



Appeal Decision

Site visit made on 27 April 2026

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 APRIL 2026

Appeal Ref: APP/W0734/C/24/3354109

Land at 73 Cambridge Road, Linthorpe, Middlesbrough, TS5 5NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Nadeem Akram against an enforcement notice issued by Middlesbrough Council.
 - The notice was issued on 24 September 2024.
 - The breach of planning control as alleged in the notice is without planning permission, there has been a material change of use of land from sports field and primary open space to residential garden, and the erection of fencing to enclose the Land.
 - The requirements of the notice are to (i) cease the use of the Land as an extended residential garden, (ii) remove the fence and the hedge from the Land in its entirety, (iii) remove any raised beds, garden furniture, fixtures, buildings, or other structures including light columns from the Land, and (iv) restore the land to grass land.
 - The period for compliance with the requirements is 12 weeks from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words *"Restore the Land to grass land"* in section 4(iv) and their substitution with the words *"Restore the Land to its condition before the breach took place"*. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for Costs

2. An application for costs is made by Mr Nadeem Akram against Middlesbrough Council. The application is the subject of a separate Decision.

Procedural Matters

3. In its statement of case, the Council has referred to policy NE3 of the draft Middlesbrough Publication Local Plan 2025 (draft 2025 LP). The draft 2025 LP is not yet adopted and so does not have the full and statutory weight, in decision making terms, relative to the policies contained within the currently adopted development plan for the area. Nonetheless, the draft 2025 LP has reached a relatively advanced stage following public consultation. Hence, I afford policy NE3 moderate weight as a material planning consideration. It is noteworthy that the site continues to be designated in draft form as existing open space and recreation. The evidence is that this reflects the Council's Playing Pitch Strategy which

identifies the supply and current and future demand for playing pitches within the town (paragraph 6.26 of the draft 2025 LP).

4. A draft National Planning Policy Framework 'Plan-making and national decision-making policies' was issued by the Government for consultation on 16 December 2025 (Consultation Draft Framework). I afford the Consultation Draft Framework limited weight as a material planning consideration. This is relative to the published National Planning Policy Framework 2024 (the Framework) to which I afford full weight as a material planning consideration.
5. I have also determined enforcement notice appeals¹ relating to land at No. 69 Cambridge Road and No. 71 Cambridge Road which also concern the extension of gardens into the sports field/primary open space. These are the subject of separate decision letters.

Ground (d) appeal

6. 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.
7. The appellant comments that while he and *'his immediate neighbours did not begin entering into discussions about the purchase of their respective land parcels from the Dormans Athletic Club until 2018, it is the case that the appellant had a separate verbal agreement in place with the club from January 2014 onwards whereby they allowed him to begin the clearance and remediation process of the area of land specifically to the rear of his property at No 73 Cambridge Road and the use of this part of the site for domestic garden purposes'*.
8. The so-called verbal agreement has not been substantiated by the appellant in the form of precise and unambiguous evidence. In essence, this comment is no more than assertion. In addition, clearance and remediation does not in itself amount to a material change of use of the land to an extended garden. The appellant has failed to provide sufficient precision in terms of when and how the land was first used as residential garden land.
9. Moreover, and, in any event, the aerial photographs displayed in the Council's 'expediency' report demonstrate that the material change of use likely occurred sometime between June 2017 and July 2018. The July 2018 aerial photograph shows a distinct change in the appearance of the land when compared to the June 2017 aerial photograph and includes a demarcation in the form of a means of enclosure. Given the appearance of the land prior to 2018, the Council's 2018 aerial photograph casts sufficient doubt over the appellant's claim that the appeal land has been continuously used as an extended garden for ten years.
10. My attention has been drawn to a planning permission² for the replacement of timber windows and a door to the front at the appeal property. The red edged location plan includes the land which is the subject of this appeal. That planning application was received by the Council on 18 November 2020. Given this date,

¹ Appeal reference numbers APP/W0734/C/24/3354093 & 3354094 and APP/W0734/C/25/3377138.

² Planning permission 20/0671/FUL

the red edged site location plan does not lead me to depart from my conclusion on this ground (d) appeal.

11. On the evidence that is before me, and, on the balance of probability, I therefore conclude that when the notice was issued it was not too late to take enforcement action. Therefore, the ground (d) appeal fails.

Ground (a) appeal and the deemed planning application

Main Issue

12. The appeal made on ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
13. I have considered the reasons for issuing the enforcement notice as well as the officer report which led to the local planning authority considering that it was expedient to take enforcement action. In this regard, the main issues are (i) the effect of the development on playing field provision and open space, and (ii), whether the development preserves or enhances the character or appearance of the Linthorpe Conservation Area.

Effect of the development on playing field provision and open space

14. Prior to the land being fenced off and forming part of an extended garden area in association with the primary use of No. 73 Cambridge Road as a dwellinghouse, it separately comprised land associated with and in the ownership of Dorman Long United Athletic Club. The evidence indicates that alongside other adjacent land, the appeal land was occupied by a pavilion building and some self-seeded trees. The evidence is that the pavilion building was the subject of a fire in 1994 and was subsequently removed by the appellant (and neighbouring landowners). The evidence is that the appellant acquired the land in 2018.
15. In summary, the appellant claims that the development should be allowed in so far that the removal of the fire damaged building and remediation of the land amount to public benefits and that the use of the land as a garden has not actually resulted in the loss of useable open space or playing field land. Moreover, the appellant claims that money from the sale of the land is being used by Dorman Long United Athletic Club to provide an *'additional junior pitch'*.
16. The appellant makes the claim that saved policy E7 of the adopted Middlesborough Local Plan 1999 (LP) is out of date and, moreover, as the Council's adopted Core Strategy 2008 covers the period up to 2023, its policies are also out of date.
17. While I acknowledge that the above policies are now of some age, it is noteworthy that paragraph 232 of the Framework states that *'existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework the greater weight that may be given)'*. I also emphasise that just because a development plan or its policies are of some age, it does not obviate the need to apply section 38(6) of the Planning and Compulsory Purchase Act 2004 which mandates that *'planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise'*.

18. I have considered the policies referenced by the Council in terms of this main issue and particularly saved policy E7 of the LP and policies DC1(e) and CS4(j) of the CS. These policies continue to form the basis of the adopted development plan for the area. I find that they are consistent with the protection approach afforded to open space and playing fields in paragraph 104 of the Framework which states that they *'should not be built on unless a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or c) the development is for alternative sports and recreation provision, the benefits of which clearly outweigh the loss of the current or former use'*.
19. The appeal land forms part of a wider land designation as primary open space in the development plan for the area. The Framework defines open space as *'all open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity'*.
20. In respect of paragraph 104 of the Framework, I have considered the representation made by Sport England. It has assessed the development against paragraph 104 of the Framework, as well as against its Playing Field Policy and Guidance (updated 2021). The latter is a material planning consideration to which I afford significant weight in decision making terms. In respect of the latter, exception No. 3 is relevant, and which considers proposed development to be acceptable if it affects only land *'incapable'* of forming part of a playing pitch and subject to meeting other criteria.
21. I agree with Sport England that owing to the garden extension, it means that it is no longer possible to set out cricket and football pitches side by side and in a manner which would ensure efficient playing pitch provision. Moreover, given the position of the very large enclosed extended garden, and if the wider land were to be used for cricket, the evidence is that less land would now be available for football use purposes at the same time. The evidence indicates that the garden extension has reduced the sporting capacity of the playing field to accommodate playing pitches, or the capability to rotate or reposition playing pitches to maintain their quality. In this regard, I find that the breach of planning control does not accord with Sport England's Playing Field Policy and Guidance.
22. I recognise that the land may have once included a pavilion and some trees. However, the evidence is that these were removed some time ago. There is no evidence to suggest that their removal amounted to acts of development. It is necessary that I consider whether land is now *'incapable'* of forming part of a playing pitch. The land may now be owned privately, but the evidence does not indicate that it would be incapable of being used as part of a playing pitch if the requirements of the notice were met. It would clearly be unreasonable to take the view that the land was incapable of being used for playing pitch purposes simply because it is now in private ownership, and/or because an unauthorised material change of use of the land has occurred. It is also noteworthy that it has not been disputed that Middlesbrough's Playing Pitch Strategy shows that there is a shortage of playing pitches across several age groups and sports.
23. In conclusion, there is no evidence to indicate that an assessment has been undertaken to show that the land is surplus to requirements from a playing pitch

point of view. While the appellant claims that money has been used by Dorman Long United Athletic Club to provide an ‘*additional junior pitch*’, this is not supported with any objective evidence. Furthermore, and, in any event, no controlling mechanism is before me to deal with such a matter. In addition, the proposal is not for alternative sports or recreation provision. Therefore, I find that the appeal development does not accord with the requirements of paragraph 104 of the Framework. This weighs significantly against granting planning permission for the breach of planning control.

24. As regards the loss of open space, saved policy E7 of the LP states that it will be ‘*safeguarded from development*’ and ‘*exceptions will only be made for development which complements its function, or is of overriding benefit to the community as a whole and which would not result in the significant loss of open space*’.
25. The garden extension has resulted in a significant loss of open space. Owing to the position of the fencing, and the resultant irregular shaped land which was otherwise more regular in shape and used for sporting purposes, I do not find that the development has complemented the overall function of the open space. Moreover, while the evidence is that a fire damaged building may have been removed (and the land remediated) at some time prior to the breach of planning control occurring, there is nothing to suggest that the former owner of the land could not have done this. In other words, the evidence does not suitably demonstrate why the sale of the land was the only way that the fire damaged building could have been cleared, or the land made safe.
26. The creation of a private garden following the removal of former development on the land does not, in my judgement, amount to an overriding benefit to the community. In fact, in use terms the breach of planning control does not now relate to a community benefit at all.
27. For the above reasons, I therefore conclude that the development does not accord with policy E7 of the LP. This also weighs against allowing the deemed planning application.
28. Given my conclusions above, it has not been strictly necessary for me to reach a conclusion against policy NE3 of the draft 2025 LP. However, and, for the avoidance of doubt, the breach of planning control does not accord with policy NE3 of the draft 2025 LP because an up to date assessment has not been undertaken to clearly show that there is a proven excess of provision; recreational facilities within the site have not been enhanced by the development; the evidence does not sufficiently support any claim that the community has gained a greater or equivalent benefit for the provision of alternative open space or recreational facilities within the local area; the development does not relate to an educational facility, and, given my reasoning below, the loss of provision has resulted in harm being caused to the character and appearance of the CA.

Linthorpe Conservation Area

29. The appeal site falls within the northwestern part of the Linthorpe Conservation Area (CA). The CA is situated approximately 2km to the south of Middlesbrough town centre between the radial routes of Linthorpe Road and Acklam Road and consists of an area of approximately half a square kilometre.

30. The northern half of the western section, along Oxford Road, Barker Road, Thornfield Road and Linden Grove is characterised by terraces of buildings set behind small front gardens. The buildings are a mixture of brick and render with pitched slate roofs and chimneys. Common architectural features are balconies with decorative metal railings, sliding sash windows with some leaded lights and low brick boundary walls. These attributes add positively to the significance of the CA.
31. The significance of the CA as a whole relates to the overall consistency of the buildings and the definition of the external spaces around them. The buildings are set back from the street, with front gardens generally defined by low brick walls and often mature hedges. The mature planting in the front gardens, which often slightly obscures the buildings, is an important feature of the area. Therefore, although many of the buildings have been altered to some degree, due to their overall form, they still make a positive contribution to the character and appearance of the area.
32. In addition to the sense of spaciousness around properties in the CA, there are important open spaces associated with various private organisations. The Linthorpe bowling club and the playing fields and car parking associated with Kirby Campus provide a break in the urban grain in the central area. Moreover, the sports ground to which the appeal site forms a part is a large rectangular maintained grass area and which is used as football and cricket pitches. This land provides some welcome open relief from the otherwise built form that surrounds it. It is visible from rear of properties on Cambridge Road and Thornfield Road, and from glimpsed views between boundary vegetation on Oxford Road. Its open character and rectangular appearance add positively and distinctively to the character and appearance of the CA as a whole.
33. As part of my site visit, I was able to consider the breach of planning control in the context of its surroundings. The garden extension, facilitated by the erection of imposing fencing, is visible from parts of Oxford Road. Indeed, it can be seen through parts of the palisade fencing and the breaks in vegetation and is likely to be more prominent when the mainly deciduous vegetation is without leaf. Moreover, the irregular shape of the sports field and imposing fencing is conspicuous to those that play sport. It is a very large garden extension and has departed from the otherwise more regular shape and open character and appearance of the sports pitch. In this regard, I find that harm has been caused to the character and appearance of the CA.
34. In the context of paragraph 215 of the Framework, I find that less than substantial harm has been caused to the significance of the CA. I conclude that the harm is at the lower end of the spectrum of less than substantial harm. While I acknowledge that the evidence appears to indicate that the appellant, alongside his neighbours, cleared the land of a pavilion following a fire, and that the land was remediated, this must be weighed against the fact that the unauthorised extended private garden area has resulted in the loss of primary open space and the opportunity for playing pitch provision, i.e., the loss of land that could be used for public and/or sporting purposes. In my judgement, there are no identified public benefits associated with the breach of planning control which are sufficient in this case to outweigh the identified less than substantial harm caused to the significance of the CA.

35. I therefore conclude that the proposal does not preserve or enhance the character or appearance of the CA. Consequently, it fails to accord with the conservation, visual and sustainable development requirements of policies DC1, CS4, CS5 of the CS, and chapter 16 of the Framework.

Ground (a) appeal conclusion

36. For the reasons given above, I find that the unauthorised development does not accord with the development plan for the area taken as a whole and there are no material considerations, including the supportive representation made by the occupier of a neighbouring property, that indicate the decision should be made other than in accordance with the development plan. Therefore, I conclude that the ground (a) appeal fails.

Ground (f) appeal

37. The 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.
38. The purpose of the notice is to remedy the breach of planning control by requiring the use to cease and the facilitating development to be removed. In this regard, the steps required by the notice to be taken are not excessive.
39. Notwithstanding the above, the appellant raises concern about requirement 4(iv) of the notice which is to *'restore the land to grass land'*. The evidence is not clear about the precise condition of the land immediately prior to the unauthorised use/development commencing and, moreover, I am not certain what the Council means by *'grass land'*.
40. In respect of this notice, section 173(3) allows the remedying of a breach of planning control *'by restoring the land to its condition before the breach took place'*. The landowner should have the best knowledge of what the previous condition of the land was prior to the breach of planning control taking place.
41. The evidence appears to suggest that the land was cleared of rubble and building foundations sometime prior to the material change of use of the land occurring. However, I have not been provided with a detailed timeline from either of the main parties in terms of when the land was specifically cleared and then when the material change of use of the land actually took place (including the erection of facilitating fencing). There may have been a gap between the clearance taking place and the breach of planning control occurring, but the evidence is not clear in this regard. Given that the currently drafted notice only requires the land to be restored to *'grass land'*, it is not therefore the Council's intention to require any building rubble or foundations to be restored on or within the land. The issue relates to the extent of any *'grass land'* which may have existed prior to the breach of planning control occurring.
42. In the context of the above, and, given the identified uncertainty based on the evidence that is before me, I shall vary requirement 4(iv) by deleting *'Restore the Land to grass land'* and replacing it with *'Restore the land to its condition before the breach took place'* in accordance with section 173(4) of the Act. I am satisfied

that such a variation would not lead to injustice being caused to any of the main parties.

43. To the extent that I shall vary requirement 4(iv) of the notice, I conclude that the ground (f) appeal succeeds.

Conclusion

44. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR