



Appeal Decision

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

Site visit made on 20 January 2026

an Inspector appointed by the Secretary of State

Decision date: 11 February 2026

Appeal Ref: APP/F5540/X/24/3340907

Land at Ashley Drive, Isleworth TW7 5QA

- 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 Ruben Bandarian of Ashley Drive Residents Association (Osterley) Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application, Ref 01531/A/LAW3 dated 5 December 2023, was refused by notice dated 25 January 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 installation of gates and piers.
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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 operations considered to be lawful.

Main Issue

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

Reasons

3. General planning permission for the erection or construction of a gate, fence, wall or other means of enclosure is given by reason of Article 3(1), Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order').
4. 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 1m. Where not adjacent to a highway¹, the relevant limitation is 2m.
5. Ashley Drive is a private road, owned and maintained by the appellant company, serving a small estate of detached two-storey houses constructed under planning permission 00647/350/P2 dated 9 May 1984.
6. The proposed operations comprise the installation of a set of double vehicular gates, with a pedestrian gate on each side. They would be erected across Ashley Drive at a point set back 11m from the back of the footway to Jersey Road, a public highway. No part of the installation would be higher than 1.56m.

¹ Or in the case of a school (and not likely to cause a danger to highway users)

7. The Council is in opposition to the issue of the LDC because it says:

- Ashley Drive is a highway, and the proposed development would not benefit from Class A rights since it would be adjacent to it and over 1m;
- Jersey Road is a highway, and the proposed development would not benefit from Class A rights since it would be adjacent to it and over 1m; and
- The development would be a breach of a condition attached to planning permission 00647/350/P2.

The appellant disagrees on each of these points, which I shall address in turn.

Ashley Drive

8. Common law has established that a highway is a defined route over which the public can pass and repass without hindrance or charge. The use must be “as of right”, meaning without force, secrecy, or permission.
9. Ashley Drive is a privately owned and maintained cul-de-sac, and it is clearly marked at both sides of its entrance with signs saying that it is a private road and that there is “No public access or right of way”. It is clear from these signs that no permission is given by the private owners of Ashley Drive to the public for pass and repass. The fact that residents of the small private estate have access to the land known as Ashley Drive (along with visitors having their permission) does not in my view mean that members of the public have access “as of right”.
10. Accordingly, I do not find as a matter of fact and degree that Ashley Drive is a highway. My reasoning in this regard is consistent with that of the Inspector in the Wembury Park Appeal² who issued a LDC in similar circumstances. I also agree with him that the definition of highway in Part 1 of the Order does not apply to Part 2³.

Jersey Road

11. It is not in dispute that Jersey Road is a highway – but it is the appellant’s case that the development would not lay adjacent to it.
12. The new gates would be set back a significant distance from Jersey Road⁴, and that factor I find highly persuasive that they would not be adjacent to it. In fact, the distance is considerably more than in the case of the Former Long Walk House Appeal⁵ (more than twice the distance), where a LDC was issued on the same basis for lawfulness as in the appeal before me.
13. Further, in the proposal, the 11m section of Ashley Drive between the development and Jersey Road would be resurfaced with brown block pavements in clear contrast to the black tarmac of the highway. Accordingly, the area would appear distinct from the highway and more related to the private estate.

² APP/M3645/X/15/3135589

³ Unlike the Inspector in APP/W4325/X/22/3291235, I place no weight on the definition of highway on page 6 of the *Permitted development rights for Householders - Technical Guidance* (Ministry of Housing, Communities and Local Government). That document is clearly a guide to Part 1 and page 6 simply repeats the Part 1 definition.

⁴ As found by the Inspector in APP/F5540/X/21/3287532 who determined an appeal concerning a related proposal for gates and piers across Ashley Drive set 10m back from Jersey Road (DL12).

⁵ APP/T0355/X/13/2194880

14. Together, the significant set-back and the choice of contrasting materials in the intervening distance before the highway would result in the development not being perceived as the boundary of the land from the highway edge.
15. For these reasons, I find that the development would not be adjacent to a highway.

Permission 00647/350/P2

16. To safeguard the amenities, appearance and character of the Ashley Drive housing development⁶, Condition 11 was imposed:

"No walls, fences or other means of enclosure shall be erected in advance of the front main walls of the individual properties unless otherwise agreed by the Local Planning Authority."

17. A reasonable reader applying common sense in the context of the planning permission as a whole, and noting the reason for the imposition of the condition, would understand the condition as prohibiting the erection of enclosures at locations identified in Appendix E of the appellant's appeal statement. That is to say, in front of the **individual** houses within Ashley Drive. The specific wording of the condition does not appear to control the installation of gates (and piers) across the access road serving the houses. Further, prohibiting (without consent) the erection of enclosures in front of the individual properties in Ashley Drive would be consistent with the stated purpose of the condition in protecting the amenities, appearance and character of the housing development as a whole.
18. Accordingly, the proposal before me would not be in breach of Condition 11.

Conclusion

19. 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 installation of gates and piers 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.

Andrew Walker

INSPECTOR

⁶ Demolition of existing buildings, construction of access road and erection of 13 detached two-storey houses each with double garage.



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 5 December 2023 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:

General planning permission is afforded by reason of Article 3(1), Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

Signed

Andrew Walker

Inspector

Date: 11 February 2026

Reference: APP/F5540/X/24/3340907

First Schedule

Installation of gates and piers.

Second Schedule

Land at Ashley Drive, Isleworth TW7 5QA

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: 11 February 2026

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Scale: Do not scale

