



Appeal Decision

Site visit made on 30 June 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Appeal Ref: APP/X0415/X/19/3238812

26 Blackhorse Close, Amersham, Bucks HP6 6JE

- 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 Mrs Kiran Somasunder against the decision of Chiltern District Council.
 - The application Ref: PL/19/1365/SA, dated 19 April 2019, was refused by notice dated 9 July 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 for proposed front boundary wall and gates.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue is whether the proposed front boundary wall and gates would have been lawful at the date on which the application was made. In an appeal such as this the planning merits of the proposed development do not fall to be considered.

Reasons

3. The appeal site is on the west side of Blackhorse Close. There is a pedestrian path leading to some houses to the northwest running alongside the northern boundary. The northern flank boundary has a timber fence about 1.8m tall extending to the back of the footway. The front boundary of No 26 is demarcated by a tall hedge.
4. The proposal as submitted to the Council was for a side boundary wall to the southern flank boundary with a maximum height of 2m dropping down to a 1m high wall towards the front of the site, with a 1m high wall extending along the frontage with double gates set back and supported on 1m high pillars adjacent to the northern flank boundary. The gates would be metal and black painted. The frontage wall would return along the northern boundary to the pillar supporting one of the gates.
5. Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits the

- erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure provided it accords with the limitations and exceptions in A.1. The Council does not dispute that the proposal accords with the limitations and exceptions in A.1.
6. However, the Council does consider the proposal is contrary to Article 3 (6) of the GPDO. Article 3 (6) of the provides that permission granted by Schedule 2 does not authorise development which creates an obstruction to the view of a person using a highway used by vehicular traffic so as to be likely to cause a danger to such persons.
 7. The dropped kerb to the vehicle access to No 26 crosses the footway and the footway is therefore part of a highway used by vehicular traffic. Article 3 (6) is therefore relevant to the erection of the boundary wall, railings and gates and I will assess the proposal on that basis. Vehicles would either drive on to the drive in forward gear and reverse out onto the road or they would reverse into the drive and drive out in forward gear. Vehicles are not able to turn around on the driveway. If the gates were closed a vehicle would have to wait on the carriageway or across the footpath to allow gates to be opened before driving onto the frontage of No 26.
 8. Manual for Streets 2 (date September 2020) (MfS) states that 'emerging drivers will have to take account of people on the footway. The absence of wide visibility splays at minor accesses will encourage drivers to emerge more cautiously – similarly to how vehicles pull out when visibility along the carriageway is restricted'¹. In considering whether this is appropriate in any given situation it advises that the frequency of vehicle movements; amount of pedestrian activity and the width of the footway should be considered.
 9. Although it is likely that pedestrian traffic would not be high along the frontage footway, the proposal would still result in an obstruction to visibility for those driving out of No 26. I also note that while the address of the appeal property is Blackhorse Close, which is a cul-de-sac, the section of road used to access the appeal property is a through road so traffic may not always be light or that slow moving. The property opposite has a Plantation Road address. While the level of activity on the highway may not be many in terms of numbers this does not detract from the lack of visibility created by the proposal at the junction of the drive and the highway.
 10. The proposed boundary treatment on the frontage, the gates and the returns to support the gates would be 1m high would, in my view, create an obstruction to visibility when a vehicle exited the driveway either reversing out or driving out in forward gear. Such restricted views would result in an unacceptable hazard to all users of the highway, but particularly pedestrians. As such, due to the provisions of Article 3 (6) of the GPDO, the construction of the boundary walls and gates would not be permitted development.

Other matters

11. The appellant refers to boundary treatment at 128 Plantation Road, which is opposite the appeal site. I am not clear whether there was an LDC issued in relation to that development or whether planning permission was granted or whether it was erected with neither. Therefore, while I am aware of it, I have

¹ Paragraph 10.6.1 of MfS

determined the appeal on the basis of the development and facts for No 26. In an LDC appeal planning considerations are not relevant.

12. I noted at my site visit that the existing flank boundary fence and the front boundary hedge currently restrict visibility at the junction of the access and the footway. The existing visibility at the access onto the highway is capable of being a material consideration in determining a planning application. However, this appeal is in relation to an LDC and I have concluded that the proposed development would create an obstruction to the view of persons using the footway so as to be likely to cause a danger to those individuals and as such it is contrary to Article 3 (6) of the GPDO and is not permitted development.
13. I note comments from a neighbour in relation to their concerns over the effect of the proposal on their living conditions. Any application for an LDC is seeking to ask a question, namely whether a particular use or development, as described in the application, is lawful. In an appeal such as this, the planning merits of the proposed development do not fall to be considered.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed front boundary wall and gates 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.

Hilda Higenbottam

Inspector