



Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2023

Appeal Ref: APP/K0425/X/23/3323686

5 Friars gardens, Hughenden Valley, High Wycombe, Bucks, HP14 4LT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Matthew Bartlett against the decision of Buckinghamshire Council.
 - The application ref 23/05021/CLP, dated 4 January 2023, was refused by notice dated 18 April 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is to widen the access of a driveway to allow for off street parking, and to drop the kerb accordingly.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Procedural Matters

2. The front boundary wall to the property has already been shortened to provide a wider opening at the front of the property. It appears that the works necessary to complete the widening of the access are the lengthening of the dropped kerb and associated works to the footway/verge. There are no engineering drawings to show this in full detail, but a sketch plan shows the crossing over the footway widened to 4.6m and a method statement from a contractor sets out the main steps.
3. Neither party has queried the lawfulness of the works to shorten the wall and the remaining works can be reasonably described as 'to widen the access of a driveway'. Accordingly, I have approached the appeal on the basis that it is only the remaining works to the road/footway/verge, and not the shortening of the wall, for which the certificate is sought. This appears to be the basis on which the Council considered the scheme, taking the view that the application did not include any works within the residential curtilage of the dwelling.
4. Given the facts of this case, I have considered below the evidence before me relating to whether a hardstanding constructed at the property would have been permitted development. Nevertheless, this decision relates only to the widening of the access and I have considered the question of the hardstanding only to the extent necessary to reach a finding on that matter.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the proposal to widen the access is development permitted under the provisions of Article 3(1) and Class B of

Part 2 of Schedule 2 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) (the GPDO).

Reasons

6. LDC applications are determined solely on the question of lawfulness; the planning merits of the development are not relevant. The Government's *Planning Practice Guidance* advises that the applicant is responsible for providing sufficient information to support an LDC application.
7. The appellant's case is that the proposed works are permitted under the provisions of Class B of Part 2 of Schedule 2 of the GPDO. Class B allows the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road. Although it does not explicitly make provision for the widening of an existing access, the Council does not object on that basis, and it seems to me that the 'formation' of an access could reasonably include such works. However, Class B is specifically for situations where the access is required in connection with development permitted by particular classes within Schedule 2 of the GPDO. The question in this case is whether the widened access is required in connection with such permitted development.
8. It is common ground that the tarmac driveway previously at the property was recently replaced with a new, larger, block-paved hardstanding. This was constructed in November 2022. The appellant's case is that this was development permitted by Class F of Part 1 of Schedule 2 of the GPDO and that the widening of the access is required in connection with the new hardstanding. On this basis, the widening of the access is said to fall within the scope of Class B of Part 2.
9. The Council suggests that the hardstanding may not have been permitted development. There is no LDC before me for those works. However, the sole basis of the Council's view appears to be the condition at F.2. of Class F. This establishes that, for a hardstanding such as this, it is conditional that either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.
10. Yet the Council accepts that the hardstanding is made of porous materials¹. Consequently, regardless of any provision made for directing water run-off, the evidence before me suggests that the condition is complied with. The Council does not suggest that there is non-compliance with any other aspect of Class F. Accordingly, I have no reason to doubt that the hardstanding was development permitted under Class F.
11. The next question is whether the widening of the access is required in connection with the hardstanding. Clearly, since the hardstanding was completed some time ago, the two projects cannot be completed concurrently. However, that does not mean that the projects were unconnected. Indeed, the only conceivable reason to use the improved access is to park on the area provided by the hardstanding. The existing access was all that was needed to serve the old driveway, and widening it would have only served to allow cars to reach an area of lawn.

¹ See Council's Delegated Report para 2.4 and Appeal Statement para 5.12

12. Moreover, the application to widen the access was made soon after the hardstanding was created, on 4 January 2023. It is also evident that the shortening of the boundary wall to create a wider gap, a necessary step in order to widen the access, must have been carried out before the hardstanding was completed, since some of the new surfacing is on the area previously occupied by the wall. Thus, it seems probable that the widening of the access was conceived concurrently with the hardstanding. In any event, the wall had been shortened by the time a Council officer visited the site in April 2023.
13. For these reasons, it appears to me that it was the new hardstanding that prompted the requirement for the access. Even if they are regarded as separate projects, they are intrinsically linked in that both are aimed at improving parking arrangements at the property. The fact that the completion of the access has stalled pending gaining confirmation that planning permission is not required does not alter that.
14. The Council argues that, even if there is a connection between the hardstanding and the access, the hardstanding is already served by an adequate access, and so there is no need for the widened access. On this basis, it is said that the new access is not 'required'. In support of that position, I have been referred to an appeal decision relating to a site at Solihull². In that case, the inspector decided that 'there must be a reasonable degree of need for the access to be required' and concluded that there was no such requirement as the hardstanding in that case was already served by an adequate access.
15. Nevertheless, notwithstanding that inspector's reference to 'need', I must apply the wording set out in the legislation. Moreover, that was a very different scheme, where an access track was proposed. In this case, the hardstanding has been created to accommodate more cars than the previous driveway at the property. It seems entirely natural to me that a wider access should be required in connection with that, allowing cars to be moved onto and off the site while minimising the need to shuffle around those cars already on the site. Thus, applying the ordinary meaning of the wording in the legislation, the widened access is *required* in connection with the new hardstanding.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposal to widen the access of a driveway to allow for off street parking, and to drop the kerb accordingly was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and grant the certificate applied for.

Peter Willows

INSPECTOR

² APP/T3725/X/16/3156418

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 4 January 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the widening of the access is required in connection with development permitted under the provisions of Article 3(1) and Class F of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Consequently, the widening of the access is permitted under the provisions of Article 3(1) and Class B of Part 2 of Schedule 2 of the GPDO.

Signed

Peter Willows

Inspector

Date: []

Reference: APP/K0425/X/23/3323686

First Schedule

Widen the access of a driveway to allow for off street parking, and to drop the kerb accordingly.

Second Schedule

Land at 5 Friars gardens, Hughenden Valley, High Wycombe, Bucks, HP14 4LT

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: []

by Peter Willows BA MRTPI

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Scale: Not to Scale

