DELEGATED REPORT

Application Reference:	PL/2023/06443
Application Type:	Lawful Development Certificate

Site Address:	Manor Farm, Wadswick, Box, Corsham, SN13 8JB
Proposal:	Certificate of lawfulness (Existing Use) for area of hardstanding (laid approximately 30 years ago) at the entrance of a field and has recently been re-laid with new stone/hardstanding
Recommendation:	That a Certificate of Lawful Development be GRANTED

PROPOSAL & SITE DESCRIPTION

An application for a Lawful Development Certificate (LDC) has been submitted to the Local Planning Authority (LPA). The purpose of the application is to establish that an area of hardstanding laid at the entrance to a field is lawful, on the basis that the hardstanding was originally laid some 30 years ago, and has been re-laid at various junctures since that time, when necessary and as required, most recently in February 2023.

Wadswick Lane heads north from the A365 from almost 1km before coming to a junction which turns east towards Neston (as Wadswick Lane), and west towards Bradford Road (B3109). The residential property of Corner Cottage sits in the south-eastern corner of the junction and is thus wrapped on its northern and western boundaries by Wadswick Lane. The field to which the site serves is located to the immediate south of Corner Cottage and the access strip which forms this application site runs along the eastern boundary of that residential property. The lawful use of the field and its associated access – as considered in this application – is agricultural.

LEGISLATION

The statutory framework covering lawfulness for lawful development certificates relating to existing use or development is set out in Section 191 of Town and Country Planning Act 1990.

CONSULTATION RESPONSES & REPRESENTATIONS

There is no statutory requirement to consult third parties – including Town/Parish Councils or neighbours – on this application type.

However, the Town Council and neighbours were consulted, and a site notice was sent to the applicant to display at the site.

Box Parish Council provided '*no comment*' on the application.

ASSESSMENT

Scope of consideration

This Certificate of Lawfulness application seeks confirmation as to whether the works carried out are lawful by virtue of being immune from enforcement action due to the time period which has elapsed since the work was carried out.

This application is assessed against the criteria set out in Section 191 ('s191') of the Town and Country Planning Act 1990 (as amended)('the Act'). S191 of the Act allows an application to be made to establish the lawfulness of development ('uses or operations') carried out. Enforcement action in respect of all breaches of planning control is subject to time limits. In accordance with Section 171B(1) of the Act, for this development to be considered legally acceptable, it must have been 'substantially completed' more than 4 years before the date of the breach, after which no enforcement action can be undertaken.

For a certificate of lawfulness to be issued, the onus is on the applicant to provide evidence that, on the balance of probabilities, the works were completed not less than the time limit for immunity from enforcement action prescribed under Section 171B (Time Limits) of the Town and Country Planning Act 1990 (as amended), whereby the time limit for taking enforcement action had expired.

The LPA needs only to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in the determination of this particular application.

Evidence provided by the applicant –

- Application form
- Aerial photographs
- Statutory Declarations: Mr Tim Barton (Applicant's father) and Mr Graham Webb (Third Party)

Other evidence available –

- Planning history
- Historic aerial photographs

LPA review of evidence

Inasmuch as the works were originally undertaken during the 1990s, then it can reasonably be considered that it was at this point that the 'development' (in terms of s55 of the 1990 Act) was completed. The question which follows, in terms of the lawfulness of these works, is whether there has been any lapse in the 'development' during the period from when they were first implemented, that being 'approximately 30 years ago' as stated in the application submission; it is noted that the works of 're-laying' have most recently been undertaken during February of 2023.

Given the nature of these works, the subsequent 're-laying' works are considered to represent works of repair rather than 'development' per se. The Statutory Declarations provided by the third

party (Mr Graham Webb) confirm that such repair works have been undertaken at various times during the period from when the 'development' occurred up until the present time. On this basis it is considered reasonable to conclude that, on the balance of probabilities and without any evidence to the contrary, the entrance has been formed of laid hardstanding for a significant period of time, that being greater than 4 years.

The sporadic dating of the available aerial photography renders this as not a particularly useful or conclusive source of evidence. This is clearly demonstrated by a photograph of the site taken during September 2023 following re-laying work in February 2023 and is already showing clear signs of 'greening', as shown below. The aerial photographs available – which generally appear to show the access as being 'green' – would thus not necessarily show any completed repair / re-laying works unless taken within a relatively short period after which such works had been undertaken.



CONCLUSION

On the balance of probabilities, and based on the evidence provided by both the Applicant and by a third party in the form of signed Statutory Declarations, it is concluded that the development has been 'substantially completed' for a period exceeding 4 years. As such, the works specified in the description of the proposal are considered to be lawful.

RECOMMENDATION:

That the application for a Lawful Development Certificate is GRANTED.