



Appeal Decision

Site visit made on 3 October 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/P1045/X/23/3318274

Meadow View, The Row, Main Street, Hollington, Derbyshire DE6 3HA

- 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 D Keeling against the decision of Derbyshire Dales District Council.
 - The application ref 22/01159/CLPUD, dated 10 October 2022, was refused by notice dated 2 December 2022.
 - 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 new access track and associated hard surfaced parking area.
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Decision

1. The appeal is allowed in respect of the hard surfaced parking area and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful. The appeal is dismissed in respect of the new access track.

Preliminary Matter

2. The description of development given on the application form refers only to a hard standing, however the decision notice, application statement, appeal form and planning appeal statement all refer to the proposed development as being a new access track and associated hard surfaced parking space. It is therefore evident that the Council and appellant are in agreement that the proposal relates to both the hardstanding and the access. I have therefore used that description in the banner header above.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. This turns on:
 - Whether the proposed access track would have been lawful due to the provisions of Article 3(1) and Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO) and;
 - Whether the proposed hard surfaced parking area would have been lawful due to the provisions of Article 3(1) and Schedule 2, Part 1, Class F of the GDPO.

Reasons

The proposed access track

4. Schedule 2, Part 2, Class B of the GDPO permits 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 the schedule (other than by Class A of part 2). The appellant considers that the development which they propose to undertake is permitted by Schedule 2, Part 2, Class B.
5. However, despite the reference to Class B, the appellant does not set out the specific works proposed to form the access. An access could take many forms, from a highly engineered development to a simple track, yet nothing has been provided other than a plan which shows the route that the access would take, and which refers to it as an access track. On the basis of the information submitted, I do not know what operational development, if any, is proposed. The Planning Practice Guidance states that with respect to a lawful development certificate application the applicant is responsible for providing sufficient information to support an application and that in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
6. Moreover, the Council contends that the proposal represents the material change of use of land. The minimal information provided by the appellant does not provide clarity on this point, but I note that the application form refers to a change of use from agriculture to a use incidental to the enjoyment of the dwellinghouse. Yet Class B is concerned with operational development and does not make any provision for such a change of use. Indeed, Schedule 2 Part 2 is entitled 'Minor Operations'. Whilst the appellant makes reference to Section 55 of The Town and Country Planning Act 1990 (The Act), this clearly separates out operational development from development involving the making of any material change in the use of any buildings or other land. The laying out of a means of access is defined by Section 336 of The Act as being operational development. This reinforces my view that Class B is concerned with operational development rather than changes of use.
7. Taking these considerations as a whole, I conclude that it has not been demonstrated, on the balance of probability, that the development proposed would have been lawful due to the provisions of Schedule 2, Part 2, Class B of the GDPO
8. I have had regard to the previous appeal decision¹ on an unrelated site that was submitted by the appellant with this appeal. However, that decision does not expressly consider whether a change of use of land is permitted under Schedule 2 Part 2, Class B of the GDPO. Accordingly, that decision, and the extracts from the Planning Resource website which also do not expressly address the main issue in this appeal, do not alter my view on this matter. In any event, irrespective of those cases, I do not have details of any operational development that may be permitted by Class B.

¹ APP/T3725/X/16/3156418

Other matters raised in the refusal relating to the proposed access track

9. The appellant's aim in providing the hard surfaced area under Schedule 2, Class 1, Part F of the GDPO is to be able to park a car within the curtilage of their property. There is no other vehicular access provision currently available for them to reach any part of their dwelling and there would be a clear benefit in providing such. The proposed means of access would allow them to reach the proposed hard surfaced area by vehicle. Therefore, in response to the Council's suggestion that the new means of access would not be 'required' in connection with development permitted by a class elsewhere in the GDPO, I am satisfied that it would be required.
10. The reason for refusal states that the development would be the formation of a private way connecting the existing track to the north of The Old Post Office to the proposed hard surfaced parking area. The Council's Statement of Case further notes that this track is not a public footpath. It is uncertain from this wording as to whether or not the Council considers that the existing access to the north of The Old Post Office falls within the definition of a highway for the purpose of Schedule 2, Part 2, Class B and they have not set out a reasoned case in that regard. However, as that matter is not determinative on the outcome of the appeal and as the Council's position is not clear, I have not considered it further.

Proposed Schedule 2, Part 1, Class F development

11. The Council considers that what is proposed represents one development consisting of the new access track and the hard surfaced parking area and that this would be a single operation which is not permitted by any part of the GDPO. However, they seem to me to be distinguishable elements of the overall proposal, the claim of lawfulness relates to separate parts of the GDPO and I see no reason not to consider them independently.
12. Although the appellant has not provided details as to what specific surface would be provided to the parking area, the description of it as 'hard surfaced' provides reasonable certainty as to the nature of the operational development proposed. There is nothing before me to suggest that it would represent a change of use of land either, being situated on an area laid out as garden, and that is not a point of dispute offered forward by the Council.
13. Accordingly, the hard surfaced parking area would be permitted development under Schedule 2, Part 1, Class F of the GDPO. The Council's decision not to issue a partial lawful development certificate for that element was not well-founded. I shall therefore issue a lawful development certificate for this element of the proposal.

Other Matter

14. The appellant states that the purpose of the development is not solely to provide a hard surface parking area for the dwellinghouse, but to improve the highway safety of the road for their own benefit and other users. This consideration cannot however have any bearing on my assessment of the main issue in this case, and on whether the proposal would be lawful or not.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed new access track was well-founded and that the appeal should not succeed in that respect. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended in relation to the new access track.
16. As I have set out, the Council's refusal to grant a certificate of lawful use or development for the hard surfaced parking area was not well-founded and the appeal should succeed in that respect. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended in relation to the hard surfaced parking area.

Graham Wraight

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 10 October 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would have complied with the provisions of Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 on 10 October 2022.

Signed

Graham Wraight
Inspector

Date: 15 December 2023
Reference: APP/P1045/X/23/3318274

First Schedule

Hard surfaced parking area

Second Schedule

Land at Meadow View, The Row, Main Street, Hollington, Derbyshire DE6 3HA

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 December 2023

by **Graham Wraight BA(Hons) MSc MRTPI**

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Scale: Not to Scale

