

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242825
Site Address:	Land to the South of St Anne's Manor, Wokingham, RG40 1ST
Expiry Date:	24 January 2025
Site Visit Date:	22 January 2025
Proposal: Application for a certificate of existing lawful development to confirm that planning permission 190900 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 and 191068] has been lawfully implemented within three years as per Condition 1, through the commencement of work by virtue of the construction of a section of footpath.	

PLANNING HISTORY

Application No.	Description	Decision & Date
190900	Full planning application 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.	Approved 24/05/2021
233179	Application for submission of details to comply with the following conditions of planning consent 190900 dated 24/05/2021. Condition 3 relates to a footpath network; 4 to earth mounding and contouring; 5 to landscaping; 7 to protection of trees; 8 to a landscape and ecological management plan; 9 to public art; 10 to archaeology; 11 to a Construction Environmental Management Plan and 14 to sustainable drainage.	Approved 29/04/2024
	Condition 3 - 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. the route of the paths; ii. a specification for the construction of each path type; and iii. a methodology for the construction.	

	Condition 4 - 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.	Approved 29/04/2024 Approved 21/10/2024
	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 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	Approved 29/04/2024 Approved 22/05/2024

	retained.	
	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. 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. 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.	Approved 22/05/2024
	Condition 8 - Prior to the commencement of the development a landscape and ecological management plan, including long term design	Approved 29/04/2024

	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.	Approved 21/10/2024
	Condition 9 - Before the development hereby permitted is brought into use, a strategy for delivery of public art throughout the site, setting out principles for: a. public engagement; b. the nature of the artwork; c. number of pieces; d. broad locations; e. procurement; and f. phasing of delivery shall be submitted to and approved in writing by the Local Planning Authority and the strategy shall be implemented as approved.	Approved 22/05/2024
	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.	Approved 29/04/2024 Approved 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. 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 queueing 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	Approved 03/05/2024 Approved 09/05/2024

	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. 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; The Plan shall be implemented in accordance with the approved details throughout the construction period.	
	Condition 14 - 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	Approved 29/04/2024 Approved 21/10/2024

REPRESENTATIONS

Parish/Town Council	No comments received
Ward Member(s)	No comments received
Neighbours	No comments received

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate – Covering Letter
- 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 (22.05.2024);
- Appendix 8 – Photographs;

By the Council:

- Site Visit Observations
- Planning History
- Email from Property Services confirming works were completed at the time of site visit dated 25/05/2024.

LEGISLATION

Town and Country Planning Act 1990 (as amended) (TCPA)

Section 55(1) of the Town and Country Planning Act 1990 (as amended) defines development as “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.”

Section 57 of The Town and Country Planning Act 1990 (as amended) requires that planning permission is required for the carrying out of any development of land.

Timescale

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful, they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations Page 11 of 32 or other matter.

As Section 191(1) (a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) defines operations as ‘lawful’ if:

- (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

CASE LAW

The courts have held in *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 that the relevant test of evidence on such matters is ‘the balance of probability’. The Courts have also held that the applicant’s own evidence does not need to be corroborated by ‘independent’ evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise

make the applicant's version of events less probable, there is no good reason to refuse that application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The usual material planning considerations relating to matters such as policy, principle of development/sustainability, design/landscape/ neighbouring amenity and highways/access are not to be considered under an application for a certificate of lawfulness for an existing use or development.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to confirm that planning permission 190900 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 and 191068] has been lawfully implemented within three years as per Condition 1, through the commencement of work by virtue of the construction of a section of footpath.

In determining a Certificate of Lawful Existing Development a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

In the case of this Certificate, it must be demonstrated that the operational development (commencement of the footpath) was undertaken within the last three years. The date of the application (190900) approval was 24 May 2021; therefore, the works must have been undertaken before 24 May 2024 for the Certificate to be Lawful.

In addition to the above, the Local Planning Authority (LPA) must also be satisfied that the development was Lawful at the time it took place, in this case, the LPA should be satisfied that all pre-commencement conditions had been approved and works were undertaken within the parameters of the condition's applications requirements.

Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so. The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness.

However, the NPPG also states that "if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided that the applicant's evidence is clear and unambiguous to justify the grant of a certificate".

Applicants Evidence

Lawful Development Certificate – covering letter submitted by Nexus Planning

The submitted covering letter supports the Certificate application in that lawful implantation of the footpath has been lawfully established. The covering letter outlines that the commencement of the footpath was commenced prior to the deadline within planning permission 190900, specifically condition 1.

Evidence has been submitted to support the applicant's case, this includes correspondence between Council officers and the developer, decision notices, Arboricultural Site Monitoring Report, LEMP Briefing Note and photographs.

Appendix 1 – Correspondence between WBC officers and agent

The email trail submitted is between the Council Planning Officer and the agent, the agent presents the matter of material operation and therefore, asks the officer whether this constitutes commencement of the development via the partial construction of the footpath.

The email from the agent was sent to the Council officer 28th November 2023, seeking information on the best way forward to commence development.

Appendix 2 – Decision Letter for conditions of planning permission 190900 (22.05.2024)

A conditions decision notice (233179) has been submitted to show that the details of all the pre-commencement conditions within planning permission 190900. The decision letter shows in detail the status of pre-commencement conditions and when those pre-commencement conditions were approved. Clearly, this evidence shows that all pre-commencement conditions had been submitted and approved by the LPA, therefore making the construction of the footpath Lawful.

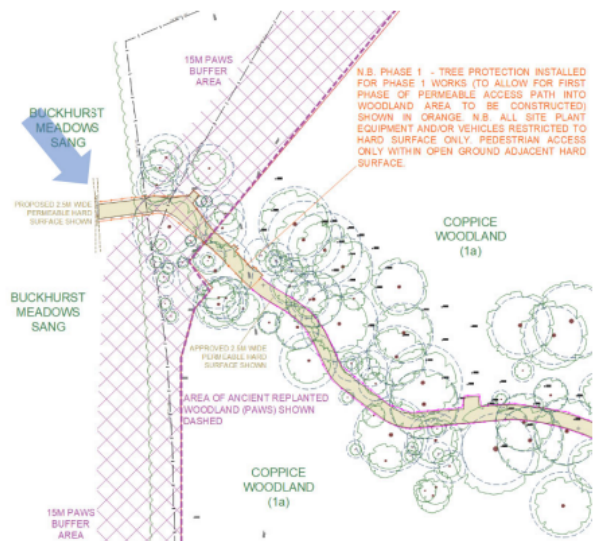
The approval date states 9 May 2024 and is clearly within the three years, stipulated within condition 1 of planning permission 190900.

Appendix 3 – Arboricultural Site Monitoring Report

An Arboricultural Site Monitoring (ASM) Report has been submitted by DPA arboricultural consultants on behalf of the developer (Kingacre Estates Ltd).

The ASM was submitted on 15 May 2024 and includes inspection notes on the installation of the tree protection measures on 14 May 2024 prior to the commencement of any works on site. Site photos have been enclosed within the AMS to show the state of the land near to where footpath would be laid down:

The picture below shows the location of the entrance of the footpath, the section has been cordoned off so that materials and equipment can be stored safely, clearly this shows that works are to be undertaken imminently to ensure commencement of the planning permission (190900).



Appendix 4 – Landscape Ecological Management Plan (LEMP) Briefing Note

A LEMP was submitted in August 2020 as required by condition 8 of planning permission 190900. One of the reasons why the LEMP was a pre-commencement condition was to establish the principle that the route of the proposed path within the woodland would be minorly adjusted to avoid unnecessary impacts of protected species.

A site meeting with Council officers and various stakeholders was arranged for 8th May 2024. The purpose of this meeting was to discuss the access approach and working methods to begin the first phase of delivering the footpath through St Anne's woods.

Appendix 5 – Correspondence between WBC officers and agent

The agent has submitted further correspondence where they seek clarification from Council officers regarding the re-alignment of the proposed footpath due to a dry pond being filled with water and resulting in potential ecology issues and resultant issues with commencement on site.

WBC officers respond with a response that if certain criteria are fulfilled, the revised proposal can be acceptable and that the updated drawings be submitted for consideration.

Appendix 6 – Decision Notice for conditions application 190900 (22.05.2024)

A decision notice sent to the agent by the Council dated 22nd May 2024, approving several relevant conditions (please see planning history section for a list of all pre-commencement conditions) including:

- Condition 3 (footpath construction)
- Condition 5 (landscaping)
- Condition 7 (AMS)
- Condition 11 (CEMP)

Therefore, once all the pre-commencement conditions have been approved, works on the construction of the footpath and its commencement can begin.

Appendix 7 – Decision Notice for conditions application 190900 (21.10.2024)

A decision notice approved by the Council dated 21st October 2024, approving several conditions including:

- Condition 4 (earthworks and contouring)
- Condition 8 (LEMP)
- Condition 10 (archaeology)
- Condition 14 (SuDs)

Therefore, once all the pre-commencement conditions have been approved, works on the construction of the footpath and its commencement can begin.

Appendix 8 – Photographs





The photographs above have been submitted as evidence, the agent has stated that the footpath construction was completed on 23rd May 2024 and the photographs were taken on 24th May 2024.

Council's Evidence

Site Visit Observations

A site visit was undertaken by the officer on 22 January 2025 at approx. 3:30pm, to ensure that the footpath has been constructed as per the approved plans, I was glad to see that the footpath is in good condition. Additionally, other council officers have undertaken visits, the most important one was by the Council's Property Services team on 25th May 2024, an email sent by Maria Sugden (senior surveyor for the Council) on 30th May 2024 confirms that at the time of her visit, the footpath has been constructed. See picture of footpath, at the time of her visit:



Planning History

There is extensive planning history for this site, most relevant is planning application 190900 which has been discussed in this report on several occasions and application 190914 which was for outline planning permission for Land at Phase 2a for up to 215 dwellings and associated infrastructure.

Conditions application 233179 is also highly relevant.

As shown within the planning history section, the most important aspect of this CLUED application is that the LPA records show that all the pre-commencement conditions have been approved prior to the works taking place.

Correspondence between WBC officers

An email from Maria Sugden (senior surveyor) who works within the Council's Property Services team has emailed the planning officer on 30 May 2024 confirming that a site visit was attended with the Council's Ecology officer and other stakeholders on 25 May 2024 (with pictures attached to the email) confirming that the footpath had been completed at the time of their visit.

Consideration of the Evidence

Applicants Evidence

The evidence provided by the applicant outlines that the construction of the footpath on the outskirt of Buckhurst Meadows was implemented and commenced before the three years elapsed on planning permission 190900, specifically condition 1.

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.

The LPA is required to consider three criteria to ensure that a grant of this certificate is Lawful and correct:

- 1) Had all the pre-commencement conditions been signed off prior to the works taking place? – the LPA is satisfied that the pre-commencement conditions had been submitted to the LPA for consideration and were subsequently approved as shown in the history section of this report.
- 2) Did the works take place before the planning permission (190900) expired? – the LPA is satisfied that the works to the footpath had commenced prior to the expiry date of the planning permission. The submission of the ASM report, combined with the photographic evidence by the Council's senior surveyor allows the LPA to ascertain with a degree of certainty that the works were undertaken prior to the expiry of the planning permission i.e. 24 May 2024.
- 3) Finally, are the works extensive enough to constitute a material operation/ implementation of the planning permission? – the LPA is satisfied that the works undertaken constitute a material operation and therefore implementation of the planning permission has been completed. The footpath construction is approx. 2.5metres wide and the material is coxwell gravel as the wearing course along with treated timber edging. This level of detail and having seen

the footpath, leads me to accept that a material operation has been undertaken and therefore, the planning permission has been implemented.

The applicant states that the operational development (commencing works to the footpath) was undertaken 23rd May 2024 and completed 24th May 2024.

The applicant has provided email trails between WBC and themselves, to show that discussions relating to commencement and lawfully implementing the footpath was undertaken via the submission of conditions applications. Within these emails, the Council confirmed in principle on November 29th 2023, 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 sufficient scope to satisfy a material start. Therefore, the agent believes in constructing this footpath the applicant has satisfied the legal requirements of Section 56(2) of the Town and Country Planning Act 1990.

The evidence also includes an ASM report, which corroborates the agents view that the works prior to the construction of the footpath were carefully observed by arboricultural specialists and that following ecology concerns the footpath should be re-aligned when construction commences.

The applicant has provided photographs which show the completion of the footpath, the Covering Letter states these were taken on the 23rd and 24th May 2024, these photographs are not date stamped. It can be concluded that it was most likely the footpath (phase 1) was commenced and completed by those dates respectively as stated within the Covering Letter.

The submission of this certificate is for the lawful implementation and commencement of a footpath and the evidence provided demonstrates the operational development (i.e. commencement) to lawfully implement within three years as per Condition 1, through the commencement of work by virtue of the construction of a section of footpath.

The Council does not hold any evidence which would be contrary to the evidence/documentation provided by the applicant.

Conclusion

Having considered the application and the Council's own evidence outlined in the Assessment, the Local Planning Authority is satisfied that on the balance of probability and with no significant evidence to the contrary, development has been lawfully implemented within three years as per Condition 1, through the commencement of work by virtue of the construction of a section of footpath.

All of the pre-commencement conditions had been approved by 22 May 2024 and the evidence shows that the works commenced on 23 May 2024 which was before the planning permission expired on 24 May 2024 and this constitutes a material operation.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues, and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that, the development has been lawfully implemented within three years as per Condition 1, through the commencement of work by virtue of the construction of a section of footpath.

It is therefore considered that the application of a certificate of existing lawful use should be approved, and a draft certificate is set out below.

Date:	21 January 2025
Earliest date for decision:	
Recommendation agreed by: (Authorised Officer)	<i>Connor Corrigan</i>
Date:	23/01/25