



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2021

Appeal Ref: APP/Z5630/X/20/3256748

33 Grove Road, Kingston Upon Thames KT1 2ST

- 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 Dr Amir Zal against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 20/01194/CPU, dated 27 May 2020, was refused by notice dated 17 July 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 installation of new fence and steel gate door.
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Decision

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

Procedural Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted. Both the appellant and the Council were contacted and given the opportunity to comment.
3. The development for which the LDC is sought was described on the application form as "to fix a new fence and steel gate door". The Council subsequently described the development as set out in the bullet point above. I have used the Council's description because it more accurately reflects the proposal. No injustice would be caused by my course of action.
4. An LDC under s192 of the 1990 Act is not equivalent, in law, to a planning permission. Therefore, the appellant's submissions relating to potential impacts on the character and appearance of the area, light, privacy, security and access for maintenance of neighbouring properties do not fall to be considered. The decision will be based strictly upon the facts of the case and relevant planning law.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

6. The appeal property is a detached dwellinghouse which is set further into the site than neighbouring properties. The house is accessed via a long driveway off the highway between the residential properties of Nos 33 and 35 Grove Lane. Properties along this stretch of the lane are set back from the road beyond front gardens and a pavement.
7. The proposal is to erect a fence and steel gate door across the driveway in line with the front building line of No 31. The submitted plans show the overall height of the fence would be 2 metres and the height of the steel gate door would be 1.8 metres.
8. Schedule 2, Class A, Part 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 subject to certain limitations. Paragraph A.1. sets out that 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 – (i) For a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; and (ii) in any other case, 1 metre above ground level;
 - (b) The height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level.
9. The Council refused the LDC application because it considered the proposed steel gate door would be adjacent to the highway and would exceed 1 metre in height. It is the appellant's case that due to its distance from the site boundary, the proposed development would not be adjacent to the highway and so would be permitted development.
10. There is no definition of 'adjacent' within the GPDO. A normal everyday definition of adjacent is 'being near or close to.' The assessment of what constitutes 'adjacent' must therefore amount to a matter of fact and degree.
11. In this particular case, the steel gate door would be set back from the front boundary of the appeal site in line with the front elevation of No 31 which itself is set back from the highway beyond a front garden and pavement. I am informed by the appellant that this would be a distance of approximately 6 metres inside his land. This distance is not disputed by the Council.
12. Furthermore, the proposed fencing would start from the steel gate door and run along the shared boundary with No 31. Consequently, it would be at a similar distance back from the highway. Thus, as a matter of fact and degree, I consider that the proposed steel gate door and fence would not be adjacent to

the highway used by vehicular traffic and would therefore be permitted development for purposes of Part 2, Class A of the GPDO. Thus, the proposed development would be lawful.

Conclusion

13. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of a fence and steel gate door as shown on drawing numbers 001, DA1 02 and DA1 03 was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elizabeth Jones

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 27 May 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 proposed steel gate door and fence in locations shown on drawing numbers 001, DA1 02 and DA1 03 are permitted development falling within Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3 (1) of the Order.

Signed

Elizabeth Jones

Inspector

Date 02 June 2021

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First Schedule

Installation of a new fence and steel gate door.

Second Schedule

Land at 33 Grove Lane, Kingston upon Thames KT1 2ST

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 the Lawful Development Certificate dated: 02 June 2021

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Scale: Not to scale

