

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development**REF NO:** EP/149/17/CLP**LOCATION:** Sandcastles
32 Tamarisk Way
East Preston**PROPOSAL:** Lawful Development Certificate for a proposed construction of new garden wall to front of property.**DESCRIPTION OF APPLICATION**

It is proposed to erect a new wall to the front of this property. The submitted details indicate a low 0.7 wall with a 8 x 2m high piers. Between the piers would be horizontal timber (cedar) slates. In addition there would a 1x 2m high pier and a pair of 2m high timber (cedar) gates. The wall and piers would be white rendered and would be located on the front boundary of the residential curtilage at the back edge of the verge adjoining the road. The grass verge between the metalled road and the proposed wall is 4.638m in depth.

DESCRIPTION OF SITE AND SURROUNDINGS

The site is occupied by a detached chalet bungalow with rendered elevations, a tiled roof and detached garage to the north-east. The property also features a weather boarded dormer and a balcony on the southern elevation.

The character of the locality is predominantly residential and features properties of various designs and styles.

RELEVANT SITE HISTORY

EP/65/05/	Alteration of cladding to existing dormer and substitution of french doors with flower balcony for sundry windows.	ApproveConditionally 22-07-2005
EP/131/06/	Alterations & extension to form balcony	ApproveConditionally 20-11-2006
EP/6/17/HH	Detached double garage, extension to north elevation, pergola to south elevation & alterations to existing garage to create home gym.	ApproveConditionally 28-02-2017
EP/119/17/NMA	Application for a non- material amendment following the grant of EP/6/17/HH to reduce the height of the outbuildings & change roof tiles from Grey rooftiles to Redland Concrete Plain tiles Charcoal Grey.	Approve 17-10-2017

EP/55/60	Enclosure for swimming pool	Approve 19-05-1960
EP/125/60	Garage	ApproveConditionally 07-11-1960
EP/92/84	O/L application for erection of single detached dwelling with garage	ApproveConditionally 25-07-1984
EP/11/85	Approval of reserved matters following the grant of an O/L P/P Proposed construction of 4 b/r detached house & garage	Refused 20-02-1985
EP/67/85	New three bedroomed detached chalet type bungalow in plot with existing garage	ApproveConditionally 15-05-1985

Noted.

REPRESENTATIONS

Representations received:

No representations received.

Comments on Representations received:

N/A

CONSULTATIONS

Consultations responses received:

No consultees.

Comments on Consultation responses:

N/A

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 the Town and Country Planning (General Permitted Development) Order 2015 (as amended) under Schedule 2, Part 2:

- Class A, which pertains to gates, fences, walls, etc.

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 RELEVANT PART OF THE GPDO

Schedule 2, Part 2, Class A

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1 Development is not permitted by Class A if -

(a) 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 -

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

Interpretation of Class A

A.2 For the purposes of Class A, "school" includes -

(a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and

(b) a building permitted by Class C of Part 4 of this Schedule (temporary buildings and uses) to be used temporarily as a school, from the date the local planning authority is notified as provided in paragraph C.2(b) of Part 4.

WHETHER TAMARISK WAY IS A HIGHWAY

It has been previously established following considerable reference to case law that private roads such as Tamarisk Way are not highways - see EP/111/14/CLP.

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 definition.

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 Tamarisk Way 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

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

6. Overall conclusion

Tamarisk Way is not a highway

WHETHER PLANNING PERMISSION IS REQUIRED

Given that Tamarisk Way is not a highway, the height of any gate, fence, wall or means of enclosure erected or constructed must not exceed 2 metres above ground level. Schedule 2, Part 2, Class A, A.1, (b) refers.

In this case the wall, fencing, piers and gates do not exceed 2m overall and therefore planning permission is not required.

RECOMMENDATION

PP NOT REQUIRED

The Arun District Council hereby certify that on 29 November 2017 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 in black on the plan attached to this

certificate, would be lawful within the meaning of section 192 of the Town & Country Planning Act 1990 for the following reason:

The proposed wall will not exceed 2m in height. The proposed wall is not therefore in accordance with Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) since it does not satisfy the requirements of A1, (b) within Class A and would be lawful without the need to apply for planning permission.

FIRST SCHEDULE

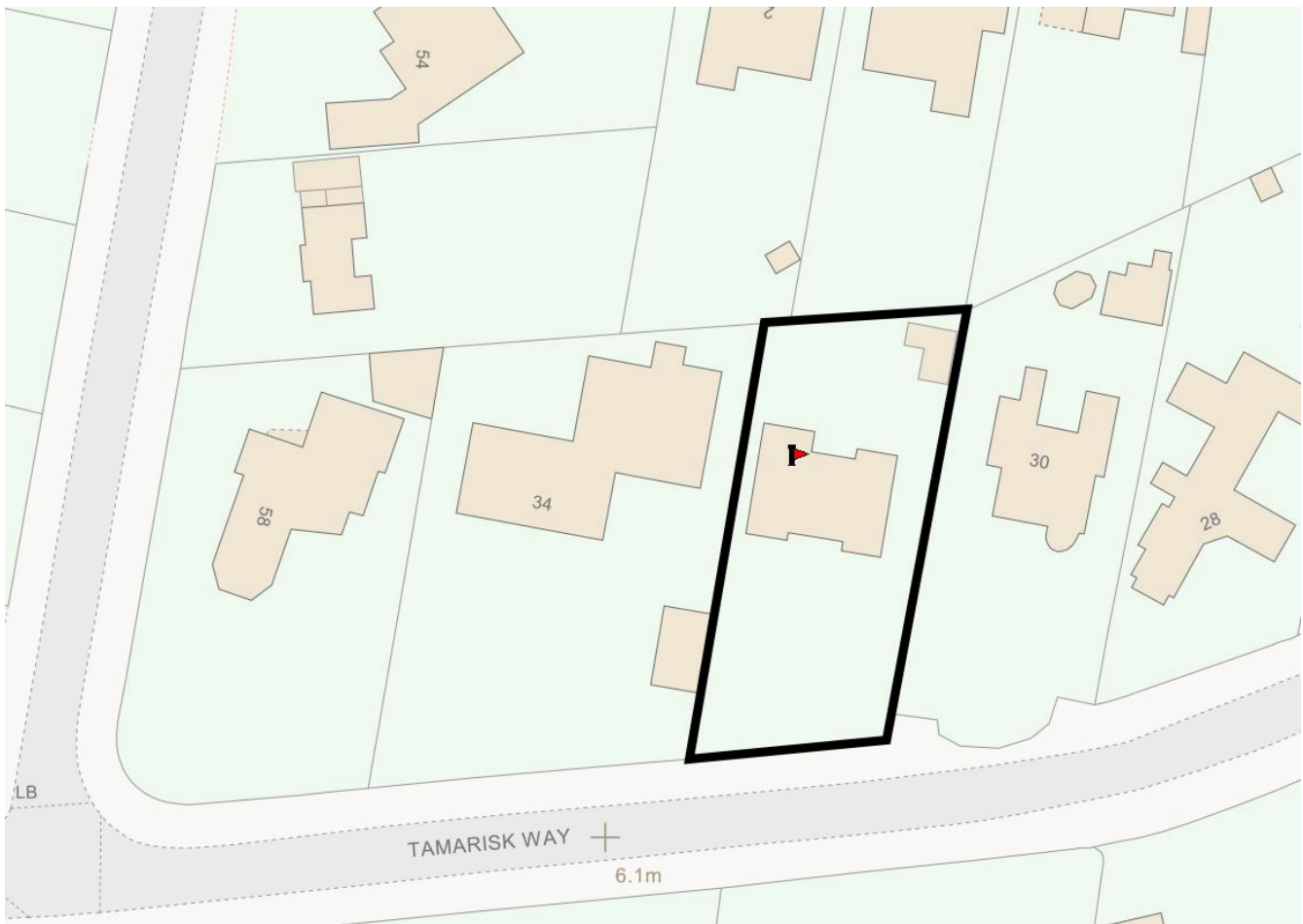
The development proposed is the construction of a new garden wall to front boundary as shown on Drawing Number 1069.05 dated 31.10.2017 (Proposed Boundary Wall Plan, Elevations & Site Plans).

SECOND SCHEDULE

Sandcastles, 32 Tamarisk Way, East Preston, West Sussex BN16 2TE

EXTENT OF USE

Construction of a new wall. The submitted details indicate a low 0.7m wall with a 8 x 2m high piers. Between the piers would be horizontal timber (cedar) slates. In addition there would be a 1 x 2m high pier and a pair of 2m high timber (cedar) gates. The wall and piers would be white rendered and would be located on the front boundary of the residential curtilage at the back edge of the verge adjoining the road. The grass verge between the metalled road and the proposed wall is 4.638m in depth.



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