



Appeal Decisions

Site visit made on 10 October 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 June 2024

Appeal A Ref: APP/X1355/C/23/3314005

Appeal C Ref: APP/X1355/C/23/3314008

St Aidan's House/Church Hall, High Street, Willington, Crook, County Durham DL15 0PE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Bijan Samadi and Appeal C is made by Mr Bijan Samadi (Samadi Associates Global Law Firm Limited) against an enforcement notice issued by Durham County Council.
- The notice was issued on 18 November 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a mixed sui generis use including offices and residential flats/bedsits, with incidental internal and external alterations to the building to facilitate the change of use.
- The requirements of the notice are:
 - A – Discontinue the use of the Land, by permanently:
 - a) Cease the use of the Land including the building for residential purposes,
 - b) Cease the use of the Land including the building for office purposes,
 - B – Restore the land and building to its condition prior to development taking place by undertaking the following actions:
 - a) Remove all domestic furniture, fixtures, fittings, cupboards, kitchenettes, adaptations, fireplaces, appliances, equipment, clothes, ornaments, sports equipment, outdoor furniture and belongings/paraphernalia and stored items from the Land.
 - b) Remove all beds and bedding.
 - c) Remove all office fittings, fixtures, furniture, appliances, computers, office supplies, files, stationery and equipment and associated paraphernalia and store items from the Land.
 - d) Remove all internal alterations and adaptations creating the individual rooms within the building, including stud walls, doors, en-suite fixtures and fittings at both ground floor and first floor.
 - e) Remove from the rear of the building on the Land the two-storey enclosed raised timber platform in its entirety including the staircase, re-instate the rear of the building and roof, remove the external door created to access the raised platform at first floor level, make good the exterior of the building following removal of the structure and door opening, using materials to match existing.
 - f) Re-instate the exterior of the building on the Land to its form prior to development taking place by undertaking the following actions:
 - i. remove the square window and frame installed on the eastern gable wall and block up the openings, making good the void with render finish to match existing.
 - ii. remove the window fittings installed on the rear elevation of the building, block up the openings and render and paint to match existing.
 - iii. remove the four window fittings installed on the front elevation of the building, reinstate single window fittings to fill the arched voids.
 - iv. remove the applied mouldings from above the window openings and door on the front porch and reinstate the wall with render and match to match existing.
 - v. remove the external heating vent pipes from the eastern gable wall and reinstate the wall of the building with materials to match existing.
 - vi. remove the satellite and tv antenna.

- The periods for compliance with the requirements are:
Steps 5 A – a) and b) – 6 weeks
Steps 5 B- a) – h) inclusive – 16 weeks
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (e) and Appeal C is proceeding on the grounds set out in section 174(2)(b), (c) and (e) 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.

Summary of Decisions: The appeals are dismissed, the enforcement notice is upheld with corrections and variations, and planning permissions is refused in the terms set out below in the Formal Decision.

Appeal B Ref: APP/X1355/C/23/3314006

Appeal D Ref: APP/X1355/C/23/3314009

St Aidan's House/Church Hall, High Street, Willington Crook, County Durham DL15 0PE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal B is made by Mr Bijan Samadi and Appeal D is made by Mr Bijan Samadi (Samadi Associates Global Law Firm Limited) against an enforcement notice issued by Durham County Council.
- The notice was issued on 18 November 2022.
- The breach of planning control as alleged in the notice is without planning permission the operational development consisting of:
 - the erection of a two-storey rear extension/raised platform with external staircase, and alteration of the building to install a door opening/access at first floor on the rear elevation,
 - the erection of timber and Perspex canopy structure to side,
 - the erection of storage structure and brick fire pit in the yard area.
 - the alteration of the building involving:-
 - i. the installation of 2no rectangular top opening casement upvc windows and 2no square single pane casement upvs windows and blocking up of the remaining area of the front arched original window voids;
 - ii. installation of upvc window fittings of various styles, to the blocked up original arched window voids to the gable elevations;
 - iii. opening up of blocked up window voids on the rear elevation and installation of 2no upvc casement windows of different size/styles,
 - iv. the application of flat rectangular mouldings around the front porch door and above the small windows inserted into the arched voids on the main façade,
 - v. the installation of 2no roof windows to both the front and rear roof of the building,
 - vi. the installation of satellite antenna to rear, and tv antenna/aerial to roof,
 - vii. the installation of external vents in the gable elevations.
- The requirements of the notice are:
 - a. Remove from the rear of the building the two-storey enclosed raised timber platform in its entirety including the staircase, re-instate the rear of the building and roof, remove the external door created to access the raised platform at first floor level, make good the exterior of the building following removal of the structure and door opening using materials to match existing.
 - b. Remove the timber and Perspex canopy structure in its entirety, and make good the exterior of the building following removal of the structure.
 - c. Remove the storage structure and brick fire pit in their entirety.
 - d. Re-instate the exterior of the building to its form prior to development taking place by undertaking the following actions:
 - i. Remove square window and frame installed on the eastern gable wall and block up openings, making good the void the void with render finish to match existing.

- ii. Remove the window fittings installed on the rear elevation of the building, block up the openings and render and paint to match existing.
- iii. Remove the four window fittings installed on the front elevation of the building, reinstate single window fittings to fill the arched voids.
- iv. Remove the applied mouldings from above the window openings and door on the front porch and reinstate the wall with render and paint to match existing.
- v. Remove the external vent pipes from the eastern gable wall and reinstate the wall of the building with materials to match existing.
- vi. Remove the satellite and tv antenna/aerial.
- The periods for compliance with the requirements is 16 weeks.
- Appeal B is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (e) and Appeal D is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (e) 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.

Summary of Decisions: The appeals are dismissed, the enforcement notice is upheld with corrections, and planning permission is refused in the terms set out below in the Formal Decision.

Matters Concerning the Notices

1. There are two enforcement notices the subject of these four appeals. For clarity, I shall refer to the enforcement notice relating to the material change of use of the land and building, the subject of appeals A and C, as the MCU Notice. I shall refer to the enforcement notice relating to the operational development, the subject of appeals B and D, as the OD Notice.
2. Section 2 of both enforcement notices identifies the land to which they relate. The HM Land Registry Title number is therefore superfluous and its deletion from both the MCU Notice and the OD Notice does not cause injustice to the appellant or Council.
3. 'Mixed use' is a term used to describe any combination of primary uses being operated from a single planning unit. In legal terms, a mixed use is described as *sui generis*, which translates as a use not falling within a defined use class. In section 3 of the MCU Notice, the words 'sui generis' are superfluous, and their deletion does not cause injustice to the appellant or Council.
4. Furthermore, the use of the word 'including' in the allegation suggests that the mixed use may consist of primary uses other than offices and residential flats/bedsits. There is no suggestion within the MCU Notice that the land and building are being used for any primary use other than offices and residential flats/bedsits. The word 'including' therefore causes ambiguity and shall be substituted with the word '*comprising*', which provides precision. This substitution does not cause injustice to the appellant or Council.
5. The allegation set out in section 3 of the OD Notice is unnecessarily detailed. For conciseness I shall correct it to read '*Without planning permission, the erection of a two-storey rear extension with external staircase, a single storey lean-to side extension, a detached storage structure, and a brick fire pit, installation of a satellite dish and the carrying out of internal and external alterations to the building.*' The requirements provide detail as to what works need to be carried out to return the appeal site to its condition before the breach of planning control occurred. This correction of the allegation does not cause injustice to the appellant or Council.

6. An appeal on ground (g) has not been brought, however the evidence shows that Mr Samadi resides at the appeal site on an intermittent basis. It is unclear whether the building is Mr Samadi's sole place of residence as the submissions refer to him being absent from the building for extended periods of time. While there is no evidence to show that Mr Samadi resides elsewhere, if he is absent from this building for extended periods, it would seem logical that he would have a residence elsewhere. In these circumstances, and in the absence of any substantiated evidence to the contrary, I find the periods of compliance specified in the MCU Notice to be a reasonable balance between the public interest identified being addressed expeditiously and the private interests bound up with the development.
7. I shall proceed based on the corrections identified above.

Preliminary Matters

8. Paragraph 7.9 of the appellant's Statement of Case confirms the ground (c) appeals in respect of Appeals A and C are not being pursued. Paragraph 7.19 of the appellant's Statement of Case confirms the ground (b) appeals in respect of Appeals B and D are also not being pursued. I shall proceed on the basis that these grounds of appeal have been withdrawn.
9. A separate planning application¹ for the '*change of use of existing building from St John's Ambulance centre to a mixed-use comprising office and first floor 3 bed flat, replacement of first floor raised platform with two storey extension and external staircase, and retention of windows and rooflights to the front and rear*' has been submitted to and determined by the Council. A copy of the application was submitted as late evidence by the appellant. Prior to visiting the site, I had not been advised of the Council's decision in respect of that application.
10. The Planning Inspectorate received a section 78 appeal against the Council's decision to refuse to grant planning permission for the alternative scheme referred to above. However, that appeal was submitted outside the statutory period and has been returned. That alternative scheme does not therefore represent a fallback position to which I need refer in the determination of the ground (a) appeals before me.
11. The revised National Planning Policy Framework (revised Framework) was published on 19 December 2023. I have had regard to the revised Framework and found there is no need for comments to be sought on the relevance of the revised Framework to these cases.

Appeals A, B, C and D on ground (e)

12. S172(2) of the 1990 Act² requires a copy of an enforcement notice to be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. S174(e) confirms that an appeal may be brought on the ground that copies of an enforcement notice were not served as required by s172(2).

¹ Council reference: DM/23/00995/FPA

² Town and Country Planning Act 1990 as amended

13. The notices were served on the owner, occupier and several persons identified as having an interest in the land. Appeals have been brought by Mr Samadi and Samadi Associates Global Law Firm Ltd. Those appeals are in respect of the MCU Notice and the OD Notice. Furthermore, in addition to ground (e), appeals were made on grounds (b), (c), (d) and (a), albeit some grounds are no longer being pursued.
14. Appeals have not been made on grounds (f) and (g). I have already considered and found the compliance period specified in the MCU Notice to be reasonable (s174(2)(g)). I also have the power to vary the terms of an enforcement notice, where I am satisfied that doing so will cause no injustice. As all relevant grounds of appeal will be considered as part of these appeals, in my judgement, it is unlikely that the failure to serve a copy of the notice on a person having a material interest in the land would have generated other appeal grounds over and above those that have been made, or that would potentially lead to a different outcome for the appeals.
15. Taking account of the above factors, I find no other person required to be served with a copy of the notices who was not served, has been substantially prejudiced by the failure to serve him. In accordance with s176(5) of the 1990 Act, I shall therefore disregard this fact.
16. The appeals on ground (e) fail.

Appeals A and C on ground (b)

17. An appeal on this ground is that the corrected matters alleged have not occurred as a matter of fact. The onus is on the appellant to show, on the balance of probability, that the material change of use of the land to a mixed use comprising of offices and residential flats/bedsits, with incidental internal and external alterations to the building to facilitate the change of use has not occurred as a matter of fact.
18. There is no dispute that the facilitating development had occurred at the time the notice was issued.
19. I am told the land and building, prior to the appellant's purchase, was used as a training centre by the St Johns Ambulance Service. As such, I do not doubt that some of the internal space would have been used as incidental office space and, in all likelihood, there would have been toilet, and perhaps kitchen, facilities. There is however no suggestion that there was any form of residential accommodation associated with the building's use by the St Johns Ambulance Service.
20. Fundamental to determining whether a material change of use has occurred is identifying the extent of the original planning unit and the use(s) to which it has been put. Bridge J, in *Burdle*³ identified three criteria for determining the planning unit as follows:
 - (a) Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. This is a single use planning unit.

³ *Burdle v SSE* [1972] 1 WLR 1207 (Div Court)

- (b) Even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered. This is a mixed-use planning unit.
 - (c) Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit. This is more than one planning unit.
21. There is nothing before me to show that the land and buildings have been physically divided in any way. The appellants claim only *'general maintenance and improvement [works]...linked to an ongoing search to find a viable use for the building, which itself has been an ongoing process'* have occurred. Furthermore, in terms of use, the appellants claim *'other than some occasional uses of the building as an office space for [Mr Samadi] while home from overseas, and use of the upper floor level to reside while he does so'* no other use has occurred.
22. The appellants' claims are however at odds with the Council's recollection of conversations they have had with the appellants and their representatives, and with the photographic evidence the Council has provided. The Council's evidence shows that 2 of the 'offices' had beds, clothing, personal hygiene products, and food in them. During visits by Council officers, access to one ground floor room could not be achieved as they were told it was being rented out for office purposes to someone other than Mr Samadi. Other council evidence refers to discussions with Mr Samadi, or his representative, during which officers were told that employees of the appellants' business sometimes worked through the night and were therefore provided with sleeping accommodation.
23. During the accompanied site visit, I saw that three of the ground floor rooms had built in kitchen units including a sink and worktop space. None of the rooms had cooking facilities, but they did have their own en-suite WC/shower facilities. While I saw one room laid out as an office, the other two did not appear to be in use. However, the Council's evidence shows they have been used for sleeping accommodation and as office space in the past.
24. Other accommodation on the ground floor, and contained within the original building, includes a dining room, bathroom and kitchen claimed to be used in connection with the first-floor flat. I saw that the internal door leading from the ground floor corridor into the flat's lobby has a sign saying 'private' on it. The sign would be unnecessary if the building was not in use by anyone other than Mr Samadi. I was told by the appellants' representative that the dining room has been used as a meeting room in connection with businesses operating from the building.
25. While Mr Samadi's written evidence shows the upper floor to be fitted out and occupied as a residential flat⁴, its kitchen, a family bathroom and other habitable accommodation is located on the ground floor. If the dining room has been used for business purposes, it would not be unreasonable to conclude that

⁴ Paragraph 7.8 of their Statement of Case dated 17 March 2023

the kitchen could also have been used to provide facilities for occupiers of the 3 ground-floor en-suite rooms.

26. The floor plans submitted to Building Control show 3 offices with en-suites, a kitchen, a meeting room and separate shower room on the ground floor, and 4 rooms with a separate WC/shower on the first floor. While the floor plans do not provide clarity on what use the first-floor accommodation was to be put to, it does suggest that the kitchen and meeting room would be ancillary to the office use.
27. The first-floor residential accommodation, coupled with the ground floor kitchen and other accommodation, is purported by the appellants to be a self-contained dwelling. However, evidence shows that the dining room has been used for business meetings. This area therefore has at least a dual if not communal use. Also, in the absence of cooking facilities in the ground floor en-suite rooms, it has not been shown, on the balance of probabilities that the kitchen is not used in connection with the ground floor en-suite rooms. The kitchen is a communal facility in my view.
28. From the written evidence, at the time the MCU Notice was issued the building was capable of being occupied as offices or for residential purposes. The evidence shows that the extent and intensity of those uses may have fluctuated. Furthermore, the internal layout is such that the ground floor offices have sleeping and washing facilities and shared cooking facilities with the accommodation on the first floor. The ground floor en-suite rooms, while being used for residential purposes, would not therefore amount to flats/bedsits, which are self-contained dwellings.
29. There is insufficient evidence to show that any of the residential accommodation was self-contained at the time notice was issued. Instead, there was a fluidity of use with ground floor en-suite rooms being capable of office or residential use. While the first-floor accommodation had also been used for residential purposes, the kitchen and dining/meeting room were in communal use with the offices/residential units. In my judgement, an accurate description of the use of the building would be as a *'mixed use comprising of offices and residential units'*.
30. The allegation goes on to state 'with incidental internal and external alterations to the building to facilitate the change of use.' The steps to be taken however, also require the removal of several extensions. S176(1) of the 1990 Act extends to correcting the allegation in order that the alleged breach is properly described for the purposes of the deemed planning application where there is an appeal on ground (a). There is a ground (a) appeal in respect of this appeal and the words *'facilitated by internal and external alterations, a single storey lean-to side extension, and a two-storey rear extension with external staircase.'* would provide clarity and precision in terms of identifying the facilitating development.
31. For the above reasons, I find that, on the balance of probability, at the time the MCU Notice was issued, the appeal site formed a single planning unit that had been used for a mixed use comprising of offices and residential units facilitated by internal and external alterations, a single storey lean-to side extension, and a two-storey rear extension with external staircase. Injustice would not be

caused to the appellant or Council by my correction of the allegation in this manner as it provides clarity and precision.

32. The appeal on ground (b) succeeds to the extent that the component parts of the mixed use and the facilitating development shall be corrected to reflect the uses I have found to have occurred and the steps required to be taken.
33. The partial success on ground (b) requires the steps to be taken set out in section 5. of the MCU Notice to be varied. The steps set out are lengthy and may go beyond what is necessary to remedy the breach of planning control. Furthermore, they may prevent the lawful use of the appeal site. The sales brochure⁵ shows the building to have had a kitchen and toilet facilities, and this needs to be reflected in the steps required to be taken.
34. Where the requirements seek to cease a mixed use, the step to be taken need only require the use to cease and step 5.A shall be varied accordingly. Step 5.B shall be varied to require the removal of the facilitating development identified in the corrected allegation, and the restoration of the appeal site to its condition before the development took place. The step numbering in section 6 of the MCU Notice shall be varied accordingly. Injustice would not be caused to the appellant or Council by the variations to the requirements or the compliance period wording.

Appeals B and D on ground (c)

35. An appeal on this ground is that the matter alleged does not amount to development or it benefits from planning permission, either deemed or express. It is for the appellant to show, on the balance of probability, that the alterations and extensions identified in the corrected allegation of the OD Notice do not amount to a breach of planning control.
36. I appreciate that the works to the building took place over a relatively long period. However, there is nothing before me to show that the alterations and extensions, including the re-instatement of windows and application of decorative mouldings, were not carried out for any other purpose than to facilitate finding a suitable alternative use for the building. As such, the works were carried out as part of a single building operation, and it is not before me to separate individual aspects of the work from the whole.
37. There is no dispute that the extensions require planning permission. The changes to the windows, including the provision of decorative mouldings, have materially affected the external appearance of the building. Having regard to s55(2)(a), the external alterations therefore amount to development. The Town and Country (General Permitted Development) (England) Order 2015 (as amended) does not provide for buildings in mixed use to benefit from deemed planning permission for extensions or alterations. Furthermore, I have not been told of any express planning permission having been granted for the works.
38. The works undertaken require planning permission and that planning permission has not been granted. The works undertaken, as corrected, therefore represent a breach of planning control.
39. For these reasons, the appeals on ground (c) fail.

⁵ Appendix C of the Council's Statement of Case

Appeals B and D on ground (d)

40. An appeal on this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. It is for the appellant to show, on the balance of probability, that the corrected matters alleged in the OD Notice had occurred on or before the material date. The relevant period to achieve immunity from enforcement action for this operational development is 4 years. The material date is therefore 18 November 2018.
41. I have already established that the operational development was carried out as a single operation. The appellant would need to show that the single building operation was substantially complete on or before 18 November 2018.
42. The appellant claims that some works were carried out before or by August 2018. There is no substantiated evidence to demonstrate that works were carried out by August 2018. The written evidence is unsworn statements and letters, which are not corroborated by documentary evidence to substantiate the claim. Moreover, even if one element of what is alleged was finished by August 2018, the totality of the development comprising the single building operation was not substantially completed by August 2018.
43. The courts have held that an appellant's own evidence does not need to be corroborated by independent evidence to be accepted. Providing, however, that evidence is sufficiently precise and unambiguous and there is no other evidence to make the appellant's version of events less than credible.
44. The appellant claims that all works to the front façade of the building were complete by August 2018. However, the Council's photograph of the front façade of the building, dated 10 May 2019, shows the works had not been started. Furthermore, the Council's photographs dated 4 March 2020 show scaffolding present at the front of the building and that works to change the front window openings was on going. The photograph of the side of the building shows that the single storey lean-to side extension, external staircase, fire pit and garden store had not yet been erected. The photograph of the rear entrance shows that works on the rear two-storey extension had not commenced.
45. The Council's photographs dated 9 July 2020 show the external staircase and the rear two-storey extension to be under construction. They also show the fire pit to have been constructed and the works to the front façade to have been completed. The Council's photographs dated 1 April 2021 show the garden store to have been erected and the roof to have been put on the two-storey extension. The single storey lean-to side extension first appears in photographs dated 8 December 2021. The Council's photographic evidence therefore contradicts the appellant's version of events. I therefore find the appellants' evidence to be imprecise and ambiguous, making their version of events less than credible.
46. The appellants have failed to show, on the balance of probability, that the operational development alleged was substantially completed on or before the material date, 18 November 2018. For this reason, the appeals on ground (d) fail.

Appeals A and B on ground (a) and the deemed applications for planning permission

47. An appeal on ground (a) is that planning permission should be granted for the corrected matters alleged. As there are 2 Notices, the ground (a) appeals relate to the mixed use and its facilitating development as well as the operational development alone.
48. The **main issues** are the effects of the development on:
- The character and appearance of the building and street scene;
 - The living conditions of occupiers and neighbouring residents; and
 - Highway safety.
49. Policy 6: Development on Unallocated Sites of the County Durham Plan (October 2021) (the CDP) provides a list of criteria against which sites such as this one will be considered. The appeal site is located within the built-up area where the re-use of buildings for residential and office purposes would be compatible with adjacent uses. The development therefore complies, in principle, with policy 6 of the CDP and guidance set out in the revised Framework.

Character and appearance

50. The appeal property is a former chapel and is located at the end of a short, narrow cul-de-sac. There are residential properties located to one side of the road and the rear elevation of other residential properties are located adjacent to the carriageway edge on the opposite side. The appeal property backs on to open fields. Development in the locality is predominantly two-stories in height and used for residential purposes although there are local shops and services within easy walking distance.
51. Prior to the development taking place, the building benefitted from a symmetrical front façade, incorporating a central ground floor entrance porch with tall arched topped windows to either side and an unbroken roof plane. The feature windows have been removed, their openings partially blocked up and new square or rectangular windows have been installed. Roof lights have also been installed, which break up the roof plane and which do not follow the alignment of the replacement windows. While 'decorative mouldings' have been attached to the facade, they are angular in appearance and out of keeping with the former arch top window heads. These changes detract from and cause harm to the building's original character and appearance.
52. The two-storey rear extension has a simplistic timber design, incorporating a flat roof. As the first-floor accommodation is partially contained within the building's roof, the two-storey extension, at first floor level, projects upwards and outwards from the roof plane. This results in an awkward junction, which is visually dominant in wider views of the property, particularly from Hunwick Lane. Furthermore, the painted timber and Perspex materials highlight the extension's presence in the landscape and lend the extension a flimsy and unsympathetic appearance. Contributing further to the identified harm to the building's appearance.

53. The other extensions and structures are not as visually dominant, they are however constructed of unsympathetic materials. I accept that the other window openings created may be in similar positions to openings that had been blocked up at some point in the past. The new windows do not however follow the former vertical appearance of those openings, which detracts from the overall character and appearance of the building. These works also contribute to the totality of harm arising to the character and appearance of the building.
54. For these reasons, the facilitating and operational development cause significant harm to the character and appearance of the building and street scene. They are therefore contrary to policies 6 and 29 of the CDP, which amongst other things, seek to deliver high quality developments that respect the character and appearance of the locality.

Living conditions

55. The Council confirm that the internal room sizes meet with standards set out in the Nationally Described Space Standards applicable to residential developments. External amenity space consists of the hard surfaced areas to the side of the extended building. The single storey lean-to side extension shows that a significant part of this would be used for vehicle parking. The remaining area is relatively small, and it is unclear as to whether this space is available to all occupiers of the property or only those occupying the first-floor accommodation. However, I saw that Willington Town Park is located a short walk away and this provides public amenity space that residents can use. I therefore find that the development provides acceptable living conditions for occupiers.
56. The alterations include the provision of first floor windows in the rear elevation. While being perpendicular to the properties fronting on to Mill Street, these windows provide an opportunity for overlooking the adjacent properties' private rear gardens. Residents of those adjacent properties experience an unacceptable loss of privacy because of that overlooking.
57. The two-storey extension is positioned further away from the Mill Street properties than the two first floor windows, but it is visually obtrusive, dominating views from the rear of those established dwellings. The design and materials give the impression of there being a first-floor conservatory, providing views over a sweeping area, strengthening the feeling of overlooking and loss of privacy for neighbouring occupiers.
58. For these reasons the facilitating and operational development have a detrimental impact on the living conditions of adjacent residents. They therefore conflict with policy 31 of the CDP, which seeks to ensure there will be no unacceptable impact on living conditions through overlooking, visual intrusion, visual dominance, or loss of privacy, amongst other things.

Highway safety

59. The Council claim relevant parking standards require on-site provision of 7 parking spaces. This appears to be based on one space per ground floor office/residential unit and one space for each of the four first floor rooms.
60. The appellant however argues that, based on the combined ground floor office space and a single self-contained 3 bedroomed flat, only three spaces are

required. They also argue that, as the lawful use of the building falls within Use Class F1: Learning and non-residential institutions, it generates a requirement for 10 parking spaces. In these circumstances, the appellant argues that any displaced parking resulting from the development would be less than that generated by the former use of the building.

61. Regardless of whether the development generates a need for 3 or 7 parking spaces, the site can only accommodate 1 parking space based on the size of the single storey lean-to side extension. Vehicles associated with the site would therefore have to park on the highway, potentially displacing other parked vehicles in the vicinity. Parking outside the site has the potential to cause congestion, both on the cul-de-sac and on High Street or Mill Lane.
62. While the cul-de-sac in front of the host building can accommodate two-way traffic, there is no turning head. Furthermore, vehicles parking on this length of highway restrict access for the appeal site and for neighbouring properties. Given the limited highway space available on the cul-de-sac and the configuration of parked cars, vehicles are likely to reverse out of the cul-de-sac on to High Street. This creates a danger to other road users.
63. There is no dispute that the building was originally used as a chapel and has more recently been used as a training centre for the St John's Ambulance Service. Those uses will no doubt have generated traffic and a need for vehicle parking. Activities associated with those uses may also have taken place in evenings and at weekends. While the specific amount of parking demand from those former uses is not known, it is only fair to have regard to the fact that they would have generated some demand when considering the highway implications of the mixed use.
64. The mixed use of offices and residential units generates an unknown on-street parking demand; it would be reasonable to conclude that some of that demand would exist during office hours and some at other times. The previous uses of the appeal site also had an unknown on street parking demand. However, the parking demand was likely to fluctuate with the time of day and the activity taking place on the site.
65. Taking all these factors into consideration and given the size of the building, in my judgement, the development would not cause any greater highway safety risk than the former uses of the site. As such, while the development conflicts with policy 6 of the CDP, in that it fails to provide adequate parking facilities, it is unlikely that it would cause any greater harm to highway safety than the former uses of the building.

Other matters

66. The main appeal parties have referred to policy 16, which amongst other things, refers to the provision of student accommodation and houses in multiple occupation (HMO). The MCU Notice does not refer to the mixed-use including use of the building as a HMO. I have seen no evidence to suggest that the building has been converted into student accommodation or an HMO. Therefore, this policy has no direct relevance to the development. However, if it did, insufficient information has been provided to show how the development the subject of Appeal A meets the relevant criteria.

Conclusion on ground (a)

67. For the reasons given above, the mixed use and its facilitating development as well as the operational development conflict with the development plan as a whole. The appeals on ground (a) fail.

Overall Conclusion

68. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices with corrections and variations and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

Appeals A and C

69. It is directed that the enforcement notice (the MCU Notice) is corrected and varied by:

In section 2. THE LAND TO WHICH THE NOTICE RELATES, the deletion of the words 'registered under HM Land Registry Title number DU331703' and 'including'.

In section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of all the words and the substitution of the words 'Without planning permission, the material change of use of the land to a mixed use comprising of offices and residential units, facilitated by internal and external alterations, a single storey lean-to side extension, and a two-storey rear extension with external staircase.'

In section 5. WHAT YOU ARE REQUIRED TO DO, delete all the words and substitute the words '(a) Permanently cease the mixed use comprising of offices and residential units. (b) With the exception of one kitchen and one WC/shower room, remove all domestic fixtures, fittings and paraphernalia from the land. (c) Remove all office fixtures, fittings and paraphernalia from the land. (d) Remove all internal and external alterations, the single storey lean-to side extension and the two-storey rear extension with external staircase. (e) Return the internal and external appearance of the building to its condition before the breach occurred.'

In section 6. TIME FOR COMPLIANCE, delete all the words after '...undertaken.' And substitute the words, 'Step 5. (a) 6 weeks, and Steps 5. (b) to (e) inclusive – 16 weeks.'

Subject to the corrections and variations, the appeals are dismissed. The enforcement notice is upheld, and planning permission is refused on the application deemed to have been made for Appeal A under section 177(5) of the 1990 Act as amended.

Appeals B and D

70. It is directed that the enforcement notice (the OD Notice) is corrected by:

In section 2. THE LAND TO WHICH THE NOTICE RELATES, the deletion of the words 'registered under HM Land Registry Title number DU331703'.

In section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of all the words and the substitution of the words 'Without planning permission, the erection of a two-storey rear extension with external staircase, a single storey lean-to side extension, a detached storage structure, and a brick fire pit, installation of a satellite dish and the carrying out of internal and external alterations to the building.'

Subject to the corrections, the appeals are dismissed. The enforcement notice is upheld, and planning permission is refused on the application deemed to have been made for Appeal B under section 177(5) of the 1990 Act as amended.

M Madge

INSPECTOR