



Appeal Decision

Site visit made on 30 September 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 November 2025

Appeal Ref: APP/P1425/C/24/3348945

13 Tor Road, Peacehaven BN10 7SX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr David Miles against an enforcement notice issued by Lewes District Council.
- The notice was issued on 13 May 2024.
- The breach of planning control as alleged in the notice is *without planning permission, the erection of side boundaries in excess of 1 metre in height adjacent to a highway, used by vehicles the approximate position of which is shown for identification purposes only in blue on Plan A*
- The requirements of the notice are:
 - (i) *Permanently reduce the height of the side boundaries to no more than 1 metre above ground level for 2 metres set back from the highway.*
 - (ii) *Permanently remove all resultant materials and debris from the Land.*
- The period for compliance with the requirement is: *Two months from the date this notice takes effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the 1990 Act (as amended).

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld as set out in the Formal Decision below.

Formal Decision

1. The appeal is dismissed, and the enforcement notice (EN) is upheld.

Preliminary Matters

2. Given the alleged breach was at the front of the property, I undertook the site visit on an unaccompanied basis from the roadside. From here I was able to view the development and the related ground level, which assisted me in determining this appeal. As such, I am satisfied that neither party has been prejudiced by this approach.
3. The appellant has indicated that the means of enclosure does not impede views of vehicular traffic. They also contend that there are several other fences, boundary treatments and enclosures which are adjacent to a highway and exceed 1 metre in height within the vicinity. Be that as it may, I have not been presented with the planning history or individual circumstances associated with these other sites. Furthermore, as the appellant has not appealed on ground (a), nor paid the relevant fee, there is not a deemed planning application for me to consider. As a result, the planning merits of the case are not considerations before me in this specific appeal.

Appeal on ground (b)

4. An appeal on this ground is that the matters alleged in the EN, have not occurred. In order to succeed on this ground, the appellant must demonstrate that, on the

balance of probability¹, the matters stated in the EN have not occurred as a matter of fact.

5. Section 55 of the 1990 Act (as amended) sets out the meaning of “development”, which includes the carrying out of building engineering, mining or other operations in, on, over or under land. The development subject to the EN comprises a means of enclosure with panels and posts fixed to the ground, on the appellants land inside existing boundary fences.
6. The means of enclosure was in situ at the time of my site visit and has remained at the site since at least May 2024 when the EN was served. The means of enclosure is physically fixed to the ground and thus has a considerable degree of permanence. Consequently, as a matter of fact and degree, the means of enclosure is considered development under s55(1) of the 1990 Act as a building. For this reason, I conclude that, the construction of a building on the land has occurred as a matter of fact.
7. Accordingly, the appeal on ground (b) must fail

Appeal on ground (c)

8. An appeal on this ground is made on the basis that the matters stated in the EN (if they occurred) do not constitute a breach of planning control. In a legal ground of appeal, the burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
9. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended, permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosures subject to certain limitations. The limitations at A.1 include;
 - (a) *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 – (ii) ...1 metre above ground level.*
 - (b) *the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;*
 - (c) *the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater;*
10. The means of enclosure at the front of the site runs along the side boundaries of 13 Tor Road and have been set inside existing fences that adjoin the flanking properties at 11 and 13a Tor Road. From the information before me, the means of enclosure subject to the EN (edged in blue on the plan attached to the EN) are new, and thus are not maintained, improved nor altered structures and therefore cannot exceed any former height referred to under A.1(c).
11. The appellant highlights that the means of enclosure is approximately 1.5 metres in height along the majority of the side boundaries between Nos. 11 and 13a, whilst stepping down to 1.2 metres as part of the first panel from the front wall of the

¹ Thrasyvoulou v SSE & Hackney LBC (No 1) [1984] JPL 732

property. As a matter of fact, the means of enclosure is therefore in excess of 1 metre. The question therefore, is whether the fence is adjacent to a highway.

12. No definition of 'adjacent' is provided in statute. Although various dictionary definitions² exist, 'adjacent' is commonly understood as meaning next to or adjoining, or lying near to, something else. As such, a means of enclosure does not have to physically touch the highway in order to be adjacent to it. Whether a structure is adjacent to the highway will depend on the individual, site-specific circumstances of each case and is a matter of fact and degree.
13. The appellants property fronts Tor Road, which is a highway, used by vehicular traffic. The means of enclosure is located along the side elevation of the host property, with the final panel abutting the front boundary wall at Tor Road. Whilst I appreciate that the majority of the means of enclosure forms the side boundary, where a height of up to 2 metres would fall within the GPDO tolerances, the point where the enclosure meets the front wall, is considered adjacent to a highway. As the means of enclosure is in excess of 1 metre in height at this point, it is therefore outside the requirements of the GPDO.
14. As a matter of fact and degree, I find that the means of enclosure is not permitted by the GPDO and so planning permission is required. Subsequently, the matters stated in the notice have occurred, and I conclude that the appellant has not shown on the balance of probabilities that they do not constitute a breach of planning control.
15. Thus, the ground (c) appeal also fails.

Other Matters

16. I am sympathetic to the appellant's position in that they are seeking consistency in decision making from the Council. Whilst the appellants make several references to other fences and means of enclosure in the vicinity, to demonstrate an inconsistent approach by the Council, I am not bound by these matters. Whilst I acknowledge that there appears to be a degree of inconsistency in the Council's approach, I can only consider whether the development before me is lawful, based on the submitted evidence. As stated, given that no permission for the development as built has been sought, nor is there a deemed planning application under ground (a), I cannot consider the planning merits of the case, thus for the reasons stated the means of enclosure is not a lawful development.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN.

Robert Naylor

INSPECTOR

² Oxford English Dictionary online: Adjacent - Next to or very near something else; neighbouring; bordering, contiguous; adjoining