
Appeal Decision

Site visit made on 13 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 December 2016

Appeal Ref: APP/Q3115/X/16/3150593

228 Greys Road, Henley-on-Thames RG9 1QY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is by Mr J Shean against the decision of South Oxfordshire District Council.
 - The application Ref P16/SO559/LDP dated 1 March 2016 was refused by notice dated 29 April 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a front boundary brick wall and the installation of timber entrance gates.
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Decision

1. The appeal is dismissed.

Reasons

2. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered. I accept that although permitted development rights have been withdrawn in relation to the building works, this did not apply to the external works.

3. The erection of a gate, fence, wall, or other enclosure can be permitted development under Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). But the erection of a gate, fence, wall, or other enclosure over 1m in height, which is '*adjacent*' to a highway used by vehicular traffic, is not permitted development and planning permission is required for such a proposal.

4. The question in this case, therefore, revolves around whether or not the proposed boundary wall is considered to be '*adjacent*', or not, to the highway which in this case is Greys Road. The word '*adjacent*' is not defined in the Planning Act and it has been held that legislators were not likely to have intended '*a one size fits all approach*'. The common dictionary definition of '*adjacent*' is '*lying near*' or '*contiguous*', although Case Law shows that '*adjacency*' does not equate to '*contiguous*' or '*abutting*'.

5. Thus the position established by the courts is that the word '*adjacent*' does not necessarily mean that the fence has to be abutting or touching the highway. In the case of *Simmonds v SSE and Rochdale MDC [1981]* it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. A 2m figure has also been referred to in Case Law and I accept

that this particular proposal would slightly exceed that figure. However, the thrust of Case Law and other appeal decisions is that a wall or fence can be set back from a highway, but still be '*adjacent*' to it, as a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so.

6. In this case the proposed wall and gates would form the boundary between the back of the verge at the side of the highway and the appellant's garden area. It is clearly intended that the wall and gates would be a means of enclosure to the appellant's land. Having seen proposed location in conjunction with the highway, it is my view that the wall and gates would, as a matter of fact and degree, be '*adjacent*' to the highway and, despite the intervening Beech hedge, they would be perceived as such.

7. I acknowledge that the proposed hedge would be between the highway and the proposed wall and I have taken into account the other DCS referenced cases referred to on behalf of the appellant (Chelmsford, Daventry, Mole Valley and Tunbridge Wells). However, each case must be assessed on its merits and, as a matter of fact and degree, I consider that a wall and gates of this length construction and height would still be perceived as the main boundary between the highway and the appellant's property.

8. I accept that the proposed hedge will screen the wall to some extent. But I agree with the LPA that it will not act as a sufficient intervening obstruction or feature which would physically obstruct the wall from the highway and particularly where it will remain fully visible from the highway. I conclude, therefore, that the wall and gates (exceeding 1m in height) as proposed would not be lawful within the meaning of Article 3, Schedule 2, Part 2, Class A of the GPDO. I consider that the LPA decision was sound and that planning permission would be required for the proposal. The appeal, therefore fails.

Anthony J Wharton

Inspector