

8 October 2025

Dear Ms Chew,

**Re: Planning Application 2025/92303 - Land at Low Farm, Wakefield Road, Flockton**

I wish to make a formal objection to the above application for a Certificate of Lawfulness, which seeks to establish that development under planning permission 2021/62/93644/E was lawfully commenced before its expiry on 24 August 2025. Having reviewed the planning record and supporting documentation, it is clear that the works undertaken in August 2025 cannot lawfully be regarded as commencement of the approved development.

The only operations recorded are the formation of a short access track and the erection of palisade fencing within Parcel 9. No solar panels, cabling, substation works or other principal infrastructure were undertaken. These limited works took place when several pre-commencement conditions remained undischarged, were discharged to the wrong company, or relied on outdated 2021–2022 surveys. The situation is compounded by missing risk assessments, lack of CDM 2015 compliance, and unresolved mining risks adjacent to Parcel 9.

**1. Outstanding and Late Pre-commencement Conditions**

A review of the Council's own planning record confirms that several pre-commencement conditions remained undischarged or only partially discharged when the works in Parcel 9 were undertaken.

Specifically, Conditions 5, 14, 15, 18, 19 and 20 were either outstanding or discharged too late to have been implemented before the alleged start of works.

Condition 5 (Landscape and Ecological Management Plan) was not approved until 12 August 2025, more than a week after the claimed commencement date of 4 August 2025.

The remaining conditions relate to contamination (14 and 15), highway access (18), archaeology (19), and ecological supervision (20) – all material matters that must be satisfied prior to any lawful commencement.

As these conditions had not been discharged or implemented at the time, the operations undertaken on or before 4 August 2025 were in breach of conditions precedent.

In accordance with the Whitley principle (*F.G. Whitley & Sons v SoS Wales* [1992] JPL 856), a development begun in breach of a condition precedent cannot constitute lawful commencement of a planning permission.

## **2. Outdated Technical Data**

Many condition submissions relied on ecological, arboricultural, and contamination surveys from 2021–2022, which had expired well before the August 2025 works. Under professional standards (CIEEM and BS5837), such data must be refreshed after 12–24 months. No updated assessments were provided.

This means the Council discharged multiple conditions based on outdated and unreliable information, rendering those approvals both procedurally and substantively defective.

## **3. Wakefield Public Inquiry**

The 2021 Decision Notice names Boom Power Ltd as the sole permission-holder. However, most subsequent condition discharges were issued to Boom Developments Ltd or Boom Low Farm Solar Ltd, while the present Certificate of Lawfulness application has been made by the latter. No formal transfer of the planning permission is recorded.

This inconsistency has already been acknowledged in the developer's own documentation. A letter from Ashfords LLP, dated 11 July 2023, was submitted by the developer and first appeared on Kirklees Council's own planning portal under the Low Farm application. In that letter, Ashfords explicitly stated:

"Boom Developments Ltd is promoting the New Hall Farm site, while Boom Power Ltd is responsible for Low Farm."

That same letter was later included as a core document at the Public Inquiry held in Wakefield concerning the New Hall Farm Solar Project, promoted by Boom Developments Ltd.

The fact that this clarification first appeared on Kirklees's own planning portal demonstrates that the Council was, or ought to have been, fully aware that Boom Developments Ltd had no lawful role in the Low Farm permission. Despite this, Kirklees continued to issue condition discharges in that company's name throughout 2023–2025.

This pattern of procedural oversight mirrors the concerns examined at the Wakefield Inquiry and reinforces the conclusion that the Low Farm permission was never lawfully implemented by the correct entity.

## **4. CDM 2015 Non-Compliance and Missing Risk Assessments**

The project clearly falls within the Construction (Design and Management) Regulations 2015 (CDM 2015), which require the client to notify the Health and Safety Executive (HSE) of any project of this scale via Form F10 before works begin.

No Form F10 has been submitted for Low Farm, according to the HSE. This omission is significant: without F10 notification, the site was never registered as a construction project and no formal health and safety duty holders were in place. Without this legal notification,

there could be no appointed Principal Designer or Principal Contractor, as required under Regulations 5-7.

Furthermore, Land & Power Ltd, named as Principal Contractor, produced a method statement dated 11 August 2025, one week after the alleged start date. There is no evidence that any site-specific risk assessments, contamination risk assessments, or mining stability assessments were prepared before works began. These omissions breach both CDM 2015 and Condition 12 of the permission (ground risk).

The WSP Phase 2 Ground Investigation Report (August 2024) explicitly advised that potential hazards – including combustible materials, sulphates, and ground gases – should be addressed by the contractor through detailed Risk Assessments and Method Statements (RAMS) prior to construction. However, the Land & Power method statement makes no reference to these risks, includes no evidence of RAMS having been prepared, and does not cite or implement WSP's recommendations. This demonstrates that the works were undertaken without reference to the approved investigation report or any site-specific risk management plan, in clear breach of both Condition 12 and the duties imposed by CDM 2015.

The absence of these mandatory assessments demonstrates that the August 2025 operations were not part of a regulated or lawful construction project, but rather limited enabling activity.

## **5. Mining Risks Adjacent to Parcel 9**

Condition 16 required a Coal Mining Risk Assessment, yet the WSP report (June 2023) was purely desk-based and relied on an exemption applicable only to surface-mounted solar panels. It did not assess the access track, fencing, or subsurface infrastructure. Parcel 9 lies directly adjacent to known historic workings associated with Caphouse Colliery, an area recorded by the Coal Authority as within the Development High Risk Zone.

The omission of intrusive ground testing or a stability assessment is therefore a substantive breach of Condition 16. These are precisely the operations now relied upon to claim lawful commencement, yet they were carried out without the required safety assurances.

## **6. Lack of Substantive Progress and Intent**

Following the short period of activity in August 2025, all works ceased. There has been no further progress, no delivery of materials, and no installation of solar infrastructure. This is not consistent with the commencement of a 49.9 MW solar farm, but rather with a token operation to preserve an expiring permission. The absence of CDM compliance, F10 notification, and risk assessments confirms that there was no intention to begin substantive construction.

## **7. Conclusion**

The documentary record shows that:

- Multiple pre-commencement conditions (5, 14, 15, 18, 19, 20) were not discharged or implemented before works began;
- The supporting data used was outdated and invalid;
- Required CDM notifications and risk assessments (RAMS) were never completed; and
- The only on-site works were minor enabling activities near historic mining works.

On this basis, the operations of August 2025 cannot lawfully constitute commencement of development under section 56 of the Town and Country Planning Act 1990.

I therefore urge the Council to refuse this Certificate of Lawfulness and to undertake a full review of how these conditions were managed. Should the Authority decline to address these matters transparently, it may be appropriate for the case to be referred to the Local Government and Social Care Ombudsman for independent investigation.

Thank you for your time and consideration.

Yours sincerely,