



Appeal Decision

Site visit made on 4 June 2026

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2026

Appeal Ref: APP/V1505/C/24/3341274

1A Clay Hill Road, Basildon, Essex, SS16 5DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Sergui Miron against an enforcement notice issued by Basildon Borough Council.
 - The notice was issued on 23 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a brick wall incorporating metal railings and gate.
 - The requirements of the notice are to:
 - i) Permanently remove the entire brick wall incorporating metal railings and gate; and
 - ii) Permanently remove all resultant materials from the works done in compliance with requirements (i) from the site.
 - The period for compliance with the requirements is: Four (4) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) 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.
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Summary Decision: The appeal is allowed in part and planning permission for that part is granted, but otherwise the appeal fails and the notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Enforcement Notice

1. The allegation at section 3 of the notice refers to a brick wall and a gate, singular, whereas the photograph appended to the notice shows multiple brick walls and two separate gates, a pedestrian one and what appears to be a single sliding vehicular access gate. I shall therefore correct the notice by deleting the words wall and gate and replacing them with walls and gates.
2. The reasons for issuing the notice at section 4 refer to a fence. As there is no fence, I shall delete this word and replace it with the brick walls incorporating metal railings and gates.
3. The requirements at section 5(i) and (ii) of the notice include the word 'permanently.' This is unnecessary having regard to the provisions of Section 181(1) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act), which states that compliance with an enforcement notice shall not discharge that notice. I shall therefore delete this word.
4. Appendix A of the notice contains a photographic image dated 21/06/2023 but the text below it states the image was taken 21/06/2022. Both of these dates are significantly earlier than the date the notice was served, which was 23/02/2024. I am however satisfied that the date of the photograph 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.

Background and Procedural Matters

5. Prior to the enforcement notice being served, a planning application was made to retain the walls, railings and gates. This application was refused and a subsequent appeal (Ref. APP/V1505/D/23/3333646) was dismissed. The appellant states that prior to the notice being served, the gates and railings were removed, and the walls were reduced to approximately one metre in height on two sides. The Council state that some railings were still present at the time the notice was served, but do not dispute that some changes had taken place that were not reflected in the notice.
6. At the time of my visit, I saw that the only gates were those set back roughly in line with the front elevation of the house. All railings and front gates shown in the photograph attached to the notice had been removed, and most of the remaining front and southern side walls, including brick pillars, were below one metre in height. The wall running along the northern boundary of the site, measures approximately two metres high with the pillars extending marginally above this. It wraps around the front northwest corner of the site where it reduces and then steps down in height.
7. Comments made by the Local Highway Authority suggest that part of the development may encroach onto highway land. However, land ownership is not a planning matter.

The appeal on ground (c)

8. The appeal on ground (c) is made on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground, and to succeed, the burden of proof is on the appellant to demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control.
9. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), grants planning permission for some forms of development without the need for an application to be made to the local planning authority. Schedule 2, Part 2, Class A of the GPDO, permits development consisting of any gate, fence, wall or means of enclosure, not exceeding two metres above ground level, or where it is adjacent to a highway, provided it would not exceed one metre above ground level.
10. It is undisputed that the development as originally built, described in the notice and shown on the photograph attached to the notice, required planning permission. The appellant states that as the walls on two sides have been reduced to approximately one metre, they would now fall within permitted development rights. However, permitted development rights cannot be applied retrospectively, and I must deal with the development referred to in the notice regardless of any changes that may have occurred.
11. Although the appellant alleges that what is stated in the notice does not accurately reflect what existed on the site on the date the notice was served, no appeal has been made on ground (b) as set out in section 174(2) of the 1990 Act: namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. The absence of an appeal

on ground (b) is a tacit acceptance that the breach of planning control alleged in the notice has occurred.

12. Moreover, at the time of my visit, part of the wall adjacent to the highway still exceeded one metre above ground level, and part of the northern boundary wall still slightly exceeded two metres above ground level. I am therefore satisfied that on the balance of probability, the development taken as a whole and as alleged in the notice, has occurred and did not fall within the parameters of the GPDO on the date the notice was served, and thus the matters alleged in the notice did constitute a breach of planning control.
13. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

14. An appeal on ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issue

15. The main issue, having regard to the Council's reason for issuing the notice, is the effect of the development on the character and appearance of the area.

Reasons

16. The appeal site comprises an end of terrace house and its curtilage. It is located at the end of a residential cul-de-sac with a vehicular turning head to the front and a densely planted area of landscaping to the remainder of the front and to the side, which separates the site from the access road to a public car park. The row of houses the site forms part of have gardens and block paved parking areas to the front and are generally open plan.
17. I acknowledge the previous planning and appeal decisions, and I agree that the development as shown in the photograph attached to the notice was, due to its height, overly dominant and created an undue sense of enclosure that harmfully detracted from the uniformity and open character and appearance of the area.
18. Consequently, the development referred to in the notice fails to accord with Policy BAS BE12(i) of the Basildon District Local Plan Saved Policies (September 2007) and paragraph 135 of the National Planning Policy Framework (the Framework), which seek to ensure development does not result in harm to the character of the surrounding area, including the street scene.

Other Considerations

19. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.
20. The appellant has suggested an alternative scheme, which is that planning permission ought to be granted for the development that currently exists, with the gates and railings removed entirely, and parts of the brick walls being reduced in height. As this alternative scheme relates to part of the matters stated in the notice, I have considered this on ground (a).

21. The walls, which are constructed in red brick work that matches the dwelling, now measure less than one metre in height along the boundary between numbers 1A and 1B Clay Hill Road, and immediately adjacent to the turning head. I noted that there is a similar low brick wall dividing the front gardens of numbers 13 and 15 Clay Hill Road.
22. Whilst the northern side boundary wall, and a small section of the front wall, measure approximately two metres above ground level (marginally more or less in parts), this marks the end of the road and adjoins a mixture of equally high fencing that continues to run along the northern boundary of the whole estate. These higher sections of the wall are set against a landscaped backdrop of dense high level mature planting. The front garden and parking area to number 1A is also much shorter and less uniformed than that of others in this row due to its position adjacent to the turning head.
23. There is undisputed photographic evidence that the walls replaced lower quality fencing of similar height that previously enclosed part of the front garden as well as the land to the side of the house. If the entire remaining wall had to be removed, there is a more than theoretical possibility that it would be replaced by a similar new wall or lower cost and lower quality fencing of similar height, but set back from the highway, under permitted development rights. This is likely to be necessary to secure the site and to protect the privacy of occupiers of the property from users of the adjacent public woodland area and car park.
24. The enforcement system is intended to remediate rather than punish. In this case, it would not be expedient to require the entire removal of the works when part of those could simply be replaced with something very similar at a later date, and where the same outcome could be achieved at lesser cost and disruption to the appellant.
25. The altered walls which currently exist, and for which planning permission is sought, due to their reduced height adjacent to the highway and adjoining dwelling, do not appear overly dominant in the street scene and do not harmfully detract from the uniformity or character and appearance of the property or its surroundings.
26. I therefore conclude that the existing development and alternative scheme for which planning permission is sought, accords with Policy BAS BE12(i) of the Basildon District Local Plan Saved Policies (September 2007) and paragraph 135 of the Framework, which seek to ensure development does not result in harm to the character of the surrounding area, including the street scene.

The appeal on ground (f)

27. 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.
28. As the requirements of the notice are to remove the entire brick walls, metal railings and gates, 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. No lesser steps would remedy the breach of control.

29. The appellant's appeal on this ground is that the walls have been reduced to one metre in height and considers that this should be considered as lesser steps. Reducing the height of the walls does not achieve the purpose of the notice: nothing short of removing the walls in their entirety would achieve that. I have, however, already considered this alternative scheme under the appeal on ground (a) and consider that planning permission ought to be granted for it.
30. In these circumstances, the appeal on ground (f) would only apply to the residual element of the breach of planning control following the grant of planning permission. I am satisfied that in this case there is no such residual element, due to the height of the walls already having been reduced.
31. Accordingly, in this case there are no matters to consider on ground (f).

Conclusion

32. For the reasons given above, I conclude that the appeal on ground (a) should succeed in part only. I shall grant planning permission for the boundary walls shown on the attached photograph at Appendix 1, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission in respect of the other part of the matters.
33. As the alternative scheme granted permission is that which currently exists, no further works are required, no conditions are necessary and the appeal on ground (g) does not therefore need to be considered.
34. By virtue of section 180(1) of the 1990 Act as amended, the requirements of the notice will cease to have effect in so far as they are inconsistent with the planning permission hereby granted.

Formal Decision

35. It is directed that the enforcement notice be corrected and varied by:
- Deleting the words 'wall' and 'gate' at section 3 and replacing them with the words 'walls' and 'gates'.
 - Deleting the words 'the fence exceeds one metre in height and is' in the third paragraph of section 4 and replacing them with the words 'the walls, railings and gates exceed one metre in height and are'.
 - Deleting the word 'permanently' from sections 5(i) and 5(ii).
36. Subject to the corrections and variations, the appeal on ground (a) is allowed insofar as it relates to the brick walls as shown on the photograph at Appendix 1 of this decision, 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 brick walls as shown in the photograph at Appendix 1, at 1A Clay Hill Road, Basildon, Essex, SS16 5DA.
37. The appeal is otherwise dismissed, the enforcement notice is upheld as corrected, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended for the breach of planning control alleged in the notice.

R Bartlett

INSPECTOR

APPENDIX 1

