



Appeal Decision

Site visit made on 15 April 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Appeal Ref: APP/M1710/C/23/3330900

Land at Penlan, Gilbert Street, Ropley, Alresford SO24 0BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Kevin Ashley against an enforcement notice issued by East Hampshire District Council.
 - The notice was issued on 14 September 2023.
 - The breach of planning control as alleged in the notice is within the last four years and without planning permission, the erection of a fence greater than 1m in height, adjacent to a highway.
 - The requirements of the notice are to dismantle and remove fencing, fence posts and gravel boards between the points marked green X(A)-X(B) and X(C)-X(D) on plan A attached to the notice.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fee has not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by substitution of the plan annexed to this Decision for the plan attached to the enforcement notice. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Although the appeal was initially made solely under the ground (b) heading, the appellant's written submissions also raised points of relevance to ground (c)-i.e., that the matters alleged in the enforcement notice do not constitute a breach of planning control. Therefore, I shall deal with the appeal as if it had been made on ground (c), as well as ground (b). There would be no unfairness, as the Council have addressed both grounds of appeal in their written submissions.
3. The Council submitted a corrected plan during the appeal which more precisely identifies the land to which the notice relates. This followed the appellant confirming that the northernmost portion of the fence shown on the plan attached to the notice is in separate ownership. I shall exercise the power in s176(1) of the Act to correct any defect, error or misdescription in the enforcement notice or to vary its terms, by substituting the original plan with that annexed to this Decision. I am satisfied that there would be no injustice in doing so.
4. There is no deemed planning application arising from an appeal made on ground (a) and the relevant fee has not been paid. Therefore, planning merits considerations are not before me in this appeal.

Ground (b) and ground (c) appeals

5. The ground (b) appeal is that the matters alleged in the enforcement notice have not occurred as a matter of fact. In this and in respect of ground (c), the onus is on the appellant to show why their appeal should succeed, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a detached dwelling and is located at the junction of two rural lanes. The notice alleges the erection of a fence greater than one metre in height at the property. A close boarded timber fence around two metres in height has been erected. The fence follows the southern and western boundaries of the property. The matters alleged in the notice have therefore occurred as a matter of fact. The ground (b) appeal fails.
7. Turning now to the ground (c) appeal. Erecting the fence has involved the carrying out at the property of building operations, falling within the definition of development set out in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act.
8. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) grants planning permission at Article 3, Schedule 2, Part 2, Class A for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. This is provided that none of the limitations in Paragraph A.1 are exceeded. In particular, paragraph A.1 limits the height of development in Class A to one metre above ground level where it is adjacent to a highway used by vehicular traffic (paragraph A.1(a) ii)) and two metres above ground level elsewhere (paragraph A.1(b)).
9. Since the fence is clearly in excess of one metre in height, it is necessary to assess whether it is adjacent to the highway. No definition of 'adjacent' is provided in statute. Although various dictionary definitions exist, 'adjacent' is commonly understood as meaning next to or adjoining, or lying near to, something else. This means that a gate, fence, wall or other enclosure does not have to physically touch the highway in order to be adjacent to it. As a result, whether a structure is adjacent to the highway will depend on the individual, site-specific circumstances of each case and is a matter of fact and degree.
10. On the western side of the property, the fence is set back a limited distance from the carriageway, behind a narrow strip of land. On the southern side, the fence is set back further from the carriageway, behind a wider portion of land. In both instances however the fence separates the property from the carriageway and acts as a boundary. There is no significant built feature or substantial planting separating the fence from the carriageway. The grass and other planting on the land between the fence and the carriageway does not perform any separating or boundary function. Therefore, even if the edge of the carriageway was taken to be the edge of the highway, as a matter of fact and degree I find that all of the fence is adjacent to the highway, on account of its proximity and function. It follows that the height of the fence exceeds the limitation in paragraph A.1(a)(ii).
11. Paragraph A.1(c) of Class A permits the maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure where its height does not exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater. Even if there had previously been a fence at the property, its replacement goes beyond what

could reasonably be regarded as ‘maintenance, improvement or alteration’ and so falls outside of the limitation in paragraph A.1(c).

12. The consequences of these findings are that the fence does not benefit from the planning permission granted by Class A. Nor has express planning permission been granted for the fence following submission to the Council of a planning application. The definition of a breach of planning control at s171A(1) of the Act includes carrying out development without the required planning permission.
13. Therefore, based on the evidence before me the appellant has been unable to show that the matters alleged do not constitute a breach of planning control. The ground (c) appeal also fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Stephen Hawkins

INSPECTOR



Plan

This is the plan referred to in my decision dated: **2 May 2025**

by **Stephen Hawkins MA, MRTPI**

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Scale: Not to scale

