



Appeal Decision

Site visit made on 16 June 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2026

Appeal Ref: APP/K3415/X/25/3366243

**4 Blythe View, Lichfield Road, Hamstall Ridware, Staffordshire, Rugeley
WS15 3QG**

- 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 Palmer against the decision of Lichfield District Council.
- The application ref 25/00095/CLE, dated 28 January 2025, was refused by notice dated 5 March 2025.
- The application was made under section 191(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 access and driveway works.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought an LDC on the basis that the access to the site at 4 Blythe View has been constructed lawfully under Part 2, Schedule 2, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO). The application also seeks confirmation that the driveway works did not require planning permission owing to the fact that it accords with requirements set out within Schedule 2, Part 1, Class F of the GPDO. Notwithstanding that the Council's refusal refers to section 192, it is clear from the application that the appellant has submitted the application under section 191(b) of the Act and so I shall consider it on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse the application was well founded. This will turn on whether the works are granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).

Reasons

4. An application under section 191(1) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has

¹ Town and Country Planning Act 1990 (as amended)

expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. To the front of the property, the appellant has created a sloped area of hardstanding, comprising gravel, upon which vehicles can park, an acco [sic] slot drain and soakaway crates². The property fronts onto Lichfield Road, which, it is not disputed, is an unclassified road. The main thrust of the appellant's case is that the works which have been carried out are granted planning permission by the GPDO.
6. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the 'balance of probabilities'. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
7. Part 1 Class F of Schedule 2 of the GPDO permits development consisting of (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such, subject to certain conditions and limitations, including that (a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and (b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres, either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.
8. Part 2, Class B of Schedule 2 of the GPDO grants permission for the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).
9. Prior to the works, the appeal site featured a raised lawn, with hedgerow, vegetation and stone wall to the frontage which sat higher than Lichfield Road. Part of the stone wall, which is stated to have measured around 1m in height, remains *in situ*, with a modest slope from the dwellinghouse towards the retaining wall evident. Photographs provided by the appellant show the site before the works and afterwards. The front garden appears heavily vegetated and so it is not clear whether the front garden was level with the wall, or the extent of material removed.
10. Nevertheless, given the height of the remaining section of front garden, it seems likely that a substantial wedge of earth has been removed from the site, to create the remaining slope. The Council asserts that the formation of the vehicular access involved significant groundworks, excavation and regrading of land levels, which constitutes engineering operations rather than a minor works operation. The Council's case is that these works fall outside the scope of Part 2, Class B of Schedule 2 of the GPDO.

² Soakaway crates would have been installed below the hardstanding and so were not evident during my site visit but are identified on the plan submitted in support of the application.

11. In support of their case, the appellant has drawn my attention to the case of *Wycombe DC v Secretary of State for the Environment* [1995] JPL 223. In that case, Class F of the GPDO then in force was at issue. The front garden of a dwellinghouse in an elevated position was almost totally excavated, leaving a hard standing for vehicles on level with the road. The appellant suggests that the *Wycombe* case confirms that works consistent with that considered by this appeal are permitted development.
12. However, while the Secretary of State in that case decided that what was done was permitted under Class A, the Judge found that the Secretary of State was fatally in error in omitting to consider the correct test, and in applying tests which were not appropriate and remitted the matter back to the Secretary of State. The proper approach is to look first at what the Order permitted and then to consider, as a matter of fact and degree, whether anything done or to be done beyond that specific permission was incidental to what was specifically permitted.
13. In interpreting a permission in the GPDO one applies the ordinary rules of statutory interpretation. The words, their context and the statutory purpose are relevant to that task. In order to provide a hard surface, it is likely that some form of ground works will be required, whether that is to create a level surface or to enable some sort of a base to be laid, before the laying of the hard surface (which may reasonably include the laying of a base or subbase and the material comprising the hard surface itself). Similarly, with respect to the access to a highway, to form and lay out a means of access to a highway, some form of ground works are likely to be required to enable the laying of a subbase and laying of some form of hard surface.
14. Section 55 of the Act sets out the meaning of development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 336(1) of the Act sets out that “engineering operations” includes the formation or laying out of means of access to highways.
15. The appellant states that the works were carried out by individuals associated with the property and that at no point were any engineers commissioned as part of the works. It is suggested that it is *possible* that the works could have been carried out by hand and that the works took a long weekend at most and resulted in very little excavated material. However, there is limited detail as to what excavation works actually *were* carried out, how they were carried out or what the extent of material removed from the site actually was. As set out above, the burden of proof in an LDC is firmly on the applicant.
16. Given the difference in height between the public footpath and the former wall (around 1m) it seems likely to me that there was a significant volume of excavated material which had to be removed from site, or placed elsewhere within the property, though I saw no evidence of this during my visit. Furthermore, it is likely that material has been excavated to enable some sort of subbase, the crates and Aco drain to be laid.
17. It is likely the works would have involved an element of pre-planning to ensure a suitable gradient and to accommodate the laying of materials. While the works may not have been carried out by individuals associated with the property³, such

³ Who may not have engineering knowledge.

works would generally be supervised by a person with some engineering knowledge. In my judgment, the works are development for the purposes of the Act. Significantly, the appellant does not dispute that the works comprise development, their case is advanced on the basis that such development is permitted by the GPDO.

18. While retaining walls have not been erected, the works to excavate the site are likely to have been substantial, involving the removal of significant quantities of material and, in my view, go beyond what could be considered incidental to the provision of a hard surface or the formation, laying out and construction of a means of access to a highway. It was, in my judgement, a separate activity of substance requiring its own planning permission.
19. I recognise that the example cited by the Council, *Eatherley v London Borough of Camden* [2016] EWHC 3108 (Admin) concerned a very different development, involving works which are likely to have taken a longer period of time compared with the appeal scheme before me, a greater volume of excavated material and the need for a structural report. Nevertheless, the same principle applies, which is that the decision maker should ask itself whether the works (excavation of a basement in the above case) constituted a separate activity of substance.
20. In support of their case, the appellant has drawn my attention to what are suggested to be similar works, at No 8 Lichfield Road. Planning permission is stated to have been granted on appeal, reference 20/00674/FUL and, it is suggested, the site plan shows no works to the driveway serving 8 Lichfield Road, with the front garden excluded from the application site boundary.
21. It is further suggested that, as it fell outside the application site boundary, it was constructed under the provisions of the GPDO. However, there is no suggestion that an LDC has been issued in respect of those works, nor in respect of any other similar works referred to along Lichfield Road. Even if the local planning authority has decided, for whatever reason, not to take enforcement action in respect of other similar development, this does not mean that the works carried out are lawful. Planning merits are not relevant to the determination of an LDC.
22. For the reasons set out above, I find, as a matter of fact and degree, that the excavation and regrading of the site was a separate activity of substance requiring its own planning permission. Since no such planning permission has been granted, the works as a whole are development for which planning permission is required and the appeal must fail.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for access and driveway works is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR