



Appeal Decision

Site visit made on 7 July 2026

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 July 2026

Appeal Ref: APP/G5180/C/24/3355955

Pines Cottage, 22 Pines Road, Bickley BR1 2AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Ms Natasha Catchpole against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 24 October 2024.
- The breach of planning control as alleged in the notice is:
Without the required planning permission, the erection of fencing and a gate along the boundary with Pines Road and Chislehurst Road.
- The requirements of the notice are:
 - (a) Remove the fencing and gate along the boundary with Pines Road and Chislehurst Road
 - (b) Restore the land to its condition before the breach of planning control took place
- The period for compliance with the requirements is: 3 months
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

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

Preliminary Matters

1. By correspondence dated 10 July 2026, appeals on grounds (a), (f) and (g) were withdrawn by the appellant.
2. Since the enforcement notice was issued, the Council has granted planning permission (reference DC/24/04325/FULL6, dated 24 April 2025) for the railings and gates which are the subject of the enforcement notice, subject to a condition which seeks the removal of timber panelling attached to the gates. At the time of my site visit the timber panelling was not in situ.
3. The effect of the above planning permission is that, by virtue of section 180(1) of the 1990 Act as amended, the requirements of the enforcement notice cease to have effect so far as they are inconsistent with the planning permission which has been granted.

The Notice

4. The notice misdescribes the appeal development as “fencing and a gate” when it is in fact “railings and gates”. I shall correct the notice in this regard, using my powers under section 176(1)(a) of the 1990 Act. I am satisfied this would not cause injustice to any party to this appeal as it is clear from the written submissions that both main parties have approached the appeal development as railings and gates, rather than fencing and a gate.

5. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because what is alleged complies with the terms and conditions of a planning permission, including any such permission granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order').
6. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
7. Schedule 2, Part 2, Class A of the Order permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to limitations.
8. The appellant's ground (c) case is predicated on the gates being 'permitted development' pursuant to the Order, accepting that the metal railings do not constitute permitted development.
9. Relevant to the circumstances of this case, one of the limitations of the Order is that development is not permitted if the height of any gate, fence, wall or other means of enclosure constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level. Where not adjacent to a highway used by vehicular traffic, the height may be up to 2 metres above ground level.
10. The appeal gates secure the appeal site from Pines Road, a highway used by vehicular traffic. According to the appellant, the gates are 1.8 metres in height and are not 'adjacent' to the highway as they are set back from the edge of the footway (which is part of the highway) by 3.2 metres. But the measurement of any such setback is not necessarily determinative, even if it allows for a car to turn into the driveway and be clear of the carriageway whilst the gates open.
11. The word 'adjacent' is not defined in the 1990 Act or the Order, which uses the expression 'adjacent' rather than 'abutting'. As has been established in case law (*Simmonds v Secretary of State for the Environment and Rochdale MDC* [1980], which is cited in the evidence provided), such a gate does not need to be abutting the highway in order to be adjacent to it, it is sufficient for the gate to be adjacent to the highway in order to trigger the 1 metre height limitation.
12. As is acknowledged by the appellant, whether 'adjacent' for the purposes of applying Schedule 2, Part 2, Class A of the Order, is a matter of judgement in the circumstances of each case.
13. In this case, the gates together with the railings either side, clearly define the boundary of the property from the highway and are perceived to do so. They are clearly intended as a means of enclosure to the appeal site and there is insufficient physical or visual separation, meaning that for all intents and purposes the gates are, as a matter of fact and degree, adjacent to the highway and are perceived as such.
14. According to the appellant, the point of the 1 metre limitation in the Order is to enable visibility to be achieved in respect of pedestrians and vehicles and that as such, a setback of 2.4 metres is normally the distance required to achieve such visibility from an existing access. But no authority has been provided for this contention and so it makes no difference to my decision.

15. The appellant has drawn my attention to an appeal decision in Chadderton, Oldham, reference APP/W4223/C/19/3238445, dated 19 June 2020. In that case, the boundary wall in question was separated from the highway by a landscaped verge containing grass and mature trees, such that separation between the public realm and private gardens was defined. But that is not so in the case before me, where the gates are merely setback from the highway by a limited span of driveway. So I do not consider that case to be directly comparable to the case which is before me.
16. In any event, matters of lawfulness, as is the case for a ground (c) appeal, turn on the individual facts and circumstances of each case. So other such cases do not necessarily assist in determining what is lawful on the appeal site.
17. I conclude that the appeal on ground (c) fails.

Conclusion

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

Formal Decision

19. The appeal is dismissed and the enforcement notice is upheld.
20. It is directed that the enforcement notice is corrected by the deletion of “fencing and a gate” from paragraph 3 and paragraph 5a of the notice and its substitution with “railings and gates”.
21. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

L Perkins

INSPECTOR