

<u>APPLICATION NO:</u>	25/00178/CLD	<u>CASE OFFICER:</u>	Lee Osborne
<u>WARD:</u>	Halewood North	<u>PARISH:</u>	Halewood Town Council
<u>LOCATION:</u>	Land at Okell Drive, Halewood		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR PROPOSED PERIMETER FENCE		

Site Description

The application relates to an open grassed area, which is roughly triangular and approximately 0.32ha in area. The site is bounded by Okell Drive to the south-east, Church Road to the north and the connecting roundabout between the two at the tip of the triangle of land. The rear garden boundaries of homes in Elworthy Avenue bound the site to the south-west with part of the site in the ownership of the applicant incorporating a grassed area between the side boundary of 40 Elworthy Avenue and Okell Drive.

There are mature trees near the northern boundary of the site with Church Road, and trees relatively close to the roundabout near the south east boundary of the site with Okell Drive. Some of the trees are protected by a Tree Preservation Order.

The area generally has a residential character comprising of two-storey post war housing, although to the north of the site, on the opposite side of Church Road, is agricultural land within the Green Belt. A wide grass verge extends from the site along the north-western side of Okell Drive between the pavement and the boundaries of properties up to Torcross Way. There is also a grass verge between the carriageway and the pavement which extends to Torcross Way. The pavement on this side of Okell Drive stops at Torcross way and beyond there is a grassed area between the carriageway and boundaries of properties.

Proposal

This application is for a Certificate of Lawfulness for the proposed erection of 2m high fencing 2m in from the boundary of the site around the site perimeter. The fencing is not proposed along the boundary with the rear gardens of housing fronting Elworthy Avenue as there is already rear garden fencing to those rear garden boundaries. The fencing would cut in from adjacent the Okell Road boundary of the site to the front part of the side boundary of 40 Elworthy Avenue. One of the trees near the northern boundary of the site would be pavement side of the proposed fencing.

Two types of fencing have been submitted, palisade fencing and solid timber fencing and the application seeks to confirm that either type would be lawful. It should be noted that any type of fencing could be erected if the application is deemed lawful.

Consultations

Halewood Town Council - No Comments received.

Representations

No consultations are carried out with regard this type of application as the application is to determine whether a proposal is lawful and does not require planning permission rather than the merits of a proposal which occurs with a planning application.

Planning History

14/00193/FUL - ERECTION OF 11NO TWO STOREY DWELLINGS TOGETHER WITH ASSOCIATED WORKS. Refused – 08.08.2014.

14/00631/FUL - ERECTION OF 6NO. TWO STOREY DWELLINGS TOGETHER WITH ASSOCIATED ACCESS. Refused – 16.01.2015. Appeal dismissed – 19.08.2015.

20/00360/FUL - ERECTION OF A CHILDRENS DAY NURSERY TOGETHER WITH THE CONSTRUCTION OF A SINGLE VEHICULAR ACCESS/EXIT OFF OKELL DRIVE. Refused: 15.06.2022. Appeal dismissed: 21.11.2022.

24/00643/FUL - ERECTION OF A CHILDRENS DAY NURSERY TOGETHER WITH THE CONSTRUCTION OF A SINGLE VEHICULAR ACCESS/EXIT OFF OKELL DRIVE. Refused: 17.04.2025.

Relevant Policy

As the application is to determine whether the use proposed requires planning permission under planning law planning policies are not relevant in this instance as they are applicable when considering the merits of a planning application.

Article 35 Statement

NA

Assessment

The application is made on the basis that the proposal falls within Schedule 2, Part 2, Class A (Minor Operations) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The issues therefore to be considered in determining the application are considered to be:

1. Whether the proposal constitutes "development".
2. If so, whether the proposal requires planning permission.

Whether the proposal constitutes 'development'

Section 55 (1) of the Act provides 'Subject to the following provisions of this section, in this Act, except where the context otherwise requires. 'development' means the carrying out of building, engineering, mining or other operations in, on or under land, or the making of any material change of use in the use of any buildings or other land'.

The proposed fencing falls within works which constitute development under the Act.

Whether the proposal requires planning permission

If the proposal falls within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO) express planning permission is not required.

PERMITTED DEVELOPMENT

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

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.

There is no definition of "adjacent to a highway used by vehicular traffic" and is a matter of taking consideration of each case. There is no planning definition of highway, however highway usually refers to any way over which the public has a right to pass and repass, either on foot or with vehicles. This can include roads, footpaths, bridleways. The vehicular highway includes the pavement for the vehicular carriageway. The fencing would be 2m in height and at least 2m from a highway used by vehicular traffic (Okell Drive and Church Road together with the adjoining roundabout); along Church Road the fencing would be up to 2.4m from the pavement in parts. The fencing would also be 2m from a footpath providing a pedestrian link between Elsworthy Avenue and Okell Drive which is not used by vehicular traffic. As such it is considered that the proposed fence would not be adjacent a highway used by vehicular traffic.

Other criteria noted in the legislation is:

(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.

The proposed fencing is not maintaining, improving or altering existing fencing and is not development within the curtilage a listed building or to boundary treatment of a listed building. As such these points are not relevant to the assessment of the proposed development and whether it would be lawful.

Conclusion

The proposed works comply with the provisions as laid down within Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended) as the submitted information indicates that the proposed boundary treatments would not exceed 2m in height and would be at least 2m from highways used by vehicular traffic and considered not to be adjacent to such, and would be 2m from a pedestrian footpath. The proposed fencing is therefore considered lawful.

Recommendation

A Certificate of Lawful development is issued to the applicant for the following reason: -

The proposed works of 2m high fencing set in from the boundary of the site adjacent public highway by a minimum of 2m constitute permitted development under the provisions of Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended).

SCHEDULE 1

Date Received	Ref. No	Version	Drawing/Document Title
02/07/2025	004		PROPOSED SITE PLAN
07/04/2025	001	REV A	SITE LOCATION PLAN AND EXISTING SITE PLAN
18/03/2025	DS\IP3003310		COVER SUPPORT LETTER

Signed Case Officer¹: **Lee Osborne**_____

Signed Authorising Officer²: **Jo Sheridan**_____

Date: **11/07/2025**_____

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

