



Appeal Decision

Site visit made on 22 April 2026

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 April 2026

Appeal Ref: APP/Y0435/X/24/3346450

Kingdom Hall of Jehovahs Witnesses, 2 Hainault Avenue, Giffard Park, Milton Keynes MK14 5PA

- 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 J Miners against the decision of Milton Keynes Council.
- The application ref 24/00535/CLUP, dated 7 March 2024, was refused by notice dated 1 May 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (“the Act”).
- The development for which a certificate of lawful use or development is sought is: Part new, part replacement car park site fence.

Summary of decision: The appeal is allowed in part, and a certificate of lawful use or development is issued for that part in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant advises the application was made prior to works taking place on the basis of proposed works. The application was therefore made under Section 192 of the Act. He also advises that, prior to the determination of the application, the fencing was installed. However, I note that in the north-eastern corner, the alignment of the fencing erected differs to some extent from that shown on the proposed plans. On the ground, there is a point at which the northern fencing erected ‘turns a corner’ and continues along Hainault Avenue, whereas the proposed plans show a gradual curve without such a feature. I have considered the appeal on the basis on which the application was submitted, as shown on the submitted plans.

Main Issue

2. The main issue is whether the Council’s decision was well founded.

Reasons

3. Section 192(1)(b) provides for the making of an application to ascertain whether any operations proposed to be carried out in, on, over or under land would be lawful. The relevant matter is whether, on the date on which the application was made, the development would have been lawful.
4. The erection of fencing, replacement or otherwise, is development for the purposes of the Act, and planning permission is required for it. The appellant’s case is that planning permission would have been granted for it by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”), on the basis that it would have been ‘permitted development’ under Schedule 2, Part 2, Class A (“Part 2 Class A”).

5. The appellant advises that enforcement action was taken after the application was determined, which was after the application was made. But I am required to consider whether the development to which the application relates would have been lawful on the date the application was made (“the relevant date”). Neither party have advised that an enforcement notice had been issued by that date, or that Part 2 Class A permitted development rights had been withdrawn.
6. Part 2 Class A describes the erection and construction of a fence (among other things) as permitted development, subject to specific exclusions. The parties agree that the development is not for a school, and it is not within the curtilage of and does not enclose a listed building. Any fence adjacent to a highway used by vehicular traffic exceeding 1m in height is therefore excluded, as is any fence exceeding 2m in height elsewhere.
7. The term ‘highway’ is not defined in the GPDO, but Section 336 of the 1990 Act describes it as having, “the same meaning as in the Highways Act 1980”. That is, except where the context requires, ‘highway’ means the whole or any part of a highway other than a ferry or waterway. Common law has established that a highway is a defined route over which the public can pass and repass without hindrance or charge.
8. Hainault Avenue is therefore a highway, as is the public footpath running along the northern boundary, but the canal on the western side is not. Only Hainault Avenue is used by vehicular traffic.
9. Part of the development before me is for 1.8m high fencing along the western sides and part of the northern side. Not being adjacent to a highway used by vehicular traffic, these parts of the fencing would meet the requirements of Part 2 Class A.
10. Parts of the lower fencing, at 1.35m high, face a highway used by vehicular traffic, but the northern parts are between around 6m and 20m from the vehicular carriageway. Fencing in this area would also be at the top of a bank. The combination of the distance from the highway and the height of the ground above it mean that this part of the proposed fencing would also meet the requirements of Part 2 Class A.
11. The remaining part of the 1.35m fencing, from around the northern corner of the building to the south-eastern corner of the Land, would run along the frontage of the road. The land on which the fencing would be erected is generally flat ground at a higher level than the road, despite the fall in land levels of the road from south to north. The northern end is therefore at the top of a raised bank but the southern end is flatter and resembles a grass verge associated with the road. Notwithstanding its proposed set-back from the road, and with the loss of the formerly intervening vegetation, the fencing in this area would read as an enclosure adjacent to Hainault Avenue, which is a highway used by vehicular traffic. This part of the fencing would therefore fail to meet the requirements of Part 2 Class A, and is therefore not permitted development.
12. In coming to this view, I note the examples of the applications considered by the Council elsewhere, and at appeal. But none of those cases is directly comparable to the circumstances in this case.
13. Where an application specifies two or more operations, Section 193(4) of the Act makes provision for a LDC to be issued for one or more of them. The application

does not specify which are the 'new' and which are 'replacement' sections of fencing, but the plan does separately specify separate sections of proposed 1.8m and 1.35m fencing respectively.

14. As the entirety of the 1.8m high fencing would have been 'permitted development' on the relevant date, it would therefore have been granted planning permission, and would have been lawful. I shall therefore issue a certificate for that part.
15. Although I have artificially divided the 1.35m high fencing into approximate sections for the purposes of my evaluation, there is no division on the proposed plan. There is also no definitive point at which it can be divided with sufficient precision and certainty to enable me to issue a certificate in relation to specific parts, and not to others.

Conclusion

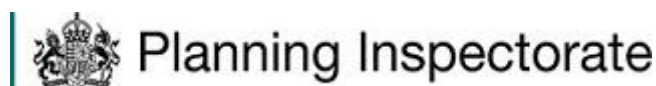
16. For the reasons given above I conclude, on the evidence available, that:
 - (a) the Council's refusal to grant a certificate of lawful use or development in respect of part new, part replacement car park site fence comprising 1.8m weldmesh fencing to the western boundary and part of the northern boundary is not well founded. The appeal should succeed for that part of the development only; and
 - (b) the Council's refusal to grant a certificate of lawful use or development in respect of part new, part replacement car park site fence comprising 1.35m weldmesh fencing to the eastern boundary and part of the northern boundary is well founded, and the appeal for that part of the development should fail. I will exercise the powers transferred to me under section 195(2) and 195(3) of the 1990 Act as amended.

Formal Decision

17. The appeal is dismissed in so far as it relates to part new, part replacement car park site fence comprising 1.35m weldmesh fencing to the eastern boundary and part of the northern boundary. The appeal is allowed in so far as it relates to part new, part replacement car park site fence comprising 1.8m weldmesh fencing to the western boundary and part of the northern boundary. Attached to this decision is a certificate of lawful use or development describing the proposed operations which are found to be lawful.

Peter White

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 7 March 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and indicated by a brown dotted line and as 'Proposed 1.8m weldmesh fence in black' on the plan attached to this certificate, would have been lawful within the meaning of section 192(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It would have been 'permitted development' under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 and planning permission would have been granted by Article 3(1).

Signed

Peter White

Inspector

Date: 24 April 2026

Reference: APP/Y0435/X/24/3346450

First Schedule

Part new, part replacement car park site fence comprising 1.8m weldmesh fencing to the western boundary and part of the northern boundary.

Second Schedule

Kingdom Hall of Jehovahs Witnesses, 2 Hainault Avenue, Giffard Park, Milton Keynes MK14 5PA

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, had the operations described in the First Schedule taken place on the land specified in the Second Schedule on the certified date, they would have been lawful and, thus would not have been 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 have resulted in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 April 2026

by Peter White

Land at: Kingdom Hall of Jehovahs Witnesses, 2 Hainault Avenue, Giffard Park, Milton Keynes
MK14 5PA

Reference: APP/Y0435/X/24/3346450

Scale: Not to Scale

