
Permitted Development Statement

Application for a Certificate of Lawfulness of Proposed Development

Lombardy Retail Park,
Hayes,
UB3 3EX

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Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Contents

1. Introduction	1
2. Legislative background and guidance	2
3. Identification of Proposed Development	4
4. Presentation of evidence	9
5. Conclusion	14
Appendices	15
Appendix 1.0 Site Location Plan	16
Appendix 2.0 Interest in land	18
Appendix 3.0 Photographs	20

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



1. Introduction

1.1. Introduction

1.1.1. This Permitted Development Statement ("Statement") has been prepared on behalf of SSE Energy Solutions ("the Applicant"), in support of an application for a Certificate of Lawfulness for Proposed Development ("CLPD" or "Certificate") relating to the installation of six electrical upstands and an associated substation ("the Proposed Development") at Lombardy Retail Park, Hayes, UB3 3EX ("the Site").

1.1.2. A site location plan is provided at **Appendix 1.0**.

1.1.3. Accordingly, an application for a CLPD is submitted to the Local Planning Authority ("LPA") demonstrating the Proposed Development on the Site is lawful as a result of benefiting from Permitted Development rights.

1.2. Statement structure

1.2.1. Given the nature of this application, most of the evidence is included as appendices with the Statement effectively being a 'guide' through, and summary of, the appendices. Accordingly, this remaining sections of this Statement is structured as follows:

- **Section 2:** Identifies the relevant legislative context for the submission and assessment of applications for CLPDs;
- **Section 3:** Identifies the development and matters for which confirmation is sought;
- **Section 4:** Provides, in connection with the various appendices, requisite evidence to demonstrate why the CLPD can be issued; and
- **Section 5:** Sets out a conclusion on the evidence provided.

2. Legislative background and guidance

2.1. Overview

- 2.1.1. This section provides an overview of the legislative background and guidance in respect of CLPDs. It does not seek to be exhaustive but establishes the key principles and requirements of a CLPD.

2.2. Legislative background and guidance

- 2.2.1. Section 192 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") allows any person who wishes to ascertain whether *"(a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, over or under land, would be lawful"* to make an application to the LPA. If the LPA is satisfied that the appropriate legal tests have been met, it should issue the Certificate.

- 2.2.2. Section 192(2) of the 1990 Act states if the LPA is provided with information satisfying them that the use or operations described would be lawful if instituted or begun at the time of the application, they shall issue a Certificate to that effect, and in any other case they shall refuse the application.

- 2.2.3. Section 192(3) of the 1990 Act identifies what information must be specified within a Certificate. It specifies that Certificates should:

"(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of the application for the certificate"

- 2.2.4. To assist with this, Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) ("the 2015 Order") specifies the contents of an application for a CLPD and how it must be submitted. Applications must be accompanied by:

"(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;

(b) such evidence verifying the information included in the application as the applicant can provide; and

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



(c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application."

- 2.2.5. In this case, (a) is provided at **Appendix 1.0**, (b) is presented within this Statement and its various appendices and (c) is provided at **Appendix 2.0**.
- 2.2.6. Applications must be accompanied by sufficient factual information/evidence for an LPA to decide the application. Following the withdrawal of Circular 10/97 (Enforcing Planning Control), guidance about CLPDs is now contained within the online National Planning Policy Guidance ("NPPG").
- 2.2.7. The NPPG identifies that an application should include a precise description of what is being applied for (not simply the use class) and the land to which the application relates. This is presented in Section 3 of this Statement.
- 2.2.8. A CLPD must include a description of the use or operations for which it is granted regardless of whether the matters fall within a specific use class and where it is within a use class of the Town and Country Planning (Use Classes) Order 1987, a Certificate must also specify the relevant use class.
- 2.2.9. Paragraph Reference 17c-006-20140306 of the NPPG states 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."*
- 2.2.10. From the above it is clear that the onus is on the Applicant to provide sufficient evidence to demonstrate lawfulness and that LPAs should co-operate with applicants if they hold information relevant to the application. Importantly, evidence put forward by the Applicant should be accepted 'at face value' so long as it is "sufficiently precise and unambiguous" and unless the LPA is able to provide evidence to the contrary.
- 2.2.11. Issues such as compliance with policies set out within the development plan documents are not to be taken into consideration as the decision is based on a matter of fact and law and not on planning policy grounds.

3. Identification of Proposed Development

3.1. Overview

- 3.1.1. This section provides an identification and explanation of the Proposed Development for which confirmation is sought.

3.2. The Site

- 3.2.1. The Site comprises part of an existing car park at Lombardy Retail Park, Hayes, UB3 3EX. The Site is enclosed by additional car parking to the north, Sainsburys to the east, residential properties on St Christophers Drive to the south and the access road to the retail park to the west.

3.3. Proposal

- 3.3.1. The installation of six electrical upstands to serve 12 vehicles and the installation of a substation and underground cabling.

3.4. Electrical Ustand for Recharging Electric Vehicles

- 3.4.1. As the evidence presented within this Statement will confirm, the Proposed Development of a series of electrical upstands for recharging EV on this Site satisfies the provisions within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO Order"). This CLPD therefore seeks to confirm the lawful development of the electrical outlets on the Site.

- 3.4.2. The relevant extract from the GPDO Order is set out below:

The Town and Country Planning (General Permitted Development) (England) Order 2015

PART 2 - Minor Operations

Class E – electrical upstand for recharging vehicles

Permitted development

E. The installation, alteration or replacement, within an area lawfully used for off-street parking, of an upstand with an electrical outlet mounted on it for recharging electric vehicles.

Development not permitted

E.1 Development is not permitted by Class E if the upstand and the outlet would—

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



a) in relation to an upstand and outlet—

- i. within the curtilage of a dwellinghouse or a block of flats, exceed 1.6 metres in height from the level of the surface used for the parking of vehicles; or*
- ii. in any other case, exceed 2.3 metres in height from the level of the surface used for the parking of vehicles;*

b) be within 2 metres of a highway;

c) be within a site designated as a scheduled monument;

d) be within the curtilage of a listed building; or

e) result in more than 1 upstand being provided for each parking space.

Conditions

E.2 Development is permitted by Class E subject to the conditions that when the development is no longer needed as a charging point for electric vehicles—

a) the development is removed as soon as reasonably practicable; and

b) the land on which the development was mounted or into which the development was set is, as soon as reasonably practicable, and so far as reasonably practicable, reinstated to its condition before that development was carried out.

Interpretation of Class E

E.3. For the purposes of Class E—

“block of flats” means a building which consists of at least two flats.

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



3.5. Substation

3.5.1. As the evidence presented within and with this Statement will confirm, the Proposed Development of a substation on this Site satisfies the provisions within the GPDO Order. This CLPD therefore seeks to confirm the lawful development of the substation on the Site.

3.5.2. The relevant extract from the GPDO Order is set out below:

The Town and Country Planning (General Permitted Development) (England) Order 2015

PART 15 - Power related development

Class B – electricity undertakings

Permitted development

B. Development by statutory undertakers for the generation, transmission, distribution or supply of electricity for the purposes of their undertaking consisting of—

- a) the installation or replacement in, on, over or under land of an electric line and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line;*

Development not permitted

B.1 Development is not permitted by Class B if—

- a) in the case of any Class B(a) development—
 - i. it would consist of or include the installation or replacement of an electric line to which section 37(1) of the Electricity Act 1989 (consent required for overhead lines) F4 applies; or*
 - ii. it would consist of or include the installation or replacement at or above ground level or under a highway used by vehicular traffic, of a chamber for housing apparatus and the chamber would exceed 29 cubic metres in capacity;**

Conditions

B.2 Development is permitted by Class B subject to the following conditions—

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



- a) in the case of any Class B(a) development consisting of or including the replacement of an existing electric line, compliance with any conditions contained in a planning permission relating to the height, design or position of the existing electric line which are capable of being applied to the replacement line;*
- b) in the case of any Class B(a) development consisting of or including the installation of a temporary electric line providing a diversion for an existing electric line, on the ending of the diversion or at the end of a period of 6 months from the completion of the installation (whichever is the sooner) the temporary electric line is removed and the land on which any operations have been carried out to install that line is restored as soon as reasonably practicable to its condition before the installation took place;*

Interpretation of Class B

B.3 For the purposes of Class B(a), “electric line” has the meaning given by section 64(1) of the Electricity Act 1989 (interpretation etc. of Part 1)

3.6. Statutory Undertaker

- 3.6.1. The work relating to the substation will, as the GPDO Order requires, be undertaken by a statutory undertaker. Whilst an application for a CLPD does not seek confirmation of this, it is noted that the Applicant (either directly or a sister company within SSE) are statutory undertakers – as per the definition within both the GPDO Order and the Town and Country Planning Act 1990 (the content of which is reproduced below) – and may be responsible for undertaking the development if it is located in their jurisdiction.

The GPDO Order

Interpretation

2.—(1) In this Order—

“statutory undertaker” includes, in addition to any person mentioned in section 262(1) of the Act (meaning of statutory undertakers)—

...

- g) any licence holder under section 6 of the Electricity Act 1989;*

The Act

Meaning of “statutory undertakers”

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



262.(6) Any holder of a licence under section 6 of the Electricity Act 1989 shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking—

- a) for the purposes of the provisions mentioned in subsection (7)(a), if he holds a licence under subsection (1) of that section;*
- b) for the purposes of the provisions mentioned in subsection (7)(b), if he is entitled to exercise any power conferred by Schedule 3 to that Act; and*
- c) for the purposes of the provisions mentioned in subsection (7)(c), if he is entitled to exercise any power conferred by paragraph 1 of Schedule 4 to that Act.*

3.7. Exceptions

- 3.7.1. The Site is not located within Article 2(3) land, as defined by the GPDO Order, including conservation areas; Areas of Outstanding Natural Beauty; National Parks; The Broads; and / or a World Heritage Sites.
- 3.7.2. Furthermore, the Site is not located within Article 2(4) land, including a National Park, the Broads, or certain land outside the boundaries of a National Park. Nor have Permitted Development rights been removed on this Site by the LPA via an Article 4 Direction.

4. Presentation of evidence

4.1. Overview

- 4.1.1. This section presents evidence demonstrating that the Proposed Development constitutes Permitted Development. The relevant appendices to this Statement and other submitted information should be cross-referred to as appropriate.

4.2. Summary

- 4.2.1. As identified in section 1 of this Statement, the purpose of this application for a CLPD is to confirm the lawfulness of Proposed Development at the Site. To demonstrate this, the Applicant's case and evidence forms two distinct parts:

- Whether the proposed works are permitted development by virtue of Schedule 2, Part 2, Class E (The installation, alteration or replacement, within an area lawfully used for off-street parking, of an upstand with an electrical outlet mounted on it for recharging electric vehicles) of the GPDO Order; and
- Whether the proposed works are permitted development by virtue of Schedule 2, Part 15, Class B (Development by statutory undertakers for the generation, transmission, distribution or supply of electricity for the purposes of their undertaking consisting of a) the installation or replacement in, on, over or under land of an electric line and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line) of the GPDO Order.

- 4.2.2. Each case and evidence base will be considered in turn below.

4.3. Evidence

Electrical Upstand for Recharging Electric Vehicles

- 4.3.1. To assist the LPA in determining the CLPD in respect of the electrical upstand for recharging electric vehicles, Table 4.1, overleaf, sets out the provisions of the GPDO Order and identifies if the Proposed Development, as shown in the submitted plans and drawings, satisfies the provisions or not.

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Table 4.1 – Lawfulness of the proposed electrical outlet with regard to the GPDO Order

Electrical Upstand	
The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 2, Class E (electrical upstand for recharging vehicles)	
<i>Permitted development E. The installation, alteration or replacement, within an area lawfully used for off-street parking, of an upstand with an electrical outlet mounted on it for recharging electric vehicles.</i>	
<i>Development not permitted</i>	
<i>E.1 Development is not permitted by Class E if the upstand and the outlet would—</i>	
<i>(a) in relation to an upstand and outlet—</i>	
<i>(i) within the curtilage of a dwellinghouse or a block of flats, exceed 1.6 metres in height from the level of the surface used for the parking of vehicles; or</i>	The proposed development complies with this condition
<i>(ii) in any other case, exceed 2.3 metres in height from the level of the surface used for the parking of vehicles;</i>	The proposed development complies with this condition
<i>(b) be within 2 metres of a highway;</i>	The proposed development complies with this condition
<i>(c) be within a site designated as a scheduled monument;</i>	The proposed development complies with this condition
<i>(d) be within the curtilage of a listed building; or</i>	The proposed development complies with this condition
<i>(e) result in more than 1 upstand being provided for each parking space.</i>	The proposed development complies with this condition

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



- 4.3.2. As indicated above, the Proposed Development satisfy the provisions within the GPDO Order and can therefore be considered to be Permitted Development and lawful.

Conditions

- 4.3.3. It is noted that the two following conditions may be applied to a decision notice.

Conditions

E.2 Development is permitted by Class E subject to the conditions that when the development is no longer needed as a charging point for electric vehicles—

- a) the development is removed as soon as reasonably practicable; and*
- b) the land on which the development was mounted or into which the development was set is, as soon as reasonably practicable, and so far as reasonably practicable, reinstated to its condition before that development was carried out.*

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Substation

4.3.4. In a similar manner to that shown above, to assist the LPA in determining the CLPD in respect of the substation, Table 4.2, overleaf, sets out the provisions of the GPDO Order and identifies if the Proposed Development, as shown in the submitted plans and drawings, satisfies the provisions or not.

Table 4.2 – Lawfulness of the proposed substation with regard to the GPDO Order

Substation	
The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 15, Class B (electricity undertakings)	
<i>(a) the installation or replacement in, on, over or under land of an electric line and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line;</i>	
<i>(b) the installation or replacement of any electronic communications line which connects any part of an electric line to any electrical plant or building, and the installation or replacement of any support for any such line;</i>	
...	
<i>(e) the erection on operational land of the undertaking of a building solely for the protection of plant or machinery;</i>	
<i>(f) any other development carried out in, on, over or under the operational land of the undertaking.</i>	
Development not permitted	
B.1 Development is not permitted by Class B if—	
(a) in the case of any Class B(a) development—	
<i>(i) it would consist of or include the installation or replacement of an electric line to which section 37(1) of the Electricity Act 1989 (consent required for overhead lines) applies; or</i>	The proposed development complies with this condition
<i>(ii) it would consist of or include the installation or replacement at or above ground level or under a highway used by vehicular traffic, of a chamber for housing apparatus and the chamber would exceed 29 cubic metres in capacity;</i>	The proposed development complies with this condition

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



- 4.3.5. As indicated above, the Proposed Development satisfies all provisions within the GPDO Order and can therefore be considered to be permitted development and lawful.

Conditions

- 4.3.6. It is noted that the two following conditions may be applied to a decision notice.

Conditions

B.2 Development is permitted by Class B subject to the following conditions—

- a) in the case of any Class B(a) development consisting of or including the replacement of an existing electric line, compliance with any conditions contained in a planning permission relating to the height, design or position of the existing electric line which are capable of being applied to the replacement line;*
- b) in the case of any Class B(a) development consisting of or including the installation of a temporary electric line providing a diversion for an existing electric line, on the ending of the diversion or at the end of a period of 6 months from the completion of the installation (whichever is the sooner) the temporary electric line is removed and the land on which any operations have been carried out to install that line is restored as soon as reasonably practicable to its condition before the installation took place;*

4.4. Commentary

- 4.4.1. From assessing the Proposed Development, set out in the attached plans and drawings, against the relevant provisions of the respective parts of the GPDO Order, in relation to both electrical upstand and substations, it is considered that the Proposed Development comprises with those provisions and, as such, is Permitted Development and lawful – for which a CLPD can be issued.

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



5. Conclusion

5.1. Conclusion

- 5.1.1. This Statement has been prepared by Savills on behalf of the Applicant in support of an application for a CLPD under Section 192 of the 1990 Act. The CLPD seeks to establish that the Proposed Development of a series of electric upstand for recharging electric vehicles and an associated substation are lawful.
- 5.1.2. The evidence presented within this Statement comprises two parts, being:
- Electrical upstand for recharging electric vehicles; and
 - Substation.
- 5.1.3. The evidence presented confirms that the Proposed Development is Permitted Development, as per Schedule 2, Part 2, Class E and Schedule 2, Part 15, Class B of the GPDO Order.
- 5.1.4. In accordance with Section 192(4) of the 1990 Act the LPA has been provided with sufficient information to satisfy them of the lawfulness at the time of the application of the use to issue the CLPD.

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Appendices

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Appendix 1.0 Site Location Plan

Lombardy Retail Park, Hayes, UB3 3EX

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Appendix 2.0 Interest in land

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Lombardy Retail Park, Hayes, UB3 3EX

Interest in land

In accordance with Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) this statement acts as *“a statement setting out the applicant’s interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.”*

The Applicant is SSE Energy Solutions who will enter into a leasehold agreement with the landowner of the application Site.

The landowner is Box + III (Lombardy) Ltd and they have been served notice, as indicated within the application form.

There are no other known parties with an interest in the land.

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Appendix 3.0 Photographs

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Figure A3.1: Looking north towards the location of the proposed substation (adjacent to the existing substation)



Figure A3.2: Looking south-east along the parking bays

Permitted Development Statement

Lombardy Retail Park, Hayes, UB3 3EX



Figure A3.3: Looking north-west along the parking bays



Figure A3.4: Looking south towards parking bays