
Appeal Decision

Site visit made on 23 September 2025

by **Richard S Jones BA (Hons), BTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th October 2025

Appeal Ref: APP/D1265/X/24/3345205

**Nuzzlebury Cottage, Droop, Hazelbury Bryan, Sturminster Newton, Dorset
DT10 2ED**

- 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 Martin Bleathman against the decision of Dorset Council.
 - The application ref P/CLP/2023/06956, dated 27 November 2023, was refused by notice dated 22 February 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 to form 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 proposed operation which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the formation of a vehicular access would have been lawful on the date of the LDC application on the basis that planning permission would have been granted by the GPDO¹, and that there would not have been a material change in the use of the land, for which planning permission would be required.

Reasons

3. Class B of Part 2 of Schedule 2 of the GPDO grants planning permission for 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 Part 2).
4. Nuzzlebury Cottage is positioned to the south of an unclassified lane. The red line boundary of the appeal site follows the alignment of the proposed access from the lane, across what appears to be an agricultural field and up to the side/rear boundary of the cottage. Thereafter, beyond the extent of the appeal site, it would connect to a short section of driveway/hardstanding and a car turntable. There is presently no vehicular access into the property.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

5. The Council's position is that the dwellinghouse and its curtilage are physically distinct from the adjacent field and that they are used for materially different purposes. For the avoidance of doubt, the term 'curtilage' simply describes an area of land that has an intimate association with a building; it does not describe what the use of the land might be. Nevertheless, despite level differences, there is a clear visual and functional link between the side/rear garden and the cottage, such that there is an intimate association between the land and the building. The side/rear garden therefore falls within the curtilage of the cottage.
6. Although the fence between the adjacent field and the residential garden is visually permeable, it creates a distinct separation which is reinforced by the domestic characteristics of a lawn on one side, and the characteristics of a grazing field on the other. The adjacent field does not therefore form part of the curtilage of the cottage. As the access would be positioned entirely within the field, no part of it would fall within the curtilage of the cottage. However, there is nothing in the wording of Class B to suggest that the access needs to be within the curtilage of the destination dwelling.
7. Having regard to the second part of Class B, the appellant states that the access is required in connection with the creation of a hardstanding within the curtilage of the cottage. As noted, the plans show the access drive connecting to a short section of driveway/hardstanding and then a car turntable. It is not shown, or even discussed, whether the turntable would amount to permitted development by any Class in Schedule 2, but the short section of drive/hardstanding would likely fall within Class F of Part 1 of Schedule 2, relating to development consisting of *the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such*.
8. Therefore, on the balance of probabilities, the access is required in connection with permitted development by a class within Schedule 2 of the GPDO. Moreover, there is no suggestion that the access would create an obstruction to the view of persons using the highway, such that the general exclusion of Article 3(6) applies.
9. However, the Council's view is that the formation of the vehicular access through agricultural/forestry land to serve the cottage would result in a material change in the use of the land, which is not permitted by any Class under Schedule 2, Part 3 of the GPDO, so express planning permission would be required.
10. In support of the respective arguments, I have been referred to two appeal decisions; Upper Barton Farmhouse² from the appellant, and land at The Bellbrook³ from the Council. In respect of the former, the Inspector commented that a driveway is not a use of land but rather an engineering operation. Nevertheless, he went on to consider whether it might also be regarded as a material change in the use of the land and a separate act of development.
11. It seemed to the Inspector, having regard to the *West Bowers Farm Products Ltd* judgement⁴, that if he was to find a material change of use distinct from the engineering operation, he would need to conclude that the change of use was of such a scale and importance that it could not be reasonably regarded as ancillary to the engineering works.

² Appeal Ref: APP/Y3425/C/06/2013158 and 2013159

³ Appeal Ref: APP/C1950/C/15/3138373

⁴ *West Bowers Farm Products Ltd v Essex CC* [1985] JPL 857

12. The Inspector noted that the purpose of the driveway was to form a physical link between a residential property and a lane and that none of the evidence led him to view that there was a separate purpose of materially changing the use of the land. As a matter of fact and degree, he considered that there was nothing substantial or distinct about the change of use that would lead him to conclude that it was a separate act of development. Rather, he was firmly of the view that what had taken place was ancillary to the engineering operation to construct the driveway.
13. Whilst the Council, and similarly the Inspector in The Bellbrook case, understand the access to be an engineering operation utilising Class B permitted development rights, it is argued as being development that facilitates a material change of use of the land, thereby requiring planning permission. However, if the GPDO grants planning permission for a means of access, it must also grant planning permission for its use for that purpose, in this case being required in connection with development permitted by Class F in the residential curtilage of the cottage.
14. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary uses of the same. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change. The general rule is that the assessment should be made in terms of the whole site concerned.
15. The planning unit was considered by the Inspector in The Bellbrook appeal decision as part of his determination of a ground (b) appeal against an enforcement notice, as to whether the development that had taken place (a driveway) should be considered as a material change of use of the land (from agricultural to residential as alleged) or as operational development (engineering operation), where there had been no material change of use.
16. In this case, the appellant describes the existing or last known use of the land as a paddock, which in an everyday understanding refers to a field where animals are kept, especially horses. It is physically separated from the residential garden associated with the cottage by a timber fence, supplemented by stock fencing and barbed wire, suggesting an agricultural (grazing type) use of the land. The Council similarly refer to the land being in agricultural/forestry use.
17. The land on the other side of the fence is a recognisably physically separate area, being domestic in character and occupied for differing and unrelated purposes, being part of the residential garden of the cottage.
18. The fence line therefore marks the physical and functional separation between two planning units, with a residential primary use on one side, and likely, a primary agricultural use on the other. That was similarly found in The Bellbrook appeal decision.
19. The proposed access here would be situated wholly within the agricultural planning unit. There would therefore be a change in the use of the land on which the access would be formed, from agricultural to a residential use in connection with the cottage.
20. Being used for the purposes of facilitating vehicular movements into and out of the adjacent residential garden, the access would not be functionally related to the primary agricultural use, so as to amount to an activity which is incidental in nature.

Moreover, the plans show the access would be positioned to the east of an existing field access gate, which is shown to be retained. Access to the field would therefore continue, independently of the proposed access, which, in the circumstances is likely intended to be solely used for purposes incidental to the residential use of the cottage. In that regard, activities carried on within a single planning unit cannot be incidental to activities carried on outside of the same.

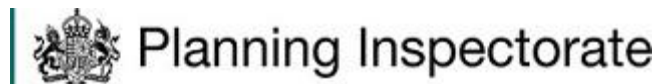
21. However, that does not necessarily result in a material change of use of the agricultural/paddock planning unit. For that to occur, there must be some significant difference in the character of the activities from what had gone on previously as a matter of fact and degree.
22. The area occupied by the access would be fairly small, relative to the wider agricultural/paddock planning unit, and would be confined towards its eastern extent, close to the garden of the cottage. It would physically change the appearance of that part of the land, but because it would be at ground level, it would not be particularly obvious from other parts of the paddock.
23. Vehicles travelling along the access would be an obvious change in this part of the paddock, but that would be relatively infrequent given the number of movements normally associated with one dwelling. Moreover, given that the existing field access is shown to be retained, it is likely that the agricultural use is to continue, whereas in The Bellbrook case the land was no longer being used for agricultural purposes.
24. Although the Inspector in that case found the construction of a driveway across an agricultural planning unit, with a primary purpose of gaining access to the residential curtilage, resulted in a fundamental change in the character of the land, it is inevitably a matter of planning judgement in the particular circumstances of the case. In this case, the above reasoning logically takes me to conclude that there would not be a significant difference in the character of the activities from what has gone on previously as a matter of fact and degree, when assessed in terms of the agricultural/paddock planning unit as a whole.
25. Accordingly, the proposed formation of a vehicular access would have been lawful on the date of the LDC application on the basis that it would have been permitted development by virtue of Schedule 2, Part 2, Class B of the GPDO and thus would have been granted planning permission by Article 3(1) of the same. Moreover, the use of the access to serve the residential property at Nuzzlebury Cottage, would not amount to a material change in the use of the land, for the reasons explained.

Conclusion

26. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC 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.

Richard S Jones

INSPECTOR



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 27 November 2023, the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The formation of the vehicular access constitutes permitted development by virtue of the provisions of Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, and thus would have been granted planning permission by Article 3(1) of the same.

The use of the vehicular access to serve the residential use of Nuzzlebury Cottage would not result in a significant difference in the character of the activities from what had gone on previously as a matter of fact and degree and thus would not amount to a material change in the use of the land.

Signed

Richard S Jones

INSPECTOR

Date: 10th October 2025

Reference: APP/D1265/X/24/3345205

First Schedule

To form vehicular access.

Second Schedule

Nuzzlebury Cottage, Droop, Hazelbury Bryan, Sturminster Newton, Dorset DT10 2ED

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 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: 10th October 2025

by **Richard S Jones**

Land at: Nuzzlebury Cottage, Droop, Hazelbury Bryan, Sturminster Newton, Dorset DT10 2ED

Reference: APP/D1265/X/24/3345205

Scale: Not to Scale

