

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development

REF NO: EP/111/14/CLP

LOCATION: 50 Angmering Lane
East Preston

PROPOSAL: Application for a Lawful Development Certificate for proposed alterations to existing front wall and gate.

DESCRIPTION OF APPLICATION

The proposed works involve the reduction in height of the wall and gates from 2.45m to 2m in height.

DESCRIPTION OF SITE AND SURROUNDINGS

A detached bungalow with brickwork and smooth rendered elevations. The roof is pitched with brown tiles. There is an attached garage that comes forward of the main house. The surrounding area is predominantly residential in character, consisting primarily of two storey detached properties of various designs and styles, which are set back from the road. A wall has been erected forward of the primary elevation measures 2.45m in height (at its highest point) and is sited approximately 5m from the road.

RELEVANT SITE HISTORY

EP/124/13/	Retention of new front wall & gate in lieu of previously removed 3m high mixed hedge & drive gates.	Refused 15-01-2014
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This matter was the subject of a planning refusal under application reference EP/124/14/.

REPRESENTATIONS

Representations received:

None

Comments on Representations received:

None

CONSULTATIONS

Solicitor - Legal Services

Consultations responses received:

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo now returned together with your file on which alone plus the authorities cited this is based.

2.GENERAL RECOMMENDATION

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I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

I rely on you to tell me of any evidence indicating otherwise.

3.DETAILS AND TESTS UNDER SS 192 TCPA 1990 AND NPPG LDC GUIDANCE

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 8.15 and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity. S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

This being an application for Certificate of Lawfulness of Proposed Development the simple question is "does the application relate to future development and does it fit within the relevant parts of GPDO or is it otherwise lawful?"

I cannot comment on dimensions and whether tolerances have been exceeded.

In short I've seen nothing that suggests this is not PD, save for the height of the piers which appear to exceed 2m.

The precise GPDO PD rights are within Schedule 2 Part 2 Minor Operations---- this in brief authorises a 1 m high wall next to a highway and , in other cases, where the wall is not located adjacent the highway, a 2m . high wall

The applicant contends Angmering Lane is NOT a highway, so the structures can be PD, the structures, being up to 2 m high .

These questions with my answers follow:-

No Question Answer and Evidence relied on

1. How is highway defined ?

Sauvain QC on Highway Law - p 1 chapter 1 -

[a] a public right of way over a defined route

[b] open to public at large

[c] public must use as of right

[d] right of passage ie pass and repass

[e] along a defined route

All these elements must be present

2. What is the definition of highway in Planning Law and under GDPO ?

S336 TCPA 1990 refers to Highways Act 1980

S328 of which defines highway as including the whole carriageway

S329 contains numerous definitions but none succinct or complete

Consequently the definition from Sauvain QC above is the most helpful and comprehensive

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definition

The applicants exhibit HC Library 18 October 2010" Roads Unadopted" confirms this at page 3 para 2

3. Does a highway need to be publicly maintained? No - Sauvain QC on Highway Law Chapter 4 para 4.07 However, whether a highway is publicly maintainable is a different question to whether a route is a highway as above defined

4. Is Angmering Lane a highway as above defined? No.

All the elements [a] to [e] in the Sauvain definition above must be satisfied.

Elements [a] and [c] are absent because :-

It is on a private estate as stated at the entrance and on the Willowhayne website

It is not accessible by the public by legal right -the gates are closed at weekends -Butts Estate Agents and Google Earth show this

There are signs at the entrance - a green sign with gold letters "Private right public right of way" on the gates and on the verge a sign with a white background and blue edges with lettering at bottom saying "S31 Highways Act 1980 "no intention to dedicate this road or path to the public"

5. Is Angmering Lane publicly maintained ? No

there is evidence of this :-

Applicants Statement page 2

Applicants exhibit WSCC letters dated 15 and 21 July 2014

Sue Loveday's email dated 29 August summarising GPS copied to David Easton on 5/9/14

Estate Agents websites and Willowhayne Estate Residents Association refers to the roads being maintained by the private company

6. Overall conclusion ? Angmering Lane is not a highway

I have noted that the gates/wall are stated to be , in parts , over 2m high. So even if parts are PD, parts are not. So can the applicant be told to reduce the parts that exceed 2m?

4.FURTHER EVIDENCE /OTHER OPTIONS

I rely on you to show me any fresh evidence or any questions which may alter the tenor of this advice.

I am willing to take a Counsel's Opinion if that is helpful.

I have, at my 1 to 1 meeting on 28 August 2014, discussed this question of definition of a highway with my line manager , who agrees with me.

cleoffrep

I suppose you could take the point that the wall should be measured as a whole including piers, which do exceed 2.0m high and so argue, that takes the wall outside PD rights due to its height in parts. Sensibly, I suggest you argue for the piers to be reduced to come within 2m. and so PD.

5. SUGGESTED TERMS OF GRANT

I suggest [subject to your comprehensive review of the evidence] that the application be granted in these terms:-

1. grant
2. the wall [excluding piers] is within 2m height limits so benefits from PD under Minor Operations Part 2
3. the wall is not adjacent to a "highway", Angmering Lane, for all the above reasons, being a private estate road to which the public have no access, as of right.

Comments on Consultation responses:

None

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

In this instance the proposed works will be assessed against 2 criteria contained within The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008, Part 2 - Class A, which pertains to erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Provided the proposed works satisfy the relevant criteria, and that no restrictive conditions to development have been imposed on the site, the proposed works will constitute Permitted Development and would not require planning permission. If the works fail to accord with the criteria then planning permission will be required for them to take place.

CONCLUSIONS

The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008, Part 2 Class A prescribes the degree of works involving the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure that can be undertaken without the need to apply for Planning Permission. The development subject of this application will therefore be assessed against the criteria contained within this part of the order.

Class A (a) (i) cannot be applied in this instance as it relates to development by a school.

Class A (a) (ii) states that 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 one metre above ground level.

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As identified by the Council Solicitor the definition of a 'highway' within The Town and Country Planning Act 1990 refers to The Highways Act 1980, which under S329 defines a 'highway' as "a highway maintainable at the public expense". Whilst, this definition is ambiguous Angmering Lane also fails the tests in that it is not 'a public right of way' nor do the public have 'use as a right'.

Therefore, Angmering Lane is not a 'highway' and as such Class (a) (ii) cannot be applied.

Class A (b) states that the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level. In this case the proposed wall and gate once reduced from its existing height of 2.45m would be two (2) metres in height and as such would not be contrary to this section of the GPDO.

Class A (c) this section again is not relevant as the wall and gate are newly constructed.

Class A (d) 50 Angmering Lane is not a Listed Building and as such the proposed development would be in accordance with this part of The Town and Country (General Permitted Development) Order 1995 (as amended).

The existing wall and gates are currently in breach of Schedule 2, Part 2, Class A, (b) due to their height being 2.45m (45cm beyond that permitted. Therefore, the proposed 45cm reduction would mean that the walls and gates would benefit from permitted development under Schedule 2, Part 2, Class A, (b) of The Town and Country (General Permitted Development) Order 1995 (as amended).

RECOMMENDATION

PP NOT REQUIRED

The Arun District Council hereby certify that on 15/09/2014 the development described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town & Country Planning Act 1990 for the following reasons:

The proposed wall and gate would measure two (2) metres in height and as such the development would qualify as Permitted Development as per The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 1995 (as amended) under Schedule 2, Part 2, Class A (b).

FIRST SCHEDULE

The reduction in height of the wall and gate to a maximum height of two (2) metres in accordance with Schedule 2, Part 2, Class A, (b) of The Town and Country (General Permitted Development) Order 1995 (as amended).

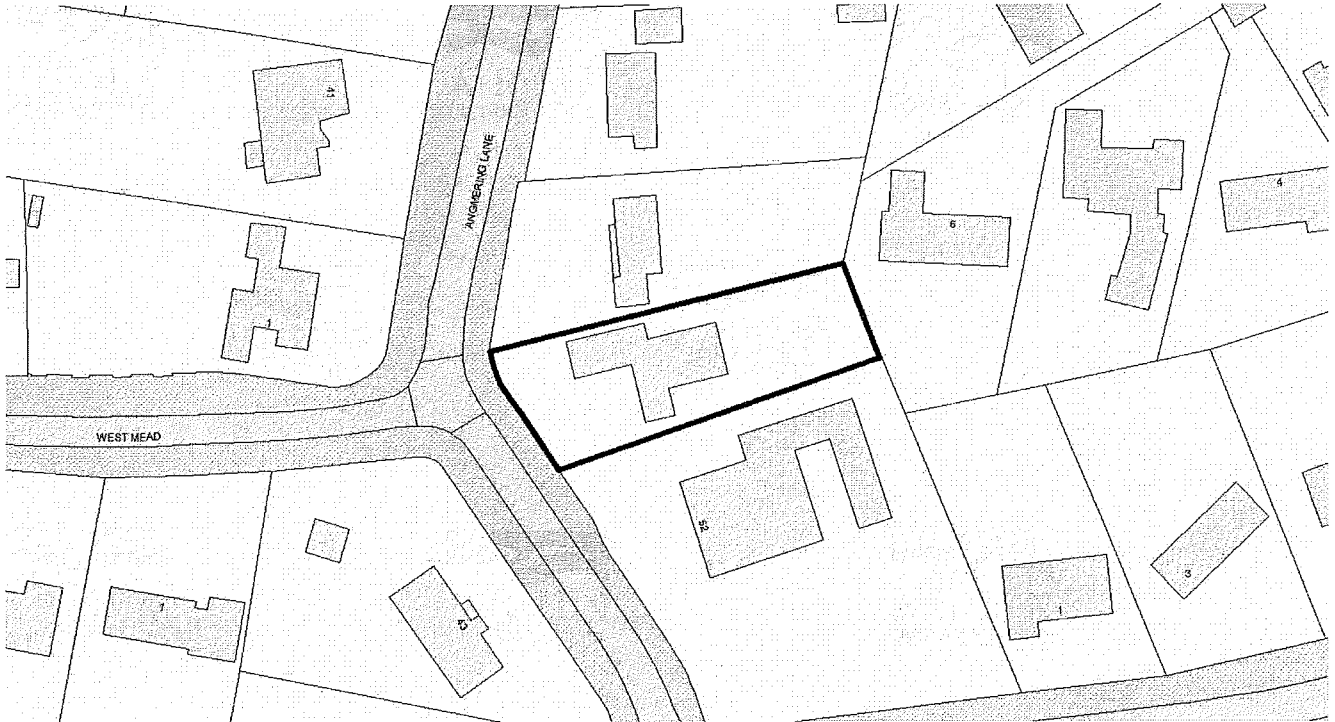
SECOND SCHEDULE

50 Angmering Lane, East Preston, West Sussex, BN16 2TA

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EXTENT OF USE

Wall and gate forward of the primary elevation to a maximum height of two (2) metres.



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