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Planning Development

Section 78 Appeal - Town & Country Planning Act 1990 (as amended)

Land off April Court, Roberttown, Liversedge, West Yorkshire, WF15 7RB

LPA Ref: 2021/62/90564/E

Appellant's Statement of Case

1. Introduction

- 1.1 This appeal is submitted against Kirklees Council's decision to refuse planning permission for the erection of one dwelling. The proposals originally incorporated a detached garage on a separate piece of land on the opposite side of April Court, however this was deleted from the proposals part way through the application process.
- 1.2 The appellant is content to refer to the 'Site Description' and 'Description of the Proposals' sections of the Council's delegated report for the sake of brevity and avoidance of repetition.
- 1.3 The Council's reason for refusal is stated to be:

The proposed development by reason of its scale and siting would have a significant overbearing and oppressive impact upon the residential amenity of the properties which are located to the east. To permit this development would be harmful to the amenity of the neighbouring properties, contrary to Policy LP24 of the Kirklees Local Plan, as well as the aims of Chapter 12 of the National Planning Policy Framework.

- 1.4 The following sections will put forward the appellant's case to address this reason for refusal.

2. Planning history

- 2.1 Planning permission for the erection of 1 no. two storey detached dwelling on the appeal site was granted on 4th September 2020 (LPA ref: 2019/62/93605/E). ¹ This planning permission remains extant and is capable of being implemented. It therefore represents a material planning consideration in the form of a lawful fallback position in this appeal case.

¹ Plans appended as original PDF documents to enable measurements to be made if necessary at Appendices A & B

2.2 This planning permission would be implemented if the appellant had no other choice, however the viability of the approved two-bed property is less than ideal, with particular regard to the fact that two bedrooms would be less appealing to the family market.

2.3 As such, the appellant applied for the erection of a 3-bed detached dwelling, which would be more spacious and more attractive for the local market – for example by providing a utility room and a third bedroom, as this would be more practical and attractive for a growing family. This would in turn produce a more viable development.

3. The Council's more detailed reasoning

3.1 The Council's reason for refusal is specifically focussed on the issues of the *scale* and *siting* of the proposed dwelling having a significant *overbearing* and *oppressive* impact upon the residential amenity of the properties which are located to the *east*. The properties to the east in this case are two-storey semi-detached dwellings situated on Huddersfield Road.

3.2 With reference to the delegated officer's report (Appendix C) the Council ² identify that the material difference between the 2021 scheme compared with that approved in 2019, is the more direct relationship of the dwelling with the properties on Huddersfield Road. This they say is as a result of the 45 degree rotation of the dwelling, together with a larger overall footprint and that this would result "in a level of overbearing, as well as an oppressive impact, which would be detrimental to the amenity of the occupiers of these properties." ³

3.3 Referring back to the approved 2019 scheme, Officer's stated: "This indirect relationship was considered to reduce the additional bulk and massing introduced by the dwelling to an acceptable level which would be sufficient to prevent any additional overbearing impact from being detrimental to the amenity of the occupiers of the adjacent properties."

3.4 It is perhaps worth pausing at this point to assess which properties on Huddersfield Road are affected by the 'direct' relationship the Council refers to. Referring to the proposed layout plan, Huddersfield Road comprises rows of semi-detached properties, some with outbuildings to the rear. When addressing the issue of 'direct' relationships, it is arguably just one property (no. 212), that would face the bulk of the eastern elevation of the appeal dwelling, and would therefore have a 'direct' relationship. Other properties adjacent on Huddersfield Road would have 'indirect' facing relationships, or would only be looking out on part of the proposed dwelling.

4. The 2019 approved scheme vs the appeal proposals

4.1 The appellant's case is firstly based upon the contention that the appeal proposals are not sufficiently different to the extant 2019 planning permission with respect to the impact on the residential amenities of properties on Huddersfield Road, to tip the planning balance from one of planning approval, to one of refusal. This is with particular regard to the separation distances set out in the Council's new Supplementary Planning Document, published since the refusal of planning permission (see below).

² Page 8

³ Page 8, Paragraph 3

- 4.2 The relationship between the appeal site and the nearest property (no. 212 Huddersfield Road) has been analysed in the following table. Within this, comparisons are made with the 2019 approved scheme in terms of whether the impacts of the appeal scheme are beneficial, neutral or disadvantageous.

	2019 scheme	2021 scheme	Difference	Impact of appeal scheme compared with 2019 scheme
Eaves height (measured to base of guttering)	4.9m	4.75m	-0.15m	Beneficial
Ridge height	6.65m	6.6m	-0.05m	Beneficial
Separation distance to nearest Huddersfield Road dwellings	12m	12m	0m	Neutral
Habitable / non-habitable room relationship	Non-habitable to habitable other than ground floor (habitable room) patio windows	Non-habitable to habitable	Removal of facing habitable room windows	Beneficial
Height of proposal vs Huddersfield Road properties	Lower	Lower	Slightly lower as a result of reduced eaves and ridge heights	Beneficial

- 4.3 As can be seen from this Table, the appeal proposals have beneficial or neutral impacts compared with the 2019 approved scheme:

- A reduction in the height of the eaves and ridge of the proposed dwelling.
- The appeal proposal remains lower at both eaves and ridge compared with the properties on Huddersfield Road (see cross section on plan ref: 19/87/B(i) May 2021.
- The 12 m distance habitable to non-habitable separation distanced remains the same.
- The habitable to non-habitable room relationship is improved through the removal of any habitable room windows (noting a ground floor living room patio window was approved previously at ground floor on the eastern elevation – see Appendices A and B)

5. Kirklees Housebuilders Design Guide Supplementary Planning Document (June 2021)

- 5.1 Importantly, since the refusal of planning permission in June, the Council have adopted the Kirklees Housebuilders Design Guide Supplementary Planning Document, on 29th June 2021. Relevant extracts are enclosed with this statement and link to Local Plan Policy LP24 (Design) cited in the Council's reasons for refusal (Appendix D). It is considered that this SPD is an important material consideration in this appeal case and for the reasons set out below, we respectfully suggest that this tips the balance in favour of upholding this appeal.
- 5.2 Paragraph 7.19 on Page 26 (Maintaining high standards of residential amenity) sets out typical minimum distances for two storey houses, including "12 metres between windows of habitable rooms that face onto windows of a non-habitable room."
- 5.3 The appeal proposal complies with this 12 metre policy standard with regard to the separation distance between the appeal site and the nearest properties on Huddersfield Road.

5.4 Moreover, whilst Paragraph 7.20 of the SPD allows for *reduced* separation distances subject to certain design solutions, Paragraph 7.21 states that “longer distances between buildings may be necessary if:

- *It fits in with the local character;*
- *The site includes higher buildings to fit with local character, or is adjacent to higher buildings which would impact on the amount of natural light;*
- *Steep topography on the site, which presents challenges relating to overlooking.*

5.5 Therefore, crucially in connection with this appeal case, there is nothing in this guidance specifying that distances greater than the 12 metre separation distance will be necessary in cases *other than* where the proposals are adjacent to higher buildings, or there is steep topography presenting overlooking challenges.⁴

5.6 None of these criteria are applicable in the appeal case because the proposed dwelling is on level ground and is not higher than the properties on Huddersfield Road. In fact, the appeal proposal demonstrates a beneficial impact in having lower ridge and eaves heights.

5.7 Perhaps more importantly in this case, the SPD only discusses the issue of dwelling orientation and angles of facing elevations in the context of justifying *lower* than normal separation distances, not *higher* separation distances. As such, unless any of the circumstances specified in Paragraph 7.21 arise, the SPD does not specify or indicate that longer than normal separation distances will be sought.

5.8 This being the case, it is the appellant’s contention that the Council’s SPD would not insist upon a greater separation distance for habitable to non-habitable room windows of 12 metres (as is proposed) unless issues of topography and / or higher building positions arose, which is not the case with the appeal proposal.

5.9 Moreover, the SPD policy does not suggest that a ‘direct’ relationship (as the Council refers to) between the appeal proposal and the nearest property on Huddersfield Road (no. 212) would justify a longer separation distance than 12 metres in cases, where the respective properties are at similar ground levels and overall heights. As such, whether the relationship is direct or indirect (as with the 2019 approval), the SPD would not require a separation distance above 12 metres for a habitable room to non-habitable room relationship.

5.10 As such, particularly given the other benefits of the 2021 scheme highlighted above, compared with the 2019 fallback scheme, the change to the orientation to the dwelling position and the increased massing, would not constitute grounds under the new guidance to justify the refusal of planning permission in this case, had the SPD been adopted at the time the Council refused planning permission.

5.11 Given the new SPD essentially seeks to replicate the previous Unitary Development Plan Policy BE12 (Appendix E) which existed prior to the current Local Plan being adopted in 2019, the author is unaware of any cases where proposals have been refused by the Council for habitable to non-habitable separation distances at the 12 metre standard, particularly in cases where there have not been topographical or dwelling height differences between the

⁴ The ‘local character’ clause is not considered to be relevant to this particular case.

respective properties. The 12m / 21m standards have been the norm rather than the exception across the Kirklees district for the past 22 years at least.⁵

- 5.12 Essentially, the Council's reason for refusal is indirectly saying that the separation distance of 12 metres is insufficient in this case, however it is considered that the recently adopted SPD does not lend support for greater separation distances above the minimum standards specified, in cases where building heights and topography are compatible.
- 5.13 The appellant respectfully disagrees that the relationship between the appeal proposal and the properties on Huddersfield Road produces a *significantly overbearing and oppressive impact* upon residential amenity. This is by virtue of the 12 metre separation distance is achieved in compliance with the new Kirklees SPD, together with the fact the appeal property would be marginally lower in eaves and ridge height than the nearest property on Huddersfield Road.
- 5.14 Consequently, the appeal proposals should now be judged to be acceptable with respect to separation distances and the issue of safeguarding residential amenity.
- 5.15 Put another way, now the Housebuilders Design Guide SPD has been adopted, if the LPA were to insist on higher separation distances in situations where there are no building height or topographical constraints, this potentially sets an undesirable precedent for housing development projects in the context of key Government and Local Plan policy objectives relating to housing supply and the efficient use of land.
- 5.16 As a further point on the subject of separation distances and residential amenity, the current scheme provides other material planning advantages:
 - a) the main habitable room elevation previously facing properties on April Court in the 2019 scheme being moved so that these habitable room windows now face the cul-de-sac, as opposed to other dwellings. The 2019 approved scheme set these windows at a distance of 19 metres from the facing properties on April Court, which if implemented, would now fall short of the habitable to habitable 21 m policy standard; and
 - b) the patio doors at ground floor level on the (habitable) living room on eastern elevation of the 2019 approved scheme, would have had a habitable room to habitable room relationships with adjoining properties and would also have arguably contravened the 21m minimum standard, despite the slightly oblique angle of overlooking.

6. Representations from interested people

- 6.1 Unfortunately, because of the Council's current policy allowing third party representations to remain anonymous, it is not possible to establish where eight of the ten representations originate from. The appellant is only therefore able to make relevant comments (in connection with the reason for refusal) on the two representations with addresses (218 and 220 Huddersfield Road).
- 6.2 These two properties are situated to the south of the appeal site (either side of the entrance to April Court) and would not be affected in relation to the Council's reasons for refusal.

⁵ Since the UDP was adopted in 1999.

- 6.3 If the LPA are able to clarify which of the other representations originate from properties nearer the appeal site on Huddersfield Road (if any), the appellant may be able to address any representations further in connection with the Council's reason for refusal.

7. Summary

- 7.1 An extant planning permission exists as a fallback position for the erection of a two storey detached dwelling on the appeal site.
- 7.2 The Kirklees Housebuilders Design Guide SPD, published after the Council's decision, is an important material consideration in this appeal case. The SPD sets out clear, detailed policy guidance about appropriate separation distances between dwellings in the context of safeguarding residential amenity.
- 7.3 With regard to the separation distance between the non-habitable elevation on the appeal site and the nearest (habitable room elevation) on the nearest property on Huddersfield Road, the appeal proposal complies with the specified 12 metre policy standard as per Paragraph 7.19 of the SPD.
- 7.4 Essentially, the Council's reason for refusal is indirectly saying that the separation distance of 12 metres is insufficient in this case, however the SPD (Paragraph 7.21) only states that greater separation distances *may be necessary if: "The site includes higher buildings to fit with local character, or is adjacent to higher buildings which would impact on the amount of natural light; or steep topography on the site, which presents challenges relating to overlooking.*
- 7.5 As such, the change to the orientation of the dwelling and its increased massing from the 2019 approved scheme, would not in the appellant's opinion be considered to be grounds to justify refusing planning permission in this case, particularly under the new SPD guidance.
- 7.6 The appeal proposals also have material benefits compared with the extant 2019 planning permission in the form of lower eaves and ridge heights together with the elimination of opportunities for overlooking (noting the living room patio doors on the eastern elevation of the 2019 scheme). The appeal scheme also provides other benefits in connection with improved separation distances / less overlooking to other surrounding properties.
- 7.7 The appellant therefore respectfully disagrees that the relationship between the appeal proposal and the properties on Huddersfield Road produces a *significantly overbearing and oppressive impact* upon residential amenity. This is by virtue of the 12 metre minimum separation distance being achieved in compliance with the new Kirklees SPD, together with the fact the appeal property would be marginally lower in eaves and ridge height than the nearest property on Huddersfield Road.
- 7.8 For these reasons, we respectfully suggest the clear guidance in newly published Kirklees Housebuilders Design Guide SPD tips the balance in favour of upholding this appeal.

8. Conditions in the event the appeal is upheld

- 8.1 A number of conditions are recommended in the officer's delegated report and the appellant is content to accept these conditions.
- 8.2 The Highway Service consultation response requested a condition regarding bin storage, however this issue was addressed through the submission of the amended layout plan ref; 19/87(Aii) Rev C).
- 8.3 The appellant also refers back to the decision notice on the 2019 approved scheme and proposes the conditions list at Appendix F. An additional condition to agree existing, proposed and finished floor levels is also included.

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