



Appeal Decision

Site visit made on 30 September 2025

by **M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th October 2025

Appeal Ref: APP/C4615/C/24/3343932

Land at 42 Broomehill Close, Quarry Bank, Brierley Hill, West Midlands, DY5 2PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Zoe Garrington against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The notice was issued on 9 April 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years the erection of a boundary treatment (composed of inter alia fence panels, gravel boards, posts and associated fixtures and fittings) adjacent to a vehicular highway which exceeds 1m in height.
 - The requirements of the notice are to:
 - i) Remove all fence panels, gravel boards, posts and any associated fixtures and fittings that are situated within two metres of the rear of the footway on Hillfields Road; or
 - ii) Reposition the fence panels, gravel boards, posts and any associated fixtures and fittings that are located within two metres of the rear of the footway on Hillfields Road, so that when repositioned they are two metres or more away from the rear of the footway on Hillfields Road and of a height which does not exceed two metres above existing ground level.
 - iii) Remove from the Land all waste materials and debris arising from fulfilling the requirements of this notice and dispose of lawfully.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of “one month” from paragraph 6 and its replacement with “three months” as the period for compliance.
2. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The appellant did not appeal on ground (g). However, they state that it will not be possible to carry out the requirements of the notice within one month. This amounts to a “hidden” ground (g) appeal. As the Council had the opportunity to respond to this matter, injustice would not arise from considering this ground of appeal.
4. The revised National Planning Policy Framework (the Framework) was published in December 2024. This does not raise any matters that require me to seek representations from the main parties in this case.

The ground (a) appeal and the deemed planning application

5. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice. The main issue in this case is the effect of the development on the character and appearance of the area.
6. The appeal site is a two storey, detached dwelling located at the end of Broomehill Close, a residential cul-de-sac. The northern gable end of the property faces towards and is elevated above Hillfields Road which is a main road and a bus route. Hillfields Road has a verdant character owing to the trees and shrubs lining it. There is a landscaped embankment on this stretch of the road which acts as a buffer between the road and the adjoining residential properties and serves to soften the appearance of the domestic boundary treatments.
7. The notice relates to a timber fence with gravel boards and posts which has been erected above a brick retaining wall adjacent to Hillfields Road. Retrospective planning permission was sought for these works, but this was refused in August 2023¹. Ground clearance and engineering works have also been undertaken to raise the ground levels of the embankment on this side of the property, but these engineering works and the new brick retaining wall are not part of the notice.
8. According to the Council, the fence is about 2.4m high, and the combined height of the fence and the wall is around 3.6m measured from Hillfields Road. Although the appellant has disputed that it is this high, it is clearly of significant height and substantial length along Hillfields Road and as a result appears as a stark and dominant barrier. It has replaced a previous fence to this side, but the latter was set further back from the footway and partially screened by established vegetation which has since been removed. Whilst of similar height to adjoining fences, the unauthorised fence steps forward of these and is of much greater length and is more prominent. Consequently, the development is incongruous and fails to reflect the prevailing boundary treatments in the area which are generally more modest and set back from the public highway. The loss of the vegetation and part of the embankment has exacerbated the adverse visual effects of the development by eroding the sense of openness and verdant character on Hillfields Road.
9. New shrubs have been planted between the wall and the fence, but these do not adequately mitigate the harm and there is insufficient space in this narrow strip for significant additional planting. In any case, screening does not justify poor design.
10. During my site visit I observed other garden fences in the surrounding area. Whilst of similar materials, they are not comparable to the appeal development in terms of both overall height and length. The appellant has provided details of other fences and developments in the area. However, their specific designs and contexts are not identical to the appeal scheme, and some appear to be a significant distance away from the site. Moreover, some of the examples referred to are uncharacteristic of the prevailing character of the area or do not benefit from planning permission and therefore do not justify the appeal development.
11. The notice requires in summary the fence, boards and posts within two metres of the footway to be removed, or repositioned so that they are at least two metres away from the footway, and the removal of all waste and debris arising from these

¹ Council ref. P23/0640

works. Moving the fence two metres back from the footway broadly in its original position would reduce its prominence and the impact on the street scene.

12. I conclude that the development is harmful to the character and appearance of the area. As such, it conflicts with Policies ENV2 and ENV3 of the Black Country Core Strategy (2011), and Policies L1, S6, S7, S8 and S19 of Dudley Borough Development Strategy (2017) which, amongst other things, seek to ensure development delivers high quality design that enhances local character. It also conflicts with the Framework, including paragraph 135 which requires development to add to the overall quality of the area and be sympathetic to local character.
13. The appellant seeks to justify the works with reference to structural damage to the property, issues with the gradient of the land, the condition of the previous fence and the ground, and the need to tidy up the unkempt embankment. However, these are not compelling reasons for the repositioning of the fence closer to the footway or the harm arising from it. There is no substantive evidence before me to demonstrate that replacing the fence in the original position would lead to an on-going problem. The new shrubs may support wildlife, but any such benefits are likely to be minor and attract limited weight. Overall, the matters raised, along with supporting comments from a local resident, do not outweigh the harm identified.
14. The appeal scheme is contrary to the development plan and there are no other material considerations, including the provisions of the Framework, that outweigh this finding. Therefore, the appeal under ground (a) should be dismissed.

The ground (g) appeal

15. An appeal on ground (g) is that the compliance period specified in the notice falls short of what should reasonably be allowed. The appellant says it would not be possible to carry out the requirements of the notice within one month, but they have not said what they consider to be a reasonable compliance period. I consider that the one month period is unlikely to be sufficient given the size of the fence and the scale and nature of the works involved. The appellant will need to secure their garden prior to removing the fence, and the works may have financial implications for them that need to be addressed. I am also mindful that the harm arising from the breach should not be prolonged unnecessarily. Therefore, a three month compliance period would strike an appropriate balance between remedying the harm whilst giving the appellant sufficient time to undertake the works.
16. The appeal on ground (g) therefore succeeds, and I will vary the enforcement notice by changing the compliance period to three months.

Conclusion

17. For the reasons given I conclude that the appeal on ground (a) fails but that the appeal on ground (g) succeeds. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Ollerenshaw

INSPECTOR