The Planning Inspectorate

Appeal Decision

Site visit made on 12 April 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/Y3615/X/21/3281608
Land adjacent to The Willows, Gole Road, Pirbright, Woking GU24 0QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Karl Kavanagh against the decision of Guildford Borough Council.
- The application Ref 21/P/01060, dated 12 May 2021, was refused by notice dated 05/07/2021.
- 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 2m high brick piers, 1.8m high timber entrance gates and 2m high wall.

Decision: the appeal is dismissed

Procedural matters

1. This appeal was travelling with an appeal made under section 174 of the 1990 Act made by the same appellant and relating to the same site, but relating to an unrelated enforcement notice (APP/Y3615/C/21/3285199). That appeal is the subject of a separate Decision.

2. A total of five representations have been received from local residents in response to the notification of this appeal. One of these representations does consider that the wall, brick piers and gates are adjacent to a highway and that, because they exceed 1 metre in height, require planning permission. I have taken that opinion into account.

3. However, all five representations object to the erection of the wall and gates for reasons that go the planning merits of the proposed development. In an appeal under section 195 of the Act, the planning merits of the development are not a relevant consideration: my decision must turn on the facts of the case, and the application of those facts to legislation and case law. I am therefore unable to take those comments into account.

Reasons

4. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them 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; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. The main issue

is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

5. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted under Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), subject to the limitations at Class A.1. The latter provides that the erection of a gate, fence, wall or other means of enclosure is permitted development unless:

   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 carrying out 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;

   (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;

   (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed whichever is the greater.

   (d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclose surrounding a listed building.

6. The appellant does not claim that the wall, brick piers and entrance gates are an improvement or alteration of existing walls, fences or gates, such that the limitation at A.1 (c) is of no relevance. The site is not a school and therefore the limitation at A1 (a)(i) is also not relevant. The proposed development is not within the curtilage of a listed building, and the limitation at A.1(d) is not relevant.

7. The proposed wall, brick piers and entrance gates would exceed 1 metre in height above ground level but would not exceed 2 metres in height. The issue in dispute is therefore whether the wall, brick piers and entrance gates are adjacent to a highway used by vehicular traffic for the purposes of (A.1(a)(ii)).

   Whether the proposed wall, brick piers and entrance gates would be adjacent to a highway used by vehicular traffic

8. The proposed wall would be situated roughly parallel to Gole Road (the B3012), a highway used by vehicular traffic. The wall, in which some of the brick piers would be embedded, would be set back some 3.7 metres back from the highway. The entrance gates, as well the associated brick piers, would be set back some 8.7 metres from the highway. The land between the edge of the road and the proposed wall is grass verge.

9. There is no definition of 'adjacent' in the GPDO itself. The Oxford English Dictionary (OED) defines 'adjacent' as being near or next to something else. The Council refers to an appeal decision relating to a site at Henley-upon-Thames in Oxfordshire (APP/Q3115/X/16/3150593) in which the Inspector relied on the dictionary definition of 'adjacent' but also refers to relevant case law in which this issue was considered by the Courts. The thrust of that case law is that a wall, fence or gate can be set back from a highway but still be 'adjacent' to it, as a matter of fact and degree, provided that the enclosure is clearly intended to define the boundary of the property concerned from the highway and is perceived to do so.

10. In this case, the proposed wall, brick piers and entrance gates would be set back behind a grass verge for distances varying between 3.7 metres and 8.7 metres. To the west of the proposed entrance gates, an existing chain link extends along the full length of the boundary of the land fronting Gore Road that is within the appellant's ownership[1]. Although not shown on the application drawings, my understanding of the appellant's evidence is that this chain link fence would be retained. That fence would therefore form an intervening feature between that part the proposed wall and the highway. However, at the time of my site visit, to the east of the entrance gates the chain link fence (if it ever existed in that position) had been replaced by a timber hoarding and metal entrance gates, the latter set back from the highway.

11. Along that part of the site frontage where the existing chain link fence would be retained, the alignment of the proposed wall parallel to Gore Road, together with its height, design and appearance, would dominate the chain link fence in front. The latter would therefore be viewed as being subservient to the wall behind. Furthermore, the proposed wall would be clearly intended to define that part the boundary, and would clearly be perceived as doing so. Overarching both of these considerations is that, with a distance from the highway of some 3.7 metres, the wall would in my opinion still be 'near' to highway, albeit not directly next to it. For those reasons, I consider that as a matter of fact and degree the proposed wall to the west of the entrance gates would be adjacent to the highway, notwithstanding the presence of the chain link fence in front.

12. To the east of the proposed entrance gates, there would be no intervening feature between the proposed wall and the highway. Similarly, although set back by a greater distance, there would be no intervening feature between the proposed entrance gates and the highway. The wall and entrance gates would be clearly intended to define that part the boundary, and would be perceived as doing so. For that reason, I consider that as a matter of fact and degree this section of the proposed wall, as well as the proposed entrance gates, would be adjacent to the highway.

13. I have found that the proposed wall, brick piers and entrance gates would be adjacent to a highway. All would exceed 1 metre in height and, therefore, would not constitute permitted development under Class A, Part 2, Schedule 2, Article 3 of the GPDO.

14. It is settled case law that permitted development rights under the GPDO only apply when the development fully accords with the limitations set out in the

[1] As shown edged in blue on the application drawings.

Order. Consequently, even if on an alternative view the wall to the west of the entrance gates was considered not be adjacent to the highway due of the presence of the chain link fence, the development as a whole would still not be permitted development because other parts of it would not accord with the limitations under Class A.1.

Conclusion

15. 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 2m high brick piers, 1.8m high timber entrance gates and 2m high wall at land adjacent to The Willows, Gole Road, Pirbright, Woking GU24 0QF was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

16. The appeal is dismissed.

Paul Freer
INSPECTOR