



Appeal Decision

Site visit made on 24 September 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 OCTOBER 2025

Appeal Ref: APP/R3650/X/24/3352414

2 Fir Cottage, Portsmouth Road, Milford, Godalming, GU8 5DY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Donna Holmes against the decision of Waverley Borough Council.
 - The application reference WA/2024/01482, dated 25 July 2024, was refused by notice dated 19 September 2024.
 - 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 a vehicle cross over (dropped kerb).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by Donna Holmes against Waverley Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. It was agreed by the appellant at LDC validation stage that the proposal was for a 'vehicle cross over (dropped kerb)'. This is how the local planning authority (LPA) describes the LDC proposal. It is noteworthy that the appellant commented on 3 August 2024, in discussion with the LPA about the description of proposed development, *'my application targets a single specific operation comprising what SCC describe as a vehicle crossover (dropped kerb) so perhaps that might be a better compromise that will satisfy all parties and to which I will agree¹'*.
4. For the avoidance of doubt, I make clear that the planning merits of the proposed vehicle cross over (dropped kerb) are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
5. I noticed on my site visit that a vehicle was parked on the hardstanding in front of the appeal property. However, the kerb was not dropped. Therefore, the vehicle is being parked on the hardstanding by 'bumping' over the existing highway kerb.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded with particular regard to whether the proposed vehicle cross over (dropped crossing) would constitute an act of operational development and that it

did not amount to permitted development under Class B of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

7. There is no dispute between the main parties that the proposed hardstanding to the front of No. 2 Fir Cottage, to be used for parking purposes, and the removal of the dwarf wall with a fence/gate does not amount to development in respect of the section 55 of the Act. I do not disagree with this common ground position and hence planning permission is not required for such proposals. I observed on my site visit that the hardstanding had already been formed and that the dwarf wall with a fence/gate had been removed.
8. The point of dispute between the main parties relates to the *'new dropped kerb'* as shown on the appellant's submitted plans. Indeed, the appellant comments in his statement of case that *'the appeal application sought confirmation that a new vehicular crossover (dropped kerb) in this position does not constitute development requiring planning permission'*. The proposed cross over (dropped kerb) is positioned within the part of the highway where there is an existing kerb and which is adjacent to double yellow lines. The proposed cross over (dropped kerb) measures about 6.6 metres in length and would be in front of the dwarf wall with a fence/gate and hardstanding which have respectively been removed and formed.
9. Section 55(2)(b) of the Act states that *'the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment'*, shall not be taken for the purposes of the Act to involve development of the land.
10. The LPA does not make a claim that the proposed vehicle cross over (dropped kerb) would lead to significant adverse effects. The LPA does not provide any detailed reasoning in terms of how it reached this view, but, in any event, it states that such an operation is not required for the maintenance or improvement of the road. I agree with the position of the LPA in respect of this matter. While the appellant would like a vehicle cross over (dropped kerb), as the existing kerb does not facilitate uninterrupted motor vehicle access to the formed hardstanding (i.e., there is no existing means of vehicular access), the evidence does not demonstrate that such a proposed operation is required for the maintenance or improvement of the road.
11. While the Highway Authority may undertake the operation comprising the proposed dropped cross over (dropped kerb), if a separate Highway Authority application was applied for and approved by it, it is not the case that the evidence demonstrates that the proposed vehicle cross over (dropped kerb) is specifically required to maintain or improve the existing road. Moreover, the operation would essentially be undertaken by the appellant, albeit that the Highway Authority would likely be requested to carry out such an operation. The section 55(2)(b) Act exclusion is limited to local highway authorities which have the sole statutory authority to carry out such works on a public highway. It is not limited to a situation where an individual wants an operation to be undertaken in the highway to

facilitate a new means of access to their private land. Hence, and, in this context, I do not find that the proposed operation would be carried out on land 'by a highway authority' for the purposes of *'maintenance or improvement'*.

12. Put another way, the evidence is that the proposal is to facilitate the private use of a formed hardstanding area for car parking purposes, and not to maintain or improve the existing road. Furthermore, and, in any event, even if a case had been successfully made that such a proposal was an *'improvement'* as defined in the Highways Act 1980, it would not amount to works carried out by the Highway Authority and for a Highway Authority improvement or maintenance purpose.
13. For the above reasons, I conclude that the requirements of section 55(2)(b) of the Act are not met and hence the proposed vehicle cross over (dropped kerb) comprises an act of operational development under section 55(1) of the Act. Given this finding, it is therefore necessary that I consider whether the proposed vehicle cross over (dropped kerb) would constitute permitted development under Class B (Minor Operations) of Part 2 of Schedule 2 of the GPDO. Class B of Part 2 of Schedule 2 of the GPDO states *'the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)'*, is permitted development.
14. The evidence is that the proposed removal of the existing kerb, and its replacement with a vehicle cross over (dropped kerb), would take place within a classified road. Such operational development would comprise the formation of a new means of access to No. 2 Fir Cottage. The appellant claims that No. 2 Fir Cottage, and the neighbouring property, have previously been used for the parking of motorcycles. The evidence is that such access took place via the access gate to the front of No. 2 Fir Cottage which has now been removed.
15. The new means of access to a classified highway would be formed because of the proposed cross over (dropped kerb). The evidence is that such a means of access would be used by motor vehicles to facilitate parking on the hardstanding. The historic use of the land to the front of No. 2 Fir Cottage (and the neighbouring property) for the parking of motorcycles does not alter this finding.
16. For the above reasons, I conclude that the proposed cross over (dropped kerb) amounts to an act of development under section 55 of the Act. Moreover, it is not permitted development under Class B of Part 2 of Schedule 2 of the GPDO. Therefore, planning permission is required for the proposed cross over (dropped kerb).
17. In reaching the above conclusion, I note the supportive comments made by the occupier of No. 3 Fir Cottage including the comment made that there *'is a long-standing issue with parking on the side roads'*. However, the planning merits of the proposal are not relevant to the consideration of this LDC appeal. Moreover, I have considered the appellant's submitted appeal decisions for a site at 623 Filton Avenue, Filton South, Gloucestershire². However, and, unlike this appeal, the development which was the subject of the Gloucestershire appeals did not relate to operational development in the form of a dropped kerb to create a new means of access from a classified road.

² Appeal references APP/P0119/C/01/1069744 & 5 and APP/P0119/A/01/1071647 dated 15 January 2002

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a vehicle cross over (dropped kerb) is 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 (as amended).

D Hartley

INSPECTOR