

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	261512
Site Address:	Barkham Farms, Barkham, Wokingham, Berkshire, RG40 4EX
Expiry Date:	25 August 2026
Proposal: Application for a certificate of existing lawful development to provide confirmation that the development approved under 211081, amended under 241264 has been lawfully implemented prior to the expiry date of the planning permission	

PLANNING HISTORY

Application No.	Description	Decision & Date
211081	Full application for EIA development for the proposed installation of a new 52ha solar farm for a temporary period of 25 years including underground grid connection between site and Electricity Distribution Centre, laying of internal access road, the erection of substation building security fencing and associated landscaping with approximately 3.4ha of tree planting for carbon sequestration.	Approved 21 st January 2022
241264	Application for non-material amendment to planning consent 211081 to amend the layout of the approved solar farm in relation to the location of the Distribution Network Operator's (DNO) substation, the PV layout and internal access road	Approved 8 th July 2024
242228	Application for submission of details to comply with the following condition of planning consent 211081 dated 21/01/22. Condition 4, 22, 23 and partial (completion) discharge of conditions 5 and 10.	Approved 11 th December 2024
241901	Application for submission of details to comply with the following conditions of planning consent 211081 dated 21.01.22 and NMA 241264 dated 08.07.24: Condition 5 (partial discharge) relates to landscaping details; 6 to landscape management; 7 to tree protection; 9 to archaeological investigation, 10 (partial discharge) to rights of way details; 15 to landscape and ecological management plan; 16 to ecological permeability	Approved 16 th December 2024

261644	Application for submission of details to comply with the following conditions of planning consent 211081 dated 21/02/2022. Condition 5(a) relates to landscaping details (proposed levels) and condition 10(h) to rights of way details (post and rail fencing).	Approved 15 July 2026
261645	Application for non-material amendment to planning consent 211081 (as amended by planning consent 241264) to allow amendments to Condition 10 (Rights of Way Details), including amendment to the trigger for submission of details required by Condition 10(e) and updating the wording of Condition 10 to reflect details previously approved under discharge of condition applications 241901 and 242228	Approved 15 July 2026

INFORMATION PROVIDED

By the applicant:

- Minor Works Agreement
- Email from contractor with update (email sent 16th January 2025)
- Photographs from contractor from w/c 13th January 2025
- WBC Traffic and Travel update bulletin dated 19 December 2024
- Email from WBC Development and Planning Manager – Commercial Property to WBC CIL and S106 team advising the development will commence on 13th January 2025
- Contract Variation Notice for contractor to formally start the works

By the Council:

- Relevant planning history

By third parties:

- None. Furthermore sections 191–193 of the Town and Country Planning Act 1990 set out the application and determination process for lawful development certificates. The legislation does not require statutory consultation or publicity as part of the determination procedure. Whilst third parties have been notified, there is no statutory requirement to undertake or await consultation in the determination of this type of application.

APPRAISAL

The application is for a Certificate of Lawfulness to establish whether a planning permission has been lawfully commenced in accordance with the time restrictions that pertain on it. This application has been submitted under Section 191 of the Town and Country Planning Act 1990 (as amended), and seeks to establish whether the development approved under planning permission ref. 211081 was lawfully commenced prior to the expiry of the permission.

In determining a Certificate of Lawfulness, 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 development approved under 211081 was lawfully commenced within three years of the date when the permission was granted, the relevant date being 21st January 2025.

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 *“in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”* (Paragraph 006 Reference ID: 17c-006-20140306)

While the burden of proof is on the applicant, the relevant test of the evidence on such matters is ‘the balance of probability’. Accordingly, the assessment is limited to matters of fact and lawfulness only, and no planning balance or consideration of development plan policy is required or undertaken in reaching this conclusion. This is to say that Section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply to the determination of applications for certificates of lawfulness. However, evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so.

Background

As summarised in the Planning History section of the report, planning permission was originally granted on 21st January 2022 (ref 211081) for the following proposed development:

Full application for EIA development for the proposed installation of a new 52ha solar farm for a temporary period of 25 years including underground grid connection between site and Electricity Distribution Centre, laying of internal access road, the erection of substation building security fencing and associated landscaping with approximately 3.4ha of tree planting for carbon sequestration

The permission was subject to 29 conditions, several of which required the submission of further details for approval by the LPA before the development could commence. Council records indicate that the pre-commencement conditions necessary to lawfully begin the development had been discharged prior to the commencement of works. No evidence has been identified to indicate that any pre-commencement condition remained outstanding at that time.

As the development was the capable of being lawfully implemented, attention now has to turn as to whether the development did commence within the 3 year required period (21st January 2022 – 21st January 2025).

Appraisal

Condition 1 of permission ref 211081 states:

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of s.91 of the Town and Country Planning Act 1990 (as amended by s.51 of the Planning and Compulsory Purchase Act 2004).

This application seeks to confirm that the development was lawfully commenced before 21/01/25, in compliance with condition 1, and that building works can proceed on the site in accordance with planning permission 211081 and its conditions.

The initial commencement works, as presented by the applicant, comprise the formation of a bell mouth on Barkham Ride.

Some of the evidence presented by the applicant shows only an intent to commence works on 13th January, such as the email correspondence to the CIL and S106 team, and the Council's Traffic and Travel update bulletin. An intent to start is not alone sufficient to demonstrate that works did in fact commence.

However, an email from the contractor accompanied with photographic evidence (refer to Fig. 1 below) from week commencing 13th January 2025 do show a material operation in terms of excavation relating to the bell mouth:



Fig. 1: Photographic evidence from week commencing 13th January 2025

Within the first 4 days on site (all prior to 21st January 2025), the contractor outlined the following had been carried out which mentions excavation, supporting what can be seen in the above photograph:

- Traffic management/lane closure set up and removed daily as required.
- Known services identified running parallel with road at site entrance (marked with spray).
- Tree/bushes cut down at entrance.
- Engineer set out radius for kerbs (pins and spray used to preserve markings).
- Removal of metal gates and wooden posts at site entrance.
- Excavated kerb line and bell mouth to 680mm construction depth, spoil moved by dumper to stockpile.
- Barriers set up around excavation before leaving site.

The photographic evidence and contractor records are dated to week commencing 13 January 2025 and are considered to clearly relate to the approved site access works at Barkham Ride as shown on the approved drawings which form part of the planning permission. There is no evidence before the Council to reasonably dispute the accuracy or timing of this information.

The evidence submitted demonstrates, on the balance of probability, that a material operation forming part of the approved development was carried out prior to the expiry date of planning permission 211081 (21 January 2025).

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”:

- (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.

In this case, (d) of section 56(4) would apply as the material operation constituted work on creating the bellmouth access on Barkham Ride. It is also relevant that the description of the approved development included the creation of an internal access road, which the bellmouth connects to, so it is clear that the approval included works falls under (d) which explicitly mentions the construction of a road, and which are material operation under Section 56 of the TCPA. It is therefore considered that planning consent ref 211081 was lawfully commenced prior to the expiry date of 21/01/2025. The works undertaken are not preparatory in nature but form an integral part of the approved access arrangements and are therefore sufficient to constitute a material operation for the purposes of Section 56.

The Council has no evidence from its own records or from third parties which contradicts or undermines the applicant's evidence. All relevant conditions have been complied with or are ongoing, with no breach of condition(s) identified in this assessment that would potentially render the commencement of development unlawful. There is therefore no evidence to suggest that the development cannot continue to be implemented in accordance with planning permission ref 211081 and

the permission remains extant. As such, on the balance of probability, and in the absence of evidence to the contrary, the applicant's evidence is sufficiently clear and unambiguous to justify the grant of a certificate.

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 no equality impacts arise from the determination of this application, which relates solely to a matter of lawfulness.

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 approved by planning application 211081 has lawfully commenced before 21st January 2025, which is within the required 3-year time period from the date permission was granted (as stipulated in condition 1 of planning permission 211081). It is therefore considered that the application of a certificate of existing lawful use should be granted.

Date:	16 July 2026
Recommendation agreed by: (Authorised Officer)	
Date:	16 July 2026