



Appeal Decision

Site visit made on 30 September 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2025

Appeal Ref: APP/V4250/X/25/3361370

88 Bodmin Road, Tyldesley, Wigan M29 7PF

- 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 Mrs Nazia Ahmed against the decision of Wigan Metropolitan Borough Council.
- The application ref A/24/97931/LUCE, dated 15 October 2024, was refused by notice dated 10 December 2024.
- The application was made under section 191(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 erection of boundary fence.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant suggested that it is necessary for me to enter the site, to gain a better understanding of site layout. However, I am satisfied that I have been able to see the site sufficiently from public land.

Main Issue

3. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

4. An application under section 191(1)(b) of the Act seeks to establish whether any operations which have been carried out in, on, over or under land are lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
5. The Town and Country (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), Schedule 2, Part 2, Class A, permits the erection of a fence up to 1m above ground level where it has been constructed adjacent to a highway used by vehicular traffic and 2m where it is not adjacent to a highway used by vehicular traffic. The main thrust of the appellant's case is that the development would meet with the limitations set out within Schedule 2, Part 2, Class A of the GPDO.

6. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits form no part of the assessment of an application for a LDC under S191 of the Act, which must be considered in the light of the facts and the law.
7. The application comprises fencing of various heights, which has been erected to the front of the property. The Council explains in its officer report that the application has been determined on the basis of the plans submitted to the Council. However, the application was made under section 191 of the Act, which relates to existing development. It is clear from the appellant's application, from the evidence submitted and from my inspection of the site, that the fencing has been erected. I have therefore considered the appeal on the basis of the development which has been erected on site.
8. This appeal will turn on whether the fencing is adjacent to a highway used by vehicular traffic. The Council states that its interpretation of "adjacent" is a distance of 2m from the back edge of the highway. The term 'adjacent to a highway' is not defined in the GPDO. The Oxford English Dictionary defines 'adjacent' as 'next to or very near something else; neighbouring; boarding; contiguous; adjoining.' What constitutes 'adjacent to a highway' is a matter of fact and degree, depending on the circumstances of the case.
9. The appellant has provided me with elevation plans. Fencing which is parallel to the carriageway is denoted by 'Elevation A' and is shown to measure 1m in height. Fencing which is perpendicular to Bodmin Road is denoted by 'Elevation B' and 'Elevation C' and is shown to be of varying heights. Elevation B is shown to comprise a 1m high panel of limited width, two panels of 1.4m in height, a panel of 1.6m in height and a panel of 1.9m in height and Elevation C is shown to comprise a 1m high panel of limited width, three panels of 1.4m, a panel of 1.7m and a panel of 1.9m.
10. However, the plans submitted do not accurately reflect the fencing which has been erected. At the point where the fencing shown in Elevation B meets the footpath which runs along Bodmin Road, the fence panel which has been erected is of a similar height to the adjoining two panels and clearly exceeds 1m in height. It has also been erected atop a concrete kerb. Although the fencing is perpendicular to the carriageway, given the limited distance between the fencing and Bodmin Road, it is, in my view, adjacent to a highway used by vehicular traffic.
11. The fencing which has been erected along Elevation A has been erected atop a concrete kerb and is physically connected to the fencing which has been erected along Elevation C. There is limited distance between the highway and fence panels which clearly exceed 1m in height along Elevation C, and so, despite being perpendicular to the highway, I find, as a matter of fact and degree, fence panels which exceed 1m in height are adjacent to the highway. Moreover, the fencing to elevations A and C is likely to have been erected as a single act of development. The breach of the limits takes the whole structure outside of the permitted development right.
12. The appellant has drawn my attention to appeal reference APP/A1910/C/22/3302653, which concerned an enforcement appeal in Kings Langley. The Inspector in that case considered, under ground (c), whether a fence was adjacent to the highway. In that case, the Inspector commented that the

position established by the courts is that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. A 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.

13. The appellant suggests that the function of the section of fence the Council is concerned with is not to define the boundary of the property from the highway, but rather to demarcate the appeal site and the footpath, which runs perpendicular to the highway. However, I do not interpret the Inspector's comments to mean that fencing which is perpendicular to a highway cannot be considered adjacent to it.
14. The appellant asks that I consider the legislative intent behind restricting the height of fences adjacent to a highway, which it is suggested is to preserve clear sight lines for vehicular and pedestrian safety. The appellant also asserts that the section of fence is not 'functionally adjacent' to the highway because of its perpendicular orientation and setback. However, the legislation does not use the term 'functionally adjacent'. Furthermore, fencing which is perpendicular to a highway can still impede visibility.
15. The fencing which has been erected is, in my judgement, as a matter of fact and degree, adjacent to a highway used by vehicular traffic and exceeds 1m in height. It therefore fails to comply with the limitations set out in the GPDO and is development for which planning permission is required. Consequently, the appeal must fail.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the erection of a boundary fence is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR