

Appeal against Kirklees Metropolitan Council

Refusal of Planning Application 2020/62/93890/E

53 Mill Lane

Hanging Heaton

Batley

WF17 6DZ

Erection of Raised Decking

Appellant:	Stuart Lowrey
Date:	27 th April 2021
Prepared:	PS
Checked:	SL

Statement of Case

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1.0 INTRODUCTION

1.1 RBA Town Planning have been instructed by the Applicant, Stuart Lowrey, of Planning Application 2020/62/93890/E to act on their behalf in the preparation and submission of an Appeal against the decision of the Local Planning Authority to refuse Planning Consent for the proposed development.

1.2 Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing. (*National Planning Policy Framework 47*).

1.3 The Application was refused under Delegated Powers on 26th February 2021, for the reasons outlined with the issued Decision Notice, which cites policies contained within the Councils Adopted Plan.

1.4 This Statement sets out the Appellant's Case and makes reasoned justification against Adopted Plan Policies cited within the Notice. This statement should be read in conjunction with the proposed plans and all other documentation submitted as part of the original planning application and attached appendices.

1.5 Given the determination date of the Refused Planning Application it is considered that the Appeal is not outside the prescribed time limits for submission and is lodged under the Written Representation Procedure.

2.0 THE SITE

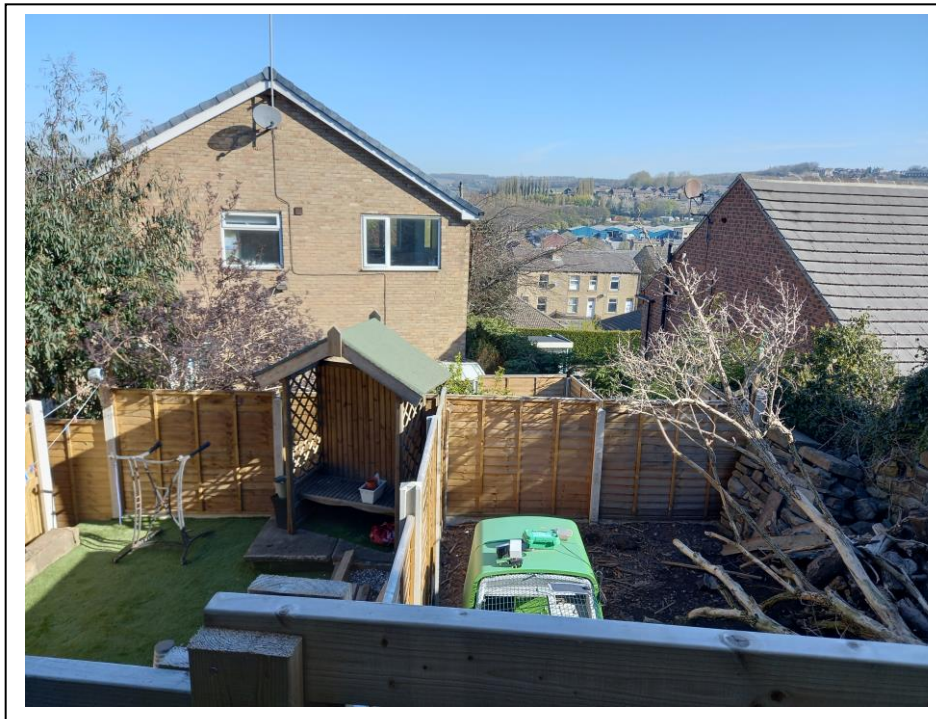
2.1 The Appeal Site comprises an end of terraced two storey dwelling in the village of Hanging Heaton.

Figure 1. Location Plan Excerpt



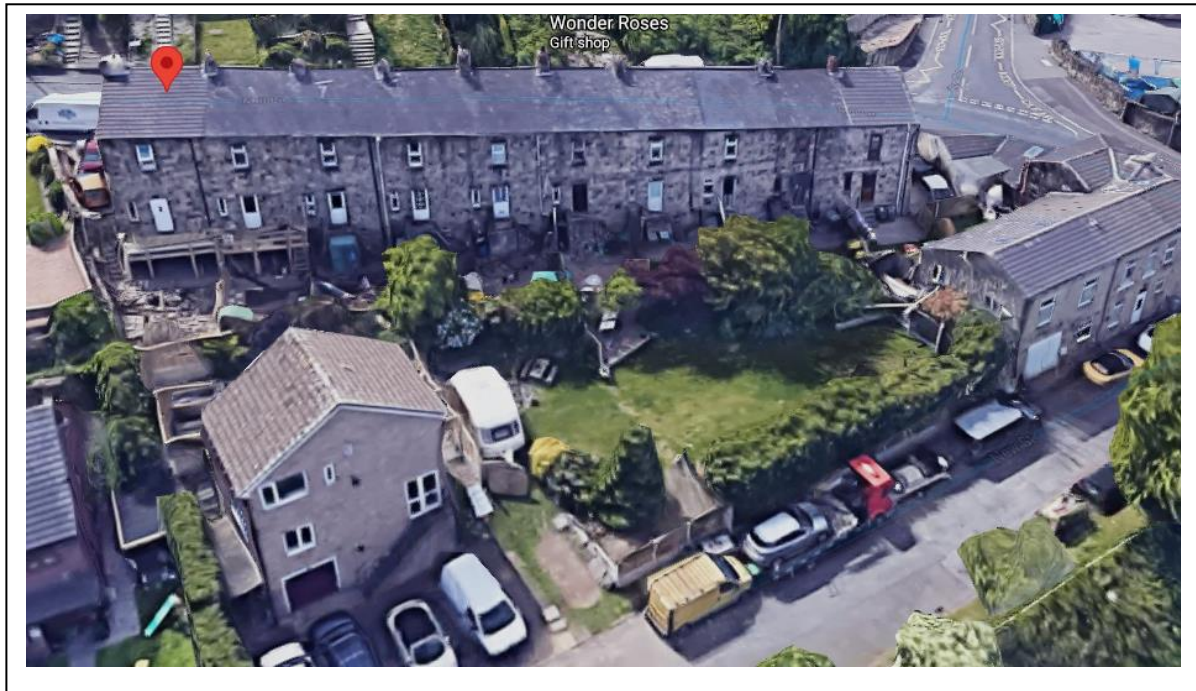
2.2 Due to the site topography, the level of the rear garden is set 2m below that of the ground floor level. It is at ground floor level that the rear entrance to the property is located. The differing land levels can be seen from the photo in figure 2.

Figure 2. Rear Amenity Space



2.3 As can be seen in figure 3 below, the installation of the decking does not introduce any further element of overlooking than already exists at the site. This is due to the topography around the appeal site and the design of the terrace at Mill Lane.

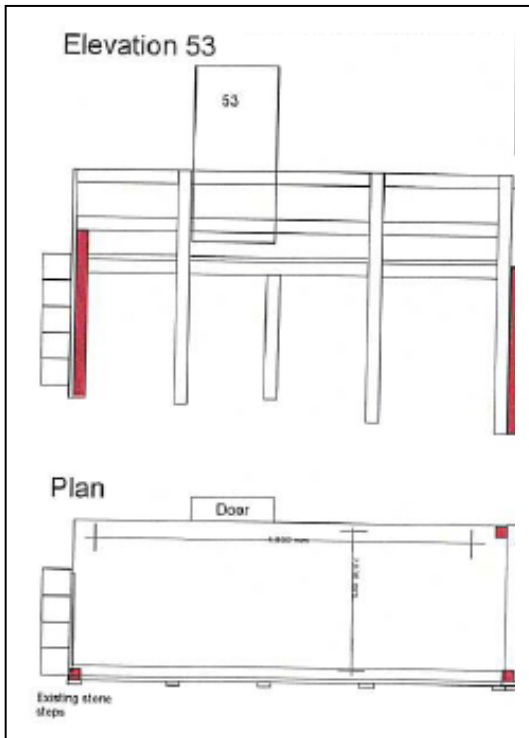
Figure 3. Rear of Terrace at Mill Lane



3.0 PROPOSAL

3.1 The Appellant sought Planning Consent from Kirklees Metropolitan Council for the erection of raised decking.

Figure 4. Proposed Development



3.2 The decking is to be installed to replace the existing stone platform which currently serves the means of access to the rear elevation. These can be seen in situ on neighbouring properties along the row of terraced houses.

As the decking has been installed to replace the stone platform it is considered there are no additional overlooking concerns to the existing situation.

4.0 REFUSAL

4.1 The Application was refused under Delegated Powers on 26th February 2021 for the following reasons;

1. The proposed decking, by virtue of its height, scale and materials does not constitute good design. The proposed decking does not respect the style, layout, form or character of the host dwelling and is, therefore, contrary to the objectives of Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.
2. The proposed decking would detrimentally impact upon the residential amenity of several neighbouring dwellings in terms of overlooking and loss of privacy. By virtue of the size and scale of the decking, the entire outdoor amenity space of neighbouring dwellings would be overlooked, whilst the decking would also cause overlooking into the rear, first floor windows of habitable rooms of an adjacent dwelling. The proposal is contrary to Policy LP24 of the Kirklees Local Plan.

5.0 POLICY

5.1 Kirklees Local Plan

Policy LP24 Design

Good design should be at the core of all proposals in the district and should be considered at the outset of the development process, ensuring that design forms part of pre-application consultation of a proposal. Development briefs, design codes and masterplans should be used to secure high quality, green, accessible, inclusive and safe design, where applicable. Where appropriate and in agreement with the developer schemes will be submitted for design review.

Proposals should promote good design by ensuring:

- a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape;
- b. they provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary;
- c. extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details and minimise impact on residential amenity of future and neighbouring occupiers;
- d. high levels of sustainability, to a degree proportionate to the proposal, through:
 - i. The re-use and adaptation of existing buildings, where practicable;
 - ii. design that promotes behavioural change, promoting walkable neighbourhoods and making walking and cycling more attractive;
 - iii. considering the use of innovative construction materials and techniques, including reclaimed and recycled materials;
 - iv. where practicable, minimising resource use in the building by orientating buildings to utilise passive solar design. This includes encouraging the

- incorporation of vegetation and tree planting to assist heating and cooling and considering the use of renewable energy;
- v. providing charging points to encourage the use of electric and low emission vehicles;
 - vi. incorporating adequate facilities to allow occupiers to separate and store waste for recycling and recovery that are well designed and visually unobtrusive and allows for the convenient collection of waste;
 - vii. designing buildings that are resilient and resistant to flood risk, where such buildings are acceptable in accordance with flood risk policies and through incorporation of multi-functional green infrastructure where appropriate;
 - viii. designing places that are adaptable and able to respond to change, with consideration given to accommodating services and infrastructure, access to high quality public transport facilities and offer flexibility to meet changing requirements of the resident / user.
- e. the risk of crime is minimised by enhanced security, and the promotion of well-defined routes, overlooked streets and places, high levels of activity, and well-designed security features;
 - f. the needs of a range of different users are met, including disabled people, older people and families with small children to create accessible and inclusive places;
 - g. any new open space is accessible, safe, overlooked and strategically located within the site and well integrated into wider green infrastructure networks;
 - h. development contributes towards enhancement of the natural environment, supports biodiversity and connects to and enhances ecological networks and green infrastructure;
 - i. the retention of valuable or important trees and where appropriate the planting of new trees and other landscaping to maximise visual amenity and environmental benefits;
and
 - j. the provision of public art where appropriate.

6.0 ASSESSMENT

6.1 Whilst there are two reasons for refusal, both of these relate to how well the proposal accords with policy LP24 of Kirklees Local Plan. In assessing the proposal against LP24, it is the Appellants position that there is insufficient justification to support the Councils decision to refuse the application.

Section of the policy that are relevant to this proposal, and supporting arguments, are set out in paragraph 6.2.

6.2 Policy LP24 requires that Proposals should promote good design by ensuring:

- a. *“the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape;”*

Given the topography of the site, the development satisfies this criterion. There are no heritage assets within the vicinity of the Appeal Site.

The Case Officer Report has a different view of this, stating that *“due to its position at ground floor level, significantly above the garden level, does not respect the form and layout of the dwelling”*. In this sense, the Case Officer Report does not take into account the elevated position of the rear entrance to the property. If the deck was positioned at ground level, it would be impossible to access the dwellinghouse.

- b. *“they provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary;”*

The provision of the outdoor platform improves the amenity for future occupiers. Whilst the Council have identified that the development would result in overlooking neighbouring amenity spaces it is considered that a condition to require adequate screening around the decking would mitigate this issue.

6.3 It is noted that the decking is structured entirely in accordance with the existing form and layout of the building. It aligns with the entry and egress to the property through the rear door.

Furthermore, where the Case Officer Report states *"The decking essentially hides the traditional elements, such as stone lintel, and sills"*, the 'traditional elements' referred to is a solitary cellar window which measures 0.6m x 0.6m (0.36m²).

6.4 In relation to the concern of the Council that *"This proposal removes all privacy for the rear gardens of the other dwellings in the terrace and, thus, the proposal is unacceptable on residential amenity grounds"* the Appellant believes this could be addressed with the use of screening and is agreeable to this being added as a condition should the Inspector be minded to allow the appeal.

It should also be noted that there were no objections to the proposal from occupiers of the neighbouring dwellings along the terrace and so it is reasonable to state that the current occupiers do not share the opinion of the Case Officer that their amenity will be impacted by this development.

6.5 The Case Officer Report goes to some length to set out how the proposal would impact upon the amenity of No. 6 New Street. It should be noted that the current occupier of No. 6 New Street was not consulted by the Council regarding the development and, importantly, assisted the Appellant in the design and installation of the decking.

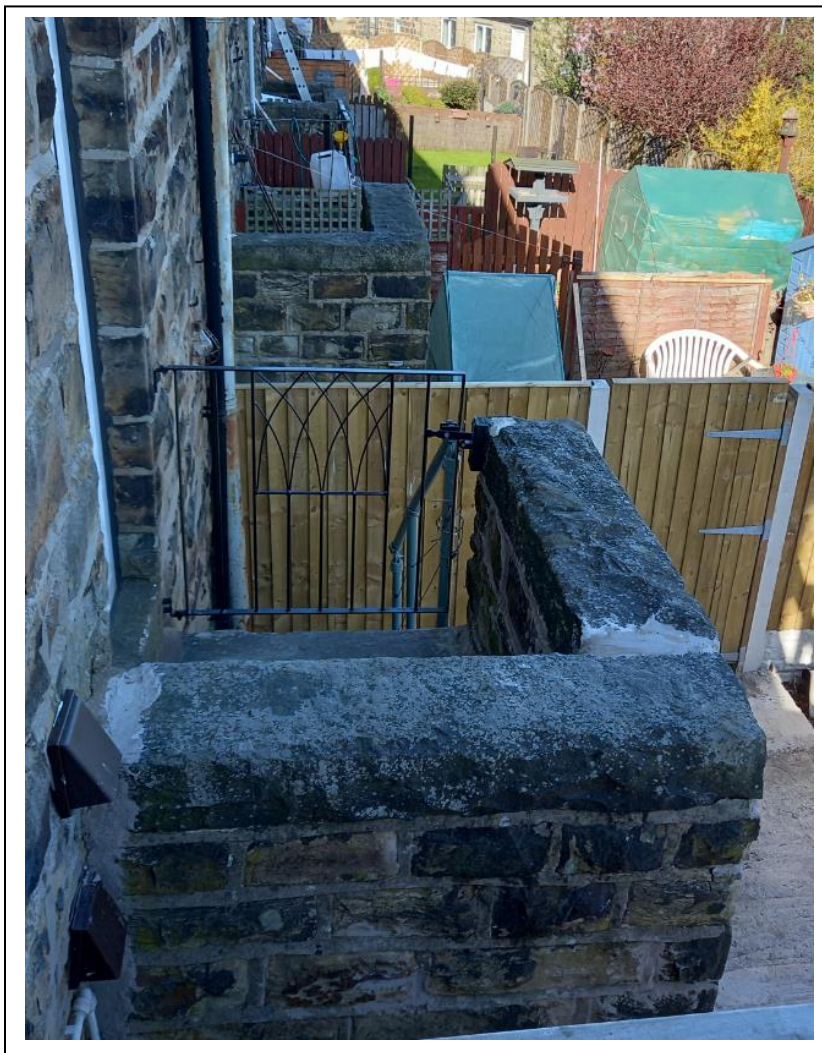
6.6 The final comment in respect of the impact on residential amenity is that the proposed decking is in the same position as the previous platform and therefore the impact on amenity is identical to the existing situation.

6.7 It is considered that a decking structure within the rear amenity space is acceptable and numerous examples of this can be found in the vicinity of the Appeal Site.

As the deck platform is in an identical position to that of the previous stone structure it is considered the development is acceptable and the LPA do not have sufficient justification for the refusal.

Pictured below are the stone structures that the terraced houses have to the rear elevation.

Figure 5. Existing Stone Platform and Steps



This affords a view along the entirety of the rear elevations and amenity space and is an existing feature of the dwellinghouses.

6.8 The second reason for refusal states:

“By virtue of the size and scale of the decking, the entire outdoor amenity space of neighbouring dwellings would be overlooked, whilst the decking would also cause overlooking into the rear, first floor windows of habitable rooms of an adjacent dwelling.”

The installation of the decking does not introduce this overlooking into the rear first floor windows of habitable rooms of an adjacent dwelling.

6.9 It is noted that an almost identical proposal is made for the neighbouring property at No. 51 Mill Lane. As such it is considered there would be no unacceptable overlooking as a result of this proposal at No. 53. It is further considered that as a result of the proposal at No. 51 Mill Lane, the proposal at No. 53 would not result in any overlooking of the rear amenity space at the remaining properties of the terrace.

7.0 CONCLUSION

7.1 The National Planning Policy Framework (NPPF) states in paragraph 10 to ensure that “sustainable development is pursued in a positive way, at the heart of the framework is a presumption in favour of sustainable development”. The proposal comprises sustainable development when considered against guidance in the NPPF. The framework advises that developments should respond to local character and history and reflect the identity of local surroundings and materials, whilst not discouraging appropriate innovations.

7.2 It has been evidenced in the assessment above that the proposed development would not result in the harm considered by the Local Authority and that it does conform in all regards to the Councils Development Plan and guidance within the National Planning Policy Framework.

7.3 It is respectfully requested that the appeal is upheld and permission granted for the proposed development subject to appropriate conditions.