

Appeal Decision

Site visit made on 12 August 2024

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 20th August 2024

APP/K3605/X/23/3321878

3 Claremont Park Road, Esher, Surrey KT10 9LT

- 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 the decision of Elmbridge Borough Council to refuse to grant a certificate of lawful use or development, (LDC).
- The appeal was made by Mr Jeremy Rudge.
- The application, reference 2023/0719, validated on 9 March 2023, was refused by a notice dated 4 May 2023.
- The application was made under section 192(1)(b) of the Act of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of development is sought is for the erection of entrance gates and piers to a height of 2.0m.

Summary of Decision: A certificate of lawfulness is not issued.

Appellant's proposal

1. The Appellant, Mr Jeremy Rudge, wishes to erect entrance gates and piers to a height of 2.0m at the frontage of his detached house to Claremont Park Road, Esher.

Council reason for refusal

2. The Council said the proposed development does not constitute permitted development under Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, (the Order).

Considerations

3. Schedule 2 Permitted development rights of the Order at PART 2 Minor operations, *Class A – gates, fences, walls etc*, allows for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A at A.1 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, (2m), (subject to provisos), (ii) in any other case, 1m above ground level.
4. The dispute between the parties centred upon Mr Rudge's assertion that the fronting Claremont Park Road was not a highway. He said it was a privately owned road. It served only a few houses. It was effective a cul-de-sac because a vehicle or pedestrian cannot readily exit at the locked Old

Chestnut Avenue gates to Portsmouth Road, A307. Although the private road provided access to Claremont Park Golf Course, the course was for use by members only, non-members playing only with a member.

5. The term 'highway' can be used interchangeably with 'public rights of way'. A highway is sometimes used to denote the physical route rather than the right itself. It is essentially a public right to pass over a defined linear route and; the way must be open to the public at large; the public must have a right to use the way; the public right must be primarily for passage; the public right of way must follow a defined route. In the Supreme Court's consideration in *Southwark LBC v Transport for London* of the extent of a highway, Lord Briggs JSC held, 'the word highway has no single meaning in the law but, in non-technical language, it is a way over which the public have rights of passage, whether on foot, on horseback or in (or on) vehicles'.
6. The Ministry of Housing, Communities and Local Government - Permitted development rights for householders Technical Guidance published in September 2019 says, (page 6), "Highway" – is a public right of way such as a public road, public footpath and bridleway.'. From the evidence of the parties to this appeal, it is not clear that the public in general have a right to pass along Claremont Park Road. However, whether or not there is a right or a permissive right to the public to traverse the section of roadway at the frontage to Mr Rudge's home at No. 3, the Technical Guidance definition at page 6 goes on to say: "For the purposes of the Order it also includes unadopted streets or private ways.". The concessions, their limitations and the conditions of the Order, therefore apply to public and private roads.
7. The application of the Technical Guidance definition of a highway in this instance is that the right to erect a wall or other means of enclosure along the frontage of a dwelling on Claremont Park Road is limited in height by the Order to no more than 1m above ground level.
8. In my view, Elmbridge Borough Council were right to refuse a certificate of lawfulness for the erection entrance gates and piers to a height of 2.0m at the frontage of No. 3 Claremont Park Road. Mr Rudge's appeal must fail.

FORMAL DECISION

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawfulness for the erection entrance gates and piers to a height of 2.0m at No. 3 Claremont Park Road, Esher, Surrey KT10 9LT was well-founded and that the appeal should not succeed. I exercise the powers transferred to me under s.195(3) of the 1990 Act as amended accordingly.

John Whalley

INSPECTOR