
Appeal Decision

Site visit made on 12 August 2025

by **J Symmons BSc (Hons) CEng MICE**

an Inspector appointed by the Secretary of State

Decision date: 21st October 2025

Appeal Ref: APP/X1355/W/25/3364425

Land to the east of 33 Campbell Street, Tow Law, Bishop Auckland DL13 4DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr David Lee against the decision of Durham County Council.
 - The application Ref is DM/24/02128/FPA.
 - The development proposed is for a 2 bedroom self build single storey bungalow.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council issued its decision notice, refusing planning permission, on 28 April 2025 prior to the appeal being validated. The appellant was given the opportunity to comment on this and agreed to the appeal being against a refusal to grant planning permission rather than against a failure to give notice within the prescribed period on an application for planning permission. To this effect the appellant provided a revised appeal statement, and the Council had the opportunity to comment on this. Accordingly, I have determined the appeal on this basis.
3. I have used the development description shown on the application form as no confirmation has been provided that the appellant agreed to any changes. For conciseness I have removed the reference to the address and placed the '2 bedroom' reference to the front of the description.
4. The proposal is detailed as a self-build and would normally be exempt from providing Biodiversity Net Gain (BNG). However, the Council has advised that it requires a planning obligation to secure the development as self-build and this has not been provided. The appellant was given the opportunity to review and provide additional information for this, and I have taken the response into account.
5. The Council indicates that a planning obligation is required to secure an Open Space Needs Assessment (OSNA) contribution. However, an agreement has not been provided. The appellant was given the opportunity to provide additional information regarding this, and I have taken the response into account.
6. The appellant has submitted additional correspondence from the Coal Authority in support of the appeal. The information does not fundamentally change the proposal, and the Council has had an opportunity to comment on it. I do not consider this correspondence would prejudice any party and have considered it in the appeal.

Main Issues

7. The main issues in the determination of the appeal are:

- the stability of the land;
- the effect of the proposal on the living conditions of the occupiers of the neighbouring property with regard to privacy;
- whether the requirements of BNG are relevant to the proposal and, if so, whether such requirements are met; and
- whether the requirements of the OSNA are relevant to the proposal and, if so, whether such requirements are met.

Reasons

Land Stability

8. Notwithstanding some concerns detailed by the appellant regarding the Council's consultation with the Coal Authority, objections were raised by the Coal Authority at the application stage that led to the Council having concerns over the safety and stability of the appeal site.
9. However, following issue of additional information to the Coal Authority, the appellant has provided confirmation that the Coal Authority has withdrawn its objection to the proposal subject to planning conditions being included to secure investigations and remedial measures. The Council also confirms this to be the case.
10. Consequently, with suitably worded conditions imposed, the proposal would be safe and stable. Accordingly, it would not conflict with Policy 32 of the County Durham Plan, adopted 2020 (the Plan) which states that development must demonstrate that any unstable land issues can be satisfactorily addressed by appropriate mitigation measures. It would also not conflict with Paragraphs 187 f), 196 and 197 of the National Planning Policy Framework 2024 (Framework) which seek to prevent new development being adversely affected by land instability.

Living Conditions

11. Part (e) of Policy 29 of the Plan requires developments to provide high standards of amenity and privacy while minimising their impact on the occupants of existing adjacent and nearby properties. Similarly, Policy 31 of the Plan requires that proposals which will have an unacceptable impact through such things as loss of privacy will not be permitted unless satisfactory mitigation measures can be demonstrated.
12. The Residential Amenity Standards Supplementary Planning Document, January 2023 (Residential Amenity Standards SPD) provides, amongst other matters, guidance in relation to privacy/separation distances for residential development. Among its provisions, the guidance recommends a minimum of 18.0 metres between habitable room windows where both dwellings are single storey. The guidance also identifies habitable rooms as those which the resident can expect to enjoy for their normal day-to-day activities and details this as including rooms used or intended to be used for sleeping, cooking, living or eating purposes.

13. The proposal would be located very close to the neighbouring residential property. This existing property has three sets of windows facing the appeal site and the Council advises that the windows serve two bathrooms and a living room. The appellant advises that the bathroom windows are opaque, and a kitchen rather than a living room is served by the other window. While the appellant's comments are noted, the fact remains that a kitchen or living room would be classed as a habitable room and an appropriate consideration of the proposal's effect on privacy is necessary.
14. While the appellant has advised that the proposal's window can be easily altered so as not to face the existing property's window and this would have been completed if the Council had raised its concern earlier, no details to this effect have been provided. Based on the closeness of the proposal to the neighbouring property which is well below the separation recommended in the Residential Amenity Standards SPD and the use of the rooms, there is a high risk that a loss of privacy would occur. As such, the proposal would harm the privacy of the occupiers of the existing neighbouring property.
15. The occupiers of this neighbouring property have confirmed support for the proposal. However, the harm caused would be permanent and while the current occupiers may accept this, there is little to suggest that this would be the view of future occupiers. Furthermore, the support does not change the fact that the proposal would cause harm to privacy.
16. The appellant refers to approved applications at Croft Street (LPA Ref: DM/21/02353) and High West Road (LPA Ref: DM/19/02852/FPA) as examples where close onlooking windows were accepted by the Council. However, the detail provided of these applications is very limited. Indeed, only photographs of one of the Croft Street application dwellings is presented showing close facing windows. With no evidence of the room uses, it is not possible to assess if the window arrangement would conflict with the Residential Amenity Standards SPD. Notwithstanding this, it is also not possible to assess if there were any mitigating factors considered in approving either scheme. As such, I cannot be sure the examples are directly comparable to the proposal before me. Accordingly, they do not change my view on the privacy harm that would be caused.
17. For the above reasons, the proposal would have a harmful effect on the living conditions of the occupiers of the neighbouring property with regard to privacy. This would conflict with Policies 29 and 31 of the Plan. It would also conflict with Part 12 of the Framework which seeks, amongst other matters, development to have a high standard of amenity for existing and future users.

BNG

18. There is a statutory BNG framework which mandates that new development must deliver at least a 10% increase in biodiversity value relative to the site's pre-development biodiversity value. However, there are a number of exceptions including certain self-build and custom housebuilding. To meet the self-build and custom build exemption, amongst other matters, this must meet the definition in section 1(A1) of the Self-build and Custom Housebuilding Act 2015.
19. While the appellant indicates a 'hope to build and occupy' the proposal and details it as being self build, no compelling evidence has been provided to confirm it would meet the above definition.

20. The Council indicates that since a recent appeal decision (PINs Ref: APP/X1355/W/24/3355113) it now secures self-build and custom housebuilding through a planning obligation.
21. It is clear that there is a need to secure the development as self build to meet the mandatory BNG exemption and no evidence has been provided to show the use of a planning obligation for this purpose would be unacceptable. Indeed, the appellant does not dispute the use of a planning obligation and has indicated a willingness to provide one.
22. While I appreciate the Council has not provided details of the planning obligation, the fact remains that no completed agreement has been provided. Consequently, with no evidence to the contrary, it has not been shown that the proposal would meet the mandatory BNG exemption.
23. Further to this, while the appellant has included an integrated bird box to the gable end of the proposal, the mandatory BNG minimum information requirements set out in Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 have not been provided. This includes information demonstrating the pre-development biodiversity value of the site and the completed metric calculation tool. As a result, it is not possible to determine if the proposal would meet the mandatory BNG requirement.
24. As a result of the above, the proposal would not be exempt from or meet the mandatory BNG requirement. The proposal would conflict with Policy 41 of the Plan and Paragraph 187 d) of the Framework which seek new development provide net gains for biodiversity.

OSNA

25. Policy 26 of the Plan requires new residential developments to make provision for open space to meet the needs of future residents having regard to the standards of open space set out in the OSNA.
26. The Durham County Council's Development Viability, Affordable Housing and Financial Contributions Supplementary Planning Document April 2024 sets out the approach to determining and securing developer contributions for new development. This includes details of the financial contributions required to meet the OSNA and secure it through a planning obligation.
27. The appellant has not disputed the need for the financial contribution and has indicated a willingness to provide a planning obligation to secure this. However, due to communication issues between the parties, no completed agreement has been provided.
28. From the evidence presented, a contribution towards open space would be necessary to make the development acceptable and with no evidence to the contrary, I see little reason to question this.
29. Accordingly, the absence of a planning obligation results in conflict with Policy 26 of the Plan.

Other Matters

30. It is detailed that the proposal would have a broadband connection, the hours of construction would be restricted, and the proposal would be designed appropriately for the ground conditions. However, these are expected from new development and are neutral factors in this appeal.
31. The appellant raises a number of concerns regarding the Council's communication and processing of the application. However, these are matters for the appellant to address with the Council. It does not alter my findings on the appeal before me.

Planning Balance and Conclusion

32. While the land for the proposal would be safe and stable, this would not outweigh the proposal's harmful effect on the living conditions of the occupiers of the neighbouring property and the proposal's failure to meet the mandatory BNG requirements and the open space contribution.
33. For the above reasons, the appeal should be dismissed.

J Symmons

INSPECTOR