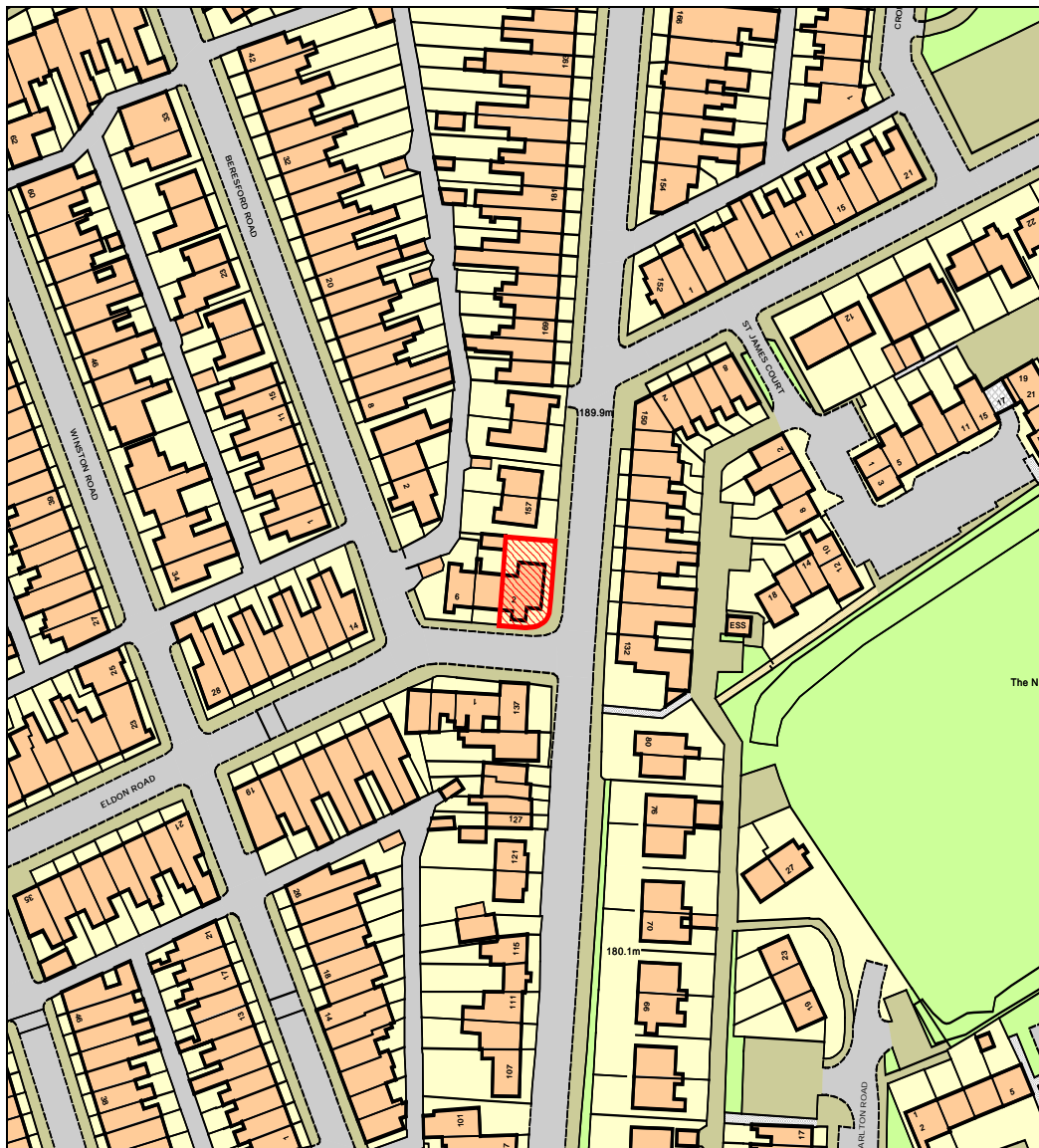


**Proposed development: Full Planning Application (Retrospective) for Retention of single storey rear extension with a decrease in height of 150mm**

**Site address:  
2 Eldon Road  
Blackburn  
BB1 8BE**

**Applicant: Mr Sajid Ibrahim**

**Ward: Shear Brow & Corporation Park  
Councillors:  
Cllr Hussain Akhtar  
Cllr Suleman Khonat  
Cllr Zainab Rawat**



## **1.0 SUMMARY OF RECOMMENDATION**

1.1 Approve subject to the recommended conditions.

## **2.0 KEY ISSUES**

2.1 This planning application is presented to Committee through the Chair Referral scheme, as a result of the land ownership dispute between the owner of 2 Eldon Road and the owners of 157 Shear Brow, and the objections received from the owners of No.157 Shear Brow.

2.2 Due to the receipt of the neighbour objection from the owners of 157 Shear Brow which raise both land ownership issues and residential amenity issues, as summarised at paragraph 6.1, below, the key issues to be addressed are as follows:

- The impact of the development upon the character and appearance of the surrounding area
- The impact of the retrospective development on the amenity of nearby residents; and,
- The impact the proposed development will have on the existing street parking

## **3.0 RATIONALE**

### **3.1 Site and Surroundings**

3.1.1 The application site is a red brick end terrace property located on a corner plot at the junction of Eldon Road and Shear Brow.

3.1.2 The Principal Elevation of the property faces on to Eldon Road with the gable elevation facing Shear Brow. The rear north facing elevation of the dwelling faces the gable of no. 157 Shear Brow. The rear boundary of the application site is the residential curtilage and the gable wall of this neighbouring property.

3.1.3 Notwithstanding the extension currently under consideration, which has been erected at the property, the property has been subject to a two-storey side extension, a front porch and rear mono-pitch kitchen extension. All these additions are present.

3.1.4 The property also has a vehicular entrance from Shear Brow which is secured by a roller shutter door built in to the roadside boundary of the site.

### **3.2 Proposed Development**

3.2.1 A previous retrospective planning application was made for the existing extension in February 2019 under LPA Ref: 10/19/0107. This application was subsequently withdrawn over concerns the local planning authority raised regarding the dispute over the land ownership boundary and loss of amenity to the neighbouring property, 157 Shear Brow.

- 3.2.2 The application before the Committee offers minor changes to this withdrawn scheme, including a small reduction in the height of the extension present and a new brick faced rear and side walls. It also offers sufficient evidence to satisfy the Council's Legal Department that the Certificate 'A' accompanying the application is correct for the purposes of determining this planning application. The application submitted an independent Boundary Report prepared by Thomas V Shaw Ltd. Members should note that the Council does not arbitrate on land ownership disputes.
- 3.2.3 Retrospective permission is sought for a single storey extension to the rear of the property with a flat parapet roof with roof lantern, albeit with the overall roof height dropped by 150mm.
- 3.2.4 The extension sits aside the previous kitchen extension and projects from the rear elevation in an 'L' shape by approximately 7.6m. The widest part of the extension is the end closest to 157 Shear Brow. This measures approximately 6.35m. The height of the proposed altered extension is to be approximately 3.0 metres, 0.15m lower than the extension as built, with the glass roof lantern projecting an additional 400mm.
- 3.2.5 The extension is constructed in facing brick to the elevations facing Shear Brow. The side of the extension closest to No. 4 Eldon Road and the rear of the extension close to No. 157 Shear Brow are both finished in concrete block. The drawings indicate these elevations are to be faced with matching brick.

### **3.3 Development Plan**

- 3.3.1 Section 38(6) of the Planning and Compulsory Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise.
- 3.3.2 Blackburn with Darwen Borough Local Plan Part 2: Site Allocations Development Management Policies (December 2015)
- Policy 8: Development and People  
Policy 10: Accessibility and Transport.  
Policy 11: Design
- 3.3.3 Residential Design Guide Supplementary Planning Document Revised Edition (September 2012)
- RES E1: Materials  
RES E7 Rear extensions

### **3.4 Other Material Planning Considerations**

- 3.4.1 The most relevant national policy and guidance is contained within:
- National Planning Policy Framework, updated February 2019
  - Planning Practice Guidance, updated March 2019
- 3.4.2 The Legislation relevant to the proposals is as follows:

- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004
- The Crime and Disorder Act 1998
- Conservation of Habitats and Species Regulations 2017

### 3.5 Assessment

#### Design and visual amenity

- 3.5.1 Local Plan part 2 Policy 11 requires all new development to “*present a good standard of design and will be expected to:*
- i) Demonstrate an understanding of the wider context; and,*
- ii) Make a positive contribution to the local area.*
- 3.5.2 The extension is somewhat unusual in its inverted ‘L’ shaped design. It is constructed of brick and has a flat parapet roof with glass roof lantern.
- 3.5.3 When viewing the proposals from inside the site, the height of the extension exceeds that of the single storey kitchen extension which has a mono-pitch roof by approximately 200mm. This appears somewhat discordant.
- 3.5.4 Due to the existing boundary fencing and roller shutter garage door; there are only partial views of the rear extension from Shear Brow. The visual impact of the extension is therefore localised and is mainly seen when approaching the property from Shear Brow when travelling downhill in a southerly direction, where the corner of the extension is seen from the immediate street scene.
- 3.5.5 It is noted that the brick used in the construction of the extension does not match the brickwork of the original property nor the kitchen extension, however, given there are no mid-long range views of the extension there is minimal harm to the street scene.
- 3.5.6 Members should note that the external faces of the extension on the shared boundaries of Nos. 4 Eldon Road and 157 Shear Brow are not finished and are currently concrete block. The submitted drawings indicate these will be faced with matching brick. Should Members be minded to approve this retrospective application, this proposed finishing should be completed and this can be secured by the recommended condition. Members should note that such matters can usually be undertaken within 3 months of any decision, however, given the land ownership dispute between the applicant and the owners of 157 Shear Brow, a more realistic timeframe of 6 months for the applicant to address the party wall issues is considered to be a more realistic timeframe for the finishing works to be undertaken.
- 3.5.7 Subject to the above recommended condition, the retrospective proposals are considered to be acceptable from a design and visual amenity perspective.

## Residential Amenity

- 3.5.8 Local Plan Part 2, Policy 8ii) requires new development to “*secure a satisfactory level of amenity and safety for surrounding uses and for occupants or users of the development itself, with reference to noise, vibration, odour, light, dust, other pollution or nuisance, privacy / overlooking, and the relationship between buildings.*”
- 3.5.9 The extension under consideration abuts a rear single storey extension and the side boundary of No. 4 Eldon Road and is located within 2.0 metres of the gable elevation of No. 157 Shear Brow.
- 3.5.10 In respect of the impact on the occupiers of 4 Eldon Road, the extension at the application site sits along the shared boundary of this property. In addition, this property has a single storey rear porch extension close to the boundary of the extension and therefore, given a porch is not a habitable room the extension causes no significant harm to these neighbours.
- 3.5.11 In respect of the impact on the occupiers of No.157 Shear Brow, this property is located to the north of the site and is within 2.0 metres of the extension being considered. A ground floor window exists which forms a secondary window to this neighbours kitchen-diner room.
- 3.5.12 The agents acting on behalf of the owners of 157 Shear Brow assert that the south facing window is the only window serving the applicants kitchen-diner. The case officer has re-visited the neighbouring property, and confirms it was evident that the kitchen-diner is served by two windows, the south facing window on the gable, and a larger window on the rear west facing rear elevation. As this is the case, it is considered that the occupier of No.157 Shear Brow will not suffer from a significant loss of light to their kitchen-diner.
- 3.5.13 The representation made also advises that the extension, which is within 2 metres of a south-facing window, adversely affects the neighbours outlook from their kitchen-diner. At this affected window the neighbours’ kitchen sink exists. The existing outlook from this window is towards the rear elevations of the properties on Eldon Road. Members are advised that a fence/means of enclosure could be erected along the boundary up to a height of 2 metres from the ground on which it is erected under permitted development.
- 3.5.14 It is acknowledged that the extension has resulted in a loss of outlook from this window, however, in considering applications due consideration must be given to the permitted-development fall-back position when considering applications as the Courts have ruled on a number of occasions a fall-back position has material weight. Permitted Development allowances, as defined within the Town & Country Planning (General Permitted Development Order 2015, as amended, should thus be taken in to account.
- 3.5.15 Permitted Development allowances would allow the applicant to erect both an extension and an outbuilding up to this neighbouring boundary (taking into account other criteria) without the need for planning permission. Outbuildings, where they are within 2 metres of a boundary can be erected up to 2.5m high. The drawings indicate that the extension is approximately 2.90m high; therefore, Members have to assess the 400-500mm height difference in terms of the impact on the adjoining property.

3.5.16 No.157 Shear Brow is positioned at a slightly higher level than the application site. The drawings accompanying the application indicate that the height difference is approximately 600mm, thus showing the height of the extension to be approximately 2.4 metres. Therefore, whilst the overbearing impact of the extension on this window is fully recognised and Officers are sympathetic to the neighbour, the fall-back position must be taken in to account.

3.5.17 Due to the fall-back position and the fact that two windows serve the kitchen-diner, with the west facing window on the rear elevation of No.157 Shear Brow being the larger of the two and not affected by this extension, it is considered that that there are no strong grounds to justify resisting the application.

#### Highway Safety

3.5.18 The representation received states that the proposed extension results in an increase in on-street parking as the extension occupies space formerly used for parking purposes.

3.5.19 The Highway Authority acknowledges the representation made, however, considers that there are no strong highway safety reasons to warrant refusal of the application on this ground.

## **4.0 RECOMMENDATION**

### **4.01 Approve subject to:**

Conditions which relate to the following conditions:

- Facing of the external walling with materials to match the existing within 6 months of the date of permission.
- Development completed in accordance with submitted details/ drawing nos.

## **5.0 PLANNING HISTORY**

5.01 The following is a table of the sites planning history:

<b>APPLICATION NUMBER</b>	<b>DEVELOPMENT DESCRIPTION</b>	<b>DECISION</b>	<b>DATE</b>
10/19/107	Retention of single storey rear extension	Withdrawn	12/09/2019
10/17/1410	Proposed first floor rear extension over existing kitchen	Withdrawn	24/01/2018
10/02/0986	Erection of 2 storey side extension and rear dormer	Approved	02/01/2003
10/02/0354	Erection of two storey side extension and rear dormer	Refused	02/07/2002

## **6.0 CONSULTATIONS**

### Neighbour Representations

6.01 7 neighbours were consulted about the application. 1 letter of objection and 8 letters of support have been received.

6.02 The letter of objection is from the owner of 157 Shear Brow who raises the following concerns:

- The Applicant has undertaken unauthorised works within the boundary of no. 157 Shear Brow, including the removal of the neighbouring raised flower beds. Moreover, the proposed red facing brick to be added to the extension would involve further trespass and building work undertaken via our Client's property (no. 157 Shear Brow).
- The proposed extension leads to an unreasonable loss of residential amenity by virtue of outlook and an important source of light to our Client's kitchen-diner
- Contrary to the claims of the Agent, the proposed extension well exceeds any work which can be carried out under the provisions of Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development (England) Order 2015 (or previous Order). There is no fall-back position to be considered in the determination of the current application.
- The amount of development on site significantly exceeds the maximum amount of built development that can be accommodated without a harmful impact on local character
- Increase in on-street parking

6.03 The full objection letter, written on behalf of the neighbour by PWA Planning Planning Consultants is appended to this report for Members to consider.

**7.0 CONTACT OFFICER: Claire Booth MRTPI, Senior Planning Officer**

**8.0 DATE PREPARED: 03 January 2019**

## **9.0 SUMMARY OF REPRESENTATIONS**

### **Support - Sajid Bhola, 132 Shear Brow, Blackburn. Rec – 20/12/2019**

To Claire Booth and Gavin Prescott

We are happy with the planning application - Retention of single storey rear extension

As stated in my letter which was sent in October

We also don't have any issues with currant building Height at

2 Eldon Road

Blackburn

Yours faithfully

Sajid

---

### **Support - Ismail Mulla, 136 Shear Brow, Blackburn. Rec – 20/12/2019**

To Claire Booth and Gavin Prescott

We are happy with the planning application - Retention of single storey rear extension

We also don't have any issues with currant building Height at

2 Eldon Road

Blackburn

Reference: 10/19/0973

Ismail Mulla

136 Shear Brow

Blackburn

BB1 8DZ

Yours faithfully

Mr Mulla

---

### **Support - Altaf Ismail, 138 Shear Brow, Blackburn. Rec – 16/12/2019**

To Claire Booth

Gavin Prescott

I am happy with the planning application for no 2 Eldon Road which is accross the road from my house.

Retention of single storey rear extension.

I don't have any issues with the current building height.

NO NEED TO DECREASE THE BUILDING IN HEIGHT

Yours faithfully

Altaf ismail

---

### **Support - Ajit Vali, 4 Eldon Road, Blackburn. Rec – 13/12/2019**

Retention of single storey rear extension

Ref : 10/19/0973

FAO : Claire Booth - Gavin Prescott and Martin Kelly

We have No issues with the planning application

I am happy with the building extension

No problems with the current height

Ajit Vali

4 Eldon ROAD

---



Support - Yaqub Bhola, 132 Shear Brow, Blackburn. Rec – 06/11/2019

Full Planning Application (Retrospective) – Retention of single storey rear extension with a decrease in height of 1500mm

At  
2 Eldon Road  
Blackburn  
BB1 8BE

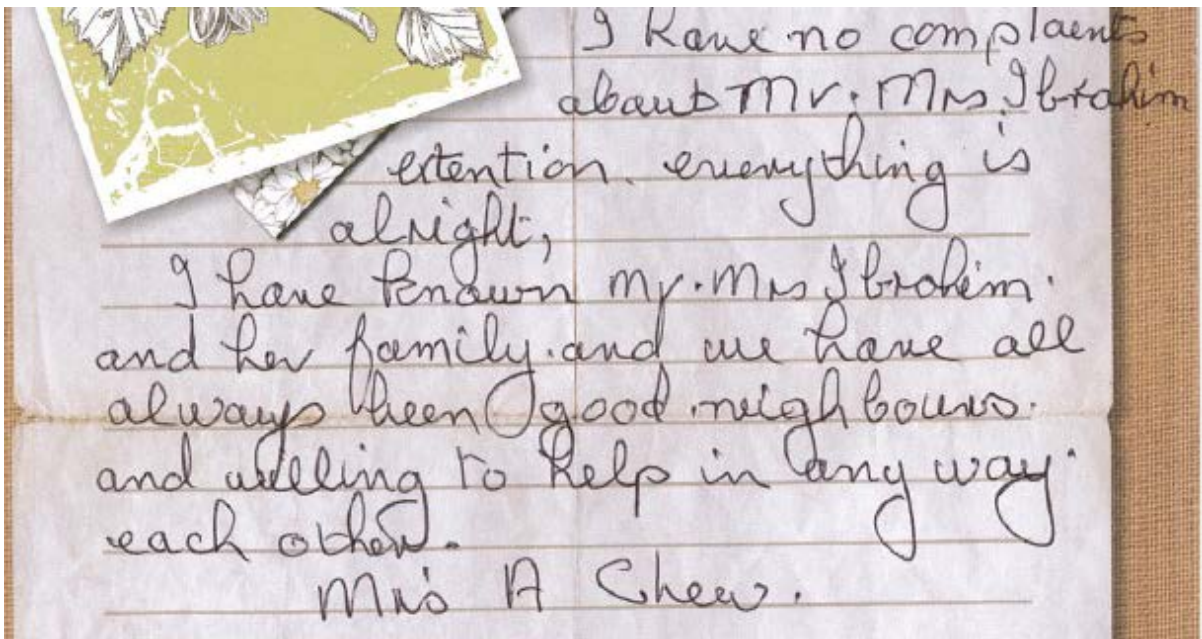
Dear Sir / Madam

I have No Concerns regarding the above application Ref : 10/19/0973.  
The Height is not an issue as well – You cannot see the extension from the road.

Yours faithfully,

---

Support - Mrs A Chew, 140 Shear Brow, Blackburn. Rec – 29/10/2019





Objection to LPA Ref: 10/19/0973

2 Eldon Road  
Blackburn  
BB1 8BE

Retention of single storey rear extension with a decrease in height of 1500mm

OBJECTION STATEMENT

November 2019



PWA Planning is a trading name of Paul Walton Associates Ltd.  
Registered in England and Wales no. 8605706. Registered Address:  
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www.pwaplanning.co.uk

# REPORT CONTROL

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Document	Objection Statement
Project	2 Eldon Road, Blackburn
Client	Mohsina Sadathlawala
Job Number	19-673
File storage	Z:\Client files\19-639 to 19-900\19-673 2 Eldon Road, Blackburn\4. Second Objection Letter

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## Document Checking

Primary Author:	Joe Davis		JD
Contributor:			
Reviewer:	Matthew Wyatt		MW

## Revision Status

Issue	Date	Status	Checked for issue
1	08/11/2019	Draft	Yes
2	11/11/2019	Final	Yes
3			
4			

# CONTENTS

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EXECUTIVE SUMMARY

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1 INTRODUCTION

---

2 SITE CONTEXT

---

3 LAND OWNERSHIP MATTERS

---

4 PLANNING POLICY

---

5 GROUNDS OF OBJECTION

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APPENDIX 1: COPY OF APPEAL DECISION APP/A2335/D/11/2154800

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## EXECUTIVE SUMMARY

PWA Planning has been instructed by Mrs. Mohsina Sadathlawala, to provide professional planning advice following the submission of a retrospective planning application that affects their property at no. 157 Shear Brow, Blackburn, BB1 8DZ. This Objection Statement has been prepared based on our findings.

Objections are raised on the following grounds:

- To erect the extension, the Applicant has undertaken unauthorised works within the boundary of no. 157 Shear Brow, including the removal of the neighbouring raised flower beds. Moreover, the proposed red facing brick to be added to the extension would involve further trespass and building work undertaken via our Client's property. The Applicant should have consequently submitted a full planning application (and not householder application) with the red edge increased to include the land within the boundary of the neighbouring property and serving formal notice on the owner of our Client.
- The development description states the extension is to be reduced in height by 1500mm (1.5 metres). This is clearly not reflected in the submitted plans. It has been assumed in this Objection Statement that the Applicant indeed meant a reduction in height by 150mm (15 centimetres). The application is therefore void, given the specific, incorrect reference to the height within the description of development.
- The proposed extension leads to an unreasonable loss of residential amenity by virtue of outlook and an important source of light to our Client's kitchen-diner. Contrary to the claims of the Agent, this is a habitable room and reference is made to an appeal decision which proves this to be the case.
- Contrary to the claims of the Agent, the proposed extension well exceeds any work which can be carried out under the provisions of Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development (England) Order

2015 (or previous Order). There is no fall-back position to be considered in the determination of the current application.

- The amount of development on site significantly exceeds the maximum amount of built development that can be accommodated without a harmful impact on local character.
- The proposed extension is likely to lead to an increase in on-street parking.

PWA Planning strongly believe that in its current form, the planning application is void and cannot be determined. Assuming that errors within the description of development and plans are eventually addressed, planning permission must nevertheless be refused due the resulting loss of residential amenity for the occupants of No. 157 Shear Brow, the impact on local character and appearance and increased pressure generated for on-street parking.

## /1 INTRODUCTION

- 1.1. PWA Planning is retained by Mrs. Mohsina Sadathlawala, who is the owner of the property at no. 157 Shear Brow, Blackburn, BB1 8DZ, to advise and progress a formal objection to the 'Retention of single storey rear extension with a decrease in height of 1500mm' at 2 Eldon Road, Blackburn, BB1 8BE (Ref: 10/19/0973).
- 1.2. The unauthorised works undertaken by or on behalf of the Applicant have caused the occupants great distress, having encroached onto and been works on their land without permission. The works have moreover resulted in a significant loss of residential amenity.
- 1.3. This Statement will provide further details regarding the application and site context, prevailing planning policies and set out grounds of objection. The Local Planning Authority (LPA) is strongly encouraged to refuse planning permission and pursue immediate enforcement action against the unauthorised development.

## /2 SITE CONTEXT

- 2.1. The householder planning application under LPA Ref: 10/19/0973 relates to no. 2 Eldon Road, Blackburn, BB1 8BE. The property is an end-terrace that fronts Eldon Road. To the rear is no. 157 Shear Brow.
- 2.2. The amount of built development at the planning application site has clearly been increased significantly in the past. Notwithstanding the current, proposed extension, the property has been subject to a two-storey side extension, a front porch and rear extension. The Council's online planning application search facility only shows that permission has only be approved for the side extension in January 2003 under LPA Ref: 10/02/0986.
- 2.3. By virtue of the location of an extension to a principle elevation, their height and the proximity to curtilage boundaries, these are unlikely to have been constructed under the provisions of Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development (England) Order 2015 (or previous Order). These elements are consequently worthy of further investigation by the LPA as a potential form of unauthorised development. Nevertheless, buildings erected within the site exceed 50% of the residential curtilage.
- 2.4. A previous retrospective planning application was made for the existing extension in February 2019 under LPA Ref: 10/19/0107. This application was subsequently withdrawn over concerns the LPA raised regarding the dispute over the land ownership boundary and losses of amenity to the neighbouring property owned by our Client at 157 Shear Brow. The application now been submitted offers minor changes to this withdrawn scheme, including a small reduction in the height of the extension and a new brick faced rear wall.
- 2.5. When measuring the submitted plans however, it is quickly apparent that the description of development is however massively incorrect, stating a proposed reduction in the height of the extension by 1500mm (1.5 metres) and the LPA is requested to urgently



address this matter. It is assumed that the Agent for the application was supposed to specify 150mm (15 centimetres).

- 2.6. Beyond the rear boundary of the planning application site is the residential curtilage and gable wall of the Objector's property at no. 157 Shear Brow. Before the Applicant entered their neighbour's land without authorisation to remove an area of landscaping (discussed further below), the dwelling was separated by fencing, an area of flower beds and a footway to the rear garden.
- 2.7. The gable wall of no. 157 Shear Brow (facing towards the proposed extension) features the only window serving the kitchen-diner for the property. This serves as the main source of natural light to the habitable room. As a south-facing opening, the daylight provides an important source of amenity for the occupants.
- 2.8. It is apparent that an outbuilding is also present to the rear of no. 4 Eldon Road, which is located to the east of the planning application site. This outbuilding is accessed via a back-street from Beresford Road.
- 2.9. It is worthy of note that the wider surroundings comprise mostly terraced residential properties. The vast majority of these do not benefit from private car parking spaces. Thus, there is already a high demand for on-street car parking in the locality, which generates a wider loss of amenity for many residents.

### /3 LAND OWNERSHIP MATTERS

- 3.1. The Applicant has provided a Boundary Report detailing the extent of the boundary between no. 157 Shear Brow and no. 2 Eldon Road. The report details the position of the boundary line based on a conveyance from 1937. The boundary dispute does not technically fall under the remit of planning, constituting instead a civil legal matter and it is understood that our Client has also enlisted the support of a solicitor to help resolve this matter. It is however very important for the application to acknowledge the trespassing which has occurred and development taken place on our Client's land without permission.
- 3.2. The submitted 'existing' and 'proposed' plans (Drawing no. 01 and PL01E) are inconsistent with the boundary line established within the Boundary Report, which runs across the very edge of the rear point of the extension compared with a gap which exists between the extension and boundary in the submitted plans. The plans are therefore prepared incorrectly and do not provide an accurate representation of the established boundary line between the properties. The additional area of land lies within the ownership of the occupants of no. 157 Shear Brow and no authorisation has been granted for their neighbour to construct within their curtilage.
- 3.3. Furthermore, the Applicant has undertaken work within the curtilage of no. 157 Shear Brow in order to construct the extension, which is not represented through the submitted plans. The works have included the removal of the existing boundary fence, the complete removal of their raised flower beds, replacement with hardstanding and the construction of a new boundary fence but in a different. No explanation is offered regarding these works and nor is there a denial within the submitted supporting information. However, it is assumed that works have been undertaken within the curtilage of no. 157 Shear Brow for structural reasons to facilitate the proposed extension.

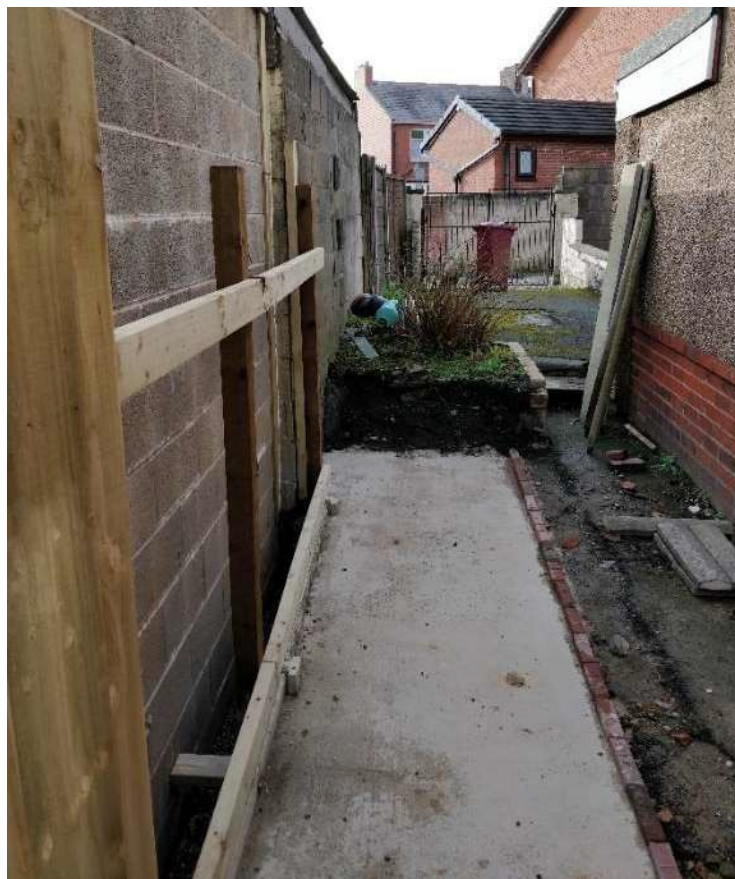


Figure 1: Remanence of the Flower Beds and Unauthorised Hardstanding

- 3.4. It is assumed that for the Applicant to install the proposed red brick facing and reduce the height, the Applicant will need to trespass onto our Client's land again to complete the development.
- 3.5. Notwithstanding the fact that the submitted plans are consequently inaccurate and do not truly reflect the development as built, the red edge of the site location plan should be extended to truly reflect that land affected by the development. This must include the area of replacement hardstanding shown in Figures 1 and 2.
- 3.6. It is not possible to submit a householder application which includes third party land (nor is it possible for the LPA to determine it). As such, the current application must be forcibly withdrawn by the LPA, with a 'full' application submitted and Certificate B served on the owners of no. 157 Shear Brow, as required through The Town and

Country Planning (Development Management Procedure) (England) Order 2015.  
Failure to undertake these actions will leave any decision open to Judicial Review.



Figure 2: Extent of Unauthorised Hardstanding Installed by the Applicant

3.7. In light of the above, the owners of no. 157 Shear Brow and PWA Planning do not see a way that the current application can be determined in its current form. Nor would the approval of the submitted plans grant consent for what has actually been constructed.

## /4 PLANNING POLICY

- 4.1. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that where making any determination under the Planning Acts, regard is to be had to the Development Plan. Determination shall be made in accordance with the plan unless material considerations indicate otherwise.
- 4.2. In this instance, relevant documents which form the statutory Development Plan for Blackburn with Darwen Borough Council comprise the Core Strategy (2011) (CS), the Local Plan Part 2: Site Allocations and Development Management Policies (2015) (SADMP) and the Residential Design Guide Supplementary Planning Document (2012) (SPD). The National Planning Policy Framework (2019) (the Framework) must also be recognised as a policy document which is relevant to all development proposals.
- 4.3. Also, given references made by the Agent to case law and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), it is relevant to run through relevant provisions for the extension of dwellings.

### Development Plan Policies

- 4.4. CS Policy CS16: Form and Design of New Development, sets out how the Council will require new development to be of a high standard of design, and to respect and reinforce local character. Particular attention must be paid to all of the following:
- i. Character
  - ii. Townscape
  - iii. Public realm
  - iv. Movement and legibility
  - v. Sustainability
  - vi. Diversity
  - vii. Colour

- 4.5. SADMP Policy 11: Design, expands upon each of the above criteria to ensure that new development proposals demonstrate an understanding of the wider context and makes a positive contribution to the local area.
- 4.6. Chapter 4 of the Residential Design Guide SPD focuses specifically upon extensions to existing dwellings; confirming how in determining planning applications, the Council will also assess (amongst other considerations):
- Any loss of privacy;
  - Overshadowing;
  - Overbearingness
  - Physical design and size of a structure and materials;
  - Loss of daylight or sunlight;
  - Highway issues; and
  - Character and distinctiveness
- 4.7. Under RES E1: Materials, it is expected that materials used in residential extensions match those used in the existing property.
- 4.8. Through RES E3: Separation Distances, it is stated that where windows of habitable rooms face a blank gable or wall with only windows to non-habitable rooms, the Council will normally expect a separation distance of no less than 13.5 metres to be maintained.
- 4.9. RES E5: Over Development, details that residential extensions that result in over the development of plots will not be acceptable. Extensions will only be considered acceptable in terms of Local Plan policy where they do not compromise the ability of the property to:
1. Function without impacting on neighbouring properties and infrastructure in the surrounding area.
  2. Meet its own servicing requirements in terms of:

- Bin storage
- Carrying out maintenance to the property
- Parking
- General use of outdoor space including drying of washing, storage of equipment and so on.

3. Safeguard the health of residents in respect of light and air.

4.10. RES E7: Rear Extensions, furthermore, details that any proposals for rear extensions to properties will be required to meet the following criteria:

- i. The extension is subordinate to the original house;
- ii. The design of the extension is in keeping with the existing property by virtue of:
  - Materials
  - Overall architectural style
  - Roof form and pitch
  - Size, proportion and position of openings
  - Fenestration details; and
- iii. The extension will not have an unacceptable impact on neighbours with respect to the separation distances outlined in the general requirements above.

4.11. RES E19: Extensions and Parking, also sets out that any proposals for extensions to properties which may affect the provision of parking within the property curtilage or generate a requirement for additional parking will be required to meet the following criteria:

- i. The development provides for adequate parking within the property curtilage with respect to the Council's adopted parking standards and will not result in an unacceptable increase in on street parking.

### **National Planning Policy Framework (2019) (The Framework)**

- 4.12. Chapter 12 of the Framework seeks the achievement of well-designed places. At Para 124 it states how:

*“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.*

- 4.13. Para 127 goes on to detail that planning decisions should ensure that developments (amongst other considerations):

- Will function well and add to the quality of the area;
- Are visually attractive as a result of good architecture and layout; and
- Create places that deliver a high standard of amenity for existing and future users.

- 4.14. The Framework goes on at Para 130 to confirm that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards in supplementary planning documents.

### **The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)**

- 4.15. Schedule 2, Part 1 of the GPDO details forms of permitted development that can occur (i.e. without the need for planning permission) within the curtilage of a dwelling house.



Under Class A (A.1) it is confirmed that the enlargement, improvement or other alteration of a dwelling house is not permitted if:

- (b) *as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);*
- (f) *subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—*
  - (i) *extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or*

4.16. A.1 (g) allows for the construction of larger extensions, subject to the owner applying for the Prior Approval of the local planning authority. The provisions do not however allow for this to be undertaken retrospectively.

4.17. Schedule 2, Part 2, A.1 allows for the construction of boundary walls and fences where the height does not exceed 2m above ground level.

#### **Relevant Appeal Decisions**

4.18. Supporting documentation submitted by the Agent claims that a kitchen-diner does not form a 'habitable room'. As such, it is implied that the LPA should attribute less material weight to the amenity of adjacent occupants. In doing so, the Agent references the Council's 'Residential Design Guide' (2012).

4.19. The Residential Design Guide however refers specifically to kitchens. In this instance the window affected serves a kitchen-diner which is an important area of habitable activity for the occupants. The LPA are therefore fully justified in assessing cases on their individual merits, with the term 'Guide' allowing scope for flexibility depending on site-specific circumstances.

4.20. Notwithstanding the Council's Residential Design Guide, Appendix 1 of this Statement provides a copy of Appeal Decision Ref: APP/A2335/D/11/2154800. The decision relates to a site that is outside of the Blackburn with Darwen Borough but relating to the potential impact of a proposed residential extension on neighbour amenity; in particular, the loss of outlook, light and overbearingness experienced from a window serving a kitchen-diner.

4.21. At Para 5 of the Decision Letter, the Inspector states:

*The proposal would impinge upon the enjoyment of the use of the ground floor kitchen diner, a habitable room in No.120 Broadway from which I was able to view the appeal site during my inspection; its window directly faces the north west side of the appeal dwelling.*

4.22. The conclusions of the Inspector represent an important material consideration which must be taken into account.

## /5 GROUNDS FOR OBJECTION

- 5.1. As explained above, works previously undertaken and proposed encroach onto third party land, with the removal of flowerbeds and replacement with hardstanding. The height of the proposed extension, as referenced in the description of development does not reflect that which is shown on the plans. The application is therefore invalid and void, and the LPA is encouraged to take action to ensure these matters are addressed.
- 5.2. Notwithstanding these critical matters, this Chapter demonstrates why planning permission should nevertheless be refused.

### **Revised Height Reduction**

- 5.3. The description of development states that the extension is to be reduced in height by 1500mm (1.5 metres), with the extension having a revised total height of 2930mm from ground level. No measurements are given on the existing heights of the extension, but when comparing the existing and proposed elevations, it is clear only a very small reduction has been made to the extension and not the 1500mm (1.5 metres) as claimed in the development description. The Applicant has therefore misdirected themselves and provided a false and misleading description of the proposed development. PWA Planning believe that the description of development is meant to read 150mm (15 centimetres).
- 5.4. The submitted section plans also provide misleading ground levels, indicating the extension lies at a significantly lower level than the neighbouring property at 157 Shear Brow. This gives one the impression that the proposed extension is less overbearing than is the case and acts to further mislead the LPA on the true scale of the proposed development in relation to the neighbouring property.

### Loss of Residential Amenity

- 5.5. The proposed extension has been constructed in proximity of the southern gable wall of no. 157 Shear Brow. This features a ground floor window that serves the kitchen-diner.
- 5.6. The submitted Cover Letter which accompanies the application states a kitchen is not a habitable room, referring to the Council's Residential Design Guide. This document however makes no reference to kitchen-diners being a non-habitable room. Nor does it prevent the LPA from assessing the impact of proposals on their individual merits.
- 5.7. The kitchen-diner serving no. 157 Shear Brow in fact forms an active part of the dwelling and is in regular use by the occupier's family. Thus, it should be considered a 'habitable room'.
- 5.8. Further support is offered through a relevant Appeal Decision, Ref: APP/12335/D/11/2154800, a copy of which is provided at Appendix 1 of this Statement. This was dismissed on the grounds that *"the proposal would impinge upon the enjoyment of the use of the ground floor kitchen diner, a habitable room"*, as is the case in this similar proposal.
- 5.9. The window is moreover the only opening that serves the kitchen-diner and given its position facing towards the sun, is an important source of natural light for the occupants.

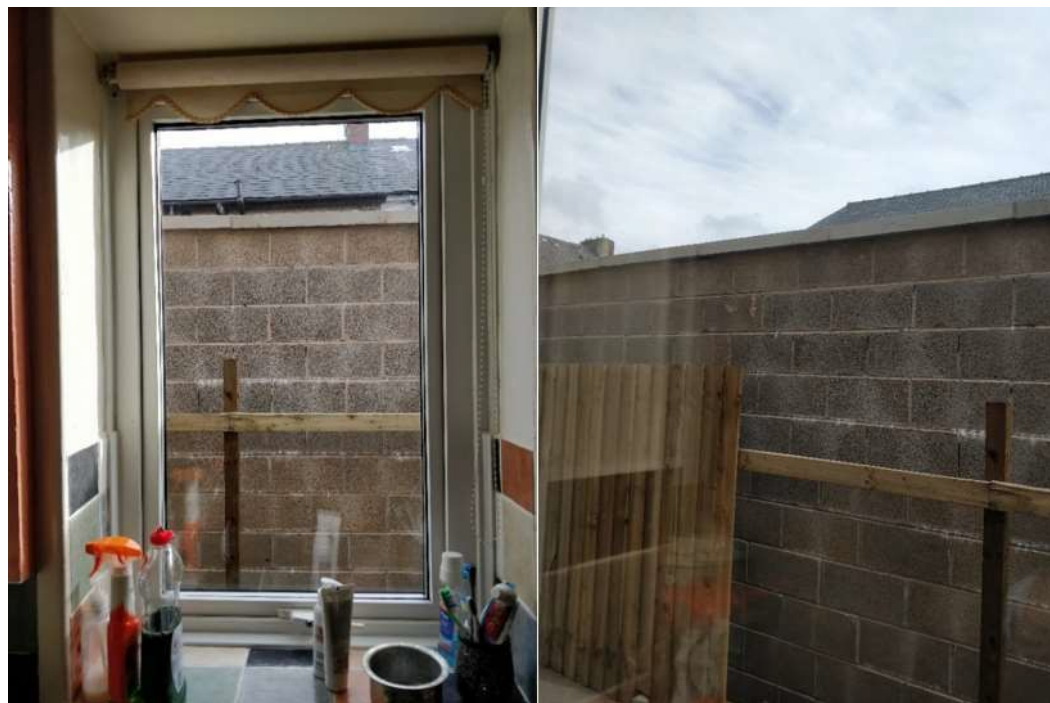


Figure 1: Photographs of the Extension from the Kitchen Window of no. 157 Shear Brow

- 5.10. The impact of the extension on this opening as a source of amenity can be clearly seen from the above photographs, taken from inside of the property. The small reduction in the height of the extension, as now proposed, would have a negligible improvement on neighbour amenity.
- 5.11. This is still unacceptable for our Client, with the reduction offered considered merely a token amendment to the design (assuming that the reference to 1500mm in the description of development is incorrect). As proposed, the extension will continue to generate an unreasonable loss of amenity by virtue of losses of natural light, overbearingness and outlook towards a tall, blank wall which is well above the height of a standard fence. Indeed, the position of the extension is well below the recommended separation distance of 13.5 metres, set out under RES E3 of the Residential Design Guide SPD.
- 5.12. The Applicant proposes to complete the current breeze-block wall with a brick finish. However, this would involve further works on our Clients land, which is not acceptable.

5.13. Whilst it has not been possible for PWA Planning to access no. 4 Eldon Road, it is noted that this property already has an outbuilding to the rear. Given the relatively small nature of the residential curtilage, it is thus expected that the occupants of this property will also experience a loss of amenity and overbearingness due the sense of enclosure that the extension generates.

### **Design and Over Development**

5.14. Chapter 2, above, explains that notwithstanding the current proposal, the application site has already been subject to several extensions, including a two-storey side extension and single storey extensions to the front and rear of the property. Although not represented through the submitted site-location plan, it is clearly the largest in terms of the amount of built development within the terrace of dwellings from nos. 2–6 Eldon Road. Extensions cover well over 50% of the residential curtilage.

5.15. Given the size of the residential curtilage and the relationship with the surrounding built environment, it is the opinion of PWA Planning that the proposed extension now significantly exceeds the maximum amount of built development that can be accommodated without a harmful impact on local character. The extension as built has led to the overdevelopment of the site, with the minimal changes now put forward having no real impact on reducing the impact.

5.16. The design of the extension is also bland, particularly to the north, which affects the amenity of the occupants of no. 157 Shear Brow. It is perceived that the extension should feature a broader range of materials, rather than just red-brick, to complement the existing property and enhance local character.

### **Permitted Development**

5.17. The Cover Letter submitted as part of the application makes reference to various works which could be carried out Permitted Development (PD). The points raised are however incorrect and misleading.

- 5.18. Firstly, the Applicant refers to the ability to build a 2-metre-high wall or fence at the boundary of the site. However, as per Schedule 2, Part 2, A.1 of the GPDO, this must be measured from ground level at the boundary. The proposed section drawings show the wall of the proposed extension at a height of 2.93m, which is massively above that of any boundary wall that could be erected in this location under permitted development. Moreover, the proposal is to erect an extension to the property and not a boundary wall. It should be treated as such.
- 5.19. The submitted Cover Letter also refers to the ability of the Client to build an outbuilding under PD up to the boundary wall with a maximum height of 2.5m. As above, this is irrelevant given that the application relates to an extension to a home and not an outbuilding. Schedule 2, Part 1, Class A of the GPDO applies and not Class E.
- 5.20. The provisions of Class E nevertheless do not allow outbuildings where the total area of ground covered by existing buildings exceeds 50% of the total area of the curtilage; as is the present case. Nor do they permit outbuildings greater than 2.5m where they are located within 2m of the boundary.

### **Parking and Highways**

- 5.21. It is perceived highly unlikely that as a result of the extension, the Applicant would continue to use their rear curtilage for the parking of a vehicle. There would be little option but for the occupants to park on-street, which would contribute to existing pressures that exist in the locality.
- 5.22. Notwithstanding this matter, the dwelling at no. 2 Eldon Road is already a large property. It is perceived that the further extension (which includes the provision of an additional bedroom) is likely to generate a need for the parking of another private vehicles due to the increase in occupants, either now or in the future. This further demand for on-street parking would exacerbate the present situation, resulting in a loss of amenity for the wider area, as well as generating concerns for highway safety.

## Conclusions

- 5.23. In addition to the issues surrounding land ownership, the omission of third party land from the red edge and the encroachment into the curtilage of the neighbouring property, it has been demonstrated the planning application fails to adhere to CS Policy CS16, SADMP Policy 11, Residential Design Guide SPD Policies RES E1, RES E3, RES E5, RES E7 and RES E19. It is a form of poor design and as per the instruction of Chapter 12 of the Framework, planning permission should be refused. It has been demonstrated that there is no fall-back position under the provisions of the GPDO and with reference to an appeal decision, a kitchen-diner should be regarded as a habitable room.
- 5.24. The LPA is moreover encouraged to pursue swift enforcement action against the Applicant, with the re-instatement of both their land and third party residential curtilage.





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APPENDIX 1: COPY OF APPEAL DECISION  
APP/A2335/D/11/2154800



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# Appeal Decision

Site visit made on 25 July 2011

by **R M Barker BEng(Hons) CEng MICE FCIHT**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 August 2011

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**Appeal Ref: APP/A2335/D/11/2154800**  
**122 Broadway, Morecambe, LA4 5XZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr N Palamountain against the decision of Lancaster City Council.
  - The application Ref 10/01101/FUL, dated 27 October 2010, was refused by notice dated 4 April 2011.
  - The development proposed is described as *proposed two storey extension to rear with first floor extension to side over existing garage*.
- 

## Decision

1. The appeal is dismissed.
2. I have taken account of the views of local residents and other interested parties in reaching this decision.

## Main Issue

3. The effect of the proposed development on the living conditions of the occupiers of No.120 Broadway by reason of an overbearing nature.

## Reasons

4. The element of this appeal that is of concern is the proposed extension to the north west side of the host dwelling above the existing garage and adjacent to No.120 Broadway. The proposal would result in a substantial reduction in the first floor gap between these two dwellings to approximately 5 metres. However the Council's Supplementary Planning Guidance Note 12 [SPG] '*Residential Design Code*' advises (paragraph 2.17) that there should normally be at least a 12 metres gap where a habitable room faces on to a side wall of this nature.
5. The proposal would impinge upon the enjoyment of the use of the ground floor kitchen diner, a habitable room in No.120 Broadway from which I was able to view the appeal site during my inspection; its window directly faces the north west side of the appeal dwelling.
6. In my judgment this element of the proposed development would have a materially adverse effect on the views of open sky that are currently available from this kitchen diner window and in this crucial respect my assessment differs from that of the Council officer and of the appellant. The proposal would significantly change the current outlook from No.120, notwithstanding current

views of the boundary fence and neighbouring wall. It would present a dominant new building element that would noticeably reduce daylight in the affected room of No.120 Broadway. In all these respects therefore the proposal would conflict with Lancaster District Local Plan Policy H19 which includes the provision that development should not have an adverse effect on the amenities of nearby residents.

7. The appellant has drawn attention to an extension that has been constructed at No.66 Broadway. However I am not aware of all the circumstances of that case and I must deal with this appeal on the basis of the details that present themselves at this appeal site.
8. In view of all the above therefore I conclude on the main issue that the proposed development would have an unacceptably harmful effect on the living conditions of the occupiers of No.120 Broadway by reason of an overbearing nature and consequently I dismiss the appeal.

*R M Barker*

INSPECTOR

