
Appeal Decision

Site visit made on 7 January 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Appeal Ref: APP/D3830/C/24/3336931

1 The Platt, Lindfield RH16 2SY

- 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 Darren Baylis against an enforcement notice (EN) issued by Mid Sussex District Council.
 - The EN was issued on 12 December 2023.
 - The breach of planning control as alleged in the EN is: Without planning permission, the erection of a fence on the Land in the location marked in green between the points marked 'A' and 'B' on the plan attached to the EN.
 - The requirements of the EN are:
 - i) Remove from the Land the fence and fence posts as indicated in the approximate position marked in green between the points marked 'A' and 'B' on the plan attached to this Notice.
 - ii) Remove from the Land all materials and debris arising from compliance with requirement i) above.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the 1990 Act.
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Decision

1. The appeal is allowed and the EN is quashed.

The ground (c) appeal

2. A ground (c) appeal is that those matters (if they occurred) do not constitute a breach of planning control. The appellant considers that parts of the fence are development permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and that the part closest to the dwelling has planning permission.
3. In summary, the GPDO through article 3 grants planning permission for the classes of development described as permitted development in Schedule 2 to the Order, subject to any specified exception, limitation or condition. In Schedule 2, Part 2 Minor Operations, Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. There are limitations on when development is not permitted, as set out in paragraph A.1. Relevant to this appeal, the height of the fence after the carrying out of the development must not exceed 1 metre above ground level if erected adjacent to a highway used by vehicular traffic.
4. 1 The Platt (No 1) is a detached dwelling at the junction of The Platt and The Hollow. There is no dispute that both The Platt and The Hollow are highways used by vehicular traffic. There are differing height fences on the garden area that is located between a side wall of No 1 and The Hollow. There is no dispute that the EN only attacks the sections of fence (the EN fence) that extend towards The Platt

in front of the fencing that appears to be approximately 1.8m in height, together with the small section that returns towards the side wall of the dwelling. The evidence before me indicates that when the EN fence was initially constructed it was also approximately 1.8m in height and has been altered to the current lower heights. Nevertheless, it is a matter of common ground that the height of the EN fence currently exceeds 1 metre above ground level. Therefore, in respect of the GPDO, the remaining factor for consideration is the position of the fencing and whether the fence is “adjacent to” a highway used by vehicular traffic.

5. “Adjacent to” is not defined by the GPDO. However, in light of case law it is generally accepted that a fence or other means of enclosure does not have to actually abut the edge of the highway to be considered “adjacent to” it. The common dictionary definition of ‘adjacent’ refers to meaning close or near to something. It is a matter of fact and degree depending on the circumstances of each case.
6. The section of the EN fence fronting onto The Hollow is set back about 2m from the edge of the pavement. There is a low post and rail fence, and relatively tall hedging plants situated between that fence and the edge of the pavement. The evidence before me indicates that most of the post and rail fence and hedging plants fronting The Hollow pre-date the erection of the EN fence. That pre-existing post and rail fence, and hedging extended from the rear boundary of No 1 to the start of the radius that marks the junction of The Hollow and The Platt. Additional post and rail fencing and hedging plants now extend around the radius and along The Platt frontage up to the edge of No 1’s driveway. However, that additional section of the post and rail and those plants were erected/planted after the EN fence was erected.
7. The section of the EN fence that fronts onto The Platt does not run parallel with the frontage and therefore its set back from The Platt’s pavement increases nearer to No 1’s driveway. Nevertheless, the corner nearest the radius of the junction is still set back a considerable distance from the edge of that pavement behind an intervening grassed area. Overall, there is an appreciably greater distance between the Platt’s pavement and the EN fence when compared to the distance between The Hollow’s pavement and the EN fence.
8. Moreover, at the time the EN fence was erected the pre-existing post and rail fence and the hedging extended to a point close to that corner. I acknowledge that at that time the post and rail fence and hedging fronting onto The Platt was not in place and therefore the section of the EN fence fronting The Platt was the only means of enclosure on that part of the frontage. Nevertheless, when viewed from close to the junction the pre-existing post and rail fence and hedge and the grassed verge would have been visible with the EN fence. Moreover, at that time the EN fence would have had the appearance of forming part and parcel of the 1.8m fence, not attacked by the EN, that fronts The Hollow and was erected at a similar time.
9. In my judgement, the above factors mean that at the time the EN fence was erected it would not have been perceived as being close or near to the highway. It is more likely than not that the pre-existing post and rail fencing and hedging would have been perceived as dividing the appellant’s land from the highway. Therefore, as a matter of fact and degree the EN fence is not adjacent to a highway used by vehicular traffic. It is therefore permitted development for the purposes of Class A,

Part 2, Schedule 2 and is granted planning permission by Article 3 of the GPDO. As such, there is no need to determine whether part of the EN fence formed part of the fence previously granted planning permission by the Council.

10. I note the representations made by local residents and the previous appeal decision on this site. However, planning merits are not relevant to and cannot be considered in an appeal on ground (c), which is concerned only with whether the matters alleged constitute a breach of planning control. Moreover, the previous planning appeal decision related to the refusal of planning permission under section 78 of the 1990 Act.

Conclusion

11. For the reasons given above, I conclude that the appeal should succeed on ground (c). The EN will be quashed.
12. In these circumstances, the appeals on grounds (d) and (f) do not fall to be considered.

D Boffin

INSPECTOR