



Appeal Decision

Site visit made on 26 June 2025

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 July 2025

Appeal Ref: APP/H4315/C/25/3361686

Land at 1 Spinners Drive, St Helens WA9 3GF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act").
 - The appeal is made by Mr Matthew Walkden against an enforcement notice issued by St Helens Metropolitan Borough Council.
 - The notice was issued on 6 February 2025.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the erection of a concrete post and timber boundary fence.
 - The requirements of the notice are: (1) Remove the unauthorised concrete post and timber boundary fence as shown on the blue line on the attached plan; (2) Remove all resultant waste from the site.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e), (f) of the Act.
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Decision

1. It is directed that the notice is corrected in section 3 and varied in section 5(1), in each case by the deletion of the word "concrete" and the substitution of "UPVC."
2. Subject to the correction and variation, the appeal is dismissed, and the notice is upheld.

Preliminary Matters

3. The copy of the notice provided by the Council is dated 31 January 2025, but the appellant received a copy dated 6 February 2025. I can only conclude that the former is an unissued draft, and that the latter is a true copy as issued.
4. While the appellant suggested I would need to enter the site to see where a previous fence had stood, I can determine the appeal in line with his statement that it was set back some 45cm from the footway on Prince Albert Close.
5. The appellant owns a small triangle of land outside the red line of the plan accompanying the notice, between the fence and the driveway serving 12 Prince Albert Close. However, as the fence does not enclose that piece of land, there is no need to correct the notice, or the plan accompanying it, in this respect.

The appeal on ground (e)

6. An appeal on this ground is that copies of the notice were not served as required by section 172 of the Act. Under section 172(3), a notice must be served:
 - (a) Not more than 28 days after its date of issue; and
 - (b) Not less than 28 days before the date specified in it as the date on which it is to take effect.

7. As noted above, the date of issue of the notice was 6 February 2025. The appellant's copy of the notice was served on him by recorded delivery on 17 February 2025, within the 28-day period required by section 172(3)(a).
8. Under section 172(3)(b), the service of the appellant's copy also needed to occur on or before 7 February 2025, 28 days before the notice was due to take effect. The date of service on the appellant was less than 28 days before the notice took effect and therefore did not comply with the requirement of section 172(3)(b).
9. Copies of the notice were therefore not served as required by section 172 of the Act but that must be considered having regard to section 176(5) of the Act:

Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
10. The section is drafted in terms of non-receipt, rather than late receipt, but the principle may still be applied. Late service can, as the appellant states, put a recipient 'on the back foot,' but in this case, he was able to make a valid appeal in the 18-day window before the notice took effect.
11. Nevertheless, I have considered whether late service severely impacted the appellant's ability to "obtain additional legal advice and consider all available options." However, 'additional' indicates that legal advice had already been taken and there is nothing within his submissions to suggest that more was needed, or that his case would have been any different if there had been more time.
12. Accordingly, I find that the appellant has not been substantially prejudiced by the Council's failure to serve the notice as required by section 172 of the Act and the appeal on this ground must fail.

The appeal on ground (b)

13. The fence posts are not concrete, as alleged, but UPVC. However, other than pointing that matter out, there is no evidence that the appellant would have made a different case if the correct material had been stated. It would therefore not cause injustice to correct the notice in this respect. The appeal on ground (b) therefore succeeds to this limited extent and the notice will be corrected and varied.
14. A point made by the appellant about the section of fence at a 45-degree angle to Prince Albert Close will be considered in the appeal on ground (c).

The appeal on ground (c)

15. An appeal on this ground may succeed if an appellant can demonstrate, on the balance of probabilities, that any matter alleged in the notice is not a breach of planning control. This could be because it is not development or does not require an express grant of planning permission.
16. The appellant points out that the section at a 45-degree angle, or at least part of it, follows the alignment of a previous fence that the Council had approved, and should therefore be considered a replacement.

17. While that may be so, the fence the subject of the notice is a single structure for the purposes of this assessment and the part adjacent to Prince Albert Close, which does not follow the previous alignment, exceeds 1m in height. That means the entire structure is development requiring planning permission and the appeal on this ground must fail.
18. The appellant's contention that it is unreasonable to require removal of the 45-degree section is more appropriately considered in the appeal on ground (f).

The appeal on ground (f)

19. An appeal on this ground may succeed if it can be shown that the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, any injury to amenity it may cause. The notice requires the removal of the fence, so its purpose is to remedy the breach.
20. The appellant refers to an earlier notice, not provided, which gave an option to reduce the height of the fence to not more than 1m. Doing so would bring the fence to within the parameters of a means of enclosure permitted by Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("Class A" of "the Order").
21. However, the erection of the fence was a building operation, defined by section 55(1A)(d) of the Act, and the reduction in height would alter but not remove it. Consequently, the breach of planning control would not be remedied because the altered fence would not be permitted by Class A, and thus be unauthorised, because of the provisions of Article 3(5)(a) of the Order:

The permission granted by Schedule 2 does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.

22. Even if the purpose of the notice were to remedy injury to amenity, the appeal on this ground would fail for the following reasons.
23. Reducing the fence's height would reduce its prominence but would not create space for landscape planting in front. Nor would it provide the privacy normally expected for a back garden. Another appeal decision¹ noted that lawned areas and shrub planting provide an attractive environment and make a positive contribution to the character and appearance of the street scene, and I agree.
24. While the appellant has suggested planting in front of the fence on its current alignment, it has not been shown that any suitable species might grow in that setting, with no root space between the fence and the footway.
25. The appellant suggests that it is unreasonable to require the 45-degree section of fence to be removed because it follows the line of a previous fence that had been acceptable to the Council. Details of that part of the previous fence have not been provided but from the evidence I have seen, it stood further back from Prince Albert Court. A 45-degree section in the same place would therefore have followed a different line, beginning further away from the road, with a lesser impact on the character and appearance of the area.

¹ APP/H4315/D/22/3302917, dismissed 29 November 2022.

26. Consequently, it is not certain how much of the 45-degree section follows the previous fence line. Nor has it been shown how any part that does could be separated and retained in isolation. Accordingly, it is not excessive for the notice to require the 45-degree section to be removed along with the rest of the fence.
27. Substituting 'brick slip' style pillars for UPVC has been suggested although no illustration has been provided. While this might result in a less strident contrast with the grey fence panels, and so reduce the impact of the fence, it would not remedy the breach because an unauthorised fence would remain.
28. A lesser step of removing only the section parallel to the side of the dwelling has been suggested. While that would reduce the visual impact of the fence, it would not eliminate it, and harm identified in the previous appeal decision would remain.
29. The above lesser steps would not, individually or collectively, remedy the breach. I understand the appellant's concern about removal of the fence in terms of privacy and the safety of his children. However, those concerns could be addressed by erecting a fence or other means of enclosure of similar height but not adjacent to the highway, like the previous fence.
30. Accordingly, and in these circumstances, if any interference with the appellant's rights under Article 8 of the European Convention on Human Rights² were to arise, it need not be significant. The rights set out under Article 8 are qualified rights, which may be interfered with in accordance with the law and in the interests of public safety in a democratic society. Planning and enforcement policies and procedures exist to protect economic well-being, health and the rights and freedoms of others. Accordingly, I find that the requirements of the notice are not disproportionate having regard to Article 8.
31. For these reasons, the appeal on ground (f) must fail, although I will vary requirement (1) to refer to UPVC posts rather than concrete as alleged.

Conclusion

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

Mark Harbottle

INSPECTOR

² As set out in Schedule 1 of the Human Rights Act 1998.