



Appeal Decision

Site visit made on 26 November 2025

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2026

Appeal Ref: APP/K1128/X/24/3338918

SX 656 515 Church Lane, Modbury, PL21 0QN

- 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 Mr Russell Quick (Quick Planning Solutions) against the decision of South Hams District Council.
 - The application ref 4092/23/CLP, dated 1 December 2023, was refused by notice dated 14 February 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 a 2m high fence above natural ground level, set in from the front boundary with Church Lane.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision was well-founded.

Reasons

3. Church Lane, a sunken lane on the south side of Modbury, is a highway used by vehicular traffic. The Appellant's property lies on the north side of the lane. The lane is cut into the bedrock though, as with the frontage of the appeal site, in places this is faced with stone walls. The wall is about 2m high where the appeal site fronts the lane. The wall is said to be the property boundary, and this seems most likely to be the case. However, whilst I cannot be sure whether its construction was for aesthetic or structural purposes, I find that it is not a means of enclosure. Above the wall, the Appellant's land slopes back. Initially, this is quite steep before becoming fairly level and is used as a garden area.
4. It is proposed to erect a 2m high fence around the garden area, thus it would be a means of enclosure. Where it would face towards Church Lane, it would be sited towards the change in the angle of slope.
5. Section 192 of the Act provides the basis for a person to make an application for a determination as to whether, amongst other things, operations proposed to be undertaken on land would be lawful. If lawful, a local planning authority would issue a certificate of lawful development to that effect. Where, as here, a local planning authority refuses to issue a certificate, section 195 provides the mechanism to appeal that refusal.

6. Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO') sets out that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development ('PD'). A caveat to this is that where the means of enclosure would be adjacent to a highway used by vehicular traffic, its height should not exceed 1m. Where this is not the case, the height restriction is 2m.
7. Given that it encloses land, and that Church Lane is used by vehicular traffic, the outcome of the appeal hinges on an assessment of whether the proposed fence would be adjacent to the highway.
8. In its 'Further Statement', the Council says that as the garden is not in the ownership of any of the houses close to the site "This implies that the land has become detached from any of the properties and may therefore no longer benefits [sic] from the rights under Schedule 2 Part 2, Class A Minor Works of the Town and Country Planning (General Permitted Development) Order 2015 as amended". This is incorrect. The PD right relates to the enclosure of any land.
9. The GPDO does not define 'adjacent', though the parties cite a number of appeal decisions¹ and the Council refers to the case of *Simmonds v SSE and Rochdale MDC* [1980] P&CR 432 in support of their positions. Whilst they did not provide me with copies of those appeal decisions, they did provide a brief description of the Inspectors' findings. Their overall message is that an assessment as to whether a means of enclosure is adjacent to a highway used by vehicular traffic is a matter of fact and degree, with each decision being based on the individual circumstances of the case. Adjacent does not, however, require a means of enclosure to abut a highway.
10. Drawing 22-PLP appears to show the 'road edge' of Church Lane, at the bottom of the stone-faced wall, to be plotted more or less accurately. As such, I use this as a point of reference. The fence would be set back from this, horizontally, by about 2.5m. It would, of course, be set a few metres above the level of the carriageway.
11. The distance between the proposed fence and the carriageway is small and there are no intervening features, natural or built, between the two that might impact on my assessment of adjacency. Given this, and notwithstanding its elevated position, as a matter of fact and degree I find that the fence would be erected in a position that is adjacent to the highway. As such, given its height, the proposed fence would not be permitted development under Class A of Schedule 2, Part 2 of the GPDO.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a 2m high fence is 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.

Roy Curnow
Inspector

¹ APP/C3620/C/99/1027562; APP/Y2810/C/02/1095521 & 1095523; APP/Q3115/X/16/3150593; and APP/B9506/C/20/3253245