

Planning Appeal Statement of Case

**APPEAL AGAINST REFUSAL OF APPLICATION 2023/62/92340/E
FOR ERECTION OF 2 DETACHED DWELLINGS**

**LAND ADJ. 124 HARTSHEAD LANE, HARTSHEAD, LIVERSEDGE,
WF15 8AJ**

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1.0 Introduction

1.1

The statement describes the grounds of appeal against the refusal of a planning application at land adj. 124 Hartshead Lane, Hartshead, Liversedge. Application reference 2023/62/92340/E for the erection two detached dwellings was refused by the Local Planning Authority (LPA), Kirklees Council, on 24 November 2023 for the following single reason:

1) The cumulative impact of the proposed development by virtue of its location, scale and layout would materially detract from the character and appearance of 120 Hartshead Lane, a Grade II listed building. Whilst the degree of harm caused is judged to be less than substantial, it has not been demonstrated that this would be outweighed by a public benefit. The proposal is therefore contrary to the aims of Policies LP24(a) and LP35 of the Kirklees Local Plan, Principles of the Kirklees Housebuilders Design Guide SPD and Chapter 16 of the National Planning Policy Framework.

1.2

We fundamentally disagree with the LPA's assessment that the development would result in harm to the character and appearance of 120 Hartshead Lane. In fact, there would be no impact at all on the character and appearance of 120 Hartshead Lane. The impact of the development on 120 Hartshead Lane would be limited to a very minor change to the setting of the listed building. In our view, and as backed up by the Heritage Statement prepared by a highly-reputable heritage specialist but apparently given no weight by the LPA, the minor alteration to setting would have a negligible impact on the heritage significance of the listed building.

1.3

The LPA has also then failed to give any meaningful weight to the public benefits that delivering two new family homes would provide. This is in direct contradiction of an earlier assessment at the same site by the LPA, which is discussed in more detail further below. Even if the LPA had identified some minor heritage harm though the negligible impact of the minor alteration to the setting of the listed building, the public benefits that were clearly identified and set out in the application submission comfortably outweighed this perceived harm.

1.4

The reason for refusal is flawed and cannot be substantiated. There is no conflict with policy LP24, LP35, the key principles of the adopted design guidance or section 16 of the NPPF.

1.5

The application was subject to a significant delay due to a wait for the LPA's conservation officer to provide their comments. The planning officer then refused the application within 3 days of the conservation officer's comments finally being received, without giving any weight at all to counter arguments that, in our view, demonstrate that the proposal is fully policy compliant. Whilst fully appreciating that these matters are not material to the merits of the case, they are indicative of the lack of any kind of positive or collaborative approach in the LPA's consideration of the application.

2.0 The Site, the Proposal and Relevant Planning History

2.1

The refused application relates to part of the side garden of a substantial detached dwelling known as Sherwood that lies to the southern side of Hartshead Lane in Hartshead village.

2.2

In January 2023, planning permission was granted for one detached dwelling in the same side garden space. The approved site plan is shown below:



2.3

The application subject to this appeal proposes two detached dwellings at the site in order to make a far more efficient use of the valuable land resource. The proposed site plan is shown below:

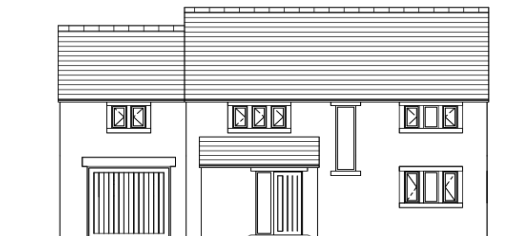


2.4

The proposed houses are of attractive and traditional design. The LPA's delegated report acknowledges that they would be in keeping with the character of the local built environment.



Front Elevation



Front Elevation

2.5

The disagreement between the appellant and the LPA is limited to the impact that the development would have upon the setting of the listed building that neighbours the application site to the north west at 120 Hartshead Lane. The position of the listed building at 120 Hartshead Lane (and listed buildings at 119 and 121 Hartshead Lane) are shown on the Historic England map extract below:



3.0 Key Issue 1 – Impact on 120 Hartshead Lane

3.1

The reason for refusal alleges that the proposed development by virtue of its location, scale and layout would materially detract from the character and appearance of 120 Hartshead Lane, a Grade II listed building.

3.2

It is interesting to note that the reason for refusal refers to harm to the **character and appearance** of the neighbouring listed building, and makes no reference at all to the **setting or significance** of that listed building. In our view, this is indicative of a fundamental failure to correctly apply relevant policy and guidance in respect of the historic environment.

3.3

The nearest part of the proposed development (i.e. the north western corner of proposed plot 1) is over 25 metres from the nearest part of the listed building at 120 Hartshead Lane. The two sites are separated by a boundary wall and mature trees. The development has no direct impact whatsoever on the **character and appearance** of 120 Hartshead Lane as the listed building (on a separate land parcel and completely out of the control of the applicant) is not altered as part of the proposals. The suggestion in the reason for refusal of any impact on the character and appearance of the listed building is wholly incorrect.

3.4

It's clear that the LPA is actually concerned about an alteration to the **setting** of the listed building as a result of the proposed development, although it is unfathomable as to why the reason for refusal does not make reference to the issue of setting. Indeed, the LPA's Conservation Officer in their consultation response made no

reference to harm to the “character and appearance” of the Listed Building and their concerns did actually refer to this issue of setting. The decision makers have not even properly applied the advice of their own Conservation Specialist in the assessment of the application. We can only attribute this to a lack of the correct application of policy and guidance and a flawed assessment process.

3.5

The NPPF defines the setting of a heritage asset as:

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”

3.6

It is, therefore, fully acknowledged that the setting of a heritage asset can be an important element of its significance. Indeed, the NPPF goes on to set out that significance is:

“The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance.”

3.7

The LPA has failed to translate its perceived concerns about “character and appearance” into any understanding or assessment of the significance of the listed

building and the role that the setting of the listed building contributes to that significance.

3.8

Paragraph 195 of the NPPF makes it clear that:

“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.”

3.9

The LPA has completely failed to conduct this essential exercise in the assessment of the application, and this has resulted in their assessment being fundamentally flawed.

3.10

In contrast to the LPA’s assessment, the application was accompanied by a detailed Heritage Statement that includes a thorough consideration of the significance of the designated heritage asset at 120 Hartshead Lane, and the contribution that setting makes to its significance. The LPA has made no reference to the submitted Heritage Statement in its delegated report.

3.11

The consultation response from the LPA’s Conservation Officer does, at least, make some reference to the submitted Heritage Statement. In this respect, it states that *“We are however not convinced by the assessment of the setting of 120 Hartshead*

Lane.”. However, the Conservation Officer’s response also fails to identify what the significance of the listed building is, or what contribution the setting makes to that significance.

3.12

The Heritage Statement submitted with the application includes a whole section on the significance of 120 Hartshead Lane. This sets out that the building is considered to hold historic, archaeological and architectural interest as a result of its age, vernacular detailing and arrangement. The full Heritage Statement is attached as an appendix to this statement of case.

3.13

In respect of setting, the Heritage Statement sets out that the setting of the building is defined by its location on Hartshead Lane, with the north elevation directly fronting the land and views towards the east elevation from further along lane. To the south, setting is enclosed by the garden of the listed building, which itself is enclosed by mature trees. Views of the listed building from the south are limited. Beyond the building’s immediate setting, the building draws historic interest as a result of its position within Hartshead and the relationship between itself and other historic buildings in the locality. The relationship between the historic built environment is set out in detail in the Heritage Statement.

3.14

The Heritage Statement goes on to identify that the proposed development site has no historic connection to the listed building at 120 Hartshead Lane. The application site used to be part of a single larger field parcel, but has not been used for agricultural purposes since the 1950s and the field parcel has already been subdivided through the construction of the existing modern dwellings within it. This

has altered its legibility as a former single field (and one that did not have any historical connection to 120 Hartshead Lane anyway).

3.15

The proposed development site has negligible historic interest in relation to 120 Hartshead Lane, and the site does not contribute to the architectural, artistic and archaeological interest of the listed building. The Heritage Statement finds that the application site makes a neutral contribution towards the setting of 120 Hartshead Lane.

3.16

Neither the Conservation Officer's consultation response or the LPA's delegated report offer any alternative assessment of the significance of the listed building, its setting, or the contribution that the application site makes to setting and significance. This lack of consideration of setting and significance completely undermines the LPA's baseless conclusion that the development would result in unacceptable harm.

3.17

The Heritage Statement then goes on to set out the impact of the proposed development on the nearby heritage assets, including 120 Hartshead Lane.

3.18

This commences by discussing the 'embedded mitigation' that the development includes to ensure no detrimental impact on the existing built environment, including appropriate scale, design and materials. The LPA's delegated report notes that the houses would be in keeping with the townscape character.

3.19

Specifically in respect of the impact of the proposed development on the setting on 120 Hartshead Lane, the Heritage Statement notes that:

“The proposed development will bring residential properties within closer proximity to 120 Hartshead Lane, however this is not considered to impinge upon any interests drawn from the Listed Building’s surroundings, primarily as the existing property boundary will remain intact, and the development is not situated in any key view from the Listed Building, principal views from the building being orientated north and south.

To avoid impacts upon key views towards the Listed Building and to ensure that the proposed development does not overshadow the building, both residences have been sited away from the street frontage. This takes advantage of the sloping topography of the site, to ensure the roofline of the properties is below that of 120 Hartshead Lane. This also removes the development from key views along Hartshead Lane, east and west, with the proposed development set behind existing housing in views from the east and behind 120 Hartshead Lane in views from the west. As such the proposed development will only be visible in views in association with 120 Hartshead Lane from directly in front of the site. Here a degree of separation is maintained by the existing property boundary and mature planting.

To mitigate the impact of larger scale residential properties to the west, it has been proposed that the residences show a decrease in scale from Sherwood, across plot 2 to plot 1, which will be of a similar size footprint to 120 Hartshead Road and the properties on the opposing side of the street. This will soften the interface between the historic property and the newer properties to the west.

The materials proposed have also been carefully selected to reflect the local vernacular with coursed stone proposed for the principal walls and grey artstone

slates for the roof. Detailing is modern and therefore easily identifiable against the historic building stock of the village, but simple so as to not detract from the architectural interest of the Listed Building.”

3.20

The Heritage Statement goes on to acknowledge that the proposal will result in the loss of some green space within the vicinity of the listed building. However, this will not substantially alter the landscape character of the site given that it has been residential garden since the 1950s. This green space makes a negligible contribution to the heritage significance of the Listed Building. As such, the loss of this green space would have a very limited negative effect.

3.21

The delegated report suggests that the proposal “*would be trying to shoehorn development*”. This suggestion is unfounded. The proposed dwellings would be detached dwellings set in large plots. It would deliver a low density and spacious development, entirely in keeping with the character and grain of the existing built environment. The new houses would be a far cry from being cramped or ‘shoehorned’ in.

3.21

Our application case fully acknowledged some harm by way of the loss of the green space in the vicinity of the listed building. However, based on the detailed assessment of the setting and significance of the listed building, it can be confidently concluded that the harm is very minor and at the very lowest end of the ‘less than substantial’ category.

3.22

On the other hand, the Conservation Officer's consultation response simply notes that:

"We would agree with the concluding comments made in the Heritage assessment that the proposed development would cause less than substantial harm and as set out under 202 of the NPPF the impact would therefore be balanced against the public benefits. Having regard to the benefits set out, we can find no clear or resounding public benefits for the development."

3.23

There is no acknowledgement by the Conservation Officer of the fact that the harm caused would be very minor indeed, limited to a minor change to a historically unconnected piece of neighbouring land that doesn't make a positive contribution to the significance of the listed building to start with.

3.24

This then feeds back to our earlier point that the harm to setting that the Conservation Officer raised was then, for unknown reasons, morphed into a concern about the impact on the character and appearance of the listed building in the actual reason for refusal. The whole approach and assessment lacks any evidence base, coherent consideration, or correct application of policy and guidance.

3.25

The development would result in a very minor harmful impact to the significance of the listed building through an alteration to a green space that itself plays a minor role in the setting of the listed building and makes no positive contribution to its significance. Whilst this very minor harm still needs to be taken into consideration in the assessment, it is a very different matter to the suggestion that the development would *"materially detract from the character and appearance of 120 Hartshead Lane, a Grade II listed building"* as alleged by the reason for refusal.

3.25

Having established through the detailed Heritage Assessment the precise impact that the development would have, and that this impact translates to some very minor less than substantial harm, the LPA should then have properly weighed this against the public benefits that the development would deliver. There was a comprehensive failure to do so, as set out below.

4.0 Key Issue 2 – Public Benefits

4.1

The LPA's failure to properly weigh the public benefits of the development against the identified negligible harm to the significance of the listed building at 120 Hartshead Lane appears to begin with the statement in the Conservation Officer's consultation response that:

“we can find no clear or resounding public benefits for the development.”

4.2

Aside from the question as to whether it is the Conservation Officer's role to make such a judgement given that the public benefits relate to planning considerations outside of the scope of heritage matters, the Conservation Officer should not have had any difficulty in finding these benefits as they were very clearly presented in the application.

4.3

It should be noted that the Conservation Officer also objected to the one house scheme that was approved in January 2023. However, the planning case officer weighed the harm against the public benefits, noting in the delegated report that:

“The proposals would result in less than substantial harm, which would be outweighed by the public benefit of providing one additional dwelling, making more efficient use of the site and contribute to meeting the Council’s housing requirement.”

4.4

Whilst the question of whether public benefits outweigh harm is a subjective matter of judgement, for the Conservation Officer to state that there is no public benefit is simply wrong as a matter of fact. The LPA has already acknowledged in the last application that the provision of providing one dwelling is a public benefit. It is abundantly clear that providing two dwellings delivers public benefit.

4.5

The public benefit of providing two dwellings is significantly emphasised by the fact that the LPA does not have a 5-year housing supply. This fact is fully acknowledged early in the delegated report for the refused application, yet this bizarrely is then given no weight in the planning balance later on.

4.6

The application clearly set out the public benefits of the proposed development, which were entirely consistent with the public benefits identified by the LPA in consideration of the one house scheme.

4.7

The public benefits of a two house scheme versus a single dwelling in respect of housing delivery and efficient use of the land are doubled.

4.8

The delegated report does not even acknowledge the public benefits of the housing delivery, and instead simply notes that:

“Whilst the degree of harm caused is judged less than substantial, it has not been demonstrated that this would be outweighed by a public benefit.”

4.9

We cannot fathom why, having previously acknowledged the public benefits of the one house scheme, having acknowledged in the current application the lack of housing land supply and having the public benefits clearly presented in our application submission, the LPA has failed to give any weight to the clear and convincing public benefits this time round.

4.10

The LPA has, therefore, made the dual error of not properly considering the impact of the development on the significance of the heritage asset and then compounding this by failing to give any weight to the public benefits.

4.11

When the impact of the development is properly understood, based on a thorough assessment of the setting and significance of the listed building, it is clear that the harm is very minor indeed. The public benefits of delivering two houses are clear, and the proposal doubles the public benefit of the previously accepted one house scheme. Given that the harm is so low, and the public benefits are so clear, the public benefits convincingly outweigh the harm. As such, the proposal does not conflict with policies LP24 of LP35 of the Local Plan or with section 16 of the NPPF.

5.0 Conclusion

5.1

The LPA's assessment of the application was fundamentally flawed. The LPA has not had regard to the significance of the listed building or to the contribution that the application site makes to the setting of the listed building or how that contributes to its overall significance. This has resulted in a baseless and unsubstantiated conclusion about the impact that the development would have on the neighbouring listed building. The suggestion in the reason for refusal that the development would harm the character and appearance of the listed building is wrong as a matter of fact.

5.2

The LPA has then failed to give weight to the public benefits that the development would deliver. The public benefits would, in fact, clearly and convincingly outweigh the very minor level of harm to the setting and significance of the listed building.

5.2

The proposal is therefore fully policy compliant, and the appeal should be allowed.