
Appeal Decisions

Site visit made on 25 November 2025

by **Chris Preston BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 November 2025

Appeal A Ref: APP/J3015/C/25/3366511

Appeal B Ref: APP/J3015/C/25/3366512

Park View Cottage Main Street, Strelley, NOTTINGHAM, Nottinghamshire, NG8 6PE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Adam Wood and Appeal B by Mrs Christine Wood against an enforcement notice issued by Broxtowe Borough Council.
 - The notice was issued on 19 May 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised development of erecting a 1.8m high timber fence on the Land marked with a blue line on the attached plan.
 - The requirements of the notice are to:
 - (i) Remove in full the 1.8m high timber fence including the fence posts on the eastern boundary of the Land marked with a blue line on the attached plan shown within the attached photos.
 - (ii) Reinstate the Land to its previous form.
 - The period for compliance with the requirements is: Within 4 weeks from the date the notice takes effect.
 - Appeal A and Appeal B are proceeding on the grounds set out in section 174(2) (b), (c), (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

Preliminary Matters

2. Where two appellants are named on the appeal form, in this case Mr and Mrs Wood, technically two individual appeals are made and each is allocated its own reference. I have referred to them as Appeal A and B in the banner heading above. The grounds of appeal are identical in relation to both and I have therefore determined them together within this decision letter.

The Appeals on Ground (b)

3. An appeal on ground (b) is made on the basis that the matters alleged in the notice have not occurred as a matter of fact. The notice relates to the erection of the fence and there is no dispute that development has occurred. The ground (b) appeals refer to the removal of a previous hedgerow which is not a matter alleged in the enforcement notice. Accordingly, the appeals on ground (b) must fail.

The Appeals on Ground (c)

4. Under Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) the erection, construction, maintenance, improvement or alteration of a gate, fence,

wall or other means of enclosure constitutes permitted development, subject to the limitations of paragraph A.1 of that Class. Under paragraph A.1(a)(ii), the height of any gate, fence, wall or means of enclosure adjacent to a highway used by vehicular traffic is not permitted where it would exceed 1 metre above ground level. The height of any other gate, fence, wall or means of enclosure should not exceed 2 metres, in line with paragraph A.1(b).

5. There is no dispute that the fence is adjacent to the track which passes to the front of the dwelling but the appellant questions whether that track constitutes a "highway used by vehicular traffic" for the purposes of the GPDO. The word "Highway" is not defined within the GPDO. However, s336(1) of the Town and Country Planning Act 1990 (the Act) provides that, for the purposes of the Act 'highway' has the same meaning as in s328 of the Highways Act 1980.
6. Under that definition 'highway' means the whole or any part of a highway other than a ferry or waterway and that, where such a highway passes over a bridge or through a tunnel, that bridge or tunnel is to be taken to be part of the highway. Those definitions are somewhat circuitous but Common Law has established that a highway is a defined route over which the public can pass and repass without hindrance or charge. The use must be "as of right", meaning without force, secrecy, or permission.
7. Shortly before the cottage the tarmacadamed section of Main Street comes to an end after which the track leading to the cottage and beyond is unmade. An access gate marks the transition and is clearly signposted as a private road. However, the Council point out that there is a Public Right of Way running along the track and it is clearly signposted as a public bridleway and also a cycle route, such that the public have a right to pass along it, albeit not in motorised vehicles.
8. Nonetheless, it is a highway having regard to the common law definition. It is also used by vehicles, including cycles and private vehicles of those residing along the track. There is nothing to indicate that a cycle would not constitute a vehicle for the purposes of the GPDO.
9. Accordingly, on balance, it seems to me that the fence is adjacent to a highway used by vehicular traffic. It is over a metre in height and therefore would not be permitted, having regard to the limitations of paragraph A.1, Class A, Part 2 of Schedule 2 of the GPDO.
10. In any event, even if I were wrong on that point, permitted development rights for the erection of walls and fences have been removed for the area in question through an Article 4 Direction. Whilst that Direction was made under the Town and Country Planning (General Permitted Development) Order 1977, the Council correctly point out that it has continued effect on account of the provisions of the Interpretation Act 1978.
11. The Article 4 Direction clearly specifies that planning permission will need to be sought for the erection of walls and fences, of less than a metre where adjacent to a highway or up to two metres in other cases. In effect, the permitted development rights being removed by the Direction are those now found in Class A, Part 2 of Schedule 2 of the GPDO. Accordingly, regardless of whether the fence is adjacent to a highway used by vehicular traffic it does not benefit from permitted development rights granted through the GPDO.

12. In the absence of planning permission, either granted via the GPDO or by the Council following a planning application, the fence is unauthorised and represents a breach of planning control. Accordingly, the appeals on ground (c) must fail.

The Appeals on Ground (f)

13. When considering an appeal under ground (f) it is necessary to consider the purpose of the requirements. In this case, the Council is clearly seeking to remedy the breach of planning control in its entirety. The whole of the fence, including associated posts, is unauthorised and the requirement to remove it goes no further than is required to remedy the breach that has taken place.
14. The appellant has referred to a need to keep the fence in situ to provide protection for the hedgerow that has been planted adjacent, until such time as it becomes established. That is not a matter that I can take into account in the absence of a ground (a) appeal/ deemed planning application. In other words, it is not open to me to consider the planning merits of retaining the fence to allow the hedge to become established. I must consider solely the question of whether the requirements go beyond what is necessary to remedy the breach of control and they do not.
15. In any event, hedgerows in fields and gardens using common native species appear to have no difficulty in becoming established in the absence of close boarded fencing directly adjacent and it would not be a matter that would alter my decision, even if I could take the matter into account.
16. Accordingly, the appeals on ground (f) must fail.

Conclusion

17. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice accordingly.

Chris Preston

INSPECTOR