



Appeal Decision

by **Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 September 2025

Appeal Ref: APP/H5390/C/24/3342440

The Cottage, 1D Oaklands Grove, London, W12 0JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Emily Johnstone against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The notice was issued on 7 March 2024.
 - The breach of planning control as alleged in the notice is: without planning permission, the construction of a timber fence located at the front of the property (shown outlined in the attached photo.)
 - The requirement of the notice is to: (1) Remove from the land, the timber fencing panels (shown outlined in the attached photo).
 - The period for compliance with the requirement is: within 2 months of the date on which 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).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. In light of the case presented by the appellant and the information submitted by both parties including the photographic evidence, it has not been necessary for me to conduct a site visit to determine this appeal.

Ground (c)

3. An appeal on ground (c) is that the matters alleged in the notice to have occurred, if they have occurred, do not constitute a breach of planning control. The onus is on the appellant to show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.
4. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) (as amended) (GPDO) grants planning permission for certain development (providing the relevant exceptions, limitations and conditions are met) without the developer having to make a formal application to the local planning authority for planning permission. One such form of permitted development is set out in Part 2 of Schedule 2 to the GPDO, ie Class A. *The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.*
5. There is a limitation relevant to this appeal, Paragraph A.1 of Part 2 of Schedule 2, which is that development is not permitted if (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... 1 metre above ground level; and (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level (emphasis supplied).

6. The appeal site is The Cottage, a two-storey property on the southern end of Oaklands Grove, set well back from the road, as well as behind the main elevations of 3-11 Oaklands Grove that adjoin the site. The fencing is of white painted timber. The photographs show that the fencing in part abuts the highway, (ie including the footway) although it is continuous and much of it lies well behind the highway. However, the target of the notice, the outlined area on the photograph attached to the notice, identifies as the breach of planning control only the two panels that project past the main elevations of Nos 3 – 11. The requirement is to remove only those two panels.

7. The term "adjacent to the highway" is not legally defined for the purposes of the GPDO. It is a matter of fact and degree and of planning judgement, what part or parts of the fencing is "adjacent". One has to consider whether the fence can be seen as defining the boundary between the property and highway. Thus, a fence or part of it may be set back from the highway edge and still be "adjacent" to it. "Adjacent" has been interpreted flexibly to include 'next to', 'adjoining', 'contiguous with', 'close to' or even 'near'. A fence parallel to the highway would be subject to the limitation, but also the end part or parts of fencing close to the highway that are perpendicular thereto.

8. The highway must be used by vehicular traffic but it has been held¹ that this refers only to de facto use, it does not have to be part of the "carriageway" as defined by s329(1) Highways Act 1980. In this case there is nothing separating the fence from the footway which forms part of the highway and, although the footway is not part of the carriageway, that still leaves the question of whether the fencing is "adjacent" to it.

9. The Council relied on its report authorising enforcement action. Not having produced an appeal statement, it has not commented on the appellant's case but did consider all the new fencing to be forward of the principal elevation of the cottage and therefore not permitted development. That is not the correct test for determining if it is in Class A of Part 2 to Schedule 2. The Council may have confused this Class with Class A, Part 1 of Schedule 2 by which some built development in the curtilage of a dwelling may be excluded, if forward of the main elevation of the dwelling.

10. The common dictionary definition of 'adjacent' is 'lying near to' or 'contiguous'. The appellant cites the case of *Simmonds v Secretary of State for the Environment and Rochdale MDC 1980 JPL* which is relevant for present purposes simply because the court declined to rule that adjacency had to equate to something being "contiguous" or "abutting". The appellant's reliance on the comment in *Simmonds* that the fence in that case was "*an uncharacteristically high and solid feature in the street that detracted from the openness of its surroundings*" is not strictly relevant. The street scene here does not rule out the panels, targeted by the notice, being adjacent to the highway.

11. The forecourt outside the neighbouring premises is used as a street cafe (Proud Mary's) with outside tables and chairs. This area may be privately owned but whether or not it has public rights of passage through or on it, is not relevant, nor for that matter are the historical precedents supplied for boundaries perpendicular to driveways or highways that are over 1m in height. The appellant is concerned that I appreciate the way the boundary fits into the street scene, and that the street scene in general has an open character, but these factors are not relevant here.

12. I have to consider the particular fencing that is the subject of the notice, ie the two panels. Whilst some part of the total enclosure might be regarded as coming with permitted development, in my view it is clear that as a matter of fact and degree, the

¹ *Nicholson v First Secretary of State* [2005] EWHC 378 (Admin)

two panels are sufficiently close to the highway so as to make them adjacent thereto for the purposes of Class A of Part 2 of Schedule 2 to the GPDO. Therefore, in the absence of planning permission the allegation of a breach of planning control is well founded.

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Grahame J Kean

INSPECTOR