



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: 30/07/26

Appeal Ref: APP/K3415/X/25/3366288

Bromley Hayes Garden Centre, Shaw Lane, Riley Hill, Staffordshire, Lichfield WS13 8HW

- 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 Land and Water against the decision of Lichfield District Council.
- The application ref 25/00229/CLE, dated 4 March 2025, was refused by notice dated 28 April 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 'commencement of development of planning permission 20/01836/COUM.'

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Applications for costs

2. An application for costs has been made by Land and Water against Lichfield District Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the name of the applicant from the application form.

Main Issue

4. The main issue is whether the Council's decision to refuse the application is well founded.

Reasons

5. 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 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.
6. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an LDC, the burden of proof is firmly on the appellant to make their

¹ Town and Country Planning Act 1990 (as amended)

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. Planning permission for 20/01836/COUM was granted on 6 October 2021 for the change of use of retail garden centre (Class E) to mixed use of offices (Class E), storage (Class B8) and ancillary industrial (Class B2) for the use of the site as office and plant storage headquarters including erection of 540sqm of additional floorspace. That permission was granted subject to a number of conditions, including the condition that the development shall be begun before the expiration of three years from the date of the permission.
8. As the permission was granted on 6 October 2021, to succeed in this appeal, it is necessary for the appellant to show that the development was begun not later than 6 October 2024. The main thrust of the appellant’s case is that the works undertaken include the digging out of the access driveway, the internal bell mouth area and the setting out of the delineation of the access drive, in accordance with the general arrangement plan approved as part of 20/01836/COUM, which included the construction of a new access to the site from the A515.
9. Section 56(2) of the Act states development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) of the Act defines ‘material operation’ as (a) any work of construction in the course of the erection of a building; (aa) any work of demolition of a building; (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building; (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b); d) any operation in the course of laying out or constructing a road or part of a road; (e) any change in the use of any land which constitutes material development.
10. The appellant has drawn my attention to the case of *Malvern Hills DC vs Secretary of State for the Environment* [1982] JPL 439, which considered whether the pegging out of the lines of part of a new estate road was an operation in the course of laying out the road and the case of *Spackman vs Secretary of State for the Environment and Another* [1977] 33 P&CR 430. What is clear from the judgements cited is that very little need be done to satisfy the relevant section.
11. The works carried out must be in accordance with the relevant planning permission or comprised in the development for which planning permission was granted and they must be material in the sense of being more than *de minimis*. It is only necessary for the ‘material operation’ to be begun to be carried out for the whole development to be taken to be begun under section 56(2). A material operation does not have to be completed.
12. Permission 20/01836/COUM includes a number of conditions to be complied with prior to commencement of development, including conditions 3: construction vehicle management plan, condition 4: construction environment management plan and habitat management plan, condition 5: details of external materials and condition 6: landscape and planting scheme. A certificate, dated 27 October 2022, confirms that details in respect of these conditions have been approved.

13. A letter, dated 13 February 2023, was sent on behalf of the appellant to the Council regarding a Notice of intention to mobilise site works in advance of commencing development under planning application 20/01836/COUM. Those works are stated to include the erection of tree protection fencing in accordance with both planning condition 7 and the construction vehicle management plan, construction environmental management plan and habitat management plan.
14. The works are also stated to include some initial pruning works to the existing hedgerow and that the works were being undertaken further to a Section 278 Agreement that is [sic] in the process of being finalised with Staffordshire County Council to facilitate the formation of the approved access junction. The letter advises that dated photographic evidence will be undertaken of the mobilisation works and the subsequent commencement works.
15. The appellant states that the initial mobilisation works, including the erection of tree protection fencing and some additional pruning works were undertaken on 17 February 2023, with the works completed week commencing 20 February 2023. It is stated that the appellant then formally commenced development, by way of the digging out of the internal access drive, including the internal bell mouth at the point of the connection with the highway. It seems that the process to secure a Section 278 Agreement is ongoing, however, this would not prevent the works from having begun the development for the purposes of the Act.
16. I have been provided with a schedule, comprising a series of photographs, which appear to have been taken within the site. The schedule provides a date, time, and details of the camera used to take the photographs. The photographs, dated 4 August 2023 and 16 August 2023, show an area which has been cleared of vegetation, soil bunds and an excavator, suggesting that material has been excavated from the site and placed in the bund within the photograph.
17. Within the photographs provided, the land appears relatively flat, with excavator track marks evident, suggesting that the land has been levelled. In some of the photographs, it is evident that soil has been removed given the difference in height between the excavated area and the adjacent vegetated ground. The works which are shown in the photographs go well beyond the erection of tree protection and some initial pruning.
18. Heras fencing is visible within the photographs bounding the cleared area, as are markings in blue and white paint, the latter having written 'HS2' near a couple of blue flag markers. A blue flag marker is also visible atop the bund. A wooden stake is also visible in one of the photographs. During my visit, I saw evidence of the flag markers, wooden stakes and bund. Although the site has become overgrown, their position appeared consistent with the photographs provided within the schedule. The Council does not dispute that earthworks have been undertaken within the site, nor does the Council dispute the dates provided on the photographs.
19. It is suggested that the creation of a small soil bund, which is not part of the approved plans, and the placement of indicative markers fall short of the threshold required to demonstrate lawful commencement. However, the bunds, as well as evidence of an excavator (photograph 7 shows an excavator and excavator tracks are evident within most of the photographs provided) support the suggestion that the land has been excavated.

20. Although the works cover an area beyond the access road, the excavations coincide with the area within which the bell mouth would be located and blue markings, which appear to accord with the general line of the bell mouth can be seen in the photographs. While the outline of the bell mouth itself is not physically defined on the ground and the blue markings are no longer visible, it seems to me that excavating this part of the site is likely to have comprised an operation in the course of constructing a road or part of a road.
21. That road clearly forms part of the permission, with conditions 9 and 10 both relating to the new access from the A515. This, in my view, supports the appellant's claim that the works being carried out were in connection with the permission. Those works are not, in my judgement, *de minimis* as they covered a substantial area and resulted in the excavation of a substantial amount of material which has been placed in bunds, which remain on site.
22. The appellant does not dispute that the works are not a recent event. Indeed, the appellant's case and evidence show that this was carried out in August 2023, well before the planning permission would have lapsed. The fact that nothing more appears to have been done does not mean that those works did not begin the development for the purposes of the Act.
23. The Council suggests the Heras fencing was erected by HS2 to protect their land interest and is not related to the approved scheme, whereas the appellant suggests that it is. However, there is no suggestion that the erection of Heras fencing was sufficient to begin the permission for the purposes of the Act. Furthermore, although some of the markings shown in the photographs refer to HS2, there is no evidence to show that the works themselves were carried out for the purposes of HS2.
24. The safeguarding area is substantial and extends well beyond the appeal site. I have no evidence to show that works have been carried out elsewhere within the safeguarded area in this area. Although the site was overgrown during my visit, it was possible to understand generally where the photographs were taken from and where within the site works were carried out. Given the location of the works within the site, it seems more likely that the works were carried out in connection with the planning permission and that any reference to HS2 is simply a means of enabling contractors to understand where different constraints may lie.
25. The officer report refers to a response which set out that the originally approved application had not been progressed and that the works referred to within the submissions related to enhancement of site security, general maintenance and clearing up after a break in at the site. However, had the works identified been general maintenance, I would not expect them to be limited to the part of the site where the proposed access would be, nor would I expect the land to have been marked up in the way that it was or soil to have been excavated.
26. The appellant has provided me with a copy of a report, reference 24/00999/FULM, concerning a proposal for the redevelopment of the site, which advised 'It is also noted the site benefits from planning permission for the change of use to light industry with ancillary offices and an additional 540sqm of floor space (Application reference: 20/01836/COUM), which has since been implemented.' It is not clear what basis the author of the report drew this conclusion, nor does it constitute a lawful development certificate.

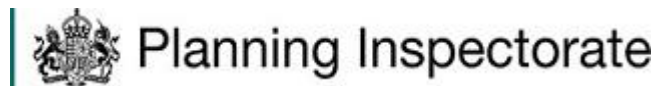
27. Section 56 of the Act sets an objective test and so the intention of the developer is not relevant. Nevertheless, the appellant's actions, securing approval for the pre-commencement conditions, writing to the Council with a Notice of intention and photographs showing excavation works, shows a timeline of events consistent with the appellant's case that it intended to begin the development and did so in 2023.
28. While the appellant has not provided statutory declarations to corroborate the evidence submitted, the evidence before me does not, in my view, contradict or otherwise make the appellant's version of events less than probable. Thus, as a matter of fact and degree, I find that the works carried out, namely the digging out of the internal access drive and bell mouth were a material operation comprised in planning permission 20/01836/COUM. As these works were carried out by 6 October 2024, they were lawful and so the appeal should succeed.

Conclusion

29. 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 for the commencement of development of planning permission 20/01836/COUM 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).

M Savage

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 4 March 2025 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown, on the balance of probabilities, that works carried out at the site prior to 6 October 2024 were a material operation comprised in the development for which planning permission was granted under reference 20/01836/COUM and were lawfully undertaken.

Signed

M Savage

Inspector

Date: 30 July 2026

Reference: APP/K3415/X/25/3366288

First Schedule

The commencement of development of planning permission 20/01836/COUM.

Second Schedule

Land at Bromley Hayes Garden Centre, Shaw Lane, Riley Hill, Staffordshire, Lichfield
WS13 8HW

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 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 July 2026

by M Savage

Land at: Bromley Hayes Garden Centre, Shaw Lane, Riley Hill, Staffordshire, Lichfield WS13 8HW

Reference: APP/K3415/X/25/3366288

Scale: Not to Scale

