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06 November 2024

Our Ref: 40089

WBC Ref: 190900 / 233179

Dear Emy,

Re: Land South of Anne's Manor – Lawful Development Certificate

I write on behalf of the applicant, Kingacre Estates, who are seeking a Lawful Development Certificate ("LDC") for an existing use or development under Section 191 of the Town and Country Planning Act ("the Act").

The application seeks to confirm that the planning permission (ref: 190900) for Land South of Anne's Manor ("the Site") for *"the proposed change of use of land from nil use to D2 for proposed Suitable Alternative Greenspace (SANG) with associated landscaping. To be read in conjunction with applications 190914 & 191068"* has been lawfully implemented within three years as per Condition 1 (i.e. before 24th May 2024).

Work has commenced on the Site by virtue of the construction of a section of footpath (Phase 1).

The following plans and documents have been submitted in support of this application:

- Appendix 1 - Correspondence between the Council in relation to the access license and addressing pre-commencement conditions discharge;
- Appendix 2 - Decision Letter for conditions of planning permission 190900 09.05.2024;
- Appendix 3 - Arboricultural Site Monitoring Report
- Appendix 4 - LEMP Briefing Note;
- Appendix 5 – Correspondence between the Council in relation to amending the footpath route and the tree protection fencing;
- Appendix 6 - Decision letter for conditions of planning permission 190900 22.05.2024;
- Appendix 7 - Decision letter for conditions of planning permission 190900 21.10.2024;
- Appendix 8 - Photographs;

Planning History

Planning permission was granted on 24th May 2021 for *"the proposed change of use of land from nil use to D2 for proposed Suitable Alternative Greenspace (SANG) with associated landscaping. To be read in conjunction with applications 190914 & 191068"*. The permission contains a number of planning conditions, specifically Condition 1 (Timescale for development), which requires the development to be begun before the expiration of three years from the date of the consent i.e. 24th May 2024.

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The Site is located within the South Wokingham Strategic Development Location and is associated with the approved outline planning permission for Land at Phase 2a for up to 215 dwellings and associated infrastructure (ref. 190914).

Commencement of Development

The Act is the key statutory framework for a certificate of lawful development if one wishes to ascertain whether an existing use of land, or operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes and no enforcement action can be taken.

In order to lawfully 'commence' development it is necessary to satisfy the legal requirements in Section 56(2) of the Act. This says that *"development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out."* As per Section 56(4) "material operation" means:

- a) *"any work of construction in the course of the erection of a building;*
- b) *the digging of a trench which is to contain the foundations, or part of the foundations, of a building;*
- c) *the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);*
- d) *any operation in the course of laying out or constructing a road or part of a road;*
- e) *any change in the use of any land which constitutes material development."*

The Council confirmed in principle on November 29th 2023, via email (Appendix 1), that the construction of a footpath would constitute a material operation and, therefore, commencement. It was agreed that a section of footpath (Phase 1) would be of sufficient scope to satisfy a material start. Therefore, in constructing this footpath the applicant has satisfied the legal requirements of Section 56(2) of the Town and Country Planning Act 1990.

Timeline

The onus of proof in a lawful development certificate application is firmly on the applicant and therefore clear and sufficient evidence is required to be provided to ensure a development is lawful on the basis of probability.

Whilst a Section 106 Agreement has been prepared for the SANG in relation to planning permission 190914, as this permission has not been granted at the time of the works commencing, the obligations were not in effect.

The below sets out a timeline of events which evidences that works consisting of a material operation were completed in order to implement the planning consent prior to the 24th May 2024, the date of which the planning permission would expire.

1. Details to comply with all pre-commencement conditions pursuant to planning permission 190900 were submitted on 22nd December 2023 (WBC ref: 233179).
2. The pre-commencement Conditions 3, 4, 5, 7, 8, 9, 10, 11 and 14 were discharged and originally approved on 9th May 2024 (Appendix 2).
3. Kingacre Estates signed an Access Licence Agreement with the Council on 10th May 2024 granting access to undertake works between 13th May and 24th May (inclusive).
4. Subsequently, site set up for the construction of the footpath (Phase 1) commenced on Site on 13th May 2024, with tree protective fencing installed on 14th May 2024 (Appendix 3), and site clearance and soil stripping taking place on 14th and 15th May 2024, as confirmed by the ECOSA Briefing Note (Appendix 4).
5. The contractor, ecologist and arboriculturist encountered a dry pond on the 14th May 2024 which had been filled with water following heavy rainfall. This pond was located at the entrance to the Site and the start of the

footpath. An alternative route for the footpath was provided and the Council agreed in principle to this on 14th May via email (Appendix 5).

6. Following this, revised plans and supporting documents were submitted to the Council to regularise the revised route and an updated decision notice was issued on 22nd May 2024 (Appendix 6). Revisions were also made to update drawings in the reports pursuant to the earthworks, drainage and WSI conditions. The Council issued a revised decision notice on 21st October 2024 (Appendix 7).
7. The section of footpath (Phase 1) was completed on 23rd May 2024. Photos taken on 24th May 2024 evidencing this material start accompany this application (Appendix 8).

The Council's Countryside, Commercial Property and Planning Officers were fully informed, as works took place, with any amendments identified and agreed immediately. Officers also attended the Site throughout the works taking place.

As such, Officers will be able to corroborate the timeframes that work took place in accordance with the Access Licence.

For the avoidance of doubt, the below table sets out each of the conditions, drawing numbers and document references and when the date of their approval.

Condition of 190900	Drawing no. / Document Reference	Date of Approval
Condition 3 - <i>Before the use of the land hereby approved commences, the footpath network, including a connection into the primary footpath network at Buckhurst Meadows SANG, shall be laid out in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The details shall include:</i> <i>i. the route of the paths; ii. a specification for the construction of each path type; and iii. a methodology for the construction.</i>	P23-1666_EN-005 St Anne's SANG Footpath NBS Specification Revision A March 2024	29/04/2024
	P23-1666_EN_004B-01 Footpath Design (Sheet 1 of 2)	22/05/2024
	P23-1666_EN_004B-02 Footpath Design (Sheet 2 of 2)	
Condition 4 - <i>No earthworks shall take place except in accordance with details that have first been submitted to and approved in writing by the local planning authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform.</i>	Condition 4 Earth Mounding and Contouring Explanatory Note 12 December 2023	29/04/2024
	P19-0052_14 Rev D Suitable Accessible Natural Greenspace Detailed Landscape Plan (approved drawing, within note)	21/10/2024
	P23-1666 PEG XX XX DR C 2000 P2 Earthworks Strategy Plan (within note)	
	Condition 4 Earth Mounding and Contouring Explanatory Note to capture minor changes to footpath July 2024	

Condition of 190900	Drawing no. / Document Reference	Date of Approval
	P19-0052_14 Rev D Suitable Accessible Natural Greenspace Detailed Landscape Plan (approved drawing, within note) P23-1666 PEG XX XX DR C 2000 P2 Earthworks Strategy Plan (within note)	
Condition 5 - Prior to the commencement of the development, full technical details of both hard and soft landscape proposals shall be submitted to and approved in writing by the local planning authority. These details shall include, as appropriate: a. scheme drawings; b. proposed finished levels and contours; c. means of enclosure (having regard to ecological permeability, safe exercising of dogs, grazing livestock as part of the maintenance of the site and provision of a sufficiently secure boundary to deter trespass on the railway); d. other vehicle and pedestrian access and circulation areas; e. specification of hard surfacing materials; f. specification and minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, lighting, external services, etc.); and g. measures required for ecological mitigation or biodiversity gain; Soft landscaping details shall include planting plan, cross-sectional soil profiles, specification (including cultivation and other operations associated with plant and grass establishment), schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate, and implementation timetable. All hard and soft landscape works shall be carried out in accordance with the approved details prior to any part of the development	P23-1666_EN_003A Soft Landscaping Details P23-1666_EN_001C-01 Detailed Soft Landscape Proposals (Sheet 1 of 2) P23-1666_EN_001C-02 Detailed Soft Landscape Proposals (Sheet 2 of 2) P23-1666_EN_002E-01 Detailed Hard Landscape Proposals (Sheet 1 of 2) P23-1666_EN_002E-02 Detailed Hard Landscape Proposals (Sheet 2 of 2)	29/04/2024 22/05/2024

Condition of 190900	Drawing no. / Document Reference	Date of Approval
<i>being brought into use or in accordance with a timetable approved in writing by the local planning authority. Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved and permanently retained.</i>		
Condition 7 - a) No development or other operation shall commence on site until a scheme which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent the site in accordance with BS5837: 2012 has been submitted to and approved in writing by the local planning authority (the Approved Scheme); the tree protection measures approved shall be implemented in complete accordance with the Approved Scheme for the duration of the development (including, unless otherwise provided by the Approved Scheme) demolition, all site preparation work, tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening or any other operation involving use of motorised vehicles or construction machinery. b) No development (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening or any other operation involving use of motorised vehicles or construction machinery) shall commence until the local planning authority has been provided (by way of a written notice) with a period of no less than 7 working days to inspect the implementation of the measures identified in the Approved Scheme on-site.	Arboricultural Method Statement May 2024 DPA7044_AMS_Rev5 Arboricultural Site Monitoring Report (SMR) 15 May 2024 DPA-7044-SMR Nexus Planning on behalf of Kingacre Estates wrote to WBC Officers on 2nd May 2024 inviting the Arboricultural Officer to undertake an on-site meeting with the project arboriculturist. Officers agreed on 2nd May 2024 that a short report with photos showing the tree protection fencing in-situ could be sent instead of an on-site meeting due to availability. The Arboricultural Site Monitoring Report (dated 15th May 2024) was submitted to WBC Officers on 21st May setting out the installation of the tree protective fencing in	22/05/2024

Condition of 190900	Drawing no. / Document Reference	Date of Approval
<i>c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within an area designated as being fenced off or otherwise protected in the Approved Scheme.</i> <i>d) The fencing or other works which are part of the Approved Scheme shall not be moved or removed, temporarily or otherwise, until all works including external works have been completed and all equipment, machinery and surplus materials removed from the site, unless the prior approval of the local planning authority has first been sought and obtained.</i>	line with the approved Arboricultural Method Statement.	
Condition 8 - <i>Prior to the commencement of the development a landscape and ecological management plan, including long term design objectives, management responsibilities, timescales and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.</i>	Landscape and Ecological Management Plan December 2023 23.0032.0021.F0 Rev. 1 020424 Landscape and Ecological Management Plan Briefing Note 20.0032.003 F0 September 2024	29/04/2024 21.10.2024
Condition 9 - <i>Before the development hereby permitted is brought into use, a strategy for delivery of public art throughout the site, setting out principles for:</i> <i>a. public engagement; b. the nature of the artwork; c. number of pieces; d. broad locations; e. procurement; and f. phasing of delivery</i> <i>shall be submitted to and approved in writing by the Local Planning Authority and the strategy shall be implemented as approved.</i>	P23-1666_EN_006C Public Art Strategy	22/05/2024

Condition of 190900	Drawing no. / Document Reference	Date of Approval
Condition 10 - No development shall take place except in accordance with either a statement confirming the use of non-intrusive working methods that will preserve in situ any archaeological features present or (should the proposed methods change and there be potential for ground disturbance that would cause harm to archaeological significance) an archaeological watching brief to mitigate the impact via preservation by record which has first been submitted to and approved in writing by the Local Planning Authority.	Written Scheme of Investigation Archaeological Watching Brief August 2023 P23-1666	29/04/2024
	Written Scheme of Investigation Archaeological Watching Brief August 2024 P23-1666	21/10/2024
Condition 11 - No development, including any works of demolition, shall take place, until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The Plan should include amongst other things: <i>i. Phasing of development; ii. measures for the control of dust, odour and other effluvia; iii. measures for the control of noise; iv. measures to prevent queuing outside the site; v. pollution control measures; vi. a construction travel protocol or Green Travel Plan for the construction phase; vii. construction traffic management plan comprising: a. analysis of the volumes of construction vehicles during construction phases for both light and heavy vehicles; b. vehicle routes and notably lorry routes, with volumes of lorries; and c. traffic management proposals including any mitigations, hours of operation and signage viii. site construction access; ix. details of any site construction office, compound and ancillary facilities; x. cycle storage and motor vehicle parking and turning for site operatives and visitors; xi. loading, unloading and storage of plant and materials; xii.</i>	DPA-7044-03-REV D SANG Woodland Area (Tree Protection Plan) (also included in the Arboricultural Method Statement)	03/05/2024
	DPA-7044-04-REV D (Eastern SANG Area (Tree Protection Plan) (also included in the Arboricultural Method Statement) Construction Environmental Management Plan Revision E May 2024 P23-1666 TRO1	09/05/2024

Condition of 190900	Drawing no. / Document Reference	Date of Approval
<i>measures to prevent deposit of mud on the highway; xiii. lighting; xiv. A site security strategy; xv. protection of important trees, hedgerows and other natural features xvi. relevant ecological mitigation measures for protected species and species of principle importance; xvii. contact details for complaints construction liaison officer; xviii. Communications Plan to keep local residents, town/parish councils and ward members informed;</i> <i>The Plan shall be implemented in accordance with the approved details throughout the construction period.</i>		
Condition 14 - <i>The use hereby permitted shall not commence until a sustainable drainage scheme for the site has been completed in accordance with details (including future management and maintenance) which have first been submitted to and approved in writing by the Local Planning Authority. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed details</i>	Condition 14 Sustainable Drainage Explanatory Note 12 December 2023 P19-0052_14 Rev D Suitable Accessible Natural Greenspace Detailed Landscape Plan (approved drawing, within note) P23-1666 PEG XX XX DR C 2000 P2 Earthworks Strategy Plan (within note)	29/04/2024
	Condition 14 Sustainable Drainage Explanatory Note August 2024 P19-0052_14 Rev D Suitable Accessible Natural Greenspace Detailed Landscape Plan (approved drawing, within note) P23-1666 PEG XX XX DR C 2000 P2 Earthworks Strategy Plan (within note)	21/10/2024

Summary

To conclude, all pre-commencement conditions were discharged in advance of works lawfully taking place and the approval received for the regularised works on 22nd May. The construction of the Phase 1 section of footpath was completed on 23rd May, as evidenced by photos submitted with this application. For these reasons, a material operation has lawfully commenced on site therefore satisfying the legal requirements in Section 56(2) of the Town and Country Planning Act 1990. As such, the planning permission 190900 has been lawfully implemented.

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The Applicant would be most grateful if the Council could confirm the above position by issuing a lawful development certificate.

I trust this provides sufficient information to enable the application to be registered and the details required to evidence commencement, but please do not hesitate to contact me should you have any questions in respect of the above.

Yours sincerely



Matt Harris

Associate



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