

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2018/4115/P
<b>Officer</b>		<b>Expiry date</b>	
Charles Thuaire		18/10/2018	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
41 Frogna London NW3 6YD			
<b>Conservation Area</b>		<b>Article 4</b>	
Redington Frogna		none	
<b>Proposal</b>			
Erection of 2m high entrance gates, piers and timber fences in the front garden set back from front boundary			
<b>Recommendation:</b>		Grant certificate	

The relevant legislation here is the GDPO Part 2, 'Minor operations', with Class A covering gates, fences, walls etc.

**The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 2, Class A**

**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;

*Not applicable – not proposed for a school*

ii) in any other case, 1 metre above ground level;

*The proposed fence is not directly adjacent to the highway being set back over 3m at its closest point. However see discussion below.*

b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

*The fence is not adjacent to the highway and is less than 2m*

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

*Not applicable- there is no existing fence in the proposed location*

d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

*Not applicable- the fence is not within the curtilage of a listed building*

#### Assessment:

The property is a single family dwelling house set within a large plot with long front and rear gardens. It is unlisted and in a conservation area. The current front garden has a very low dwarf brick wall behind which is sloping open lawn and mature trees. Neighbouring front gardens on either side have high brick walls behind the pavement.

The proposal is to erect a 1.8m high timber fence of a bespoke design arranged along a wavy curving line and well set back behind the dwarf wall; in addition there would be pedestrian and vehicular entrance gates flanked by 2m high brick piers. The fence would be 3.2m at its minimum distance from the pavement and 7.1m at its maximum. Existing trees would be retained in front and new trees and shrubs planted there to mask much of the new fence.

Normally a front garden wall or fence directly adjoining the public highway here and not replacing an existing 2m high enclosure should be a max of 1m high to qualify as permitted development. It could be argued that nevertheless a 2m high fence here is not permitted development as it is almost adjacent to the highway, albeit not directly abutting it. However on examination of case law and appeal decisions, as discussed below, and due to the circumstances of the case and the significant setback proposed, it is considered that the proposed boundary fence would fall within the parameters of permitted development.

Advice from Planning Resource is given on what is meant by the term 'adjacent' in the GPDO. The thrust of several appeal decisions is that a wall or fence may be sited back from the edge of a highway and still be "adjacent" to it, provided that the function of the enclosure is clearly to define the boundary of the property concerned from the highway. As each situation is different, there is no common standard for setback distance that may be deduced from cases.

An appeal decision from Tunbridge Wells in 2018 (ref 10752234) is the most relevant decision here. In that case there was a substantial bed containing trees, shrubs and plants (the bed measured between 1.7m and 2.5m in width) and was greater than the width of the footway. This, the inspector concluded, was a feature of substance in its own right which separates the fence from the footway. In addition the inspector considered that the distance which separated the fence from a person standing on the

footway was such that the person could not touch the fence without entering the land belonging to the property. This he argued meant that there was no sense of "immediacy or proximity" of the fence. Accordingly, in his view the fence was not considered adjacent.

In the current proposals, a substantial bed is also present, containing a number of mature trees including a chestnut, plane and 2 hollies. In addition there is also an existing 0.3m high brick wall which abuts the highway. The bed measures between 3.2m and 7.1m, is wider than the existing footway, and together with the retained wall can be concluded to be a feature of substance in its own right which separates the fence from the footway. Moreover, as in the Tunbridge Wells case, it would not be possible for a person standing on the footway to touch the fence without entering onto the land of no 41.

It is therefore concluded that the proposed boundary enclosure of 2m height with a considerable setback ranging from 3m to 7m is not 'adjacent' to the public highway and can be regarded as lawful permitted development.