



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 16 October 2025

Appeal Ref: APP/T2405/C/24/3347240

6 Brookes Avenue, Croft, Leicester LE9 3GJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Roy Burdfield against an enforcement notice issued by Blaby District Council.
 - The notice was issued on 31 May 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a brick wall with timber gates/infill in excess of 1m in height adjacent to a highway (shown in BLUE in the approximate position on the attached plan).
 - The requirements of the notice are to: Either (i) Reduce the height of all elements of the wall including pillars, infills and gates to a height not exceeding one metre above ground level; or (ii) Remove all elements of the wall including pillars, infills and gates in their entirety.
 - The period for compliance with the requirements is: 28 days.
 - 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. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The sole ground of appeal under s174(2)(f) of the Town and Country Planning Act 1990 does not require any visual assessment of the development, or any alternative scheme, to reach any conclusions about its effect on, for example, the character and appearance of the area or highway safety. There are no planning merits to be considered. As such, I was able to consider the appeal, and reach my conclusions, without visiting the appeal site. Not doing a site visit has not prejudiced the cases of any appeal party.
3. The appellant has referred to an inaccuracy of the position of the wall shown in blue on the enforcement notice plan. They have shown the accurate position of the entire wall with a green line on a copy of the enforcement notice plan at appendix RB3 of their appeal statement. I raised this with the Council, and it was confirmed that the appellant's green line shows the correct position of the works carried out. Because all sides are aware of the inaccuracy, both main parties know what has been carried out and there is no dispute about the error, I can correct the notice by substituting an accurate plan without causing injustice to either side.
4. There is no appeal under s174(2)(c) of the Town and Country Planning Act 1990 which is that the development carried out does not constitute a breach of planning control. However, there is reference in the appeal cases to the ability to erect a wall not exceeding 1m high adjacent to a highway and the permitted development right to do so under the Town and Country Planning (General Permitted

development) Order 2015 (GPDO). There is also evidence that the appellant has undertaken remedial works to reduce the height of the wall closest to the highway to only 1m high.

5. It is frequently argued in ground (f) appeals that the requirements of the notice should be varied to allow for implementation of permitted development rights. Nevertheless, the GPDO does not grant retrospective planning permission. Therefore, if a fence or wall has been erected adjacent to a highway used by vehicular traffic, it would only be permitted by the GPDO if it met the height limitations under Paragraph A.1 of Part 2 of Schedule 2 when it was erected or constructed. If the fence or wall exceeded those limits, it would not be permitted under the GPDO even when it was subsequently altered.
6. It follows that varying an enforcement notice so that a fence or wall adjacent to a highway used by vehicular traffic must be reduced in height from 2m to 1m would not serve to remedy the breach of planning control. Moreover, the fence or wall would be unlawful as a whole, not just the part of the fence or wall that exceeded the permitted development limits. Therefore, while some parts of the appeal structure may not now exceed 1m high, the whole of it remains unlawful. I shall come back to this matter below.

Main Issue

7. The main issue is whether the steps required by the notice to be taken, 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 any such breach.

Reasons

8. By requiring the boundary structure to be removed or for it to be reduced in height to no more than 1m, that aims to bring the structure in line with the height limitation of the planning permission granted by the GPDO, the purpose of the Notice is to remedy the breach of planning control under s173(4)(a) of the 1990 Act. Despite the Council stating that removing the structure entirely would go beyond what is necessary, that is not the case because its complete removal would remedy the breach of planning control.
9. Bearing in mind what I have set out above under 'Preliminary Matters', reducing the height of the boundary enclosure in this case to 1m high would technically not remedy the breach of planning control. Nevertheless, if the structure was removed in its entirety, the planning permission granted by the GPDO to re-erect another structure that met the height limitations of the GPDO would then be a realistic fallback position. Therefore, as an obvious and less punitive alternative that could be achieved with less cost and disruption to the appellant, the requirement to lower the height of the development would be a proportionate remedy in this case.
10. In view of the above, the requirements of the notice do not exceed what is necessary. Therefore, options (i) and (ii) set out at paragraph 5 of the enforcement notice should remain as they are.

Conclusion

11. Consequently, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Gareth Symons

INSPECTOR

CORRECTED ENFORCEMENT NOTICE PLAN

