



Appeal Decision

Site visit made on 12 April 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 August 2022

Appeal Ref: APP/N4720/X/22/3292363

South Wood, Ling Lane, Scarcroft, Leeds LS14 3HT

- 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 Rasham Singh against the decision of Leeds City Council.
 - The application Ref 21/10064/CLP, dated 11 December 2021, was refused by notice dated 8 February 2022.
 - 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:
 - a) Boundary wall not more than 1m high on front boundary (previously constructed)
 - b) Garden wall with gateway not more than 2m high set back approx. 9.5m from front boundary (foundations already installed).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant made the LDC application on a section 192 form which relates to proposed uses or developments. He seeks to establish the lawfulness of boundary structures including an existing boundary wall and a proposed garden wall which would be set further back. He clarifies that he is seeking an LDC for a 'proposed gateway' that would include both the existing and proposed walls as part and parcel of the same development. I have therefore considered the appeal on the basis that it is a proposed development under s192.
3. I note that the Council make reference to a boundary fence in their decision notice. However, this structure is not included in the description and so I have not considered it within the scope of this appeal.
4. In an LDC appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities.

Main Issue

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

Reasons

6. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) relates to the erection,

construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. In a residential context, development is not permitted by Class A if 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 1 metre above ground level. The height of any other gate, fence, wall or means of enclosure erected or constructed should not exceed 2 metres above ground level.

7. The wall nearest the road has been erected and its age is not clear from the evidence presented. The appellant states that 1 metre is intended as a maximum height for this wall, as ground levels do and continue to vary as a result of garden and landscaping works.
8. The second wall, incorporating a sliding electric gate, would be constructed approximately 9.5 metres back from the existing boundary wall. The piece of land between the two walls would remain within the ownership of the property at South Wood.
9. The drawings show that the proposed structure would not exceed 2 metres in height, including the piers. However, the consideration in this case turns on whether or not the second wall would be adjacent to the highway or not. The word 'adjacent' is not defined in the Act and it has been held that legislators are unlikely to have intended a 'one size fits all' approach.
10. The position established by the courts is that the word 'adjacent' does not necessarily mean that the enclosure has to be abutting or touching the highway. The thrust of case law and other appeal decisions is that a wall or fence can be set back from a highway, but still be 'adjacent' to it, as a matter of fact and degree. This is providing that the enclosure is clearly intended to define the boundary of the property concerned from the highway and is perceived to do so.
11. Given its scale and strong sense of enclosure, the proposed wall and entrance gate would appear from Ling Lane as confining the private garden area associated with the house. Viewed together as a 'set piece' with the existing front wall and the intervening space, the new structure would be perceived as the main boundary between the highway and the appellant's property. This perception would be further underpinned by the design of the proposed gateway whereby the new piers would be aligned with the smaller piers in the front wall. Therefore, despite the proposed set back, it is my view that the new wall and gate would, as a matter of fact and degree, be 'adjacent' to the highway. At a height exceeding 1m, it would fall outside permitted development limitations.

Conclusion

12. I conclude, therefore, that the appeal proposal would not be lawful within the meaning of Article 3, Schedule 2, Part 2, Class A of the GPDO. I consider that the Council's decision was well-founded, and that planning permission would be required for the proposal. The appeal should therefore fail.

Elaine Gray

INSPECTOR