

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

REF NO: R/83/13/CLP

LOCATION: 15 Fontwell Close
Rustington

PROPOSAL: Application for certificate of lawfulness for a proposed use - Replace rear garden fence to completely enclose rear garden

DESCRIPTION OF APPLICATION

The proposal involves the erection of 1.95 metre high timber fencing to enclose the rear garden of the property in question. This will replace existing dilapidated boundary treatment.

DESCRIPTION OF SITE AND SURROUNDINGS

The site is occupied by a terraced two-storey dwelling which backs onto the road, with the frontage facing onto a central footpath and green area. The rear garden of the property is enclosed using a combination of dilapidated concrete walling and timber fencing varying between approximately 1.6 and 1.8 metres in height.

RELEVANT SITE HISTORY

None.

REPRESENTATIONS

Representations received:

None.

Comments on Representations received:

None.

CONSULTATIONS

Consultations responses received:

None.

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.

The Town and Country Planning (General Permitted Development) Order 1995 (as amended) Schedule 2 Part 2 'Minor Operations' Class A lists the specific situations in which the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure can be regarded as Permitted Development. Should the proposed boundary fencing not accord with the criteria set out, a planning application will need to be received and approved in order for the proposed works to be undertaken lawfully.

CONCLUSIONS

It is noted that there is a restrictive condition relating to boundary treatment attached to the site under the original application for the development, R/23/66. However, this relates only to boundaries to the front of the building line (i.e to the front of the dwelling) and, as such, does not interfere with the proposed scheme, which involves fencing to the rear garden.

The Town and Country Planning (General Permitted Development) Order 1995 (as amended) Schedule 2 Part 2 Class A 'Minor Operations' allows for the erection of a means of enclosure, subject to it being within the thresholds set out in the associated criteria.

Criterion A.1(b) instructs that the maximum height above ground level of any means of enclosure erected must not exceed 2 metres, if it is to be considered to be Permitted Development. Accompanying plans show that the proposed fencing is to be 195cm in height and, as such, would be within the parameters set out.

However, in any instance where the means of enclosure runs adjacent to a highway, the permitted height is reduced to 1 metre as per A.1(a). In this instance, it has been determined that the fencing running along the eastern site boundary would be in a position directly adjacent to the highway and, as such, would exceed the height permitted for boundary treatment in this position.

It is therefore held that planning permission would be required in order for the proposed development to be undertaken lawfully.

RECOMMENDATION

PP REQUIRED

The Arun District Council hereby certify that on 29th of April 2013 the development shown on the plans accompanying the application, would not be lawful within the meaning of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) Schedule 2 Part 2 'Minor Operations' Class A for the following reasons.

The section of fencing on the eastern boundary would run adjacent to the highway and exceed 1 metre in height, thereby falling outside of the thresholds allowed under The Town and Country Planning (General Permitted Development) Order 1995 (as amended) Schedule 2 Part 2 Class A.1 (a).