



Appeal Decision

Site visit made on 28 January 2026

by **Chris Baxter BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03rd March 2026

Appeal Ref: APP/Q4245/X/24/3357477

16 Broadway, Sale M33 6NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mark Howells against the decision of Trafford Metropolitan Borough Council.
- The application ref 114501/CPL/24, dated 1 October 2024, was refused by notice dated 5 December 2024.
- The application was made under section 192(1)(b) of the Act.
- The development for which a certificate of lawful use or development is sought is replace existing wrought iron fences and gates with 2 metre wooden fences and gate.

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.

Applications for costs

2. An application for costs was made by Mr Mark Howells against Trafford Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue of this appeal is whether the decision of the Council to refuse an LDC was well-founded.

Reasons

4. Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development. Paragraph A.1(a)(ii) of the GPDO further states that development is not permitted by Class A if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed— in any other case, 1 metre above ground level.
5. The Council's reason for refusal indicates that the development would not be permitted as it would not comply with A.1(a) of the GPDO. The Council elaborate further in their statement of case by stating that the proposed gates and fencing parallel with the sites frontage to the east of the driveway are considered to not be adjacent to the highway and are therefore permitted development. The only matter in dispute is whether the proposed fences either side of the driveway complies with A.1(a)(ii) of the GPDO.
6. Neither the GPDO nor the Act defines the meaning of the word "adjacent". The dictionary definition of "adjacent" as meaning being near or close to, next to, or contiguous. "Contiguous" is defined as sharing a boundary, or boundaries that abut each

other physically or continuously. Case law, however, has established that the meaning of “adjacent” in the context of the GPDO does not mean “contiguous” or “abutting”. Therefore, a fence does not have to adjoin a highway to be “adjacent” to it. Each case is a matter of judgement, on a fact and degree basis, as to whether a fence defines the boundary of a property as being away from the highway edge, or whether it is “adjacent” to the highway. The term “highway” is defined in the GPDO as being a public right of way such as a public road, public footpath and bridleway. Further stating that for the purposes of the GPDO it also includes unadopted streets or private ways.

7. The hatched green area, on the plan¹ showing relevant features and distances, is identified by the appellant as being Private Land which is supported somewhat by the map² showing adopted highways. This Private Land is not included in the area identified as adopted highway and the Council consider this Private Land to be in third party ownership. Regardless of its ownership, to all intents and purposes this Private Land is primarily used to access the driveway of the appeal site. The Council consider the land immediately east and west of this Private Land to be highway verge and not used by vehicular traffic. Given the use and relationship of the Private Land with the appeal site and its surroundings, I consider this Private Land to be more akin to an extension of the private driveway and does not fall within the term “highway” as defined by the GPDO.
8. The proposed fencing either side of the driveway connects with the proposed gate as well as the proposed fencing to the east to purposely form a means of enclosure that separates the driveway and garden area from the highway. The proposed fencing, which would abut the existing stone pillars, would be set back approximately six metres from the nearest part of the highway that is used by vehicular traffic. Given this six metre or so set back, I am satisfied that the proposed two metre high fencing would not be adjacent to a highway used by vehicular traffic.
9. I have had regard to the Council’s statement of case including reference to other appeal decisions³. I do not consider the schemes in these other appeals to be directly comparable to the proposed fencing in this appeal, particularly with regards to distance between the fencing and highway used by vehicular traffic.
10. Consequently, I have found, as a matter of fact and degree, that the proposed fencing would be permitted development for the purposes of Class A, Part 2, Schedule 2, Article 3 of the GPDO.

Conclusion

11. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development to replace existing wrought iron fences and gates with 2 metre wooden fences and gate 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 Act.

Chris Baxter

INSPECTOR

¹ Appendix 1 of appellants statement of case

² Appendix 2 of appellants statement of case

³ PINs ref numbers: APP/V2255/X/17/3176191 and APP/A1910/C/22/3302653



Planning Inspectorate

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 1 October 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 2 metre wooden fences and gate is “permitted development” falling within Class A of Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

Chris Baxter

INSPECTOR

Date: 03rd March 2026

Reference: APP/Q4245/X/24/3357477

First Schedule

To replace the existing wrought iron fences and gates with 2 metre wooden fences and gate.

Second Schedule

Land at 16 Broadway, Sale M33 6NR

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 use /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, was /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 use /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 this decision dated: 03rd March 2026

by Chris Baxter BA (Hons) DipTP MRTPI

Land at: 16 Broadway, Sale M33 6NR

Reference: APP/Q4245/X/24/3357477

Scale: Not to Scale

