



PLANNING STATEMENT

ERECTION OF DECKING AND ACCESS STAIRCASE

AT

**27 Ashfield Close,
Penistone,
Sheffield,
S36 6EY**

MARCH 2014

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SECTION 1

INTRODUCTION

Instructions: Leith Planning Ltd was instructed by Mr and Mrs Delooze who reside at 27 Ashfield Close, Penistone, Sheffield to prepare and submit a retrospective planning application for a recently completed development in the rear garden of their property.

Description of Development: The Description of Development reads as follows:

“Retrospective Planning Application for the creation of a decking area on an existing raised rear garden terrace with access staircase.

Notes:

1. It should be noted that the rear garden terrace was already in existence in advance of the commencement of works and was already available as usable garden amenity space.
2. A number of amendments are being proposed to the ‘as built’ structure in order to further address the concerns of neighbouring residents, and to protect amenity including, moving the staircase to the other side of the deck, stepping the decked area back from the edge of the retaining wall, installation of fencing around the decked area, an area of planting to the front of the decked space to improve visual amenity and the provision of a new boundary fence at the upper terrace to further limit overlooking of neighbouring properties. It should be noted that many of these amendments go further than we deem necessary given the original relationship of this garden space with the local area, and in this regard will actually improve amenity and privacy over and above the original position prior to commencement of works. This should be seen as a significant enhancement of the site and a material condition in favour of approval of this application.”

Site Description: The site is located to the south east of Penistone Town Centre within a new housing development constructed in 2007. The site adjoins Penistone Church Football Club. The application site is not within Penistone Conservation Area and is not understood to be subject of any other current planning policy restrictions.

Principle of Development: For the reasons outlined within this submission the development accords with the determinative policies, Policy CSP29 of the Barnsley Core Strategy and the content of the adopted Supplementary Planning Document on House Extensions. The development as completed is therefore deemed to accord with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. The matter of other material considerations is dealt with at Section 8.

Pre-Application Discussions: The Applicant has for some time notified neighbours of his intention to construct a decked area on the raised terrace with the provision of an access stairway and did in fact confirm that works were to commence during a community Christmas party held at the application site on the 14th December 2013. At no point over the years or at the event on the 14th

December 2013 were concerns or objections raised to the proposed development. In fact the residents appeared supportive of the proposals with the neighbour at 29 Ashfield Close even having previously discussed the potential of also undertaking similar works. The neighbours residing at number 25 always have and continue to support the application and have no objection to the development as completed. This is demonstrated within the letter of support included at Appendix 2.

Should neighbours have raised any objections to the proposal at this pre-construction phase the Applicant would have sort to address such issues, and if necessary the development would not have proceeded, in circumstances where the intention was never to create concerns or issues with the existing residents, many of whom have been friends since moving into the development in 2008.

The Applicant was genuinely unaware of the fact that planning permission was required for the development as constructed, and was only advised of the same following a visit to the property by Officers from the local planning authority on Thursday 6th February 2014. Upon confirmation that planning permission should have been sought prior to the commencement of works, the Applicant has sought to undertake further dialogue with the objectors at 29 Ashfield Close to endeavour to find a resolution which addresses and overcomes their concerns.

In addition to the on-going dialogue with neighbouring residents the proposed development has also been discussed on a pre-application basis with Andrew Burton, Senior Planning Officer of Barnsley Metropolitan District Council at a meeting at the Council offices on Tuesday 25th February 2014. The meeting focussed on the proposed amendments which are subject of this application.

Proposed Amendments: Whilst the development as built is not deemed to be contrary to planning policy given the original relationship of the application site and neighbouring properties, in the interests of good neighbourliness and in order to seek to address the concerns raised by the residents of number 29, the Applicant has created an amended development which is now being submitted for consideration by the local planning authority.

The amendments being proposed to the 'as built' structure in order to further address the concerns of neighbouring residents and to protect amenity include, moving the staircase to the other side of the deck, stepping the decked area back from the edge of the retaining wall, installation of fencing around the decked area, an area of planting to the front of the decked space to improve visual amenity and the provision of a new boundary fence at the upper terrace to further limit overlooking of neighbouring properties. It should be noted that many of these amendments go further than we deem necessary given the original relationship of this garden space with the local area, and in this regard will actually improve amenity and privacy over and above the original position prior to commencement of works. This should be seen as a significant enhancement of the site and a material condition in favour of approval of this application.

SECTION 2 PLANNING HISTORY

The application site has not been the subject of any recent planning applications following the grant of consent for the original residential development.

Pre-Application Discussions - Council: The planning application has been discussed on a pre-application basis with Andrew Burton of Barnsley Metropolitan District Council. These discussions included consideration of alternative development options (including the amendments which are now subject of this application) and the scope of development which could be constructed under the provisions of the General Permitted Development Order.

Pre-Application Discussions – Neighbours: As detailed above it should be noted that prior to commencement of the development both of the affected neighbouring properties were advised of the applicant's intentions and the general scope of works. All affected neighbours have had the appropriate opportunity prior to commencement of works to outline any objections or concerns with the proposed development. In addition, dialogue continued with both neighbours during the construction process to ensure that affected residents could advise of any required alterations or objections to the development. The neighbours at number 29 have raised an issue with regards to one of the deck support poles which had been incorrectly placed over the property boundary. It should be noted that the pole has been relocated and the development is now wholly within the boundary of number 27.

It was only upon completion of the works and following a visit to the site by the local planning authority that the Applicant was advised that there was a neighbour objection from the residents at number 29. Following this notification the Applicant has sought to continue dialogue with the neighbouring residents, as well as with other neighbouring properties, to discuss the issues raised and to seek to negotiate and consider alternative development options which address the concerns raised. Whilst it is understood that the residents at number 29 remain concerned about the proposal, the amendments included within this application have all been prepared to seek to overcome their concerns, whilst being mindful of the privacy of the residents at number 25.

SECTION 3

GOVERNMENT ADVICE

The National Planning Policy Framework (NPPF) was published in March 2012. The guidance outlines a presumption in favour of sustainable development which includes an economic role, a social role and an environmental role; the three roles are seen as mutually dependent.

Paragraph 11 confirms that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

Paragraph 12 notes that the National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place. It is understood that given that the Barnsley Unitary Development Plan was adopted and approved in 2000 that the saved policies of the UDP are no longer determinative.

Paragraph 17 states that within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should (extract reproduced in part only):

- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;

Paragraph 53 states that local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

Paragraph 56 states that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

Paragraph 66 notes that Applicants will be expected to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community. Proposals that can demonstrate this in developing the design of the new development should be looked on more favourably.

Paragraph 186 details that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The

relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.

Paragraph 187 states that local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

Paragraph 188 outlines that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

Paragraph 196 notes that the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions.

Paragraph 203 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Comment: The proposed development fully accords with the provisions of the National Planning Policy Framework in circumstances where the proposal has been designed to reflect and enhance the character and appearance of the area and is a significant visual enhancement of the site from the previously overgrown scrub land. The proposal has not resulted in detrimental harm to the local area which would warrant a refusal of planning consent.

The development as built has no greater impact upon the amenities of neighbouring properties by way of overlooking, loss of privacy or overbearing affects than was in existence prior to the commencement of works, in circumstances where the raised terrace was created when the properties were built and the terrace could already be legitimately used as garden amenity space. In fact it is considered that with the proposed amendments which are subject of this application, that the proposed development could be deemed to be an enhancement over and above the original position, as the proposed fencing to the decked area and property boundary will improve the level of overlooking and loss of privacy than the original situation.

In assessing the merits of this application it should be noted that the residents at 25 Ashfield Close created a usable garden space on this raised terrace level when the properties were completed and the Applicant and other adjoining neighbours regularly access this parcel of land for garden maintenance. Attention

is drawn to the Google Earth shot included below which shows the use of the raised garden terrace at number 25. The provision of decking at the raised terrace at number 27 is not deemed to raise any greater overlooking and impact to neighbouring properties than is seen at the adjacent property.



It should be noted that the Applicant advised all affected neighbouring properties of his intentions to install a decking area on the raised terrace with an access stairway prior to commencement of work, and has sought to address and overcome the recently raised neighbour concerns through various proposed amendments to the development, including relocating the development in its entirety within the application site boundary and the provision of boundary screening to further protect neighbour amenity. The Applicant can therefore demonstrate compliance with the principles of the National Planning Policy Framework as it relates to front loading and ongoing neighbour consultation. In accordance with paragraph 66 of the NPPF we would therefore kindly request that the proposal be looked upon more favourably by the local authority.

In short, the development is considered to be well designed, a visual enhancement of the site, does not increase the previous levels of overlooking and loss of privacy to neighbouring properties and does not represent inappropriate garden development. The proposal is therefore considered to comply with the principles of the National Planning Policy Framework and we would kindly request that planning consent be granted subject to appropriately worded conditions. The matter of conditions is addressed in more detail at Section 8 Other Material Considerations.

SECTION 4

DEVELOPMENT PLAN

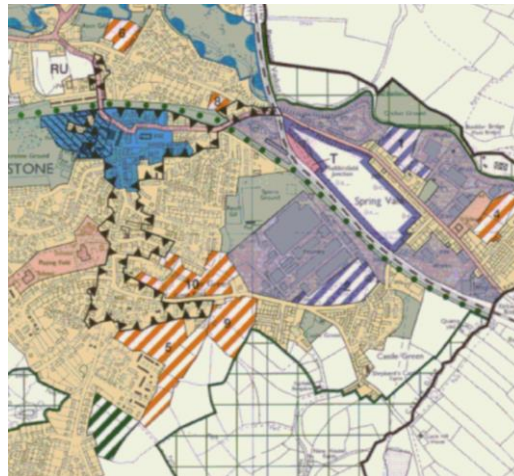
Section 70(2) of the Town and Country Planning Act 1990 requires a local planning authority, in dealing with a planning application, to have regard to the provisions of the development plan, as far as material to the application, and to any other material considerations.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 refers to determinations to be made under the Planning acts as follows:

“If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.”

Barnsley Development Plan: The referable local plan is the Barnsley Core Strategy Adopted 8th September 2011. It is understood from Andrew Burton at Barnsley Metropolitan Council that the saved policies of the adopted Unitary Development Plan (December 2000) are no longer determinative given the requirements laid down in the NPPF.

As can be noted from the Proposals Map extract included below the application site falls within a wider area of land which was allocated for employment use in the Unitary Development Plan adopted in December 2000; albeit the land has obviously now been developed for a large residential scheme. To the rear of the application site is an area of land allocated as Urban Greenspace.



Core Strategy

Core Strategy Policy CSP 29 - Design Principles: Outlines that high quality development will be expected, that respects, takes advantage of and enhances the distinctive features of Barnsley, including:

- topography, Green Infrastructure assets, important habitats, woodlands and other natural features; **The development subject of this application respects and seeks to work with the existing topography of the site**
- views and vistas to key buildings, landmarks, skylines and gateways; **The development has no detrimental impacts upon the existing views or vistas into the site, across the site or from neighbouring properties**
- heritage, townscape and landscape character including the scale, layout, building styles and materials of the built form particularly in and around:
 - Barnsley Town Centre
 - Penistone and the rural villages in the west of the borough
 - within and adjacent to Conservation Areas; **This small scale development has no detrimental impacts upon the scale, layout, build style, materials or built form within Penistone.**

Development should:

- contribute to place making and be of a high quality, that contributes to a healthy, safe and sustainable environment; **The form, scale, design and use of materials are deemed to represent a high quality development.**
- help to transform the character of physical environments that have become run down and are lacking in distinctiveness; **Prior to commencement of this development the land in question was overgrown, was lacking in distinctiveness and was visually detrimental. The effective and efficient development of this land ensures that this existing rear raised terrace can be used as accessible garden amenity space and is a significant visual enhancement of the site.**
- enable all people to gain access safely and conveniently, providing, in particular, for the needs of families and children, and of disabled people and older people contribute towards creating attractive, sustainable and successful neighbourhoods; **N/A**
- achieve a Building For Life assessment rating of 'good' or equivalent as a minimum, in developments of 10 or more dwellings; **N/A**

Comment: For the reasons laid out above the development accords with the requirements and principles of Core Strategy policy CSP29 and as such we would kindly request that planning permission be granted subject to conditions.

Supplementary Planning Document- House Extensions: This document was adopted in March 2012 and supports Policy CSP29 of the adopted Core Strategy. The most relevant extracts of the document to the development subject of this application are included below.

Section 2 addresses the matter of general principles and states that proposals for house extensions, roof alterations, outbuildings and other domestic alterations should:

1. be of a scale and design which harmonises with the existing building
2. not adversely affect the amenity of neighbouring properties
3. maintain the character of the street scene and
4. not interfere with highway safety.

Section 5 deals with the matter of design principles and reads in part, as follows:

“It is important that any extension is designed to be in keeping with your property and the character of your neighbourhood, therefore, before designing the extension, examine the character and details of your house.”

Section 6 deals with layout principles including the issue of privacy from new extensions and outlines that:

“Extensions should be designed so that they do not result in significant overlooking of habitable room windows to nearby houses or private gardens. Privacy problems might be overcome by using a combination of obscure glazing, high level windows, screen fencing or rooflights, but are better avoided altogether.

...

A boundary fence may act as an effective screen to a single storey extension and could reduce overlooking from a side window.”

On the matter of overshadowing the SPD states at page 11 that:

“The position of an extension in relation to a neighbouring property and to the path of the sun can influence the level of daylight and sunlight received by that property. Extensions should not overshadow neighbouring properties or their gardens to an unreasonable degree.

Extensions directly to the south and to the south east and south west of a neighbouring dwelling will generally have a greater impact than those located to the north, east or west.

The Council will seek to protect principal habitable room windows on the front and rear elevations of the adjacent property, but not secondary windows, i.e. halls, stairs, utility rooms, toilets and bathrooms including en-suites, particularly those on side elevations of adjacent dwellings.”

The matter of garden space is addressed at page 11 and states as follows:

“Extensions and outbuildings should not take up a disproportionate amount of private rear garden space and as a general principle should allow the retention of at least half the garden area. Account should be taken of existing trees and their future requirements for growth.”

Section 7 deals with the various forms of proposed extension and alteration. This is clearly an application for a decked area with an access stairway and as such the content of page 18 of the SPD is the most pertinent to the determination of this application. The relevant paragraphs read as follows:

“Decking and raised platforms are commonly used where the rear garden is below the floor area of the dwelling in order to allow improved access to the rear garden and to provide a convenient outdoor amenity area on the same level as the dwelling. Decking and raised platforms are also used in other circumstances

but can often give rise to increased overlooking of neighbouring dwellings and particularly their gardens.

In view of this, decking and raised platforms will only be allowed where the privacy of neighbouring residents is not detrimentally affected by significantly increased overlooking (e.g. where the decking is located away from the boundary and where there is sufficient permanent screening, such as a high boundary wall or an outbuilding in an adjacent garden).

In addition, decking and raised platforms should not have a significantly detrimental impact on visual amenity and for this reason decking will not be allowed where it is prominently located and can be easily viewed from public vantage points. In some circumstances, to reduce overlooking, it may be possible to include screening such as fencing with an application for decking or a raised platform but any screening should not result in significant overshadowing or loss of outlook from neighbouring dwellings or have a detrimental impact on visual amenity or the character of the dwelling.”

Comment: Clearly much of this SPD relates to house extensions, however the principles on design, overlooking, impact on neighbours, overshadowing etc are all considered to be important development control matters of relevance to this application. In short, this is deemed to be a well-designed proposal which does not result in any greater overlooking of neighbouring properties than was already in existence prior to the commencement of works. In fact with the amendments proposed within this application the levels of overlooking are actually improved given the provision of boundary fencing and screening to the decked area. The development does not reduce privacy levels between the properties given the existing and original relationship within this development, furthermore, given the height and open nature of the structure does not result in an overbearing development nor a structure which results in loss of daylight or overshadowing to neighbouring properties.

As can be noted from the before and after photographs of the development included below, the decking area itself does not have a significant detrimental impact upon visual amenity in fact quite the contrary; the platform is in fact a significant visual enhancement of this previously overgrown area of land. The area is not visible from public vantage points and is in the main is only obliquely visible to neighbouring properties. The scale and height of the development and the provision of planting in front of the decked area also ensures that the proposal is not visually overbearing.

Before



After



Summary: For the reasons outlined above and throughout this report, it is considered that the proposed development fully accords with the provisions of the policies contained within the Adopted Development Plan; in particular Policy CSP29 of the Core Strategy and the Supplementary Planning Document on House Extensions . The proposed development will have a negligible, if any, impact on the amenity of neighbouring properties given that the terrace area was already in existence prior to commencement of works. Furthermore, the Applicant was already able to utilise this space for garden amenity purposes, in the same way as both his adjoining neighbours have done; this can be demonstrated through the provision of a garden area at this level at number 25 (see Google Earth shot included at page 8) and through the use of the ladder on the photograph included above to secure access to the terrace area for the residents of number 29. In addition, it is important to recognise that the overall housing development was completed with low level boundary fences between neighbouring properties which results in all residents having views into and over each other's garden spaces and the rear elevations of the properties. The proposal is not therefore considered to create any greater impacts with regards to overlooking and loss of privacy than were already in existence.

Given the nature of the materials used, the height of the structure and the general feeling of openness created by the proposal, the development is not considered to result in any detrimental overbearing impacts upon neighbouring properties. As such, we would respectfully request that the Council approve this application.

SECTION 5

EVOLVING POLICY FRAMEWORK

Regard has been had to the evolving Local Development Framework, in particular it is understood that:

- **Core Strategy:** The Core Strategy was adopted and operative from the 8th September 2001. The Legal Challenge period is understood to have expired on 20th October 2011. No challenges were received.
- **Local Plan:** It is understood that public consultation is currently expected on this document in June-July 2014 with the Publication consultation expected in November – December 2014.

Comment: There are no documents due out for consultation in the short term which are understood to be relevant to the determination of this application. We will however continue to monitor the policy framework and will make representations if necessary.

SECTION 6

PRINCIPLE OF DEVELOPMENT

Development Plan - Section 70(2): of the Town and Country Planning Act 1990 requires a local planning authority, in dealing with a planning application, to have regard to the provisions of the development plan, as far as material to the application, and to any other material considerations.

Section 38(6): of the Planning and Compulsory Purchase act 2004 refers to determinations to be made under the Planning acts as follows:

“If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.”

Statutory Development Plan: The statutory Development Plan includes:

- **Barnsley Development Plan:** The proposed development fully accords with the provisions of the policies contained within the Adopted Core Strategy; in particular Policy CSP29. Furthermore, the proposed development will have a negligible, if any, impact on the amenity of neighbouring residents and as such, we would respectfully request that the Council approve this application.
- **Design for Residential Development SPD:** For the reasons outlined above and throughout this report, it is considered that the proposed development fully accords with the provisions of the policies contained within the Adopted Development Plan; including the Supplementary Planning Document on House Extensions. Furthermore, the proposed development will have a negligible, if any, impact on the amenity of neighbouring properties given that the terrace area was already in existence prior to commencement of works and the Applicant was already able to utilise this space for garden amenity purposes.

Comment: For the reasons outlined within this submission the development accords with the determinative policies, Policy CSP29 of the Barnsley Core Strategy and the content of the Council's SPD on House Extensions and as such accords with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. The matter of other material considerations is dealt with at Section 8.

SECTION 7

SUPPORTING STATEMENTS

The reports submitted with the planning application will include the following documents:

- Application Drawings
- Planning Statement – Leith Planning
- Neighbour Letters of Support

Comment: The reports submitted with this planning application are comprehensive in their scope and on balance support the principle of development and address the various technical considerations.

SECTION 8

OTHER MATERIAL CONSIDERATIONS

Other Material Considerations – Generally: Section 70(2) of the 1990 Act deals with determination of applications: general considerations requires that the authority in dealing with the application shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations. Whether a consideration is material is a matter for the courts; the weight to be accorded to a material consideration is a matter for the decision-maker. There are a number of 'other material considerations' outlined below which would support the grant of consent.

Material Consideration – design: In determining whether or not to grant planning permission the local planning authority clearly may use their own judgment as to whether the development in question is aesthetically pleasing or visually intrusive. However, Government policy as set out in the National Planning Policy Framework is a material consideration and the development has been demonstrated to comply with the national and local provisions on the matter of development design.

Material Consideration – effect on neighbouring properties: It is commonplace for the local planning authority to take into account the amenity interests of those who live adjacent to the site in question. While the proposed development involves change the proposed development will not, on balance, harm the amenity of neighbouring properties or the local environment in circumstances where the raised terrace area has been in existence since the property was constructed in 2007. Furthermore, the area in question can already be utilised as garden amenity space by the applicant in the same way as both adjoining neighbours utilise their raised terrace areas without restrictions. The development is not therefore considered to create any significant detrimental impacts to neighbouring properties which would support a refusal of this application.

Material Consideration - Scheme Amendments: The application has been lodged with a set of 'as built' drawings, however the Applicant is proposing to seek planning consent for an amended development which moves the staircase to the other side of the decking area, provides screening to the terrace boundary and the perimeter of the deck and also includes the provision of an area of screen planting to the front of the deck. All of these works will be completed if permission is granted in accordance with the proposed drawings, namely Plans (Ref: AD-PPT01), Elevations (Ref: AD-PPE01) and Sections (Ref: AD-PPS01). This work and the compliance with the proposed drawings could well be secured by an appropriately worded planning condition.

Should the local authority deem further amendments necessary to make the development more acceptable, we would kindly request to be notified of such changes at an early stage in the process such that revised drawings can be prepared and submitted for evaluation during the life of this application.

Material Considerations - the planning history of the site (“fall back” position): The “fall-back” position is a material consideration where it can be shown that the development and uses to which the site might be put without further planning permission, having regard in particular to the Use Classes Order, would bring about a similar situation to that for which permission is sought. See the distinction drawn between a tent, which could be erected in the grounds of a hotel each weekend and taken down thereafter, and a marquee (2000) J.P.L. 343. In this instance the fall-back position relates to the original built form of the application site and the fact that the land in question was already available as usable garden amenity space. In this regard should the Applicant be required to remove the as built structure we would argue that the level of overlooking and loss of privacy would be no worse and no better than the current situation. In fact through the provision of the proposed amendments and the provision of appropriately worded conditions, the Council can in fact impose greater controls and improve the privacy levels between the application site and neighbouring properties than was the case before the construction works were commenced.

Material Consideration – Planning Conditions: As laid out at paragraph 203 of the National Planning Policy Framework Council’s can impose planning conditions on development which would otherwise have been deemed to be unacceptable. In this regard the Applicant would be content to accept suitably worded planning conditions which comply with the provisions of Circular 11/95 should this address any concerns raised. A condition regarding the provision of suitable boundary screening could well overcome the issues raised by residents on loss of privacy; albeit in assessing the merits of this application it is important to acknowledge that the area in question was already usable garden amenity space and the development as constructed is not considered to create a detrimental increase in overlooking than the original position.

Fairness: As will be appreciated the matter of fairness in the determination of planning applications is discussed at [2004] J.P.L. 1316 with particular reference to *Auborn Court Ltd v Kingston and St. Andrew Corporation* [2004] WLR 62219 and *R. (on the applicant of David Rubin) v First Secretary of State, Harrow London Borough Council*, 9 February 2004. The circumstances may be such that a party has a legitimate expectation that he will be consulted: *R. (on the application of Wainwright) v Richmond-upon- Thames London Borough Council* [2001] EWCA Civ 2062.

Decision Making: Overall Advantage: In addition to those matters relating to decision making, such as the development plan and sustainable development, there is inevitably a balancing exercise to be carried out; few decisions are free of such an approach. The phrase “overall-advantage” reflects this balance; at the end of the day the decision-maker must attach what weight he considers appropriate to the material consideration in question. The so-called “overall-advantage” is nothing more than the weighing of often disparate planning considerations so that it can be said that the advantages outweigh the disadvantages, or the reverse.

Comment: Section 70(2) of the 1990 Act deals with determination of applications: general considerations requires that the authority in dealing with the application shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations. Whilst it is considered that the development subject of this application complies with the provisions, policies and principles of the development plan we have also evaluated the following material considerations, namely:

- Design;
- Visual Amenity;
- effect on neighbouring properties;
- Scheme Amendments
- Fall-Back Position;
- Planning Conditions; and
- Fairness

Whether a consideration is material is a matter for the courts; the weight to accorded to a material consideration is a matter for the decision-maker. Collectively in this case the other material considerations are over-whelming in favour of the development.

SECTION 9

CONCLUSIONS

Description of Development: The Description of Development reads as follows:

“Retrospective Planning Application for the creation of a decking area on an existing raised rear garden terrace with access staircase.

Notes:

3. It should be noted that the rear garden terrace was already in existence in advance of the commencement of works and was already available as usable garden amenity space.
4. A number of amendments are being proposed to the ‘as built’ structure in order to further address the concerns of neighbouring residents and to protect amenity including, moving the staircase to the other side of the deck, stepping the decked area back from the edge of the retaining wall, installation of fencing around the decked area, an area of planting to the front of the decked space to improve visual amenity and the provision of a new boundary fence at the upper terrace to further limit overlooking of neighbouring properties. It should be noted that many of these amendments go further than we deem necessary given the original relationship of this garden space with the local area, and in this regard will actually improve amenity and privacy over and above the original position prior to commencement of works. This should be seen as a significant enhancement of the site and a material condition in favour of approval of this application.”

National Planning Policy Framework: The development is considered to be well designed, a visual enhancement of the site, does not increase the previous levels of overlooking and loss of privacy to neighbouring properties and does not represent inappropriate garden development. The proposal is therefore considered to comply with the principles of the National Planning Policy Framework and we would kindly request that planning consent be granted subject to appropriately worded conditions.

Statutory Development Plan: For the reasons outlined above and throughout this report, it is considered that the proposed development fully accords with the provisions of the policies contained within the Adopted Development Plan; in particular Policy CSP29 of the Core Strategy and the Supplementary Planning Document on House Extensions. The proposed development will have a negligible, if any, impact on the amenity of neighbouring properties given that the terrace area was already in existence prior to commencement of works. Furthermore, the Applicant was already able to utilise this space for garden amenity purposes,

Principle of Development: For the reasons outlined within this submission the development accords with the determinative policies, Policy CSP29 of the Barnsley Core Strategy and the content of the Council's SPD on House Extensions and as such accords with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Supporting Statements: The reports submitted with this planning application are comprehensive in their scope and on balance support the principle of development and address the various technical considerations.

Material Considerations: Section 70(2) of the 1990 Act deals with determination of applications: general considerations requires that the authority in dealing with the application shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations. Whilst it is considered that the development subject of this application complies with the provisions, policies and principles of the development plan we have also evaluated the following material considerations, namely:

- Design;
- Visual Amenity;
- effect on neighbouring properties;
- Scheme Amendments
- Fall-Back Position;
- Planning Conditions; and
- Fairness

Whether a consideration is material is a matter for the courts; the weight to accorded to a material consideration is a matter for the decision-maker. Collectively in this case the other material considerations are over-whelming in favour of the development.

APPENDIX ONE
FUSION ONLINE PRINT OUT

Development Plan Monitoring Schedule

Barnsley Metropolitan Borough Council – Advertisements: Adopted May 2003.

Barnsley Metropolitan Borough Council – Advertisements: Public Consultation on Draft 22 August - 19 September 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Agricultural & Forestry Workers' Dwellings: Adopted May 2003.

Barnsley Metropolitan Borough Council - Agricultural Buildings: Adopted May 2003

Barnsley Metropolitan Borough Council - Archaeology and Development: Adopted May 2003

Barnsley Metropolitan Borough Council - Barn Conversions: Adopted May 2003.

Barnsley Metropolitan Borough Council - Barn Conversions: Public Consultation on Draft 22 August - 19 September 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Barnsley Policies: Issue papers 11 January - 15 March 2002. Preferred options 17 October - 28 November 2005. This document has been incorporated into a Development Sites and Place Development Plan Document.

Barnsley Metropolitan Borough Council - Barnsley Town Centre Area Action Plan: Issue papers 11 January - 15 March 2002. Preferred options consultation 17 October - 28 November 2005. Issue papers 11 January - 15 March 2002. Preferred options consultation 17 October - 28 November 2005. Revised Preferred Options 9.00am 30 July - 4pm 28 September 2012 - This was extended to 15 October 2012. This document has now been merged into a new Local Plan which is going to be consulted on in June 2014.

Barnsley Metropolitan Borough Council - Community Infrastructure Levy: Work has commenced on the Community Infrastructure Levy but no timetable is currently available.

Barnsley Metropolitan Borough Council - Core Strategy: Issues consultation 11 January - 15 March 2002. Preferred Options 17 October - 28 November 2005. Revised Preferred Options 1 June - 4pm 10 August 2009. Publication Consultation 26 February - 9 April 2010. Submission to Secretary of State 30 September 2010. Examination in Public 15 March - 22 March 2011. Inspector's Report received 24 May 2011. Adoption 8 September 2011. Legal Challenge period ended 20 October 2011 - No Challenge received.

Barnsley Metropolitan Borough Council - Design and Layout of Open Space on New Housing Developments: Adopted May 2003.

Barnsley Metropolitan Borough Council - Design to Avoid Crime: Adopted May 2003

Barnsley Metropolitan Borough Council - Designing New Residential Development:

Information from the Joint South Yorkshire Residential Guide will be included in this Supplementary Planning Document. Public Consultation on Draft 9.00am 3 October - 5.00pm 31 October 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Developing Contaminated Land: Adopted May 2003

Barnsley Metropolitan Borough Council - Development Sites and Places: Public consultation 23 July - 4pm 28 September 2012 - This was extended to 15 October 2012. This will now form part of the New Local Plan. See Local Plan for timetable.

Barnsley Metropolitan Borough Council - Dormers and Rooflights: Adopted May 2003

Barnsley Metropolitan Borough Council - Education Sites: Issues and Options consultation 17 October - 28 November 2005. Preferred Options 30 October - 15 December 2006. Submission to Secretary of State 10 December 2007 - 4pm 28 January 2008. Examination by written representation 21 July - 4pm 1 September 2008. Inspector report received 26 November 2009. Adopted 29 January 2009.

Barnsley Metropolitan Borough Council - Employment Sites: Issues consultation 11 January - 15 March 2002. Preferred Options consultation 17 October - 28 November 2005. The Barnsley Policies, Employment Sites, Housing Sites and Transport Proposals Development Plan Documents has been incorporated into the Core Strategy and Development Sites Document.

Barnsley Metropolitan Borough Council - Flood Risk and Development: Adopted May 2003

Barnsley Metropolitan Borough Council - Gypsy and Travellers Site: This document has been removed from the Local Development Framework in the 2007 Local Development Scheme. The issues have been incorporated in to the Housing Sites DPD.

Barnsley Metropolitan Borough Council - Hot Food Takeaway: Adopted May 2003

Barnsley Metropolitan Borough Council - Hot Food Takeaways: Public Consultation on Draft 22 August - 19 September 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - House Extensions: Adopted May 2003

Barnsley Metropolitan Borough Council - House Extensions: Public Consultation on Draft 22 August - 19 September 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Housing Sites: Issues consultation 11 January - 15 March 2002. Preferred options on consultation 17 October - 28 November 2005. The Barnsley Policies, Employment Sites, Housing Sites and Transport Proposals Development Plan Documents has been incorporated into the Core Strategy and Development Sites Document.

Barnsley Metropolitan Borough Council - How to Appeal against a Planning Decision:

Adopted May 2003.

Barnsley Metropolitan Borough Council - Infill Residential Development: Adopted May 2003

Barnsley Metropolitan Borough Council - Infrastructure Delivery Plan: Although this council have an Infrastructure Delivery Study there are no plans currently to produce an Infrastructure Delivery Plan.

Barnsley Metropolitan Borough Council - Introductory Notes: Adopted May 2003.

Barnsley Metropolitan Borough Council - Joint South Yorkshire Residential Design Guide: Doncaster is took the lead on this document which has been produced on behalf of the 4 South Yorkshire local authorities, namely Barnsley, Doncaster, Rotherham and Sheffield in collaboration with Transform South Yorkshire. Public Consultation on Draft 14 June - 23 July 2010. The documents have been adopted as an Interim Guidance Document and will be adopted as a Supplementary Planning Document by Doncaster and Rotherham but Sheffield and Barnsley will never adopt it as a Supplementary Planning Document. Barnsley will include this information in a new Supplementary Document entitled "Designing New Residential Development". Doncaster expect to adopt early 2012 as a Supplementary Planning Document and Rotherham intends to adopt when their Core Strategy has been adopted.

Barnsley Metropolitan Borough Council - Joint Waste Plan: This document is being produced jointly with Barnsley, Doncaster and Rotherham Council but Doncaster are taking the lead. Issues and Options 4 February - 21 March 2008. Interim Sustainability Appraisal consultation 25 July - 5pm 22 August 2008. Regulation 25 Publication consultation - 3 November - 12 December 2008 - this was extended to 5 January 2009. A public consultation event took place at Dunsville Community Centre, High Street, Doncaster on 4 September 2009 to discuss the feasibility of a potential waste site at Hatfield Power Park, Stainforth. Public Consultation 28 June - 9 August 2010. Publication Consultation 11 April - 23 May 2011. Submission to the Secretary of State 29 July 2011. Examination 24 - 27 October 2011. Additional hearing session 9.30am 2 November 2011. Comments on Changes 11 November - 5pm 23 December 2011. Inspector's Report received 13 January 2012. Adopted 20 April 2012. Legal Challenge Period ended 5pm 8 June 2012. No challenge received.

Barnsley Metropolitan Borough Council - Landscape Design: Adopted December 2000

Barnsley Metropolitan Borough Council - Landscape Design for Industrial Development: Adopted December 2000

Barnsley Metropolitan Borough Council - Lawful Development Certificates: Adopted May 2003

Barnsley Metropolitan Borough Council - Local Development Scheme: Local Development Scheme approved by Secretary of State April 2005. Revised Local Development approved June 2006. Local Development Scheme revised and approved 31 March 2007. Local Development Scheme revised and approved December 2007. Currently (October 2013) there are no plans to revise this document even though it does say it is being revised on their web page.

Barnsley Metropolitan Borough Council - Local Plan: Consultation on draft expected June - July 2014. Publication Consultation expected November - December 2014. Submission to Secretary of State expected April

2015. Examination expected July 2015. Adoption expected November 2015.

Barnsley Metropolitan Borough Council - Mortar Mixes for Pointing Historic Buildings: Adopted May 2003.

Barnsley Metropolitan Borough Council - Neighbourhood Plan - Oxspring Parish: Application consultation 5 August - 20 September 2013. This document will be updated when information is received from the council.

Barnsley Metropolitan Borough Council - Open Space Provision on New Housing Developments: Adopted May 2003.

Barnsley Metropolitan Borough Council - Open Space Provision on New Housing Developments: Public Consultation on Draft 9.00am 3 October - 5.00pm 31 October 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council – Parking: Public Consultation on Draft 9.00am 3 October - 5.00pm 31 October 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Paths and Development: Adopted May 2003.

Barnsley Metropolitan Borough Council - R-Use of Employment Policy Areas: Adopted May 2003.

Barnsley Metropolitan Borough Council - Removal of Agricultural Occupancy Conditions: Adopted May 2003.

Barnsley Metropolitan Borough Council - Residential Amenity and the Siting of Buildings: Public Consultation on Draft 9.00am 3 October - 5.00pm 31 October 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Sequential Approach and need for Retail, Leisure and Business Developments: Adopted May 2003.

Barnsley Metropolitan Borough Council - Sequential Approach to determining Planning Applications for New Residential Development: Adopted January 2004.

Barnsley Metropolitan Borough Council - Shopfront Design: Adopted May 2003.

Barnsley Metropolitan Borough Council - Shopfront Designs: Public Consultation on Draft 22 August - 19 September 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012 - confirmed 6 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Statement of Community Involvement: Pre-submission draft Statement of Community Involvement consultation 13 June - 25 July 2005. Submission document on consultation 10 February - 24 March 2006. Examination by Written Representation. June 2006. Inspectors report received

on 25 July 2006. Adopted 20 September 2006. There were no legal challenges.

Barnsley Metropolitan Borough Council - Strategic Flood Risk Assessment: Strategic Flood Risk Assessment approved September 2010. There are currently no plans to review.

Barnsley Metropolitan Borough Council - Strategic Housing Land Availability Assessment: Call for sites and draft methodology consultation was held February 2008 - Further consultation on sites 17 October - 14 November 2008. Final Report published March 2009. This document is now being reviewed - Consultation 9 December 2009 - 4pm 22 January 2010. An update on this document was published February 2011. Call for Sites on the 2013 review ended 8 May 2013. Public Consultation 4 October - 1 November 2013. Final Report is expected to be published mid - late March 2014.

Barnsley Metropolitan Borough Council - Sustainable Location of Housing Sites: Public Consultation 21 June - 19 July 2010. This document is a Planning Advisory Note not an not a Supplementary Planning Document .

Barnsley Metropolitan Borough Council - The Design and Layout of New Housing: Adopted May 2003.

Barnsley Metropolitan Borough Council - Transport Proposals: Issues and Options consultation was expected October 2008. The Barnsley Policies, Employment Sites, Housing Sites and Transport Proposals Development Plan Documents has been incorporated into the Core Strategy and Development Sites Document.

Barnsley Metropolitan Borough Council - Trees and Hedgerows: Adopted May 2003.

Barnsley Metropolitan Borough Council - Trees and Hedgerows: Public Consultation on Draft 22 August - 19 September 2011. Adopted 1 March 2012 - Legal Challenge period ended 1 June 2012. No Challenge received.

Barnsley Metropolitan Borough Council - Unitary Development Plan: Unitary Development Plan adopted 4 December 2000. No High Court challenge.

Barnsley Metropolitan Borough Council - Uses on Employment Sites: Adopted May 2003.

Barnsley Metropolitan Borough Council - Walls and Fences: Adopted May 2003.