



Appeal Decision

Site visit made on 18 March 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal Ref: APP/K3605/X/24/3347610

15 Patmore Lane, Walton-on-Thames KT12 5DX

- 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 iLife Developments Limited against the decision of Elmbridge Borough Council.
 - The application ref 2024/0931, dated 8 April 2024, was refused by notice dated 3 June 2024.
 - 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 erection of gate piers and gates under 2m in height.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Main Issue

2. The main issue in the appeal is whether the Council's refusal to grant an LDC for the proposal was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) at Article 3, Schedule 2, Part 2, Class A.

Reasons

3. The burden is firmly on the appellant to show that an LDC should be granted for the proposal, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a detached residential dwelling. The property is located at the far end of Patmore Lane, a residential cul-de-sac. It is proposed to erect gate piers and gates at the front of the property. The overall height of the gate piers and gates would be 1.93 metres.
5. The GPDO at Article 3, Schedule 2, Part 2, Class A grants planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, where none of the limitations in paragraph A.1 are exceeded. Paragraph A.1(a)(ii) provides that development is not permitted by Class A if 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 1 metre above ground level.
6. The GPDO does not define what is meant by the term 'highway' for the purposes of Part 2. The definition of a highway in Part 1 paragraph 1, which includes an

unadopted street or a private way, does not extend to the rest of the GPDO. According to s336(1) of the Town and Country Planning Act 1990 (as amended), 'highway' has the same meaning as in the Highways Act 1980. However, the latter Act does not offer a comprehensive definition of the term. Given this lacuna it is considered appropriate to rely on common law, where a 'highway' is regarded as any way over which members of the public have the right to pass and re-pass.

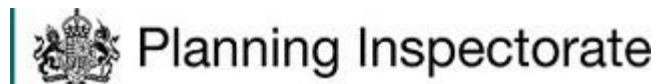
7. Patmore Lane is located on part of the Burwood Park Estate, an extensive gated residential community. My understanding is that all roads and communal spaces on the estate, including Patmore Lane, are owned by a private management company. Access to the estate is warden and/or barrier controlled. Signage makes it clear that access to the estate is restricted other than for residents. Therefore, members of the public do not have the ability to pass and re-pass along Patmore Lane as of right. This leads me to conclude that, as a matter of fact and degree, Patmore Lane is not a 'highway' in the common law sense.
8. As the gate piers and gates would not be adjacent to a highway used by vehicular traffic, the 1 metre height limit in paragraph A.1(a)(ii) would not be exceeded. Also, being under 2 metres in height the gate piers and gates would not exceed the height limit in paragraph A.1(b) for any gate, fence, wall or means of enclosure which is erected or constructed other than in the circumstances referred to in paragraph A.1(a).
9. Accordingly, having regard to the available evidence, on the balance of probability and in the light of the particular circumstances of this case, the appellant has shown that the proposal is granted planning permission by the GPDO at Article 3, Schedule 2, Part 2 Class A and so is lawful for planning purposes.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of gate piers and gates under 2m in height was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 8 April 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, planning permission is granted for the proposed operations by Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Stephen Hawkins

Inspector

Date: **26 March 2025**

Reference: APP/K3605/X/24/3347610

First Schedule

Erection of gate piers and gates under 2m in height

Second Schedule

Land at 15 Patmore Lane, Walton-on-Thames KT12 5DX

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **26 March 2025**

by **Stephen Hawkins MA, MRTPI**

Land at: **15 Patmore Lane, Walton-on-Thames KT12 5DX**

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Scale: Not to Scale

