
Appeal Decision

Site visit made on 5 February 2020

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 12th February 2020

Appeal Ref : APP/L2250/X/19/3220694

Land 589 metres west of Caesars Camp Boarding Kennels, Crete Road West, Folkestone, Kent, CT18 7AB

- 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 made by Mr Benjamin Watts against the decision of Folkestone and Hythe District Council.
- The application reference Y18/1139/FH dated 5 September 2018 was refused by notice dated 19 November 2018.
- 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 (proposed) replacement of existing 1m high fencing (on all sides) to 2 m high fencing (on all sides) together with an increase in width of the gated opening from 4m to 7m

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. The appeal site is located within the Kent Downs Area of Outstanding Natural Beauty and Special Landscape Area. It comprises a small plot separated from the wider landscape by fencing. Access is via a metal post and rail gate with a gravel access track from the highway known as Crete Road West. A former Royal Observer Corps monitoring post sits within the site. The access hatch is visible above ground and leads to a main bunker below ground.
4. 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) (England) Order 2015 (as

- amended) (the GPDO). But the erection of a fence 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.
5. The issue in dispute in this appeal is whether or not the proposed fencing is considered to be adjacent to the highway. The word adjacent is not defined in the Planning Act. The common dictionary definition of 'adjacent' is 'lying near' and caselaw indicates that adjacency does not equate to contiguous or abutting. Caselaw and other appeal decisions indicate that a 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 2m fence would be set back from Crete Road West by 1.75m and separated from it by a verge. There is no dispute between the parties that this unclassified road is a highway and I have no reason to conclude otherwise. It is clearly intended that the fence would be a means of enclosure to the Appellant's land. It would form a clear boundary between the back of the verge at the side of the highway and the Appellant's land. I acknowledge that there is a verge between the proposed fencing and the highway but the existence of the verge does not alter my conclusion. The verge does not physically obstruct the appeal site and the proposed fencing would be visible from the highway. Adjacent does not mean abutting and the existence of the verge does not in this case affect the perceived purpose of the fencing to define the boundary of the land from the highway. Having seen the proposed location in conjunction with the highway it is my view that as a matter of fact and degree the proposed fencing in this case would be adjacent to the highway, despite the intervening verge, and would be perceived as such.
 7. I do not doubt the Appellant's need for secure fencing but this does not affect consideration of whether or not it is located adjacent to a highway. The planning merits of the proposal are not relevant to this appeal which concerns the lawfulness of the proposal. I note that the Appellant says that the proposed fencing was suggested by an officer of the Council but I am not bound by any such advice in making this decision.
 8. I conclude for the reasons given above that the proposed 2m high fencing would not be lawful within the meaning of Article 3, Schedule 2, Part 2, Class A of the GPDO.
 9. The proposal also concerns the widening of the gated access. Article 3 Schedule 2 Part 2 Class B provides that the formation, laying out and construction of a means of access to a highway required in connection with development permitted by any other Class in the Schedule (other than Class A of Part 2) is permitted development.
 10. I conclude that as a matter of fact the widening of the access is required in connection with the fencing. As fencing falls within Class A of Part 2 it does not fall within Class B and therefore does not attract permitted development rights.
 11. I have sympathy with the Appellant's desire to increase manoeuvrability for vehicles but this does not affect the lawfulness of the proposal.
 12. I conclude for the reasons given above that the proposed fencing would not be lawful within the meaning of Article 3, Schedule 2, Part 2, Class A of the GPDO

and that the widening of the access would not be lawful within the meaning of Schedule 2, Part 2, Class B of the GPDO.

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of replacement of existing 1m high fencing (on all sides) to 2 m high fencing (on all sides) together with an increase in width of the gated opening from 4m to 7m was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

14. The appeal is dismissed.

S. Prail

Inspector