
Appeal Decision

Site visit made on 27 June 2025

by **Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 July 2025

Appeal Ref: APP/Z4718/C/24/3356495

58 Southfield Road, Waterloo, HUDDERSFIELD, HD5 8RJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Elita Skujina against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 21 October 2024.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a fence exceeding 1 metre in height adjacent to the highway.
 - The requirements of the notice are:
 - a) Permanently dismantle and remove the fence (adjacent to Southfield Road and Fleminghouse Lane), from the site OR
 - b) Reduce the height of the fence along Fleminghouse Lane and Southfield Road to no more than 1 metre in height, measured from the adjacent highway (See Diagram 1 - Blue Line); and reduce the height of the fence, running perpendicular to Southfield Road, to no more than 1 metre in height, measured from natural ground level, for the first 2 metres from where it meets the public pathway (see Diagram 2 – Green Line).
 - c) Following either step a) or step b), remove all resulting dismantled material from the site.
 - The period for compliance with the requirements is 60 days after this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural matter

2. An appeal was made on ground (a), that planning permission should be granted for the development. However, where an enforcement notice is issued on or after 25 April 2024, no appeal on ground (a) may be made if the enforcement notice was issued after the making of a related retrospective planning application and within 2 years of the date on which the related application ceased to be under consideration. In this case, the related application was a planning application for retention of the fence, refused by the Council in March 2024. As there was no appeal the application ceased to be under consideration, therefore the appellant is barred from appealing on ground a). Therefore, the appeal is on ground f) only.

Background

3. The appeal property occupies a corner plot facing Southfield Road and Fleminghouse Lane having the main frontage on Southfield Road. The fencing is formed from close boarded timber and extends around the property on both roads, leaving a gap at the entrance on Southfield Road, but continuing between No 58 and the adjacent premises. The notice was issued by the Council for reasons that the fence appears in the street scene as a solid barrier, visually incongruous with

its surroundings, and has an imposing and oppressive presence on both roads including along the front part of the boundary between No 58 and its neighbour.

Ground (f)

4. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. It is essential to understand the purpose of the notice. Under s173(4) of the Act, its purpose is to: (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.
5. Reading the enforcement notice as a whole it is clear on its face that its purpose is to remedy the injury to amenity by requiring the fence to be reduced in height, only requiring its complete removal should the reduction in height not occur.
6. The appellant is willing to reduce its height to 1m at the front of the property but stated that a 1.8m high fence was required to provide privacy and security to the rear garden area where children play, ie by the part of the fence that fronts Fleminghouse Lane. I understand the need for appropriate privacy in the rear garden, however this is a planning merits argument that would, or should have been made when the application to retain the fence was submitted. There is no evidence that the requirements of the notice are excessive in this regard, the fence is equally prominent and at odds in the street scene along Fleminghouse Lane where the road junction is fairly wide and open to views from several angles. As it is, all the requirements of the notice are necessary to remedy the injury to amenity.
7. It is said that the fence could be painted a more neutral colour or set in slightly from the boundary whilst planting a hedge in front to provide a natural screen at the rear garden area. In the "final comments" document the agent maintains that clear lesser steps have been presented that fall to be considered. The proposal might amount to clear and lesser steps but would not remedy the injury to amenity that has occurred. Many alternative lesser steps can be proposed to alleviate a given injury to amenity, however whilst they may seem like a matter of common sense to some, they should not involve having to judge the planning merits of the proposal, as they would here, when there is no ground (a) appeal and the planning objection that the notice seeks to remedy cannot obviously be overcome thereby. Once the notice is complied with by reducing the height of the fence, the appellant may carry out other works subject to obtaining any necessary planning permission.
8. A neighbour has written in support of maintaining the fence in situ whilst another states that several properties nearby have boundary treatments 1.8m and higher, adjacent to the highway. Whilst this would be a factor if I were considering the planning merits of the fence, the planning objection that the notice seeks to remedy, is the height of the fence itself at the appeal property. In this respect, the requirements are no more than are necessary to remedy the injury to amenity.

Conclusion

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

Grahame Kean

INSPECTOR