

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	28.01.2022
Planning Development Manager authorisation:	SCE	28.01.2022
Admin checks / despatch completed	CC	31.01.2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	SH	31.01.2022

Application: 19/01173/LUEX **Town / Parish:** Weeley Parish Council

Applicant: Cromwell Estates (UK) Limited

Address: Land at Old Goods Yard Weeley Railway Station Clacton Road

Development: Erection of boundary fences and gates.

1. Town / Parish Council

Mrs Nicola Baker
29.08.2019

Weeley Parish Council is concerned at the accuracy of the red line on the site plan and feels that the erection of these fences and gates has resulted in a restricted access to Weeley Station.

2. Consultation Responses

None received

3. Planning History

19/01173/LUEX	Erection of boundary fences and gates.	Current	
21/01048/DEMCON	Proposed demolition of existing disused train station building	PA not req	14.07.2021
21/02008/DEMCON	Demolition of existing disused station building on platform.	Current	

4. Relevant Policies / Government Guidance

The Town & Country Planning Act 1990; Section 191 (1) (a)

5. Officer Appraisal

The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

The time limits are:

- four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed

- four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken
- 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed

Once these time limits have passed, the development becomes lawful, in terms of planning.

Subsection (1) of section 191 provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes

Applications for Lawful Development Certificates should include the following information:

- whether the application relates to:
 - a use
 - a building operation
 - a condition not complied with
- the date that the use started
- any use class the applicant considers to be applicable
- the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- any other relevant information
- a plan identifying the land
- a certificate as to the applicant's interest (ownership, tenancy etc.) in the land and any interest of any other person

Question 7 of the application form submitted on 2nd August 2019 confirms that the application relates to building operations as to fencing and gates

Question 10 of the application form submitted on 2nd August 2019 confirms that the development began on 11th July 2019

Question 7 of the application form submitted on 2nd August 2019 confirms that the application relates to work which is permitted development pursuant to Class A of Part 2 (Minor Operations) of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2019 as amended as gates and fencing not requiring formal planning permission from the local planning authority. A covering letter is submitted in support

Question 9 of the application form submitted on 28th May 2019 confirms that the grounds for the Lawful Development Certificate are that the building operations are permitted development as set out above.

An application plan identifies the land to which the application relates as land edged red.

Question 5 of the application form submitted on 2nd August 2019 confirms that the applicant's interest in the land is as the owner

It is up to the person applying for a Lawful Development Certificate for to building operations to show the proper evidence. This could include:

Photos

Supporting documents

Plans and drawings with dimensions

Statutory Declarations or Statements of Truth or Affidavits

Third party letters.

Here the supporting evidence consists of:

1. An invoice from a fencing company
2. Three photos of the fence and gates
3. A supporting letter dated 2nd August 2019 from Messrs Holmes and Hills Solicitors

Section 191 of the Town and Country Planning Act 1990 is the relevant section when dealing with issues of Certificates of Lawful Use or Development. Section 191 (1) (a) states that the use will be lawful if no enforcement action or Breach of Condition Notice could be served and, that the use or

development does not constitute a contravention of any of the requirements of any Enforcement Notice then extant. In this case there is a relevant Enforcement Notice in respect of this property.

Up to date guidance on the issue of lawful use certificates is given in the National Planning Practice Guidance section on Lawful Development Certificates which states that the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In general if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

By virtue of section 191(5)(b), a LDC must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", a LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously.

Section 191 (2) of the 1990 Act is relevant to decisions as the building work or other development which is claimed to be lawful must not constitute a contravention of any of the requirements of an enforcement notice then in force. In this case the requirements of an existing enforcement notice are relevant to the decision because of Section 191 (2) of the 1990 Act. Section 191(4) of the 1990 Act provides that local planning authority should issue a Certificate of Lawfulness if they are persuaded of the lawfulness of the building operations or other development comprised in the application but that in other cases they shall refuse the application.

The Enforcement Notice which is relevant to the decision on this application is dated 9 May 2018. It was then appealed to the Planning Inspectorate who dismissed the appeal and upheld the Enforcement Notice by a decision dated 1 May 2018. It is the Council's position that the Notice has not yet been complied with. It runs permanently with the land to which it relates. The land includes the land in this application. The Notice relates to the material change of use of the land from a use for the parking of cars to use for the storage of the vehicles. As part of the material change of use associated construction has taken place of gates and fences partly enclosing the area used for the storage of vehicles as shown in the approximate position marked with a "T" on the plan annexed to the Notice.

One of the requirements of the Notice is the gates and fences shown marked with a "T" on the plan to the Notice be demolished and the resulting debris be removed from the land comprised in the Notice.

Past enforcement action has been taken circa 1995 on adjoining land at the former stations goods yard as to the construction of a building but that would not be relevant to the matters in this application.

The case for the applicant based upon photos and the invoice submitted plus the Solicitors letter is that they have moved the fencing and gates sufficiently to allow the fencing in its new permission to now be "permitted development" under Schedule 2 of the 2015 Order as set out above. However the 2015 Order contains Article 3 (5) which provides that in the case of planning permission granted in relation to an existing building that planning permission does not apply if the building operations involved in the construction of that building are unlawful nor can any planning permission granted in relation to an existing use apply if the use is unlawful.

This issue was considered by the appeal Inspector as to the enforcement appeal in her decision letter of 23 April 2019 in paragraphs 16 to 26. She specifically refers to Article 3 (5) (b) of the 2015

Order in deciding that the then gates and fencing were unlawful in paragraph 26 of her decision. In her view the then gates and fencing were integral to the unlawful change of use. As such the fencing does not benefit from the permitted development rights that might otherwise apply.

The revised date for compliance with all the steps required by the Notice was 23 July 2019 after dismissal of the enforcement appeal. This date has passed without compliance with the Notice.

It is the case that certain areas of fencing within the Enforcement Notice have not been altered in compliance with the Notice despite the matters stated in this application. This relates to areas on the boundary with the former station house. Although the invoice with the application refers to the movement of fencing no block plans or dimensions are submitted to show how and where fencing has been altered. In practice legal advice is that any repositioned fencing is unlawful as it continues to permit the unlawful use to continue rather than being "fall back" permitted development after the original fencing and gates has been altered. Areas of fencing on the boundary a grassed area in front of Weeley Bridge Caravan Park seem little altered but a one metre tall fence has been erected outside the original fence. Legal advice is that this would not form work which is permitted development.

Insofar as it is claimed the entrance gates have been altered they appear to enclose the land in the Notice as before and possibly make use of the same hole in the ground for retaining bolts. The alterations to the fencing are unlawful and are not permitted development due to the provisions of article 3 (5) (b) of the 2015 Order. Based upon the advice in Section 191 (4) of the 1990 Act the application should be refused.

6. Recommendation

Lawful Use/development Refused

7. Reasons for Refusal

The matters concerned in this application are not lawful nor permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended by virtue of a Planning Enforcement Notice dated 9th May 2018 and article 3(5) of the said 2015 Order and by virtue of Section 191 (2) and (4) of the Town and Country Planning Act 1990 this application cannot be granted and a Lawful Development Certificate issued

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	
Weeley Parish Council		