

# STATEMENT

## **STATEMENT IN SUPPORT OF APPLICATION FOR CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT AT 50 ANGMERING LANE, EAST PRESTON, WEST SUSSEX, BN16 2TA**

### **Brief Planning History**

On 27<sup>th</sup> September 2013 Mr Andrew Wood, a Planning Compliance Officer at Arun District Council, wrote to the Applicant alleging a breach of planning regulations asserting that a wall had been constructed that required planning permission. It was stated that the height of the wall itself is 2.0m but that the height of the piers rises to 2.45m. None of that is disputed, save that the majority of the piers are 2.2m high and only the piers on each side of the entrance gates are of 2.45m in height.

The letter also stated that "the wall is considered by this Council to be adjacent to the highway and it is the Council's view that only a 1.0m wall could be constructed under the Town and Country Planning General Permitted Development Order 1995 as amended." That assertion is disputed and is at the heart of this application.

On 14<sup>th</sup> October 2013 the Applicant submitted an application for retrospective planning permission for the wall as constructed and that application was refused on 15<sup>th</sup> January 2014 under Ref: EP/124/13. The Officer's Report that accompanied that decision stated that "the application seeks planning permission to retain a front boundary wall and gates at approximately 2.1m in height." That is disputed as the wall itself (excluding the piers and the gates) is only 2.0m high as correctly stated in the Council's Compliance Officer's letter of 27<sup>th</sup> September 2013.

This Application for a Certificate of Lawfulness of Proposed Use or Development puts forward a proposal that will bring the entire structure within Permitted Development Rights.

### **The Relevant Statutory Provisions**

The Town and Country Planning General Permitted Development Order 1995 as amended (see copy extract attached), permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure up to a height of 2.0m unless such gate, fence, wall or other means of enclosure is adjacent to a highway used by vehicular traffic, in which the maximum permitted height is 1.0m.

Under S336 of the Town & Country Planning Act 1990 (see copy extract attached), the interpretation of "highway" is stated to have the same meaning as in the Highways Act 1980.

Turning to the Interpretation provisions of the Highways Act 1980 (see copy extract attached), the meaning of a "highway" appears in S328 which refers to a "highway maintainable at the public expense", and S329 which refers, inter alia, to "carriageway", "footpath" and "footway", all qualified by the public having a right of way thereover. Indeed, a clear distinction is made elsewhere within the Act between a "highway" and a "private street".

If the Council's assertion is correct that the maximum permitted height is only 1.0m, it is necessary for it to prove that Angmering Lane is a highway and that it is either "maintainable at public expense" or, at the very least, that the public has a right to pass or re-pass over it with vehicles by right and as frequently as they wish without hindrance and without charge. In fact, neither is the case.

Angmering Lane is a private road on the Willowhayne Estate and is maintained by the residents through a subscription paid to the Willowhayne Residents' Association. Attached to this Statement is a copy of a letter dated 15<sup>th</sup> July 2014, addressed to the Highways Department at West Sussex County Council enquiring as to whether Angmering Lane is a highway maintainable at the public expense, and a copy of their emailed reply dated 21<sup>st</sup> July is also attached clearly stating that it is not.

Furthermore, the public have no legal rights of access and the various entrances to the Estate are prominently signed and the gates are closed or manned periodically to prevent any such rights becoming established. Consequently, even if the Council asserts that Angmering Lane is a highway (not maintainable at public expense) the fact that the public are excluded from time to time is conclusive proof that it cannot be held to be a "highway" within the statutory definition.

By way of further evidence of the Applicant's view on the matter, also attached are copies of two extracts from guidance issued by the Planning Portal; one relating to the height of boundaries that may be erected under Permitted Development Rights and the other relating to the definition of a "highway" under planning legislation, both of which support the Applicant's understanding of the relevant legislative regimes.

In further support of this Application, attached is a series of photographs of numerous other instances of walls, fences and gates on the Willowhayne Estate where some or all of the means of enclosure exceed 1.0m in height. All the roads to which these structures front are of exactly the same status as Angmering Lane. Consequently, either the Council has granted planning permission in each of these cases (which is believed not to be the case) or the Council has decided not to take any enforcement action, presumably on the basis that they were within Permitted Development Rights as they are not adjacent to a highway. To take an opposing view in relation to this Application would be unconscionable and/or perverse.

## **Conclusion**

In conclusion, the Applicant is of the view that it is patently obvious that Angmering Lane is not a "highway" in that the public has no right of way over it to pass or re-pass with vehicles as frequently as they wish without hindrance and without charge, nor is it a "highway maintainable at public expense". As a consequence, the 1.0m limitation on height referred to in Schedule 2, Part 2, Para A1 (a) does not apply and the limitation of 2.0m on height referred to in Schedule 2, Part 2, Para A1 (b) applies to the matter the subject of this application.

It is firmly believed that this Application for a Certificate of Lawfulness of Proposed Use or Development will bring the front boundary wall at the subject property within the Town and Country Planning General Permitted Development Order 1995 and should be approved accordingly.