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## Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> September 2025

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### Appeal Ref: APP/T4210/C/24/3348416

### Land and Property at 21 Castle Hill Road, Bury BL9 7RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
  - The appeal is made by Clare Reynolds against an enforcement notice (EN) issued by Bury Metropolitan Borough Council.
  - The EN was issued on 9 July 2024.
  - The breach of planning control as alleged in the EN is: Without the benefit of planning permission, the erection of timber fencing in excess of 3 metres in height located on the side boundary of the property. (Noted as 'A-A' on the attached red edged plan).
  - The requirement of the EN is:  
Reduce the height of the timber fencing, shown in the approximate position on the attached red edged location plan and marked 'A-A', to no more than 2 meters in height measured from natural ground level.
  - The period for compliance with the requirement is: 60 days.
  - The appeal is proceeding on the ground set out in section 174(2)(f) of the 1990 Act.
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### Decision

1. It is directed that the enforcement notice is varied by:
  - the deletion of the word "meters" and the substitution of the word "metres" in the requirement; and
  - the deletion of the word "natural" in the requirement.

Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

### Preliminary Matters

2. On an appeal any defect, error, or misdescription in an EN may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. In this case the requirement cites '*2 metres in height measured from natural ground level*'. There is a typographical error as '*meters*' should be '*metres*'. Moreover, the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) at Part 2, Class A, section A.1(b) refers to '*the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level*'. Therefore, to ensure precision I intend to delete the word '*natural*' from the requirement. As these variations to the requirement are minor no injustice would result to any party if I used the powers available to me under section 176(1) of the 1990 Act. I will therefore do so.
3. Section 172(3) (b) of the 1990 Act states that '*the service of the notice shall take place—.....(b) not less than twenty-eight days before the date specified in it as*

*the date on which it is to take effect.*’ In this case the date of issue of the EN is 9 July 2024 and the date on which it takes effect is 23 July 2024. As such, it was not issued in accordance with section 172 of the 1990 Act. However, the appellant was able to make a valid appeal in time and therefore they have not been substantially prejudiced. As a result, if a ground (e) appeal, under section 174(2)(f) of the 1990 Act, had been made it would not have been successful.

### **The ground (f) appeal**

4. The ground of appeal is that the requirement of the EN is excessive.
5. An EN can have the purpose of remedying the breach of planning control. This can include 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 EN can have the purpose of remedying any injury to amenity which has been caused by the breach.
6. Reducing the fence to no more than 2 metres in height would bring it within the terms of the planning permission granted by the GPDO at Article 3, Schedule 2, Part 2, Class A. Therefore, its purpose is clearly to remedy the breach. Retaining the fence at its current height would sustain the breach described in the EN. This would not achieve the purpose of the EN.
7. I understand the need for appropriate security to protect the occupiers of a dwelling and their property from harm and vandalism. However, that is a planning merits argument and there is no deemed planning application before me, as no ground (a) appeal has been made. Aside from retaining the fence at its current height until a neighbour has passed away, the appellant has advanced no alternative to the requirement set out in the EN. Whilst, that would eventually remedy the breach, the timescale is unknown, and no ground (g) appeal has been made. Moreover, the fence is not required to be removed only reduced in height to no more than 2 metres in height.
8. Therefore, the EN requirement is not excessive; it is a proportionate remedy involving the minimum works necessary to remedy the breach of planning control. The ground (f) appeal fails.

### **Conclusion**

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

*D Boffin*

INSPECTOR