,
- they may take such steps as may be necessary for that purpose.

(2) Before exercising their powers under this section, the local authority shall, if it is reasonably practicable to do so, give notice of their intention to the owner and occupier of the building, or of the premises on which the structure is situated.

(3) Subject to this section, the local authority may recover from the owner the expenses reasonably incurred by them under this section.'

59. Section 78 therefore contains a mechanism where, if there were concerns about the building stability and the works that were required, the local authority could have effected those works. It did not choose to exercise its powers, nor did the officers deem it appropriate to remain at the site in order to oversee the works which were taking place. The Appellant would submit that the criticism which is now being levied as to what happened when those works took place, and the emergency judgement call that it was necessary to make once those works had commenced, are all made with the benefit of hindsight. No party can state what they would have done as they were not present and had further made a decision not to be present, and not to carry out those works themselves. There could be no criticism of the Council had it used its powers under Section 78 to carry out the works that its officers considered to be necessary. The decision taken by the contractor has caused widescale criticism, but it was a decision that was taken on the spot and the Appellant and contractor will state that it was taken in the immediate interests of safety.

In the circumstances, under ground (a), the Appellant applies for planning permission for the emergency works that took place to make the building safe on 7<sup>th</sup> August 2024. To this end, the Appellant comments below on some of the points raised within the Notice (which include factual assertions). It is noted that the Council's reliance upon the NPPF and other advice and guidance is predicated on its case that the fire itself was a breach of planning control. As per the ground (a) appeal submitted by the Appellant, it takes the starting point that the building had already been damaged by fire, and submits that the demolition of the remaining parts of the structure is consistent with the guidance in the NPPF. In particular, the retention of the remains of an unsafe, fire-damaged building is contrary to the objectives in the following provisions of NPPF:

- Para 8 - Achieving Sustainable Development.
- Para 96 – Achieving healthy, inclusive and safe places and beautiful buildings. Part 11 – Making effective use of land.
- Part 12 – Achieving well-designed and beautiful places.

## Commentary on the Notice

Para 4(v) – Not a listed building

60. The Notice states the following:

*'The unauthorised demolition of the Building resulted in the loss of a community facility of local historic significance and interest which was included in the Historic Environment Record (HER) as further detailed and set out in the Heritage Statement annexed to this Notice at Appendix 1. At the time of demolition, Historic England was in receipt of an application to list the Crooked House. However, due to its demolition, Historic England did not have the opportunity to assess it and determine if it was suitable for listing. The Local Planning authority was progressing the Building to be included on the "Locally Listed Buildings" register. Had the Building not been demolished it would have been included in the Locally Listed Buildings register as the Building would have met the criteria for local listing as set out in the Heritage Statement.'*

## Appellant Response

61. The level of public feeling toward the Building since the fire and subsequent demolition has been extraordinary and it is overwhelmingly obvious that the Building meant a lot to many in the local community. However, notwithstanding the opinion of some in the community that it should have been, the Building was not listed. No notification had been given to the owner of the Building that applications to Historic England had been made.

Para 4(vi) – NPPF Chapter 16 (Historic Environment)

62. The Notice further comments that,

*National Planning Policy Framework Chapter 16, 'Conserving and enhancing the historic environment' (Paragraph 195) states that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Paragraph 200 notes in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.*

63. *The demolition of the Building is contrary to these policies as the Building is listed on the Historic Environment Record and is therefore considered to have the same level of protection as a non-designated heritage asset. There was no ability for the Local Planning Authority to fully assess*

*the implications of its loss as no desk-based assessment or field evaluation was carried out to assess the potential impact of the demolition of the non-designated asset.*

### Appellant Response

64. To be clear, the demolition did not come about by the Appellant taking the decision that it did not want the Building. A fire occurred, which resulted in such damage that demolition was considered necessary, at least in part, by the Council in order to make the Building safe, and then by the Appellant given the knock-on effects of the works instructed to take place. The Appellant was not aware of the Building being listed on the Historic Environment Record. Paras 195 and 200 of NPPF should be considered in the context of (a) initial damage by fire due to causes unknown and (b) demolition of remaining parts of a building which had already been severely damaged by the fire and was unsafe.
65. National Planning Practice Guidance (NPPG) Historic Environment National Planning Practice Guidance (last updated 23 July 2019) addresses non-designated heritage assets at paragraphs 39 to 41.
66. Paragraph 40 states that, 'Plan-making bodies should make clear and up to date information on non-designated heritage assets accessible to the public to provide greater clarity and certainty for developers and decision-makers. This includes information on the criteria used to select non-designated heritage assets and information about the location of existing assets'.
67. The 'Historic England Advice Note 7 (Second Edition): Local Heritage Listing: Identifying and Conserving Local Heritage (2021)' also recommends that lists should be revisited 'to check that heritage assets included still merit inclusion on the list and to check that heritage assets identified in the planning process have been added to the list, thereby maintaining a local heritage list's value and relevance' (paragraph 65).
68. The Advice Note does not agree with the premise that entry on the Historic Environment Record would have the same level of protection as a non-designated heritage asset:
- (60). Historic Environment Records can play a crucial role in ensuring access to the information supporting local heritage list preparation. The NPPF (paragraphs 187 to 1891) emphasises the importance of HERs in providing the core of information needed for plan-making and individual planning decisions. HERs are unique repositories of information relating to landscapes, buildings, sites and artefacts. Their content underpins the identification, recording, protection and conservation of the local historic environment and the interpretation of historic environment designation and planning decisions. HER recording guidelines vary across the country. Individual HERs are best placed to advise on how to collect and collate supporting data.

(61). The inclusion of a site or structure in an HER does not itself identify it as a non-designated heritage asset: inclusion merely records valuable information about it, and does not reflect the planning judgement needed to determine whether it does in fact have a degree of heritage significance which merits consideration in planning decisions. However, the information within the HER will help to identify candidates for possible inclusion in a local heritage list.’

Para 4(vii) NPPF – Para 97 (Community Facilities)

69. The Enforcement Notice states that,

*‘loss of this community facility is contrary to Chapter 8, Paragraph 97 of the National Planning Policy*

*The loss of this community facility is contrary to Chapter 8, Paragraph 97 of the National Planning Policy Framework which sets out the need to “provide the social, recreational and cultural facilities and service the community needs, and planning policies and decision should:*

*‘plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;*

*take into account and support the delivery of local strategies to improve the health, social and cultural well-being for all sections of the community;*

*guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day to day needs;*<sup>5</sup>

*ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community;”*

### Appellant Response

70. This statement is predicated on the Council’s case that the damage caused by the fire constituted a breach of planning control, which is a matter in dispute.

71. Even before the fire, the Building was no longer operating as a public house. Marston’s had sold the Building (not as a trading asset) as the public house was not viable for them. The Appellant will argue that it was not viable as public house. The pub was not at the time of the fire or subsequently a serving community asset (as it was not trading), nor had it been sold as

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<sup>5</sup> Now paragraphs 198 to 200 of the NPPF (December 2023)

a serious commercial or going concern. The Appellant will produce expert evidence which submits that the pub, even if operational, did not constitute a community asset given its location.

72. Despite being placed for sale by the brewery, prior to the fire, it was not attempted to be listed as an Asset of Community Value. The Localism Act 2011 requires district and unitary councils to maintain a list of land or buildings of community value. The Council maintains a list of Assets of Community Value, in which it states, 'A building or land is an asset of community value if its main use is to further the social wellbeing or interests of a local community for example a local village shop, community centre or playing fields'. When listed assets come up for sale or change ownership, the Act then gives community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market. This will help local communities keep much loved sites in public use and part of local life. The asset will remain on the register for five years or until the property is sold'.

73. The Crooked House pub does not appear on the successful nomination list (11 nominations) or the unsuccessful nomination list (five nominations). Public houses appear on both.

74. There are no residential areas close to the current site of the Crooked House pub. Areas of Kingswinford are c.700m south-east and south-west, Lower Gornal is c.830m north-east and the village of Himley is c.1.5km west. The Building is not located close to the B4176 (Himley Road), rather, it is reached by an access road which is c.725m long. The access road is known as Crooked House Lane, itself being a private road. The Lane provides access to Lower Gornal Sewage Treatment Works and Oak Farm Quarry Landfill Site. At the access points, the route becomes more open but overall, it has an enclosed character, particularly at its southern end close to the bridge which links different parts of the landfill site. The route is unlit and there have been reports of anti- social behaviour and vandalism occurring on the access road. The vicinity of the site has evolved dramatically since the original building (a farmhouse) was constructed in the 1760s. The area close to the site both to the north and south of the B4175 have changed due to mining and landfilling processes. In terms of the site, there is a public footpath which uses the access road. However, the wider network is limited and does not link to residential areas making both pedestrian and vehicular access to the Land and Building difficult and uninviting.

Para 4(viii) – LPA Policy EQ3

75. The Notice notes that,

*'Demolition of the Building is contrary to Policy EQ3 of the 2012 South Staffordshire Council adopted Core Strategy which is to protect and enhance the historic environment. The development that has been undertaken has resulted in the loss of a focal building due to its*

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**Appellant Statement of Case**

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*siting, design and historical association with the area, which although was in a remote location, had a socially prominent position and therefore is contrary to policy EQ3.'*

### Appellant Response

76. This statement is predicated on the Council's case that the damage caused by the fire constituted a breach of planning control, which is a matter in dispute.
77. For the avoidance of doubt, Policy EQ3 sets out the actions that the Council will take to conserve and enhance the historic environment including (a) the establishment, review and maintenance of records of 'known heritage assets' including 'Buildings of Special Local Interest (a 'local list')' and 'Undesignated heritage assets'. The same policy notes that there will be: 'joint working with local communities and interest groups such as civic and historical societies'; 'the continual development and refinement of the Local List'; and 'interaction with the County Council's Historic Environment Record (HER)'.
78. The explanatory text to Policy EQ3 states '...“Heritage assets” are essentially those identified by the Council in its decision making processes and include local listings'
79. The Crooked House pub was not a historic building recognised through the SSC Local List (at the time), and the present day setting is now one which is wholly alien to the historic setting of the pub and indeed, is served by a private access road. The pub was a failing commercial concern, hence the sale by the brewery.

Para 4(ix) – LPA Core Policy 10

80. The Notice states that,

*“The demolition of the Building is contrary to Core Policy 10 of the South Staffordshire Council adopted Core Strategy: Sustainable Community Facilities and Services. Policy EV9 of Core Policy 10: Provision and Retention of Local Community Facilities and Services does not support the loss of community facilities and services including public houses as a local community facility and service. Community facilities should be sought to be retained wherever possible where they make an important contribution to the vitality of the place and quality of life/ wellbeing of local communities and the maintenance of sustainable communities.”*

### Appellant Response

81. This statement is predicated on the Council's case that the damage caused by the fire constituted a breach of planning control, which is a matter in dispute.
82. For the avoidance of doubt, insofar as this may be relevant, the Appellant does not accept that the Site was functioning as a Community Facility immediately prior to the fire. The introduction to Core Policy 10: Sustainable Community Facilities and Services highlights the importance of access to the services and facilities people need. Whilst public houses are referred to as basic

facilities, they are noted as being ‘important to local communities and have a social and cultural role with other services which are essential to people such as the elderly. Such facilities can add vibrancy to communities and provide a focus for activities and foster community spirit and cohesion’ (paragraph 9.41).

83. Core Policy 10 states that,

*‘The Council will support proposals and activities that protect, retain or enhance existing community facilities and services or lead to the provision of additional facilities that improve the wellbeing and cohesion of local communities and ensure that communities are sustainable’.*

84. The explanation to Core Policy 10 focuses on villages and their essential facilities and services. These should be,

*‘accessible to local people and delivered locally’.*

85. Policy EV9: Provision and Retention of Local Community Facilities and Services supports Core Policy 10. It replicates many of the same issues set out under the Core Policy.

86. Policy EV9 states,

*‘Proposals for redevelopment or change of use of any premises currently used or last used to provide essential facilities or services which support the local community, whether of a commercial nature or not, will only be permitted where the Council is satisfied that:*

*it has been demonstrated through a viability test that the use concerned is no longer economically viable, that all reasonable efforts have been made to sell or let the property at a realistic price for a period of at least 12 months, the use could not be provided by some other means, or is genuinely redundant; and...*

*the facility or service which will be lost will be adequately supplied or met by an easily accessible existing or new facility in the local area or the village concerned, unless it has been accepted as redundant under criterion (a) above.’*

87. As noted above, the value of the Building as a community facility is not proven prior to the fire. For reasons discussed elsewhere in this Statement, the Appeal site is remote from residential areas, and is relatively inaccessible by public transport and on foot. Even access by car is constrained by the narrow access road, which is unlit and poorly maintained, lined with discarded waste, and which is subject to frequent antisocial behaviour including the burning of fly tipped wastes and vegetation. Access is further constrained by the very limited space available for parking.

88. Unfortunately, the local support was hitherto absent prior to the fire and subsequent demolition, as evidenced by the Marston's sale of the Building as a non-operating facility. The use served no ongoing or notable asset. The Appellant has also endeavoured to work in a positive manner to explore possible ways of recreating the pub, thereby, providing an asset of some genuine community value through its re-siting. This was set out during informal pre-application discussions in December 2023 and is dealt with at the relevant section of this Statement.
89. Rebuilding the Building in its current location will not provide a sustainable community facility (it is not in a sustainably accessible location, and is substantially less accessible to the local community than various of the other trading public houses which are centrally located within the nearest residential areas), just as it has not in the period preceding the sale to the Appellant. It was clearly not providing a sustainable community facility prior to the sale by Marston's, and likewise not in the period between the sale and fire.

## Ground (f) Proportionality of the terms of the Notice

90. It is the Appellant's case that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which had been caused by any such breach. The Appellant would state that the steps required by the notice are entirely punitive (1) by requiring a rebuild of the building as it stood prior to the fire and (2) given the issues with the location.

91. Section 5 of the Notice requires the following steps to be taken:

- *Rebuild the Building, located in the position outlined in blue on the Plan attached to this notice, so as to recreate it as similar as possible to the demolished Building as it stood prior to the start of demolition on 5 August 2023, to include the original pub building and later additions of the rear extension and toilet block. For the avoidance of doubt such restoration shall include, but not be limited to steps (i) and (ii) as set out below:*
- *Construction works as are required in order to reinstate the Building to its former dimensions and style as a public house including the provision of customer toilets within the Building and all necessary services and utilities. The construction and style of the Building are illustrated on the plans and photographs annexed to the enforcement notice (Appendix 2); and*
- *Reconstruct the Building in design and materials to match those used in the original structure including but not limited to:*
  - *Walls and bricks:*
  - *Reclaimed bricks from the Crooked House should be used for the construction of the exterior walls or modern alternative to match in colour and texture. These should be laid in a bond based upon the photographic evidence of the elevations (Appendix 2 pages 1 – 5) (principal building in a variety of bonds). Where additional materials are required, suitable reclaimed bricks should be sourced to match to existing materials.*

Appellant Response

92. Demolition took place as directed by the Council and later following a decision taken by the Appellant due to the safety of the Building on 7th August 2023. At that point, a substantial part of the Building was no longer standing.
93. The Notice can only direct a remedy for a breach of planning control and not a remedy for the events that took place before that alleged breach. The Appellant's primary case is that the damage which took place to the building as a result of the fire on the 5th and 6th August 2023, was not 'development' for the purposes of the Act and, in the circumstances, the Notice exceeds what is necessary to remedy the breach of planning control. The Notice can only direct that the Building is rebuilt so as to recreate it as similar as possible to the post-fire remains of the Building which was demolished on 7th August 2023.
94. It is important to note that discussions took place between the Appellant, its representatives and the Council following the events of 5th – 7th August with regard to the rebuilding of the Building. For the avoidance of doubt, the Appellant has not refused to rebuild the Building and has actively engaged with the Council regarding this.
95. The Appellant submits that key to the Notice and its requirements is that the Building, in its current location, was not viable. Marston's, the previous owners, had sold the Building as they could not make it work as a pub. Notwithstanding the weight of public opinion and press attention following the fire, people were not using the Building in order for it to be viable as a pub. The Appellant believes that the location of the Building, access to it and lack of passing footfall is key to this. Requiring a re-build in the same location, whilst reflective of popular opinion, will not change the fact that the Building in that location is not viable or feasible as a public house. For this reason, the Appellant put forward a sustainable, and what it sees as a genuine and practical, solution to the issue to the Council that it rebuilds the Building on other land that it owns, to operate as a public house, with other development, to increase footfall and give the pub and the Building a real chance of success as a community asset.
96. Notwithstanding arguments that will be raised about the viability and costs of a rebuild, should it be rebuilt in the same location, there is no doubt that there would be a huge amount of interest in the first few months; however, this does not translate to continued and sustained interest to make the Building work as pub going forward. The location is complex, and it is very difficult to control and regulate the anti-social behaviour on the access lanes to the pub. The alternative redevelopment option which was discussed prior to the Notice being served, locates a newly constructed Crooked House pub along with appropriate parking and landscaping further north

off Crooked House Lane and as near to the highway junction with the Himley Road as would be allowed. This would enable security to be put in place to restrict access (noting the requirement to respect extant Rights of Way) further down that lane in an attempt to avoid the fly tipping issues and access for anti-social behaviour purposes. The proposed rebuild would fall within the South Staffordshire Council administrative boundary. The relocated pub would have comparable proportions and development space, with enhanced accessibility and parking. It is also proposed to include an interpretation/education centre in this area which would link to local history (e.g. mining and archaeology). The proposal would also include enabling complimentary development within the existing woodland setting.

97. Prior to the Notice being served, the Appellant had submitted a detailed request for pre-application advice to the Council (and neighbouring authorities). Whilst the Appellant appreciates that permission for a relocation cannot be considered as part of the appeal against the Enforcement Notice, its intention to imminently submit to the LPA an application for the development described above is a factor which it says is relevant to the appeal.
98. In addition to those factors which affect the ongoing operating viability of the Building on the current Appeal Site, including the lack of passing trade, the Appellant submits furthermore that there are unreasonably onerous costs associated with the rebuilding of the facility in this location.
99. The process of rebuilding the structure will incur very significant engineering challenges and therefore costs, over and above those associated with a normal development of a similar public house in a more conventional location. This is true in particular in regard to the ground works, stabilisation of the ground (having regard to the reasons for the 'tilt' in the first place), its location in the floodplain, and proximity to environmentally contaminated land. The costs associated with this alone are likely to be multiple millions of pounds and render the redevelopment financially unviable and almost certainly uninsurable.

The Appellant's case is that the cost of these works would be wholly disproportionate to the value of the building, both in terms of its true economic value and its value as a community asset, as discussed above. Whilst one of the legitimate aims of the planning regime is to protect the public interest, both the Council and the Secretary of State are required to maintain a fair balance with the private rights of the individual. The effect of the Enforcement Notice is to place an 'individual and excessive' financial burden on the Appellant in circumstances where it was blameless for the building's destruction by fire. The requirements of the Notice are therefore incompatible with the Appellant's economic rights under A1P1 ECHR and if upheld would constitute a breach of Section 6 HRA 1998 by the Council and/or the Secretary of State.

Ground (g) that any period specified in the Notice falls short of what should reasonably be allowed

100. The Appellant further submits that any period specified in the Notice in accordance with section 173(9) falls short of what should reasonably be allowed.
101. On the face of it, three years to rebuild the Building is not an unreasonable period time. However, studies and investigations which have thus far taken place by experts engaged by the Appellant show that a full ground investigation will need to be conducted (this is underway at the time of drafting this statement), consideration given to the erection of a reinforced raft to support the building which may require the removal of the building cellar. Then consideration needs to be given to the floodplain and the nature of the surrounding land. Further, the amount of retained bricks will need to be considered and other materials such as timber frames which were for the most part destroyed in the fire. Procurement of appropriate replacement materials will need to take place. A quantity of retained original bricks remain secured on site, however, members of the public removed bricks which were later sold online. There have even been recent social media reports of Crooked House bricks being sold in antiques shops. The Appellant is currently investigating this in order to ascertain the factual position.
102. This ground has been advanced because the Appellant continues to engage appropriate experts to advise in relation to issues such as feasibility or funding which may impact on the timeframes for any rebuild. Given the complexity of the rebuilding of what is a 'crooked' structure using niche/specialist construction techniques in a complex geological environment, and the funding and insurance consequences of such a challenging build, the time frames for funding, design and construction are likely to extend well beyond this period. It is anticipated that a better idea will be gained on the complexities and timescales when expert proofs of evidence are filed later on in the year.

## Wider Environmental, Sustainability and Planning Matters

103. This section of the Statement of Case considers matters not directly alluded to in the Enforcement Notice, but which are relevant to consideration of the suitability of the measures proposed in the Notice.
104. It is relevant to consider the proposed rebuilding of the Crooked House public house on its former site through the lens of its likely acceptability or otherwise under the current planning regime.
105. Whilst not seeking to be an exhaustive review (a full review will be undertaken in the proofs of evidence), the following section details a number of material considerations which the Appellant argues would render the construction and operation of a public house use in this location and setting (as judged against the current planning regime) clearly unacceptable.
106. Any planning application for a public house in this location would have to address a number of planning policy and environmental tests, compliance with which the Appellant argues would render consent unachievable. These are discussed below.
107. The order of discussion of the points does not imply any hierarchy of importance.

## Environmental Matters - Flood Risk

108. The site of the Crooked House public house is within a low-lying part of the surrounding area. Indeed, the original building which subsequently became a farmhouse and public house was a watermill, and the presence of the associated watercourse in proximity to the building may well have been a significant contributor to the ground instability in the area which forced the subsidence of the building.
109. Land within both the immediate footprint, and wider curtilage of the Building lie within Flood Zones 1, 2 and 3 as classified on the Environment Agency Flood Map for Planning. Parts of the (only) access route in and out of the site by road lie within Flood Zone 3.
110. The significance of the Flood Zone classifications is as below:
- Flood zone 1
    - Locations in flood zone 1 have a low probability of flooding. This means in any year land has a less than 0.1% chance of flooding from rivers.
  - Flood zone 2
    - Locations in flood zone 2 have a medium probability of flooding. This means in any year land has between a 1% and 0.1% chance of flooding from rivers.
  - Flood zone 3
    - Locations in flood zone 3 have a high probability of flooding. This means in any year land has a 1% or more chance of flooding from rivers.
    -
111. The classification of at least part of the building area and wider site means that as a minimum any redevelopment of the site would involve substantial physical flood mitigation measures, as well as the need for a flood evacuation strategy, but in practice would be more likely to render any new development of this site unacceptable in planning terms; development in Zone 3 would be a last resort for a development of this nature.
112. The classification described above already makes the site challenging in planning terms, but the addition of the factors used to consider the impacts of Climate Change will render the risks to the area even more significant, with the supporting evidence appropriate for use in any Flood Risk Assessment now required to factor in a 40% increase in rainfall. This will lead to even greater likely impacts on the usability and safety of the site.

## Environmental Matters – Ground Stability

113. The site of the Crooked House public house is within an area of historic mining and landfill activity. Both these factors would render the risks to the stability of any development on the site substantial. These matters will be discussed in detail in Proofs and by Expert Witness at the Inquiry. This factor would mitigate against development of the site for use as a public house in planning terms.

## Environmental Matters – Pedestrian Accessibility

114. Key to acceptability of development of a site for use as a public house (or similar community facilities) would be accessibility for pedestrian users.

115. The proximity of public transport is an important aspect of facilitating pedestrian access to a site. There are no nearby rail stations, the nearest being well over 2 miles distant.

116. In this instance, the nearest public transport stop is a bus stop is over 0.8 miles from the site on Straits Road, meaning a walk of around 17-18 minutes once leaving public transport.

117. Access to the site, once a pedestrian leaves the B4176 (Himley Road), is via 0.4 miles of an unlit, single track, metalled lane (classified as a public right of way) which passes through the middle of the landfill site that entirely surrounds the appeal site. There is no dedicated footpath to provide safe separation from vehicular traffic which can be comprised of large and other HGVs serving the surrounding landfill and other works. The lane passes through the remains of former railway bridges, the active landfill gas management compound and the entrance to a substantial water treatment works.

118. The area has a history as a location subject to antisocial behaviour, and is unappealing at best as a walking route for pedestrians. Furthermore, as noted above, the access road is liable to flooding under the highest Flood Zone classification that the EA use for planning permission classification.

119. The footpath network as it passes to the west of the Appeal site does not offer any particular destination beyond returning pedestrians to either the Himley Road to the north, or industrial land to the south. As such there is very limited likelihood of pedestrians using the routes other than specifically with the Site in mind.

120. As a consequence of these factors, and the lack of obvious other destinations for passing pedestrians beyond the Appeal Site, it is considered that pedestrian visits to the site are likely to be very limited.

121. Overall, access to the site for pedestrians is considered to be both relatively arduous and potentially unsafe. As such the location as a potential development site for a public house would appear undesirable (in this regard) in planning terms.

### Environmental Matters – Vehicular Accessibility

122. Key to acceptability of development of a site for use as a public house (or similar community facilities) would be accessibility for vehicle users and capacity for parking.

123. In this instance, the nearest highway is the B4176 (Himley Road). As for pedestrians, access is via 0.4 miles of an unlit single track metalled lane<sup>6</sup> in poor general condition which serves and passes through the middle of the landfill site that entirely surrounds the appeal site. The access lane passes through the remains of former railway bridges, the active landfill gas management compound and the entrance to a substantial water treatment works.

124. Passing places are limited and the quality of the road surface poor. Furthermore, as noted above, the access road is liable to flooding under the highest Flood Zone classification that the EA use for planning permission classification.

125. The road itself terminates at the Appeal Site, and as such there is no other destination to draw causal visitors past the Appeal site who might then stop.

126. As a consequence of these factors, and the lack of obvious other destinations for passing vehicles beyond the Appeal Site, it is considered unplanned vehicular visits to the site are likely to be very limited, and even access conditions for those wishing specifically to visit the destination are potentially off-putting.

127. On arrival at the Appeal site, constraints on space imposed by the presence of the surrounding landfill site mean that the areas available for parking are very limited, with a capacity limited to significantly less spaces than would be desirable for a facility of the type and capacity associated with the Crooked House. There are no other areas that could provide expanded parking in close proximity, given spatial limitations and general conditions in the area, and as such no other possibilities for parking without the occupants then using the unlit pedestrian access as described above.

128. Overall, access to the site for vehicles is considered to be both arduous and potentially unsafe, and with limited capacity for parking once the destination is reached. As such the location as a potential development site for a public house would appear undesirable (in this regard) in planning terms.

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<sup>6</sup> The Appellant understands that there is a public right of way over the lane but it is not a highway which is maintained at public expense.

## Planning Matters - Heritage Significance of Setting

129. Whilst it is acknowledged that the structure of the Building at the centre of the Appeal is of historical interest, the Appellant argues that the setting of the Building is such that it has no significance in contributing to the historical value of the Building.
130. Whilst the Public House originally served the mining operations associated with the area, the land use that these supported has been superseded such that the entire surroundings of the appeal site are now a dramatically reshaped landform associated with the ongoing landfilling activity. There are no visible reminders of the original setting which was associated with the Public House use.
131. Given that the structure of the Appeal Building is the aspect of historical interest, the appellant argues that to require the rebuilding of it in the same location, when that location is both unsuitable for development and would directly prejudice the Building's long term viability is unreasonable.

## Planning Matters – Financial and Operational Viability

132. Integral to the acceptability of developing a site for a use such as a Public House is the viability of the site. For a number of reasons, set out in brief below, it is hard to conclude that the Appeal site would have strong commercial viability;
- Limited food service covers through constrained physical space
  - Limited parking
  - No passing trade by foot or vehicle access
  - Access to the site by public transport difficult
  - Access during hours of darkness is unlit and with poor visibility.
  - Lack of neighbouring/complimentary development attractions to draw in visitors
  - Setting is off-putting in terms of neighbouring land uses and physical setting
  - Setting is known locally as a hotspot for antisocial behaviour
  - A national context of decline for the hospitality industry in terms of Public Houses
133. The factors listed above contribute heavily to the view of the appellant and their advisors that the operation of a Public House use on the Appeal site would, beyond an initial period of interest generated by the media attention, be commercially unviable, and as such hard to justify in planning terms.

## Planning Matters – Overall Sustainability of the Location

134. The sustainability of any development is key to its acceptability in planning terms.

135. Sustainability has a very broad reach, but relevant to this Appeal matter both environmental and financial sustainability are key. As has been set out in the commentary on matters above, the Appellant considers that viewed through the lens of the current planning regime, construction and operation of a Public House in this location would clearly fail tests of both environmental and financial sustainability, and would thus prove unacceptable in planning terms.

## Planning Policy

### NPPF – Relevant Sections

136. The Appellants will consider the degree of compliance of the development proposals with the policies of the Framework.

137. The Enforcement Notice notes paragraphs within the NPPF to include;

- Paragraph 195 states that ‘heritage assets are irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations’.
- Paragraph 200 notes in determining applications, ‘local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.’<sup>7</sup>
- Paragraph 97<sup>8</sup> sets out the need to “provide the social, recreational and cultural facilities and services the community needs, and planning policies and decisions should:
  - (a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
  - (b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;
  - (c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day to-day needs;
  - (d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community;”

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<sup>7</sup> National Planning Policy Framework Chapter 16

<sup>8</sup> National Planning Policy Framework Chapter 8

## NPPF - Appellant Response

138. Taking the starting point that the building had already been damaged by fire, the demolition of the remaining parts of the structure is consistent with the guidance in the NPPF. In particular, the retention of the remains of an unsafe, fire-damaged building is contrary to the objectives in the following provisions of NPPF:

- Para 8 - Achieving Sustainable Development.
- Para 96 – Achieving healthy, inclusive and safe places and beautiful buildings. Part 11 – Making effective use of land.
- Part 12 – Achieving well-designed and beautiful places.

139. In respect of matters of the community asset value status of the Appeal site, even before the fire, the Building was no longer operating as a public house. Marston's had sold the Building (not as a trading asset) as the public house was not viable. The pub was not at the time of the fire or subsequently a serving community asset (as it was not trading), nor had it been sold as a serious commercial or going concern.

140. Despite being placed for sale by the brewery, prior to the fire, it was not attempted to be listed as an Asset of Community Value. The Localism Act 2011 requires district and unitary councils to maintain a list of land or buildings of community value. The Council maintains a list of Assets of Community Value, in which it states, 'A building or land is an asset of community value if its main use is to further the social wellbeing or interests of a local community for example a local village shop, community centre or playing fields'. When listed assets come up for sale or change ownership, the Act then gives community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market. This will help local communities keep much loved sites in public use and part of local life. The asset will remain on the register for five years or until the property is sold'.

141. The Crooked House pub does not appear on the successful nomination list (11 nominations) or the unsuccessful nomination list (five nominations). Public houses appear on both.

142. In terms of its status as a community asset or otherwise, the physical location of the facility mitigates against it serving a community function in that it is a considerable geographical and travel time distance (discussed elsewhere in detail) from the nearest residential areas which could be said to form any relevant community. There are no residential areas close to the current site of the Crooked House pub. Areas of Kingswinford are c.700m south-east and south-west, Lower Gornal is c.830m north-east and the village of Himley is c.1.5km west. The

Building is not located close to the B4176 (Himley Road), rather, it is reached by an access road which is c.725m long. The access road is known as Crooked House Lane, itself being a private road. The Lane provides access to Lower Gornal Sewage Treatment Works and Oak Farm Quarry Landfill Site. At the access points, the route becomes more open but overall, it has an enclosed character, particularly at its southern end close to the bridge which links different parts of the landfill site. The route is unlit and there have been reports of anti- social behaviour and vandalism occurring on the access road. The vicinity of the site has evolved dramatically since the original building (a farmhouse) was constructed in the 1760s. The area close to the site both to the north and south of the B4175 have changed due to mining and landfilling processes. In terms of the site, there is a public footpath which uses the access road. However, the wider network is limited and does not link to residential areas making both pedestrian and vehicular access to the Land and Building difficult and uninviting.

143. It should further be noted that there are various public houses, cafes, and other hospitality facilities within close proximity to the nearest residential areas, easily accessible by bus, cycling, or on foot.
144. To argue therefore that the loss of the Appeal Site would leave the community unserved by such facilities is inaccurate.

## The South Staffordshire Local Plan (December 2012)

145. The South Staffordshire Local Plan is a relatively old document, but still within its plan period and as such provides the relevant local policy.

### Relevant Sections

146. The Enforcement Notice particularly notes;

- Core Policy 2, 'Protecting and Enhancing the Natural and Historic Environment'
- Policy EQ3 of Core Policy 2, 'Conservation, Preservation and Protection of Heritage Assets'.
- Core Policy 10 , ' Sustainable Community Facilities and Services.
- Policy EV9 of Core Policy 10: 'Provision and Retention of Local Community Facilities and Services '

## South Staffordshire Local Plan - Appellant Response

### Historic Assets Policy

147. As with the commentary relevant to historical value policies within the NPPF, it is relevant to note that the Appellant was not aware of the Building being listed on the Historic Environment Record. Paras 195 and 200 of NPPF should be considered in the context of a building which had already been severely damaged by fire, and which was unsafe.

148. National Planning Practice Guidance (NPPG) Historic Environment National Planning Practice Guidance (last updated 23 July 2019) addresses non-designated heritage assets at paragraphs 39 to 41.

149. Paragraph 40 states that, 'Plan-making bodies should make clear and up to date information on non-designated heritage assets accessible to the public to provide greater clarity and certainty for developers and decision-makers. This includes information on the criteria used to select non-designated heritage assets and information about the location of existing assets'.

150. The 'Historic England Advice Note 7 (Second Edition): Local Heritage Listing: Identifying and Conserving Local Heritage (2021)' also recommends that lists should be revisited 'to check that heritage assets included still merit inclusion on the list and to check that heritage assets identified in the planning process have been added to the list, thereby maintaining a local heritage list's value and relevance' (paragraph 65).

151. The Advice Note does not agree with the premise that entry on the Historic Environment Record would have the same level of protection as a non-designated heritage asset:

(60). Historic Environment Records can play a crucial role in ensuring access to the information supporting local heritage list preparation. The NPPF (paragraphs 187 to 1891) emphasises the importance of HERs in providing the core of information needed for plan-making and individual planning decisions. HERs are unique repositories of information relating to landscapes, buildings, sites and artefacts. Their content underpins the identification, recording, protection and conservation of the local historic environment and the interpretation of historic environment designation and planning decisions. HER recording guidelines vary across the country. Individual HERs are best placed to advise on how to collect and collate supporting data.

152. (61). The inclusion of a site or structure in an HER does not itself identify it as a non-designated heritage asset: inclusion merely records valuable information about it, and does not reflect the planning judgement needed to determine whether it does in fact have a degree of heritage significance which merits consideration in planning decisions.

### Community Assets Policy

153. Again, as with commentary of the NPPF policies covering community asset value, it should be noted that prior to being placed for sale by the brewery, and prior to the fire, it was not attempted to be listed as an Asset of Community Value. The Localism Act 2011 requires district and unitary councils to maintain a list of land or buildings of community value. The Council maintains a list of Assets of Community Value, in which it states, 'A building or land is an asset of community value if its main use is to further the social wellbeing or interests of a local community for example a local village shop, community centre or playing fields'. When listed assets come up for sale or change ownership, the Act then gives community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market. This will help local communities keep much loved sites in public use and part of local life. The asset will remain on the register for five years or until the property is sold'.

154. The Crooked House pub does not appear on the successful nomination list (11 nominations) or the unsuccessful nomination list (five nominations). Public houses appear on both.

155. There is no clear evidence that the Crooked House was in fact objectively an asset of community value.

## The Planning Balance

156. Following the removal of the Crooked House structure for the reasons of the protection of health and life following the fire, the Appellant recognises the existence of both a degree of planning harm inherent in the loss of an asset such as the Crooked House, and the weight of public opinion upset by the loss of the Building.
157. However, the Appellant neither accepts that they were responsible for any such Planning harms (which they maintain are necessary consequences of an event (the fire) out with their control), nor do they recognise that unauthorised development (in planning terms) has taken place, either in respect of the fire, or in respect of the subsequent actions, including removal of the structure, to make the Appeal Site safe.
158. In respect of the actions taken to make the Appeal Site safe following the fire, the Appellant argues that these actions were all directly and immediately necessary to protect health and life following the fire damage, and were either direct requirements issued by the Local Authority, or directly necessary because of the consequences of those initial requirements. This includes both the initial phase of works discussed with, and required by, officers of the Local Authority, and the secondary phase of works which the Appellant states subsequently became immediately necessary as a direct consequence of the initial works required by the council.
159. The Appellant argues that the first phase of work subsequent to the fire required no planning consent as they were works directly ordered by the responsible officers of the Planning and Building Control department of the Local Authority, and that the secondary phase of essential works were needed as a direct and immediate consequence of the first phase; these also de facto required no planning consent as they effectively were an unavoidable consequence and continuation of the first phase. As such the Appellant argues that no unauthorised development took place in the actions subsequent to the fire, all of which were necessary to make the building safe<sup>9</sup>.
160. It is the Appellant's case that it would be entirely disproportionate to require the Appellant (who bears no responsibility for the origins of the fire which was the first in a directly linked chain of events which led to the ultimate removal, for reasons of safety, of the Crooked House), to rebuild the Crooked House as it was before the fire, in the same location, within 3 years, and continue to operate it as a Public House.

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<sup>9</sup> As noted already, the purpose of an enforcement notice is limited by s.173 TCPA to requiring steps to be taken to 'remedy the breach'. If and insofar as the 'breach' is said to be the measures taken after the fire, it would be perverse to require the Appellant to reinstate the building to its post-fire condition, and we understand that is not the Council's case.

161. The Appellant argues that the original setting (as it is in modern times) plays no role in the historical significance or general interest of the Crooked House; indeed, quite the contrary, it is a significant detrimental factor in the perceived value of the Crooked House. Therefore, to require rebuilding in this location adds no value to the Crooked House's value as a structure, and positively detracts from its prospects as a financially viable concern.
162. The Appellant argues that the rebuilding of the Crooked House would be unduly onerous (both financially and practically) given the challenging environmental setting (which includes, but is not limited to, constraints related to ground stability, flood risk, proximity of hazardous landfill, poor access, and technically difficult building techniques required to recreate the 'tilted' structure).
163. Finally in respect of practical matters, the Appellant considers that, given the complexity of rebuilding the Crooked House either on its original site or on any replacement site, the proposed three year time limit for completion is entirely unrealistic.
164. The Appellant argues that there are no reasonably foreseeable circumstances under which the Crooked House will be either financially or operationally viable if rebuilt on the same site. Evidence given by an Expert Witness on Public House viability will expand upon this.
165. The Appellant further submits that when considered against the context of the Planning regime as it stands today there are numerous significant environmental, policy and sustainability factors which mitigate against the likelihood of consent being given for a similar structure or use in this location, if such an application were made now.
166. The Appellant therefore argues that the terms of the Enforcement Notice, both in respect of the actions required by the Notice and the period in which those actions are required to be completed, are unreasonable and disproportionate in their entirety.

## Planning Balance Summary

167. The Appellant argues that the planning balance must be judged in terms of whether (any or all) the terms of the Enforcement Notice can be argued to be proportionate to any Planning Harms where they exist.
168. It is the Appellant's case that no direct breaches of Planning Control have occurred, and that therefore to require the Appellant, as a consequence of events for which they have not been shown to bear responsibility, to rebuild the Crooked House at extremely high cost and risk, and to subsequently operate it as a Public house, with little to no prospect of medium to long term operational viability, is grossly disproportionate.
169. Whilst the Appellant maintains that no breach of planning control has occurred, it does recognise that some planning harm has occurred represented by the loss of the Crooked House, and the strength of public opinion. As such, the Appellant submits that achieving a reasonable and proportionate planning balance is best served by the rebuilding of the Crooked House in a different location in which the environmental constraints are acceptable, planning policy is supportive, and where a financially viable future use can be maintained. To this end, the Appellant proposes that the Crooked House can be rebuilt in as close a form as reasonably possible to that of the pre-fire structure, to respect the historical interest and value of the original but in a location which is acceptable in modern planning terms, and financially viable.

## Conclusion

170. For the reasons detailed above the Appellant submits that the Planning Inspectorate should exercise its powers under Section 176 (2) of the Act and quash the Notice.