



Appeal Decision

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/G5180/X/22/3305008

59 Hayes Way, Beckenham BR3 6RR

- 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 Mrs Lisa Lombardo against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/22/01875/PLUD, dated 6 May 2022, was refused by notice dated 30 June 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 replacing existing 1.8 metre high boundary fence and gates on rear boundary with new 1.8 metre high wall and sliding gate.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the avoidance of doubt, only matters of lawfulness may be considered in a LDC appeal. I cannot take into account matters of planning merit, such as those raised by the appellant¹ and an interested third party.
3. It was not necessary for me to conduct a site visit to determine this appeal, with a decision made based on the evidence before me.

Main Issue

4. The main issue is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

5. It is uncontested between the parties that the appeal proposal involves the construction of a **new** brick wall and gate adjacent to a highway, **replacing** the existing wooden fence and gates (my emphasis of words taken directly from the appellant's description of the proposal contained within the submitted LDC application form).
6. Article 3(1) and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides general planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. These permitted development rights are subject to limitations.

¹ Paragraph 3.4 of the Grounds of Appeal Statement, for instance.

7. One such limitation (A.1.(a)(ii)) is that development is not permitted if the height of any gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would exceed 1m above ground level. This clearly applies to the appeal development, which would be 1.8m above ground level.
8. The provision contained in A.1.(c) does not apply as the appeal development involves the erection or construction of a new wall and metal-framed sliding gate – and not the maintenance, improvement or alteration of the existing wooden fence and gates.
9. Accordingly, the proposal does not benefit from permitted development rights under the GPDO or express planning permission. It was therefore unlawful at the time of the application for the LDC.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of replacing existing 1.8 metre high boundary fence and gates on rear boundary with new 1.8 metre high wall and sliding gate 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.

Andrew Walker

INSPECTOR