



Appeal Decision

Site visit made on 7 June 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Appeal Ref: APP/G2245/X/22/3293701

Willys At Heath South, Spout Lane, Crockham Hill, Edenbridge TN8 6RS

- 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 Mrs P.A. Carver against the decision of Sevenoaks District Council.
 - The application ref 21/03761/LDCEX, dated 15 November 2021, was refused by notice dated 14 January 2022.
 - The application was made under section 191(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 creation/existence of a vehicular access to serve Willy's at Heath South.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application seeks to establish whether the creation/existence of a vehicular access to the site was lawful on the date of the application. The onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development was lawful at the date of the application.
3. Section 191(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) provides that uses and operations are lawful at any time if no enforcement action may be taken in respect of them because the time for taking enforcement action, 4 years in this case, has expired. Accordingly, the appellant needs to demonstrate, on the balance of probabilities, that the vehicular access has been in existence since at least 4 years prior to the date the application was made (15 November 2021), that is on or before 15 November 2017. I acknowledge the appellant's point that it is not a question of whether a material change of use has taken place.

Main Issue

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

Reasons

5. Willys at Heath South is a semi-detached dwelling. The adjoining dwelling, Willys at Heath, has a vehicular access to the north. The properties are Grade II listed. The listing description indicates that Willys at Heath had been restored to one dwelling at the time of listing, having previously been divided. Planning permission and listed building consent were granted in 1989 for its conversion back into two separate dwellings¹.
6. There is an opening in the boundary of the garden of Willys Heath South giving access to Spout Lane that is wide enough for a vehicle to use. Spout Lane is classified as a B road. There are double wooden gates set far enough back from the edge of the highway to allow a vehicle to pull off the road. The area between the gates and the highway is mostly laid to grass, with small areas of tarmac.
7. The appellant has provided photographs purporting to show extracts from the title deed plans for the property. One of the extracts shows two lines on a plan from the west elevation of the house to Spout Lane. Another extract indicates a different plan that includes two lines which appear to correspond with the existing northern access to the site, enclosing the buildings and terminating at the boundary with Spout Lane. The appellant states that these lines indicate an access. The Council's Planning Officer's Report states that the Council's historic plan from 1951-1952 shows a line up to Spout Lane, although a copy has not been provided.
8. A statutory declaration has been provided from Alan Rodney Power Carver, who has owned and occupied the property since 1991. He states that the property had been owned and occupied by his parents since 1958. During the time he has known the property it has benefitted from two access points, as shown on the title deeds. In July 2021 he removed undergrowth that had grown to the extent that it had limited visibility at the access point in question. No additional hardstanding was laid, nor was any boundary treatment removed. He does not however identify whether the access was pedestrian or vehicular during the period he has known the property. As a statutory declaration I attribute weight to the evidence therein.
9. This evidence indicates that, on the balance of probabilities, there was a means of access to the site from Spout Lane. Although there is no contradictory evidence, it is not sufficiently precise and unambiguous as to whether the access was vehicular or pedestrian.
10. Google Street View images have been provided. In the image from October 2008, a narrow pedestrian gate fills a small gap in an overgrown hedge. The March 2021 image shows that the hedges were present but have been cut so that the gap is wider. The gap in the hedges is filled by what appears to be the same pedestrian metal gate with a short section of timber fencing next to it. A tarmac pedestrian pathway is visible. The Google Street View image from August 2021 indicates a metal gate in an open position, the small area of tarmac path, and that the removal of part of the hedge on both sides of the gap has revealed a wall either side of the opening. The section of timber fence and the gate post have been removed. The opening appears wide enough for a

¹ References 89/00901/HIST and 89/00902/HIST

vehicle to access the site, as shown on the photograph provided by the appellant of a vehicle parked within the site at the access point.

11. The photographic evidence from Google Street View therefore indicates that there was no vehicular access in October 2008, only a pedestrian access. The photographs indicate that it most likely remained as a pedestrian access until 2021. Between March and August 2021, the access was widened to form a vehicular access, by removing a section of fencing, a pedestrian gate, gate post, and cutting back/remove part of the hedgerow. Notwithstanding the weight I attribute to the statutory declaration, the dated Google Street View images show that boundary treatments were removed to form the vehicular access, in contradiction with the sworn evidence. The evidence leads me to conclude, on the balance of probabilities, that the vehicular access was formed in 2021, and that this involved physical works. Even if there had previously been a vehicular access in this location, perhaps as shown by the gap in the wall, the evidence indicates that there was only a pedestrian access for a considerable period of time prior to the works to create the vehicular access in 2021.
12. Section 55(1) of the 1990 Act states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land.
13. Under Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, is permitted development, where that access is required in connection with other permitted development. As Spout Lane is a classified road, Schedule 2, Part 2, Class B does not apply in this case.
14. Section 336(1) of the 1990 Act states that “engineering operations” includes the formation or laying out of means of access to highways. “Means of access” includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street. The terms ‘formation’ and ‘laying out’ indicate that, as a matter of fact and degree, some physical works to form the access must be involved. There is no indication in s336(1) that the works must be very substantial. While the removal of the pedestrian gate and section of fence in themselves would not ordinarily constitute development, the operation as a whole must be considered, rather than its component parts. In this case, the works have created or reinstated an access large enough for a vehicle to access a road, where there was previously only a pedestrian access. The physical works that have taken place were necessary to form the access and are therefore engineering works. There is no requirement that engineering works have to involve an engineer. I conclude that the works are development requiring planning permission. As the works were carried out in 2021, it cannot be said, on the balance of probabilities, that the current access has existed for more than 4 years, ending with the date of the application.
15. I disagree with the appellant’s view that the case differs from the appeal decision² provided by the Council, as I have found that physical works have taken place that are an engineering operation requiring planning permission. The explanation in S55(1A) refers to “building operations” rather than engineering operations, and it is not a requirement that the works are those

² Appeal ref APP/A2335/X/19/3228823

that would normally be undertaken by a person carrying on business as a builder.

Conclusion

16. For the reasons set out above, I conclude that the Council's refusal to grant an LDC in respect of the creation/existence of a vehicular access to serve Willy's at Heath South was well founded and that the appeal should fail. I will therefore exercise accordingly the powers transferred to me under s195(3) of the Act.

N Thomas

INSPECTOR