



Appeal Decision

Site visit made on 2 September 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 September 2025

Appeal Ref: APP/R2330/C/24/3345278

105 Hyndburn Road, Accrington BB5 4AA

- 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 Miss Katrina Hussain against an enforcement notice ("EN") issued by Hyndburn Borough Council.
 - The EN was issued on 2 May 2024.
 - The breach of planning control as alleged in the EN is: Without planning permission, the erection of boundary wall, fence and roller shutters to the side of the property facing Riding Barn Street.
 - The requirements of the EN are:
 - i) Remove the roller shutters and fill out any resulting damage to the ground from the removal.
 - ii) Rebuild the wall as described. The wall shall be constructed using red brick with a matching coping brick or rendered breeze block to match the gable end of the existing dwelling. The wall shall taper smoothly down or be stepped gradually from the house to the garden gate. The wall shall taper or be stepped in height from a maximum height of 2.2m immediately adjacent to the house to 1.4m adjacent to the garden gate and thereafter to the vehicle entrance.
 - iii) Remove the fence.
 - iv) Remove and resultant rubbish and debris from the site.
 - The period for compliance with the requirements is: 2 (two) calendar months from the date on which the notice takes effect.
 - 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 EN is corrected and varied by:

- *the deletion of the words:*
 - i) *Remove the roller shutters and fill out any resulting damage to the ground from the removal.*
 - ii) *Rebuild the wall as described. The wall shall be constructed using red brick with a matching coping brick or rendered breeze block to match the gable end of the existing dwelling. The wall shall taper smoothly down or be stepped gradually from the house to the garden gate. The wall shall taper or be stepped in height from a maximum height of 2.2m immediately adjacent to the house to 1.4m adjacent to the garden gate and thereafter to the vehicle entrance.*
 - iii) *Remove the fence.*
 - iv) *Remove and resultant rubbish and debris from the site.*

and their substitution with the words:

- i) *Remove the roller shutters and repair any resulting damage to the ground from their removal.*
- ii) *Demolish the wall in its entirety or reduce the height of the wall to one metre above ground level.*
- iii) *Remove the fence.*

iv) Remove any resultant rubbish and debris from the site.

in section 5 of the EN; and

- *the substitution of the plan annexed to this decision for the plan attached to the EN.*

Subject to the corrections and variation, the EN is upheld.

Matters Concerning the Notice

2. The plan attached to the EN outlines in red the dwelling and the rear garden of 105 Hyndburn Road but omits the dwelling's front garden. As such, no part of the breach falls within the plan area.
3. Section 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 ("the 2002 Regs") states that an EN shall specify "*the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise*" [my emphasis]. The address of the appeal site is precisely described within section 2 of the EN. Consequently, although the plan is incorrect, I am satisfied that the EN meets the requirements of s4(c) of the 2002 Regs.
4. Case law¹ has established that correcting the EN plan is not constrained to reducing the area in which the plan relates, and it can be extended providing it does not cause injustice. Accordingly, I canvassed the parties regarding extending the site edged red to include the front garden. The Council agreed that the plan should be corrected and provided an amended plan that includes the front garden of the appeal site. It is the Council's opinion that correcting the plan would not cause injustice to the appellant but offered no explanation. No response was received from the appellant.
5. The front garden is part and parcel of the dwelling and therefore, correcting the plan to enlarge the land edged red would not have consequences in terms of who was served the EN, who appealed, or what the grounds of appeal were. Consequently, I am satisfied that I can correct the plan to include the front garden without causing injustice to either party.

Appeal on Ground (f)

6. An appeal under ground (f) is that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
7. In appealing under ground (f), the appellant has not stated how the steps to be taken are excessive. Instead, they have provided copies of correspondence they have had with the Council regarding how the breach could be amended. The Council assert that this correspondence relates to pre-application discussions. While the appellant has been advised of a potentially acceptable alternative scheme by the Council, it would require planning permission.

¹ Howells v SSG [2009] EWHC 2757 (Admin)

8. It is unclear from the information before me whether the appellant has obtained planning permission for an alternative scheme. Notwithstanding this, there is no ground (a) appeal before me to allow me to consider it.
9. Although the appellant has not detailed why the steps in the EN are excessive, I have identified several issues. The term “*fill out any resulting damage*” [my emphasis] within step i) of section 5 of the EN is imprecise. Consequently, it should be substituted with “*repair any resulting damage*”. As the correction is for precision, injustice would not be caused to either party.
10. Step iv) of section 5 of the EN contains a spelling mistake. I have corrected the mistake for precision, which would not cause injustice to either party.
11. Step ii) of section 5 of the EN does not specifically require the wall to be demolished. However, the requirement to re-build the wall would first necessitate the demolition of the existing wall. Consequently, I am satisfied that the requirement can be varied to specifically require the demolition of the wall for precision, without prejudicing either party.
12. The Council assert that the EN’s steps require the appellant to return the wall to its previous height. However, step ii) requires the rebuilding of the wall rather than the reduction in the height of the existing wall. Requiring a new wall to be rebuilt goes beyond remedying the breach. Furthermore, the information before me states that the previous wall exceeded one metre in height. The wall is adjacent to a highway and therefore, it cannot exceed one metre above ground level unless planning permission is obtained². I do not have a ground (a) appeal before me, so I am unable to consider the planning merits of reducing the wall to the previous height.
13. Nonetheless, requiring the complete removal of the wall would be excessive because planning permission could be granted under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 for a wall not exceeding one metre above ground level. This represents a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption to the appellant. Consequently, I am satisfied that step ii) can be varied to include this alternative provision without prejudice to either party.

Conclusion

14. For the reasons given above, I conclude that the requirements of the EN are excessive to remedy the breach of planning control. I shall correct and vary the EN prior to upholding it. The appeal on ground (f) succeeds to that extent.

A Berry

INSPECTOR

² Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)



Planning Inspectorate

Amended Plan

This is the plan referred to in my decision dated: 22 September 2025

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Scale: Not to Scale

