



Appeal Decision

Site visit made on 9 September 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 December 2025

Appeal Ref: APP/D1835/C/25/3358725

100 Columbia Drive, Worcester WR2 4XU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Dr Amie Ford against an enforcement notice issued by Worcester City Council.
 - The notice was issued on 12 December 2024.
 - The breach of planning control as alleged in the notice is without planning permission the erection of timber closed board fence (fencing) adjacent to the highway measuring over 1.0m in height at Columbia Drive, Worcester, WR2 4XU shown in blue on the attached plan.
 - The requirements of the notice are to:
 - 5.1 Remove the fencing adjacent to the highway, or
 - 5.2 Reduce the height of the fencing to 1.0m or less where it is within 2.0m of the highway, or
 - 5.3 Resite the fencing to at least 2.0m from the highway.
 - 5.4 (A) Resite the fencing (as demarked in blue on the attached plan) to at least 1.7m from the highway, and
 - (B) i) Plant a hedgerow of one of the following species:
 - Photinia Red Robin Elaeagnus eb. Compacta, or
 - Ligustrum ovalifolium, or
 - Elaeagnus eb. Compacta
 - ii) The chosen species shall be planted 500mm from the back of pavement edge and at least 500mm from the newly erected fence.
 - iii) The hedge plants shall be 1.5 metres tall at the time of planting and be planted at 25cm spacings (4 plants per linear metre). Single stakes for each plant may be required to provide support.
 - (C) Maintenance: The Hedge shall be watered weekly from April until October, unless there has been significant rainfall that week, their bases should be kept clear of weed growth until they are successfully established (up to 5 years). Any hedge plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced with others of species size and number as originally approved, by the end of the first available planting season thereafter.
- (NOTE: Measurements are from the nearside edge of the footway, which falls within the definition of the 'highway')
- The period for compliance with the requirements is:
 - 6.1 One of the steps set out in paragraphs 5.1, 5.2 & 5.3 must be completed within 1 month from when this notice takes effect, unless you implement the requirements of paragraph 5.4.
 - 6.2 5.4(A) must be completed within 1 month from when this notice takes effect.
 - If you carry out the requirements set out in paragraph 5.4(A), the requirements in paragraphs 5.4(b), i), ii) and iii) must be completed within the first available planting season (October – March) allowing 3 months for compliance from when this notice takes effect.
 - Step 5.4 (C) requires maintenance of the hedge plants and their replacement for a period of five years from the completion of the planting.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. The appellant initially appeared to raise a ground (c) appeal, however, the matters raised related to the planning merits of the fencing, which cannot be considered under ground (c). The appellant has since confirmed that they do not wish to advance any arguments under ground (c) and so I shall consider the appeal on ground (d) only.

Matters concerning the notice

3. An enforcement notice is null if it is defective on its face, normally by missing some vital element that an enforcement notice 'shall' include under section 173 of the Act. Section 173(9) of the Act provides that 'An enforcement notice **shall** specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, reference in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.' The word 'period' implies a start point and an end point, with a period of time in between.
4. Step 5.4(C) is required to be carried out for a period of five years from the completion of the planting. Since it is not known when the planting would be completed, it is not known when this requirement must be completed by. I queried with the parties whether this renders the notice a nullity, because the notice is defective on its face, missing a vital element required under section 173 of the Act.
5. The Council's position is that the notice is not a nullity because step 5.4(C) includes a clear period of time, and a specific trigger from when it will be counted from. The five-year period runs from the date of planting, which, it is suggested, will be readily ascertainable following compliance with 5.4(B). However, while an enforcement notice may include ongoing requirements, such as ceasing a use, given the requirement relates to a period of maintenance, an end point should be identified.
6. The Council suggests that further clarity can be provided through a simple correction/variation to the notice to require the appellant to notify the Council within 7 days of the completion of the hedgerow planting, for inspection, so that there is certainty for all parties in respect of the 'start date' from which to calculate the 5 year maintenance period. However, section 173(9) is clear that it is the enforcement notice that shall specify the period. Requiring the appellant to notify the Council afterwards would not remedy this. It would not be clear, from the four corners of the notice, when the steps are required to have been taken by.
7. I am mindful that proceeding on the basis that an enforcement notice must be null even if a small part falls foul of the statute could lead to absurd results because it takes no account of the relative importance or materiality of what is removed compared to what is left. The part of the notice which falls foul of section 173(9) of the Act relates to the requirement to resite the fencing to at least 1.7m from the highway and the requirement for maintenance.
8. The notice alleges the erection of a timber closed boarded fence adjacent to a highway over 1m in height. The requirements of the notice are written in the

alternative, giving the appellant the option to remove the fence, reduce it in height, or resite the fence, either to 2m from the highway, or 1.7m from the highway, provided planting is carried out.

9. Section 173(4) sets out the purposes of an enforcement notice, which are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
10. Section 173(5) states that an enforcement notice may, for example, require (b) the carrying out of any building or other operations. Local planning authorities are not required to formulate the steps so that they correspond solely with either on purpose or the other. An enforcement notice may require, for example, that part of the site is restored to its previous condition, but lesser works on a different part of the site designed to remedy the injury to amenity.
11. The Council could have simply required the appellant to remove the fence: that would have remedied the breach. The Council, however, chose to give the appellant a number of different options to choose from. It is not unusual for an enforcement notice which alleges the erection of a fence, to give the option to reduce the fence in height, given that the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) grants planning permission for the erection of such works, subject to certain limitations. Planning permission is then granted for the works by virtue of section 173(11), not the GPDO.
12. The Council suggests requiring the fence to be resited at least 2.0m from the highway provides a lawful means of addressing the breach, because this would result in it not being adjacent to the highway, and as such the resiting would comply with permitted development rights. The Council suggests that the requirement to resite the fence to at least 1.7m from the highway is intended to remedy the harm (i.e. 'injury') to amenity, which has been caused by the breach. It is suggested that the requirement to resite the fence and provide hedgerow planting between the fence and the highway is a proportionate response to remedy the identified harm.
13. However, in order to comply with either of these requirements, the appellant must first remove the fence. This would itself remedy the breach. The appellant would then have to erect the fence in a different part of the site, which itself is development. Whether or not such development would be permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) is debatable.
14. The ability of an enforcement notice to grant permission for works is limited by the provisions of section 173(11) and (12). Section 173(11) provides that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and all the requirements of the notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of

the activities. Since a fence 2m or 1.7m from the highway was not in existence at the time the enforcement notice was issued and does not form part of the breach, the notice could not have required its removal and so planning permission would not be granted by section 173(11).

15. Section 173(12) states that where (a) an enforcement notice requires the construction of a replacement building; and (b) all the requirements of the notice with respect to that construction have been complied with, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of that construction. Section 173(7) states that a replacement building may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control. The fence which has been erected is unauthorised: the GPDO does not grant retrospective planning permission and even if it was altered, it would not be granted by the GPDO. The fence would therefore not be the construction of a replacement building.
16. The Council suggests that requirement 5.4 could be struck out from the notice using my powers under section 176(1)(a) of the Act. Given my concerns, it would also be necessary to delete requirement 5.3, leaving the appellant the option of removing the fencing or reducing the height of the fencing to 1.0m or less where it is within 2.0m of the highway. I have wide powers of correction, subject to the correction or variation not causing injustice to the appellant or the local planning authority. Although deleting requirements 5.3 and 5.4 would reduce the options open to the appellant, they would still have the choice of removing the fence or reducing it in height. The appellant has confirmed they consider such a correction would not cause injustice.
17. In my view, the offending parts can be excised and so, in my judgement, the notice is not a nullity.

Ground (d)

18. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities. As established in *Gabbittas v SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
19. An enforcement notice was issued on 1 August 2024 in respect of the fence. That notice was withdrawn and the enforcement notice, which is the subject of this appeal, was issued on 12 December 2024. Where an enforcement notice is issued under section 171B(4) of the Act, the appeal under ground (d) is considered on the basis of whether the development was lawful on the date of the first notice, or when the local planning authority first purported to take action.
20. The Council advise that the estate within which the appeal site is located was originally granted planning permission under reference 68/0203. This permission is stated to relate to the comprehensive development of the wider area, comprising the layout of roads and pedestrian routes and the erection of 538 dwellings.

Attached to that permission is condition 5, which states ‘there shall be no fencing whatsoever of the grassed open areas in front of the houses.’

21. However, in my view this is ambiguous. The fencing which has been erected is, in my view, located to the side and rear of the dwelling, not the front. The Council does not suggest that the immunity period should be 10 years, and the enforcement specifically states within the reasons that the breach has occurred within the last four years. Where substantial completion took place before 25 April 2024, the relevant immunity period for operational development is 4 years.
22. Given the above, this appeal will turn on whether the appellant can show, on the balance of probabilities, that the fence was substantially completed on or before 1 August 2020.
23. In support of their case, I have been provided with a statutory declaration made by the director of Webb Maintenance Limited, who state they carried out works at the appeal property. The individual states that they started works to erect the new fence on 20 July 2020 and completed the work by 22 July 2020 and includes a photograph of the fence in situ, which is dated 30 July 2020.
24. While I note the Council’s concern that the photograph is not verifiably an original, the individual states in their statutory declaration that the photograph shows the rear garden and new fencing as at 30 July 2020. The appellant’s partner has also submitted a signed statement, which confirms that the fence was in place before August 2020 and that they took the photograph of the fence dated 30 July 2020. Although the statement is not witnessed, it is consistent with the evidence of the director of Webb Maintenance Limited and supports the appellant’s case that the fencing was substantially completed by 1 August 2020.
25. The Council’s evidence shows that the fencing was constructed between May 2020 and April 2021. Although the appellant stated that the development was completed on 31 August 2020 on a planning application form, they have confirmed that this reflected the fact that the application was not just for the erection of fencing and that other aspects of the application were completed at a later date. This, in my view, is a plausible explanation.
26. While the statutory declaration was not made available to the Council at the time of its investigation, or submitted when the appeal was lodged, the appellant has submitted that there were extenuating circumstances which resulted in delay. I have considered the circumstances advanced and agree that in this instance, it is reasonable to allow the evidence to be submitted.
27. On the basis of the evidence submitted, I consider it is more likely than not, that the fence was substantially completed by 1 August 2020 and so the appeal under ground (d) succeeds.

Conclusion

28. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

M Savage

INSPECTOR