



Appeal Decision

Site visit made on 17 June 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector, appointed by the Secretary of State

Decision date: 28th June 2024

Appeal Ref: APP/W4515/X/24/3339867

Land to the Rear of 44 Greenhaugh, West Moor, Newcastle, Tyne and Wear NE12 7WA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Ian Palmer against the decision of North Tyneside Metropolitan Borough Council (the LPA).
 - The application Ref 23/00776/PLP, dated 12 June 2023, was refused by notice dated 3 August 2023.
 - The application was made under section 192(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 described as: "it is proposed to enclose the area in question with a wooden fence of height no greater than 2 metres from ground level and then landscape the area as an extension to the main garden. There are no plans to install any permanent buildings on the site."
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Decision

1. The appeal is dismissed.

Main Issue

2. The planning merits of the proposed development are not relevant in an appeal against a refusal of an LDC application.
3. The main issue is whether the LPA's decision to refuse the application for an LDC was well-founded, with particular regard to whether the proposal would amount to development for which planning permission is required.

Reasons

4. S191(2) of the Act sets out that uses are lawful at any time if, (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. Development, for the purposes of the Act, is defined in S55(1). It states that development means, inter alia, the making of any material change in the use of any buildings or other land. The concept of a material change of use is not defined in statute or statutory instrument. The established approach is that, for a material change of use to have occurred, there must be some significant

difference in the character of the activities proposed from what has gone on previously, as a matter of fact and degree.

6. I could see from my site visit that the land is an area of densely planted trees and vegetation which sits beyond the rear fence line of the garden of 44 Greenhaugh. It is part of a strip of such land which runs to the rear of the gardens of the adjacent properties. The strip of land sits adjacent to open fields. The LPA indicate that the fields are agricultural land, with the landscape strip of which the appeal site forms part providing a buffer between the housing and the fields. Whilst in the appellant's ownership, the land is not used for residential activities. I saw from my site visit that it is difficult to access, and its function is clearly to provide space for landscaping. It is not conducive for residential or recreational activities. Indeed, the LPA indicates that the site forms part of a wildlife corridor designated in the North Tyneside Local Plan (2017). It is indicated that the landscape buffer form part of the original design of the housing estate.
7. In contrast, the proposal would involve extending the rear garden of No 44 by opening it up to the appeal site and enclosing it with a 2m high fence. Whilst I note the appellant indicates no buildings would be erected on the land, its use as a residential garden would be significantly different in character from how it is used at present.
8. The appellant indicates the area would be landscaped as with the present garden, which would involve the removal of vegetation and the pruning of trees. It would be used as an extension to the existing rear garden. The activities typically carried out in a rear garden such as sitting, eating, relaxing playing and socialising, along with the various paraphernalia typically associated with residential gardens, would be significantly different from the existing character of the land as a wildlife corridor.
9. I note the appellant owns the Land. There is no restriction on their ability to access it and look after it. However, ownership does not equate to freedom to determine its use.
10. The appellant's argument that other properties in the area have fenced off their land to the edge of the field carries little weight. I do not have the circumstances of those cases before me and, in any event, each case is to be considered on its own merits.
11. I note the appellant's concerns regarding the potential for anti-social behaviour. However, as I have set out such matters are not relevant to the determination of whether or not the proposed development would be lawful.
12. The erection of a fence up to 2m in height is granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) as it is defined as permitted development in Class A of Part 2 of Schedule 2.
13. However, Article 3(5) of the GPDO states that the permission granted does not apply if the permission is granted for works where (a) the building operations involved in the construction of that building are unlawful; or, (b) the existing use is unlawful. In this instance, since the fence is part and parcel of the material change of use of the land to residential garden which would not be

lawful, it follows that Article 3(5) applies and the fence would not be granted planning permission by the GPDO. It too would thus not be lawful.

14. I conclude, therefore, that the proposed erection of the fence to enclose the land and change its use to garden area would amount to development for which planning permission is required. Since there is no evidence of any such planning permission having been granted, the proposal would amount to development without planning permission. As a result, it would not be lawful in the meaning of S191(2) of the Act.

Conclusions

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposal to enclose the area in question with a wooden fence of height no greater than 2 metres from ground level and then landscape the area as an extension to the main garden 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.

J Whitfield

INSPECTOR