



Appeal Decisions

Site visit made on 2 December 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 JANUARY 2026

Appeal A Ref: APP/Y1138/C/24/3340213

Appeal B Ref: APP/Y1138/C/24/3340214

Church Lea, Willand Old Village, Willand, Cullompton, Devon EX15 2RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr B Rowe and Appeal B is made by Mrs S Rowe against an enforcement notice issued by Mid Devon District Council.
- The notice was issued on 14 February 2024.
- The breach of planning control as alleged in the notice is without planning permission the erection of a fence adjacent to the public highway in excess of 1m in height which is shown by a blue line on the Plan ("the Fence").
- The requirements of the notice are to:
 - (1) Permanently remove the Fence as shown by the blue line on the Plan, and remove all the associated fence panels and debris from the Land; or
 - (2) Reduce the height of the Fence to no more than 1m in height.
- The period for compliance with the requirements is: 2 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are dismissed, and the enforcement Notice is upheld with a variation.

Preliminary Matters

1. The site is subject to two separate enforcement notices; the other enforcement notice on the land alleges a lean to extension to a garage. For simplicity, the appeals against the other enforcement notice have been addressed in a separate decision letter¹.
2. No ground (a) appeal has been pleaded against the operational development alleged in the Enforcement Notice (Notice). As such, issues such as the impact of the development on the character and appearance of the area, and the Willand Conservation Area are not matters before me for consideration.

The Appeals on Ground (b) and Matters Concerning the Enforcement Notice

3. The appellants have expressed concerns regarding the validity of the Notice, specifically noting that the attached plan, along with the red line delineating the site, inaccurately includes two garages not owned by them. They have submitted an extract from the Land Registry to substantiate this claim. Consequently, the appellants argue that the Notice is invalid due to this error, which creates ambiguity about the requirements. Furthermore, they highlight that the owners of the garages in question have been denied the opportunity to appeal, as they did not receive a copy of the Notice.

¹ Appeal references 3340219 and 3340220

4. Additionally, the Notice alleges the presence of an unauthorised fence, marked by a blue line on the accompanying plan. The appellants contend that this blue line fails to encompass the entire length of the newly erected fence, omitting approximately 8 metres at the northwestern end. This has left the appellants unclear as to whether they are required to remove the entire fence or only a specific section, as indicated on the plan. In that respect, the appellants contend the Notice does not tell them with reasonable certainty what steps they had to take to remedy the alleged breach.
5. I have considered the issues raised regarding the validity of the Notice, along with my powers under section 176(1)(a) of the Town and Country Planning Act 1990 (1990 Act) to correct defects or misdescriptions, and under section 176(1)(b) to vary the terms of the enforcement notice. In either instance of correcting or varying the Notice, the determining factor is whether such correction or variation would result in any injustice to the appellant or the Council.

Red Line Boundary

6. The Council has acknowledged the error, conceding that the red line on the Notice's Plan should not have included the garages. However, the Council cites relevant case law² asserting that a Notice can still be upheld as long as the land and the breach are identifiable based on the Notice's description, independent of the attached plan. It contends that the unauthorised fence is situated away from the neighbour's garages, which are not in the appellants' ownership. The blue line outlining the part of the fence to be removed is also physically separated from the garages.
7. Upon visiting the site, I noted the boundary fence that is clearly marked by the blue line on the attached plan. Despite the red line error on the plan, the Notice is sufficiently clear in identifying the site, the development being alleged, which is separate from the neighbour's garages as well as the requirements to remedy it. The red line error in the plan does not introduce confusion regarding the Notice's allegations or required actions.
8. Section 176(5) of the Town and Country Planning Act 1990 identifies that the failure to serve the enforcement notice on a required party does not invalidate the enforcement action, provided that no substantial prejudice occurs to the appellant or the unserved party. Since the Notice does not impose any requirements affecting the neighbours' garages, their lack of service or opportunity to appeal has not resulted in any injustice.
9. Therefore, I conclude that the current plan can remain unchanged and does not make the Notice invalid. The error in the plan does not result in uncertainty, and neither the appellants nor the neighbours who own the garages have been caused any injustice.

Blue Line Denoting Fence

10. As indicated, the appellant also contends that the blue line does not cover the entire length of the newly erected fence, omitting approximately 8 metres at the northwestern end. The Council maintains in its statement that the blue line encompasses the entire fence, which does not extend to the vehicle access point. However, for clarity it confirms that the length of the fence to be removed from the site, or reduced in height, is as shown in blue on the plan attached to the Notice.
11. After my site inspection, I came to the conclusion that the fence does not reach the vehicle access point but it excludes a length of the newly erected fence on the

² Bracken v East Hertfordshire District Council (2000) and Wiesenfeld v Secretary of State (1992)

northwestern end, as indicated by the appellant. Consequently, in my judgement, the Notice does not necessitate the removal of the entirely new fence structure I viewed at the site situated along the boundary with the road. I communicated this to both parties and suggested that if the Council intended for the entire fence to be removed, the Notice would need correction and variation to include it, which could lead to injustice to the appellant.

12. The Council responded to indicate that no changes are needed and that they were satisfied the appeal could proceed based on the current allegation and requirements set out in the Notice. The appellant states that as an 8-metre section is not captured by the blue line, the Council have accepted it is lawful or immune, and correcting and varying the Notice to include the omitted section would result in injustice to the appellant. The Council, while reiterating its stance, states that it does not agree with the appellant's position.
13. I have had regard to the matters raised, and based on my site observations, I agree that part of the fence erected to the northwestern end is not captured by the allegation in the Notice and its requirements. However, a Notice does not need to target the entire development, and the omission of part of the fence from the Notice does not necessarily mean this section is lawful or immune. It is simply the case that the length of the fence highlighted by the appellant and omitted from the allegation is not part of the matters alleged. Consequently, I cannot consider it part of the appeal, as my jurisdiction extends only to the matters alleged as part of the Notice.
14. With the above in mind, the blue line on the attached scaled plan clearly delineates the section of the fence that is alleged to be in breach and is required to be removed. This specificity ensures that the Notice is clear regarding both the alleged breach and the actions required for remedying it. While it is acknowledged that a portion of the fence is not included in the plan, the allegation remains unambiguous concerning the section in question and what must be removed to comply with the requirements. Therefore, the Notice and the accompanying plan fulfil the requirements set out in section 173(1)(a) of the 1990 Act by detailing 'the matters constituting the breach of planning control' and the necessary steps for remedy.
15. Moreover, the Notice is not misleading; as a reasonable recipient can definitively ascertain the nature of the alleged development and the subsequent actions required. The omission of part of the length does not prejudice the appellant in understanding or responding to the allegation as framed. As such, the Notice is not invalid for this reason, and it is not necessary to correct the allegation and vary the requirements to address the omission of part of the fence highlighted by the appellant.
16. For completeness, I should note that aside from the above issues, the appellants have not produced any other evidence to show that the fence, as identified in blue on the attached plan, has not occurred as a matter of fact. From what I saw on site, the fence erected in the location shown in blue on the attached plan amounts to a building operation and constitutes 'development' having regard to the definition set out in section 55 of the 1990 Act³. Accordingly, I am of the view that the development had occurred as a matter of fact.
17. Therefore, the appeals on ground (b) fail.

³ Section 55 of the 1990 Act defines 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land

The Appeals on Ground (c)

18. In an appeal on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the Notice, which give rise to the alleged breach of planning control, did not constitute a breach of planning control.
19. Section 57(1) of the 1990 Act makes clear that, subject to certain provisions, planning permission is required for the carrying out of any development of land. There is no evidence of any planning permission having been granted for the fence under section 58 of the 1990 Act. However, certain developments are granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). Schedule 2, Part 2, Class A of the Order sets out that the erection, construction, maintenance, improvement or other alteration of a gate, fence, wall or other means of enclosure is permitted development.
20. Schedule 2, Part 2, Class A of the Order is subject to the limitations in paragraph A.1. Limitation A.1(a)(ii) is that development is not permitted by Schedule 2, Part 2, Class A of the Order if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would exceed 1m above ground level. Limitation A.1(b) is that development is not permitted by the Class if the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2m above ground level.
21. The main dispute between the parties is whether the fence has been erected adjacent to a highway used by vehicular traffic and exceeds 1m. It is not disputed by the Council that the fence exceeds 2m, and this accords with my general observations on my site visit. It should be clarified that, in line with what I saw on site, my assessment of this matter relates specifically to the fence shown by the blue line, and I have not considered the part of the fence omitted from its length on the northwestern end.
22. The property sits on a plot on a slight curve in the highway, and the fence encloses the garden and part of the driveway area. The road is a highway used by vehicular traffic; it has no footways but includes a grassed bank on the appeal site side. The appeal site, in the main, sits at an elevated level, approximately 1-1.5m above the road. The appellant contends that the bank is adjacent to the highway, which is not part of his property. As such, the fence is set back from, and therefore, not adjacent to, the highway used by vehicle traffic.
23. The word adjacent is not defined in the Order. Its common dictionary definition is 'Next to or very near something else; neighbouring; bordering, contiguous; adjoining.'⁴ Determining what constitutes 'adjacent' is, therefore, subjective, as it could be defining something that is near, close or bordering, adjoining or abutting something else. The determination of whether something is adjacent is therefore a question of fact and degree.
24. The appellant has indicated that the fence is at least 1.6m from the edge of the highway, and in some places more than 2m. A photograph has been included to illustrate this, but it is not annotated, and I have no accompanying scaled plan to indicate what locations are set back these distances. Nevertheless, I saw on my site visit that the fence sits at an elevated position on top of the bank, and it is the slope of the banking that forms the setback described by the appellant. Based on my

⁴ Oxford English Dictionary- oed.com

observations, the setback appears to be greater towards the northwest of the curved boundary and gets closer and steeper further to the southeast or rear of the plot.

25. While the slope of the bank does create a setback of some form, the steepness of the bank toward the rear section is significant. This steep configuration, combined with the location of the fence at the edge of the bank and its proximity to the highway is such that, in my judgement, it is adjacent to it. As it exceeds 1m in height, it would fail to meet the limitation under A.1(a)(ii). Even if I were to conclude that the greater parts of the setback were sufficient to take it outside the scope of being adjacent, the part of the fence where it is closer accounts for a large proportion of the alleged fence. The fence forms one means of enclosure erected in a single operation, and thus, any part of that which is adjacent to the highway would take the whole of the means of enclosure outside the limitations under A.1(a)(ii).
26. The appellant has also indicated that the fence does not cause any obstruction to persons using the highway. Although I acknowledge that the fence does not appear to impede the safety of the highway, this is not material to my consideration when determining whether the fence is permitted by the Order.
27. Consequently, I find that the development subject of the Notice does not constitute development permitted by Schedule 2, Part 2, Class A of the Order. It is not, therefore, permitted by virtue of Article 3 of the Order, and the development alleged amounts to a breach of planning control.
28. For these reasons, the appeals on ground (c) should not succeed.

The Appeals on Ground (g)

29. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within two months of the Notice taking effect.
30. The appellant contends that additional time is required, due to the appellant's not being able to complete the works themselves. The appellants would, therefore, need to hire a contractor to undertake the work. The appellant requests an additional 10 months, extending the compliance period to twelve months.
31. Having regard to the works that are required and the difficulties the appellants would have to undertake the work themselves, I consider that a period longer than two months can be justified. Furthermore, as the appellant has the option of removing the fence in its entirety or lowering the fence to a permitted 1m height, the works to lower the fence may take longer to complete. However, a twelve-month period to undertake these works is excessive and would prolong the harm identified. On this basis, I consider that a period of six months for the appellant to comply with the Notice would be reasonable. This time frame would strike an appropriate balance between having to complete the works to comply with the Notice and the harm identified.
32. Accordingly, the appeals on ground (g) succeed to this limited extent, and I shall vary the Notice accordingly.

Conclusion

33. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decisions

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Appeal B Ref: APP/Y1138/C/24/3340214

34. It is directed that the enforcement notice varied by:

In paragraph 6, specifying the time for compliance, the deletion of the number '2' and its substitution with the number '6'.

35. Subject to the variation, the appeals are dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR