



Appeal Decision

Site visit made on 11 August 2026

by **Mark Caine BSc (Hons) MTPL MRTPI LSRA**

an Inspector appointed by the Secretary of State

Decision date: 14 October 2026

Appeal Ref: APP/V4630/C/25/3369671

The land of 108 Bankside Crescent, Streetly, Sutton Coldfield B74 2JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Hira Iden Ilyas against an enforcement notice issued by Walsall Metropolitan Borough Council.
- The notice was issued on 1 July 2025.
- The breach of planning control as alleged in the notice is Without planning permission:
 - i. The unauthorised change of ground levels of the rear garden by extending the raised area (immediately adjacent to the rear elevation of the dwelling house, by the erection of a retaining wall and soil backfill measuring approximately 46cm. Which exceed the limitations of permitted development.
 - ii. The unauthorised change of ground levels by the erection of a second retaining wall and soil backfill at the northeastern end of the rear garden (area shaded colour on the attached plan). Measuring approximately 1.5meters which exceed the limitations of permitted development
 - iii. The unauthorised installation of Fencing exceeding 2m from original ground level following the increase in land level alterations exceed the limitations of permitted development.
- The requirements of the notice are to:
 - 1. Restore Original Land Levels: You must reinstate the ground levels at the locations stated in 3i and 3ii above to their pre development condition.
 - 2. Remove any added or waste material and regrade the land to match the original contours.
 - 3. Following completion of requirement 1 above, erect a closed board timber fence at the boundary of the land at a height not exceeding 2m above pre development ground level.
 - 4. Dispose of Waste Material: All waste material resulting from the restoration process must be disposed of at a licensed waste disposal facility. You are required to provide evidence of proper disposal, including receipts or documentation from the facility.
- The periods for compliance with the requirements are:
 - a.) The time for compliance with the requirements set out in paragraph 5 a) above is Three (3) months from the date on which this Notice takes effect.
 - b.) The time for compliance with the requirements set out in paragraph 5.b) above is Four (4) months from the date on which this Notice takes effect.
- The appeal is made on the grounds set out in section 174(2)(c), (f), and (g) of the Town and Country Planning Act 1990 (as amended).

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

The Enforcement Notice

1. Section 176(1) of the Act states that, on appeal, the Secretary of State may (a) correct any defect, error or misdescription in the enforcement notice; or, (b) vary the terms of the enforcement notice, if they are satisfied that the correction will not cause injustice to the appellant or the LPA.
2. A closing bracket has been omitted and is required to be inserted after the words “dwelling house” in paragraph 3.1i. of the notice. For the purposes of clarity, the words “in height” are also required to be added after “46cm” in the same paragraph.

3. The word “meters” is spelt wrong and should be corrected in paragraph 3.1 ii., with the words “in height” added after it. There is also not an area shaded in any colour on the attached plan as suggested in this paragraph. However, as the text in the notice clearly identifies where the second retaining wall is located, the words “(area shaded colour on the attached plan)” are not necessary and can be deleted. The word “Fencing” is also incorrectly given a capital letter in paragraph 3.1 iii. of the notice and requires correcting. In the interests of clarity, it is also again necessary to insert the words “in height” after the words “exceeding 2m” in this paragraph.
4. There is some overlap in the requirements of paragraphs 5.1 and 5.2 of the notice and these can be combined into a single requirement to “Reinstate the ground levels and restore the land to its condition before the breach took place at the locations identified in paragraphs 3.1i and 3.1ii by removing all surplus waste material and regrading the land to match its original contours.”
5. Furthermore, the requirements of the notice should reflect the matters alleged. Although paragraph 5.3 requires the erection of a fence at the boundary of the land at a height not exceeding 2 metres, there is no reference to the removal of the unauthorised fencing. Moreover, all of the unauthorised fencing may not necessarily be required to be replaced, and an entirely new fence might not need to be erected. As such, I am satisfied that a correction can be made to this paragraph to ensure that following the completion of requirement 5.1, any boundary fence on the land should not exceed 2 metres in height.
6. Paragraph 5.4 of the notice requires the disposal of the waste material at a licensed waste disposal facility and to provide documentary evidence of such disposal. However, the disposal of waste is subject to control under separate legislation and goes beyond requiring the removal of the unauthorised development and restoring the land to its previous condition. I shall therefore delete this from the requirements.
7. Finally, paragraphs 6. a.) and b.) of the notice incorrectly refer to compliance with the requirements set out in paragraphs 5 a) and 5.b). The Council has acknowledged this oversight and confirmed that it should require compliance with paragraphs 5.1 and 5.2. The appellant has not contested this. However, as I will merge the requirements of 5.1 and 5.2 into one paragraph, I consider that an overall compliance period of 4 months would ensure that no injustice would be caused to the main parties. I shall therefore reword paragraph 6.a) to reflect this and delete paragraph 6.b).
8. I am satisfied that I can make all of the corrections and variations above without injustice to the appellant or the Council.

Preliminary Matters

9. Although the appeal was initially made under the ground (c), (f) and (g) headings, the appellant’s written submissions raise points in respect of the planning merits of the case. However, in the absence of an appeal on ground (a), namely that planning permission ought to be granted, the planning merits of the development are not before me for consideration. I am therefore unable to have regard to and evaluate these points within my decision.

10. Nonetheless, the appellant's written submissions have also raised points of relevance to ground (b)-i.e., that those matters alleged have not occurred. Therefore, I shall deal with the appeal as if it had been made on ground (b) as well as ground (c), (f) and (g). There would be no unfairness, as the Council has already been given the opportunity to address these points in its written submissions.

Appeal on implied ground (b) and ground (c)

11. The appeal on ground (b) is that the alleged breach of planning control has not occurred as a matter of fact. The appeal on ground (c) is that there has not been a breach of planning control. An important principle to bear in mind is that these appeal grounds are regarded as legal grounds, in relation to which the onus rests with the appellant to demonstrate their case, on the balance of probability.
12. With regard to the ground (b) appeal, the appellant's arguments are that no part of the garden has been raised, that the end of the garden has only been cleared, with the supporting wall reinforced and restored to how it was previously. It has also been put forward that there has been no change in the fenceline or the fence height on the boundaries of the site.
13. Although I have had regard to a letter of support from one neighbour, there is little substantive evidence to support these claims. It is not in dispute that an area of decking adjacent to the conservatory, which is shown in the submitted sales particulars, has been replaced with a raised slabbed patio area. My site observations confirmed that its height is consistent with that in the notice. Furthermore, photographs submitted by a third party clearly show the previous fencing and its height to follow the original contours of the garden, and to be lower and different to that in situ. I do not consider any of the photographs provided by this third party to be misleading.
14. It is undisputed that an area of decking previously occupied the end of the garden, and it is clear from the third party evidence that the removal of this and the vegetation along the rear boundary revealed a breeze block retaining wall. However, the retaining wall the subject of the notice does not have the same breeze block finish as the wall shown in the third party photographs. There is also little substantive evidence before me to corroborate the appellant's view that it is of the same height and length, and in the same position in the garden as the original wall. In addition, I am unable to verify when the appellant's photographs of the space below the previous raised decking were taken.
15. Nor is there any firm evidence to demonstrate on the balance of probability that, as a consequence of the retaining wall, and the backfill of soil, the garden's levels have not been changed and parts of it have not been raised in height. The sales particulars show that the garden lawn sloped downwards and from left to right. However, the Council's photographic evidence, which was taken during construction, clearly shows a light brown material which appears to be the importation of a stockpile of granular fill located adjacent to the retaining wall. This material appears consistent with imported fill used for the levelling or raising of ground levels. This area was also levelled out and turfed at the time of my visit.
16. Accordingly, I conclude that the appellant has not discharged the onus of proof to demonstrate, that on the balance of probabilities, the matters alleged have not occurred.

17. Turning to the ground (c) appeal, S171A(1) of the Act states that, for the purposes of the Act (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
18. The meaning of development is set out in S55(1) of the Act and includes the carrying out of building or engineering operations on land, or the making of any material change in the use of the land. I am satisfied that the raised patio area, the alteration of ground levels of the garden and the erection of the boundary fencing constitute development within the meaning of Section 55 of the Act.
19. The appellant has referred to the raised (slabbed patio) area as being the same height as the previous decking which Google Earth images show was in place in 2007. However, in order to construct the raised patio, the decking had to be removed. The raised patio area is therefore essentially a new development and structure of a different character to the decking.
20. Article 3, Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) is concerned with the enlargement, improvement or other alteration of a dwellinghouse. Paragraph A.1.(k) confirms that development is not permitted by Class A if, amongst other things, it would consist of the construction of a raised platform (defined elsewhere within the regulations as meaning a platform with a height greater than 0.3 metres). Given its height I have no reason to doubt that the patio constructed is a raised platform that requires planning permission.
21. Furthermore, the garden profile has been altered considerably from the former natural contours and ground level. This, in my view, is more than a modest change in ground levels and constitutes an engineering operation that falls within S55(1) of the Act. There is no compelling evidence before me to demonstrate that this engineering operation would not require planning permission.
22. Turning to the close boarded fencing, Article 3, Schedule 2, Part 2, Class A of the GPDO states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure constitutes permitted development, subject to certain limitations. Paragraph A.1. of Class A goes on to indicate that, with the exception of specific circumstances relating to schools, development is not permitted by Class A if the structure in question is erected or constructed adjacent to a highway used by vehicular traffic and would exceed a height of 1 metre above ground level. In any other case the height of the structure should not exceed 2 metres above ground level, in order to be permitted development.
23. The close boarded timber fencing has not been constructed adjacent to a highway. However, given my findings in respect of the alterations to the original ground levels, and my site observations, I am not persuaded that all of this fencing has been constructed within its permitted height of 2 metres above ground level. All of the development thereby requires planning permission.
24. I appreciate that the removal of overgrown vegetation does not require planning consent and that the appellant has carried out the works in order to create a stable, accessible garden that is free from hazards for the safety of their family. The appellant's willingness to potentially submit a planning application is also noted. However, these factors do not alter my conclusion that, on the balance of

probabilities, the matters stated in the notice have occurred and that they do constitute a breach of planning control.

25. I am also mindful of the appellant's allegations in respect of being subjected to harassment, including racial harassment, by some local residents. Whilst I have taken this submission into account, it is not determinative in the consideration of these grounds of appeal.
26. Accordingly, drawing all of the above considerations together I conclude that the appeals on ground (b) and ground (c) fail.

Appeal on ground (f)

27. An appeal on ground (f) is brought on the grounds that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters stated in the notice or, as the case may be, remedy any injury to amenity which has been caused by such breach.
28. Section 173(4) of the 1990 Act states that the purpose of an enforcement notice is to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
29. In this case the requirements of the corrected notice are to restore the land to its former condition and contours. As such, the purpose is clearly to remedy the breach.
30. I have already covered the incorrect cross-referencing in section 6 of the notice, and the excessive requirement in respect of the disposal of any surplus waste materials above. Furthermore, as previously mentioned, in the absence of a ground (a) appeal, and a deemed planning application, I am unable to consider the planning merits of any potential alternative schemes for privacy screening. Whilst I also appreciate the financial loss and costs associated with the development and the requirements, there is little else before me to explain why the appellant considers the steps to be excessive or to detail any proposed lesser steps.
31. Therefore, as the notice does no more than seek remedy of the breach, it is not excessive. There are no other lesser steps drawn to my attention, or any obvious alternatives that could be achieved with less cost and disruption, to remedy the breach of planning control, which is the purpose of the notice.
32. I have already concluded above that the notice requirements should be corrected. Other than with regard to these corrections, the ground (f) appeal does not succeed.

Appeal on ground (g)

33. The appeal on ground (g) is made on the basis that the period specified in the notice falls short of what should reasonably be allowed. The periods for compliance are 3 months to restore the original land levels, and 4 months to remove waste material and regrade the land as set out in the header of this decision.

34. The compliance period must strike a balance between allowing sufficient time and ensuring that the adverse impacts of the breach are not unnecessarily prolonged. However, no specific details have been advanced in respect of why additional time is needed.
35. Moreover, I have already concluded that, in line with the corrected requirements, the overall period for compliance can be extended to 4 months. In the absence of any evidence to the contrary, I am not persuaded that there is need to extend the period for compliance in the notice to any further extent. Accordingly, I am satisfied that it is a proportionate response to the breach of planning control that has occurred. Other than with regard to this variation, the appeal on ground (g) therefore fails.

Conclusion

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

Formal Decision

37. It is directed that the enforcement notice is corrected by:
- The addition of a closing bracket after the words “dwelling house” in paragraph 3.1i.
 - The addition of the words “in height” after “46cm” in paragraph 3.1i.
 - The deletion of the words in the brackets “(area shaded colour on the attached plan)” in paragraph 3.1ii.
 - The deletion of the word “meters” and the substitution of the words “metres (m) in height” in paragraph 3.1ii.
 - The deletion of the word “Fencing” and the substitution of the word “fencing” in paragraph 3.1iii.
 - The addition of the words “in height” after “exceeding 2m” in paragraph 3.1iii.
 - The deletion of section 5 in its entirety and the substitution of the following wording instead:

“5. WHAT YOU ARE REQUIRED TO DO

1. Reinstate the ground levels and restore the land to its condition before the breach took place at the locations identified in paragraphs 3.1i and 3.1ii by removing all surplus waste material and regrading the land to match its original contours.
 2. Following completion of requirement 1 above, no boundary fence on the land should exceed 2 metres in height when measured from the restored ground level.”
38. It is directed that the enforcement notice is corrected and varied by:
- The deletion of section 6 in its entirety and the substitution of the following wording instead:

“6. TIME FOR COMPLIANCE

a.) The time for compliance with the requirements set out in paragraph 5.1 above is Four (4) months from the date on which the Notice takes effect.”

39. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

Mark Caine

INSPECTOR