

2019/03339/PA – Ladywood Road, Bracebridge Road, Hartopp Road, Wentworth Road and Luttrell Road - Application for a Certificate of Lawfulness for the proposed installation of 8 no. vehicle access control gates

Planning Committee Report Addendum

A letter was received from the applicant on Friday 27th August which sought to respond to and clarify points set out within the Local Planning Authority's Committee Report following its publication. The letter, in summary, covers the following issues, to which the Local Planning Authority respond accordingly.

1. Evidence considered by LPA excludes Legal Counsel opinion of John de Waal QC.

This is not evidence, but an opinion. The opinion cited that the presence of signage was sufficient to conclude that the streets were private and permitted development rights applied. This is considered to have been disproven in the Highways investigation and the Council's legal advice.

2. Legal advice provided to LPA not made available to applicant.

Until the point of the publication of the Committee Report, this was confidential and considered that it would be premature to share this prior to the conclusion of the Highways Investigation, which is ongoing.

3. Submission of information relating to Lichfield DC decision on Certificate of Lawfulness for vehicle gates up to 2m in height across their private roads in the Little Aston Conservation Area not considered by LPA.

The application concerned has been assessed in the context of the site and the evidence available. The outcome of an application for a lawful development in a neighbouring authority would not necessarily mean that the same conclusion would be reached in this application.

4. Historic evidence submitted by the applicant not considered by LPA.

Whilst the applicant sets out that they advised in their cover letter that "the company can evidence roads maintenance expenditure from at least 1988 from audited accounts (although it has been incurred since formation of the Estate at the end of the 19th century)", no evidence (in the form of receipts or invoices) have been supplied by the applicant.

5. Duration of the determination of the application and availability of Highways Report undertaken by Highways Officer.

The determination of this application has been delayed due to restricted access to archive material required to inform the Highways Investigation which has been undertaken by Birmingham City Council Highways Officers during the Covid-19 pandemic. This has included, as set out in the Committee Report, the review of over 100 years of minutes, plans, committee reports and various other evidence, amounting to around 11,000 pages. As set out in the report, the investigation is ongoing however it is believed that the completion of the investigation would be unlikely to present any evidence which would overturn the conclusions reached that the streets are highways and public access through and across them has been dedicated over the course of the existence of the Four Oaks Estate. We maintain that the onus and burden of proof is firmly with the applicant, and the LPA has produced evidence which concludes that, on the balance of probability, the streets are highways and permitted development rights do not apply.