



Appeal Decisions

Site visit made on 26 February 2026

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 MARCH 2026

Appeal A Ref: APP/H0724/X/24/3356466

Low Throston House, Netherby Gate, Hart Lane, Hartlepool, TS26 0LF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Andrew Haygarth against the decision of Hartlepool Borough Council.
 - The application ref H/2024/0098, dated 3 April 2024, was refused by notice dated 29 May 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is for a lawful use to be confirmed for the fence line around the new bungalow.
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Appeal B Ref: APP/H0724/C/24/3344250

Netherby Gate, Hart Lane, Hartlepool, TS26 0LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Andrew Haygarth against an enforcement notice issued by Hartlepool Borough Council.
 - The notice was issued on 10 April 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of land to extend curtilage of 1No. dwelling approved under H/2021/0215 and erection of fence to enclose land into residential curtilage.
 - The requirements of the notice are to 1) Restore the fence line boundary to its original position as shown on plan 415d-S2D SITE PLAN (Proposed)(date received 24/05/2021 by the LPA approved under reference H/2021/0215 (copy attached) in accordance with the following methodology: (i) The fence posts shall be cut to be level with, or marginally below original ground level (maximum 200mm depth without any ground disturbance). (ii) The revetment feature at the inside base edge of the fence shall be: a. removed if it has been placed on the original ground surface OR, b. cut to ground level. (iii) If the upright sleeper retaining wall and any brickwork/foundations associated with the patio are to the west of the redefined line of the boundary these shall be removed to ground level without additional ground disturbance. 2) Remove any debris associated with steps 1) (i), (ii) and (iii).
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of the words "the change of use of land to extend curtilage of 1No.dwelling approved under H/2021/0215 and erection of fence to enclose land into residential curtilage" and their substitution with the words "the

material change of use of land to extend the garden of 1No.dwelling approved under H/2021/0215 and erection of fence” in paragraph 3; and

- the deletion of 2 months and its substitution with 3 months as the time for compliance.
3. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

The description of the existing development given in the LDC application in Appeal A

4. The application form indicates that the appellant is seeking an LDC for an existing use which is described as “*A Lawful Use to be confirmed for the fence line around the new bungalow as determined by the Expert Witness Chartered Surveyor’s report dated 16 January 2024 and the application Statement of Case.*” It is the boundary line, and therefore the use of the land, that the application is seeking to confirm rather than the physical fence itself. This is confirmed by the arguments made by the appellant in his Statement of Case.

Curtilage

5. The curtilage of a house is the land which is so intimately associated with the building that the land forms part and parcel of the building¹. The curtilage of a dwellinghouse is not a planning use of land.

The Notice

6. It is evident in this case that the parties agree that the appeal land is being used for residential purposes incidental to the use of the Bungalow. The allegation in the enforcement notice in Appeal B should therefore be corrected to refer to the change of use of the land for residential purposes in order to be clear and precise. This can be done without causing injustice as it reflects the way in which the parties have put their cases.
7. Section 55 of the Town and Country Planning Act 1990 (“the 1990 Act”) defines development as the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in the use of any buildings or other land.
8. Whilst the appellant argues that there has not been a change of use of the appeal land, neither party has raised an argument regarding the materiality of any change of use. The Council state that there was a change of use which required planning permission, and as such they must be alleging that there had been a material change of use to fall within the definition of development. And the appellant is arguing that there has been no change of use.
9. I will deal with whether there has been a change of use, and whether it was material, under grounds (b) and (c) in Appeal B below. The allegation should therefore be corrected to refer to a material change of use so that it accords with section 55 of the 1990 Act, and I am satisfied that I can do this without causing injustice to the parties as it does not affect their respective cases.

¹ Methuen-Campbell v Walters [1979] 1 QB 525

Human Rights Act 1998

10. The rights of the appellant to a private and family life, home and correspondence , and to enjoy their property as enshrined in the Human Rights Act 1998 are not engaged in an LDC appeal, or the legal grounds of an enforcement notice appeal (which includes grounds (b), (c) and (d)).
11. The right to a fair trial under Article 6 applies to all grounds of enforcement appeals and to LDC appeals. I am satisfied that the appeal procedure fulfils this requirement, and there is nothing to indicate that the appeals have not been procedurally fair, or that the appellant has not had a fair opportunity to make his case. There is also nothing before me to show that there has been discrimination in relation to the protected characteristics. The Council must consider whether enforcement action is expedient in each case, and it is not a matter for the inspector to determine on appeal.

Planning History

12. The most relevant elements of the planning history of the site for the purposes of these appeals are:
 - Reference: H/2020/0062 approved 20/12/2020, outline planning permission approved with some matters reserved for the erection of a dwellinghouse (“the Outline Permission”);
 - Reference: H/2021/0215 approved 02/08/2021, approval of reserved matters relating to appearance, landscaping layout and scale for the erection of a single residential dwelling pursuant to outline planning permission H/2020/0062 (“the Reserved Matters”); and
 - Planning appeal reference: APP/H0724/W/23/3323428, dated 8 December 2023 refusal of change of use of land to extend curtilage of 1no. dwelling approved under H/2021/0215 (“the 2023 Appeal”). The work had already taken place and the appeal was dealt with on a retrospective basis.

The Planning Unit

13. The case of *Burdle & Williams v SSE New Forest DC* [1972] 1 WLR 1207 held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree is physically separate and distinct and occupied for different and unrelated purposes. Whilst the appellant states that he has a larger land holding than the appeal site, the occupation of land is not always or necessarily the same as its ownership.
14. In this case, a separate dwellinghouse use was created at the Bungalow which is not ancillary or incidental to the use of Low Throston House. Whilst I do not have details regarding the occupiers of the Bungalow, the implementation of the Outline Permission and Reserved Matters has created a separate unit of occupation with physical and functional separation from the wider unit.
15. I have taken into account the evidence submitted by the Chartered Surveyor on behalf of the appellant. This deals with the possible boundaries of the land when the houses were built with reference to the official copy title plan for 3 Netherby Gate and the boundary of the scheduled monument.

16. The ownership boundary may be different to the boundary of the lawful planning uses on the appeal land. Ownership of land alone, or indeed the boundary of the scheduled ancient monument does not confer or confirm a lawful planning use. Such uses can change or be lost over time depending on the actual use of the appeal land as a matter of fact and degree.
17. The appellant states that he and his family have used the wider site within his ownership "in a manner compatible with the residential curtilage of Low Throston House". However, he has not provided details of his land ownership, or regarding the activities have taken place on specific parts of it, and whether such uses took place for an uninterrupted period of 10 years. In addition, the appeal land appears undifferentiated from the rest of the adjacent field prior to its enclosure within the Bungalow unit.
18. Of particular relevance in these appeals, the appellant has not provided details regarding any such specific previous use of the land which has now been enclosed as part of the Bungalow boundary. He has therefore not shown on balance that it had an existing residential use. In any event, such an existing use, if shown, would be incidental to the use of Low Throston House and not the newly created planning unit of the Bungalow.
19. Even if it could be shown that the particular section of the land which was part of the adjoining field in which the scheduled monument is located had a residential use previously, the very act of fencing it meant that it became associated with the Bungalow and the new planning unit.

Appeal A

20. The planning merits of the development are not relevant in an LDC appeal. There may well be other encroachments onto land in the vicinity but those matters are not before me in these appeals, and each case will be dependent on its facts and context. The actions of Historic England and the LPA during the investigations and previous planning applications are also not relevant to the factual matters being determined in these appeals.
21. Section 191(2) provides that uses and operations are lawful at any time if:
 - a) no enforcement action may then be taken in respect of them **and**
 - b) they do not constitute a contravention of any of the requirements of an enforcement notice then in force.
22. There was not an enforcement notice in force at the date of the LDC application as the notice which is the subject of Appeal B was issued subsequently. Therefore, the main issue to be considered is whether enforcement action could have been taken on that date in respect of the description of development provided in the application.
23. A material change of use becomes immune from enforcement action after substantially uninterrupted period of use of 10 years. To succeed in the LDC appeal, the appellant would therefore need to prove on the balance of probabilities that there has been such continuous use, and with no intervening lawful use, from at least 3 April 2014 (10 years before the date of the LDC application).

24. As I have set out above, the appellant has not shown that there was an existing residential use of the appeal land before it was fenced to enclose the garden for the Bungalow. This occurred less than 10 years before the date of the LDC application and was not immune from enforcement action.
25. The appellant's statement of case in the LDC appeal raises the permitted development rights for the erection of a fence under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 2, Class A. He argues that as the fence is less than 2 metres in height it is permitted operational development under Class A.
26. The LDC application was for the use of the land as it seeks to confirm that the fence line is lawful. The permitted development rights under Part 2, Class A do not grant permission for the whole of the development as they can only grant permission for the operational element. As the material change of use of the land does not benefit from permitted development rights, and an existing lawful residential use has not been shown on balance, the LDC appeal does not succeed.

Conclusion on Appeal A

27. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the fence line around the new bungalow is 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).

Appeal B

28. As there is not a ground (a) appeal or deemed planning application, the planning merits of the development are not being considered as part of this appeal.

Ground (b)

29. This ground of appeal is on the basis that the matters alleged in the notice have not occurred.
30. It is evident from the planning history of the site as set out previously, and my observations during the site visit that a new planning unit has been formed, and that the area of land enclosed is greater than that had been granted permission under the Outline and Reserved Matters consents.
31. Based on the information before me, the land was not previously part of the garden of the Low Throston House, or any other dwelling. This means that there was a material change of use of the enclosed land to residential as alleged in the notice when it became part of the curtilage to the Bungalow and was separated from the rest of the field by the fence. It has not been shown on balance that the appeal land had a residential use associated with any dwellinghouse prior to the creation of the Bungalow planning unit and erection of the associated boundary fence. It is for the appellant to prove their case on this ground of appeal on the balance of probabilities but he has not done so here.
32. The appeal on ground (b) does not therefore succeed.

Ground (c)

33. This ground of appeal is that the matters stated in the notice do not constitute a breach of planning control.
34. The boundary for the outside area associated with the residential use of the Bungalow was provided by the Reserved Matters. The additional land to the north and west of that boundary which has since been enclosed by the fence did not acquire a residential use through the Outline Permission and Reserved Matters.
35. The development being targeted by the enforcement notice is the material change of use of the land which I have found to have taken place as set out above. The works to fence the land are integral to the unauthorised residential use, and as such can be required to be removed as facilitating this unauthorised use. This is notwithstanding that the fence may fall within Class A, Part 2, Schedule 2 of the GPDO, as caselaw confirms that an enforcement notice which is targeted as a material change of use may require the removal of works that are ancillary or incidental to that unauthorised use, even if such works would be permitted development.²
36. The purpose of the fence was to enable the material change of use, and was therefore part and parcel of that use. As such, it is not immune from enforcement action as the appeal under ground (c) fails.

Ground (d)

37. It is unclear on the evidence exactly when the material change of use or works took place, but the appellant has not shown on balance that this happened more than 10 years prior to the issue of the enforcement notice. The alleged development is therefore not immune from enforcement action and the appeal on ground (d) fails.

Ground (f)

38. The requirement to remove the fence does not exceed what is necessary to remedy the breach of planning control. The requirement in fact under-enforces the alleged breach in that it does not seek to restore the land to its condition before the breach as it only requires the fence posts and other features to be cut to ground level. This is to prevent any additional ground disturbance, and I am satisfied that this can be achieved if undertaken with due care and attention.
39. As such, the steps required by the notice do not exceed what is necessary to remedy the alleged breach, and the appeal on this ground does not succeed.

Ground (g)

40. The appellant requests an extension of the compliance period to 6 months but does not provide any specific reason for this suggested extension other than stating that it would be more reasonable. The works required by the notice are not extensive, even considering that they will have to be undertaken carefully to prevent additional ground disturbance. However, to allow sufficient time to arrange for an appropriately experienced person to undertake these works, an additional month is reasonable and the compliance period should be extended to 3 months.

² *Murfitt v SSE* [1980] PL 630

41. The appeal under ground (g) succeeds to this limited extent.

Zoë Frank

INSPECTOR