



Appeal Decision

Site visit made on 4 April 2022

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 21st April 2022

Appeal Ref: APP/K3605/X/21/3279391

212 Terrace Road, Walton-on-Thames, Surrey, KT12 2EE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Arran Littlefair against the decision of Elmbridge Borough Council.
 - The application No: 2021/0632, dated 10 February 2021, was refused by notice dated 11 June 2021.
 - The application was made under section 191(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is the construction of a wall, pillars and gates as means of enclosure.
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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 existing operation which is found to be lawful.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.
3. The description of the development in the banner heading above is taken from the application form. However, it is clear from the evidence before me and my observations that there are walls on each side of the driveway and that both walls have been included within the LDC application. Both main parties refer to 'walls' within their evidence. I have therefore dealt with the appeal on the basis that the LDC is sought for *'the construction of walls, pillars and gates as means of enclosure'*.

Main Issue

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

Reasons

5. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for classes of development described as permitted development in Schedule 2 to the Order, subject to any specified exception, limitation or condition. In Schedule 2, Part 2 Minor Operations, Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure

- (Class A). There are limitations on when development is not permitted, as set out in paragraph A.1. Relevant to this appeal, the erection of a gate, fence, wall, or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic which is more than 1 metre(m) above ground level is not permitted development.
6. The appeal property's address is 212 Terrace Road (No 212) but the access drive to the property is formed from Walton Road. There is no dispute between the parties that Walton Road is a highway used by vehicular traffic and that the landscaped verge alongside that road forms part of that highway. It is also common ground that the height of the walls, piers and gates is in excess of 1m. I have no reason to disagree with these findings. Therefore this appeal turns on whether or not the development is adjacent to a highway used by vehicular traffic.
 7. The word '*adjacent*' is not defined in the 1990 Act and the courts have held that legislators were not likely to have intended there to be a '*one size fits all approach*'. Case law also clarifies that adjacent does not necessarily equate to something being '*contiguous*' or '*abutting*'. Consequently, the position established by the courts is that the word '*adjacent*' does not necessarily mean that the walls, gates and pillars in question have to be abutting or touching the highway. Indeed in the case of *Simmonds v SSE and Rochdale MDC* [1981] it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. It is clear to me that each situation has to be considered on its merits and a planning judgement needs to be made in each case.
 8. At the driveway entrance a set of double gates has been erected between walls, those walls are roughly perpendicular to Walton Road. The double gates are set a substantial distance from the kerb line of that road. The submitted drawings indicate that, due to the alignment of the road, that that distance from the kerb line varies between 7.6m and 9.1m. A pedestrian gate is set into the one wall and each wall is supported by a number of pillars.
 9. The one side of the pillars, at the end of each wall, adjoins the landscaped verge which is between the boundary of No 212 and the kerb line of Walton Road. The dwelling at No 212 is located some distance from the driveway entrance onto Walton Road. The verge and landscaping extend alongside the road for some distance either side of the driveway entrance and the verge is relatively generous being over 4m in width in places. The verge consists of grass and mature landscaping, including some trees.
 10. These factors in combination mean that it is highly likely that when the mature landscaping is in full leaf the dwelling and other boundary treatments of No 212 would be largely screened. Moreover, that landscaping also minimises the visual effect of the walls, gates and pillars when viewed by pedestrians and occupants of vehicles travelling along Walton Road. As such, in my judgement, they are not perceived to form the means of enclosure and the boundary between the highway and private land. Taking into account all of the above, as a matter of fact and degree and on the balance of probability, the walls, gates and pillars are not adjacent to a highway used by vehicular traffic. Consequently, they are permitted development under the provisions of Article 3 and Class A of Part 2, Schedule 2 of the GPDO.

Conclusion

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of walls, pillars and gates as means of enclosure 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.

D Boffin

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 10 February 2021 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of walls, gates and pillars, as existing and shown on drawing numbers 2019-001; 2019-002; 2019-003 and 2019-004, is permitted development under the provisions of Article 3 and Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

D Boffin

Inspector

Date: 21st April 2022

Reference: APP/K3605/X/21/3279391

First Schedule

The construction of walls, pillars and gates as means of enclosure.

Second Schedule

Land at 212 Terrace Road, Walton-on-Thames, Surrey, KT12 2EE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 21st April 2022

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Scale: Not to Scale

