
Delegated report Officer: Caroline Burn

Application ref. DMPN/2025/1343

Certificate of Lawfulness for existing use to confirm a lawful start has been made to planning permission ref. DMPA/2023/0701 (Variation of conditions 2 (plans), 6 (access) and 11 (landscape and biodiversity management plan) relating to planning permission ref. DMPA/2021/0750 (The erection of a detached dwelling on land) at Breachlands, Breach Lane, Melbourne, Derby, DE73 8DF

Valid date: 18/10/2025

Consults expired: 25/11/2025

EIA development? No

Section 106 agreement? Not required

This decision is delegated to officers under the terms of the current Scheme of Delegation.

Relevant planning history

DMOT/2023/1131 The approval of details reserved by condition 14 (Boundary Treatments) relating to planning permission ref. DMPA/2021/0750 – approved October 2023

DMPA/2023/0701 Variation of conditions 2 (plans), 6 (access) and 11 (landscape and biodiversity management plan) relating to planning permission ref. DMPA/2021/0750 – approved July 2023

DMPA/2021/0750 The erection of a detached dwelling – approved February 2023

Responses to consultations and publicity

There is no requirement to consult or publicise this type of application under the relevant legislation. In this case however a site notice was installed and Parish and Ward members and neighbours were notified in the interest of obtaining material facts and evidence. Melbourne Parish Council commented and raised no objection.

Relevant policy, guidance and/or legislation

- Section 191 of the Town and Country Planning Act 1990 (as amended);
- Part 8, Article 39 of the Development Management Procedure (England) Order 2015, as amended;
- Planning Practice Guidance (PPG), Lawful Development Certificates.

Planning considerations

The application for Certificate of Lawfulness of Existing Use falls to be considered under Section 191 of the 1990 Act. The Local Planning Authority (LPA) needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. Planning merits are not relevant at any stage. Whilst the onus is on the applicant to provide sufficiently precise and unambiguous evidence to justify the grant of a certificate, on the balance of probability, the PPG also states that if the LPA has no evidence itself, nor any from others, to contradict the applicant's case or make it less than probable, there is no good reason to refuse the application. In this instance, the application seeks to evidence that there has been a material start of planning permission ref. DMPA/2023/0701 (Variation of conditions 2 (plans), 6 (access) and 11 (landscape and biodiversity management plan) relating to planning permission ref. DMPA/2021/0750 (The erection of a detached dwelling) on land at Breachlands, Breach Lane, Melbourne, Derby, DE73 8DF.

Planning assessment

The application site is located on the northern side of Breach Lane, in the rural area outside of Melbourne. It comprises an area of undeveloped land at the end of a short row of dwellings on the lane that is bordered by hedgerows to the south and west.

Planning permission was granted in 2021 for the erection of a dwelling adjacent to the dwelling 'Breachlands'. The planning permission incorporated access arrangements with the site having an existing western access that would be used for the new dwelling, and eastern access that would be maintained for the existing dwelling. The eastern access was not included within the red line boundary for the original application, as it was considered to comprise permitted development. The permission expires on 17 February 2026.

The planning permission was varied in 2023. This included submission of alternative details for the eastern site access, which continued to remain outside of the red line boundary. The proposal included the installation of c. 1.8m high walls and a gate that would be set back from the public highway by more than 2.4m, and were also considered to comprise permitted development. The variation altered condition 2 relating to the plans references approved, plus condition 6 which was a Grampian condition related to the installation of the access arrangement prior to any other works taking place. It also incorporated details to effectively discharge condition 11 for the Landscape and Biodiversity Management Plan as part of the application. The permission also expires in 17 February 2026, as per the original timeframe.

The 2023 variation included the following pre-commencement conditions: condition 6 requiring modification of the two accesses in accordance with approved plans; condition 11 relating to submission of details for the Landscape and Biodiversity Management Plan; and condition 12 requiring the installation of tree protection fencing. Condition 11 was discharged as part of the 2023 variation, and the other two conditions simply require compliance with rather than submission of any details.

Consideration of Evidence

Officers from the Council's planning and legal departments have reviewed the evidence put forward within the applicant's covering letter (Planning and Design Group, 10 October 2025). Officers from the Council's planning team have also visited the site.

There is only one pre-commencement condition that requires submission of details, condition 11, and these details were approved as part of the 2023 variation. From Officer visits to the site it is evident that the works to the eastern access have been undertaken in accordance with the 2023 approved plans. Initially, there was some concern that the works did not form part of the red line boundary for the site, and as such may have required planning permission in their own right, however from further review it is clear that the works would comprise permitted development with Breach Lane being unclassified and the walls being more than 2m back from the edge of the highway. The works to the access are a specific requirement of the development commencing as per condition 6. The works are therefore considered to comprise a material start of planning ref. DMPA/2023/0701. Overall and on the balance of probability, there is sufficient information to confirm that a material start of DMPA/2022/0122 has been made within the relevant period. It is therefore recommended that the certificate of lawfulness be granted.

Recommendation

Approve

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation made:	05/12/2025
Report agreed:	11/12/2025
Authorised officer:	Jenny Blair
