
Appeal Decision

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

Appeal Ref: APP/P0119/X/20/3261782

Chelwood, Vattingstone Lane, Alveston, Bristol BS35 3JT

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs S Riddiford against South Gloucestershire Council.
 - The application (Ref. P20/11073/CLP) is dated 23 June 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 described as: *Proposed dwarf wall to 1m high - existing unauthorised wall within clients' curtilage to be reduced in height and capped to below 1m in height. Proposed 1.99m high wall set behind the front 1m wall - new wall to be constructed and capped under 2m in height. Proposed sun wall - wall to be under 2m in height and comply with PART 2 Class A – gates, fences, walls etc of GDPO (sic) 2015. Proposed loggia - to comply with class E of GDPO 2015 (sic).*
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Decision

1. The appeal is dismissed insofar as it relates to the proposed dwarf wall to 1m high; the proposed 1.99m high wall; and the proposed loggia.
2. The appeal is allowed insofar as it relates to the proposed sun wall, and I attach to this decision a certificate of lawful use or development describing the proposed operations which I consider to be lawful.

Preliminary matters

3. The Council has not given notice to the appellant of its decision on the LDC application within the prescribed period. The appeal is therefore made under section 195(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
4. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority (the LPA) is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
5. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

6. Planning Practice Guidance is clear that the applicant (or in this case the appellant) is responsible for providing sufficient information to support an LDC application¹.
7. The Council make reference to the gates on drawing 02-07 Revision A (02-07) but no further details are provided to allow for proper consideration of whether the gates would be permitted development (PD) by virtue of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). However, the description of the proposed development makes no reference to the gates and I note the plans suggest that the design is to be agreed. Consequently, I do not consider this element forms part of the LDC application.

Main Issue

8. It is clear from the evidence provided within the Council's appeal statement that had they made a decision on the application it would have been a split decision. The Council took the view that the sun wall as described would be lawful whilst the remaining proposals would require express planning permission. However, since the Council has not determined the application, the appeal is against its deemed refusal, hence the main issue is whether that deemed refusal would have been well founded.

Reasons

9. The property is subject to an enforcement notice which was issued on 26 May 2020. The breach of planning control alleged in the notice is: "The erection of walls, gates and fencing in excess of 1 metre in height without planning permission, in the approximate location marked blue on the attached plan".
10. The enforcement notice was subject to a linked appeal² which was decided on 15 December 2020. The notice was upheld and required, within 3 months of the appeal decision, the following: (a) Remove all sections of wall, fencing and gates; and their constituent materials from the land.

Proposed dwarf wall to 1m high - existing unauthorised wall within clients' curtilage to be reduced in height and capped to below 1m in height

11. The Council is correct in its view that because the existing wall directly fronting the highway is subject to an enforcement notice which requires its demolition, a certificate of lawfulness is prevented from being issued for the reduction in height of the existing boundary wall. I note that the appeal against the failure of the Council to issue its decision regarding the LDC was lodged prior to the appeal decision for the enforcement notice. Nevertheless, the description within the LDC application for the "proposed dwarf wall" informs the decision maker that the intention is for the "existing wall to be reduced in height to below 1m".
12. The appellant, in a letter dated 11 January 2021 to the Planning Inspectorate, provides that further to a conversation with the LPA on 4 January 2021, it was confirmed that the boundary wall shown on drawing SK-32 Revision A (SK-32) would be a completely new wall of no more than 1m in height and that the wall would not be connected to any other structure. I acknowledge the appellant's reason for the amendment to the proposal following the enforcement notice

¹ Lawful development certificates, paragraph: 006 Reference ID: 17c-006-20140306

² APP/P0119/C/20/3255709 and APP/P0119/C/20/3255716

appeal decision. However, the appeal against the Council's failure to determine the LDC was already progressing and beyond the point where amendments could be made to the proposal.

13. The proposal for the dwarf wall involves development to which the enforcement notice relates. Section 191(2)(b) of the 1990 Act states that for the purposes of this Act, uses and operations are lawful at any time if they do not constitute a contravention of any of the requirements of any enforcement notice then in force. Consequently, this element of the LDC application would not be lawful.

Proposed 1.99m high wall set behind the front 1m wall - new wall to be constructed and capped under 2m in height

14. Development is not permitted by Class A1(a) of Part 2 of the GPDO if the height of any gate, fence, wall or means of enclosure adjacent to a highway used by vehicular traffic would exceed 1m above ground level. The proposed 1.99m boundary wall would be set back from the highway boundary with soft landscaping in front.
15. The question is whether the height of the wall in this position exceeds the GPDO limitations. Put simply, would the proposed 1.99m wall be adjacent to the highway? The term 'adjacent' is not defined in statute or case law in numerical terms for the purposes of applying Class A, its interpretation is a matter of fact and degree and requires a judgment to be made in each individual case. The wall would be set back by approximately 4m from the metalled part of the highway for most of its length with an intervening grass verge, part of which forms highway land. I consider, as a matter of fact and degree, that the proposed wall would be adjacent to a highway used by vehicular traffic. By virtue of its height, it does not therefore benefit from GPDO permitted development rights due to the Class A1(a) limitation.
16. Notwithstanding the considered position regarding the "dwarf wall", the appellant argues if the 1.99m wall would be behind a lower wall, it would not be adjacent to the highway and therefore its height need not be limited to 1m above ground level. Even if this were the case and a replacement lower wall was built in the position as shown on 02-07, with soft landscaping as an intervening barrier between the walls, it is my view that the proposed 1.99m wall would remain to be considered as being positioned adjacent to the highway.
17. Therefore, the proposed development would not benefit from deemed planning permission pursuant to Class A of Part 2 of Schedule 2 to the GPDO. Express planning permission would be required.

Proposed sun wall - wall to be under 2m in height and comply with Part 2 Class A – gates, fences, walls etc of GDPO (sic) 2015

18. The council takes the view that the proposed sun wall would not require planning permission. Drawing 02-07 shows the position of the proposed sun wall to the north of the house and describes the proposal on the application form "to be under 2m in height and comply with Part 2 Class A – gates, fences, walls etc of GDPO (sic) 2015". However, Part 2 Class A is solely concerned with means of enclosure, and based on the limited information before me, it seems that the proposed sun wall would not form an enclosure but rather a building. For the purposes of interpretation of the GPDO, section 1(2) defines "building"

as including any structure or erection. It includes any part of a building, but excludes gates, fences walls and other means of enclosure insofar as they are development within the curtilage of a dwellinghouse. Consequently, the sun wall would stand to be considered under the provisions of Part 1, Class E³ of the GPDO rather than Part 2, Class A.

19. Notwithstanding the reference to Part 2, Class A within the description for this element of the proposal, I am of the view that I have been provided with details on drawing 02-07 to show the position of the sun wall and I have no reason to doubt that it would be for a purpose incidental to the enjoyment of the dwellinghouse. Furthermore, the height of the structure is stated as being no more than 2m in height. Consequently, I consider that the proposed sun wall would be PD when considered under the provisions of Part 1, Class E.

Proposed loggia - to comply with class E of GPDO (sic) 2015

20. Drawing 02-07 shows the position of the proposed loggia on the site plan. Unfortunately, no further details have been provided within the application to enable me to confidently determine that what is proposed would be PD. An LDC application needs to describe the proposal with sufficient clarity and precision for the decision maker to understand exactly what is involved⁴. Without such information, I am unable to determine whether the proposed development would be lawful.

Conclusion

21. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC in respect of the proposed dwarf wall to 1m high, the proposed 1.99m high wall and the loggia was well-founded and that the appeal should fail in that respect. However, I find that the Council's deemed refusal to grant an LDC in respect of the sun wall was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR

³ Buildings etc incidental to the enjoyment of a dwellinghouse

⁴ NPPG Paragraph: 005 Reference ID: 17c-005-20140306

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 23 June 2020 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, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The available evidence shows that, on the balance of probability, the proposed sun wall described in the First Schedule and shown on the drawing titled: Proposed Site Plan Drawing number 02-07 Revision A dated 22.06.20 would be within the terms of Article 3 and Schedule 2, Part 2 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S A Hanson
Inspector

Date:

Reference: APP/P0119/X/20/3261782

First Schedule

Proposed sun wall under 2m in height

Second Schedule

Land at Chelwood, Vattingstone Lane, Alveston, Bristol BS35 3JT

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in my decision dated:

by S A Hanson BA(Hons) BTP MRTPI

Land at: Chelwood, Vattingstone Lane, Alveston, Bristol BS35 3JT

Reference: APP/P0119/X/20/3261782

Scale: Not to scale

