
Appeal Decision

Site visit made on 13 April 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 5 May 2021

Appeal Ref: APP/C3620/X/20/3260080

The Drive, Tyrrells Wood, Headley, Leatherhead KT22 8QP

- 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 Ian Sims of Tyrrells Wood Estate Association against the decision of Mole Valley District Council.
 - The application Ref MO/2020/0234/PCL, dated 3 February 2020, was refused by notice dated 31 March 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 the erection of a hand operated wooden gate across the metalled surface of The Drive, circa 65-70 metres from the junction of The Drive and Headley Road. The gate (including gateposts) will not exceed 2 metres in height and will be approximately 5 metres in width (sufficient to span the metalled surface of The Drive with gateposts either side of the verge).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Application for costs

2. An application for costs was made by Tyrrells Wood Estate Association against Mole Valley District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. I have taken the description of the proposed development from the application form but have removed superfluous wording.

Reasons

4. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the application, be lawful. The planning merits of the case are not relevant to the legal tests and therefore I cannot have regard to the concerns raised by third

- parties. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.
5. The decision turns on whether The Drive is a highway used by vehicular traffic, for the purposes of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
 6. Under Part 2 Class A, the erection of a gate up to 2 metres in height is permitted development if it is not adjacent to a highway used by vehicular traffic. There is no specific statutory definition of highway for Part 2 of the GPDO. Section 336(1) of the Town and Country Planning Act 1990 provides that, for the purposes of that Act, "highway" has the same meaning as in the Highways Act 1980. Section 328 of the 1980 Act provides that, for the purposes of that Act, "highway" means the whole or any part of a highway other than a ferry or waterway.
 7. It has been established by common law that a highway is defined as a route over which the public can pass and repass without hindrance or charge. The use must be 'as of right', meaning that it must not be on sufferance or by licence.
 8. In this case, The Drive is a private road, which leads to a number of individual houses and a golf course with a clubhouse. At its junction with Headley Road near the A24, it is sign posted as a private 'no through' road. It re-joins Headley Road to the east, but towards its eastern end there is a gate which is able to be closed across the road, thereby preventing its use as a through-road for vehicles. The gate was closed and locked at the time of my site visit. I appreciate that this is only a snapshot in time and it may be open at other times. Nonetheless, when closed the gate prevents the use of the road by the public as a cut-through to another public highway. While part of The Drive is signposted as a public bridleway, I have seen no evidence that this permits its use by the public for vehicular traffic.
 9. The Drive gives access to the Tyrrells Wood Golf Club. The appellant explains that the Golf Club is not akin to a public recreation ground or public car park. It does not hold a public licence, and only members and their invited guests can drink in the clubhouse, which is not open to the public at large. Any attendees at events are there only by invitation rather than through the exercising of a public right. It is open to fee paying visiting golfers. This leads me to conclude that it is not a facility that the wider public has a right to visit.
 10. I am aware that planning permission¹ was previously granted for the gate at the other end of The Drive, and a planning application has been refused for a gate in the location of the appeal proposal². As these were applications for planning permission rather than a lawful development certificate, they do not purport to make a determination as to whether the gate benefitted from permitted development rights.
 11. On the basis of the evidence before me, I conclude that the public does not have an unhindered right to use The Drive, and therefore it is not a highway used by vehicular traffic for the purposes of Schedule 2 Part 2 Class A of the

¹ Ref MO/2016/0351/PLA

² Ref MO/2019/0907/PLA

GPDO. Planning permission is therefore not required to erect the proposed gate.

12. 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 erection of a hand operated wooden gate across the metalled surface of The Drive, circa 65-70 metres from the junction of The Drive and Headley Road, the gate (including gateposts) will not exceed 2 metres in height and will be approximately 5 metres in width (sufficient to span the metalled surface of The Drive with gateposts either side of the verge), was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

N Thomas

INSPECTOR

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 3 February 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operation is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas

Inspector

Date: 5 May 2021

Reference: APP/C3620/X/20/3260080

First Schedule

The erection of a hand operated wooden gate across the metalled surface of The Drive, circa 65-70 metres from the junction of The Drive and Headley Road. The gate (including gateposts) will not exceed 2 metres in height and will be approximately 5 metres in width (sufficient to span the metalled surface of The Drive with gateposts either side of the verge).

Second Schedule

Land at The Drive, Tyrrells Wood, Headley, Leatherhead KT22 8QP

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, was 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 the Lawful Development Certificate dated: 5 May 2021

by **N Thomas MA MRTPI**

Land at: The Drive, Tyrrells Wood, Headley, Leatherhead KT22 8QP

Reference: APP/C3620/X/20/3260080

Scale: NTS

The Cottage, The Drive, Leatherhead, Surrey, KT22 8QH

