
Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date **12 March 2025**

Appeal Ref: APP/H1840/X/24/3347473

The Old Vicarage, Church Road, Crowle, Worcester WR7 4AT

- 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 Miss Cat Bromley against the decision of Wychavon District Council.
 - The application ref W/23/02106/CLPU, dated 13 October 2023, was refused by notice dated 11 December 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
The development for which an LDC is sought is the proposed removal of existing, rotten five bar gates and replacement with new solid gates to the entrance of the property.
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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 considered to be lawful.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposed removal and replacement of gates would benefit from planning permission granted by Article 3(1) and Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the "Order").

Reasons

6. The appeal relates to the proposed replacement of gates at the entrance to The Old Vicarage, a residential property in the village of Crowle. The appeal site is accessed from Church Road via a single driveway. The gates would be a maximum of 2 metres in height and would be set back from the public highway by approximately 17 metres.
7. Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 as amended (the Order) grants planning permission for the classes of development set out in Schedule 2 of the Order. Within this section, Class A of Part 2 permits the erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure no more than 1 metre above ground level where it would be erected or constructed adjacent to a highway used by vehicular traffic. Elsewhere, this part of the Order allows the height of any other gate, fence, wall or means of enclosure erected or constructed to be no more than 2 metres above ground level.
8. The Council considers that although the gates would not be directly adjacent to the public highway, they would be erected over a privately owned track which is used by vehicular traffic and is therefore considered to be a highway. Furthermore, it is considered that as the height of the proposed gates would exceed the height of the existing gates they would replace, the proposal would not be permitted by Class A.1(c) of Part 2 of the Order.
9. There is one access point with the public highway where the driveway provides access into and out of The Old Vicarage. With nothing beyond the land holding known as The Old Vicarage, members of the public do not have an inalienable right to access the driveway because it is private land owned by the appellant. The driveway has not been adopted as a highway maintainable at the public expense and the title is likely vested with the appellants. As members of the public do not have a right to pass or re-pass, they would only enter the driveway if specifically visiting.
10. Common law has established that a highway is a defined route over which the public can pass and repass without hindrance or charge. The use must be “as of right”, meaning without force, secrecy or permission and may be limited to a particular class of user or mode of transport.
11. In the absence of any contrary statutory definition, a privately-owned or maintained or an unmaintained way may be a highway if the public can use it “as of right”. This applies to the Order except in relation to Part 1 “development within the curtilage of a dwellinghouse”. For the purposes of Part 1, ‘highway’ is defined in paragraph I “Interpretation of Part 1” as including an unadopted street or a private way.
12. Accordingly, it is my view that the private driveway upon which the proposed gates would be erected or constructed is not a public highway. The question, therefore, revolves around whether or not the gates are considered to be ‘adjacent’, or not, to Church Road, which I consider to be the nearest public highway which incorporates the footway that forms part of the defined route over which the public can pass. The word ‘adjacent’ is not defined in the Order and it has been held that legislators were not likely to have intended ‘a one size fits all approach’.

13. The common dictionary definition of 'adjacent' is 'being near', 'close to' or 'contiguous', although Case Law shows that 'adjacency' does not equate to 'contiguous' or 'abutting'. Thus, the position established by the courts is that the word 'adjacent' does not necessarily mean that the gates must abut or touch the highway. A gate, wall or fence can be set back from a highway, but still be 'adjacent' to it, as a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so.
14. In this case the gates are clearly intended as a means of enclosure to the appellant's land and considering the significant separation distance between them and the public highway, it is my view that the gates would, as a matter of fact and degree, not be 'adjacent' to the highway. Furthermore, although they would exceed the height of those they replace, they would not exceed the height referred to in paragraph A.1(b) of Part 2, Class A of the Order.

Conclusion

15. I conclude that the proposed development would comprise 'permitted development' under Article 3 and Schedule 2, Part 2, Class A of the 2015 Order. As such, express planning permission would not be required for the proposal.
16. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant an LDC in respect of the 'proposed removal of existing, rotten five bar gates and replacement with new solid gates to the entrance of the property' 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.

S A Hanson

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 13 October 2023 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operations to remove the existing rotten five-bar gates and their replacement with new solid gates to the entrance of the property would have constituted permitted development within the terms of Article 3(1) and Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and would not constitute development requiring planning permission.

Signed

S A Hanson
INSPECTOR

Date 12 March 2025

Reference: APP/H1840/X/24/3347473

First Schedule

Proposed removal of existing, rotten five bar gates and replacement with new solid gates to the entrance of the property.

Second Schedule

Land at: The Old Vicarage, Church Road, Crowle, Worcester WR7 4AT

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 12 March 2025

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Scale: Not to scale

