



Appeal Decisions

Site visit made on 1 May 2025

by **Chris Baxter BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06th June 2025

Appeal A Ref: APP/N2739/C/24/3350328

Appeal B Ref: APP/N2739/C/24/3350329

Fulham Farm Cottage, Fulham Lane, Whitley DN14 0JL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
 - The appeal is made by Miss Sally Armstrong (3350328) and Mr Andrew Stewart (3350329) against an enforcement notice issued by Selby District Council.
 - The notice was issued on 17 July 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a dry-stone wall to replace original wooden fence panels, 4 replacement fence panels and pedestrian gate over 1 metre high adjacent to the highway along with the erection of a bin store.
 - The requirements of the notice are to:
 - Step 1 Reduce the wall to 1m in height above ground level.
 - Step 2 Reduce the fence panels and gate to 1m in height above ground level.
 - Step 3 Remove the bin store.
 - Step 4 Remove all items from the Land in association with the reduction in height of the wall, fence panels, gate and bin store.
 - The period for compliance with the requirements are 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e) and (f) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B proceeds on grounds (b), (c), (d), (e) and (f) only.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In paragraph 5 Step 4 of the notice, before the words “bin store” insert the words “removal of”
2. Subject to the correction, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

The Enforcement Notice

3. Section 176(1) of the Act provides a wide-ranging power to correct or vary the terms of a notice provided that it would not result in injustice to the parties.
4. Step 4 of the requirements is not clear as it implies the reduction in height of the bin store. This does not match Step 3 which is the removal of the bin store. I have corrected the notice, so Step 3 and Step 4 are aligned. Given the limited extent of the corrections, I am satisfied that no injustice to the appellants or Council would arise by me correcting the notice as I have set out in paragraph one.

Appeals on ground (e)

5. An appeal on ground (e) is a claim that a copy of the enforcement notice was not properly served as required by section 172(2) of the Act.
6. Section 172(2) provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land which, in the opinion of the Council, is materially affected. It is for the Council to decide who is materially affected by the notice, but it runs the risk of the notice being quashed if it exercises its discretion incorrectly.
7. The Council state that they served enforcement notices on Sally Armstrong and Andrew Stewart as well as Clydesdale Bank plc as per information on the Land Registry search. The Council further state that the appellants, Sally Armstrong and Andrew Stewart, had been in contact with the planning enforcement officer during the enforcement case and had not indicated that they were not the occupants of the property. The appellants state that the notice was not properly served because the initial investigation was conducted without any collaboration with the appellants.
8. The appellants have not identified any other persons as owners, occupiers, or with an interest in the land who were not served with a copy of the notice, or how they may have been materially affected by the notice, or how any such parties or the appellants themselves has been substantially prejudiced by any failure of service.
9. As such, I am unable to find that there has been a failure of service resulting in substantial prejudice to any party. Consequently, even if there was a failure to properly serve the notice, I would disregard the failure in accordance with s176(5) of the Act.
10. The appeals on ground (e) therefore fail.

Appeals on ground (b) and (c)

11. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact.
12. An appeal on ground (c) is that matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (b) and (c) appeals is on the appellants and the test of the evidence is on the balance of probability.
13. The appellants detail in their evidence that the dry-stone wall, fence and gate have been in situ at the site for some time. At my site visit, it is clear that the wall, fence, gate and the bin shelter are the unauthorised development described in the notice, and there is no evidence before me to suggest that the alleged development was not situated on the site at the date the notice was issued.
14. Consequently, the appellants have failed to demonstrate that at the date the notice was issued the matters alleged had not occurred, and the appeals on ground (b) must fail.
15. The appellants argues that the wall, fence and gate fall within permitted development rights. Class A, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other

means of enclosure is permitted development unless the height of a gate, fence or wall erected or constructed adjacent to a highway used by vehicular traffic would exceed 1 metre above ground level. The wall, fence and gate are over 1 metre in height and are located adjacent to a highway that is used by vehicular traffic.

16. The appellants indicate that there was a previous fence and gate in the same location as the alleged development, and claims that only the fence panels have been replaced with existing and new posts combining to make up the fence, as well as the gate being the original gate. There is no compelling evidence before me which indicates that existing posts were used in the construction of the alleged fence. Nevertheless, even if some existing posts were retained, the fence panels are newly erected and these make up the majority of the structure, therefore it is new development and as a matter of fact and degree, I consider the fence to be the construction of a new fence which is not permitted development as defined in Class A, Part 2 of the GPDO.
17. Paragraph A.1(c) of Class A, Part 2 of the GPDO also states that development is not permitted for a gate, fence or wall if the height of any gate, fence or wall maintained, improved or altered exceeds its former height. The appellants describe how the alleged fence, gate and wall do not exceed the height of the previous structures. The fence and the wall are new developments and the appellants state that the *“gate is as original and has remained untouched”*. On this basis, the alleged development therefore does not fall within the descriptions of being “maintained, improved or altered” and therefore is not permitted development in line with paragraph A.1(c) of the GPDO.
18. I have had regard to the appellants submitted evidence including previous trees at the site, access splays and claims that the Council advised them on permitted development rights and heights of structures. However, these matters do not alter my findings above and that the alleged development is not permitted development in line with the GPDO.
19. On the balance of probability, I conclude that the matters alleged in the notice do not benefit from being permitted development under Class A, Part 2 of the GPDO. There is no evidence before me indicating that the alleged development has planning permission and thereby, they constitute a breach of planning control.
20. The appeals on ground (c) fail.

Appeals on ground (d)

21. In order for an appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late for enforcement action to be taken. The test on the evidence is on the balance of probability.
22. Section 171B(1) of the Act provides that no enforcement may be taken in respect of any unauthorised operational development after the end of the period of four years. The appellants state that the fence, gate and wall are within the boundaries of the property of Fulham Farm Cottage and also claim that the fence and gate have been existing for over 10 years with the wall being in place since 2019.
23. Photographs dated 7 April 2014 show a fence at the appeal site and it is clear that the fence shown in these photographs is significantly different to the fence which is

currently at the site. These photographs do not clearly show any gates or walls present at the site.

24. The appellants detail that for more than 10 years, maintenance and replacement of the fence has taken place because of damage resulting from vehicle collisions and weather conditions. Other than assertions from the appellants, there is no compelling evidence before me which clearly shows that the alleged development has been in place for over four years.
25. As a matter of fact and degree, and on the balance of probability, the alleged development was not in place more than four years before the notice was issued and it was not too late for the Council to take enforcement action on these matters.
26. The appeals on ground (d) therefore fail.

Appeal A on ground (a)

27. This ground of appeal is that planning permission should be granted for the matters alleged in the notice.

Main issues

28. The main issues are:

- i) Whether the development is inappropriate development in the Green Belt;
- ii) The effect of the development on highway safety with regards to access; and
- iii) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

29. Policy SP3 of the Selby District Core Strategy (SDCS) relates to development in the Green Belt. Paragraphs 154(c) of the National Planning Policy Framework (the Framework) states that the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building would not be inappropriate development. The original building in this appeal being the residential property of Fulham Farm Cottage.
30. The fence, gate and wall form part of the residential unit of Fulham Farm Cottage and given their scale and height, they would not be disproportionate additions over and above the size of the original building.
31. The bin store is located directly adjacent to the highway with the means of enclosure for Fulham Farm Cottage set behind the bin store. Given the location of the bin store, it has the appearance of being outside the curtilage of Fulham Farm Cottage and detached somewhat from the existing buildings. Due to the location of the bin store, it is not considered an extension or addition of an existing building and is therefore inappropriate development in the Green Belt.
32. The bin store as described in the notice is inappropriate development in the Green Belt and as such conflicts with Policy SP3 of the SDCS which seeks to safeguard the Green Belt from inappropriate development.

Highway safety

33. The Council have indicated that the access at the appeal site should have a visibility splay of 215 metres. The appellant argues that the position and height of the fence including the visibility splays have not changed, with visibility improving as trees, stumps, bushes and shrubs have been removed.
34. The section of highway by the access is narrow without any footpaths, with the appellant describing that large vehicles pass the site exerting forces on the structures by the side of the road. Given the scale and position of the overall development including the fence, wall and bin store, visibility from the access is constrained. This restricted visibility from the access, particularly given the narrowness of the highway, would result in vehicles having to edge out onto the highway when exiting the site, and therefore causing an obstruction in the road and being detrimental to highway safety.
35. The development does have a harmful effect on highway safety with regards to the access. The development does not accord with Policies T1 and T2 of the Selby District Local Plan which seeks development to relate well to existing highway networks and not be detrimental to highway safety.

Other considerations

36. The appellant describes that the development provides a level of safety and security which helps in terms of containing pets, deterring crime, creating a barrier from wind and road traffic, as well as a haven for wildlife. The bin store also provides a suitable location for refuse, preventing litter in the surrounding area.

Conclusions

37. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework states that substantial weight is given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
38. Other considerations have been identified some of which can be described as benefits and given the scale of the development, I attribute minimal weight to these benefits. I have found that highway safety would be harmed. The identified benefits would not clearly outweigh the harm that I have identified above, particularly given the importance the government gives to the protection of the Green Belt as reflected in the Framework.
39. For the reasons outlined above, therefore, other considerations do not clearly outweigh the harm to the Green Belt and any other harm. Consequently, the very special circumstances needed to justify the development do not exist. The development is contrary to the relevant development plan policies and the Framework as a whole.
40. I therefore conclude that the appeal on ground (a) fails.

Appeals on ground (f)

41. An appeal on ground (f) is that requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach. In this case the requirements seek to reduce the fence, gate and wall to 1 metre in height which the purpose is therefore to remedy the injury to amenity, as well as requiring the removal of the bins store which is to remedy the breach of planning control.
42. The appellants arguments on this ground relate to planning merits which I cannot consider on this ground although I have taken into consideration on ground (a). The requirements go no further than remedying the injury to amenity in respect of the fence, gate and wall, and remedying the breach in terms of the bin store.
43. For these reasons, the appeals on ground (f) fail.

Conclusion

44. For the reasons given above, I conclude that the appeals should fail on grounds (a), (b), (c), (d), (e) and (f), and therefore the appeals are dismissed, and the enforcement notice should be upheld, subject to the correction identified above.

Chris Baxter

INSPECTOR