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The Savills logo consists of the word "savills" in a lowercase, sans-serif font, colored red, set against a solid yellow rectangular background.

Masie Milton-Newland
Room 3A Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Joe Oakden
E: joseph.oakden@savills.com
DL: +44 (0) 7977 030 125

33 Margaret Street W1G 0JD
T: +44 (0) 20 7499 8644
F: +44 (0) 20 7495 3773
savills.com

Dear Masie,

4 ELLERDALE CLOSE, LONDON, NW3 6BE
APPEAL REFERENCE: APP/X5210/X/22/3305671
APPELLANT RESPONSE TO LOCAL PLANNING AUTHORITY STATEMENT OF CASE

We write on behalf of the appellant in response to the Local Planning Authority Statement of Case associated with the above referenced appeal which were received on the 3rd January 2023. This letter addresses the case made by the Council on a point-by-point basis in turn below. No third-party comments on the appeal were received.

Comments on the LPA Statement of Case

The Council have submitted a Statement of Case which first outlines the background to the appeal site before commenting on the appellant's grounds for appeal as set out within the original Statement of Case. Each of the points raised by the Council are addressed on a point-by-point basis below. For ease of reference, each of the Council's responses have been set out, with the appellant's reply detailed below it.

Before addressing the Council's response in more detail below, one preliminary point should be emphasised: The Council's reliance on the alleged failure to satisfy condition A.1(j) (enlargement extending beyond a wall forming a side elevation of the original dwellinghouse and having a width greater than half the original dwellinghouse) adds nothing to the alleged failure to satisfy condition A.2(b) (enlargement extending beyond a wall forming a side elevation of the original dwellinghouse) and is therefore essentially irrelevant. The only relevant question is whether the angled walls of the bay window are correctly characterised as a side wall of the original dwellinghouse. If (as the appellant says) they are not, but rather form part of the rear wall, then both condition A.2(b) and condition A.1(j) will be satisfied, since the enlargement will not extend beyond a wall forming a side elevation.

Further, as regards this only relevant question, the Council accept (see 2 below) that in accordance with the Government's Technical Guidance, whether the angled walls are properly to be characterised as walls forming a side elevation turns on whether such walls "*cannot be identified as being a front wall or a rear wall*". Here, it is plain that such angled walls *can* be identified as rear walls. As set out below, this is unequivocally demonstrated by the fact that the Council have (twice) identified the angled walls of an *identical* bay window at No.2 Ellerdale Close as rear walls.

Council's response

1. *The appeal site is as detached property benefiting from a two-storey bay window which projects from the rear elevation. In paragraph 5.3 'of the Appellant's Statement - Figure 4 – Existing rear elevation' the*

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drawing evidences that the existing two storey bay window is a prominent feature of the property. The fact the bay extends from the ground up to the first floor results in it being integral part of the building with a two storey high side elevation. It is not merely a feature of the rear elevation.

2. *Although 'Side elevation' is not defined in the GPDO, it is stated within the Governments Technical Guidance April 2017 'Permitted development rights for householders' to be any wall that cannot be identified as being a front wall or a rear wall. It further states that houses will often have more than two side elevation walls. This allows for walls which is not facing the front or rear of the building to be considered as a side elevation. This assessment is supported by an appeal decision in relation to a similar proposal in Barnet, reference: APP/N5090/X/18/3203408.*
3. *What was in question in this appeal was "whether or not the development would comply with limitation A.1(j) which states development is not permitted if 'the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would (iii) have a width greater than half the width of the original dwellinghouse."*
4. *The planning inspector did not consider that all three elevations of the bay windows are rear elevations. The decision states, "they do not all face the rear with the angled elevations facing more towards the side boundaries than the rear. In my view, the angled elevations of the bay are not rear or front elevations and thus must be side elevations. I therefore find, as a matter of fact and degree that the bay projection consists of a rear elevation and two side elevations, albeit the side elevations are at an angle."*
5. *It was therefore concluded that the proposed extension would have extended beyond side elevations of the original dwellinghouse and as the width of the proposed extension was greater than half the width of the dwellinghouse it would not comply with A.1 (j).*

Appellant's Reply

6. The Council begin by asserting that because the bay is two storeys high it is not merely a "feature". However, (i) the fact that the bay is two storeys high does not prevent it from being a feature and (ii) as the Council go on to agree, the question in any event is whether the angled walls of the bay can be identified as rear walls. The fact that the bay is two storeys high does not mean, and does not affect, whether its angled walls can be identified as rear walls: whether a wall is one or two storeys high, it still has to be characterised as either a rear or a side wall and the same test, which is independent of the number of storeys, applies. As a result, there is nothing in the technical guidance to support the Council's assertion that the number of storeys is relevant. Applying the agreed test, in this case, it is clear that the angled walls can be identified as rear walls, as shown by the fact that the Council has *twice* concluded that *identical* angled walls on an *identical* bay at No.2 Ellerdale Close are rear walls.
7. The Council go on to reiterate their reliance on the Barnet appeal, but their submission adds nothing to their original report. This Barnet appeal case was referenced by the Council within their officer delegated report and was addressed by the appellant within their original Statement of Case.
8. As noted previously, this appeal case is different in key characteristics to the property in the Barnet appeal. As noted within the Barnet appeal decision, what constitutes a side elevation "*is a matter for planning judgement, on the facts of a particular case*".
9. Turning to the facts of the two cases, the bay window in the Barnet appeal case is considerably larger and more angular in comparison to that at 4 Ellerdale Close, which meant that the angled walls of the bay faced more towards the sides than the rear. Importantly, this was the *only* fact specifically relied upon by the Barnet Inspector in concluding that the bay window of that property contained side walls. The angled walls of the bay window at 4 Ellerdale Close have a much smaller projection and have a much shallower angle than that in the Barnet appeal, with the result that the angled walls face more towards the rear than the side of the property. The result is that *only* fact relied upon by the Barnet appeal inspector is inapplicable in this case. Further, the reasoning in the Barnet appeal in fact *supports* the appellant's case, because it is

contingent upon whether the angled wall faces more to the side or to the rear; and here the angled wall faces more to the rear, strongly suggesting that it should be characterised as a rear wall.

10. Further, as noted by the appellant in the original Statement of Case, there are numerous other appeal decisions where a planning inspector has concluded differently to the conclusion in the Barnet appeal, supporting the appellant's case in this matter. Indeed, the examples provided by the appellant are much more akin to that at 4 Ellerdale Close than the single Barnet appeal case cited by the LPA. Full details of a selection of cases are shown within the appellant's Statement of Case.

Council's Response

11. *Although the illustrations in the GDPO are shaped differently it doesn't mean that the principle doesn't apply. The illustrations show elevations at different recesses where the elevations would move further and further to the centre of the rear elevation just because the bay window doesn't have a right angle it doesn't mean that the principle shouldn't apply. The guidance under Class A.1(iii) also stipulates that a house may have more than two side elevations.*

Appellant's Reply

12. It is noted that the Technical Guidance does not directly address whether a bay window is to be defined as containing side elevations for the purpose of permitted development rights. The appellant is not suggesting that characterisation as a rear or side wall is contingent upon whether the wall is at a right angle to another wall. Rather, as the Council agree, the question is whether on the facts and matters of the individual case the relevant wall can be identified as a rear wall. In this case, the rear bay windows walls of the appeal property are most naturally characterised as comprising rear walls of the house, given that these face more towards the rear of the house than the side and given the very shallow projection of the bay feature.
13. Further, it should be noted that when discussing what comprises a front elevation of the property, the Technical Guidance states that bay windows would be defined as such. Applying the same logic, similar principles should apply in respect of rear bay windows. The rules are intended to prevent a homeowner extending beyond the side of the house. They are not intended to prevent development to the rear where the house merely has an angled bay window at the rear.

Council's Response

14. *The GPDO doesn't specify the angle at which a side wall should be to be identified as a side elevation it is a matter of fact and degree. This is supported by the Barnet appeal decision referred to the case officers' report and above. In this current appeal case the side elevation of the bay is angled at 43.1 degrees. This is not slight and it can clearly be seen on the side elevation of the property as a whole projecting 0.74m from the rear elevation. Furthermore, the elevation is two storeys in height clearly distinguishes it from being merely a feature on the rear elevation.*

Appellant's Reply

15. The appellant agrees with the Council that what can be identified as a side elevation is to be determined based on the facts of the case. The Council failed properly to consider the facts of this case in reaching their decision. Instead, the Council has simply purported to apply the Barnet appeal decision, without giving any proper consideration to the differences between this case and the Barnet appeal and apparently without taking into account either the other appeal decisions relied upon by the appellant (which were not referred to in the Council's decision) or the Council's own *two* prior decisions in relation to the *identical* bay at No.2 Ellerdale Close.
16. The Council's response in this paragraph does not properly address the fact that the measurements in this case demonstrate significant differences to the bay in the Barnet appeal (which had an angle of 61.7 degrees), most notably because they result in the angled walls facing more to the rear than the side (thus

distinguishing the key fact specifically relied upon in support of the decision in the Barnet appeal) and because the bay projects far less. As can be seen from these measurements, the case to which the appeal relates and the Barnet appeal case cited by the Council are very different in their characteristics and cannot be used comparatively. Rather, as set out at paragraph 5.27 of the appellant's Statement of Case, the measurements in this case are in line with those in the Cheam and Harpenden appeals, where the bays were not regarded as containing side elevations.

17. The Council goes on to suggest that because the bay window element is two storeys this would clearly distinguish it from being merely a feature on the rear elevation. As set out above, the fact that the bay is two storeys does not prevent it from being considered a feature (to the extent that is relevant) and the number of storeys is irrelevant.

Council's Response

18. *In the two cases at 2 Ellerdale Close were assessed over 10 years ago under a previous version of the GPDO. However, it is noted that extensions do not extend to more than half of the original dwelling house. This property differs from the application property due to trapezoid shape of the floorplan. This is not a relevant example as the proposal would have complied with the GPDO at the time of being granted.*

Appellant's Reply

19. The Council's attempts to distinguish its two prior decisions in relation to an *identical* bay at No.2 Ellerdale Close consist of a mixture of obfuscation, irrelevance and incorrect suggestion.
20. First, the Council asserts that the extensions at No.2 do not extend to more than half the original dwelling house. This is obfuscation, because (even if it were correct¹) as the Council must be well aware, it is wholly irrelevant. In a conservation area, the overriding question was (and is) whether the extension extends beyond the side elevations of the original dwelling house: if the extension does so, the extension would not be permitted development irrespective whether the extension extends to more than half the original dwelling house or not. The relevant question is (and was) therefore whether the extension extends beyond a wall forming a side elevation. As to that question, as set out in Appendix 2 and Appendix 3 to the appellant's Statement of Case, the Council twice concluded in relation to the *identical* bay at No.2 as follows:

A.2(b)	Would the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse?	No
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21. The same conclusion must logically apply to the appeal property in this case.
22. Second, the Council suggests that the No.2 differs due to its trapezoid floorplan. The Council appears to be referring to the side extension at No.2 which interlocks with the side extension at No.3. This is irrelevant, because the test is by reference to the "original dwellinghouse" and the side extension is not part of the original dwellinghouse.² It is also irrelevant because the existence of this side extension (or its angled wall)

¹ The assertion is in fact incorrect because the Council has impermissibly taken into account the side extension to No.2 in reaching the conclusion that the width of the rear extension at No.2 is not greater than half the width of the *original* dwellinghouse. If the side extension is (as it is required to be) disregarded, the rear extension at No.2 *is* greater than half the width of the *original* dwellinghouse at No.2. The distinction between the *original* dwellinghouse and the side extension at No.2 can be clearly seen from the photo at Figure 2 of the appellant's Statement of Case, where the rectangular shape of the original dwellinghouse at No.2 is clearly visible. In any event, notably, the Council's assertion does not reflect its actual reasoning at the time of making its prior decisions at No.2. Its conclusion in relation to No.2 that the width of the rear extension at No.2 was not greater than half the width of the original dwellinghouse was based on the fact that the angled walls of the bay window did not form side elevations. This is clear from its answer to question A.2(b), as quoted above. If the Council had considered the extension as extending beyond the side elevations of the original dwellinghouse, its answer to question A.2(b) would have had to be 'Yes', but it was not.

² See the photo at Figure 2 of the appellant's Statement of Case, showing the original rectangular shape of No.2 Ellerdale Close.

has no effect whatsoever on whether the wholly separate and independent angled elevations of the bay (which is identical to that at the appeal property No.4) are rear or side elevations. Regardless of the differentiating floorplans, the disputed matter in this appeal relates to whether the bay window contains side elevations of the original dwellinghouse or not.

23. Third, the Council suggests that the “*the proposal would have complied with the GPDO at the time of being granted*”. This inaccurately suggests that the relevant requirements in the GPDO were different when the Council made its decisions in relation to No.2. This is wholly incorrect. At the time of the Council’s decisions in relation to No.2, the relevant requirements were in fact *identical* to those which apply now:³ the relevant question was then (and is now) whether the proposed enlargement extends beyond a wall forming a side elevation of the original dwellinghouse. As set out above, the Council answered that question (twice) by clearly concluding that it did not.
24. In reality, the Council has no valid response to the fact that its decision in this case is wholly inconsistent with its own previous decisions in relation to an *identical* bay window at No.2. A homeowner is entitled to expect consistency of decision making; and such prior decisions give rise to a legitimate expectation that the same approach would be applied to No.4.
25. In any event, even leaving aside the need for, and justice in, consistency, the fact that the Council itself has twice concluded that the angled walls of an *identical* bay form part of the rear elevation demonstrates that those walls *can* be considered part of the rear elevation. This is especially in circumstances where these prior decisions were made by two different planning officers.⁴

Council’s Response

26. *This decision does define or identify that a bay window would be considered as a side elevation based on the size of it. It states that it is a matter of fact and degree. The existing rear bay window is not a single storey feature but a double height element of the building which can be read from the side elevation of the building and is therefore identified as a side elevation.*

Appellant’s Reply

27. As noted by the appellant above and within the appeal Statement of Case, it is agreed that assessment is a matter of fact and degree. The comments made by the appellant were made disputing the fact that the Barnet appeal case was a comparative example. As has already been noted, the Barnet case is very different to that at 4 Ellerdale Close and cannot be used comparatively as the Council has done.
28. The Council again suggest that because the bay windows element is two storeys, it can be read from the side elevation of the building is therefore a side elevation. Again, whether the bay window is one or two storeys is irrelevant. Further, the mere fact that a wall projects does not make it a side elevation of the original dwellinghouse, as demonstrated by the appeal decisions upon which the appellant relies. The only relevant question is whether the angled walls of the bay (whether one or two storeys high, and whether or not they can be read from the side) can be identified as rear walls. As the appellant has repeatedly noted, in this case the angled walls of the bay face more towards the rear of the site than the side and are much more naturally characterised as being part of the rear wall.

Council’s Response

29. *Both of the stated appeals relate to bay windows which were single storey construction only, and one of which was of particularly lightweight construction. They present a different context from the appeal site*

³ See question A.2(b) in the prior decisions as quoted above, showing that the relevant requirement applied then, just as it does now; and see also the relevant requirements at the time of the Council’s decisions in relation to No.2 set out in Appendix 1. The requirement in a conservation area that the enlarged part of the dwellinghouse must not extend beyond a wall forming a side elevation of the original dwellinghouse is set out at paragraph A.2.

⁴ See Appendix 2 and 3 of the appellant’s Statement of Case.

which has a two storey bay of solid construction. The Barnet appeal decision is a more appropriate example in terms of similarity with the appeal site proposal.

Appellant's Reply

30. The appellant would reiterate that the bay window height is irrelevant to the disputed matter in this appeal: the test does not turn on, and is independent of, the number of storeys. The examples provided in the appellant's Statement of Case are much more akin to that proposed at 4 Ellerdale Close than the Barnet appeal (angle 61.7 degrees, projection 1.06m). In particular, in the Harpenden and Cheam appeals the angles of the bays and length of the projections were very similar to those in this case: in those appeals the angles were between 40 and 45 degrees, compared with the 43.1 degrees in this case and the bay projections were 0.5-0.6m, compared to the 0.74m in this case. Further, the angled wall of the toilet/utility room in the Harpenden appeal had an even greater projection. In addition, if and to the extent the solidity of construction of wall is of any relevance to whether the wall is correctly characterised as a rear or a side wall (and it is not clear why it should be)⁵, the angled walls in the Harpenden appeal (of both the bay and the utility/toilet) were of equally solid construction to the bay in this case. The angled walls in this case are most naturally characterised as being rear walls (rather than side walls) of the original dwellinghouse. This is fully addressed within the Statement of Case.

Conclusions

31. As noted in paragraph 5.4 of the appellant's Statement of Case, the Permitted Development rights for householders Technical Guidance (September 2019) states that "*a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or rear wall*". It is clear that it is a matter of judgement as to whether the angled walls of a rear bay window can be considered part of the rear wall of the original dwellinghouse for the purposes of the GPDO. The very limited projection of 0.7m and the shallow angle of the side walls of less than 45 degrees means that as a matter of fact and degree, the rear bay window in its entirety can be considered (and is most naturally considered) part and parcel of the rear wall of the house.
32. The Council's conclusion that the bay window contains side elevations in this case is not justified taking account of the individual characteristics of the site as a matter of fact and degree. The Council simply rely on an appeal decision made in Barnet, which for numerous reasons is not comparable to the appeal site, as set out within the appeal Statement of Case. Indeed, in the Barnet appeal, the reasoning actually points in favour of the angled walls at 4 Ellerdale Close being characterised as part of the rear wall rather than against it, given that these face more to the rear of the site than the sides. Further, the fact that the Council has *twice* (through two different planning officers) concluded in relation to an *identical* bay window at No.2 Ellerdale Road that the angled walls of that *identical* bay constitute part of the rear elevation demonstrates that the angled walls of the *identical* bay at No.4 *can* be regarded as comprising rear walls of the original dwellinghouse.
33. The proposal is therefore considered to be in full conformity with Class A of Part 1, Schedule 2 of the GPDO as a matter of fact and degree and therefore a CLOPUD for the proposed extension should be duly granted.

Yours sincerely,



Joe Oakden MPLAN MRTPI
Savills (UK) Ltd

⁵ The appellant does not consider that the solidity of the construction of the wall is relevant: the construction is either a wall (in which case solidity does not affect whether it is a rear or a side wall), or it is not.