

LAND AT WOOD LANE, CHIPPENHAM

**LAWFUL DEVELOPMENT CERTIFICATE
SUPPORTING STATEMENT**

PREPARED FOR
CODEX LAND PCC LIMITED CELL C

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LAND AT WOOD LANE, CHIPPENHAM

LAWFUL DEVELOPMENT CERTIFICATE SUPPORTING STATEMENT

1. Introduction

1.1 This application for a *Certificate of Lawfulness of Existing Use or Development* (CLEUD) has been made by Codex Land PCC Limited Cell C seeks to establish that permission ref. 18/11019/FUL has been lawfully implemented, and therefore remains extant.

1.2 On the 19th December 2019, Full Planning Permission (ref. 18/11019/FUL) was granted for the:

"Development of eight houses on the land to the rear of the former police station, Wood Lane, including the demolition of the existing car park structure."

1.3 This permission was granted with a requirement to begin development before the expiration of three years from the date of the permission (condition 1), and was subject to 5 pre-commencement conditions.

1.4 This Statement, and the accompanying evidence, will demonstrate, in accordance with the relevant Statutory Background, that:

1. The pre-commencement conditions have been lawfully dealt with to enable development to occur; and
2. 'Development' occurred on site within the necessary timeframe, in accordance with the approved plans.

2. Previous Conclusions on the Permission Being Extant

- 2.1 Following the grant of permission ref. 18/11019/FUL, planning permission was sought for a larger development of 17 residential dwellings on the site (ref. PL/2022/05783). This was granted permission at appeal.
- 2.2 In the Committee Report (dated January 2025), when discussing the planning history (section 4), this acknowledges a letter sent to the Council confirming that the development was commenced on the 15th December 2022. The Committee Report did not seek to challenge this.
- 2.3 Furthermore, within the Committee Report it stated:

"9.25 The proposal site has an existing permission for the residential development of eight units..." (p. 36)

- 2.4 Following the refusal (and appeal submission) of the 17 dwelling application, the Council did not dispute that the 8 dwelling permission was extant within their Statement of Case.
- 2.5 Additionally, throughout the Inspector's Report (ref. W/25/3368630), it has been acknowledged that this permission is extant, stating:

"An extant planning permission also exists for the demolition of the existing car park and development of 8 dwellings in a cul-de-sac arrangement on the site...." (paragraph 6, p.2)

"...considered in the context of the extant scheme which would result in similar harms in any event." (paragraph 14, p.3)

"...also be a consequence of the extant planning permission being implemented in any event." (paragraph 20, p.4)

"...than the extant scheme in arboricultural terms..." (paragraph 21, p.4)

"... An extant planning permission also exists on the site which cannot be completed without removal of the existing structure in any event." (paragraph 24, p.5)

And

"...in the context of an extant permission for redevelopment..."
(paragraph 35, p.6).

- 2.6 Therefore, through reference to this permission as part of related schemes on the application site in recent time, it has been acknowledged that this permission has been lawfully implemented and remains extant.

3. Statutory Background (for a Lawful Development Certificate)

- 3.1 Section 55 of the Town and Country Planning Act 1990 ("the 1990 Act"), defines "development" as:

*"(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the **carrying out of building, engineering, mining or other operations in, on, over or under land**, or the making of any material change in the use of any buildings or other land."* (our emphasis)

- 3.2 Section 56 of the 1990 Act identifies the time when development has begun. So far as relevant, this states:

*(1) Subject to the following provisions of this section, for the purposes of this Act **development of land shall be taken to be initiated—***
*(a) if the development consists of **the carrying out of operations, at the time when those operations are begun;***

...
*(2) For the purposes of the provisions of this Part mentioned in subsection (3) **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.***

*(3) The provisions referred to in subsection (2) are **sections ...91, ...***

*(4) In **subsection (2) "material operation" means—***

...
(d) any operation in the course of laying out or constructing a road or part of a road;
..." (our emphasis)

- 3.3 For a Certificate of Lawfulness of Existing Use or Development, Section 191 of the 1990 Act, so far as relevant, states:

*"(1) If any person **wishes to ascertain** whether—*

...
*(b) any **operations which have been carried out** in, on, over or under land **are lawful;** or*

...
he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

...

*(4) If, on an application under this section, the local planning authority are provided with information **satisfying them of the lawfulness at the time of the application of the use, operations** or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they **shall issue a certificate to that effect**; and in any other case they shall refuse the application.” (our emphasis)*

Evidential Burden

- 3.4 In respect of the burden of proof, the National Planning Policy Guidance (NPPG) states:

*“...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**.” (ref. 17c-006-20140306, our emphasis)*

- 3.5 The evidential burden is on the Applicant to prove the matters claimed on “the balance of probabilities” (*Nelsovil v Minister of Housing and Local Government* [1962] 1 All ER 423).
- 3.6 “On the balance of probability” is a relatively low standard of proof to meet. The Applicant need only prove that it is more likely than not that the permission was lawfully implemented (*Miller v Minister of Pensions* [1947] 2 All ER 372).
- 3.7 In the absence of any evidence to the contrary, the Local Planning Authority is not entitled to insist on corroborative evidence from third parties when determining an application for a Certificate of Lawfulness (*Gabbitas v Secretary of State for the Environment and Newham London Borough Council* [1985] J.P.L 630).
- 3.8 When using a lawful development to demonstrate there is an extant planning permission for development, the PPG identifies:

*“A lawful development certificate **may be granted on the basis that there is an extant planning permission for the***

development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate.” (17c-011-20140306, our emphasis)

4. Lawfully Addressing Pre-Commencement Conditions

4.1 The planning permission was granted subject to the following five pre-commencement conditions:

- C3 – Archaeology
- C10 – Access Road
- C11 – Construction Method Statement
- C12 – Contamination
- C21 – Arboricultural Method Statement

4.2 The discharge of each of these conditions is considered below, in accordance with the relevant Case Law. This concludes that all conditions have been dealt with lawfully in accordance with case law.

Relevant Case Law

4.3 The leading case on “true condition precedents” is the Court of Appeal decision in *Greyfort Properties Limited v. Secretary of State CLG* [2011] EWCA Civ 908.

4.4 *Greyfort* brought together various previous cases on the subject, including the Whitley Principle established in *FG Whitley & Sons Co Ltd v Secretary of State for Wales* (1992) 64 P & CR 296, as well as other cases such as *R (Hammerton) v London Underground Limited* [2002] EWHC 2307 (Admin) and *R (Hart Aggregates Ltd) v. Hartlepool BC* [2005] EWHC 840 (Admin).

4.5 It is a general principle, established in *Whitley* that if, on proper construction of a condition, operations contravene that condition, they cannot properly be described as commencing the development authorised by the permission to which that condition is attached (‘the Whitley principle’). In *Greyfort*, the Court of Appeal explored the various exceptions established by case-law to that general principle, namely:

- a. Where a condition requires approval before a given date and the developer has applied by then for the approval;
 - b. Where the authority agreed that development could start without full compliance with certain conditions;
 - c. Where a condition had in substance been complied with where the relevant documents or plans had been submitted and approved but the formal notice of approval had not been issued by the time work began on site;
 - d. Where it would be unlawful, on the basis of irrationality or abuse of power, for the local planning authority to take enforcement action to prevent development proceeding in breach of the condition.
- 4.6 In addition to the Whitley Principle and its exceptions, other case law (*Hart*) has established that not all conditions which required some action to be taken before development was commenced were true 'conditions precedents'.
- 4.7 The effect of *Hart* was that conditions which did not "go to the heart" of the permission or which did not use very clear words to prohibit development before the action required had been taken would not necessarily prevent lawful implementation of the development if it was started before compliance with the condition. Since *Hart*, the emphasis has shifted away from the precise form of prohibitory words used in the condition, but the requirement for the condition to "go to the heart of the permission" remains (see *Greyfort*, paras 36 - 45).

Addressing the pre-commencement conditions

Condition 3 – Archaeology

- 4.8 Condition 3 states:

"No development shall commence within the red line boundary shown on the Location Plan received by the Local Planning Authority on 20th November 2018 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; and*
- b) *The approved programme of archaeological work has been carried out in accordance with the approved details.*

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 enable the recording of any matters of archaeological interest. "

- 4.9 A Written Scheme of Investigation (WSI) watching brief was submitted, dated by the Council the 14th October 2022 (ref. PL/2022/07997). This was before development commenced.
- 4.10 On the 21st April 2023, a number of minor amendments were requested to the WSI, including to update the reference, specify the submission of a hard copy report to the Wiltshire HER, incorporate an OASIS form to the report, and include a commitment to pay 'box fees'.
- 4.11 An updated WSI was submitted, dated 28th June 2024, and the condition was partially discharged (condition 3a only) on the 4th July 2024.
- 4.12 The WSI prescribed a watching brief. Therefore, condition 3b is effectively a compliance condition.
- 4.13 This planning history indicates that Condition 3 has been addressed in accordance with the case law. The WSI was submitted prior to the three-year commencement of development deadline, and the shortfalls identified on the 21st April 2023 were minor, technical in nature, and did not challenge the principle of the archaeological monitoring. This was addressed through an updated WSI.
- 4.14 Therefore, Whitley exceptions 'a' and 'd' apply. This condition has been lawfully discharged.

Condition 10 – Access Road

4.15 Condition 10 states:

"No development shall take place until construction details of the internal access road(s) to achieve an adoptable standard have been submitted to and been approved in writing by the Local Planning Authority. The dwellings hereby permitted shall not be occupied until the road(s) is/are constructed in accordance with the approved plans.

REASON: To ensure the internal access roads are planned and approved in good time to include any Highways Orders and to a satisfactory standard for use by the public and are completed prior to occupation."

4.16 A highway arrangement plan was submitted on the 5th December 2022 (ref. PL/2022/09324). This was before development commenced.

4.17 This condition was partially discharged on the 16th December 2022. This is before the expiration of three years, however after development commenced.

4.18 Therefore, Whitley exception 'a' applies. This condition has been lawfully discharged.

Condition 11 – Construction Method Statement

4.19 Condition 11 states:

"No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- The parking of vehicles of site operatives and visitors;*
- Loading and unloading of plant and materials;*
- Storage of plant and materials used in constructing the development;*
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;*
- Wheel washing facilities;*
- Measures to control the emission of dust and dirt during construction;*

- *A scheme for recycling/disposing of waste resulting from demolition and construction works;*
- *Measures for the protection of the natural environment.*
- *Hours of construction, including deliveries;*
- *Details of the employment of a Banksman to manage access along Flowers Yard;*
- *Contact details for the site manager or Banksman employed*
- *Arrangements to check the construction access route by site staff for cleanliness, including the provision of a road sweeper when required.*

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.

REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase."

4.20 A Construction Environmental Management Plan and Appendices (September 2022) was submitted, dated by the Council the 14th October 2022 (ref. PL/2022/07997). This was before development commenced.

4.21 This condition was discharged on the 21st April 2023.

4.22 Therefore, Whitley exception 'a' applies. This condition has been lawfully discharged.

Condition 12 – Contamination

4.23 Condition 12 states:

"No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site and any adjacent sites for at least the last 100 years and a description of the current condition of the sites with regard to

any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site and the potential impact of any adjacent sites.

Step (ii) If the above report indicates that contamination may be present on, under or potentially affecting the proposed development site from adjacent land, or if evidence of contamination is found, a more detailed site investigation and risk assessment should be carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11 and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details must be submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

Reason: To ensure that land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority."

- 4.24 A Supplementary Phase II Contamination Report (October 2022) was submitted, dated by the Council the 17th November 2022 (ref. PL/2022/08934). This was before development commenced.
- 4.25 This condition was partially discharged (steps i and ii) on the 9th January 2023.
- 4.26 The Contamination Report identified a step iii report is necessary, however has not been undertaken.
- 4.27 However, step iii of this condition specifically identifies that this report must be "...submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development **or in accordance with a timetable that has been agreed in writing by**

the Local Planning Authority as part of the approved remediation scheme.” (our emphasis). This condition specifically builds in flexibility regarding the timeframe for how this condition can be discharged.

4.28 As discussed in *Hart*, not all conditions “go to the heart” of the permission. This element of the condition is considered to fall within this exemption, and the inherent flexibility built into the condition with the ability to agree a timetable, supports this interpretation.

4.29 A suitable remediation scheme can be provided prior to any further work being undertaken on this site to ensure that the intended outcomes of this condition can be achieved.

Condition 21 – Arboricultural Method Statement

4.30 Condition 21 states:

“No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:-

- A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2012 and a plan indicating the alignment of the protective fencing;*
- A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2012;*
- A schedule of tree works conforming to British Standard 3998: 2010;*
- Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;*
- Plans and particulars showing the siting of the service and piping infrastructure;*

- *A full specification for the construction of all retaining walls including details of the no-dig specification;*
- *Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and*
- *Details of all other activities, which have implications for trees on or adjacent to the site.*

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, in order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990."

4.31 An AMS was submitted, dated by the Council the 17th November 2022 (ref. PL/2022/08934). This was before development commenced.

4.32 This condition was discharged on the 9th January 2023.

4.33 Therefore, Whitley exception 'a' applies. This condition has been lawfully discharged.

5. Commencement of Development

5.1 The following documents accompany the application, which together demonstrate that the permission has been lawfully implemented:

- **D1**– Stat Dec from Andrew Ball (Development Director, Woodsome Estates), discussing work undertaken]
- **D2** – Internal correspondence (email dated 15th December 2022) confirming work had commenced.
- **D3** – Internal correspondence (email dated 19th December 2022) post-commencement containing multiple photographs of work undertaken dated 16th December 2022 (meta-data).
- **D4** – Internal correspondence (email dated 31st December 2022) containing an Invoice for the work undertaken in December.
- **D5** - Letter dated 3rd January 2023 from Andrew Ball (Development Director, Woodsome Estates) to Wiltshire Council confirming development commenced on the 15th December 2022, including photographs dated 16th December 2022 (meta-data) showing this work.

5.2 There are two key matters to establish in regard to the construction work that occurred:

- a. The works were undertaken prior to the 19th December 2022 (in accordance with Condition 1); and
- b. The works were undertaken in accordance with the approved plans.

Construction Date

5.3 The development was commenced on the 15th December 2022. This was within the 3 year time period to implement the permission, which was the 19th December 2022.

- 5.4 The Statutory Declaration at **D1** is further supplemented by a range of evidence.
- 5.5 Internal correspondence at **D2**, between the CLEUD applicant and the developer undertaking the commencement works, dated the 15th December 2022, confirm that excavation works had commenced with most kerbs installed, and stone being delivered on the 16th December.
- 5.6 Subsequently, on Monday 19th December 2022 (**at D3**), an email was sent from the developer undertaking the commencement works to the CLEUD applicant containing 6 photographs of the work undertaken. These photos are referred to in the email, stating: "*Here are some photos of the access works from Friday last week...*". 'Friday last week' was Friday 16th December 2022, the second day of construction. All six photos also contain meta-data dated 16th December 2022.
- 5.7 An Invoice was subsequently received by the CLEUD applicant via an email dated 31st December 2022 (**at D4**). This also demonstrates the work and materials associated with implementing the permission, including 2 days labour.
- 5.8 Finally, the letter at **D5** (dated 3rd January 2023), was sent to the Council to confirm that development commenced on the 15th December 2022, and includes photographs of the work, which contain meta-data showing they were taken on the 16th December 2022 (the second day of construction).

Accordance with plans

- 5.9 Development undertaken comprises the construction of a vehicular access (see photographs in **D3**).
- 5.10 The 'proposed site plan' (ref. PL 103 K) was an approved plan (condition 2 of permission ref. 18/11019/FUL) and included the proposed access to the site.

- 5.11 The development works implemented, as shown in **D3**, accord with the approved plans. The kerbing shown in the images within **D3** extends the kerbing associated with the existing development into the site, in accordance with the proposed site plan (ref. PL 103 K).

Overview

- 5.12 Through the evidence provided within documents D1, D2, D3, D4 and D5, as discussed above, it is clear that construction commenced within the three year period, in accordance with condition 1 of permission 18/11019/FUL.
- 5.13 Furthermore, the works undertaken to implement the permission (shown in D3) accord with the approved plan 'proposed site plan' (ref. PL 103 K).
- 5.14 Therefore, in accordance with S56 of the 1990 Act (as quoted at paragraph 2.2), development commenced on the application site on the 15th December 2022.

6. Conclusion

- 6.1 The extant nature of permission ref. 18/11019/FUL for 8 dwellings on the site has not been challenged by the Council through a previous planning application on the site (ref. PL/2022/05783), and was considered extant by a Planning Inspector during the course of an appeal (W/25/3368630).
- 6.2 This conclusion has been reaffirmed through this Supporting Statement.
- 6.3 It is clear that all relevant Planning Conditions have been lawfully dealt with, and there are no outstanding conditions that could prevent the lawful implementation of the planning permission. This has been established for each planning condition in turn throughout section 4 of this Supporting Statement.
- 6.4 The evidence set out through section 5, including through the evidence provided within documents **D1, D2, D3, D4** and **D5**, it is clear that construction commenced within the three year period, in accordance with condition 1 of permission 18/11019/FUL.
- 6.5 Furthermore, the works undertaken to implement the permission (shown in **D3**) accord with the approved plan 'proposed site plan' (ref. PL 103 K).
- 6.6 Therefore, in accordance with S56 of the 1990 Act (as quoted at paragraph 2.2), development commenced on the application site on the 15th December 2022.
- 6.7 On the balance of probability, a CLEUD should be granted, confirming that the permission ref. 18/11019/FUL has been lawfully implemented, and remains extant to be completed.