



Appeal Decision

Site visit made on 14 July 2026

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2026

Appeal Ref: APP/C3810/C/25/3367747

Land Lying to the North of Brooks Lane, Bognor Regis, West Sussex (also known as Rabbit Island) PO22 8AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Callan Wood of cwbikes limited [sic] against an enforcement notice issued by Arun District Council.
 - The notice was issued on 19 May 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last ten (10) years the operational development by the erection or construction of fencing, gates, walls or other means of enclosure, adjacent to a highway (namely public footpaths 3799,3800,3801), that exceed 1m in height, on the Land.
 - The requirement of the notice is to: Reduce all fencing, walls or other means of enclosure that are adjacent to the highways (namely public footpaths 3799, 3800, 3801) to a maximum of 1m in height, on the Land.
 - The period for compliance with the requirement is: One (1) month after the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matter

2. The postcode has been taken from the appeal form and added to the site address, as this provides a more precise identification of the site.

The Ground (c) Appeal

3. An appeal on this ground is that the matter alleged, if it has occurred, does not constitute a breach of planning control. It is for the appellant to demonstrate, on the balance of probabilities, that the development is not a breach of planning control, either because it does not constitute development requiring planning permission or because it benefits from planning permission, including permitted development rights.
4. Section Four of the Enforcement Notice (EN) states that the development is contrary to Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"), on the basis that it exceeds one metre in height and is adjacent to a highway.
5. Schedule 2, Part 2, Class A of the GPDO relates to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. In its appeal statement, the Council refers to this provision and state

that a means of enclosure cannot exceed two metres in height unless it is adjacent to a highway used by vehicular traffic. However, this is not an accurate reflection of Schedule 2, Part 2, Class A of the GPDO.

6. In determining whether the development benefits from the permitted development rights granted by Class A, it is necessary to consider the limitation in Class A.1(a). This provides that development is not permitted where a gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, following the carrying out of the development, exceed one metre above ground level.
7. The limitation is therefore directed specifically at development adjacent to a highway used by vehicular traffic. Whilst the Council has considered the definition of a highway and referred to the Technical Guidance on Permitted Development Rights for Householders (MHCLG, 2019), as well as the decision in *Nicholson v Secretary of State* (2005), which recognises that a highway can include a public right of way, the starting point must be the wording of Class A itself.
8. The restriction in Class A is not expressed as applying to all highways. If Parliament had intended that to be the case, the additional words “used by vehicular traffic” would serve no purpose and be redundant. Those words must therefore be given their ordinary meaning. Accordingly, the fact that a route may constitute a highway for legal purposes does not, of itself, bring the development within the scope of the limitation. The relevant question is whether the means of enclosure is adjacent to a highway that is used by vehicular traffic.
9. The Council accepts that the rights of way are footpaths and are unlikely to be accessible by a standard car. Furthermore, from my observations during the site visit, there was no evidence that the rights of way are used by vehicular traffic. Nor does the evidence before me indicate that the rights of way are, or have historically been, used by vehicular traffic. In these circumstances, whilst the rights of way may constitute highways for legal purposes, the evidence does not demonstrate that they are highways used by vehicular traffic. Accordingly, it has not been sufficiently demonstrated that the development is adjacent to a highway to which the limitation in Class A.1(a) applies.
10. Whilst the Council refers to *Garland v Minister for Housing and Local Government* (1981) in support of its contention that operational development must be considered in its entirety, that authority does not alter my findings regarding the application of Class A.1(a). Even if the development is considered as a whole, the evidence does not demonstrate that it is adjacent to a highway used by vehicular traffic.
11. I have considered the representations made by interested parties and appreciate the concerns that have been raised. However, as I have found that the matter alleged in the EN does not constitute a breach of planning control, those concerns do not affect my findings, and I cannot consider them further in the determination of this appeal.
12. For the reasons set out above, I am not persuaded that the development is adjacent to a highway used by vehicular traffic for the purposes of Class A.1(a) of Schedule 2, Part 2 of the GPDO. Accordingly, I find that, on the balance of probabilities, that the development falls within permitted development tolerances.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on ground (f) does not fall to be considered.

V Goldberg

INSPECTOR