
Appeal Decision

Site visit made on 11 July 2025

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 OCTOBER 2025

Appeal Ref: APP/C2741/X/24/3353168

The Sleeping Bear, 4 Government House Road, YORK, YO30 6LU

- 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 James Cornish against the decision of City of York Council.
 - The application ref 24/00993/CPD, dated 30 May 2024, was refused by notice dated 20 August 2024.
 - 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 for 1 metre tall timber gates running roughly the width of the drive at 3.3 metres.
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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.

Reasons

2. An LDC for proposed development is determined in relation to the development sought by the applicant. In this case the description of the works were solely for operational development, specifically timber gates which are 1 metre in height with a width of 3.3 metres.
3. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 ("the GPDO") provides that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development as long as it complies with the relevant exceptions, limitations and conditions set out in Class A.1. The proposed gate would be adjacent to a highway (in fact across an existing highway) and would not exceed 1 metre in height and so would fall within the necessary parameters.
4. Article 3(6) of the GPDO provides that the permission granted by Schedule 2 does not authorise any development which creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons. However, due to the layout of the spur in the road which goes to the outbuilding, the proposed location of the gate and infrequency of the use of that road by vehicles, the proposed gates could not be said to be likely to cause danger. When the gates are closed there will be no danger to anyone on either side, and as they would open inwards they would not cause an obstruction to the view of those using the road on the wider estate, or any danger overall.
5. The main issue is that, at the date of the making of the LDC application, the gate would be located on adopted highway and would enclose the land behind, including the

appellant's garden at No.4 but also the highway access to the garage/outbuilding which is part of No.5 and adopted.

6. The appellant's intentions seem to be both to stop up the highway to No.5 and enclose the land as his garden. The stopping up would need to be done separately using an appropriate stopping-up power, and any material change of use of the land from highway to domestic garden use would be liable to require planning permission from the local planning authority. These matters would be separate from each other as well as separate to this LDC. It follows that the grant of an LDC for the gates would not protect the appellant from enforcement action were he to undertake other development such as a material change of use of the land without the requisite planning permission.

7. The description of the development in the previous LDC appeal (APP/C2741/X/23/3326860) was for the operational development of the inward opening gates one metre in height *for the purpose of gating a proposed stopped up highway*. In that case the reason for the development, and the associated change of use of the land behind the gate, was clearly part of the application.

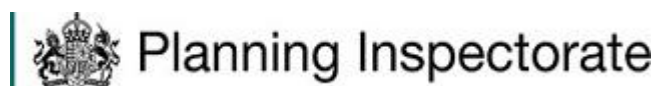
8. The operational development described is permitted under Schedule 2, Part 2 Class A of the GPDO but any material change of use of the land is not. The stopping up of the highway and any subsequent material change of use of the land would need to be assessed and obtained separately under the relevant statutory provisions as the grant of an LDC does not remove the need to comply with any other legal requirements.

Conclusion

9. 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 1 metre tall timber gates running roughly the width of the drive at 3.3 metres is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Zoë Frank's

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 May 2024 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 gates constituted permitted development pursuant to Schedule 2, Part 2, Class A of the GPDO 2015 (as amended).

Signed

Zoë Franks

Inspector

Date: **20 OCTOBER 2025**

Reference: APP/C2741/X/24/3353168

First Schedule

1 metre tall timber gates running roughly the width of the drive at 3.3 metres.

Second Schedule

Land at The Sleeping Bear, 4 Government House Road, YORK, YO30 6LU

IMPORTANT NOTES – SEE OVER

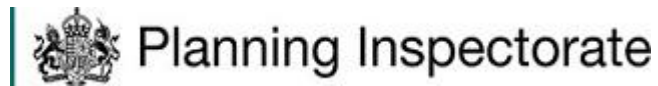
NOTES

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 use /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: **20 OCTOBER 2025**

by Zoë Franks, Solicitor

Land at: The Sleeping Bear, 4 Government House Road, YORK, YO30 6LU

Reference: APP/C2741/X/24/3353168

Scale: Not to Scale

