

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF
LAWFUL DEVELOPMENT**

Reference no.: 2025/CL/92303/E

Site: Low Farm, Wakefield Road, Grange Moor,
Huddersfield, WF4 4BB

Description: Certificate of lawfulness for existing construction of access road and erection of palisade fence pursuant to permission 2021/93644 for erection and operation of grid-connected solar photovoltaic farm to supply up to 49.9MW with ancillary infrastructure and landscaping and biodiversity enhancements

Case Officer: Katie Chew

Decision Reference: PROPOSED OPERATIONS GRANT

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kevin Walton

AUTHORISED OFFICER

Date 15-Oct-2025

Officer Report

Application: 2025/92303

Applicant: Boom Low Farm Solar Ltd

Application Site: Low Farm, Wakefield Road, Grange Moor, Huddersfield, WF4 4BB

Proposal: Certificate of Lawfulness for existing construction of access road and erection of palisade fence pursuant to permission 2021/93644 for erection and operation of grid-connected solar photovoltaic farm to supply up to 49.9MW with ancillary infrastructure and landscaping and biodiversity enhancements.

Site Description

The application site covers an area of 89.6ha. This includes 1.8ha of land within Wakefield Council's boundary, leaving 87.8ha in Kirklees.

The land within Kirklees is primarily split amount eight main parcels and one smaller parcel, accessed and linked by a connecting corridor along Wakefield Road (A642). One parcel would be accessed from Grange Lane. There is an additional parcel required for the point of connection to the national grid, within Wakefield Council's boundary. Of the eight main parcels, two are to the south and six to the north of Wakefield Road.

The main parcels are between Overton (approximately 700m to the eastnorth-east) and Grange Moor (approximately 800m to the west). Flockton lies approximately 75m to the south of the southernmost field, and Bristfield lies approximately 1.2km to the north of the site. The National Coal Mining Museum is also located to the east, approximately 350m away. As well as the villages, there are sporadic farmsteads and hamlets around the site.

The site is wholly within the Green Belt. The site and surrounding area have an undulating landform, with an overall fall from south-west to north-east. The highest part of the Site lies at just below 210 m Above Ordnance Datum (AOD) at the western end of Parcel 1. The lowest part of the Site lies at approximately 125 m AOD at the north-eastern corner of Parcel 2.

The eight parcels are agricultural, predominantly arable with some pasture use. The boundaries to the various parcels are formed by a combination of hedgerows, often with frequent hedgerow trees, tree belts and woodlands. Much of the land between the different parcels is also wooded, with their being two parcels of ancient woodland to the north of the site. There are no watercourses or waterbodies within the Site, though there is a small watercourse just beyond part of the southern boundary of parcel 5. Between parcels 1 and 2 is a grouping of fishponds (outside the redline).

Surrounding fields are likewise agricultural, used as arable, pasture and grassland, and have similar boundary treatments. Several public rights of way (PROW) footpaths cross the field between parcels 4 and 5, including:

- KIR/103/40
- KIR/103/30
- KIR/103/20
- KIR/104/20
- KIR/104/30
- KIR/103/60
- KIR/103/50

PROW KIR/43/10 is between parcels 1 and 2, with Bridleway KIR/42/10 being to the west and north of parcel 1.

Development Proposal

The application is for a Certificate of Lawful Development (CLD) for the existing construction of access road and erection of palisade fence pursuant to permission 2021/93644 for erection and operation of grid-connected solar photovoltaic farm to supply up to 49.9MW with ancillary infrastructure and landscaping and biodiversity enhancements.

The submitted covering letter sets out that permission for 2021/93644 was granted on 24/08/2022 and that works commenced on site on 04/08/2025. The applicant advances that the commencement of development is therefore lawful and took place prior to the 24/08/2025 in accordance with the requirements of planning condition 1 of the above application.

The Law

Section 191(1) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or existing use of buildings or other land would be lawful to make an application to the Local Planning Authority.

Section 191(2) of the Act provides that uses are lawful 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 taking enforcement action has expired or for any other reason);
- a. They did not constitute the contravention of any of the requirements of any enforcement notice then in force.

For the purposes of the Act a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force.

Section 191(2) (b) states that the inability to take enforcement action may come about because the use did not involve development, or because it did not require planning permission, or because the time for taking enforcement action has expired or for any other reason.

The above does not apply in certain circumstances, including in cases of relevant demolition or if the existing works contravene the requirements of an enforcement notice.

Site Visit

A site visit was undertaken on 18/09/2025.

Representations

We are currently undertaking statutory publicity requirements, as set out at Table 1 and Table 2 in the Kirklees Development Management Charter.

However, given the level of previous public interest on the original permission 2021/93644, it was considered reasonable to advertise the application via site notices within the immediate vicinity of the site. In addition to the above, this application has been available on the Kirklees Council website for public view. Public consultation is therefore due to expire on 09/10/2025.

10 representations have been received. Comments are summarised below.

- The applicant has not discharged all of the pre-commencement conditions attached to the original permission.

Officer note: Noted. This is discussed in more detail within the assessment section of this report.

- Some of the conditions that have been discharged were done so after the claimed commencement date of 04/08/2025 and therefore was in breach of conditions. Whitley principle (F.G. Whitley & Sons v SoS Wales [1992] JPL 856), a development begun in breach of a condition precedent cannot constitute lawful commencement of a planning permission.

Officer note: Noted. This is discussed in more detail within the assessment section of this report.

- The applicant suggests that the erection of fencing is evidence of commencement, this is not a construction that evidences development.

Officer note: Noted. This is discussed in more detail within the assessment section of this report.

- If passed, it could potentially (and is likely) to be taken to Judicial Review which will be costly to the Council.

Officer note: Noted.

- Kirklees Council have continued to issue condition discharges in a company name which has no lawful role in the Low Farm permission.

Officer note: Noted. There is no explicit restriction in the Town and Country Planning Act 1990 or the Development Management Procedure Order 2015 that limits discharge of conditions applications to landowners or those with legal interests in the land. This is due to a discharge of condition application not being an application for planning permission, and therefore it does not fall within the same notification/ownership rules.

- Many condition submissions relied on ecological, Arboricultural and contamination surveys from 2021-2022, which had expired well before the August 2025 works. Under professional standards, such data must be refreshed after 12-24 months. No updated assessment was provided, meaning that the Council discharged multiple conditions based on outdated and unreliable information.

Officer note: Noted. This is not considered relevant to the question of whether the erection of palisade fence and track were lawful. Notwithstanding this, whilst these concerns are acknowledged, the date of such surveys submitted as part of the discharge of condition applications were immaterial as they have previously been accepted and approved under the original application and were used to inform the discharge of condition but were not specific to its discharge.

- No solar panels, cabling, substation works, or other principal infrastructure has been undertaken.

Officer note: Noted. This is discussed in more detail within the assessment section of this report.

- The findings of the Court of Appeal in *East Bergholt Parish Council v Aggett & Ors* [2019] EWCA Civ 2200 made it clear that local planning authorities must not misapply planning law or policy to avoid undesirable outcomes, such as the cost of defending an appeal or judicial review. Authorities must base decisions on legal correctness and planning merits, not on risk avoidance or expediency.

Officer note: Noted.

- Biodiversity Net Gain was not properly secured under the original permission and therefore the justification for the original permission falls away.

Officer note: The above is noted however, this is not considered to be relevant to the matter of whether implementation of the permission has lawfully commenced, which is the subject of this CLD application.

- Whilst some conditions have been discharged, several of the approved management plans and technical statements remain unfulfilled due to further commitments/implementation.

Officer note: Noted. This is discussed in further detail within the assessment section of this report.

- There has been no further progress following the short period of activity in August 2025. This is not consistent with the commencement of a 49.9MW solar farm but rather a token operation to preserve an expiring permission.

Officer note: Noted. Once a development has legally started with “material operations” (as discussed within the assessment section of this report), the planning permission is deemed as implemented and lasts indefinitely without the requirement to continue on with works under a restricted timeframe.

- The Council are asked to consider the permanence and substantial status of this road; it is constructed of hardcore with no evidence of concrete etc. meaning that it could be removed and the site returned to agriculture with ease.

Officer note: Noted. This provision of the internal access road is discussed in more detail within the assessment section of this report.

- The approved Construction Management Plan and Construction Environmental Management Plan were only issued shortly before the works took place and were addressed to a different company from the named permission-holder. Furthermore, there is no evidence of compliance (submission of Form F10) with the Construction (Design and Management Regulations 2015).

Officer note: Noted. In terms of the submission of Form F10, as the works undertaken at this time appear to have lasted just 4 days (as discussed within the assessment section of this report), and did not involve more than 20 workers or exceed 500 person-days of construction work in total it is not considered that the applicant is in breach of this regulation. Nevertheless, this would fall outside the scope of this application. In respect of who has submitted the CLD application, Section 191 (1) of the Town and Country Planning Act 1990 states that any person can make an application for a

certificate of lawfulness of existing use or development and therefore there are no restrictions on who can submit a CLD, whether they are landowner or not.

Consultation Responses

No consultations were deemed necessary for this proposal as it is an application for a Lawful Development Certificate.

The Relevant Test

The burden of proof lies firmly with the Applicant and the relevant test for whether the operations can be deemed lawful is the 'balance of probability'.

The applicant's evidence does not need to be corroborated by 'independent' evidence. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the Applicant's version of events less probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.¹

Limitations

The LDC must contain precise details of what use or operation are found to be lawful, why and when. The details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against which any subsequent change may be assessed.

Relevant Information

Section 55 (Mean of "development and "new development") of the Town and Country Planning Act 1990 states the following:

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.

Section 55(2) goes on to give specific examples of works which do not constitute development.

Section 56(4) of the TCPA (Time when the development begun) states the following:

"material operation" means –

(a) Any work of construction in the course of the erection of a building;

¹ National Planning Policy Guidance – Lawful Development Certificates paragraph 006

(aa) Any work of demolition of a building;

(a) The digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(b) The laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b)

(c) Any operation in the course of laying out or constructing a road or part of a road;

(d) Any change in the use of any land which constitutes material development.

Section 336 of the TCPA defines building, for the purpose of the TCPA as

“building” – includes any structure or erection, and any part of a building, as to defined, but does not include plant or machinery comprised in a building.”

Evidence submitted in support of the application

The applicant has submitted the following:

- Photographic evidence of ‘road’ as built, received 23/09/2025.
- Location Plan 1, Drawing No. 2112/D001.1, Rev v.c, received 14/08/2025.
- Location Plan 2, Drawing No. 2112/D001.2, Rev v.c, received 14/08/2025.
- Location Plan 3, Drawing No. 2112/D001.3, Rev v.c, received 14/08/2025.
- Covering Letter, received 14/08/2025.
- Appendix 1 – Commencement Works, Rev 1.0, received 14/08/2025.
- Appendix 2 – Overall Layout, Drawing No. B001.1, Rev 5.1, received 14/08/2025.
- Appendix 3 – Internal Access Track Cross Section, Drawing No. B107, Rev 1.0, received 14/08/2025.
- Appendix 4 - DNO 132kv Substation Palisade Fencing Elevations Planning, Drawing No. B120, Rev 1.2, received 14/08/2025.
- Appendix 5 – Photographic Evidence, received 14/08/2025.
- Appendix 6 – Boom Power Sign in Sheet, received 14/08/2025.
- Appendix 7 – RAMs for Site Work, Ref: 1952, Rev 2, received 14/08/2025.
- Appendix 8 – Invoice from Land & Power Limited, received 14/08/2025.

Evidence submitted against the application

No evidence has been submitted against the application.

Evidence obtained from Council Records and other sources

Google Earth aerial imagery from 2022, 2023 & 2024.

Google Streetview imagery from 2022, 2023, 2024 & 2025.

Assessment

Development/Permission

The applicant seeks a lawful development certificate pursuant to section 191 of TCPA for the construction of an access road and erection of palisade fencing. The evidence submitted by the applicant² indicates the erection of palisade fence and ground works including excavations and laying and compaction of base materials within a field. The field is said to be area 9 as shown on drawing annotated as “Commencement works”³.

The drawing provided is not drawn to scale although it can be estimated by comparing the location of the palisade fencing to the size of the field that the fencing erected is approximately 50 metres in length. Using the same method it is estimated the excavation and laying of material is approximately 30 metres in length and 3 metres in width.

By virtue of the scale of works to erect the fence and excavate the ground, it is considered the works are significant and not de-minimis. As such, the works carried out are considered to constitute building/engineering operations as set out section 55(1) of the TCPA. Consequently and by virtue of section 57 of the TCPA it is considered that planning permission is required as the exemption provisions of section 57(1A) & (2) do not apply in this case.

Notwithstanding any permission granted upon appeal or via the operation of an enforcement notice, planning permission can be grant via a Development Order or by express planning permission granted by the Local Planning Authority. In the circumstances of a Development Order, Article 3(1) of the Town and Country Planning (General Permitted Development)(England) Order 2015(as amended) may grant a planning permission for developments as set out in Schedule 2 of the Order. In this instance it is considered Part 2, Class A (*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*) and Part 9, Class C(*Repairs to unadopted streets and private ways*) may be of relevance. However, it can be seen from aerial imagery that whilst there appears to be a private way running along the southern boundary to the field, the engineering operations falls outside the boundaries of this way. In the case of Class E, the develop of a private way is only permitted “within the boundaries of” the way and as such the engineering operations fall outside the description of development in Class E or Part 9. With regard to the development of the fence, Part 2, Class A of the Order grants a general permission subject to several limitations, inter alia, that the height of the fence does not exceed 2 metres above ground level. The applicant submits⁴ that the fence erected is the approved fence pursuant

² Appendix 5 of Cover Letter

³ Appendix 1 of Cover Letter

⁴ Cover Letter

to the 2021 planning permission which is shown to be 2.4 metres in height. The photographs submitted and neither the quote⁵ provide a definitive height of the erected fence although it can be seen from the photographs that the fence is height that the security fencing erected adjacent to the fence. The height of a standard temporary security fence is 2 metres in height and as the palisade fence erected appears higher it is considered Part 2, Class 1 of the Order cannot grant a deemed planning permission for the fence.

Consequently, an express planning permission from the Local Planning Authority would provide the only route for the fencing and engineering operations to benefit from any planning permission. Without an express planning permission, the works would be considered a breach in planning control ⁶ and could not therefore benefit from a certificate of lawful development. Therefore, this matters turns on whether or not the fencing and/or the engineering operations form part of a planning permission and that any permission can be said to have been lawfully implemented.

Local Planning Authority Planning Permission

The thrust if the applicant's case is that the erection of the palisade fencing and engineering operations constitute a lawful commencement of planning permission granted for the Erection and operation of grid-connected solar photovoltaic farm to supply up to 49.9MW, with ancillary infrastructure and landscaping and biodiversity enhancements, planning reference 2021/93644 granted on the 24 August 2022.

The Local Planning Authority (LPA) do not dispute the granting of planning permission for the development, or the date upon which it was granted.

For the permission to have been lawfully commenced, material operations pursuant to the implementation of the permission would need to have commenced on or before the 24/08/2025 by virtue of condition 1 and be works capable of being incorporated into the planning permission.

In terms of the works undertaken, the applicant has provided a covering letter which sets out that:

...works commenced on the 4th August 2025. This constituted the laying of a section of the consented internal access road within parcel 9 and the installation of a section of the approved palisade fencing associated with the substation to be built in parcel 9. The location of the works is shown in the context of the consented development in drawing ref: Commencement Works V1.0 dated 11th August 2025 provided at Appendix 1 of this letter. The approved layout is also appended to this letter drawing ref: B001.1 V5.1 dated 5th July 2022 as Appendix 2. The specification of the consented internal access road is shown in drawing ref: B107 V1.0 dated 16th April 2021 provided at Appendix 3 and the specification of the consented palisade

⁵ Appendix 8 of Cover Letter

⁶ Section 172 of the TCPA

fencing is shown in drawing ref: B120 V1.2 dated 15th March 2022 provided at Appendix 4. The access road works were completed on the 8th of Aug 2025.

In addition to the above, time stamped photographs have also been submitted which were taken by BOOM Power's site manager who was overseeing the groundworks contractor Land and Power. Photographs were taken on 04/08/2025 of the erection and completion of temporary protective tree fencing around the boundary of parcel 9. Photos were also taken on the 05/08/2025 of the construction of a section of the palisade fencing within parcel 9 as described above. Further photographs were taken on the 05/08/2025 which show the excavation works undertaken to create the internal access track, and finally on the 07/08/2025, photographs are provided showing the completed section of track and palisade fencing. The submitted Boom Power signing in sheet (Appendix 6), would support the timing of the above works, and the submitted Land & Power Limited invoice (Appendix 8), would support both the timing and type of works undertaken on site.

A search on Google Earth and Google Streetview is inconclusive as there is no aerial imagery coverage of August 2025, in which the applicant has stated that the road and fencing were installed. However, it is clear that the road and fencing were not erected in July 2024. Notwithstanding this, Google Streetview at ground level shows the palisade fencing to be erected on an image dated Aug 2025⁷. Consequently and on the balance of probability, it is accepted the works undertaken did take place before the expiry date of the planning permission.

As outlined within the Relevant Information section of this report, Section 56(4) of the TCPA (Time when the development begun) provides definitions of "material operation", of which the most relevant criteria in this instance are:

- (a) Any work of construction in the course of the erection of a building*
- (d) Any operation in the course of laying out or constructing a road or part of a road;*

Whilst the applicants statement refers to the erection of a palisade fence as part of the existing works undertaken it is considered a "building" as defined under the Town and Country Planning Act (TCPA) includes any structure or erection. The process of erecting a fence can therefore be a "material operation" for the purposes of Section 56 of the TCPA, which governs when development begins. It is also noted that Drawing No. B120 V1.2 which shows the proposed palisade fencing, formed part of Condition 2 of the original permission (2021/93644) and therefore helps to fulfil the requirement to start development.

In respect of the partial construction of the internal access road for parcel 9, for the planning permission to be lawfully implemented it is crucial that the works undertaken are pursuant to the planning permission and are capable of being incorporated in the development in so far as they can be reasonably

⁷ <https://maps.app.goo.gl/Xp4E74dHEpR7AWcJ8>

said to have been carried out to commence a planning permission, notwithstanding any significant discrepancies⁸. In this case, the approved development as described on the decision notice includes ancillary infrastructure and landscaping as part of the approved development. Condition 2 of the decision notice refers to approved plans in the plans and specification table which includes the palisade fence and access track specifications. The approved plans for the internal access road for parcel 9 (ref: B107 V1.0), indicates the proposed access road was to be excavated out with a Terram 1000 geotextile separation layer between the natural ground and capping layer, a minimum 250mm thick rock fill capping layer is to be provided on compacted ground, with a processed rockfill on top. From the submission of evidence from the applicant, it appears that the works undertaken reflect the approved requirements and the location indicated on the submitted Commencement Works plan (Appendix 1). Given the nature of the works undertaken, it is considered that these go beyond what may be considered de-minimis, the applicant has therefore demonstrated that the internal access road has partially been provided within the expiry period and in a manner consistent with the original planning permission and thus is capable of implementation. Equally, the position of the palisade fence is either in the location as shown on the approved plans or at least not significantly different to the degree it could say said the fence would not be comprised in the approved development. The Local Planning Authority are therefore satisfied that the palisade fence and access track formed part of the wider approved development and are capable of implementing the planning permission.

Conditions

The Planning Permission was granted subject to several conditions that required further details to be agreed prior to development commencing ["Pre-Development Conditions"]. The Court has held that Pre-Development Conditions must be discharged for a development to be lawfully implemented. This is referred to as the Whitley Principle⁹. The Court has since held that a number of exemptions may be applicable to the Whitley Principle whereby a breach of condition need not be fatal to the implementation of a planning permission. J Waksman¹⁰ succinctly summarised the Courts interpretation of these exemptions in paragraph 24 of his judgment. He states three questions needed to be asked, "(1) *has there been a breach of condition* , (2) *if so is the effect of that breach of condition such as to render the development as a whole unlawful (i.e. does it go to the heart of the permission)sic* & (3), *if so, do any of the exceptions to the Whitley principle apply, such as irrationality, abuse of power on the part of an LPA if it sought to enforce, or compliance in substance*". Essentially where the answer to questions 1 and 2 are yes and no exceptions apply in question 3 then the works carried out are unlawful and the permission was not lawfully implemented.

⁸ *Commercial Land Ltd/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions* [2003] J.P.L. 358 (Admin)

⁹ *F. G. Whitley & Sons v Secretary of State for Wales* (1992) 64 P. & C.R. 296; [1992] 3 P.L.R. 72

¹⁰ *Bedford Borough Council v Secretary of State for Communities & Local Government & Anor* [2008] EWHC 2304 (Admin)

The original planning permission was granted subject to a number of pre-commencement conditions. A summary of these pre-commencement conditions attached to the decision notice of original permission 2021/93644 are outlined below:

- Condition 5 (LEMP) – discharged under application 2025/91494 12 Aug 2025.
- Condition 6 (Construction Management Plan) - discharged under application 2025/91264 24 July 2025.
- Condition 7 (Construction Environmental Management Plan) – discharged under application 2025/91264 24 July 2025.
- Condition 8 (Construction Environmental Management Plan – Biodiversity) – discharged under application 2025/91183 16 May 2025.
- Condition 9 (Invasive non-native species) – discharged under application 2022/93737 15 Dec 2022.
- Condition 10 (Arboricultural Method Statement) - discharged under application 2023/92040 20 Sept 2023.
- Condition 11 (Access Roads) – discharged under application 2023/92040 20 Sept 2023.
- Condition 12 (Phase II Ground Investigation Report) - discharged under application 2024/92554 18 Nov 2024.
- Condition 13 (Remediation Strategy) – discharged under application 2024/92554 18 Nov 2024.
- Condition 16 (Coal Mining Risk Assessment) - discharged under application 2023/91673 19 July 2023.
- Condition 18 (Access and Improvement Sightlines) – not discharged but solely relates to parcels 1, 2, 3, 4, 5, 6, 7 and 8. This CLD application relates to parcel 9 of the development and therefore discharge of this condition is not required in this instance.
- Conditions 19 & 20 (Archaeology) – not discharged but solely relates to development commencing within areas 2_D and 2_E, as shown on plan titled ‘Overview - Coal mining activity AG1581’ within the previously approved Low Farm Geophysical Investigation rev. 2 report, and therefore discharge of these conditions is not required in this instance.
- Condition 21 (Ecological Design Strategy) – discharged under application 2025/91183 16 May 2025.
- Condition 23 (Animal gates) – discharged under application 2023/92489 02 Oct 2023.

As outlined above, it is noted that there are no conditions attached to the planning permission, in so far as the development of parcel 9, that require further details to be agreed before development commences. Whilst it is acknowledged that condition 5 was discharged/approved after the commencement date of 04/08/2025, a combination of the short period of time between works being carried out, that information pursuant to discharging the

condition provided in May was in the process of agreeing some minor amendments prior to 4 Aug 2025 and discharge prior to the expiry of the planning permission would have rendered any enforcement action as irrational and potentially an abuse of power. Thus, it is accepted that an exemption to the Whitley Principle can apply with regard to condition 5. Moreover, it is also noted that no condition expressly precluded any work to be carried out but rather required further detail of the approved development to be agreed prior to work commencing. A distinction between such wording was considered important to decide whether or not the Whitley Principle applied¹¹ which in this case also supports the argument that the Whitley Principle does not apply, particularly to condition 5.

It is considered therefore, that based on the evidence provided by the applicant and held by the Council, that the partial laying and erection of the internal access road and palisade fencing within parcel 9, can only be pursuant to the original planning permission approved under 2021/93644 for erection and operation of grid-connected solar photovoltaic farm to supply up to 49.9MW with ancillary infrastructure and landscaping and biodiversity enhancement. Moreover, as the work is not in breach of any planning conditions, the works must therefore be lawful.

Conclusion

As such, on the balance of probabilities, the LPA is satisfied that material operations in the form of the laying of part of the access road and installation of palisade fencing of parcel 9, were commenced as approved through planning permission ref: 2021/93644, were lawful for the purposes of Section 191 of the Town and Country Planning Act 1990. Acknowledging this, it is recommended that the Certificate of Lawful use should be approved.

Recommendation: Granted.

Decision Authorisation: Delegated Powers

Application Number: 2024/92303

Officer Recommendation: Grant Certificate of Lawful Development.

The evidence provided by the applicant demonstrated, on the balance of probability, that operations to form the laying of part of the access road and installation of palisade fencing of parcel 9, were commenced as approved through planning permission ref: 2021/93644, were lawful for the purposes of Section 191 of the Town and Country Planning Act 1990.

Plans and specifications schedule:

¹¹ R. (on the application of Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin)

Plan Type	Reference	Version	Received
Photographic Evidence	-	-	23/09/2025
Location Plan 1	2112/D001.1	v.c	14/08/2025
Location Plan 2	2112/D001.2	v.c	14/08/2025
Location Plan 3	2112/D001.3	v.c	14/08/2025
Covering Letter	-	-	14/08/2025
Commencement Works (Appendix 1)	-	1.0	14/08/2025
Overall Layout (Appendix 2)	B001.1	5.1	14/08/2025
Internal Access Track Cross Section (Appendix 3)	B107	1.0	14/08/2025
DN0 132kv Substation Palisade Fencing Elevations Planning (Appendix 4)	B120	1.2	14/08/2025
Photographic Evidence (Appendix 5)	-	-	14/08/2025
Boom Power Sign in Sheet (Appendix 6)	-	-	14/08/2025
RAMs for Site Work (Appendix 7)	1952	2	14/08/2025
Invoice from Land & Power Limited (Appendix 8)	-	-	14/08/2025

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2024 and otherwise actively engaged with the applicant in dealing with the application.

Report Dated: 10/10/2025.