



Meltham Road

Honley

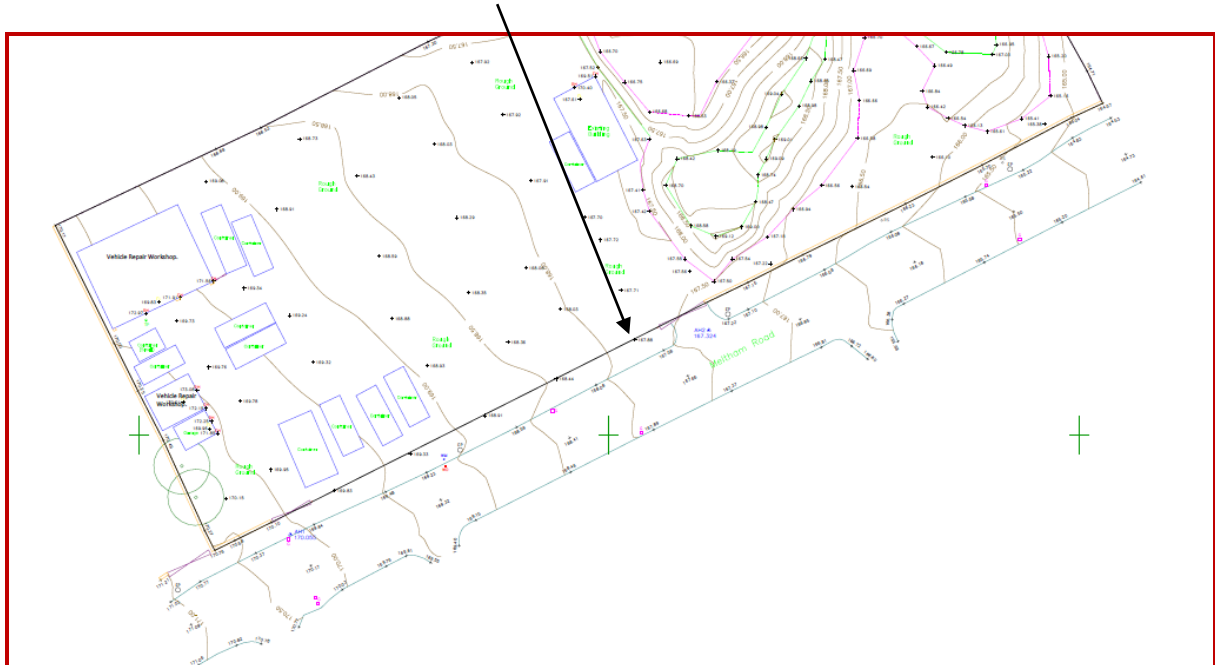
HD9 6HL

Certificate of Lawfulness for Fence

Introduction

This Certificate is for the erection of a 2m high fence at Meltham Road, Honley.

The fence is existing and its position is shown on the topographical survey submitted and copied below (fence is the black line).



Consideration

The erection of a gate, fence, wall, or other enclosure can be permitted development under Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). However, the erection of a gate, fence, wall, or other enclosure over 1m in height, which is 'adjacent' to a highway used by vehicular traffic, is not permitted development and planning permission is required for such a proposal.

The question therefore is whether or not this fence lies adjacent a highway.

The word 'adjacent' is not defined in the Planning Act and the courts have held that legislators were not likely to have intended 'a one size fits all approach'. The common dictionary definition of 'adjacent' is 'lying near to' or 'contiguous', although Case Law also clarifies that that 'adjacency' does not equate to something being 'contiguous' or 'abutting'.

Thus the position established by the courts is that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. In the case of *Simmonds v SSE and Rochdale MDC [1981]* it was held that a fence higher than one metre and less than one metre from a footway to a highway did about the

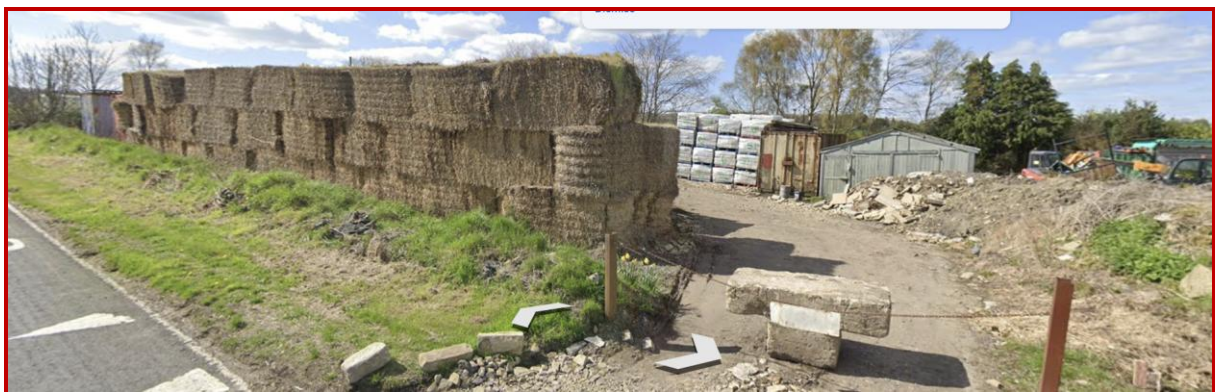
highway. In another case a 2m distance (between highway and enclosure) also resulted in a conclusion that the structures were '*adjacent*' to the highway.

Thus, the thrust of case law and other appeal decisions is that a wall or fence or a pier and gates can be set back from a highway, but still be '*adjacent*' to it, as a matter of fact and degree, **provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so**. As indicated above each situation has to be considered on its merits and a planning judgement needs to be made in each case.

We have highlighted the element that we consider is the key consideration as to whether or not the fence requires the submission of an application.

In our opinion the fence is not perceived to clearly define the boundary of the property concerned.

Below is a photograph of the grassed area in front of the fence before its erection (it is in a position roughly where the hay bales are).



We have deliberately referred to the area between the fence and the metalled part of road as a grassed area and not grass verge. For the sake of clarity we agree that this area is owned by the Highways Department but that is not the issue for planning purposes. The issue is whether or not this area is perceived as part of the highway.

We believe a grass verge would, in any common use as a term, be used to describe a more formal area, maintained formally and having an appearance where it could be easily read as part of the highway.

Any visit to the site will reveal that the grass area is visually read as part of the applicant's site, and not part of the highway. As can be seen in the picture below, the open nature of the applicant's site, the fact that the grass continues at the same level through the fence, and the lack of a footpath or any formalisation of the grass area, means that it is read as part of the applicant's site and not part of the formal area of the tarmacked road.



Thus, the fence is not perceived to clearly define the boundary of the applicant's property and is not, therefore, adjacent the highway.

Conclusion

The fence reads as though it is 2-3m inside the applicant's land and as such it is not perceived as defining the applicant's boundary. It is therefore not adjacent the highway and does not need planning permission.

*AKPlanning
147 Lane Top
Linthwaite
Huddersfield HD7 5SG*

*Contact: Andrew Keeling
E-mail: andrew@akplanning.co.uk
Mobile: 07500965645*



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Chartered Town Planner