

Site Address: The Gable, 32 Fishery Lane, Hayling Island, PO11 9NR
 Proposal: Application for Lawful Development Certificate for proposed alteration to existing brick piers and replacement of existing gates.
 Application Type: Certificate of Lawfulness
 Application No: APP/23/00545 Expiry Date: 11/09/2023
 Applicant: Mr R Gammon
 Agent: Case Officer: Denise Sheath
 Ward: Hayling East

Recommendation: REFUSE A CERTIFICATE OF LAWFUL USE

1 Site Description

The Gable, 32 Fishery Lane, lies on the south side of Fishery Lane. Vehicular access to the site, is between 32D & 32 B Fishery Lane, with No. 32 sited to the rear.

2 Planning History

97/52442/002 - Felling of Red Horse Chestnut tree covered by TPO 982. REF - 08/09/1997

03/57900/000 - Variation of Condition 3 of Planning permission 22521/13 dated 8 May 1981 to allow for the retention of a clear glazed window on the south elevation. REF - 06/05/2003

03/57900/001 - Application to crown reduce by up to 30%, crown thin by 10% and crown raise to a height of 3m a Horse Chestnut (T1) subject to TPO 0982. PERM - 12/06/2003

07/57900/002 - Fell a Horse Chestnut tree (T1) subject to TPO 0982. REF - 14/11/2007

APP/14/00316 - Crown reduce 1No. Horse Chestnut (T1) by 2.8m from the top, 2m from the sides and remove any dead, crossing or epicormic branches;remove lowest limb on east sector back to trunk, subject to TPO 0982. PERM - 30/04/2014

APP/17/00790 - Subdivision of garden and erection of 1 No.3 bed bungalow and detached double garage with access from Marshall Road and erection of a new detached double garage for No. 32 Fishery Lane with access from Fishery Lane. WD - 20/09/2017

APP/17/01118 - Fell 1 No. Horse Chestnut (T1) subject to TPO 0982. PERM - 24/11/2017

APP/18/00099 - Erection of 1No. two bed chalet bungalow. (Resubmission.). REF - 27/03/2018

APP/23/00215 - Replacement of existing gates with 1.8m high timber gates and extension of associated brick piers. - decision outstanding

3 Proposal

Application for Lawful Development Certificate for proposed alteration to existing brick piers and replacement of existing gates from 1.2m high to 1.8m high.

4 Legal Considerations

4.1 The Town and Country Planning (General Permitted Development) (England) Order 2015, case law and appeal decisions

5 Statutory and Non Statutory Consultations

Not required

6 Community Involvement

Not required for a Certificate of Lawful Proposed Use or Development.

7 Legal Considerations

7.1 The proposal has been assessed against the 'permitted development' allowances in The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), case law and appeal decisions.

7.2 Schedule 2, Part 2 Minor operations, Class A of the GPDO states:

"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."

7.3 Therefore, under permitted development right, there is a height limitation of one metre for a gate erected adjacent to a highway used by vehicular traffic and a height limitation of two metres for any other gate.

- 7.4 The height of the replacement close boarded gate the subject of the application would be 1.8m. The associated piers would be raised by 300mm from 1.5m to 1.8m.
- 7.5 The proposal is to erected the gates, 4m back from the edge of the highway.

Whether adjacent to the highway

- 7.2 The term "adjacent to a highway" is not defined in the Order or in the Town & Country Planning Act 1990 and thus a matter to be determined on the facts in any particular case. Taking its common and everyday meaning, and having regard to the Oxford Dictionary definition, the terms "adjacent" means next to or close to in proximity. That said, the position established by the courts is that the "adjacent" does not necessarily mean that the walls, gates and pillars in question have to be abutting or touching the highway. Thus, the thrust of case law and other appeal decisions is that a wall or fence or a pier and gates can be set back from a highway, but still be 'adjacent' to it, as a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so. Therefore, each proposal has to be considered on its individual merits, with a planning judgement made in each case.
- 7.3 As to the proposal, the erection of the gates and piers would define the property when viewed from Fishery Lane, and would be perceived to do so. Therefore having regard the individual circumstances of the proposal, the piers and gates would be 'adjacent' to the land and because they would exceed 1m in height would not constitute permitted development under the GPDO.

8 Conclusion

- 8.1 The proposed development does not fall within permitted development regulations as set out in Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Therefore, a Lawful Development Certificate **cannot** be issued.

9 RECOMMENDATION:

That the Head of Place be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/23/00545 for the following reason:

The proposed development would exceed 1 metre in height and be adjacent to a highway used by vehicular traffic and therefore fails to comply with the criteria of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Lawful Development Certificate for proposed alteration to existing brick piers and replacement of existing gates. as described in the written particulars, plans and other documents submitted with your application received on 17 July 2023.

SECOND SCHEDULE:

This certificate relates to land at The Gable, 32 Fishery Lane, Hayling Island, PO11 9NR as shown edged red on the submitted Location Plan received 17 July 2023.

- 1 The proposed development would exceed 1 metre in height and be adjacent to a highway used by vehicular traffic and therefore fails to comply with the criteria of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).