

Certificate of Lawfulness Application

**Removal and replacement of existing
gates**

32 Fishery Lane, Hayling Island, PO11 9NR

Supporting Narrative

17th July 2023

INTRODUCTION

This narrative has been assembled to support a Certificate of Lawfulness Application following the earlier submission of a Planning Application for the removal and replacement of a pair of existing gates and the increase in height of the associated supporting brick piers.

The narrative is intended to explain the rationale for why the proposals should be considered as Permitted Development under the GDPO 2015

GDPO 2015

An extract from the 2015 GDPO, specifically relating “enclosures” is provided below along with a laymans version of the same legislation;

The Town and Country Planning (General Permitted Development) (England) Order 2015

UK Statutory Instruments ► 2015 No. 596 ► SCHEDULE 2 ► PART 2 ► Class A – gates,...

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What Version ?
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Opening Options ?
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Status: This is the original version (as it was originally made).

Class A – gates, fences, walls etc

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.

Planning Permission

You will **not** need to apply for planning permission if you wish to erect a new; or alter, maintain, improve or take down* an existing fence, wall or gate if the following conditions are met:

- in regard to its height:
 - it is next to a highway used by vehicles (or the footpath of such a highway) and it would **not exceed** one metre in height (from ground level); or
 - it would **not exceed** two metres in height (from ground level) if elsewhere; or
 - if an existing fence, wall or gate already exceeds the limits above, that its height would **not be increased**.
- no part of the site is a listed building or within the curtilage of a listed building.
- no part of the fence, wall, gate or any other boundary involved, forms a boundary with a neighbouring listed building or its curtilage.
- the right to put up or alter fences, walls and gates has not been removed by an article four direction or a planning condition.

If any of these conditions are not met, then you will need to apply for planning permission.

GDPO INTERPRETATION

Taking the above into account a reasonable interpretation of the guidance is as follows;

If a gate, wall or fence is **adjacent** to a highway or a footpath then the maximum height allowed under the GDPO 2015 is 1m or, if elsewhere, the **maximum height is 2m** irrespective of whether the height is being increased – as long as it doesn't exceed the greater of 2m or its former height.

Unfortunately, and because the term **adjacent** is not properly defined by Planning Legislation, the decision as to whether an enclosure is “adjacent” or “elsewhere” has to be informed by case law.

Previous “case law” examples typically use 2 criteria to determine whether an enclosing feature is “adjacent”, and these are as follows;

- An enclosing feature is “adjacent” if it is within a distance of 2m from a public highway or footpath adjacent to a public highway
- An enclosing feature is “adjacent” if it could be reasonably perceived as defining the property boundary adjacent to a highway or footpath adjacent to a public highway.

If one or both of the above criteria are met then the enclosing feature is “adjacent” and, if they are not met, then the enclosing feature is considered as “elsewhere”.

THE PROPOSALS

The line of the existing gates is currently set back 4.2m from the edge of the existing footpath and the line of the property boundary between the footpath and the driveway is very clearly defined by both a change in material and the line of the neighbours front fence/wall, meaning that the gates could never be perceived as defining the property boundary.

Therefore, given that neither of the criteria that define “adjacent” are met, it must follow that the location of the existing gates can be considered as “elsewhere” under the GDPO 2015.

This being the case, it means that a maximum height of 2m is allowable as Permitted Development and, therefore, the proposed increase in height to 1.8m is lawful.