



# Appeal Decision

Site visit made on 19 January 2010

by **Paul V Morris** DipTP MRTPI

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**26 January 2010**

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## Appeal Ref: APP/T5720/C/09/2113974-5

### 1 Cerne Road, Morden SM4 6QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Marta Kwiatkowska & Mr Radoslaw Bylina against an enforcement notice issued by the Council of the London Borough of Merton.
- The Council's reference is 42331.
- The notice was issued on 3 September 2009.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a 1.8 metre wooden fence along the Crowland Walk elevation and an integrated double width electric sliding gate along the Cerne Road elevation.
- The requirements of the notice are to:
  - (a) remove the 1.8 metre close boarded fence and gates from the boundary of the property adjacent to Cerne Road and Crowland Walk; or
  - (b) reduce the height of the fence and gates to a height no greater than 1 metre above natural ground level;
  - (c) remove all debris and materials resulting from these works from the land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on grounds (c), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.**

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### Ground (c)

1. The claim on this ground is that there has been no breach of planning control. The appellants say that they believed that they did not need planning permission for a replacement fence.
  2. From the appellants' evidence, and the photographs in particular, it is apparent to me that there was a pre-existing 1.8 metre fence along the Crowland Walk frontage. The appellants' photograph, entitled '*Garden view of old fence panels*', shows this fence in place extending from the two panels, which are still in place and which are mostly on the property boundary of 18 Crowland Walk and partly on the appellants' property boundary, to the corner of Cerne Road. The following two photographs, entitled '*Old front and side panels during the works*' show a significant length of fencing having been taken down and laying on the ground. I think there is little doubt that this is the length of fencing formerly in position beside Crowland Walk and now replaced.
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3. I conclude, therefore, on the balance of probability, that the fence which now exists on the Crowland Walk frontage is the replacement of a pre-existing 1.8 metre fence, and there is no breach of planning control relating to this section.
4. I also think it is possible that a portion of this fence was on the Cerne Road frontage, at the northern end connected to the corner of the Crowland Walk section, although there is not the same level of certainty as the photographs are not clear on this matter. However, to my mind, there is no evidence to suggest that a 1.8 metre fence pre-existed along much of the Cerne Road frontage. The existing 1.8 metre fence with gates is therefore a structure requiring planning permission, as it adjoins the highway.
5. The ground (c) appeal succeeds in part, and I will vary requirement (a) of the notice to exclude reference to Crowland Walk. However, the ground (c) appeal does not succeed in relation to the Cerne Road frontage, and I have dealt with grounds (f) and (g) on that basis.

**Ground (f)**

6. The appellants have offered to paint the fence a different colour and/or reduce the height to 1.6 metres.
7. However, whilst these measures might go some way towards addressing the injury to amenity, they would not remedy the breach of planning control. It may be that the Council would want to consider these measures, but this is for the Council to determine. As it is, the ground (f) fails.

**Ground (g)**

8. The appellants say that three months would be a more reasonable time for compliance. In view of the date of this decision, I consider that three months would be reasonable to allow any works to take place in springtime weather.

**FORMAL DECISION**

9. I allow the appeal on ground (c) in part, and on ground (g), and direct that the enforcement notice be varied:
  1. by deleting, in paragraph 5(a), the words: '*and Crowland Walk*';
  2. by deleting, in paragraph 5 Time for Compliance, the words: '*ONE (1) MONTH*' and inserting '*Three months*'.
10. Subject to these variations I uphold the enforcement notice.

*Paul V Morris*

Inspector