



Appeal Decisions

Site visit made on 4 March 2026

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 April 2026

Appeal A Ref: APP/H4505/C/24/3353466

Appeal B Ref: APP/H4505/C/24/3353467

3 Shield Avenue, Swalwell NE16 3EG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mrs Audrey Hamilton (Appeal A) and Mr Albert Hamilton (Appeal B) against an enforcement notice issued by Gateshead Metropolitan Borough Council.
 - The notice was issued on 11 September 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the removal of a first floor window in the rear elevation, and the installation of French doors in place of the window, and without planning permission, the installation of a clear glass balustrade on the roof of the single storey rear extension.
 - The requirements of the notice are:
 - i) Remove the unauthorised french doors from the first-floor rear elevation of 3 Shield Avenue.
 - ii) Restore the opening to its former depth and size by stopping up the wall and finishing to match the surrounding area of wall and reinstating a window similar to that which existed prior to the unauthorised development taking place.
 - iii) Remove the unauthorised glass balustrade from the roof of the single storey rear extension.
 - iv) Remove the associated table, chairs, ornaments, plant pot and flower baskets from the roof terrace
 - v) Remove from the land all materials and debris resulting from compliance with i), ii), and iii) above.
 - The period for compliance with the requirements is: 2 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
 - Appeal B is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. It is directed that the enforcement notice is varied by:
 - In section 5 the deletion of requirement iv) in its entirety.
2. Subject to the above variation, the appeals are dismissed and the enforcement notice is upheld. In respect of Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Since the appeals were lodged, a revised version of the National Planning Policy Framework ("the Framework") was published in December 2024. I have considered the changes and as they are not material to the appeal development, further comments were not sought. I have, however, determined the appeals having regard to the revised Framework.

Appeal A on ground (a) and the deemed planning application

Main Issues

4. The main issues are the effect of the development on:
- the living conditions of neighbouring occupiers at 39 and 41 Clavering Road and 1 Shield Avenue, with specific regard to privacy; and
 - the character and appearance of the area.

Reasons

Living Conditions

5. The appeal site comprises a two-storey semi-detached dwelling located on Shield Avenue, a small cul-de-sac that slopes gently down from Clavering Road. The surrounding area is characterised by primarily two-storey dwellings of varying design and appearance. The appeal property has a small garden and driveway to the front and an irregular shaped rear garden of modest size.
6. A glass balustrade has been erected around part of the flat roof of an existing single storey rear extension. French doors have replaced an existing window at first floor level which gives access to the roof. Together these works have facilitated a roof terrace at first floor level, and at the time of my site visit there was a small table, chairs and flowerpots present on the roof terrace.
7. The rear aspect of the appeal property is not visible from public vantage points on Shield Avenue or Clavering Road. However, the immediately surrounding properties on Shield Avenue, Clavering Road and Enfield Avenue are broadly positioned in a “U” shape with their rear elevations all facing inwards towards their respective rear gardens. Consequently, the rear aspect of the appeal property is visible from the rear facing windows and gardens of several nearby residential properties.
8. I acknowledge that the appellant may have received incorrect advice from her builder regarding whether planning permission was required for the works. However, from the roof terrace I had clear views into the rear gardens of the neighbouring residential properties. The elevated position of the roof terrace also offers users clear views into first-floor habitable windows at 39 and 41 Clavering Road, and in particular 1 Shield Avenue which directly adjoins the roof terrace. The proximity of the roof terrace and the extent to which users can overlook these windows, as well as private rear gardens, is detrimental to the privacy of occupiers of neighbouring properties.
9. I recognise that there would have been opportunity for some overlooking from the original first floor window. However, the appeal development clearly facilitates a roof terrace which provides more enhanced views and encourages people to sit, particularly during pleasant weather, for more prolonged periods of time. This increases the amount of overlooking and loss of privacy for the occupiers of those neighbouring properties.
10. I have considered whether adding privacy screens or having the glass to the balustrade obscured would limit the level of overlooking and the resultant loss of privacy to an acceptable level. The obscuring of the glass balustrade though would

have little effect given its limited height, whereas the erection of a privacy screen of a height sufficient to overcome the loss of privacy suffered by neighbouring occupiers would, in my view, be an overbearing and oppressive feature particularly to the first-floor rear window at 1 Shield Avenue.

11. Furthermore, whilst I have powers to grant planning permission for the “*whole or any part of those matters*” stated in the enforcement notice as constituting a breach of planning control, in my judgement the erection of an additional privacy screen that would extend beyond the height of the existing glass balustrade would not be within the “*whole or any part*” of the development against which the enforcement notice was issued. The notice is clearly directed at the glass balustrade and French doors that were in place at the time of the issue of the notice.
12. Consequently, I find that the development causes unacceptable harm to the living conditions of neighbouring occupiers, with particular regard to privacy. The development is therefore contrary to Policy CS14 of the Planning for the Future Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (CS) (adopted March 2015), and Policy MSGP17 of the Making Spaces for Growing Places Local Plan Document for Gateshead (LPD) (adopted February 2021). Together these seek, amongst other things, to ensure that developments do not have a negative impact on residential amenity including safeguarding privacy.

Character and Appearance

13. The Council have provided little evidence to support their contention that the development causes unacceptable harm to the character and appearance of the area. The site is located in a predominately residential area with the properties displaying a variety of different architecture and designs. The rear elevation of the appeal property is unremarkable and appears to have been extended and altered previously, including the flat-roofed single storey rear extension. The glass balustrade has been installed around part of the flat-roofed extension, effectively creating a roof terrace. The French doors have been installed in place of a window to provide access.
14. From the site visit, I noted that the development was not visible from either Shield Avenue or Clavering Road. I acknowledge that it is visible from the rear gardens of neighbouring properties and that glass balustrades and roof terraces are not common features in the immediately surrounding area. However, even with the glass balustrade the development is relatively modest in scale, and in my judgement, it has not had a detrimental effect on the character or appearance of the building or surrounding area.
15. Consequently, I find that the development does not have a detrimental effect on the character and appearance of the host building or the surrounding area. Therefore, I find no conflict with Policy CS15 of the CS and Policy MSGP24 of the LPD. Together these policies seek, amongst other things, to ensure that developments respond positively to local distinctiveness and character.

Conclusion on ground (a) and the deemed planning application

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless

material considerations indicate otherwise. Whilst I have found that the development does not result in harm being caused to the character and appearance of the area, it causes unacceptable harm to the living conditions of occupiers of neighbouring residential properties with regard to privacy. The development therefore conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the harm identified and the associated development plan conflict.

17. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal on ground (a) fails and the deemed planning application is refused.

Appeals A and B on ground (f)

18. For the appeals to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
19. It is clear from the requirements of the notice that its purpose is to remedy the breach of planning control. The appellants have suggested lesser steps in the form of erecting a privacy screen. I have also considered the option of obscuring the glass balustrade. However, modifying the development in such a way would not remedy the breach, and as already set out above the addition of a privacy screen would be outside the scope of the notice. In any event, I have considered the suggested lesser steps as part of the ground (a) appeal and for the reasons already outlined have concluded that these steps would not remedy the harm identified.
20. Nevertheless, the enforcement notice is directed solely at operational development in the form of the installation of a glass balustrade and the installation of French doors in place of a window. Requirement iv) in section 5 of the notice requires the removal of a table, chairs, ornaments, plant pot and flower baskets. There is though no corresponding allegation in respect of these items nor do I consider that they amount to operational development. The notice also does not allege a material change of use which associated paraphernalia might have been associated with. Consequently, I find this requirement to be excessive as it is not necessary to remedy the breach of planning control and should be deleted.
21. Accordingly, the appeals on ground (f) succeed to that extent and I have varied the notice accordingly.

Conclusion

22. For the reasons given above I conclude that the appeals do not succeed, save for a limited extent under ground (f). I have therefore upheld the enforcement notice as varied, and in respect of Appeal A, refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Jones

INSPECTOR