



Appeal Decision

Site visit made on 17 June 2025

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI)

an Inspector appointed by the Secretary of State

Decision date: 30 June 2025

Appeal Ref: APP/J3720/X/24/3355697

8A Rowley Crescent, STRATFORD-UPON-AVON, CV37 6UT

- 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 & Mrs James & Frances Richardson against the decision of Stratford-on-Avon District Council.
 - The application ref 24/02167/LDE, dated 13 September 2024, was refused by notice dated 8 November 2024.
 - The application was made under section 191(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 confirm whether 19/03463/FUL was materially implemented within the 3 year time limit.
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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 existing operation which is found to be lawful.

Preliminary Matter

2. The application, which was made under s191 of the Town and Country Planning Act 1990 (the Act), sought confirmation that application 19/03463/FUL had been commenced within the three year time limit specified by that permission. That permission (the 2020 permission), which was for the “demolition of existing building, construction of replacement dwelling, with all ancillary works and alteration to vehicular access” was granted by the Council on 14th April 2020.
3. More specifically, the appellant contends that work that has been undertaken to extend the dropped crossing across the pavement between the edge of the garden and the carriageway was a material operation comprised in the approved development and that the work was sufficient to begin the permission. The Council disagrees with that position and that dispute forms the nub of the appeal before me.
4. Before addressing the main issue it is worth noting the terminology of s191 of the Act in respect of how the application was described. Under s191(1)(b), which is relevant in this instance, if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful he may make an application to the local planning authority specifying the land and the operations. That is distinct from s192(1)(b) of the Act which covers a situation where a person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land *would* be lawful in the future tense.

5. The way the arguments have been presented focus less on whether the physical work that has been undertaken to date is lawful and more on whether that work was sufficient to begin the permission, such that it *would* be lawful to continue to implement the 2020 permission and construct the replacement dwelling. The parties have focussed less on whether the work involved in constructing the dropped crossing would be lawful, of itself, having regard to the specific wording of s191(1)(b) and more on the consequences of undertaking that work in respect of the 2020 permission.
6. All of the above led me to wonder whether the appeal would more appropriately be dealt with under s192 of the Act, as opposed to s191. However, it is not clear that the operation in this case would constitute permitted development under Class B, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Under that Class, the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road is permitted, where that access is required in connection with development permitted by any Class in Schedule 2 (other than Class A of Part 2).
7. The widened section of the dropped crossing runs up to the boundary of the garden but then abuts the hedgerow and garden planting beyond. The pre-existing driveway of the dwelling has not been widened or extended to meet the extended section of the dropped crossing. As such, it is not possible to drive over that section to gain entry to the property. No other development permitted under Schedule 2 has been undertaken to which the works could be said to be “in connection” with. The appellant has not made any argument to that effect.
8. Thus, in order for it to be lawful it would need to be work that forms part of the development granted by the 2020 permission. If that is the case, and the operations are lawful in the meaning of s191(1)(b), it follows that the 2020 permission had been begun. Accordingly, in a roundabout way, I am satisfied that it is appropriate to consider the appeal under the scope of s191 of the Act, as opposed to s192.

Main Issue

9. The main issue is whether the Council’s decision to refuse to grant a certificate of lawful development was well-founded. As with all such appeals, the planning merits of any development are not material to my decision which must rest on the facts of the case and any relevant judicial authority. The onus rests with an appellant to demonstrate their case, on the balance of probability.

Reasons

10. Under s56(1)(a) of the Act development of land shall be taken to be initiated—
 - (a) if the development consists of the carrying out of operations, at the time when those operations are begun.
11. S56(2) states that, for the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. What constitutes a material operation is defined in s56(4) (a) to (e). Of those,

sub-section (d) relates to any operation in the course of laying out or constructing a road or part of a road.

12. There is no dispute that the works involved constitute operational development. Permission is required from the Highway Authority to construct the crossing with work being carried out by a contractor who must follow a specified construction schedule, involving the excavation/ removal of the footway, construction of a suitable hardcore base, relaying tarmac and installing the stone cobbles/ setts at the edge of the carriageway.
13. There also appears to be no dispute that the work to extend the dropped crossing was undertaken and completed within three years of the planning permission being granted. The key question is whether the work was a material operation “comprised in the development”.
14. The description of development for which permission was granted clearly refers to “alterations to vehicular access”. The red line boundary, which depicts the extent of the land to which the application relates on the location plan¹, includes the pavement and highway where the works have been undertaken. However, the approved plans are somewhat lacking in detail regarding the precise nature of works relating to the alterations to the vehicular access.
15. The existing situation is that the driveway of No.8a is directly next to that of No.10. It is not a shared driveway and the two drives have different surfaces, No.10 being tarmac and No.8a being block paved. Nonetheless, they are directly side by side. The approved site layout plan² and the plan showing the proposed street scene/ details of the front gate/ wall³ show that a hedgerow would be planted on the driveway of No.8a running parallel to the drive of No.10, in order to provide a landscaped buffer between the two.
16. The result is that the hard surfaced area of the drive under the approved scheme would need to be extended further into the site from its present position i.e. shunted slightly to the north-west. Otherwise, the driveway would not be wide enough to drive a car across once the new hedgerow had been planted. Two gate posts are shown on the approved plans, marking the realigned position of the entrance to the site.
17. However, there is no annotation on the plan to depict that the dropped crossing across the pavement would be widened as part of the proposal. I have been referred to other documents submitted with the application but they provide little substantive evidence relating to the extension of the dropped crossing. The planning statement contains two contradictory sentences under the heading of “Access”. In the first it is stated that *“the revised application includes a small alteration to the existing vehicular access. The access to be moved westwards by approximately 600mm to allow space for the width of a yew hedge as requested by the planning officer”*. The second states that *“the position of the existing access and dropped kerb is to be maintained but fitted with pillars and gates as indicated on the drawings”*.
18. The second statement is clearly incorrect as a matter of fact because the plans depict the position of the access being moved to account for the planting of the

¹ P151-008 Rev D

² Also plan P151-008 Rev D

³ P151-005 Rev C

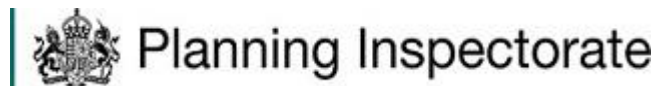
yew hedge, as described above. However, neither statement makes direct reference to the dropped crossing.

19. As a basic matter of common sense and practicality an extension to the dropped crossing was always going to be required in order to allow vehicles to drive through the new driveway because the pre-existing dropped crossing would not have extended far enough across the pavement. Unless it was extended, one would need to drive with one wheel over the dropped crossing and one wheel over the raised section of kerb to get into the site.
20. In that sense, even though it is not shown on the plans, it appears to me that the extension of the dropped crossing is clearly related to the approved scheme. As noted above, it hasn't been constructed for any other purpose. The Council contend that the existing hedgerow could be removed such that the crossing could, in future, be used for the existing dwelling. However, that is not what has occurred on the ground.
21. The Council also state that *"simply because an associated development is required to facilitate a development which has been granted planning permission, this does not in itself make the enabling development part of the approved planning permission as this is subject to the approved drawings and details which make no reference or inference to the extension to the extension of the dropped kerb"*.
22. The reference to "enabling development" provides a hint of acceptance that the works are related to the approved permission. Whilst the matter would undoubtedly have been more clear cut had the dropped crossing been shown on the approved plans, in my experience not every act of development is necessarily shown on planning drawings in great detail. In cases where applicants seek to demonstrate that a development has begun, it can often be the case that a trench may have been dug or a concrete foundation laid. Those works themselves would be unlikely to be shown on planning drawings but the question, when assessing whether the works were enough to say a permission had commenced, would be whether they corresponded to the position of walls or other features of the approved development.
23. In a similar vein, whilst the dropped crossing isn't explicitly depicted on the approved plans it clearly falls under the description of "alteration to vehicular access" which was approved. The width of the extended section would appear to correspond to the need to cater for cars to be driven across the proposed access, extending slightly further to the north-west than the proposed access pillar in order to allow for a swept path into the driveway. In my view, the dropped crossing is an integral part of the proposed access arrangements, notwithstanding that it wasn't depicted on the plans.
24. Accordingly, whilst it is a somewhat unusual case, I am satisfied, on the balance of probabilities, that the works that have been undertaken can be said to a material operation comprised in the development for which permission was granted. In other words, it is more likely than not. It follows that the operations are lawful in the meaning of s191(1)(b) of the Act and also that the 2020 permission was begun within the three year time limit set by condition 1 of that permission. It is common ground that there were no other conditions precedent relating to that permission that had not been discharged and the commencement was therefore lawful.

25. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development to confirm whether 19/03463/FUL was materially implemented within the 3 year time limit was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Chris Preston

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 13 September 2024 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of an extended dropped crossing across the pavement between the garden of No.8A Rowley Crescent and the carriageway amounted to a material operation comprised in the development granted permission by the Council on 14 April 2020 under application reference 19/03463/FUL, described as the demolition of existing building, construction of replacement dwelling, with all ancillary works and alteration to vehicular access. The material operation was undertaken within three years of the grant of that permission such that the development was lawfully implemented within the timescale set out under condition 1 of that permission.

Signed

Chris Preston

Inspector

Date: **[30 June 2025]**

Reference: APP/J3720/X/24/3355697

First Schedule

Confirmation that application 19/03463/FUL was materially implemented within the 3 year time limit as a result of carrying out a material operation comprised in the development.

Second Schedule

Land at 8A Rowley Crescent, STRATFORD-UPON-AVON, CV37 6UT

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 were 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 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [\[30 June 2025\]](#)

by Chris Preston

Land at: 8A Rowley Crescent, STRATFORD-UPON-AVON, CV37 6UT

Reference: APP/J3720/X/24/3355697

Scale: Not to Scale

