Planning Inspectorate

Appeal Decisions

Site visit not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 SEPTEMBER 2025

Appeal A Ref: APP/X1355/C/24/3351510
Appeal B Ref: APP/X1355/C/24/3351511
9 Meadow Dale, Chilton, Ferryhill, County Durham, DL17 0RW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Michael Atkinson and Appeal B is made by Mrs Charli Atkinson against an enforcement notice issued by Durham County Council.
- The notice was issued on 2 September 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from open space to residential garden and the erection of a 1.8m fence enclosure.
- The requirements of the notice are to A) Discontinue the use of the Land, by: (i) permanently cease the use of the Land hatched on the attached plan for the purposes of domestic garden and B) restore the Land to its condition prior to development taking place by undertaking the following actions: (i). permanently dismantle and remove in its entirety the timber boundary fence erected on the Land shown between points A-B-C-D on the attached site plan enclosing the area of hatched land, including removal of all timbers, posts, gates.
- The period for compliance with the requirements is 28 days.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. The appeals are dismissed, and the enforcement notice is upheld.

Ground (b) appeals

2. An appeal made on ground (b) is that the matters comprising the alleged breach of planning control have not occurred. The onus is on the appellant to make a case on the legal grounds of appeal.

3. The appellants' case on ground (b) is that there has been no breach of planning control as the fence has been erected on private land. Whether the land is in private or other ownership is not a relevant ground (b) appeal matter. The various photographs appended to the Council's statement of case show that the fence was in situ in June 2022, May 2023 and May 2024.

4. There is no evidence before me to support any claim that the appeal fence was not in situ when the notice was issued. Moreover, I have considered the Council's pre-existing and post-development photographs showing the breach of planning control in the street-scene. As a matter of fact and degree, I find that use of the land as a residential garden, as distinct from unenclosed open space, and facilitated by the erection of the fence, has resulted in a material change in the visual character of the use of the land. Consequently, I find that when the notice

was issued, a material change of use of the land had occurred and hence it amounted to an act of development in accordance with section 55(1) of the Act.

5. On the evidence that is before me, I conclude that the matters comprising the alleged breach of planning control have occurred. In reaching this conclusion, I am mindful that the appellants applied for planning permission to retain the same development in 2022[1] which was refused by the Council and subsequently dismissed on appeal. This further casts doubt about any possible suggestion that the breach of planning control has not occurred.

6. For the above reasons, I conclude that the ground (b) appeals fail.

Ground (d) appeals

7. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

8. The appellants ground (d) appeal is made on the basis that the Council *'made no communication for over a year and have attempted to enforce action within a month, also stated the appeal needed to take place within 8 days*'. These are not relevant ground (d) appeal matters.

9. The dated photographic evidence submitted by the Council demonstrates that the fence was substantially complete in June 2022. In respect of section 171B of the Act, the relevant period for immunity from enforcement action is ten years for the material change of use of the land from open space to a residential garden, and four years for the erection of the fence.

10. The notice was issued on 2 September 2024. The appellant has not provided sufficiently precise and unambiguous evidence to demonstrate that the land has been continuously used as a residential garden for ten years, or that the fence has been in place for four years. The photographs submitted by the Council do not show the facilitating fence in situ in November 2021. The evidence does not support any claim that the fence was in place for four years prior to the notice being issued. Moreover, it is noteworthy that the appellants state as part of their final comments that *'the boundary fence around the plot of my house has been in place for almost 3 years'.*

11. In the absence of any contrary and precise evidence from the appellant, the above casts doubt about any possible claim that the land was used a residential garden, as distinct from open space, for a continuous period of ten years. It might be the case that the land has been in the ownership of the appellant for some time, but that does not in itself mean that such land has not historically functioned as open space.

12. For the above reasons, and, on the balance of probability, I conclude that the ground (d) appeals fail.

[1] Appeal reference APP/X1355/W/23/3315170

Ground (f) appeals

13. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

14. The purpose of the notice is to remedy the breach of planning control by ceasing the use of the land as a residential garden and removing the fence. In this regard, the requirements of the notice are not excessive.

15. The ground (f) appeals are made on the basis that a *'compromise has not been offered'*. I am not certain what is meant by this but, in any event, a ground (a) and deemed planning application is not before me. Hence, I am unable to consider the planning merits of any alternative scheme which relates to the breach of planning control.

16. For the above reasons, I conclude that the ground (f) appeals fail.

Ground (g) appeals

17. An appeal on ground (g) is made on the basis that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.

18. The appellants' claim on ground (g) is that a *'compromise has not been offered'*. This is not a relevant ground (g) appeal matter. The notice requires the residential garden use to cease and the fence to be removed within 28 days of the notice taking effect. There is no evidence before me which would lead me to otherwise conclude that a period of 28 days is a reasonable and proportionate response to remedying the breach of planning control in the public interest.

19. I therefore conclude that the ground (g) appeals fail.

Conclusions

20. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

D Hartley

INSPECTOR