



Appeal Decision

No Site Visit

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/C3810/C/24/3343512

Land at 6 Seacourt Close, Aldwick, Bognor Regis PO21 4RD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Mr Simon Forbes against an enforcement notice issued by Arun District Council.
 - The enforcement notice was issued on 8 April 2024.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref BR/155/78 granted on 4 October 1978.
 - The development to which the permission relates is: Residential development, overall density (Phase I, II, III) not to exceed 5 dwellings per acre – Phase II & III, Barrack Lane, Aldwick, Bognor Regis.
 - The condition in question is no 4 which states: Notwithstanding the provisions of the Town and Country Planning General Development Order, 1977, no gate, fence, wall or other means of enclosure shall be erected or constructed in front of the forwardmost parts of the proposed buildings which fronts on a highway unless permission is granted by the Local Planning Authority on an application on that behalf.
 - The notice alleges that the condition has not been complied with in that: Without planning permission and within the last 10 years, the erection of fencing as shown further below in red bold contrary to Condition 4 of permission BR/155/78 which are in front of the forwardmost parts of the main building and front onto a highway. This being generally referred to as an "Open-Plan Condition".
 - The requirements of the notice are to: Comply with Condition 4 of Planning Permission BR/155/78 dated 4 October 1978 by removing all the fencing, gates and associated development in relation to the enclosure forward of the main building, along with any debris arising from the removal, restoring the land to as it was. This is marked in bold red on the attached plans.
 - The period for compliance with the requirement is: One (1) month after the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the 1990 Act.
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Decision

1. It is directed that the enforcement notice is corrected by:

- *The substitution of the words "red bold" with "bold red" in "3. The Breach of Planning Control Alleged – Breach of Planning Condition: The Breach of Condition Concerned."*
- *The substitution of the words "...main building and front onto a highway" with "...main building which fronts onto a highway" in "3. The Breach of Planning Control Alleged – Breach of Planning Condition: The Breach of Condition Concerned."*
- *The omission of the words "gates and associated development" in "5. What you are required to do".*

2. Subject to the corrections, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. The appellant asserts that the fence blends in with the locality, does not cause harm to the street scene or amenity, nor does it cause an obstruction; that the fence is required for safety, security and prevents nuisance car parking; and that there are hundreds of examples of similar fences within the Parish and more that do not conform with the Council's development plan. I have also been provided with photographs showing examples of other boundary fences in the surrounding area. The appellant has not paid a fee for an appeal on ground (a) and therefore, I cannot consider these or any other planning merits for the development. Similarly, the objections to the development from interested parties have not had an influence upon my decision.
4. Whether the appellant chose to apply under ground (a) is not dependent on whether the enforcement notice was issued to the appellant in isolation, or whether the Council inferred originally that the fence was permitted development.
5. The appellant has commented upon the Council's lack of enforcement proceedings against similar fences in the surrounding area, and their handling of the enforcement investigation. However, these matters fall outside the scope of this appeal.
6. The planning merits of the development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. Therefore, a site visit was not necessary as it would not help me reach a decision. I advised the main parties of my intention to determine the appeal without a site visit. I have not received any comments disagreeing with this approach from the Council, however, the appellant deemed that a site visit was necessary. I have considered the appellant's reasons however they have not altered my view.

Matters Concerning the Notice

7. The appellant has stated there are no gates within the fence and the allegation within the enforcement notice relates only to the erection of fencing. It is therefore necessary for me to remove "*gates and associated development*" from the requirements to provide consistency with the allegation.
8. Condition 4 refers to "...*the forwardmost parts of the proposed buildings which fronts on a highway*...", whereas the breach refers to "...*the forwardmost parts of the main building and front onto a highway*" [my emphasis underlined]. For consistency, I have therefore corrected the breach to reflect the condition.
9. The allegation refers to the fencing as shown in "red bold" whereas the requirements of the notice refer to the fencing marked "bold red". I have therefore corrected the allegation so that it is consistent with the requirements.
10. I am satisfied that the notice can be corrected in these respects without causing injustice.

Appeal on Ground (c)

11. An appeal on ground (c) is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The breach of planning control is failing to comply with any condition or limitation subject to which planning permission has

been granted. The onus of proof is on the appellant to show there has been no breach of planning control. The relevant test is the balance of probability.

12. The appellant makes two submissions. Firstly, the fence as erected does not constitute development under s55 of the 1990 Act. Secondly, Condition 4 of planning permission BR/155/78 does not prevent the erection of the fence the subject of the enforcement notice and therefore, it is permitted development in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").
13. Operational development is defined, in s55(1) of the 1990 Act, as the carrying out of building, engineering, mining or other operations in, on, over or under land. A building is defined by s336 of the 1990 Act as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
14. The courts have identified three primary factors as decisive of what is a building: (a) size; (b) permanence; and (c) physical attachment. No one factor is decisive.
15. The development comprises a close boarded wooden fence with concrete posts and gravel boards. The appellant asserts that it was installed by an experienced tradesman. There is no substantive evidence before me to suggest that the materials were not brought onto the land and then erected, that it is not a permanent structure, or that it is not physically attached to the ground. Consequently, on the basis of the evidence before me, the fence is a building and constitutes operational development under the first limb of s55(1) of the 1990 Act. As such, it is not *de minimis*.
16. I acknowledge there is no Article 4 Direction removing permitted development rights for the erection of gates, walls, fences or other means of enclosure from the dwelling. However, planning permission BR/155/78 encompassed a large residential development that included 6 Seacourt Close and Condition 4 of that planning permission states:

"Notwithstanding the provisions of the Town and Country Planning General Development Order, 1977, no gate, fence, wall or other means of enclosure shall be erected or constructed in front of the forwardmost parts of the proposed buildings which fronts on a highway unless permission is granted by the Local Planning Authority on an application on that behalf."
17. The wording of the condition clearly seeks to remove permitted development rights for the erection of any gate, wall, fence or other means of enclosure within the garden area in front of the nearest elevation of a building such as a dwelling or garage that faces towards the road. Therefore, any gate, wall, fence or other means of enclosure constructed in such a location could not be permitted development. Contrary to the appellant's assertion, it is the building not the fence that has to front a highway.
18. The submitted photographs demonstrate that No 6 fronts a highway. The fence extends beyond the front wall of both the dwelling and its garage. Consequently, the fence has been constructed in front of the forwardmost parts of the buildings which front a highway, thereby conflicting with the condition in this regard.

19. The appellant asserts that the fence is not a means of enclosure. The fence is sited along the boundary between 5 Seacourt Close and No 6 and extends from an existing fence. While extending around only part of No 6's front garden, the fence serves an enclosing function in separating the garden from the neighbouring property. Even if I had found that the fence did not enclose the front garden of No 6, the fence is not freestanding, it forms part of a continuous fence that encloses the side and rear garden of No 6. It therefore forms part and parcel of that fence. Consequently, as a matter of fact and degree, in my judgement, the fence has an enclosing function.
20. For these reasons, Condition 4 of the planning permission prevents the erection of the fence the subject of the enforcement notice and therefore, the fence is not permitted development in accordance with the GPDO.
21. Condition 4 refers to the Town and Country Planning General Development Order, 1977 ("GDO"). The appellant suggests that as the GDO has been superseded by the GPDO, the condition cannot be enforced. However, s17(2)(b) of the Interpretation Act 1978 states "*where an Act repeals and re-enacts, with or without modification, a previous enactment then anything done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision*". As such, Condition 4 can be enforced by the GPDO. Furthermore, no significant changes have been made to permitted development rights relating to gates, walls, fences and other means of enclosure since the GDO.
22. The appellant refers to the fence replacing a hedgerow that was removed. However, a hedgerow does not fall within the definition of "development" for the purposes of the 1990 Act. Even though the hedge was higher than the fence, this has no effect in relation to Condition 4. The appellant has referred to having acted in good faith on incorrect advice given by the Council. However, the evidence before me suggests that that advice did not follow the formal procedure detailed through s192 of the 1990 Act (a Lawful Development Certificate).
23. The appellant asserts that Condition 4 is not enforceable as other developments have taken place in breach of the condition. However, immunity from enforcement action by the passage of time for one development does not imply that a new development undertaken in breach of a condition cannot be enforced against. Furthermore, the condition would not apply to a gate, wall or fence approved as part of the original planning permission for the housing estate, or a gate, wall or fence not located forward of the front elevation of a building fronting a highway.
24. For these reasons, the appellant has failed to show, on the balance of probability, that the fence has not been constructed in breach of Condition 4 of planning permission BR/155/78 and that a breach of planning control has not occurred as alleged in the notice. Therefore, the appeal on ground (c) fails.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

A Berry INSPECTOR