
Appeal Decision

Site visit made on 15 August 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 August 2022

Appeal Ref: APP/M4510/C/22/3296190

Land at 404 Chillingham Road, Heaton, Newcastle upon Tyne NE6 5QZ

- 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 Mr Khashhayer Samghabadi against an enforcement notice issued by Newcastle-upon-Tyne City Council.
 - The enforcement notice is dated 28 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a timber extension to front.
 - The requirements of the notice are: Remove the front timber extension in its entirety including all fixtures and fittings.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. In his submissions, the appellant expresses the hope that his appeal will facilitate discussions with the Council as to what changes he can make at the appeal site that would be acceptable. However, for the sake of clarity, this is a process that is beyond the scope of the appeal. It is for the appellant to engage with the Council through the appropriate processes.
3. The sole ground of appeal is ground (f), which is that the steps required to comply with the requirements of the notice are excessive. I have taken into account the appellant's reference to similar outside spaces that have been created over the last few years, and a business on the same street that has recently erected a 2400mm brick wall on its boundary. However, these factors go to the planning merits of the case and could only be assessed under a ground (a) appeal, which is that planning permission should be granted for the unauthorised development.

The appeal on ground (f)

4. The appellant explains that the original plan was to create a fenced off garden area at the appeal site that would allow patrons to dine outside in the summer in a way that met with the coronavirus pandemic guidelines that were then in force. He goes on to say that he was advised that the polycarbonate roof would not need planning permission as it would be classed as a temporary structure.

5. In respect of the requirements of the enforcement notice, the appellant states that he is willing to remove the roof and glazed windows, but wishes to retain the fencing. This is on the basis that the appeal site is close to a bus stop, and so the fencing would protect both the customers and those using the bus shelter.
6. The purpose of the notice is to return the land to its previous condition, and to remedy injury to the amenity of neighbouring residents. The Council have considered whether any lesser steps such as a reduction in the size of the development or the staining of the timber could alleviate the adverse visual impact of the development. From the evidence, I agree with the Council's conclusion that such measures would not mitigate the harm arising from the development.
7. Moreover, such changes would not address the matter of harm to the living conditions of neighbours. The appellant does not suggest any lesser steps that would resolve this issue.
8. Drawing these strands together, I find that the requirements are commensurate with the purposes of the notice, and are not excessive. No alternatives have been identified that would be appropriate in this particular case.
9. The appeal on ground (f) therefore fails.

Conclusion

10. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR