

## Appeal Decision

Site visit made on 26 November 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

**Decision date: 12<sup>th</sup> December 2019**

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### **Appeal Ref: APP/W5780/X/19/3224990**

### **8 Wickets Way, Hainault, Ilford IG6 3DF**

- The appeal is made by Fareeth Ansari Shahul Hameed under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Redbridge to grant a lawful development certificate.
  - The application Ref: 4499/18, dated 31 October 2018, was refused by notice dated 3 January 2019.
  - The application was made under section 192(1)(b).
  - The operations for which the certificate is sought are alterations to three sections of the boundary wall on the western side of the property.
  - The application drawings show that the existing height of these sections would be raised from 0.85m to 2m by constructing brick pillars with timber fencing between them.
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### **Decision**

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the operations described in the application, which are considered to be lawful if begun at the time of the application.

### **Reasons for the decision**

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the operations would be lawful if begun at the time of the application for the certificate. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
  3. "The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure" is permitted by Article 3(1) and Schedule 2, Part 2, Class A the Town and Country Planning (General Permitted Development) (England) Order 2015, subject to the limitations in paragraph A.1 of Class A. These limitations allow such development to be carried out up to a height of 2m above ground level unless it is "adjacent to a highway used by vehicular traffic", in which case it is restricted to a height of 1m above ground level.
  4. The Council's decision to refuse the application was based on an officer's report which indicates that the proposals relating to the two sections of the wall that are alongside 4 & 6 Wickets Way would comply with the limitations, but finds that the proposals as a whole would not be lawful because the remaining
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section would “front” Trentbridge Close, which is a highway used by vehicular traffic. The report incorrectly equates fronting the highway with being adjacent to the highway.

5. The Council’s appeal statement maintains that it is arguable that this section of the wall is subject to the 1m height limit because it is adjacent to the highway. The wall here is parallel to Trentbridge Close and the success of the Council’s argument depends on the parking area between it and Trentbridge Close either being part of the highway or, if it is not, the gap formed by the parking area between the wall and the highway being such that the wall is nevertheless still adjacent to the highway. In support of this argument, the Council have quoted from two lawful development certificate appeal decisions, one in the City of Birmingham (Ref: APP/P4605/X/17/3177636) and the other in Sevenoaks District (Ref: APP/G2245/X/14/2223903).
6. The highway at this location clearly includes the carriageway and the footway alongside it. It incorporates a dropped kerb and a vehicle crossover to provide access and egress to and from the parking area. The parking area has no other means of vehicular access or egress. It consists of a rectangular area which is bounded by (i) the crossover, (ii) the section of wall in question, (iii) a further section of the appellant’s boundary wall which is not affected by the proposals and (iv) a footpath off Trentbridge Close signposted “Access to 2-6 Wickets Way”, which serves the three houses next to it.
7. From what I have seen and read about this matter, I have concluded as a matter of fact and degree that the parking area is not part of the highway and that the section of wall in question is not adjacent to the highway and is therefore subject to the 2m height limit. I have reached this conclusion for the following reasons: -
  - The location and layout of the parking area do not give it the appearance of being part of the highway and I do not consider that drivers would be justified in assuming that they had a right to park on it without permission. The parking area is marked out as three parking spaces by blocks inlaid into its surface, consistent with it being allocated for the sole use of 2, 4 & 6 Wickets Way, which are next to it. The Land Registry filed plan that the appellant has provided appears to show that one of the spaces is part of the land held with No 6 and it is reasonable to assume that the other two spaces are held with Nos 2 and 4. These three houses do not have any other parking spaces or drives or garages.
  - The Council’s highways department have not supplied me with any comments on the matter. The parking area does not appear to be maintained by the department: the boundary between the parking area and the crossover is marked by a line of edgings and the standard of maintenance of the parking area is poor compared to that of the carriageway, crossover and adjoining footway; there are cracks in the surface of the parking area and weeds are growing towards the back of it.
  - The materials used in the construction of the carriageway and the footway are different to those used in the construction of the crossover

and the parking area. The materials used for the parking area are the same as those used at houses nearby for drives that are not part of the highway and lead to garages.

- I consider that the line of edgings marks the boundary of the highway. The parking area lies between the line of edgings and the section of wall in question. The distance between the wall and the edgings is nearly 6m. A wall this far from the highway boundary is not normally considered to be adjacent to the highway for the purposes of paragraph A.1 and this wall is no exception, since the wall as a whole marks the boundary between the appellant's curtilage and the curtilage of 2, 4 & 6 Wickets Way and the section in question does not have the appearance of being next to or close to the highway.
  - Neither of the appeal decisions referred to by the Council relate to paragraph A.1. They both concerned house extensions where the outcome was dependent on whether a house wall fronted a highway, not whether there was a means of enclosure adjacent to a highway. In the Birmingham decision, the inspector did find that a parking area was part of the highway, but this was the result of the detailed considerations set out in paragraph 9 of the decision, which are very different from the circumstances that apply in the current appeal.
8. Accordingly, I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

*D.A.Hainsworth*

INSPECTOR