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# Appeal Decision

Site visit made on 11 January 2017

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 19 January 2017**

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**Appeal Ref: APP/B5480/X/16/3152643**  
**20 Wilfred Avenue, Rainham, RM13 9TX**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Miss Charlotte Warde against the decision of the Council of the London Borough of Havering.
- The application Ref E0016.15, dated 14 December 2015, was refused by notice dated 9 May 2016.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is "the erection of front garden walls in accordance with the Town and Country Planning (General Permitted Development) Order 2015 – Part 2 Minor Operations as limited by section A.1(b)".

**Summary of Decision: The appeal is dismissed.**

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## Main Issue

1. The main issue is whether the erection of the front garden walls would have been lawful at the date on which the application was made, that is, on 9 May 2016. In an appeal such as this the planning merits of the proposed development do not fall to be considered.

## Reasons

2. The appeal site is a mid-terraced house with a front garden area which has been hard-surfaced. The two walls that are the subject of this appeal are along the front side boundaries of the property. At their highest point next to the front elevation of the house they are 1.96m high and they slope steeply down to 1.15m next to the highway. They are some 3.25m long<sup>1</sup>.
3. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land. One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2<sup>2</sup>.

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<sup>1</sup> Dimensions from the Council's Officer's report and not challenged by the Appellant

<sup>2</sup> Article 3 also provides for specified exceptions to this general provision

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4. Class A of Part 2 of Schedule 2 to the GPDO permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure provided it accords with the limitations and exceptions in A.1. A.1(a) says that development is not permitted if the height of any wall erected or constructed adjacent to a highway used by vehicular traffic would exceed (ii) 1m above ground level.
5. There is no dispute that the part of the wall furthest from the front elevation of the house is over 1m in height. The Appellant says that previous appeal decisions have concluded that in order for a wall to be adjacent to a highway it must actually separate the highway from the land and the walls in this case are not therefore adjacent to the highway. However, the Appellant has not provided any details of these decisions or any authority to support his contention.
6. There is no definition of 'adjacent' in the GPDO but the dictionary definition includes 'lying near' or 'adjoining'. I saw on my visit that the walls appear to be built into brick pillars on the edge of the footway. These pillars are about one brick deep and are over 1m in height. It appeared to me that the pillars were integral elements of the walls. There is no question in my mind that the walls are, as a matter of fact, adjacent to the highway and because they are over 1m in height they are not permitted development.
7. Even if I had reached a different conclusion, Article 3(6) of the GPDO provides that permission granted by Schedule 2 does not authorise any development which creates an obstruction to the view of persons using any highway used by vehicular traffic so as to be likely to cause danger to such persons. I have taken into account the conclusions of the Appellant's Transport Planner<sup>3</sup> that the walls do not constitute a danger to users of the highway whether pedestrian or vehicular for a number of reasons including the location of the appeal site in a cul-de-sac, the low volume of traffic and pedestrians and the visibility available to drivers of vehicles. These conclusions are in contrast with the Council's Principal Highways Engineer who has concluded that the walls have significantly eroded visibility and present an unacceptable risk to pedestrians, especially children, who are masked by the walls.
8. With regard to vehicle exits at the back edge of the footway 'Manual for Streets 2' explains that 'emerging drivers will have to take account of people on the footway. The absence of wide visibility splays at minor accesses will encourage drivers to emerge more cautiously - similarly to how vehicles pull out when visibility along the carriageway is restricted'<sup>4</sup>. In considering such vehicle exits matters to be taken into account include 'the frequency of vehicle movements; the amount of pedestrian activity; and the width of the footway'<sup>5</sup>.
9. From what I saw on my visit it is apparent that if a vehicle is driven onto the appeal site it would have to be reversed off and vice versa. In my opinion because of the height of the walls and their design, which incorporates a steeply sloping reduction in height over a short length, any driver carrying out either manoeuvre, but particularly reversing off the appeal site, would have severely restricted views of the footway. Indeed it appeared to me that a vehicle in reverse gear would be mostly across the footway before there would

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<sup>3</sup> Letter dated 18 December 2015

<sup>4</sup> Para 10.6.1

<sup>5</sup> Para 10.6.2

be any clear view of the footway and the road. Such restricted views would be a significant hazard to all users of the highway, particularly those on the footway.

10. The walls on the boundaries with the premises either side of the appeal site<sup>6</sup> similarly adversely affect the visibility of drivers reversing vehicles off those premises. The Appellant's expert has referred to vehicles on the appeal site and on neighbours' properties parking in the middle of the forecourt and thus the natural buffer between the vehicle and the wall providing some additional visibility. At the time of my visit there was what appeared to be a trailer parked close to the wall on one side of the forecourt of the appeal property with space remaining for a second vehicle which seems to indicate that a vehicle would not always be parked in the middle. However, even if it was I consider that even with 'some additional visibility' any driver reversing a vehicle from Nos 18, 20 and 22 would have severely obstructed visibility which results in significant danger to users of the highway. In reaching this conclusion I take into account representations made by local residents which refer to visibility whilst in their vehicles being adversely affected by the walls.
11. I accept, among other things put forward by the Appellant, that the number of pedestrians in Wilfred Avenue may be low; that vehicles may travel at a low speed in the cul-de-sac; and that the number of domestic trips by the Appellant (and the neighbours) may not be numerous but these matters do not justify the construction of the walls which I find create an obstruction to the view of persons using the highway used by vehicular traffic so as to be likely to cause danger to such persons. The construction of the walls is therefore not permitted development pursuant to Article 3(6) of the GPDO.

### **Conclusions**

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of front garden walls was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

### **Decision**

13. The appeal is dismissed.

*Gloria McFarlane*

Inspector

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<sup>6</sup> Nos 18 and 22