



Appeal Decision

Site visit made on 1 July 2026

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

an Inspector appointed by the Secretary of State

Decision date: 03 July 2026

Appeal Ref: APP/J1915/X/24/3356737

Land at Chalk Stream Close, Hertford, Hertfordshire, SG14 2RW

- 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 Edward Pearce against the decision of East Hertfordshire District Council.
 - The application ref 3/24/1682/CLPO, dated 12 September 2024, was refused by notice dated 6 November 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 the erection of a 1.8-metre-high entrance gate and piers across the access to the site and a 1.2-metre-high gate across the walkway into the Meadow area at the back of the site.
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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 operations which are found to be lawful.

Preliminary Matter

2. For the avoidance of doubt, I make clear that the planning merits of the proposed outbuilding within the rear garden is not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded with particular regard to whether on the date of the LDC application the proposed development would have been permitted development given the limitations and conditions of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

4. Class A of Part 2 of Schedule 2 of the GPDO states that a gate, wall, fence or other means of enclosure is not permitted development if '*(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed— (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; (ii) in any other case, 1 metre above ground level; (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level*'.

5. Notwithstanding comments made by a previous Inspector who considered an appeal¹ made under section 78 of the Act for the same proposed gates and piers set back from the access with North Road, I have applied my own professional planning judgment. The proposed gates with piers would be set-back from the main road by several metres and, in my judgement, and as a matter of fact and degree, would not be perceived by passers-by as being adjacent to North Road. In other words, the set-back distance would be sufficient in this case for me to conclude that they would not be adjacent to North Road. Indeed, the proposed gates and piers would not define the boundary of the site concerned with the highway known as North Road.
6. The proposed 1.2-metre-high gate across the walkway would face a meadow. As a matter of fact and degree, the meadow land does not comprise land used as a highway by vehicular traffic.
7. Notwithstanding the above, it is necessary that I also consider whether the proposed means of enclosure would each be sited on land which is of itself a highway. There is no definition of a highway in terms of the consideration of Class A of Part 2 of Schedule 2 of the GPDO. In the absence of a such a definition, it is noteworthy that common law has established that a highway is a defined route over which the public can pass and repass without hindrance or charge. The use must be 'as of right', meaning without force, secrecy, or permission.
8. In this case, the internal access road is used by vehicular traffic. It is not gated, and, to this extent the free movement of vehicles and people along it can take place without physical obstruction. However, the absence of an existing physical barrier is not in this case a decisive matter given my other reasoning below.
9. The evidence is that the internal access road does not link to any public rights of way, bridleway network or any other roads. Moreover, my site visit revealed that motorists could not continue beyond the complex of residential properties served off it. The evidence is that the internal access road provides a private route to only the five residential properties and where there is a meadow beyond. The provision of signage at the entrance to the complex of five dwellinghouses which state 'private road' and with a cul-de-sac marking on the Chalk Stream Close road sign indicate to those passing-by that this is not a through route.
10. The undisputed evidence is that there is no public access over the route as of right. Moreover, the evidence does not indicate why the public at large would want to use the access, particularly as it is essentially a route to the cluster of private residential properties. While there may be deliveries to the properties along the internal access road, that is not an uncommon occurrence in respect of the use of private drives. In essence, such deliveries would be authorised by the respective residents.
11. Overall, I find that the evidence is persuasive in so far that members of the public cannot, as of right, use the internal access road without authorisation or permission. In this regard, there appears to be a legal hindrance to the free movement of all vehicles and people along the internal access road. Moreover, there is no reason why anyone other than authorised visitors to the residential properties would have need to use the internal access road. Consequently, I do not find that internal access road is a highway for the purposes of considering Class A of Part 2 of Schedule 2 of the GPDO.

¹ Appeal reference APP/J1915/W/23/3320496 dated 10 July 2024

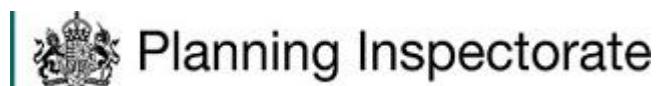
12. In my judgement, and, as a matter of fact and degree, I conclude that the proposed means of enclosure would not be erected on a highway and nor would they be adjacent to a highway for the purposes of considering Class A of Part 2 of Schedule 2 of the GPDO. As the proposed means of enclosure would not exceed two metres in height above ground level, I conclude that they would have been permitted development under Class A of Part 2 of Schedule 2 of the GPDO had such development been instigated or begun on the date of the LDC application.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the erection of a 1.8-metre-high entrance gate and piers across the access to the site and a 1.2-metre-high gate across the walkway into the Meadow area at the back of the site 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 (as amended).

D Hartley

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 12 September 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and as per the plans 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 proposed means of enclosure would have been permitted development if instigated or begun on the date of the LDC application under Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

D Hartley

Inspector

Date: **03 July 2026**

Reference: APP/J1915/X/24/3356737

First Schedule

The erection of a 1.8-metre-high entrance gate and piers across the access to the site and a 1.2-metre-high gate across the walkway into the Meadow area at the back of the site.

Second Schedule

Land at Chalk Stream Close, Hertford, Hertfordshire, SG14 2RW

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 use /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, 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 and identified on the attached plan. 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.

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.

Plans

These are the plans referred to in the Lawful Development Certificate dated: **03 July 2026**

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

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Scale: Not to Scale

