

## **ITEM: 9. Planning: Appeals and Enforcement**

### **Appeals:**

None to note.

### **Enforcements:**

Enforcement Ref: PS/19/00170/CONHH

Address: Pound Cottage 1, Shillingee Road, Chiddingfold, Surrey, GU8 4SZ

Enquiry: Erection of a means of enclosure adjacent to a highway

Outcome: Following on from my site visit on the 22nd May 2019, I am writing to advise you I have assessed the development carried out in conjunction with Schedule 2, Part 2, Class A of the General Permitted Development Order which sets out the requirements for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, to benefit from permitted development rights. In this instance, I do not consider that the brick wall and pillars are adjacent to a highway and therefore there is no breach of planning control. On this basis I have now closed the file on this matter.

Planning Officer (Enforcement): Sue Payne

Enforcement Ref: PS/18/00283/CONBC

Address: Kogala, The Drive, Ifold, Loxwood, Billingshurst, West Sussex, RH14 0TD

Enquiry: Installation of entrance gates and piers adjacent to the highway

Outcome: I have now visited The Drive to assess the development carried out and to have regard to the character of the area. I have also taken into account the fact that the Ifold Estate comprises private roads which are not dedicated to the public.

During my site visit I was able to see that the entrance to the above development is closed with gates (hung from brick piers) and that this means of enclosure is set back some 3 metres [I did not measure the distance] from the back edge of The Drive. The access drive to the new properties is named as Hawthorn Close. This arrangement is not unique in this location. Also accessed from The Drive is Wildacre Close and Sycamore Close that have a five bar gate at the entrance to these private ways each serving the dwellinghouses that are set back off The Drive and flanked by close boarded fencing. I make no comment on whether these arrangements create a 'gated community' but the principle of demarking the 'new' development with a gated entrance and 'labelling' the way is clearly an established practice within the estate. The naming of the private driveways is for the purpose of identification and in itself does not result in their adoption as a highway. The Drive is classified as a 'Private street or private road' and the secondary driveways of Hawthorn Close, Wildacre Close and Sycamore Close are classified as 'non-maintained' roads (new estates/private lanes). In so far as this classification relates to planning control, there is a difference between a private way and a public highway, planning law makes a distinction between the two:

- A highway is a defined route over which the public at large can pass and repass as frequently as they wish without hindrance and without charge. A privately-owned or privately-maintained way can be a highway, but only if the public at large can use it as of right; a public

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right of passage is not established simply because there is no actual exclusion such as gating, rather there has to be a dedication (express or implied) by the owner;

- An enforcement notice requiring the removal of 1.8m high gates at the entrance to a housing estate in Surrey was quashed because there had not been a breach of planning control. In common law it was a highway over which members of the public could pass and re-pass. However, the road serving the houses was a cul-de-sac and there was no access to any footpaths or streets. In the opinion of a Planning Inspector, members of the public did not have any right to pass or re-pass and would only enter the road if specifically visiting one of the seven dwellings. Thus, the access was not a highway and there had not been a breach of control

There are many examples where the use and rights of access have been considered in relation to the above 'tests'. When applying these findings to The Drive, the management of the estate, is described on line at: <http://www.kelseyhall.org.uk/ifold-estates/> where it is stated that:

The company's principal activity is the management and maintenance of the access routes, verges and drainage channels (that run over verges and roads) of Ifold in West Sussex which comprise: The Drive, Chalk Road, The Ride, Hogwood Road, The Close, Wildacre Close, The Lane and Ifold Bridge Lane up to the River Lox.

Ifold Estates Ltd. undertakes to:

1. Hold the freehold of the private roads, verges and footpaths in Ifold for the benefit of residents; and
2. Maintain and repair the roads and verges and improve the amenities for the residents. There is no charge to be a member of Ifold Estates.

The current road charge for 2019 is £260 for the year which runs from 1.1.19 to 31.12.19.

The private nature of the estate and its roads is clearly defined in this statement and as such it reinforces the view expressed by officers that the development carried out is permitted under the Town and Country Planning (General Permitted Development) Order 2015 in that the use of gates firmly indicates that the access is private. In these circumstances, a breach of planning control does not exist and so formal enforcement action cannot be taken.

Planning Officer (enforcement): Shona Archer (Manager)