
Appeal Decision

Site visit made on 11 March 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal Ref: APP/G5180/X/19/3242129

Penbryn, Chelsfield Lane, Orpington BR6 7RS

- 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 and Mrs Belzak against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/00248/PLUD, dated 16 January 2019, was refused by notice dated 4 April 2019.
 - 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 boundary wall and entrance gates.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the decision to refuse the certificate was well founded.

Reasons

3. The appeal site is situated on the eastern fringe of Orpington. Chelsfield Lane traverses the eastern side of the settlement with the appeal site situated between a row of houses on the west side of the lane. Directly opposite the appeal property is a large field bounded on the lane side by trees. The properties alongside Penbryn are detached and semi-detached with some variety to the treatments of their front boundaries adjoining the highway. Carmel has no form of front enclosure. The property next to it has a dense shrub and tree boundary. The property to the north of Penbryn, 1a Alma Road has a low boarded fence. Alma Road junction adjoins this property and has a wide splayed access with a grass verge and fence. The northern side of the splay has a narrower verge but a higher boarded fence than its southern counterpart fence. This fence on the north side of Alma Road continues up to the next road junction onto Chelsfield Lane.
4. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of 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 (GPDO). 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 - (ii) in any other case , 1 metre above ground level.
5. The matter in contention is whether the proposed boundary walls are 'adjacent' to the highway. The proposed boundary treatment comprising of walls and railings would be 1.8m in height and set-back some 2 - 2.4m from the highway. The gated railings and piers would be a similar height but set-back some 5m from the highway. There is no dispute that the proposed boundary treatment would form a means of enclosure to the property and the highway.
 6. There is no definition of 'adjacent' within the Planning Act. It has been established by the courts that 'adjacent' does not necessarily mean that the fence must 'abut' or actually 'touch' the highway. The common dictionary definition is 'lying near' or 'adjoining'. A means of enclosure can be set-back from a highway, but still be 'adjacent' to it. It is therefore a matter of fact and degree pertaining to the circumstances and facts of the case.
 7. The frontage to the highway along this row of houses is generally defined by a means of enclosure. Carmel the next-door property to the appeal site has no formal enclosure and its front lawn extends to the highway. The access drive to Carmel is positioned alongside the existing drive to Penbryn such that where both driveways meet the highway, they form a combined splay. The proposed wall and gates for Penbryn would form the boundary between the verge at the side of the highway and the property's garden area. The verge by the side of the highway would be the only intervening physical feature between the proposed wall and the highway, but it would not serve to obstruct the view of the proposed wall from the highway. The degree of set-back would not be significant for this length and height of wall and railings, and as a matter of fact and degree, it would be close enough to Chelsfield Lane to be regarded as 'adjacent' to the highway.
 8. The appellant refers to a comparable case at 48 Bromley Common where the separation distance of the development from the highway was 2m as in the case in this appeal. However, I view there are material differences in the context of that development being built-up with a defined alignment of road and pavement to that of the appeal site. I have also taken into account the suggestion that additional landscaping may assist in providing a suitable intervening feature between the proposed wall/railings and the highway. However, I am not persuaded that this would act as a sufficient intervening physical obstruction in this case given the development's height and length.
 9. I have taken into account other appeal decisions (Maidenhead and Henley-on-Thames). However, I have determined this appeal on its own particular facts taking into account the site's context and layout and the relationship of the appeal property to the highway.
 10. I conclude on the evidence now available 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 decision to refuse the certificate was well founded. Planning permission would be required for the proposal and the appeal therefore fails.

Iwan Lloyd INSPECTOR