



Appeal Decision

Site visit made on 6 May 2025

by **Ryan Cowley MPlan (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 June 2025

Appeal Ref: APP/X1355/W/25/3358613

St Aiden's House, High Street, Willington, Durham DL15 0PE

- 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 Arya Samadi, on behalf of ASRE Global Limited, against the decision of Durham County Council.
- The application Ref DM/24/02067/FPA was approved on 11 December 2024 and planning permission was granted subject to conditions.
- The development permitted is change of use of existing building to a dwellinghouse with ancillary workspace including external alterations.
- The conditions in dispute are Nos 2 and 4 which state that:

Condition No 2:

Within three months from the date of this decision, the four window fittings installed on the front elevation of the building shall be removed, the applied mouldings above the window openings and door on the front porch shall be removed, and the two windows and their cills on the front elevation as shown on 'Floor Plans and Elevations as Proposed' Drawing Number: 23/066/02B shall be fully installed on the site in accordance with 'Front Window Specification Works Order' received by the Local Planning Authority on 22nd October 2024.

Condition No 4:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the proposed first floor rear window as shown on 'Floor Plans and Elevations as Proposed' Drawing Number: 23/066/02B shall be obscured to level 3 or higher of the Pilkington scale of privacy or equivalent and shall be maintained thereafter in perpetuity.

- The reasons given for the conditions are:

Reason No 2:

In order to ensure the development relates acceptably to the character and appearance of the area in accordance with Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

Reason No 4:

In the interests of the residential amenity of neighbouring properties in accordance of Policies 29 and 31 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Arya Samadi, on behalf of ASRE Global Limited, against Durham County Council. This is the subject of a separate Decision.

Preliminary Matters

3. The appellant contends that, as part of the planning application, there was no justification for the Council to seek a planning obligation pursuant to Section 106 of

the Town and Country Planning Act 1990 (the Act) towards off-site open space provision. Notwithstanding this, an executed Section 106 agreement, signed by the appellant and dated 10 December 2024, has been submitted as part of the appeal.

4. The Planning obligations: good practice advice, updated 5 February 2025, states that Section 106 agreements, can usually only be modified or discharged under section 106A of the Act. Section 106A enables modification or discharge to be achieved either by an agreement with the local planning authority (which must be executed as a deed), or by an application to the local planning authority. There is a right of appeal under section 106B if any such application is refused.
5. The Council contends that the financial contribution was entirely justified in this case and meets the relevant tests for planning obligations set out in the National Planning Policy Framework (the Framework). Accordingly, it does not agree to the modification, and there is no executed variation to the agreement before me.
6. Moreover, Section 106A(4)(b) confirms that an application to modify or discharge a legal agreement under Section 106A can only be made after 5 years beginning with the date the obligation has been entered in to, unless an alternative period is prescribed. No such alternative period is prescribed in this case.
7. There is no evidence that the appellant has applied to the Council to modify or discharge the legal agreement pursuant to the provisions of Section 106A and, even if they had, the Council would have been under no obligation to accept such an application, given how recently the agreement was executed.
8. As there has been no formal application under Section 106A to modify or discharge the legal agreement, there is currently no statutory mechanism by which the appellant can appeal to the Secretary of State to seek the modification or discharge of the legal agreement. The appeal has thus been determined under section 78 of the Act, and only in so far as it relates to condition Nos 2 and 4.

Background and Main Issues

9. The Council granted planning permission for change of use of existing building to a dwellinghouse with ancillary workspace including external alterations in December 2024¹, subject to a condition (No 2) requiring alterations to the existing front elevation window fittings within 3 months of the decision and another condition (No 4) requiring that the proposed first floor rear window be obscurely glazed.
10. The Council contend that condition No 2, which requires works to be carried out in accordance with the proposed plans, would resolve the harm caused to the building by previous unauthorised works. It also maintains that the wording of the condition allowed sufficient time for the appellant to comply with its requirements. The appellant also proposed to obscurely glaze the proposed first floor rear facing window. The Council sought to secure this through condition No 4, which it considers necessary to protect the privacy of the occupiers of neighbouring properties by precluding overlooking into neighbouring gardens.
11. The appeal seeks the removal or variation of condition No 2 and the removal of condition No 4. The appellant contends that the design expectations for the windows are excessive, the windows would not meet fire safety requirements, and the timeframe for compliance with condition No 2 is unreasonable. The appellant

¹ Council Ref DM/24/02067/FPA

also considers that there is no justification for the requirement for obscure glazing of the rear facing window.

12. The main issues are therefore:

- Whether condition No 2 is necessary and reasonable, with particular regard to the character and appearance of the area, fire safety and the timescale for compliance; and
- The effect that removing condition No 4 would have on the living conditions of the occupiers of neighbouring properties, with particular regard to privacy.

Reasons

Condition No 2

13. The appeal building is set back from High Street down a short cul-de-sac. Nevertheless, the front elevation faces directly towards High Street and is visible between buildings on either side of the cul-de-sac. The site abuts the rear yards of houses on Mill Street to the east, while the rear and side elevations of the building are readily visible in views from Hunwick Lane across the intervening open fields.
14. The area is predominantly characterised by 2-storey buildings, typically in terraced arrangements. There is some variety in the age and appearance of buildings in the vicinity, though this part of High Street is lined by traditional buildings, with a mix of brick, painted render and pebbledash finishes. Window styles vary, however those facing High Street often have a vertical emphasis. There are examples of arched windows at the entrance to the cul-de-sac and on the opposite side of High Street.
15. The front elevation of the building currently maintains a degree of symmetry. However, the evidence indicates that it previously featured tall arched topped openings to either side of the ground floor entrance porch. These have been partially blocked up and replaced with 4 square / rectangular windows and decorative mouldings.
16. The size and squareness of the existing windows and the decorative mouldings above are wholly unsympathetic to the original character and appearance of the building and do not reflect the traditional proportions of many of the windows in other buildings facing High Street. They are also out of keeping with the other arched features on the side elevation of the building. They thus detract from the character and appearance of the building, and the contribution this makes to that of the wider area. Notably, the Inspector in the previous enforcement appeals² came to a similar conclusion. While the building is not listed, nor within a conservation area, this does not provide justification for the identified harm.
17. The planning permission to which this appeal relates sought to remove the existing mouldings and the four windows on the front elevation and replace these with two arched windows with a single horizontal and vertical bar, re-instating the arches in the front elevation. This would restore the positive contribution that the previous openings made to the building's appearance and resolve the harm caused by the installation of the existing windows. It was on this basis that the Council granted planning permission, subject to condition No 2.

² Appeal Decisions APP/X1355/C/23/3314005, APP/X1355/C/23/3314006, APP/X1355/C/23/3314008, APP/X1355/C/23/3314009

18. The appellant accepts that the removal of the applied mouldings and rendering of the building will make the building more aesthetically pleasing however they consider that the window expectation is too high. Instead, the appellant now proposes reopening of the arch within the existing windows and either infilling with render or appropriately coloured cladding or soffit board.
19. There are no amended plans before me to demonstrate how this would appear in practice, including no clarity on the scale or proportions of the arched openings, the dimensions or design of the replacement windows, or the extent or appearance of the infill material in this context. The appellant has provided an image of how the building looked when it was in use by St John Ambulance, with the arched void infilled with white soffit fascia board. This does not appear to be the original design and form of the windows however and, in any event, was not particularly sympathetic to the character and appearance of the building or wider area.
20. Ultimately, such an approach would represent a deterioration in the design quality of the approved scheme and is unlikely to remedy harm caused by the previous unauthorised works. Paragraph 140 of the Framework seeks to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme. Condition No 2 is therefore necessary and reasonable to safeguard the character and appearance of the area, and there is no compelling justification before me for its variation or removal through this appeal.
21. The appellant has raised concerns that the windows as approved do not meet fire escape requirements. However, there is little evidence of this before me, and it is not clear that the approved windows could not be adapted to provide a means of escape, or whether there are other measures that could address fire safety. Moreover, it has not been demonstrated how infilling the arch with render, cladding or soffit board as proposed would provide a better means of escape. Likewise, there is therefore no compelling justification for the removal or variation of condition No 2, with particular regard to fire safety.
22. I recognise that the production and installation of custom designed windows of the type proposed may take longer than standard windows, particularly when accounting for operations that would span the Christmas period. However, given that condition No 2 simply sought compliance with the proposed plans, and the application was accompanied by technical details, the manufacture and installation of the windows could reasonably have been planned for. There is no substantiated evidence before me to demonstrate that 3 months was not sufficient time to accommodate this, and the appellant has not proposed an alternative timescale.
23. Condition No 2 is thus necessary and reasonable, with particular regard to the character and appearance of the area, fire safety and the timescale for compliance. It is therefore in accordance with paragraph 57 of the Framework. The removal or variation of the condition as proposed would conflict with Policy 29 of the County Durham Plan Adopted 2020 (the CDP). This policy, among other provisions, seeks to ensure all development proposals achieve well designed buildings and places, contribute positively to an area's character, identity and townscape, and help to create and reinforce locally distinctive and sustainable communities.

Condition No 4

24. The proposed first floor rear facing window would directly overlook the open field to the rear of the appeal site. It would face perpendicular to windows in the rear elevations of the neighbouring dwellings along Mill Street. Guidance contained within the Council's Residential Amenity Standards Supplementary Planning Document recommends a minimum separation distances of 13 metres between gable and facing elevations, where the gable does not contain a primary habitable room window. The evidence indicates that the relationship between the appeal building and the neighbouring dwellings would comply with this guidance.
25. The proposed window is however closer to the boundaries of neighbouring gardens than this, and there is no local guidance setting out minimum separation distances between habitable room windows and private rear gardens. Whether the proposal in the appeal case would result in a loss of privacy for users of the neighbouring gardens is thus a matter of planning judgement.
26. The appeal site sits at a higher level to many of the neighbouring gardens. The proposed window would thus provide a considerably elevated vantage point. In view of this and given the proximity of the window to the rear boundaries of these gardens, a degree of oblique overlooking would occur. This would have a deleterious effect on the level of privacy enjoyed in these rear gardens.
27. My attention has been drawn to the Inspector's assessment regarding this issue in the previous enforcement appeals. The appellant highlights that the Inspector acknowledged that the two-storey extension is positioned further away from the Mill Street properties than the two first floor windows. However, the Inspector also clarified that the extension provided views over a sweeping area, strengthening the feeling of overlooking and loss of privacy for neighbouring occupiers. This does not conflict with my assessment above and does not lead me to a different conclusion.
28. The appellant contends that pedestrians and vehicles using nearby roads can readily see into Mill Street gardens. However, I did not observe this on site and, even so, such views would be fleeting and not as harmful as those from an elevated habitable room window.
29. There is no compelling evidence before me that the use of obscure glazing would unreasonably restrict natural light and ventilation, particularly as the affected room would be served by an additional window and door on the west facing elevation.
30. While the extension may sit in front of an existing blocked up window, it is not clear from the evidence when this window was blocked up, nor that the effect of views from this window on the privacy of the occupiers of neighbouring properties were comparable or worse than could be achieved through the proposed window in the absence of condition No 4.
31. Condition No 4 is thus necessary and reasonable, and in accordance with paragraph 57 of the Framework. Removing it would have a harmful effect on the living conditions of the occupiers of neighbouring properties, with particular regard to privacy. This would conflict with Policies 29 and 31 of the CDP. These policies, among other provisions, seek to ensure all development proposals provide high standards of amenity and privacy and minimise the impact of development upon the occupants of existing adjacent and nearby properties, and state that proposals which will have an unacceptable impact such as through overlooking or loss of

privacy will not be permitted unless satisfactory mitigation measures can be demonstrated.

Other Matters

32. I agree with the findings of the Inspector in the previous enforcement appeals decision that the changes to the windows, including the provision of decorative mouldings, have materially affected the external appearance of the building and was thus development for the purposes of Section 55(2)(a) of the Act.
33. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) does not provide for buildings in mixed use to benefit from deemed permission for alterations, and alterations to commercial, business or service establishments are only permitted at ground floor. The planning permission for change of use to a dwellinghouse with ancillary workspace is contingent on compliance with condition No 2. Even if the provisions of the GPDO that apply to dwellinghouses were relevant, they would not be engaged until the replacement windows are installed as proposed. The evidence thus indicates that the existing windows installed in the front elevation are unauthorised and the provisions of the GPDO do not offer a realistic fallback position.
34. The Planning Practice Guidance and the Framework encourage local planning authorities to take a positive approach and work proactively with applicants. While the appellant's frustration with the level of engagement offered by the Council during the application process is noted, this does not lead me to a different conclusion on the main issues.

Conclusion

35. For the reasons given above, I conclude that appeal is dismissed.

Ryan Cowley

INSPECTOR