



Appeal Decision

Site visit made on 15 July 2025

by **AJ Steen BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 August 2025

Appeal Ref: APP/G5180/X/23/3334493

2 Fairbank Avenue, Orpington, Bromley BR6 8JZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Faye Watson against the decision of the Council of the London Borough of Bromley.
 - The application ref DC/23/01837/PLUD, dated 10 May 2023, was refused by notice dated 26 October 2023.
 - The application was made under section 192(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 was described as “garden wall to be replaced with a fence incorporating bushes inside the garden and fence will be extended in line with our rear facing neighbours at Number 1 Poplar Avenue”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development set out within the application refers to bushes and removal of the existing garden wall. For clarity, this decision only relates to the proposed fence.
3. No plans were submitted with the appeal. However, I have since been provided with drawing number A1/2349/p that provides plans and elevations of the existing wall and proposed fence. I have taken those into account in coming to my decision.

Background and Main Issue

4. The appellant suggests that the proposed fence would be lawful by reason of the planning permission granted under “permitted development” rights conferred by Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This enables the erection or construction of fences, subject to a number of criteria. The parties agree that it meets most of those criteria except that where a fence is erected or constructed adjacent to a highway it cannot exceed 1 metre in height above ground level. The proposed fence would be more than 1m in height.
5. The main issue is whether the Council’s decision to refuse the LDC for the fence was well-founded. In this case, this relates to whether the fence would be located adjacent to the highway.

Reasons

6. The GPDO does not define what it means by being adjacent to a highway. As a result, it is a matter of fact and degree as to what constitutes whether a fence is adjacent to the highway. To be adjacent does not necessarily mean the fence needs to touch the edge of the highway. There could be some separation provided that the fence could be described as next to the highway.
7. 2 Fairbank Avenue is located inside a bend in the road. The front garden currently comprises grass with some shrub borders with a wall set back from the front elevation of the house. The existing wall turns at right angles and extends to the rear boundary of the site. Between that wall and the road is the pavement, which forms part of the highway, substantial shrub planting and lawn.
8. The neighbouring property to the rear has a similar relationship to the roads, Poplar Avenue to the front and Fairbank Avenue to the side. Their side boundary steps back away from Fairbank Avenue just behind the house. It would be parallel to the existing wall at 2 Fairbank Avenue if it continued. The boundary walls to the side of the house to the rear and 2 Fairbank Avenue currently gradually step back from the road. As a result, the boundary wall of 2 Fairbank Avenue is further from the road than that of the house to the rear.
9. Over the road, there is paved or gravel space between the rear of the pavement and boundary treatments or garages of the houses beyond. Other development on the estate generally has open front gardens and space to the side of any properties whose sides face the roads. This results in a spacious character and appearance to the estate.
10. The proposed fence would extend from the front corner of house such that it would be further forward than the existing wall. It would extend further from the house, and closer to the road, before turning and following a straight line to the rear corner of the boundary wall of the house to the rear. This is a different angle to that of the existing wall and that of the boundary of the house to the rear. The appellant suggests that the rear corner would meet the corner of the boundary wall belonging to the house to the rear. The proposed fence would not step away from the road in the manner of the existing boundary wall. The Council indicate the fence would be set back between 1-1.7m from the road, with the closest points to the front corner and where it joins the boundary wall of the house to the rear. It would be considerably closer to the road than the existing wall, particularly at the front corner.
11. The fence would be considerably closer to the road than the existing wall. As a result, I consider that it would be next to the highway. On the balance of probability, I conclude that the proposed fence would be adjacent to the highway.

Conclusion

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 a side boundary fence at 2 Fairbank Avenue, Orpington BR6 8JZ is 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.

AJ Steen

INSPECTOR