

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20240057
Location	Home Acre Melliker Lane Meopham Gravesend
Proposal:	Application for a Lawful Development Certificate for the proposed erection of a wall and gate.
Applicant:	Ms Marta Pochtowska
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form;
Drawing no. D-11 Rev. B – Site Location Plan, Block Plan, Wall & Gates Existing & Proposed;
Drawing no. D-12 Rev. B – New Wall & Gates Plan & Elevation; and
Planning Statement.

Property Type

The property comprises a detached dwelling.

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Relevant Planning History

None.

Officer Assessment

Permitted Developments Rights Restrictions

Article 2 (3) Land (AONB, Conservation Area)	N
Article 4 Direction	N
Permitted Development Rights Removed/Restricted	N
Listed Building	N

The application site has all permitted development rights as they have not been removed by an Article 4 Direction or by a planning condition attached to a previous planning permission.

The application relates to the proposed erection of a wall and gate and as such it stands to be assessed under Article 3, Part 2, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended):

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—

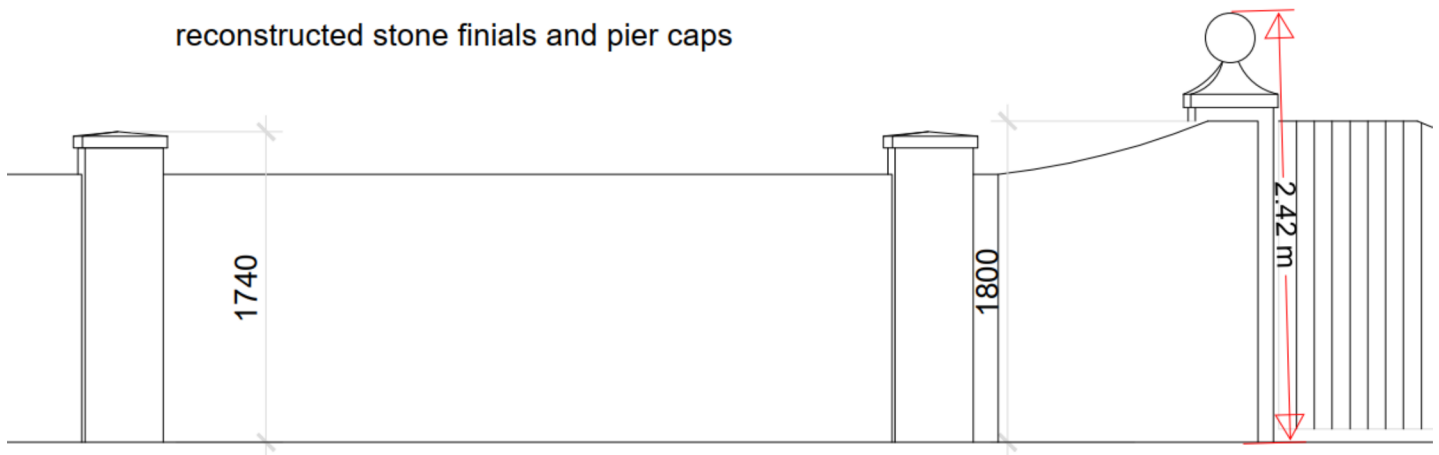
(a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and

(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.

In respect of Schedule 2, Part 2, Class A the application site is located on Melliker Lane which is a public highway. Case Law has shown that a gate/fence/wall can be set back some distance from a highway and still be described as adjacent to it provided that it is close enough to have the perceived function of forming a boundary between a highway and a property and that decisions are a matter of fact and degree; it does not have to be abutting or touching the highway to be considered adjacent to it. The case which established this was *Simmonds v SSE and Rochdale MDC* [1981] where it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. A 2m set back from the highway has also been referred to in Case Law as adjacent to the highway.

At Gravesham a reasoned approach is taken that if a gate/fence/wall is set back 2m or more from the highway then the gate/fence/wall can be 2m in height as it is not considered adjacent to the highway. In this case the plans submitted show the proposed wall and gates to the front of the dwelling would at their nearest point be

set back 2m from Melliker Lane and no point of the wall or gate would be within 2m of Melliker Lane. It is therefore considered that the proposed wall and gate should be considered against A.1 (b) above and that the proposed wall and gate could be up to 2m in height. However, the highest part of the wall would be 2.42m in height as shown in the below extract:



As this is greater than 2m in height then the proposed wall and gate is not permitted development.

As such a Lawful Development Certificate cannot be issued for this application as the wall exceeds 2m metres in height for a wall which would be set back 2m and more from the highway.

The proposal does not comply with Schedule 2 Part 2 Class A, A.1 (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Conclusion

Whilst the proposed wall would be set back 2m and more from the highway and is therefore not considered adjacent to the highway, it would be 2.4m at its highest point and therefore does not meet the requirements of Article 3, Part 2, Class A, A.1 (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and as such planning permission is required.

Recommendation: Refuse Lawful Development Certificate

Case Officer:	Ms Rebecca Harrison	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	18th March 2024	Dated:	18 March 2024