



Appeal Decisions

Site visit made on 23 June 2026

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2026

Appeal A Ref: APP/N1920/C/25/3365178

Appeal B Ref: APP/N1920/C/25/3365179

12 Ark Avenue, Borehamwood WD6 1GH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mrs Sian Kaye (Appeal A) and Mr Paul Kaye (Appeal B) against an enforcement notice issued by Hertsmere Borough Council.
 - The notice was issued on 25 March 2025.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a boundary fence adjacent to the highway exceeding one metre in height.
 - The requirements of the notice are: 1. Remove the fencing [in the] approximate position indicated blue on the plan attached to the notice. 2. Remove from the land the debris, items, fixtures and fittings, building materials, plant and machinery resulting from compliance with step 1.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

1. It is directed that the enforcement notice is varied by in paragraph 5 ('what you are required to do') inserting the following step between steps 1 and 2: 'Or, as an alternative to step 1, reduce the height of the fence so that it does not exceed more than 1 metre in height above ground level.' Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

Preliminary matters

2. Whether development is immune from enforcement action is strictly a matter of fact and law. The appellants accepted that the fence the subject of the enforcement notice was substantially completed within the four-year period specified in s171B(1) of the 1990 Act.
3. No appeal was made on ground (a) and the relevant fee has not been paid. Therefore, planning merits considerations, including the effect on the character and appearance of the area and/or the living conditions of occupiers of neighbouring residential property, cannot form part of my deliberations. Nor can issues concerning the Council's enforcement investigation be taken into account.
4. Whether it was expedient for the Council to take enforcement action can only be dealt with by way of Judicial Review.

Ground (c) appeals

5. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. This ground of appeal is concerned strictly with matters of fact and law. The burden of proving why their appeals should

succeed on this ground rests firmly with the appellants, the relevant test of the evidence being on the balance of probability.

6. The appeal property contains an end of terrace dwelling. The property is located adjacent to the corner of two streets on a modern, planned residential estate. The notice is concerned with a solid timber fence about 1.8 metres in height, erected adjacent to the street to enclose a landscape planted strip at the property, alongside the rear garden. Previously, the rear garden was enclosed at the side with solid fencing similar in height to the fence in the notice, set back from the street behind the landscaping strip.
7. Erecting the fence in the current position has nevertheless involved carrying out building operations falling within the definition of development in s55(1) of the 1990 Act. Planning permission is required for the development of land, having regard to s57(1) of the 1990 Act. The definition of a breach of planning control in s171A(1)(a) of the 1990 Act includes carrying out development without the required planning permission.
8. Planning permission is granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) at Article 3(1), Schedule 2, Part 2, Class A, for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. This is subject to the limitations in paragraph A.1 of Class A being complied with, where relevant. Paragraph A.1(a)(ii) provides that development is not permitted where the height of any gate, fence, wall or other means of enclosure erected adjacent to a highway used by vehicular traffic would exceed one metre above ground level.
9. The fence is adjacent to a street used by vehicular traffic and is in excess of one metre in height. Although the street has not been adopted by the highway authority that simply means it is maintained privately, not at public expense. The street is still a highway in the sense that members of the public can pass and repass-including in vehicles-at all times, freely and without hindrance or charge. The Highways Act 1980 does not exclude unadopted streets from being highways used by vehicular traffic. The meaning of a highway in that Act is conveyed into the 1990 Act. Accordingly, the fence exceeds the height limit in paragraph A.1(a)(ii) and its erection cannot have been permitted by Part 2, Class A.
10. As planning permission is not granted by the GPDO, express planning permission would have been required to erect the fence. However, no grant of planning permission for doing so following the submission of a planning application to the Council was drawn to my attention. Any agreement to the fence being erected from the housebuilder responsible for developing the estate has little bearing on the requirement for planning permission.
11. Therefore, based on the available evidence the appellants have been unable to show to the required standard that the fence does not constitute a breach of planning control. The ground (c) appeals fail.

Ground (f) appeals

12. The ground of appeal is that the notice requirements are excessive.
13. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or; it can seek to remedy any injury to amenity caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. The notice requires nothing short of removal of the fence, following which the property would be restored to its condition before the breach took place.

14. Given the purpose of the notice, the absence of a ground (a) appeal through which planning permission could have been sought for the fence and in the context of the ground (f) appeals, considerations concerning the proportionality of the requirements are limited to whether the works involved would exceed that necessary to remedy the breach. Enforcement action is nevertheless intended to be a remedial measure. Therefore, whether the planning difficulties could be overcome at less cost and disruption than total removal of the fence is a relevant consideration. Moreover, it is also possible to remedy a breach of planning control by making any development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes where that planning permission is granted by the GPDO.
15. A fence not exceeding 1 metre in height could be erected at the property adjacent to the highway in compliance with Part 2, Class A in the GPDO, following removal of the unauthorised fence. It is not unreasonable for the appellants to require some form of physical boundary to their property adjacent to the street once the unauthorised fence is removed. Even if fencing were to be re-erected along the original alignment, the appellants may well wish to maintain the enclosure of the landscaping strip. Aside from the overall height, the replacement structure is unlikely to differ significantly from that currently in situ. This all raises the realistic prospect of a similar, 1 metre high fence being erected shortly after the unauthorised fence is removed.
16. Varying the notice to require a reduction in the height of the fence to 1 metre would not restore the property to its condition before the breach took place, as no part of a development undertaken in excess of GPDO limits is lawful. Even so, such a reduction would bring the fence within the height limit in paragraph A.1(a)(ii). As there are no other relevant limitations in Class A and the restriction in Article 3(6) would not apply in this instance, the reduction in height would also remedy the breach by making the fence comply with the planning permission in Part 2, Class A of the GPDO.
17. In the circumstances, whilst the steps required by the notice are not excessive, I shall exercise the power in s176(1)(b) of the 1990 Act to vary the terms of the notice as set out above, to provide an alternative remedy to the breach. The ground (f) appeals succeed to that limited extent.

Conclusions

18. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

Stephen Hawkins

INSPECTOR