

Statement prepared in support of an application for a Certificate of Lawfulness for proposed developments under Section 192 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991)

The application seeks to confirm that the proposed erection of 1.0-metre-high composite fencing and automated gates along the front boundary of the curtilage of the dwelling house at 26 Linnet Hill, Rochdale, OL11 4DA is lawful.

Statement prepared by MRH Planning Services

Date: March 2024

SITE LOCATION



1.0 Introduction and Background

1.1 MRH Planning Services have been commissioned by Mrs Claire Smith to submit to the Local Planning Authority (LPA) a Certificate of Lawfulness of proposed development under the provisions of Section 192 of the Town and Country Planning Act 1990 (the Act) (as amended).

1.2 The applicant is seeking a legal determination from the LPA to confirm that a proposed development to be undertaken at 26 Linnet Hill, Rochdale, OL11 4DA is permitted development, lawful and therefore does not require prior planning permission from the Council. The proposed development includes the following works:

- 1) Erection of 1.0-metre-high composite fencing and automated gates along the front boundary of the curtilage of the dwelling house at 26 Linnet Hill.

1.3 26 Linnet Hill is a large modern detached Class C3 dwellinghouse and it benefits from having an extensive residential curtilage. There are large open garden areas at the front and rear of the house. A surfaced driveway on the site frontage provides off road parking provision for several vehicles at the property and this is accessed directly from the public highway on Linnet Hill. The maps, photograph images and other additional supporting information provided in this Statement clearly identify the exact site location.

1.4 Background to the application submission

1.5 The applicant (Mrs Smith) erected some composite fencing and automated gates along the front boundary of her dwelling house (adjacent to the highway on Linnet Hill) in 2021 without the necessary planning permission, and this boundary treatment remains in place at the present time. Mrs Smith has completely renovated and modernised her dwelling house in recent years, and she did not wish to cause any

upset or annoyance to the neighbours or the amenity of the area when she chose to erect this taller and modern form of boundary treatment. She just wanted to provide something that suitably matched the house, and which provided a reasonable level of security for the family. The failure to obtain the necessary prior planning permission for the development was a genuine mistake.

1.6 The Council's Planning Enforcement Service received a complaint about the fencing and gates that Mrs Smith had erected, and they subsequently investigated the matter and established that a breach of planning control had taken place due to the height and positioning of the fencing and gates. The reason for this is because the boundary treatment is sited adjacent to a highway used by vehicular traffic (back of footway on Linnet Hill) and it measures more than 1 metre in height. The existing fencing and gates range in height between 1.8 - 2.4 metres due to the sloping nature of the land.

1.7 Mrs Smith is a reasonable person, and she has fully engaged with the Council to try and resolve the breach of planning control. She has sought to regularise the situation through the submission of two materially different planning applications (Refs. 21/00951/HOUS and 22/00193/HOUS, but these have unfortunately been unsuccessful. The Council refused retrospective application (Ref. 21/00951/HOUS) for the existing boundary treatment on 31 August 2021, and a subsequent appeal to the Planning Inspectorate was dismissed on 1 February 2022. The alternative scheme proposal (Ref. 22/00193/HOUS) involving the set-back of the fencing and gates into the front garden area along with some screen planters in front was refused on 25 April 2022. The reasons for refusal for both applications are detailed below and on the following page.

21/00951/HOUS - Reason for refusal

Due to its substantial size, materials, design and siting the proposed boundary treatment would appear out of character with the leafy, open character of the

immediate street scene. Therefore, the development would not accord with policies P3 and DM1 of the adopted Rochdale Core Strategy (2016) and the National Planning Policy Framework

22/00193/HOUS - Reason for refusal

By virtue of its size, design, materiality and siting the proposed boundary treatment would appear out of character with the leafy, open character of the immediate street scene. Therefore, the development would fail to accord with policies P3 and DM1 of the adopted Rochdale Core Strategy (2016) and the National Planning Policy Framework.

1.8 Following these decisions and the recent notification from the Council of their intention to commence formal enforcement proceedings to remedy the breach of planning control, the applicant (Mrs Smith) has sought some further professional advice on the lawful alternatives that are available from a planning point of view to secure her property boundary. The enquiries have revealed that a 1.0-metre-high fence and gates may be erected on the boundary of the property utilising householder permitted development rights. This Lawful Development Certificate application has therefore been prepared and is being submitted on this basis.

1.9 This supporting statement is organised into the following sections:

- Section 1: Introduction
- Section 2: Central Government Advice and Legal Background
- Section 3: Site Planning History
- Section 4: The Evidence
- Section 5: Analysis of Evidence
- Section 6: Conclusions

2.0 Central Government Advice and Legal Background

2.1 Section 192 (1) of the 1990 Town and Country Planning Act states that:

If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land is lawful; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

2.2 Section 192 (2) of the 1990 Town and Country Planning Act also states that:

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

2.3 These sections allow persons to apply to the local planning authority (LPA) in writing for formal confirmation that the proposed development which he or she has carried out is lawful. The various procedures in relation to lawful development certificate applications are described in Article 39 of the Town and Country Planning (General Development Procedure) Order 2015.

2.4 When considering the evidence associated with the local development certificate application, the relevant test is “the balance of probability”.

2.5 National Planning Practice Guidance

2.6 In the section on Lawful Development Certificates, Paragraph 005 states that the information in a Lawful Development Certificate application must be sufficient and precise.

2.7 Paragraph 006 states that the applicant is responsible for providing the necessary evidence to support an application. Although the local planning authority is able to canvas other evidence, it must share this with the applicant and provide them with the opportunity to respond. In the case of an existing use, if the local planning authority has no contradictory evidence, there is no good reason to refuse the Lawful Development Certificate as long as the applicant's evidence is sufficiently precise and unambiguous. **In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved**

2.8 Paragraph 009 states that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. **Planning merits are not relevant at any stage in this particular application or appeal process.**

3.0 Site Planning History

3.1 According to the published on-line Rochdale Council Planning records there are five planning applications showing for the site (26 Linnet Hill) from 2015 onwards, as detailed below and on the following page.

22/00701/HOUS - Single storey outbuilding including excavation of land to form sub-zero level – Granted 02/08/2022

22/00193/HOUS - Composite fencing with automated gates to front of dwelling (retrospective application) resubmission of 21/00951/HOUS – Refused 25/04/2022

21/00951/HOUS - Composite fencing with automated gates to front of dwelling (retrospective application) – Refused 31/08/2021 (Appeal Dismissed)

17/00045/AM - Application for minor material amendment to conditions 2 and 3 on planning permission 15/00735/HOUS – retrospective – Deemed Withdrawn

15/00735/HOUS - Proposed two storey and single storey rear extension with balcony including front dormer demolition of existing porch and erection of replacement porch – Granted 30/09/2015

4.0 The Evidence

4.1 The evidence in support of the Certificate of Lawfulness application takes the form of:

1. Plan drawings prepared by MAHE Architecture on behalf of Mrs Smith showing the proposed location and the relevant details of the 1.0-metre-high fencing and gates that she is considering erecting on her land (see Appendix 2)
2. The permitted development rights for this dwelling house (26 Linnet Hill) appear to be intact following a check carried out on the planning permission decision notices for developments that have previously been granted at the property. The decision notices do not appear to contain any conditions removing permitted development rights in respect of the erection of gates, walls, fences, or other means of enclosure.

Therefore, this enables the owner to carry out the erection of a fence and gate within the residential curtilage on the proviso that it meets the permitted development criteria specified in the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Schedule 2 Part 2 (Minor Operations) Class A deals specifically with *'the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.* An extract from the legislation is also provided in Appendix 3.

5.0 Analysis of Evidence

We have assessed the proposed development involving the erection of fencing and gates along the front boundary of the dwelling house (as shown in the drawings prepared by MAHE Architecture) against the GPDO criteria detailed in Schedule 2 Part 2 (Minor Operations) Class A and our explanation why we consider it to be permitted development is detailed on the following page.

5.1 The proposed 1.0-metre-high fencing and gates comply with the permitted development criteria specified in Schedule 2 Part 2 (Minor Operations) Class A.1 (a)(ii) of the GPDO – see extract from relevant legislation detailed below and in Appendix 3.

5.2 Schedule 2 Part 2 (Minor Operations) Class A.1 (a)(ii) of the GPDO clearly states that; Development is not permitted by Class A if –

(a) 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—

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

5.3 The proposed front boundary fencing and gates that are the subject of this application are shown to be sited adjacent to the back of footway outside 26 Linnet Hill (a highway used by vehicular traffic) and they will not exceed 1.0 metre in height above ground level.

6.0 Conclusion

6.1 We consider that the details provided in the submitted plan drawings prepared by MAHE Architecture and the analysis of the evidence in Section 5 of this statement justify that the proposed 1.0 metre high boundary fencing and gates are permitted development under the provisions of Schedule 2 Part 2 (Minor Operations) Class A.1 (a)(ii) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

6.2 We would therefore respectfully request the Council to grant / issue a Certificate of Lawfulness under the provisions of Section 192 of the Town and Country Planning Act 1990 (the Act) (as amended) to confirm this.

List of Appendices

Appendix 1 – Photographs of the site

Appendix 2 - Plan drawings for the proposed development prepared by MAHE Architecture

Appendix 3 - Copy of Relevant Legislation - Schedule 2 Part 2 (Minor Operations) Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

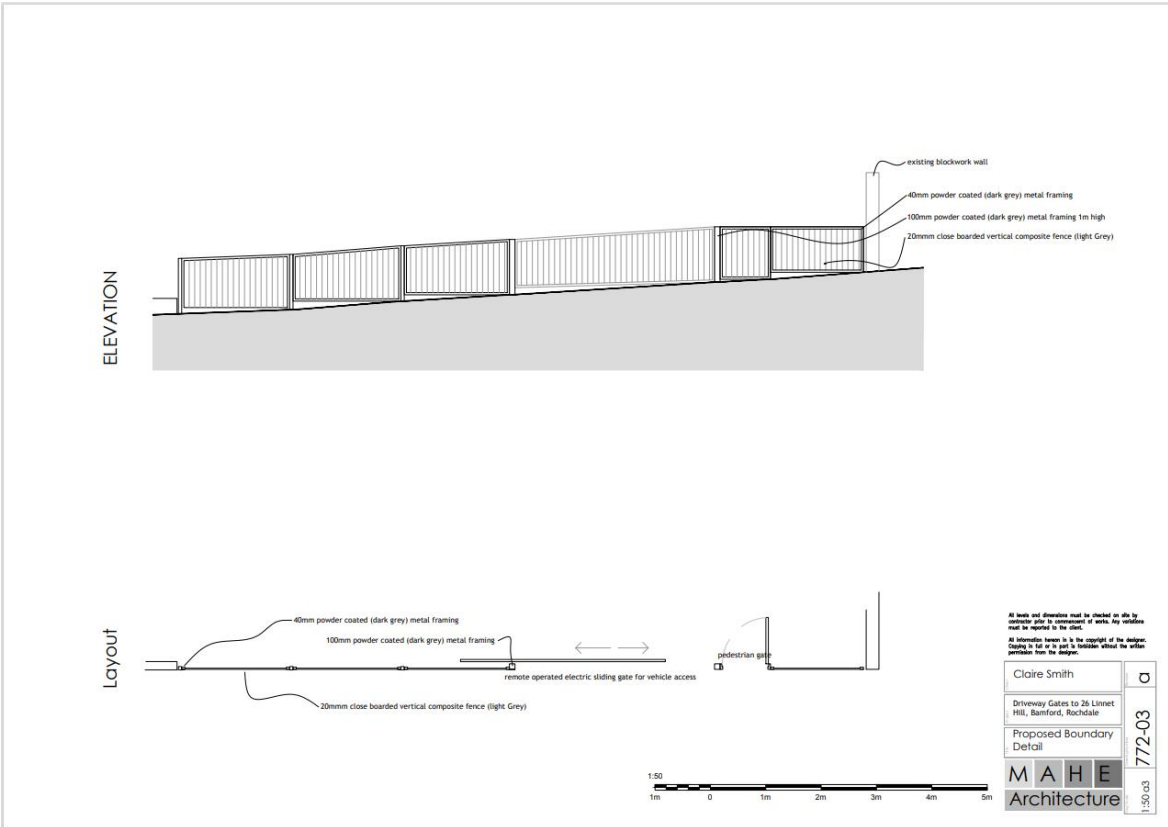
Appendix 1 – Photographs of the site (26 Linnet Hill) – showing the existing 1.8 - 2.4 metre high fencing and gates that are in situ on the front boundary of the property



Appendix 2 - Plan drawings for the proposed development prepared by MAHE Architecture



Site Location Plan



Proposed Boundary Detail



Proposed street scene view

**Appendix 3 – Copy of Relevant Legislation - Schedule 2 Part 2 (Minor Operations)
Class A of the Town and Country Planning (General Permitted Development) (England)
Order 2015 (as amended)**

PART 2
Minor operations

Class A – gates, fences, walls etc

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1 Development is not permitted by Class A if—

- (a) 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—
 - (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;
 - (ii) in any other case, 1 metre above ground level;
- (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;
- (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or
- (d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

Interpretation of Class A

A.2 For the purposes of Class A, "school" includes—

- (a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and
- (b) a building permitted by Class C of Part 4 of this Schedule (temporary buildings and uses) to be used temporarily as a school, from the date the local planning authority is notified as provided in paragraph C.2(b) of Part 4.