



## Appeal Decisions

Site visit made on 12 February 2020

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

### Appeal Refs:

**APP/H4505/C/19/3236279 (Appeal A)**

**APP/H4505/C/19/3236280 (Appeal B)**

### **Land adjacent to 27 Sundridge Drive, Wardley, 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 Maria Marshall (Appeal A) and Denis Marshall (Appeal B) against an enforcement notice issued by Gateshead Council.
- The enforcement notice was issued on 1 August 2019.
- 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 the attached Plan 1 from public open space to private garden involving the erection of a timber fence.*
- The requirements of the notice are to:
  - (i) Permanently cease the use as private garden of the Land (shown edged red in Plan 1 attached).
  - (ii) Dismantle the timber fence enclosing the Land (shown in the approximate position edged with a blue line and a broken black line on Plan 2 attached), 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 ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

### Decision

1. The appeals are dismissed.

### **The appeals on ground (b)**

2. To succeed on this ground the appellants must demonstrate, on the balance of probabilities, that the matters stated in the notice as constituting the breach of planning control have not occurred.
3. 27 Sundridge Drive is a detached residential property in a Radburn-style housing estate in a suburb of Gateshead. It is separated from its neighbour No 25 at 90° by a roughly square expanse of grassland. This expanse was said by a previous Inspector, when dismissing an appeal in 2007 against the Council's refusal to permit the change of use of the land from public open space to a private garden, to amount to 224m<sup>2</sup> in area. Many areas of open grassland exist throughout the estate, and I saw when walking around the estate that these are kept clear and reasonably well-tended. They are generally overlooked

by the fronts of surrounding properties, providing recreational space with natural surveillance.

4. A close-boarded fence around 1m high has been erected on the land adjacent to No 27. This divides the square of land diagonally from front to rear, and runs alongside the footway to the front, creating an enclosed triangular parcel of grassed land that contained a couple of footballs at the time of my visit. An unobtrusive pedestrian gate has been installed in the part of the fence adjacent to the footway, near to the property at No 27. A low wall of around 6 brick courses plus capping, together with the side wall of the house itself, completes the third side of the triangle, separating this grassed area from the property at No 27.
5. The allegation in the notice is that this triangle of land has been put to use as a private garden, and my conclusion after viewing the site is that the allegation is true. Although the appellants state that the gate is kept unlocked, this fact is insufficient to enable the public reasonably to perceive that the land is kept available for their use. Many garden gates are not kept locked. Although the land is separated from the property at No 27 by a low brick wall and the side wall of the house, it is nevertheless obviously used as a private garden area contiguous with, and benefitting, that dwelling.
6. The appellants also refer to the consequences of the fence as discouraging the use of the land for dog fouling and by youths riding motorbikes or quad bikes. If its consequences are to discourage such use, it follows that other public use is also likely to be deterred. The fence serves to distinguish this area of land from other open spaces on the estate which have no fences or physical barriers. There are no indications that the land remains available for public use. The appellants say that their neighbours still use the land, but do not say on what terms, and I consider that the wider public would perceive the land, as I do, to be used as a private garden area associated with No 27.
7. Therefore I conclude on the balance of probabilities that the matters alleged in the notice have occurred and the appeals on ground (b) fail.
8. A number of other matters have been raised in correspondence by local residents including the neighbours at No 25 where similar enforcement action has recently been taken in respect of the triangle of land adjacent to that property. Nothing raised in that correspondence affects my conclusions on the appellants' appeals on ground (b). Therefore I shall uphold the enforcement notice.

### **Formal Decision**

9. The appeals are dismissed and the enforcement notice is upheld.

*Laura Renaudon*

INSPECTOR