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# Appeal Decision

Site visit made on 23 July 2024

**by Martin Allen BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 September 2024**

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**Appeal Ref: APP/P0119/C/24/3338319**

**Land at 69 Byemead, Emersons Green, South Gloucestershire BS16 7DL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Colin Reed against an enforcement notice issued by South Gloucestershire Council.
  - The notice was issued on 8 January 2024.
  - The breach of planning control as alleged in the notice is, without the benefit of planning permission, the erection of a boundary treatment consisting of a timber fence exceeding 1m in height adjacent to the highway.
  - The requirements of the notice are to: Permanently remove the fence from the land.
  - The period for compliance with the requirement is: One month.
  - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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## Decision

1. The enforcement notice is quashed.

## The Notice

2. S173(2) of the 1990 Act as amended states that an enforcement notice complies with s173(1)(a) if it 'enables any person on whom a copy of it is served to know what those matters are' being the matters alleged to constitute the breach. The test established in case law is whether the enforcement notice tells the recipient fairly what they have done wrong and must do to remedy it (the 'Miller-Mead' test).
3. The allegation within the notice refers to the erection of a boundary treatment consisting of a timber fence exceeding 1 metre in height, adjacent to a highway. From the photograph that is attached to the notice, as well as from my own site visit, it would appear that the fence referred to is positioned atop an existing brick boundary wall.
4. The fence itself is not a boundary treatment in its own right, it is positioned on top of and is fixed to the brick boundary wall so as to form a single boundary treatment. While it may be reasonably inferred that the notice is directed only at the timber fence element, the notice in telling the recipient fairly what they have done wrong, must also be clear why the alleged action is wrong. In this respect the notice is lacking in that it refers to a fence exceeding 1 metre in height; however, the existing brick wall is already above this limitation.
5. When assessing the height of a boundary treatment it is well established that measurements should be taken from the highest ground level adjacent to it. In this case, the allegation appears to refer to the height of the fence above that of the existing wall, not ground level. This creates confusion and it is thus

unclear on what basis the development is alleged to be a breach of planning control. This lack of clarity is further compounded by the reference by the Council within its statement of case to the boundary treatment being adjacent to the highway and in excess of 2 metres (paragraph 6.2).

6. I have the power to vary or correct the terms of the notice, but in doing so must cause no injustice. In light of the identified confusion, to amend the allegation on the basis of incomplete information would indeed cause injustice to the appellant.

### **Conclusion**

7. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. Furthermore, I am unable to understand what corrections might be appropriate without them resulting in injustice to any party. As such, I am unable to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act as amended. The enforcement notice is invalid and will be quashed.
8. In these circumstances, the appeal on the ground set out in section 174(2)(f) of the 1990 Act (as amended) does not fall to be considered.

*Martin Allen*

INSPECTOR