



Appeal Decision

Site visit made on 23 June 2026

by **M Ollerenshaw BSc (Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th July 2026

Appeal Ref: APP/T3725/X/24/3354876

Eathorpe Hall, Old Fosse Way, Eathorpe, Warwickshire, CV33 9DF

- 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 A Read against the decision of Warwick District Council.
- The application ref W/24/0727, dated 30 May 2024, was refused by notice dated 31 July 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 described on the application form as 'proposed erection of a set of gates, railings and brick piers'.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr A Read against Warwick District Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The application was submitted under section 192 of the Town and Country Planning Act (the 1990 Act) which provides for the certification of any lawful proposed use or operations. For the purposes of obtaining a certificate of lawful use or development (LDC) the onus is on the appellant to make out their case to the standard of the balance of probabilities. The relevant date for ascertaining whether the proposed development would be lawful is the date of the LDC application. The planning merits of the case are not relevant.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded, having particular regard to whether the proposed development would have been lawful if begun on the date of the application.

Reasons

4. The appeal site relates to Eathorpe Hall which is a Grade II listed building. The property is a large, detached house situated within substantial grounds. It is set well back from Old Fosse Way and is accessed via a long, tree lined driveway which is gated at the road frontage. The LDC application is for proposed gates, railings and brick piers.
5. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence,

wall or other means of enclosure. This is subject to certain limitations being satisfied.

6. The Council does not dispute that the proposal complies with the limitations at sub paragraphs A.1(a), (b) and (c). I have no reason to disagree with that assessment based on the evidence before me. The dispute is over whether the proposal conflicts with sub paragraph A.1(d), which states that development is not permitted by Class A if it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building. Thus, the proposal would require planning permission if it would be situated within the curtilage of the listed building.
7. Curtilage defines an area of land in relation to a building. Whether something falls within a curtilage is a question of fact and degree and thus primarily a matter for the decision-maker.
8. In *Calderdale*¹ it was held that three factors are to be taken into account in deciding whether a structure or object is within the curtilage of a listed building. They are (1) the physical 'layout' of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present. In *Calderdale*, the earlier judgment of *Methuen-Campbell*² was cited, in which it was held that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building.
9. Size is not a conclusive test of curtilage. In *Dyer*³ it was held that curtilage is constrained to a small area about a building: 'the area attached to and containing a dwellinghouse and its outbuildings'. The Court of Appeal in *Skerritts of Nottingham Ltd*⁴ described the decision in *Dyer* as plainly correct, though commenting that "this court went further than it was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression." The High Court in *Lowe*⁵ found that "It connotes a building or piece of land attached to a dwelling and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house. However, it could not possibly include the whole of the parkland setting in which the house lay, nor the driveway along which the fence was erected".
10. The proposed gates, railings and brick piers would be erected across the driveway around 21 metres back from Old Fosse Way and about 94 metres away from Eathorpe Hall. Thus, the development would be much closer to the public highway than the listed building.
11. The area of land to the front of the house is well defined by an established hedge and wall. It has the feel of an enclosed garden laid to lawn with areas of decorative planting and hard surfacing. This area is intimately associated with the house, as are the gardens to the side and rear of the house.

¹ HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC [1983] JPL 310

² Methuen-Campbell v Walters [1979] 1 QB 525

³ Dyer v Dorset CC [1988] 3 WLR 213

⁴ Skerritts of Nottingham Ltd v SSETR (No. 1) [2000] EWCA Civ 60

⁵ Lowe v First Secretary of State [2003] EWHC 537 (Admin)

12. Land to the west just beyond the front garden boundary through which the driveway runs is characterised by mature trees and has a woodland character which contrasts with the manicured gardens to the front, side and rear of the house. There is a sense of entering the gardens and the curtilage at the point where the driveway emerges from the tree lined avenue and sweeps round to the front of the house. The proposal would thus be more associated with the woodland than with the gardens and parking area surrounding the house. Due to the extent of physical separation from the house, this area does not have the feeling of being intimately associated with the building. Moreover, there is a lack of intervisibility between the proposal and the listed building due to the distance between them, intervening trees and shrubs, and the curved alignment of the driveway. Therefore, the site of the proposal is not physically part of the curtilage of the building.
13. I note that the listed building and the location of the proposal are within the same ownership, and probably have been over a long period, such that there is a link between the two in this respect. However, the same could be said of the wider land within the estate (outlined in blue on the site location plan) which is also within the same ownership, but not all of which will be within the curtilage. Therefore, the fact that the appellant owns the land where the proposal would be sited is not determinative of whether it is part of the curtilage.
14. There is a lack of evidence before me as to the historic relationship between the land comprising the appeal site and the listed building. The driveway appears to be used as the principal means of accessing the building at the present time. Although submitted with a costs response, and outside the normal appeal timetable, I note the Council's reference to a 1900 Ordnance Survey Map. That would indicate that a relationship has existed between the house and the driveway for a considerable period, though Historic England mapping and the site location plan suggest it has not been the only means of access historically. Consequently, the evidence points to a functional relationship between the driveway and the listed building, but it provides only limited assistance in determining the extent to which the appeal site forms part of the curtilage.
15. Whilst the land is in the same ownership as the building and serves a functional role in providing access to it, the physical relationship with the listed building is not such that the land can reasonably be regarded as forming part and parcel of the building. The site is physically remote from the building and is not intimately associated with it.
16. I have had regard to the appeal decision referred to by the appellant at Chapel Cottage⁶. However, the substantive details of that case are not before me and it is unclear to me whether the circumstances are comparable to the appeal proposal, which I have considered on its particular facts.
17. Taking all relevant factors into consideration, I conclude as a matter of fact and degree that the land does not form part of the curtilage of the listed building. Accordingly, the proposed development would be permitted under Class A, Part 2, Schedule 2 of the GPDO and therefore would have been lawful on the date the application was made.

⁶ Appeal Ref. Appeal Ref: APP/N4720/F/23/3326823

Conclusion

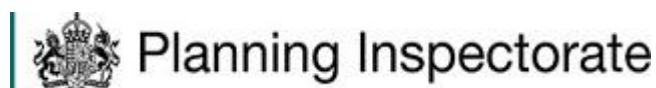
18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed erection of a set of gates, railings and brick piers was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

19. 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.

M Offerenshaw

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 30 May 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

On the balance of probability, the operations described in the First Schedule would be permitted development by virtue of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

M Ollerenshaw

INSPECTOR

Date: 13th July 2026

Reference: APP/T3725/X/24/3354876

First Schedule

Proposed erection of a set of gates, railings and brick piers in accordance with drawing numbers 55213-2A, 55213-3A, 55213-5A and Revised Gate Design, submitted with the application reference W/24/0727 dated 30 May 2024.

Second Schedule

Land at Eathorpe Hall, Old Fosse Way, Eathorpe, Warwickshire, CV33 9DF

IMPORTANT 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: 13th July 2026

by M Ollerenshaw BSc (Hons) MTPI MRTPI

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Scale: Not to Scale

