



Appeal Decision

Site visit made on 23 January 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2024

Appeal Ref: APP/U4610/X/23/3324418

73 Bridgeacre Gardens, Coventry CV3 2NR

- 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 Ms Tasnim Khan against the decision of Coventry City Council.
 - The application ref LDCP/2022/1769, dated 30 June 2022, was refused by notice dated 10 August 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 described as 'the construction of a new 2 metre and a 1 metre, fully framed, close boarded, timber fence and gate at the same height for access along the right-hand side elevation of the property boundary'.
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Decision

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

Procedural Matter

2. The proposal is described differently on the application form, the appeal form and the decision notice issued by the Council. I have relied on the description on the application form, except that I have removed the reference to the 'right-hand side elevation of the property boundary', in the interests of clarity. The location of the fence and gate is, in any event, shown clearly on the submitted drawing, which shows the main section of fence running along the southern boundary of the property.

Main Issue

3. The main issue is whether, on the date of the application, the proposed fence and gate were lawful. This turns on whether it is development permitted by the provisions of Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

4. Although certain permitted development rights relating to the appeal property have been removed by condition, it is common ground that this does not affect the appeal proposal, since fences are specifically excluded from that limitation. Thus, the proposal falls to be considered against the provisions of Class A of Part 2 of Schedule 2 of the GPDO, which permits the erection of fences and

gates, subject to certain limitations, which are set out at paragraph A.1. The dispute centres on the height restriction at A.1(a)(ii), which limits the height of anything within the class (other than in relation to a school) constructed adjacent to a highway used by vehicular traffic to 1m above ground level. Elsewhere, a 2m height limitation applies.

5. The section of fencing closest to the road Bridgeacre Gardens would be only 1m high, and so does not breach any height restriction. However, the 2m section of fence would run alongside a path linking Bridgeacre Gardens with Abbeydale Close. It is common ground that this path is a 'highway', a view I share. The question is whether or not it is 'a highway used by vehicular traffic', as the Council claims. I have not been provided with any definitive set of regulations relating to the use of the path. I have therefore made my assessment based on the appearance of the path and the information provided by the parties.
6. There are no obvious signs that the path is used by traffic. Indeed, it is quite obvious from its narrowness that it is not for use by cars. Although it describes the path as a 'public footpath', 'footpath' and 'footway' – all terms which clearly imply pedestrian use – the Council argues that it might be used by bicycles. There are no signs saying that cycling is prohibited, as there are on many such paths. However, the path links two sections of footway, on Bridgeacre Gardens and Abbeydale Close, rather than linking the carriageways. Thus, it has clearly been designed to serve the pedestrians on the footways, rather than the vehicles on the carriageways. There are no dropped kerbs to indicate any encouragement for cyclists to use the route. Nor is there any colouring of the surface or other indication of shared use. Taken together, these characteristics are a clear indication that the path is intended for pedestrian use.
7. It is quite possible that a mobility scooter might use the path but, in that respect, it is no different to any other section of footpath or footway. Thus, the possibility of such use does not make it 'a highway used by vehicular traffic' in my judgement.
8. The Council refers to an appeal decision concerning a site in Milton Keynes, in which an inspector refused to issue an LDC on the basis that the proposed 1.8m high fence was adjacent to a pathway. However, it was quite clear that, unlike the path in this case, that particular pathway was designed as a shared surface for use by both pedestrians and cyclists, being part of a network of 'Redways' within Milton Keynes. Consequently, the inspector's finding that use of the Redway by cyclists would amount to vehicular traffic for the purposes of Class A has no bearing on my decision.
9. Overall, I conclude that this ordinary section of footpath is not a highway used by vehicular traffic. Accordingly, the fact that the proposed fence would be adjacent to it cannot be a bar to the permitted development provisions of Class A. There is nothing before me to suggest that any other limitation within Class A is not complied with. Accordingly, the proposed development was permissible under the provisions of Class A at the time the application was made.

Conclusion

10. 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 proposed development was not well-founded and that the appeal should

succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and grant the certificate applied for.

Peter Willows

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 30 June 2022 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, 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 fence and gate would be permitted development falling within the provisions of Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Peter Willows

Inspector

Date: []

Reference: APP/U4610/X/23/3324418

First Schedule

The construction of a new 2 metre and 1 metre, fully framed, close boarded, timber fence and gate at the same height for access.

Second Schedule

Land at 73 Bridgeacre Gardens, Coventry CV3 2NR

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: []

by **Peter Willows BA MRTPI**

Land at: 73 Bridgeacre Gardens, Coventry CV3 2NR

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Scale: Not to Scale

