



## Appeal Decisions

Site visit made on 25 June 2024

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 16<sup>th</sup> July 2024**

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### **Appeal A Ref: APP/K0940/W/23/3331861**

#### **High Mill Northern Units, The Butts, Alston CA9 3JU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr Peter Olive against the decision of Westmorland and Furness Council.
- The application Ref 22/0582 was approved on 31 August 2023 and planning permission was granted subject to conditions.
- The development permitted is change of use of factory and office buildings to 2 No residential dwellings.
- The conditions in dispute are contained in the attached schedule and are Condition Nos 1(i), (ii), (x) and (xi) and condition Nos 3, 4, 5 and 6.
- The reasons given for the conditions are set out in the attached schedule.

### **Appeal B Ref: APP/K0940/W/23/3334622**

#### **High Mill Northern Units, The Butts, Alston CA9 3JU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Peter Olive against the decision of Westmorland and Furness Council.
- The application Ref 23/0497, dated 13 September 2023, was refused by notice dated 8 November 2023.
- The application sought planning permission for change of use of factory and office buildings to 2 No residential dwellings without complying with conditions attached to planning permission Ref 22/0582, dated 31 August 2023.
- The conditions in dispute are contained in the attached schedule of disputed conditions and reasons and are Condition No 1 (viii) and (ix) and Condition No 2.
- The reasons given for the conditions are set out in the attached schedule.

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### **Decision**

1. Appeal A and Appeal B are dismissed insofar as they relate to condition No 1 clauses (i) and (ii); condition No 1 clause (viii) and condition No 2 (in so far as they both relate to garage doors); condition No 1 clause (x); and condition No 3.
2. Appeal A and Appeal B are allowed insofar as they relate to the removal of condition No 1 clauses (ix) and (xi); the removal of condition No 1 clause (viii) and the revision of condition No 2 (insofar as these both relate to windows and pedestrian doors); the revision of condition No 5; and the removal of condition No 6; and planning permission is granted for change of use of factory and office

buildings to 2 No residential dwellings at High Mill Northern Units, Alston CA9 3JU in accordance with the terms of the application, Ref 22/0582, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the conditions in the attached Schedule of Conditions.

### **Preliminary Matters**

3. The appellant has lodged 2 No appeals which relate to the same permitted scheme for the conversion of a former commercial building into 2 dwellings. These appeals relate to a dispute over conditions attached to planning permission 22/0582 which permits the variation of condition No 2 of planning permission Ref: 19/0604.
4. During my site visit, I observed that works were underway for the conversion of the appeal property into 2 dwellings. Amongst other things 3 No roof lights had been installed in Unit 1; a rendered finish applied to the exposed section of the ground floor frontage of the appeal building and colour-coated roller garage doors, composite front doors and PVCu double-glazed windows and rear doors installed.
5. Through Appeal A the appellant seeks:
  - to vary condition No 1 so that it refers to a different version of the location plan (clause i); site plan (clause ii); and structural survey (clause xi) as approved documents;
  - to vary condition No 1 which seeks to control the required design details of the rooflights to 'Unit 1' through clause (x);
  - the removal of condition No 3 which seeks to control the external finish of the exposed ground floor frontage of the Unit 1;
  - the removal of condition No 4 which places limitations on the hours of construction activities;
  - the removal of condition No 5 which seeks to secure the provision and retention of arrangements for access and turning; and
  - the removal of condition No 6, which seeks to secure the provision and retention of pedestrian visibility splays.
6. From the evidence before me, Appeal B clearly seeks permission to carry out development without complying with condition No 1 (clauses viii and ix) and condition No 2. Collectively, these conditions seek to manage the design details and materiality of the windows and external pedestrian and garage doors for both units. In view of the grounds by which Appeal B is made, my assessment is based upon the written evidence as well the works already undertaken relating to the specific components of Appeal B.
7. I note that clause (viii) of the relevant planning permission Ref: 22/0582 (the parent permission) is repeated twice within the decision notice, firstly in regard to casement windows and then secondly, in regard to side hung doors. It is clear from the appeal submission that the appellant is pursuing both matters and I distinguish between these elements, where necessary, for the avoidance of any doubt.

8. To avoid any repetition and given that these appeals relate to the same parent permission, I have dealt with both appeals within a single decision letter. As the disputed conditions are clearly severable from one another, I have reached a conclusion on each in turn within my Decision. A final set of conditions which reflect my findings is attached to this Decision.
9. The appeal site is located within the Alston Conservation Area and forms part of the setting of neighbouring Grade II\* listed High Mill. Therefore, in reaching my decision I have exercised my statutory duties in respect of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
10. The appeal site is also located within the North Pennines Area of Outstanding Natural Beauty, now a National Landscape and address this matter latter.

### **Main Issues**

11. In terms of the parent permission, the main issues are:

- whether or not carrying out the development without compliance with clauses (viii), (ix) and (x) of condition No 1; condition No 2; and condition No 3 would preserve the setting and special interest features of Grade II\* listed High Mill and preserve or enhance the character or appearance of the host building and wider Alston Conservation Area
- whether or not the removal of condition No 4 would harm the living conditions of neighbouring residents
- whether or not the removal of condition Nos 5 and 6 would be prejudicial to the safety of highway users; and
- whether or not the variation of condition No 1 in terms of clauses (i), (ii) and (xi) would appropriately define the scope of the consent granted.

### **Reasons**

#### Heritage

##### Context

12. The appeal site is located on the very edge of the Alston Conservation Area, the boundary of which runs tightly against the rear elevation of this former factory. The appeal site forms part of a wider complex of buildings that were associated with High Mill, a Grade II\* listed building. The appeal building does not form part of that listing. Nonetheless, it falls within the immediate setting of this listed former corn mill.
13. The significance of the Conservation Area is mainly derived from the historical, architectural and communal values of Alston as a market town serving its remote North Pennines rural hinterland. This includes the prevailing traditional built form and design and use of natural materials, including in relation to windows and doors.
14. The submitted evidence confirms that the significance of High Mill as a former corn mill rests mainly in its historical, and architectural values. It is the only extant watermill designed by John Smeaton, an eminent 18<sup>th</sup> century engineer. Its integrity and readability remain intact in view of the minor interventions that have been made to it. As such, it is a good example of a relatively small scale

later 18<sup>th</sup> century water-driven corn mill constructed to supply a local market, whose form continues to visibly illustrate its former industrial function.

15. Condition No 1(viii) seeks secure appropriate treatment of the replacement external side hung pedestrian and garage doors and casement windows. Condition No 1 (ix) seeks to secure the appropriate treatment of the replacement vertical sliding windows. Condition No 1 (x) seeks to secure appropriate roof lights. Condition No 2 seeks to secure the replacement of the currently installed unauthorised doors and windows with others which accord with condition Nos 1(viii) and 1(ix). Condition No 3 seeks the removal of a rendered finish that has been applied to part of the front face of the ground floor and its reinstatement with a more suitable finish.
16. Securing the authority not to comply with conditions subject to which the previous parent permission was granted would enable the retention of the 2 No colour-coated composite front doors; 3 No white PVCu rear doors; 3 No colour-coated metal roller garage doors; the colour-coated PVCu casement and vertical sliding sash windows and all roof lights. However, even if the removal of the rendered finish to the ground floor frontage was not required through the parent permission, the removal of condition No 3 would not mean that it was lawful. This is because that component does not form part of the details on the plans relating to the parent permission in the first instance.
  - (i) Windows and doors
17. The submitted evidence demonstrates that the former windows to the front elevation of the appeal building were a mix of 16 pane and 8 pane timber frames. Doors were vertically boarded timber, some of which had glazed 8 pane upper sections. The part of the ground floor frontage which has been rendered by the appellant had previously housed a long timber lintel, a window, and 2 sets of double doors and their surrounds.
18. The loss of these former doors and windows which formed part of the historic fabric of the appeal building was accepted through the parent planning permission. At the time of my site visit, there were no original doors or windows within the building or at the site.
19. The front elevation of the appeal building forms part of the important internal views of the Conservation Area and is more sensitive to change than its rear. As such, the permitted scheme takes a traditional design approach to the overall treatment of the front elevation. In contrast, a contemporary design solution for the permitted extensions has been deemed appropriate treatment to the rear. Albeit, in doing so the main roofscape remains an important uninterrupted historic feature.
20. The roller style garage doors would not respect the traditional character and appearance of the appeal building or its prevailing wider historic context by virtue of their upward means of opening and horizontal banding detail arising from their roller construction and materiality.
21. The requirements of clause (viii) of condition No 1 and condition No 2, as imposed, would effectively secure an appropriate treatment of the garage door openings that would preserve the character and appearance of the Conservation Area and also the setting of the listed corn mill. However, it would be necessary to revise the wording of condition No 2 to address a potential tension between

the requirement for side hung doors for Unit 1 and the requirement of condition No 6 in respect to achieving and maintaining visibility splays.

22. The profile and design of the panelled and partially glazed front pedestrian doors would not be jarring with the overall traditional semi-informal rural character and appearance of the original building. Furthermore, the heavily glazed, contemporary design of the rear doors would be consistent with the modernity of the rear extensions which they would serve. The man-made, colour-coated materiality of all of these pedestrian doors would be evident only upon very close inspection.
23. All windows are double glazed, PVCu framed units with a 'Chartwell Green' coloured and wood grained textured external finish and white interior. Being 2 on 2 paned, the vertical sliding windows being pursued would differ in style, colour, materiality and glazing to the former windows. Being dual paned, the casement windows would also differ from their predecessors in terms of design.
24. The top and bottom panes of the vertical sliding windows have a vertically sliding opening mechanism. Given their height above floor level the function of the casement windows would mainly be as a light source as opposed to being opened for ventilation. The width, depth and profile of the window frames, glazing bars and horns and the lesser number of glazed panes being pursued are not significantly different to a building of this period and vernacular. Only when in an open position and upon close inspection would the absence of a cord and weight mechanism and the double glazed nature of the panes be apparent from within the Conservation Area. The number of panes per window coupled with the external grained and colour finish would not be alien to the character or appearance of the Conservation Area so as to be harmful to it.

(ii) Roof lights

25. Of the 3 No rooflights that have been installed, only one is of a conservation style, being of vertical proportions with a central glazing bar. There should be a consistent treatment of this historic roofscape, particularly as this could be visible from higher ground against the backdrop of the Conservation Area. The retention of clause (x) of condition No 1 is necessary to secure this.

(iii) External render

26. My attention has been drawn to the quality of the former external finish of the part of the ground floor frontage that has been exposed as a consequence of the works undertaken. In sum total these exposed areas are relatively small in size, given the openings within that elevation. Nonetheless, the treatment of this part of the building governs its character and appearance. Furthermore, forming part of the front elevation, this part of the host building is very prominent within the immediate historic street view.
27. Whilst render exists on other buildings within the Conservation Area, unlike that before me this tends to be of a contrasting colour to the masonry. The act of rendering only the ground floor section of this frontage is not a typical characteristic of this conservation area. Furthermore, there is an absence of exposed stone or timber lintels above the door openings of proportions commensurate to their function. Consequently, the finish between the render and stonework above is weak. This all accentuates the awkwardness of the particular solution pursued.

28. Overall, this particular external treatment pursued significantly undermines the authenticity of the character and appearance of the host building within its historic context. Furthermore, even if it were deemed appropriate to erase any reference to its commercial legacy, in view of my concerns this particular treatment would not represent a sufficiently sensitive design solution. However, as currently worded, condition No 3 does not reflect the fact that there may be scope for the main parties to identify a means to overcome my concerns. The revision of this condition would enable that to be explored, without prejudicing the ability for the Council to pursue an appropriate solution through other means.

#### Summary of heritage findings

29. In overall summary, I am satisfied that the specific pedestrian door and window designs preserve the character or appearance of the Alston Conservation Area and also the setting of the listed corn mill. Whereas, the installation of roller garage doors, 2 No standard design rooflights and rendered finish to the ground floor frontage do not.

30. However, this change to setting does not translate to harm to the special interest features of the listed corn mill itself. Nonetheless, these particular components which have been installed are harmful to the character and appearance of the Alston Conservation Area. As they fail to preserve or enhance the character or appearance of that Conservation Area they do not meet the provisions of the Act, to which I attach great weight.

31. I note that the Alston Conservation Area has been placed on the Heritage At Risk Register of Historic England, due in part to the gradual loss of traditional features within it. In view of this, and in line with the National Planning Policy Framework (the Framework) I attribute considerable importance and weight to the conservation of both the listed corn mill and the Alston Conservation Area.

32. In view of my findings, the pedestrian doors and window treatments before me are appropriate, such that compliance with clauses (viii) and (ix) of condition No 1 of the parent permission is unnecessary. Consequently, compliance with condition No 2 would also be unnecessary insofar as it relates to those doors and windows.

33. However, in view of the harm that I have identified in relation to the roller garage doors, compliance with both clause (viii) of condition No 1 and condition No 2 is necessary in that regard to ensure compliance with the development plan from a heritage perspective. However, it would be appropriate to address the requirement of clause (viii) of condition No 1 through a revision to condition No 2. I am also satisfied that the remainder of the clauses of condition No 1, including clause (x) and also condition No 3 remain necessary to ensure a satisfactory development overall and to avoid any ambiguity as to what constitutes the permission. These conditions would also be reasonable, precise, relevant to development and the proposal and enforceable and would meet the prescribed tests for planning conditions if revised to accord with my findings.

34. In conclusion to this main issue, with the exception of their reference to the garage doors, the variation of clauses (viii) and (ix) of condition No 1 and also condition No 2 would preserve the setting and special interest features of the Grade II\* listed High Mill and would preserve both the character and appearance of the host building and the Alston Conservation Area. However, the

remaining revisions sought to condition Nos 1, 2 and 3 attached to the parent permission would not. Consequently, these findings should be reflected in the attached Schedule of Conditions.

#### Living conditions

35. Condition No 4 seeks to control the hours of construction works in order to safeguard the living conditions of neighbouring residents.
36. Whilst the parent application did not seek to vary or change this condition, the effect of approving that application gave a new planning permission for the development. If this condition had not been imposed on planning permission Ref: 22/0582, there would be no continuing control over working hours.
37. By virtue of the location of the appeal site and the nature of the development, I am satisfied this requirement remains necessary to ensure a satisfactory development overall in terms of safeguarding the living conditions of neighbouring residents during the construction phase, in accordance with the development plan. It is also reasonable, precise, relevant to development and the proposal and enforceable. As such, and as part of ongoing building works to convert the property adjacent to residential properties, the imposition of this condition on planning permission Ref: 22/0582 meets the tests for planning conditions.
38. In conclusion to this main issue, the removal of condition No 4 of the parent permission would harm the living conditions of neighbouring residents. Consequently, it should be retained as worded in the decision notice and this finding should be reflected in the attached Schedule of Conditions.

#### Highway safety

39. Condition No 5 seeks to manage access and turning arrangements in perpetuity. Condition No 6 seeks to ensure that adequate visibility splays are also secured and maintained thereafter.
40. Drawing No S1-Rev1 demonstrates that subject to any limitations on access rights that have not been made known to me and the design of the garage doors, the required visibility splays, access and turning space can be achieved upon occupation.
41. Whilst the parent application did not seek to vary or change either of these conditions, the effect of approving that application gave a new planning permission for the development. The removal of these conditions would eliminate the ability for the Council to ensure that these matters are satisfactorily addressed.
42. Moreover, condition No 6 remains relevant to the garage door design which, from my earlier findings, will need to be agreed with the Council.
43. Therefore, in order for these matters to be satisfactorily addressed in time for occupation, it was and remains necessary to impose these conditions in order to secure appropriate control through this new parent planning permission so as not to conflict with the development plan.
44. However, I understand that the land to which these requirements relate falls outside of the appellant's ownership. Therefore, the in perpetuity requirement of each of these 2 conditions would be unreasonable and unenforceable as any

changes on that land would fall beyond the control of the appellant or subsequent occupier.

45. Therefore, the in perpetuity requirements of each should be removed. Furthermore, it would be more appropriate to merge the remaining requirement of condition No 6 with condition No 2 given its relevance to the garage door design.
46. In conclusion, if revised as I have outlined condition Nos 2 and 5 of the parent permission would meet the prescribed tests for planning conditions. However, condition No 6 would be unnecessary. Consequently, these findings should be reflected in the attached Schedule of Conditions.

#### Scope of consent

##### (i) Approved Location Plan

47. Condition No 1(i) confirms the version of the location plan which should be relied upon for determining the extent of the site to which the planning permission relates. Therefore, condition No 1(i) is, in principle, necessary to avoid any ambiguity as to what constitutes the permission.
48. Neither of the main parties have clearly substantiated their cases on this disputed matter. Although each version has a different base map, the location plan for 19/0604 and that submitted with 22/0582 show the same site boundary. Consequently, there is no basis to change the reference made in respect to clause (i) of condition No 1.
49. Consequently clause (i) of condition No 1 meets the prescribed tests for planning conditions in that it is necessary to define the approved plans. I am also satisfied that it is reasonable, precise, relevant to development and the proposal and enforceable.

##### (ii) Approved Site Plan

50. Clause (ii) of condition 1 confirms the Site Plan that should be relied upon as part of the suite of approved documents. That plan is referenced in condition No 1 because it is cited in condition No 6.
51. In view of my findings on condition Nos 5 and 6, I am satisfied that Drawing No S1-Rev1 should be retained in clause (ii) of condition No 1 to ensure a satisfactory development overall and to avoid any ambiguity as to what constitutes the permission. As its continued relevance relates to my findings about condition No 6, clause (ii) of condition No 1 remains necessary. I am also satisfied that it is reasonable, precise, relevant to development and the proposal and enforceable.

##### (iii) Approved Structural Appraisal

52. Condition No 1(xi) seeks to define the structural baseline of the appeal property to justify that the property is capable of conversion and any necessary precautions that would need to be undertaken to ensure its continuing structural integrity.
53. The Council has conceded that the circumstances surrounding this matter mean that this clause is no longer necessary. I have no cause to find otherwise.

Therefore, clause (xi) of condition No 1 should be removed as it does not meet the prescribed tests for conditions.

54. In overall conclusion on this main issue, the variation of condition No 1 in terms of clauses (i) and (ii) would not appropriately define the scope of the parent permission. However, the removal of clause (xi) of condition No 1 would not undermine that. Consequently, these findings should be reflected in the attached Schedule of Conditions.

### **Other Matter**

55. The findings of my assessment of the windows, doors and external finish pursued by the appellant in terms of character and appearance translate to their incremental effects on the special scenic qualities of the North Pennines as a National Landscape.

56. Consequently, I conclude that the proposed windows and pedestrian doors would not harm the scenic qualities of the North Pennines, whereas there is harm from the roller doors, roof lights and rendered finish. In line with the paragraph 182 of the Framework I give great weight to conserving and enhancing the landscape and scenic beauty of the North Pennines as a National Landscape. This only serves to reinforce my other findings on the acceptability of the appellant's proposed changes to the conditions attached to the parent permission.

### **Conclusion**

57. For the reasons given above, I conclude that Appeal A and Appeal B should succeed in part. In doing so, planning permission 22/0582 is varied to reflect my findings, as contained in the attached Schedule of Conditions by:

- removing 2 No clauses (viii) of condition No 1 (Appeal B);
- removing clause (ix) of condition No 1 (Appeal B)
- removing clause (xi) of condition No 1 (Appeal A)
- revising condition No 2 so that it refers only to garage doors and securing visibility splays (Appeal A and B)
- revising condition No 3 to enable the parties to explore an appropriate external treatment (Appeal A)
- revising the wording of condition No 5 (Appeal A); and
- removing condition No 6 (Appeal A).

*C Dillon*

INSPECTOR

## SCHEDULE OF DISPUTED CONDITIONS AND REASONS

Condition No 1 states:

"The development hereby granted shall be carried out in accordance with the drawings hereby approved unless otherwise indicated

This includes the following disputed criteria:

- i. Location Plan (L1) received 15th August 2019
- ii. Site Plan (S1 – Rev 1) received 14th October 2019
- viii. External side hung doors (units 1 & 2) (D1) received 15th August 2019
- viii. Casement windows (units 1 & 2) (D2) received 15th August 2019
- ix. Vertical sliding windows (unit 1) (D3) received 15th August 2019
- x. Roof lights to unit 1 (D4) received 15th August 2019
- xi. Structural Appraisal received 15th August 2019"

The Council's reason for this condition is to ensure a satisfactory development and to avoid any ambiguity as to what constitutes the permission.

Condition No 2 states:

"Notwithstanding the details shown on the approved plans in Condition 1, prior to the first occupation of the development, the doors, windows and garage doors in the elevations visible from The Butts shall be removed and replaced with timber-framed windows and doors as approved for the original application ref. 19/0604. All the garage doors shall be of timber vertical planks and, for the northern dwelling only, shall be side-hung double doors."

The Council's reason for this condition is to restore the architectural interest of the building and to aid better understanding of its historical context within Alston Conservation Area.

Condition No 3 states:

"Prior to the first occupation of the northern dwelling, the rendered façade facing The Butts at ground floor level shall be removed and the stone or brickwork behind the render shall be restored to its previous appearance."

The Council's reason for this condition is to restore the architectural interest of the building and to aid better understanding of its historical context within Alston Conservation Area.

Condition No 4 states:

"Construction works shall be carried out only between 0800 – 1800 hours Mondays – Fridays; 0900 – 1300 hours on Saturdays and there shall be no activity on Sundays and Bank Holidays."

The Council's reason for this condition is to safeguard the amenity of residents living nearby.

Condition No 5 states:

"The dwelling shall not be occupied until the vehicular access and turning requirements have been constructed in accordance with the approved plan and has been brought into use. The vehicular access turning provisions shall be retained and capable of use at all times thereafter and shall not be removed or altered."

The Council's reason for this condition is to ensure a minimum standard of access provision when the development is brought into use.

Condition No 6 States:

"A 2.4 metre x 2.4 metre pedestrian visibility sight splay as measured from the highway boundary as Drawing No. S1-Rev1, shall be provided on both sides of the vehicular access. There shall be no obstruction above a height of 600mm as measured from the finished surface of the access within the area of the visibility sight splays thereafter."

The Council's reason for this condition is to provide adequate inter-visibility between the pedestrians and users of the access and the existing public highway for the safety and convenience of users of the highway and of the access.

## SCHEDULE OF CONDITIONS ARISING FROM APPEAL DECISION

1. The development hereby granted shall be carried out in accordance with the drawings hereby approved unless otherwise indicated:
  - i) Location Plan (L1) received 15 August 2019
  - ii) Site Plan (S1 – Rev 1) received 14 October 2019
  - iii) Plans as Proposed Ground Floor (22/887/15 rev C) received 29 August 2023
  - iv) Plans as Proposed First Floor (22/887/14 rev C) received 29 August 2023
  - v) Plans as Proposed Second Floor and Roof Plan (22/887/13 rev D) received 29 August 2023
  - vi) Elevations as Proposed Front and Rear Elevations (22/887/16 rev C ) received 29 August 2023
  - vii) Roof lights to unit 1 (D4) received 15 August 2019
  - viii) Sections as Proposed (22/887/17 rev A ) received 29 August 2023
  - ix) Bat Surveys and Risk Assessment received 15 August 2019
  - x) Heritage Statement received 15 August 2019
  - xi) Design and Access Statement received 15 August 2019
2. Notwithstanding the details shown on the approved plans, prior to the first occupation of either new dwelling, garage doors shall be installed in each garage door opening which are constructed from painted timber vertical planks. The precise details for all of these doors, including their design, any glazing, means of hanging and opening, shall have first been submitted to and approved in writing by the Local Planning Authority prior to their installation. The garage doors shall not open in a manner that would obstruct the visibility sight splays shown on Drawing No S1-Rev1.
3. The external treatment of the rendered façade at ground floor level facing The Butts shall be agreed in writing with the Local Planning Authority and implemented in accordance with those approved details prior to the first occupation of the northern dwelling.
4. Construction works shall be carried out only between 0800 – 1800 hours Mondays – Fridays; 0900 – 1300 hours on Saturdays and there shall be no activity on Sundays and Bank Holidays.
5. The dwelling shall not be occupied until the proposed vehicular access and turning area are first available for use in accordance with Drawing No S1-Rev1.

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