



Appeal Decision

Site visit made on 20 May 2025

by **S Brook BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

Appeal Ref: APP/K0940/W/25/3359727

Fiddlers Croft, Church Road, Levens, Cumbria LA8 8PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr R Kelly against the decision of Westmorland and Furness Council.
 - The application reference is 2024/2242/FPA.
 - The application sought planning permission for erection of 3 dwellings without complying with a condition attached to planning permission reference SL/2023/0580, dated 21 December 2023.
 - The condition in dispute is No 9 which states that: *The lower ground floor shall not be used as habitable accommodation at any time.*
 - The reason given for the condition is: *To safeguard the amenity of the neighbouring residents.*
-

Decision

1. The appeal is allowed and planning permission is granted for erection of 3 dwellings at Fiddlers Croft, Church Road, Levens, Cumbria, LA8 8PP, in accordance with the application reference 2024/2242/FPA, without compliance with condition number 9 previously imposed on planning permission reference SL/2023/0580, dated 21 December 2023, and subject to the conditions in the attached schedule.

Background and Main Issues

2. The planning history for the appeal site indicates that outline planning permission was granted for three dwellings on Church Lane in 2016¹, followed by an approval of reserved matters in 2020². I have used the original act of development in the banner heading above. Two further applications then sought to vary the approved plans of the original reserved matters application³. The Officer's Report accompanying this appeal, indicates that the approved plans subject of application SL/2023/0580 included a larger additional lower ground floor space. Condition 9 of that permission is the subject of this appeal, which prevents the use of the lower ground floor as habitable accommodation.
3. While the reason provided for imposing condition 9 related only to safeguarding the amenity of neighbouring residents, the Council's refusal reason also raises concerns with the standard of living conditions afforded to future occupiers of the appeal scheme, due to limited openings and ventilation in the lower ground floor.

¹ SL/2015/0260

² SL/2019/0343

³ SL/2022/0938 and SL/2023/0580

4. Consequently, I consider the main issues in this appeal to be whether the condition is necessary and reasonable having regard to (a) the standard of living conditions afforded to future occupiers of the proposed development, with particular regard to natural light and ventilation, and (b) the effect of the development on the living conditions of the occupiers of neighbouring properties, with specific regard to privacy and disturbance.

Reasons

Natural Light and Ventilation

5. While the appellant has sought to remove condition 9, there is no information before me to suggest how this lower ground floor would be used, other than those details provided on the approved plans. These plans show a plant room, three store rooms, and a shower room, along with a lobby and hall. This is a large area, encompassing the footprint of the upper floors, as well as extending under the parking area and rear terrace.
6. Neither party has referred me to any particular standards relating to the provision of natural light or ventilation, or provided any calculations for the level of provision that would be afforded to these lower ground floor rooms.
7. At the time of my visit the plant room was being fitted out as such, with a large amount of plant being installed. Although of moderate size, it seems unlikely that this room would be used for any other purpose, given the nature of the use and the extent of the plant, perhaps with the exception of storage. As such, natural light and ventilation would not be a necessary requirement to this room and so a restriction on its use as habitable accommodation seems unnecessary.
8. The largest room to the northern side of the lower ground floor is served by fully glazed double doors. While this room extends back for much of the depth of the building, these glazed doors provide a good level of natural light to this space. Similarly, the smaller store to the south of the lobby and to the rear of the building would be served by a window, which provides a good level of natural light to this space. There is no detailed evidence before me to suggest that these rooms could not be adequately ventilated. As such, I find no reason to restrict the use of these rooms for habitable accommodation.
9. The plans include a further 'store' located to the south of the hallway, positioned internally to the lower ground floor. This room is substantially sized and so it could easily accommodate sleeping or living space. However, given its internal position, this room is not fitted with any external doors or windows, and so it benefits from no natural light and there is no suggestion that any could be provided. These circumstances would mean that if utilised as habitable accommodation, it would not be possible to undertake general domestic activities without reliance on artificial light at all times, and any occupiers of the space would be afforded no outlook. Therefore, it would not provide an acceptable standard of sleeping or living space for future occupiers.
10. Consequently, in relation to the standard of living conditions afforded to future occupiers of the proposed development with regard to natural light and ventilation, condition 9 is not reasonable because it prevents the use of all the lower ground floor from use as habitable accommodation, when I have found that at least some of these rooms would be suitable for such a use. However, removing this condition

in its entirety would not secure an acceptable standard of living conditions for future occupiers, given the issue I have identified with the internal 'store' room. This can be addressed by varying the imposed condition, so that the restriction imposed applies to this internal room only.

11. This varied condition would be necessary and reasonable in order to afford future occupiers an appropriate standard of living conditions, with particular regard to natural light and ventilation. The varied condition would be relevant to planning, as the National Planning Policy Framework (the Framework) requires that all development provides a high standard of amenity for existing and future users, and it would clearly relate to the development to be permitted.
12. Further, it would be sufficiently precise and enforceable. Habitable accommodation is a common phrase in the consideration of living conditions for planning purposes, and its natural and ordinary meaning is clear. The Act affords a Local Planning Authority certain rights of entry for enforcement purposes, including to ascertain whether there is, or has been, any breach of planning control.
13. The varied condition would meet the requirements of policies DM1 and DM2 of the South Lakeland Development Management Policies Development Plan Document, March 2019, (DPD), which, amongst other matters, require that the needs of potential users are considered in terms of design and layout, so as to deliver acceptable levels of amenity for future occupants.
14. The appellant suggests that restricting how a dwelling can be used would be officious and excessive. However, the provision of adequate light within a dwelling is a material planning consideration, as demonstrated by the appeal decisions provided by the Council. While I have reached my own conclusions based on the physical circumstances of the appeal site and the proposal, given the requirements of local and national policy to achieve a high standard of amenity for future users, the varied condition is proportionate in the restrictions it would impose on future occupiers.

Privacy and Disturbance

15. As the lower ground floor extends under the elevated terrace and parking area of the dwelling, the doors and windows within the rear elevation of this lower level would be closer to the site's boundaries than those at upper levels. Additionally, use of the lower ground floor for habitable accommodation, could potentially increase the movement of future residents between these floors, both internally and externally via the external steps that link the terrace to the garden, or along the path to the side of the property.
16. The host property is positioned on rising land and so neighbouring dwellings to the southwest and west are at a substantially lower ground level. Nevertheless, as the proposed dwelling is now substantially constructed, I was able to clearly appreciate the relationship of the new dwelling with its neighbours.
17. The Cottage, located to the southwest, lies in close proximity to the appeal dwelling. This cottage sits tightly into the rising ground of its garden, which then rises up towards its garage, accessed off Church Lane. If used as habitable accommodation, users of the lower ground floor of the appeal dwelling would be afforded views towards this neighbouring dwelling from the rear windows and doors. However, these views would mainly take in the blank side elevation and the

roof of The Cottage, and so there would be no significant loss of privacy for occupiers of this property, from these openings.

18. The approved dwelling includes a large terrace at the rear, which holds an elevated position, due to the topography. This sits above a garden area which is on level with the lower ground floor. For those cottages to the west, any outlook from these lower ground floor windows would be similar to that afforded by upper floor windows, the elevated terrace and the garden, and so there would be no significantly greater impact on the privacy of occupiers of these neighbouring properties.
19. Having considered the physical relationship of the appeal site to surrounding residential properties, any increase in comings and goings to the lower ground floor via the access to the side, would provide only passing views of part of the garden serving The Cottage, which would not result in a greater level of overlooking than might be expected in a residential area. Having observed the size and position of openings and the amenity space relating to those properties to the west, any increase in comings and goings associated with the use of the lower ground floor would not lead to any significant loss of privacy, over and above that resulting from the dwelling as approved.
20. I acknowledge that use of the lower ground floor as habitable accommodation could allow for other arrangements, such as an annex, given the larger available space. Nevertheless, there is no evidence before me to suggest that it would not remain in use as one planning unit for residential purposes, and any increase in comings and goings associated with the use of the lower ground floor for habitable accommodation, would not be so considerable over and above the permitted dwelling, that it would amount to a level of disturbance, harmful to the living conditions of occupiers of neighbouring properties, given the established residential character of the area.
21. For these reasons I find that condition 9 is not necessary to maintain the living conditions of occupiers of neighbouring properties, with specific regard to privacy and disturbance. In this respect, its removal would not conflict with DPD policies DM1 and DM2, insofar as they seek to ensure new development secures a positive relationship with surrounding development and provides an acceptable level of amenity and privacy for neighbouring occupants.

Conditions

22. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The Council has provided a list of those other conditions applied to application reference SL/2023/0580. These other conditions are not in dispute and neither party has provided me with any evidence to suggest that they are no longer necessary, or have been discharged. In addition to the varied condition, I have therefore restated those other conditions imposed on the earlier permission. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

23. For the reasons given above, the appeal should be allowed with the disputed condition varied, retaining those non-disputed conditions from the previous approval⁴ that appear to still be relevant.

S Brook

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Plan P208 Revision A, Floor Plans Elevations P209 Revision A, House 3 and Street Elevations P210 Revision A, Location Plan 489-PL 100 Received 26 July 2023, Proposed Elevations 489-PL 302 Received 26 July 2023, Proposed Elevations 489-PL 300 RevB Received 03 August 2023, Proposed Elevations 489-PL 301 RevA Received 26 July 2023, Proposed Plans 489-PL 200 Rev B Received 26 July 2023, Proposed Plans 489- PL 201 RevA Received 26 July 2023.
- 2) The external walls of the dwellings hereby approved shall be finished in a combination of natural stone, timber cladding and render, in the proportions indicated on the approved plans and in accordance with a further specification that shall first have been submitted to and approved in writing by the Local Planning Authority. The required specification shall detail:
 - (1) the coursing of the natural stone and the depth and colour of mortar joints
 - (2) the colour and finish of the proposed render
 - (3) specification of the proposed timber claddingThe roofs of the dwellings hereby approved shall be finished in natural slate from a source that shall first have been agreed in writing by the Local Planning Authority. These materials shall be agreed and implemented, prior to first occupation of the dwelling.
- 3) The internal configuration of the dwellings hereby approved shall be constructed to meet the Building Regulations M4(2) standards for accessible and adaptable homes.
- 4) No individual dwelling shall be first occupied until it has been provided with one or more swift bricks in accordance with a scheme that first have been submitted to, and approved in writing by, the local planning authority. The scheme shall include manufacturers' details of each bird and bat box together with a plan identifying their proposed locations. Thereafter, the approved swift bricks shall be retained for the lifetime of the development, replaced on a like-for-like basis as necessary.
- 5) No individual dwelling hereby approved shall first be occupied until the parking and associated access to the highway shown on the approved plans have been constructed and made available for use. The first 5m of the access drive to each dwelling measured from carriageway edge of the adjacent highway shall be surfaced in bituminous or cement bound materials, or such other finish as shall

⁴ SL/2023/0580

first have been submitted to, and approved in writing by, the local planning authority. Thereafter, the approved parking and access arrangements shall be maintained for the lifetime of the dwelling concerned.

- 6) Neither of the two new vehicular accesses onto Church Road shall be first brought into use until they have been provided with visibility splays giving clear visibility of 60 metres measured 2.4 metres down the centre line of the access drive and the nearside channel line of the carriageway edge in accordance with details approved in writing by the local planning authority on 18 August 2022, in accordance with application SL/2022/0652. Notwithstanding the provisions of the Town and Country planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no structure, vehicle or object of any kind shall be erected, parked or placed, and no trees, bushes or other plants shall be planted or permitted to be planted, within the visibility splays in a manner which obstructs the limits of clear visibility defined above.
- 7) No individual vehicular access shall be first brought into use until it has been provided with measures to prevent surface water discharging onto or off the highway in accordance with details approved in writing by the local planning authority on 18 August 2022, in accordance with application SL/2022/0652. Thereafter, the approved measures shall be maintained for the lifetime of the associated dwelling concerned.
- 8) No individual dwelling shall be first occupied until the means of enclosure to its curtilage has been completed in accordance with a scheme that shall first have been submitted to, and approved in writing by, the local planning authority.
- 9) The internal room to the south of the hallway on the lower ground floor shall not be used as habitable accommodation at any time.