



Appeal Decision

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2020

Appeal Ref: APP/E2734/X/20/3244664

Wharfedale Grange Farm, Red House to Castle View, Dunkeswick LS17 9LW

- 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 Ms Claire Thomas against the decision of Harrogate Borough Council.
- The application Ref 19/04894/CLOPUD, dated 24 November 2019, was refused by notice dated 10 January 2020.
- 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 works to existing access to include erection of entrance wall and gates.

Summary of Decision: The appeal is allowed and a certificate of lawful development is issued, in the terms set out in the Formal Decision.

Main Issue

1. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Class A of Part 2 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

2. Class A, Part 2 of Schedule 2 of the GPDO allows for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A if it is constructed adjacent to a highway used by vehicular traffic and the height would exceed 1 metre above ground level.
3. The Council contends that the entire development is adjacent to the highway and exceeds 1 metre in height in some parts. The proposal is for the construction of a stone pier and wall along the frontage of the site which are not in excess of 1m in height. The wall then curves around into the site and increases to a height in excess of 1 metre and up to 2 metres in a setback position of 9 metres from the edge of the highway used by vehicular traffic. The proposed metal gates would be situated between two stone piers which are set back approximately 9 metres from the edge of the highway.
4. The case turns on whether that position can be considered adjacent to the highway. In order to be adjacent to the highway a means of enclosure need

not be physically touching it. In these particular circumstances, the evidence before me shows that the significant set-back of the section of wall and associated piers which exceeds 1 metre in height is of sufficient distance to be considered to be in a position which is not adjacent to the highway.

Conclusion

5. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful development in respect of works to the existing access to include erection of entrance wall and gates was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

6. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is considered to be lawful.

A A Phillips

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 24 November 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development constitutes permitted development by virtue of the provisions of Class A of Part 2 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).

Signed

A A Phillips
INSPECTOR

Date: 18 May 2020

Reference: APP/E2734/X/20/3244664

First Schedule

Works to existing access to include erection of entrance wall and gates.

Second Schedule

Land at Wharfedale Grange Farm, Red House to Castle View, Dunkeswick LS17 9LW

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 May 2020

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Not to scale

