



Appeal Decision

No site visit made

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2025

Appeal Ref: APP/P3610/X/24/3352350

11A Christ Church Mount, Epsom KT19 8LU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr John Balfour against the decision of Epsom and Ewell Borough Council.
- The application ref 24/00917/CLP, dated 23 July 2024, was refused by notice dated 16 September 2024.
- The application was made under section 192(1)(b) of the 1990 Act (as amended).
- The development for which a certificate of lawful use or development is sought is for the formation of new vehicular crossover involving a dropped kerb to provide in/out access to existing hardstanding driveway.

Formal Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. The description on the decision notice more accurately reflects the scope of the proposed plans which were submitted to and determined by the Council and are now the subject of this appeal. As no parties' interests would be prejudiced, in the interests of clarity I rely upon the description in the decision notice for the purposes of the heading above.
3. An LDC decision will rest on the specific facts of the case and the application of relevant and established case law. Planning merits do not form part of the consideration of an LDC appeal and thus are not relevant here. Consequently, as the determination of an LDC case is based on the evidence submitted, in this particular case it was not deemed necessary to carry out a site visit in these circumstances. Neither party has been prejudiced by this approach.

Main Issue

4. The main issue is whether the Epsom and Ewell Borough Council's decision to refuse to grant an LDC was well founded.

Reasons

5. It is important to determine whether the proposed vehicular crossover would be deemed 'development' under the meaning of the 1990 Act, and if so, would it amount to 'permitted development' under Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

6. From the information before me, the existing site has a hardstanding on the forecourt with two off-street access points, albeit the appellant effectively has to “bump” over the existing kerb from the western access point, given there is currently no crossover or dropped kerb. The appellant contends that a new vehicular crossover is required to enable egress and exit to and from the site in forward gear during heavily trafficked periods, particularly during school drop off and pick up times, given the appeal sites proximity to Stamford Green Primary School.
7. Section 55(2)(b) of the 1990 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]’*, would not involve development of the land.
8. It is acknowledged that the physical works are likely to be undertaken by a highway authority¹, in respect to the installation of the new crossover and dropped kerb. However, these works would not be ‘required’ for the maintenance or improvement of the road. Moreover, these works would facilitate an additional access for the appellant in connection with the use of the hardstanding at the front of the property. Given the eastern access point already contains a crossover and dropped kerb, the appellant is not excluded from parking their vehicles off-street. Therefore, other than the desirability of an alternative access point for the appellant, I have little evidence before me that would demonstrate the proposed works would be required for the maintenance or improvement of the road.
9. Consequently, the proposal would not meet s55(2)(b) and would be considered ‘development’ under the s55(1) meaning of the 1990 Act. Nevertheless, given these findings, it is prudent to consider whether the proposal would be considered ‘permitted development’ under Schedule 2, Part 2, Class B of the GPDO.
10. Under Class B, works consisting of 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 development’. It is an agreed position that the provision of the new crossover and dropped kerb would meet with these criteria. Where there is dispute, is in the second requirement of Class B which states *‘where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).’*
11. The hardstanding at the front of the premises is existing and is already utilised by the appellant for off-street parking, as there is an existing crossover and dropped kerb at the eastern access point. However, other than optimising its use for parking, I have been provided with little evidence as to why the additional crossover and dropped kerb is ‘required’ for this use, as the hardstanding is already used for this purpose. Therefore, the proposal would not meet with the relevant requirements of the GPDO, as highlighted above, and subsequently would not comprise permitted development.
12. Overall, I conclude that the proposed new vehicular crossover involving the dropped kerb is development under s55 of the 1990 Act. However, it is not

¹ Surrey County Council

permitted development under Schedule 2, Part 2, Class B of the GPDO, and consequently, planning permission is required.

Other matters

13. I note the appellant is seeking consistency in decision making, as they make several references to other properties in the vicinity containing two crossovers and dropped kerbs. I have been presented with little detail in respect to any planning history associated with these developments, and therefore I am unable to comment on their lawful nature. I can only consider the development before me, based on the submitted evidence, which for the reasons stated above, does not benefit as permitted development and requires planning permission. Nevertheless, my decision would not fetter the appellant seeking to apply for full planning permission for a crossover and dropped kerb should they see fit to do so.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the formation of a new vehicular crossover involving a dropped kerb to provide in/out access to existing hardstanding driveway is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act (as amended).

Robert Naylor

INSPECTOR