
Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2026

Appeal Ref: APP/P2114/X/25/3372738

53 Gills Cliff Road, Ventnor PO38 1AD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Peter Champion of Champion Associates Ltd against the decision of Isle of Wight Council.
 - The application ref: 25/00818/CLPUD, dated 6 June 2025, was refused by a notice dated 1 August 2025.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is demolition of wall to create access for mechanical excavator.
-

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.

Preliminary Matters

2. The description of the development for which the LDC is sought is taken from the application form. I acknowledge that there is a long and complex planning history associated with the appeal site. However, it is clear from the evidence before me that the appellant is seeking to establish that the development granted planning permission¹ on 4 April 2024 (the 2024 permission) has begun and can lawfully be completed. This is on the basis that the demolition of a wall to create access for a mechanical excavator forms part of the development permitted by that planning permission and was begun on or before 25 November 2025. I will therefore consider the appeal on the basis that it seeks an LDC for demolition of wall to create access for mechanical excavator constituting the development approved by the 2024 permission being begun.
3. Given the nature of the dispute in this case, I did not consider a site visit to be necessary. Accordingly, I have made my decision based on the submitted information and plans but without visiting the site.
4. My decision rests on the facts of the case, on relevant planning law and judicial authority. The appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

¹ Ref No: 24/00211/RVC

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

6. In order for an LDC to be granted under section 192 of the 1990 Act, the burden of proof is with the appellant, and the appropriate test of the evidence is the balance of probabilities. There is no dispute that: the works, the demolition of part of a wall, were carried out prior to 25 November 2025 and that there are no pre-commencement conditions attached to the 2024 permission that would fetter the lawful commencement of the development and I have no reason to disagree. Therefore, whether the development, pursuant to the 2024 permission, was lawfully begun will turn on; whether the works undertaken comprise part of the development permitted by the 2024 permission; and whether those works constitute a material operation, as defined in section 56(4) of the 1990 Act.
7. The works carried out prior to the submission of the LDC application relate to the demolition of a small part of a substantial retaining wall that fronts onto Gills Cliff Road. Those works are adjacent to existing steps leading onto the appeal site from the road. The appellant has stated that *"the demolition of the identified section of wall forms an integral part of the approved development, because the wall requires removal to facilitate access to begin excavation for the parking area"*. The Council's Delegated Report states that *"the extent material removed from the wall would not constitute a material operation"* and it goes on to state that *"it is not clear from the evidence provided that the removal of material constitutes part of the development as shown on the approved plans"*.
8. The plans approved as part of the 2024 permission include a proposed site and roof plan² and a street scene³. It is clear from those plans that the existing substantial retaining wall would need to be demolished and the ground behind it removed to facilitate the parking and ramps areas. The amount of demolition that had been carried out, prior to the LDC application being submitted, was relatively small considering the extent of the retaining wall. Nevertheless, that wall has to be demolished to facilitate the development including providing access for mechanical excavators to remove the ground behind the retaining wall. Consequently, taking into account all of the above, it is reasonable to consider that the works that had been carried out are substantially useable within the development permitted by the 2024 permission. Therefore, it is more likely than not that they comprise part of the development permitted by the 2024 permission.
9. I note that after the submission of the LDC application and prior to October 2025 the demolition works were extended. Yet the initial demolition work to the wall was, in my judgement, sufficient to not be treated as de minimus. Moreover, in the Malvern Hills⁴ judgement it was held that very little need be done to satisfy section 56 of the 1990 Act.
10. Section 56(2) of the 1990 act 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"*

² Drawing No: 700100 rev C

³ Drawing No: 700400 rev C

⁴ *Malvern Hills DC v Secretary of State for the Environment* [1982] J.P.L. 439

begins to be carried out.” Section 56(4) of the 1990 Act states, amongst other things that “*In subsection (2) “material operation” means ... (aa) any work of demolition of a building*”. Section 336 of the 1990 Act states that “building” includes any structure or erection and any part of a building. The submitted evidence indicates that part of the retaining wall has been removed and I consider that, on the balance of probability, that work constitutes demolition of a building for the purposes of section 56(4) of the 1990 Act.

11. For all the reasons given, I conclude that, on the balance of probability, that the works carried out were sufficient to constitute a material operation, as defined in section 56(4) of the 1990 Act, comprised in the development granted by the 2024 permission.

Other Matters

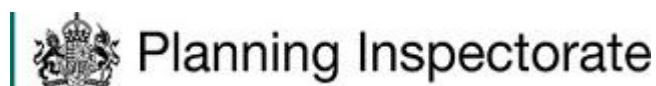
12. I note that a neighbouring occupier has expressed concern relating to stability and potential landslip resulting from the works. However, that issue is outside my jurisdiction in determining this appeal.

Conclusion

13. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for demolition of wall to create access for mechanical excavator constituting the development approved by the 2024 permission being begun 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.

D Boffin

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 6 June 2025 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched 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 reason:

The development was lawfully begun in accordance with the planning permission dated 4 April 2024, Application No: 24/00211/RVC, because the works undertaken comprise part of the development permitted; they constitute a material operation, as defined in section 56(4) of the 1990 Act; and had begun to be carried out before 25 November 2025.

Signed

D Boffin

Inspector

Date: 22nd May 2026

Reference: APP/P2114/X/25/3372738

First Schedule

Demolition of wall to create access for mechanical excavator constituting the development approved by the 2024 permission, 24/00211/RVC, being begun.

Second Schedule

Land at 53 Gills Cliff Road, Ventnor PO38 1AD

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: 22nd May 2026

by D Boffin

Land at: 53 Gills Cliff Road, Ventnor, PO38 1AD

Reference: APP/P2114/X/25/3372738

Scale: Not to Scale



53, Gills Cliff Road, Ventnor, Isle Of Wight, PO38 1AD



Site Plan shows area bounded by: 455222.23, 77398.16 455363.65, 77539.53 (at a scale of 1:1250), OSGridRef: SZ55297746. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Produced on 7th Oct 2019 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2019. Supplied by www.buyaplan.co.uk a licensed Ordnance Survey partner (100053143). Unique plan reference: #00461202-A33176

Ordnance Survey and the OS Symbol are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain. Buy A Plan logo, pdf design and the www.buyaplan.co.uk website are Copyright © Pass Inc Ltd 2019