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## Appeal Decision

Site visit made on 4 July 2020

by **Elaine Gray MA(Hons) MSc IHBC**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

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**Appeal Ref: APP/H0738/C/19/3245726**

**Land adjacent to 7 Emsay Close, Ingleby Barwick, Stockton on Tees  
TS17 0PY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by David McBride against an enforcement notice issued by Stockton-on-Tees Borough Council.
  - The enforcement notice was issued on 8 November 2019.
  - The breach of planning control as alleged in the notice is: A change of use of the land from open green space area to residential garden and erection of 0.9m boundary fence without planning permission.
  - The requirements of the notice are (i) Remove the fence enclosing the open space land as indicated in black within the red edge on Plan SBC0002A attached to the enforcement notice.  
(ii) Cease using the land outlined in red on Plan SBC0002A for residential purposes and restore the land back to its former state prior to the breach taking place.  
(iii) Remove from the land all the resultant debris/materials associated with complying with points (i) and (ii) above.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) 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 be amended by the deletion of all the text in the allegation and the substitution of it by the following text:  
  
‘A material change of use of the land from open green space area to residential garden and erection of 0.9m boundary fence without planning permission.’
2. Subject to this amendment, the appeal is dismissed and the enforcement notice is upheld.

### The enforcement notice

3. With regard to the wording of the notice, it alleges ‘... a change of use of the land...’. The allegation is imprecise in that it refers to a ‘change of use’, whereas to reflect the definition of the term ‘development’ in s55(1) of the Act, it should state a ‘material change of use of the land’.
4. I am satisfied that this correction does not cause any injustice, or make the notice more onerous.

## **The appeal on ground (a) and the deemed planning application**

### *Main issue*

5. The main issue is the effect of the development on the character and appearance of the surrounding area.

### *Reasons*

6. The property at 7 Embsay Close is a two storey dwelling located in an estate of similar houses. To the side of the property is an adopted footpath that links through from Embsay Close to other streets in the vicinity. The appeal site is an irregularly shaped piece of land located between the path and the side boundary of No 7. The appellant has erected a fence of approximately 0.9m in height around the land and now uses it as part of his private garden. The appeal site is allocated within the Stockton-on-Tees Borough Council Local Plan (LP) as public open space. It formed part of the original approval for the estate (Ref: 93/0520/P) which also identified the land as open space.
7. Amongst other aims, LP Policy ENV6 seeks to protect open spaces in the borough in order to meet community needs and enable healthy lifestyles. The loss of any open amenity space will be resisted unless a. it has been demonstrated to be surplus to requirements; or b. the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or c. the proposal is for another sports or recreational provision, the needs for which, clearly outweigh the loss; or d. the proposal is ancillary to the use of the open space; and e. in all cases there would be no significant harm to the character and appearance of the area or nature conservation interests.
8. On my site visit, I walked part of the footpath, which forks off in two directions. I saw that the land surrounding the paths is characterised by open stretches of grass interspersed with trees and shrubbery. The appellant states that prior to his purchase of the appeal site, it was overgrown with neglected trees and shrubs. However, at the time of my visit, I saw no signs of neglect of the remaining open space.
9. Although most of the houses in the area have their own plots, many of these are relatively small, and the dwellings are set fairly close together. That being the case, the sense of spaciousness afforded by the open green spaces surrounding the footpaths is an important contributor to the character and appearance of the area. They are certainly in keeping with the leafy, suburban ambiance of the neighbourhood.
10. I agree that the design of the fence in itself is not out of keeping in a residential context and I saw the fence at 18 Embsay Close on my visit. However, I also saw that many of the properties in Embsay Close are strongly characterised by open green plots without boundary enclosures, and that the use of fencing to define plots is in the minority.
11. By fencing the appeal site off for private use as a garden, the development has significantly reduced the amount of open green space that provides an important buffer between the more built up elements of Embsay Close. It introduces a form of physical enclosure where none previously existed, obstructing public access to the land and materially harming its contribution to the visual amenity of the area.

12. The appellant states that, prior to the development, the area was commonly used as a dumping ground and attracted anti-social behaviour. He has provided one photograph of a patch of scorched grass and one photograph of tyre tracks on the grass. However, the circumstances surrounding these incidents are unclear. There is little corroborative evidence to show the extent or severity of the problems of anti-social behaviour alluded to. The submitted photographs show, for example, some patches of longer grass and some shrubs in need of trimming. However, there is little substantive evidence of ongoing or serious neglect of the wider area of open land.
13. The appellant has planted hedging along the line of the fence to conceal it, but this is insufficient to mitigate the harm I have identified. Whilst measures to encourage wildlife are welcome, these could be achieved independently of the appeal scheme, which limits the weight I can attach to them. The appellant contends that the path is now more attractive to female dog walkers as a result of his work, although again there is little independent evidence to substantiate this assertion.
14. Taking all these factors in combination, I conclude that the development unacceptably harms the character and appearance of the surrounding area, contrary to the requirements of LP Policy ENV6.
15. My attention has been drawn to a development at 4 Wharfedale Close, where the appellant states that the owner was granted permission to purchase land and build a large extension. However, the full circumstances of that case are not before me, and so I cannot be certain that it provides a direct parallel to this appeal. In any event, each case is to be considered on its individual merits. Although the appellant voices concern over liability should anybody be injured on the land, this matter does not fall within my jurisdiction. I have taken into account the support of the appeal scheme amongst third parties, but this has not led me to a different conclusion on the main issue of the case.

### **Conclusion**

16. For the reasons above, the appeal is dismissed and the enforcement notice is upheld, subject to amendment.

*Elaine Gray*

INSPECTOR