



Appeal Decision

Site visit made on 7 June 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 7 June 2024

Appeal Ref: APP/W4515/C/24/3337279

Land at 41/43 Hugh Street, Wallsend NE28 6RL

- 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 William Morrison against an enforcement notice issued by North Tyneside Metropolitan Borough Council.
 - The enforcement notice was issued on 4 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission, or an application for planning permission being made, a raised platform to the rear of an upstairs flat has been built.
 - The requirements of the notice are 1. the removal of the platform and the structure in which it is situated, 2. all fixtures including the boundary enclosure must be removed entirely and the land renovated to its former conditions, 3. the rear building wall reduced in height where it has been raised to accommodate the platform and supporting structure, and 4. all materials and debris to be safely removed from the site.
 - The period for compliance with the requirements is 2 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the address in section 2 and replacing it with '*Land at 41/43 Hugh Street, Wallsend, NE28 6RL*'. Subject to this correction, the appeal is dismissed, and the enforcement notice is upheld.

The Notice

2. The address in the notice refers to '*Land at 41/43 Hugh Street, Wallsend and 22-28 Netherton Avenue North Shields, Tyne and Wear, NE28*'. The local planning authority has confirmed that this was an error. The plan appended to the notice identifies the land as '*41/43 Hugh Street, Wallsend, NE28 6RL*'. I shall correct the address in the notice, without injustice being caused to the main parties, so that it reads '*Land at 41/43 Hugh Street, Wallsend, NE28 6RL*'. This is reflected in the banner heading above.

Reasons

3. The appeal made on ground (c) is that the matter alleged does not constitute a breach of planning control.

4. The raised platform constitutes development in respect of the meaning expressed in section 55(1) of the Act which is *'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'*. The raised platform has been erected in association with use of the appeal building as a flat. The appellant claims that a raised platform has not been constructed and instead it is a *'garage roof and below 14ft so no planning permission is needed'*. It is also claimed that it could be taken down and so it is not permanent.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) defines a dwellinghouse and states *'except in Part 3 (changes of use), [Class B (demolition of buildings) of Part 11 (heritage and demolition),] Part 12A (development by local authorities and health service bodies) and Part 20 (construction of new dwellinghouses) of Schedule 2 to this Order, it does not include a building containing one or more flats, or a flat contained within such a building'*.
6. The onus is on the appellant to make a case on legal grounds. Other than the above 'grounds of appeal' comment, the appellant has not submitted a statement of case. In this case, the evidence is that the raised platform has been constructed in association with use of the appeal building as a flat. The raised platform is not permitted development in respect of Part 1 of schedule 2 of the GPDO as the building operation relates to a flat.
7. Class A of Part 2 of Schedule 2 of the GPDO states that a means of enclosure erected or constructed would not be permitted development if it is more than 1 metre in height adjacent to a highway used by vehicular traffic, or in any other case 2 metres in height. When the raised platform is considered as a whole (i.e., one building operation) it is adjacent to a street used by vehicular traffic. Even if one were to consider the breach of planning control as a means of enclosure, it would not be permitted development as it exceeds all permitted development height restrictions as expressed in Class A of Part 2 of Schedule 2 of the GPDO.
8. I conclude that the raised platform is not permitted development in respect of the GPDO. It is development which constitutes a breach of planning control. Even if the raised platform had been erected on a 'temporary' basis, or could be taken down, it is still development for which planning permission is required to be sought. Therefore, I conclude that the ground (c) appeal fails.

Conclusion

9. For the reasons given above, I consider that the appeal should not succeed.

D Hartley

INSPECTOR