



Appeal Decisions

by John Braithwaite BSc(Arch) BA(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2025

Appeal A Ref: APP/J3720/C/24/3341256 and 3341257

The Leys, Welsh Road, Priors Hardwick CV47 7SJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mr G and Mrs S J Wilson against an enforcement notice issued by Stratford-on-Avon District Council.
 - The notice was issued on 15 February 2024.
 - The breach of planning control as alleged in the notice is the change of use of the Land from agricultural land to domestic garden use in connection with dwelling known as The Leys; and the erection of a timber climbing frame with integral swing and raised platform, which comprises operational development requiring planning permission and which facilitates the change of use described above.
 - The requirements of the notice are: a) Remove the timber climbing frame from the land; b) Remove all other play equipment from the land; c) Cease the use of the land for domestic garden purposes; and d) Remove all elements of the post and rail fence (along alignment W-X-Y-Z on the plan) above ground level from the land by cutting posts to ground level and leaving the subterranean post in situ.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appeals have been made under ground (c); the Appellants are claiming that the post and rail fence, referred to in the requirements of the enforcement notice, is development permitted under the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). In these circumstances and given that the appeals must be determined on the basis of the situation that prevailed on the date that the notice was issued, visiting the site is unnecessary. The appeals have been determined without undertaking a site visit.
3. An application for costs has been made by the Council against the Appellants. This application is the subject of a separate decision.

Reasons

4. The Leys is a detached dwelling in a residential plot on the west side of Welsh Road. Land to the west of the residential plot is pasture. The Appellants have acquired part of the pasture and have incorporated the land into their plot by enclosing it with a post and rail fence, and by removing that which previously defined the former west boundary of the plot. The alleged breach of planning control does not refer to the fence; it refers to the change of use of the land to domestic garden and the introduction of play equipment onto the land, but the notice does require the removal of the fence because, as claimed by the Council, it has facilitated the change of use of the land.

5. The Council does not dispute the Appellants' claim that, in other circumstances, the fence would be development permitted under the provisions of Class A of Part 2 of Schedule 2 of the GPDO. There is no doubt that the fence is integral to and has facilitated the change of use of the land from pasture to domestic garden. The Council has referred to the case of *Murfitt v SSE & East Cambridgeshire DC [1980] JPL 598*, for this case deals directly with the circumstances in these appeals. It follows from the ruling in *Murfitt* that an enforcement notice alleging a material change of use may not only require the removal of works which would otherwise be immune, but also the removal of works that are permitted development if they facilitate the alleged use.

6. The land is part of a Scheduled Monument, the medieval settlement of Priors Hardwick, but this is not a relevant matter. The Council has referred to the case of *Kestrel Hydro v SSCLG & Spelthorne BC [2016] EWCA Civ 784* but the ruling in this case does not add anything to the ruling in *Murfitt*. The Appellants have referred to other similar situations in Priors Hardwick where property owners have fenced off parts of the Scheduled Monument. The planning status of these other parcels of land is not known but they do not, in any event, set any form of precedent for the use of the land, or the fence that surrounds it, in this case. Once the requirements of the notice have been carried out the residential plot can be secured by erecting a fence, under permitted development rights, along the former west boundary to the pasture.

7. The Appellants have not challenged or appealed against the allegation in the enforcement notice. Applying the principals established in *Murfitt*, the requirement to remove the fence, even though it is permitted development, is appropriate given that it facilitates the change of use of the land. The ground (c) appeals thus fail and the enforcement notice is upheld.

John Braithwaite

Inspector