



## Appeal Decision

Site visit made on 27 June 2023

by **R Merrett Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

---

**Appeal Ref: APP/H4505/X/22/3311077**

**Allotment Gardens West of Pelaw Youth Centre, Shields Road, Felling, Gateshead NE10 0YH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Ahmed against the decision of Gateshead Council.
  - The application Ref DC/22/00635/CPE, dated 25 May 2022, was refused by notice dated 11 October 2022.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is "Private general amenity land use".
- 

### Decision

1. The appeal is dismissed.

### Reasons

2. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development, require planning permission or because the time for enforcement action has expired (s191(2)).
3. There is a further proviso that the development must not contravene the requirements of any enforcement notice then in force. I have not been told that there was any extant enforcement notice relating to the property at the time of this application.
4. In this case the appellant is relying on the argument that the use of the land would be immune from enforcement action due to the passage of time. In order to succeed on this ground, in accordance with Section 171B(3) of the Act, it is necessary to demonstrate, on the balance of probability, the use of the appeal site as described has continued for a period of ten years or more prior to the date of the application, therefore since at least 25 May 2012, so as to be immune from enforcement. The onus rests with the appellant to demonstrate their case on the balance of probability.
5. For the avoidance of doubt the planning merits of the case, including in the context of any previous use of the site, have no influence on the outcome of an application of this type.

6. The site comprises an irregularly shaped area, the main part of which is situated between Shields Road to the north and the railway line to the south. From my visit it was evident that the site was significantly overgrown with dense vegetation, thus impeding accessibility across the land. A small number of dilapidated buildings remained on the site together with the occasional amorphous remains of various materials and structures. These may have been vestiges of a previous use of the site for allotment purposes, though it would be difficult to interpret this past use from the present condition of the land.
7. The Council says that it has viewed various satellite and Google Streetview images of the site taken between 2008 and 2022, showing the site laid out as allotments with associated structures. It was cited in the officer report that the Council considered allotment use to have taken place on the land within the last 10 years. However, the aforementioned images have not been provided as evidence.
8. Notwithstanding this, it is unclear from the information provided by the appellant that if not for allotment purposes how in practical terms the site has actually been used more recently. It is referred to by the appellant as private general amenity land and undeveloped outdoor space, however this is an unsatisfactory vague description, which does not explain the use with the necessary precision. Furthermore, I agree with the Council that ownership of the land is not directly relevant to its function, and does not necessarily assist the appellant's case. There has been no clarification and supporting evidence provided of how the site has actually been used in practical terms; whether that use extended over the entire site; with what frequency and over what duration to demonstrate continuous use for the requisite immunity period. The lack of evidence of any practical use for allotment purposes at present does not bolster the appellant's case.
9. The appellant has provided 22 copies of standard prepared statements, signed by local residents and businesses. These statements refer to allotment use not being seen on the site for over ten years; also to the land being in private ownership and used as general amenity land. Although the statements purport to be sworn statutory declarations, they do not appear to be so, not appearing to have been witnessed and countersigned by a person of appropriate professional standing.
10. I therefore afford these documents limited weight given that there can be no sanction, such as a fine or jail term, if found to be untruthful. However even if the declarations submitted had been properly sworn, they would still not provide the detail that would overcome the aforementioned ambiguity. Furthermore, although the statements refer to allotment use not being seen, it is unclear how frequently the respondents observed the appeal site, the extent of the site that was visible to them, and therefore the context in which these conclusions have been reached.
11. Historic ordnance survey plans submitted by the appellant indicate that the site has been free from built development over the period 1919 – 1984. However, I do not agree with the appellant that this must mean the land was in recreational use, and even if the land was historically associated with the adjacent former church, the historic plans do not otherwise assist in resolving the aforementioned ambiguity. I note also that the date when the use begun is recorded on the application form as 20 May 2022. Whilst this may be an error

- and is not determinative, it does at least add to the ambiguity in terms of continuity of use. Notwithstanding this point, contrary to the appellant's claim, for the reasons set out above continuous use of the land as 'private general amenity land' has, on the balance of probability, not been demonstrated.
12. In addition, drawing the above considerations together, and in the apparent absence of a definitive record of allotment land in the Borough, I am not persuaded that the previous allotment use of the land ended outside the ten-year period prior to the application.
  13. The appellant has referred to various case law / appeal decisions, which make reference to the relative value of allotment land and the likelihood of it being re-established. They also say that the Council has a surplus of open space, within the Pelaw and Heworth Ward, when measured against its standards. However, these considerations relate to the planning merits or otherwise of retaining land in allotment use. As such they have no bearing on the question of the lawful use of the land.
  14. I am mindful that planning practice guidance states "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability." Given the appellant's lack of evidence concerning details of the actual, practical use and continuity of the use, on the balance of probability, the appellant's case is not sufficiently precise and unambiguous. It therefore falls significantly short of being able to meet the requisite test for lawfulness.
  15. Therefore, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "Private general amenity land use" at Allotment Gardens West of Pelaw Youth Centre, Shields Road, Felling, Gateshead NE10 0YH was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*R Merrett*

INSPECTOR