



TOWNS AND COMMUNITIES OVERVIEW AND SCRUTINY SUB-COMMITTEE

21 January 2016

Subject Heading:

Concerns over permitted development rights for walls and fences to the front of properties in the Borough.

CMT Lead:

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Policy context:

National Planning Policy Framework
National Planning Practice Guidance
Havering Local Development Framework

SUMMARY

Following the resolution of the Full Council, this sub-committee is asked to consider the issue of walls which have been erected at the front of a property in the Borough and any action that could be taken as a consequence.

The issue of whether particular walls fall under permitted development is still being considered. However, it is considered by officers that the examples of the walls provide insufficient justification of a problem that requires the removal of permitted development rights across the Borough in relation to walls and fences, and such a proposal is unlikely to be supported by the Secretary of State and would have resource implications.

RECOMMENDATIONS

That the report be noted and that no further action be taken, other than appropriate planning enforcement action being taken in cases where planning permission would be required for front/wall fences which are considered harmful to visual amenity, residential amenity or highway safety.

REPORT DETAIL

1.0 Background

- 1.1 At the Full Council meeting on 26th November 2015, following a motion on behalf of the Independent Residents Group, the following resolution was agreed:

Noting concern expressed in respect of a case where two 2 metre high front boundary walls of an industrial appearance have been erected and that the Planning Department has described the two walls as arguably part “permitted development” and part breach of planning rules and that the “permitted development” part is considered to block neighbours’ street view, this Council invites the Towns & Communities Overview & Scrutiny Sub Committee to investigate the case and to consider and recommend to Cabinet any action which the Council might take to address problems such as these.

- 1.2 The motion and subsequent resolution stems from two brick walls recently erected along the side boundaries of the front garden of a terraced house in Rainham. The wall is up to 2 metres in height next to the house and its neighbours and reduces in height to the highway.

- 1.3 The purpose of this report is to:
- Explain permitted development rights,
 - provide a consideration of how permitted development rights apply generally to walls and fences
 - description and consideration of the particular boundary walls which are causing the current concern, and
 - provide commentary on possible action that could be considered in relation to restricting permitted development.

2.0 Permitted Development Legislation

- 2.1 Permitted development rights are basically a right to make certain changes to a building or land without the need to apply for planning permission. These derive from a general planning permission granted from Parliament applying to the whole of England, rather than from permission granted by the local planning authority. The permitted development rights are defined in statute, presently the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order).
- 2.2 Permitted development rights have existed in one form or another since the introduction of the current planning system in 1947. The main premise of permitted development rights is that people undertaking minor or common

types of development should not always have to submit a full planning application; that the planning system would be overwhelmed by planning applications should all development always need planning permission and that certain development proposals supported by national planning policies should automatically be granted planning permission.

2.3 The current permitted development legislation covers a very wide range of development including new buildings/structures and changes of use of buildings. The Order has 19 different Parts and runs to 164 pages and in many instances is not straightforward to determine whether planning permission is required or not as there are usually a list of accompanying limitations and/or conditions for particular classes of development described within each part of the Order.

2.4 The most common types of development carried out as permitted development are as follows:

- Development within the curtilage of a dwellinghouse (Part 1 of the Order) – includes for example alterations, extensions and outbuildings to houses subject to certain size limitations.
- Minor operations (Part 2 of the Order) – includes for example walls, gates and fences
- Changes of use (Part 3 of the Order) – includes for example changes of offices to residential and houses to small HMOs

3.0 Permitted Development Rights for Walls and Fences

3.1 From a review of historic legislation, permitted development rights for the erection of walls and fences have been available for at least 52 years (1963 Order). It is probable that the rights have existed since 1947, although earlier legislation has not been found to confirm this for sure. The early legislation allowed fences, walls and gates to be up to 4 feet (now 1 metre) adjacent to the highway and 7 feet (now 2 metres) elsewhere. These rights have remained with the government not considering any need to revise these permitted development rights in subsequent reviews of the legislation, which have been frequent.

3.2 There is a provision in the Order that requires that most forms of permitted development do not create an obstruction to the view of persons using any highway so as likely to cause danger to such persons. No further explanation of this provision is given in the Order.

4.0 Current Walls Causing Concern

4.1 A complaint was received regarding high boundary walls that had been erected at the front of a residential terraced house in Rainham. Upon investigation, it was found that two brick walls had been erected to the front of the property along each side boundary. Each wall is 1.96 metres high from the front of the house itself for a distance of 3.25 metres with the height

reducing down to 1.15 metres to the front of the property, adjacent to the public highway.

- 4.2 Putting aside any consideration of whether the wall needs planning permission or not, in terms of the planning merits of the work carried out, due to the terraced nature of the property the wall is very close to the front facing window of a neighbouring property and has undoubtedly changed the view out of that window, particularly the angled view out to the wider street beyond that in front of the property. However, at less than 2 metres high, the effect on outlook, daylight and sunlight on the neighbour is not particularly significant. There is no doubt that in this case the owner of the property has acted unneighbourly in not considering, consulting or notifying neighbours (although this is not a requirement of any legislation). The occupier could park a high vehicle or touring caravan or plant a semi-mature hedge with the impact on the neighbours outlook being similar. The wall, given its height and finish does look out of place in the street where side boundaries to the front either do not exist or are low walls, although the impact of this is limited to the immediate area. Furthermore, the existing fronts of houses are of variable quality, mainly hardstanding and used for parking vehicles with very little landscaping or other quality features characterising the area. The wall does obstruct views of persons using the pavement and, in particular, for vehicles reversing off the front of the property there is increased danger to pedestrians due to lack of visibility. If planning permission was required for the wall, it is likely that officers would recommend that planning permission be refused on grounds of highway safety. On balance, given the existing visual quality of the area, it is considered that a refusal on grounds of appearance would unlikely be supported on appeal. As protection of view is not normally a reason to refuse planning permission, impact on residential amenity is not considered to be a reasonable ground to refuse permission.
- 4.3 In terms of whether the wall needs planning permission or not, staff have sampled relevant appeal decisions across the country and it appears that any wall/fence perpendicular rather than parallel to the highway is not "adjacent" and would likely be permitted development if it is not considered a danger to users of the highway. There is little guidance or precedent in relation to the issue of danger. Staff are of the view that a high wall/fence that obstructs the view of pedestrians to any vehicle leaving the site and vice versa could be a danger.
- 4.4 The owner of the property considers that the walls are permitted development and has submitted an application for a Certificate of Lawfulness of Existing Development, which is currently under consideration. It is important to note that the decision on such applications is made on legal fact and interpretation. Unlike a planning application, the decision is not made on policy or the merits for and against. For that reason no third party consultation is undertaken.

4.5 In the circumstances, staff have sought a legal opinion on whether any part of the wall needs planning permission before deciding whether any action can be taken and if so in what form. As to whether any enforcement action could require the removal of the whole wall, it would normally be appropriate for enforcement action to solely address the harm being caused and the actual part of the development which needs permission, so staff's current view is that it would not be appropriate to require the removal of the whole wall, although a legal opinion on this point is also being sought.

5.0 Measures for Controlling Undesirable Permitted Development

5.1 In some circumstances local planning authorities can suspend permitted development rights in their area. Local planning authorities have powers under Article 4 of the Order to remove permitted development rights. Article 4 Directions typically apply to particular areas within a local authority or individual sites. There are examples of Article 4 Directions covering the whole local authority area, although the only examples staff have found were related to changes of use of dwellings to HMOs (Houses in Multiple Occupation). Havering has recently confirmed two Article 4 Directions which come into force in July, with tighter controls covering four ward areas and lesser control over the rest of the Borough. A new Article 4 Direction has also recently come into force covering the Gidea Park conservation area, replacing earlier Article 4 Directions and limiting permitted development that can be carried out by householders.

5.2 While Article 4 directions are confirmed by local planning authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most Article 4 directions at any point. Government policy and guidance is clear that there must be particularly strong justification to removing permitted development rights covering the entire area of a local planning authority. Given this guidance, it is likely that any borough wide Article 4 direction would be scrutinised by the Secretary of State and therefore a strong evidence base should exist to support any Article 4 direction.

5.3 Havering does have Article 4 Directions that control walls and fences – specifically in relation to some conservation areas where the historic character of the area is considered sufficiently important to protect.

5.4 In terms of a borough wide Article 4 direction on front walls and fences, it may be difficult to make a strong justification to accompany any notification to the Secretary of State, particularly given the following considerations:

- Despite the permitted development regime being in place for nearly 70 years, and at least 50 years in relation to walls and fences, there have been very few instances of the permitted development rights being used inappropriately or in a way that results in a detrimental impact on the appearance of the area or residential amenity.

- There will no doubt be isolated examples of adverse affects, such as the walls that have instigated this report or residential extensions where there are unusual relationships between neighbouring houses. This is perhaps an indication of the inevitable consequence of having permitted development rights that cover the whole country and which in their formulation cannot take account of every possible scenario. To require every householder in the borough to submit a planning application as a result of these few examples is likely to be considered to be an overreaction and is contrary to successive governments' efforts to free up the planning burdens placed on householders.
- The planning harm in the case of these walls is considered to be limited to highway safety, which potentially, subject to legal advice, would mean that the wall is not permitted development and appropriate action to mitigate the harm can be taken. Although it is acknowledged that the wall could be considered unneighbourly, the significance of this harm is limited and may not be a strong reason to refuse planning permission. The example of these walls is not a particularly strong one to put forward in support of an Article 4 direction.
- It is relatively common in many parts of the borough to have front side boundary treatments in excess of 1 metre in height. It would be difficult to identify a particularly borough wide character or property relationship that needs to be protected.

5.5 A further, but important, consideration is that an Article 4 direction in relation to front walls and fences would result in an unknown number of planning applications being required to be submitted should residents wish to put up a new boundary treatment or replace existing. Where there is an Article 4 direction, no fee for a planning application is paid. There would be an increased number of enforcement investigations with a large majority being closed on basis that it would not be expedient to take action. An Article 4 direction could result in significant resource implications for the planning service. This outcome would be disproportionate to the comparatively isolated frequency and scale with which householders seek to use permitted development rights for front walls and fences in a way which, by any measure, is markedly and unreasonably harmful to their neighbours.

5.6 It is officers' view that the justification for an Article 4 direction covering front walls and fences is weak.

6.0 Conclusion and Recommendation

6.1 Whilst it is agreed that the walls that have been erected do look out of place and could be considered unneighbourly, this is a relative isolated example of the consequence of permitted development rights for walls and fences to the front of houses. It is considered that there is insufficient justification for an Article 4 direction covering the whole borough with a likely outcome that any Article 4 would not be supported by the Secretary of State.

6.2 The Council resolution asks this committee to consider and recommend any action to Cabinet, but due to the conclusion that the erection of front walls and fences is unlikely to adversely affect the character of the borough or residential amenity, no action is recommended. It is therefore recommended that no further action be taken in relation to Article 4 directions and the report be noted. Subject to legal advice, action on the walls subject to this report may be taken on the grounds of highway safety.

IMPLICATIONS AND RISKS

There is a corporate requirement to set out the implications and risks of the course of action being proposed, in the following areas:

Financial implications and risks:

Any decision to apply for an article 4 direction covering front walls and fences would have additional resource implications. The application itself would be met through the reprioritisation of existing resources, predominantly officer time.

If successfully applied, the article 4 direction would result in a significant number of additional householder planning applications and enforcement investigations. It is not possible to accurately estimate the likely volume of these and therefore, the associated cost to administer, but indicatively this could be in the region of £55k per annum.

There is also a risk that compensation would be payable to any applicants who had started works or submitted planning application which was then affected by the making of the Article 4 direction. It is not possible to quantify the potential cost of this activity, although it could be significant.

The investigation into the issues regarding the specific wall in question is being undertaken as part of normal service activity.

Legal implications and risks:

Officers have set out the main aim of making an Article 4 direction which is to require a planning application to be submitted for development which would otherwise be permitted development. The legislation which covers permitted development and the making of Article 4 directions is under the Town and County Planning (General Permitted Development)(England) Order 2015.

In addition to the Order which sets out how an Article 4 direction should be made, guidance on making such directions is also found in planning policy documents. The Planning Practice Guidance sets out clearly that Article 4 directions should only be made where it is necessary to protect the local amenity or the well being of

the area. In particular, strong justification is required where a direction is intended to cover the whole area of the local planning authority. In this instance, the officers have shown that there are difficulties in being able to justify making a direction to cover the borough for the type of development involved. The National Planning Policy Framework echoes the same sentiment as above at paragraph 200.

As officers have indicated in making an Article 4 direction, the Secretary of State is required to be notified and he has the powers to modify or cancel the direction if he considers there to be strong reasons in doing so (Schedule 3 (paragraph 13) of the 2015 Order as above).

One last matter to set out is the risk of compensation being payable to any applicants who had started works or submitted planning application which was then affected by the making of the Article 4 direction.

The officers have set out valid reasons as to why it would not be legally sound to make an Article 4 direction in this instance.

Human Resources implications and risks:

There are no HR implications or risks arising directly as a result of this report.
Geraldine Minchin – Strategic HR Business Partner

Equalities implications and risks:

An Article 4 direction would likely affect a number of residents borough wide and should be subject to an equality assessment. As no action is being recommended, an equality assessment is not considered necessary at this stage.

BACKGROUND PAPERS

Town and Country Planning (General Permitted Development)(England) Order 2015

Local Development Framework

National Planning Policy Framework

National Planning Practice Guidance