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By email only – Sean.Tilbury@cherwell-dc.gov.uk

7 September 2026

Dear Mr Tilbury

Wroxton Motocross Track, Stratford Road, Banbury OX15 6HH (“the Site”)

I am a planning lawyer and am instructed by Clinton Putnam (who acts as agent to [REDACTED] and [REDACTED]).

The purpose of this letter is to address two separate but related matters, namely, (i) the proposed direction removing permitted development rights for the use of the Site for motorcross events, and (ii) the extant enforcement notice (19/00316/ENF) relating to the unauthorised use of the Site as a mixed-use comprising agriculture, a motorcross track and camping site (“the EN”).

1. Issue (i)

In relation to issue (i), I understand that on 5 October 2026 the Council will be considering at its Executive Meeting the making of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the 2015 Order”) (“the Article 4 Direction”). This follows the Executive Meeting on 16 June 2026, at which the Executive resolved to make a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

At this stage, it is unclear how the Report to the Executive Meeting on 5 October 2026 will address the various matters raised in the representation submitted by Artland Limited on 16 June 2026 (“the Representation”). As explained in the Representation, the proposed Article 4 Direction raises a number of discrete matters of planning law which need to be addressed by the Executive. Accordingly, it is likely that following the publication of this

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Report, I will be writing again to the Council setting out any those matters of law which will be relevant to the Council's decision.

In advance of the preparation of the Report, however, the Council is asked to consider carefully the following important principles of planning law in relation to the removal of permitted development rights.

Article 3(1) grants planning permission for "the classes of development described as permitted development in Schedule 2". Under Article 3(2), "any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2". Article 4(1) enables a local planning authority to remove permitted development rights for "(a) all or any development of the Part, Class or paragraph in question in an area specified in the direction, or (b) any particular development falling within that part, Class or paragraph, which is specified in the direction".

The effect of the above provisions is that planning permission is granted for development set out in Schedule 2, subject to any restrictions, conditions or limitations applicable to such development as set out in Schedule 2. Article 4 provides a mechanism for a local planning authority to remove those rights, but not to add conditions or modify how those rights operate.

The use of the Site for motorcross (for up to 14 days in any calendar year) is permitted under Part 4, Class B, paragraph (b) of the 2015 Order. Under Article 4(1), the statutory powers may only be exercised in relation to removing either "all or any of the development" permitted under Part 4, Class B, paragraph (b), or "any particular development falling within [Part 4, Class B, paragraph (b)]".

The resolution at the Executive Meeting on 16 June 2026 seeks to permit the use of the Site for motorcross but limit the dates on which it can be used and requires the approval of an Events Management Plan. However, the permitted development rights granted under Part 4, Class B, paragraph (b) do not include any conditions, limitations or restrictions which relate to the dates on which the motorcycling racing may occur or the manner in which the motorcycling use may operate.

Accordingly, as a matter of law, it is unclear why the local planning authority considers it has the statutory power to make the Article 4 Direction in the manner proposed under the resolution. The Court explained the scope of Article 4 in *Thanet District Council v Ninedrive Ltd* [1978] 1 All ER 703:

"all that art4(1) is saying is that the planning authority may either ban all or any development or ban a specific development, that is to say, it can either sweep the board clean or be as extremely selective as it chooses."

As the Court noted, the statutory powers under Article 4 are limited to "development" which would otherwise be permitted under Article 4. The proposed Article 4 Direction does not fulfil that requirement. For example, there is nothing in Part 4, Class B, paragraph (a) which prevents the permitted development occurring on a Bank Holiday, or on 11 November. The only limitation under this Class is that the use of the land for motorcycling does not exceed 14 days in any calendar year. In other words, the statutory power available under Article 4 in relation to permitted development rights for the use of land for motorcycling is in relation to the scope of those permitted development rights, namely, whether they can include "trials of speed" and "practising for these activities", as well as "the provision on the land of any moveable structure for the purpose of the permitted use".

The 'restrictions' proposed in the resolution are akin to planning conditions. However, under s72 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act"), planning conditions may only be imposed "on

the grant of planning permission under that section [ie section 70]”. Under s70(1)(a), planning conditions may be imposed “when an application is made to a local planning authority”. Permitted development rights granted under Article 3 are not granted pursuant to a planning application. They are granted by operation of Article 3(1). This is another reason why the proposed resolution is wrong in law, as it seeks to impose conditions on permitted development rights without lawful authority to do so (ie ultra vires).

The reason why the proposed restrictions in the resolution fail in law can also be seen in the wording of Article 4(1) itself. This states that a direction under Article 4 (if made) will require any development described in the Article 4 direction to “not be carried out unless permission is granted for it on an application”. In this way, Article 4 ‘squares the legislative circle’ by moving planning control for what would otherwise be permitted development to the planning application process. In those circumstances, planning conditions can then be imposed on the planning application for such development.

For all the above reasons, the Council is respectfully requested to obtain legal advice prior to proceeding with its proposed Article 4 resolution.

2. Issue (ii)

In relation to issue (ii), my client has confirmed that all the works required under paragraph 5 of the EN have been carried out to the satisfaction of the LPA.

My client understands that the LPA has said it will withdraw the EN once its terms have been satisfied. Such a withdrawal would make sense, given that the use of the Site would in any event be controlled by existing permitted development rights under Part 4, Class B, paragraph (b) of the 2015 Order.

Accordingly, my client would be grateful if the EN could be withdrawn given that the works have been carried out in full.

Yours sincerely


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