

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT DELEGATED REPORT

APPLICATION REFERENCE:	PL/2026/04212
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Land at Gate Farm, High Street, Sutton Benger
DEVELOPMENT DESCRIPTION:	Certificate of Lawfulness seeks confirmation that development of the agricultural access, approved through the planning appeal ref. APP/Y3940/W/23/3314906, has been implemented.
RECOMMENDATION:	Approve

PROPOSAL

A Certificate of Lawfulness for an Existing Use or Development (CLUED) under Section 191 of the Town and Country Planning Act 1990 (as amended) is sought to establish the lawfulness of an agricultural access, pursuant to planning permission PL/2022/01518.

Wiltshire Council refused planning permission for the “Creation of new agricultural access together with associated ancillary development and ground works” under the aforementioned reference number. That refusal was subsequently overturned at appeal on 22 September 2023 (ref: APP/Y3940/W/23/3314906), with no pre-commencement conditions being imposed.

The submission claims that a material and lawful commencement of the permitted development has occurred and that, therefore, the permission remains extant. In support of their application, the following has been submitted by the applicant:

- A Statutory Declaration claiming that the Managing Director of Thornbury Surfacing carried out development works to the agricultural access pursuant to the planning permission ref: PL/2022/01518, allowed at appeal. They state that the works comprised:
 - Excavation over the site to a depth of 300mm below the finished level, with all excavated spoils left and stockpiled on site;
 - Compaction of the bottom of the excavation and application of geotextile matting; and
 - Reinstatement with 150mm thick type 1 stone sub-base, fully compacted.
- The Statutory Declaration states that the works described were carried out for the purposes of implementing the agricultural access approved under the planning permission.
- Photographs of the work being undertaken were also included in the Statutory Declaration and application submission. The works are stated to have been carried out May 2026 (with some preparatory works in April 2026).
- The Statutory Declaration includes a quote for the works, dated 23/04/26, but unsigned.
- An accompanying plan shows the location of the works.

The submission does not amount to an application seeking a fresh planning permission. The acceptability of the development as assessed against national and local planning policy is therefore not for consideration in this instance.

RELEVANT LEGISLATION AND CONSIDERATIONS

The statutory framework governing Certificates of Lawfulness for Existing Use or Development (CLUED) is primarily set out in Section 191(2) of the Town and Country Planning Act 1990 (as amended). This section establishes that "lawful development" refers to development against which no enforcement action may be taken and where no enforcement notice is in force, or development for which planning permission is not required.

Section 191(4) of the Town and Country Planning Act 1990 (as amended) further stipulates that a Local Planning Authority (LPA) shall issue a Certificate of Lawfulness upon request, provided that, on the balance of probabilities, the LPA is satisfied that the existing development or use described in the application is lawful. The time limits for taking enforcement action are set out in s171B of the Act.

The Planning Practice Guidance (PPG) on [Lawful development certificates](#) clarifies that the burden of proof lies with the applicant. It is the applicant's responsibility to provide sufficiently clear, precise, and unambiguous evidence to demonstrate the lawfulness of the existing development or use.

In this case, the issue is not whether a use has become lawful through the passage of time, but whether the planning permission granted at appeal was lawfully implemented before its expiry date (22 September 2026). The question for the Council is therefore whether, on the balance of probabilities, the works undertaken constituted a material operation pursuant to the planning permission such that the permission was commenced within the relevant time period.

It is important to note that when determining a CLUED application, the LPA must focus solely on whether, based on the facts and applicable planning law, the specific use or development is lawful. Planning merits or considerations relating to the quality or suitability of the development are not relevant.

CONSULTATION

There is no legal obligation to consult third parties for this type of application, including Town/Parish Councils or neighbouring properties. 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.

Sutton Benger Parish Council: Objection:

"Sutton Benger Parish Council considered the request for Lawful Development: Existing Use to be granted for the application PL/2026/04212 at the Parish Council

meeting on Wednesday 12th August and are requesting the opportunity to OBJECT to lawful use being granted.

Approval for an agricultural entrance was granted under appeal APP/Y3940/W/23/3314906 nearly 3 years ago and the consent will expire in September 2026.

There is no evidence that work has been started to create an agricultural entrance according to the original terms of the appeal. The photographs submitted with the application show a dug out area of land well within the field which provides no evidence that the planning permission won at appeal has been lawfully implemented in order to create an entrance. There is no work at the boundary nor on the bank down towards the road therefore the Parish Council do not believe that a material start has been made. There is no factual evidence of time and continuity (i.e., that the use has been happening continuously) even for a short period of time as this work of 'breaking ground' appears to have been carried out very recently and well after an application for 90 homes on this land was submitted. Councillors do not believe that just breaking ground is evidence of Existing Use.

Councillors request that Wiltshire Council Planning / Legal particularly take into account the outline planning application PL/2025/09825 which has subsequently been submitted on Land at Gate Farm High Street Sutton Benger, when considering this application. This is an application for 90 homes to be built on the land for which this agricultural access has been granted but not yet implemented. The outline site plan clearly demonstrates that the same entrance when built is to provide access to the 90 homes and is no longer planned for agricultural use.

Evidence of the real intended use of this entrance is shown in the attached Community Consultation document.

Councillors therefore believe that if it cannot be demonstrated that an agricultural entrance is in use before the expiry date then any future request for an entrance at this point should be made as part of the 90 homes application and not on the back of this agricultural use.

SBPC request that a certificate should not be granted to secure the 2022 permission in perpetuity as it simply provides a live consent for non-agricultural use."

Council Highway Engineer: No objection:

"There is evidence that work has been initiated in line with the approved plans that formed part of the appeal decision granting permission."

REPRESENTATIONS

One representation has been received objecting to the application from a third party. The objection states as follows:

"Objection to Application for Lawful Development Certificate"

Reason for Objection:

The works carried out do not constitute a lawful commencement of permission approved through the planning appeal ref. APP/Y3940/W/23/3314906 and were not undertaken in good faith to implement the approved scheme.

I object to the issuance of a Lawful Development Certificate on the following grounds:

1) Failure to Implement the Approved Plans

The Schedule of Conditions listed by the planning inspector on Appeal Decision APP/Y3940/W/23/3314906 specify the development is to be carried out in accordance with approved plans /PL05, /PL20, and /PL25.

Approved plan /PL25 specifies the slope for the access drive at a 1:14 gradient from the field ground level to the road.

The documentation submitted by the applicant within this LDC application show that the actual gradient for the excavation performed is 1:49 with a rise towards the road instead of a fall (see document reference P25-0894 included with the Statutory Declaration document). This is also evident from photos included (Photo 6 and Photo 7) where the depth of the excavation does not visually deviate in depth over its length, if this was a 1:14 gradient as originally specified then it would be visually apparent. I'm sure this can be verified by a site visit by the planning inspector.

This severe deviation proves that the works undertaken do not match the original approved plans. Material commencement requires a genuine intention to build out the approved scheme, rather than token ground works that ignore conditioned design parameters.

2) Works Do Not Match the Approved Development Description

The LDC submission includes document P25-0894 as part of the Statutory Declaration document, which explicitly categorises the operations as "temporary construction" and limits works to a 300mm excavation of topsoil.

The original permission was granted for a permanent, engineered agricultural access. By the applicant's own admission in their technical documentation, the current works are temporary in nature. Scraping topsoil under a "temporary" brief does not constitute the lawful initiation of a permanent engineered access drive.

3) Absence of Genuine Agricultural Intent and Ulterior Purpose for Access

The covering letter from Gillings Planning and statutory declaration of Neil Blackmore included in the LDC submission confirms that these works were instructed by Gleeson Land. Gleeson Land is the applicant for an undecided, separate planning application to construct 90 houses on this same plot of land.

The pending housing application relies on the agricultural access point being already approved. The involvement of Gleeson Land, combined with the non-compliant nature of the excavations, demonstrates that these works were not carried out for agricultural access or agricultural purposes.

Conclusion

Case law establishes that to lawfully commence development, works must strictly align with the approved planning permission. In Atwill v New Forest NPA [2023], the High Court ruled that operations must be genuinely undertaken to the specific grant of permission. Furthermore, Handoll v. Warner, Goodman & Streat [1995] confirms that material deviations from approved plans constitute development without planning permission.

The divergence here is material, not de minimis. To complete the agricultural access to the approved specification, the current works would need to be completely re-excavated to fix the gradient. The work done to date is entirely "throw-away" and useless for the final build.

While the applicant cites Malvern Hills DC v Secretary of State for the Environment [1982] to argue that minimal work can initiate development, that same ruling requires works to be "genuinely done for the purpose of carrying out the development". As demonstrated by the three previous objection points, these temporary, non-compliant works were not genuinely executed to build the approved agricultural access.

Accordingly, the Council must refuse the Lawful Development Certificate and require the applicant to re-submit a new application for the genuine purpose of the access drive."

RELEVANT SITE HISTORY

Proposal / Summary
PL/2022/01518 - Full planning permission Decision - Refuse Date: 14/11/2022, Allowed at Appeal 22/09/2023 – Creation of new agricultural access together with associated ancillary development and ground works.
PL/2025/09825 - Outline planning permission: Some matters reserved – Outline planning application (with all matters reserved except means of access from the B4069) for up to 90 no. (class C3) residential dwellings (including 40% affordable dwellings) including the creation of a new vehicular access (from the B4069), pedestrian and cycle paths, parking spaces, public open space, biodiversity enhancement, landscape planting, surface water attenuation, associated infrastructure and other associated works. – Pending consideration at the same site, however not relevant to the considerations of this application.

ASSESSMENT

The application states that the works took place in April and May 2026 to implement the planning permission granted under appeal ref: APP/Y3940/W/23/3314906 (the original application reference being PL/2022/01518). The appeal was allowed on 22 September 2023. For the application to remain valid, it was required to commence on site by 22 September 2026.

In considering whether the planning permission has been lawfully implemented, regard must be had to Section 56 of the Town and Country Planning Act 1990. Section 56(2) confirms that development is taken to have begun on the earliest date upon which a material operation comprised in the development is carried out. Section 56(4) sets out a range of activities that constitute a material operation, including “(d) any operation in the course of laying out or constructing a road or part of a road”. Consequently, the legal threshold for commencement is relatively modest, and it is not necessary for substantial works to have been undertaken. The evidence must demonstrate on the balance of probabilities, that a material operation was carried out prior to the expiry of the permission.

The application is supported by a statutory declaration and photographic evidence that works were undertaken to part of the approved access. The statutory declaration is from the Managing Director of Thornbury Surfacing, a contractor that undertook works on the site. The statutory declaration states that their company were instructed to carry out development works to the agricultural access pursuant to the planning permission. The works area was set out in April 2026 and the contractor commenced and completed the works on 13 May 2026. The works undertaken comprised:

- (1) Excavation over the site to a depth of 300mm below the finished level, with all excavated spoils left and stockpiled on site;
- (2) Compaction of the bottom of the excavation and application of geotextile matting; and
- (3) Reinstatement with 150mm thick type 1 stone sub-base, fully compacted.

Photographs and plans accompany the statutory declaration which consistent with the claim that the works described being carried out. Documentary evidence in the form of a quote from Thornbury Surfacing for the works has also been provided which is dated prior to the claimed date of the development being undertaken. However, it is unsigned and therefore cannot be given significant weight.

On the other hand, objections have been received from Sutton Benger Parish Council and a neighbour, which are considered below.

Sutton Benger Parish Council state that there is no evidence that work has been started to create an agricultural entrance according to the original terms of the appeal. In this case, whilst the concerns of the Parish Council are understood, they are more generalised in nature and do not outweigh the much more detailed evidence provided by the applicant concerns have been noted. Indeed, whilst the photographs may not show an area of land close to the site frontage, they do show development taking place in a location which does correspond to the approved plans and, critically, are accompanying a sworn declaration which states that a contractor was employed to create an agricultural entrance according to the terms of the

permission. In this instance, where there is no evidence of equivalent detail to the contrary, the submitted statutory declaration must be accorded significant.

A third party has also objected and disputes that the undertaken development accords with the specified gradients within the approved plans. In this case, the approved plans indicate that a 1:14 gradient is required for the section of access descending in an area immediately as it approaches the public highway. However, the undertaken development appears to relate to a separate section of the approved access further within the site, and away from the immediate frontage to the public highway where the approved plans specify no gradient. For this reason, the strength of the evidence supplied is not diluted by the third party representations on this matter.

In other respects, the third party also points out that the approved access has not been fully completed. However, for development to be considered to have been initiated, Section 56(2) of the Town and Country Planning Act states that it shall be taken to be:

“...on the earliest date on which any material operation comprised in the development begins to be carried out requires only that a material operation forming part of the approved development has been undertaken.”

Since there is no provision within the permission to compel the delivery of the entirety of the development within a specified timeframe, it must be held that a material commencement of a part of the approved development prior to 22nd September (equating to three years from the date of the permission being granted, as set out in condition 01) will be sufficient to render the permission extent.

The third party also refers to annotations within the submitted construction drawings referencing temporary works. Having reviewed the submitted evidence, there is no substantive evidence before the Council that the excavation, placement of geotextile matting and installation of compacted Type 1 sub-base were undertaken for a purpose unrelated to the implementation of the approved development. The fact that further works remain necessary to complete the development does not mean that the works undertaken cannot constitute a material operation and therefore implementation of the planning permission. Furthermore, the statutory declaration expressly confirms that these works were carried out pursuant to the planning permission and there is insufficient evidence before the Council to conclude otherwise.

The schedule of works described are considered to comprise a material start on site in accordance with the approved plans allowed at appeal. The Council's Highway Engineer recognises that there is evidence that work has been initiated in line with the approved plans that formed part of the appeal decision granted permission.

Other matters

The Parish Council has also referred to the pending outline application for residential development on the site for 90 residential dwellings under PL/2025/09825, which has not yet been determined. However, the purpose of a Certificate of Lawfulness application is limited to establishing whether the development described has been lawfully implemented. The

existence of a separate planning application, and any future intentions for the wider site, are not material to the determination of whether the appeal permission was lawfully commenced. In any event, there is no evidence of weight available which suggests that the undertaken development does not accord with the plans approved under PL/2022/01518.

CONCLUSION

The applicant's submitted evidence has been submitted in a sworn format and is both detailed and conforms that development has been undertaken within the three years of the planning permission. It also includes documentary evidence which shows the work being undertaken in the location shown on the approved plans.

Whilst the received representations object to the granting of the certificate, for the most part they are generalised and run contrary to what is shown on the approved plans, as well as the operation of the relevant legislation. The future intentions of the applicant for the wider site do not change the applicant's evidence which appears to confirm that the development undertaken would accord with approved plans relating to PL/2022/01518.

Even accepting the lack of signatures on the supplied contractor quote, taken together, the applicant's submitted evidence demonstrates, on the balance of probabilities, that development associated with the approved access has been undertaken. The Council is satisfied on the balance of probabilities that works constituting a material operation were lawfully undertaken pursuant to the planning permission allowed under appeal ref. APP/Y3940/W/23/3314906 (planning reference PL/2022/01518) before its expiry date of 22 September 2026.

Accordingly, and on the balance of probability, the Council is satisfied that the development is lawful and that a Certificate of Lawfulness for Existing Use or Development should be issued.

RECOMMENDATION: That the Certificate of Lawfulness for Existing Use or Development be GRANTED for the described development.