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Sent to all parties

Our ref: CLUD-270-2010

Planning Authority ref:25/00658/CLE

3 July 2025

Dear Sir/Madam

**CERTIFICATE OF LAWFUL USE & DEVELOPMENT APPEAL: LAND 40M NORTH OF  
54 RIVERSIDE PARK LOCHYSIDE FORT WILLIAM PH33 7RB**

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

We collect information if you take part in the planning process, use DPEA websites, send correspondence to DPEA or attend a webcast. To find out more about what information is collected, how the information is used and managed please read the [DPEA's privacy notice](#).

I trust this explain the position.

Yours sincerely,

*Rebecca Davidson*

**REBECCA DAVIDSON**  
**Case Officer**  
**Planning And Environmental Appeals Division**





## Town and Country Planning (Scotland) Act 1997 Appeal Decision Notice

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Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Certificate of Lawful Development appeal reference: CLUD-270-2010
- Site address: land 40 metres north of 54 Riverside Park, Lochyside, Fort William, PH33 7RB
- Appeal by Nicholas Sneddon against the failure to issue a decision by Highland Council
- Application for certificate of lawful development 25/00658/CLE dated 5 March 2025
- The subject of the application: the laying and compacting of sub base hardstone on the site and access road

Date of appeal decision: 3 July 2025

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### Decision

I dismiss the appeal.

### Preliminary

Taking account of the nature of the appeal and the submissions lodged I have concluded that my consideration of the case would not be assisted by an in-person inspection of the appeal premises. I am satisfied that the written submissions, including photographs, have enabled me to give full and proper consideration to this appeal.

### Reasoning

1. This application for a certificate of lawfulness under section 150(1) of the Act relates to a material operation having been made prior to the planning permission expiry date by laying and compacting 38 tonnes of Type 1 sub base hardstone on the site and access road. It has been submitted on the basis that the development does not require planning permission and would be immune from enforcement action.
2. Planning permission (reference 20/04278/FUL) was granted by Highland Council on 23 November 2021 for the erection of 24 residential units on the site, with access to be taken off Riverside Park. The permission is subject to 12 conditions, seven of which require measures to be agreed in advance of work commencing on site. By virtue of Section 58 of the Act, the permission would expire three years after the date of permission, which would be 23 November 2024.
3. The appellant says that the laying and compacting of sub base hardstone does not constitute lawful development or a material change of use and would fall within the established site operations. It says that the works would have the effect of commencing the planning permission 20/04278/FUL.

4. I understand that council officers had recommended that the application for a certificate of lawfulness be refused, but that there had been no council decision at the point at which the appeal was made. The appeal was therefore made on the basis of non-determination of the application. I recognise therefore that the council's delegated report (THC01) is not the formal decision of the council.

5. There is no dispute between the parties that the hardstone has been laid on the ground between Riverside Park and the main part of the site to which permission 20/04278/FUL relates. The evidence indicates the use of heavy equipment to lay the hardstone. The appellant highlights that in addition to access works, it has carried out site clearance and compaction. I am satisfied from the submitted evidence, including photographs, that the works have taken place in that location. I am also satisfied that the works would constitute a material operation under Section 27 of the Act, as they would involve an operation in the course of laying out or constructing a road or part of a road.

6. I must then consider whether the works would lawfully have the effect of commencing permission 20/04278/FUL. The appellant suggests, with reference to case law, that the permission could be commenced in breach of certain conditions, where the conditions did not affect the substance or deliverability of the development. I have taken into account the relevant case law and the council's record of progress against each of the conditions.

7. The council raises concerns that the requirements of three suspensive conditions on permission 20/04278/FUL have not been met. These matters relate to condition 7 on Road Construction Consent (RCC) and conditions 10 and 11 on surface water drainage. Four other pre-commencement requirements have either been met or are not considered by the council to preclude development from commencing so are not addressed as part of this appeal.

8. I am not convinced that conditions 7 and 11 are necessary as they cover matters that would be addressed by other statutory regimes. However, even if conditions 7 and 11 were not necessary, condition 10 requires full details of surface water drainage provision to be submitted to and agreed in writing by the planning authority before development commences.

9. The council's update on the discharge of conditions on permission 20/04278/FUL from 19 November 2024 (THC06) indicates that the detailed drainage designs remained outstanding at that point. Email exchanges indicate discussions with the council ongoing during November 2024. However, the appellant's email to the council on 22 November 2024 acknowledges that not all of the outstanding matters had been addressed. Despite Scottish Water's positive response on capacity on 22 November 2024, I see no evidence that the detailed designs had been agreed with the planning authority by the permission's expiry date of 23 November 2024.

10. It is not clear from the evidence why there has been a delay in submitting and agreeing the necessary details, but it remains the case that not all of the pre-commencement requirements of permission 20/04278/FUL have been met. I agree with the appellant that it may, in certain circumstances, be possible to proceed without satisfying all pre-commencement conditions. However, in this case, I find that the outstanding drainage matters in particular are key to delivery of a suitable scheme. Without knowing what the drainage arrangements would involve (as they have not been agreed), I cannot say for certain that they could be accommodated within the site or within the tight layout of the site access without amendments to the agreed plans. I find that the lack of agreement on

drainage goes to the heart of the permission and whether the development as a whole would be capable of implementation.

11. In light of the above, I find that the works were not lawfully carried out, not because they did not constitute a material operation, but because they were carried out before certain other matters (part of which I find does go to the heart of the permission) had been agreed. I therefore find that the works are a breach of planning conditions and that permission has not been lawfully commenced through the laying of hardstone.

12. The evidence indicates that the works which constitute a breach of conditions took place in November 2024. For the avoidance of doubt, as it has been less than 10 years since the breach of conditions took place, the breach would not be immune from enforcement action in terms of time.

13. The appellant highlights concerns with the council's handling and timescales for determining the original planning application and the application for a certificate of lawfulness. While statutory timescales may not have been met, that does not invalidate the process and it allows for an appeal against non-determination to be made, as has been the case here. I find that the concerns over procedural matters do not affect my assessment of this appeal. Matters relating to the review and processing of a separate planning application (reference 23/05042/FUL) are outwith the scope of this appeal.

14. The appellant refers to other examples of developments commencing with enabling works. Whether other developments could proceed in this way would depend on the specific wording and requirements of the conditions attached to the consent. Reference to other examples does not alter my conclusions on this case.

## **Conclusion**

15. In light of the above, I conclude that the laying of hardstone was not lawful in relation to commencing permission 20/04278/FUL. Section 154(3)(a) of the Act requires a certificate to be issued on appeal if the appeal decision maker is satisfied that the authority's refusal is not well-founded. In this case, I find that the council's reasons for refusal are well-founded and therefore conclude that the certificate should not be granted.

*Rosie Leven*  
Reporter

**Certificate of Lawful Development appeal reference: CLUD-270-2010**

**Site address: land 40 metres north of 54 Riverside Park, Lochyside, Fort William, PH33 7RB**

**Appeal by Nicholas Sneddon against the failure to issue a decision by Highland Council**

**Application for certificate of lawful development 25/00658/CLE dated 5 March 2025**

**The subject of the application: the laying and compacting of sub base hardstone on the site and access road**

1. The appeal relates to a material operation having been made prior to the planning permission (20/04278/FUL) expiry date by laying and compacting 38 tonnes of Type 1 sub base hardstone on the site and access road. It has been submitted on the basis that the development does not require planning permission and would be immune from enforcement action.
2. Planning permission 20/04278/FUL expired on 23.11.2024. The permission had 12 conditions, 7 of which required measures to be agreed in advance of development commencing on site.
3. Council officers would have recommended that the application for a certificate of lawfulness (25/00658/CLE) in relation to the laying and compacting of sub base hardstone be refused, but that there had been no council decision at the point at which the appeal was made. The appeal was therefore made on the basis of non-determination of the(25/00658/CLE) application.
4. The reporter notes that –
  - the lack of agreement on drainage goes to the heart of the permission and whether the development as a whole would be capable of implementation.
  - the works were not lawfully carried out, not because they did not constitute a material operation, but because they were carried out before certain other matters (part of which I find does go to the heart of the permission) had been agreed. I therefore find that the works are a breach of planning conditions and that permission has not been lawfully commenced through the laying of hardstone
  - as it has been less than 10 years since the breach of conditions took place, the breach would not be immune from enforcement action in terms of time
5. Conclusion
  - conclude that the laying of hardstone was not lawful in relation to commencing permission 20/04278/FUL. Section 154(3)(a) of the Act requires a certificate to be issued on appeal if the appeal decision maker is satisfied that the authority's refusal is not well-founded. In this case, I find that the council's reasons for

refusal are well-founded and therefore conclude that the certificate should not be granted

Bob Robertson – (Acting) Planning Manager South

22 August 2025