



Appeal Decision

Site visit made on 18 November 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 November 2025

Appeal Ref: APP/U2750/C/24/3353485

The Retreat, Marsh Lane, Beal, East Yorkshire DN14 0SL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
- The appeal is made by Dr Jan Birley against an enforcement notice ("EN") issued by North Yorkshire Council.
- The EN was issued on 19 September 2024.
- The breach of planning control as alleged in the EN is: Without planning permission, the unauthorised erection of a 2m fence adjacent the highway along the frontage of the site.
- The requirement of the EN is: STEP 1 Remove or reduce the fence to 1m high and remove all items of the fencing not retained as a means of enclosure from the Land in association with the reduction in height of the fence. For clarification the fence is adjacent to Marsh Lane and shown on the enclosed plan in Blue.
- The period for compliance with the requirement is: 6 months from when the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act.

Decision

1. It is directed that the EN is varied by:

- *the deletion of the words: "Step 1 Remove or reduce the fence to 1m and remove all items of the fencing not retained as a means of enclosure from the Land in association with the reduction in height of the fence. For clarification the fence is adjacent to Marsh Lane and shown on the enclosed plan in Blue."*

and their substitution with the words:

"Either:

- (i) *Remove the 2m fence adjacent to the highway along the frontage of the site (as shown in Blue on the plan attached to the EN); or*
- (ii) *Reduce the height of the 2m fence adjacent to the highway along the frontage of the site (as shown in Blue on the plan attached to the EN) to no more than 1m metre above ground level; and*
- (iii) *Remove all materials associated with (i) or (ii) above from the Land"*

in Section 5 of the EN.

Subject to the variation, the appeal is dismissed and the EN is upheld.

Preliminary Matters

2. For clarity, the alleged breach references the fence along the frontage of the appeal site. It excludes the gates that have been erected further into the appeal site. Therefore, I have determined the appeal on this basis.

3. I noticed during my site visit that part of the fence has been removed. However, I must consider the alleged breach as it appeared at the time the EN was issued.
4. The appellant also appealed under ground (a). However, ground (a) is barred from consideration. As I do not have a ground (a) appeal before me, I am unable to consider the planning merits of the alleged breach of planning control raised by the appellant. Similarly, the concerns raised by interested parties have not had an influence upon my decision.
5. The appellant has raised concern regarding the Council's conduct. However, this does not free me of my obligation to determine the appeal in the public interest.
6. The appellant has confirmed they no longer occupy the appeal site and therefore, they do not wish to pursue the appeal. I contacted the appellant to clarify whether they would like to withdraw the appeal, but no response was forthcoming. Consequently, I have determined the appeal accordingly.

Appeal on Ground (c)

7. An appeal on ground (c) is that the matters alleged in the EN do not constitute a breach of planning control. The alleged breach of planning control is the construction of a 2m high fence adjacent to a highway. The onus of proof is on the appellant to show there has been no breach of planning control. The relevant test is the balance of probability.
8. The appellant asserts that the fence is permitted development under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). However, Part 1, Schedule 2 of the GPDO relates to development within the curtilage of a dwellinghouse. The appeal site operates as a business and therefore, it is not applicable.
9. The appellant also asserts that the fence is permitted development under Class A, Part 2, Schedule 2 of the GPDO which permits *"the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure"* providing: *"A.1(a)(i) 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 in any other case, 1 metre above ground level"*.
10. The appeal site consists of a detached building with a surface car park accessed from Marsh Lane to the north. The site's northern boundary is bounded by a dwarf wall positioned either side of the access. To one side of the access, the dwarf wall abuts the back edge of the pavement (which forms part of the highway). To the other side, the dwarf wall abuts an access that provides entry to two dwellings. The dwarf wall is therefore adjacent to a highway used by vehicular traffic.
11. Fence posts have been positioned immediately to the rear of the dwarf wall along both sides of the access. Close boarded fence panels have been affixed to the posts and extend above the rearmost section of the dwarf wall. Consequently, it is my judgement that the fence forms part and parcel of the dwarf wall and therefore, is adjacent to a highway. The 2m height of the fence is not disputed by the appellant and from the evidence before me, I have no reason to disagree.

12. As such, the fence has been constructed adjacent to a highway used by vehicular traffic and exceeds 1m above ground level. Therefore, it does not comprise permitted development under Class A, Part 2, Schedule 2 of the GPDO.
13. For these reasons, the appellant has failed to show, on the balance of probability, that the fence as alleged in the EN does not constitute a breach of planning control. The appeal on ground (c) therefore fails.

Appeal on Ground (f)

14. An appeal under ground (f) is that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is necessary to remedy the breach of planning control, or any injury to amenity which has been caused by any such breach.
15. The EN requires either the fence to be removed in its entirety or for it to be reduced to a height not exceeding one metre above ground level. I shall vary the requirement so the wording is clearer. This would not cause injustice to either party as it is for clarification purposes.
16. The appellant has advanced planning merits as their evidence; matters that fall outside the scope of ground (f). They also suggest that the fence's alignment could be amended to improve visibility. However, I do not have a ground (a) appeal before me and as such, I am unable to determine whether planning permission could be granted for an alternative scheme.
17. The purpose of the EN is to remedy the breach of planning control. Providing the "or" option in the EN equates to the provision of a lesser step that the appellant could choose to implement. Consequently, the steps required by the EN are not excessive to remedy the breach of planning control. The appeal on ground (f) therefore fails.

Appeal on Ground (g)

18. An appeal under ground (g) is that the period specified for compliance within the EN falls short of what should reasonably be allowed. The period for compliance specified in the EN is six months. The appellant requests an extended period but does not specify an alternative timeframe.
19. I acknowledge the appellant's requirement to seek time to gather evidence regarding aggressive and harassing behaviour and trespass. However, these matters are unrelated to the time needed to comply with the EN's requirements.
20. The fence is not extensive and therefore its demolition or reduction in height is unlikely to be time consuming, particularly as some of the fence has already been removed. I appreciate that a contractor/handy person may need to be appointed to undertake the work, however, I find that six months is a generous period. The appeal on ground (g) therefore fails.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with a variation.

A Berry INSPECTOR