



Appeal Decision

Site visit made on 16 July 2026

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

an Inspector appointed by the Secretary of State

Decision date: 16 July 2026

Appeal Ref: APP/Z4718/C/22/3300501

31 Hare Park Avenue, Hightown, Liversedge WF15 8DN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Matthew Brook against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 31 May 2022.
 - The breach of planning control as alleged in the notice is: without the benefit of planning permission, the erection of a gate, fence and associated wall adjacent to a highway at the front of the site.
 - The requirements of the notice are:
 - a) Dismantle and permanently remove the fence, gate and associated wall adjacent to the highway at the front of the site.
 - b) Return the land to its condition prior to the development taking place (see appendix 1).
 - The period for compliance with the requirements is: complete step 5 (a) & 5 (b) above – 60 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (a), (f) and (e) 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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Decision

1. The appeal 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.

Preliminary Matter

2. Communication was received from the appellant contemporaneously with submission of the appeal form on 6 June 2022, that made it clear, in substance if not form, that the appeal, in addition to grounds (a) and (e) stated on the form, was also being made on grounds (d) and (f). These matters are dealt with below.

Ground (e)

3. An appeal on this ground is that copies of the enforcement notice were not served as required by s172 of the 1990 Act. The case for the appellant is that the letter containing the notice was not signed for, however this is not a statutory requirement.
4. The requirements of s172(2) include that the notice is served on the owner of the land to which it relates. By s172(3) service must be not more than twenty-eight days after its issue and not less than twenty-eight days before the date specified in it as the date on which it is to take effect. There is no dispute that these requirements are met. The appellant identifies himself in the appeal form as the

owner of the appeal property and the Council states that it served the notice on the owner of the land, ie the appellant at his home address, 31 Hare Park Avenue.

5. As to the exact method of service, s329 provides that a notice may be served by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode. The Council states that it chose to send the notice by recorded delivery but that if it was not signed for then that did not invalidate the service.
6. I note however that s176(5) states that where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him. In this case, whatever the position over whether the notice was signed for or not, the appellant was able to make his appeal and has clearly suffered no prejudice.
7. In these circumstances the appeal on this ground cannot succeed.

Ground (d)

8. The appellant states that *"the gates should be granted permission as the 2 pillars the gates are between have been there for many years before the notice was issue"* thus raising the prospect that the development or part thereof had been substantially completed more than 4 years prior to the issue of the notice.
9. The image at Appendix 1 of the notice is a photograph from Google Street View of the boundary treatment said to be at the site before the development took place. No date is given but the image corresponds with one on the publicly available google image site for March 2019. The brick pillar at the corner of the site (the first pillar) was pre-existing and remains at some 16 courses high. It is not targeted by the notice which is aimed at the "fence, gate and associated wall" across the front of the site.
10. Previously there were two pillars (including the first pillar) forming the gateway to the vehicular access. The second pillar was, like the first, some 16 courses high, whereas now it is some 20 courses high. A new, third, pillar has been erected to the right of the frontage next to the separate pathway to the entrance door and this third pillar is also c20 courses high. In between the second and third pillar is a brick wall matching the pillars, above which is a metal fence giving a combined height of some 1.8m. Between the first and second pillars there is also now a combination of metal and timber fencing and gate/door all c1.8m high to match the fencing above the wall between the second and third pillars.
11. Thus, the gate/door structure is new and does not benefit from having been in situ for 4 years prior to the issue of the notice. The second pillar was, like the corner pillar, pre-existing but it was lower in height. What has been built on top of it was not there 4 years before the issue of the notice. The gate/door structure was not part of the pre-existing boundary treatment. Therefore, the ground (d) appeal must fail

Ground (a)

12. The development plan for the area includes the Kirklees Local Plan 2019 (LP). A key policy in this appeal is LP Policy LP24 which seeks the promotion of good

design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape, among other matters.

13. The main issue is the effect of the development on the character and appearance of the appeal property and the wider street scene.
14. A planning application to retain the development, which was already in place, was refused in July 2021, ie for “*gates put between existing pillars and extended at the same level with a wall and fence on top.*” The decision was upheld on appeal on 19 October 2021 under ref APP/Z4718/W/21/3278503.
15. Had the appellant re-applied for permission within two years of this refusal, it is a strong possibility that the Council would have exercised their powers under s70A (a) to decline to determine such application, given the previous similar application coupled with the fact that there has been no significant change in the development plan, so far was material to the application, or in any other material considerations.
16. Despite the appellant now being able to renew his application (and appeal) the previous appeal decision is a highly material consideration given that the planning circumstances have essentially remained the same.
17. I adopt the Inspector’s description of the site in paragraph DL/4, which reads:

The appeal site is an end of terrace, 2-storey dwelling with attached garage situated close to an internal corner on Hare Park Avenue. The road forms part of an estate of similarly designed and finished short terraces set behind open front gardens with a mix of private and open amenity spaces to the rear.

18. I also adopt in their entirety, the Inspector’s description of construction of the wall and gates at DL/5, and his assessment of the effect of the development in DL/6 and DL/7:

5 The development includes the construction of a front boundary wall with a metal-framed infill panel of composite boarding above. The wall extends across the frontage directly forward of the house. Additionally, a series of metalframed gates with composite infill and an additional panel complete the front boundary as it extends across the width of the garage to meet a pre-existing wall with timber infill panels along the side boundary. The new wall and gates are estimated to stand at a maximum height of about 1.8m by the Council.

6. The predominant character of the estate is one of open frontages free from means of enclosure. Although some handrails line walkways between grassed and landscaped areas, these are open in their design to maintain the sense of openness and spaciousness within the streetscape.

7. The substantial enclosure of the frontage by high boundary treatments prevents otherwise consistent views of the semi-private green spaces forward of the dwellings along the road. The fence and wall introduce a dominant and detracting feature incorporating panel materials alien to the locality. It contrasts starkly with the open frontages elsewhere and results in a ‘dead’ frontage along the back of the pavement which limits views to the garden and the lower parts of the building’s principal elevation.”

19. Furthermore, I agree with the Inspector’s conclusion at DL/16 as follows:

16. The development harms the character and appearance of the area and conflicts with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

20. Adopting those reasons, I find the development is contrary to LP Policy LP24. The appellant draws attention to matters clearly canvassed in the previous appeal decision such as safety and security. I have considered carefully the present submissions, but they do not either taken singly or together, provide a compelling reason to justify granting permission which will be refused.

21. The appeal on ground (a) does not therefore succeed.

Ground (f)

22. An appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. It is essential to understand the purpose of the notice. Under s173(4) of the Act, its purpose is to: (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.

23. Reading the enforcement notice as a whole it is clear on its face that its purpose is to remedy the breach of planning control by requiring the removal of the fence, gate and associated wall adjacent to the highway at the front of the site and a return of the land to its prior condition.

24. The officer's report on the previous application to retain the development accepted that a lower wall might be appropriate but the 1.8m height of the walling and gate in situ, and the materials used, were unacceptable. The design of the development in situ is not one that would be easily susceptible to a straightforward reduction in height, and none is articulated in the appeal statements. Therefore, there is no alternative step that is obviously available that would achieve the aim of the notice as lesser cost. Clearly a lower boundary treatment within the tolerances of permitted development legislation is an option for the appellant, once the notice is complied with. Therefore the appeal on this ground fails.

Conclusion

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

Grahame J Kean

INSPECTOR