



Appeal Decisions

Site visit made on 13 August 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 September 2019

Appeal Refs: APP/M4510/C/18/3216459 (Appeal A) & 3216460 (Appeal B)

107 Regent Farm Road, Newcastle upon Tyne NE3 3HD

- 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 Louise Ford (Appeal A) & Mr Paul Ford (Appeal B) against an enforcement notice issued by Newcastle-upon-Tyne City Council.
 - The enforcement notice was issued on 15 October 2018.
 - The breach of planning control alleged in the notice is: Without planning permission, the material change of use of the land from privately owned open space to private garden, the installation of a hardstanding and the erection of a fence.
 - The requirements of the notice are: i. Cease the use of the land as a private garden.
ii. Remove timber fence at the location shown marked by the red line on Plan 2.
iii. Remove hardstanding surface at the location shown shaded blue on Plan 2.
iv. Reinstall boundary wall in materials to match the existing premises at a height no greater than 1 metre in height at the location shown by the yellow line shown on Plan 2.
v. Following compliance with requirements (iii) and (iv) relay topsoil to a depth of not less than 100mm onto the area shown shaded blue on Plan 2. vi. Following compliance with (v) above, make good the former grassed area with turf, adjusting levels to ensure that it is laid level with the surface of the surrounding land.
 - The period for compliance with the requirements is 4 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. It is directed that the enforcement notice be varied by:
 - 1) the deletion of item iv. Reinstall boundary wall in materials to match the existing premises at a height no greater than 1 metre in height at the location shown by the yellow line shown on Plan 2; and
 - 2) the removal of the reference to requirement (iv) from item v.
2. Subject to these variations, the appeals are dismissed and the enforcement notice is upheld.

The appeal on ground (c)

3. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. With regard to ground (c), the onus of proof is on the appellants.
4. The appeal site at No 107 is a two-storey semi-detached property. It is set back from the road, and previously had an area of open grass to the front

which was physically divided by a low brick wall. I saw that this arrangement is common to a number of dwellings in the vicinity of the appeal site. There is no dispute between the parties that the whole area of land between the house and the pavement at no 107 is in the ownership of the appellants, and that they are responsible for its maintenance.

5. It is alleged by the Council that a low brick wall has been removed, and a fence of not more than 1m in height has been erected at No 107. The Council were concerned that this had the effect of taking the open space beyond the wall into the private front garden of No 107. They consider that a material change of use occurred as a result of the enclosure of the previously open land, to the detriment of the character and appearance of the surrounding area. The resultant long garden strip was also considered to be out of character with the prevailing pattern of development.
6. I saw on my site visit that the fence referred to in the enforcement notice has been removed. The result is that the land is no longer enclosed, and to that extent, its previously open nature has been restored. However, the Council argue that the use of the land as private garden space and the laying of hardstanding for a drive are unlawful.
7. Although the Council refer to the Town and Country (General Permitted Development) Order 1995 as amended, the evidence extracted from Google Street View shows that the work was carried out after October 2016. It is necessary to look at the Order in force when the development was begun, and so I shall take into account the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015).
8. Schedule 2, Part 1, Part F of the GPDO 2015 states that the provision within the curtilage of a dwellinghouse of a hard surface of more than 5sqm for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted subject to condition (b) where either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse
9. In this case, a drain has been installed at the end of the hardstanding adjacent to the pavement. Details of its construction have been provided by the appellants, and the Council do not dispute its suitability. However, such rights apply only within the curtilage of a private dwelling. It is thus necessary to consider whether or not the land between the line of the wall and the pavement falls within the curtilage of No 107.
10. Whilst there is no legal definition of curtilage, the term generally refers to land which serves the purpose of a building in some reasonably necessary or useful manner; the courts have held that the tests of physical layout, ownership (past and present) and use (past and present) apply. It is a matter of fact and degree as to whether the land forms part and parcel of, or has an intimate association with, the building to which it is attached.
11. From my observations of the other similarly laid out properties in the vicinity, the perception is that the areas between the houses and the boundary walls form their domestic curtilage. By contrast, the areas between the walls and the pavement have the appearance of public open space. Their use is also different insofar as there is nothing to stop the public walking across these

areas. Conversely, it is unlikely that the homeowners would utilise these areas for their own leisure purposes, for example, putting out a table and chairs.

12. Therefore, although I accept these areas of land are in private ownership, I am satisfied that they fall outside the domestic curtilage of the dwellings. That being the case, there is no permitted development right to lay a hardstanding on the land between the line of the wall at No 107 and the pavement. Although the erection of the fence would be permitted development under A.1(a)(ii) of the GPDO 2015, in this particular case, it would facilitate the change of use of the land to a private garden. As I have found such a change of use to be unauthorised, the associated fence would similarly be unauthorised, were it to be reinstated.
13. Turning to the matter of the wall, the Town and Country Planning (Demolition – Description of Buildings) Direction 2014 provides¹ that the demolition of the whole or any part of any gate, fence, wall or other means of enclosure shall not be taken to involve the development of land for the purposes of the Town and Country Planning Act 1990. That being the case, there has been no breach, and so there is no basis to require the reinstatement of the wall. I will therefore direct that the relevant requirement is deleted from the enforcement notice.
14. I conclude that a material change of use of the land has occurred, and that the appellant has not shown that the construction of the hardstanding is permitted development. With the exception of the demolition of the wall, the matters alleged in the notice constitute a breach of planning control and the appeal on ground (c) fails.

The appeal on ground (f)

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. As there is no injury to amenity in this case, the purpose of the notice is to remedy any breach of planning control.
16. I have found that the material use of the land has been changed, with a fence erected to facilitate the change, and that the laying of the hardstanding over the land in question requires planning permission. Taking into account the variations to the enforcement notice discussed above, I am satisfied that the remaining requirements to cease the use of the land, remove the fence and hardstanding and replace the grass, are commensurate with the purposes of remedying the breach of planning control. The appeals on ground (f) therefore fail.

Conclusion

17. For the reasons given above, I conclude that the appeals should be dismissed.

Elaine Gray

INSPECTOR

¹ 3(1)(b)