
Appeal Decision

Site visit made on 11 March 2026

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th March 2026

Appeal Ref: APP/X1165/C/24/3342921

78 Osney Crescent, Paignton, Devon TQ4 5EZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Karl Wolf against an enforcement notice issued by Torbay Council.
- The notice was issued on 13 March 2024.
- The breach of planning control as alleged in the notice is:
Without planning permission, the erection of a means of enclosure adjacent to a highway used by vehicular traffic in excess of 1.0 meter in height above ground level, in the approximate location identified by a blue line on the attached plan titled "Map 2".

- The requirements of the notice are to:

- (i) *Reduce the timber fence sited in the approximate location shown by a blue line on the attached plan titled "Map 2" to no more than 1.0 meter in height when measured from the ground level directly adjacent to it.*

Alternatively, remove the timber fence in the approximate location identified by a blue line on the attached plan titled "Map 2" in its entirety.

- (ii) *Remove all resulting debris generated as a result of any remedial works set out in point (i) of this section in its entirety from the Land.*

- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Procedural Matter

1. It is common ground that the fence has been reduced in height since it was erected. However, it is a matter of dispute whether the alterations took place before or after the Enforcement Notice was issued. Whether it was expedient for the Council to issue the Notice is a matter for them. Nevertheless, the question is whether the matters that constitute the breach of planning control took place, not whether they were extant at the date the Notice was issued. It appears the appellant accepts that the development had taken place. Consequently, my consideration of the appeal relates to the fence subject of the Notice, rather than after it had been reduced in height and as I saw it at my site visit.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

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

Reasons

3. The appeal site lies in a residential area comprising largely of substantial houses set back from the road behind low stone boundary walls. The sloping nature of the locality means that some of these walls retain gardens at a higher level, whereas others enclose lower gardens. Some of the walls are topped with vegetation, or are surmounted by fences and trellises. Overall, however, whilst the gardens are enclosed, the boundary treatments are generally low enough that they do not dominate the street scene, and the planting behind is readily visible. Consequently, the area has a mature, well-landscaped appearance and a spacious, suburban character.
4. The site itself comprises a detached house that occupies a prominent and elevated position at the junction of Osney Crescent and Clennon Summit. It has a long road frontage that curves around the corner, and is defined by a stone wall, which retains the front garden approximately a metre above the adjacent pavement level. The evidence indicates that, prior to the erection of the fence, the wall was topped by a substantial evergreen hedge along its entire length.
5. The fence that is the subject of the Notice was of a considerable height in its own right. However, as the garden is at a higher level than the road, its overall height in relation to the adjacent pavement was greater still. Being located directly behind the wall, the fence was, and is, very close to the footpath, and its overall height made it a dominant feature in the street scene that was out of character with the relatively low boundary treatments in the area. Notwithstanding that the boards are offset, in most views the fence has a solid, urban appearance, which is at odds with the lower, more perforate, or greener boundary treatments which give the surrounding area its open, suburban character.
6. The garden was previously enclosed by a substantial hedge, but that form of boundary treatment is not uncharacteristic of the prevailing well-landscaped nature of the area. By contrast the fence had a stark appearance, which did not integrate well into its surroundings. Its extensive length, elevated position, and prominent corner location meant that it was a particularly intrusive and discordant feature in the street scene, resulting in harm to its character and appearance.
7. I acknowledge that there are other fences in the immediate area. 76 Osney Crescent, on the opposite side of the junction, has a trellis behind the stone boundary wall to a height exceeding two metres. However, it does not have the same stark appearance, as it is transparent, and foliage has pushed through the gaps, making it visually recessive. There are close-boarded fences on the frontages of 1 and 2 Clennon Summit, immediately to the southwest, which are unrelieved by any planting. However, these are of much shorter length and do not reach the same overall height adjacent to the pavement as the fence that was the subject of the Notice. Consequently, their impact on the visual appearance of the area is much more limited.
8. The appellant has also sought to draw my attention to boundary treatments in the wider area. However, I was unable to see any high frontage fences at 15 or 21 Clennon Rise, 3 Clennon Gardens, or at 3 or 24 Osney Crescent. I did, though, see the vertical timber fence at 34 Osney Crescent and the horizontally boarded fence above a retaining wall at 19 Osney Crescent. Although neither of these are directly comparable to the fence that was subject of the Notice, I acknowledge that

they are examples of fences that do not accord with the prevailing character of the area. I have little evidence, however, regarding whether planning permission was granted for them. Furthermore, they are some distance from the appeal site, so I ascribe little weight to them in my decision. Nonetheless, in searching out these examples, I walked a considerable area in the environs of the site, and saw no other fences that closely resembled the one which was subject of the Notice in terms of design, extent, height, and prominence.

9. The fence that was subject of the Enforcement Notice did not, therefore, integrate well with the existing street scene and was out of keeping with its surroundings, resulting in harm to the character and appearance of the area. Consequently, it was in conflict with Policy DE1 of the Torbay Local Plan 2012-2030 (Adopted December 2015), and Policy PNP 1(c) of the Paignton Neighbourhood Plan 2012-2030 (Adopted December 2015). These policies seek to ensure that development respects the character of the built environment and strengthens local identity.
10. I am mindful that the fence has been reduced in height, and that some vegetation has grown up, softening its appearance to a degree. However, my consideration of the appeal must be based on the development that was the subject of the Notice. I have considered whether a planning condition requiring a scheme of landscaping could have overcome the harm that I have identified. However, there is insufficient space between the wall and the fence to allow the establishment of an effective planting screen.

Other Matters

11. I recognise that the front garden area is the primary outdoor amenity space for the occupants, as the side/rear gardens are restricted, and that the fence was erected to provide privacy following the removal of the hedge. A reduction in the height of the fence to one metre would reduce its effectiveness in this regard. Nevertheless, in combination with the stone wall, the boundary treatment would still be of a considerable height. Furthermore, I am not convinced that privacy could not be achieved in an alternative manner, such as hedge planting behind a lower fence, or setting the fence back to allow for a meaningful planting scheme in front of it. In either of these ways, a similar level of privacy could be achieved without the same harmful impact on the character and appearance of the area.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Formal Decision

13. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nick Davies

INSPECTOR