CASE OFFICER'S REPORT

Application Reference:	PL/2023/07116
Application Type:	Lawful development: Existing use
Site Inspection:	
Consultation ends:	20 October 2023
Case officer:	Peter K-Gyabong

Site Address:	Land at Rawlings Farm, Cocklebury Lane, Chippenham, Wilts, SN15 3LR
Proposal:	Completion of works related to the Temporary Haul Route relating to the discharge of Condition 4 of Planning Permission 18/02037/FUL- Construction of bridge over Great Western Railway and accommodation works, including temporary haul road from Upper Peckinhall Farm, construction compound, bridge beam storage compound, Cocklebury Link Road (phase1) and associated drainage arrangements; highways and associated landscaping.
Recommendation:	Approve

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LEGISLATION:

Town and Country Planning Act 1990 (as amended). In particular, the following sections:

- Section 57 requires that planning permission is needed for development of land. Section 55 provides that development includes any material change in the use of land.
- Section 171A (1) provides that failing to comply with a planning condition constitutes a breach of planning control.
- Sections 171, 172 & 187A provide for various options of enforcement where a breach of planning control has taken place or appears to have taken place.
- Section 171B (2), provides that where there has been a breach of planning control consisting in the change of use of any building (which includes any part of a building) to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach (the 'relevant period').
- Section 171B (3) provides that where there has been any other breach of planning control (other than operational development) no enforcement action may be taken after the end of the relevant period of ten years beginning with the date of the breach.
- If at any time during the relevant period the Council would not have been able to take enforcement proceedings in respect of the breach, for example, because no breach was taking place, then any such period cannot count towards the relevant period.
- Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority's duty to determine them.

For the purpose of the 1990 Act s.191 defines operations as 'lawful' if:

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 they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

• Section 171BA includes provision for the local planning authority to apply to the Magistrates' Court for a Planning Enforcement Order where there has been concealment of unauthorised development and the relevant time period for enforcement action has expired.

Where there has been deliberate deception in respect of a breach of planning control, this can also allow enforcement action to be taken after the expiry of the relevant period, under the Welwyn Hatfield principle.

REPRESENTATIONS:

Drainage Engineer:

The applicant has submitted this application for the Discharge of Condition 4 of Planning Permission 18/02037/FUL.

The condition 4 states that "Prior to the commencement of the development there shall be a full condition survey of the haul road between the B4069 junction with Maud Heaths Causeway at Langley Burrell to Upper Peckingell Farm, which shall be submitted for approval by the local planning authority no later than 14 days prior to the commencement of works. The survey shall detail all existing defects on the route, both in written and image form, in accordance with a scheme which shall first have been agreed by the local planning authority. When works have been completed, a

further survey shall be undertaken and submitted to the local planning authority within 1 month of completion. Within one month of that survey being approved, a scheme of remedial works shall be submitted for approval, setting out detailed proposals for remediation of any damage and including a timeframe for implementation. The agreed works must be completed to the satisfaction of the Local Planning Authority in accordance with the approved timescale."

To discharge this condition, applicant has subsequently submitted a trail of emails and full condition survey undertaken by WSP (REF. No. 70067352-RCS STATEMENT dated OCTOBER 2022) between junction with Mauds Heath Causeway at Langley Burrell to Upper Peckingell Farm.

The drainage team have no comment to make on the additional information submitted in relation to the discharge of Condition 4.

Chippenham Town Council:

The Town Council defers to the LPA to determine whether a certificate of lawfulness should be granted. There is nothing in the submitted evidence which the Town Council would dispute or raise issues with.

Public representation:

This proposal will require access through Langley Burrell village and underneath the railway along narrow roads and with restricted height at the railway bridge. Residents and businesses regularly park cars on the roadside in Langley Burrell making this a totally inappropriate route for heavy traffic. As the work is easily accessible from Parsonage Way this application should be rejected and the alternative access used.

ASSESSMENT:
A local planning authority can only grant a Certificate of Lawfulness to confirm that:

a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990; or

b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.

The application in question relates to the time constraint conditions placed on the decision notice for application 18/02037/FUL. The planning permission was granted for the application on 13th November 2019. The relevant conditions read as follows:

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

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:
Highways Technical Note 2 Dated 30th August 2019.
5609-ATR-13-B (1 OF 2) Dated June 2019
5609-ATR-013-B (2 OF 2) Dated June 2019
5609-SK-020-B (1 OF 2)
5609-SK-020-B (2 OF 2)
70005609-FIG 1 (Bridge Construction Traffic Routes)
70005690-SK-021-A (1)
70005690-SK-021-A (2) Received 6/9/19
Tree Survey AIA & Method Statement 1st March 2019
Noise Assessment and Management Plan Received 08/03/2019
5609-GA-0009-B
BRL-PL151
BRL-PL200 Plant Schedule
Topographic Survey BRL PL150 (21/01/19)BRL PL152 Plant Schedule
CB-SK-011 P01
245988-ARP-DRG-EST-00001 P03
5609-GA-005 REV A
5609-GA-007 REV A Received 29/02/2019
REASON: For the avoidance of doubt and in the interests of proper planning.
3. Prior to the commencement of the development a Construction Traffic Management Plan (CTMP) shall be submitted to and approved by the local planning authority. The CTMP shall set out the proposed programme for the construction of the works, the forecast number and timing of lorry movements associated with each element of the programme, methods to be employed on the site to ensure that detritus from the site is not deposited on the public roads, temporary road works to mitigate damage to the existing highway structure (carriageway and verges), construction traffic signage on

the proposed haul route from the B4069, lorry and car parking on the site to accommodate construction traffic. The works shall be carried out in accordance with the approved CTMP at all times.
REASON: To ensure that a reasonable degree of control is exercised over construction traffic during the construction period, and to mitigate the impact of such traffic on the local communities affected.

4. Prior to the commencement of the development there shall be a full condition survey of the haul road between the B4069 junction with Maud Heaths Causeway at Langley Burrell to Upper Peckingell Farm, which shall be submitted for approval by the local planning authority no later than 14 days prior to the commencement of works. The survey shall detail all existing defects on the route, both in written and image form, in accordance with a scheme which shall first have been agreed by the local planning authority. When works have been completed, a further survey shall be undertaken and submitted to the local planning authority within 1 month of completion. Within one month of that survey being approved, a scheme of remedial works shall be submitted for approval, setting out detailed proposals for remediation of any damage and including a timeframe for implementation. The agreed works must be completed to the satisfaction of the Local Planning Authority in accordance with the approved timescale.

REASON: Pre-works and post-works surveys are required in order to establish the appropriate levels of remediation required to damage reasonably attributable to the construction traffic, and potentially enforced by the highway authority under the provisions of s59 Highways Act 1980.

6. Prior to the commencement of the Cocklebury Link Road Phase 1 full details of the internal permanent site roads connecting to the Link Road shall first have been submitted to and approved by the local planning authority. Details shall include road construction details, vertical and horizontal alignment, drainage, lighting, signing, marking and all associated roadworks required to secure an adoptable distributor road. The roads shall be constructed in accordance with the approved details.

REASON: In order to ensure that internal site roads are appropriate to serve their intended function

8. Prior to the commencement of the bridge/rail crossing hereby permitted details of the structural design of the bridge, including cladding and exposed surface materials, arrangements for surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
REASON: The proposed application contains insufficient information and the matter raised above require to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.
9. No demolition, site clearance or development shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development, until a Tree Protection Plan showing the exact position of each tree/s and their protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations"; has been submitted to and approved

in writing by the Local Planning Authority, and; The protective fencing shall be erected in accordance with the approved details. The
protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.
No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and
9.particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work - Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise. If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.
No concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.
[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later].
REASON: The matter is required to be agreed with the Local Planning Authority
before development commences in order that the development is undertaken in an
acceptable manner, to enable the Local Planning Authority to ensure the retention of
trees on the site in the interests of visual amenity.
10. No works shall commence on the construction of the railway bridge until details of storm water drainage incorporating sustainable drainage details have been submitted to and approved by the LPA. The storm water drainage arrangements shall be completed in accordance with the approved details prior to the railway bridge being first brought into use. No works shall commence on the length of distributor road until details of the storm water drainage incorporating sustainable drainage details have been submitted to and approved by the LPA. The storm water drainage arrangements shall be completed in accordance with the approved details prior to the first length of distributor road being brought into use.
REASON: To ensure that the development can be adequately drained.
11. Prior to construction of any element of this application, an Ecological Construction
Method Statement will be submitted to the LPA for approval. It will include all elements of the construction of the haul road, taking account of any phasing and temporary measures. The additional planting and any other features provided either as mitigation or enhancement for biodiversity must be integrated into the Landscape & Ecological Management Plan for the wider site and must be submitted for approval prior to the start of construction. Such features must be clearly labelled on the drawings as ecological mitigation or enhancement, with specific management prescribed.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure adequate protection, mitigation and compensation for protected species, priority species and priority habitats.

12. No development shall commence until:
a. A written programme of archaeological investigation, which should

include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority.
The programme of investigation should be implemented in accordance with the scope of works set out in the approved Framework Archaeological Mitigation Strategy; and
b. The approved programme of archaeological work has been carried out in accordance with the approved details as set out in the Framework Archaeological
Mitigation Strategy and the agreed Written Scheme of Investigation.

REASON: To enable the recording of any matters of archaeological interest.

13. No development shall commence on site until a construction management plan has been submitted to and approved in writing by the local planning authority. The planshall include details of the measures that will be taken to reduce and manage the emission of noise, vibration and dust during the demolition and/or construction phase of the development. It shall include details of the following:

i. The means of foul water disposal from the construction compoundwelfare facilities;
ii. The cutting or other processing of building materials on site;
iii. The transportation and storage of waste and building materials;
iv. The recycling of waste materials (if any);
v. The loading and unloading of equipment and materials
vi. The location and use of generators and temporary site accommodation;
vii. Pile driving (If it is to be within 200m of residential properties)
viii. viii. Hours of Construction.

The construction/demolition phase of the development will be carried out fully in accordance with the construction management plan at all times.
REASON: In the interests of residential amenity.

14 No burning of waste or other materials shall take place on the development site at any time during development.
REASON: In the interests of residential amenity
15 Control of noise from construction work for the bridge and haul road and haul road operations shall be undertaken in accordance with BS8225 and the recommendations of report ref. 19-031 'Inacoustic' Noise Assessment & Management Plan Information dated 26th February 2019.
A suitably qualified person must undertake regular noise monitoring during construction works and operation of the haul road and keep a written record that is available to the LPA upon request.
Any planned departure from these requirements must be reported to the LPA in advance of works being undertaken and a scheme of mitigation agreed with the LPA.
REASON: In the interests of residential amenity.

16. Prior to the commencement of the bridge/rail crossing and Cocklebury Link Road Phase 1 hereby approved a scheme of soft landscaping related to that element of the development shall been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-

- full details of any tree to be retained, together with measures for their protection in the course of development;

- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- retained historic landscape features and proposed restoration, where
- relevant.
- details and location of any new or replacement trees, of a size and
- species and in a location to be agreed in writing with the Local Planning Authority,
- shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428

Prior to the removal of the Haul Road and Construction Compound a scheme of remedial soft landscaping shall be submitted to and approved in writing by the Local Planning Authority, the details of which shall include: -

- a detailed planting specification showing all plant species, supply and planting sizes and planting densities; retained historic landscape features and proposed restoration, where relevant.
- details and location of any new or replacement trees, of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

17 All soft landscaping comprised in the approved details of landscaping for the bridge shall be carried out in the first planting and seeding season following the first use of the bridge or the substantial completion of the bridge whichever is the sooner; All soft landscaping comprised in the approved details of landscaping for the Cocklebury Link Road Phase 1 shall be carried out in the first planting and seeding season following the first use of the Cocklebury Link Road Phase 1 or the substantial completion of the Cocklebury Link Road Phase 1 whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.
REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

The Council must now determine whether on the balance of probability, and based on the evidence submitted, whether the applicants can demonstrate that a material start has been made on the development in order to comply with the aforementioned conditions.

The following evidence has been submitted to validate this claim:

- Site Location Plan with drawing showing the site plan and badger set location and tree constraints plan Title: General Arrangement. Drawing No: 5609-GA-009).

- Copy of Planning permission 18/02037/FUL
- Copy of Decision Notice 20/08802/DOC (Discharge of conditions 3 & 6 of planning application 18/02037/FUL)
- Copy of Decision Notice 20/08802/DOC (Discharge of conditions 4 of planning application 18/02037/FUL)
- Method Statement covering the road condition surveys (Pre-and Post-Construction Road Condition Survey by KBC Development LLP for discharge of Condition 4)
- Copy of Decision Notice 20/08918/DOC (Discharge of conditions 8 of planning application 18/02037/FUL)
- Copy of Decision Notice 20/09265/DOC (Discharge of conditions 9 & 16 of planning application 18/02037/FUL)
- Copy of Decision Notice 20/08953/DOC (Discharge of conditions 10 of planning application 18/02037/FUL)
- Copy of Decision Notice 20/08914/DOC (Discharge of conditions 11 of planning application 18/02037/FUL)
- Copy of Decision Notice 20/03175/DOC (Discharge of conditions 12a of planning application 18/02037/FUL)
- Copy of Decision Notice 20/09472/DOC (Discharge of conditions 13 of planning application 18/02037/FUL)
- Copy of Dason Construction Ltd invoice dated 11 November 2022
- Copy of correspondence between Cotswold Wildlife Surveys (Andy Warren) and Ian Fielding (Summix Ltd) confirming initial ground works on 7th November 2022
- Copy of Decision Notice 15/11886/FUL (Discharge of conditions 2, 3,4 & 6 7)
- Technical Note 4 dated 14 November 2022, with photographic evidence of material commencement of works

The supporting evidence confirms that a material start had been made on or by the 12th November 2022 for the works relating to application 18/02037/FUL. There is no reason to doubt the evidence and compliance documents provided. The supporting statement written by the planning agent seeks to summarise all the evidence submitted and make a case for approving the certificate. Again, there is no evidence to doubt the comments made in this statement.
The Council itself has no other significant evidence to contradict the applicant's evidence. As such, on the balance of probability, it can be concluded that a material start has been made on the development and that the time constraint conditions relating to application 18/02037/FUL have been adhered to. The Certificate should therefore be approved.

RECOMMENDATION
Approve