
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/25/3365768

Appeal B Ref: APP/N1920/C/25/3365769

6 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 Mr Syed Zain Quli Rizvi (Appeal A) and Ms Harriet Dallen (Appeal B) against an enforcement notice issued by Hertsmere Borough Council.
 - The notice was issued on 3 April 2025.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of boundary fencing adjacent to the highway exceeding one (1) metre in height ('the breach').
 - 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.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (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. Appeal B is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fee has not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decisions

1. Appeal A-The appeal 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 boundary fencing adjacent to the highway exceeding one metre in height at 6 Ark Avenue, Borehamwood WD6 1GH as shown on the plan attached to the notice.
2. Appeal B-The appeal is dismissed but the enforcement notice is not upheld.

Appeals A and B

Ground (d) appeals

3. The ground of appeal is that it was too late to take enforcement action against the alleged breach of planning control. The 1990 Act at s174(2)(d) confirms that it is the date the notice was issued which is relevant for determining whether development is immune from enforcement action, not when the notice takes effect.
4. The appeal property contains an end of terrace, three storey dwelling. The property is located adjacent to the corner of two streets on a modern, planned residential estate. The enforcement notice attacks 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.

5. At s171B(1), the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out of building operations and where, as in these appeals, those operations were substantially completed before 25 April 2024, no enforcement action may be taken after four years beginning with the date of substantial completion. The burden of showing why the 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 former owner applied for planning permission to erect an outbuilding as a home office at the property along with erecting the fence, on 20 April 2021.¹ The application form states that the works described had started on 19 April 2021 but were not complete. The applicant's statement that '*... I would like to move my garden fence to our boundary line which is currently being taken up by plants*' suggests that the fence was erected after the application was made. None of the above supports the fence having been substantially completed for more than four years prior to 3 April 2025-the date the notice was issued.
7. Even if the fence had been substantially completed when the Council officer dealing with the application visited the property, this was less than four years before the notice was issued. Correspondence from the housebuilder responsible for developing the estate, addressed to the former owner, only refers to erection of the garden outbuilding/home office with no mention of the fence. In any event, that correspondence is dated 22 April 2021 and so is within the four-year period.
8. The photographic image extract from Google Earth provided by the Council, purportedly dating from June 2021, also supports the fence being erected after the above application was made, even if the precise date that image was taken is uncertain. On the other hand, the appellants did not provide any firm evidence which might have shown that the fence was substantially completed more than four years prior to the issuing of the notice.
9. Therefore, the appellants have been unable to show to the required standard that it was not too late to take enforcement action against the fence, the available evidence suggesting otherwise. The ground (d) appeals fail.

Appeal A

Ground (a) appeal

Main Issue

10. The main issue in this ground of appeal is the effect of the fence on the character and appearance of the surrounding area.

Reasons

11. The estate is generally made up of dwellings of similar scale, neatly arranged in terraces, along with apartment blocks. For the most part, the substantial built forms are set back limited distances from the street behind front gardens which also wrap

¹ Council Ref: 21/0861/HSE

around the side at corner plots. The modest size of these spaces and the generally low level of the maturing shrub planting means that greenery is not the dominant feature of property frontages. Along with the substantial scale of buildings and their relationship to extensive vehicular and pedestrian hard surfaces, this has led to the environs possessing a well-ordered and pleasant but nevertheless appreciably built-up feel, the principal visual relief from which comes in the form of nearby communal open space.

12. Prior to erecting the fence, the landscaping strip would have provided some visual softening to the rear garden fencing behind. I am given to understand that this and similar spaces at other corner plots were included in the estate masterplan. Even so, due to its restrictive size the landscaping strip would have had a limited effect in terms of offsetting the substantial scale of the nearby built forms and extensive areas of hard surface. This and similar spaces at other properties are small, mostly discrete areas of land in the ownership of individual householders, who are ultimately responsible for their maintenance. They are not part of any communal open space. Consequently, in practice the landscaping strip and similar spaces make/made only a modest contribution to the overall greening of the estate.
13. The reasons for issuing the notice are similar to in the above application, which was refused by the Council in February 2022. None of the fences erected to enclose similar spaces at other corner plots on the estate currently benefit from planning permission.
14. Nevertheless, moving the fence line from behind the landscaping strip to the back edge of the pavement has made limited difference to the visual qualities of the locality. The dwelling and neighbouring buildings are the visually dominant structures, with the fence appearing as a secondary or subsidiary built feature. The visual consequences are not markedly different to if a one metre high fence had been erected in a similar position, relying on the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3(1), Schedule 2, Part 2, Class A, Paragraph A.1(a)(ii). Also, maturing planting at the front and side of the dwelling assists in offsetting the visual presence of the fence when approaching the property from the south. As a result, the fence does not contribute to an appreciably more harsh or urbanised feel in the environs, either individually or in accumulation with similar development undertaken by other householders.
15. Furthermore, there are local incidences of fencing adjacent to hard surfaces with a comparable visual presence to the appeal fence, including for example at residents' parking areas, which probably originated at or around the same time as the estate was constructed. The Council's Planning and Design Guide Supplementary Planning Document advises that front fences may be used where they are a feature of the street, complement the existing pattern of boundary treatment and integrate with planting. Moreover, similar fences adjacent to the street are not an untypical rear garden boundary treatment in comparable residential settings.
16. For the above reasons, the fence does not appear at odds with the general pattern of local development, it is not viewed as an alien feature in the street scene and there is no unacceptable harm to the character and appearance of the surrounding area. There is no conflict with Policy CS22 of the Council's Core Strategy, which requires all development to be of high quality design to ensure the creation of attractive and useable places. There is also no conflict with Policy SADM30 of the

Hertsmere Local Plan: Site Allocations and Development Management Policies Plan, which requires development to, amongst other things, contribute positively to the built environment, recognise and complement the particular character of the area in which it is located and result in a high quality design, including through respecting, enhancing or improving the visual amenity of the area.

Conclusions

17. Appeal A-The fence has not caused unacceptable harm to the character and appearance of the surrounding area and there is no conflict with the Development Plan. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Therefore, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the operations as described in the notice. No planning conditions were suggested and none are necessary. The enforcement notice will be quashed. In these circumstances the appeal on grounds (f) and (g) does not fall to be considered.
18. Appeal B-The appeal fails on ground (d) however it is unnecessary for me to consider whether the appeal on grounds (f) and (g) should succeed as the enforcement notice will be quashed in consequence of my decision to allow Appeal A on ground (a).

Stephen Hawkins

INSPECTOR