



## Appeal Decision Notice

Decision by Michael McGlynn, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2039
- Site address: 48 River Park, Nairn, IV12 5SR
- Appeal by Mr MacCormick against the enforcement notice dated 4 November 2021 served by The Highland Council
- The alleged breach of planning control: The alleged erection of fencing above 1 metre high that is forward of the principal elevation of a house without planning permission
- Date of site visit by Reporter: 24 January 2022

Date of appeal decision: 31 January 2022

## Decision

I dismiss the appeal and direct that the enforcement notice dated 4 November 2021 be upheld.

Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

## Reasoning

1. The appeal against the enforcement notice was made on the following ground as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:

- (c) the matters stated in the notice (if they occurred) do not constitute a breach of planning control.

2. The council served the notice (reference number: 21/00137/ENF) alleging that unauthorised development had taken place, comprising the erection of a fence above 1 metre high forward of the principal elevation of the house; to the east on the boundary with 50 River Park and to the north facing road 'River Park', without planning permission. The council has stated that the fence was erected in March 2021, and it is noted that the appellant has also stated this.

3. The fence is 1.8 metres high and of wooden construction; timber posts, timber rails and dressed with vertical timber boards with spaces between each board. I have noted from my site visit that the fence is in place as described and measured the fence as being 1.8 metres in height.

4. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, sets out classes of development that are granted planning permission by virtue of the order.

5. Class 3E states that planning permission is required where: any part of the resulting gate, fence, wall or other means of enclosure would exceed one metre in height where it: (i) fronts a road; or (ii) extends beyond the line of the wall of the principal elevation or side elevation that is nearest a road. I accept the council's view, that as the fence exceeds 1 metre in height and is forward of the principal elevation where it fronts the road planning permission is required. The appellant has not demonstrated that permission exists for the works and therefore it is a breach of planning control. The appeal under ground (c) therefore fails.

#### Other matters

6. The appellant refers to other fences in the area that are also above 1 metre in height, and hedges on the same street. From my site visit I have noted this. However, I have to consider this enforcement appeal on its own merits in terms of legislation and the ground of appeal. Therefore, those matters are not relevant to my consideration of this appeal. In addition, I note that hedging does not constitute development and therefore does not require planning permission and is subject to legislation set out in the High Hedges (Scotland) Act 2013.

#### Conclusion

7. For the reasons set out above, I find that the matters stated in the enforcement notice to be a breach of planning control have occurred and conclude that the enforcement notice should be upheld.

8. I have taken into account all other matters raised however these would not lead me to alter my conclusion.

*Michael McGlynn*  
Reporter