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## Appeal Decisions

Site visit made on 14 October 2025

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19<sup>th</sup> November 2025

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### **Appeal A Ref: APP/M4320/D/25/3365683**

#### **26 Beach Priory Gardens, Sefton, Southport PR8 1RT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Ms Samantha Jones and John Ball against the decision of Sefton Metropolitan Borough Council.
  - The application Ref is DC/2025/00406.
  - The development proposed is Erection of a new boundary fence to the side of the dwellinghouse to include re-staining/painting. (Retrospective).
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### **Appeal B Ref: APP/M4320/C/25/3369217**

#### **26 Beach Priory Gardens, Southport PR8 1RT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Samantha Jones against an enforcement notice issued by the Sefton Metropolitan Borough Council.
- The notice was issued on 18 June 2025.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a fence to the front side boundary of the property in excess of 2 metres in height in the approximate position shown edged in blue on the attached plan marked 'Fence Plan' (the Fence).
- The requirements of the notice are to:  
You must Remove the fence from the front side boundary of the property or reduce its height to no higher than 1 metre (approximate location shown edged in blue on the enclosed plan entitled "fence plan").
- The period for compliance with the requirements is:  
One month.
- The appeal is proceeding on the grounds set out in sections 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld.**

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### **Appeal C Ref: APP/M4320/C/25/3369489**

#### **26 Beach Priory Gardens, Southport PR8 1RT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by John Bell against an enforcement notice issued by the Sefton Metropolitan Borough Council.
- The notice was issued on 18 June 2025.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a fence to the front side boundary of the property in excess of 2 metres in height in the approximate position shown edged in blue on the attached plan marked 'Fence Plan' (the Fence).
- The requirements of the notice are to:  
You must Remove the fence from the front side boundary of the property or reduce its height to no higher than 1 metre (approximate location shown edged in blue on the enclosed plan entitled "fence plan").
- The period for compliance with the requirements is:  
One month.
- The appeal is proceeding on the grounds set out in sections 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld**

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## **Decisions**

### **Appeal A**

1. The appeal is allowed and planning permission is granted for erection of a boundary fence to the side of the dwellinghouse to include re-staining/painting at 26 Beach Priory Gardens, Sefton, Southport PR8 1RT in accordance with the terms of the application, Ref DC/2025/00406, subject to the following conditions:
  - 1) The development hereby approved shall be retained in accordance with drawing nos: site location plan; SC/24/370–101 (pre-existing); and SC/24/370-201 (existing), except as required by condition 2 of this permission.
  - 2) Unless within 1 month of the date of this decision the approved scheme is implemented and the fence is stained dark grey to match the existing fences, the fence shall be removed from the front side boundary of the property or its height reduced to a height no higher than 1 metre and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved details specified in this condition, the hereby approved scheme shall thereafter be retained as such.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Appeals B and C**

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

### **Preliminary Matters**

3. Appeal A is an appeal against the Council's refusal to grant planning permission for a new boundary fence to the side of the appeal property. Appeals B and C are appeals against an enforcement notice in respect of the erection of a fence to the front side boundary of the appeal property. The appeals relate to the same operational development, albeit that I have amended the development description to remove superfluous descriptive elements that are not acts of development.
4. Appeal B (and subsequently Appeal C) was initially submitted on the grounds set out at section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). However, as a consequence of the provisions of sections 174(2A) and (2B) as introduced by section 123(4) of the Localism Act 2011, an appeal may not be brought under ground (a) where the notice was issued at a time after the making of an application for planning permission that was related to the notice. As a consequence I am satisfied that Appeals B and C should proceed solely on the grounds set out at s174(f) and that by virtue of the aforementioned provisions I am not required to consider the appeals under ground (a). The planning merits of the operational development are considered in Appeal A and under the provisions of s78 of the Act.
5. I am satisfied that all three appeals relate to the same property despite the slight differences in the development address. Similarly, the slight variations in wording of

the operational development between Appeal A and Appeals B and C reflect the slight differences between the wording set out on the planning application form and that on the Notice. I have determined the appeals accordingly.

## **Appeal A**

### **Main Issue**

6. The main issue is the effect of the boundary fence on the character and appearance of the surrounding area.

### **Reasons**

7. The appeal property lies at the head of a short cul-de-sac (Beach Priory Gardens) on elevated ground above both the cul-de-sac and Rotten Row to the rear. The appeal property's garden is laid to a stepped, terraced patio and garden area, bound by borders and shrub planting. A driveway access leads from the head of the cul-de-sac into the appeal property, between the side wall of 28 Beach Priory Gardens and a garden retaining wall and rises towards the house.
8. Leading towards the appeal site, other properties along Beach Priory Gardens display a mix of boundary treatments around their front gardens. Low brick walls and taller brick pillars frame a mix of timber panel fences, railings and hedges and shrubs. The walls between properties at the head of the cul-de-sac are characterised by taller, distinctive brick walls that slope downwards towards Beach Priory Gardens, reflecting the fall in ground levels from the ridge that separates Beach Priory Garden from Rotten Row.
9. Like the other properties at the head of the cul-de-sac, the appeal site has a different relationship with Beach Priory Gardens than those properties on either side of the approach to the appeal site. Although visible from distance by virtue of its elevated position above the road, the appeal site enjoys only a short length of boundary with the carriageway at the head of the cul-de-sac.
10. The fence, which runs between the appeal property and its immediate neighbour at No. 24 appears from outside the site as if it sits atop the sloping wall, its visible extent increasing towards its intersection with Beach Priory Gardens. Although both the wall and the fence slope modestly along their lengths, their pitches diverge such that the visible extent of timber fence exposed above the brick wall is significantly greater at the entrance to the appeal property than it is closer to the rear of the house. The divergence in the respective slope angles was, at the time of my visit, compounded by the somewhat stark and untreated appearance of the fence.
11. The point at which the fence appears at its highest when viewed from outside the site broadly corresponds to the edge of the lower portion of the sloped terraced garden internally within the site. In this respect, the appellants' reasoning – on safety grounds to mitigate against the raised sections of terrace relative to the height of the brick wall - for the erection of the fence is understandable given the height of the terraced garden at this point.
12. Although the fence is stark in its appearance and the cumulative height of the fence and wall considerable at its highest visible point, much of its visual effect can be assigned to its essentially unfinished and untreated materials. The coping brick course at the top of the sloping wall is finished in dark grey bricks, as are the

entrance gate pillars and retaining wall alongside the driveway entrance to the appeal property. So too, a lower timber panel fence atop the retaining wall. Given these already dark elements, together with the dark grey window and door framing, tiles and solar panels, a darker, more recessively coloured timber treatment would negate its presently stark appearance and be more consistent with the backdrop against which it would be seen.

13. Whilst fences are lower along the length of Beach Priory Gardens on approach to the appeal site, they are not uniformly so. Nor does the cul-de-sac have a particularly open feel to it. The low brick walls are offset somewhat by taller brick gate piers between which are a mix of timber fence panels or more substantial shrub and hedge planting. The head of the cul-de-sac and the properties there have a distinctly different character though, in terms of ground levels, dwelling size and type, physical, visual and functional relationship to the cul-de-sac to those on either side along its length.
14. Given the particular nature of the appeal property's presence within the Beach Priory Gardens streetscene I am satisfied that it would not, with an appropriate colour finish to the timber panels, be harmfully intrusive or disruptive to the character or appearance of the appeal property. A suitably worded planning condition would ensure adequate control could be exercised over an acceptable, and acceptably recessive, colour choice and that it could be applied within a reasonable time period.
15. Nor, despite its height relative to its immediate surroundings at the rear of No. 24, would it be overpowering or dominant in relation to that property given that the wall and fence are adjacent to a driveway access and apron to a double garage that are cut into the prevailing rising ground levels. Thus given the nature of the use of this part of the neighbouring property, I am not persuaded that harm would arise, whether in terms of character and appearance or the living conditions of occupiers of that property.
16. Sefton Local Plan<sup>1</sup> (SLP) Policy EQ2 seeks to ensure that development proposals respond positively to the character, local distinctiveness and the form of their surroundings. Amongst other factors set out therein, proposals should relate positively to the character and form of their surroundings in terms of scale, height, massing, detailing and materials. The 'Boundary Treatment' Supplementary Planning Document<sup>2</sup> provides guidance on boundary treatments alongside SLP Policy EQ2.

## Conditions

17. The Council's suggested conditions are set out on the appeal questionnaire and adopt the standard wording as set out in relation to 'householder appeals'. However, as the development has already been undertaken the suggested conditions regarding a commencement time limit and approved plans do not accurately reflect the retrospective nature of an approval in this instance. Nor has the Council specified a materials condition.
18. With regard to a plans condition I have adopted a slight variation on the wording and tense to reflect the retrospective nature of the appeal scheme. As development

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<sup>11</sup> Adopted April 2017

<sup>2</sup> December 2024

has commenced the standard time limit condition would not be appropriate but I have incorporated a time limit element to a version of a materials condition to ensure that an appropriately dark, recessive colour finish is applied to the fence, the time period for which reflects that as set out in the notice. I have therefore attached these conditions accordingly.

### **Conclusion on Appeal A**

19. For the reasons set out, and having considered all other matters raised, I conclude that subject to appropriately worded conditions regarding the approved plans and the time period for the application of an appropriate colour finish to the timber fence, that appeal A should succeed. The appeal is allowed.

### **Appeals B and C**

20. For reasons explained above, appeals B and C proceed solely on ground (f); that is, that the appellants feel that 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 by any such breach. In this instance, the notice's requirements are that either the fence is removed or that its height is reduced to no higher than 1 metre. This is consistent with the purpose of remedying the breach of planning control in accordance with section 173(4)(a) of the Act, not to remedy injury to amenity. Nor is it the place of an appeal under ground (f) to address the planning merits of the matter enforced against.
21. The appellants, in seeking to address visual impact concerns, has suggested modifications could be made to the fence to mitigate the alleged impact. These modifications include painting the fence and gates in a darker colour; modifying the top element of the fence to create a 'trellis' style top; insertion of stone piers to break up the fence; and a reduction in height and stepping of panels in specific locations.
22. However, these measures are consistent with seeking to remedy injury to amenity, rather than to remedy the breach of planning control. The purpose of the notice is to remedy the breach of planning control and, in the absence of an appeal under ground (a), these 'lesser steps' would not do so. Thus, the notice's requirements do not exceed what is necessary to remedy the breach of planning control set out and are proportionate thereto. The appeals under ground (f) must therefore fail and I shall uphold the enforcement notice.

### **Conclusions on Appeals A, B and C**

23. Section 180(1)(a) of the Act<sup>3</sup> provides that where planning permission is granted after the service of a notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the permission. This means that the planning permission overrides the notice to the extent that the planning permission authorises what is being enforced against. However, the notice is not quashed, its requirements and time scales remain intact and it does not cease to have effect altogether. Thus, to the extent that the fence enforced against is common to the planning permission and the enforcement notice, s180(1)(a) operates to prevent the notice continuing to bite upon those elements.

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<sup>3</sup> Town and Country Planning Act (1990) (as amended)

24. In this instance therefore, as the fence is common to both the planning permission and the notice, in allowing Appeal A the effect of s180(1)(a) is to ensure that the requirements of the notice do not bite on the scheme approved by the Appeal A decision. Thus, for the avoidance of doubt, this means that the enforcement notice would cease to have effect, so long as the planning permission is extant and its terms and conditions are complied with.
25. For the reasons set out and having considered all other matters raised, I conclude that Appeal A should be allowed. For the reasons given above, I conclude that Appeals B and C on ground (f) should not succeed and I shall uphold the enforcement notice.

*G Robbie*

INSPECTOR