



Appeal Decision

Site visit made on 27 September 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/F5540/X/21/3287532

Land at Ashley Drive, Isleworth TW7 5QA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ruben Bandarian/Ashley Drive Residents Association (Osterley) Ltd against the decision of the Council for the London Borough of Hounslow. The application ref 01531/A/LAW1, dated 6 August 2021, was refused by notice dated 1 October 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 installation of gates and piers.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issue

3. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

4. The application was made under section 192(1)(b) of the Act which relates to proposed development in the form of operations. The appellants submit that the installation of gates and piers would amount to permitted development under Schedule 2, Part 2, Class A (Part 2 Class A) of the Town and Country Planning (General Permitted Development) (England) Order 2015. For that reason, they consider that the development does not require express planning permission.
5. The Council cites a condition which was attached to the consent for the Ashley Drive development (Council Ref. 00647/350/P2) that restricts the erection of walls, fences or other means of enclosure in advance of the front main walls of the individual properties.

6. There is a dispute between the parties regarding which areas within the Ashley Drive development are restricted by the condition. However, section 192 of the Act does not provide for an LDC to be sought or granted in respect of a proposed breach of condition. Therefore, whether or not the proposed development would be in accordance with the restrictive condition is not a matter which can be addressed by an application or an appeal relating to an LDC.
7. In any event the Council has confirmed that in its view regardless of the restrictive condition, the proposal would not comply with Part 2 Class A which sets out that the following would be permitted development:

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

But development is not permitted by Part 2 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;

(ii) in any other case, 1 metre above ground level;

8. For the purposes of the GDPO, and in this case, it is important to establish the extent of the highway. There is no dispute between the parties that Ashley Drive is a private estate of 13 houses accessed off Jersey Road. In respect of Ashley Drive the appellants do not consider that it constitutes a highway for a number of reasons. The Council has not reached a definitive view on whether or not Ashley Drive is a highway for the purposes of development under Part 2 Class A.
9. The Council's arguments revolve around the relationship between the proposed gates and Jersey Road, it concludes that the development would be adjacent to Jersey Road and for the reason the gates and piers are not permitted development. In the event that I were to reach the same conclusion as the Council, the matter of whether or not Ashley Drive itself is a highway for the purposes of Part 2 Class A would not be determinative.
10. There is no definition of the meaning of adjacent in the GDPO. However, in other cases, such as the appeal decision cited by the appellants which relates to gates at Former Long Walk House, Kings Road, Windsor¹ (the Windsor Appeal), reference has been made to the Concise Oxford Dictionary definition of the word as "lying near to or adjoining".
11. In the appeal case the gates would be set back 10 metres from the back edge of the pavement/crossing on Jersey Road. There are existing piers attached to the end of the walls in this position and it is not clear whether the gates would be attached to them. The maximum height of the gates is shown as

¹ Ref: APP/T0355/X/13/2194880

- 1.3 metres, which exceeds the permitted height under Part 2 Class A where the development is adjacent to a highway.
12. In the Windsor Road appeal decision, the Inspector took the view that in a position 4.2 metres back from the pavement, the gates were set back by a significant distance. Taking a consistent approach 10 metres set back must also be considered as significant. Had that been the only consideration before me it would have been reasonable to conclude that the proposed gates would not be lying near, adjoining or adjacent to a highway.
 13. However, it has been established that consideration must also be given to the intervening space between the enclosure and the highway. In this respect the Inspector for the Windsor Road decision considered the surface material of the access bellmouth. He found that the bellmouth was to be finished in a different material to the tarmac of the highway and the pavement crossing and he considered the result to be visually and functionally more related to the paved forecourt of the housing development rather than the operation of the highway.
 14. There are no proposals to resurface that part of the access bellmouth between the proposed gates and the back edge of the pavement/crossing on Jersey Road. Thus, there is and will be little to distinguish any visual or functional difference between the elements of Ashley Road in front of and behind the gates or between those areas and Jersey Road. This was a key point for the Inspector in the Windsor Road appeal, albeit that the photographs provided by the appellant show the bellmouth finished in a similar surface treatment to the carriageway.
 15. In the particular circumstances of the appeal proposals Ashley Drive has a similar appearance to Jersey Road including to the extent that there are double yellow lines within the access comparable with the double red lines on Jersey Road. The blocks which mark the edges of the crossing surface have a very limited segregating effect.
 16. The driveways serving Nos. 2 and 12 Ashley Drive are surfaced with gravel and lie beyond the existing piers and there is a further change in surface treatment where Nos. 3 and 11 front this access.
 17. The space between the gates and Jersey Road will also serve as a waiting area for cars and service vehicles while the gates are opened. As a result, the area will have a functional relationship with the highway.
 18. Drawing all of these strands together and considering the appeal scheme in the same way as the Inspector for the Windsor Road appeal, albeit reaching a different conclusion, I find that the space between the edge of the public highway and the proposed position of the gates is visually and functionally more related to the highway than to the housing development.
 19. Whilst I find that in terms of distance the proposed gates would not be adjacent to the highway, as a result of the visual and functional relationship between the highway and the space in front of the gates, the proposed development would be adjacent to a highway used by vehicular traffic. The matter of whether or not Ashley Drive itself is a highway for the purposes of Part 2 Class A is not determinative
 20. For these reasons, and as a matter of fact and degree on the circumstances of this case, I conclude that the proposed gates and railing would lie adjacent to

the highway. As such the proposed development does not fall within the provisions of Schedule 2, Part 2, Minor Operations- Class A of the Town and Country Planning (General Permitted Development) Order 1995, as amended.

Conclusion

21. 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 installation of gates and piers at Land at Ashley Drive, Isleworth TW7 5QA 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.

Sarah Dyer

Inspector