



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: 15 January 2026

Appeal A Ref: APP/H1840/C/25/3360329

Hadley Cross House, Haye Lane, Ombersley, Droitwich WR9 0EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Jonathan Sansom against an enforcement notice issued by Wychavon District Council.
- The notice was issued on 6 February 2025.
- The breach of planning control as alleged in the notice is without planning permission, erection of fencing exceeding 1 metre above ground level adjacent to the highway used by traffic.
- The requirements of the notice are to: Remove the fencing denoted by a filled blue line from the land outline in red on the attached plan.
- The period for compliance with the requirement is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended).

Appeal B Ref: APP/H1840/X/25/3359242

Hadley Cross House, Haye Lane, Ombersley, Worcestershire WR9 0EJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Jon Sansom against the decision of Wychavon District Council.
- The application ref W/24/02205/CLPU, dated 25 October 2024, was refused by notice dated 8 January 2025.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is proposed 1m high hit and miss fence and 2m high hit and miss fence with native species planting.

Appeal C Ref: APP/H1840/D/25/3359241

Hadley Cross House Haye Lane, Ombersley, Worcestershire WR9 0EJ

- 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 Mr Jon Sansom against the decision of Wychavon District Council.
- The application Ref is W/24/02206/HP.
- The development proposed is the replacement of 'dilapidated former post & rail boundary fence with hit and miss timber fencing and native species boundary planting (Part Retrospective)'.

Appeal A: Decision

1. It is directed that the enforcement notice is varied by, at section 5 of the Notice, the addition of the words 'Or, reduce the height of the fencing denoted by a filled blue line so that it does not exceed 1m above ground level.' Subject to this variation, the enforcement notice is upheld.

Appeal B: Decision

2. The appeal is dismissed.

Appeal C: Decision

3. The appeal is allowed and planning permission is granted for replacement of former post & rail boundary fence with timber fencing and native species boundary planting at Hadley Cross House, Haye Lane, Worcestershire WR9 0EJ in

accordance with the terms of the application, Ref W/24/02206/HP and the plans submitted with it subject to the following condition:

Condition 1: The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 001 Rev B: Site Plan, Drawing No 002 Rev A: Elevations, Drawing No 003 Rev A: Location Plan.

Preliminary Matters

4. Where enforcement notices are issued after 25 April 2024, ground (a) is barred if the requirements of s174(2A) are met. Namely, the enforcement notice on related development was issued: 1. Within the time allowed for determination of the retrospective planning application or, 2. Within two years of the date on which the related application ceased to be under consideration. The appellant ticked ground (a) on their appeal form, however, the Planning Inspectorate has previously determined that the ground (a) is barred, because the notice was issued during the time allowed for determining a related retrospective planning application. Appeal A shall therefore proceed on grounds (c) and (f) only.

Appeal A: Section 174 Appeal

Ground (c)

5. An appeal under ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. The Town and Country (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), Schedule 2, Part 2, Class A, permits the erection of a fence up to 1m above ground level where it has been constructed adjacent to a highway used by vehicular traffic and 2m where it is not adjacent to a highway used by vehicular traffic.
6. It is not disputed that the fencing which has been erected exceeds 1m in height. The appellant's case under ground (c) is advanced on the basis that the fence (or part of it) is not adjacent to the highway and comprises permitted development under Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
7. This appeal will turn on whether the fencing is adjacent to a highway used by vehicular traffic. The term 'adjacent to a highway' is not defined in the GPDO. The Oxford English Dictionary defines 'adjacent' as 'next to or very near something else; neighbouring; boarding; contiguous; adjoining.' The Council has drawn my attention to a number of appeal decisions¹. While each case turned on its own facts, what constitutes 'adjacent to a highway' is a matter of fact and degree, depending on the circumstances of the case.
8. The fencing which has been erected has been set back from the highway a number of metres, with a grass verge between the fencing and the road. A modest hedge has been planted to the front of the fencing. However, while there is a grassed area and a hedge between the fence panels and the highway, the fence which has been erected is, in my view, perceived as a boundary fence separating the appellants' land from the highway.

¹ APP/A2470/C/17/3172568, APP/L3625/X/16/3165616 and APP/T0355/C/11/2162054

9. Although there is fencing which runs perpendicular to the highway, it is likely to have been erected as a single act of development. The fencing which has been erected is, in my judgement, as a matter of fact and degree, adjacent to a highway used by vehicular traffic and exceeds 1m in height. It therefore fails to comply with the limitations set out in the GPDO and is development for which planning permission is required. Consequently, the appeal under ground (c) must fail.

Ground (f)

10. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, 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.
11. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., 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. Since the requirements of the notice are to remove the fencing, the purpose of the notice is, in my view to remedy the breach.
12. The appeal under ground (f) is made on the basis that the requirements of the notice are unreasonable and unnecessary and that the requirement should only involve the reduction in height to 1m high adjacent to the highway, as it would then comprise permitted development and that the fence points (a) to (b) as per the Plan at Appendix 1 is permitted development and should be allowed to remain in situ. However, as set out above, I have found that the fencing, including points (a) to (b) is not permitted by the GPDO.
13. Although the GPDO does not grant retrospective planning permission, I am mindful that once the appellant has complied with the requirements of the notice, they would be able to erect a fence up to 1m in height. Requiring complete removal is unlikely to achieve anything and therefore would be excessive, because the grant of planning permission under the GPDO represents a realistic fallback position and is an obvious alternative, which can be achieved with less cost and disruption than total removal.
14. In its statement of case, the Council confirms that it is agreeable to a requirement being added to the Notice to enable the appellant to reduce the height of the fencing to not exceed 1m in height. Given the above, I consider that the notice should be varied to give the option to reduce the height of the fencing. The appeal under ground (f) therefore succeeds to that extent.

Conclusion

15. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Appeal B: LDC

Main Issue

16. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

17. An application under section 192(1)(b) of the Act seeks to establish whether any operations proposed to be carried out in, on, over or under land, would have been lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
18. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the development would be lawful.
19. The proposed works include the erection of a 1m high hit and miss fence that would replace the former post and rail fence and would be set 3.6m back from the highway edge. A separate 2m high hit and miss wooden fence would be positioned 0.3m behind the 1m high fence and a 1m high native species hedge would be planted in staggered rows between the highway and the 1m high fence.
20. The Council suggests that, as the 1m high fence is not existing, the proposal must be assessed as a whole and there is currently no object or intervening feature between the highway and the positioning of either fence. The Council suggests that the 2m high fence to the northern boundary, whilst not physically attached to the 1m high fence proposed, would have the appearance of being part of the main boundary between the highway and the property.
21. The physical separation between the two fences would not be easily perceived when viewing the development and the boundary treatments are likely to be read as one. I agree, therefore, that it is reasonable to consider the fences to the northern boundary to be adjacent to the highway. While the 1m fence would be physically separate from the 2m fence, the appellant clearly wishes me to consider the proposal together, rather than issue a certificate in respect of the 1m fence alone.
22. Although there was previously a 1.2m high post and rail fence at the site, much of this has been removed. The proposal would include fencing which would exceed 1m in height and is, as a matter of fact and degree adjacent to a highway used by vehicular traffic, it is therefore not granted by the GPDO, and the appeal must fail.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for 1m high hit and miss fence and 2m high hit and miss fence with native species planting is well-founded and that the appeal

should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Appeal C: Section 78 Appeal

Background

24. The appellant describes their application as part retrospective and confirmed that the development was started on 10 January 2024. I have therefore dealt with the application on this basis. Although an enforcement notice has been issued in respect of the fence, Section 180 of the Act provides that, where after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that planning permission, the notice shall cease to have effect so far as inconsistent with that permission.

Main Issue

25. The main issue is the effect of the development on the character and appearance of the area.

Reasons

26. The appeal site comprises a substantial dwelling, which is set back from but faces towards Haye Lane. Haye Lane is generally rural road, characterised by sporadic dwellings, hedgerows and farmland beyond. Boundary treatments in the area vary in style, design and materials. Indeed, the appellant has drawn my attention to boundary treatments at Rose Cottage, 4 Sandpits, Shelsey Villa and 2 White Cottage, which comprise a variety of treatment types, design and height, including close boarded fencing over 1m in height.
27. The fencing which has been constructed (and which is proposed) comprises a hit and miss horizontal boarded fence, constructed in a light timber. The fencing is set back around 3.6m from the highway edge, with the host dwelling set a number of metres further back from the fence. Prior to the erection of the fencing, the boundary comprised a Leylandii hedgerow, post and rail fencing, brick wall with piers either side of a wooden gate. Much of the Leylandii hedgerow has been removed. Native shrub planting is proposed to the front of the fencing, between the fencing and the highway. At the time of my visit, I saw that the appellant has carried out planting to the front of a section of the fencing.
28. Policy SWDP21 of the South Worcestershire Development Plan (2016)(the DP) sets out that development is expected to be of a high design quality and needs to integrate effectively with its surroundings. Policy SWDP25 similarly seeks to ensure that proposals are appropriate to, and integrate with, the character of the landscape setting. Policy TOAD6 of the Omersley and Doverdale Neighbourhood Development Plan 2020-2024 (adopted October 2021)(the NP) also seeks development which protects, conserves and enhances landscape character by, amongst other things, demonstrating that the character of the landscape has positively influenced boundary treatments and policy TOAD9 of the NP seeks development which takes account of the character of the surrounding built environment and landscape setting, having regard to style and materials, among other things.
29. The South Worcestershire Design Guide Supplementary Planning Document: Overarching Design Principles (2018)(the SPD) advises that only in exceptional

circumstances will built boundary treatments over one metre in height be appropriate adjacent to a public highway and that materials should always complement the character of the property and the neighbourhood.

30. Although I have found that the fencing would be adjacent to the highway and would exceed 1m in height, it is/would be well set back from the road, with a substantial grass verge between the fencing and the highway. While the fence is of similar height to the brick wall which is currently *in situ*, the use of different materials adds visual interest, and means that the fence does not appear excessive in horizontal extent.
31. The Leylandii bounding the site previously (and where still *in situ*) presented an enclosed frontage to the highway and, though the fencing would also present an enclosed frontage, given its design, materials used/proposed, its substantial setback from the road, relatively isolated position and the variety of boundary treatments used elsewhere along Haye Lane, it does not appear an incongruous feature.
32. For the reasons given above, I find that the fencing which has been erected and which is proposed does not harm the character and appearance of the area and there is no conflict with policies SWDP21 or SWDP25 of the DP, or policies TOAD6 or TOAD9 of the NP, the requirements of which are set out above, or the advice contained in the SPD.

Other Matters

33. I note that the Highways Authority has recommended that the proposal is deferred until further information has been provided to demonstrate that the proposals would not result in a severe or unacceptable impact on the local highway, and safe and suitable access can be ensured for all users. However, the fencing would be constructed either side of a brick wall and so, in my view, there would be no greater effect on visibility splays compared to the pre-existing situation. The planting proposed would also be set back from the highway and is proposed to be 1m in height, to the front of the fencing. Even if the vegetation were to exceed 1m in height, the appellant has shown that adequate visibility splays could be achieved. Significantly, the Council did not refuse the application on the basis of highway safety and has confirmed that information regarding visibility splays has now been provided.

Conditions

34. As set out above, the application is partly retrospective, with the fencing to the east of the access gate already *in situ*. Because the works have already commenced, it is not necessary to impose the standard commencement condition. It is, however, necessary to ensure that the remaining development is carried out in accordance with the approved details, as shown on drawing number 002 Revision A, in the interests of protecting the character and appearance of the area. I shall therefore impose a condition to secure this.
35. The Highways Authority states that any proposed hedgerow exceeding 0.6m in height within the visibility splay is not accepted. The appellant proposes a hedgerow of up to 1m in height to the front of the fencing. However, it would be possible to erect a fence up to 1m in height adjacent to the highway and so it would be unreasonable to restrict the planting of vegetation in this way. Although the

appellant has proposed planting, I do not consider it is essential to the acceptability of the fencing. Given this, and that much of the proposed planting has already been carried out, I see no need to impose a condition to ensure that planting is carried out or maintained.

36. The appellant states that they are prepared to stain the fencing, however, I have found the fencing is acceptable and that there is no need to impose a condition to secure this.

Conclusion

37. For the reasons given above, I conclude that the appeal scheme would not harm the character and appearance of the area and accords with the development plan as a whole. Consequently, Appeal C should be allowed subject to the condition set out above.

M Savage

INSPECTOR