
Appeal Decisions

Site visit made on 9 June 2026

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 12th June 2026

Appeal A Ref: APP/C3620/X/25/3375573

Stonehouse, Broomehall Road, Coldharbour, Dorking, Surrey, RH5 6HF

- 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 & Mrs James Reader against the decision of Mole Valley District Council.
 - The application ref MO/2025/0678/PCL, dated 15 April 2025, was refused by notice dated 16 July 2025.
 - 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 the creation of a basement.
-

Appeal B Ref: APP/C3620/X/25/3375575

Stonehouse, Broomehall Rd, Coldharbour, Dorking, Surrey, RH5 6HF

- 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 & Mrs J Reader against the decision of Mole Valley District Council.
 - The application ref MO/2025/02032, dated 18 July 2025, was refused by notice dated 15 September 2025.
 - 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 erection of a single storey outbuilding.
-

Decisions

1. The appeals are allowed and attached to this decision are certificates of lawful use or development describing the proposed operations which are found to be lawful.

Applications for costs

2. An application for costs on Appeal B has been made by the appellant and is dealt with in a separate decision letter.

Preliminary Matters

3. Both appeals are for LDCs for development that the appellant considers is permitted by the GPDO. In both cases the Council consider the works comprised in the proposals would go beyond what is permitted by the GPDO and comprise a separate act of development, namely engineering works that would require planning permission. In both cases the engineering works amount to the excavation of the ground and removal of the spoil with associated highway impacts. This then is a single issue on which both appeals turn.

Reasons

4. Appeal A is for a basement, which would usually be permitted by Part 1 Class A of the GPDO as an enlargement, improvement or other alteration of a dwellinghouse. Appeal B is for a garden building that is dug into the hillside and would otherwise be permitted by Class E.
5. My assessment of both proposals relies on the judgement in the case of *Eatherley*¹. The key quote from that judgement is *“there must be a point where the excavation, underpinning and support for a basement for a dwelling house becomes an activity different in character from the enlargement, improvement and alteration of that dwellinghouse. For that reason engineering operations for the basement are at some point different in character to those involved in preparation of foundations for a house”*. This principle can be extended to any works that require excavation. Thus the decision maker has to consider what is being excavated, the scale of the works, the offsite impacts of those works and compare that to what would reasonably be expected to flow from a planning permission granted by the GPDO.
6. Firstly, most forms of development involve some level of excavation, if only for foundations, and most forms of development involve a mix of building and engineering works. Class A is silent on basements, but it must be assumed that if it was not intended to encompass them it would say so. Consequently, a reasonable amount of excavation to create a basement must be acceptable. Similarly Class E is silent on the excavations required to enable a permitted garden building to go ahead. However, I note that Class E expressly allows the construction of swimming pools so clearly a considerable amount of excavation is envisaged as acceptable. A number of decision letters have been provided which show that buildings dug into a slope can be permitted development under Class E. In both cases the test is whether the engineering works involved become an activity different in character from that normally associated with a basement or a garden building.
7. In the case of the basement there is nothing to suggest that is anything other than a standard basement beneath the house. There are no neighbours that require underpinning or propping and the size of the basement is subordinate to the size of the dwelling above. Because the test from *Eatherley* is somewhat subjective a general rule of thumb has developed that basements beneath detached houses are more likely to be permitted development than terraced, for the reasons noted above. If you dig out the space beneath a part of the house, support the house above and install a basement, that is all part of the enlargement of the dwelling. Once you start other, more technically complex works, to support neighbours' houses for example, then you are straying into an activity different in character from the enlargement of a dwelling. That does not seem to be the case here.
8. The garden building will be cut into the hillside so that uphill you would be able to walk directly onto the roof. There would be no changes to the contours of the surrounding land, but a considerable amount of excavation would take place as a substantial part of the building would be sunk into the sloping garden. However, the excavations involved would be straightforward and are entirely integral to the construction of the garden building. As a matter of fact and degree they are not an

¹ *Eatherley v Camden LBC & James Ireland JPL 2017*

activity different in character to that which would normally be associated with the provision of a Class E building.

9. The Council seemed to have been misled by a mistaken reliance on Parkes². They took from that case that engineering operations are part of the concept of operational development. Engineering operations involve altering the profile of land by excavation etc and therefore as there were engineering works involved in the garden building it could not be permitted development. It is this last leap of logic that is incorrect, as noted above Class E (and many other Classes) are simply involved with development. As engineering works are part of development there is no reason why they are not permitted by Class E, as long as they are clearly part and parcel of the erection of the Class E building and do not become so extensive that they amount to works different in character to those associated with the erection of the Class E building.
10. The second limb in the Council's case concerns the highway works associated with the proposed developments. They are associated primarily with the excavations and are in themselves so extensive they add weight to the argument that the engineering works have crossed the Eatherley threshold – although the Council do not expressly mention Eatherley, that is the description of development they should have been considering.
11. For the basement I am informed that 285 cubic metres of earth will be removed which is 9 loads of a 40 yard skip. I do not know how much earth will be removed to construct the Class E building, but it would presumably be much less. A 40 yard skip is a large lorry load, so I imagine about 12 lorries in total would be required to take away all the earth. Stonehouse is set within its own grounds to the west of Broomehall Road. The road is best described as a country lane that snakes downhill through woods. There are some properties along it, but they are generally set back and very private, including one more or less opposite the site.
12. Stonehouse has two accesses. The northern one, close to the house and the southern at the bottom of the property, close to a manege and stable block. Neither are ideal as both are close to bends that restrict visibility. But the road has a 30 mph limit and close to the northern access is the end of the 20mph limit, so traffic should be travelling at reasonably slow speeds. Indeed, the nature of the road suggests that would be the case regardless of the official speed limit. I drove up and down the road several times (trying to find the property) and was on site for about half an hour. During that entire time I came across one other car. I think it is fair to say the road is lightly trafficked.
13. Both accesses have deep set mouths so there is room to turn off the road. The Council are concerned that large lorries would have difficulty negotiating the northern access, when approaching from the north, due to the bend. The appellant disputes this. Although I have no facts and figures concerning the ability of lorries to use the northern access, the appellant has provided a Construction Management Plan which suggests there should be no problem with either access. A further assessment was provided RGP who are highway and transport consultants which supported that statement. My own observations tended to agree with this. Nevertheless the CMP envisages large lorries would use the southern access. The idea is all waste would be removed by tipper trucks from the

² Parkes v SSE and Another, CoA [1978]

basement (and presumably the garden building) site to be stored on the manege. This area would then provide ample space for loading of lorries enabling them to turn, to enter and leave the site in forward gear.

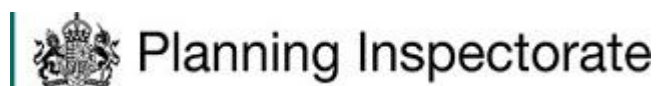
14. The Council were concerned there was no connectivity for vehicles between the northern and southern accesses. However, as I saw on my site visit this is not the case and there is ample room for the smaller dumper trucks as envisaged in the CMP. The CMP arrangements seem to be an eminently sensible. The CMP also deals with contractors parking, neighbour notification, suppression of dust, noise and so on, which are all required.
15. In my view, with the CMP in place there should be no highway or neighbour issues, beyond that normally associated with building works. A s106 unilateral undertaking has been provided to ensure the CMP is followed. I was invited to expressly confirm whether the s106 and the CMP were required for Appeals A or B or both. This should be taken as confirmation it is required for both appeals.

Conclusion

16. Subject to the provisions of the CMP I consider the proposed basement (Appeal A) and Class E garden building (Appeal B) are permitted development under the relevant classes of the GPDO and shall issue certificates accordingly.

Simon Hand

INSPECTOR



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 15 April 2025 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: the construction of a basement is permitted by Class A of Part 1 of the GPDO

Signed

Simon Hand

Inspector

Date: 12th June 2026

Reference: APP/C3620/X/25/3375573

First Schedule

Creation of a basement as shown on plans submitted with the application MO/2025/0678/PCL and subject to the s106 unilateral undertaking submitted with this appeal.

Second Schedule

Land at Stonehouse, Coldharbour, Dorking, RH5 6HF

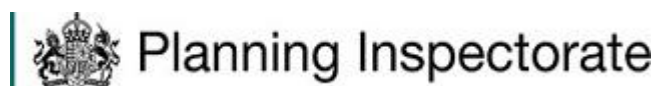
IMPORTANT NOTES – SEE OVER

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. 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.



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 18 July 2025 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: they are permitted development by virtue of Class E of Part 1 of the GPDO.

Signed

Simon Hand

Inspector

Date: 12th June 2026

Reference: APP/C3620/X/25/3375575

First Schedule

Erection of a single storey outbuilding as shown on plans submitted with the application MO/2025/02032 and subject to the s106 unilateral undertaking submitted with this appeal.

Second Schedule

Land at Stonehouse, Coldharbour, Dorking, RH5 6HF

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. 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.