

MATERIAL CHANGE OF USE

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (as amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE

To: Mr Raymond Colpitts of 25 Hampton Drive, Felling, Gateshead, Tyne and Wear
NE10 9EP

Issued By: **THE BOROUGH COUNCIL OF GATESHEAD**
Civic Centre
Regent Street
Gateshead
Tyne and Wear
NE8 1HH

- 1. THIS IS A FORMAL NOTICE** which is issued by The Borough Council of Gateshead (“The Council”) because it appears to them there has been a breach of planning control, within **Section 171A(1)(a) of the Town and Country Planning Act 1990 (“the Act”)**, at the land described below. The Council consider that it is expedient to issue this notice under Section 172 of the Act, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.
- 2. The Land To Which the Notice Relates**
Land between 25 and 26 Hampton Drive Felling Gateshead Tyne and Wear NE10 9EP as shown edged red on the attached plan (“the land”).
- 3. The Matters Which Appear To Constitute The Breach of Planning Control**
Without planning permission the unauthorised change of use from a children’s play area with open and unrestricted access to an area enclosed by a fence with controlled access.
- 4. Reasons For Issuing This Notice**
It appears to the Council that the above breach of planning control has occurred within the last ten years. The Council considers the change of use of the land from children’s recreation area with unrestricted access to a private space with controlled access to be detrimental to the amenity of the residents of Hampton Drive having regard to the nature of the site and its relationship to residential properties, therefore the Council does not consider that planning permission should be given. For that reason the unauthorised change of use is not compatible with policies H2, H20, C38 and C45 of the Adopted Unitary Development Plan for Gateshead. Those policies are set out below as follows.

Policy H2

The residential amenity of existing housing areas will be protected. Proposals which may affect existing housing areas should not result in:

- a) Adverse impact on visual amenity or character;**

- b) **Overlooking or loss of light affecting the residential amenity of neighbouring properties;**
- c) **Loss of trees or urban space;**
- d) **Disturbance through commercial intrusion, artificial lighting, noise, vibration, smell, fumes, smoke, ash, dust, or grit; or**
- e) **Unacceptable parking or traffic generation.**

Policy H20

All new housing development should have access to appropriate play areas. Provision should be made on-site unless appropriate facilities are available, or are secured, off-site. Play areas should be designed and maintained to meet the needs of toddler, junior and teenage age groups.

Policy C38

Proposals to incorporate areas of public open space into private gardens, including amenity land in housing areas, will only be approved provided that the proposal:

- a) **does not result in or worsen a deficiency in recreational public open space in the relevant residential neighbourhood;**
- b) **does not fragment areas of recreational public open space;**
- c) **does not result in a loss of visual amenity;**
- d) **does not result in a reduction in the safety of children or others;**
- e) **does not prejudice highway safety; and**
- f) **does not prejudice the maintenance of underground services.**

Policy C45

Toddlers' Play Areas, designed principally for children under seven and not necessarily equipped, should be provided within 60 metres of all homes in the Borough, other than those in isolated locations or in settlements with less than 100 inhabitants. All new sites should be visible from adjacent dwellings and not adjoin busy roads or lie across them from the areas they are intended to serve.

The Council does not consider that planning permission should be given, because planning conditions cannot overcome (a) the adverse impact on visual amenity or character and (c) loss of an urban public space in policy H2 or the loss of a children's play area in accordance with policy H20 or a toddlers' play area in accordance with policy C45. The Council believes that the land should be retained for a children's play area and not allowed to be annexed to a private garden and relies upon policy C38 in support of its position.

5. What You Are Required To Do

Remove the fence and fence posts enclosing the land adjacent to Hampton Drive so as to allow unrestricted access from Hampton Drive to the land shown edged in red on the attached plan.

6. Time for Compliance

6 weeks from the date this notice takes effect. For the avoidance of doubt the last date for compliance is **21 May 2004**.

7. When This Notice Takes Effect

This notice takes effect on **9 April 2004** unless an appeal is made against it beforehand.

Dated: 10 March 2004

Signed:



Maureen Kesteven.

Acting Strategic Director of Legal and Corporate Services

on behalf of : The Borough Council of Gateshead
Legal and Corporate Services
Civic Centre
Regent Street
Gateshead
Tyne and Wear
NE8 1HH

EXPLANATORY NOTE

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed booklet "Enforcement Notice Appeals – A Guide to Procedure" sets out your rights. Please read it carefully. You may use the enclosed appeal forms.

- One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice.
- The second copy of the appeal form and notice should be sent to the Council.
- The third copy is for your own records.

FEES

Upon lodging an appeal there is deemed to be an application for planning permission, whether or not reliance is placed upon the ground set out under Section 174(2)(a) of the 1990 Act. A fee, equal to twice that which would have been payable if a planning application were made for the development specified in the enforcement notice, is payable to have this ground considered.

No fee is payable if;

- you have already made an application for planning permission, accompanied by the appropriate fee, for the development specified in the enforcement notice, that was undetermined at the time the notice was served, or,
- you have already lodged an appeal with the Secretary of State against the Council's refusal to grant planning permission for the development specified in the enforcement notice that was undetermined at the time the notice was served.

The fee in this case would be £440.00, half of which should be paid to the Planning Inspectorate (made payable to the Office of the Deputy Prime Minister) and the other half to the Council (made payable to Gateshead Council).

If a fee is due, and you do not pay it within the period specified by the Secretary of State, the deemed application will not be considered by the Planning Inspector.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 6 of the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and / or remedial action by the Council.

PERSONS ON WHOM THIS NOTICE HAS BEEN SERVED

Mr Raymond Colpitts
25 Hampton Drive
Felling
Gateshead
NE10 9EP

Mrs Linda Colpitts
25 Hampton Drive
Felling
Gateshead
NE10 9EP

Mr Mohammed Iqbal Khan
26 Hampton Drive
Felling
Gateshead
NE10 9EP

Mrs Rizwana Iqbal Khan
26 Hampton Drive
Felling
Gateshead
NE10 9EP

