



Appeal Decision

Site visit made on 14 April 2026

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 APRIL 2026

Appeal Ref: APP/A0665/C/25/3375569

Land at Rushmere Lodge, Beauty Bank, Whitegate, Winsford, Cheshire, CW8 2BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Gary Barker against an enforcement notice issued by Cheshire West and Chester Council.
 - The notice was issued on 7 October 2025.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a 1.8m high fence adjacent to Dalefords Lane, Whitegate, Winsford, Cheshire, CW8 2BP.
 - The requirements of the notice are to 1) remove the section of fencing between the points marked 'A' to 'B' on the attached plan or 2) reduce the overall height of the fencing between the points marked 'A' and 'B' on the attached plan to a maximum height of not more than 1 metre when measured from normal ground level so that it would be comparable with current permitted development provisions under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
 - The period for compliance with the requirements is 3 calendar months from the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 (as amended) (the Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. While the appellant did not plead ground (f) of section 174(2) of the Act in his appeal form, he did nonetheless make such an appeal in his statement of case and as part of his final comments. The Council has responded to a ground (f) appeal. I have therefore determined this appeal based on the appeal proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Act.

Ground (d) appeal

3. The appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
4. The appellant makes the claim that the feather board fence between points 'A' and 'B' on the plan attached to the notice and adjacent to Dalefords Lane was constructed in September 2021. For the feather board fence to be immune from enforcement action under section 171B of the Act, it would have needed to have been substantially completed for four years prior to the notice being issued.

5. The evidence in the form of the Council's submitted Google Street View image dated November 2021, as well as the Council's photograph (appendix B of the Council's statement of case) which was indexed to the case file on 19 October 2021, collectively cast doubt about the appellant's claim that the appeal fence was in place in September 2021. In respect of the four-year immunity period, this runs from the date of substantial completion. In this context, it is also noteworthy that as part of the final comments the appellant states that '*works commenced on the new fenceline in September 2021*' (my emphasis).
6. The onus is on the appellant to demonstrate that the feather board fence has been in situ for four years. The appellant has not provided precise and unambiguous evidence to demonstrate that the feather board fence was substantially completed for four years prior to the notice being issued. The notice was issued on 7 October 2025 and, on the balance of probability, the evidence from the Council casts sufficient doubt about the fence being substantially completed in September 2021. In fact, the evidence indicates, on the balance of probability, that the fence was substantially completed sometime after November 2021. Hence, an immunity period of four years before the notice was issued cannot be claimed.
7. I therefore conclude, on the balance of probability, that the ground (d) appeal fails.

Ground (f) appeal

8. The appeal on 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 or to remedy any injury to amenity which has been caused by any such a breach.
9. The appellant makes the claim that the requirements of the notice are excessive in so far that historically there was a wooden fence in a similar position and it ranged between 1.4 and 1.6 metres in height. Both the Council's and appellant's evidence demonstrate that such a fence was removed several years ago and that prior to the breach of planning control occurring there was a brick wall (with wooden infill posts between the piers) on the land. The appellant has not submitted a ground (b) appeal but, for the avoidance of doubt, the evidence before me demonstrates, as a matter of fact and degree, that a new fence has been erected on the land. The appellant makes the claim that original foundations have been used, but such a claim is not supported with precise and unambiguous evidence. Even if that were proven, on the balance of probability, the visual evidence before me demonstrates, as a matter of fact and degree, that the appeal development comprises the erection of a new fence on the land.
10. The purpose of the notice is to either remedy the breach of planning control by removing the fencing in its entirety, or to remedy the injury caused to amenity by reducing it in height to no more than one metre above ground level. The latter requirement reflects national permitted development rights in Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as a fallback position. The requirements of the notice are not excessive as they either seek to remedy the breach of planning control, or to remedy the injury to amenity which has been caused by the breach. The appellant's evidence does not support a claim that there is a lawful fallback position relating to the erection of a fence at 1.4 metres in height above ground level.

11. I therefore conclude that the ground (f) appeal fails.

Ground (g) appeal

12. The appeal on ground (g) is made on the basis that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
13. The appellant considers that owing to the length of the fence, and the alleged need to complete the required steps on a phased basis, a period of nine months rather than three months is necessary.
14. On the evidence that is before me, I do not find that a period of more than three months would be necessary to ensure compliance with the steps required in the notice. A period of three months strikes a reasonable and proportionate balance between ensuring the removal of the fence, or its reduction in height to no more than one metre above ground level, in the public interest and considering the planning harm that is identified in the reasons for issuing the notice. In this regard, a period of three months affords the appellant a reasonable amount of time to source a contractor and to carry out the necessary work.
15. I therefore conclude that the ground (g) appeal fails.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

D Hartley

INSPECTOR