



Appeal Decision

Site visit made on 7 May 2025

by **R Merrett BSc(Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 June 2025

Appeal Ref: APP/V0510/C/24/3354503

Land known as Breach Farm, Ness Road, Burwell, Cambridge CB25 0DB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Michael Mitcham, BC Mitcham Farms (Burwell) Ltd, against an enforcement notice issued by East Cambridgeshire District Council.
- The notice was issued on 25 September 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of two brick walls exceeding 1m in height.
- The requirements of the notice are to i) Demolish the two brick walls; ii) Remove all resulting debris and material from the land arising from compliance with requirement (i).
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. In support of the appeal, the appellant's agent has explained the reason for the wall being constructed at its present height was in the interests of improving security, in light of a series of break-ins and substantial thefts from the property. Reference is also made to support for the development from the police and from insurers of the property; also to similar developments having been constructed elsewhere and the development not appearing out of place.
2. However, these points all relate to the planning merits of the alleged development. In the absence of an appeal on ground (a) being considered, namely that planning permission ought to be granted, the planning merits of the development are not before me for consideration. I am therefore unable to have regard to and evaluate these points within my decision.

Background

3. The Council granted planning permission for two replacement dwellings, which are set back from Ness Road and reached via an existing access road. The same access road continues on to serve the wider Breach Farm complex. The permission included the erection of an entrance gate and walls close to the junction of the site access road with Ness Road¹.
4. Conditions attached to the planning permission required the development to be carried out in accordance with approved drawings². The approved drawing numbers include 473/P/01 Rev. D and 473/P/03 Rev. A.

¹ Planning permission reference 22/00925/FUL – granted 11 October 2022.

² See conditions 1 and 6.

5. Drawing 473/P/03 Rev. A depicts the approved elevation details for the entrance walls, which are shown to have a maximum height of 1 metre; with the approved gate and associated piers having a maximum height of 2 metres.

The appeal on ground (c)

6. The appeal on ground (c) is that the alleged matters do not constitute a breach of planning control. The appellant's case in this regard is two-fold. Firstly, they argue that the height of the walls is not restricted by conditions imposed on the aforementioned planning permission. Secondly, they say that the walls benefit from permitted development rights. It is undisputed that the walls exceed one metre in height, which I was able to verify during my visit.

7. Condition 6 of the aforementioned planning permission states as follows:

“The boundary treatments hereby permitted shall be constructed in accordance with the details specified on drawing no. 473/P/01 Rev. D. The boundary treatments shall be in situ and completed prior to the first occupation on the site. All works shall be carried out in accordance with the approved details and retained thereafter.”

8. The appellant sets out that condition 6, which is concerned with boundary treatments, does not relate to the walls that are the subject of the enforcement notice, because those walls do not adhere to the site boundary. They suggest the boundary treatments with which condition 6 is concerned relate to the dwellings themselves, which are not the subject of the notice.
9. I am in no doubt that the configuration of the entrance walls on approved drawing 473/P/03 Rev. A are consistent with the configuration of the same depicted on approved drawing 473/P/01 Rev. D; which itself is consistent with the position of the walls as identified on the plan attached to the notice.
10. Therefore, even if the site entrance walls were not specifically covered by condition 6, I am in no doubt that the layout and elevation details for the entrance walls are governed by the approved planning permission drawings, as set out above, by virtue of condition 1. Accordingly, the walls have not been constructed in accordance with the approved drawings and are in breach of the aforementioned planning permission.
11. I therefore turn to the question of whether the entrance walls would have amounted to permitted development. Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure constitutes permitted development, subject to various conditions.
12. Paragraph A.1. of Class A goes on to indicate that, with the exception of specific circumstances relating to schools, development is not permitted by Class A if the structure in question is erected or constructed adjacent to a highway used by vehicular traffic and would exceed a height of 1 metre above ground level. In any other case the height of the structure should not exceed 2 metres above ground level, in order to be permitted development.

13. The parties do not dispute that the walls in this case exceed 1 metre in height. Whether they should be regarded as being 'adjacent' to a highway used by vehicular traffic is therefore a significant factor in determining whether they constitute permitted development.
14. Case law has established that a wall does not need to be abutting a highway in order to be adjacent to it. The common dictionary definition of 'adjacent' refers to meaning close or near to something. A fact and degree assessment will therefore be necessary in each case, to determine whether a wall should be regarded as adjacent to a highway.
15. In this case the walls form a curved feature, with the piers at one end supporting entrance gates, significantly set back from the main road (Ness Road). Both walls are also set back from the main road, there being a substantial intervening verge area and drainage ditch separating them from the carriageway. For this reason, it seems to me that the walls do not give the impression of forming an imposing boundary feature with Ness Road, even though they are likely to help prevent trespass onto areas of land in the appellant's ownership.
16. Notwithstanding this, and despite their splayed configuration, a substantial proportion of both walls, are sited very close to the existing access road. This gives the overall impression of each wall, as a whole, forming a substantial boundary feature separating that road from open fields beyond.
17. I accept that the walls do not result in any harm to visibility of the highway. However, drawing the above considerations together, and as a matter of fact and degree, I conclude that the walls are not adjacent to Ness Road but are adjacent to the existing access road serving the site. They are therefore adjacent to a highway used by vehicular traffic. In this context, when considering their height, the walls would not therefore constitute the permitted development granted by the GPDO. The ground (c) appeal therefore fails.

The appeal on ground (f)

18. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and include remedying the breach of planning control. The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
19. With regard to the unauthorised development, insofar as the objectives of the notice are to demolish the walls and remove all resulting materials, the objective is to restore the land to its condition before the breach took place. It follows that the purpose of the notice, in this regard, is to remedy the breach of planning control.
20. However, the appellant's ground (f) appeal is that the requirements are excessive, because an alternative acceptable, and less onerous, course of action would be for the height of the walls to be reduced to the extent they are brought into compliance with the aforementioned planning permission.

21. I concur that either course of action would serve to remedy the breach of planning control. Accordingly the requirement to demolish the walls, without allowing for this alternative course of action, would exceed what is necessary.
22. The ground (f) appeal therefore succeeds to this limited extent, and I shall vary the notice accordingly.

Conclusion

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

Formal Decision

24. It is directed that the enforcement notice is varied by:

Deleting the wording at Section 5 paragraph (i) in its entirety and substituting the following wording instead:

“(i) EITHER demolish the two brick walls OR make alterations to the two brick walls so that they comply with condition 1 of planning permission reference 22/00925/FUL – granted 11 October 2022”

25. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

R. Merrett

INSPECTOR