



Application for a:

Lawful Development Certificate

**Milking Hole Farm
Trough Lane
Denholme
Bradford
BD13 4NA**

Construction of stone walls and installation of a metal gate

30/07/2023

- 1.1. This application for a Lawful Development Certificate for a proposed operation has been submitted pursuant to the Town and Country Planning Act 1990: Section 192 as amended by Section 10 of the Planning and Compensation Act 1991.
- 1.2. The application seeks legal clarification that the proposed operation, as detailed by the accompanying plans would be lawful. The development subject of this application is that indicated by the plans, rather than the existing wall and gateway, which my client intends to modify depending on the outcome of this application.
- 1.3. It is appreciated a lawful development certificate cannot be applied for while there is an Enforcement Notice in place, this is however a materially different proposal.
- 1.4. It is acknowledged that when submitting applications to establish lawfulness that the responsibility is on the applicant to provide evidence to support the application.
- 1.5. Under the Town and Country Planning (General Permitted Development) (England) Order 2015, part 2, the erection or alteration of a gate or wall (or other means of enclosure) is permitted, providing the development does not exceed 2 metres in height above ground level. When constructed adjacent to a highway used by vehicular traffic, development is not permitted should it exceed 1 metre in height (from ground level).
- 1.6. In addition, under Class B (means of access to a highway) *'The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)'*, does not require consent.

- 1.7. The proposal involves the construction of two walls either side of the access, measuring 1 metre in height adjacent to the highway, which is increased to a height of 1.6 metres within the site, at a setback position, 6 metres away from the adopted highway. As such, it is considered that the proposed development would be lawful as it complies with the parameters established by Part 2 of the GPDO.
- 1.8. The key assessment in this instance is whether the section of wall exceeding 1 metre is setback a sufficient distance from the highway to no longer be considered adjacent to it.
- 1.9. The applicant accepts that a wall does not actually have to physically touch the edge of the highway for it to be considered adjacent in planning terms. It may be a small distance away from the highway edge provided it is close enough to have a perceived function of forming a boundary between a highway and a property.
- 1.10. The interpretation of *adjacent* in this context has arisen at appeal on numerous occasions. The thrust of these decisions is that for a wall or fence to be classed as adjacent to a public highway, consideration must be given to the setback distance and the function of that land between the means of enclosure and highway. In this instance, in order to ensure sufficient visibility for cars accessing the property, the walls, which exceed 1 metre in height, have been positioned a distance of 8 metres and more from the public highway.
- 1.11. An appeal decision from Tunbridge Wells (Tunbridge Wells BC 18/02/02), a case with very similar planning merits to the subject of this appeal, concluded that an enclosure which lay 1.7m behind a footway was not adjacent to it. The situation here was that along with distance, there was a bed of shrubs in front of the fence in dispute. The inspector deemed that this bed was a feature of some substance in its own right separating the fence from

the footway. In addition, the inspector averred that the distance which separated the fence from a person standing on the footway was such that a person could not touch the fence without entering the land belonging to the property. In this instance, the 9 metre distance alone is a feature of some substance and serves to separate the wall and gateway from the public highway.

- 1.12. Photographs 1 and 2 show the start of the wall to be over 2m back from the edge of the carriageway. The height of the wall on both sides will not exceed 1m for the first 6m. This represents a set back from the highway of over 8m.
- 1.13. In light of the above, it is maintained that the proposal would constitute permitted development under Part 2 of the General Permitted Development Order (2015).
- 1.14. A similar conclusion was reached in the case of Mole Valley 13/12/1999 DCS No 050-647-290 where the fence was set 5m back from the highway.
- 1.15. More recently, in an appeal in Harrogate (APP/E2734/X/20/3244664) in a similar case, the Inspector stated: *'The Council contends that the entire development is adjacent to the highway and exceeds 1 metre in height in some parts. The proposal is for the construction of a stone pier and wall along the frontage of the site which are not in excess of 1m in height. The wall then curves around into the site and increases to a height in excess of 1 metre and up to 2 metres in a setback position of 9 metres from the edge of the highway used by vehicular traffic. The proposed metal gates would be situated between two stone piers which are set back approximately 9 metres from the edge of the highway. The case turns on whether that position can be considered adjacent to the highway. In order to be adjacent to the highway a means of enclosure need Appeal Decision not be physically touching it. In these particular circumstances, the evidence before me shows that the significant set-back of the*



section of wall and associated piers which exceeds 1 metre in height is of sufficient distance to be considered to be in a position which is not adjacent to the highway.'

1.16. The significant matters here are:

- i. The fact that the wall and gate are set back from the sight lines.
- ii. It does not exceed 1m for a distance of 8m from the highway edge.
- iii. A landscaped area and a length of access round separate the wall and gate from the highway.
- iv. No part of the remaining walls or gate exceeds 2m in height.

1.17. The local authority is respectfully requested to confirm the proposed development is permitted under the Town and Country Planning Act 1990: Section 192 as amended by Section 10 of the Planning and Compensation Act 1991.