



Appeal Decision

Site visit made on 6 January 2025

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2025

Appeal Ref: APP/B1930/X/23/3316960

**Land at The Stables, Nicholls Farm, Lybury Lane, Redbourn, Hertfordshire
AL3 7JH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Peter Tallantire against St Albans City Council.
 - The application ref 5/2022/2394 is dated 29 September 2022.
 - 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 described in the application as: the erection of an electric vehicle charging point for the use of users of the equestrian unit, along with an access track from the highway to the charging unit.
-

Decision

1. The appeal is dismissed.

Main Issue

2. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority.
3. The Council did not determine the application subject of this appeal. Accordingly, the main issue in this case is, had the Council refused the LDC application, whether or not the refusal would be well founded. The test of the evidence is on the balance of probability and the burden of proof is on the appellant to show that the matters referred to in the application would have been lawful if begun on the date the application was made.

Reasons

4. There are two elements to the proposal subject of the appeal. These are referred to as an electric vehicle charging point and an access track. I deal with these each in turn as follows.

Electric Vehicle Charging Upstand

5. The appellant's case is that the upstand would have the benefit of planning permission granted by reason of Class E of Part 2 Article 3, Schedule 2 of The

Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order), hereafter referred to as Class E.

6. Class E permits:

‘The installation, alteration or replacement, within an area lawfully used for off-street parking, of an upstand with an electrical outlet mounted on it for recharging electric vehicles.’

7. The dispute between the parties is whether or not the upstand for recharging electric vehicles would be located within an area lawfully used for off-street parking.
8. The appellant points to the LDC granted by the Council in 2021 (the 2021 LDC) for the ‘use for the keeping, stabling, exercising of horses and associated activity’. Whilst the plan accompanying the certificate has not been provided, there is no dispute that this certificate relates to the appeal site. The appellant suggests that the ‘associated activity’ referred to in the certificate includes ‘the parking of vehicles, trailers, implements on the hard standing, in the menage and on the paddocks’. This is not disputed by the Council.
9. Having regard to the use stated in the 2021 LDC, I have no reason to find that the parking of vehicles (i.e. off-street parking) on the appeal site in association with the use of the site for the keeping, stabling, exercising of horses would not be an activity (i.e. a use) that is ancillary to the lawful use of the site. Furthermore, I have no doubt that the permission granted by Class E would apply to an area used for off-street parking, where the parking is associated with a different use of the wider site (i.e. where the off-street parking area is within the same planning unit as, and is ancillary to the primary use of the planning unit).
10. However, having regard to the terms used in the description of the development permitted by Class E, the permission granted is for development within an area that is lawfully used, rather than an area that could be lawfully used for off-street parking. By this I mean that Class E applies to existing, established off-street parking areas, where parking already takes place and where that activity is lawful. It would not apply to an area that is not already used for parking, but could nevertheless be lawfully used for these purposes.
11. The plans indicate that the electrical upstand would be located within a field parcel, directly adjacent to the boundary of an enclosed manège. At the time of my visit the field was in use for keeping horses and the manège had the appearance of an enclosed area used for the exercise of horses. I could not see any hard surfacing that might be expected for an off-street parking area on the part of the site immediately surrounding the location of the upstand, and there was no obvious signs that this part of the site is in regular use for vehicle parking. Indeed, the field was deep with mud and in both the field and the manège I saw pooled water. The condition of this part of the site was such that its use for the parking of a domestic vehicle, for example, would be difficult and unlikely.
12. I do not doubt the appellant’s claims with regard to vehicles and trailers present within the wider site. I also note the aerial photographs of the site, which the appellant suggests show a tipper truck, trailer, tractor and horse box on the site. Whilst items are visible in these photographs, they are not entirely clear in terms of what these items are, and not all of the items visible are within the area of the

proposed upstand. The photographs show only a point in time on the year they were taken and there is little consistency in the location of the items visible.

13. Whilst I do not doubt that the keeping of these items on the appeal site is an activity that is ancillary to the site's lawful use, I am not persuaded that this activity is the same as off-street parking, as referred to in Class E. Even if I were to regard this activity as off-street parking, rather than the storage of these items, the evidence before me is not sufficient to demonstrate that, on the balance of probability, there is an existing off-street parking area in the location of the proposed upstand.
14. Accordingly, I conclude that the erection of an electric vehicle charging point in the location proposed is development that would benefit from the permission granted by Class E and would not, therefore, have been lawful if it had been instigated at the time of the LDC application subject of this appeal.

Access Track

15. The LDC application form refers to 'an access track from the highway to the charging unit' (singular). However, the site plan submitted with the LDC application has drawn on it two lines annotated with 'Route A' and 'Route B'; both meet at the location for the proposed upstand. The suggestion is that these are alternative schemes.
16. The appellant suggests that either one of the routes described as an 'access track' is development that would have the benefit of the planning permission granted by Class B of Part 2 Article 3, Schedule 2 of the 2015 Order, hereafter referred to as Class B.
17. Class B permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road. The permission granted by Class B is for development. Development is defined in section 55(1) of the 1990 Act as including 'the carrying out of building, engineering, mining or other operations'. Other than the site plan annotated with 'Route A' and 'Route B', no further details have been provided to indicate the operations (whether they be engineering or other operations) that comprise what the appellant describes as an 'access track'.
18. Notwithstanding this lack of detail, as the appellant has referred to Class B, I could assume that what is proposed in either scheme is an operation comprising the formation, laying out and construction of a means of access to a highway. However, I note that the northernmost point of Route B meets an existing agricultural type gate which was set in from the edge of the carriageway known as Lybury Lane. There is also a hard surfaced area between the gate and the edge of Lybury Lane, that splays towards the edge of the carriageway. This is shown in the series of photographs provided by the appellant, which are consistent with my observations on site. The appellant also refers to this as 'the existing concrete field entrance with dropped kerb onto the public highway on Lybury Lane'.
19. To my mind, what I observed in this location is an existing and distinct operation that is a means of access for the purposes of Class B, from the highway to the field parcel enclosed by the gate. There is no suggestion that this existing means of access is the subject of the LDC application and I note that the LDC application is for proposed, rather than existing development.

20. As for the point at which Route A meets the highway, again the appellant's photographs are consistent with my observations on site, where I saw an agricultural type gate in the enclosure between the highway and the southernmost area outlined in blue on the site plan. The gate was in the approximate location of where on the site plan Route A meets the highway. Across this blue outlined area there was evidence of vehicles having driven over the land from the gate with the highway to a gate into the land outlined in red on the site plan. I did not observe any hard surfacing in this area, as I did to the north of the site, in the location referred to above. Nevertheless, what I saw was an existing means by which vehicles or pedestrians can pass from the highway to the land outlined in blue, which I would regard as a means of access for the purposes of Class B. Again, there is no suggestion that this existing means of access is the subject of the LDC application and the appeal before me.
21. There is reference in the document accompanying the LDC application to a 'right to lay a hard surfaced access track' on the final 30 metres of Route B. This statement was made following reference to the ownership of the land along both routes. At the time of my visit, I did not observe any hard surfacing on the site in the location of the two marked routes.
22. If I were to assume that the development proposed on either route is an engineering operation comprising the laying of a hard surface track in the location of the annotated routes on the site plan, I cannot conclude that this operation would be permitted by Class B. I say this because, for development to be permitted by Class B, it must comprise the formation, laying out and construction of a means of access to a highway. The evidence before me does not indicate that the proposal includes the formation, laying out and construction of a means of access to a highway; the means of access to a highway for both routes is existing. Instead, if I have assumed correctly, what is proposed on either route is an engineering operation comprising the formation or provision of a hard surfaced track from the existing site entrance to the location of the proposed upstand. I would suggest that this is more accurately described as a 'private way' across the site, as referred to in certain provisions of the 2015 Order. I have not been made aware of any provisions within the 2015 Order that would permit a hard surfaced track (a private way) on the site and none are obvious to me.
23. If what is proposed is something more than the formation or provision of a hard surfaced track, without any details of the engineering or other operations that comprise the development for which the LDC is sought, I cannot conclude that what is described in the LDC application form would be development that is lawful. Furthermore, I do not have sufficiently precise and unambiguous evidence before me to determine whether or not what is proposed is, indeed, development, as defined in section 55(1) of the 1990 Act.
24. Even if I were satisfied that the LDC application proposed development for either alternative comprising the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, for the development to be permitted by Class B, it must be required in connection with some other development permitted by any Class in Schedule 2 of the 2015 Order (other than by Class A of Part 2). The appellant suggests that the track along either route would be required in connection with the proposed electric vehicle charging upstand. I have, however, been unable to conclude that the proposed upstand would be permitted by Schedule 2 of the 2015 Order. For this reason, I

cannot conclude that the track would benefit from the permission granted by Class B.

25. In addition to the above, I am not persuaded that Class B would permit the provision of a hard surfaced track of the length proposed on either route, even if a proposed means of access to a highway was part of the scheme. Whilst the appellant suggests that their view on this has been 'confirmed in several appeal cases', these have not been put before me.
26. Finally, I note the Council's concerns regarding which of the two routes are the subject of the application. I note that the routes meet in the middle of the site and that, together, they would form a single route from north to south. I have, nevertheless, considered the proposal for Route A and Route B as alternatives. Notwithstanding this, even if I were to agree with the appellant on all other matters in this appeal, I cannot conclude that if both alternatives were constructed, both would benefit from the permission granted by Class B. Development permitted by Class B must be required in connection with some other development, as specified above. I might conclude that one of the alternatives would be required in connection with the provision of an electric vehicle charging upstand. I could not, however, conclude that both would be required.
27. Having regard to the evidence before me, I cannot conclude on whether or not the matter described in the LDC application form as 'an access track from the highway to the charging unit' would be development as defined in section 55(1) of the 1990 Act. If what is proposed would be development, I cannot conclude that it would benefit from the permission granted by Class B. For these reasons, I am unable to conclude that what is proposed would have been lawful if it had been instigated at the time of the LDC application.

Conclusion

28. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of the erection of an electric vehicle charging point for the use of users of the equestrian unit, along with an access track from the highway to the charging unit, that refusal would have been well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

J Moss

INSPECTOR