



Appeal Decision

Site visit made on 13 October 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2026

Appeal Ref: APP/B3030/C/25/3375131

Land at 2 Birkland Drive, Edwinstowe NG21 9LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Christopher Cooke against an enforcement notice issued by Newark & Sherwood District Council.
 - The notice was issued on 29 September 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational 'development' consisting of the erection of a fence, enclosing the South and West elevations of the property (as shown between Point 'A' within Photograph 1. and Point 'B' within Photograph 2. and marked by a red line within Plan A).
 - The requirements of the notice are to reduce the height of the fence (between Point 'A' within Photograph 1. and Point 'B' within Photograph 2. and marked by a red line and labelled with 'A' and 'B' within Plan A) enclosing the South and West elevations of the property to no more than 1m in height.
 - The period for compliance with the requirements is 180 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (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.
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Decision

1. 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 a fence, enclosing the South and West elevations of the property (as shown between Point 'A' within Photograph 1. and Point 'B' within Photograph 2. and marked by a red line within Plan A) on Land at 2 Birkland Drive, Edwinstowe NG21 9LU as shown on the plan attached to the notice.

Appeal on ground (c)

2. The ground of appeal is that the matters alleged in the notice, namely the erection of a fence, enclosing the South and West elevations of the appeal property, does not constitute a breach of planning control. The appellant's case is that the fence is not adjacent to a highway used by vehicular traffic and is therefore permitted development under the provisions of Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended (GPDO). It is also his view that because the fence as erected does not exceed the height of the hedgerow it replaced, then this also means that it is permitted development under those same provisions of the GPDO.
3. It is the local planning authority's view that the fence, which is approximately 1.8m in height, has been erected adjacent to a highway used by vehicular traffic. As such, it is not permitted development as it would conflict with Class A.1(a) (ii), Part

- 2, Schedule 2, Article 3 of the GPDO. They also consider that the fence conflicts with Class A.1 (c) as the previous means of enclosure was a hedge.
4. Class A, Part 2, Schedule 2, Article 3 of the GPDO provides for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Class A.1 states that development is not permitted by Class A if:
- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed-
 - (i) for a school, ...
 - (ii) in any other case, 1 metre above ground level.
 - (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;
 - (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it is erected or constructed, whichever is the greater, or
 - (d) it would involve development within the curtilage of, or a gate, fence, wall or other means of enclosure surrounding, a listed building.
5. The fence that has been erected is not surrounding a listed building and does not exceed 2 metres above ground level, thus there is no dispute that the provisions of Class A.1 (b) or Class A.1 (d) are not applicable in this case. In addition, the appellant considers that because the fence is no higher than the hedgerow it replaced, the fence is permitted under the provisions of Class A.1 (c). However, paragraph (c) only permits development which involves the maintenance, improvement or alteration of an existing gate, fence, wall or other means of enclosure. Thus, paragraph (c) it is not applicable to the erection of the new fence which is the subject of this enforcement notice.
6. The main issue is thus whether the fence that has been erected is adjacent to a highway used by vehicular traffic, and the issue turns on an interpretation of the term 'adjacent to'. The GPDO gives no definition of 'adjacent to' and leaving this to be decided having regard to its normal meaning. The normal everyday dictionary definition of adjacent is 'being near or close'. What constitutes 'adjacent to' is therefore a matter of fact and degree and is dependent upon the circumstances of the case.
7. The fence that has been erected is a single structure carried out in one act of development. Thus, should I find that any part of the fence has been constructed adjacent to a highway used by vehicular traffic, then the whole fence would not be permitted by the provisions of Class A of the GPDO as set out above.
8. The appellant has advised in his statement of case that the fence is set back from the carriageway (highway used by vehicular traffic) by 4.4m where it fronts Mansfield Road; 2.1m where it fronts Birkland Drive; and 3m where it aligns with the corner radius. The Council does not dispute those measurements.

9. The fence is at its closest to the carriageway edge where it fronts Birkland Drive. In this location it has been constructed to align with the back edge of the pavement and is approximately 2m from the kerb line. There is no intervening verge or street furniture and the fence in this location aligns with the boundary treatments of neighbouring properties which front Birkland Drive, all of which form a means of enclosure for their gardens from the public highway. Whilst I appreciate that the fence does not directly abut the part of the highway which is used by vehicular traffic, considering its modest distance from the carriageway edge and the absence of any intervening public open space, verge or dominant street furniture, I consider that as a matter of fact and degree the fence has been constructed adjacent to a highway used by vehicular traffic.
10. I have had regard to my decision on Watercress Close¹. However, as set out in that decision, whether something is 'adjacent to' is a matter of fact and degree and is dependent upon the circumstances of the case. The relationship to the highway of the hoardings and site characteristics were very different in that case to those the subject of this appeal and that appeal case is not therefore directly comparable.
11. I conclude that the fence erected is a single operation/enclosure and part of that development is adjacent to the highway, namely Birkland Drive. The fence does not therefore benefit from the permitted development rights set out above or express planning permission. A breach of planning control has occurred and the appeal on ground (c) fails.

Appeal on ground (a), deemed planning application

Main Issue

12. The main issue is the effect of the development on the character and appearance of the area.

Reasons

13. The appeal property is situated on the corner of Birkland Drive and Mansfield Road in a residential area. The area is characterised by predominantly detached dwellings, the individual design and form of which vary considerably. In addition, the properties display an eclectic range of boundary treatments, including timber fencing, brick/stone walls and hedgerows, and all of which differ in their individual heights. Thus, the character and appearance of the area varies greatly when considering how the front gardens of the individual properties are enclosed.
14. The fence that has been erected is approximately 1.8m high and is constructed from timber panels supported by a concrete plinth and posts. Whilst the location of the property on the street corner means that the fence is visually prominent within the street scene, it does not appear incongruous and nor does it dominate local views. The timber panels have weathered to a muted silver colour and the fence is set well back behind the kerb line radius aligning with its neighbours' boundary enclosures on both Mansfield Road and Birkland Drive. In addition, it is no higher than the adjoining hedgerow and the appeal property is still clearly visible above the fence. Moreover, fences are a part of the character of the area, and I noted on my site visit that the property on the opposite corner of Birkland Drive has a similar

¹ APP/K1935/C/20/3251206.

fence along part of its boundary. I was also able to view comparable fences on the corner of First Avenue/Mansfield Road as well as Welbeck Close/Mansfield Road.

15. For the reasons given above I conclude that the fence does not have a harmful effect on the character and appearance of the area. There is no conflict with the development plan as a whole, including Core Policy 9 of the Newark and Sherwood Amended Core Strategy, 2019 nor Policies DM5 and DM6 of the Allocations and Development Management DPD, 2013 which are consistent with the National Planning Policy Framework (NPPF) in seeking to achieve good design which contributes to local distinctiveness and character in scale, form and materials. I also find no conflict with the Council's Householder Development Supplementary Planning Document, 2014 which seeks to ensure that boundary treatments are of a scale, height and design/material in keeping with the character and appearance of the dwelling and surrounding area and is not too intrusive. The fence is sustainable development and in accordance with Policy S3 of the NPPF should be approved.

Conclusion

16. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.
17. In these circumstances the appeal on grounds (f) and (g) do not fall to be considered.

Elizabeth Pleasant

INSPECTOR