CAROLINE TAMWORTH PLANNING

Planning and Development

**PLANNING ENFORCEMENT APPEAL**

**25 HILLCREST VIEW, GOLCAR, HD7 4FD**

# APPELLANTS' STATEMENT OF CASE

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**On behalf of**

**Mr L. Davies & Ms A. Kelly**

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Planning Applications and Appeals, Change of Use Applications, Development Potential Appraisals, Conservation Areas & Listed Buildings, Planning Enforcement Issues

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## 1.0 The Site

1.1 The appeal relates to a detached two storey dwelling on Hillcrest View which forms part of a wider new-build development. The first phase of the development, to the east and south east, was completed in 2021 and the dwellings were sold and are occupied. Plot 3 (No. 25 Hillcrest) is part of the second phase of the development and was bought and occupied by the appellants in September 2023.



*The appeal site – Plot 3*

1.2 Access to the site is via Hillcrest View, a new tarmacadamed access road leading off Carr Top Lane, which has been created to serve both phases of the residential development.

1.3 The land within the general area and on the site slopes quite steeply downwards from north to south with No's 5 – 25 Clay Well sitting at a much higher level than the development site to the north and the phase 1 dwellings of Hillcrest View sitting at a lower level to the south and east. Aside from an area of open land to the west, the surrounding area is residential in character with a predominance of two storey stone built terraces.

1.4 A site location plan is provided within the copy of the enforcement notice at Document No. 1.

## 2.0 The Enforcement Notice

2.1 The Notice was issued on 2nd April 2024 and was due to take effect on 14th May 2024.

2.2 The alleged breaches of planning control are stated within the enforcement notice at paragraph 3 as:-

> *"Without the benefit of planning permission, the erection of a dwelling."*

2.3 The steps required to remedy the breach set out at point 5 of the Notice state:

> *"Demolish the dwelling and return the land to its condition prior to the development taking place."*

## 3.0 Planning Background

3.1 Planning permission for the residential development of the wider site for 13 dwellings was granted in February 2022 under planning application 2021/91384.

3.2 Several applications for approval of details reserved by the conditions attached to 2021/91384 were subsequently submitted to the Council for consideration.

3.3 In July 2022 an application seeking approval for the variation of condition 2 of 2021/91384 was submitted to the Council (2022/70/92334/W). The application sought various amendments to the plot designs including, but not limited to, the addition or deletion of windows, deletion of chimneys, recessed balconies, parapet verges and stone detailing and increased eaves and cill heights. Amendments to plot positions, staircases and driveways were also included. The planning officer listed the amendments to the plot subject to this appeal within the delegated report as follows:

> *Plot 3*
>
> *Gable window added to first floor bedroom*
> *Chimney stack omitted*
> *Eaves height to the front elevation lifted*
> *Vaulted ceiling omitted, altering window to bedroom 1*
> *Recessed balcony omitted*
> *Lounge French doors altered to window*
> *Garage extended to rear building line*
> *Amendments to garage door and front door design*

3.4 Work continued on site during the eight months that the application was under consideration by the Council and the scheme that was implemented was that that was the subject of the variation of condition application.

3.5 In January 2023 the developers of the site, Brierstone Newsome Ltd, went into administration. When the decision on the application was issued in March 2023, due to the circumstances, it did not reach Brierstone Newsome Ltd and the deadline to appeal against the refusal of the application passed. An enforcement notice was subsequently received by Brierstone Newsome Ltd, the landowner. The enforcement notice included plots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 but excluded plots 1 and 13 as the Council were aware that these plots had already been sold and took the view that it was not expedient to pursue enforcement action. The Council were informed that plots 2, 3 and 12 had also been sold since their last communication with the developer's accountants in August 2023. This information was provided at paragraph 1.1 of the appellants' Statement of Case of the enforcement appeal lodged against the enforcement Notice on 7th November 2023 (APP/Z4718/C/23/3332696), but the Council did not respond to this information and the appeal progressed with the Council submitting its appeal questionnaire on 29th January 2024.

3.6 On 13th February 2024 an email from the Council's enforcement officer was received stating the following:

> *"It has been brought to our attention that several of the plots subject to the Notice have been sold. Due to this, the Council feels that we have no other option but to withdraw the Notice and reserve it immediately, so that all the owner/occupiers of the land have the opportunity to appeal.*
>
> *If we can agree to this route forward, you can appeal on the same grounds, use the same appeal documents/material you have already prepared for the current appeal, and we can transfer the fee you have paid over to the new appeal. The only difference will be that the new Notice will be served on the owner/occupiers too, meaning that they can submit their own appeals to the Notice should they so wish."*

3.7 At this point the appeal had been with the Planning Inspectorate for three months with the six week deadline due on 26th February. The developer had no option but to agree to the suggested course of action but was, and remains, understandably extremely concerned about the impact that the delay would have on the completion of the plots and sales and in turn the financial implications. The Council undertook to re-issue the Notice immediately. However, the Notice was not re-issued until seven weeks later on 2nd April 2024 adding a further significant delay.

## 4.0 Planning Policy Context

4.1 The land to which the appeal relates is allocated for housing on the Kirklees Local Plan. The site also falls within the Golcar Conservation Area and there are Grade II listed buildings to the north.

4.2 The following Local Plan policies are relevant to the appeal:-

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP4 – Providing infrastructure
- LP5 – Masterplanning sites
- LP7 – Efficient and effective use of land and buildings
- LP9 – Supporting skilled and flexible communities and workforce
- LP11 – Housing mix and affordable housing
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking
- LP23 – Core walking and cycling network
- LP24 – Design
- LP26 – Renewable and low carbon energy
- LP27 – Flood risk
- LP28 – Drainage
- LP30 – Biodiversity and geodiversity
- LP32 – Landscape
- LP33 – Trees
- LP34 – Conserving and enhancing the water environment
- LP35 – Historic environment
- LP47 – Healthy, active and safe lifestyles
- LP48 – Community facilities and services
- LP49 – Educational and health care needs
- LP50 – Sport and physical activity
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvement of environmental quality
- LP53 – Contaminated and unstable land
- LP63 – New open space
- LP65 – Housing allocations

4.3 Advice contained within the Kirklees Council Golcar Conservation Area character appraisal and the Housebuilders Design Guide SPD (2021) is also relevant to the appeal along with the National Planning Policy Framework (NPPF).

## 5.0 Grounds of Appeal

5.1 The appellants are appealing the enforcement notice on the following grounds:-

5.2 Ground a) the planning permission should be granted for the dwelling as built and as indicated on the plans submitted under application 2022/70/92334/W that was refused by the Council in March 2023.

5.3 Ground f) that the steps set out within the notice are excessive and that lesser steps would be sufficient to remedy the alleged breach.

5.4 Ground g) that the time set out within the notice for compliance is too short.

## 6.0 Justification

Ground a)

6.1 The principle of the residential development of the site has already been accepted. The planning officer's delegated report for 2022/70/92334/W states that:-

> *"In this instance, the principle of residential development on this site has already been established by planning application 2021/91384, to which this application relates.*
>
> *More specifically, the number of units as a whole would not change. The size, number of bedrooms or housing mixture would remain unaltered. Therefore, the proposal remains an effective and efficient use of the housing allocation, as required by Local Plan policies LP7 and LP11."*

6.2 The Council's reason for refusal of the application to vary condition 2 of 2021/91384 states:-

> *"The development would fail to provide a high quality design for the site, which is situated within a prominent hillside location, surrounded by heritage assets which include Golcar Conservation Area and a row of Grade II listed terraces. To permit such development would be contrary to Paragraph 135 and Chapters 12 and 16 of the National Planning Policy Framework, Policy LP24 and LP35 of the Kirklees Local Plan and the aims of the Housebuilders Design Guide Supplementary Planning Document."*

6.3 However, within the planning officer's delegated report, it is stated that several of the amendments to plot 3 were deemed acceptable or not raised as a significant concern. These are listed below:-

> *Plot 3*
>
> *Alterations to the originally proposed vaulted ceiling that resulted in a change to the design of the window opening for bedroom 1 by removing the upper triangle and infilling with stone.*

*A new gable window to bedroom 1 – subject to the installation of obscure glazing.*

*The eaves for the projecting gable have been heighted so that they now sit flush with the eaves on the main house.*

6.4 The Council also did not set out any concerns on the replacement of the French doors with a window to the rear elevation, or the extension of the garage to the rear building line, within the delegated report.

6.5 The extracts below are taken from the delegated report and address matters of residential amenity, highway safety and other relevant matters.

*"Impact on residential amenity*

*…given the nature of the changes proposed, it is unlikely that the development would have any material impact upon existing third parties in terms of overbearing, overshadowing or overlooking. This is due to the acceptable separation distances of at least 20m (at the closest) being retained. The change in levels would also mean that the application site would be on a lower level than the dwellings to the north along Clay Well.*

*Amenity of future occupiers*

*The changes would allow for an acceptable level of amenity to be provided for the future occupiers, as all habitable rooms would retain an acceptable outlook.*

*Lastly, all dwellings would exceed the Government's nationally-described space standards.*

*For these reasons, the proposed amendments are considered acceptable from a residential amenity perspective……. to accord with Policy LP24 of the KLP, the aims of the Housebuilder SPD and Chapter 12 of the NPPF.*

*Impact on highway safety*

*….there would be no significant changes to the highway or the parking spaces for each plot. It has been noted that the layout for the driveway to plot 5 would be amended, however, this would still be suitable for the parking of two cars.*

*Other matters*

*The proposed variation is not considered to impact upon any other material planning considerations such as trees, ecology, PROW, crime and safety, land contamination*

*etc. which remain as previously assessed within the parent application (ref 2021/91384).*

*Planning Obligations*

*With regard to the previous contributions, to include affordable housing, the education, open space, sustainable transport and ecology contributions and the management and maintenance of drainage and the vehicular access into the adjacent site, these would all remain unchanged and in the case of an approval would be secured via a Deed of Variation to the original Section 106 agreement."*

6.6 It is clear from the above that there is agreement between the Council and the appellants on the acceptability of many of the aspects of plot 3 as built.

6.7 Looking now to the aspects of the development as built or proposed that the Council has raised objection to, these are summarised below.

*Plot 3*

*The removal of the chimney stack and the replacement with a standard flue pipe.*

*The amended garage door and front door design.*

*The removal of the rear balcony.*

6.8 Focussing on the guidance and policies referred to within the reason for refusal of the application to vary the conditions to secure the amendments:

6.9 Paragraph 140 of the NPPF states that:--

*"Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme".*

6.10 NPPF Chapter 12 and Kirklees Local Plan policy LP24 seek to achieve an attractive high quality sustainable design that respects the local context and makes a positive contribution to the local area.

6.11 Policy LP24 states that development 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…"*

6.12 The Kirklees Housebuilders Design Guide SPD (2021) provides additional guidance on achieving high quality design in new housing developments.

6.13 Principle 2 of the SPD states that:-

> *"New residential development proposals will be expected to respect and enhance the local character of the area by:*
>
> > • *Taking cues from the character of the built and natural environment within the locality.*
> >
> > • *Creating a positive and coherent identity, complementing the surrounding built form in terms of its height, shape, form and architectural details.*
> >
> > • *Illustrating how landscape opportunities have been used and promote a responsive, appropriate approach to the local context."*

6.14 The dwelling the subject of the enforcement notice has been built to a high standard of design and makes a positive contribution to the character and appearance of the area. The material palette is complementary to the older buildings within the village and the architectural detailing and fenestration is in keeping with the buildings that form the character of the hillside village.

6.15 In the delegated report for 2022/70/92334/W the Council alludes to the fact that it would be preferable for the design features of the approved scheme to be implemented but does not state in detail how their omission is harmful. As such, it is contended that the design of the scheme as built, and as proposed within 2022/70/92334/W, whilst maybe not 'ideal' is acceptable. The omission of stonework details, amendment to the garage and front doors and the other alterations are minor and do not go to the heart of the original permission.

6.16 NPPF Chapter 16 and Kirklees Local Plan policy LP35 seek to conserve and enhance the historic environment.

6.17 Paragraph 200 of the NPPF requires the applicant to identify and adequately assess the significance of a heritage asset which may be affected by a proposed development. Clear justification for any harm or loss caused, if any, must demonstrate substantial public benefits that outweigh that harm.

6.18 The appeal site is located within the Golcar Conservation Area and there are Grade II listed buildings to the north.

6.19 To support the appeal the developer has engaged a historic building consultant, Garry Miller, who has carried out a heritage assessment which sets out the significance of the heritage assets and examines the impact that the retention of the dwellings the subject of

this and other linked enforcement notices for plots 1 and 3 - 13 will have on the conservation area and listed buildings. The Heritage Statement is provided at Document No. 2.

6.20 On page 16 of the Heritage Statement, Mr Miller argues that:-

> *"Given that we are essentially dealing with decorative touches – and not radical alterations such as scale, massing, or the quantum of development– then the level of any harm must surely be no more than at the lowest end of the scale of less than substantial. In the extent of the conservation area as a whole, which covers a wide area encompassing the core of the village and surrounding open space – amounting to just under 50 hectares – their impact of these detail changes would be imperceptible. Its essential hill village character will remain unaffected. Similarly, they are unlikely to be noticeable in terms of the setting of the listed buildings, as the application site forms part of the wider background in which they are experienced; a background in which modern development, in the form of the estate to the east of the appeal site, is already established. In this context the absence of, for example, quoins or a change to garage door detail is hardly likely to impede the understanding or appreciation of any of the listed buildings, especially as they belong to a new housing development with which they have no aesthetic or historic connection. They will still be appreciated primarily for their intrinsic interest, and in a setting which includes both traditional and modern properties. To suggest therefore that the absence of these details represents anything other than the lowest level of harm to this setting would be an overstatement.*
>
> *Considering the above in the final planning balance, where harm is less than substantial paragraph 202 of the NPPF requires it to be balanced against the public benefits arising from the proposal. The benefits in this case are the provision of new homes in a sustainable location, as duly recognised in the officer's report and by the original approval. However the report fails to make the balancing exercise on the changes that paragraph 202 requires. When this test is applied, the reasonable conclusion to arrive at is that the omission or alteration of the approved details is a minor matter that is clearly outweighed by the scheme's public benefits."*

6.21 It is important to note that the wider scheme contains three affordable houses. The developer did put forward a financial viability case as part of the original planning application process seeking a reduction in the level of contribution towards education, open space, sustainable transport, ecology and the management and maintenance of drainage and the vehicular access into the adjacent site. However, the Council was not willing to take this into account. Affordable housing provision on phase 2 of the development has equated to £440,000.00 of discounts across three of the dwellings. The terms of the S106 Obligation include the provision of one discounted dwelling (20% below market value) and two dwellings to be sold to a housing association at a considerably discounted price (64% below market value). This, combined with rising inflation, increased materials costs and challenges on site due to the topography has taken its toll. As a result, the developer had no option but to seek the reduction in some of the non-essential architectural detailing.

6.22 The housing development to the east, also carried out by the same developer, has been completed to a high standard. These dwellings also fall within the conservation area and did not include features being requested on the appeal site. The dwelling being considered here is the third plot of phase 2 and appears as a logical extension to those built under phase one, reflecting closely their character and appearance. The absence of the chimney stack and the installation of garage and front entrance doors of a slightly different design to that approved is not obvious to anyone who is not specifically aware of the details of the approved scheme and certainly does not have a harmful impact. The omission of the rear balcony and the extension of the garage to the rear building line is not harmful or readily visible from the public domain and as such are not considered key features that will lead to visual harm, an adverse impact on amenity or result in poor design.



*Plot 3 rear elevation as approved*



*Plot 3 rear elevation as built*

6.23 In view of the above, the retention of the dwelling as built is considered to be acceptable when assessed against relevant local and national planning policies relating to design and the historic environment.

Ground f)

6.24 The steps for compliance set out within the enforcement notice at point 5, which requires the demolition of the dwelling and the return of the land to its previous state are considered excessive. Lesser steps could be taken to address the matter.

6.25 The dwelling is occupied by its new owners who were unaware of the discrepancies between the approved plans and the build. The demolition of their home would be devastating and completely unwarranted. A supporting letter from the appellants is included at Document No. 5. The complete demolition of the dwelling is entirely excessive and disproportionate to those two aspects of the breach that the Council has raised objection to. Some of the alterations referred to within the enforcement notice have been found acceptable as set out within the planning officer's delegated report relating to 2022/70/92334/W whilst other amendments are relatively minor and do not undermine the visual quality of the dwelling to a harmful degree . For the reasons set out above under ground a) the lesser step of granting planning permission for the development as built could be taken to address the matter.

6.26 If the Inspector considers it necessary then the developer has undertaken to add a chimney stack to plots 1, 2 and 3, for cosmetic purposes, in accordance with a scheme to be agreed with the Council. This can be done without too much disruption.

Ground g)

6.27 If the appeal were to fail on grounds a) and f) then the period for compliance of nine months put forward by the Council is too short.

6.28 A period of 18 months from the appeal decision is considered to be more acceptable.

## 7.0 Conclusion

7.1 For the reasons stated above, the retention of the dwelling within the appeal site boundary is not harmful to the Golcar Conservation Area or listed buildings to the north. The amendments to the original approved scheme are minor and do not diminish the design quality of the scheme and certainly not to an extent that would warrant the complete demolition of the dwelling.

7.2 The overall scheme has delivered quality family residential units, including three affordable units, to the area and any perceived harm as a result of the amended design is far outweighed by the addition of quality units to the housing stock.

7.3 The retention of the dwelling is fully compliant with local and national planning policies and advice and it is respectfully requested that the appeal is allowed and planning permission granted.

**April 2024**