

DELEGATED OFFICER REPORT



**WOKINGHAM
BOROUGH COUNCIL**

Application Number:	250164
Site Address:	Meadow Sweet, Station Road, Wargrave, Wokingham, RG10 8HD
Expiry Date:	21 March 2025
Site Visit Date:	11 March 2025
Proposal: Application for a certificate of existing lawful development to confirm that planning permission 191705 has been implemented through the demolition of the existing dwelling.	

PLANNING HISTORY

Application No.	Description	Decision & Date
131652	Application for a certificate of existing use for the continued use of part of the ground floor and all of the first floor of the garage as a separate dwelling.	Approved 17/03/2014
151895	Demolition of existing three dwellings and erection of 3 detached dwellings with garages and creation of two new accesses off Waterman Way.	Refused 28/05/2015 Appeal Dismissed 07/3/2016
170576	Full application for the proposed erection of 2no detached dwellings with detached garages, access points onto Watermans Way and Loddon Drive, driveways, garden amenity areas and landscaping.	Approved 22/06/2017
173621	Application for variation of condition 2 of planning consent 170576 for the proposed erection of 2no detached dwellings with detached garages, access points onto Watermans Way and Loddon Drive, driveways, garden amenity areas and landscaping. Condition 2 relates to approved plan numbers to allow changes to the approved site layout plan.	Approved 29/03/2018
182447	Application for the submission of details to comply with the following condition of planning consent 170576 (22/06/2017) and 173621 (29/03/2018) 13. Archaeology	Approved 20/11/2018
190602	Application for submission of details to comply with the following conditions of planning consent 173621 (dated 29/03/2018) 3. Materials 4.	Approved 01/05/2019

	Landscaping 6. Arboricultural Report 7. SUDS 15. Lighting Design	
191705	Application to vary condition of planning consent 173621 for the proposed erection of 2no detached dwellings with detached garages, access points onto Watermans Way and Loddon Drive, driveways, garden amenity areas and landscaping. Condition 2 refers to allow changes to the approved plans and CIL liability.	Approved 18/09/2019
191850	Application for the submission of details to comply with the following condition of planning consent (170576)(22.6.2019). Condition 14: Either a license issued by Natural England, or a statement issued by Natural England authorising the specified activity/ development to go ahead.	Approved 09/08/2019
192995	Application for non-material amendment to planning consent 191705 to allow change order of construction phasing shown on submitted plan (3034-602a).	Approved 08/01/2020
192219	Application for submission of details to comply with the following condition of planning consent 170576 (Dated 22/06/2017) 15. Lighting design strategy.	Refused 02/03/2020
202760	Application for submission of details to comply with the following condition of planning consent 191705 dated 19/09/2019. Condition 4. Landscaping.	Approved 19/11/2020
231236	Application to vary condition 2 of planning consent 191705 to vary condition 2 of planning consent 173621 for the proposed erection of 2no detached dwellings with detached garages, access points onto Watermans Way and Loddon Drive, driveways, garden amenity areas and landscaping. Condition 2 refers to the approved details and the variation is to allow the addition of timber terraces, changes to fenestration and location of balconies.	Approved: 11/09/2023

INFORMATION PROVIDED

By the applicant:

- Application Form:
 - This application seeks to confirm that the demolition of existing dwelling which implemented the approved planning application 170576 & 191705 has taken place.
 - This application seeks formal confirmation that the planning permission was implemented before the 22nd of June 2020 as stated in the conditions and that the permission is still valid.

- It is stated that the evidence provided within this application shows that the demolition which was phase 1 of the application was carried out within the 3 years from approval.
- Photographs of the Site (not dated) shows demolition works taking place.
- Site Location Plan (ref: 001)
- Proposed Site / Block Plan (ref: 002)
- Site Registration Form for Bat Mitigation Class License.
- Charge Form – Bat Mitigation Class Licence
- Meadowsweet Wargrave – Soft Strip Supervision.
- Assessment of Habitat Regulations Licensing Tests.
- Bat Emergence and Re-Entry Survey (R2231/a).
- Copy of Decision Notice of Planning Permission 191705, 202760, 191850
- Email from Trevor Sutton of Wokingham Borough Council confirming demolition was complete on 22 July 2020.
- Email from Johann Van Der Walt, a Health & Safety Executive, confirming demolition was taking place on 6 July 2020.
- Demolition Notice from Wokingham Borough Council dated 2 October 2019.
- Letter from Sarah Foot of John Wenman Consultancy confirming bat survey carried out in 2019 with the planned demolition of the house.
- Asbestos Survey Report dated 12 July 2019.
- Copy of Landscaping Plan (707- LA-P-01).
- CIL Liability Notices for Phases 2 & 3 dated 17 & 18 February 2020.
- CIL Relief Claim Decision Notice dated 18 February 2020.

By the Council:

- Site Visit Photographs (11/03/2025 & 17/07/2023).
- Planning History Records (see above).
- Aerial Photos dated from 2017 onwards.

By third parties:

- None

APPRAISAL

Preamble

The application is for a Certificate of Lawful Existing Use to provide confirmation that the development approved under 191705 has been lawfully implemented prior to the expiry date of the planning permission and that construction can lawfully continue.

Condition 1 of permission 191705 states:

The development hereby permitted shall be begun before the expiration of three years from the date of the original planning permission (170576); i.e. development to begin before 22nd June 2020.

In determining a Certificate of Lawful Existing Use, the Council 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, the applicant is required to demonstrate, on the

balance of probabilities, that the development has commenced prior to the expiry date of the planning permission, this being 22 June 2020.

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”.

Background

Planning permission was originally granted on 22/06/2017 (ref: 170576) for the following proposed development:

“Full application for the proposed erection of 2no detached dwellings with detached garages, access points onto Watermans Way and Loddon Drive, driveways, garden amenity areas and landscaping.”

An application to vary the wording of condition 2 was subsequently approved in March 2018, essentially creating a new planning permission. The consent was subject to 17 conditions, several of which required the submission of further details for approval by the LPA before the development could commence. Two Discharge of Conditions applications were subsequently submitted (refs 182447 & 190602) and approved by the Council in late 2018 and early 2019, before a further section 73 application was made to vary the approved details of the application (ref: 191705; approved 18/09/2019). Further Discharge of Conditions and Non-Material Amendment applications were made between late 2019 and late 2020, with a further section 73 application being approved in September 2023 to make further alteration to the scheme.

As per the description of development, the applicant is seeking to confirm that the works associated with application 191705 lawfully commenced by 22/06/2020. As this permission was phased, there has been no identified breach of conditions, with phases 2 and 3 not yet being commenced. There are no pre-commencement conditions outstanding.

Appraisal

In seeking to address the fundamental question as to whether demolition of the existing dwelling constitutes commencement of planning permission 191705, it is important to note that reference to demolition was not made in the original description of development and changes to this description cannot be introduced through the Section 73 process. Notwithstanding, it would not be possible to implement the proposed development without the demolition of the existing properties, such that it is intrinsically linked to the approved scheme. Furthermore, although not mentioned in the formal description of development, reference to the demolition of the existing properties was

specifically referenced throughout the officer reports pertaining to applications 170576 191705.

S.56(2) of the Town and Country Planning Act 1990 states that development is taken to be initiated when a material operation is carried out. A material operation can include demolition if it is part of the approved development.

Demolition of the existing dwelling was considered to be integral to this proposal as it formed part of "Phase 1" of this development which is clearly linked to the erection of the new dwellings and the demolition works are therefore considered to comprise part of the development and can be considered to constitute commencement of the development.

The following appraisal is now concerned with whether the demolition works had begun before 22/06/2020, the date in which the application expired. Some of the information submitted by the applicant provides context as to the planning history of the site but does not provide an indication with regard to the date of commencement. As such, to avoid unnecessary commentary, only those relevant pieces of evidence have been discussed.

Photographs & Site Visits

Photographs of building works which show the demolition of the existing buildings are submitted with this application, however, these are not dated and therefore hold limited weight.

Demolition was confirmed with a site visit by the Case Officer on 11/03/2025, but also by an earlier visit from the Council upon assessment of application 231236, undertaken on 17/07/2023. This evidence provides no confirmation as to the precise date in which the demolition works commenced, however, it confirms the demolition was undertaken well before July 2023.

An enforcement case was raised (ref: RFS/2020/085644) on 2 June 2020 stating that work on the property started the week before, with the start of demolition of the previous properties. The report to the enforcement team was prior to the expiry of the application. This case was closed as it was not a planning issue, and the complainant was referred to the Health and Safety Executive.

A Second case was raised regarding raising of the ground levels (ref: RFS/2020/085794). The site visit notes from this case (dated 01/09/2020) are set out below:

"Demolition has occurred.

Bank to the south adjacent to water channel has been cut away.

All vegetation along the bank has been removed.

Breezeblocks and footing for a fence has been laid.

Levels have been raised on part of the site by approximately 0.75 of a metre."

The application for the discharge of conditions application 202760 dated 16/10/2020 states that works had not yet commenced, however, the application form for S73

application 231236 dated 11/09/2023 states that the works commenced in June 2020 but was not yet completed.

Building Control records

Through informal consultation with the Council Building Control team, it has been confirmed that the planned date for demolition of the pre-existing properties was 2 June 2020. Not only does this hold substantial weight in itself, but it also corroborates with the timeline of the aforementioned enforcement, where a case was raised due to the start of the demolition.

Email Correspondence

Johann Van Der Walt, a Health & Safety Executive, confirmed that demolition works were taking place on 6 July 2020, through an email sent to the applicant. This was following reports that dangerous demolition practices were taking place building up to that date. This was only 2 weeks following the date in which the application had expired, providing strong weight to the claims that the commencement of development had taken place by the expiry date.

In accordance with the above, an email was sent by Trevor Sutton of Wokingham Borough Council to the applicant on 29 July 2020, confirming that the demolition had been completely finished, as observed through a site visit on 22 July 2020, precisely one month after the expiry date.

Other

In addition to the above, there is a plethora of evidence provided by the applicant that, although does not prove that commencement had begun by 22/06/2020, it does demonstrate the intention to begin demolition by the expiry date of the application. This includes a commencement notice for phase 1 of the development (demolition), dated 11/11/2019, and confirmation that a bat license had been obtained for demolition works in late 2019.

Summary

From the evidence submitted and the Council's planning history records, it is clear that the applicant was working towards commencing the approved development before the expiration date. There is limited evidence to suggest that demolition had not commenced by 22/06/2020 and site visits carried out over the course of 2020 - 2024 confirmed that the buildings are no longer in situ.

Although the evidence is not wholly clear on the date demolition commenced, on the balance of probabilities, the evidence indicates this is more likely than not prior to 22 June 2020.

Section 56(2) of the TCPA 1990 states 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." Section 56(4) lists what is considered as a "material operation" including "(aa) any work of demolition of a building;". It is therefore considered that, on

the balance of probabilities, planning consent ref 191705 was lawfully commenced prior to the expiry date of 22/06/2020.

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 in respect of planning consent 191705, the proposed development was lawfully commenced prior to 22/06/2020 (the expiry date) in accordance with condition 1. Development could therefore continue to be undertaken in accordance with planning consent 191705. This application is therefore recommended for approval.

Date:	20 March 2025
Earliest date for decision:	18 February 2025
Recommendation agreed by: (Authorised Officer)	<i>JMM</i>
Date:	21 March 2025