

**Item Number:** 9  
**Application No:** 21/01382/73A  
**Parish:** Malton Town Council  
**Appn. Type:** Non Compliance with Conditions  
**Applicant:** Mr H. Hague  
**Proposal:** Variation of Condition 02 and 03 on approval 20/00920/HOUSE dated 17.03.2021 to accept an additional window at ground floor to the west elevation and Variation of details approved for Condition 03 on 21/00570/COND dated 26.04.2021 to accept side hung casement to 1no window in the north elevation at first floor level.  
**Location:** Sandreith Cottage 39 Middlecave Road Malton YO17 7NE

**Registration Date:** 9 October 2021  
**8/13 Wk Expiry Date:** 4 December 2021  
**Overall Expiry Date:** 1 December 2021  
**Case Officer:** Ellie Thompson **Ext:** 43326

#### CONSULTATIONS:

**Malton Town Council** Recommend Approval  
**Malton Town Council** Recommend Approval

**Representations:** Mr David Barnet,

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#### SITE:

The property is a recently renovated and extended, two storey detached dwelling, located off Middlecave Road in Malton. The dwelling was originally a smaller traditional cottage, but has been substantially extended following the grant of planning permission under a previous application (20/00920/HOUSE). The property is within development limits of Malton and there is a Tree Preservation Order on a group of trees immediately adjacent to the site.

#### PROPOSAL:

This application seeks to vary conditions 02 and 03 on approval 20/00920/HOUSE dated 17.03.2021 to accept an additional window at ground floor to the west elevation and to accept a side hung casement to 1no window in the north elevation at first floor level.

The additional window to the western elevation at ground floor level has been relocated from the approved rear extension, and is proposed to match the other proposed windows in the western elevation of the property.

The new first floor window is located at the eastern side of the northern elevation of the property, and serves an en-suite bathroom. The window is obscure glazed and side hung, so that it provides an emergency escape route that has been requested by Building Control. The window features a restrictor bar, to ensure that it cannot fully open unless in use during an emergency. Members may recall that in order to prevent overlooking of a neighbouring property, the permission (20/00920/HOUSE) restricted all first floor windows on the northern elevation to the property to be top hung and obscure glazed. The relevant conditions on the permission were subsequently discharged on that basis.

Both windows have been installed and in that respect, the application is retrospective and is seeking to regularise the current position.

## **POLICIES:**

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 planning authorities are required to determine each planning application in accordance with the planning policies that comprise the Development Plan unless material considerations indicate otherwise. The relevant Development Plan policies for the determination of this application are:

The Ryedale Plan - Local Plan Strategy (2013)

Local Plan Strategy - Policy SP16 Design

Local Plan Strategy - Policy SP20 Generic Development Management Issues

Material Considerations

National Planning Policy Framework

National Planning Practice Guidance

## **REPRESENTATIONS:**

A brief summary of the position of statutory and non-statutory consultees is included on the front sheet of the report and issues raised are addressed in the relevant appraisal sections of the report. All consultation responses are available for Members to view in full on the public access webpage, and referred to in the report accordingly.

A summary of the representations received from the occupier of the neighbouring property (no. 39 Middlecave Road) is as follows:

- The original permission had associated reasons and clauses to protect the privacy of neighbouring properties and to comply with Policy SP20. Condition 03 on the previous permission stated that windows on the northern elevation had to be top hung or fixed.
- Building regulations state windows must have a height and width of 450mm and a clear openable area of 0.33 m<sup>2</sup>, and show that this could be achieved with a self-supporting top hung window. On this basis there is no reason why the building needs to be side hung when building control can be satisfied with a top hung window.
- The contributor raised no objections to the additional, re-located ground floor window.

Malton Town Council has recommended approval for the proposed development.

## **PLANNING HISTORY:**

20/00920/HOUSE: Planning permission was been granted for erection of part two storey part single storey wraparound extension following removal of existing conservatory, porch and garage, reroofing of dwelling and rendering of all external walls.

## **APPRAISAL:**

The main issues relating to the application are:

- Design
- Impact on Neighbouring Amenity

## Design

The additional, re-positioned ground floor window in the western elevation of the property is of the same style, scale and design as the other windows within the property. This window was previously approved to be installed on the western elevation of the single-storey rear extension, and as a result the new position of the window is not significantly different from what was previously approved. Further to this, the resulting western elevation of the two-storey section of the dwelling is more symmetrical in its appearance and design. On this basis the variation in the design of this elevation in respect of the relocation of the window is considered to be acceptable.

The new side-hung window at first floor level in the northern elevation of the dwelling is of the same style, scale and design as that approved and in the same position on this elevation of the house. Whilst the construction of the window has been altered to be side hung and side opening, this does not in itself change the external appearance of the window as approved and does not change the appearance of the approved principal elevation of the dwelling.

## Impact on Neighbouring Amenity

The main issue in relation to this application is the proposed variation of Condition 03 which restricts the construction of all first floor windows in the northern elevation of the new dwelling, to be obscure glazed (Pilkington level 5 or equivalent), and either top hung or fixed only, in order to protect the privacy of the occupiers of the neighbouring properties to the north.

During the construction process, the applicant was advised by their Building Control Inspector that the window on the eastern side of the northern elevation was required to be an escape window, as it serves an en-suite which serves a bedroom, and the bedroom windows which are themselves, too small to be used as a means of escape. As such the applicant installed an obscure glazed, side-hung window in this opening, which features a restrictor bar to restrict the extent to which the window can be opened when not in use as an emergency escape route.

Officers undertook a site visit to understand the construction of the new window, and the extent to which it could be opened with the restrictor in place. In terms of detail, the right hand casement (when facing the building) features the restrictor bar, and needs to be opened first. The left hand casement cannot be opened before the right hand casement, and it cannot open any wider than the right hand casement, and is thus restricted by the same restrictor bar. When fully opened with the restrictor bar in place, the opening of this window is restricted to approximately 11.1 degrees, which measures at approximately 8cm.

On this basis, it is considered that with the restrictor bar in place this window does not allow for any direct overlooking of the neighbouring properties to the north when closed or open. As such, it is considered that the variation of Condition 03 to allow for a side-hung window in this location is acceptable, subject to additional wording being included to ensure that the restrictor bar is kept in place at all times, unless the window is in use as an emergency escape route.

The main issue raised by the occupier of the neighbouring property is that the new side hung window has been installed in this opening as an escape route to comply with the building regulations when an escape window could have been achieved through a self-supporting top hung window. The Building Control requirement for this window is that its construction allows for it to be a means for escape. It is understood that whether or not a top-hung window could have been used as a means for escape in this location, would depend on whether the necessary opening dimension could be achieved with a top-hung configuration. However, it is understood that top-hung escape windows are uncommon. As well as this, they are not often used on the elevations of domestic properties, as they are usually of a plain, functional, square design; and so are more commonly installed on roof slopes and in commercial buildings.

The current wording of Condition 03 restricts the means of opening of the northern first floor windows to fixed or top hung, in order to protect the privacy of the occupiers of the properties to the

north. As outlined above however, the side-hung configuration with restrictor bar that has been installed is not considered to result in direct overlooking or loss of privacy of the neighbouring properties. As installed it is considered by officers that the amenity of the occupiers of neighbouring properties is protected and that the amended proposal is acceptable.

### Conclusion

The proposed variation to the plans to allow for an additional window in the western elevation at ground floor level is considered to be acceptable. In addition, the proposed variation of Condition 03 to allow for a side-hung window in the eastern, first floor window in the northern elevation of the property is considered to be acceptable, subject to the condition being worded to ensure that the fixer bar is kept in place at all times, when the window is not in use as an emergency escape route. As such, the proposed development is considered to comply with the relevant policy criteria set out in policies SP16 and SP20 of the Ryedale Local Plan Strategy, and the NPPF. On this basis approval is recommended subject to the following conditions:

### **RECOMMENDATION:                      Approval**

- 1            The development hereby permitted shall be carried out in accordance with the following approved plans;
  - Proposed Drawings, Drawing Number WG923 02J, (scanned to file 21.10.2021).
  - Consideration of Trees and Landscape Plan, drwg. no. WG923 03C (scanned to file 09.02.2021).
  - Drawing no. WG923 04A, (scanned to file on 21.10.2021) (Window details)
  - Side Hung Defender Restrictor Plans and details, drwg. no. DSR16-RH-P-SS (received by the Local Planning Authority on 10.12.2021).

Reason: For the avoidance of doubt and in the interests of proper planning in accordance with Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 2            The first floor north facing windows shall be permanently obscure glazed with glass of Pilkington Level 5 obscuration or equivalent. All windows in the northern elevation of the property at first floor level shall be top hung or fixed (non-opening); with the exception of the double casement window on the eastern end of the first floor northern elevation, which shall be side hung with a restrictor bar. The restrictor bar on this window shall remain in place at all times, unless the window is in use as an emergency escape route. The obscure glazing and agreed means of opening shall be retained for the lifetime of the development.

Reason: To protect the privacy of neighbouring properties and to comply with Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 3            No other new openings shall be inserted in the north facing wall of the dwelling as extended without the express consent in writing of the Local Planning Authority.

Reason: For the avoidance of doubt and in the interest of protecting the residential amenities of adjacent neighbouring properties in accordance with Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 4 Tree protection measures shall be carried out in accordance with submitted Plan Number WG923 03C (scanned to file 09.02.2021).

Reason: For the avoidance of doubt and to ensure that significant trees located on and adjacent to the site are adequately protected during construction works in accordance with Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 5 Prior to the commencement of the development hereby approved, fencing and ground protection methods shall be installed in accordance with the Tree and Landscaping Plan WG923 03C (scanned to file 09.02.2021).

Reason: To ensure the protection and retention of the existing trees in close proximity to the site, which are considered to be important visual amenities and contribute to the character of the area, in accordance with Policy SP20 of the Ryedale Local Plan Strategy.

- 6 Unless otherwise agreed in writing with the Local Planning Authority, the proposed development hereby approved shall be undertaken in accordance with the agreed details submitted under the discharge of condition application 21/00570/COND to discharge Condition 07 (Foundations)

Reason: for the avoidance of doubt and in the interests of proper planning, and to ensure the protection and retention of the existing trees in close proximity to the site, which are considered to be important visual amenities and contribute to the character of the area, in accordance with Policy SP20 of the Ryedale Local Plan Strategy.

- 7 Unless otherwise agreed in writing with the Local Planning Authority, the proposed development hereby approved shall be undertaken in accordance with the agreed details submitted under the discharge of condition application 21/00570/COND to discharge Condition 08 (Method Statement).

Reason: For the avoidance of doubt and in the interests of proper planning, and to ensure the protection and retention of the existing trees in close proximity to the site, which are considered to be important visual amenities and contribute to the character of the area, in accordance with Policy SP20 of the Ryedale Local Plan Strategy.

- 8 The proposed landscaping shall be carried out in accordance with the Tree and Landscaping Plan WG923 03C (scanned to file 09.02.2021).

Reason: In the interests of good arboricultural practice and visual amenity, in accordance with Policy SP20 of the Ryedale Local Plan Strategy.

- 9 Unless otherwise agreed in writing with the Local Planning Authority, the proposed development hereby approved shall be undertaken in accordance with the agreed details submitted under the discharge of condition application 21/00570/COND to discharge Condition 10 (Render). The approved render details shall be maintained for the lifetime of the development unless otherwise approved in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning, and to ensure a satisfactory external appearance and to satisfy the requirements of Policies SP16 and SP20 of the Local Plan Strategy.'