

Birmingham City Council
Planning & Regeneration
Planning Management
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Birmingham
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Our Ref: 18086 LPA6 GC
Planning Portal Ref: 2019/03339/PA

27th August 2021

F.A.O Claudia Clemente, Principal Planning Officer

Dear Sirs,

2019/03339/PA - Certificate of Lawfulness for the proposed installation of gates at Four Oaks, Sutton Coldfield

I write in respect of the above application for a Certificate of Lawfulness, which is being reported to your forthcoming Planning Committee on 2nd September 2021.

I am concerned that the published Committee report for 2019/03339/PA incorrectly states at para. 6.4 that "No commentary has been submitted which pertains to the question of whether access to the public (i.e. those that are not resident on the Estate) has been restricted or the declaration of the streets on the Estate being not highways has been enforced" and at para. 6.5 that "The submitted evidence relies solely on photos and statutory declarations". This is clearly not the case: in addition to the detailed submission including a detailed covering letter, photographs, Statutory Declarations etc, leading QC opinion has been submitted, and whilst this is referenced in the list of documents, it is most surprisingly not referenced in any detail in the commentary.

John de Waal QC legal advice is clear, in addressing the question of whether or not the erection of barriers would fall within the Estate's permitted development rights. In answering this question, his advice sets out the following critical points: -

- If the Estate Roads are 'highways', the specific provisions of the Town and Country Planning (General Permitted Development) (England) Order SI 2015/596 ("the Order") are engaged.
- A 'highway' is a way over which there lies a public right of access. The Estate Roads are private roads owned by the Four Oaks Estate Ltd and not adopted.

- If there is a possibility that dedication of the Roads as a highway may be presumed, namely that if the public have been allowed to drive along the Estate Roads without any 'interruption' by the Estate, they will be deemed to have been dedicated.
- If the Four Oaks Estate Ltd has put up notices at the entrances to the Estate stating that the Roads are private roads, that is inconsistent with dedication. The relevant law is that explained by the House of Lords in *R (Godmanchester Town Council) v Secretary of State for the Environment* [2008] 1 AC 221 at paras. 68 – 69.
- There are notices visible at the entrances to the Estate which state "Four Oaks Estate Private Roads". These notices have been up for some while. There are also notices which state "Private Roads – No Access". These notices have been up since October 2015. In the QC view these notices satisfy the test set out in s.31 of the Highways Act 1980, as explained by the Grantchester decision and the Estate Roads will not be deemed to have been dedicated.
- The QC advice concludes that:

"...the Estate does not need planning permission to install gates across the entrances and exits to the Estate provided they are across the roads themselves (not the footpaths, but that is intended anyway) and not more than 2m above ground level." (Underlining writer's emphasis).

I note that in the Officer's Committee report there is no detailed reference to, or assessment of, the Counsel's opinion obtained by the Applicant. The QC opinion is at odds with your own Legal Team's advice; unfortunately, we have not been provided with a copy of that advice, despite requests.

Similarly, there is no reference in the Committee report to the submission as evidence of the details of the approval by neighbouring Lichfield District Council of a Certificate of Lawfulness for vehicle gates up to 2m in height across their private roads in the Little Aston Conservation Area, adjacent to Four Oaks (LPA ref. 20/00139/CLP refers).

In addition, there is incorrect emphasis applied in the reference in the commentary of the Committee report to the Estate's letter of 28th August 2020 - para 1.5 of the report suggests that the Estate "...did not have any information [records relating to the management or maintenance of the estate streets] dating from prior to 1988"; this is incorrect as the letter actually states "...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)".

I would respectfully request that you update Members of the Planning Committee with these relevant facts in advance of their meeting.

I would also request that you advise Members that this Certificate of Lawfulness application has been with the Council for nearly 2 and a half years and that the Applicant has been very patient during that time, including responding to Officers' requests without

undue delay. However, it was not until yesterday afternoon, 26th August 2021, that we received full details of your Highways colleagues' commentary on the historical records they had sourced. This was a very detailed report amounting to 31 pages. I consider we should have been provided with this lengthy report well in advance, without my needing to solicit it, as it appears your recommendation rests on the contents of that detailed document.

In respect of some of the points raised in the Highways report, the Applicant has the following points to make in the short time that it has been available to them:

- In applying for financial assistance, it is understood that there was no Estate request which ever asked for the roads to be designated as highways or be adopted, as the Committee report suggests.
- The report indicates that the privacy notices were first posted in the 1980s. This is not correct. The Statutory Declaration from the former Secretary of the Estate who took up his role in 1975 confirmed that existing old signs were replaced with new signs. This suggests historic signage existed for a considerable number of years before being replaced.
- The various applications and requests to the Council, e.g. relating to the installation of telegraph lines and statutory undertakers equipment etc. are not an indication of the outcome. Whether statutory undertakers held the view that the streets were highways is irrelevant: what is relevant is whether they are highways for the purposes of the planning regulations.
- The Estate did take additional steps to prevent through traffic by erecting a manned barrier on Wentworth Road in 2017. Birmingham City Council and the Police were informed and raised no objections. Schools and the public were also notified and again no objections were received; this is inconsistent with the Council's current view.

The Applicant therefore maintains the view that the proposed gates are permitted development and urges the Council to reconsider its position and grant the Certificate by agreeing that the evidence provided on the Applicant's behalf is clear and unambiguous, against the partial and ambiguous counter evidence provided, including the "considerable anecdotal evidence" submitted by objectors to the LDC (para. 6.6 of the Committee report).

In conclusion, whilst the Highways report does suggest the public use of the roads; the Applicant's QC advice is clear – the erection of the notices negates the common law rights, and the roads are not highways for the purposes of the regulations. It is therefore considered that the installation of the gates is permitted development by virtue of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This view is supported by the evidence to date and is confirmed by the legal opinion by John de Waal QC.

My Client has been advised by their QC that there are clear grounds upon which to seek a declaration from the Court that the roads have not been dedicated as public highways. However, I hope the Committee will agree that in these circumstances, this would be an unnecessary use of Court time and an avoidable expense for my Client.

Please can you acknowledge receipt of this letter and confirm that it will be made available to the Members of the Planning Committee before its meeting on Thursday 2nd September 2021.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'GC3COL'.

Gail Collins BSc (Hons) Dip TP MRTPI DMS

Director

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