



Appeal Decision

Site visit made on 2 September 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 09 September 2025

Appeal Ref: APP/Z4718/C/24/3357469

51 Benomley Crescent, Almondbury, Huddersfield HD5 8LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Shahid Parvez against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 5 November 2024.
 - The breach of planning control as alleged in the notice is without planning permission, engineering operations to raise the ground level to the rear of the property and the erection of a fence on the raised land level.
 - The requirements of the notice are to:
 - a) Remove the fence from the rear boundary with number 53 Benomley Crescent;
 - b) Remove all infilled material used to raise the land level from the site;
 - c) Following step b, return the land to its state prior to the unauthorised engineering operations taking place at the site.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is 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 1990 Act as amended.

Appeal on ground (a)

2. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the breach of planning control stated in the notice. Where an appeal on ground (a) is duly made, an application for planning permission is deemed to have been made.

Main Issues

3. The main issues are the effect of the development on: the character and appearance of the area; and the living conditions of the occupiers of Nos. 53 Benomley Crescent and 48 Benomley Drive, with regard to outlook.

Character and appearance

4. The appeal site comprises a semi-detached dwelling with rear garden on Benomley Crescent. The garden formerly contained a garage on a platform, following the removal of which the overall land level was raised. It adjoins Nos. 49 and 53 Benomley Crescent to the north and south respectively, and backs onto the rear garden of No. 48 Benomley Drive to the east. A fence has been erected along the boundary with No. 53 Benomley Crescent.

5. I observed the site during my visit and found the raised land levels of the rear garden to appear notably out of place. Other back gardens along this side of Benomley Crescent maintain a more consistent level, sitting much lower than that at the site. In particular, the gardens at Nos. 49 and 53 Benomley Crescent either side of the site have a comparable land level with one another, set significantly below that at the appeal property. From the evidence before me, this is the land level that the garden at the site also sat at, even with the raised garage in place.
6. The incongruous nature of the raised garden is further highlighted by the fence along the boundary with No. 53. Due to the level of the garden, this fence is a prominent feature in the immediate area. It sits much higher than other boundary features in the vicinity, appearing visually jarring in context.
7. Overall, the current land level and boundary fence at the site read as out of place features. Both in their own right and when taken together they fail to respect or reflect the predominant character of the surrounds. In this regard they cause clear visual harm that is readily experienced by occupiers of nearby dwellings, despite their location to the rear of the appeal property.
8. For the reasons given, the development causes significant harm to the character and appearance of the area. As such, it fails to comply with Policy LP24 of the Kirklees Local Plan, the House Extensions and Alterations Supplementary Planning Document and the provisions of the National Planning Policy Framework, insofar as they seek to ensure development respects the character of the area.

Living conditions

9. As discussed above, the raised land level at the site results in the southern boundary fence being set much higher than similar features in the area. This is clearly experienced from the rear gardens and rear habitable room windows at Nos. 53 Benomley Crescent and 48 Benomley Drive.
10. In particular, the fence runs along much of the boundary of the rear garden of No. 53 at a considerable height, resulting in an overbearing addition when viewed from this garden. It creates an undue sense of enclosure and, in doing so, reduces the enjoyment of this space by the occupiers of No. 53.
11. Similarly, the raised level of the site runs along the entire width of the rear boundary of No. 48, topped with the tall southern boundary fence at the site which, while side on, remains clearly visible. Combined, these features read as dominant from the rear garden of No. 48, appearing unduly imposing and resulting in harm to the outlook for the occupiers of this property.
12. For the reasons given, the proposal results in significant harm to the living conditions of the occupiers of Nos. 53 Benomley Crescent and 48 Benomley Drive, with regard to outlook. As such, it fails to comply with Policy LP24 of the Kirklees Local Plan, the House Extensions and Alterations Supplementary Planning Document and the provisions of the National Planning Policy Framework, insofar as they seek to ensure development provides high standards of amenity for neighbouring occupiers.

Other matters

13. The appellant states they are amenable to reducing the height of the fence, replacing it with hedging, or removing it altogether. Nevertheless, the raised rear

garden land level at the appeal site would remain. This raised garden results in visual harm in its own right, as outlined above. Accordingly, these alternative schemes would not adequately address the planning harm identified.

14. It is further stated that the fence provides the occupiers of the appeal property and those at No. 53 with privacy. However, the scale and variety of harm identified above would not be outweighed by this benefit.
15. The development enables family members with additional needs and health issues to safely use the garden space. In considering this appeal I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others. Following careful consideration of these particular matters I am satisfied that the impact of dismissing this appeal is proportionate and justified.

Appeal on ground (f)

16. An appeal on ground (f) is brought on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either: (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach. Section 173(4) is clear that a notice can remedy the breach of planning control by: making the development comply with the terms of any planning permission which has been 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.
17. Given that the requirements of the notice are to restore the land to its previous condition, the purpose of the notice is to remedy the breach of planning control. The appellant argues that the steps required by the notice exceed what is necessary. In this regard they refer to lowering, removing, or replacing the boundary fence. I have assessed the planning merits of this above and find that it would still result in harm to the character and appearance of the area.
18. I observed the site during my visit and noted the presence of the development identified in the enforcement notice. From my observations the only way to remedy the breach would be to remove the development in its entirety and to restore the appeal site to its prior condition, as outlined in the requirements of the notice. Given the purpose of the notice, the requirements are not therefore excessive.
19. The appeal on ground (f) therefore fails.

Overall Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

C Rafferty

INSPECTOR