



Appeal Decision

Site visit made on 24 September 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 OCTOBER 2025

Appeal Ref: APP/R3650/C/25/3366851

Cherry Tree Cottage, Stroud Common, Guilford, GU5 0SZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Jill Monk against an enforcement notice issued by Waverley Borough Council.
 - The notice was issued on 29 April 2025.
 - The breach of planning control as alleged in the notice is without planning permission: erection of a fence.
 - The requirements of the notice are to 1. Reduce the height of the fence to a maximum height of one metre between the points A-B, B-C, C-D, D-E and E-F on the attached plan, and 2. Remove from the Land all materials resulting from compliance with Step 1.
 - The period for compliance with the requirement is three months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(f) 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.

Ground (f) appeal

2. The appeal on 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 or to remedy any injury to amenity which has been caused by any such a breach.
3. The breach of planning control relates to the erection of a wooden fence which is a single building operation. The planning harm caused by the fence is outlined in the reasons for issuing the notice. It includes harm caused to highway safety, the openness of the Green Belt, and to the character and appearance of the area. There is no ground (a) appeal and deemed planning application before me. Hence, I must accept that such planning harm has been caused by the breach of planning control.
4. The purpose of the notice is to remedy the injury caused to amenity which has been caused by the breach of planning control. The notice requires the two-metre-high fence to be reduced in height to a maximum of one metre in height.
5. An appeal has not been submitted on ground (c) of section 174(2) of the Act, i.e., that the matters alleged do not constitute a breach of planning control. The evidence is that the local planning authority (LPA) decided that a breach of planning control had occurred having regard to the limitations imposed in Article 3(6) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) which states *'the permission granted by Schedule 2 does not, except in relation to development permitted by Classes A,*

B, D and E of Part 9 and Class A of Part 18 of that Schedule, authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons.

6. The LPA also considers that the unauthorised two metre high fence is adjacent to a highway used by vehicular traffic and hence is not permitted development owing to the limitations imposed in A.1 of Class A of Part 2 of Schedule 2 of the GPDO which states that 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. The word adjacent does not mean that the fence must touch the highway.
7. As part of my site visit, I was able to consider the position of the fence relative to the B2128 used by vehicular traffic. Parts of the fence are set slightly back from the highway and parts of it are in very close proximity to the B2128. The fence is one continuous structure and, in my judgement, and, as a matter of fact and degree, I find that all parts of it are adjacent to a highway used by vehicular traffic for the purposes of applying A.1 of Class A of Part 2 of Schedule 2 of the GPDO. I reach this finding even accounting for the existence of a relatively narrow strip of vegetation between parts of it and the highway. In this regard, the appeal fence is not permitted development.
8. In addition, the LPA considers that the fence falls within and obstructs the sightlines of the visibility splays of the respective accesses for Cherry Tree Cottage (the north-west visibility splay) and Nos. 1 and 2 New Cottages (the south-eastern visibility splay). The appellant's evidence fails to suitably and precisely demonstrate that the fence has not created an obstruction to the safe views of those persons wishing to use the adjacent highway used by vehicular traffic from a sightlines point of view. In respect of the north-west visibility splay, the appellant does not dispute that the fence does not accord with the limitation imposed in Article 3(6) of the GPDO.
9. In considering the impact of the fence on both visibility splays, it is reasonable that I consider the baseline visibility splays for both Cherry Tree Cottage and Nos. 1 and 2 New Cottages prior to the unauthorised fence being erected. Despite the visibility splay for Nos. 1 and 2 New Cottage (the south-eastern visibility splay) including land in the ownership of Cherry Tree Cottage, the appellant accepts that the fence has had an impact on sightlines owing to its height. Article 3(6) of the GPDO does not seek to differentiate between public and private land in terms of considering whether development has created an obstruction to the view of persons using a highway by vehicular traffic, so as to be likely to cause danger to such persons. While the appellant states that such private land did historically include some vegetation which fell within the south-eastern visibility splay, the evidence before me does not include very detailed drawings so that a full and relative comparison can be made in this regard.
10. The appellant comments that were it not for that fact that parts of the fence obstruct the view of persons using the highway, it would be permitted development given the two-metre height restriction imposed in respect of Class A of Part 1 of Schedule 2 of the GPDO. However, that is not the case given my finding above that the two-metre-high fence is adjacent to a highway used by vehicular traffic. In this regard,

and despite the varying opinions between the main parties about the impact of the fence on visibility splays, the fence in any event constitutes development requiring planning permission because it is adjacent to a highway used by vehicular traffic. In other words, even if I had concluded that part or all the fence did not create an obstruction to the view of persons wishing to use the adjacent highway used by vehicular traffic, it still requires planning permission for the reason outlined.

11. Notwithstanding the above, the appellant nonetheless considers that I should afford weight, as part of the consideration of the ground (f) appeal, to a permitted development fallback position as a material consideration. In the context of the above, the appellant says that the requirement of the notice to reduce the whole of the fence down to a maximum of one metre in height is excessive. Instead, the appellant comments that it should only be necessary to '*relocate*' part of the fence so that it is outside the visibility splay (i.e., that within the north-west visibility splay) and, if necessary and justified, to reduce the height of another part of the fence (i.e., that within the south-eastern visibility splay) to a maximum of one metre in height. The appellant contends that such a varied requirement would have the effect of remedying the injury to amenity which has been caused by any such a breach.
12. Given my finding about the appeal fence being adjacent to a highway used by vehicular traffic, it is not the case that there would be a permitted development fallback option as claimed by the appellant. Even if one were to disagree with my fact and degree judgement about this matter, it is necessary, in any event, that the requirements of the notice relate specifically to the breach of planning control. The suggested '*relocation*' of part of the unauthorised two-metre-high fence, which is a single operation, coupled with the part retention of a two-metre-high fence, and a reduction in the height of part of the fence to one metre in height, would, in my judgement, amount to a materially different form of development. Indeed, it would be a form of development which does not relate to the breach of planning control.
13. I also emphasise that there is no ground (a) appeal and deemed planning application before me. Therefore, even if it were possible to vary the requirement of the notice in the manner as suggested by the appellant, I would not, in any event, be able to consider the planning merits of such a different form of development from the point of view of considering its effect on matters such as highway safety, the openness of the Green Belt, and the character and appearance of the area. In effect, the appellant suggests that I vary the requirements of the enforcement notice so that it relates to a different fence. I cannot do that and, moreover, any such requirement would necessitate a full consideration of highway safety matters which is not possible when a deemed planning application is not before me.
14. For the above reasons, I conclude that the requirement of the notice does not exceed what is necessary to remedy the injury to amenity which has been caused by the breach of planning control. I recognise that the evidence indicates that if the appeal fence were to be removed, there would likely be a more than theoretical prospect that on part of the land (i.e. on land that is not adjacent to the highway as a matter of fact and degree) a means of enclosure could be erected at a maximum of two metres in height utilising permitted development rights under Class A of Part 2 of Schedule 2 of the GPDO. However, and, as a matter of fact and degree, that would have to relate to the erection of a materially different means of enclosure to that which I am considering as part of this appeal. In this regard, the claimed

permitted development fallback position does not justify varying the notice in the manner suggested by the appellant. Therefore, the ground (f) appeal fails.

15. In reaching the above conclusion, I have considered the appeal decision referred to by the appellant at land to the south of Lindley Wood, Fenn Lanes, Fenny Drayton¹. The circumstances relating to that appeal are not the same as for this appeal. Indeed, the Inspector merely considered a reduction in the height of the fence as distinct from the '*relocation*' of part of the existing fence. Put another way, the Inspector considered a reduction in the height of the fence which was the subject of the breach of planning control, relative to the permitted development fallback height position, but did not seek to vary the requirement of the notice so that it resulted in a materially different breach of planning control.
16. I am mindful that it would be open to the appellant to discuss matters further with the LPA in terms of whether it would favourably consider the submission of a planning application which sought to retain part of the appeal fence at a height of two metres, in conjunction with the erection of a new contiguous fence in a different location. I pass no comment on the planning merits of any such fence, or indeed the weight that the LPA may afford to the likelihood of Class A of Part 1 of Schedule 2 GPDO permitted development rights being utilised following compliance with the requirement of the notice. However, if planning permission were to be approved for such a different fence, then it is noteworthy that section 180 of the Act states that where, after the service of a copy of an enforcement notice, '*planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission*'.
17. I am also cognisant of the representations received as part of this appeal including from the occupier of No. 1 New Cottages who comments that the '*high trees in the garden and hedges adjacent to the fencing*' make it difficult to see when a bus is approaching and/or the bus driver to see them at the bus stop. The planting of trees and hedges is not development. The evidence suggests that condition No. 03 of WA/2021/2025 included a condition about a hedge not exceeding 1 metre in height. I do not know if the hedge referred to by the occupier of No. 1 New Cottages is of relevance in respect of condition No. 03 of WA/2021/2025 but, in any event, I pass no comment on this matter as the breach of planning control relates to the erection of a fence and not to a breach of condition No. 03 of WA/2021/2025. The latter would need to be separately investigated by the LPA.

Conclusion

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

D Hartley

INSPECTOR

¹ Appeal reference APP/K2420/C/23/3317487 dated 24 April 2024