

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/02992
APPLICATION TYPE:	Lawful development: Proposed use
SITE ADDRESS:	Land west of A429 (Crudwell Road), North of Malmesbury, Wiltshire
DEVELOPMENT DESCRIPTION:	The proposed development is to construct an access road between the A429 and the main solar array consented under application 20/08618/FUL.
RECOMMENDATION:	Approve

PROPOSAL

This application seeks a Certificate of Lawfulness (CLP) under Section 192 of the Town and Country Planning Act 1990 (as amended) for proposed construction of a section of access road between the A429 (Crudwell Road) and the consented solar array, comprising engineering operations to lay and complete the track, in order to constitute a material start to planning permission ref. 20/08618/FUL.

The proposed works comprise the construction of a section of access track located between the A429 (Crudwell Road) and the approved solar array, within the site edged red on the submitted location plan. The track will be approximately 3.5 metres in width and constructed over a defined section of the approved alignment as shown on drawing 20.09_301 Rev F. The construction works will include excavation of approximately 300mm of existing topsoil, grading and levelling of the formation, installation of a geotextile/damp proof membrane, and the laying and compaction of Type 3 MOT aggregate to form a durable surfaced track. The section of road to be constructed is limited in length to that necessary to establish a functional access from the public highway into the site and to represent a material operation associated with the wider consented development.

Image denotes Location Plan and site track



RELEVANT LEGISLATION AND POLICY

The statutory framework governing CLP's is set out in Section 192 of the Town and Country Planning Act 1990 (as amended). This section establishes that a proposed development or use is "lawful" if it would not constitute a breach of planning control. A CLP can be granted if the Local Planning Authority is satisfied, on the balance of probabilities, that the proposed development or use would not require planning permission.

In this case, planning permission has been granted and the purpose is to establish the lawful commencement of that permission such that there is no requirement for a new planning permission to be granted in order to continue with the development.

REPRESENTATIONS

There is no legal obligation to consult third parties, including Town/Parish Councils or neighbouring properties, for this type of application. However, the PPG recognises that it may be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
N/11/01765/HRN - Hedgerow Removal Decision - Refused Date: 1/7/2011 – Removal of 305m of Hedgerow
20/05893/SCO - Scoping Opinion following a screening opinion Decision - EIA Required Date: 7/10/2020 – EIA screening/scoping opinion for installation of a solar farm with a 49.9 MW output for a temporary period of 40 years, including battery storage units, associated infrastructure, permanent grid connection hub and environmental enhancements.
20/08618/FUL - Full planning permission Decision - Approve with Conditions Date: 23/8/2023 – Installation of a solar farm comprising ground mounted solar PV panels with a generating capacity of up to 49.9MW, including mounting system, battery storage units, inverters, underground cabling, stock proof fence, CCTV, internal tracks and associated infrastructure, landscaping and environmental enhancements for a temporary period of 40 years and a permanent grid connection hub.
21/00554/SCO - Scoping Opinion following a screening opinion Decision - EIA Required Date: 25/2/2021 – EIA scoping opinion for Installation of a solar farm with a 49.9 MW output for a temporary period of 40 years, including battery storage units, associated infrastructure, permanent grid connection hub and environmental enhancements

PL/2024/11614 - Prior notification: Road (agricultural/forestry) Decision - Prior Approval Not Required Date: 17/1/2025 – Prior Approval for Proposed Formation of Internal Farm Tracks

PL/2026/00712 - Approval of details reserved by a condition Decision - Approve Date: 05/06/2026– Partial Discharge of Condition 12 (Construction Management Statement) and Full Discharge of Conditions 5 (Drainage Strategy), 6+7 (Archaeological Works), 8 (LEMP), 9 (ECMP), 10 (Hard & Soft Landscaping), 14+15 (Details of Site Access - Solar Array), 16 (Visibility Splays), 17+18 (Details of Site Access - Grid Compound) relating to application 20/08618/FUL.

ASSESSMENT AND CONCLUSION

Evidence Submitted by the Applicant

The applicant has submitted supporting documents identifying the scope of works which are proposed to be undertaken.

- Planning Statement Job Number: LH25/028, Parent application 20/08618/FUL,
- Decision Notice for 20/08618FUL,
- Approved Site Block Plan -Proposed DRG 20.09_301 Ref F, 20/08618FUL
- Approved General Detail- Access Track Figure 3 Revision v0.1, and Access Track BLR and
- Discharge of Condition Decision Notice PL 2026 00712.

Assessment

When considering commencement of a development an LPA must be sure that works are in accordance with a planning permission. There are a number of factors that can be taken into account, but most importantly, that the works are ‘development’ requiring planning permission¹, that the relevant planning permission has granted those works and that the works would be carried out in accordance with the extant planning permission. Consideration of planning conditions and the timing of the commencement of the works is also necessary. Section 56 (Time when development begun) of the Town and Country Planning Act 1990 provides the legislative background with regard to such considerations.

In this case, full planning permission for the installation of a solar farm comprising ground-mounted solar photovoltaic panels with a generating capacity of up to 49.9MW, together with associated infrastructure including battery storage units, inverters, underground cabling, internal access tracks, fencing, CCTV, landscaping and environmental enhancements was granted on 23rd August 2023 (ref. 20/08618/FUL).

Condition 1 of the permission requires the development to be begun no later than 23rd August 2026. A number of conditions were imposed which must be discharged prior to commencement, including those relating to access arrangements, visibility splays and surfacing materials (Conditions 14–18). Evidence submitted under the site history ref. Application PL/2026/00712 demonstrates that these pre-commencement conditions have

¹ Under Section 55 of the Town and Country Planning Act. 1990 (as amended).

been discharged, including details of the site access, turning areas and visibility splays serving both the solar array and grid connection sites.

The proposed works also appear to fall within the scope of the works granted planning permission 20/08618/FUL and the LPA accepts they would be in accordance with the approved details.

Having regard to this, and on the basis that all pre-commencement conditions have been formally discharged prior to works taking place, the proposed construction of the access track would not be in breach of any planning condition and would be in accordance with the approved details.

The works comprise operations in the course of laying out and constructing a road, which fall within the definition of a 'material operation' under Section 56(4)(d) of the Town and Country Planning Act 1990. Accordingly, the carrying out of these works would constitute a lawful commencement of the approved development providing they take place within the relevant time period, thereby implementing the planning permission.

RECOMMENDATION

It is recommended that a Certificate of Lawfulness for Proposed Development be GRANTED for the following development:

Certificate of Lawfulness (Proposed) to confirm that the construction of a section of access road, comprising engineering operations to form part of the approved internal access track, would constitute a lawful material operation and thereby represents a valid commencement of development in accordance with the time limit imposed by Condition 1 of planning permission ref. 20/08618/FUL.

Reason for approval: The Local Planning Authority is satisfied, on the balance of probabilities, that the proposed works would not constitute a breach of planning control and would be works requiring planning permission undertaken in accordance with the extant Planning permission ref. 20/08618/FUL.

The proposed works fall within the definition of a material operation under Section 56(4)(d) of the Town and Country Planning Act 1990 and would therefore lawfully implement the planning permission if undertaken prior to the 23rd August 2026.

