

Lawful Development Certificate (existing) Delegated Report



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

A. Application Details

Application No.	24/00139/CLUE
Site Address	Great Wolf Lodge Oxfordshire, Kirtlington Road, Chesterton, OX26 1TE
Proposal	Certificate of Lawfulness of Existing Development: at the site referenced above in relation to the development which is proposed to be undertaken pursuant to planning permission number 21/04158/F
Amended Plans	None received

B. How the Application is Assessed

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter would be lawful.

C. Constraints and Relevant Planning History

Constraints	<ul style="list-style-type: none"> Public Right of Way 		
Site history	<p>Application: 19/02550/F Appeal Allowed 16 March 2020 (11th May 2021 appeal decision) (Against Refusal)</p> <p>Redevelopment of part of golf course to provide new leisure resort (sui generis) incorporating waterpark, family entertainment centre, hotel, conferencing facilities and restaurants with associated access, parking and landscaping</p> <p>Application: 21/03164/OBL Permitted 29 March 2022</p> <p>Discharge of golfing obligations associated with the Second Schedule to the Great Wolf Resort s106 (19/02550/F).</p> <p>Application: 21/04158/F Permitted 29 March 2022</p>		

Variation of condition 2 (plans) of 19/02550/F - 1. Alterations to the Family Entertainment Centre including adjustments to the number and type of leisure attractions. 2. Reconfiguration of the Conference Centre orientation and floor plan to consolidate the guest experience and improve internal circulation. 3. General internal spatial co-ordination in line with operational requirements. Generally, this is local to internal layouts but do affect a small number of external door and window positions. 4. Updates to the landscape design proposal as a result of the building footprint changes and reconfiguration of the Conference Centre and fire tender access to the site. 5. Extension of the Porte cochere as a result of shifting the building southwards 3.6m to allow for a larger drop off / set down point for arriving guest vehicles/buses. 6. Waterpark updates including slide and external terrace paving area modifications. The overall height of the waterslide is maintained below the height of the turret which remains as per the consented scheme. 7. Relocation of Great Wolf entrance statue. 8. Roof updates in line with revised roof access strategy. 9. Minor MEP and utility updates across the site. 10. Waste yard ramp dimensions updated with wider radius ramp and integrated vehicular protection zones

Application: 22/00106/DISC Permitted 21 November 2022

Parital discharge of conditions 9 (Landscaping) and full discharge of conditions 11 (trees to be protected according to Arboricultural Method Statement) & 23 (Mitigation strategy for Great Crested Newts) of 21/04158/F

Application: 22/00175/DISC Permitted 17 June 2022

Discharge of Condition 12 (Landscape and Ecological Management Plan (LEMP) of 19/02550/F

Application: 22/00771/DISC Permitted 15 June 2022

Discharge of condition 28 (great crested newt compensation) of 21/04158/F

Application: 22/00967/DISC Permitted 29 July 2022

Discharge of conditions 3 (finished floor levels), 7 (fire hydrants), 20 (soundproofing scheme), 30 (bus facilities) & 33 (green roof details) & partial discharge of condition 9 (landscaping scheme - Resort Landscape) of 21/04158/F

Application: 22/01599/DISC Permitted 4 November 2022

Discharge of Conditions 6 (colours and materials of any water slide, wolf, or other external built feature), 24 (footpath specification details) and 25 (Construction Traffic Management Plan) of 21/04158/F

Application: 22/01633/DISC Permitted 12 September 2022

Discharge of condition 8 (details relating to services serving the development) 17 (hard surfacing) of 21/04158/F

Application: 22/01815/DISC Permitted 1 November 2022

Discharge of condition 16 (water drainage scheme) of 21/04158/F

Application: 22/02070/OBL Permitted 25 November 2022

Discharge of S106 for 21/04158/F - to comply with Schedule 2, Para 2.1 of the s106 agreement

Application: 22/03690/DISC Permitted 26 April 2023

Discharge of condition 15 (construction, materials and surfacing of the access road) of 21/04158/F

Application: 23/00581/NMA Permitted 2 June 2023

1. Reduction in height to the two flanks of the main hotel building by 654mm. 2. Reduction in height of the central lobby part of the hotel building by 990mm. 3. End facades pushed out on end/corner guestrooms by 52mm. 4. Six additional guestrooms (from 498 to 504) within the consented envelope of the building. 5. Extension to the flat roof of the waterpark support building (the "bunker") over the pitched section to form a dormer-like structure. 6. Updates to external window and door positions. 7. Removal of the Substation West (at the northern perimeter of the carpark) and minor alterations to the substations at the southern end of the car park within the landscape. 8. Additional doors on the flat roofs to facilitate safer means of emergency egress. 9. Rationalisation of window heights.

10. Addition of windows to the ballroom to improve natural daylight. 11. Relocation of access / maintenance entrances to provide more discreet, efficient and safer means of access. 12. Minor alterations to rainwater goods location setting out on the building to provide more efficient surface water

collection. 13. Removal of the chimney at the ridge of the pitched roof over the lobby (no longer required). 14. Revised ventilation strategy and removal of flue on green roof (proposed as non-material amendments to 21/04158/F)

Application: 23/01016/DISC Permitted 13 June 2023

Discharge of Condition 21 (external lighting/security lighting/floodlighting details) of 21/04158/F

Application: 23/01184/DISC Permitted 19 July 2023

Discharge of condition 14 (covered cycle parking facilities) of 21/04158/F

Application: 23/01227/DISC

Discharge of Condition 4 (Schedule of Materials) of 21/04158/F

Application: 23/01620/DISC

Discharge of condition 5 (architectural detailing of the exterior of the buildings) of 21/04158/F

Application: 23/02828/OBL Permitted 21 December 2023

Discharge of Clause 12.1.1 of the S106 agreement pursuant to application 21/04158/F

Application: 23/02932/NMA Permitted 21 December 2023

1. Introduction of ventilation grilles above all guestroom windows;
2. Reduction of brick plinth to back of house areas of waterpark building;
3. Change of rear of hotel from stone to render retaining stone surrounds and sills;
4. Change of rear of hotel from stone to timber with timber surrounds and metal sills;
5. Change from stone plinth to buff brick plinth to back of house areas of waterpark building;
6. Change of buff brick from blue brick material around plinths;
7. Reduction of extent of plant screening above conference zone where plant is no longer present;
8. Reposition slow windows to eaves to raise them slightly; and,
9. Re-align windows above porte cochere (proposed as non-material amendment to 21/04158/F)

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D. Summary of Responses

Below is a summary of any responses received at the time of writing this report. Any responses received are available to view in full on the Council's website, via the online Planning Register.

Consultees	<ol style="list-style-type: none"> 1. Clerk to Chesterton PC – Object as they do not consider the development has been commenced. 2. Building Control (CDC) – No comments to make at this stage 3. Ward Councillor – No comments received. 4. Legal Services (CDC) - No comments received.
Neighbours	6 local residents have been consulted, but no comments have been received to date.

E. Appraisal of Application

In order to be acceptable, the application needs to be assessed against the following topics:

- a) Evidence supplied by the applicant
- b) Evidence the LPA may have at its disposal
- c) Evidence submitted by third parties
- d) The onus of proof, is the evidence sufficiently precise and unambiguous
- e) The balance of probabilities

Further advice can be found here <https://www.gov.uk/guidance/lawful-development-certificates>

Evidence supplied by the applicant

The applicants have provided a cover letter outlining why development has commenced within the 3 years (11th May 2024). Photographs have also been provided showing the work commenced thus far.

Evidence the LPA may have at its disposal

Discharge of planning conditions, including obligation submissions, and site visits

Evidence submitted by third parties

None

The onus of proof, is the evidence sufficiently precise and unambiguous

The applicants haven't provided any invoices to demonstrate that they have commenced works. They have provided photographs. Even though these photographs are provided with month and year when they were taken. These photos are not timed stamped, therefore there is no certainty when these have been taken. However, given that the dates are before 11th May 2024, and the application for the CLUE has been submitted prior to this date, it is evident that these works commenced prior to 11th May 2024. In addition the case officer undertook a site visit 10th April 2024. Photos have been taken of the site. In addition, Great Wolf has a website, which gives updates on when certain works are progressing.

The balance of probabilities

In order to lawfully commence development, it needs to satisfy the legal requirements in section 56 (4) of the Town and Country Planning Act 1990. Section 56(4) states that a material operation means:

Any work of construction in the course of the erection of a building, the digging of a trench which is to contain the foundations, or part of the foundations of a building, the laying of any underground main or pipes to the foundations, or part of the foundations of a building or to any such trench, any operation in the course of laying out for construction a road or part of a road, any change of use of land which constitutes material development.

The 2019 application (19/02550/F) was allowed by the planning inspector on the 11th May 2021, therefore the applicants have until 11th May 2024 to commence development. The 2021 application (21/04158/F) was a variation of a planning condition to the 2019 approval under Section 73 of the Town and Country Planning Act 1990. Section 73 applications do not allow for the time limit of the original application to be extended (19/02550/F), however, it is clear on the decision notice of 21/04158/F that a three-year condition was imposed. This was in error. In determining whether work has commenced for the development, the Council are taking the commencement date from the 2019 permission rather than the 2021 application. The development is likely to be undertaken in accordance with the 2021 permission.

The permission for the development includes pre-commencement conditions, which are required to be discharged before works are undertaken on site. These are detailed above and were all discharged within the year 2022.

It is clear within the application, supporting documents, officer site visit, and website that these works all commenced within the year 2023. After the conditions have been discharged.

Consideration also has to be had to the requirements of the S106 attached to the original consent. However, this has a different description of what constitutes a commencement of development. The applicants have provided evidence that the pre-commencement elements within the S106 have been complied with. These include a training plan, golf course scheme, shuttle bus service, section 278 agreement, payment, and bond to the county council. The applicants also included a notice of commencement on site.

Works on-site include the construction of access, works within the site, development relating to utilities, substation and pumping station, and surface water drainage. The right of way has also been diverted and completed. Although the S278 and S257 final paperwork is pending.

It is clear from the site visit, that sufficient works have commenced on site to satisfy the legal requirements in Section 56(4) of the Town and Country Planning Act 1990. The implementation of the planning consent has occurred on site within the 3 years (11th May 2024) in accordance with the pre-commencement conditions and requirements under the S106.

F. Conclusion

I am satisfied that the applicant has established, on the balance of probability, that the works have been implemented within the three years as allowed under applications 19/2550/F and 21/04158/F.

G. Recommendation

The application is recommended for **APPROVAL**.

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H. Authorisation			
Case Officer:	Katherine Daniels	Date:	3 June 2024
Authorising Officer:	Caroline Ford	Date:	14 June 2024