



Appeal Decisions

Site visit made on 11 June 2019

by **Paul Freer BA (Hons) LLM PhD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2019

Appeal Refs: APP/H4505/C/18/3211273 & 3211274

Land adjacent to 27 Sundridge Drive, Gateshead NE10 8JF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Maria Marshall and Mr Denis Francis Marshall against an enforcement notice issued by Gateshead Council.
 - The enforcement notice was issued on 10 August 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land shown edged in red on Plan 1 attached to the notice from public open space to enclosed land involving the erection of a timber fence.
 - The requirements of the notice are:
 - (i) Permanently cease the use as enclosed land of part of the Land shown edged in red on Plan 1 attached to the notice
 - (ii) Dismantle the timber fence enclosing the land as shown the approximate position edged with a blue line and a broken black line on Plan 2 attached to the notice, ensuring that the posts and foundations are removed to at least 100 millimetres below the level of the ground.
 - (iii) Restore the land to its condition prior to the breach by filling in any post holes with topsoil to a minimum depth of 100 millimetres, levelling and evenly grading the surface of the ground to match the contours of the surrounding land.
 - The period for compliance with the requirements is 4 weeks.
 - The appeals are proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the enforcement notice is quashed

Reasons

1. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land from public open space to *enclosed land* involving the erection of a timber fence (my emphasis). The term 'enclosed land' used in the alleged breach of planning control is a descriptive one, and is not a use of land in planning terms. Because the notice does not actually allege any material change of use of the land, it is invalid as originally drafted.
2. The appellants have responded to the notice on the basis that the alleged breach of planning control is a change of use to a private garden, and I have considered carefully whether I could correct the notice to allege that use without causing injustice. However, had that been the breach of planning control alleged in the notice as originally drafted, I cannot discount the possibility that the appellants may have chosen to lodge their appeal on

grounds other than or in addition to just ground (c) on which the appeal was made.

3. In particular, the appellants may have chosen to lodge an appeal on ground (a): namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Indeed, some of the comments made by the appellants as part of their appeal on ground (c) do constitute matters that ought to be considered under an appeal on ground (a). However, because no appeal on ground (a) has been made and the requisite fee was not paid at the relevant time, I am not able to consider the appeal as if it had been made on ground (a) or to invite an appeal on ground (a) to be made at this time.
4. For these reasons, I am not able to correct the breach of planning control to allege use as a private garden without potentially denying the appellants the opportunity to appeal on one or more other grounds of appeal that they might have elected to pursue had that been the breach of planning control alleged in the notice as originally drafted. That would cause them injustice.
5. In addition, the requirement at paragraph 5(i) of the notice to permanently cease the use as enclosed land is not sufficiently precise to enable the recipients of the notice to know what they must do to comply with it. Because 'enclosed land' is not a use of land, there is no use of the land for the appellants to permanently cease. Consequently, the appellants would not be able to comply with the notice which, given the criminal sanctions that may result from not complying with an enforcement notice, would be a serious matter. Moreover, I am unable to vary the requirements of the notice because, by doing so, I would deprive the appellants of the opportunity to make appeals under grounds (f) and (g) as set out in section 174(2) (c) of the Town and Country Planning Act 1990, should they so wish, in relation to the requirements as varied. That would also cause them injustice.

Conclusion

6. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the requirements to comply with the notice. It is not open to me to correct the errors in these respects in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeals under ground (c) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

Formal Decision

7. The enforcement notice is quashed.

Paul Freer
INSPECTOR