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## 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: 28 April 2026

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**Appeal Ref: APP/Y0435/C/24/3345154**

**50 Wolverton Road, Haversham, Milton Keynes, MK19 7AA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr & Mrs Terry Castles against an enforcement notice issued by Milton Keynes Council.
- The notice was issued on 2 May 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the constructions of the rear automatic gated access, comprising of two wooden gates, and associated mechanical equipment that is used to open and close the gates ("Unauthorised Operational Development").
- The requirements of the notice are:
  - i. Permanently remove the two automatic wooden gates at the rear of the property and any associated mechanical equipment that is used to open and close the gates.
  - ii. Permanently remove from the site the materials and debris that arise from complying with step 5(i) above.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).

**Summary of decision:** The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

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### Preliminary Matters

1. I am empowered to correct any error or misdescription of the Notice where no injustice would occur to the appellant or the Council. In Section 3, the phrase 'constructions of the rear automatic gated access' is qualified by details of the construction alleged to have occurred. Those details concern the gates only and not the access. The Council have confirmed that the access was not intended to be part of the allegation, only the gates, gate posts and associated mechanical equipment, and that the access was considered separately through the planning application process.
2. However, as the Notice does not require the gate posts to be removed, to include reference to them in the allegation, but not in the requirements, would result in planning permission being treated as having been granted for them if the requirements of the Notice are complied with under Section 173(11) of the Act. On the other hand, to introduce reference to the gate posts in both the allegation and the requirements would require the appellants to remove the posts, which they are not currently required to do. That would result in injustice to the appellants.
3. For clarity, that allegation should therefore be corrected to, "Without planning permission, the construction of automatic wooden gates and associated mechanical equipment". No injustice would occur to either party in doing so, and I will therefore correct the Notice in my formal decision. It is the corrected allegation which is considered below in relation to the grounds of appeal.

4. The appeal form stated that the appeal was made on ground (b), but the appellants then requested that it proceed on grounds (a), (b) and (c). But no fee has been paid for an appeal on ground (a), and the appellants subsequently withdrew their case on that ground.
5. Although the appeal was started on the basis that it would proceed on grounds (b) and (c), the appellants' case is that planning permission is not required for the gates, and that the access was made and has been in use for a number of years. The first is a matter for an appeal on ground (c), but the second relates to matters for appeals on grounds (b) and (d). I have therefore considered parts of the second point as an appeal on ground (d), since the Council have responded to it with evidence, and no injustice would arise to either party were I to do so.

### **The appeal on ground (b)**

6. Appeals on ground (b) are made on the basis that the matters alleged in the Notice have not occurred.
7. The appellants do not deny that gates have been erected or that they are mechanically operated.
8. A Street View image provided by the Council shows that, in May 2019, fencing was in place without the gates. An image for September 2023 shows the gates in place in their current form. Part of the electrical mechanism was also apparent and appeared to be part of that I witnessed at my site visit.
9. On the balance of probabilities, with the evidence before me, the construction of automatic wooden gates and associated mechanical equipment had therefore occurred by the time the Notice was issued.
10. The appeal on ground (b) therefore fails.

### **The appeal on ground (c)**

11. Appeals on ground (c) are made on the basis that the matters (if they occurred) do not constitute a breach of planning control. The appellants' case is that there is no requirement for planning permission for the gates.
12. Section 55 of the Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The construction of the gates, posts and associated equipment are therefore development, and none of the exceptions set out in Section 55 apply. Section 57 of the Act states that planning permission is required for the carrying out of any development of land.
13. The Council have considered whether planning permission has been granted 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").
14. Part 2 Class A states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development subject to specified exceptions. The development does not relate to a school, and it is not within the curtilage of or 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.

15. 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.
16. As the gates 'cut the corner' of the plot, they open partly onto the adjacent access track and partly onto Manor Drive. At the time of my visit the access track displayed signs stating 'Private Road. Access Only.' With the evidence before me the access track is therefore not a highway for the purposes of Part 2 Class A, even though it is used by vehicular traffic.
17. However, Manor Drive is a highway and is also used by vehicular traffic. Despite their diagonal orientation, the gates as a whole are close to the road. They are separated only by a footway and a narrow grass verge, and there is no intervening boundary. They are therefore adjacent to a highway used by vehicular traffic, and as they exceed 1m in height, they are not permitted development under Part 2 Class A. Planning permission was therefore not granted for them.
18. The construction of automatic wooden gates and associated mechanical equipment was development requiring planning permission and it has not been demonstrated that planning permission or a certificate of lawfulness has been granted.
19. The development therefore constitutes a breach of planning control, and the appeal on ground (c) fails.

### **The appeal on ground (d)**

20. Appeals on ground (d) are made on the basis that, on the date the notice was issued, no enforcement action could be taken in respect of the breach of planning control.
21. Section 171B of the Act sets out time limits within which any enforcement action must be taken. Applying transitional provisions<sup>1</sup>, where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
22. To succeed on this ground the appellants would therefore have to show that the works of construction of wooden gate posts, automatic wooden gates and associated mechanical equipment had been substantially completed at least four years prior to the date the Notice was issued. That is, by 2<sup>nd</sup> May 2020.
23. The Council's images show that the development had not occurred in 2019 but had occurred by 2023. The appellants advise they have used the access since June 2021, although that is not necessarily the date the gates were installed. One

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<sup>1</sup> Regulation 5 of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024/452.

of the Council's photographs appears to show the posts, gates and associated equipment having been recently installed (without weathering), but no date is provided for when it was taken.

24. The onus is on the appellant to demonstrate, with evidence, that the development occurred and was substantially complete more than four years before the Notice was issued. With the evidence before me that has not been demonstrated, and on the balance of probabilities it was not. Enforcement action could therefore be taken in respect of the breach of planning control on the date the Notice was issued.
25. The appeal on ground (d) therefore fails.

### **Conclusion**

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

### **Formal Decision**

27. It is directed that the enforcement notice is corrected by:

In Section 3, the deletion of the words:

- "Without planning permission, the constructions of the rear automatic gated access, comprising of two wooden gates, and associated mechanical equipment that is used to open and close the gates ("Unauthorised Operational Development")"

And their substitution with the words:

- "Without planning permission, the construction of automatic wooden gates and associated mechanical equipment".

28. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

*Peter White*

INSPECTOR