



Appeal Decision

Site visit made on 22 July 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 August 2025

Appeal Ref: APP/C1435/C/24/3337244

10 Blatchington Mill Drive, Stone Cross, Pevensey BN24 5QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Rupak Pal against an enforcement notice issued by Wealden District Council.
- The notice was issued on 3 January 2024.
- The breach of planning control as alleged in the notice is *without planning permission, the erection of a timber closed-boarded fence in excess of 1 metre in height adjacent to the highway ("the fence") in the approximate position shown by a green line on the attached plan.*
- The requirements of the notice are:
 - Either:*
 - (i) *Demolish, dismantle and remove the Fence and all fence posts along the road frontage from the Land.*
 - (ii) *Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with requirement (i) above.*
 - Or:*
 - (iii) *Reduce the height of the Fence and all posts along the road frontage to a height not exceeding 1 metre at any point along the length of the Fence.*
 - (iv) *Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with requirement (iii) above.*
- The periods for compliance with the requirements are: *3 months after this notice takes effect.*
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld as set out in the Formal Decision below.

Formal Decision

1. The appeal is dismissed, and the enforcement notice (EN) is upheld.

Preliminary Matters

2. I was unable to gain access to the rear of the property, as at the time of my visit. Consequently, I undertook the site visit on an unaccompanied basis from the roadside. Nevertheless, I was able to view the development and the related ground level, which assisted me in determining the appeal. As such, I am satisfied that neither party has been prejudiced by this approach.
3. The appellant contends that the fence is similar to several other examples in the vicinity, notably at 38 Patcham Mill Road and 28 Ifield Mill Close and thus it is not out of keeping in the locality. The appellant further contends that the fence is required for the safety and security of their children. I would acknowledge that the fence provides increased security and privacy, however whilst I do not doubt these are legitimate concerns there is not a sufficiently robust evidential base before me to conclude the provision of such a high means of enclosure is essential. Furthermore, the appellant has not paid a fee for an appeal on ground (a) and

therefore, I cannot consider these or any other planning merits for the development.

4. Even if, an appeal had been made under ground (a), I have noted that a retrospective planning application¹ was previously made for the fence. This was refused by the Council and was also dismissed at appeal². Here, the Inspector concluded that the fence does detract from the street scene and would conflict with the relevant policies of the Wealden Local Plan, adopted December 1998.

Appeal on ground (c)

5. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. In a legal ground of appeal, the burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
6. Section 55 of the Town and Country Planning Act 1990 (the 1990 Act) as amended, sets out the meaning of “development”, which includes the carrying out of building engineering, mining or other operations in, on, over or under land. The development comprises a close boarded wooden fence with timber posts and kickboards. Following my site visit, I would consider the fence is a permanent structure given its size and physical attachment to the ground. Consequently, based on the evidence before me, the fence is considered a building and constitutes operational development under the meaning of S55(1) of the 1990 Act.
7. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended, permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosures subject to certain limitations. These limitations include *A.1.(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed – (ii) ...1 metre above ground level.*
8. The appellants property flanks Blatchington Mill Drive which is a highway used by vehicular traffic. The fence is located along the side elevation of the host property and sits extremely close to the kerbside of Blatchington Mill Drive, as such the development is a fence that has been constructed adjacent to a highway. As the fence is in excess of 1 metre in height, it is therefore outside the requirements of the GPDO.
9. As a matter of fact and degree, I find that the fencing is not permitted by the GPDO and so planning permission is required. Subsequently, the matters stated in the notice have occurred, and I conclude that the appellant has not shown on the balance of probabilities that they do not constitute a breach of planning control. Thus, the ground (c) appeal fails.

Conclusion

10. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN.

Robert Naylor INSPECTOR

¹ Wealden District Council Planning Ref: WD/2022/0437/FR

² PINS Ref: APP/C1435/D/22/3307110