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## Appeal Decision

Site visit made on 24 January 2017

**by Elizabeth Jones BSc (Hons) MCTP MRTPI**

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

**Decision date: 06 March 2017**

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**Appeal Ref: APP/Z2830/C/16/3151382**

**Land at 8 West End, Bugbrooke NN7 3PF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Inmaculada Boada Arjona against an enforcement notice issued by South Northants District Council.
- The enforcement notice was issued on 16 May 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a large close-boarded fence erected in a Conservation area over 1m in height adjacent to the highway.
- The requirements of the notice are:
  - i) Demolish the fence in its entirety including both side boundaries to the frontage of the property facing West End down to 1m in height.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) (a) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed and the enforcement notice is quashed.**

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### Procedural Matter

1. I have taken account of the appellant's comments regarding the service of the enforcement notice. Whilst no appeal has been brought under ground (e) in bringing this appeal it is clear that the appellant received the enforcement notice and therefore has not been substantially prejudiced.

### Appeal on ground (c)

2. In this ground of appeal it is necessary to show that there has not been a breach of planning control. The appellant argues that the fence is permitted development because it is not adjacent to the highway.
  3. Class A, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain limitations. However, limitation A.1. says that such 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 the carrying out of the development exceed in all cases, with the exception of schools, one metre above ground level. The evidence does not make clear on what date the fence was erected. However, the provisions of the 2015 Order are similar to those in
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the 1995 GPDO (in force until 15 April 2015) insofar as they relate to the development the subject of this appeal.

4. The fence in this appeal exceeds one metre in height and encloses the rear garden of the house. A section of the fence is stepped in to allow for an off- street parking area. West End road at the rear of the house is a highway used by vehicular traffic and a pavement runs along the north side of this section of road. The question therefore to be determined is whether the fence is adjacent to the highway.
5. There is no definition of "adjacent" within the GPDO. A normal everyday dictionary definition of adjacent is 'being near or close'. The assessment of what constitutes "adjacent" must therefore amount to a question of fact and degree.
6. The appellant argues that the fence is over two metres away from the highway at its closest point and over 5 metres away at its furthest point. The Council considers that the fence is approximately two metres setback from the edge of the highway boundary. There is a section of railings along part of the rear edge of this pavement at the rear of the appeal site. Between the rear edge of the pavement and the appeal fence there is a landscaping strip which is a significant feature. It is gravelled and planted with laurel hedging. The laurel hedging at almost the same height as the fence partially obscures the fence and provides a physical separation between the highway and the fence.
7. I have had regard to the appeal summary referred to by the Council regarding a wall and fence which could be viewed as one structure if sited closely together<sup>1</sup>. Whilst I have not been provided with the full details and so do not know the circumstances I consider that this case is not directly comparable. Although in close proximity to the fence, due to its size the hedge appears separate from the fence behind it and the two in this instance are not viewed as a single means of enclosure.
8. In this particular case, the fence is set back from the rear boundary of the appeal site beyond a hedge which itself is set back from the highway. Thus, it is my view that the fence is sufficiently distant from the highway, that as a matter of fact and degree the fence as erected is not adjacent to the highway and is therefore permitted development for purposes of Part 2 Class A of the GPDO.
9. I note the representations made by local residents and the Parish Council, but planning merits are not relevant to and cannot be considered in an appeal on ground (c), which is simply concerned with whether the matters alleged constitute a breach of planning control.
10. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under grounds (a) and (f) set out in s174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under s177(5) of the 1990 Act as amended do not need to be considered.

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<sup>1</sup> South Bedfordshire 05/02/1998 DCS No 045-981-756.

**Formal Decision**

11. The appeal is allowed and the enforcement notice is quashed.

*Elizabeth Jones*

INSPECTOR