



TOWN & COUNTRY PLANNING ACT 1990

APPEAL BY: MR AND MRS ROBINSON

LOCATION: 2 Capel Ley, Purbrook, Waterlooville, Hants, PO7 5PU

PROPOSAL: Single storey rear extension, hip to gable enlargement and insertion of rear dormer window. (Revised application).

COUNCIL REF: APP/19/00595

APPELLANT STATEMENT OF CASE

1.0 Introduction

1.1 This appeal is made following Havant Borough Council's decision to refuse planning application APP/19/00595 for a single storey rear extension, hip to gable enlargement and insertion of a flat roofed rear dormer window.

1.2 The planning application was refused for two reasons as detailed below:

Reason 1:

"The rear extension and rear dormer in combination would by reason of their scale, mass, bulk, design and depth result in an extension and first floor roof extension that would dominate the existing modest dwelling and be harmful to the character and appearance of the area. This would be contrary to Policy CS16 Part 1 of the Havant Borough Local Plan (Core Strategy) 2011, paragraphs 5.39, 5.40, 5.41, 5.42 and 5.48 of the Havant Borough Design Guide SPD 2011 and the National Planning Policy Framework."

Reason 2:

“The rear extension would by reason of its size, depth and siting result in an un-neighbourly development to the harm of the residential amenities of the occupiers of No.1 Capel Ley. In particular the development would have an overbearing effect, cause a loss of outlook and have a detrimental impact on light to the living space of the adjoining property to the north. The unacceptable harm caused to neighbour amenity as a result of the development proposed would conflict with Policy CS16 Part 1(e) of the Havant Borough Local Plan (Core Strategy) 2011, paragraphs 5.39, 5.41, 5.42, 5.43 and 5.44 of the Havant Borough Council Design Guide SPD 2011 and the National Planning Policy Framework.”

- 1.3 This appeal statement will demonstrate that the development has had full regard to the main planning considerations for a development of this nature and surrounding development context. The development would allow an appropriately scaled addition that is in keeping with the form of the host dwelling and is comparable in scale to similar forms of development found within the immediate area.
- 1.4 It will be concluded that the proposed development can be delivered in accordance with relevant development plan policy in an appropriate manner, meeting the needs of the appellant and without resulting in unacceptable harm to neighbour amenity or the character and appearance of the area. This view will be supported by a granted Lawful Development Certificate which has established that a permitted development scenario exists that would have a greater impact over and above that of the appeal proposal. A point of fact that has been disregarded by the LPA in their decision making resulting in an unnecessary appeal.

2.0 Site Description

- 2.1 The appeal site is located within Capel Ley a small cul-de-sac located to the south of Morelands Road in Purbrook. The property itself is a semi-detached bungalow and forms part of a matching hipped roof pair of properties when viewed from the road. The dwelling is finished in brick and with concrete tiles. To the rear the property has been extended by the addition of a single storey flat roof extension and conservatory.

Figure 1 – Aerial Photo of the appeal site and surrounding area



33 Shillinglee



42 Shillinglee

Examples of dormer roof extensions in the immediate area.

Figure 2: Detailed aerial view of the appeal site



2.2 The figure 1 aerial photo provides an illustrative view of the appeal site and surrounding area. As discussed within the appeal statement the area is largely residential and comprises of high-density housing of varying architectural scale and design, with a mix of roof forms and single and two storey dwellings, both the figure 1 and figure 2 images support this summary.

2.3 It is evident to see from the image that plot size varies but the residential development around the appeal site is high density. When viewing the photos in relation to the appeal site and the proposed development it is difficult to assert that the extension is a disproportionate addition or excessive in scale. It is also unreasonable to conclude that it would be harmful to character or that it would result in harm to neighbour amenity. If anything, the figure 2 image demonstrates that the proposal is very much in keeping with the general form and pattern of development in the immediate area and maintains accepted and existing distances between neighbours.

3.0 Proposal

- 3.1 Planning permission is sought to demolish the existing conservatory and erect a single storey extension with low pitched roof.
- 3.2 The rear extension would be sited 450mm in from the adjoining shared boundary with 1 Capel Ley. The height of the extension at the boundary would be 2.1m. The roof will then pitch away from the shared boundary reaching 2.5m in height when it is 1.3m from the boundary and 3m in height when it is 2.8m in from the shared boundary.
- 3.3 The roof of the existing dwelling would be altered to create a barn-hipped roof in place of the existing hipped roof with the inclusion of two front facing roof lights.
- 3.4 A flat roofed dormer window would be inserted to the rear and would extend into part of the flat roof of the existing single storey extension to meet the requirements of the appellants' growing family.
- 3.5 An illustrative view of the development as proposed is provided in figure 3 below.

4.0 Relevant Planning History

- 4.1 APP/19/00344 - Application for Certificate of Lawfulness relating to proposed loft conversion and hip to gable extension, insertion of two rooflights in the front roof slope, and erection of outbuilding. Permitted 23/05/2019
Full plans and the decision notice for the LDC application have been provided as Appendix A for comparison.
- 4.2 APP/18/01249 - Single storey rear extension, hip to gable enlargement and insertion of rear dormer window. Refused 15/02/2019
- 4.3 02/67272/000 - Construction of conservatory to rear, Permitted 30/05/2002

5.0 Relevant Planning Policy

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, in determination of planning applications decisions are made in accordance with the development plan unless material considerations indicate otherwise.

5.2 National Planning Policy Framework 2019:

The National Planning Policy Framework (NPPF) establishes a presumption in favour of sustainable development.

5.3 The NPPF makes clear that regard must be had to the document as a whole in determining what the Government's view of sustainable development means in practice. It promotes the effective use of land through the re-use of previously developed land.

5.4 Paragraph 130 states *"where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development."*

5.5 Havant Borough Core Strategy 2011

Policy CS16 – High Quality Design

"Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and relax. All development should demonstrate that its design:

1. Responds to, draws inspiration from and respects local context and:

a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site;

b) Integrates with existing local landscape features, promotes wildlife and biodiversity and/or applies characteristics of the local area into the design of a scheme wherever possible to create variety and interest;

c) Uses the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors;

d) Is well connected to and integrates with the immediate local area and the wider area by linking to existing pedestrian and cycle routes and encouraging people to use public transport where possible; and

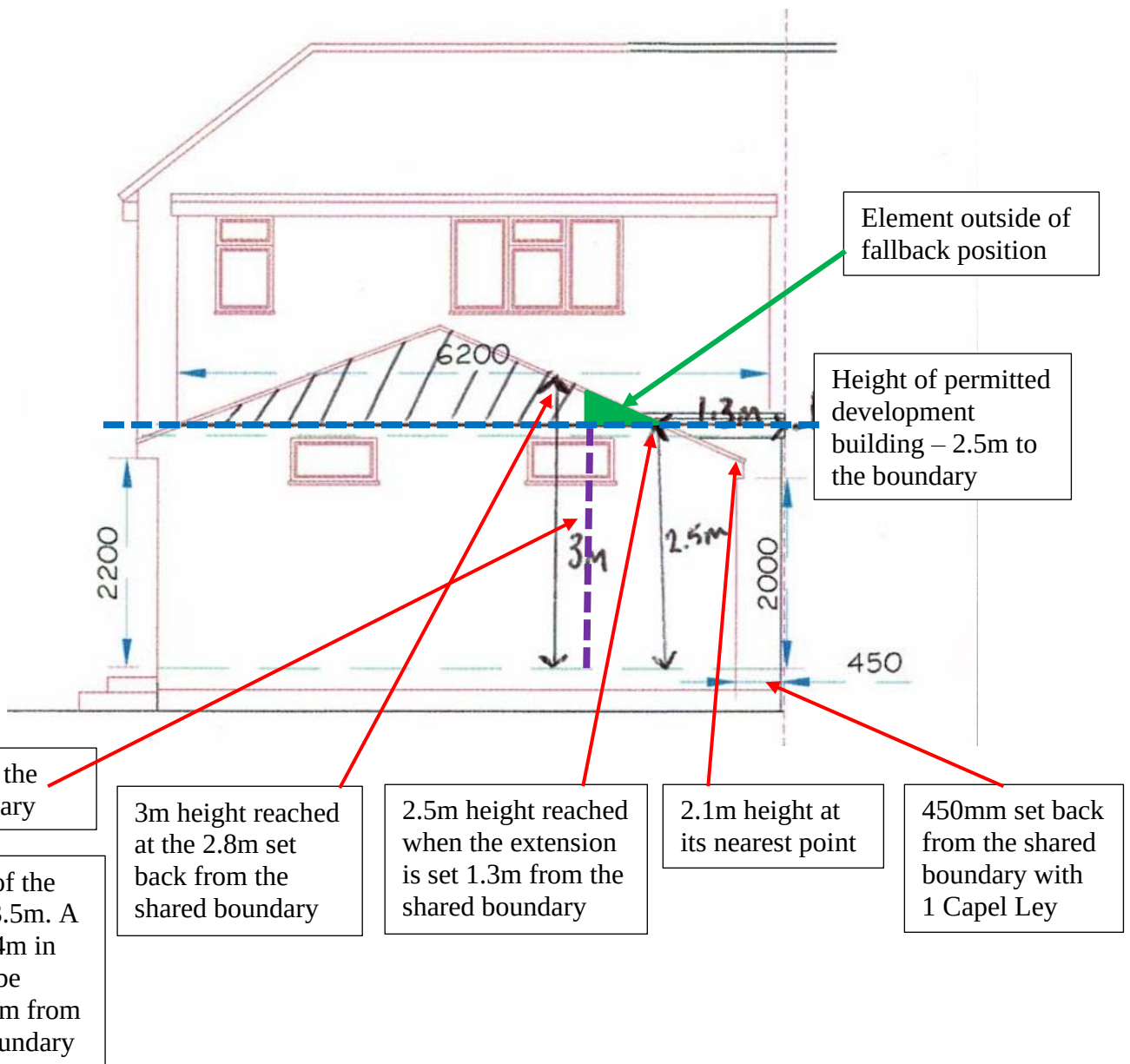
e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.”

- 5.6 It is contended that the development as proposed has had full regard to the policy framework for this type of proposal. The development would be of an acceptable design, in-keeping with the host dwelling and the prevailing varied character and appearance of the area. Further the development has full regard to the impact it would have on neighbour amenity. A view supported by the baseline assessment of the approved Lawful Development Certificate APP/19/00344 (Appendix 1) and submitted as valid ‘fallback’ position for the appeal proposal.

6.0 Evidence submitted to the LPA during the application assessment

- 6.1 Appendix 2 provides a series of communications with the LPA that indicate the unreasonable length of time taken to deal with the planning application. Initial officer assessments were positive with the only concerns raised in respect of the single storey extension. At no point was further concern raised by the LPA in relation to the rear dormer window or hip to gable enlargement.
- 6.2 Having visited the site on several occasions the appellant was asked to move the extension off of the boundary in line with the existing extension (450mm). Amended plans were submitted to this effect. The LPA thereafter insisted on a further set back of 1m from the shared boundary. It was highlighted that the current proposal did not reach 2.5m in height until it got to 1.3m in from the shared boundary, a view ignored by the LPA in the consideration and determination of the application.
- 6.3 Having submitted the illustrated proposal of the development, figure 3, the following email communication was submitted emphasising the comparison between the proposal and the LDC and the improvements made with the appeal proposal (provided in full within the Appendix 2 documents):

Figure 3: Illustrated view of the proposal against the LDC approval



6.4 Email to Case Officer

"I have seen David's comments, but it is important that he notes that the LDC has granted a higher and taller building along the boundary, compared to that proposed, and now amended.

The LDC shows a 2.5m flat roofed building along the boundary at the same depth as the extension proposed. The proposed extension only gets to 2.5m in height when it is 1.3m from the shared boundary. It reaches 3m in height when it reaches 2.8m from the shared boundary. Class E allows for a 2.5m high structure to the boundary and a 4m high structure 2m from the boundary so in both instances this extension would be better than both PD fall back positions.

The attached marked plan shows the element that needs to be considered over and above the 'fall back' position hatched black. Of significance is the green line which shows the PD extension, higher and closer to the shared boundary. As mentioned above the 2.5m height is not reached until you get 1.3m in from the boundary. 3m it reached at 2.8m. Both of these form part of the 'fallback' assessment and need to be considered and balanced by the LPA in favour of the application.

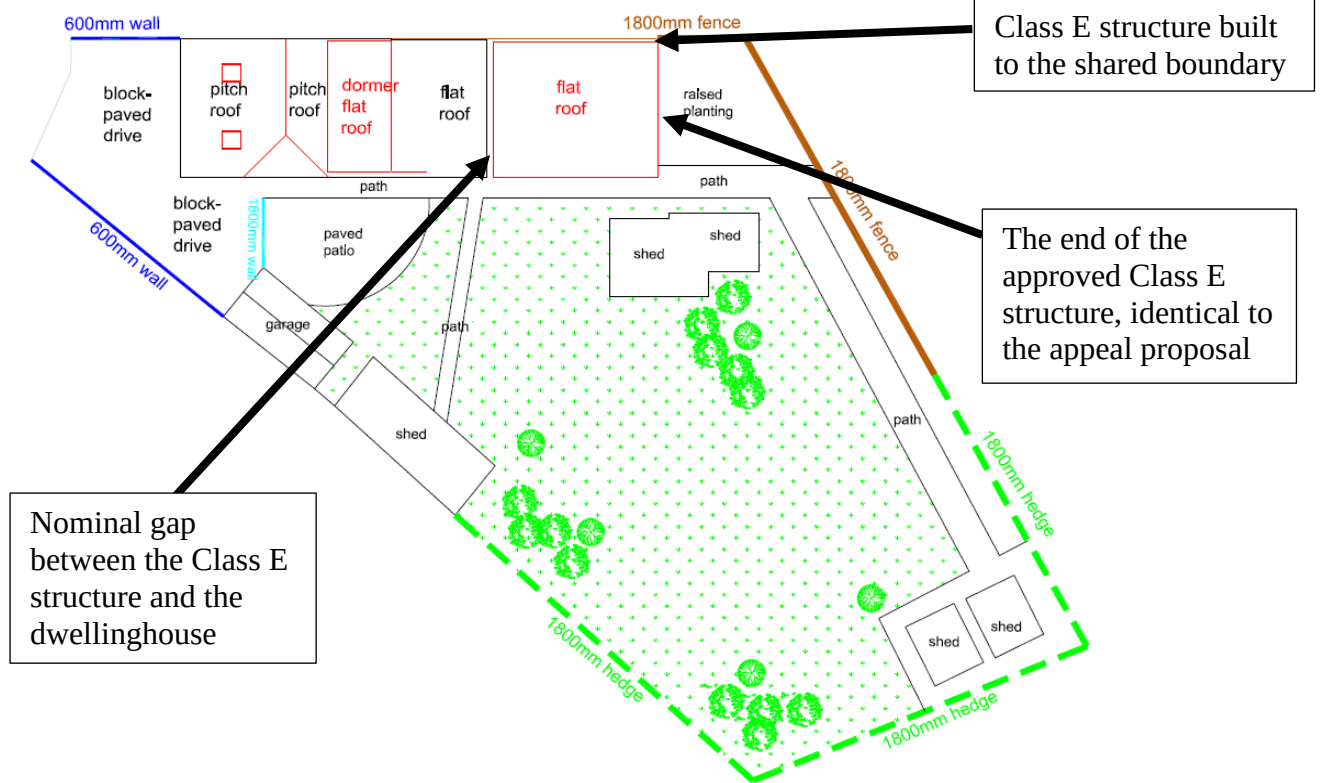
It is my view that the amendments submitted and to be considered as part of the application offer an improved development to the Class E position confirmed by the LDC. Failure to ignore the LDC and 'fallback' position would in my opinion demonstrate unreasonable behaviour on the part of the LPA and would result in an application for costs at appeal."

- 6.5 Figure 3 clearly illustrates that a Class E development would have a greater impact on the adjoining neighbour of 1 Capel Ley than the appeal proposal. The approved LDC allows a 2.5m high structure to be erected to the boundary. The appeal proposal is 2.1m in height and positioned 450mm from the boundary. As illustrated the 2.5m height is not in fact reached until the extension is set 1.3m from the shared boundary. Against this it would be possible to erect a Class E structure up to 4m in height, provided it is set 2m from the shared boundary. The appeal proposal is in fact 3.5m in height. The green triangle shown on figure 3 shows the only element that would fall outside of both 'fallback' examples. It is contended that this clearly demonstrates that the development would not be harmful to neighbour amenity when assessed against the potential alternatives.

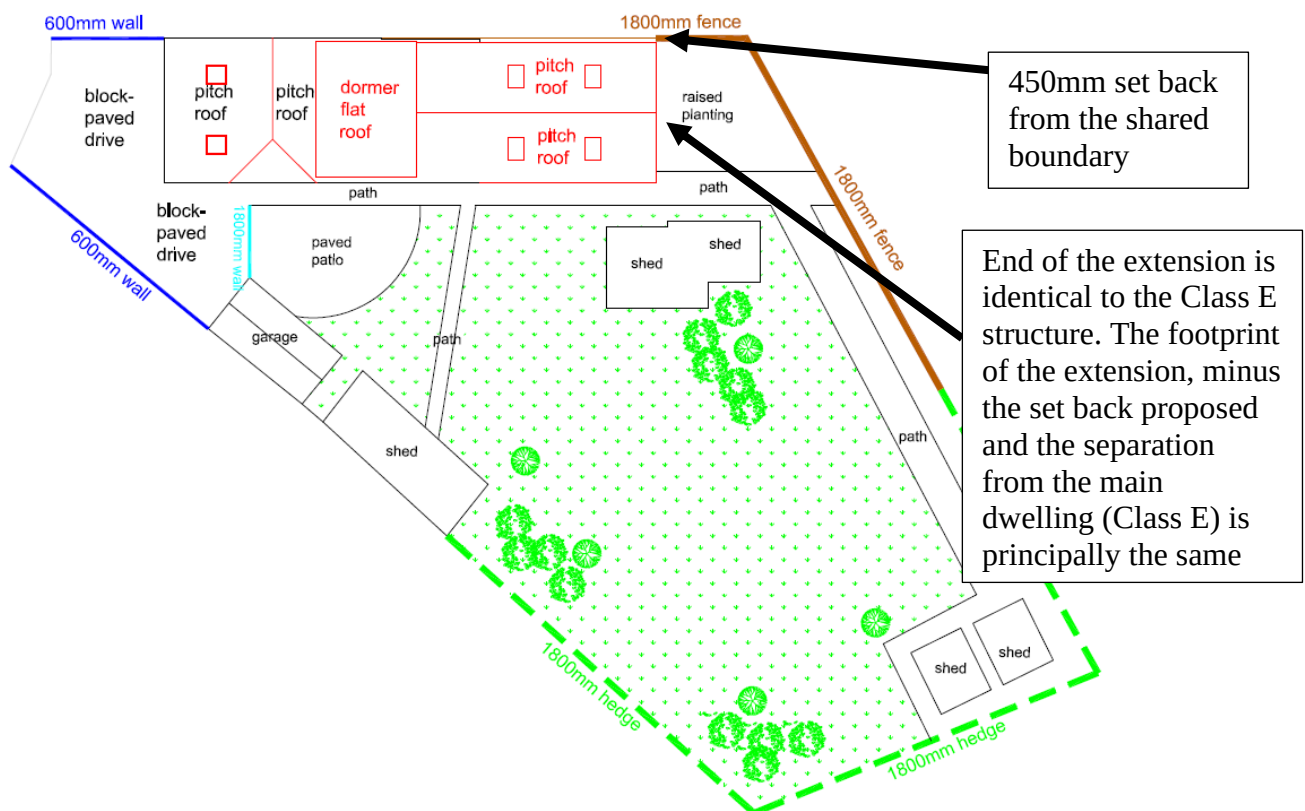
7.0 Appellant Assessment

- 7.1 The appeal seeks approval to demolish the existing conservatory and erect a single storey extension with low pitched roof. In addition, the roof of the existing dwelling would be altered to create a barn-hipped roof in place of the existing hipped roof and to insert a rear facing dormer window.
- 7.2 This planning application is a resubmission following the issue of a Lawful Development Certificate from Havant Borough Council (Ref: APP/19/00344) for a hip to gable enlargement flat roofed rear dormer window and single storey detached outbuilding to the rear of the dwelling (Appendix 1).
- 7.3 The established permitted development constitutes an accepted 'fallback' position and as such this proposed development must be assessed and compared against the Lawful Development Certificate.
- 7.4 The principle differences between the LDC approval and this proposal have been illustrated in figure 3. The following figure 4 and 5 examples show the site comparisons

Figure 4 Approved LDC Layout Plan



Proposed Layout



- 7.5 In respect of the single storey rear extension it is accepted that it is deep, full regard therefore has been given to its height and scale and the relationship the extension would have to the adjoining neighbour. The roof and eaves height have been carefully designed so that it is only nominally higher than 2 metres (the height that could be achieved by a boundary fence). The roof of the extension retains a shallow pitch that moves immediately into the appeal property. The extension is also partially set into the ground and off of the shared boundary of the appeal site, application property, the land being raised at the boundary, ensuring that collectively the height and scale of the extension at the boundary is kept to a minimum and is commensurate with the height of a boundary fence.
- 7.6 It is pertinent to note that the approved LDC extension is in fact higher along the shared boundary at 2.5m in height. The proposal therefore seeks a different roof form, with reduced eaves level along the boundary and to join the extension to the dwelling, a nominal change and increase to the LDC approval and one that does not in itself cause harm to neighbour amenity.
- 7.7 In addition to the above regard has also been given to the depth of the neighbour's flat roof extension. The depth of the appeal extension is therefore not excessive when considered against this baseline, with no habitable windows affected due to the design and low eaves and roof height as detailed above.
- 7.8 The result is a rear extension that does not result in unacceptable harm by way of overbearing effect, overshadowing or loss of light to the adjoining neighbour, especially when considered against the backdrop of the LDC approval. The development therefore offers a clear improvement to the built relationship that could be achieved under the LDC development.
- 7.9 The final element would be the creation of a rear dormer window, which is commonplace in the immediate area and would retain a traditional and established outlook between neighbours, only overlooking the furthest elements of the rear gardens of neighbours. This is further aided by the screening afforded to adjoining neighbour 1 Capel Ley by its existing single storey rear extension and the screening and separation distances between the appeal property and the dwellings to the rear, in excess of 22m. This part of the development would therefore also ensure that neighbour amenity is suitably protected with no unacceptable harm created.

- 7.10 Again, the principle of a dormer window and hip to gable enlargement has been accepted and granted by the LDC approval. The principle change is the modest increase in depth over a small section of the single storey rear extension.
- 7.11 Full regard has been given to the character and appearance of the area and the fact that the development would still retain a significant garden area for the appeal site. It is maintained that the development would accord with the varied residential development surrounding the site and would not appear overly large, incongruous or out of keeping. In fact, the changes visible from the public domain; namely the hip to gable enlargement, can be achieved under permitted development entitlement (see Appendix 1).
- 7.12 The development would not therefore result in harm to neighbour amenity by way of overbearing effect, overshadowing, loss of light or loss of privacy and would retain the existing residential character of the area. The development would therefore comply with the relevant policies of the development plan, in particular policy CS16 of the Core Strategy, with any other harm or conflict clearly outweighed by the established LDC.

8.0 **'Fallback' Position**

- 8.1 An existing planning permission **permitted development rights** and the existing use of a site are all examples of possible fall-back options that developers may reasonably ask a local planning authority to take into account when deciding whether or not to grant planning permission. Often, especially when the planning authority is seeking to refuse permission, the question arises as to whether the 'fallback' position that is being put forward is a genuine fall back that qualifies as a material planning consideration.
- 8.2 The case of Zurich Assurance v North Lincolnshire Council involved a challenge by Zurich, the owners of much of the retail centre of Scunthorpe, to a decision by North Lincolnshire to grant planning permission for an out-of-town retail development on an existing garden centre site. One of the grounds of Zurich's challenge was that the Council had wrongly taken into account the potential for a 'fallback' open retail scheme. This 'fallback' was claimed to arise because the garden centre had, for many years, sold a wider range of goods than was permitted by the conditions imposed on its planning permission.

8.3 While Zurich sought to argue that the committee should have been advised that they could only take a 'fallback' into account if it were a realistic possibility, the Court rejected this; finding that **the fall back does not have to be probable or even have a high chance of occurring**. Instead the Court held that, in order to be a material consideration, **a 'fallback' only has to have "more than a merely theoretical prospect"**. While the likelihood of the 'fallback' occurring may affect the weight to be attached to it, the Court did not feel it affected its status as a material planning consideration.

8.4 Lindblom LJ confirmed the legal considerations in determining the materiality of a 'fallback' position as a planning judgement were:

- the basic principle is that for a prospect to be a "real prospect", it does not have to be probable or likely: **a possibility will suffice**.

9.0 **Summary**

9.1 Having regard to the permitted development comparison against the appeal proposal it is important to accept the similarities and differences between the two.

9.2 **Similarities:**

- The front elevation would remain the same. Two rooflights and a hip to barn hip gable enlargement;
- Flat roofed rear dormer window;
- The single storey extension would have a similar footprint and the same depth.

9.3 **Differences:**

- The flat roofed dormer extends further out onto the roof of the single storey extension to create the required living space for the appellants' growing family;
- The appeal single storey extension is set off of the boundary by 450mm and has a lower roof form along and from the shared boundary.

9.4 It is noted within the officer report that the LPA claims that the use of the LDC building would be different to the appeal extension. However, the LPA has not argued harm by reason of use within the decision notice, the harm referred to is from the built form itself. It is this comparison that is considered relevant and it is this built relationship that the appeal statement has focussed on.

9.5 In respect of the uses between the two it is maintained that they are both residential areas and would be comparable whether or not the use is an extension or Class E structure and would not result in a marked difference in respect of impact on neighbour amenity.

10.0 Conclusion:

10.1 Having considered all of the issues surrounding this appeal and the reasons for refusal the appellant contends that the appeal proposal has been appropriately considered and designed. The development accords with the relevant criteria of Local Plan Policy and the principle objectives of the NPPF in terms of sustainability, originality and initiative; with the development appropriate to and in keeping with the character and appearance of the host dwelling, size of plot and the immediate context and character of the area. Further the extended dwelling pays proper regard to neighbouring dwellings and will ensure that neighbour amenity is protected; particularly in relation to overlooking, loss of privacy, overbearing effect, overshadowing and loss of light. An assessment made against the backdrop of an established and more harmful permitted development proposal.

10.2 Therefore having regard to the above information and all relevant material planning considerations the appellant respectfully requests that the Inspector allows this appeal and grants a full award of costs following the LPA's unreasonable behaviour in refusing planning permission resulting in an unnecessary appeal.