Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/25/0805
Mannings Heath Golf Club, Hammerpond Road, Mannings Heath, Horsham, West Sussex, RH13 6PG

DESCRIPTION:

The laying of a private access track and associated storage area on a date four years previous (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

DC/24/1564	Creation of an access track (Retrospective).	Application Refused on 13.12.2024
DC/22/1027	Creation of an access track to provide access to vineyard (Retrospective).	Application Refused on 16.01.2024
DC/25/0009	Application to confirm the laying of a private access track and associated storage area on a date four years previous (Lawful Development Certificate - Existing).	Application Refused on 19.03.2025

SITE LOCATION AND APPLICATION DESCRIPTION

This application relates to a Lawful Development Certificate (Existing) to confirm the laying of a private access track and associated storage area on a date four years previous, at Mannings Heath Golf Club and Wine Estate, Hammerpond Road.

Relevant Legislation and Guidance

Section 191(2) of the Town and Country Planning Act 1990 (TCPA) provides that *'for the purposes of this Act uses and operations are lawful at any time if-*

a) 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

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

The land subject of this application is not subject to an extant enforcement notice, as such, there would be no automatic exemption from the grant of a certificate of lawfulness by virtue of the provisions of S.191(2)(b) TCPA 1990.

S.171B of the TCPA states:

'*(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of –*

a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of –

(a) in the case of a breach in planning control in England, ten years beginning with the date of the breach

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.'

S.191(4) of the TCPA states:

'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.'

The Planning Practice Guidance (PPG) on Lawful Development Certificates explains that the applicant is responsible for providing sufficient information to support an application. This paragraph, furthermore, explains that, in the case of applications for an existing use, if the authority holds no evidence itself, nor form any 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 a balance of probability.

Case law, furthermore, confirms that in the determination of an application for a certificate of lawfulness, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the authority holds no evidence itself, or from others, to contradict or call into question the probability of the applicant's version of events there is no good reason to refuse an application.

The Test

TCPA 1990 S.191(1) provides that if any person wishes to ascertain whether:

- Any existing use of buildings or other land is lawful;
- Any operations which have been carried out in, over or under land are lawful; or
- *Any other matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful;*

he may apply to the local planning authority specifying the land and describing the use, operations or other matter.

If on such an application, the local planning authority is satisfied with the lawfulness of the use, operations, or other matters described in the application, or that description as modified or substituted by them, it shall issue a certificate or refuse the application.

The Act provides that in respect of a failure to comply with any condition or limitation subject to which planning permission has been granted, any matter constituting such a failure is lawful at any time if:

- The time for taking enforcement action in respect of the failure has expired; and

- It does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force

Planning History

This site and both the track and storage area have substantial planning and planning compliance history, with a complaint relating to the construction of this track originally received in 2021, under the compliance reference EN/21/0401. Following several subsequent planning applications and compliance investigations, the previous LDC application, reference DC/25/0009 was submitted.

DC/25/0009 –

Under this application, the Planning Statement detailed that the works were carried out in April 2019 and substantially completed in April 2020. As the officer's delegated report details, the LPA has received varied information from the applicant as to when works started at the site. The application form for DC/22/1027, received on 30th May 2022, states that the work to the track started on 06th January 2019 and was completed on 7th March 2022. The application form for DC/24/1564 states that the work on the track started on 1st January 2017 and was completed on the 31st August 2017. These dates do not correlate, and no rationale has been provided for the reason(s) for the discrepancies.

As part of this application, a number of representative comments were received as part of the questionnaire responses. These comments mostly raised issues with the safety of the access and the impact on the ancient woodland; however, they also stated there had been a breach of planning control since August 2021.

The officer's report accepts that the aerial images indicate that there has been a track in this location with elements of formalisation since 2018; however, the images provided were not of sufficient detail to demonstrate the materials of the track. The imagery provided was not detailed enough to be sufficient to demonstrate that a change from the unsurfaced to surfaced path had taken place, and if it were evident, it would be expected that the applicant provide clarification on the imagery provided as to where the compacted hardcore has been laid and then met the bare ground. DC/25/0009 was refused on the following grounds -

1. It has not been demonstrated on the balance of probability that the laying of a private access track and associated storage area was constructed and completed in excess of 4 years prior to submission of the application (and prior to 25 April 2024).

<u>The Applicant's Evidence</u>

- Planning Statement, containing aerial images.
- Location Plan
- Statutory Declarations x2
- Photographic Evidence

Council's Evidence

- Lawful Development Certification application – DC/25/0009
- Consultation Response – Horsham District Council – Planning Compliance
- Consultation Response – Colgate Parish Council
- Aerial Photograph of the site – dated

Assessment of Evidence

The Planning Statement details that the track measures approximately 3m in width and consists of 100mm depth of compacted hardcore, used predominantly by agricultural vehicles for maintenance purposes, as well as seasonal workers during the harvesting season. The original purpose for this track was to serve as access for construction vehicles for the Vineyard Barn, and has services laid beneath the surface. Paragraph 3.6 states that the work was undertaken and completed between April and July 2019. Paragraph 3.7 provides a rationale for the previous discrepancies around the dates the track was constructed, as detailed previously in this report. This paragraph states further clarification has been sought from the contractor who undertook the work, who has clarified the dates and has provided a signed affidavit. They have also stated that the track within the September 2018 aerial image was an informal track used for the planting and maintenance of the vineyards and was formalised between April and July 2019. The work undertaken was the digging of a trench for services and laying of compacted hardcore to provide a usable track in all weather conditions.

The following supporting evidence was not provided as part of the previous application but is provided in support of the assetion that the work was undertaken between April and July 2019.

The applicant has provided an affidavit, signed by Barry Anderson of Manning's Heath Golf and Wine Estate, which states work began to lay the formal track and associated storage area in April 2019, being completed by 05th July 2019. The works involved groundworks, laying of services, and the formalisation of the access track, to allow for the construction of the 'Vineyard Barn'. As part of this statement, four photographs have been provided, detailed as follows:

1) Image 3141 - A photo showing a vineyard wine tasting tour in progress, with both golf carts and the touring group standing on the track. This photo is dated 22nd June 2019.
2) Image 3142 – A zoomed-in shot of the above photo, showing the track and what appears to be piles of the topsoil removed.
3) Image 3140 – A photo dated 12th April 2019, showing a trench with the services having been laid and the track under construction.
4) Image 3155 – A photo showing the vineyard; however, machinery can be seen in the background, to which the applicant states is undergoing work to complete the track.

The applicant has provided a further affidavit, signed by Danny Kerridge, who states they were employed by Mannings Heath Estate to undertake the work which is the subject of this application. Kerridge states they constructed the track, along with other earthworks, beginning in April 2019 and completing by the 5th July 2019. A photo has been supplied, reference Img 3291, showing Kerridge's vehicle driving along the completed track.

Aerial images seem to confirm the account that the track changes, between the September 2018 image and April 2020 image, with the whole track appearing wider and the creation of the associated storage areas. There is a distinct difference in this image between the track and the surrounding adjacent ground. The track and storage areas then appear unchanged in the subsequent aerial images, dated

June 2021, March 2022, March 2024, August 2024 and March 2025. The officer's comments under DC/25/0009, are noted. A further site visit has been undertaken as part of this new application, and the track was inspected in its entirety. The newly available evidence, namely photos 3291, 3141, 3142, demonstrates a change from the unsurfaced to surfaced path has taken place, reinforced by the photos showing that the topsoil has been either removed from the site or is piled by the fencing. These piles remain, demonstrating that a new surface has been laid.

With the new supplied evidence and the affidavits, it has been demonstrated, on the balance of probability, that the laying of a private access track and associated storage area was constructed and completed in excess of 4 years prior to submission of the application (and prior to 25 April 2024).

Recommendation: Application Permitted

Conditions:

1 It has been demonstrated, on the balance of probability, that the laying of a private access track and associated storage area was constructed and completed in excess of 4 years prior to submission of the application (and prior to 25 April 2024).

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

Plans list for: DC/25/0805
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

Schedule of plans/documents **approved**:

Plan Type	Description	Drawing Number	Received Date
Supporting Statement	Planning Statement	NONE	14.05.2025
Location plan	Red Line Plan - Track	NONE	14.05.2025
Supporting Docs	Affidavit - B Anderson	NONE	14.05.2025
Supporting Docs	Affidavit - D Kerridge	NONE	14.05.2025

DELEGATED

Case Officer sign/initial Sam Nye Date: 09/07/2025

Authorising Officer sign/initial Tamara Dale Date: 09/07/2025