

# Public Document Pack



**Service Director – Legal, Governance and  
Commissioning**

**Julie Muscroft**

The Democracy Service  
Civic Centre 3  
High Street  
Huddersfield  
HD1 2TG

**Tel:** 01484 221000

Please ask for: Andrea Woodside

Email: [andrea.woodside@kirklees.gov.uk](mailto:andrea.woodside@kirklees.gov.uk)

Wednesday 5 June 2019

## Notice of Meeting

Dear Member

### **Planning Sub-Committee (Heavy Woollen Area)**

The **Planning Sub-Committee (Heavy Woollen Area)** will meet in the **Reception Room - Town Hall, Dewsbury** at **1.30 pm** on **Thursday 13 June 2019**.

(A coach will depart the Town Hall, at 10.30am to undertake Site Visits. The consideration of Planning Applications will commence at 1.30 pm in the Reception Room - Town Hall, Dewsbury.)

This meeting will be webcast live and will be available to view via the Council's website.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft".

**Julie Muscroft**

**Service Director – Legal, Governance and Commissioning**

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

## **The Planning Sub-Committee (Heavy Woollen Area) members are:-**

### **Member**

Councillor Paul Kane (Chair)  
Councillor Mahmood Akhtar  
Councillor Michelle Grainger-Mead  
Councillor John Lawson  
Councillor Fazila Loonat  
Councillor Mussarat Pervaiz  
Councillor Andrew Pinnock  
Councillor Nosheen Dad  
Councillor Cathy Scott  
Councillor Charlotte Goodwin  
Councillor Kath Taylor  
Councillor Graham Turner  
Councillor Steve Hall

When a Planning Sub-Committee (Heavy Woollen Area) member cannot be at the meeting another member can attend in their place from the list below:-

### **Substitutes Panel**

#### **Conservative**

M Thompson  
B Armer  
V Lees-Hamilton  
N Patrick  
R Smith  
J Taylor

#### **Green**

K Allison  
S Lee-Richards

#### **Independent**

C Greaves  
T Lyons

#### **Labour**

E Hill  
M Sokhal  
M Kaushik  
Simpson  
A Butt

#### **Liberal Democrat**

A Munro  
A Marchington

# Agenda

## Reports or Explanatory Notes Attached

---

**Pages**

**1: Membership of the Committee**

This is where Councillors who are attending as substitutes will say for whom they are attending.

---

**2: Minutes of Previous Meeting**

1 - 6

To receive the Minutes of the previous meeting of the Sub-Committee held on 25 April 2019.

---

**3: Interests and Lobbying**

7 - 8

The Councillors will be asked to say if there are any items on the Agenda about which they might have been lobbied. The Councillors will also be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other interests.

---

**4: Admission of the Public**

Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.

---

**5: Deputations/Petitions**

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

In accordance with Council Procedure Rule 10 (2), Members of the Public should provide at least 24 hours' notice of presenting a deputation.

---

---

**6: Public Question Time**

The Committee will hear any questions from the general public.

---

**7: Site Visit - Application No: 2019/90813**

Formation of private car park facility for the use of the community centre at 61 Battye Street - land between St Philip's Close and Battye Street, Dewsbury.

(Estimated time of arrival at site – 10.35am)

Contact Officer: Nia Thomas, Planning Services

**Wards**

**Affected:** Dewsbury East

---

**8: Site Visit - Application No: 2019/90281**

Erection of boundary wall and fence, and formation of children's play area at Park Hotel, 125 High Street, Westtown, Dewsbury.

(Estimated time of arrival at site – 10.50am)

Contact Officer: Nia Thomas, Planning Services

**Wards**

**Affected:** Dewsbury West

---

**9: Site Visit - Application No: 2019/90269**

Erection of detached dwelling and associated site works adjacent to 93 Stocks Bank Road, Mirfield.

(Estimated time of arrival at site – 11.10am)

Contact Officer: Nia Thomas, Planning Services

**Wards**

**Affected:** Mirfield

---

## **10: Site Visit - Application No: 2019/91110**

Change of use from A1 (retail) to A1 (retail) and A3 (restaurant/cafe/drinking establishment) (within a Conservation Area) at the Ginger Whale, 344 Oxford Road, Gomersal, Cleckheaton.

(Estimated time of arrival at site – 11.30am)

Contact Officer: Jennifer Booth, Planning Services

### **Wards**

**Affected:** Liversedge and Gomersal

---

## **11: Local Planning Authority Appeals**

9 - 22

The Sub Committee will receive a report detailing the outcome of appeals against decisions of the Local Planning Authority, as submitted to the Secretary of State.

Contact: Mathias Franklin, Planning Services

---

## **Planning Applications**

23 - 24

The Planning Sub Committee will consider the attached schedule of Planning Applications.

Please note that any members of the public who wish to speak at the meeting must have registered no later than 5.00pm (via telephone), or 11.59pm (via email) on Monday 10<sup>th</sup> June

To pre-register, please contact [andrea.woodside@kirklees.gov.uk](mailto:andrea.woodside@kirklees.gov.uk) or phone Andrea Woodside on 01484 221000 (Extension 74993)

An update, providing further information on applications on matters raised after the publication of the Agenda, will be added to the web Agenda prior to the meeting

## **12: Planning Application - Application No: 2019/90813**

25 - 36

Formation of private car park facility for the use of the community centre at 61 Battye Street - land between St Philip's Close and Battye Street, Dewsbury.

Contact Officer: Nia Thomas, Planning Services

### **Wards**

**Affected:** Dewsbury East

---

**13: Planning Application - Application No: 2019/90281** 37 - 44

Erection of boundary wall and fence, and formation of children's play area at Park Hotel, 125 High Street, Westtown, Dewsbury.

Contact Officer: Nia Thomas, Planning Services

**Wards**

**Affected:** Dewsbury West

---

**14: Planning Application - Application No: 2019/90269** 45 - 68

Erection of detached dwelling and associated site works adjacent to 93 Stocks Bank Road, Mirfield.

Contact Officer: Nia Thomas, Planning Services

**Wards**

**Affected:** Mirfield

---

**15: Planning Application - Application No: 2019/91110** 69 - 74

Change of use from A1 (retail) to A1 (retail) and A3 (restaurant/cafe/drinking establishment) (within a Conservation Area) at the Ginger Whale, 344 Oxford Road, Gomersal, Cleckheaton.

Contact Officer: Jennifer Booth, Planning Services

**Wards**

**Affected:** Liversedge and Gomersal

---

**Planning Update**

75 - 78

The update report on applications under consideration will be added to the web agenda prior to the meeting.

Contact Officer: Andrea Woodside

## KIRKLEES COUNCIL

### PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

Thursday 25th April 2019

Present: Councillor Paul Kane (Chair)  
Councillor Mahmood Akhtar  
Councillor Michelle Grainger-Mead  
Councillor John Lawson  
Councillor Mussarat Pervaiz  
Councillor Andrew Pinnock  
Councillor Cathy Scott  
Councillor Graham Turner

Apologies: Councillor Kath Taylor  
Councillor Mark Thompson

**1 Membership of the Committee**

There were no substitutions of membership. Apologies for absence were relived on behalf of Councillors Thompson and K Taylor.

**2 Minutes of Previous Meeting**

**RESOLVED** – That the Minutes of the Meeting held on 21 March 2019 be approved as a correct record.

**3 Interests and Lobbying**

All Members advised that they had been lobbied on Application 2019/90269.

Councillors A Pinnock, Grainger Mead, Lawson, Turner and Kane advised that they had been lobbied on Application 2018/93781.

Councillors A Pinnock, Lawson, Turner, Pervaiz and Scott advised that they had been lobbied on Application 2019/90380.

Councillors Pervaiz and Scott advised that they had been lobbied on Application 2019/90122.

Councillor Kane advised that he had been lobbied on Application 2018/91866 and that he would not participate in the vote on this application.

**4 Admission of the Public**

It was noted that all Agenda Items would be considered in public session.

**5 Deputations/Petitions**

None received.

**Planning Sub-Committee (Heavy Woollen Area) - 25 April 2019**

**6 Site Visit - Application No: 2019/90061**

Site visit undertaken.

**7 Site Visit - Application No: 2019/90122**

Site visit undertaken.

**8 Site Visit - Application No: 2019/90269**

Site visit cancelled (application deferred).

**9 Site Visit - Application No: 2019/90380**

Site visit undertaken.

**10 Site Visit - Application No: 2018/91866**

Site visit undertaken.

**11 Local Planning Authority Appeals**

The Sub-Committee received a report which set out decisions which had been taken by the Planning Inspectorate in respect of decisions of the Local Planning Authority.

**RESOLVED** - That the report be noted.

**12 Planning Application - Application No: 2018/93781**

The Committee gave consideration to Application 2018/93781 – Change of use of existing post office into living accommodation and erection of new post office/general store (modified proposal) with raised garden area and drive to rear of Hightown Post Office at 483 Halifax Road, Hightown, Liversedge.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received representations from Simon Russell (on behalf of the applicant).

**RESOLVED –**

(1) That authority be delegated to the Head of Strategic Investment to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

- time limit for implementing works
- development in accordance with approved plans
- materials
- surfacing and drainage
- delivery management plan

(2) That additional conditions be included (i) for the provision of a landscaping scheme which demonstrates a further reduction in the extent of the raised area in order to allow for improved vehicular passing along the driveway and (ii) requiring the completion of proposed roof works within 3 months of the issue of the decision notice.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;



## Planning Sub-Committee (Heavy Woollen Area) - 25 April 2019

For: Councillors Akhtar, Kane, Lawson, Pervaiz, A Pinnock and Scott  
(6 votes)

Against: Councillor Turner (1 vote)

Abstained: Councillor Grainger-Mead

### 13 **Planning Application - Application No: 2019/90380**

The Committee gave consideration to Application 2019/90380 – Outline application for erection of residential development and associated access at land at Green Acres Close, Emley.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received representations from Paula Kemp (local resident) and Andrew Kirby (on behalf of local residents). Under the provision of Council Procedure Rule 36a, the Sub Committee received a representation from Councillor Will Simpson.

**RESOLVED** – That the application be refused on the grounds that the proposed development would intensify vehicular movements on Warburton, increasing risk to pedestrian safety and the risk of conflicts between drivers, due to the lack of adequate footways, visibility and space for parking, therefore having a detrimental impact upon highways safety and being contrary to Kirklees Local Plan policies PLP5 and PLP21 (as modified).

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;

For: Councillors Akhtar, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock, Scott and Turner (8 votes)

Against: (no votes)

### 14 **Planning Application - Application No: 2018/91866**

The Committee gave consideration to Application 2018/91866 – Demolition of existing dwelling and erection of 4 dwellings at 1 Ouzelwell Lane, Thornhill Lees, Dewsbury.

**RESOLVED** – That the application be refused on that grounds that the proposed dwellings (i) by virtue of the combination of their scale and design, would result in an incongruous and cramped form of development on a prominent corner site and would therefore be harmful to visual amenity, fail to add to the overall quality of the area and would not be visually attractive, and so would be contrary to Policy PLP 24 (as modified) of the Kirklees Local Plan as well as the aims of Chapter 12 of the National Planning Policy Framework and (ii) due to a combination of the proximity to the rear site boundary and the scale of the dwellings, would result in the overlooking and overbearing impact upon the rear elevation and the rear garden area of no.515 Lees Hall Road and so would be harmful to residential amenity and contrary to Policy PLP 24 (as modified) of the Kirklees Local Plan as well as the aims of Chapter 12 of the National Planning Policy Framework.

## **Planning Sub-Committee (Heavy Woollen Area) - 25 April 2019**

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;

For: Councillors Grainger-Mead, Lawson, A Pinnock and Turner (4 votes)

Against: Councillors Akhtar, Pervaiz and Scott (3 votes)

Abstained: Councillor Kane

### **15 Planning Application - Application No: 2019/90061**

The Committee gave consideration to Application 2019/90061 – Change of use of part A1 (shops) to A3 (restaurants and café) at Lala's Restaurant, 351A Bradford Road, Batley.

**RESOLVED** - That authority be delegated to the Head of Strategic Investment to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

- development to be in accordance with approved plans
- hours of use as stated in the application form

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;

For: Councillors Akhtar, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock, Scott and Turner (8 votes)

Against: (no votes)

### **16 Planning Application - Application No: 2019/90269**

The Committee gave consideration to Application 2019/90269 – Erection of detached dwelling and associated site works adjacent to 93 Stocks Bank Road, Mirfield.

**RESOLVED** – That the consideration of the application be deferred to in order to allow recently submitted amended plans to be assessed.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;

For: Councillors Akhtar, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock, Scott and Turner (8 votes)

Against: (no votes)

### **17 Planning Application - Application No: 2019/90122**

The Committee gave consideration to Application 2019/90122 – erection of two storey and single storey rear extension, single storey front extension and alterations, and detached double garage with store and formation of access to Fir Grove, 21 Fir Parade, Ravensthorpe.

## **Planning Sub-Committee (Heavy Woollen Area) - 25 April 2019**

Under the provisions of Council Procedure Rule 37, the Sub-Committee received a representation from Shakir Rafiq (applicant).

### **RESOLVED –**

(1) That authority be delegated to the Head of Strategic Investment to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

- three year timeframe for implementation
- development to be carried out in accordance with plans and specifications
- external walls and roofing materials of the extensions and detached garage to match those used in the construction of the existing building
- removal of permitted development rights for new openings in the side elevations of the extensions

(2) That a further condition be added which would remove permitted development rights for any further extensions or outbuildings, in the interest of residential amenity.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;

For: Councillors Akhtar, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock, Scott and Turner (8 votes)

Against: (no votes)

This page is intentionally left blank

**KIRKLEES COUNCIL**

**DECLARATION OF INTERESTS AND LOBBYING**

Planning Sub-Committee/Strategic Planning Committee

Name of Councillor			
Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an "Other Interest")	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest

**LOBBYING**

Date	Application/Page No.	Lobbied By (Name of person)	Applicant	Objector	Supporter	Action taken / Advice given

Signed: ..... Dated: .....

## **NOTES**

### **Disclosable Pecuniary Interests**

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

(a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and  
(b) either -

- the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

### **Lobbying**

If you are approached by any Member of the public in respect of an application on the agenda you must declare that you have been lobbied. A declaration of lobbying does not affect your ability to participate in the consideration or determination of the application.



---

## Appeal Decision

Site visit made on 28 March 2019

**by Darren Hendley BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>th</sup> April 2019**

---

**Appeal Ref: APP/Z4718/W/18/3218816**

**Llamedos Stables, Fieldhead Lane, Drighlington, Bradford BD11 1JL**

- 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 Atkins LGV Training Ltd against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2018/62/92465/E, dated 27 July 2018, was refused by notice dated 19 September 2018.
  - The development proposed is described as 'part demolition and alteration to unauthorised 2 storey LGV Training School to form single storey LGV Training School.'
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description of development set out in the banner heading above is taken from the planning application form. It is apparent from the appeal submissions that the scheme before the Council also concerned the change of use of land within the planning application site boundary to provide ancillary car parking. Accordingly, I have dealt with the appeal on this basis.
3. Since the Council determined the planning application, the Kirklees Local Plan (2019) (LP) has been adopted. The policies contained within the LP have replaced those in the Kirklees Unitary Development Plan (1999). The appellant and the Council were given the opportunity to comment on this matter. As such, I have considered the policies contained within the LP in my decision.
4. The appellant proposed amendments in the appeal submission in order to try to resolve the Council's reasons for refusal relating to the change of use. I was concerned, however, that interested parties would not have had the opportunity to comment on these revisions and that the scheme would not be essentially what was considered by the Council when it made its decision. The same would apply if a planning condition was utilised to this effect, even if I was minded to allow the appeal. Hence, my deliberations are based on the same scheme that was before the Council, consisting of both the proposed training school and the change of use.

### Main Issues

5. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy

Framework (Framework), b) its effect on the openness of the Green Belt, c) the effect on the safety of the users of the Batley Footpath 5 public right of way (PROW), and d) if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

6. The appeal site lies in the Green Belt and is used as a lorry driver training school. It is currently occupied by a building which is 2 storeys in height apart from a single flat roofed section with a balcony. It is understood from the appeal submissions that this building is unauthorised. The remainder of the site comprises areas of tarmac and loose stone which are used for the parking of vehicles, and for the manoeuvring of lorries, as was apparent on my site visit.
7. Adjacent to the site are a number of buildings and structures, together with an area used for pallet storage. The remaining boundaries are more open with paddocks and a planted embankment with the M62. The route of the PROW passes through the site from the paddocks to the boundary with the embankment.

### *LGV Training School - Inappropriate Development*

8. Paragraph 145 of the Framework states that the construction of new buildings is inappropriate in the Green Belt, subject to a number of exceptions. The proposed training school would not constitute such an exception. When judged against the Framework, it would therefore be inappropriate development in the Green Belt.

### *LGV Training School - Openness*

9. Openness is an essential characteristic of the Green Belt. The proposed training school would consist of a single storey building with a pitched roof. It would have a relatively large footprint size.
10. In relation to the visual aspect of openness, it would be visible from the A650, the PROW and the paddocks. It would be seen against the backdrop of the buildings, structures and uses that are found on the adjacent site. The planning application submission indicated that a conifer tree screening belt would be provided around the boundaries of the site and this is shown indicatively on the submitted site layout plan. However, even if it were to become established, in my view, it would not benefit openness with the level of enclosure that would result.
11. The existing building is clearly of greater scale and this would be reduced under the proposal by way of the part demolition and alteration. As this building is unauthorised, though, its presence does not alter my views on openness. Nor does that a demountable structure once occupied the area of the site where the proposed training school would be sited, as this is no longer in evidence with the existing building on the site.
12. Taking the spatial and visual elements together, the proposed training school would have a limited adverse effect on openness.



### *Change of Use – Inappropriate Development*

13. Paragraph 146 of the Framework states that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land.
14. The change of use entails an increase in the size of the area on the site to provide for additional parking. When vehicles are parked on this area, a limited adverse effect on openness occurs. Hence, it does not preserve the openness of the Green Belt. As I have set out above, the planting around the site boundaries would not be of a benefit as regards openness.
15. As a consequence, the change of use also constitutes inappropriate development, when judged against the Framework.

### *PROW*

16. The route of the PROW crosses the area that is subject of the change of use. With the usage of the site for lorry training and the associated manoeuvring of vehicles, this represents a conflict with public users of the PROW which has the potential to jeopardise their safety. It was evident that at the time of my visit the PROW did not appear to be readily accessible through the site. These arrangements detract from its beneficial use.
17. The appellant has suggested a diversion route that would run to the east of the site boundary. There is not information before me which indicates that the appellant has control over this land in order to implement the diversion. Even though the Council appeared to have accepted the diversion previously, this does not provide me with sufficient reassurance with the time that has passed since. As a result, the proposed diversion would not adequately address the harm that arises.
18. I conclude the effect on the safety of the users of the PROW to be unacceptable. Accordingly, the change of use does not comply with Policy PLP21 of the LP and the Framework where they concern safe access for all users.

### *Other Considerations*

19. It is apparent that the business has operated for a number of years from the site. An indoor facility is reasonably needed for a use of this nature and, as a business, it results in economic benefits, and this includes the training services that are provided. However, the evidence before me does not lead me to believe that it needs to be located in its current more countryside surroundings. Whilst businesses also operate from the adjacent site, this is not an industrial area. It does not need to be in such a location, as a matter of necessity, and so these matters carry limited weight in its favour.
20. The appellant has stated that the application sought to address a previously dismissed appeal<sup>1</sup> on the site concerning the existing building. As I have set out, though, what is before me would be inappropriate development and would not preserve the openness of the Green Belt. That the previous Inspector was concerned with the scale of the existing building and the level of

---

<sup>1</sup> Appeal ref: APP/Z4718/C/17/3191898

accommodation provided does not cause a building of a reduced scale to be acceptable. I also share the concerns of the Inspector in relation to why the building needs to be in this location. The change of use was also not the subject of this previous decision.

21. There would not be unacceptable harm as regards the effect on the character and appearance of the area. This carries neutral weight. Matters in relation to the appellant's dealings with the Council and interested parties, and the operation of the adjacent site are not for my consideration.

### **Conclusion**

22. Both the proposed training school and the change of use would be inappropriate development in the Green Belt. The proposed training school would have a limited adverse effect on openness. Paragraph 144 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, it is unacceptable concerning the effect on the safety of the users of the PROW. The other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist. The proposal would not, thus, comply with the Framework. I conclude, therefore, that the appeal should be dismissed.

*Darren Hendley*

INSPECTOR



## Appeal Decision

Site visit made on 16 April 2019

**by W Johnson BA(Hons) DipTP DipUDR MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 May 2019

---

**Appeal Ref: APP/Z4718/W/19/3221624**

**Fox Cottage, Whitley Road, Whitley, Dewsbury WF12 0LU**

- 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 & Mrs Mark Brotherton against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2018/62/91105/E, dated 4 April 2018, was refused by notice dated 2 November 2018.
- The development proposed is described as 'Detailed application for 1no. dwelling following demolition of existing stable building'.

---

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Government published the revised National Planning Policy Framework (the Framework) on 19 February 2019, which forms a material consideration in the determination of the appeal. The principle changes to the Framework relate to the Housing Delivery Test. However, the changes have no material bearing to the main issues before this appeal.
3. Since the Council made its decision on the planning application which is subject of this appeal, on 2 November 2018, the Kirklees Local Plan (LP) was adopted on 27 February 2019. Consequently, the policies contained within the Kirklees Unitary Development Plan have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. The appellant has had an opportunity at the final comments stage to provide their views on the relevance of these new policies. This appeal has therefore been determined in relation to the policies contained within the LP.
4. The Council have supplied finalised versions of LP Policies and the front page of the LP. However, apart from how they are referenced and minor changes to the policy title in some instances there are no material alterations when compared to the wording of the LP policies that were supplied with the modifications during the appeal process. I have dealt with the appeal on this basis.
5. For clarity, I have taken the appellants name from the appeal form as it is more precise than that given on the application form.

### Application for costs

6. An application for costs was made by Mr & Mrs Mark Brotherton against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

## **Main Issues**

7. The main issues are:

- whether the proposed development would be inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the appeal site and surrounding area;
- the effect of the development on the living conditions of future occupiers of the dwelling;
- whether the harm by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal.

## **Reasons**

*Whether or not the proposal is inappropriate development in the Green Belt*

8. The appeal site comprises a modest stable block situated in the corner of a field within the Green Belt. The site forms part of a notable parcel of land that is currently accessed off Whitley Road, with open fields located further to the north of the site. The proposal would involve the creation of a new access that could also be used by Fox Cottage and East Barn. The land levels fall appreciably towards Fox Cottage from the appeal site and as a result the proposed parking area would be located at a lower level than the proposed dwelling.
9. The appellants have referred to LP Policy LP59 in their submission that is for infilling and redevelopment of brownfield sites, and requires in the case of partial or complete redevelopment the extent of the existing footprint is not exceeded, and in all cases regard should be had to relevant design policies to ensure that the resultant development does not materially detract from its Green Belt setting. Although not cited on the Council's decision notice, I find this policy to be relevant to the case before me.
10. The Framework identifies inappropriate development as harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 145 of the Framework.
11. The proposal is to replace the existing timber stables with a new dwelling, which would be constructed out of brick with a slate roof. The appeal proposal would have similar proportions to the existing stables, although it is acknowledged that part of this is created through the overhanging roof. Overall, I find the dimensions of the existing and proposed building to be similar.
12. Paragraph 145 g) of the Framework also advises that an exception could be the partial or complete redevelopment of previously developed land, whether

redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development. Under paragraph 145 g) of the Framework, I consider that the new dwelling would be comparable to the existing stables, and that the site could be classified as previously developed land (PDL). The definition of PDL includes 'land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed)'.

13. The appellant has referred to various judgments to support their case in this respect. The first judgement<sup>1</sup> concluded that the keeping of horses for recreational use does not fall within the definition of agriculture. In the second judgment<sup>2</sup> it was held that an inspector had been correct in deciding that curtilages did not have precise limits and that each situation must be considered according to the facts of each particular case. In the third judgment<sup>3</sup>, the Court of Appeal accepted that three factors had to be taken into account in determining what constituted a curtilage: a) the physical layout of the building and structure, b) ownership past and present, and c) use and function past and present. The fourth judgment<sup>4</sup> stated "the ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby an integral part of the same although it has not been marked off and enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary and reasonably useful way". A fifth judgment<sup>5</sup> found that providing the new buildings fall within the use and other restrictions of the applicable indent of paragraph 89 under the 2012 Framework (now paragraph 145 of the Framework), the mere fact that permission for a new building may also involve a material change of use does not mean that it ceases to be appropriate development.
14. However, notwithstanding the classification of the land as PDL, paragraph 145 g) of the Framework states that development in this respect should not have a greater impact on the openness of the Green Belt than the existing development, amongst other things. This is a matter which I now deal with below.

#### *Openness and Green Belt purposes*

15. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. There is no definition of 'openness' in the Framework.
16. The development not only involves the replacement of the stables with a dwelling, but also proposes to form the garden/outside amenity area, the proposed parking area and the access to it from the proposed dwelling. Currently the area of land forming the appeal site is open, with timber post and rail fencing serving as majority of its enclosure towards the field and a dry-stone wall between the site and the structures at Bunkers Hill. The submitted drawings suggest that native hedging would be planted to form majority of the

---

<sup>1</sup> Sykes v. Secretary of State for the Environment [1981]

<sup>2</sup> James v SoS & Another 9/10/90

<sup>3</sup> Attorney-General ex.rel. Sutcliffe, Rouse & Hughes v Calderdale BC 1983

<sup>4</sup> Sinclair-Lockhart's Trustees v Central Land Board 1950

<sup>5</sup> LB Bromley v. Secretary of State for Local Government [2016] EWHC 595 (Admin).

boundary treatment at the property and that the dry-stone wall would be retained.

17. In general terms garden use is associated with a range of domestic paraphernalia, as well as measures to increase privacy and security which together would reduce the current openness. Whilst it is not entirely clear from the planning application, the extent of such features as hard surfacing that would be required as part of the appeal proposal, it would be very likely to be greater than the existing situation. This would constitute a suburbanising feature that would contrast unfavourably with the openness of the surrounding land that generally fringes the appeal site. This would cause moderate harm to openness.
18. The appellant has referred to various judgments in this respect. The sixth judgment<sup>6</sup> considered the concept of openness and found that it is not narrowly limited to a volumetric approach and that a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. The seventh judgment<sup>7</sup> found that openness is not a defined term, but in this instance, it was found that it is openness of the Green Belt that must be considered not the site as such. Additionally, it was found that as there is some existing development, the openness of the Green Belt had not been wholly preserved and there would have been some impact on the openness of the Green Belt already, amongst other things.
19. I have given consideration to the removal of certain permitted development rights which allow for additional structures to the dwelling and to the erection of boundary treatments, but there would still be associated domestic paraphernalia in the garden areas which could not reasonably be controlled by condition. Whilst the appeal site forms a small part of the Green Belt, even small incursions into the Green Belt can erode it. I conclude that the proposal would have a harmful effect on the openness of the Green Belt and would, therefore, represent inappropriate development.
20. Overall, and for the reasons outlined above, I conclude that the appeal proposal would fail to preserve the openness of the Green Belt. Therefore, I afford such Green Belt harm substantial weight in my assessment and determination of this appeal. Therefore, the appeal proposal would constitute inappropriate development in the Green Belt and, in this regard, it would conflict with LP Policy LP59 and the Framework.
21. LP Policy LP57 and paragraph 146 e) of the Framework has been cited by the Council on its decision notice. However, LP Policy LP57 identifies that in the case of replacement buildings, the new building must be in the same use as and not be materially larger than the building it is replacing, amongst other criteria, and paragraph 146 e) of the Framework relates to material changes of use of land. Therefore, in respect of my findings above, I find LP Policy LP57 and paragraph 146 e) of the Framework are not directly applicable to the case before me.

### *Character and appearance*

22. The appeal site is located in a semi-rural area given the existing development in the locality. The proposed dwelling would be set back from the road behind

---

<sup>6</sup> Turner [2016] EWCA Civ 466

<sup>7</sup> Euro Garages Limited v. Secretary of State for Local Government [2018] EWHC 1753 (Admin)

the existing dwellings. There are a variety of differing building positions and styles forming the residential properties in the surrounding area. I find that the proposed dwelling would suitably complement the other development in the locality, in terms of its design, scale, siting and materials proposed.

23. The proposed dwelling would not be clearly visible from public vantage points, in particular the road. However, in the context of the surrounding residential development, the dwelling would not appear materially out of place. I accept that the proposal would result in an increase in the development at the appeal site, including the new pedestrian access from the parking area to the dwelling, but taking into account the position of the appeal site, land levels and the relatively close relationship with nearby properties, I do not consider that the proposal would cause significant harm to the character and appearance of the area. I note the Council considered that further details of boundary treatment and surfacing materials could have been secured through a suitably worded condition if the application was approved and that no concerns were raised with the creation of a new access. I have little reason to disagree.
24. For the reasons outlined above, I conclude that the development would not have a significantly detrimental impact on the character and appearance of the area and hence that it would accord with the design, character and appearance aims of LP Policy LP24 and the Framework.

#### *Living conditions*

25. I note the comments made by the Council about the distance of the dwelling from the vehicle parking area. Whilst I do acknowledge that pedestrian access to the dwelling would be taken across the grassed bank, which has an increased gradient, I do not find that this would be so excessive to prevent a safe and accessible means of access for future occupiers. Additionally, I note the comments raised in respect of the carrying/drag distances to the refuse pick-up. Whilst this carrying distance is relatively long, this is an arrangement that exists in terms of existing residents in the locality. Whilst this would be a less than ideal arrangement, had all other issues been acceptable this would not in itself have justified refusal of planning permission taking into account a number of the other identified benefits associated with the development of this site for residential development.
26. Concerns have been raised in relation to the size of the dwelling, which is understood to consist of approximately 41m<sup>2</sup> of gross internal floor space. I note that the drawings have been amended to indicate that the proposed development would be for a one bedroom, one bed space dwelling and that the internal habitable area has been increased. I note the dimensions listed on the application form only indicate the amount of gross internal existing floorspace and the amount of floorspace to be lost following the development. However, on balance I find that as the floorspace of the proposal would include the covered area to the front of the stables, this is likely to be sufficient to offset such features as the increase in depth of the brick walls of the proposed dwelling.
27. Whilst the Council refer to a proposed floorspace figure of 33m<sup>2</sup> in their submission, I find that there is little evidence to substantiate on how they arrived at this figure. I recognise that the proposed residential unit is modest in its size, but I find that insufficient details have been provided to confirm that the proposed dwelling would have a shortfall of internal space below the

minimum requirement of 39m<sup>2</sup> specified in the Technical Housing Standards – nationally described space standard, March 2015 (THS). Additionally, I find that the proposed level of occupancy could be controlled through a suitably worded condition.

28. For the reasons outlined above, I conclude that the proposed scheme would not unacceptably harm the living conditions of future occupiers. Therefore, the proposal would accord with the amenity aims of LP Policy LP24, the Framework and the THS.

*Other considerations and whether very special circumstances exist*

29. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Therefore, substantial weight should be given to the harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
30. I have concluded that the proposal would be inappropriate development and would have an adverse effect on openness. It would therefore, by definition, be harmful to the Green Belt. The Appellant has not explicitly put forward other considerations which would amount to very special circumstances to justify why planning permission should be granted.
31. However, I acknowledge that the development would result in some social and economic benefits through the provision of a new dwelling and during the construction phase of the development. The provision of an additional dwelling would positively contribute towards boosting the supply of houses in the area. Nonetheless, the contribution from only one dwelling would be relatively limited in this context.
32. The appellant has referred to various appeal decisions<sup>8</sup>, which I have noted. However, relatively little detail has been provided regarding the particular planning backgrounds to these schemes. Without such information a full and detailed comparison between these developments and the case before me cannot be easily drawn. Accordingly, I find little within these cases that would lead me to alter my conclusions on the main issues.
33. In considering the substantial weight given to the identified harm to Green Belt, the considerations outlined above do not clearly outweigh such harm to the Green Belt. Therefore, the very special circumstances necessary to justify the development do not exist and the development would therefore conflict with the Framework and LP Policy LP59.

**Other Matters**

34. I have had regard to various other matters in support of the development raised by neighbouring occupiers, including the improvement to the access and its general appearance. However, I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

---

<sup>8</sup> APP/22315/A/14/2212311; APP/B2355/A/13/2194105; APP/J1535/W/15/3007926



35. I note the appellant's comments about the way the Council handled the application. However, this matter is not material to the assessment of the appeal before me.

**Planning Balance and Conclusion**

36. The proposal would amount to be inappropriate development in the Green Belt and moderate harm would be caused to openness. This is a matter to which I afford substantial weight. Whilst the proposal would not have a detrimental impact on the character and appearance of the area or on the living conditions of future occupiers these are matters of neutral consequence in the overall planning balance. Whilst the proposal would lead to some social and economic, these would be relatively limited in extent, and would not significantly and demonstrably outweigh the clear and substantial harm that would be caused to the Green Belt.

37. For the reasons outlined above, on balance I conclude that the appeal should be dismissed.

*W Johnson*

INSPECTOR

This page is intentionally left blank

**Name of meeting: PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)**

**Date: 13 JUNE 2019**

**Title of report: LOCAL PLANNING AUTHORITY APPEALS**

**The purpose of the report is to inform Members of planning appeal decisions received in the Heavy Woollen area since the last Sub-Committee meeting.**

**Electoral wards affected: Birstall and Birkenshaw; Dewsbury South  
Ward councillors consulted: No**

**Public or private:**

---

**1. Summary**

This report is for information only. It summarises the decisions of the Planning Inspectorate, in respect of appeals submitted against the decision of the Local Planning Authority. Appended to this Item are the Inspector's decision letters. These set out detailed reasoning to justify the decisions taken.

**2. Information to note: The appeal decision received are as follows:-**

- 2.1 2018/962/92465/E - Partial demolition of existing two storey building to form single storey LGV training school at Llamedos Stables, Field Head Lane, Drighlington, BD11 1JL. (Officer) (Dismissed)
- 2.2 2018/62/91105/E - Erection of detached dwelling at Fox Cottage, Whitley Road, Whitley, Dewsbury, WF12 0LU. (Officer) (Appeal dismissed and Award of Costs refused)

**3. Implications for the Council**

**3.1 There will be no impact on the four main priority areas listed below**

- Early Intervention and Prevention (EIP)
- Economic Resilience (ER)
- Improving outcomes for Children
- Reducing demand of services

**4. Consultees and their opinions**

Not applicable, the report is for information only

**5. Next steps**

Not applicable, the report is for information only

**6. Officer recommendations and reasons**

To note

- 7. Cabinet portfolio holder recommendation**  
Not applicable
- 8. Contact officer**  
Mathias Franklin –Development Management Group Leader (01484 221000) [mathias.franklin@kirklees.gov.uk](mailto:mathias.franklin@kirklees.gov.uk)
- 9. Background Papers and History of Decisions**  
Not applicable

**In respect of the consideration of all the planning applications on this Agenda the following information applies:**

## **PLANNING POLICY**

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

### **National Policy/ Guidelines**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19<sup>th</sup> February 2019, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

## **REPRESENTATIONS**

Cabinet agreed the Development Management Charter in July 2015. This sets out how people and organisations will be enabled and encouraged to be involved in the development management process relating to planning applications.

The applications have been publicised by way of press notice, site notice and neighbour letters (as appropriate) in accordance with the Development Management Charter and in full accordance with the requirements of regulation, statute and national guidance.

## **EQUALITY ISSUES**

The Council has a general duty under section 149 Equality Act 2010 to have due regard to eliminating conduct that is prohibited by the Act, advancing equality of opportunity and fostering good relations between people who share a protected characteristic and people who do not share that characteristic. The relevant protected characteristics are:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- religion or belief;
- sex;
- sexual orientation.

In the event that a specific development proposal has particular equality implications, the report will detail how the duty to have “due regard” to them has been discharged.

## **HUMAN RIGHTS**

The Council has had regard to the Human Rights Act 1998, and in particular:-

- Article 8 - Right to respect for private and family life.
- Article 1 of the First Protocol - Right to peaceful enjoyment of property and possessions.

The Council considers that the recommendations within the reports are in accordance with the law, proportionate and both necessary to protect the rights and freedoms of others and in the public interest.

## **PLANNING CONDITIONS AND OBLIGATIONS**

Paragraph 54 of The National Planning Policy Framework (NPPF) requires that Local Planning Authorities consider whether otherwise unacceptable development could be made acceptable through the use of planning condition or obligations.

The Community Infrastructure Levy Regulations 2010 stipulates that planning obligations (also known as section 106 agreements – of the Town and Country Planning Act 1990) should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The NPPF and further guidance in the PPGS launched on 6th March 2014 require that planning conditions should only be imposed where they meet a series of key tests; these are in summary:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects

**Recommendations made with respect to the applications brought before the Planning sub-committee have been made in accordance with the above requirements.**

---

## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 13-Jun-2019

**Subject: Planning Application 2019/90813 Formation of private car park facility for the use of the community centre 61 Battye Street Land between, St Philip's Close, and Battye Street, Dewsbury, WF13 1PB**

#### APPLICANT

T Hussain

#### DATE VALID

12-Mar-2019

#### TARGET DATE

07-May-2019

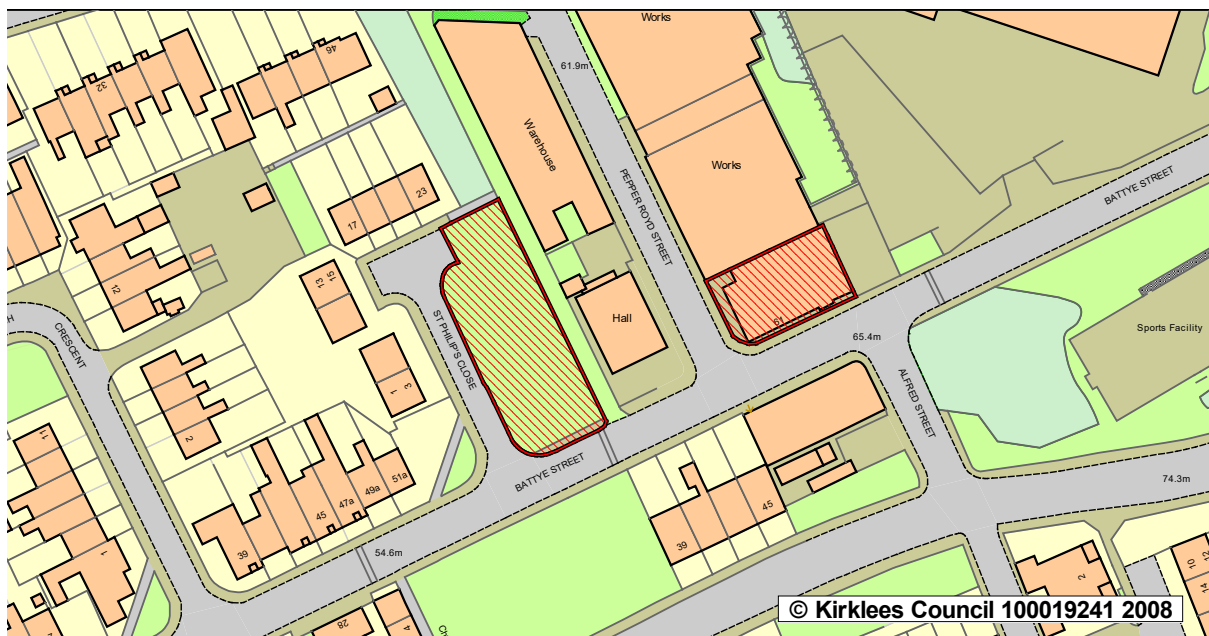
#### EXTENSION EXPIRY DATE

---

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

#### LOCATION PLAN



Map not to scale – for identification purposes only

---

**Electoral Wards Affected: Dewsbury East**

No

Ward Members consulted  
(referred to in report)

---

**RECOMMENDATION:**

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.**

**1.0 INTRODUCTION:**

- 1.1 The application has been brought to Heavy Woollen Sub Committee due to the significant number of representations that have been received as a result of the publicity period.
- 1.2 The Chair of the Planning Committee has confirmed that this is appropriate and would comply with the Councillor's Protocol for Planning Committees.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The site relates to an area of grassed land which is located between St Phillip's Close and Battye Street in Dewsbury. The land is located adjacent to residential properties to the north-west and south-west, with a community hall and warehouse building to the north-east.
- 2.2 The land is currently an area of open space with a mature tree on its frontage. The site is relatively flat. On the opposite side of Battye Street there is an area of sloping grassed open space which has been granted planning permission for residential development.
- 2.3 The site is unallocated on the Kirklees Local Plan.

**3.0 PROPOSAL:**

- 3.1 Planning permission is sought for the change of use of land to create a car park with 20 spaces for users of the community facility. The submitted site plan shows the layout of the car park, with a grassed area to remain to the rear, with small areas of grassland on either side of the entrance. The plan also shows the tree to be retained.
- 3.2 The applicant has confirmed that the car park will be surfaced from permeable grasscrete and will have a barrier to the front of the site.



- 3.3 The car park will be accessed from Battye Street and the site plan confirms that a dropped kerb will be installed.

#### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

2015/90068 – Outline application for erection of up to 4 dwellings OUTLINE APPROVED (Land off Battye Street)

2017/93614 – Reserved matters application pursuant to outline permission APPROVED (Land off Battye Street)

2017/90211 for erection of residential development APPROVAL of RM (Land off Battye Street)

2017/90211 – Outline application for erection of residential development APPROVED (Land off Battye Street)

2018/92390 – Erection of 7 dwellings APPROVED (Land off Battye Street)

2012/91050 – Change of use from cycle shop to community centre and alterations APPROVED (no. 61 Battye Street)

#### **5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**

- 5.1 Additional information was requested by Highways DM with regards to sightlines from the site's access and how the barrier gates will operate. The information has been provided and this addresses initial Highways DM concerns.

#### **6.0 PLANNING POLICY:**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

The site is unallocated on the Kirklees Local Plan.

#### **6.2 Kirklees Local Plan (2019):**

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development
- **LP21** – Highway Safety
- **LP22** – Parking Provision
- **LP24** – Design
- **LP37** – Flood Risk
- **LP33** - Trees
- **LP47** – Healthy, active and safe lifestyles
- **LP50** – Sport and physical activity
- **LP52** – Protection and improvement of environmental quality

### 6.3 Supplementary Planning Guidance / Documents:

Highways Design Guide

### 6.4 National Planning Policy Framework:

- **Chapter 8** – Promoting healthy and safe communities
- **Chapter 12** – Achieving well-designed places
- **Chapter 14** – Meeting the challenge of climate change, coastal change and flooding
- **Chapter 15** – Conserving and enhancing the natural environment

## 7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 23 representations have been received. The concerns raised are summarised as follows:

- Road safety grounds – car park being near a nursery, a play area and local school.
- Land would encourage more traffic and would add to existing highway problems
- Increase risk of accident
- No-where else where children can play
- Car headlights can shine straight into living rooms
- Reduce quality of life so one individual can make more money (renting out community centre)
- Noise
- Drugs, drink

Officer comments in response will be made in Section 6 of this report.

## 8.0 **CONSULTATION RESPONSES:**

### 8.1 **Statutory:**

**K.C Highways Development Management** - no objection following receipt of additional information on how barriers will operate and confirmation that sightlines will be acceptable (to be secured via condition).

### 8.2 **Non-statutory:**

**K.C. Planning Policy** – no objection. Piece of land not identified as area of special amenity value and does not have visual amenity quality to be deemed as such.

**K.C Trees** – no objection subject to condition requiring Arboricultural Method Statement.

**K.C Environmental Health** – no objection subject to electric vehicle charging points provided within the car park.

**K.C Physical Resources and Procurement** – no objection, including its use for car parking.

**Police Architectural Liaison Officer** – comments received. See other matters.

## **9.0 MAIN ISSUES**

9.1 The main issues for consideration are as follows:-

- Principle of development
- Urban design issues
- Residential amenity
- Landscape issues
- Housing issues
- Highway issues
- Drainage issues
- Planning obligations
- Representations
- Other matters

## **10.0 APPRAISAL**

### Principle of development

- 10.1 The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. Policy LP24 of the KLP is relevant and states that “good design should be at the core of all proposals in the district”.
- 10.2 As well as the above, consideration has been given to Paragraph 97 of the National Planning Policy Framework which stipulates that access to high quality open space is important for the health and well-being of communities and that areas of open space should not be built on subject to certain exceptions.
- 10.3 K.C Planning Policy have been consulted on the application and confirmed that the application site has not been identified as an area of valuable open space within the Local Plan open space allocations. Following a site visit and discussion with K.C Planning Policy, Officers consider that the site does not have enough quality and character to be designated as protected open space, thus being appropriate development to comply with Paragraph 97 of the National Planning Policy Framework and policy LP50 of the Kirklees Local Plan.
- 10.4 In this case, the principle of development on the application site is considered to be acceptable and shall be assessed against other material planning considerations below.

### Urban Design issues

- 10.5 Officers have considered the amenity value that the site provides within the area and the harm that would arise as a result of developing the land to form a car park.

- 10.6 The site is located in very close proximity to Battye Street which is a main thoroughfare through the area, where there are a variety of uses and buildings, none of which are considered to have special architectural merit. Whilst it is acknowledged that a large area of hardstanding will have an impact on visual amenity (character of the area and streetscene), in this context, the formation of a car park is considered, by Officers, to be acceptable. Small pockets of grassed areas will be retained within the development site as well as the mature tree on the site frontage.
- 10.7 At the time of the site visit, there was a signpost on the land stating that no ball games were to be played and there were no signs of the land being used by local people for recreational purposes. Officers do not consider that the site has significant recreational value or promotes community involvement significantly enough to warrant refusal of the application. The site is not considered by Officers to create a sense of place, and is not overly safe and welcoming for members of the public to use as open space given its location adjacent to a frequently used highway.
- 10.8 There are no architectural features within the site and the residential properties surrounding the site do not have any significant architectural merit, thus the uses bordering the site are of a low amenity value. Officers consider that the site does not contribute to the streetscene or character of the area significantly enough to warrant a recommendation of refusal to ensure the safeguarding of this piece of land for community use. The car park and proposed barrier, subject to appropriate landscaping as shown on the site plan, is considered to be acceptable in terms of policy LP24 of the KLP and Chapter 12 of the NPPF.
- 10.9 As discussed above, Officers do not consider that the site shows the characteristics of valuable public open space as stated in Paragraph 100 of the NPPF.
- 10.10 K.C Planning Policy have been consulted on the application and it was confirmed that the application site has not been identified as Local Green Space as part of the Kirklees Local Plan allocations and that the application site does not offer sufficient characteristics of valuable open space to oppose the use of the land as a car park which will provide benefits to the local community through providing parking for users of the community hall. Officers acknowledge that the granting of planning permission for residential development on the opposite side of the road will mean a reduction in public open space in the area, however this does not mean that, in the opinion of officers, the application site is significant enough to be retained.
- 10.11 It is important to note that the piece of land on the opposite side of Battye Street has been granted planning permission for the erection of 8 dwellings. Whilst this area is currently open land, the proposed residential development has been considered to be acceptable under app ref. 2018/92390.
- 10.12 To summarise, officers do not consider that the site provides a significant level of amenity value to outweigh the other material considerations that are in favour of the proposed development. The site is of a reasonable size and provides some community benefit by virtue of being an area of open land, but is not considered by Officers to be visually interesting given its location and surrounding uses. The site does not have historic significance or a richness of wildlife. Considering the above, Officers consider that the proposed development complies with the aims of policies LP24 and LP50 of the Kirklees Local Plan and Chapters 8 and 12 of the NPPF.

### Residential Amenity

- 10.13 The impact on residential amenity is considered to be acceptable. The proposed development does not include the erection of buildings or structures and therefore there will be no overbearing or overlooking / loss of privacy.
- 10.14 In terms of noise and disturbance, K.C Environmental Health have been consulted and there is no objection to the proposed development in terms of noise and disturbance relating to the use in close proximity to residential properties. The use in itself is not a significant noise generator over and above the use of the venue itself.
- 10.15 Furthermore, the residential properties are also in close proximity to the main road which a large number of vehicles will pass through. The vehicular movements that result from this change of use will not significantly harm residential amenity in this regard.
- 10.16 Considering the above, Officers consider that the proposal complies with Policies LP24 and LP52 of the Kirklees Local Plan and guidance contained within the National Planning Policy Framework. The proposed development would not create a harmful impact on residential amenity for occupiers of neighbouring properties.

### Highway issues

- 10.17 The impact on highway safety is considered, by Officers, to be acceptable following the receipt of additional information. Highways DM initially commented that the parking area would encroach onto the existing footway and create a 1.0 metre wide pedestrian border around the site. The reduction in the width of the public footway provision at this location was not acceptable and would lead to highway safety issues for pedestrians.
- 10.18 Additional information and amended plans have been provided to address this concern. The plan shows that the existing pavement will remain unchanged and a dropped kerb will be installed. Battye Street is not a classified road and therefore planning permission for the dropped kerb is not required.
- 10.19 The agent has also confirmed that the barrier will only be used before an event and after all vehicles have left, the proposed barrier is acceptable. There would be no queuing to access the car park which would ensure that there are no highway safety issues.
- 10.20 In order to ensure that the proposed development will not create highway safety issues, the sightlines from the access onto Battye Street would need to be provided and there must be no structures erected that would impede visibility from the proposed car park access. In order to ensure this, the following condition has been recommended by Highways DM:

“Nothing to be planted or erected within a strip of land 2 metres deep measured from the carriageway edge along the full frontage which exceeds over 1 metre in height”.

- 10.21 A condition has also been recommended to ensure that electric vehicle charging points are provided within the car park to comply with Chapters 9 and 14 of the National Planning Policy Framework and Policies LP27 and LP51 of the Kirklees Local Plan.
- 10.22 To conclude, Officers consider that the proposed development will not lead to highway safety issues, complying with Policies LP21 and LP22 of the KLP as well as guidance within the National Planning Policy Framework.

#### Drainage issues

- 10.23 A condition has been recommended to ensure that all hardstanding within the application site is constructed of a permeable surface in accordance with the Environment Agency's guidance. These surfaces allow water to soak through the surface into the ground below to ensure that any surface water runoff does not cause flooding risks to the site and its surroundings. Officers are satisfied that the proposed development complies with policy LP27 of the Kirklees Local Plan and Chapter 14 of the National Planning Policy Framework in this respect.

#### Representations

- 10.24 23 representations have been received raising the following concerns which are addressed as follows:
- Road safety grounds – car park being near a nursery, a play area and local school.  
*Officer comment: see highway safety section of this report. Following receipt of additional information, the proposals are not considered to be significantly harmful to highway safety.*
  - Land would encourage more traffic and would add to existing highways problems  
*Officer comment: see highway safety section of this report. The proposal has been carefully assessed by HDM and it is not considered to result in any undue highway safety implications.*
  - Increase risk of accident  
*Officer comment: see highway safety section of this report. The proposal is considered acceptable from a highway safety perspective.*
  - Nowhere else where children can play  
*Officer comment: this land does not provide a formal play area for children and indeed there are signs erected on the site stating 'no ball games'.*
  - Car headlights can shine straight into living rooms  
*Officer comment: K.C Environmental Health have raised no objection to the proposal. Given the location of the car park, there is no direct relationship between the car park and the nearby residential properties.*
  - Reduce quality of life so one individual can make more money (renting out community centre)  
*Officer comment: not a material planning consideration.*

- Noise

*Officer comment: K.C Environmental Health have not raised an objection to the proposal. The noise generated by the use will not harmful over and above the existing situation.*

- Drugs, drink

*Officer comment: Consideration has been given to crime – see other matters section of this report. Consultation has been undertaken by the Police Architectural Liaison Officer.*

### Other Matters

- 10.25 *Trees* - To the front of the site is a mature Poplar tree which has been shown on the proposed site plan to be retained. The tree is mature and of amenity value to the streetscene of Batty Street. However, it is acknowledged that the tree is not protected by a tree preservation order or any conservation area status.
- 10.26 However, given the amenity value that the tree provides, the Council's Arboricultural Officer has advised that there is no objection to the proposed development subject to an Arboricultural Method Statement being conditioned to ensure that the formation of the proposed car park does not damage the mature tree and its roots.
- 10.27 Officers consider that, with the inclusion of the suggested condition, the proposal complies with Policy LP33 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.
- 10.28 *Crime and Disorder* - The Police Architectural Liaison Officer has been consulted on the planning application and stated that there have been several crime incidents within the area involving vehicles. Whilst there is no objection to the proposed development, several recommendations have been put forward in relation to ensuring that incidents of crime and disorder do not increase as a result of the development. The following comments have been made:
- Advise that security fencing is erected around the site perimeter
  - Car park kept locked at night – management plan to main site and car park operations
  - Access must be restricted from public land by installing a lockable gate
  - External lighting must comply with BS5489 standards
  - CCTV should cover the secure parking to ensure that nuisance and anti-social behaviour are considered.
  - Motorcycle parking bays can be made more secure through the installation of ground anchors
- 10.29 The conditions which are considered necessary would be recommended on the decision notice, should planning permission be granted. Footnotes would also be recommended which would advise the applicant of further crime prevention measures that should be considered. Officers are satisfied that the formation of a car park will not create crime issues above the existing community hall use.

- 10.30 Subject to the imposition of conditions/advisory footnotes, Officers consider that the proposed development complies with Policy LP47 of the Kirklees Local Plan and Chapter 8 of the National Planning Policy Framework.
- 10.31 Boundary treatment – As part of the application details, no specification has been provided in regard to the position, height or type/design of boundary treatment. Whilst it is acknowledged that this could be controlled to a degree via permitted development set out in the Town & Country Planning (General Permitted Development) Order, it is considered necessary, by officers, to impose a condition requiring such details to be submitted to and approved in writing by the Local Planning Authority before any boundary treatments are first erected. This would be to ensure that any boundary treatments are positioned appropriately and that acceptable materials/heights/design is used, in the interest of safeguarding visual and residential amenity, in accordance with Policy LP24 of the KLP and Chapter 12 of the NPPF.
- 10.32 Users of the proposed car park – As set out in the description of the development and what has formed the basis of this assessment, is that the car park would be used in association with the existing community facility operating from no.61 Battye Street. So as to ensure that this remains the case, a condition is recommended to be imposed by officers; this would ensure that the car park would not be used as an independent facility but used, at all times, in association with the community facility. This would ensure that the proposal complies with the aims of chapter 8 of the NPPF (in terms of providing an enhancement to an existing community facility), as well as Policy LP24 of the KLP and Chapter 12 of the NPPF in respect of residential amenity.

## **11.0 CONCLUSION**

- 11.1 To conclude, the proposed car park, in terms of its size and layout, is considered acceptable by officers in this location. It would relate satisfactorily to the varied development within the vicinity of the site and, in the view of officers, would not result in any significant residential amenity implications. In addition, the proposal is not considered to result in any undue highway safety implications either.
- 11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.3 This application has been assessed against relevant policies in the development plan and other material considerations and it is considered that the development would constitute sustainable development and is therefore recommended for approval.



**12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)**

1. Standard timeframe for commencement of development (3 years)
2. Development to be in accordance with plans
3. Permeable hardstanding
4. Nothing planted/erected within a strip of land 2 metre deep from the carriageway edge of Battye Street which exceeds 1 metre in height
5. Arboricultural Method Statement to ensure mature Poplar tree is to be retained
6. Scheme to detail CCTV measures at the site.
7. Full detail of the position, height, material and design of any boundary treatment.
8. The car park shall be used in association with the community facility operating at no. 61 Battye Street and shall not be used independently from it.

**Background Papers:**

Link to application details:-

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f90813>

Certificate B signed on 12.3.2019 and notice served on Kirklees Council

This page is intentionally left blank

---

## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 13-Jun-2019

**Subject: Planning Application 2019/90281 Erection of boundary wall and fence, and formation of children's play area Park Hotel, 125, High Street, Westtown, Dewsbury, WF13 2QG**

#### APPLICANT

M Pandor

#### DATE VALID

14-Feb-2019

#### TARGET DATE

11-Apr-2019

#### EXTENSION EXPIRY DATE

---

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

#### LOCATION PLAN



Map not to scale – for identification purposes only

---

**Electoral Wards Affected: Dewsbury West**

No

Ward Members consulted

---

**RECOMMENDATION:**

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.**

**1.0 INTRODUCTION:**

- 1.1 The application is brought to the Heavy Woollen Planning Sub-Committee as the applicant is a family member of the Council's Leader Councillor Shabir Pandor. This is in accordance with Part 3.7 of the Constitution.
- 1.2 The Chair of the Sub-Committee has confirmed that this arrangement is appropriate, having regard to the Councillor's Protocol for Planning Committees.

**2.0 SITE AND SURROUNDINGS**

- 2.1 The application property is Park Hotel, no.125 High Street, Westtown, Dewsbury. It is a two storey stone built detached property, with a fenced play area and a hardstanding area to the front and a single storey flat roof extension to the side. The property was converted from a public house to a pre-school in 2013. The boundary treatment of the application site comprises a mix of post and chain fences and block walls. The site has two vehicle access points; one on High Street and another one on Whitworth Road.
- 2.2 The site and its surrounding area are characterised by a mix of residential and non-residential development. There are shops to the north-east and two clubs to the north-west of the application site. The properties in this area vary considerably in terms of scale, design and materials. There is a moderate change in land level with all properties to the north-west of High Street situated at a higher level than those to the south-east.

**3.0 PROPOSAL:**

- 3.1 The development proposal is for the erection of boundary walls and fences and the formation of a children's play area. The details of the proposal are as follows.

3.2 The boundary wall would be erected to the front and the side of the application site. It would be 2.4m high, constructed in natural stone and metal railings. There would be two gates for vehicular access; one on High Street and another one onto Whitworth Road.

3.3 Immediately behind the boundary wall would be two car parks; one with 7 spaces and the other one with 2 spaces. There would also be a children's play area in between the two car parks, which is approximately 11.0m wide and 12.0m deep. The play area would be separated from the car parks by 1.8m high green coloured horizontal railings.

#### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

2013/92447 – Change of use of public house to children playgroup (125, High Street) – Approved

#### **5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**

5.1 The Council's Highways Development Management team initially expressed concerns in regard to the proposed boundary wall as it was considered to have an adverse impact on visibility. There was also limited evidence initially submitted to confirm that the proposed parking provision would be adequate to meet the needs of the customers as well as the staff. The applicant was made aware of these concerns by officers.

5.2 Following a meeting between the applicant and officers, the applicant submitted further information in relation to parking. Additional to this, an amended plan was received on 03-Jun-2019, which demonstrates a visibility splay of 2.4m by 43.0m. There were changes to the layout of the car park to aid vehicle manoeuvring. Taking into account the above information, officers concluded the proposal to be acceptable from a highway safety, efficiency and parking perspective.

5.3 The applicant also added an additional section in the Design and Access Statement to set out the reasons for the height of the proposed boundary wall. These reasons have been considered and afforded appropriate weight in the visual amenity section in this report.

#### **6.0 PLANNING POLICY:**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is unallocated on the Kirklees Local Plan.

#### **6.2 Kirklees Local Plan (KLP):**

**LP 1** – Achieving sustainable development

**LP 2** – Placing shaping

**LP 21** – Highway safety

**LP 22** – Parking

**LP 24** – Design

**LP 52** – Protection and improvement of environmental quality

### 6.3 National Planning Policy Framework

**Chapter 2** – Achieving sustainable development

**Chapter 8** – Promoting healthy and safe communities

**Chapter 12** – Achieving well-designed places

### 7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 As a result of the initial and further publicity, no representations have been received.

### 8.0 **CONSULTATION RESPONSE:**

#### 8.1 **Statutory**

None

#### 8.2 **Non-statutory:**

**KC Highways Development Management:** No objections or concern with regard to the development proposal as shown on the amended plan received on 12-Apr-2019, subject to a condition to require the parking area be appropriately surfaced, drained and marked out in accordance with the details in the approved plan.

**KC Environmental Health:** No objections or concerns in terms of the children play area proposed. This is because the application site already has an outdoor play area. The proposed play area would be no closer to the nearby residential properties than the existing play area. Hence, it would not materially increase the noise and disturbance experienced by the occupants of the adjoining properties.

### 9.0 **MAIN ISSUES**

- Principle of development
- Impact on visual amenity
- Impact on residential amenity
- Impact on highway safety and parking
- Representations
- Other matters

### 10.0 **APPRAISAL**

#### Principle of development

10.1 Chapter 2 of the NPPF introduces the presumption in favour of sustainable development, which is the focus of policy LP1 of the Kirklees Local Plan. This policy stipulates that proposals that accord with policies in the Kirklees Local Plan will be approved without delay, unless material considerations indicate otherwise. Policy LP24 of the KLP is the overarching policy in relation to the design of all proposals, requiring them to respect the appearance and character of the existing development in the surrounding area as well as to protect the amenity of the future and neighbouring occupiers, to promote highway safety and sustainability. These considerations, along with others, are addressed in the following sections of this report.

- 10.2 The application property is currently used as a pre-school, which can be deemed a community facility for the purposes of chapter 8 of the NPPF. Paragraph 92 of the NPPF states that planning decisions should “*ensure that established ... facilities ... are able to develop and modernise and are retained for the benefit of the community*”. In this case, the applicant suggests in the supporting statement that the proposed boundary treatments would be essential in order to provide a safe environment and to ensure the health and well-being of the children, who attend the pre-school. Officers concur with the applicant that the proposal would be beneficial to the local communities by improving the existing facilities and consistent with the aim of chapter 8 of the NPPF.

Impact on visual amenity

- 10.3 The boundary wall would be erected to the front and side of the application site. Since the boundary wall would be relatively high and situated in close proximity to High Street, it would be visually prominent within the street scene. The neighbouring properties along High Street appear to be set back from the road considerably, with a large open area to the front. This evidently contributes to the existing character of the surrounding area. To permit the boundary wall as proposed is likely to have some adverse impact in terms of visual amenity.
- 10.4 Notwithstanding the above considerations, it is considered that the height of the boundary wall can be, on balance, acceptable in this particular instance as the purposes of erecting such a wall are to improve the security of the existing car park, to provide a safe outdoor environment for children to play and to deter unauthorised access and anti-social behaviour. To reduce the height of the boundary wall would render the boundary wall unsuitable for its intended purposes. The design and access statement states that Boothroyd School, for example, already has a boundary fence of a similar height for security and safeguarding reasons. It is a material consideration for the assessment of this application when considering the aims of chapter 8 of the NPPF which sets out that decisions should aim to achieve healthy, inclusive and safe places and to also provide social, recreational and cultural facilities and services the community needs.
- 10.5 Officers observed during the site visit that there is already a stone boundary wall further along High Street. The proposed boundary wall would roughly align with the existing boundary wall in close proximity of the application site. It would comprise a 1.2m stone wall and a 1.2m metal railing. It is considered that the use of metal railings above the 1.2m high stone wall would reduce the oppressiveness of the wall when viewed from High Street and Whitworth Road. For these reasons, officers do not find the proposal to be unduly detrimental to the character of the street scene. Since the proposed materials of construction are already evident at the application site, they are unlikely to cause any additional impact on visual amenity.
- 10.6 The design of the boundary wall would be considerably different from that of the neighbouring property e.g. The Irish National Club, which is located on the opposite side of High Street. Nonetheless, given the application site is not situated within a Conservation Area, the impact of permitting the proposed boundary wall on the existing character of the surrounding area is unlikely to be significant enough to warrant the refusal of the application.

- 10.7 In light of the above circumstances and on balance, officers conclude that the proposed development would be of an acceptable quality in terms of scale, design and materials, subject to conditions requiring the use of natural stone for the walling and that the railings would be coloured black (as opposed to green which was indicated as part of the application details). It would be in compliance with the aims of policy LP24 of the KLP and chapter 12 of the NPPF.

Impact on residential amenity (including noise and disturbance)

- 10.8 There are residential properties to the rear to the application site, including nos.42 to 48 Middle Road, Westtown. Due to the height of the boundary wall as proposed, as well as the difference in land level between the application property and these neighbouring properties, there is likely to be some impact on the living conditions of the occupants of these neighbouring properties. However, the impacts are not considered to be so adverse for the following reasons.
- 10.9 Nos.42 to 48 are two pairs of two storey brick built semi-detached properties with their rear elevation facing towards High Street. These properties are currently separated from the application property by a mid-level stone boundary wall. The proposed boundary wall would be approximately 18.9m from the external back wall of these neighbouring properties. Although the boundary wall would still limit the view from the windows of these neighbouring properties to some degree, it would give rise to an unacceptable overbearing impact on the occupants of these properties. The overshadowing impact is also deemed to be not significant when taking into account the physical separation between the proposed development and these neighbouring properties.
- 10.10 The garden of nos.42 to 48 are already subject to an overbearing impact because of the changing land level outlined in the site description section in this report. It is considered that the proposed boundary wall would not materially increase the overbearing impact on the garden of these properties, given the proposed boundary wall would be situated further away from their gardens than the existing boundary wall at the application site.
- 10.11 KC Environmental Health were consulted on this application because of the increase in scale of the children play area. Environmental Health considers that, having regard to the context of the site and the information submitted by the applicant that the proposal would not give rise to unacceptable noise and disturbance on the occupants of the adjacent residential properties. As such the proposal would not unduly prejudice their living conditions. There were no representations received from the neighbouring occupants in regard to the development proposal either.
- 10.12 On the basis of the above, officers conclude the development proposal to be acceptable from a residential amenity perspective and compliant with the aims of policies LP24 and LP52 of the KLP as well as Chapter 15 of the NPPF.



### Impact on highway safety

- 10.13 The proposed development would not intensify the existing use of the application site. However, it would affect the existing parking arrangements by converting part of the existing parking area into a children's play area. The amended plan indicates that a total of 9 parking spaces would be made available to the customers and staff. The parking provision is deemed to be adequate to meet the needs of the existing development at the application site. The Council's Highways Development Management (HDM) officer also confirms that the layout of the car parks as shown on the amended plan would be acceptable and compliant with the aims of policy LP22 of the KLP in respect of parking. In the interest of highway safety, a condition shall be imposed to require all areas for parking to be surfaced, drained and marked out before the proposed development is first brought into use.
- 10.14 Although High Street is not a classified road, it is a relatively busy road serving a number of residential and non-residential development in immediate vicinity. There is also a bus route running along High Street with a stop directly outside the application property. Notwithstanding the existing situation at High Street, the proposal is unlikely to result in a significant adverse impact on highway safety and efficiency. This is because the proposed development would be supported by adequate parking provision off road. This would reduce the likelihood of on-street parking and disruption to the flow of traffic.
- 10.15 The proposed development would involve the erection of a 2.4m high boundary wall facing directly towards High Street. This is capable of affecting the sightline from High Street as well as Whitworth Road. The applicant has submitted a site plan on 03-Jun-2019 to show a visibility splay of 2.4m by 43.0m, which is consistent with the relevant guidance in the Manual for Streets. Officers consider that, on the basis of the details shown the site plan, that the proposal would not give rise to visibility issues.
- 10.16 Taking all the above factors into account, officers conclude that the proposal would be acceptable in terms of highway safety and efficiency and consistent with policy LP21 of the KLP.

### Other matters

- 10.17 There are no other matters considered relevant to the determination of this application.

### Representations

- 10.18 No representations were received from the occupants of the neighbouring properties as a result of the statutory publicity.

## **11.0 CONCLUSION**

- 11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.2 This application has been assessed against relevant policies in the development plan and other material considerations. Although officers acknowledge that the proposal by reason of its scale and siting would affect the character of the street scene to a degree, the economic and social benefit of supporting the proposal would significantly and demonstrably outweigh the harm to visual amenity, having regard to the relevant guidance in the NPPF along with other material considerations.
- 11.3 It is considered that the development would constitute sustainable development and is therefore recommended for approval.

## **CONDITIONS**

1. Timeframe of 3 years for implementing the development
2. In accordance with submitted plans
3. Boundary walls be constructed in natural stones to match the existing property at the application site
4. All railings to be coloured black
5. All parking area be surfaced, drained and marked out into bays in accordance with approved details

### **Background Papers:**

Application web link:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/90281>

Certificate of Ownership: Certificate A signed and dated 29-Jan-2019

---

## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 13-Jun-2019

**Subject: Planning Application 2019/90269 Erection of detached dwelling and associated site works adj, 93, Stocks Bank Road, Mirfield, WF14 9QB**

#### APPLICANT

Mr & Mrs Knibbs

#### DATE VALID

29-Jan-2019

#### TARGET DATE

26-Mar-2019

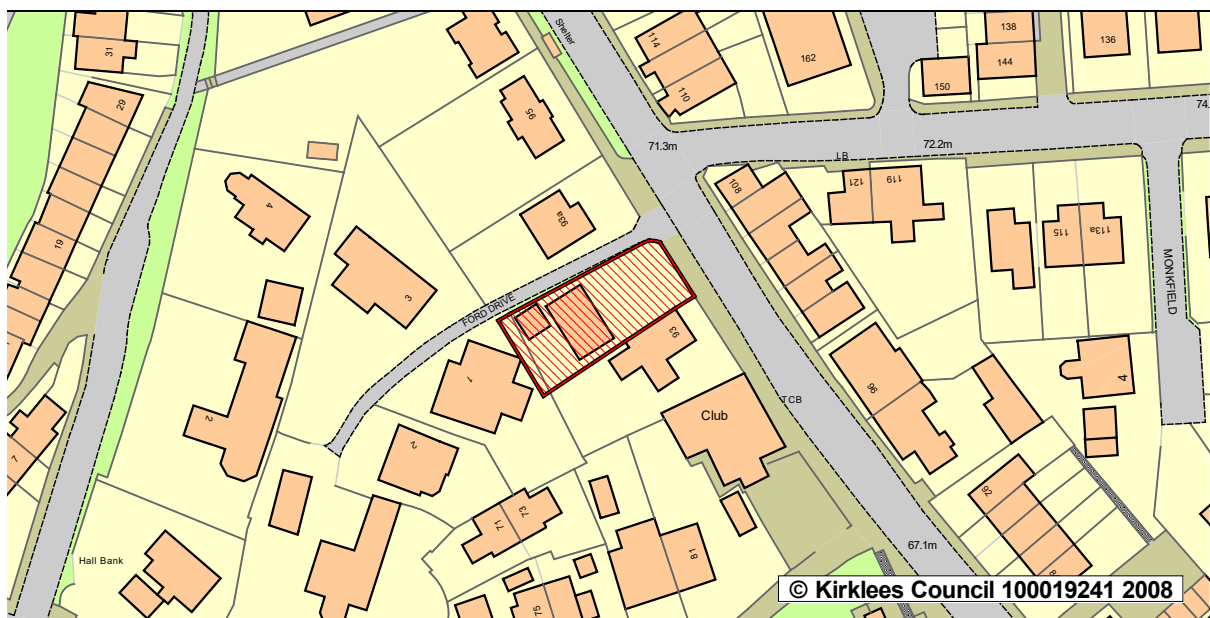
#### EXTENSION EXPIRY DATE

---

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

#### LOCATION PLAN



**Map not to scale – for identification purposes only**

---

**Electoral Wards Affected: Mirfield**

No

Ward Members consulted  
(referred to in report)

---

**RECOMMENDATION:**

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.**

**1.0 INTRODUCTION:**

- 1.1 This application is reported to the Heavy Woollen Planning Sub-Committee due to the previous committee involvement in this site. The site was deferred at the previous committee on 25<sup>th</sup> April 2019 in order for the applicant to engage with their planning consultant and for amendments to be made to the proposal to take on board comments made by objectors.
- 1.2 Due to the previous committee interest in the application site, it is advised by officers that this application be reported back to members. The Chair of the Planning Committee has confirmed that this is appropriate and would comply with the Councillor's Protocol for Planning Committees.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The site relates to land adjacent to no. 93 Stocks Bank Road, Mirfield which currently has a single storey brick double garage on it and is on a slightly lower level than Stocks Bank Road itself. The site is accessed from Stocks Bank Road and is currently hardstanding which is used as a parking area for no. 93. The site has a stone wall and hedging as a front boundary treatment and there is access to Ford Drive to the northwest of the site.
- 2.2 Surrounding the site there is a mixture of house types. To the northeast (front) of the site, there is a row of two storey terraced properties constructed of stone, to the northwest of the site is a detached dwelling constructed of artificial stone, with detached dwellings on a lower level to the southeast and northwest. To the southeast of the site is no. 93 which is a detached two storey dwelling constructed of render and brick with a conservatory to the rear. There is a variety of dwellings of different appearances and materials, including recently approved modern dwellings at no. 97 Stocks Bank Road.

### 3.0 PROPOSAL:

3.1 Planning permission is sought for the erection of one detached dwelling. The proposal also includes a new access for the existing dwelling off Stocks Bank Road. The existing garage is to be retained and incorporated into the proposed dwelling.

3.2 The dwelling will have a bungalow appearance with the following dimensions:

- Overall height – 5.5 metres
- Eaves height – 3.5 metres
- Width – 10.4 metres
- Length (including existing garage) - approx 15.9 metres

3.3 The table below provides a comparison between the dimensions of the previously refused scheme and the current proposal.

Comparison between previously refused scheme (dismissed at appeal) and current proposal		
	Refused scheme	Current proposal
Overall height (and eaves height)	7.4m (4.4m)	5.5m (3.5m)
Width	10.3m	10.4m
Length	11.1m	Approx 15.9m

3.4 The dwelling would be of a contemporary design, constructed of brick for the external walls, timber cladding for part of the external walling material, with large expanses of glazing. The roof will be covered in roofing tiles.

3.5 There will be trees on the rear boundary of the site and a fence at two metres in height surrounding the site.

3.6 The proposed development would also include an access from Stocks Bank Road to serve no. 93 which is the existing dwelling, as well as the proposed dwelling.

### 4.0 RELEVANT PLANNING HISTORY:

4.1 2017/93470 – Erection of detached dwelling and associated site works REFUSED by members of the Heavy Woollen Planning Sub-Committee (appeal dismissed)

4.2 2007/92341 – Erection of conservatory APPROVED (no. 93 Stocks Bank Road)

4.3 91/01747 – Erection of two storey extension REFUSED (no. 93A Stocks Bank Road)

4.4 91/05186 – Erection of double garage extension APPROVED (no. 93A Stocks Bank Road)

4.5 2017/92887 – Demolition of dwelling and erection of three dwellings with associated works APPROVED (no. 97 Stocks Bank Road)

## **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 No amendments have been secured as the proposed development is considered, by Officers, to be acceptable in its current form, taking into account the Planning Inspectorate's decision on app ref. 2017/93470, which was dismissed. The applicant has however, through the course of the application, further reduced the scale of the dwelling and removed an opening in the rear elevation. The amended plans have been advertised to neighbours and further comments summarised in the representations section of the report.

## **6.0 PLANNING POLICY:**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

The site is unallocated on the Kirklees Local Plan.

### **6.2 Kirklees Local Plan**

**LP1** – Achieving sustainable development  
**LP2** – Place Shaping  
**LP3**– Location of new development  
**LP21**– Highway Safety and Access  
**LP22** - Parking  
**LP24**– Design  
**LP27** – Flood Risk  
**LP28**– Drainage  
**LP33**– Biodiversity and geodiversity  
**LP51**– Protection and improvement of local air quality

### **6.3 National Planning Policy Framework (NPPF):**

**Chapter 5** – Delivering a sufficient supply of homes  
**Chapter 12** – Achieving well designed places  
**Chapter 14** – Meeting the challenge of climate change, coastal change and flooding  
**Chapter 15** – Conserving and enhancing the natural environment

## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 8 neighbour representations have been received relating to the original scheme. The comments raised are summarised as follows:
- Property is not in keeping with any of the houses in the immediate area – modern property that would look unsightly
  - House will remove view
  - New property would look directly into front room and bedroom window
  - Parking is already limited
  - Issues with construction traffic (and consequences) from development up the road including at a T-junction on the bus route and when delivery vehicles come. Causes visibility issues – Highways DM should do a site visit

- Dwelling moved front of property closer to Stocks Bank Road (reduce space for parking)
- Sewage system queries including noises
- Site area is wrong – boundary with no.1 Ford Drive was altered and this is not shown on the site plan
- Description wrong but has been amended
- Tree and hedge crucial to application – Design & Access Statement and planning application form are not consistent
- Insufficient attention paid to congested nature of junction of Nab Lane
- Building will fill entire width of plot – scale of building was rejected by Committee and Inspector previously due to overbearing impact
- Footprint is now bigger and previously was turned down for over-development
- Discrepancies in Design & Access Statement – how can we be sure that these calculations are accurate?
- Can requirement for new windows and constructions be guaranteed not to take place?
- Concerns about the amenity of no. 93 due to closeness and massing to proposed property – what if it is owned by someone else at a later stage?
- Maintenance of guttering at no. 93 will be difficult ... due to small gaps between houses. This could cause health and safety issues (Construction Design and Management Regulations)
- Drainage queries – will not allow connection to private drainage system (access and drainage rights)
- Fail to see any material changes to original reasons for refusal – covers more square metres than before
- Overlooking and overbearing, closeness to boundary will dominate properties
- Foundations will be close to Ford Drive and will cause subsidence
- Modern materials been approved at dwellings on Stocks Bank Road but this should not set a precedent
- Dwelling is larger than a single storey dwelling as the roof level is higher to include two large rooms upstairs
- Dubious to say sunlight or overshadowing will not occur at any time
- Significant impact on surroundings
- Up to date highways report (strong concerns relating to vehicular access at a very busy and accident prone junction)

7.2 As a result of the extended publicity period, three further representations has been received raising the following points:

- Bought house as has space around the property and all neighbouring plots have been developed
- Existing garage currently has no direct impact on outlook or looks out of place on the current properties on Stocks Bank Road
- Significant visual impact as it will be squeezed onto the plot
- Size of dwelling is larger than any of the surrounding properties
- References made to previous planning application which was refused by planning committee and also a subsequent appeal.
- Drawing insufficient to enable height/size of dwelling to be checked post planning as it relies on scaled drawings which often proved to be inaccurate.

- No detailed construction section – cannot be proved that accommodation can adequately be achieved (allowing for joist depths, roof covering etc) – in practice, we believe developer would likely lift the building height post planning.
- Kitchen window will be looking out on a brick wall and entrance door of proposed property (9 metres and 6 metres away respectively). 3 roof windows also face this way
- No more than a path's width between no. 93 and the proposed property
- Footprint larger than previously rejected application and it is classed as a bungalow, however it still retains a second floor.
- No access will be given to Ford Drive, including any site vehicles which need access.
- Junction makes it difficult to see approaching traffic (road itself is close to a T junction which is on a bus route)
- Currently problems with delivery vehicles – parking on the pavement outside the house – this can make exiting Ford Drive hazardous.
- Planning application limits space for parking – site visit to visual manoeuvring 3 cars in limited space
- New property shows 2 parking spaces - implications for manoeuvring and highway safety
- Building and development regulations – risk of subsidence
- Drive privately owned and paid for by the residents of Ford Drive
- Number of dimensions of UDP policy BE12 contravened.
- Meeting on site with planning officer would be of benefit to all parties
- Plans at no. 93a Stocks Bank Road for a two story extension on the rear of the house were turned down due to overbearing
- Discrepancies raised with the submitted Design and Access Statement
- Reference to Calderdale planning regulations is irrelevant
- Existing garage structure not being overbearing would be true if proportions of the garage were not to be extended (front wall of the garage will be moved in front of our kitchen window and roof height will almost double).
- Distances fall short of distances set out in UDP Policy BE12
- Privacy is not really an issue as the existing window of no. 93 is a side window which is not near enough to overlook
- Without a full year of assessing the sunlight or overshadowing, it is dubious to say that we will not lose sunlight or be overshadowed at any time – proposed property is larger than existing properties, I cannot see this will be the case at all times of the year.
- No overbearing is not true, large development will be close enough to have a significant impact on our surroundings
- Elevation facing no. 93a will have three windows in the main block including bedroom windows which will overlook no. 93a.
- Inaccuracies of site area and description of proposed works including description is incorrect
- Cherry tree and boundary hedge stated to be retained – how can this be ensured?
- No indication of how foul sewerage will be considered
- Revisions to planning drawings not shown in D and A – inconsistencies
- Parking insufficient to manoeuvre and park vehicles safely and easily
- Insufficient attention paid to congested nature of nab lane – main bus route and for access to local primary school
- Hazard during construction
- Documents refer to bungalow – in fact, it is a two storey dwelling
- What is proposed boundary treatment?



- Inconsistencies with plans including lack of dimensions on plans
- How will it be possible to check it is being correctly built on site – no dispute with a written dimension
- Floor levels and outside areas not clearly indicated as required by NPPG
- Scale of building was previously rejected by Committee and PINS – dwelling will fill entire plot
- Footprint larger than no. 93 and larger than dwelling turned down by Planning Inspectorate on overdevelopment
- Dimensions in table now wrong as plans changed – no evidence to indicate where dimensions came from, or their accuracy
- Residents of Ford Drive have a right of way. Has ground area of road been included in calculations/ concerns raised about boundaries and calculations
- Structure of garage to be used – new house only 10m from Ford Drive is different
- Concern relating to window to window distances. Angle and screening in the summer acknowledged.
- What legal enforceable guarantee can be given that the boundary hedge will be retained at the same height? Can this be the case with the cherry tree?
- Ground level of the sloping site steps down with a retaining wall about 1 metre from the hedge/fence facing Ford Drive- not seen on plans. Hedge can be seen over
- What measures can be taken to ensure that no decking/ ground raising measures will be taken – privacy concerns
- Can it be guaranteed that no windows or constructions can be installed in the future?
- Boundary line between 1 Ford Drive and 93 Stocks Bank Road is incorrectly drawn
- Former garage area to be extended 2.3 metres further towards the Stocks Bank Road – is the minimum distance to the site boundary achieved?
- Amenity of no. 93 affected by closeness of the boundary/ massing of the proposed dwelling
- Roof overhang of guttering hanging into plot of proposed new dwelling. Concern about maintenance of guttering for no. 93
- Health and safety issues should be designed out
- Access for ladders will be required from outside of the site
- Should planning regulations not take into account future occupiers' needs and prevent new builds being close to existing buildings?
- Drains privately owned and maintained and unadopted by YW. How can drains for new sewerage drains be achieved?
- Cannot be assumed by applicant that connection to sewers can be achieved/ consideration of LP28
- Presumption of SUDS used to serve surface water requirements – whole part of the site is hardstanding for parking

7.3 Officer comments will be made in Section 10.41 of this report in response to the concerns raised above.

7.4 Mirfield Town Council have been consulted but have made no comments.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

**K.C Highways Development Management** – no objection.

### 8.2 Non-statutory:

None

## 9.0 MAIN ISSUES

- Principle of development
- Visual amenity/local character
- Residential amenity
- Highway issues
- Representations
- Other matters

## 10.0 APPRAISAL

### Principle of development

- 10.1 The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. Policy LP24 of the KLP is relevant and states that “good design should be at the core of all proposals in the district”.
- 10.2 In this case, the principle of development on the application site is considered acceptable and shall be assessed against other material planning considerations below.
- 10.3 A previous application (2017/93470) was submitted on the site which was refused on residential amenity grounds by the Heavy Woollen Planning Sub-Committee and subsequently dismissed at Appeal by the Planning Inspectorate. The principle of developing the site for a dwelling was considered by the Planning Inspectorate to be acceptable and furthermore, under paragraph 15 of the Inspector’s decision, he states that “*I see no objection in principle to a contemporary design approach for this site and in this regard the dwelling would sit comfortably within its residential surroundings*”.

### Visual amenity/local character:

- 10.4 The impact on visual amenity is considered to be acceptable by officers. The Stocks Bank Road area is characterised by a variety of dwelling types with varying levels of density.

- 10.5 The dwelling itself is located in a plot which is an acceptable size for the proposed dwelling which has been significantly reduced in size since the previous refused application which was dismissed at appeal. The development will retain an area of separation between the neighbouring dwellings which is considered to be an important characteristic of this stretch of Stocks Bank Road. Although there are terraced houses on the opposite side of the highway, there are gaps between the dwellings on Stocks Bank Road, creating a spacious character. The distance between the new built form and the neighbouring dwellings has been increased from the previous application that was refused, and further reduced since the submission of the original plans for this application. Whilst the footprint of the dwelling will be increased from the previously refused scheme in terms of the length of the proposed dwelling, the overall bulk and massing has been significantly reduced, thus creating a more spacious development. Given the significant reduction in overall height and re-design of the dwelling, it is considered by officers that the dwelling is acceptable in this location and will fit satisfactorily within the plot.
- 10.6 The features of the area would be retained and the dwelling is not considered to constitute a cramped form of development. The proposed dwelling would have a reasonable amount of amenity space surrounding it, with the main emphasis of bulk and massing coming from the garage structure that currently exists on site. This part of the dwelling (the existing garage) has been changed from a gable roof to a hipped roof which is an acceptable design.
- 10.7 The proposed roof design further reduces the bulk of the dwelling and visually increases the separation distance between no. 1 Ford Drive and the proposed dwelling.
- 10.8 It is acknowledged that the style of the dwelling would be modern and of a contemporary design approach due to the materials and fenestration detail. Consideration has to be given to Paragraph 127 (c) of the National Planning Policy Framework which states that planning decisions should be sympathetic to the local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
- 10.9 In this instance, the design of the dwelling and the context in which it will be read in is considered to be acceptable and the proposed dwelling, in the view of officers, will be read harmoniously in its context. There are a variety of property styles within the area, with a range of materials used. For example, no.93 Stocks Bank Road is constructed of render and brick for the external walls, with no. 93a Stocks Bank Road being constructed of artificial stone.
- 10.10 As well as this, at no. 97 Stocks Bank Road, planning permission has been granted for the erection of 3 dwellings as shown in the planning history section of this report. These dwellings are of a contemporary style. At the time of the officer site visit, these dwellings were under construction.

- 10.11 Considering the approved application at no. 97, the proposed materials would not be the first introduction of such materials in the immediate streetscene. It is considered by officers that the palette of materials which predominantly features timber cladding and brick, along with the glazing would contribute to a contemporary style and would be appropriate when taking into account the mixed character of the area. The proposed dwelling is acceptable in its layout, materials and scale in relation to neighbouring buildings and the local area more generally, thus reinforcing local distinctiveness in accordance with paragraph 127 of the NPPF.
- 10.12 As well as the above, the Planning Inspector concurs with Officers' opinion that the principle of a contemporary design on this site is acceptable and would sit comfortably within its residential surroundings.
- 10.13 Within the streetscene, the dwelling would not be read as an incongruous feature. To the northwest, the land slopes downwards. From the streetscene plan submitted by the agent on drawing reference (35) 001, it is clear that the proposed dwelling would not be incongruous in height and scale with the dwellings in which it would sit close to. It would have a lower height than no. 93A Stocks Bank Road and a lower height than no. 93 Stocks Bank Road and would sit in its proposed location harmoniously. In summary, the proposed dwelling would not exceed the height of the surrounding dwellings and would not therefore be an unduly incongruous or prominent feature. The height of the dwelling is consistent with the surrounding houses and the dwellings are not closely spaced so as to appear cramped.

#### Summary

- 10.14 Taking into account the Inspectors appeal decision, which raised no objection to a dwelling on this site and nor did it raise any objection to a contemporary design approach, officers consider that the proposal is satisfactory from a visual amenity perspective and complies with Chapter 12 of the NPPF, as well as Policy LP24 of the Kirklees Local Plan.

#### **Residential Amenity:**

- 10.15 The impact on residential amenity is, in the opinion of officers, acceptable. Eight objections have been received as a result of the publicity for this application. The impact on each of the surrounding residential properties will be assessed below, taking into account all material considerations, including the Inspectors appeal decision.

#### Impact on no. 93A Stocks Bank Road

- 10.16 The Planning Inspector's Appeal decision states in paragraph 7 that the side wall of no. 93A includes a secondary kitchen window and a landing/office window; these were considered by the Planning Inspector to constitute habitable room openings for the purpose of assessing the proposal. Taking the appeal decision into account, this report shall be consistent with this approach taken by the Inspector.

- 10.17 The existing garage structure is 6.3 metres from the side elevation of no. 93A Stocks Bank Road, with the main additional bulk of the new dwelling being set back to 9.9 metres from the side elevation of no. 93A Stocks Bank Road. This distance, along with the fact that the main room windows are within the front and rear elevations of no.93A Stocks Bank Road, there would be no harmful impact on these openings as a result of overbearing. A condition has been recommended to remove permitted development rights for extensions and outbuildings to ensure a satisfactory level of amenity in the future.
- 10.18 The Planning Inspector's report makes reference to a shortfall in the distances recommended for the development to comply with UDP Policy BE12. However, since the appeal decision, the Kirklees Unitary Development Plan has been replaced with the Kirklees Local Plan (2019), which is now the starting point for decision -making. The Local Plan does not specify recommended distances. In this case, there is a two metre high fence proposed along the boundary.
- 10.19 In terms of overlooking and/or loss of privacy to this dwelling, there will be no harmful impact. There will be an en-suite bathroom window and an entrance opening facing this site at ground floor, with no openings proposed at first floor level. As well as this, it has also been confirmed that these openings will be obscurely glazed. Considering the above, there will be no overlooking to this existing dwelling. It is also noted that no. 93a and the ground floor windows would be overlooked from the private driveway and could currently be overlooked from this area as well as the driveway area of no. 93 Stocks Bank Road. Any overlooking from the dining room windows would not lead to a loss of privacy over and above the existing situation.
- 10.20 A condition is recommended to ensure that the bathroom window facing this neighbouring site is obscurely glazed.
- 10.21 If the Planning Inspector's stance is taken, where the windows within this neighbouring dwelling are habitable (a door, a kitchen and a landing/home office), there would be no overbearing impact as a result of the proposed dwelling which is well over 6 metres from this side elevation. The roof of the dwelling is also hipped away from the boundary, further reducing its bulk and massing and reducing this impact.

#### Impact on no. 93 Stocks Bank Road

- 10.22 There is a distance of 1.8 metres between the proposed dwelling and no. 93 which is within the applicant's ownership (as shown in the blue line on the site location plan). In the side elevation of no. 93 Stocks Bank Road, there are two openings at first floor level and an opening at ground floor which has been described in the Planning Inspector's report as serving a lounge and bedrooms. The applicant has confirmed that this opening serves a secondary kitchen/dining room and secondary bedroom windows at first floor level.

- 10.23 The proposed development has been amended to overcome, in the view of officers, the concern raised by the Planning Inspectorate in terms of outlook from these openings being severely curtailed by the new house. The new proposal shows the ground floor window to be blocked up. A condition has been recommended that the applicant provides a scheme detailing how the window will be controlled - i.e. through blocking up the window. The agent has also reduced the width of the dwelling during the course of the current planning application, thus further increasing the distance between the proposed dwelling and no. 93 Stocks Bank Road, the existing dwelling that is within the applicant's ownership.
- 10.24 Through the blocking up of this window and a significant reduction in the scale of the dwelling, which will result in the eaves of the new dwelling being much lower than the first floor windows of no.93, the proposed development will not impact on these openings in terms of a significant amount of bulk and massing close to these windows. As well as this, the windows are secondary, thus not having the main outlook from the rooms.
- 10.25 There are windows proposed within the side elevation of the proposed dwelling which serve a kitchen and an en-suite. Given that a kitchen is a non-habitable room which is significantly set back from the main bulk and massing of the proposed dwelling, and there is a timber fence proposed on the side boundary between these dwellings, there will be no loss of privacy as a result of the proposal. The en-suite window can be conditioned to be obscurely glazed.
- 10.26 If an additional window is inserted at ground floor, it could serve a habitable room and therefore consideration has to be given to any overlooking or loss of privacy that may occur as a result of the proposal. However, as stated above, there will be a fence between the sites and this will restrict any overlooking into the private amenity space of no. 93 Stocks Bank Road. Any first floor openings would be controlled by the Town & Country Planning (General Permitted Development) Order (the 'GPDO').
- 10.27 Given the nature of the side ground floor opening in no.93, which is proposed to be blocked up, there will be no overbearing impact as a result of the proposal.

#### Impact on no. 1 Ford Drive

- 10.28 No.1 Ford Drive is on a lower level than the application site and has two elevations in relatively close proximity to it. At ground floor, there is a doorway and a window serving a habitable room along with a conservatory. The applicant has also confirmed that the small window in the front elevation at first floor serves a bedroom. However, this does not have a direct relationship with the proposed dwelling. There is also private amenity space to the side and rear of no. 1 Ford Drive.
- 10.29 There is a distance of approximately 13.2 metres between the window serving bedroom one and the south-eastern elevation of no.1 Ford Drive. Officers consider that, in this instance, this distance is acceptable. The relationship between the dwellings is indirect – the rear elevation of the proposed dwelling is not directly facing either of the elevations of no. 1 Ford Drive, but is located in between the two. This relationship, the level differences in which the proposed dwelling is on a higher level, the screening on the boundary and the

fact that the existing garage will be incorporated into the proposed dwelling, means that the impact of the proposed dwelling will not be significantly detrimental to residential amenity in terms of overbearing over and above the existing situation. The main bulk and massing currently exists through the garage structure. A condition has been recommended to remove permitted development rights for new outbuildings and extensions to ensure that any future development has to be assessed in relation to its impact on residential amenity.

- 10.30 There is a window serving bedroom 1 at ground floor and three openings serving non-habitable rooms all facing this site at ground and first floor. Given the screening on the boundary, the proposed dwelling being on a higher level, along with the fact that three openings at first floor would face onto the corner of the bungalow, there is not considered to be any undue overlooking over and above the existing situation from no. 93. The bedroom window would be set back significantly from the garage structure and given the land level differences, the views from this bedroom would be onto the roof of no. 1 Ford Drive, rather than their habitable spaces to the southeast.
- 10.31 Given the level differences and the bungalow nature of the proposed dwelling, the majority of the views would overlook the dwelling and therefore not cause harmful residential amenity issues. The main amenity space for this dwelling is located directly between no. 93 and therefore will not be detrimentally affected by the proposed development. A condition has been recommended to remove permitted development rights for new openings to avoid any potential future overlooking impact.

*Impact on properties to the front of the site – a row of terraced properties (nos. 108-98 Stocks Bank Road)*

- 10.32 The proposed dwelling would have habitable room windows at ground and first floor facing these terraced dwellings which also have habitable room windows in their main elevation facing the application site. There is a distance of approx. 17 metres between these dwellings. Given that the proposed dwelling would not extend beyond no. 93 which has an established relationship with these terraced properties to the north east, a precedent has been set for this relationship and therefore, it is considered by officers that there would be no undue overlooking compared to the existing situation.
- 10.33 Furthermore, given that there is a highway located between the sites and the relationship of the new dwelling with these terraced properties is the same as the relationship with no. 93, there would be no undue overbearing impact as a result of the proposed dwelling. Additionally, this relationship was not raised as a concern during the appeal decision by the Planning Inspectorate.

*Summary*

- 10.34 In all, for the reasons set out above and when taking into account the Inspectors appeal decision, subject to the inclusion of the conditions suggested in this report, the proposals are considered acceptable by officers in relation to residential amenity and would comply with the aims of as Policy LP24 of the KLP as well as the NPPF.

### **Highway issues:**

- 10.35 Following consultation with Highways Development Management (HDM), there is no objection to the proposal. The reasons for this are set out below.
- 10.36 Following a site visit by the case officer and the Highways Officer during the course of the previous application, there was no objection to the proposal. The proposed dwelling would use the existing access that currently serves no. 93 with a new access proposed to serve the existing dwelling.
- 10.37 The parking provision at the site is acceptable. The plan demonstrates that two parking spaces can be accommodated outside the proposed dwelling. At the front of the site, there is adequate space to turn on site, thus not impacting on highway safety and efficiency. The required manoeuvres are shown on the submitted block plan.
- 10.38 At the existing dwelling, the plan shows a new access with acceptable visibility splays and width to ensure that access and egress from the site would be acceptable without causing highway safety issues. There is also capacity to accommodate three spaces to the front of the existing dwelling.
- 10.39 Furthermore, it should also be acknowledged that at the appeal stage, no concerns were raised by the Planning Inspector in relation to highway safety and the arrangements at the site are similar to those proposed as part of the previous application.

### **Summary**

- 10.40 For the above reasons, there will be no highway safety issues over and above the existing situation. Taking into account the above, the proposal is considered to comply with Policy LP21 of the KLP. Furthermore, the proposal is also considered to be in accordance with policy LP22 of the KLP in relation to the parking provision to serve the existing and proposed dwellings.

### **Representations**

- 10.41 Eight (8) neighbour representations were received as a result of the initial publicity period. The representations raise the following concerns which are addressed by officers as follows:
- Property is not in keeping with any of the houses in the immediate area – modern property that would look unsightly  
**Officer comment:** *this has been assessed in the visual amenity section of this report. There are other examples of modern style dwellings within the near vicinity.*
  - House will remove view  
**Officer comment:** *loss of view is not a material planning consideration.*
  - New property would look directly into front room and bedroom window  
**Officer comment:** *overlooking has been considered in the residential amenity section of this report.*



- Parking is already limited  
**Officer comment:** *Highways DM do not have an objection to the proposed development. The parking provision on the site is acceptable for the new dwelling and no. 93 Stocks Bank Road, the host dwelling.*
- Issues with construction traffic (and consequences) from development up the road including at a T-junction on the bus route and when delivery vehicles come. Causes visibility issues – Highways DM should do a site visit.  
**Officer comment:** *Issues arising from the construction period are not a material planning consideration. Highways DM have reviewed the proposed development and the proposed access is satisfactory, along with the suitable parking provision on the site.*
- Dwelling moved front of property closer to Stocks Bank Road (reduce space for parking)  
**Officer comment:** *there is still adequate parking provision demonstrated within the site.*
- Sewage system queries including noises.  
**Officer comment:** *the addition of one dwelling on the site will not cause undue pressure on the sewage systems. There will be no harmful impact as a result of the proposed drainage system.*
- Site area is wrong – boundary with no.1 Ford Drive was altered and this is not shown on the site plan  
**Officer comment:** *The case officer has queried this with the applicant who has confirmed that the red line is an accurate representation of the ownership. The correct certificate has been signed.*
- Description wrong but has been amended  
**Officer comment:** *The description that is put forward as the current description of development is an accurate representation of the proposed development.*
- Tree and hedge crucial to application – Design & Access Statement and planning application form are not consistent.  
**Officer comment:** *It is noted that the application form states there are no trees on the proposed development site. However, from a site visit, the case officer can confirm there are hedges on the boundaries on the application site and a condition has been recommended for these to be retained.*
- Insufficient attention paid to congested nature of junction of Nab Lane  
**Officer comment:** *Highways DM have reviewed the application and it is acceptable from a Highways safety perspective.*
- Building will fill entire width of plot – scale of building was rejected by Committee and Inspector previously due to overbearing impact/ footprint is now bigger and previously was turned down for over-development  
**Officer comment:** *See assessment of proposed development in the report. The proposed dwelling has been significantly amended from the previous planning application.*

- Discrepancies in Design & Access Statement – how can we be sure that these calculations are accurate?  
**Officer comment:** *the calculations and additional information have been considered as part of the application. Notwithstanding whether the calculations are correct, the proposal has been assessed on its merits against the relevant material planning considerations and is considered to be acceptable.*
- Can requirement for new windows and constructions be guaranteed not to take place?  
**Officer comment:** *consideration has been given in the assessment in relation to permitted development rights set out in the Town & Country Planning (General Permitted Development) Order.*
- Concerns about the amenity of no. 93 due to closeness and massing to proposed property – what if it is owned by someone else at a later stage?  
**Officer comment:** *a condition has been recommended that the ground floor window is blocked up and the amenity of the occupiers of this dwelling has been assessed in the residential amenity section of this report. The blocking up of the window has been annotated on the submitted plans.*
- Maintenance of guttering at no. 93 will be difficult --- due to small gaps between houses. This could cause health and safety issues (Construction Design and Management Regulations)  
**Officer comment:** *this is not a material planning consideration.*
- Drainage queries – will not allow connection to private drainage system (access and drainage rights)  
**Officer comment:** *access and drainage rights is a civil matter. A drainage plan/scheme can be conditioned.*
- Fail to see any material changes to original reasons for refusal – covers more square metres than before  
**Officer comment:** *the application proposal has been changed from the previous proposal as demonstrated on the submitted plans.*
- Overlooking and overbearing, closeness to boundary will dominate properties  
**Officer comment:** *the impact on residential amenity has been assessed in relation to each of the surrounding dwellings and, when taking into account the overall design of the scheme and its surroundings, is considered acceptable by officers.*
- Foundations will be close to Ford Drive and will cause subsidence  
**Officer comment:** *this is not a material planning consideration. This would be assessed at any subsequent building regulations application.*
- Modern materials been approved at dwellings on Stocks Bank Road but this should not set a precedent  
**Officer comment:** *the character of the area and streetscene is considered as part of the visual amenity section of this report. The proposed dwelling will fit in with its surroundings and will not be out of keeping given the other modern dwellings within the area. Furthermore, the Inspectors decision, in relation to the previous refusal, sets out that there is no objection to a contemporary design approach on this site.*

- Dwelling is larger than a single storey dwelling as the roof level is higher to include two large rooms upstairs  
**Officer comment:** *the proposed dwelling is smaller in overall height than the previously refused dwelling and the new proposal is assessed on its own merits in this regard. It is considered, by officers, to sit comfortably within the street scene and would not cause undue harm to visual or residential amenity.*
- Dubious to say sunlight or overshadowing will not occur at any time  
**Officer comment:** *considered in residential amenity section of this report.*
- Significant impact on surroundings  
**Officer comment:** *the development has been assessed in terms of residential amenity and visual amenity and the impact on surroundings is considered to be acceptable.*
- Up-to-date highways report (strong concerns relating to vehicular access at a very busy and accident prone junction)  
**Officer comment:** *Highways DM have reviewed the application and there is no concern relating to the proposed access and parking provision.*

10.42 As a result of the extended publicity period, two further neighbour representations has been received raising the following points:

- Bought house as has space around the property and thought all neighbouring plots have been developed  
**Officer comment:** this is noted.
- Existing garage currently has no direct impact on outlook or looks out of place on the current properties on Stocks Bank Road  
**Officer comment:** the garage structure is on site and will be incorporated into the proposed dwelling which has been assessed in the report above.
- Significant visual impact as it will be squeezed onto the plot  
**Officer comment:** see visual amenity section of this report
- Size of dwelling is larger than any of the surrounding properties  
**Officer comment:** the Planning Inspector stated that the principle of a dwelling in this location is acceptable. The dwelling is considered, by Officers, to fit into the plot and have an acceptable impact on the streetscene/ character of the area.
- References made to previous planning application which was refused by planning committee and also a subsequent appeal.  
**Officer comment:** this is a material planning consideration. It is considered by Officers that the Planning Inspectorate's reasons for refusal have been overcome.
- Drawing insufficient to enable height/size of dwelling to be checked post planning as it relies on scaled drawings which often proved to be inaccurate.  
**Officer comment:** the submitted plans are to scale and can be used to check that the dwelling is being constructed in accordance with the plans.

- No detailed construction section – cannot be proved that accommodation can adequately be achieved (allowing for joist depths, roof covering etc) – in practice, we believe developer would likely lift the building height post planning.  
**Officer comment:** if the development is not built in accordance with the approved plans, this would be an enforcement issue. The fact that the developer may not built in accordance with the approval, is not a material planning consideration.
- Kitchen window will be looking out on a brick wall and entrance door of proposed property (9 metres and 6 metres away respectively). 3 roof windows also face this way  
**Officer comment:** this has been considered in terms of residential amenity and visual amenity
- No more than a path's width between no. 93 and the proposed property  
**Officer comment:** the site layout is considered acceptable to allow sufficient distance between the proposed dwelling and existing properties.
- Footprint larger than previously rejected application and it is classed as a bungalow, however it still retains a second floor.  
**Officer comment:** the description of development is for the erection of a detached dwelling and therefore the application has been
- No access will be given to Ford Drive, including any site vehicles which need access.  
**Officer comment:** this is not a material consideration. It is a private legal matter. The applicant has confirmed in the Design and Access Addendum that no access will be required.
- Junction makes it difficult to see approaching traffic (road itself is close to a T junction which is on a bus route)  
**Officer comment:** see highway safety section of the report.
- Currently problems with delivery vehicles – parking on the pavement outside the house – this can make exiting Ford Drive hazardous.  
**Officer comment:** see highway safety section of the report.
- Planning application limits space for parking – site visit to visual manoeuvring 3 cars in limited space  
**Officer comment:** see highway safety section of the report.
- New property shows 2 parking spaces - implications for manoeuvring and highway safety  
**Officer comment:** see highway safety section of the report.
- Building and development regulations – risk of subsidence  
**Officer comment:** As stated in the National Planning Policy Framework, land stability is the responsibility of the developer.
- Drive privately owned and paid for by the residents of Ford Drive  
**Officer comment:** this is not a material planning consideration.

- Number of dimensions of UDP policy BE12 contravened  
**Officer comment:** the UDP is no longer relevant. The Kirklees Local Plan is the development plan that has been considered.
- Meeting on site with planning officer would be of benefit to all parties  
**Officer comment:** Several site visits have taken place over the course of the previous applications.
- Plans at no. 93a Stocks Bank Road for a two story extension on the rear of the house were turned down due to overbearing  
**Officer comment:** Each application is assessed on its own merits.
- Discrepancies raised with the submitted Design and Access Statement  
**Officer comment:** an assessment of the proposed plans has been undertaken. The applicant has provided a Design and Access Addendum which sets out the reasons for the revised scheme.
- Reference to Calderdale planning regulations is irrelevant  
**Officer comment:** this is noted. Calderdale planning regulations are not a
- Existing garage structure not being overbearing would be true if proportions of the garage were not to be extended (front wall of the garage will be moved in front of our kitchen window and roof height will almost double).  
**Officer comment:** a large element of the structure relates to the existing garage. Consideration has also been given to the impact of the proposed dwelling as a whole.
- Distances fall short of distances set out in UDP Policy BE12  
**Officer comment:** the UDP is no longer relevant. The Kirklees Local Plan is the development plan that has been considered.
- Privacy is not really an issue as the existing window of no. 93 is a side window which is not near enough to overlook  
**Officer comment:** this is noted.
- Without a full year of assessing the sunlight or overshadowing, it is dubious to say that we will not lose sunlight or be overshadowed at any time – proposed property is larger than existing properties, I cannot see this will be the case at all times of the year.  
**Officer comment:** given the nature of the existing openings in the side elevation and the location of the dwelling to the northwest of the application site, it is not considered that there would be a harmful impact on residential amenity as a result of the proposed dwelling.
- No overbearing is not true, large development will be close enough to have a significant impact on our surroundings  
**Officer comment:** given the windows in the side elevation of no. 93A and the fact that a large amount of bulk and massing of the dwelling will be
- Elevation facing no. 93a will have three windows in the main block including bedroom windows which will overlook no. 93a.  
**Officer comment:** this is not the case. The windows will serve the entrance and bathroom of the proposed dwelling which are non-habitable rooms.

- Inaccuracies of site area and description of proposed works including description is incorrect  
**Officer comment:** the description of development is correct and the proposed plans and elevations provide sufficient detail to allow the development to be assessed.
- Cherry tree and boundary hedge stated to be retained – how can this be ensured?  
**Officer comment:** a condition has been recommended to members to ensure that the existing boundary treatments are retained.
- No indication of how foul sewerage will be considered  
**Officer comment:** A condition has been recommended for a drainage plan to be provided.
- Revisions to planning drawings not shown in D and A – inconsistencies  
**Officer comment:** the description of development is correct and the proposed plans and elevations provide sufficient detail to allow the development to be assessed.
- Parking insufficient to manoeuvre and park vehicles safely and easily  
**Officer comment:** see highway safety section of this report. There is adequate parking on the site for the new dwelling and no. 93.
- Insufficient attention paid to congested nature of nab lane – main bus route and for access to local primary school  
**Officer comment:** Highways DM have assessed the proposed development and have no objection.
- Hazard during construction  
**Officer comment:** this is not a material planning consideration.
- Documents refer to bungalow – in fact, it is a two storey dwelling  
**Officer comment:** the description of development refers to a new dwelling which accurately reflects the proposed development.
- What is proposed boundary treatment?  
**Officer comment:** the plan shows a conifer hedge and timber fence at 2 metres in height along the boundary between the application site at no. 1 Ford Drive. There is also be a 2 metre timber fence located on the boundary between the application site and no. 93a Stocks Bank Road and no. 93.
- Inconsistencies with plans including lack of dimensions on plans  
**Officer comment:** there is no requirement for dimensions on the plans. The submitted plans are to scale and can therefore be assessed.
- How will it be possible to check it is being correctly built on site – no dispute with a written dimension  
**Officer comment:** the plans are to scale and can be scaled off the plans to check that the dwelling is being built correctly.

- Floor levels and outside areas not clearly indicated as required by NPPG  
**Officer comment:** the site plan indicates the outside areas associated with the dwelling. Floor levels do not have to be indicated on the plans.
- Scale of building was previously rejected by Committee and PINS – dwelling will fill entire plot  
**Officer comment:** it is noted that the proposed dwelling is larger in footprint than the dwelling previously refused by the Planning Inspectorate, the overall scale and bulk has been significantly reduced. It is considered that the proposed dwelling has overcome the Inspector's reason for refusal.
- Footprint larger than no. 93 and larger than dwelling turned down by Planning Inspectorate on overdevelopment  
**Officer comment:** it is noted that the proposed dwelling is larger in footprint than the dwelling previously refused by the Planning Inspectorate, the overall scale and bulk has been significantly reduced. It is considered that the proposed dwelling has overcome the Inspector's reason for refusal.
- Dimensions in table now wrong as plans changed – no evidence to indicate where dimensions came from, or their accuracy  
**Officer comment:** the changes to the plans are minor. Notwithstanding this, the plans are accurate and provide enough information to make an informed assessment of the planning application.
- Residents of Ford Drive have a right of way. Has ground area of road been included in calculations/ concerns raised about boundaries and calculations  
**Officer comment:** the overall scale of the dwelling has been considered.
- Structure of garage to be used – new house only 10m from Ford Drive is different  
**Officer comment:** the existing garage structure will be incorporated into the scheme.
- Concern relating to window to window distances. Angle and screening in the summer acknowledged.  
**Officer comment:** see residential amenity section of this report.
- What legal enforceable guarantee can be given that the boundary hedge will be retained at the same height? Can this be the case with the cherry tree?  
**Officer comment:** a condition has been recommended to ensure that the boundary hedge will be retained at the same height, and if this is replaced, it shall be with a 2 metre high boundary fence.
- Ground level of the sloping site steps down with a retaining wall about 1 metre from the hedge/fence facing Ford Drive- not seen on plans. Hedge can be seen over  
**Officer comment:** a site visit has been undertaken and the proposed development considered in its context. Given the obscure angle at which the houses face each other, there would be no harmful overlooking/loss of privacy.

- What measures can be taken to ensure that no decking/ ground raising measures will be taken – privacy concerns  
**Officer comment:** Decking/ground raising measures will need planning permission in their own right after the dwelling is constructed.
- Can it be guaranteed that no windows or constructions can be installed in the future?  
**Officer comment:** See recommended conditions. Conditions have been recommended to remove PD rights for new openings and new extensions/structures.
- Boundary line between 1 Ford Drive and 93 Stocks Bank Road is incorrectly drawn  
**Officer comment:** this has been queried by the case officer and the agent has confirmed that all land within the red line boundary is within the applicant's ownership and that the boundaries are correct.
- Former garage area to be extended 2.3 metres further towards the Stocks Bank Road – is the minimum distance to the site boundary achieved?  
**Officer comment:** there is no minimum distance to the boundary that needs to be adhered to. The proposed development is an acceptable distance from neighbouring properties.
- Amenity of no. 93 affected by closeness of the boundary/ massing of the proposed dwelling  
**Officer comment:** the amenity of the future occupiers of no. 93 has been considered. See residential amenity section of this report.
- Roof overhang of guttering hanging into plot of proposed new dwelling. Concern about maintenance of guttering for no. 93  
**Officer comment:** this is not a material planning consideration.
- Health and safety issues should be designed out  
**Officer comment:** this is not a material planning consideration.
- Access for ladders will be required from outside of the site  
**Officer comment:** this is not a material planning consideration.
- Should planning regulations not take into account future occupiers' needs and prevent new builds being close to existing buildings?  
**Officer comment:** See residential amenity section of this report. The level of amenity for the future occupiers of the dwelling is considered to be acceptable – there is an acceptable level of amenity space and the size of the rooms is acceptable in respect of the National Space Standards.
- Drains privately owned and maintained and unadopted by YW. How can drains for new sewerage drains be achieved?  
**Officer comment:** this is not a material planning matter.
- Cannot be assumed by applicant that connection to sewers can be achieved/ consideration of LP28  
**Officer comment:** the applicant's connection to the sewers is not a material planning consideration. Consideration has been given to LP28 and the applicant has been advised that there is a presumption that a sustainable drainage system will be used. A condition has been recommended for a drainage scheme to be provided.



- Presumption of SUDS used to serve surface water requirements – whole part of the site is hardstanding for parking  
**Officer comment:** a condition has been recommended to ensure that all proposed parking areas are constructed from permeable surfacing in accordance with the Environment Agency’s guidance. This is in the interests of flood risk.

10.43 All of the concerns raised in the representations, as summarised above, have been carefully considered. However, it is the view of officers that, when taking into account all material considerations, including the previous appeal decision that the proposal would comply with relevant development plan and national planning policy.

## **11.0 CONCLUSION**

11.1 To conclude, the proposed dwelling, in terms of its layout, scale, and design, is considered acceptable by officers in this location. It would relate satisfactorily to the varied development within the vicinity of the site and, in the view of officers, would not result in any significant residential amenity implications. In addition, the proposal is not considered to result in any undue highway safety implications either.

11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government’s view of what sustainable development means in practice.

11.3 This application has been assessed against relevant policies in the development plan and other material considerations and it is considered that the development would constitute sustainable development and is therefore recommended for approval.

## **12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)**

1. Three year time limit to commence development
2. Development carried out in accordance of approved plans
3. Materials
4. One charging point to be installed
5. Surfacing re parking area
6. En-suite opening to be obscurely glazed
7. Boundary treatments to the side and rear to be retained
8. Window in side elevation of no. 93 to be blocked up prior to the commencement of development of the new dwelling.
9. Drainage scheme

10. Permitted development rights removed for any outbuildings/extensions.
11. Permitted development rights removed for new openings in south western (rear) elevation.
12. Footnote re hours of construction
13. Footnote re access/ownership rights

### **Background Papers:**

Link to the application details:-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/90269>

Certificate of Ownership – Certificate A signed and dated 23<sup>rd</sup> January 2019

Previous planning application 2017/93470:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93470>



---

**Electoral Wards Affected: Liversedge and Gomersal**

No

Ward Members consulted  
(referred to in report)

---

**RECOMMENDATION:**

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within the report.**

**1.0 INTRODUCTION:**

- 1.1 This application is brought to the Heavy Woollen Planning Sub-Committee because the applicant is the spouse of Ward Councillor Grainger- Mead.
- 1.2 This is in accordance with the Council's Scheme of Delegation.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The Ginger Whale is a coffee shop, deli and speciality food shop located at no.344 Oxford Road, Gomersal. It is a two storey building which fronts immediately onto Oxford Road. It is attached to no.346 Oxford Road, which is in use as a hair and beauty salon.
- 2.2 Within the wider area, there comprises of a mix of retail and residential premises.

**3.0 PROPOSAL:**

- 3.1 The property was in a retail (Class A1) use prior to the coffee shop element being introduced which has been operating under temporary permitted development. The applicant is now seeking full planning permission to make the change of use to A1 shop and A3 coffee shop permanent.

**4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

- 4.1 2015/91791 – temporary change of use to A1 & A3 - noted

**5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**

- 5.1 None required

## **6.0 PLANNING POLICY:**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

The site is unallocated on the Kirklees Local Plan however, it is within the designated Gomersal Conservation Area.

### Kirklees Local Plan (adopted 2019):

- 6.2 **LP1** – Sustainable development  
**LP24** – Design  
**LP21** – Highway safety  
**LP35** – Historic Environment  
**LP52** – Protection and improvement of environmental quality

### National Planning Guidance:

- 6.3 **Chapter 6** – Building a strong, competitive economy  
**Chapter 7** – Ensuring the vitality of town centres  
**Chapter 15** – Conserving and enhancing the natural environment  
**Chapter 16** – Conserving and enhancing the historic environment

## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application has been publicised in accordance with the Development Management Charter. As a result, no representations have been received.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

None

### **8.2 Non-statutory:**

K.C. Highways Development Management – No objection

K.C. Environmental Services – no objection however suggested condition in terms of the opening hours to protect the amenities of neighbouring properties into the future.

## **9.0 MAIN ISSUES**

- Principle of development
- Visual and residential amenity
- Highway issues
- Representations
- Other matters

## **10.0 APPRAISAL**

### Principle of development

- 10.1 The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.
- 10.2 The premises is located within the Gomersal Conservation Area and as such consideration in terms of policy LP35 of the KLP and Chapter 16 of the NPPF is required. In this instance, there are no external alterations proposed to the building and the use has been operating on a temporary basis for some time. It is considered that there would be no impact in terms of the Conservation Area.
- 10.3 It is noted that the premises is not located within the defined centre of Gomersal and that the use as an A1 and A3 business would not normally be considered to be acceptable out of a town/village centre. However, in this instance, the business has been established for some time and prior to the temporary change of use it was a shop. Given the previous use and the established nature of the business, the proposal is considered to be acceptable in this out of centre location and would not contradict the aims of Chapter 7 of the NPPF, which highlights the importance of supporting the role of town centres. The proposal would, in fact, comply with the aims of Chapter 6 of the NPPF which sets out that planning decisions should, amongst other things, help to create the conditions in which businesses can invest, expand and adapt. Furthermore, significant weight should be placed on the need to support economic growth ... taking into account both local business needs and wider opportunities for development.
- 10.4 In this case, the principle of development is considered acceptable and would enable the existing, well-established use to continue to operate from the premises. The proposal shall now be assessed against all other material planning considerations, including visual and residential amenity, as well as highway safety.

### Visual and residential amenity considerations

- 10.5 There are no external alterations proposed to the building. The use has been established on a temporary basis under permitted development and has integrated within the area well. As such, the proposed permanent change of use is considered to be acceptable in terms of visual amenity.
- 10.6 The application form states the opening hours are currently 9am until 7pm Monday to Friday and 9am until 5pm on Saturday. The current hours are not considered to be unreasonable and no complaints have been received from neighbouring residents. Kirklees Environmental Health have suggested conditioning the openings hours to between 8am and 8pm so as to protect the occupants of the neighbouring properties. This is considered to be reasonable to protect neighbouring occupants into the future from increased opening hours which may adversely affect the amenities of the neighbouring properties should the premises be sold/change ownership and introduce a different business model, in accordance with policy LP52 of the KLP and Chapter 15 of the NPPF.

- 10.7 The applicant has expressed concerns at the proposed restriction as part of the existing business model does include events such as gin tasting sessions which may take place after the specified opening hours set out in paragraph 10.6 above. Whilst there would be concerns regarding the proximity to residential properties with unrestricted opening hours, occasional use outside of the hours of 8am until 8pm could potentially be agreed via a bespoke condition for up to a certain number of occasions within the calendar year. This is considered reasonable by officers and would provide the business some flexibility whilst preserving the amenities of the neighbouring residents. It is suggested as part of the condition that the applicant notifies its neighbours 10 working days before any such event takes place.
- 10.8 Given the coffee shop element of the unit has been established for some time, if the use is operated in line with the proposed restrictions, there would be limited potential for further impact on the amenities of the occupants of the neighbouring properties over and above the existing arrangements on site. As such, the proposal under consideration is considered to be acceptable in terms of residential amenity and complies with policy LP24 of the Kirklees Local Plan.
- 10.9 To summarise, the proposal is considered, by officers, to be acceptable from both a visual and residential amenity perspective and, with the inclusion of the suggested conditions would ensure that this would remain the case in perpetuity, in accordance with the aims of policies LP24 and LP52 of the KLP as well as Chapters 12 and 15 of the NPPF.

#### Highway issues

- 10.10 Highways Development Management (HDM) has reviewed the application. They have observed that the unit has a limited number of seats available and has been operating for some time without detrimentally impacting on highway safety; and that on-site observations confirmed that very few traffic movements were associated with the site, and although two-way flow was occasionally compromised, visibility beyond any parked vehicles was good.
- 10.11 Taking the above into account, it is considered that there would be no impact on highway safety over and above the existing arrangements on the site. The scheme is therefore considered to represent no undue harm in terms of highways safety and complies with policy LP21 of the Kirklees Local Plan.

#### Representations

- 10.12 None received

#### Other Matters

- 10.13 There are no other matters considered relevant to the determination of this application.

## **11.0 CONCLUSION**

11.1 This application for a change of use from A1 to mixed A1 and A3 has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations.

11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. This application has been assessed against relevant policies in the development plan and other material considerations.

## **12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)**

1. Other than the prior approved hours permitted under condition 2, the use hereby permitted shall not be open to customers outside the hours of 8am to 8pm Monday to Saturday and shall not be open to customers on Sundays.
2. The premises may be open to customers between the hours of 20:00 and 23:00 for not more than 12 occasions in total in any calendar year providing that 10 working days prior to each of these occasions, details of the time and date have been provided to the neighbouring occupants.

### **Background Papers:**

Link to application details:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f91110>

Certificate of Ownership – Notice served on 02/04/2019

Link to previous Temporary Approval:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f91791>



## KIRKLEES METROPOLITAN COUNCIL

### PLANNING SERVICE

#### UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY

#### PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

13 JUNE 2019

---

**Planning Application 2019/91110**

**Item 15 – Page 69**

**Change of use from A1 (retail) to A1 (retail) and A3 (restaurant/cafe/drinking establishment) (within a Conservation Area)**

**Ginger Whale, 344, Oxford Road, Gomersal, Cleckheaton, BD19 4JR**

Following the publishing of the agenda, concern has been raised by the applicant in regard to the conditions suggested by officers on page 74. The applicant contends that the business has been operating for the last 3 years without complaint (which is not disputed by officers) and this includes opening on Sundays as well as late night openings. Concern was also raised regarding the 2 weeks' notice period suggested by officers as well as the restriction to 12 late night events throughout the year.

Further discussions subsequently took place between the applicant and officers regarding these concerns. Officers maintain their view that management of the opening hours is necessary because any subsequent planning permission goes with the land and not the person. Therefore, should circumstances change at the site, for example, the premises were sold or leased to another operator who had a different business model than the applicant, when taking into account the close proximity of unrelated residential properties to the application site, harm could be caused to residential amenity if not managed accordingly.

However, the applicant advised that should the opening hours be restricted to those set out in the suggested conditions contained in the agenda, there would be an adverse impact on the business and its existing business model i.e. product launches / tasting events take place at the premises and are currently held into the evening and therefore, to restrict this would be harmful to the business.

In light of the above, the applicant has asked for members to consider the following:-

- 1) No conditions for Sunday openings apart from hours set out by law.
- 2) That it is not necessary for 2 weeks' notice to be given if we are to open late.
- 3) That we will be restricted to a maximum of 2 'late' nights a week.

In addition to the above, it is also highlighted by the applicant that they have a current License granted under the Licensing Act 2003. Officers have reviewed the License, and this specifies under 'Activities – Times Granted' that the operator is permitted to *supply alcohol for consumption on and off the premises* between Monday to Sunday 09:00 to 23:00. However, in terms of '*Premises Open Hours Granted*', these are specified as:-

Monday to Wednesday	09:00 to 16:00
Thursday	09:00 to 19:00
Friday	09:00 to 18:00
Saturday	09:00 to 17:00

Having perused the licencing application, the additional hours agreed as part of the license in relation to activities for the supply of alcohol is because the applicant stated that *"the extension to the hours for the sale of alcohol relate mainly to special events and they would be ticketed or invite only and they would be held outside of the normal opening hours"*.

It does need to be acknowledged that planning permission and premises licences are determined against different statutory guidance, each with their own set of rules. It is however, accepted that there is some overlapping of the issues to be considered in both applications, particularly in terms of nuisance.

In a recent planning Appeal Decision received by the Council (reference APP/Z4718/W/18/3213285), it was acknowledged that it is not unusual for different decisions to be reached in relation to planning and licencing matters. This is because, and as previously set out above, planning relates to land use and a grant of permission would be permanent. Whereas with a licence, this can be revised or revoked and relates more to public nuisance caused by users of the premises as opposed, for example, to noise generated from use of the building or from associated equipment. It was further highlighted in the appeal decision that the two regimes are deliberately separate because they consider different aspects of similar, but not identical, issues.

Taking the above into account, officers consider that some further flexibility would be appropriate in this instance and suggest some revisions to the conditions stated in the agenda. It is the opinion of officers that the revised conditions would reach a suitable balance between economic benefits and residential amenity. Furthermore, it should also be acknowledged that, should the applicant, or any successor, wish to change the hours specified in the conditions (should the application be approved), they do have the option of submitting a variation of condition application (under Section 73 of the Town & Country Planning Act) which would be assessed accordingly.

## **REVISED RECOMMENDED CONDITIONS:**

1. Other than the prior approved hours permitted under condition 2, the use hereby permitted shall not be open to customers outside the hours of 8:00 to 20:00 Monday to Saturday and on Sundays 10:00 to 16:00.
  2. The premises may be open to customers for the serving of alcohol for consumption on and off the premises limited to tasting events and invite only events between the hours of 20:00 and 23:00 on not more than two evenings per week between Monday and Saturday, on condition that details of the time and date have been provided to the neighbouring occupants of Nos.342 Oxford Road, nos.348 – 352a (inclusive) Oxford Road and nos. 2 – 12 (inclusive) Grove Square in advance of such events.
-

This page is intentionally left blank