



Appeal Decision

Site visit made on 4 March 2025

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2025

Appeal Ref: APP/W4705/X/23/3331702

Milking Hole Farm, Trough Lane, Denholme, Bradford BD13 4NA

- 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 Neil Bland against the decision of City of Bradford Metropolitan District Council.
 - The application ref 23/02907/CLP, dated 3 August 2023, was refused by notice dated 18 October 2023.
 - 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 construction of stone walls and installation of a metal gate.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. An enforcement notice alleging *“Without planning permission the formation of an access onto the land comprising a hard standing and a means of enclosure including stone walling and metal gates”* was issued on 29 May 2018. An appeal against this notice was dismissed on 20 May 2019, the notice being upheld with a variation to the compliance period. The requirements of the notice included the demolition of the stone walling, the removal of the metal gates and removal of resulting materials from the land. There is nothing before me to show that the requirements of the notice have been complied with.
3. Since the enforcement notice was upheld on appeal, the Council has granted planning permission for *“modification to unauthorised access to farmland”* (application reference 20/03779/FUL) (*“the 2020 PP”*). The enforcement notice would therefore cease to have effect so far as it is inconsistent with the 2020 PP by virtue of s180(1) of the Town and Country Planning Act 1990 (*“the 1990 Act”*).

Reasons

4. The **main issue** is whether the Council’s refusal to grant an LDC was well founded.
5. While the application form identifies the proposed development as *“construction of stone walls and installation of a metal gate”*, it is the appellant’s contention that *“significant modifications to an existing structure would bring it within permitted development limits.”*¹ The plans provided also show that the existing walls will be

¹ Paragraph 1.3 of the Appeal Statement prepared by Rose Consulting Planning & Regeneration dated 20/10/2023

modified as part of the proposal. I shall proceed on the basis that the existing walls and gates will be altered, as opposed to the erection of new walls and installation of a metal gate.

6. In an application of this type, it is for the appellant to show that the proposed operational development would constitute permitted development. The relevant legal test is the balance of probability.
7. Article 3(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (“the GPDO”), states “*The permission granted by Schedule 2 does not apply if – (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful*”. S336 of the 1990 Act states that “*building includes any structure or erection, and any part of a building...*”, the stone walling is therefore a building for planning purposes.
8. Class A, Part 2 of Schedule 2 of the GPDO states that “*The erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure*” is permitted development, subject to several conditions. The development proposed involves altering the stone walls and metal gates that are the subject of the extant enforcement notice. As the existing stone walling and metal gates are unlawful, any deemed planning permission that could be granted by Class A, Part 2 of Schedule 2 of the GPDO cannot be applied by virtue of article 3(5) of the GPDO.
9. The appellant has therefore failed to show, on the balance of probability, that the proposed construction of stone walls and installation of a metal gate is permitted development.

Conclusion

10. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for the construction of stone walls and installation of a metal gate is well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Madge

INSPECTOR