
Appeal Decision

Site visit made on 26 March 2026

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st April 2026

Appeal Ref: APP/U1430/C/25/3368024

Land at 2 Marlowe Road, Herringthorpe, Rotherham, S65 2JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Miss Arielle Moshkovitz against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The notice was issued on 22 May 2025.
 - The breach of planning control as alleged in the notice is: without the required planning permission, the erection of fencing, posts and gates over 1m in height adjacent to the highway.
 - The requirements of the notice are to demolish the fencing, posts and gates and remove all materials used in its construction permanently from the site.
 - The period for compliance with the requirement is: within 3 months from the date that the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
-

Summary Decision: The appeal succeeds in part only. The appeal is otherwise dismissed, and the enforcement notice is upheld subject to the variations set out below in the Formal Decision.

The Enforcement Notice

1. I note that there are minor discrepancies between paragraph 4 of the notice and the council's statement, in relation to previous application number references and the date of a previous appeal decision relating to this site. I am however satisfied that this has not affected the appellant's understanding of the notice and the requirements to comply with it. Accordingly, no purpose would be served by correcting the notice in this respect.
2. The requirement at paragraph 5 of the notice includes the word 'permanently.' This is unnecessary having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice. I shall therefore vary the notice by deleting this word.

Procedural Matters

3. The appellant has advanced various arguments as to why the development should be granted planning permission in its existing form having regard to the presence of other boundary treatments in the area and her personal circumstances for requiring the high gates and fencing. I am also in receipt of a letter of support from an immediate neighbour on similar grounds.
4. However, as an appeal has not been made on ground (a), which is that planning permission ought to be granted, these are not matters that I can take into account. Furthermore, I note that a retrospective application for planning permission (Ref. RB2023/1034) has previously been refused by the Council and dismissed on appeal (Ref. APP/P4415/D/23/3333993).

The appeal on ground (f)

5. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary to either (a) remedy the breach of planning control or (b) remedy any injury to amenity which has been caused by the breach.
6. Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development, subject to the limitations at Class A.1. One of the limitations at Class A.1 is that development is not permitted by Class A if the height of the gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway would exceed one metre above ground level.
7. In this case the breach of planning control has occurred due to the development exceeding one metre in height adjacent to the highway. As the requirements of the notice are to demolish the fencing, posts and gates adjacent to the highway, it is clear that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place.
8. Although no lesser steps to overcome the Council's concerns regarding the effect of the development on the character and appearance of the area have been suggested by the appellant, if there is an obvious alternative that would overcome the breach, at lesser cost and disruption than total demolition, then I must consider it. An obvious alternative solution would be to require the fencing, posts and gates adjacent to the highway, to be reduced in height to a maximum of one metre, in line with the provisions of the GPDO.
9. Whilst I acknowledge that the appellant states one metre high fencing and gates would not be sufficient, it offers an alternative to its total removal. It would be open to the appellant to plant hedging inside of the fencing to increase privacy if desired, without causing obstruction to the footpath. Without prejudice to any decision the Council may make, it is also open to the appellant to apply for planning permission for an alternative form of boundary treatment exceeding one metre in height adjacent to the highway, which may reuse some of the existing materials, or to explore other options not requiring planning permission.
10. I therefore conclude that the appeal on ground (f) succeeds in part, and I shall vary the notice accordingly.

Formal Decision

11. It is directed that the enforcement notice is varied by deleting the word 'permanently' from paragraph 5, and inserting the words "or reducing the fencing, posts and gates (as shown as a blue line on the plan attached at paragraph 3 of the notice) to no more than one metre in height adjacent to the highway".
12. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

R Bartlett

INSPECTOR