



Appeal Decision

Site visit made on 10 March 2025

by **E Brownless BA (Hons) Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 02 September 2025

Appeal Ref: APP/V2635/C/23/3333470 (Appeal A) & APP/V2635/C/23/3368000 (Appeal B)

Land at Labyrinth, 9 Westgate Street, Shouldham, King's Lynn PE33 0BN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended)(the "Act"). The appeals are made by Mr G Tunley (Appeal A) and Mrs G Tunley (Appeal B) against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The notice was issued on 15 November 2023.
 - The breach of planning control as alleged in the notice is 'without planning permission, the erection of a 1.9m rendered wall with aluminium slated infill panels between each pillar, and aluminium swing gates at the same height, adjacent to a highway used by vehicular traffic'.
 - The requirements of the notice are:
 1. Demolish the unauthorised wall and gates.
 2. Remove the rubble and all other associated waste from the land and restore the land to its previous condition.
 - The period for compliance with the requirements is: three calendar months from the date the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Act. Since Appeal A 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 is proceeding on the grounds set out in section 174(2)(c) and (f) of the Act.
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Decisions

1. It is directed that the enforcement notice be varied by:-

- In Schedule 5 of the notice, the addition of the words '*and remove the rubble and all other associated waste from the land and restore the land to its previous condition; OR*' after the words '*demolish the unauthorised wall and gates*' in the step 1 requirement,

so that step 1 reads '*demolish the unauthorised wall and gates and remove the rubble and all other associated waste from the land and restore the land to its previous condition; OR*'.
- In Schedule 5 of the notice, from the step 2 requirement, the deletion of the words '*remove the rubble and all other associated waste from the land and restore the land to its previous condition*' and their replacement with the words '*Reduce the wall and gates to a height not exceeding 1 metre above ground level and remove all resultant rubble and other associated waste from the land*',

so that step 2 reads '*Reduce the wall and gates to a height not exceeding 1 metre above ground level and remove all resultant rubble and other associated waste from the land*'.

2. Subject to these variations, 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.

Preliminary Matters

3. The appeal is brought in the names of Mr & Mrs G Tunley. Since multiple appellants cannot be allocated to an appeal reference number, the appeal against the enforcement notice proceeds by way of two separate appeal reference numbers. Therefore, a second appeal reference number has been allocated.
4. Although the appellants have ticked ground (a) on the appeal form, they assert in their reasons for the appeal that *'the wall in question is not adjacent to the highway'*. This appears to be a hidden ground (c) appeal, which is that, those matters stated in the notice do not constitute a breach of planning control because the development is "permitted development" and complies with the permitted development rights afforded by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).
5. The appellants have not appealed under ground (c) and, since the Council has not responded to this part of the appellants' case, I considered it was necessary to revert to the parties to seek their comments in relation to dealing with this matter under ground (c) in addition to the other grounds put forward by the appellants.
6. During the course of the appeal I also sought the parties views regarding the implication of Article 3 of the GPDO, which grants planning permission for classes of development described as permitted development in Schedule 2 and Schedule 2, Part 2, Class A of the GPDO, which grants permission for minor operations, including the construction of a wall or other means of enclosure and whether a reduction to the height of the existing wall and gates to a height of no more than 1 metre above ground level as permitted development adjacent to a highway used by vehicular traffic would represent a realistic fallback position and an obvious alternative that could be achieved with less cost and disruption than the total removal of the wall and gates. I have taken account of the parties' views in reaching my decision.
7. The Council's reasons for issuing the enforcement notice refers to the National Planning Policy Framework 2021 and their statement references the National Planning Policy Framework 2023. However, the National Planning Policy Framework ("the Framework") was revised in December 2024. I have had regard to the paragraphs cited by the Council in their evidence and note that whilst some of the paragraphs referred to have been re-numbered, the quoted paragraphs have largely remained unaltered. Given that the content relevant to this appeal has not appreciably changed, I therefore did not consider it necessary to seek the parties' views with regard to the publication of the revised Framework, however, I have determined the appeal with regards to the most up to date version of the Framework.

Ground (c)

8. An appeal under ground (c) is made on the basis that the matters alleged in the enforcement notice do not constitute a breach of planning control. This ground of appeal is strictly concerned with matters of fact and law. It is for the appellants to

demonstrate why their appeal should succeed on ground (c), the relevant test of the evidence being on the balance of probability.

9. The notice attacks a wall of some 1.9 metres in height with aluminium slated infill panels between each pillar together with aluminium swing gates of broadly equivalent height. The wall and gates are erected within the front garden of a detached two-storey dwelling. Section 55(1) of the Act defines ‘*development*’ which includes the ‘*carrying out of building, engineering, mining or other operations in, on, over or under land*’ and therefore the erection of the wall and gates amounts to ‘development’. By reason of section 57(1) of the Act, planning permission is required for the carrying out of any development of land.
10. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other enclosure can be permitted development under Schedule 2, Part 2, Class A of the GPDO. This is subject to the gate, fence, wall or other means of enclosure, adhering to the height limitations in paragraph A.1 of that Class and ensuring these are not exceeded. Paragraph A.1(b) is permissive of a gate, fence, wall or other means of enclosure to a height of 2 metres above ground level, however, paragraph A.1(a)(ii) does not permit any gate, fence, wall or means of enclosure to be erected or constructed adjacent to a highway used by vehicular traffic which would exceed a height of 1 metre above ground level.
11. The term ‘adjacent to the highway’ for the purposes of Class A is not defined in statute. The case of *Simmonds v SSE & Rochdale MDC [1981]* which concerned a fence higher than one metre and which was positioned less than one metre from a footway to a highway, it was held that the fence in that instance did abut the highway. It therefore established that a fence can be set back from the highway edge, but still ‘adjacent’ to it; the word ‘adjacent’ does not necessarily mean that the fence has to be abutting or touching the highway. In instances whereby a gate, fence, wall or other enclosure is set back from a highway but is still to be considered as ‘adjacent’ to that highway is a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so.
12. In this case, there is no footway adjoining the highway to the front of the appeal property and the wall and gates are set back more than 1 metre from the edge of the highway, taking the appellants’ measurements which have not been disputed by the Council. The Land Registry title plans show that a section of land positioned between appellants’ land and the highway is owned by a third party (the “Third Party Land”). The Third Party Land is a mix of maintained lawn and hardstanding. It is an open area of land which, in part, enables pedestrian and vehicular access to the appeal dwelling from the highway. The wall and gates appear to have been erected in a position that delineates the appellants’ land from the Third Party Land.
13. In light of the Third Party Land and the intervening gap of more than one metre between the highway and the development, the appellants argue that paragraph A.1(b) of the GPDO is engaged and that a wall and gates of up to 2 metres in height are development permitted by the GPDO. To succeed under this ground, the appellants therefore need to show, on the balance of probability, that the wall and gates have not been constructed adjacent to a highway used by vehicular traffic.

14. In this instance, the wall and gates are one continuous structure spanning the width of the appeal site and they form the boundary between the appellants' area of front garden and the back edge of the Third Party Land which is positioned at the edge of the highway. Whilst I observed that a row of vegetation had been planted to the front of the wall, the planting was of limited height and did not appear as a feature of substance in its own right separating the wall from the highway. In my judgment, it is clearly intended that the wall and gates are a means of enclosing the appellants' land and given their proximity to the highway, the wall and gates are, as a matter of fact and degree, perceived as being '*adjacent*' to the highway.
15. The submitted plan shows a new hedgerow of some 1800mm in height would be positioned to the front of the wall. Although vegetation can become more established over time and once matured it would have an increased effect in screening the wall, I consider that it is likely that a wall and gates of this construction, height and width would continue to be perceived as the main boundary between the highway and the appellants' property, particularly when viewed by passing pedestrians, occupants of vehicles and from neighbouring dwellings.
16. Accordingly, for the reasons explained above, I find that the wall and gates are not development permitted by Article 3, Schedule 2, Part 2, Class A of the GPDO. The appellants have failed to demonstrate that construction of the wall and gates does not constitute a breach of planning control. The appeals under ground (c) thereby fail.

Ground (a)

17. An appeal under ground (a) is that planning permission ought to be granted for what is alleged in the enforcement notice. The main issue is the effect of the development on the character and appearance of the surrounding area.
18. The appeal property is a detached two-storey dwelling located part way along Westgate Street within a predominantly residential area that is characterised by a variety of built form. Whilst a limited number of dwellings are built up to the edge of the road, the majority are set back from the highway with modest sized areas of garden to their front. Front garden areas are typically open and landscaped and where front gardens are set behind boundary treatments these are generally low in height, not of a solid composition and they are constructed in traditional materials that correspond with their host dwelling and/or are typically found within the vicinity. Consequently, there is an attractive, open and verdant character along the road.
19. The introduction of a wall and gates of substantial height and which include a width spanning the full extent of the appeal site results in the frontage being dominated by a continuous solid mass of built form thus having a strong enclosing effect which harmfully diminishes the prevailing open character found along Westgate Street.
20. Whilst the submitted plan suggests the horizontal slated elements of the upper part of the wall and the swing gates would be constructed from timber, it is the Council's view that these elements have been constructed from aluminium and this concurred with my observations at the site visit. Since the host dwelling is predominantly constructed in red brick, the use of render and metal fails to

correspond with materials used in the construction of the host dwelling and fails to relate well or complement materials that are predominantly found within the locality. The use of render together with metal for the infill panels and gates gives it a contemporary appearance that adds to its overall incongruity within the streetscene.

21. Given the close proximity of the development to the highway, the wall and gates are particularly prominent in views from the public domain in addition to being highly visible from some neighbouring properties. In these views, the development is viewed as an inharmonious and discordant addition.
22. Notwithstanding the presence of planting to the front of the wall, the existing vegetation is of very limited height and has little effect in screening the development. I am also mindful that, once planting has matured, the screening potential of vegetation can be compromised due to damage or ill-health of plants and in any event, vegetation is likely to take time to become established and should not be used to screen what is essentially a harmful development.
23. The appellants have suggested the wall could be altered to include a different colour of render and a photograph shows a sample of an alternative shade of render in the colour 'smoke grey'. The Parish Council have indicated their support to the colour change. However, in my judgment, the use of an alternative colour of render would have little effect in overcoming the adverse harm that has been caused by the development.
24. Overall, I find that by reason of the substantial height and width together with the use of unsympathetic materials, the development is a strident and inharmonious addition that fails to complement and diminishes the prevailing open and verdant character and appearance of the area. It is contrary to Policy CS08 of the King's Lynn & West Norfolk Borough Council Core Strategy (2011) and Policy DM15 of the King's Lynn & West Norfolk Site Allocations and Development Management Policies Plan (2016). Among other things, these policies require new development to be of a high quality design that is sympathetic to the local area.
25. Additionally, there would be conflict with the aims of the Framework which seek to protect and enhance our built environment through the creation of high quality, beautiful and sustainable buildings and places¹ and, require developments to add to the overall quality of the area, be visually attractive, sympathetic to local character and history, including the surrounding built environment, establish or maintain a strong sense of place, using, among other things, materials to create attractive, welcoming and distinctive places to live, work and visit².

Ground (a) conclusion

26. Thus, for the reasons given above, I find that the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan.

¹ National Planning Policy Framework 2024 paragraph 131

² National Planning Policy Framework 2024 paragraph 135

Ground (f)

27. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
28. An enforcement notice can have the purpose of remedying the breach of planning control. This can include by making any development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land, or restoring the land to its condition before the breach took place. Alternatively, an enforcement notice can have the purpose of remedying any injury to amenity which has been caused by the breach.
29. The notice requires the wall and gates to be demolished and the site to be restored to its condition prior to the breach taking place. This suggests that the purpose of the notice is to remedy the breach of planning control. Leaving any part of it in place would not achieve that purpose.
30. The appellants have suggested the use of an alternative colour of render, however, as explained above, in my judgment this would have little effect in mitigating the adverse harm to the character and appearance of the area that has been caused by the development. Furthermore, leaving the wall and gates in place would not remedy the breach of planning control.
31. However, under Schedule 2, Part 2, Class A of the GPDO a 1 metre high wall and gate could be erected as permitted development adjacent to a highway used by vehicular traffic.
32. The Council has commented that in reducing the height of the wall and gates to a height that would concur with the GPDO would not 'allow a requirement to finish the development to a condition that satisfies the LPA'. However, under Article 3, Schedule 2, Part 2, Class A of the GPDO in permitting a 1 metre high (above ground level) wall and gates, the conditions and limitations do not stipulate any particular type of finish or condition that should be included.
33. I am mindful that permitted development cannot be granted retrospectively and simply reducing the height of the wall and gates would not remedy the breach. Nevertheless, requiring complete removal of the wall and gates is unlikely to achieve anything and is therefore excessive, because the grant of planning permission under the GPDO represents a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption.
34. I shall therefore vary the notice to give the appellant the option to reduce the fence and gates to 1m in height above ground level.
35. In these circumstances, I conclude that the appeals on ground (f) succeed only to the extent set out above, and I shall vary the requirements of the notice accordingly.

Conclusions

36. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement

notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act. The appeals on ground (f) succeed to that extent.

E Brownless

INSPECTOR