



Appeal Decision

Site visit made on 23 May 2006

by **C F Trewick MRICS**

an Inspector appointed by the First Secretary of State

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Date
31 May 2006

Appeal Ref: APP/R1845/X/05/2004931

Land adjacent to 34 Bowpatch Road, Areley Kings, Stourport, Worcs DY13 0ND

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against a refusal to grant a lawful development certificate.
- It is made by Mr & Mrs Payne against the decision of Wyre Forest District Council.
- The application (ref: 05/1101/CERTP) dated 5 October 2005, was refused by notice dated 29 November 2005.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990, as amended.
- The development for which a lawful development certificate is sought is: erection of fencing, as described on plans and a covering letter.

Summary of Decision: The appeal is allowed in respect of the fencing at C-C, and a lawful development certificate is issued in that respect, in the terms set out below in the Formal Decision. The appeal is dismissed in respect of the remainder of the proposal.

My conclusions

1. This piece of land is a part of an estate developed in the 1970s. When the plans for the estate were approved, this land was shown as an 'open green area', to be seeded or turfed. The land has been bought by the appellants whose house immediately adjoins it. The other boundaries of this land are to Wrekin Close and Callow Close, with a much longer frontage to the footpath which connects these 2 cul-de-sacs.
2. The land has been the subject of a previous appeal arising out of an enforcement notice in 2004 relating to fencing that had been erected along these other boundaries (and also a hard-standing formed between the house and Callow Close). The Council's contention was that the fencing (about 2m high) was not 'permitted development', because part of it adjoined a highway, and because the fencing brought about a change of use of the land, from public amenity area to private land attached to a house. Similarly, because the hard-standing was within this public amenity area, it could not be 'permitted development'. The Inspector in that appeal agreed with the Council's contentions regarding the lawfulness of these operations, and dismissed the appeal against the notice (although he did grant permission for the hard-standing).
3. The present application seeks a lawful development certificate in respect of a proposal to erect a 2m fence along the original boundary of No 34 (C-C on the submitted plan), 900mm fencing along the footpath boundary, and then at right angles to meet C-C, and a short section of 900m railings at the head of Callow Close (B-B). On my visit to this area, I saw that fencing work is in progress here, and that some of the work carried out is different from

that described in the application. However, what is before me for decision is what is proposed in this application.

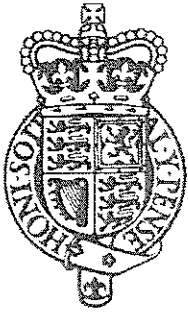
4. There can be no argument that, generally, the erection of fencing not exceeding 2m in height (1m where it is adjacent to a highway) does not require permission, by virtue of Class A in Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. However, in this case, there is an enforcement notice in place in respect of this land. Whether or not that notice has been complied with to the extent that the fencing then existing has been removed, an enforcement notice imposes a continuing obligation which is not discharged by compliance with its requirements. Thus, even if what is proposed is completely new work, it has to be assessed against the wording of the enforcement notice. This is: "without planning permission, the laying of a gravel hard-standing and the erection of a fence with gravel boards, which encloses an area of amenity land and therefore constitutes a change *[of]* use".
5. I deal first with the original boundary of No 34. This was not covered by the enforcement notice, so, on the basis that the proposed fence would not exceed 2m in height, and would be 'permitted development', I consider that a lawful development certificate can be granted for that part of the proposal.
6. As for the other fencing proposed, it is true to say that it would normally not require planning permission. However, most of this fencing is covered by the enforcement notice. This proposed fencing would still enclose the land, and, to my mind, would still result in a change of use. The 900mm fence along the line of the footpath would indeed allow views of the land to be obtained by passers-by, but it would still represent a substantial enclosure which would lead to the land being perceived as private land as opposed to public land. The claim that access to the land will still be available to the public by stepping over a 900mm high fence is implausible. The proposed fence at right angles to the footpath, up to the original boundary of No 34, and even the railings at B-B (although not covered by the notice), would reinforce the enclosure of this former amenity open land. I appreciate that this land has always been privately owned, but it was not divided from the footpath in any way, and apparently the Council has mown the grass over the years. It was clearly regarded by local residents as a public amenity space to which all had unrestricted access. The proposed fencing would completely change that. It would act as a physical and visual barrier, which would have the effect of changing the use of the land to private land associated with No 34. It is argued that the fencing at C-C would separate the land owned by Mr & Mrs Payne into 2 planning units: the house/garden and the amenity land. But this will be private land for the benefit only of No 34, not public amenity land. I have taken into account all other points raised, but, in my view, everything points to a conclusion that the fencing will bring about a material change of use of this land, in conflict with the enforcement notice dated 25 November 2004.
7. Thus, I find that I can issue a lawful development certificate in respect of the fencing at C-C, but not in respect of the remainder of the proposal.

Formal Decision

8. I allow the appeal only in respect of the proposed fencing along the original boundary of No 34 (shown as C-C on the plan accompanying the application), and I attach to this decision a lawful development certificate describing the proposed operation which I consider to be lawful.
9. I dismiss the appeal in respect of the remainder of the proposal.



Inspector



Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 5 October 2005 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Fencing not exceeding 2m in height from ground level in this location would constitute 'permitted development' by virtue of Class A in Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.

Inspector

Date: 31 May 2006

Reference: APP/R1845/X/05/2004931

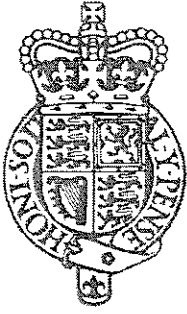


First Schedule

Erection of fencing not exceeding 2m in height from ground level along the boundary of No 34 (C-C on plan)

Second Schedule

Land adjoining 34 Bowpatch Road, Areley Kings, Stourport, Worcs DY13 0ND



Plan

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

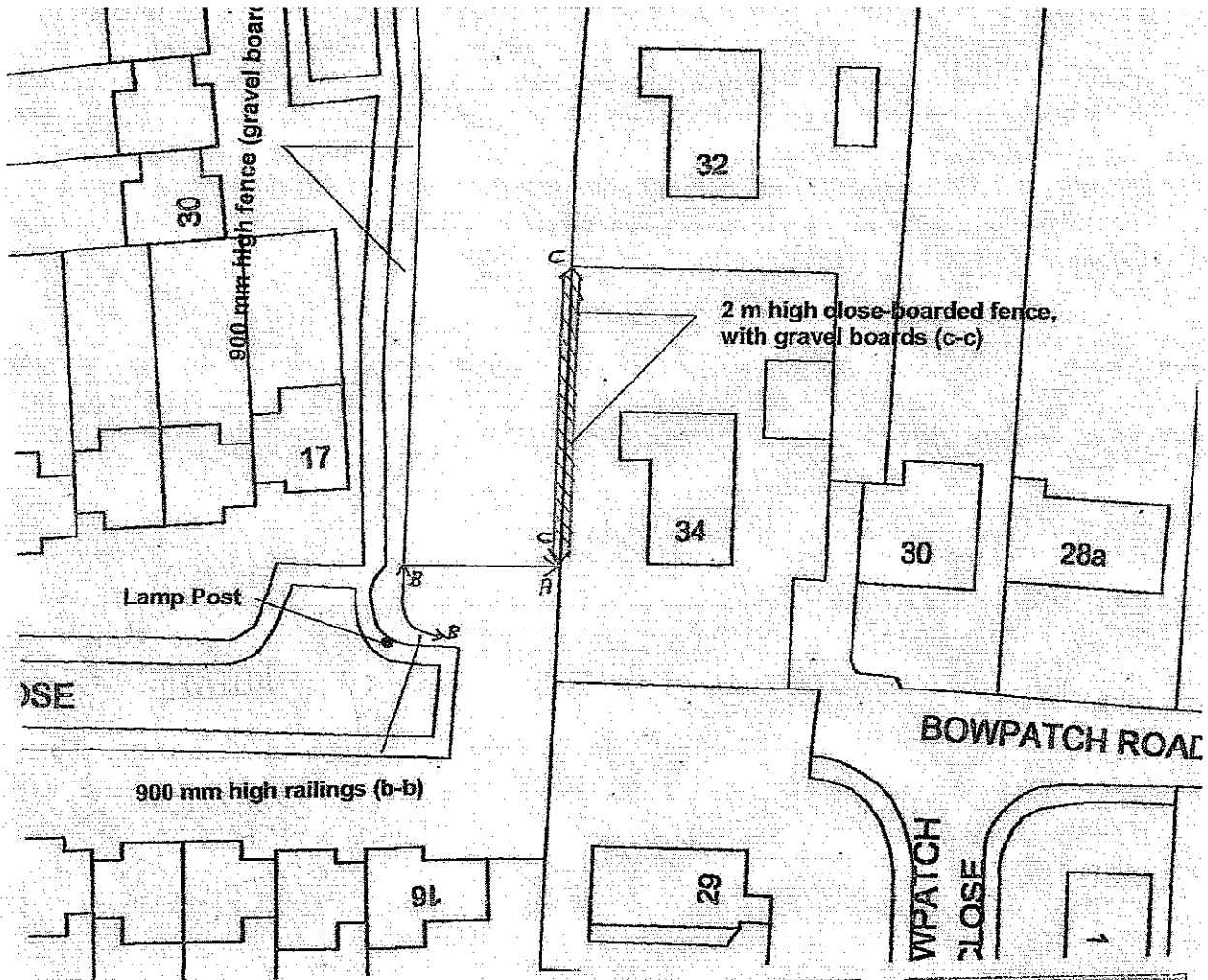
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Scale:



Client:	MRS J PAYNE	Scale:	1:500
Project:	LAND ADJ 34 BOWPATCH ROAD STOURPORT-ON-SEVERN	Date:	OCTOBER 2005
Drawing:	FENCING PLAN	Drwg. No.:	4208/2



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C F Trewick

31 May 2006

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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 result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. 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