



Appeal Decision

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2025

Appeal Ref: APP/M1520/X/24/3353283

59 Gainsborough Avenue, Canvey Island, Essex SS8 7LX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms V Skrobotova against the decision of Castle Point Borough Council.
- The application ref 24/0455/CLP, dated 14 August 2024, was refused by notice dated 17 September 2024.
- The application was made under section 192(1)(b) of the Act.
- The development for which a certificate of lawful use or development is sought is 'Replacement boundary treatment to Matching Brick wall with a height no greater than previously existed (part retrospective) Bricks to match existing house'.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded.

Reasons

3. The application for an LDC was made under section 192 of the Act. It is therefore claimed by the appellant that the description of development provided in the application form, and replicated in the banner heading above, would have been lawful if begun on the date of the application.
4. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. The relevant meaning of 'development' is provided at section 55 of the Act, which includes the carrying out of building operations. It is proposed to replace fencing comprising concrete posts, concrete gravel boards and timber panels with a brick wall. There is nothing before me which indicates that this would comprise anything other than building operations requiring planning permission. It is claimed the proposal would benefit from planning permission granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
5. Article 3(1) and Class A of Part 2, Schedule 2 of the GPDO grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to limitations.
6. Paragraph A.1(a) of Class A stipulates that development is not permitted by Class A if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed 1 metre (m) above ground level (other than in the case of a school). Paragraph A.1(b) of Class A clarifies that in any other case such

development is not permitted where the height of the boundary treatment would exceed 2m in height.

7. The following points are not in dispute: the height of the pre-existing boundary treatment exceeded 1m adjacent to a highway used by vehicular traffic; the proposed wall would exceed 1m in height adjacent to a highway used by vehicular traffic; and the proposed wall would not exceed the height of the pre-existing boundary treatment.
8. I have been referred to informal guidance from the Planning Portal website which the appellant claims suggests that planning permission would not be required to erect a new wall if an existing fence, wall or gate already exceeds 1m in height adjacent to a highway, and the height of the new wall would not exceed that of the existing fence, wall or gate.
9. To clarify, paragraph A.1(c) of Class A states development is not permitted if '*the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater*'. Therefore, if an existing domestic gate, fence, wall or other means of enclosure adjacent to a highway used by vehicular traffic is being maintained, improved or altered, planning permission is granted by the GPDO for those works, provided its height is not increased, or its height does not exceed 1m, whichever is the greater. However, if a domestic gate, fence, wall or other means of enclosure is being erected or constructed adjacent to a highway used by vehicular traffic, planning permission is only granted by the GPDO for those works if its height does not exceed 1m.
10. As the proposed wall is a replacement for the pre-existing boundary treatment, the proposed development does not comprise the maintenance, improvement or alteration of the pre-existing boundary treatment. Instead, the proposed development comprises the erection or construction of a wall, and the limitations of Class A prevent planning permission from being granted for those works because its height would exceed 1m adjacent to a highway used by vehicular traffic. The appellant has misunderstood the informal advice on the Planning Portal website, which is no substitute for the precise wording of the legislation itself.
11. I am not aware of any other planning permission the proposed development may benefit from. It has not therefore been shown, on the balance of probabilities, that the proposed development would have been lawful if begun on the date of the application.

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 'Replacement boundary treatment to Matching Brick wall with a height no greater than previously existed (part retrospective) Bricks to match existing house' is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR