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## Appeal Decision

Site visit made on 3 March 2026.

**by F P Tinsley MA (Hons) MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> April 2026

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### Appeal Ref: 6002715

#### 13-15 Frederick Street, South Shields, NE33 5DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Banana Moon Nursery against the decision of South Tyneside Council.
- The application reference is Ref: 250290
- The development is 'large rear extension of existing building (single storey, but to eaves level) and enclosure of existing hardstanding rear yard to facilitate change of use of rear ground floor to separate commercial storage and distribution area (use class B8) with the retention of lawful use class E operations to the front as a cafe/restaurant with ancillary takeaway/delivery, with new shopfront and roller shutters to front and Rear and new air conditioning units and new extraction/filtration, duct and cowl systems terminating upwards at flat roof level above second storey'

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### Decision

1. The appeal is allowed and planning permission is granted for 'large rear extension of existing building (single storey, but to eaves level) and enclosure of existing hardstanding rear yard to facilitate change of use of rear ground floor to separate commercial storage and distribution area (use class B8) with the retention of lawful use class E operations to the front as a cafe/restaurant with ancillary takeaway/delivery, with new shopfront and roller shutters to front and rear and new air conditioning units and new extraction/filtration, duct and cowl systems terminating upwards at flat roof level above second storey' at 13-15 Frederick Street, South Shields, NE33 5DY in accordance with the terms of the application, Ref: 250290, and the plans submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with drawing - Existing and Proposed Plans and Elevations – April 2025.
  - 2) The rating level of noise emitted from any extraction or ventilation equipment associated with the development shall not exceed 5 dB below the background sound level (as defined in BS4142:2014+A1:2019) at the nearest noise-sensitive premises. Assessment of noise shall be carried out in accordance with the methodology set out in BS4142:2014+A1:2019. The equipment shall be maintained and operated in such a manner as to ensure compliance with this condition at all times.

### Applications for costs

2. An application for costs was made by Banana Moon Nursery against the Council. This application is the subject of a separate decision.

## **Preliminary Matters**

3. The description of development identified in the banner above refers to the application being part retrospective which is not a form of development. On my site visit I was able to establish that the development is substantially complete as detailed on the plans lodged with the planning application. I have determined the application on the basis of the submitted plans.
4. As part of the appeal submission the appellant has submitted a Daylight / Sunlight Report prepared by Right of Light Consulting (15 December 2025). With regard to this additional information, the 'Procedural Guide – Planning Appeals – England' makes clear that the appeal process should not be used to evolve a scheme and advises that appeals should be generally determined on the same basis as the original application and should not normally introduce new evidence or technical data that was not before the local planning authority and interested parties at the application stage.
5. Having regard to the substantive and procedural tests established in case law, I find that the information submitted with the appeal does not materially change or evolve the proposal. It remains broadly consistent with the information upon which interested parties were consulted at the application stage and instead seeks to further examine matters previously considered, through the submission of evidence prepared by a professional consultant. Overall, accepting this information does not result in procedural unfairness or cause prejudice to the Council or other interested parties, all of whom have had the opportunity to comment on the document. I therefore conclude that the Daylight and Sunlight Report should be accepted, and I have determined the appeal on this basis.
6. As part of my site visit, I was provided access to the neighbouring first floor flat at No 11 Frederick Street (No 11) and was able to consider the impact of the development on the internal living area of the dwelling.

## **Main Issue**

7. The main issue in this appeal is the effect of the development on the living conditions of the occupiers of No. 11, with particular regard to outlook and access to daylight and sunlight at first-floor rear level.

## **Reasons**

8. Policy DM1 of the South Tyneside Local Development Framework – Development Management Policies (December 2011) (the Local Plan) requires, amongst other things, that development is acceptable in terms of its impact on residential amenity. Paragraph 135 of the National Planning Policy Framework (the Framework) states that development should create places that are safe, inclusive and accessible, and which promote health and well-being, with a high standard of amenity for existing and future users.
9. There are three rooms within the first-floor flat at No. 11 Frederick Street which have an outlook towards the rear. This outlook is affected by the rear extension, which is visible from the windows of two of these rooms, namely a kitchen and a bedroom.
10. While the rear extension is visible from the windows serving these rooms, I am satisfied that they continue to receive adequate levels of daylight and sunlight and

that the proposal does not cause harm to the living conditions of the occupiers to an unacceptable degree. This conclusion is consistent with the findings of the Daylight and Sunlight Report prepared by Right of Light Consulting, which confirms that all windows on the rear elevation of No. 11 Frederick Street that have a requirement for daylight or sunlight meet the relevant BRE tests for both diffuse daylight and direct sunlight. Overall, the assessment demonstrates that the development has a low impact on the light received by neighbouring properties.

11. Turning to the effect of the development on outlook from the rear of No. 11 Frederick Street, which I was able to assess from within the dwelling, I note that prior to the development occupiers of the affected rooms had views south-eastwards towards New George Street. These views are now obstructed by the rear extension, resulting in a more constrained outlook. I acknowledge the Council's conclusion that this gives rise to a degree of "tunnelling" when experienced from the rear of the dwelling. In assessing the extent of harm to the living conditions of the occupiers, however, I consider several other factors to be material. The flat is dual-aspect and includes rooms with a notably open outlook facing west from the eastern elevation of the building, overlooking Frederick Street. In this context, the rear elevation performs a clearly secondary role in the overall outlook available from the dwelling. Furthermore, planning permission had previously been granted<sup>1</sup> for a rear extension at the appeal site which, although lower in height and incorporating a pitched roof, would nonetheless have had some impact on outlook from the rear of No. 11, albeit to a lesser degree than the development before me.
12. The Council refers to the application of the 45-degree rule in relation to outlook, noting that the development does not achieve this measure when assessed in the horizontal plane of view. While this may be the case, I have not been directed to any policy requirement which mandates compliance with this guideline. I therefore consider that a degree of flexibility is appropriate, particularly within a highly urbanised context such as this, where denser forms of development, including residential accommodation above commercial premises, play an important role in supporting the vitality and viability of the area.
13. Although the scale and massing of the development are significant, they are consistent with other development in the vicinity, which is typical of commercial-scale development to the rear of high-street urban locations. In terms of outlook from No. 11 Frederick Street, the relationship is broadly comparable to that with adjacent development. When considered cumulatively, I do not find that the effects on outlook, together with the identified changes in access to daylight and sunlight, result in unacceptable harm to living conditions.
14. For these reasons, I find that the development accords with the requirements of Policy DM1 of the Local Plan and paragraph 135 of the Framework. Accordingly, the development does not result in unacceptable harm to the living conditions of the occupiers of No. 11 Frederick Street, with particular regard to outlook and access to daylight and sunlight at first-floor rear level.

### **Other Considerations**

15. A number of interested parties have made representations in relation to the café/restaurant use at ground-floor level to the front of the building. These

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<sup>1</sup> ReF: ST/0204/18/FUL

submissions both support the proposal, on the basis that it provides additional facilities within the area, and object to it due to concerns regarding the perceived over-proliferation of such uses, particularly those offering takeaway food. The Council has raised no objection to this element of the proposal, which falls within Use Class E of the Use Classes Order. The use is comparable to the previous retail use of the ground-floor premises fronting Frederick Street, which also fell within Use Class E. I am satisfied that this element of the proposal is acceptable, and I agree with the Council's conclusion that the use does not conflict with South Tyneside Local Development Framework - Core Strategy (2007) Policy SC2.

16. The Council's Environmental Health department responded to the internal consultation on the planning application and raised no objection to the development, subject to a planning condition being imposed to control noise levels arising from extraction and ventilation equipment. This matter can be appropriately addressed through the imposition of a similar condition as part of this appeal decision.

### **Conditions**

17. I have imposed a condition requiring the development to be carried out in accordance with the approved plans. This is necessary to ensure clarity and certainty, particularly in the context of development which has already taken place on site.
18. In order to ensure that the development remains acceptable in terms of noise impacts, I have imposed a condition, substantially in the terms recommended by the Council, to control noise levels arising from the use from extraction and ventilation equipment.

### **Conclusion**

19. For the reasons given above the appeal is allowed and planning permission granted.

*F P Tinsley*

INSPECTOR