



Appeal Decision

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2025

Appeal Ref: APP/N4720/C/24/3357132

Land at 38 Croft House Way, Morley, Leeds, LS27 8UB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Valerie Catherall against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 6 December 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a timber panel fence with concrete posts that exceeds one metre in height, located adjacent to a highway used by vehicular traffic, which exceeds the height permitted under Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The requirements of the notice are to: Dismantle the wooden fencing and concrete supporting posts in their entirety and remove the resulting material from the site.
 - The period for compliance with the requirements is two months.
 - 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 varied by deleting the words at section 5 (What you are required to do) and replacing them with the following:
 - Dismantle the wooden fencing and concrete supporting posts in their entirety and remove the resulting material from the site;Or
 - Reduce the height of the wooden fencing and concrete supporting posts adjacent to the highway used by vehicular traffic to a height no greater than one metre when measured from ground level.
2. Subject to this variation, the enforcement notice is upheld.

Preliminary Matters

3. The breach of planning control is a timber fence and concrete supporting posts which exceed one metre in height located adjacent to the highway. The issue of the enforcement notice followed an application for planning permission for the fence which was refused by the Council on 3 March 2024¹ and subsequently dismissed on appeal in September 2024².
4. There is no ground (a) appeal and deemed planning application before me. The appellant refers to the context of the area, where there are said to be similar boundary treatments that the Council has not taken enforcement action against. However, the planning merits of the development do not fall to be considered. No

¹ Council Ref: 23/05998/FU

² Appeal Ref: APP/N4720/D/24/3344288

site visit was necessary as the appeal can be determined based on the submitted evidence. Neither party has been prejudiced by this approach.

Appeal on ground (f)

5. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
6. When an appeal is made on ground (f), it is necessary to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are either (a) the remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach. Given that the requirements of the notice seek the removal of the fence in its entirety and all resulting materials, the purpose of the notice is to remedy the breach of control.
7. The appellant claims that the removal of the fence is unreasonable and breaches their permitted development rights. They consider that the matter can be resolved by reducing the height of the fence to reflect permitted development allowances. The erection of a fence (or other means of enclosure) is permitted development under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, if no part of it exceeds two metres above ground level or one metre where it is adjacent to a vehicular highway.
8. Permitted development rights cannot be exercised retrospectively. However, should the existing fence be removed entirely, it is likely that the appellant would erect a replacement fence within permitted development limits to secure their garden. This represents a realistic fallback position which would be likely to result in the same overall outcome as reducing the height of the existing fence, and is an obvious alternative step that can be achieved with less cost and disruption. Therefore, given that enforcement is intended to be remedial rather than punitive, requiring the fence to be entirely removed is excessive. The notice can be amended to give the appellant the option of reducing the height of the fence adjacent to the highway to one metre. The Council does not object to this variation.
9. I shall therefore vary the notice to give the appellant the option of reducing the height of the fence adjacent to the highway to no more than one metre. Accordingly, the appeal on ground (f) will succeed to this extent.

Other Matters

10. The Council says that the requirements of the notice should be carried out within the timeframe set out within the notice of four months. However, this appears to be an error as the notice states that the period for compliance is two months. The appellant has not contested this timeframe and I consider it to be appropriate.

Conclusion

11. For the reasons given above, I conclude that the appeal should succeed to a limited degree on ground (f), and I shall vary the notice prior to upholding it.

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INSPECTOR