



Appeal Decision

Site visit made on 21 October 2023

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

an Inspector appointed by the Secretary of State

Decision date: 9th November 2023

Appeal Ref: APP/A1530/X/22/3306685

18 Eastwood Drive, Colchester, Essex CO4 9EB

- 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 Les Cutmore against the decision of Colchester Borough Council.
 - The application Ref 221565, dated 21 June 2022, was refused by notice dated 16 August 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 soft landscaping area along the front boundary of the property with a wall and railings and a gate behind.
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Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. Article 3(1), Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) affords general planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
4. These permitted development rights are subject to limitations. In particular, development is not permitted (under limitation A.1.) if the height of a residential boundary treatment would be adjacent to a highway (used by vehicular traffic) and over 1m in height. The Council refused the appeal scheme on that basis, and it is common ground that the proposed brick wall (with its piers and metal railings) would be just under 2m on each of its 3 sides¹. The point of dispute between the parties, rather, is whether the development would be adjacent to the highway.
5. The longest stretch of the wall would front onto Eastwood Drive for some distance, and run broadly parallel with it. Access to the dwelling's forecourt through the proposed gate on this section facing the highway would be by

¹ The gate itself, set within the overall design of the wall, would be 2m high.

existing hard surfaces running from a roadside drop kerb and across land containing grass verges and a highway footpath before reaching the property boundary². The proposed wall and gate would be set back from the boundary by a space of just over 1m³, within which there would be a soft landscaping and planting bed behind a 0.3m high timber post and knee rail. However, as can be seen from drawing ref ED18 no. 11B, this would afford limited screening of the brick wall from the highway and would not screen the gate at all. Consequently, the taller structures - despite being set back slightly - would be perceived to define the boundary of the property in relation to the highway.

6. Due to this arrangement, and notwithstanding the distance from the road (albeit a much closer relationship with the footway), the proposed development would have significant prominence and would fulfil the function of a boundary with defines the front forecourt of the property in relation to the highway. Further, and including consideration of the presence of 3 mature trees established within the grass verges, there would be no intervening structures which would read as an alternative boundary. Therefore, in line with case law⁴ and as a matter of fact and degree, I find that the development would be 'adjacent' to the highway.
7. The 2002 appeal decision raised by the appellant⁵ appears to be materially dissimilar to the case before me since the cited "substantial bed containing young trees, shrubs and plants" before the fence is said to have been 1.7m wide. This is significantly more substantial than the planting bed proposed in the appeal before me.

Conclusion

8. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the proposed development 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

² The appellant says that the distance between the road and the proposed line of the wall and gate would be approximately 13m, with the footpath being approximately 6m away.

³ 1055mm.

⁴ *Simmonds v SSE and Rochdale MDC* [1980].

⁵ Decision dated 18th February 2002 in relation to 9 Comptons, Sissinghurst, Tunbridge Wells.