



Appeal Decision

Site visit made on 23 June 2026

by Grahame J Kean B.A. (Hons) Solicitor, MRTPI, MIPRoW

an Inspector appointed by the Secretary of State

Decision date: 4 August 2026

Appeal Ref: APP/P0240/X/25/3372223

92 Vaughan Road, Stotfold, Hitchin, SG5 4EW

- 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 Sam Cubitt against the decision of Central Bedfordshire Council.
 - The application ref CB/25/01898/LDCP, dated 9 June 2025, was refused by notice dated 31 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: creation of vehicular crossover to provide access to the highway from new Class F hard surfacing at No.92 Vaughan Road.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 10 July 2026.

Decision

1. The appeal is dismissed.

Main issue

2. The main issue is whether, on the facts of the case and relevant planning law, the specific proposal would be lawful. Planning merits are not relevant in this appeal. The issue is determined on the balance of probabilities and ultimately irrespective of the reasons given by the Council in its determination of the application. In addition, government guidance points out that the applicant is responsible for providing sufficient information to support an application¹.

Legal background

3. By s191(2) of the 1990 Act 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.
4. By s55 development 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.

¹ Planning Practice Guidance, paragraph: 006 Reference ID: 17c-006-20140306

5. The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 2 (minor operations), Class B classifies as permitted development:

“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)”

6. The use of the words “in connection with” imply that there must be associated permitted development. In this appeal the appellant refers to Class F of Part 1, Schedule 2 to the GPDO (hard surfaces incidental to the enjoyment of a dwellinghouse). Class F 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; or (b) the replacement in whole or in part of such a surface”.

7. The formation of hardstanding generally would be permitted development under Class F. However, I must also be satisfied that the development is lawful, having regard to the terms of the GPDO and other relevant matters.
8. The GPDO does not define the term “means of access”. However, s336 of the 1990 Act defines “means of access” to include any means of access, whether private or public, for vehicles or for foot passengers, and includes a street. Section 336(1) explicitly defines “engineering operations” to include “the formation or laying out of a means of access to highways”.
9. It is well established in the Court of Appeal case of *Shepherd*² as to whether permitted development rights in Class B, Schedule 2, Part 2 allow a householder to carry out improvement works to a public footpath in order to provide vehicular access to a public highway, that such a deemed permission would be inconsistent with the requirements for notification and publicity in respect of applications that affect a right of way that is predominantly used by the public on foot.
10. In *Shepherd*, owners of a cottage situated some distance from an unclassified vehicular highway, constructed a hardstanding in the curtilage of the cottage and, as there was no vehicular access to that hardstanding, and a public footpath ran past their land and joined up with the vehicular highway, they carried out works to widen the public footpath so as to create a vehicular access. The court stated:
- “The clear implication of those provisions [ie the notification and publicity requirements] in relation to rights of way is that development that affects public rights that are singled out for special attention in the planning regime, as are footpaths, should not be undertaken without public consultation and mature reflection.”*³
11. The notification and publicity requirements of Article 8 of the Town and Country Planning (General Development Procedure) Order 1995 are now found in Article 15 of the current Town and Country Planning (Development Management Procedure) (England) Order 2015. Article 15(2) states:

² See the Court of Appeal’s decision in *Shepherd v Secretary of State for the Environment* (1998) 76 P. & C.R. 74

³ *Shepherd* op.cit., per Buxton LJ ,

“In the case of an application for planning permission for development which...(c) would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 (public rights of way) applies, the application must be publicised in the manner specified in paragraph (3).”

Reasons

12. The proposal entails formation of a vehicular access crossover by means of a dropped kerb at the front of the appeal property. A brick wall, pillars and iron gates physically separate the grass verge and pathways from the curtilage of the appeal site. The crossover would facilitate a dropped kerb, driveway and hardstanding across a large area of grassed verge and new hardstanding in the curtilage of the property for on-site parking of vehicles.
13. The verge is relatively wide, c6.8m deep and contains trees. One mature specimen is close to where the access would be formed. Several open grass verges obtain in the immediate and wider vicinity, where some crossovers have occurred but over narrower strips of grass. The grass verge in front of the appeal property is largely unbroken with footpaths across it and vehicular access at the northern end.
14. The proposed dropped kerb and the hardstanding taken together constitute the formation of a vehicular access, which would be operational development as envisaged by Class B above cited. The Council considers that given the size and character of the grass verge and its public access, it is amenity land where the proposed crossover would materially change its appearance, resulting in a material change of use constituting development not benefiting from permitted development rights. However, my primary focus is on whether in any event, the engineering operations comprised in the proposal can benefit from the said permitted development rights
15. In this appeal, as I observed on site, there are two paths potentially affected by the proposal. Firstly, a path runs parallel to and next to the hard boundary treatment of the properties on this side of Vaughan Road. It thus runs across the entrance to the appeal property. Secondly, a path runs perpendicularly to the first path and said entrance, from a point between Nos 92 and 94, thence across the grass verge and leads to the carriageway. Both paths are tarmacked for the benefit of pedestrians.
16. Evidently, the paths are for the use of pedestrians, to walk the length of Vaughan Road next to the dwellings, and to afford pedestrian access from the carriageway, across the verge to properties in the immediate vicinity or to link up with the path parallel to the dwelling frontages. The appellant's proposed works would enable occupiers of the appeal site and visitors to drive motor vehicles over the footpaths in question. One can see the position in the submitted drawing 1000-002 Rev A dated 27 May 2025. Clearly that may affect the safety of users of the public paths.
17. The Council obtained land registry details that confirmed the owner of the land affected is neither the appellant nor the Council but a housing association. The grass verge is clearly not in the curtilage of the appeal dwelling but is understood to have highway rights across it and to be maintained by the local highway authority. I have been given no information about public rights of way as such, however the paths are clearly well-established routes, and form part of the overall verge which, from the Council's submissions, would appear to be part of the

highway and maintained as such. I find it likely therefore that the works are sought to be performed over a public footpath that is vested in the highway authority under s263 of the Highway Act 1980.

18. A “means of access” in Class B would normally include means of access by vehicles. In this case, however, as was the case in *Shepherd*, there are important considerations, recognised by the planning scheme, of public consultation through the planning permission system in respect of works that affect footpaths. On the facts in *Shepherd*, the Court of Appeal said:

“the effect of the works is indeed, and deliberately so, to make more commodious for use by vehicles of a path which at least principally is used exclusively by pedestrians. As the Inspector found, that will cause danger to foot passengers, who may be the sole legitimate users of the path, and in practice, even if not in law, will significantly change the status of that part of footpath no. 10.”

19. I find that a similar situation would obtain here and conclude that the general words of Class B in Part 2 of Schedule 2, that would otherwise afford permitted development rights, do not prevail over the requirements for public consultation and mature reflection, given the way in which the proposal would affect public rights. Consequently, there is no planning permission from which the proposal would currently benefit.

Other matters

Other properties nearby with crossovers

20. Properties nearby have crossovers, but the reasons for this are unclear and may well involve matters which would not provide compelling reasons to allow the appeal. Other examples of decisions on applications in different locations, are cited to illustrate the Council’s position which is stated as follows:

“If a proposal includes a large grass verge outside the residential curtilage of a dwelling this may require planning permission for a change of use. As such the Council does make an assessment on vehicular crossovers on a case-by-case basis and depends on the nature/ size of the land required to provide the crossover and the overall character of the area. For instance, a traditional highway verge limited in scale would likely not require change of use.”

21. I see nothing essentially wrong in this approach and note that in any event, a full planning application was made for change of use of amenity land to vehicular crossover, ref CB/25/02770/Full in respect of the appeal site but was not progressed. Elsewhere, approval of application ref CB/23/03598/Full at No 109 for a change of use amenity land to create a crossover, was considered visually acceptable. And of course, such applications for planning permission entail the necessary publicity and consultation requirements and mature reflection, where the development in question would affect a public right of way on foot.

“Minor operations”

22. As the appellant observes, perhaps following the response given to a query set out in the online Development Control Practice (DCP) Section 4.34, there is nothing in the GPDO to suggest that the land concerned should be in the ownership of the beneficiary of the permitted means of access set out in Class B. The DCP author goes on to note however, that whilst in practice quite long accesses may be

allowed by Part 2, Class B, that is subject to the broad constraint of the heading of the Class as a whole indicating that it only relates to "*minor operations*".

23. I am doubtful as to this last point because the heading seems to me to be more descriptive of what the legislature has, in the dispositive text of the statutory instrument, stipulated to be minor operations, rather than a heading that in itself forms a separate criterion against which to judge the proposal. In *Shepherd* the issue of whether the works were "minor" in their physical aspect was not raised before the Inspector and neither the court at first instance nor the Court of Appeal was prepared to consider the matter without the benefit of the Inspector's opinion.

Conclusion

24. 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 creation of vehicular crossover to provide access to the highway from new Class F hard surfacing at No. 92 Vaughan Road is well-founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Grahame J Kean

INSPECTOR