



Appeal Decision

Site visit made on 20 August 2025

by Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2025

Appeal Ref: APP/P2935/X/25/3363115

Land North of Greengates, Ovington, Northumberland, NE42 6EE

- 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 William Gray against the decision of Northumberland County Council.
 - The application ref 24/0454/CLEXIS, dated 22 November 2024, was refused by notice dated 9 January 2025.
 - 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 installation of a vehicular access.
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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.

Reasons

2. In a lawful development certificate (LDC) the onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant.
3. By s191(2) of the 1990 Act operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. No enforcement action has been taken by the Council. That leaves the question whether the access involves development, requires planning permission, has gained immunity from enforcement action or for any other reason no enforcement action may be taken. The relevant date for ascertaining whether the existing development is lawful is the date of the LDC application.
5. In November 2024 when the application was made the land was stated to be used for the storage of a caravan and the application was made on the grounds that the installation of the access has existed for over four years without enforcement action.
6. With effect from 25 April 2024, the so-called immunity period for operational development extended to ten years save that it remained as four years for development substantially completed prior to that date. It is asserted that the access was completed prior to that date, the immunity period of 4 years has been met, and the development is therefore lawful.

7. The combined effect of case law and government guidance is that an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

8. The Council's reasons for refusing the application were that it had not been shown that the works carried out would constitute development, and secondly, on the submitted information, on the balance of probability, it is not possible to conclude that the works were "*substantially completed and in continuous use*" for a period of more than four years before the date of the application.

9. The Council's reasons for refusal are somewhat bizarre. I will return to them further below. Also, the Council's statement wrongly asserts that the onus is on the applicant to provide "*clear and compelling evidence*". Nowhere is it stipulated that evidence must be compelling. The standard of proof has remained that of the civil standard of proof, ie the balance of probability.

10. The Council notified the appellant in January 2022 of a breach of planning control comprising creation of a new access, perimeter fencing, and infrastructure for a new dwelling. No enforcement notice was served but seemingly in contrast with the first of the Council's reasons for refusal, it did consider that development was involved which required planning permission.

11. The appellant states that an "access" in planning terms does not require a specific form of surfacing, the presence of an opening and a functional entrance would qualify. The submitted photographs of 2016 and 202 are too indistinct from which to form a conclusion on their own. However, the 2020 image does clearly show an access formed with a gravelled surface. It is laid from the roadside and extends into the appeal site for some 3m or so, across which two cross wire gates have been installed with metal frames, allowing views into the site. The gates appear to be the same that I saw when inspecting the site. Although the gravelled surface has been overgrown the gates continue to provide access to the site in which two caravans are sited.

12. Images for subsequent years show the gradual diminution or covering over of the hard surfacing but consistently show the gates maintained at the site which continue to afford access from and into the adjacent highway. In more recent images, on the land between the gates and the roadside the vegetation has been kept down to bare earth as opposed to the rest of the verge on either side along the road, less so when I saw it. It is unmistakably an access which appears to have existed from the time of the August 2020 image until November 2024 when the LDC was applied for.

13. F's so called sworn statement dated 2022 is witnessed by a solicitor but falls well short of meeting the requirements of a statutory declaration under the Statutory Declarations Act 1835. As a written statement it claims that an access was in place when F acquired the land in 2014 but the dates of the appended photographs are uncertain. It also states that the (then) current owner (who is also the appellant) "*has simply cut the self-seeded hedge to reveal the existing access*". The appellant produces a statement with the same shortcomings to qualify as a statutory declaration in which he basically corroborates F's statement. Whether the access was in place as long ago as claimed in the statements, is uncertain.

14. However, the August 2020 image tallies with the officer's report on an earlier LDC application Ref 22/02302/CLEXIS which was considered in 2022. The parish council and local residents commented that the access appeared two years previously and that

“hedging was removed in 2020 to create the access.” It is also said that photographs show a hedge in place on 30 May 2020. That may well be the case but although that photograph is not before me in this appeal, the Council has not commented on the August 2020 image. The Council claims there is nothing new in the current appealed application but of course what is new is the fact that the same evidence is produced several years on, with no enforcement action having been taken. If the Council had followed up on their refusal of the 2022 application and taken enforcement action, the outcome could possibly have been different.

15. I have no doubt that based on the evidence supplied the access in question was formed more than four years prior to the LDC application in November 2024. The evidence is not contradicted by any persuasive evidence emanating from the Council or other person. As such the development is lawful and a certificate will be granted.

16. I return to the Council’s reasons for refusal. That the works do not constitute development, is not a valid reason to refuse a certificate. As s191(2) referred to above, makes clear, the fact that operations do not involve development is a reason for declaring development to be lawful, not unlawful. Many applications seek certificates involving works that do not constitute development requiring planning permission and a certificate is granted. That is the very reason why provision for LDCs exists in part.

17. It is not explained why the access may not amount to development. As the Council will be aware, s336(1) includes the formation and laying out of means of access to highways within the definition of engineering works, which are themselves a form of operational development. The works need not be substantial. More must be done than merely driving onto land; something that amounts to the formation or laying out must take place as a matter of fact and degree. It is clear from the submitted evidence that sufficient works took place to constitute the formation of an access to the highway.

18. What is not explained either, is whether the Council regarded the access as benefitting from permitted development (PD) rights. Such rights have provisos that in most cases exclude permission that involves the formation of an access to a trunk or classified road or creates any obstruction to the view of persons using any highway used by vehicular traffic, so as to cause danger to them.

19. There were in fact safety concerns recorded in the 2022 report by the highways department on the earlier application, but they were dismissed by the officer as not relevant. Presumably it was thought they related to a planning merits matter. There was no analysis then or now, of the possibility that the access failed the permitted development criteria for the formation of an access due to the status of the road and whether danger might be caused by forming the access. Had that possibility been analysed in 2022, again the outcome could possibly have been different.

20. When considering if one can construct a means of access to a highway under permitted development rights (where that access is required in connection with development permitted by any Class in Schedule 2 of the GPDO) it is important to first look at s12 Highways Act to see if Class B, Part 2, Schedule 2 of the GPDO applies. In the interpretation parts of the PD legislation a “classified road” includes a highway or proposed highway which (a) is a classified road or a principal road by virtue of section 12(1) of the Highways Act 1980 (general provision as to principal and classified roads).

21. The access in question is adjacent to what is known as the C254 road. There is often confusion about “C roads”. Nationally published government guidance¹ provides information on road classification. It states that classified unnumbered roads are similar to ‘minor roads’ on an Ordnance Survey map and are sometimes known unofficially as C roads. It adds that some authorities choose to number their classified unnumbered roads and can refer to them as C roads. Finally, under the subheading “Road types – unofficial” it states:

“C road – another term for a classified unnumbered road. Any numbering system around C roads is peculiar to the authority and is not coordinated on a national basis; as a result, we advise that it is not displayed.”

22. So, there is little doubt that although the numbering may be “unofficial” the C254 is a classified road for these purposes. The analysis in the 2002 report might then have gone on to consider whether in fact any permitted development was negated by the existence of a dangerous situation at this location. Indeed, I have read the appeal decision of my colleague dated 5 August 2024² refusing permission for a parking bay at the site wherein she expressed concern over inadequate proposed visibility splays likely to result in harm to highway safety. Alas, that decision was on the planning merits of a different proposal and does not affect the considerations in this s195 appeal³.

23. Secondly, the Council said on the submitted information, on the balance of probability, it was not possible to conclude that the works were “*substantially completed and in continuous use*” for a period of more than four years before the date of the application. It seems the Council requires not only that the access is formed but that it continues to be maintained and used as such, to be a lawful access. This raises, although the point is not explored by the Council, potentially difficult issues of possible abandonment, physical possibility of implementation, and condition of the land. It would seem rather, that the Council has attempted in vain to fight a rearguard action based on a notion that the use associated with an otherwise lawfully established operational development has not continued. I have been given no authority that supports this proposition.

24. Suffice it to say that the access appears to have continued in use in any event and the condition of the land has not prevented that use or the lawfully acquired operational development from being implemented.

Conclusion

25. 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 for the creation of an access is 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).

Grahame Kean

INSPECTOR

¹ <https://www.gov.uk/government/publications/guidance-on-road-classification-and-the-primary-route-network/guidance-on-road-classification-and-the-primary-route-network#chapter3>

² APP/P2935/W/24/3343097

³ Not, as the parties sometimes refer to the present appeal, a s78 appeal.

Plan

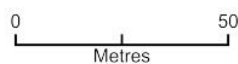
This is the plan referred to in the Lawful Development Certificate dated: 27 August 2025

by **Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI**

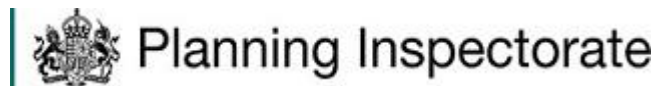
Land at: Land North of Greengates, Ovington, NE42 6EE

Reference: APP/P2935/X/25/3363115

Scale: Not to Scale



Plan Produced for: Mr William Gray
Date Produced: 08 Apr 2022
Plan Reference Number: TQRQM22098124314880
Scale: 1:1250 @ A4



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 22 November 2024 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The engineering operation comprising the formation of the access was substantially completed more than four years before the date of the application made on 22 November 2024 and, pursuant to section 191(2) of the 1990 Act, therefore constitutes lawful development.

Signed

Grahame Kean

Inspector

Date: 27 August 2025

Reference: APP/P2935/X/25/3363115

First Schedule

Installation of a vehicular access.

Second Schedule

Land North of Greengates, Ovington, NE42 6EE.

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 use /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.