
Appeal Decision

Site visit made on 13 April 2021

by **N Thomas MA MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 6 May 2021

Appeal Ref: APP/M3645/X/20/3261543

Land to the north of No 35 Chalkpit Lane, Oxted RH8 0NF

- 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 Oxted Land Company Ltd against the decision of Tandridge District Council.
 - The application Ref TA/2020/1371, dated 3 August 2020, was refused by notice dated 28 September 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 hoardings not exceeding 2 metres in height above ground level.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Oxted Land Company Ltd against Tandridge District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Site hoardings were erected across the frontage of the site to a height of 2.6 metres, as shown on photographs provided with the appeal. Planning permission for the hoardings was refused by the Council in July 2019¹. An enforcement notice² was issued and a subsequent appeal was dismissed and the notice upheld in June 2020. The enforcement notice requires the removal of the hoardings with a period of compliance of three months.
4. The application has been made for a proposed development under section 192 of the 1990 Act. It is stated on the application form that at the time of application, the development had commenced. Furthermore, the appellant has confirmed³ that at the time of the application being made the hoardings had already been reduced in height from 2.6 metres to 2 metres. As the development had already been carried out when the application was made, it is not the case that the appellant is seeking a certificate for proposed new hoardings, but for a determination as to whether the existing hoardings at the

¹ Ref TA/2019/847

² APP/M3645/C/19/3240465

³ Email dated 20 October 2020

reduced height are lawful. In effect it therefore falls to be considered under Section 191 of the Act. It would not cause injustice to consider it under Section 191 as the hoardings are referred to in the present tense in the evidence, including in the Council's decision notice.

Reasons

5. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the application, be lawful. 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.
6. The appellant's case is that the hoardings are permitted development because they are not adjacent to a highway, do not exceed 2 metres in height, and therefore comply with the limitations of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
7. However, in this case, the hoardings exceeded 2 metres when erected. Case law has established that permitted development (PD) rights only apply when the development fully complies with the limitations set out in the Order. If any limitation is exceeded, the whole of the development is unlawful, not just the element in excess of PD rights. PD rights cannot be claimed retrospectively by the removal of an element in order to return the residual development to the permitted tolerance. Furthermore, the hoardings are subject to an upheld enforcement notice that is in force and has not been complied with.
8. Therefore, regardless of whether the hoardings, as they existed when the application was made, are adjacent to a highway, they are not PD as the work involves the removal of an element of an unlawful development and cannot now comply with PD limitations. Planning permission is therefore required for the hoardings.
9. Although for a different reason to that given by the Council, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of hoardings not exceeding 2 metres in height above ground level 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.

N Thomas

INSPECTOR