



Appeal Decisions

Site visit made on 8 April 2026

by Grahame J Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2026

Appeal A Ref: APP/J4423/C/25/3371518 245 Ecclesall Road, Sheffield S11 8JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Bank Park Management Limited against an enforcement notice (EN1) issued by Sheffield City Council.
- The notice was issued on 23 July 2025.
- The breach of planning control as alleged in the notice is: without planning permission, the change of use of the Land for the use as a car park for use by motor vehicles at the site of 245 Ecclesall Road, Sheffield, S11 8JE.
- The requirements of the notice are:
 - i. Cease the use of the Land as a car park.
 - ii. Remove from the Land all motor vehicles.
 - iii. Clear from the Land all signage, banners and any other equipment and machinery associated with the use of the Land as a car park.
- The period for compliance with the requirements is: 1 month from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.

Decision:

It is directed that the enforcement notice is varied by the substitution of “9 months” for “1 month” in the period for compliance. Subject to the variation, Appeal A 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.

Appeal B Ref: APP/J4423/C/25/3373824 Appeal C Ref: APP/J4423/C/25/3374235 245 Ecclesall Road, Sheffield S11 8JE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal B is made against an enforcement notice (EN2) issued by Sheffield City Council.
- Appeal C is made against an enforcement notice (EN3) issued by Sheffield City Council.
- Appeal B is made by Bank Park Management Limited
- Appeal C is made by Navmaf Limited
- The notice was issued on 3 September 2025.
- The breach of planning control as alleged in EN2 and EN3 is: without planning permission, the erection of fencing and gates at Express Hand Car Wash, 245 Ecclesall Road, Sheffield, S11 8JE along the boundaries to the Land shown edged blue on the respectively attached plans.
- The requirements of both notices are:
 - i Remove the fencing and gates from the Land (as shown edged blue on the plan hereto and indicated in red on the attached photos in appendix 1).
 - ii Remove any waste materials arising from compliance with paragraph 5(i), above from the Land.
- The period for compliance with the requirements is: 1 month from the date the notices take effect.

- Appeal B is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) 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.
- Appeal C is proceeding on the grounds set out in section 174(2)(a), (e), (f), (g) 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.

Decisions:

Appeal B is allowed and the enforcement notice is quashed.

Appeal C is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of fencing and gates at Express Hand Car Wash, 245 Ecclesall Road, Sheffield, S11 8JE as shown on the plan attached to the notice.

Preliminary matters

1. EN1 is issued in respect of a site with an area of approximately 0.35 ha, targeting its use as a car park. EN2 is issued in respect of the same site as EN1 but targeting the erection of fencing and gates along its northern boundary. Appeals A and B are made by Bank Park Management Limited who occupy the site and operate the car park.
2. EN3 is issued in respect of a smaller area adjacent to that covered by EN1 and EN2, namely an area of approximately 640sqm, used as a car wash. It targets the erection of fencing along the northern boundary of the site (adjacent to the fencing targeted in EN2). Appeal C is made by Navmaf Limited, the site owner. Navmaf are also owners of the land to the south and west¹, ie the car park.

Appeal A

3. An application for costs has been made by the appellant against the Council. This application is the subject of a separate decision.

Validity of notice

4. The reasons for expediency refer to incorrect paragraphs of the National Planning Policy Framework (NPPF). I am asked to consider whether the notice should be quashed because of this. The professionally advised appellant does not complain about being misled. All parties became aware of the revised numbering. The Council's statutory duty to give adequate reasons for issuing the notice, has been adequately discharged. The notice is valid.

Ground (a)

The deemed application and alternative proposal(s)

5. Clearly, the allegation is not referable to a breach of condition of a temporary permission, and the deemed application is not for a temporary use, although the parties view it as such. In its preliminary appeal submissions the appellant, whilst asserting (incorrectly) that the lifespan of the car park use will be determined by the owner and the redevelopment (it will not, it will also be determined by this appeal), suggests that I could grant permission for a 3-year period since the use "*is likely to have ceased before the permission expires*". In the subsequent, full

¹ See Appeal C, Grounds of Appeal, paragraph 5.1.2

appeal submission it was said that the ground (a) appeal could result in a temporary planning permission “*for, say, 2 years*” with no mention of a 3-year period. Despite the ambiguity, no lesser period is advocated for than 2 years.

Development plan policies

6. Four relevant development plan policies are cited in the reasons for issue. None is stated in the notice as linked to any specific reason. The appellant complains that several other policies are referred to in the Council’s statement. The Council maintained that these additional policies are “*simply supplementing grounds of harm already quoted in the notice.*” Accordingly, I will focus firstly on the policies cited in the enforcement notice, insofar as they are relevant to the alleged harm described in the notice. They are as follows.
7. The Council’s Unitary Development Plan 1998 (UDP) Policy IB9 lists various criteria for development in Industry and Business Areas (IBA) including that it seeks well-designed buildings and storage appropriate to the site.
8. UDP Policy BE9 lists criteria aimed at securing in new development, a safe, efficient and environmentally acceptable site layout for vehicles and pedestrians.
9. The Council’s Core Strategy 2009 (CS), Policy CS66 appears to seek to protect air quality in all areas of the city. The policy wording is not prescriptive. The supporting text suggests that applications for uses that cause “significant amounts of traffic” might not be granted.
10. CS Policy CS74 aims to secure development that respects the townscape character of the area with its associated scale, layout and built form, building styles and materials.

Emerging draft local plan and planning permission for a mixed scheme including housing

11. There is a draft local plan. Emerging policy AS1 (Development on Allocated Sites) looks to ensure that the specific use allocated for a site is delivered on an acceptable proportion of the site area. Whilst this policy has limited weight, AS1 demonstrate the emerging plan’s ambitions for allocated sites to be brought forward in accordance with their allocation to ensure that the city’s needs – in this case for housing – are met. The appeal site is allocated for housing in the form of 184 homes (Policy allocation SWS03).
12. An extant planning permission provided, among other things for 184 housing units but is understood to have been varied under s73 by a fresh planning permission Ref 25/02616/FUL (formerly PP14285959) dated 30 January 2026. It also is regarded by the parties as having been lawfully implemented. The Council is working positively with the owner to progress its implementation. There is at least a possibility of this alternative use of the site eventuating in the foreseeable future. Therefore, the alternative housing scheme is a material consideration.

Materiality of an alternative use

13. It was established in *Stringer*² that any consideration which relates to the use and development of land is capable of being a planning consideration and whether a

² *Stringer v MHLG* [1970] 1 WLR 1281

particular consideration is material in any given case will depend on the circumstances.

14. There are established principles, the “Mount Cook” principles³ relating to the materiality of an alternative use. These are:
 - (1) *a landowner may do what they like with their land if an acceptable use in planning terms;*
 - (2) *there may be a number of acceptable alternative uses;*
 - (3) *whether a proposed use is acceptable depends on whether it would cause planning harm judged according to any relevant planning policies;*
 - (4) *absent conflict with planning policy or other planning harm, the relative advantages of alternative uses on the site are normally irrelevant in planning terms;*
 - (5) *where an application proposal does not conflict with policy, and otherwise involves no planning harm, alternative proposals would normally be irrelevant; and*
 - (6) *even where, in exceptional circumstances, alternative proposals might be relevant, inchoate or vague schemes or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight.*
15. As to weight, this was held in Mount Cook to be:

“essentially a matter of “planning judgment”. But the court should not be shy in an appropriate case of concluding that it would have been irrational of a decision-maker to have had regard to an alternative proposal as a material consideration or that, even if possibly he should have done so, to have given it any or any sufficient weight so as to defeat the application proposal” (paragraph 33)”

Main issues

16. The main issues are:
 - whether a car park use is acceptable in this location having regard to local and national planning policies that promote sustainable transport;
 - the effect of the development on the character and appearance of the area including highway safety; and
 - if the development is otherwise acceptable in planning terms whether, having regard to the alternative housing scheme, the unauthorised use should be refused as conflicting with local or national planning policy or other material considerations.

Whether use acceptable having regard to sustainable transport matters

17. The first reason for issuing the notice, as stated therein, is that the car park would serve an area of the city readily accessible by sustainable transport options, i.e. active or public transport, and would be at odds with the pursuit of modal shift which underpins national and emerging sustainable transport planning policies, as well as environmental and human health concerns around air quality.
18. On 8 November 2024 permission was refused to continue use of the site as a car park for two years, citing conflict with the promotion of sustainable transport options, modal shift choice and undermining air quality management strategies.

³ R. (On the application of Mount Cook and Ltd) v Westminster CC [2003] EWCA Civ 1346; [2004] 2 P. & C.R. 22

19. However, the Council states that in UDP spatial policy terms, the car park is an acceptable use of land. I see no reason to disagree. The site is in a Fringe Industry and Business Area to which UDP Policy IB6 applies, listing car parks as an acceptable use of land in such areas.
20. Much of the Council's statement alludes to several policies introduced after the issue of the notice, highlighting the lack of positive support given by them to the unauthorised use, or discounting their importance in light of what is said to be the NPPF's more focussed approach to modal shift and sustainable transport options (for example in relation to CS Policy 53), rather than highlighting a policy with a robust and clear rationale for rejecting a car park use on the appeal site.
21. The current use is at odds with the pursuit of modal shift away from car use only in the most generalised sense. Policy CS53 aims not to stifle demand for necessary car travel but to manage it so that it becomes more sustainable. I also note that from monitoring information, the appellant concludes, which is not disputed, that the car park users are visiting local businesses or using the car park to continue their journey to the city centre using public transport. The approved scheme and pending schemes both propose more parking spaces than the existing car park accommodates. I have considered Chapter 10 of the CS as a whole (Enabling People and Goods to Move Conveniently and by Sustainable Forms of Transport), in which Policy CS53 and other parking related policies sit. I find nothing therein that offers a compelling reason to reject the current use on grounds that it does not, or does not sufficiently, promote sustainable transport.
22. As regards air quality management, the Council's case is that the car park is "*in such close proximity to places and facilities accessible by less polluting means*" that it is at odds with Policy CS66. Historically, motor vehicles have caused air pollution. Emission controls are now more stringent. The appellant supplied statistical evidence to demonstrate the dramatic increase in EV cars in recent years, also pointing out that the approved redevelopment scheme itself shows 113 on-site parking spaces. I note the current level of EV ownership and likely increase over time. I see nothing to suggest that this car park would have a significant effect on air quality over and above other car parks, the air quality management strategies are neither explained nor applied to the circumstance of this appeal. The Clean Air Zone (CAZ) is cited but then the Council states that this does not apply to privately owned cars.
23. I conclude that insufficient evidence is supplied to persuade me that the car park use directly conflicts with Policy CS66, Policy CS53 or the other policies cited in the notice.

Character and appearance

24. Character and appearance are matters cited in the reasons for issue. Appearance can be described as the outward visible qualities and character as the sum of all the qualities which distinguish an area. The Council does not refer to character at all in its statement.
25. The appellant company occupies the appeal site, an area of c0.35-40 ha. It is used as a car park for some 86 spaces. The site has a very wide frontage of c65m to the south of Ecclesall Road, between Pear Street and Pomona Street. An open-air car wash and garage lie to the east. Vehicular access is from Pomona Street. The

steel palisade fence across the Ecclesall Road frontage and part of the Pear Street boundary is subject to Appeals B and C, following separate enforcement action.

26. The length of the frontage is significant and is by a major road in the city. Due to its location so close to the city centre and just beyond the edge of a district centre, this part of Ecclesall Road has substantial foot traffic and many people passing in cars or on public transport. The palisade fence is a very dominant feature.
27. Under its sub-heading for street scene, landscaping and visual amenity, the Council's statement notes that the palisade fence is not part of this appeal but even if the fence were removed or granted consent, the general appearance of the site, visible through the fence, is poor with dilapidated and partially demolished structures and a mismatch of surface materials. I agree. However, pending redevelopment these conditions may be more acceptable in the short term.
28. If the appeal were allowed the Council states it would effectively accept and legitimise the ongoing use and delay redevelopment of *"a very unattractive site, in a highly visible location for a period of five and a half years."* It is unclear exactly how the Council computes this period, but in any event, if the current use were otherwise acceptable in overall planning terms, I see no reason why a condition should not be attached to an eventual permission to provide for a site development scheme, commensurate with the period of use granted, that would improve the overall condition and layout of the parking area. I am satisfied that such a condition would ensure that the development would not be at odds with the intentions of policies that aim for good design and the NPPF's pursuit of attractive places.
29. An objector is concerned at the lack of disabled parking places and electric charging points. The appellant points out, correctly in my view, that if the appeal were allowed a condition could require disabled parking spaces to be marked out but then adds that *"a temporary permission would make the provision of EV charging unrealistic"*. In fact, the appellant focuses exclusively in his appeal on a temporary grant of permission and does not advocate for the permanent deemed application to be granted. Clearly in my view the appellant tenant does not wish to incur what they see as unrealistic costs in any event. However that would not prevent me from attaching such a condition to a temporary permission of appropriate length of say, the two or three years suggested.
30. The Council is concerned that the single means of access of limited width, mainly unmade internally, has limited lining to denote parking spaces and aisles and no clear delineation of a safe pedestrian route through the site. I saw that the internal signage could be improved as could the hard surfaces, however it is unclear what harm exists to highway users including in terms of inadequate visibility or conditions at the access. I am satisfied that the development is not prejudicial to highway safety in terms of the risk of accidents associated with vehicles accessing, egressing from and manoeuvring in the site. If the car park use ceases and the palisade fencing is removed it is said the site could attract fly tippers, illegal camping and unauthorised car parking. However, a suitable condition might effectively mitigate these matters if considered necessary.
31. I conclude that with appropriate conditions attached, there would be no conflict with Policy IB9 or BE9.

Whether unauthorised use should be refused as conflicting with local or national planning policy or other material considerations.

32. Various appeal decisions are cited⁴ to support the argument that continued use as a car park might not hinder redevelopment. Decisions 3343163 and 3343166 were issued in 2015, concerned a different local planning authority and planning circumstances. The car park benefitted from a series of temporary permissions, not the case here, and there was no current approved alternative scheme. Decision 3318899 was issued in 2024, also concerned a different local planning authority and planning circumstances. The site was financially unviable at that time, and there was no alternative scheme currently waiting to be delivered.
33. Decision 3205946 was issued in 2019. It too concerned a different local planning authority and planning circumstances. In that case there was an extant permission granted in 2013, parts of Phase 2 of the site were granted approval in 2018 and the site formed part of a further outline application for up to 180 dwellings that was subject to a resolution to grant subject to a s106 obligation. The proposal was for a temporary period of 1 year only and negotiations for the sale of the land for its future regeneration were continuing. Although this latter decision appears the more relevant to consider, permission was only granted pending *“longer term regeneration plans coming forward”*. I am satisfied that the decisions cited support the general principle only, ie that continued use as a car park might not hinder redevelopment, but the circumstances of the individual cases are materially different from those that obtain in the current appeal.
34. Here, the refusal in 2024 of the previous application to continue temporary use of the car park included the reason that such use would *“disincentivise the future permanent redevelopment of the site, and is not considered to constitute an effective use of the land...in conflict with National Planning Policy Framework Paragraph 123.”*
35. NPPF policy is to boost the supply of housing and promote sustainable brownfield development opportunities. Paragraph 123 is now paragraph 124 in the current NPPF. It states so far as relevant: *“planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.”*
36. Although a *hypothetical* alternative use of a site is not a material consideration, and the appellant points out that in the approved amended permission the number of residential units will be less than previously approved, there is now a fully worked up alternative scheme that has been granted planning permission and in respect of which the Council is working with the site owner to progress its implementation.
37. Paragraph 125 d) also advises that decisions should:
“promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example ... building on...car parks).”
38. The draft plan has not reached examination stage and has very little weight, including draft Policy SWS03. The site is not allocated for residential development in the adopted plan and the permission for residential development was a

⁴ APP/R3515/W/23/3318899, APP/V1260/C/24/3343163 / APP/V1260/W/24/3343166 and APP/C1055/W/18/3205946.

departure from the adopted plan. However, this draft policy, and Policy AS1 does demonstrate the emerging plan's ambitions for allocated sites to be bought forward in accordance with their allocation to ensure that the city's housing needs are met. The appellant does not dispute the housing needs articulated by the Council.

39. The issue here is whether there are exceptional circumstances, where alternative proposals are relevant and not inchoate or vague or unlikely or have no real possibility of, coming about, that should be given weight. In this particular case, the site has had planning permission for redevelopment for nearly 10 years but there is now an approved scheme (submitted by the owners of the site) that has in fact been implemented on the site. The Council and the appellant both point to the discharge of the time related condition on the original scheme which stated:

"Details have been submitted which show that hoardings have been erected on site, demolition has taken place of the existing buildings on site, and the first footings have been put in."

40. It is not disputed that the subsequent s73 application reference 25/02616/FUL, approved on 30 January 2026, has been taken to be implemented. The parties agree that an active start on site has been made, and the development has commenced. Clearly the existence of the car park will at some point conflict with due progress of the building operations under this permission.
41. Although the policies in the draft plan are not yet part of the adopted development plan, the Council cannot currently demonstrate sufficient housing land supply, and consequently all planning decisions relating to the provision of housing are currently taken in the context of the so-called tilted balance introduced by the paragraph 11 of the NPPF. This highlights the importance of delivering housing in the city in a timely fashion. Furthermore, the alternative scheme is a substantial mixed-use scheme on a prominent accessible brownfield site, that would bring about considerable economic, social and environmental benefits for the city.
42. It is relevant that the appeal is brought by the tenant of the appeal site, not the owner. As a tenant car park operator, they are clearly incentivised to continue the current use. Specifically, the appeal statement states that the appeal is made by *"Bank Park Management Limited who occupy the site and operate the car park."* The appellant states that the owner can regain possession when he wishes to recommence the development, however I have no details of the lease or other arrangements by which the timing of vacant possession of the land can be ascertained. That is also a relevant consideration.
43. A representation from a person (H) purporting to be the landowner supports the appealed application arguing that car parking is needed in the area of the appeal site, sustainable transport is not available, parking customers travel onwards into the city by sustainable means, and controlled parking is needed to avoid on street parking. Curiously, he also asserts that demand for student flat accommodation has now fallen and the retail element of the development is no longer needed. The appellant has discussed this representation with the landowners and states, which is probably the case, that H is neither the landowner, an employee nor has any connection with them. As the appellants point out, the landowners strongly disagree with his comments about student flats, adding *"if they did not consider that the redevelopment was viable they would not be investing in a new application"*.

44. I judge it important that based on the foregoing the implementation of the permission should be progressed with all due expedition. Contrary to the suggestion of the appellant, who is the tenant of the property, refusal of permission would in my view materially assist in progressing the implementation of the housing scheme over and above what is occurring at the present time. The planning history of the unauthorised use which has continued unauthorised for a considerable period of years, gives me little confidence that upon expiry of an eventual temporary permission of the car park use, that use will thereupon cease altogether and immediately give way to implementation of the approved scheme.
45. The Council points out, which is undisputed, that retrospective planning application was refused on 7 November 2024 and not appealed, yet the car park continued to operate to date, suggesting that the appellant continued to renew their contracts with parking contract holders with full knowledge that the use was unauthorised.
46. At the present time the tenant views the longevity of the car park use as within its gift⁵. The Council's statement is undisputed in that the use of the land for a car park has required minimal investment, and running costs are expected to be similarly low, the appellant referring only to the above appeal decisions and commenting that the landowner has gone to the not inconsiderable expense of submitting an amended scheme via s96A and s73 applications. This was of course the mixed housing scheme, not the car park use. Parking charges provide a passive income from the site, which is likely to delay and not incentivise the bringing forward of the permitted scheme. A further extended period of use granted permission would be reflected in the land value of the use of the site as a car park and further erode the incentive to redevelop the site in accordance with the approved scheme.

Conclusion on ground (a)

47. I conclude that the evidence and above considerations constitute exceptional circumstances such that a refusal of the unauthorised use would be likely to materially assist in progressing the alternative scheme, whereas to allow it to continue would cause unacceptable harm in a wider planning sense of frustrating or endangering a timeous and more favourable permanent solution for development of the appeal site. I shall therefore refuse permission.

Ground (f)

48. The appellant made their appeal on grounds (a) and (g). In their appeal statement they purported to add a new ground (f) to their appeal. There is no statutory power for an Inspector to amend the grounds of appeal.
49. That said, the appellant merely states, under this putative ground, that *"harm to visual amenity, if there is any at all, could have been remedied by fencing and / or planters."*
50. The requirements of the notice do not require removal of the palisade fencing which is the subject matter of the other appeals. The harm to visual amenity is a harm that, on ground (a), I considered could be adequately mitigated in this respect. However, permission was refused on other grounds. Therefore, I do not accept that the requirements of the notice could be varied by specifying the

⁵ Grounds of appeal, paragraph 6.6

proposed lesser step as an alternative that would achieve the aims of the notice. The notice is clearly aimed at remedying the breach of planning control by requiring the use to cease, removal of motor vehicles, signage, banners, and associated equipment and machinery.

51. The appeal on this ground fails.

Ground (g)

52. The stipulated period of 1 month within which to comply with the several requirements of the notice, is plainly inadequate in my view. The appellant seeks the substitution of 12 months⁶ which they say would allow them to remain in occupation of the site, keeping it free from litter and debris, and preventing unauthorised use. The appellant states that “*should the redevelopment proposals be ready to implement before then the owners can regain possession*” but as adverted to above, there can be no certainty over the timing of repossession.
53. The appellant also states that assuming the permission in question were determined by the end of December 2025 (it was determined by the end of January 2026) then construction drawings would have to be prepared, contracts let and so forth and “*it is unlikely that the development will recommence within the next 12 months.*” I have been given no information, now that permission has been granted, to suggest that this work preparatory to building operations, could not start as envisaged by the appellant, ie in a period of 12 months from the date of the grant.
54. It was initially stated⁷ contrary to the later request for 12 months, that if the appeal were dismissed the appellants would need to terminate contracts with parking contract holders, the landlords would need to put additional security in place and therefore a period of “*6 months would be more reasonable*” than the 1 month period for compliance in the notice.
55. The notice does not prevent the exercise of permitted development rights under , The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 4 (Temporary buildings and uses), Class A, to erect site hoarding and security fencing pursuant to implementation of the permission dated 30 January 2026.
56. Taking all of the above into account, I will vary the period for compliance to 9 months which is an adequate period within which to comply with the requirements of the notice. This would also allow for additional security measures said to be required.

Conclusion

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

Appeals B and C

Preliminary matter

⁶ Appeal statement, paragraph 9.10

⁷ Grounds of appeal, paragraphs 5.3.2 and 5.2.3

58. As described above, the car wash site and the car park site are adjacent to each other and similar sections of palisade fencing within each site are to be found along the frontage of Ecclesall Road, a heavily trafficked area in terms of vehicular and pedestrian movements. The same agent acts for both appellants.

Appeal C on ground (e)

59. An appeal on this ground is that the enforcement notice was not served as required by s172 of the 1990 Act. Rather than referring to the fencing as “edged” blue it would have been better had the notice referred to it being simply “marked” blue. However, taken as a whole, the notice is perfectly understandable. The agent’s case on this ground, as he himself suggested, is misconceived, as the ground relates to service of the notice, not whether the notice itself is defective.
60. The appeal on this ground fails.

Appeal B on ground (d)

61. An appeal on this ground 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. The agent’s statement is difficult to follow as it does not clearly set out his client’s case. However, the main point is that there has been a fence in this location since at least 2017. This appears to be so from the images provided and is not disputed.
62. However, the evidence is also that permanent fencing was removed after May 2019 and temporary fencing was in place by August 2020. The new fencing appears to have been installed between October 2022 and May 2023 and is materially different from the fencing on site in October 2022. It is of a different material, appearance and is physically attached to the ground. I therefore disagree that the fence now in place is an improvement of the original fence, and as it was substantially completed less than 4 years before the issue of the notice, ground (d) does not succeed.

Appeal B on ground (c)

63. It is undisputed that there was a building on the site which was demolished in 2019/2020 and steel palisade fencing was erected around the site between October 2022 and July 2023, prior to the use of the land as a car park, replacing the temporary metal hoarding that was in place once the building was demolished.
64. The appellant suggests that the fencing subject to this appeal is permitted development within Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 4 (Temporary buildings and uses), Class A – temporary buildings and structures.
65. This class permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. The Council accepts that the extant permission affords these permitted development rights but states that the fencing cannot be considered a temporary measure to secure the site as it is cemented into the ground and appears as a permanent feature along the frontage of Ecclesall Road.

66. Here I disagree with the Council. There is no reason why a temporary fence erected to secure a development site should not be concreted into the ground to provide a secure barrier for the duration of operations. Although the fencing serves as a de facto boundary to the unauthorised car park use, there is an extant planning permission on which it is agreed by the parties there have been material operations sufficient to commence development. The installation and removal of the concrete are relatively minor operations in the context of the redevelopment of the site. When building works above ground commence, it would be natural in any event to review the boundary arrangements commensurate with the then state of the redevelopment taking place and in compliance with conditions attached to permission Ref: 25/02616/FUL.

67. The appeal on this ground succeeds and the notice will be quashed.

Appeal C on ground (a)

68. There is no appeal on ground (c). There is no power given to me to add one unilaterally. Technically therefore there is no dispute that there is a breach of planning control. However, the circumstances of the appeal are similar in all material respects to the fencing on the site relative to Appeal B. Therefore, there is a good fall-back position to the effect that the fencing could be erected or re-erected under permitted development rights as discussed above in Appeal C. I shall therefore grant planning permission.

Conclusion on Appeal B

69. For the reasons given above, I conclude that Appeal B should succeed on ground (c). The enforcement notice will be quashed.

70. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Conclusion on Appeal C

71. For the reasons given above I conclude that Appeal C succeeds on ground (a). I shall grant planning permission for the operations as described in the notice. The enforcement notice will be quashed.

Grahame J Kean

INSPECTOR