

The Planning Inspectorate

ENFORCEMENT NOTICE APPEAL FORM (Online Version)

WARNING: The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

Appeal Reference: APP/Z4718/C/23/3332014

A. APPELLANT DETAILS

Name

Address

Preferred contact method

Email Post

A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice?

Yes No

B. AGENT DETAILS

Do you have an Agent acting on your behalf?

Yes No

Name

Company/Group Name

Address

Phone number

Email

Your reference

Preferred contact method

Email Post

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

LPA reference number (if applicable)	DEV/HG/D23-1357
Date of issue of enforcement notice	20/09/2023
Effective date of enforcement notice	01/11/2023

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address? Yes No

Does the appeal relate to an existing property? Yes No

Address

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? Yes No

What is your/the appellant's interest in the land/building?

Owner

Tenant

Mortgagee

None of the above

E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal? Yes No

(a) That planning permission should be granted for what is alleged in the notice.

The facts are set out in

the box below

By way of background (and mentioned in the enforcement notice) a planning application was submitted under reference number 2018/93472 in 2018 for the "change of use from sports ground to domestic garden". The application was subsequently withdrawn by the applicant following advice by the Planning Officer on the 5 April 2019. The applicant was informed that the application was likely to be refused as it conflicted with Local Plan Policy LP61. Furthermore, a consultation response from Sports England raised an objection but on quite specific grounds. These are set out in full below.

Playing field policy exception E3 allows the loss of peripheral parts of playing fields provided they cannot be used as a playing pitch or part of playing pitch. The land in question lies immediately behind goal line to a senior football pitch, and Sport England has engaged with the Football Association to understand its significance. The FA (through the Football Foundation) has responded and advised that; A minimum safety run off 3m must be provided around all sides of the pitch and run off areas must be free from obstructions and of the same surface as the playing area. Based on the information provided to date, it appears that the end boundary of the proposed garden is less than 3m from football pitch touchline, therefore not allowing for an acceptable safety run off distance. The playing pitch is currently just within the minimum acceptable dimensions of an 11v11 playing pitch, and we would not want the pitch size to be compromised in anyway as part of the proposed garden development.

The creation of a private domestic garden would lie on the fringes of a cricket pitch too, and Sport England has sought the advice of the ECB in respect of the potential risk (to the users of the garden) of ball-strike. It has responded to advise;

The informal beer garden would be replaced by a residential garden and whilst the experience of 'sitting outside' is similar, the former use did not lead to a formal planning application. The proposed new development provides the ECB with the opportunity to give this formal response via Sport England (statutory consultee).

The proposed development is at risk of ball strike and could prejudice the use of the cricket ground, with potential subsequent insurance claims leading to the cricket club not being able to withstand any associated financial pressures from a claim in relation to damage to persons or property. A ball strike risk assessment by Labosport UK, an ECB approved test house, should be undertaken, to establish if ball strike mitigation is required. ECB would be glad to review the ball strike risk assessment via Sport England through the planning system and advise on its findings in due course.

In light of the FA's comments, it is clear that the loss of playing field would not be covered by exception E3.

As none of the other playing field policy exceptions pertain to the development the proposal does not accord with playing field policy.

From the above it is our view that the concerns highlighted could have been overcome through amendments to the boundary of the proposed garden area where it fell short of the FA's 3m safety run off from the touch line. That opportunity was not offered to the applicant. In terms of the ECB concerns regarding mitigating the potential for ball strike, again no opportunity was given to the applicant to provide a ball strike assessment. The appellant has erected appropriate height netting around the boundary of the garden to mitigate against ball strike to overcome the ECB concerns. Instead, the applicant was advised to withdraw the planning application to avoid a refusal.

We will show that the area of land used for the domestic garden was not a functioning part of the playing field. It sits on the periphery of the cricket field and football pitch and was largely overgrown and being used as an informal side area for the public house with a few picnic style tables.

Whilst the land in question falls within designated Urban Green Space in the Kirklees development plan, it is a minute proportion of the urban green space that had no functional sport or open space use. We will argue that its loss would in no way adversely impact on the function or overall scale of the Urban Green Space, and, taking a sensible approach and a fair planning balance, that planning permission should be granted. We will also advance other supporting matters. The change of use provides an appropriately sized private garden area to a 4-bed property that was created through a change of use from the former public house use. Furthermore, the land in question was purchased from the cricket club to help with their finances. The sale of what was effectively a piece of waste land on the periphery of the ricket and football field provided much needed finance to enable the club to continue sporting activities on the site.

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

(e) The notice was not properly served on everyone with an interest in the land.

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

The facts are set out in

the box below

The notice requires the appellant to cease the use of the land for residential purposes, to remove the fence, hardstanding and all residential paraphernalia and return the land to its condition prior to the development taking place.

We will argue that these requirements exceed what is necessary to overcome the breach. The land was a scruffy piece of overgrown land prior to the development taking place. We will provide photographic evidence of this. We question the sense of recreating this. Whilst the land can't be used as a domestic garden, it is land owned by the appellant so we see no valid reason why he can't keep it in an appropriately tidy condition. There is no reason why the family cannot undertake exercise and sporting

activities, amongst other outdoor activities, on the land. An overgrown piece of land would prohibit this.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

The facts are set out in

the box below

We will argue that the period for compliance, being 90 days, is unreasonable. The requirement that the land goes back to its original state of an overgrown piece of land requires an agreement on what that original state was. Given the appellant is being asked to recreate the original overgrown state will need to be agreed and it will be dependent upon growing conditions. We have pictures of the former overgrown state.

Given this we would suggest a 12 month period to allow growth to be more appropriate.

F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations

(a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land? Yes No

(b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts? Yes No

Please explain.

To understand the degree of impact on the remaining Urban Green Space and the private amenity space available to the dwelling.

2. Hearing

3. Inquiry

G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes No

2. Are there any planning reasons why a fee should not be paid for this appeal? Yes No

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes No

I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

see 'Appeal Documents' section

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature

Mr David Storrie

Date

26/10/2023 09:39:39

Name

Mr David Storrie

On behalf of

Mr Joshua Dean

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018.

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#).

K. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@planninginspectorate.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below were uploaded with this form:

Relates to Section: SUPPORTING DOCUMENTS
Document Description: 01. The Enforcement Notice.
File name: even page numbers enf notice.pdf
File name: odd page numbers enf notice.pdf

Completed by MR DAVID STORRIE

Date 26/10/2023 09:39:39