

Contact Officer: Andrea Woodside

KIRKLEES COUNCIL

PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

Thursday 22nd July 2021

Present: Councillor Mumtaz Hussain (Chair)
Councillor Nosheen Dad
Councillor Steve Hall
Councillor Gwen Lowe
Councillor Fazila Loonat
Councillor Alison Munro
Councillor Mussarat Pervaiz
Councillor Cathy Scott
Councillor Adam Gregg
Councillor Joshua Sheard
Councillor Melanie Stephen
Councillor Andrew Pinnock

Apologies: Councillor Kath Taylor

1 **Membership of the Sub-Committee**

Councillor Munro substituted for Councillor Lawson.

Apologies for absence were received on behalf Councillor K Taylor.

2 **Minutes of Previous Meeting**

RESOLVED – That the Minutes of the Meeting held on 10 June 2021 be approved as a correct record.

3 **Declaration of Interests and Lobbying**

Councillor A Pinnock advised that he had been lobbied on Applications 2020/91747 and 2021/90706.

Councillor Loonat advised that she had been lobbied on Applications 2020/91747 and 2021/90706.

Councillor Pervaiz advised that she had been lobbied on Application 2021/91940.

Councillor Hussain advised that he had been lobbied on Application 2021/91940.

4 **Admission of the Public**

It was noted that all agenda items would be considered in public session.

5 **Deputations/Petitions**

No deputations or petitions were received.

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6 Public Question Time

No questions were asked.

7 Planning Application - Application No: 2020/90411

The Sub-Committee gave consideration to Application 2020/90411 – Outline application for demolition of 2 dwellings and outbuildings and the erection of 21 dwellings at 7 & 11 Church lane, Gomersal.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received a representation from David Storrie (applicant's agent).

RESOLVED –

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

- Details of the reserved matters of scale, appearance and landscaping
- Time limit for submission of reserved matters
- Time limit for commencement of development
- Submission of a Construction Management Plan to include means of access to the site for construction traffic
- Access and layout construction in accordance with approved plan
- A scheme detailing the proposed internal adoptable estate roads
- A scheme for the design and construction details for all new retaining walls
- Details for all new surface water attenuation tanks/pipes/manholes located in the highway
- Ecological impact assessment at reserved matters stage (landscaping) and development in accordance with the EiA recommendations
- Biodiversity net gain plan at reserved matters stage (landscaping)
- Detailing landscaping plan and details of boundary treatment
- Submission of phase 2 intrusive site investigation report
- Submission of remediation strategy
- Implementation of remediation strategy
- Submission of validation report
- Procedures for dealing with unexpected contamination
- Borehole investigations prior to commencement
- Details of final scheme detailing foul, surface water and land drainage
- Final details of overland flow routing
- Temporary drainage details
- Site to be developed by separate systems of drainage for foul and surface water on and off site
- No piped discharge of surface water from the development prior to the completion of surface water drainage works
- Elevation details of the pumping station (including materials)
- Provision of electric vehicle charging points
- Measures to promote carbon reduction and enhance resilience to climate change

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2) That authority be delegated to the Head of Planning and Development to secure a S106 Agreement to cover (i) affordable housing – 20% of dwellings to be affordable with a split of 55% social or affordable rent to 45% intermediate housing (ii) open space – contribution of £28,576.44 towards the improvement/enhancement of off-site open space within 720m of the site (iii) education – contribution of £42,552 to be spent upon priority admission area schools within the geographical vicinity of the site (iv) arrangements to secure the long-term maintenance and management of public open space and the applicant's surface water drainage proposals (v) a contribution of £12,787.50 to support sustainable transport methods to fund the installation of a real time information display at bus stop no.14094 and be put towards sustainable travel incentives to encourage the use of sustainable modes of transport (vi) a bio-diversity net gain contribution to allow the off-site enhancement of council owned land within the vicinity of the site in the event that an on-site net gain is demonstrated to be infeasible at reserved matters (landscape) stage.

3) That, pursuant to (2) above, in circumstances where the S106 Agreement has not been completed within three months of this decision, the Head of Planning and Development shall be authorised to consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured, and would therefore be permitted to determine the Application and impose appropriate reasons for refusal under delegated powers.

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

For: Councillors Gregg, Munro, A Pinnock, Scott and Sheard (5 votes)

Against: Councillors S Hall, M Hussain, Pervaiz and Stephen (4 votes)

Abstained: Councillors Dad, Lowe and Loonat

8 **Planning Application - Application No: 2020/91747**

The Sub-Committee gave consideration to Application 2020/91747 – Demolition of former dairy/snooker centre/storage and erection of 9 light industrial units at land adjacent to 60 Northgate, Cleckheaton.

RESOLVED – That, contrary to the Officer's recommendation, the application be refused on the grounds of protecting the local amenity, specifically from the impact of activity at the site and traffic movement.

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

For: Councillors Dad, Lowe, Loonat, Munro, Pervaiz, A Pinnock, Scott, Sheard and Stephen (8 votes)

Against: Councillors Gregg, S Hall, M Hussain and Stephen (4 votes)

9 **Planning Application - Application No: 2021/90706**

The Sub-Committee gave consideration to Application 2021/90706 – removal of condition 23 on previous permission no. 2013/93186 for demolition of a building and formation of additional coach and bus parking/storage area, with screen planting and amended vehicular access arrangements at Arriva Lodge Garage, Whitehall Road West, Hunsworth, Cleckheaton.

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RESOLVED –

That authority be delegated to the Head of Planning and Development to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

- (1) condition no longer required
- Development to be in accordance with approved plans
- Limiting activities in the coach parking area to 08:00 – 20:00 Monday to Friday
- Limitation on noise from coach parking area
- (5) condition no longer required
- (6) condition no longer required
- (7) condition no longer required
- (8) condition no longer required
- Surface water strategy retained, in accordance with details previously approved
- (12) condition no longer required
- Landscaping to be retained, in accordance with details previously approved
- (14) condition no longer required
- Details of surfacing to be retained, in accordance with details previously approved
- Sightlines to be provided and retained
- (17) condition no longer required
- (18) condition no longer required
- (19) condition no longer required
- (20) condition no longer required
- Soil to be retained on site, in accordance with details previously approved
- Site to be returned to previous state if not used for a period in excess of six months

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

For: Councillors Dad, Gregg, S Hall, M Hussain, Lowe, Loonat, Munro, Pervaiz, A Pinnock, Scott, Sheard and Stephen (12 votes)

Against: (no votes)

10 **Planning Application - Application No: 2021/91354**

The Sub-Committee gave consideration to Application 2021/91354 – Demolition of existing buildings, erection of 5 dwellings, formation of access and associated works at land at Old White Lee Colliery, Leeds Road, Heckmondwike.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received a representation from Jay Everett (applicant's agent).

RESOLVED – That the application be refused on the grounds that (i) by virtue of the proposed design, scale, layout and encroachment of development and the enclosure of land into gardens would result in a greater impact on openness than the existing development, and that this would materially detract from the green belt setting and represent inappropriate development, with no special circumstances

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demonstrated and (ii) to permit such development would be contrary to policies LP24, LP32 and LP59 of the Kirklees Local Plan, as well as chapters 12 and 13 of the National Planning Policy Framework.

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

For: Councillors Dad, Gregg, S Hall, M Hussain, Lowe, Loonat, Munro, Pervaiz, A Pinnock, Scott, Sheard and Stephen (12 votes)

Against: (no votes)

11 **Planning Application - Application No: 2021/91724**

The Sub-Committee gave consideration to Application 2021/91724 – Erection of raised decking with balustrade, new door opening and 3 giant umbrellas to rear (listed building within a conservation area) at Smiths Arms, 1 Town Gate, Highburton.

Under the provisions of Council Procedure Rule 36(3), the Sub-Committee received a representation from Councillor Armer (ward member).

RESOLVED – That, contrary to the officer’s recommendation, the application be refused on the grounds that the proposed development would have a detrimental impact upon the character of the host building and the amenity of nearby residential dwellings due to noise nuisance.

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

For: Councillors Dad, Gregg, S Hall, M Hussain, Lowe, Pervaiz, A Pinnock and Scott (8 votes)

Against: Councillors Loonat and Sheard (2 votes)

Abstained: Councillors Munro and Stephen

12 **Planning Application - Application No: 2021/91725**

The Sub-Committee gave consideration to Application 2021/91725 – Listed building consent for erection of raised decking with balustrade, new door opening and 3 giant umbrellas to rear (within a conservation area) at Smiths Arms, 1 Town Gate, Highburton.

Under the provisions of Council Procedure Rule 36(3), the Sub-Committee received a representation from Councillor Armer (ward member).

RESOLVED – That, contrary to the officer’s recommendation, the application be refused on the grounds that the proposed development would have a detrimental impact upon the character of the host building.

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

For: Councillors Dad, Gregg, S Hall, M Hussain, Lowe, Pervaiz, A Pinnock and Scott (8 votes)

Against: (no votes)

Abstained: Councillors Loonat, Munro, Sheard and Stephen

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13 Planning Application - Application No: 2021/91940

The Sub-Committee gave consideration to Application 2021/91940 – Erection of single and two storey extensions and formation of vehicular access at 40 Beckett Crescent, Dewsbury Moor.

RESOLVED – That the consideration of the application be deferred to enable to opportunity for further discussions to take place regarding the submission of a reduced scale application.

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

For: Councillors Dad, Gregg, S Hall, M Hussain, Lowe, Loonat, Munro, Pervaiz, A Pinnock, Scott, Sheard and Stephen (12 votes)

Against: (no votes)

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.

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 27th 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 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th 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 55 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.



Name of meeting: Planning sub-committee (Heavy Woollen Area)

Date: 2 September 2021

Title of report: Proposed diversion of part of the public footpath Batley 40 and provision of alternative route at Howley Walk, Soothill, Batley.
Town & Country Planning Act 1990, Section 257

Purpose of report: **Members are asked to consider** an application to divert part of public footpath Batley 40. The footpath route to be stopped up, and the alternative routes to be created are shown on appended plans. **Members are asked to make a decision** on making the order and seeking its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Yes – Colin Parr 13 August 2021
Is it also signed off by the Service director Finance?	Yes – James Anderson on behalf of Eamonn Croston.
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Yes - No Julie Muscroft
Cabinet member portfolio	Not applicable

Electoral wards affected: Batley East

Ward councillors consulted: Cllrs. Loonat, Zaman and Akhtar.

Public or private: Public

1. Summary

- 1.1 The Council received an application from the Head of Asset Management, Kirklees Neighbourhood Housing to divert part of public footpath Batley 40 and provide alternative routes, under section 257 Town & Country Planning Act 1990. The stopping up of existing public footpath would be required to implement planning

consent 2020/93489 for the demolition of existing garages and erection of 7 dwellings (modified proposal)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F93489>

- 1.2 The proposal is to facilitate the redevelopment of the land with new Council housing, see appended App B. A small part of the alignment of the recorded footpath is currently obstructed. The applicant is proposing to divert a larger part of the public footpath than is obstructed to create a path that will run at the rear of the new development.
- 1.3 All the development land is within the ownership of the Council and is managed by Housing.
- 1.4 The effect of the proposal is shown on the appended Plan 1. The route to be stopped up is shown by the bold solid line between points A & B, and the new routes to be created are shown by the bold dashed line between points C & B, with a new link to point E.
- 1.5 The Council may make and confirm a diversion order under Section 257 of the Town & Planning Act 1990 Act if it considers that it is expedient to do so when the following criteria are met:-
 - a) it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.
 - b) The Council must also take into account the suitability of the proposal and the effect the change would have on those entitled to the rights that would be extinguished.
- 1.6 The statutory procedure is a two-stage process which involves the making of a public path diversion order. The order would be subject to public consultation by way of statutory advertisement and notices posted on site. If no objections are received or they are resolved, the Council may confirm the order as unopposed. If the order is opposed and the objections cannot be resolved it would need to be submitted to the Secretary of State at DEFRA for determination if it is to be confirmed.
- 1.7 A preliminary public consultation has been held on the proposal; the details are listed in section 4 of this report

2. **Information required to take a decision**

- 2.1 Section 257 of the Town & Country Planning Act 1980 gives an authority the power to divert or footpaths, bridleways or restricted byways if it is satisfied that the relevant criteria are satisfied.
- 2.2 Circular 1/09 is guidance published by DEFRA for local authorities regarding PROW matters. Section 5 deals with changes to the public rights of way network.
- 2.3 A location plan is appended at App A.
- 2.4 A plan showing the proposed development is appended at App B.

- 2.5 An extract of the Executive Summary of the Rights of Way Improvement Plan (“ROWIP”) is appended at App C.
- 2.6 Option 1 is to decide to refuse the application to make the order.
- 2.7 Option 2 is to authorise the Service Director, Legal, Governance & Commissioning to make an order under section 257 of the Town & Country Planning Act **and only to confirm it if unopposed**, but to defer its decision on sending any opposed order to the Secretary of State at DEFRA.
- 2.8 Option 3 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990. This would also authorise confirmation of the order by the Council if it is unopposed, and authorise seeking confirmation of any opposed order by forwarding it to the Secretary of State for confirmation.

3. **Implications for the Council**

3.1 **Working with people**

- 3.1.1 There has been public consultation regarding this application.

3.2 **Working with partners**

- 3.2.1 There has been consultation with partners regarding this application.

3.3 **Place based working**

3.4 **Climate change and air quality**

- 3.4.1 Promoting walking and other green transport, and providing better facilities for physical activity works towards local and national aims on healthy living, climate change and air quality.

3.5 **Improving Outcomes for Children**

- 3.5.1 See 3.4.1

3.6 **Other (e.g. Legal/Financial or Human Resources)**

- 3.6.1 The Council receives applications to change public rights of way, in this case to regularise an historic situation, and facilitate future land management changes, including development.
- 3.6.2 The Council may make orders which propose to change public rights of way and may recharge its costs of dealing with applications and making orders, as appropriate.
- 3.6.3 Any person may make an objection or representation to the order.
- 3.6.4 The Council may choose to forward an opposed order to the Secretary of State at DEFRA (“SoS”) to determine or may abandon it. If an order is forwarded, any such objection would be considered by an inspector appointed by the Secretary of State, who may or may not confirm the order. The Council recharges the costs of applications to the applicant as appropriate, but the Council may not recharge the costs incurred by it in the process of determination of an opposed order by DEFRA. The Council would have to cover its own costs of forwarding the order to DEFRA and its costs associated with that decision process, potentially including a public inquiry.

- 3.6.5 If the Council confirms its own order, or after an order has been confirmed by the SoS, the council may recharge its costs of concluding the order process, including bringing an order into force.
- 3.6.6 Land management and development proposals, potentially including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, changes to land use and development may well be delayed, prevented or rendered unviable, with the subsequent effects on matters such as the local economy and provision of homes.

4. Consultees and their opinions

- 4.1 Cllr Loonat has no concerns or objection regarding this application.
- 4.2 Cllr Zaman has no objection to this application.
- 4.3 Cllr Akhtar has no objection to this application.
- 4.4 The West Yorkshire Police Designing Out Crime Officer has no issues with this and has no objections.
- 4.5 The Ramblers commented that as long as the work is completed as per plans then they have no issue.
- 4.6 The Peak and Northern Footpath Society representative enquired about width, surfacing, gradient and lighting, no objection received.
- 4.7 The Open Spaces Society representative noted that the proposed diversion would not significantly inconvenience footpath users but attention may be required regarding the diverted footpath in context of the route being behind any new housing. Officers then provided further information. No objection received.
- 4.8 KCOM, National Grid and Cadent have no objections to the application.
- 4.9 Auto Cycle Union, Byways & Bridleways Trust, Cycle Touring Club, British Horse Society, Huddersfield Rucksack Club, Kirklees Bridleways Group, British Gas, YEDL, National Grid, West Yorkshire Fire Service, NAVTEC, West Yorkshire Ambulance, BT, NTL, Yorkshire Water, MYCCI, Freight Transport, Passenger Transport Executive, RAC, and Road Haulage Association offered no response.
- 4.10 Notices were posted on site for 28 days and details were posted on the Council website
<https://www.kirklees.gov.uk/beta/countryside-parks-and-open-spaces/changes-to-definitive-map.aspx>

5 Next steps

- 5.1 If an order is made, it would be advertised and notice served. There would be a period of at least 28 days for representations and objections.
- 5.2 If the order is unopposed the Council may confirm it.

- 5.3 If any objections are duly made and not withdrawn, the Council may forward the order to the Secretary of State at DEFRA seeking its confirmation. Alternatively, the Council may decide to abandon the order.
- 5.4 If members decide to authorise the making of an order, but do not authorise officers to seek confirmation by the Secretary of State of an opposed order, a further decision would then be required on:
- 5.4.1 any objections that are received, and
 - 5.4.2 potential referral of the order (if opposed) back to the Secretary of State, or
 - 5.4.3 abandonment of an opposed order.
- 5.5 If sub-committee refuses the application, the order is not made. There is no appeal right for the applicant against a refusal.

6 Officer recommendations and reasons

- 6.1 Officers recommend members to choose option 3 at 2.8 above and to give authority to the Service Director, Legal, Governance and Commissioning to make and seek confirmation of an order under section 257 Town & Country Planning Act 1990 to divert Batley footpath 40 (part) and provide alternative public footpath routes.
- 6.2 The diversion would enable the implementation of planning consent 2020/93489 and would be expedient when considering the effect on the holders of the rights to be extinguished. The resulting public path provision would be appropriate and acceptable and there would be no undue negative effect on public path users.
- 6.3 The minor changes to paths outside the development are considered appropriate to regularise and tidy up the historic use of land, including previous development to the north and a residential drying area to the south.

7 Cabinet Portfolio Holder's Recommendations

Not applicable

8 Next steps

- 8.1 If the diversion order is made, there will be a statutory 28 day notice period during which time the public may make representations and objections. Any opposed Order could only be confirmed after referral to the Secretary of State, DEFRA. This may result in a public inquiry.
- 8.2 If the diversion order is not made, then Batley 40 would remain on its current alignment and the planning permission could not be fully implemented as granted.

9 Contact officers and relevant papers

Contact Officer: Giles Cheetham Direct Dial (01484) 221000
Email: giles.cheetham@kirklees.gov.uk

10 Background Papers and History of Decisions

- 10.1 PROW file 872/DIV/Bat40: Rights of Way Improvement Plan
- 10.2 Planning consent 2020/93489.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F93489>

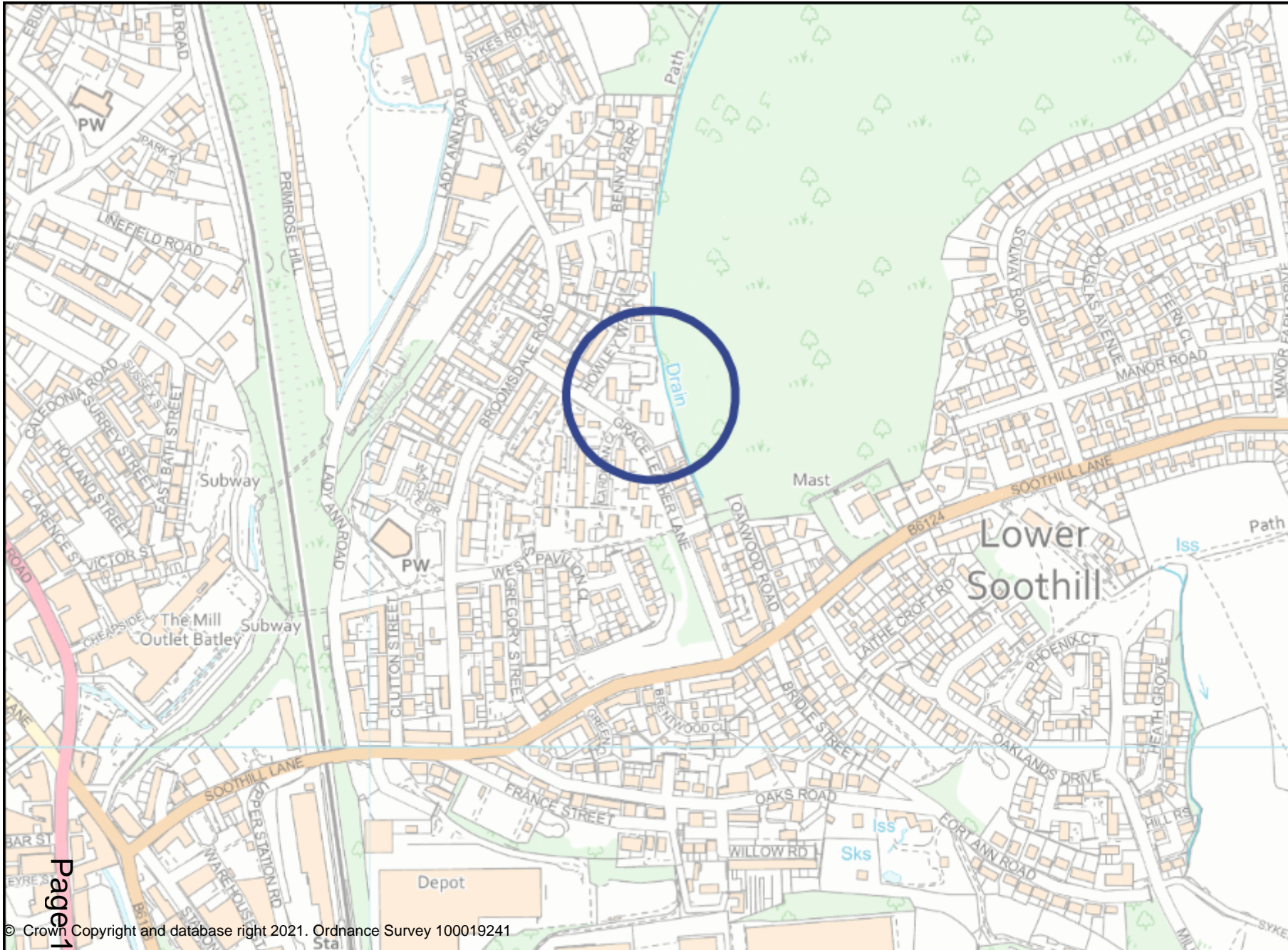
10.3 Appendices

- 10.3.1 Plan 1 – Proposed diversion
- 10.3.2 App A – Location Plan
- 10.3.3 App B - Development proposal
- 10.3.4 App C – ROWIP extract

11 Service Director responsible

Sue Procter, Service Director:

Highways and Streetscene, Environment & Climate Change Directorate

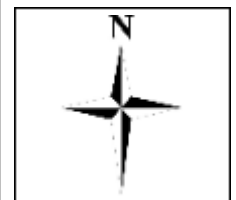


Kompass
Kirklees Mapping Service

Scale = 1:5000

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Ordnance Survey
100019241

maps@kirklees.gov.uk



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PROJECT INFORMATION
CLIENT
 Kirkless Neighbourhood Housing (KNH)
ADDRESS
 Former Garage Site at Howley Walk, Scitwill, Bristol
PROJECT TITLE
 Proposed Residential Development
DRAWING DETAILS
PROJECT NUMBER
 T-0220.D1 - P
DRAWING NUMBER
 GA101
REV
 B

DRAWING TITLE
 Proposed Site Plan

SCALE (A1 for A3)
 As per site
DRAWN BY
 HS
CHECKED BY
 AI
DATE
 Aug/2020
Purpose of Issue

NOTES
 This drawing is for information only.

Rev **Description** **Date**
 A Updated inline with client comments 16 Dec 20
 B Hard Margins Introduced 18 Dec 20

T H E M

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Executive Summary

The public rights of way network is a significant part of Kirklees' heritage and a major recreational resource. It enables people to get outdoors and away from increasing motor traffic and to enjoy the countryside which they would not otherwise have access - or simply to use it for fresh air and exercise. These rights of way are also important in the daily lives of many people who use them for travelling, particularly on short journeys, to shops, schools and other facilities as well as being an important link between neighbourhoods and settlements.

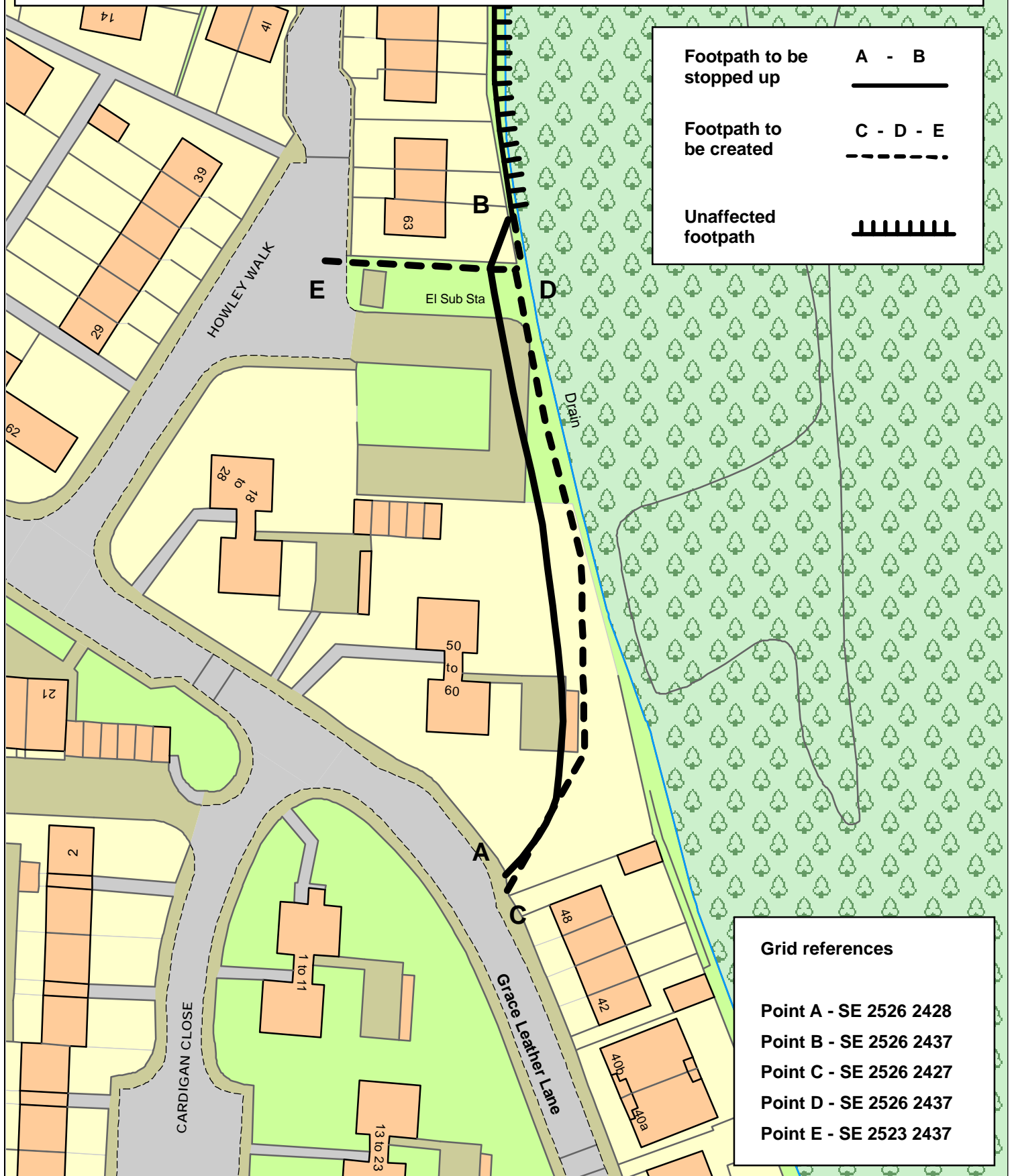
As part of Kirklees Vision, the Rights of Way Improvement Plan is to have a rights of way network; that is accessible for all, helps towards improving the health and well being of our residents, supports the economy through tourism and helps to reduce Kirklees' "carbon footprint". It aims towards improving sustainable transport with member authorities within West Yorkshire as well as working with other neighbouring authorities whose aims and objectives are the same or similar. The aims of the plan are to:

1. Protect, improve and develop the rights of way network as an important means of access both within urban areas and the wider countryside to meet with the present and future needs of the public.
2. Ensure the condition of the rights of way network is maintained and enhanced in keeping with the needs of local communities.
3. Afford opportunities for safe and sustainable travel and for access to work, schools, shops and other facilities and amenities as well as providing further opportunities for outdoor recreation and enjoyment of the area.
4. Improve the accessibility of rights of way for all members of the community in particular those from ethnic and deprived areas and especially for those with mobility problems or other impairments.
5. Identify opportunities to further improve public access in Kirklees by working with partners and volunteer groups in providing well-connected, well maintained, traffic free routes that are safe, attractive and well used by residents and visitors.
6. Enable and encourage people to enjoy the benefits of regular exercise whilst going about their daily business and to take advantage of the wide variety of countryside that exists within Kirklees.
7. Ensure the rights of way network contributes to the development of economic opportunities in Kirklees through tourism.

Each highway authority is required to prepare "A Statement of Action" for the management of its Rights of Way Network and for securing improvements to local rights of way, with particular regards to the matters dealt with in the criteria contained in the Countryside and Rights of way Act 2000.

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Town & Country Planning Act 1990, section 257. Proposed diversion of public footpath Batley 40 (part) at Howley Walk, Soothill, Batley



Footpath to be stopped up	A - B
Footpath to be created	C - D - E
Unaffected footpath	

Grid references	
Point A	- SE 2526 2428
Point B	- SE 2526 2437
Point C	- SE 2526 2427
Point D	- SE 2526 2437
Point E	- SE 2523 2437



Public Rights of Way

Date: 19/04/2021
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Name of meeting: Planning sub-committee (Heavy Woollen Area)

Date: 2 September 2021

Title of report: Proposed stopping up of non-definitive footpaths and the provision of alternative footpaths at Kenmore Drive, Milton Terrace and Rook Avenue, Cleckheaton. Town & Country Planning Act 1990, Section 257

Purpose of report: Members are asked to consider an application to stop up non-definitive footpaths and the provision of alternative footpaths as shown on appended plans. **Members are asked to make a decision** on making the order and seeking its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Yes – Colin Parr, 13 August 2021
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	Yes - James Anderson on behalf of Eamonn Croston
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Yes – Julie Muscroft
Cabinet member portfolio	Not applicable

Electoral wards affected: Cleckheaton

Ward councillors consulted: Cllrs. Lawson, Pinnock, Pinnock.

Public or private: Public

1. Summary

- 1.1 The Council received an application from Housing 21 to stop up the alleged footpaths between Kenmore Drive, Rooks Avenue and Milton Terrace and for the provision of alternative footpaths. The application is made under section 257 Town & Country Planning Act 1990 (“s257, TCPA 1990”). The applicant states that the stopping up

would be required to implement planning application 2020/91746 for the erection of extra care development providing 80 apartments with associated communal facilities and landscaped gardens. Officers note that planning consent has been authorised by Council committee, but is yet to be issued:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F91746>

- 1.2 As part of the development the applicant will provide alternative footpaths linking Milton Terrace, Rooks Avenue and Kenmore Drive.
- 1.3 The s257 TCPA 1990 stopping up application would deal with routes associated with the Definitive Map Modification Order (“DMMO”) application to the Council to record public footpath routes between Kenmore Drive, Milton Terrace, Rooks Avenue and Kenmore View. The DMMO application, under the Wildlife & Countryside Act 1981, was made by Cllr Kath Pinnock to the Council asking the Council as surveying authority for public rights of way, to recognise the existence of claimed public footpath rights across the land at Kenmore.
- 1.4 The effect of the s257 TCPA 1990 proposal is shown on the appended Plan 1. The routes to be stopped up are shown by the bold solid lines A-B, B-C, B-D, A-C and A-D; with the routes to be provided as new paths shown by the bold dashed line between point A-G-F-B, G-E-C and E-F.
- 1.5 The Council may make and confirm an order under Section 257 of the Town & Planning Act 1990 Act if it considers that it is expedient to do so when the following criteria are met:-
 - a) it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.
 - b) The Council must also take into account the suitability of the proposal and the effect the change would have on those entitled to the rights that would be extinguished.
- 1.6 The statutory procedure is a two-stage process which involves the making of a footpath stopping up order. The order would be subject to public consultation by way of statutory advertisement and notices posted on site. If no objections are received or they are resolved, the Council may confirm the order as unopposed. If the order is opposed and the objections cannot be resolved it would need to be submitted to the secretary of state for determination.
- 1.7 The proposal before members considers routes to be closed, both as shown in the definitive map modification order application and also the physical routes visible in aerial photos over the years (See appended photo at App D).
- 1.8 A small part of the claimed routes A-D and B-D runs over land in third party private ownership at the end of Kenmore View. The applicant is not in the position to offer a path connection over this land. It is considered appropriate to include this land in the proposed closure to avoid a small cul-de-sac path, even though it is outside the development site.
- 1.9 A preliminary public consultation has been held on the proposal; the details are listed in section 4 of this report.
- 1.10 After discussion with officers, the applicant has agreed that any new public paths to be created by the s257 order would be a minimum of 2 metres wide.

2. **Information required to take a decision**

- 2.1 Section 257 of the Town & Country Planning Act 1990 gives an authority the power to divert or stop up footpaths, bridleways or restricted byways if it is satisfied that the relevant criteria are satisfied.
- 2.2 Circular 1/09 is guidance published by DEFRA for local authorities regarding PROW matters. Section 5 deals with changes to the public rights of way network.
- 2.3 A location plan is appended at App B.
- 2.4 An extract of the executive summary of the ROWIP is appended at App C.
- 2.5 Option 1 is to decide to refuse the application to make the order.
- 2.6 Option 2 is to authorise the Service Director, Legal, Governance & Commissioning to make an order under section 257 of the Town & Country Planning Act **and only to confirm it if unopposed**, but to defer its decision on sending any opposed order to the Secretary of State at DEFRA.
- 2.7 Option 3 is to authorise the Assistant Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990. This would authorise confirmation of the order by the council if unopposed, or seeking confirmation of an opposed order by forwarding it to the Secretary of State to confirm.

3 **Implications for the Council**

3.1 **Working with people**

- 3.1.1 There has been public consultation regarding this application.

3.2 **Working with partners**

- 3.2.1 There has been consultation with partners regarding this application.

3.3 **Place based working**

3.4 **Climate change and air quality**

- 3.4.1 Promoting walking and other green transport, and providing better facilities for physical activity works towards local and national aims on healthy living, climate change and air quality.

3.5 **Improving Outcomes for Children**

- 3.5.1 See 3.4.1

3.6 **Other (e.g. Legal/Financial or Human Resources)**

- 3.6.1 The Council receives applications to change public rights of way, in this case to facilitate development, where planning consent has been authorised by Council committee, but is yet to be issued.
- 3.6.2 The Council may make orders which propose to change public rights of way and may recharge its costs of dealing with applications and making orders, as appropriate.

- 3.6.3 Any person may make an objection or representation to the order.
- 3.6.4 The Council may choose to forward an opposed order to the Secretary of State at DEFRA (“SoS”) to determine or may abandon it. If an order is forwarded, any such objection would be considered by an inspector appointed by the Secretary of State, who may or may not confirm the order. The Council recharges the costs of applications to the applicant as appropriate, but the Council may not recharge the costs incurred by it in the process of determination of an opposed order by DEFRA. The Council would have to cover its own costs of forwarding the order to DEFRA and its costs associated with that decision process, potentially including a public inquiry.
- 3.6.5 If the Council confirms its own order, or after an order has been confirmed by the SoS, the council may recharge its costs of concluding the order process, including bringing an order into force.
- 3.6.6 Land management and development proposals, potentially including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, changes to land use and development may well be delayed, prevented or rendered unviable, with the subsequent effects on matters such as the local economy and provision of homes.

4 Consultees and their opinions

- 4.1 No comments have been received from local ward Councillors
- 4.2 Kirklees Highways Street Lighting did not require the provision of highways lighting.
- 4.3 The West Yorkshire Police Designing Out Crime Officer has no issues with this. He stated that the redevelopment of the site has been commented on for security matters and the PROWs have been taken into account at the time
- 4.4 A local resident questioned the change to the path routes and would prefer the site to be undeveloped.
- 4.5 The Peak and Northern Footpath Society representative queried the lack of link at point D, but noted in further discussion that it would be unlikely to object to the proposal.
- 4.6 The Open Spaces Society representative requested that the development design be amended to accommodate tread lines (those visible in aerial photos), particularly between Kenmore Drive and Milton Terrace. Also, that footpath access be provided at Kenmore View. The representative notes that the current tread line and other lines have utility to residents and provide short cuts and access to enjoy the green space
- 4.7 National Grid and Cadent have no objections to the application.
- 4.8 KCOM has no apparatus or proposals for new apparatus in the vicinity of the works

4.9 Ramblers, Auto Cycle Union, Byways & Bridleways Trust, Cycle Touring Club, Spenn Valley Civic Society, British Horse Society, Huddersfield Rucksack Club, Kirklees Bridleways Group, British Gas, YEDL, National Grid, West Yorkshire Fire Service, NAVTEC, West Yorkshire Ambulance, BT, NTL, Yorkshire Water, MYCCI, Freight Transport, Passenger Transport Executive, RAC, and Road Haulage Association offered no response.

4.10 Notices were posted on site for 28 days and details were posted on the Council website

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F91746>

5 Next steps

5.1 If an order is made, it would be advertised and notice served.

5.2 If the order is unopposed the council may confirm it.

5.3 If any objections are duly made and not withdrawn, the council may forward the order to the Secretary of State at DEFRA seeking its confirmation. Alternatively, the council may decide to abandon the order.

5.4 If members decide to authorise the making of an order, but do not authorise officers to seek confirmation by the Secretary of State of an opposed order, a further decision would then be required on:

5.4.1 any objections that are received, and

5.4.2 potential referral of the order (if opposed) back to the Secretary of State, or

5.4.3 abandonment of an opposed order.

5.5 If sub-committee refuses the application, the order is not made. There is no appeal right for the applicant against a refusal.

6 Officer recommendations and reasons

6.1 Officers recommend that members choose option 3 at 2.7 above and give authority to the Service Director, Legal, Governance and Commissioning to make and seek confirmation of an order under section 257 Town & Country Planning Act 1990

6.2 The stopping up will enable the implementation of planning consent 2020/91746 and be expedient when considering the effect on the holders of the rights to be extinguished. The proposal keeps a significant practical and recreational range of links through what is proposed to be a public space, connecting paths to east, west, and north, of an appropriate width.

6.3 The site is subject to significant ground level differences and steps to appropriate specification would be provided north of point C as the new path would pass the development buildings.

6.4 There has been no challenge to the existence of public rights across the site, and the s257 proposal as described would stop up paths, provide alternatives and allow for an extra care development.

7 Cabinet Portfolio Holder's Recommendations

Not applicable

8 Next steps

8.1 If the stopping up order is made, there will be a statutory 28-day notice period during which time the public may make representations and objections. Any opposed Order could only be confirmed after referral to the Secretary of State, DEFRA. This may result in a public inquiry.

8.2 If the stopping up order is not made, then the DMMO application would need to be considered separately and the planning application could not be fully implemented as proposed.

9 Contact officers and relevant papers

Contact Officer: Giles Cheetham Tel: (01484) 221000

Email: giles.cheetham@kirklees.gov.uk

10 Background Papers and History of Decisions

10.1 PROW files

872/Div/11/Kenmore:

872/DMMO app133:

Rights of Way Improvement Plan

10.2 Planning consent 2020/91746.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F93489>

10.3 Appendices

10.3.1 Plan 1 – Proposed stopping up and provision of alternative footpaths

10.3.2 App A – Location Plan

10.3.3 App B - Development proposal plan

10.3.4 App C – ROWIP extract

10.3.5 App D – aerial photo (2009)

11 Service Director responsible

Sue Procter, Service Director: Highways and Streetscene; Environment & Climate Change Directorate

Town & Country Planning Act 1990, Section 257. Proposed stopping up and provision of alternative footpath routes at Kenmore Drive, Kenmore View, Milton Terrace and Rooks Avenue, Cleckheaton



Routes to be stopped up	A-B, B-C, B-D, A-C and A-D
Footpaths to be created	A-G-F-B, G-E-C and E-F



Public Rights of Way

Date:
19/04/2021

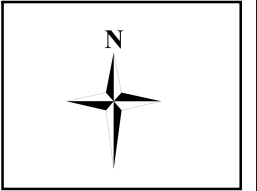
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Filename:
new plan.WOR

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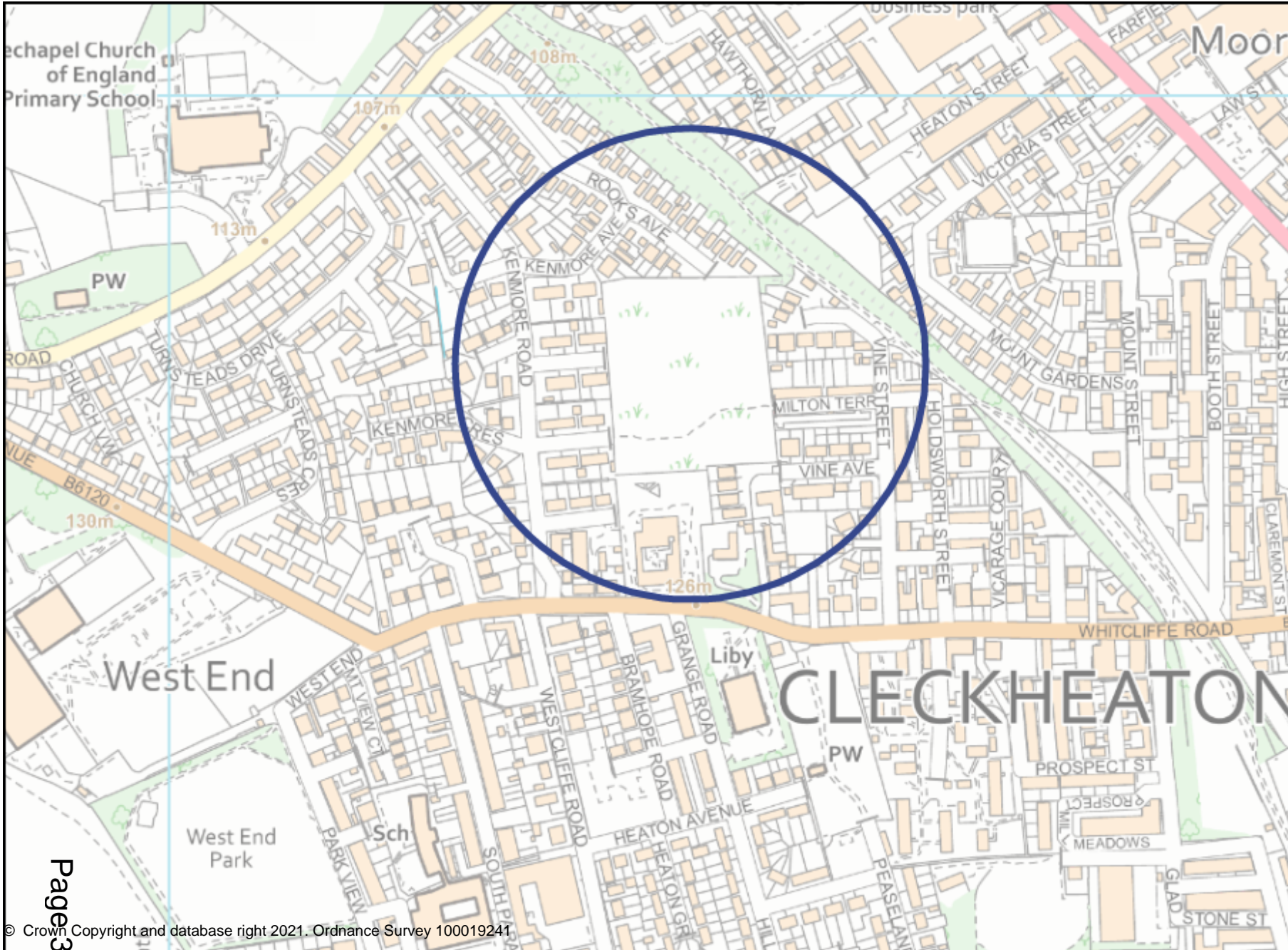
Grid references

Point A	- SE 1839 2586
Point B	- SE 1844 2576
Point C	- SE 1832 2574
Point D	- SE 1832 2580



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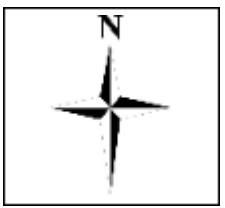
App A - Location plan



Kompass
Kirklees Mapping Service

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100019241

maps@kirklees.gov.uk



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- KEY:**
- - - Red Line Boundary - PLEASE NOTE THAT THE RED LINE BOUNDARY SHOWN IS BASED ON THE INFORMATION PROVIDED BY KIRKLEES COUNCIL
 - - - Diverted P.R.O.W
 - - - Closure of P.R.O.W (lines based on Kirklees Council drawing dated 23 - Jul - 2018)

01 P.R.O.W Closures indicated 28/10/20 EC
 REVISIONS

This design is copyright ©



PROPOSED EXTRA CARE DEVELOPMENT
 KENMORE DRIVE, CLECKHEATON

PROPOSED SITE PLAN SHOWING DIVERTED P.R.O.W

Drawn: EC Scale: 1:500@A2
 Date: OCT 20 Checked: MH

brewsterbye architects
 5 NORTH HILL ROAD
 HEADINGLEY
 LEEDS
 LS6 2EN
 telephone 0113 2754000
 facsimile 0113 2844250
 e-mail info@brewsterbye.co.uk

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Executive Summary

The public rights of way network is a significant part of Kirklees' heritage and a major recreational resource. It enables people to get outdoors and away from increasing motor traffic and to enjoy the countryside which they would not otherwise have access - or simply to use it for fresh air and exercise. These rights of way are also important in the daily lives of many people who use them for travelling, particularly on short journeys, to shops, schools and other facilities as well as being an important link between neighbourhoods and settlements.

As part of Kirklees Vision, the Rights of Way Improvement Plan is to have a rights of way network; that is accessible for all, helps towards improving the health and well being of our residents, supports the economy through tourism and helps to reduce Kirklees' "carbon footprint". It aims towards improving sustainable transport with member authorities within West Yorkshire as well as working with other neighbouring authorities whose aims and objectives are the same or similar. The aims of the plan are to:

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2. Ensure the condition of the rights of way network is maintained and enhanced in keeping with the needs of local communities.
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4. Improve the accessibility of rights of way for all members of the community in particular those from ethnic and deprived areas and especially for those with mobility problems or other impairments.
5. Identify opportunities to further improve public access in Kirklees by working with partners and volunteer groups in providing well-connected, well maintained, traffic free routes that are safe, attractive and well used by residents and visitors.
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Kirklees Mapping Service

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Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 02-Sep-2021

Subject: Planning Application 2020/94345 Erection of 5 dwellings Land at, St Luke's, Bierley Marsh, East Bierley, BD4 6PL

APPLICANT

Stephen Owens, Owens
Developments Ltd

DATE VALID

21-Dec-2020

TARGET DATE

15-Feb-2021

EXTENSION EXPIRY DATE

07-Sep-2021

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: BIRSTALL & BIRKENSHAW

Ward Councillors consulted: NO

Public or private: PUBLIC

RECOMMENDATION:

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

1.0 INTRODUCTION:

1.1 This planning application is being referred to the Heavy Woollen Planning Sub-Committee due to the significant number of representations received in relation to the scheme. This is in accordance with the Council's Scheme of Delegation set out in the Constitution.

2.0 SITE AND SURROUNDINGS:

2.1 The site is that of a parcel of land in the settlement of East Bierley. The site is immediately east of Bierley Marsh, an unadopted road with access to the public highway, South View Road, to the north. Bierley Marsh carries a public right of way (PROW), SPE/6/20. The site is characterised by self-seeded semi-dense shrubland behind St. Luke's Church and Hall. The site borders, but is not included in, the East Bierley Conservation Area.

3.0 PROPOSAL:

3.1 This is an application for full planning permission for the erection of 5 no. dwellings in two groupings; one terrace of 4no. two storey dwellings, with a single storey dwelling to the east of the site; known as 'House Type B' on the submitted drawings. Each dwellinghouse would have space within its curtilage for 2no. parking spaces.

3.2 The two storey houses would have a maximum height of 7.5m and eaves height of 4.5m, with the single storey dwellinghouse having a maximum height of 5m and eaves height of 2.8m, notwithstanding the mono pitched element.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 2020/90996 Erection of 6 dwellings – Withdrawn 16/DEC/2020

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

5.1 This planning application has been assessed based on the plans as originally submitted, save for amended site plans depicting alterations such as the re-siting of bollards to take place outside the common land boundary, as well as a revised site layout plan and highways detail. Green hatched annotation has been added to plans indicating common land. No further amendments have been sought thereafter.

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).

6.2 Kirklees Local Plan (2019):

- **LP 01** – Achieving sustainable development
- **LP 02** – Place shaping
- **LP 07** - Efficient use of land
- **LP 21** – Highways and Access
- **LP 22** - Parking
- **LP 24** – Design
- **LP 30** - Biodiversity
- **LP 33** - Trees
- **LP 35** – Historic Environment
- **LP 52** – Protection and improvement of environmental quality
- **LP 61** – Urban Green Space

Supplementary Planning Guidance / Documents:

6.3 The Kirklees Open Space Study (KOSS) 2015 (Revised 2016)
Highways Design Guide SPD
Housebuilders Design Guide SPD

National Planning Guidance:

6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th 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.

Chapter 2 – Achieving sustainable development
Chapter 6 – Building a strong competitive economy
Chapter 8 – Promoting healthy and safe communities
Chapter 11 – Making effective use of land
Chapter 12 – Achieving well-designed places
Chapter 15 – Conserving and enhancing the natural environment
Chapter 16 – Conserving and enhancing the historic environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 This application was publicised by neighbour letters and a site notice which expired on 25-Feb-2021. Following this publicity 31no. letters of representation was received.

7.2 31no. separate representations have been lodged against this planning application, 30 of which are in objection, 1 of which is a general comment. Comments raise points relating to trees, flooding, design and a non-material concern relating to land ownership and the boundary of the adjacent village green.

7.3 Ward Member Councillor Smaje has commented: *“This development lies along the line of the conservation area in East Bierley within the centre of the village. Along the lane of Bierley Marsh are a number of historical features mentioned in the Conservation Area Appraisal for East Bierley – Cross House, Cross Base – and the War Memorial is immediately next to this land which was a nursery field. Any development should fit into the conservation landscape in both size, design and materials. The lane is well used by families for walks to see the pond and the school uses the Common Land.*

The parking that is shown at the side of St Luke’s rather than at the front I assume is for the former Church building. This needs to have some parking for users as they currently have in order for this to be sustainable into the future. There are concerns about the number of vehicles that could be parked on the front of the properties and how this impacts on the lane around the common land.

In the Highways information there is an assumed speed limit of 30 mph. I am assuming that this is an assumed speed limit of 30 mph on South View Road for provision of sight lines and not on the lane around the Marsh as this would be totally inappropriate. We are looking to put a 20mph zone into the centre of East Bierley because of concerns of the speed of vehicles and would also like no parking from the lane to the school markings as there is a problem with parking vehicles at school times and accessibility for the buses. Visibility splays need to account for parked vehicles at school times.

The common land is an important feature of East Bierley and I would ask that there is no encroachment of common land to be used for this development. I note that there is a revised highway diagram for this and would ask that, if the committee are minded to approve, that no use of the Common Land be part of conditions. The public footpath rights also need to be maintained at all times.

I would also ask that flooding issues raised by several existing residents be considered and measures taken to ensure that problems are remedied and not exacerbated.

The setting of the war memorial needs to be preserved but what I cannot find is a detailed layout for the boundary between the field and the war memorial. Currently from the war memorial you can see straight across the field. There needs to be an appropriate boundary that fits into the environment of the war memorial and gardens and the village. “

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

The Coal Authority – no objection subject to conditions.

KC Highways Development Management – no objection following submission of revised site layout.

KC Environmental Health – no objection subject to conditions.

8.2 **Non-statutory:**

KC Strategic Waste – comments provided with information relating to landfill.

KC Conservation and Design – no objection in principle. Comments raised in relation to the overall scheme, but conditions suggested which would help to ensure harm to heritage assets is reduced should the application be approved.

KC Planning Policy – Comments that the application site was identified as a small open space in the Local Plan based on its apparent use for allotment purposes and recommended for retention as allotments in the Kirklees Open Space Study due to existing deficiencies in the quantity of allotment provision in the ward. Consideration will need to be given to whether the circumstances that the site does not, and has not, performed an open space function as allotments constitutes a material consideration in this instance which outweighs the development plan.

KC Trees - no objections subject to conditions

9.0 **MAIN ISSUES**

- Principle of development
- Urban design issues
- Residential amenity
- Housing issues
- Highway issues
- 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 (KLP). This policy stipulates that proposals that accord with policies in the KLP 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 in this report.

10.2 The application site is identified as a small open space to be protected/considered under Local Plan policy LP61 (Urban Green Space) on the Kirklees Local Plan Strategy and Policies document at Appendix 4. The size threshold for allocation as urban green space in the Local Plan is 0.4 hectares. The application site is 0.14 hectares in size and was identified as a small open space to be considered/protected under policy LP61 based on evidence from the Kirklees Open Space Study 2015 (Revised 2016) as set out in the consultation response of Kirklees planning policy.

- 10.3 The proposed development of 5 dwellings should therefore be considered against policy LP61 which protects small valuable green spaces from development unless specific exceptions can be met. These exceptions include where:
- a. an assessment shows the open space is clearly no longer required to meet local needs for open space, sport or recreation facilities and does not make an important contribution in terms of visual amenity, landscape or biodiversity value; or
 - b. replacement open space, sport or recreation facilities which are equivalent or better in size and quality are provided elsewhere within an easily accessible location; or
 - c. the proposal is for an alternative open space, sport or recreation use that is needed to help address identified deficiencies and clearly outweighs the loss of the existing green space.
- 10.4 Criteria (b) and (c) are not relevant in this case. In terms of criteria (a) the Kirklees Open Space Study assessment did not identify the site as surplus to requirements based on its classification as allotment provision.
- 10.5 The application site was included in the Kirklees Open Space Study 2015 (revised 2016) (KOSS) on the basis that it appeared to be used for growing purposes as an allotment site. As part of the study, an open space assessment of the site was carried out and the site was assessed as having low value as open space and medium quality. In assessing whether sites are potentially surplus to requirements as part of the KOSS, sites scoring a low rating on the open space site assessment were considered further taking into account the level of open space provision within the ward and specific site considerations. In this case, the further analysis of the application site identified a quantity deficiency in allotments in the Birstall and Birkenshaw ward at 0.22 hectares per 1,000 households compared to the Local Plan quantity standard for allotments of 0.5 hectares per 1,000 households.
- 10.6 However, contrary to the rationale behind placing this land under the designation of Urban Green Space less than 0.4 hectares, there is significant evidence to suggest the site has not been continuously used as allotment land. Evidence has been put forward by the applicant to this effect and investigation by the LPA corroborates this. Planning history indicates that the land, together with land to the south, was historically used in connection with Whinfield Nurseries. Aerial photography from the c.1950s and historical photography indicates that this north field, the site subject of this application, was used to grow chrysanthemums for commercial purposes.
- 10.7 The policy exception to LP61 furthermore is considered to comply given the current use of the land, as relatively overgrown and not currently used for allotments as would reasonably be said to be required for local needs for open space.
- 10.8 It is acknowledged that, as evidenced by local representations, the site has been used sporadically for allotment purposes at various points. It has not however been used continuously as such as can be demonstrated by the current state of the land as well as historical photography indicating its use as associated with the nurseries.

- 10.10 It is considered that the designation as small open space under the Urban Space policy allows for development in this location given the policy exception of the site clearly no longer being required to meet local needs for open space, sport or recreational facilities (i.e. allotments), and that it does not make an important contribution in terms of visual amenity, landscape or biodiversity value.
- 10.11 The site's historic use as a market garden, together with the cessation of this use and current overgrown state, is considered, on balance, to provide the justification in respect of the purposes of policy LP61 of the KLP to deem the principle of development acceptable in this location.

Urban Design issues

- 10.12 Policy LP24 of the KLP, consistent with chapter 12 of the NPPF, states, *inter alia*, that the form, scale, layout and details of all development respects and enhances the character of the townscape.
- 10.13 The proposed dwellings have been revised in comparison to those submitted under application 2020/90996 to assume a more traditionally articulated appearance. The terrace of houses in respect of form is reasonably congruent with such building types in the locality, with the massing and scale of the proposed dwellings typical of West Riding of Yorkshire terraced housing stock. It is considered that the form, scale and massing would be broadly commensurate with the surrounding townscape and would not detract from the character of the village of East Bierley.
- 10.14 The proposed bungalow, aka house type B, would be of a more contemporary design scheme. There is no policy restriction on this approach per se and it is considered furthermore that the form would be of an appropriate massing to negate any visually overbearing effect or incongruous appearance in respect of design and character. Furthermore, in the context of the proposed development of houses in its entirety, the bungalow would, in the opinion of officers, compliment the proposed terrace in providing for a range of house types and ensuring visual interest and reflecting the existing mix of housing stock that characterises East Bierley.
- 10.15 The proposed palette of materials; particularly the proposed natural stone facing materials, would assimilate admirably into the wider townscape. This would be secured by recommended condition.
- 10.16 Policy LP35 of the KLP on the historic environment states, *inter alia*, that development proposals affecting a designated heritage asset should preserve or enhance the significance of the asset. The heritage assets for the purposes of this assessment would be the Grade II listed war memorial to the north, and the Conservation Area to the north and western boundaries. The site is, at the area of proposed housing itself, not within the East Bierley Conservation Area. The point of access along Bierley Marsh to the public highway is within the Conservation Area, however. As there would be a making good of Bierley Marsh here, with no significant built form proposed, it is not considered that the character or significance of the Conservation Area would be negatively affected in any material way by the development at the part of the site within the Conservation Area. No part of the application site would impinge on the war memorial gardens.

- 10.17 As set out previously, the site comprises an over-grown plot of land, indicated as part of Bierley Marsh on the historic maps once used as a market garden.
- 10.18 The site borders East Bierley Conservation Area, the listed war memorial to the north-west, as well as St. Luke's Church. St. Luke's Church is a prominent stone building, and a positive contributor to the street-frontage and designated conservation area. It was constructed around 1900 in the arts and craft style and in 1907 it is shown on historic maps as a club. It became a Church and church hall in 1961. The rear of the church comprises a rather poor-quality brick-faced addition which appears to date from the 1970s which compromises its architectural form. However, the townscape focus of the building remains on the original front element of the building which remains an attractive, well designed feature which contributes to the character and historic interest of the conservation area and the church is consequently considered to be merit the status as a non-designated heritage asset.
- 10.19 The proposed development, therefore, may potentially impact on the setting, character and appearance of a range of heritage assets, comprising the designated conservation area, listed war memorial, the church and the village green. Fundamentally, the Planning requirement is that the development should demonstrate that it will function well and add to the overall quality of the area (due to good architecture, layout and appropriate and effective landscaping) while being sympathetic to the character and historic interest of the surrounding built environment and landscape setting.
- 10.20 In spite of the high-quality form and materials scheme when assessed per se, the proposed development would introduce built form and massing which would be visible from public vantage points in the Conservation Area and about the listed War Memorial; and as such there may be the potential for a degree of harm to the character and appearance of the conservation area, in particular the setting of the listed war memorial and Memorial Gardens. It is important therefore to reasonably ensure that any potential harm is adequately mitigated to meet the requirements of NPPF paragraphs 130 & 134 (Design), and 199, 200, 202 (Historic Environment), as well as KLP policies LP24 (Design) and LP35 (Heritage). It is considered therefore that any remaining impact on the heritage assets of this scheme should be dealt with by conditions as set out further on in this section of the report.
- 10.21 As stated above, the application site, save for a small section of access track at the junction with the public highway, is adjacent to but not included within the Conservation Area. The site does though form a backdrop to the war memorial when viewed from public vantage points along South View Road.
- 10.22 The application proposal has been revised from a previously withdrawn scheme to reconfigure the detached dwelling to a bungalow, lowering its ridge height and subsequent massing.
- 10.23 The configuration of the houses within the plot, allows for open space when viewed from South View Road towards the middle of the site and to the right of the War Memorial. The bungalow would now, by virtue of its single storey nature, be more sensitively massed than the previous proposal and would form a backdrop to the War Memorial.

- 10.24 Mature trees would be retained at the boundary of the site with the War Memorial. The Council's Tree Officer has confirmed that given that plot 5 of the proposal is a single storey dwelling and taking account of the arboricultural method statement that has been provided, along with the tree protection fencing and ground protection that it specifies, the higher quality trees located on adjacent land, within the conservation area, should not be adversely impacted on by the proposal. This allows for a further visual assimilation of the proposed built form into the townscape in respect of the listed War Memorial and public vantage points in the Conservation Area.
- 10.25 It is important to ensure that the proposed development, if approved and implemented, contributes positively to the surrounding townscape in respect of its materials, form, density and massing. As stated above any potential harm to the heritage assets needs to be appropriately mitigated. To this end it is considered that several conditions are necessary and reasonable to attach to the Decision Notice, should the application be approved, to ensure that the setting of the heritage assets – namely the adjacent Conservation Area and War Memorial – are preserved and enhanced, in respect of chapter 16 of the NPPF or the objectives of KLP policies LP24 and LP35.
- 10.26 Conditions relating to submission of detail, including attention to the selection of natural stone, coursing and coping design would strengthen the ability of the proposed built form to assimilate well into the surrounding context. In addition, a condition requiring the frontage of the terraced units to include hedges, tree planting, permeable surfaces and some green enclosure to maintain the visual connection with the nearby village green is considered reasonable and necessary in light of the increase in built form visible from vantage points in the Conservation Area and about the listed War memorial.
- 10.27 With the inclusion of the suggested conditions, together with the retention of high-quality trees depicted on the submitted drawings and as confirmed by the Tree Officer, it is considered that, on balance, the degree of harm to the heritage assets would be mitigated.
- 10.28 The proposal is accordant with the principles set out in the Kirklees Housebuilder Supplementary Planning Guidance. In particular, in accordance with Principle 4, the space allocated to parking is proportionate and not excessive vis-à-vis that of the housing itself. Furthermore, the terrace is set back in a coherent building line from Bierley Marsh, as set out in principle 5.
- 10.29 In light of this the development therefore would, on balance, be acceptable in terms of visual amenity and heritage perspective, would comply with policies LP24 and LP35 of the KLP as well as chapters 12 and 16 of the NPPF.

Residential Amenity

- 10.30 Policy LP24 of the KLP require of developments, inter alia, a good standard of amenity for future occupants and neighbouring occupiers, as well as a minimising of the impact on residential amenity of future and neighbouring occupiers.

- 10.31 The space about the proposed dwellings allows for an adequate retention of privacy and daylight to neighbouring dwellings. There would be no habitable room windows in either the terrace or the bungalow that face directly opposite neighbouring habitable room windows. There would be some interface between the neighbouring dwellinghouse to the south, Thornfield, and the terrace. The distance retained would be though, some 13.4m to the extension of that property, 15m to the kitchen window, and some 13.4m to the hall. It is noted that the hall and kitchen are not habitable room windows for the purposes of planning amenity assessments, however in any case these distances are considered acceptable, having regard to the arrangement of dwellings in the wider area, the levels of the site, as well as the guidance contained in principle 6 of the Kirklees Housebuilder Supplementary Planning Guidance and policy LP24c of the KLP.
- 10.32 Due to the orientation of the houses at the neighbouring north-east and south-east plots and the fact the east facing windows of the proposed bungalow do not directly overlook habitable rooms, it is not considered that no. 16 South View Road nor no. 15 Moorside View would experience any material loss of privacy or sunlight such that a refusal would be warranted. The single storey nature of the building also allows for this east facing fenestration in amenity terms.
- 10.33 The terrace would provide for 4no. 3 bed dwellinghouses. Table 1 of the Nationally Described Space Standards states a guideline minimum of 93m² for two storey dwellings with 3 bed spaces for 5 persons (in this case 2 double bedrooms and 1 single). The proposed dwellings in the terrace would achieve some 91m² floorspace, broadly in line with this figure. The proposed single storey dwellinghouse in the plot would be a two-bedroom property for 4 persons (2 double bedrooms). Table 1 outlines a guideline minimum of 74m². The proposed bungalow would have an floorspace (excluding the porch) of some 160m².
- 10.34 It is considered necessary and reasonable to restrict hours of construction to reasonable times given the residential setting of the area. This can be dealt with by condition.
- 10.35 All told therefore, notwithstanding design considerations above, the development would comply with KLP policy LP24c in terms of residential amenity.

Housing issues

- 10.36 As set out in the Authority Monitoring Report (AMR), the assessment of the required housing (taking account of under-delivery since the Local Plan base date and the required 5% buffer) compared with the deliverable housing capacity, windfall allowance, lapse rate and demolitions allowance shows that the current land supply position in Kirklees is 5.88 years supply. The 5% buffer is required following the publication of the 2020 Housing Delivery Test results for Kirklees (published 19th January 2021).

- 10.37 As the KLP was adopted within the last five years the five-year supply calculation is based on the housing requirement set out in the Local Plan (adopted 27th February 2019). Chapter 5 of the NPPF clearly identifies that Local Authority's should seek to significantly boost the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development.

Highway issues

- 10.38 Bierley Marsh is an un-adopted road that carries public footpath Spenborough 6 and links South View Road and Hunsworth Lane.
- 10.39 East Bierley Primary school is located at the junction of South View Road and Hunsworth Lane approximately 50m to the west of the site. East Bierley conservation area and pond is located opposite Bierley Marsh currently serves Saint Luke's Church and Hall, East Bierley Methodist Church, and around 7 residential dwellings. This proposal will increase the number of dwellings to around 13.
- 10.40 Kirklees Highway Design Guide recommends that new development serving more than 5 dwellings (or any existing private road which will serve more than 5 dwellings after completion of new development) should be laid out to an adoptable standard. The applicants have submitted indicative proposals to improve the section of Bierley Marsh Road between the site and South View Road to adoptable standards.
- 10.41 The proposed development consists of 5 new dwellings comprising a block of four 3 bedroomed terrace houses fronting onto Bierley Marsh with a 3 bedroomed detached bungalow to the rear of the site served by a private driveway. Each of the proposed houses is shown to have 2 off-street parking spaces either to the front of the dwellings for the terrace houses or within an integral garage for the proposed bungalow.
- 10.42 Vehicle swept paths are provided to show how a standard car, emergency and refuse vehicle can potentially access the site. Highways Development Management (HDM) have requested the advice of the section 38 road adoption team regarding the proposals to make-up part of Bierley Marsh Road to adoptable standards and the possibility of its formal adoption as highway maintainable at public expense.
- 10.43 This however would be a matter for consideration beyond the scope of this planning application. Matters relating to land ownership are not material considerations in the determination of a planning application. Ownership certificates have been served on relevant landowners – Certificate C as well as a public notice in the press as confirmed by the certificates attached to the submitted. application form
- 10.44 HDM have recommended that internal vehicle turning for the proposed bungalow does not rely on the use of garage space. The applicants have been asked to amend their proposals to show that a vehicle can turn without the use of the proposed garage. The applicant has now submitted these drawings and this matter is considered to have been addressed.

- 10.45 It is, therefore, considered that the application proposal would be acceptable from a highway safety and parking perspective and, thus, would comply with policies LP21 and LP22 of the KLP.

Representations

- 10.46 31no. separate representations have been lodged against this planning application, 30 of which are in objection, 1 of which is a general comment. Comments raise points relating to trees, flooding, design and a non-material concern relating to land ownership and the boundary of the adjacent village green. For clarification, the revised plans remove any part of this land from the application site entirely. It is considered that the revised plans satisfy this concern raised by several objecting third parties.
- 10.47 In terms of flooding, the site is not in a flood zone as defined by the Environment Agency.
- 10.48 Comments relating to trees are noted and the proposal has been assessed by the Council's Tree Officer who has no objection. The design has been carefully scrutinised, as has the interface between nearby dwellings.
- 10.49 Concerns raised in representations relate also to highways. The proposal has been reviewed by Kirklees Highways DM who have no objection subject to revised detail relating to turning areas for the bungalow. Revised drawings provide this detail depicting the turning areas and as such, officers are satisfied that the application would be compliant with KLP policies LP21 and LP22.
- 10.50 Concerns raised in the letter of representation pertaining to coal mining are noted. The Coal Authority have been consulted and their recommended conditions relating to investigation requirements will be carried through to the Decision Notice should planning permission be approved.

Other Matters

- 10.51 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target. However, it includes a series of policies, which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.
- 10.52 A condition regarding provision of electric vehicle charging points is considered reasonable and necessary to attach to the Decision Notice in the event of approval to ensure the environmental sustainability of the development, given the above.

10.53 Further extensions that may otherwise be compliant with Permitted Development Right regulations, such as porches, dormers, rear extensions and outbuildings may cumulatively lead to an undermining of the principle of development in this sensitive location in respect of the built form to plot ratio and the built form's impact on the heritage assets nearby. Design features such as rooflights and landscaping features such as fences may also undermine the design rationale for approval of this finely balanced application proposal. As such, it is considered necessary and reasonable to remove permitted development rights of class A-E of Part 1, inclusive, as well as Class A of Part 2 of the Town & Country Planning (General Permitted Development) Order by way of condition in the event of a grant of planning permission.

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 The application proposal would be acceptable in principle, meeting the policy exception in KLP policy LP61. The proposal would contribute to the housing stock in the order of 5no. dwellings. These are material considerations attracting significant weight in favour of the proposed development.

11.3 The proposal would, subject to the imposition of the conditions as recommended be, on balance, of an appropriate form, massing and design in terms of the character of the area and would be acceptable in regard to residential amenity of neighbours and future occupants. These are further material considerations attracting weight in favour of the proposed development.

11.4 This application has been assessed against relevant policies in the Development Plan and other material considerations. It is considered that the development would constitute sustainable development and it 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 Planning and Development)

1. Time limit (3 years)
2. Development to be completed in accordance with approved plans and specifications
3. Submission of materials schedule/samples
4. Arboricultural Method Statement Compliance
5. Electric Vehicle Infrastructure
6. Removal of Permitted Development Rights Classes A-E, Part 1 and Class A, Part 2 of the Town & Country Planning (General Permitted Development) Order
7. Soft Landscaping Scheme
8. Shallow Coal Mining Activity Investigation
9. Coal Mining Declaration
10. Further Tree Works require approval
11. Submission of Phase II Ground Report
12. Submission of Remediation Strategy

13. Implementation of Remediation Strategy
14. Submission of Validation Report
15. Construction Management Plan, to include liaison between the applicant and local residents
16. Accordance with highways drawings
17. Bin collection point drawing to be submitted

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f94345>

Link to previous, withdrawn, application:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f90996>

Certificate of Ownership – Notice served on/ or Certificate A signed

Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 02-Sep-2021

Subject: Planning Application 2020/94412 Installation of replacement shop fronts 8, Cowper Street, Savile Town, Dewsbury, WF12 9NN

APPLICANT

A I Dadibhai

DATE VALID

29-Dec-2020

TARGET DATE

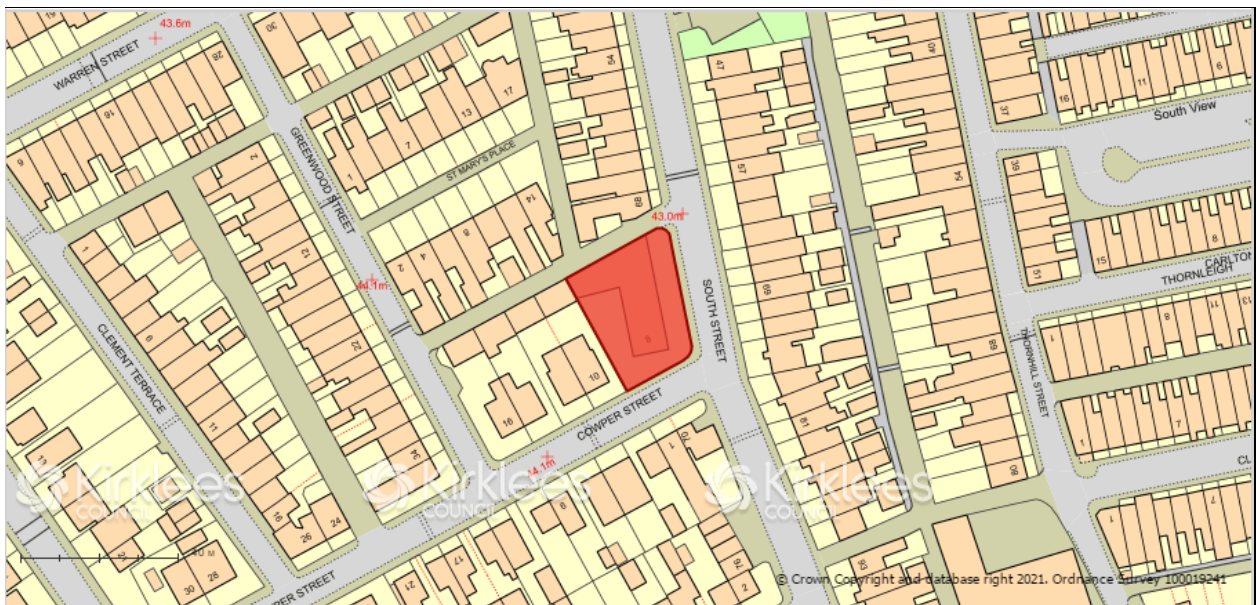
23-Feb-2021

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 South

Ward Councillors consulted: No

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and issue the decision.

1.0 INTRODUCTION:

- 1.1 The application is brought to the Heavy Woollen Sub-Committee following a request from Cllr Masood Ahmed for members to consider the impact of the proposal on design, appearance and visual amenity.
- 1.2 Cllr Ahmed also raised concern to 'the highways impact of the subdivision of the existing single retail unit into 4 separate shops given the oversubscription of this road at present given the very urban and high-density nature of the area'. Whilst amendments have been made to the scheme which is for the installation of a replacement shopfront only, it is noted that the shopfront would facilitate the subdivision of the existing retail unit, and as such, concerns relating to parking and highway safety can be taken into consideration.
- 1.3 The Chair of the Heavy Woollen Sub-Committee has confirmed that Councillor Masood Ahmed's reasons for referral to committee are valid having regard to the Councillor's Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application relates to 8 Cowper Street, a two-storey property in Saville Town, Dewsbury. It is constructed from stone for the external walls and tiles for the roof. The property currently comprises a two-storey dwelling to the southern-most element. There is an existing retail unit towards the north at ground floor level with a residential flat above. There is a single storey projecting element to the rear of the building which serves a store. The property is located on the corner of Cowper Street and South Street. The retail unit fronts onto South Street with vehicular access and an area of hardstanding to its front elevation. There is an access door to the first-floor level flat towards the north of the building. Access to the dwelling is taken to the south of the building where there is also an area of hardstanding and vehicular access from Cowper Street. There is an existing shopfront to the retail unit which is located towards the centre of the building.
- 2.2 The site is located within a predominately residential area with residential properties adjacent to all elevations. There is, however, an existing commercial use located to the south of the site on South Street. The properties along South Street are generally of a similar character, though there is some variation in terms of design. The style and design of the properties also varies within the wider area. The predominant material of construction within the vicinity is stone.

3.0 PROPOSAL:

- 3.1 The application originally sought planning permission for the installation of a replacement shop front and the subdivision of the existing retail unit. Following revisions to the scheme, the application seeks planning permission for the replacement shop fronts only.
- 3.2 The replacement shopfront would be located to the front elevation of the retail unit, fronting onto South Street, providing a separate entrance for each of the proposed four retail units. It would have a width of 21m, a height of 3.15m and a projection from the principal elevation of the building of 0.45m. The opening to the existing dwelling and access door to the first-floor level flat towards the north elevation of the building would be retained.
- 3.3 The shopfront would be constructed from aluminium and would be grey in colour (anthracite RAL7016). The individual shopfront units would also be constructed from aluminium in the same colour. Panels of K Rend Silicone render in colour granite are proposed between the individual units.
- 3.4 The submitted plans show the location of proposed signage. This cannot be considered as part of this planning application and a separate application for Advertisement Consent may be required.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

98/90337 – Erection of double garage extension. Granted.

96/92950 – Erection of two-storey extension to shop and dwelling. Granted.

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

- 5.1 The application originally sought planning permission for the installation of a replacement shop front and the subdivision of the existing retail unit.
- 5.2 Additional plans were requested from the applicant's agent during the course of the application showing the provision of off-street parking within the site. This was in response to a consultation response from the Council's Highways Development Management team in which some concern was raised to potential for the subdivision to result in a slight increase in parking demand and to place additional pressure on the existing on-street parking. The provision of off-street parking within the site was requested to mitigate the increase in parking demand.
- 5.3 An email from the applicant's planning consultant was received on 29-Apr-2021 which referred to Section 55 (2) of the Town and Country Planning Act 1990. It was requested that the application be determined based on the replacement shopfront only, as the subdivision of the unit does not constitute development for the purpose of the act and as such, would not require planning permission in its own right. For the purpose of Section 55 (2) of the Town and Country Planning Act 1990, where a building would remain in the same use, its subdivision is not considered to constitute development. In this case, it is noted that the ground floor of the building comprises a retail unit, which would be split into four separate retail units. As such, the use class of the new units would

remain as existing. Additionally, the new internal walls required to separate the units would also not constitute development. It was requested that the description of proposal be amended, and the application be determined on the basis of the replacement shopfront only, as the external works proposed would constitute development to the building. The subdivision of the retail unit is shown on the submitted drawings, however officers are satisfied that this element does not require planning permission and the application shall be determined based on the installation of the replacement shopfront only. As the external works to the shopfront would facilitate the subdivision, consideration can be given to concerns regarding the impact on highways safety and parking as a result of the subdivision which should be balanced against the realistic fall-back position that the subdivision could be completed in any event, as set out above.

5.4 Additional information was sought from the agent regarding the materials and colour of the proposed shop front. An additional plan reference 20174-D05-A was submitted on 25-May-2021 showing the proposed materials. The materials of the shopfront are set out above.

5.5 As the revisions to the scheme have removed the subdivision from consideration of the application and confirmed the proposed materials, the amendments have not been advertised in this instance.

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).

6.2 The site is unallocated on the Kirklees Local Plan proposals map. However, it is located within the Strategic Green Infrastructure Network.

6.3 Kirklees Local Plan:

LP 1 – Achieving sustainable development

LP 2 – Place shaping

LP 21 – Highway safety and access

LP 22 – Parking

LP 24 – Design

LP 25 – Advertisement and shop fronts

LP 31 – Strategic Green Infrastructure Network

LP 51 – Protection and improvement of local air quality

LP 53 – Contaminated and unstable land

6.4 National Planning Policy Framework

Chapter 2 – Achieving sustainable development

Chapter 12 – Achieving well-designed places

Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

Chapter 15 – Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Following the publicity period, 15 representations against the proposal have been received. The points raised are summarised as follows:

- Existing issues with traffic and on-street parking which would be worsened by the subdivision of the existing retail unit.
- Risk to safety of pedestrian traveling to the nearby schools.
- There are already 3 commercial shops, barbers and Dewsbury Markaz which cause high volumes of traffic in the area.
- Increase in customers to retail units due to three additional shops.
- Increase in pollution and noise levels which would be detrimental to the surrounding residential properties.
- South Street is a residential area and should remain a residential area.
- No details regarding the types of shops which would be created.
- A sequential test has not been submitted with the application.
- No opening hours submitted for the proposed shops.
- Proposal represents an overdevelopment of the site.

8.0 CONSULTATION RESPONSES:

8.1 The following consultation responses were provided based on the original scheme before revisions to the proposal and the matters for consideration were made.

8.2 KC Highways Development Management (HDM) – Raised some concern to the original scheme and requested amended plans to show the provision of off-street parking within the site.

8.3 KC Environmental Health – No objection subject to the inclusion of conditions relating to the provision of electric vehicle charging points and the reporting of unexpected contamination.

8.4 KC Strategic Waste – No objection, however, recommend the inclusion of a footnote attached to the decision notice.

9.0 MAIN ISSUES

- Principle of development
- Impact on visual amenity
- Residential amenity
- Highway issues
- 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 (KLP). This policy stipulates that proposals, which accord with policies in the KLP 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.
- 10.2 The application site is recorded as being located within the Strategic Green Infrastructure Network on the KLP.
- 10.3 Policy LP31 of the KLP states that proposals should ensure that the function and connectivity of green infrastructure networks and assets are retained, replaced or provided where appropriate, incorporating or providing new walking, cycling and ecological links.
- 10.4 The application relates to the replacement of a shopfront and, therefore, policy LP25 of the KLP is relevant. This sets out that:

The development of new or replacement shop front units and display of advertisements will only be permitted if they satisfy the following criteria:

- a) the design is consistent with the character of the existing building in terms of scale, quality and use of materials;
 - b) proposals respect the character of the locality and any features of historic, architectural, cultural or other special interest;
 - c) the shop fascia is designed to be in scale, in its depth and width, with the façade and street scene of which it forms part.
- 10.5 In this case the proposal is for the installation of a replacement shopfront to an existing retail premise. The shopfront would replace an existing shopfront to the principal elevation of the building. In this case the principle of development is considered acceptable, and the proposal shall now be assessed against all other material planning considerations, including visual and residential amenity as well as highway safety. The proposal shall be considered against policy LP25 of the KLP within the impact on visual amenity section below.

Impact on Visual Amenity

- 10.6 The proposal is for the installation of a replacement shopfront to an existing retail unit. The unit would be subdivided into four separate units. However, it is noted that this does not require planning permission and does therefore not form part of the consideration of the planning application.

- 10.7 The proposed shopfront would have a slightly greater height than the existing shopfront and would project beyond the front elevation of the property by approximately 0.4m. The shopfront would have a width of 21m when compared to the existing shopfront which has a width of 10m. It would replace existing openings to the retail unit which are located towards the northern elevation of the building.
- 10.8 Whilst the replacement shopfront would alter the appearance of the principal elevation of the building, it is considered proportionate in terms of its height, width and depth to the scale of the building. The shopfront would be constructed from aluminium which is considered an acceptable material for a development of this nature. The shopfront would replace an existing shopfront to the front of the building which appears to be of a similar material of construction.
- 10.9 The amended plans which have been submitted during consideration of the application illustrate that the shop front and rendered panels would be grey in colour. This colour is in keeping with the existing shopfront and is considered acceptable in relation to both the host building and the wider area where there are several other shop fronts which differ in colour. As such, the impact of the proposed development on the street scene and wider area is considered acceptable.
- 10.10 In conclusion, it is considered that the proposed development would be acceptable in terms of its design and the impact on visual amenity of the host building as well as the character of the immediate surroundings. On this basis, officers are satisfied that the proposal complies with policies LP24 and LP25 of the KLP and chapter 12 of the NPPF.

Impact on Residential Amenity

- 10.11 The site is located within a residential area. This section will assess the relationship between the development and the neighbouring properties.
- 10.12 Due to the nature of the proposal, which involves the installation of a replacement shopfront to an existing retail unit, it is considered that the proposal would not have a harmful impact on the closest residential properties, including the adjoining residential dwelling and flat above. Whilst the existing retail unit is shown to be subdivided on the submitted plans, this element does not require planning permission and does therefore not form part of the assessment of this planning application.
- 10.13 For the reasons set out above, the proposed development is considered acceptable regarding the impact on residential amenity. This is in accordance with policy LP24 of the KLP and chapter 12 of the NPPF.

Impact on Highway Safety

- 10.14 The proposal originally sought planning permission for the installation of a replacement shopfront and the subdivision of the existing retail unit.

- 10.15 As part of the Highways Development Management consultation response, it was noted that the existing retail unit would be subdivided into 4 smaller units, with no net increase in retail floor area. There is access to the rear of the property which appears to be used for servicing and deliveries and could also accommodate some staff parking. Vehicle access is also available from South Street to the forecourt area to front of the retail unit. Existing signage on the property suggests that this area has previously been used for customer parking. Access, servicing and parking arrangements would remain as existing.
- 10.16 Whilst there would be no net increase in retail floor area, it is considered that the sub-division is likely to result in a slight increase in parking demand. On-site observations and a review of information submitted by objectors confirms that on street parking in the area is widespread with many of the residential properties not benefiting from off-street parking. It is acknowledged that any increase in parking demand would place additional pressure on existing on-street parking. To help mitigate any slight increase in parking demand from a result of the sub-division, it was requested that the applicant confirmed the existing off-street parking provision and provided details of how this could be formalised/maximised.
- 10.17 Following revisions to the scheme, the application seeks planning permission for the replacement of the existing shopfront only with the subdivision of the retail unit not requiring planning permission. Notwithstanding this, as the external works are to facilitate the subdivision, consideration can be given to the impact of the proposal on highway safety.
- 10.18 No additional plans or information regarding the existing off-street parking has been submitted as part of the application. Whilst it is acknowledged that the proposal would result in a slight increase in parking demand at the site, when taking into consideration the realist fallback position that the subdivision could be completed in any regard, the additional demand for on street parking is considered not to warrant refusal of the application in this case.
- 10.19 The replacement shopfront would have a slight projection beyond the front elevation of the building. This projection would however be limited to 0.45m and is considered not to impact on vehicle movement within the site which would be harmful in terms of highway safety.
- 10.20 In summary, it is considered that the proposed replacement shopfront would be acceptable from a highway safety perspective, in accordance with policies LP21 and LP22 of the KLP and chapter 9 of the NPPF.

Representations

Highway Safety Concerns

- Existing issues with traffic and on-street parking which would be worsened by the subdivision of the existing retail unit.
- Increase in customers to retail units due to three additional shops.
- Risk to safety of pedestrian traveling to the nearby schools.

Officer Comments: Revisions have been made to the scheme which is being assessed based on the replacement of the existing shopfront only. The impact of the replacement shopfront has been considered within the Impact on Highway Safety section of this report and is considered acceptable.

Nature of the Surrounding Area

- There are already 3 commercial shops, barbers and Dewsbury Markaz which cause high volumes of traffic in the area.
- South Street is a residential area and should remain a residential area.

Officer Comments: Revisions have been made to the scheme which is being assessed based on the replacement of the existing shopfront only. The residential nature of the surrounding area has been noted by officers. The application relates to an existing retail unit, and as such, the replacement of the existing shopfront to this unit is considered acceptable.

Pollution and Noise Concerns

- Increase in pollution and noise levels which would be detrimental to the surrounding residential properties.
- No opening hours submitted for the proposed shops.

Officer Comments: Revisions have been made to the scheme which is being assessed based on the replacement of the existing shopfront only. It is considered that the replacement shopfront would not result in additional pollution nor would it generate noise over and above the existing relationship which would be detrimental to the amenity of the neighbouring residential properties.

Other Concerns

- No details regarding the types of shops which would be created.
- A sequential test has not been submitted with the application.
- Proposal represents an overdevelopment of the site.

Officer Comments: Revisions have been made to the scheme which is being assessed based on the replacement of the existing shopfront only. As such, details of the proposed shops and the submission of a sequential test is not required. The replacement shopfront, whilst projecting beyond the front elevation of the building, would not introduce any additional footprint. As such, it is considered that it would not result in an overdevelopment of the site.

Other Matters

Contaminated and Unstable Land

10.18 The application site has been identified as being located on land which is potentially contaminated due to its proximity to a historic landfill site. The Council's Environmental Health and Strategic Waste teams have been consulted and have requested a condition and footnote respectively relating to contaminated land. The application relates to the replacement of a shopfront and no ground works are proposed. However, as a precautionary measure, the condition and footnote could be included to the decision notice in accordance with policy LP53 of the KLP.

Climate Change

- 10.19 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target. However, it includes a series of policies, which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.
- 10.20 The proposal is for a replacement shopfront to an existing retail unit. As such, no specific measures are required in terms of the planning application, with regards to carbon emissions.
- 10.21 There are no other matters considered relevant to the determination of this application.

11.0 CONCLUSION

- 11.1 To conclude, it is considered that the proposal would have an acceptable impact with regards to visual amenity, residential amenity and highway safety as discussed in the above report.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Standard timeframe for implementation of development (3 years).
2. Development in accordance with the submitted plans.
3. Reporting of unexpected contamination.

Background Papers:

Application documents can be viewed using the link below:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020/94412>

Certificate A was submitted as part of this application, signed and dated 22.12.2020.

Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 02-Sep-2021

Subject: Planning Application 2021/91052 Use of premises for sale of used cars 105, Warren Street, Savile Town, Dewsbury, WF12 9AS

APPLICANT

L M Vladuleanu

DATE VALID

12-Mar-2021

TARGET DATE

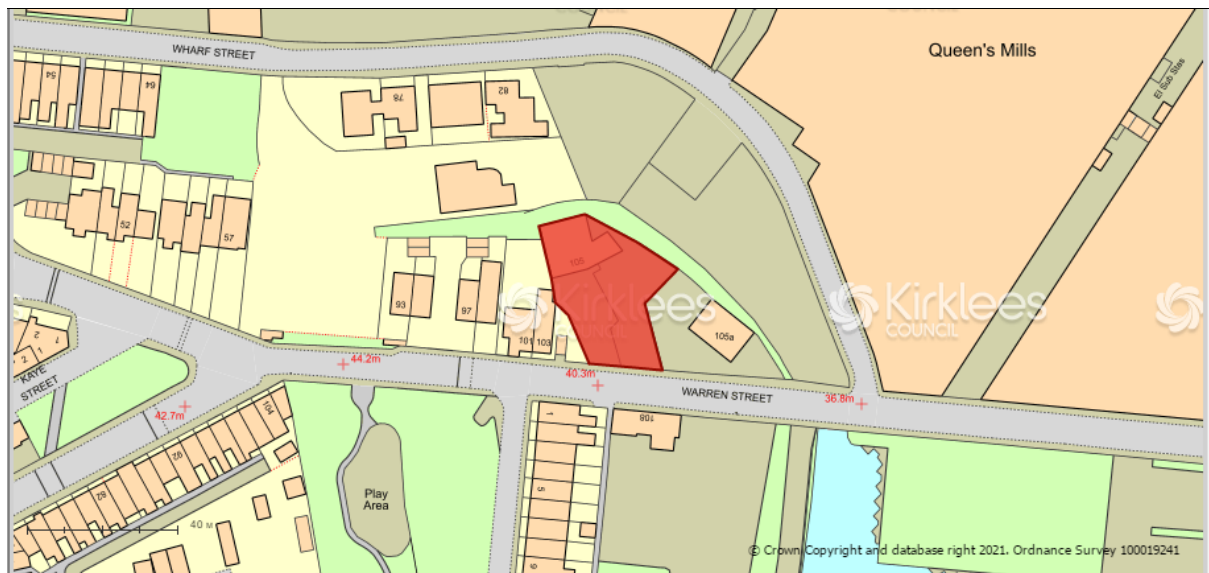
07-May-2021

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 South

Ward Councillors consulted: No

Public or private: Public

RECOMMENDATION: REFUSE

1. The use of the application site for car sales would result in the intensification of use of the highway, by virtue of additional demand for on-street parking. This would further exacerbate existing highway safety issues within the vicinity of the site. The proposed development would therefore fail to ensure a safe and efficient flow of the highway network contrary to Policy LP21 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

1.0 INTRODUCTION

- 1.1 The application has been referred to the Heavy Woollen Planning Sub Committee due to the number of representations received. 32 representations were received on application 2021/91052. 31 representations were received on application 2021/91053. This is in accordance with the Scheme of Delegation set out in the Constitution.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site relates to 105 and 105a Warren Street, Savile Town, Dewsbury. Together these units cover 1500m² with no.105 covering 920m² and 105a covering 580m². The site comprises an office and a garage on each unit, with car sales area to the front.
- 2.2 The site is on two levels, with both levels having access onto Warren Street. The sales pitch is part of the larger, former mill site, which has been divided into two smaller sites, both of which are used for car sales. The site was previously used as a manufacturing premises.
- 2.3 The site is unallocated on the Kirklees Local Plan. The eastern most point of the application site is set 25m away from an allocated primary employment area (PEA 30).

3.0 PROPOSAL

- 3.1 The proposal is for the change of use to car sales premises. The proposals are retrospective, and the application was received following an enforcement complaint.

3.2 The buildings on the site are indicated as being used for a garage and car sales office.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 87/00865 Extension to office/WC. Approved.

87/01551 Extension to office, canteen and WC. Approved.

95/92879 Erection of extension and alterations to factory. Refused.

96/91158 Erection of extension and alterations to factory. Approved.

2004/92638 Erection of two storey extension to existing factory and toilet block. Approved.

2008/90895 change of use from former petrol filling station to vehicle hire depot. Approved.

2008/91530 Change of use from storage to car valeting business. Refused (adjacent site 105a Warren Street).

2019/91226 and 2019/92001 Change of use to car sales. Refused due to the submission of insufficient information.

4.2 Comp/18/0302. Alleged material change of use from light industrial to car sales.

Comp/18/0300. Alleged material change of use from light industrial to car sales (adjacent site 105a Warren Street).

5.0 HISTORY OF NEGOTIATIONS (Including revisions to the scheme):

5.1 No amendments have been sought.

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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).

Kirklees Local Plan (2019):

6.2 LP1 Presumption in favour of sustainable development
LP21 Highway safety and access
LP22 Parking
LP24 Design
LP28 Drainage
LP51 Protection and improvement of local air quality
LP52 Protection and improvement of environmental quality

National Planning Guidance:

6.3 National Planning Policy Framework (NPPF)

Chapter 6 - Building a strong, competitive economy.

Chapter 9 - Promoting sustainable transport.

Chapter 12 - Achieving well designed places.

Chapter 14 - Meeting the challenge of climate change, flooding and coastal change.

Chapter 15 - Conserving and enhancing the natural environment.

Supplementary Planning Guidance / Documents:

6.4 Highways Design Guide Supplemental Planning Document

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was advertised by neighbour notification letters. Final publicity expired on 30th April 2021. 63 representations were received across the applications, all of which were against the proposal. It should be noted that 47 of the representations received were the same letter submitted by different individuals. Other representations were also duplicated across both applications, meaning 6 differently worded representations were received in total. These representations have been summarised as follows:

7.2 Highway Safety

- The proposed use intensifies the highway to dangerous levels in a setting nearby to a school, GP practice, a place of worship and in a residential area.
- The additional vehicles cause sight issues for vehicles and pedestrians on Warren Street and Scarborough Street.
- The use exacerbates parking issues on Warren Street.

7.3 Residential Amenity

- Noise and disturbance from the use, including the noise from vehicles and hours of operations harms the amenity of dwellings nearby.

7.4 Non-material matters

- Legality of vehicles at the site.
- The retrospective nature of the application.
- 'attitudes and habits' of the tenants.
- Inconsiderate parking.

8.0 CONSULTATIONS RESPONSES

8.1 **Statutory:**

KC Highways Development Management: No objections, subject to a Traffic Regulation Order undertaken under a s106 and an associated condition, in case the TRO application is not successful.

Canal and River Trust: No comment.

KC Environmental Health: No objections, subject to conditions regarding electric vehicle charging points, lighting, noise and hours of use.

8.2 **Non-statutory:**

KC Enforcement: Provided advice regarding the lawfulness of conditions to mitigate highway impacts.

9.0 **MAIN ISSUES**

- Principle of Development
- Visual Amenity
- Residential Amenity
- Highway Safety
- Drainage
- Carbon Budget
- Lighting
- Representations

10.0 **APPRAISAL**

Principle of Development

- 10.1 Policy LP1 of the Kirklees Local Plan (KLP), suggests that the Council will always work pro-actively with applicants jointly to find solutions, which means that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.
- 10.2 Proposals that accord with the policies in the KLP will be approved without delay unless material considerations indicate otherwise.
- 10.3 NPPF policy, in paragraph 21, says that local planning authorities should support existing business sectors and be flexible in their approach.
- 10.4 Policy, in chapter 12 of the NPPF, suggests that local planning authorities should ensure that the issue of design and the way a development will function are fully considered during the assessment of an application.
- 10.5 Consistent with the above, policy LP24 of the KLP suggests that proposals should promote good design by ensuring (among other things) high levels of sustainability through the re-use and adaptation of existing buildings where practicable and promoting walkable neighbourhoods and making walking and cycling more attractive.
- 10.6 In addition to the above, policy LP21 of the KLP requires that all proposals shall ensure safe and efficient flow of traffic within the development and on the surrounding highway network.
- 10.7 Subject to further assessment of the above-mentioned material considerations and policies it is considered that the principle of development has been established, given that the site is unallocated and has a historic commercial use.

Visual Amenity

- 10.8 There are no physical changes proposed to the site to enable the development to be carried out. The main issue with car sales plots tends to be the fencing and any signage and other advertisements.
- 10.9 With regard to the fencing and gates these are already in place, a check of the history of the site shows that these have been in place since at least 2008.
- 10.10 Any signage or other advertisement is likely to require advertisement consent.
- 10.11 Given the above, the proposals are considered acceptable in terms of visual amenity and in accordance with policy LP24 of the KLP and chapter 12 of the NPPF.

Residential Amenity

- 10.12 The proposed use of the site as a car sales pitch can lead to disturbance to neighbouring residential properties from several sources. Regarding noise and disturbance, this can be from car engines, valeting and the comings and goings of customers. Disturbance could also be caused by any ancillary uses, such as repair and valeting. These issues, which can cause disturbance, are specific to the use of the site for car sales and, given the proximity to residential properties, have the capacity, if uncontrolled, to represent an adverse impact on residential amenity and the health and wellbeing of the occupiers, contrary to policies LP24, LP51 and LP52 of the KLP and chapters 12 and 15 of the NPPF.
- 10.14 The applicant has submitted a planning statement by D5 Planning, outlining the planning application and referencing two previous applications (2019/91226 and 2019/92001) which were refused on 10 July 2020. One of the reasons for refusal was the failure to provide the following information:
- the likely noise impact of the development.
 - the impact of exhaust fumes on local air quality.
 - the impact of any artificial lighting on neighbouring residential properties.
- 10.15 Since then, the applicant has submitted an Acoustic report by Paul Horsley Acoustics Ltd, dated 06 October 2020 Ref J2978. The aims of the report are to:
- Determine the noise impact of the activities of the car sales and valet operations on the nearby residential premises from the daytime operations and advise on the likelihood of receiving justifiable complaints relating to noise from site.
 - Monitor and assess the noise output of the specific activities at the above site, in accordance with the requirements of BS4142: 2014+A1:2019.
 - Provide an impact assessment of the operations on the nearby residential premises.
 - Advise on the likelihood of justifiable complaints arising from local residents, in terms of the above standard, and provide mitigating noise control recommendations, should they be deemed necessary, to preserve the amenity of the nearby residential premises.

- 10.16 Section 4 of the report states the operations units under consideration are for car sales and valeting of vehicles. The proposal is that car sales are operated on a 'view by appointment' only basis, where customers are required to make an appointment to view and test-drive the cars. No unappointed drop-in or random inspections are to be allowed. The valeting is for the preparation of the show room vehicles only, this will not be available to the public. Therefore, the only noise associated with the two sites by valeting is due to the intermittent use of a car vacuum cleaner and pressure washer.
- 10.17 The existing noise climate is dominated by traffic flow along Warren Street, running past the site, with distant traffic noise also audible throughout. A BS4142 noise survey was conducted on Thursday 10 September 2020 from the site boundary between the site and 103 Warren Street and at close quarters to the specific car valet operations. The survey concludes that the proposal will give rise to a rating value of +1 dB above background levels and, therefore, this is not likely to cause adverse comment or justifiable complaints, and that further mitigation measures may not be necessary, when considered at this location.
- 10.18 Further monitoring was conducted from the boundary with 1 Scarborough Road, which is located opposite the proposed site. It concludes with a rating of 9 dB below the background sound level and is not likely to produce any justifiable adverse comment due to the operations. The findings of the report are accepted and considered true and accurate by Officers and KC Environmental Health.
- 10.19 Furthermore, the previous factory use of the premises must be considered. On a broad level, a proposed car sales use, to be operated in the manner discussed above, with conditions regarding hours of use, would have a lesser impact, on the amenity of the neighbouring dwellings, than a factory. Officers understand the reasons for the objections put forward by neighbours. However, many of the noise matters mentioned arise from the 'habits' of such operators, which are not material considerations, as opposed to issues caused by the actual use.
- 10.20 Given the above, subject to conditions for the hours of use to be between the hours of 0900 to 1800hrs on Monday to Saturday, and 1000 to 1700hrs on Sunday and Bank Holidays and that the viewing and sales of cars in by appointment only, the proposal is considered to accord with policies LP24, LP51 and LP52 of the KLP, regarding residential amenity, including noise, and chapters 12 and 15 of the NPPF.

Highway Safety

- 10.21 Applications 2019/91226 and 2019/92001 were refused partly due to the lack of measures to manage parking on Warren Street, as this had been identified as a highway concern.
- 10.22 This application is for the use of premises for car sales and valeting at existing premises with an access onto Warren Street. Warren Street is a 30mph two-way single carriageway local distributor road of approximately 7.5m width, with footways on both sides and street lighting present. To the west of the site there is a residential 20mph zone. The road serves several uses, including residential, car sales, industrial and a school on the opposite side to the application site. There are "No Waiting 8am to 6:30pm" TRO restrictions around

the junction with Wharf Street, to protect visibility and along the south side of Warren Street, between Wharf Street and Mill Street East. There are white “H” bars across entrances on the north side of Warren Street, with white H bars with “Keep Clear” markings to entrances on the south side of the road. This indicates there are parking issues in this location, which have caused concern in the past. Due to the narrow width of the road, parked cars usually stop partially on the footway and this may be causing an obstruction to pedestrians, possibly leading to road safety issues.

- 10.23 Drawing 19/133/A showing on-site parking spaces for sales vehicles, customer parking and staff parking was submitted as part of the application. The parking appears to allow sufficient space for manoeuvring so that staff and visitor vehicles can enter/exit the site in forward gear for road safety reasons. Not all the parking spaces are the recommended 2.4m x 4.8m in size. However, this is not of particular concern, as the staff and visitor spaces are of a suitable dimension and the remainder of the spaces are stock parking spaces, where access is not as important.
- 10.24 There are only limited staff and visitor parking spaces shown on drawing 19/133/A. However, the accompanying acoustic report from Paul Horsley Acoustics Ltd states that all customer visits to the site will be viewing by appointment only and, due to this, the applicants would be able to manage visits to the site, to avoid any additional parking need for customers, beyond what has been provided.
- 10.25 There were several parking issues identified within the area, including parking on the footway that is causing pedestrians to have to walk on the carriageway and this is viewed as a highway safety issue. In the previous applications Officers requested that the applicant should co-fund the process of installing a parking restriction TRO along the north side of Warren Street and this course of action was supported by the Kirklees Road Safety Team. However, this course of action wasn't entered in to by the applicant during the previous application and this was given as one of the reasons for refusal. Since this time, officers have had discussion with KC Enforcement who stated that given the TRO is based upon legislation and procedure outside the remit of planning, it cannot be relied upon in cases where it is fundamental for approval. Furthermore, the conditions relating to the management of the parking on the highway, which are also requested by KC Highways would not meet the enforceability test for conditions as it can't be expected of the applicant to “manage” external parking on a public highway as this is completely out their control.
- 10.26 KC Enforcement's full response to this matter is as follows:
Both sites are the subject of Enforcement Notices requiring the use applied for to cease. It is understood that these applications for 105 and 105A Warren Street were submitted following enforcement action, with the intention of regularising the development(s). The Compliance Team note the consultation responses and in particular that from Highways DM, essentially stating that the development(s) are acceptable from a highways perspective subject to a condition and that TRO is in place. The Compliance Team have concerns on the lawfulness of such a condition (explained below).

Paragraph 56 of the NPPF makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

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

These are referred to as the 6 tests, and each of them needs to be satisfied for each condition which an authority intends to apply.

Given these are retrospective applications, it is not possible to impose a pre-commencement condition, nor could a condition be worded to require the use to cease if the TRO process (which is outside Planning Legislation) is unsuccessful. Therefore, the Compliance Team do not consider such a condition (requiring a TRO) to meet all of the 6 tests stated above in these circumstances. For the avoidance of doubt, there is no question that a suitably worded condition could meet the 6 tests if the development was a proposal, for instance a “Grampian” style condition preventing the development being commenced unless and until a TRO was approved, but this is not possible with a retrospective application(s).

- 10.27 For the reason set out in paragraphs 10.25 and 10.26, the assessment with regarding to highways needs to be undertaken without the need or reliance on a TRO or conditions to manage parking on the highway. There is evidence that they are using the highway for part of the operation of their business. Whilst highway safety also advised that at the moment there may not appear to be any problems on the highway, this is more than likely due to changes occurring due to Covid and they fully expect issues to return in the post-covid world. This use would ultimately cause a more intensive use of the highway, in an area where there are existing highway issues, to which the proposal would then likely lead to the use not ensuring the safe use of the surrounding highway network for vehicles and pedestrian as well as preventing an efficient flow of vehicles as required by Policy LP21 of the Kirklees Local Plan and Paragraph 110 of the National Planning Policy Framework.
- 10.28 There were also no details of waste collection provided within the application, however it is assumed that this is done as previous and will not have an undue impact on the operation of the local highway network or cause road safety issues.
- 10.29 With the above, officer consider that the application is not acceptable on highways grounds given that it will intensify the use of the highway thus causing the prevent the safe and efficient flow of traffic on the surrounding highway network as required by KLP policy LP21. No conditions, which meet the six tests for conditions can overcome these concerns, whilst the forming of a TRO post decision cannot be relied upon given it could be determined upon grounds outside of planning legislation, could be refused, or could take a form where it does not resolve the highways issues.

Drainage

- 10.30 The application is for a change of use to an existing building, with all surface water and foul drainage to be retained as existing. It would be unreasonable to require any improvement to the drainage for this application.

Carbon Budget

- 10.31 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target. However, it includes a series of policies, which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda. To meet the policy and guidance outline above, the provision of one electric vehicle charging point for every ten spaces, to be installed within 3 months, will be sought via condition. There are controls in terms of Building Regulations, which would need to be adhered to as part of the construction process and which would require compliance with national standards. This would ensure the proposal accords with policies LP51 and LP52 of the KLP.

External Lighting

- 10.32 No information regarding external lighting has been submitted. This permission does not authorise the installation or use of any external artificial lighting. If the development requires external lighting, a new planning application would be required.

Representations

- 10.33 The application was advertised by neighbour notification letters. Final publicity expired on 30th April 2021. 63 representations were received across the applications, all of which were against the proposal. It should be noted that 47 of the representations received were the same letter submitted by different individuals. Other representations were also duplicated across both applications, meaning 6 differently worded representations were received in total. These representations have been summarised as follows:

10.34 *Highway Safety*

- The proposed use intensifies the highway to dangerous levels in a setting nearby to a school, GP practice, a place of worship and in a residential area.
- The additional vehicles cause sight issues for vehicles and pedestrians on Warren Street and Scarborough Street.
- The use exacerbates parking issues on Warren Street.

Response: Addressed within points 10.21-10.28 of the report above.

10.35 Residential Amenity

- Noise and disturbance from the use, including the noise from vehicles and hours of operations, harms the amenity of dwellings nearby.

Response: Addressed within points 10.12-10.20 of the report above.

10.36 Non-material matters

- Legality of vehicles at the site.
- The retrospective nature of the application.
- 'attitudes and habits' of the tenants.
- Inconsiderate parking.

Response: These are not material planning considerations and, therefore, cannot be considered.

11.0 CONCLUSION

11.1 To conclude, it is considered that the change of use to car sales, from manufacturing is not acceptable in terms of highway safety. The proposed car sales use would intensify the highway and exacerbate existing highways issues on the surrounding highway network contrary to policy LP21 of the KLP.

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. It is considered that the development would not constitute sustainable development given the harm caused to highway safety and is therefore recommended for refusal.

Background Papers

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F91052> – 2021/91053 – Application to which this report relates.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F91053> – 2021/91053 – Application to which this report relates.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2F92001> – Previously refused application.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/91226> - Previously refused application

Certificate of Ownership – Notice served on site owner – Certificate B signed

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Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 02-Sep-2021

Subject: Planning Application 2021/91053 Change of use to car sales premises
105 A, Warren Street, Savile Town, Dewsbury, WF12 9AS

APPLICANT

Jamal Car Sales

DATE VALID

12-Mar-2021

TARGET DATE

07-May-2021

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 South

Ward Councillors consulted: No

Public or private: Public

RECOMMENDATION: REFUSE planning permission and delegate authority to the Head of Planning and Development to proceed with enforcement action requiring cessation of the use (and the removal of any associated operational development).

1. The use of the application site for car sales would result in the intensification of use of the highway, by virtue of additional demand for on-street parking. This would further exacerbate existing highway safety issues within the vicinity of the site. The proposed development would therefore fail to ensure a safe and efficient flow of the highway network contrary to Policy LP21 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

1.0 INTRODUCTION

- 1.1 The application has been referred to the Heavy Woollen Planning Sub Committee due to the number of representations received. 32 representations were received on application 2021/91052. 31 representations were received on application 2021/91053. This is in accordance with the Delegation Agreement set out in the Constitution.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site relates to 105 and 105a Warren Street, Savile Town, Dewsbury. Together these units cover 1500m² with no.105 covering 920m² and 105a covering 580m². The site comprises an office and a garage on each unit, with car sales area to the front.
- 2.2 The site is on two levels, with both levels having access onto Warren Street. The sales pitch is part of the larger, former mill site, which has been divided into two smaller sites, both of which are used for car sales. The site was previously used as a manufacturing premises.
- 2.3 The site is unallocated on the Kirklees Local Plan proposals map. The eastern most point of the application site is set 25m away from an allocated primary employment area (PEA 30).

3.0 PROPOSAL

- 3.1 The proposal is for the change of use to car sales premises. The proposals are retrospective, and the application was received following an enforcement complaint.
- 3.2 The buildings on the site are indicated as being used for a garage and car sales office.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 87/00865 Extension to office/WC. Approved.
- 87/01551 Extension to office, canteen and WC. Approved.
- 95/92879 Erection of extension and alterations to factory. Refused.
- 96/91158 Erection of extension and alterations to factory. Approved.
- 2004/92638 Erection of two storey extension to existing factory and toilet block. Approved.
- 2008/90895 change of use from former petrol filling station to vehicle hire depot. Approved.
- 2008/91530 Change of use from storage to car valeting business. Refused (adjacent site 105a Warren Street).
- 2019/91226 and 2019/92001 Change of use to car sales. Refused due to the submission of insufficient information.
- 4.2 Comp/18/0302. Alleged material change of use from light industrial to car sales.
- Comp/18/0300. Alleged material change of use from light industrial to car sales (adjacent site 105a Warren Street).

5.0 HISTORY OF NEGOTIATIONS (Including revisions to the scheme):

- 5.1 No amendments have been sought.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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).

Kirklees Local Plan (2019):

- 6.2 LP1 Presumption in favour of sustainable development
LP21 Highway safety and access
LP22 Parking
LP24 Design

LP28 Drainage
LP51 Protection and improvement of local air quality
LP52 Protection and improvement of environmental quality

National Planning Guidance:

6.3 National Planning Policy Framework (NPPF)

Chapter 6 - Building a strong, competitive economy.
Chapter 9 – Promoting sustainable transport.
Chapter 12 - Achieving well designed places.
Chapter 14 - Meeting the challenge of climate change, flooding and coastal change.
Chapter 15 - Conserving and enhancing the natural environment.

Supplementary Planning Guidance / Documents:

6.4 Highways Design Guide Supplemental Planning Document

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was advertised by neighbour notification letters. Final publicity expired on 30th April 2021. 63 representations were received across the applications, all of which were against the proposal. It should be noted that 47 of the representations received were the same letter submitted by different individuals. Other representations were also duplicated across both applications, meaning 6 differently worded representations were received in total. These representations have been summarised as follows:

7.2 Highway Safety

- The proposed use intensifies the highway to dangerous levels in a setting nearby to a school, GP practice, a place of worship and in a residential area.
- The additional vehicles cause sight issues for vehicles and pedestrians on Warren Street and Scarborough Street.
- The use exacerbates parking issues on Warren Street.

7.3 Residential Amenity

- Noise and disturbance from the use, including the noise from vehicles and hours of operations harms the amenity of dwellings nearby.

7.4 Non-material matters

- Legality of vehicles at the site.
- The retrospective nature of the application.
- 'attitudes and habits' of the tenants.
- Inconsiderate parking.

8.0 CONSULTATIONS RESPONSES

8.1 **Statutory:**

KC Highways Development Management: No objections, subject to a Traffic Regulation Order undertaken under a s106 and an associated condition, in case the TRO application is not successful.

Canal and River Trust: No comment.

KC Environmental Health: No objections, subject to conditions regarding electric vehicle charging points, lighting, noise and hours of use.

8.2 **Non-statutory:**

KC Enforcement: Provided advice regarding the lawfulness suggested conditions/s106 in regard to mitigating highways safety impacts.

9.0 **MAIN ISSUES**

- Principle of Development
- Visual Amenity
- Residential Amenity
- Highway Safety
- Drainage
- Carbon Budget
- Lighting
- Representations

10.0 **APPRAISAL**

Principle of Development

- 10.1 Policy LP1 of the Kirklees Local Plan (KLP), suggests that the Council will always work pro-actively with applicants jointly to find solutions, which means that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.
- 10.2 Proposals that accord with the policies in the KLP will be approved without delay unless material considerations indicate otherwise.
- 10.3 NPPF policy, in paragraph 21, says that local planning authorities should support existing business sectors and be flexible in their approach.
- 10.4 Policy, in chapter 12 of the NPPF, suggests that local planning authorities should ensure that the issue of design and the way a development will function are fully considered during the assessment of an application.
- 10.5 Consistent with the above, policy LP24 of the KLP suggests that proposals should promote good design by ensuring (among other things) high levels of sustainability through the re-use and adaptation of existing buildings where practicable and promoting walkable neighbourhoods and making walking and cycling more attractive.
- 10.6 In addition to the above, policy LP21 of the KLP requires that all proposals shall ensure safe and efficient flow of traffic within the development and on the surrounding highway network.

- 10.7 Subject to further assessment of the above-mentioned material considerations and policies it is considered that the principle of development has been established, given that the site is unallocated and has a historic commercial use.

Visual Amenity

- 10.8 There are no physical changes proposed to the site to enable the development to be carried out. The main issue with car sales plots tends to be the fencing and any signage and other advertisements.
- 10.9 With regard to the fencing and gates these are already in place, a check of the history of the site shows that these have been in place since at least 2008.
- 10.10 Any signage or other advertisement is likely to require advertisement consent.
- 10.11 Given the above, the proposals are considered acceptable in terms of visual amenity and in accordance with policy LP24 of the KLP and chapter 12 of the NPPF.

Residential Amenity

- 10.12 The proposed use of the site as a car sales pitch can lead to disturbance to neighbouring residential properties from several sources. Regarding noise and disturbance, this can be from car engines, valeting and the comings and goings of customers. Disturbance could also be caused by any ancillary uses, such as repair and valeting. These issues, which can cause disturbance, are specific to the use of the site for car sales and, given the proximity to residential properties, have the capacity, if uncontrolled, to represent an adverse impact on residential amenity and the health and wellbeing of the occupiers, contrary to policies LP24, LP51 and LP52 of the KLP and chapters 12 and 15 of the NPPF.
- 10.14 The applicant has submitted a planning statement by D5 Planning, outlining the planning application and referencing two previous applications (2019/91226 and 2019/92001) which were refused on 10 July 2020. One of the reasons for refusal was the failure to provide the following information:
- the likely noise impact of the development.
 - the impact of exhaust fumes on local air quality.
 - the impact of any artificial lighting on neighbouring residential properties.
- 10.15 Since then, the applicant has submitted an Acoustic report by Paul Horsley Acoustics Ltd, dated 06 October 2020 Ref J2978. The aims of the report are to:
- Determine the noise impact of the activities of the car sales and valet operations on the nearby residential premises from the daytime operations and advise on the likelihood of receiving justifiable complaints relating to noise from site.
 - Monitor and assess the noise output of the specific activities at the above site, in accordance with the requirements of BS4142: 2014+A1:2019.
 - Provide an impact assessment of the operations on the nearby residential premises.
 - Advise on the likelihood of justifiable complaints arising from local residents, in terms of the above standard, and provide mitigating noise control recommendations, should they be deemed necessary, to preserve the amenity of the nearby residential premises.

- 10.16 Section 4 of the report states the operations units under consideration are for car sales and valeting of vehicles. The proposal is that car sales are operated on a 'view by appointment' only basis, where customers are required to make an appointment to view and test-drive the cars. No unappointed drop-in or random inspections are to be allowed. The valeting is for the preparation of the show room vehicles only, this will not be available to the public. Therefore, the only noise associated with the two sites by valeting is due to the intermittent use of a car vacuum cleaner and pressure washer.
- 10.17 The existing noise climate is dominated by traffic flow along Warren Street, running past the site, with distant traffic noise also audible throughout. A BS4142 noise survey was conducted on Thursday 10 September 2020 from the site boundary between the site and 103 Warren Street and at close quarters to the specific car valet operations. The survey concludes that the proposal will give rise to a rating value of +1 dB above background levels and, therefore, this is not likely to cause adverse comment or justifiable complaints, and that further mitigation measures may not be necessary, when considered at this location.
- 10.18 Further monitoring was conducted from the boundary with 1 Scarborough Road, which is located opposite the proposed site. It concludes with a rating of 9 dB below the background sound level and is not likely to produce any justifiable adverse comment due to the operations. The findings of the report are accepted and considered true and accurate by Officers and KC Environmental Health.
- 10.19 Furthermore, the previous factory use of the premises must be considered. On a broad level, a proposed car sales use, to be operated in the manner discussed above, with conditions regarding hours of use, would have a lesser impact, on the amenity of the neighbouring dwellings, than a factory. Officers understand the reasons for the objections put forward by neighbours. However, many of the noise matters mentioned arise from the 'habits' of such operators, which are not material considerations, as opposed to issues caused by the actual use.
- 10.20 Given the above, subject to conditions for the hours of use to be between the hours of 0900 to 1800hrs on Monday to Saturday, and 1000 to 1700hrs on Sunday and Bank Holidays and that the viewing and sales of cars in by appointment only, the proposal is considered to accord with policies LP24, LP51 and LP52 of the KLP, regarding residential amenity, including noise, and chapters 12 and 15 of the NPPF.

Highway Safety

- 10.21 Applications 2019/91226 and 2019/92001 were refused partly due to the lack of measures to manage parking on Warren Street, as this had been identified as a highway concern.
- 10.22 This application is for the use of premises for car sales and valeting at existing premises with an access onto Warren Street. Warren Street is a 30mph two-way single carriageway local distributor road of approximately 7.5m width, with footways on both sides and street lighting present. To the west of the site there is a residential 20mph zone. The road serves several uses, including residential, car sales, industrial and a school on the opposite side to the application site. There are "No Waiting 8am to 6:30pm" TRO restrictions around

the junction with Wharf Street, to protect visibility and along the south side of Warren Street, between Wharf Street and Mill Street East. There are white “H” bars across entrances on the north side of Warren Street, with white H bars with “Keep Clear” markings to entrances on the south side of the road. This indicates there are parking issues in this location, which have caused concern in the past. Due to the narrow width of the road, parked cars usually stop partially on the footway and this may be causing an obstruction to pedestrians, possibly leading to road safety issues.

- 10.23 Drawing 19/133/A showing on-site parking spaces for sales vehicles, customer parking and staff parking was submitted as part of the application. The parking appears to allow sufficient space for manoeuvring so that staff and visitor vehicles can enter/exit the site in forward gear for road safety reasons. Not all the parking spaces are the recommended 2.4m x 4.8m in size. However, this is not of particular concern, as the staff and visitor spaces are of a suitable dimension and the remainder of the spaces are stock parking spaces, where access is not as important.
- 10.24 There are only limited staff and visitor parking spaces shown on drawing 19/133/A. However, the accompanying acoustic report from Paul Horsley Acoustics Ltd states that all customer visits to the site will be viewing by appointment only and, due to this, the applicants would be able to manage visits to the site, to avoid any additional parking need for customers, beyond what has been provided.
- 10.25 There were several parking issues identified within the area, including parking on the footway that is causing pedestrians to have to walk on the carriageway and this is viewed as a highway safety issue. In the previous applications Officers requested that the applicant should co-fund the process of installing a parking restriction TRO along the north side of Warren Street and this course of action was supported by the Kirklees Road Safety Team. However, this course of action wasn't entered in to by the applicant during the previous application and this was given as one of the reasons for refusal. Since this time, officers have had discussion with KC Enforcement who stated that given the TRO is based upon legislation and procedure outside the remit of planning, it cannot be relied upon in cases where it is fundamental for approval. Furthermore, the conditions relating to the management of the parking on the highway, which are also requested by KC Highways would not meet the enforceability test for conditions as it can't be expected of the applicant to “manage” external parking on a public highway as this is completely out their control.
- 10.26 KC Enforcement's full response to this matter is as follows:
Both sites are the subject of Enforcement Notices requiring the use applied for to cease. It is understood that these applications for 105 and 105A Warren Street were submitted following enforcement action, with the intention of regularising the development(s). The Compliance Team note the consultation responses and in particular that from the Highways DM, essentially stating that the development(s) are acceptable from a highway perspective subject to a condition and that TRO is in place. The Compliance Team have some concerns on the lawfulness of such a condition (explained below).

Paragraph 57 of the NPPF makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

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

These are referred to as the 6 tests, and each of them needs to be satisfied for each condition which an authority intends to apply.

Given these are retrospective applications, it is not possible to impose a pre-commencement condition, nor could a condition be worded to require the use to cease if the TRO process (which is outside Planning Legislation) is unsuccessful. Therefore, the Compliance Team do not consider such a condition (requiring a TRO) to meet all of the 6 tests stated above in these circumstances. For the avoidance of doubt, there is no question that a suitably worded condition could meet the 6 tests if the development was a proposal, for instance a “Grampian” style condition preventing the development being commenced unless and until a TRO was approved, but this is not possible with a retrospective application(s).

- 10.27 For the reason set out in paragraphs 10.25 and 10.26, the assessment with regarding to highways needs to be undertaken without the need or reliance on a TRO or conditions to manage parking on the highway. There is evidence that they are using the highway for part of the operation of their business. Whilst highway safety also advised that there may not currently appear to be any problems on the highway, this is more than likely due to changes occurring due to Covid and they fully expect issues to return in the post-covid world. This use would ultimately cause a more intensive use of the highway, in an area where there are existing highway issues, to which the proposal would then likely lead to the use not ensuring the safe use of the surrounding highway network for vehicles and pedestrian as well as preventing an efficient flow of vehicles as required by policy LP21 of the KLP and paragraph 110 of the NPPF.
- 10.28 There were also no details of waste collection provided within the application, however it is assumed that this is done as previous and will not have an undue impact on the operation of the local highway network or cause road safety issues.
- 10.29 With the above, officer consider that the application is not acceptable on highways grounds given that it will intensify the use of the highway thus causing the prevent the safe and efficient flow of traffic on the surrounding highway network as required by policy LP21. No conditions, which meet the six tests for conditions can overcome these concerns, whilst the forming of a TRO post decision cannot be relied upon given it could be determined upon grounds outside of planning legislation, could be refused, or could take a form where it does not resolve the highways issues.

Drainage

- 10.30 The application is for a change of use to an existing building, with all surface water and foul drainage to be retained as existing. It would be unreasonable to require any improvement to the drainage for this application.

Carbon Budget

- 10.31 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target. However, it includes a series of policies, which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda. To meet the policy and guidance outline above, the provision of one electric vehicle charging point for every ten spaces, to be installed within 3 months, will be sought via condition. There are controls in terms of Building Regulations, which would need to be adhered to as part of the construction process and which would require compliance with national standards. This would ensure the proposal accords with policies LP51 and LP52 of the KLP.

External Lighting

- 10.32 No information regarding external lighting has been submitted. This permission does not authorise the installation or use of any external artificial lighting. If the development requires external lighting, a new planning application would be required.

Representations

- 10.33 The application was advertised by neighbour notification letters. Final publicity expired on 30th April 2021. 63 representations were received across the applications, all of which were against the proposal. It should be noted that 47 of the representations received were the same letter submitted by different individuals. Other representations were also duplicated across both applications, meaning 6 differently worded representations were received in total. These representations have been summarised as follows:

10.34 *Highway Safety*

- The proposed use intensifies the highway to dangerous levels in a setting nearby to a school, GP practice, a place of worship and in a residential area.
- The additional vehicles cause sight issues for vehicles and pedestrians on Warren Street and Scarborough Street.
- The use exacerbates parking issues on Warren Street.

Response: Addressed within points 10.21-10.28 of the report above.

10.35 *Residential Amenity*

- Noise and disturbance from the use, including the noise from vehicles and hours of operations, harms the amenity of dwellings nearby.

Response: Addressed within points 10.12-10.20 of the report above.

10.36 *Non-material matters*

- Legality of vehicles at the site.
- The retrospective nature of the application.
- 'attitudes and habits' of the tenants.
- Inconsiderate parking.

Response: These are not material planning considerations and, therefore, cannot be considered.

11.0 CONCLUSION

11.1 To conclude, it is considered that the change of use to car sales, from manufacturing is not acceptable in terms of highway safety. The proposed car sales use would intensify the highway and exacerbate existing highways issues on the surrounding highway network contrary to policy LP21 of the KLP.

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. It is considered that the development would not constitute sustainable development given the harm caused to highway safety and is therefore recommended for refusal.

Background Papers

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F91052> – 2021/91053 – Application to which this report relates.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F91053> – 2021/91053 – Application to which this report relates.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2F92001> – Previously refused application.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/91226> - Previously refused application

Certificate of Ownership – Notice served on site owner – Certificate B signed

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Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 02-Sep-2021

Subject: Planning Application 2021/91170 Erection of detached garage with first floor storage 20, Steanard Lane, Mirfield, WF14 8HB

APPLICANT

N Aldersley

DATE VALID

13-Apr-2021

TARGET DATE

08-Jun-2021

EXTENSION EXPIRY DATE

09-Jul-2021

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

Ward Councillors consulted: No

Public or private: PUBLIC

RECOMMENDATION: REFUSE for the following reasons

1. The proposed development would be inappropriate in the Green Belt by definition, with no very special circumstances to which clearly outweigh the harm caused by inappropriateness and other harm. There would be additional harm to the spatial and visual aspects of the openness of the Green Belt. To approve the application would be contrary to chapter 13 of the National Planning Policy Framework.
2. The proposed development, by virtue of its scale and design, would cause harm to the heritage asset – the grade II listed building - with no public benefits to justify this harm. The proposal therefore contravenes policy LP35 of the Kirklees Local Plan and chapter 16 of the National Planning Policy Framework.
3. The proposed development fails to meet the exceptions for development on developed functional flood plain in flood zone 3ai as set out in policy LP27 of the Kirklees Local Plan. The site edged red and adjacent areas are wholly within flood zone 3b and 3ai and a sequential approach cannot be achieved.

1.0 INTRODUCTION:

- 1.1 This planning application has been called in to Planning Committee by Councillor Lees-Hamilton. The reason for the call-in request by Cllr Lees-Hamilton is that “this is agricultural land, flood risks have been considered by the applicant, the current stables are unsafe in their current condition, the proposed development would be a huge improvement over what is already there and would serve a useful purpose, the proposed development is not much larger than the footprint of the stable blocks”.
- 1.2 The Chair of the Sub-Committee has accepted that Cllr Lees-Hamilton’s reason for her committee request is in line with the Council’s Protocol for Planning Committee.

2.0 SITE AND SURROUNDINGS:

- 2.1 The site is that of an historic farmstead dating from the 18th century comprising a farmhouse, cottage and barn. The buildings within the group are well-preserved examples of vernacular building in both local stone and brick with stone slate roofs. The historic farmstead buildings form a T-shape. There is an existing stable block on site. The site is in a flood zone and it is washed over by the allocated Green Belt.

3.0 PROPOSAL:

- 3.1 This is a householder application for planning permission for the erection a 26m by 12m outbuilding, approximately 7m in total height with first floor dormers and catslide roof elements. The stated proposed use of the building is as garaging. The existing stable block would be demolished.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 2021/90598 Listed Building Consent for installation of replacement windows
Pending Consideration

87/04022 Erection of stable block *Approved 07/APR/1989*

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

5.1 This planning application has been assessed based on the plans as originally submitted. The case officer has contacted the applicant well in advance of the determination date advising of concerns with the scheme. The issues relate to the principle of development and go to the heart of the application. It has not been possible to negotiate a solution to the matters raised and no further amendments have been sought thereafter.

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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 located within the allocated Green Belt on the Kirklees Local Plan.

6.2 Kirklees Local Plan (2019):

- **LP 01** – Achieving sustainable development
- **LP 02** – Place shaping
- **LP 21** – Highways and Access
- **LP 22** – Parking
- **LP 24** – Design
- **LP 27** – Flood Risk
- **LP 35** – Historic Environment
- **LP 52** – Protection and improvement of environmental quality
- **LP 57** – Extensions to buildings in the Green Belt

Supplementary Planning Guidance / Documents:

6.3 Kirklees Council has recently adopted its supplementary planning guidance on house extensions. Although the period for a potential judicial review has not yet expired, it is now being considered in the assessment of householder planning applications, with some weight attached. This guidance indicates how the Council will usually interpret its policies regarding such built development, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF), requiring development to be considerate in terms of the character of the host property and the wider street scene. As such, it is anticipated that this SPG will assist with ensuring enhanced consistency in both approach and outcomes relating to house extensions.

National Planning Guidance:

- 6.4 National planning policy and guidance is set out in National Policy Statements, primarily the NPPF published 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th 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.

- Chapter 2 – Achieving sustainable development
- Chapter 6 – Building a strong competitive economy
- Chapter 8 – Promoting healthy and safe communities
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 13 – Protecting Green Belt land
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 This application was publicised by neighbour letters and a site notice which expired on 28-May-2021. Following this publicity, no representations were received from neighbours or members of the public.

Ward Member Cllr Lees-Hamilton – comments that this is agricultural land, flood risks have been considered by the applicant, the current stables are unsafe in their current condition, the proposed development would be a huge improvement over what is already there and would serve a useful purpose, the proposed development is not much larger than the footprint of the stable blocks.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

Lead Local Flood Authority – objection on the basis of flood risk.

KC Highways Development Management – no objection.

8.2 Non-statutory:

KC Conservation and Design – objection on the basis of harm to heritage asset.

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Flooding issues
- 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 KLP, which stipulates that proposals, which accord with policies in the KLP 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 in this report
- 10.2 The application site allocated as Green Belt on the KLP proposals map. The NPPF makes clear at paragraph 149 that the construction of new buildings in the Green Belt should be regarded as inappropriate, with a small number of exceptions. One of these is the extension or alteration of a building, provided that it does not result in disproportionate additions over and above the size of the original building. There is no provision within national or local guidance for outbuildings, per se, as these are assessed in principle under subsection c as an extension to the dwelling in the curtilage. Paragraph 147 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy LP57 of the KLP states that proposals for the extension of buildings will normally be acceptable provided that the original building remains the dominant element in terms of size and overall appearance.
- 10.3 It is considered that a two-storey building with design elements such as dormers typical of a new dwellinghouse cannot reasonable be said to be a proportionate addition as an ancillary outbuilding to a residential dwellinghouse for the purposes of this policy. Expansive upstairs floorspace areas, at some 172.5m², are not considered conducive to an ancillary use to a dwellinghouse and it is clear that this building goes far beyond what could be considered proportionate for the purposes of subsection c of paragraph 149 of the NPPF.
- 10.4 As the proposal is considered inappropriate in the Green Belt, this incurs automatic and definitional harm to the Green Belt. The Government places great weight on Green Belts and harm to the Green Belt must be afforded very substantial weight in the planning balance as per national policy.
- 10.5 Case law (Turner v Secretary of State for Communities and Local Government [2016] EWCA) establishes that the concept of openness is open textured and that several factors are capable of being relevant when applying it to the particular facts of a specific case. National Planning Practice Guidance (NPPG) broadly identifies openness as being divisible into spatial and visual aspects.

- 10.6 The building itself would not be diminutively massed and would not be sited in any grouping of house or ribbon of development. The approx. 7m height of the building together with the substantial approx. 392m² floorspace set over two floors would harm the visual aspect of openness in addition to that of the spatial aspect. The effect of implementation of this application, if approved, would be the construction of a building, which would appear as a new dwellinghouse in the Green Belt, rather than an ancillary structure or outbuilding. This incurs harm to the Green Belt in addition to the automatic harm to the Green Belt afforded by the definitional inappropriateness as explained above.
- 10.7 Paragraph 147 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There are no very special circumstances apparent that would justify such clear and unambiguous inappropriateness in the Green Belt and the automatic harm to the Green Belt it would cause.

Urban Design issues

- 10.8 Policy LP24 of the KLP, consistent with chapter 12 of the NPPF, states, inter alia, that the form, scale, layout and details of all development respects and enhances the character of the townscape.
- 10.9 The historic farmstead buildings form a T-shape. Historic map evidence shows that the farmstead retained its compact layout until the late 20th century when further farm buildings were added to the east of the historic group on what was historically open farmland. Remaining elements of the surrounding rural landscape in agricultural use and woodland make an important contribution to the setting of the listed building. Views to and from the listed building to and across the rural landscape also make an important contribution to its setting. The stables, subject of this application, were granted planning permission in 1989. They are single storey, constructed of timber and have a flat roof. They are considered not to form part of the listed building. They do, however, fall within its setting. The present buildings make a neutral contribution to that setting. They are typical modern farm buildings; their low height allows has a limited impact on views to and from the listed building. However, their layout and screening vegetation around the existing parking area limits views from the north side of the listed building out towards the remaining elements of the rural landscape beyond. Paragraph 194 of the NPPF requires that applicants should be required to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.
- 10.10 The application falls short on these tests in that the significance of the affected heritage assets has not been described, the contribution made by their setting has not been considered and the West Yorkshire Historic Environment Record has not been consulted. The High Court found in *James Hall v City of Bradford* that failure to comply with the requirements of Paragraph 194 of the NPPF was grounds for quashing a grant of planning permission.

- 10.11 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the Local Planning Authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The existing stables do not form part of the listed building and there is no concern about their loss. However, the Local Planning Authority should seek to preserve the remaining rural landscape elements of the setting of the listed building and views from and to the listed building across those elements. Policy LP35 of the KLP requires that development proposals affecting a designated heritage asset (or an archaeological site of national importance) should preserve or enhance the significance of the asset. Paragraph 195 of the NPPF requires that local planning authorities avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 10.12 NPPF paragraph 206 requires that local planning authorities should look for opportunities for new development within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
- 10.13 Guidance on the sustainable development and the conservation of traditional farmsteads can be found in Farmstead Assessment Framework: Informing sustainable development and the conservation of traditional farmsteads (Historic England, 2015). This provides the following advice with regards to siting new buildings:
- Site new buildings on the footprint of lost buildings or site them so that they respond and are sensitive to the historic plan form of the site and its wider setting in the landscape.
 - Use the historic character of the site to inform the scale, massing and form of new buildings. Ideally the new elements should not compete or be overbearing to the traditional farm buildings.
- 10.14 The proposed development would not preserve the significance of the listed building, the scale and height of the proposed new building would have a greater impact on views from and to the listed building, particularly from the north side of the listed building. The scale of the new building would compete with the existing listed farm buildings. At 36 metres square in area and 6.5 metres high to the ridge, they would be comparable to the footprint and height of the existing historic buildings.
- 10.15 Paragraph 199 of the NPPF requires that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. 20 Steanard Lane is listed grade II and therefore of national architectural and historic interest. The proposed development would cause less than substantial harm to its significance.
- 10.16 Paragraphs 201 and 202 of the NPPF require clear and convincing justification for any harm to designated heritage assets and allow for harm to be weighed against the public benefits of the proposal. No justification has been provided for a building of this scale and no public benefits have been demonstrated.

10.17 Notwithstanding heritage considerations as set out above, the form of the proposal is considered more than what is typical of a domestic outbuilding such that it would not appear in keeping in respect of massing, density and scale in terms of this historic farmstead.

10.18 The development, therefore, would be unacceptable in terms of visual amenity and heritage, failing to comply with policies LP24 and LP35 of the KLP as well as chapter 12 of the NPPF.

Residential Amenity

10.19 Policy LP24 of the KLP requires of developments, inter alia, a good standard of amenity for future occupants and neighbouring occupiers, as well as a minimising of the impact on residential amenity of future and neighbouring occupiers.

10.20 The space about the dwellinghouse and isolated location of the site negates privacy or loss of light impacts on neighbouring properties. The potential future use of the first-floor windows at the proposed outbuilding is ambiguous however they would not directly overlook habitable rooms or amenity spaces.

10.21 All told, therefore, notwithstanding design considerations above, the proposed development would comply with policy LP24c of the KLP in terms of residential amenity.

Highway issues

10.22 The proposal is for the replacement of the existing outbuilding for the erection of a detached garage with first floor storage. The new garage can secure 8 cars due to it being designed as 4 attached double garages. This offers better protection and security for vehicles in the site. There is area for storage to the rear of each end garage and on the first floor. The garage will use the existing access for the old outbuilding. Highways Development Management welcomes the increase in parking provision and has no objection to the proposals so, therefore, deems the application acceptable with no specific conditions. The development concerned is, therefore, acceptable in terms of highway safety and parking and consistent with policies LP21 and LP22 of the KLP.

Flooding issues

10.23 Kirklees Flood Management & Drainage objects to this application and advises the Local Planning Authority that the proposed building is part in Flood Zone 3b and part in zone 3ai. Flood zone 3b is functional floodplain. This area is defined as where water must go. Only water compatible uses and essential infrastructure can be considered. The application fails in this respect. A policy aim is also to relocate existing development to land with a lower probability of flooding. In this respect KLP has introduced an additional flood zone category 3ai. This represents areas that would be deemed functional floodplain but have already been built upon.

- 10.24 Flood zone 3ai – Developed Functional Floodplain:
Proposals within flood zone 3ai will be assessed in accordance with national policies relating to flood zone 3a but with all the following additional restrictions:
- a. no new highly vulnerable or more vulnerable uses will be permitted;
 - b. less vulnerable uses may only be permitted provided that the sequential test has been passed and;
 - i. where extensions are linked operationally to an existing business or,
 - ii. where redevelopment of a site provides buildings with the same or a smaller footprint;
 - iii. all proposals will be expected to include flood mitigation measures such as compensatory storage which should be identified and considered through a site-specific Flood Risk Assessment;
 - iv. development will not be permitted on any part of the site identified through a site-specific Flood Risk Assessment as performing a functional floodplain role.
- 10.25 In the opinion of the LLFA, moving the footprint out of 3b and wholly in 3ai will still raise an objection as the footprint is larger in comparison to existing buildings. The red line boundary and adjacent areas are wholly within Flood Zone 3b and 3ai and a sequential approach cannot be achieved. A sequential test is not appropriate here given the policies stated above.
- 10.26 Therefore, the proposal would be contrary to policy LP27 of the KLP. This incurs a third reason for refusal.

Representations

- 10.27 No comments from neighbours or members of the public have been received.

In terms of the comments of the ward member, officers would like to take the opportunity to comment as follows: the proposed structure fails to meet the policy tests of paragraph 149 of the Framework of both residential (i.e. an extension under subsection (c)) or agricultural (i.e. it is not a building for agriculture or forestry per subsection a). The proposal has been assessed against all other Green Belt policy exceptions and still does not comply. Whilst flood risks may have been considered by the applicant this does not negate the clear, unambiguous contravention of flood risk policy. The proposed building would be significantly larger in both footprint, height and massing than the existing stables.

Other Matters

- 10.28 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target. However, it includes a series of policies, which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

10.29 This is a domestic outbuilding application. As a householder application, given the above, further conditions are considered unnecessary for this type of application in light of the six tests of planning conditions as set out in NPPG.

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 The proposal would result in inappropriate development in the Green Belt, with no "very special circumstances" to justify such automatic harm. There is additional harm to the spatial and visual aspects of openness identified in allowing the development. This attracts very substantial weight as a material consideration in disfavour of the proposal in the planning balance.

11.3 The proposed development would cause harm to a heritage asset, the Grade II listed cottage, contrary to s.16 of the NPPF and policies LP24 and LP35 of the KLP. The proposal would also be contrary to policy LP27 of the KLP on flood risk as the proposal fails to meet the exceptions for the policy of restraint on development on developed functional floodplain.

11.4 There are no further material considerations in the planning balance to outweigh these material considerations such that they would warrant a grant of planning permission in this instance.

11.5 This application has been assessed against relevant policies in the Development Plan and other material considerations. It is considered that the development would not constitute sustainable development and is, therefore, recommended for refusal.

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f91170>

Certificate of Ownership – Certificate A signed and dated 13th April 2021.

Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 02-Sep-2021

Subject: Planning Application 2021/91940 Erection of single and two storey extensions and formation of vehicular access 40, Beckett Crescent, Dewsbury Moor, Dewsbury, WF13 3PW

APPLICANT

H R & F H Malik

DATE VALID

17-May-2021

TARGET DATE

12-Jul-2021

EXTENSION EXPIRY DATE

09-Aug-2021

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

Ward Councillors consulted: No

Public or private: Public

RECOMMENDATION: REFUSE

1. The proposed extensions, by reason of the design and scale, would result in the formation of an incongruous feature within the street scene which would not be subservient to the host dwelling, and which would cause harm to visual amenity. To permit the proposed single and two-storey extensions would be contrary to Policy LP24 of the Kirklees Local Plan, the House Extensions and Alterations SPD, and advice within Chapter 12 of the National Planning Policy Framework.

2. The proposed single and two-storey extensions and formation of vehicular access, by reason of size and level of development, would result in overdevelopment and an unacceptable level of amenity space for current and future occupiers, particularly given the proposed number of bedrooms at the property. To permit the proposed single and two-storey extensions and formation of vehicle access would be contrary to Policy LP24 of the Kirklees Local Plan, the House Extensions and Alterations SPD, and advice within Chapter 12 of the National Planning Policy Framework.

3. The single and two-storey extensions, by reason of size and proximity to the shared boundary with the adjacent 42 Beckett Crescent, would result in an unacceptable overbearing and overshadowing impact on the amenities of the occupiers of the neighbouring property. To permit the proposed single and two-storey extensions would be contrary to Policy LP24 of the Kirklees Local Plan, the House Extensions and Alterations SPD, and advice within Chapter 12 of the National Planning Policy Framework.

1.0 INTRODUCTION:

- 1.1 This application is brought to committee at the request of Ward Cllr O'Donovan for the following reason:
- 1.2 "I do not believe this development would alter the visual amenity or have an overbearing impact"
- 1.3 This application was deferred at the Planning Sub-Committee meeting on 22nd July 2021 for further negotiation to achieve reductions to the scheme.
- 1.4 The Chair of the Sub-Committee has confirmed that Cllr O'Donovan's reasons for the referral to the committee are valid having regard to the Councillor's Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 40 Beckett Crescent is a two-storey semi-detached dwelling. It is faced in red brick at ground floor level and render at first-floor level, with a hipped roof finished in tiles. There is off-street parking to the front and lawned gardens to the front, side, and rear.
- 2.2 The property is located on a residential street. The surrounding properties are similar two-storey dwellings, both semi-detached and terraced. The street scene is fairly uniform, with only modest variations in design and few additions or alterations to the properties.

3.0 PROPOSAL:

- 3.1 The applicant is seeking permission for the erection of single and two-storey extensions and formation of vehicular access.
- 3.2 The extensions would be constructed over garden space to the front, side, and rear of the property. The two-storey elements would have hipped roof forms. The single storey elements would have lean-to roof forms.
- 3.3 The single-storey rear extension would project 6.0m from the original rear wall. It would have a maximum height of 3.4m and an eaves height of 2.5m. The 6.0m projection of the single-storey rear extension has been agreed through the larger home extension prior approval scheme (2020/92899).
- 3.4 The two-storey rear extension would project 3.0m from the original rear wall. It would have a maximum height of 7.3m and an eaves height of 5.2m.
- 3.5 The two-storey side extension would project 3.2m from the original side wall. It would have a maximum height of 7.3m and an eaves height of 5.2m. It would be set back from the front elevation of the host dwelling by 0.3m at the first-floor level.
- 3.6 The single-storey front extension would project 1.5m from the original front wall. It would have a maximum height of 4.1m and an eaves height of 3.1m.
- 3.7 The walls are proposed to be constructed of brick, with tiles for the roof covering.
- 3.8 The formation of vehicular access would involve creating a dropped kerb to the front of the property. This would allow access to the off-street parking area for four vehicles. The parking area would be approximately 10m wide and a minimum of 12m long.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2020/92899 - Prior notification for single storey rear extension. Not required.
- 4.2 2020/94132 - Erection of single and two storey extensions and formation of vehicular access. Refused.

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

- 5.1 This application was first brought to the Planning Sub-Committee meeting on 22nd July 2021 and was deferred for further negotiation to achieve reductions to the scheme. Officers re-iterated previous suggested amendments to the agent which could have addressed the previous reasons for refusal (2020/94132). The agent submitted amended plans only showing the two-storey side extension set back by 0.3m at the first floor level, and showing the two-storey elements set down from the ridgeline by 0.1m. Re-advertisement was considered unnecessary as the proposed amendments did not increase the level of development.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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).

Kirklees Local Plan (2019):

- 6.2 **LP 1** – Achieving sustainable development
LP 2 – Place shaping
LP 21 – Highway safety
LP 22 – Parking
LP 24 – Design
LP 30 – Biodiversity
LP 51 – Protection and improvement of air quality

Supplementary Planning Guidance / Documents:

- 6.3 Kirklees Council has recently adopted its supplementary planning guidance on house extensions. Although the period for a potential judicial review has not yet expired, it is now being considered in the assessment of householder planning applications, with some weight attached. This guidance indicates how the Council will usually interpret its policies regarding such built development, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF), requiring development to be considerate in terms of the character of the host property and the wider street scene. As such, it is anticipated that this SPD will assist with ensuring enhanced consistency in both approach and outcomes relating to house extensions.

National Planning Guidance:

- 6.4 **Chapter 9** – Promoting sustainable transport
Chapter 12 – Achieving well-designed places
Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
Chapter 15 – Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application has been advertised by neighbour letter giving until 29/06/2021 for interested parties to comment.

7.2 Two letters of support received.

8.0 CONSULTATION RESPONSES:

Below is a summary of the consultation responses received in relation to this application. Where appropriate, they are expanded upon in the appraisal section of this report.

8.1 Statutory:

None

8.2 Non-statutory:

KC Highways DM – no objections subject to conditions relating to storage and recovery of waste and areas to be surfaced and drained.

9.0 MAIN ISSUES

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

10.0 APPRAISAL

Principle of development

10.1 The site is without notation on the KLP, policy LP1 of which 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. KLP Policy LP2 sets out that, to protect and enhance the character of places, all development proposals should seek to build on the opportunities and help address the challenges identified in the KLP. In terms of extending and making alterations to a property, Policy LP24 of the KLP is relevant, in conjunction with Chapter 12 of the NPPF, regarding design. In this case, the principle of development is considered acceptable, and the proposal shall now be assessed against all other material planning considerations, including visual and residential amenity, as well as highway safety. These issues along with other policy considerations will be addressed below.

Impact on Visual Amenity

10.2 The property is located on a residential street. The surrounding properties are similar two-storey dwellings, both semi-detached and terraced. The street scene is fairly uniform, with only modest variations in design and few additions or alterations to the properties. Dependent upon design, scale, and detailing, it may be acceptable to extend the host property.

- 10.3 The proposed single and two-storey extensions to the front, side, and rear would more than triple the footprint of the dwelling, increasing from approximately 40.0 square metres to approximately 127.7 square metres. The two-storey side extension would be set back from the front elevation by 0.3m. The two-storey elements would be set down from the roofline of the host dwelling by 0.1m. It is acknowledged that setting the two-storey side extension back and setting the two-storey elements down has made the proposed extensions more subservient. However, overall, it is still considered that the projection and bulk of the combined extensions would result in an incongruous form of development which would not be subservient to the host dwelling. Given that the street scene is fairly uniform in character, the proposed extensions are considered unacceptable in terms of visual amenity.
- 10.4 The proposed side and rear extensions and off-street parking area to the front would develop most of the amenity space of the property, with the area remaining to the rear measuring approximately 2.3m x 8.0m. Although the 6.0m projection of the single storey rear extension was agreed under a "notification for prior approval for a proposed larger home extension" application (2020/92899), the proposed development in the prior approval was as wide as the original dwellinghouse, not including the side extensions under consideration here. It is considered that the proposed development would result in overdevelopment of the site which would provide an unacceptable level of amenity for current and future occupiers, particularly given the proposed number of bedrooms at the property.
- 10.5 The formation of wider vehicle access to the front of the applicant property will involve creating a dropped kerb. It is noted that several properties in the surrounding area have vehicle access. Therefore, the formation of vehicular access at 40 Beckett Crescent would not look out of place within the street scene.
- 10.6 Having taken the above into account, the proposals would still result in harm to the appearance of the host dwelling and would be out of character with the wider street scene. The proposal therefore fails to comply with policy LP24 of the KLP (a) in terms of the form, scale and layout and as the extensions would not (b) provide a high standard of amenity for future and neighbouring occupiers and/or (c) form a subservient addition to the property and would therefore not be in keeping with the existing building and the aims of chapter 12 of the NPPF.

Impact on Residential Amenity

- 10.7 Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be set out in terms of policy LP24 c), which states that proposals should promote good design by, amongst other things, extensions minimising impact on residential amenity of future and neighbouring occupiers.
- 10.8 *Impact on 38 Beckett Crescent:* This is the adjoining property to the south-east side of the application site. The side extension would be located on the opposite side of the adjoining property and, as such, would have no impacts. There would be no impacts from overshadowing from the front or rear extensions as the applicant property is located to the north. As there are no windows proposed for the side elevation of the front or rear extensions, it is considered that there

would be no overlooking impacts. Given that the front extension would have a small scale, it is considered that there would be no overbearing impacts. It is likely that there would be overbearing impacts from the rear single and first-floor extensions, as they would increase the level of development along almost the full length of the shared boundary and they are not set off from the shared boundary. However, the impact on this neighbour has been reconsidered since the previous application (2020/94132). It is considered that the overbearing impacts on this neighbour would not be significant, given that the two-storey element would only project 3m from the original rear wall and would be designed with a hipped roof form. Therefore, it is considered that there would be no significant impacts on the amenities of 38 Beckett Crescent due to the proposed development.

- 10.9 *Impact on 42 Beckett Crescent:* This is the adjacent property to the north-west side of the application site. This property benefits from a single-storey rear extension. As there are no windows proposed for the side elevation of the front or rear extensions, and the single window in the side elevation of the side extension would be obscurely glazed, it is considered that there would be no overlooking impacts. It is considered that due to the location of the applicant property to the south, the proximity of the proposed development to the shared boundary with the neighbouring property, and the size of the proposed development, that there would be a significant overshadowing and overbearing impact. Although the side extension has been set back and the two-storey elements set down slightly, it is considered that this would not overcome the overall overbearing and overshadowing impact. Therefore, it is considered that there would still be a significant impact on the amenities of the occupiers of 42 Beckett Crescent due to the proposal.
- 10.10 *Impact on 9 and 11 Beckett Crescent:* These are the neighbouring properties to the front elevation of the application site, on the opposite side of Beckett Crescent. These are angled away from the applicant site. There would be no significant impact upon the amenities of the occupiers 9 and 11 Beckett Crescent, given the significant separation distance provided by the front gardens of the dwellings and the road between (approximately 35m post-development). Furthermore, the existing windows in the front elevation of the applicant property already look towards these neighbours. Therefore, the new windows would have no further impact over and above the existing arrangements on site.
- 10.11 *Impact on 47 and 49 Heckmondwike Road:* These are the neighbouring properties to the rear elevation of the application site. There would be no significant impact upon the amenities of the occupiers of these properties, given the significant separation distance provided by the rear gardens of the dwellings and a public open space with grass and trees (approximately 30m post-development). Furthermore, the existing windows in the rear elevation already look towards these neighbours. Therefore, the new windows would have no further impact over and above the existing arrangements on site.
- 10.12 Having reviewed the above, it is considered that this proposal will still result in a significant overshadowing and overbearing impact on the adjacent 42 Beckett Crescent. As such, the application fails to comply with policy LP24 of the KLP and paragraph 127 (f) of the NPPF.

Impact on Highway Safety

- 10.13 KC Highways DM were consulted and had the following comments. The formation of vehicular access at the site frontage would include the works for a dropped kerb which would need to be done under a section 184 agreement. Visibility from the site is below standards. However, given the location of the dwelling, the speed of cars along this road is likely to be below the speed limit of 30mph and KC Highways DM believes the access would be safe. Therefore, on balance, the formation of vehicular access is considered acceptable.
- 10.14 The proposed extensions would result in an intensification of the domestic use (number of bedrooms increases from 3 to 7). The formation of new vehicular access allows for 4 off-street parking spaces to the front of the property. This in accordance with the Kirklees Highways Design Guide which stipulates that a dwelling with 4+ bedrooms should provide at least 3 off-street parking spaces. Highways Development Management consider that sufficient parking is provided. As such, the scheme would not represent any additional harm to highway safety and, therefore, it complies with policies LP21 and LP22 of the KLP and Chapter 9 of the NPPF.

Other Matters

- 10.15 *House Extensions and Alterations SPD*: This adopted SPD has been considered in the assessment of this proposal with some material weight attached. The cumulative effect of the single and two-storey extensions to the front, side and rear and formation of vehicular access would not be in keeping with the appearance, scale, design, and local character of the area, which is fairly uniform dwellings with few additions or alterations, set within good-sized plots, with lawned gardens to the front and rear. This fails to comply with Key Design Principle 1 of the SPD and relevant policy LP24 (a) and (c).
- 10.16 The cumulative effect of the proposed extensions would dominate the host dwelling, as the proposed extensions would more than triple the footprint of the dwelling. This fails to comply with Key Design Principle 2 of the SPD and relevant policy LP24 (c) and (d).
- 10.17 The proposed extensions to the side and rear would adversely impact the amount of natural light enjoyed by the adjacent neighbour (42 Beckett Crescent), as discussed in the “impact on residential amenity” section. The proposed extensions, due to their size and proximity to the shared boundary, would overshadow the habitable rooms and conservatory to the rear of the adjacent neighbour and the garden to the rear. This fails to comply with Key Design Principle 5 and relevant policy LP24 (b).
- 10.18 The proposed extensions to the side and rear would result in an adverse overbearing impact on the adjacent neighbour (42 Beckett Crescent), as discussed in the “impact on residential amenity” section. This fails to comply with Key Design Principle 6 and relevant policy LP24 (b).
- 10.19 The cumulative effect of the single and two-storey extensions to the front, side and rear and formation of vehicular access would not retain an appropriately sized and usable private outdoor space. Over half of the garden area would be developed, with the front garden converted to hardstanding parking for 4

vehicles. To the rear, an area measuring approximately 8m x 2m would be retained, which would only be accessible through the property. This is considered inadequate for a proposed 7-bedroom property, and out-of-character with the local area in which the neighbouring dwellings benefit from good-sized gardens to the front and rear. It is, therefore, “unlikely to be acceptable”. Furthermore, although a small area of amenity space may remain to the front, this is “not considered adequate private amenity space due to the lack of overall privacy for occupants”. The proposal, therefore, fails to comply with Key Design Principle 7 and relevant policy LP24 (b) and (c).

- 10.20 In terms of the detailed guidance for rear extensions set out in the SPD, the proposed single and two-storey rear extensions would fail to maintain a back garden of reasonable size (particularly for a proposed house of 7 bedrooms); would adversely overshadow and overbear the adjacent property (42 Beckett Crescent); and would not retain a 1m gap from property boundaries. Additionally, the two-storey element, to the rear, would be within 1.5m from the property boundary and would exceed an eaves height of 3m. The proposal, therefore, fails to comply with the detailed guidance for rear extensions.
- 10.21 In terms of the detailed guidance for side extensions set out in the SPD, the proposed two-storey side extension would affect the natural light to the habitable rooms of the neighbouring property and, as set out previously; would take up all the space to the side of the applicant property; and would not maintain a 1m gap to the side boundary. The proposal, therefore, fails to comply with the detailed guidance for side extensions.
- 10.22 The guidance and additional details on KLP policies set out in the House Extensions and Alterations SPD are based on the principle of ‘comply or justify’. The proposal under consideration departs from the guidance set out in the SPD and no justification has been provided. It is acknowledged that this planning application was submitted prior to the adoption of the SPD however, now that it has been adopted, it is a material consideration in the determination of this application and adds additional weight to the recommendation for refusal.
- 10.23 *Biodiversity*: The site is located within a bat alert layer. Based on the site photos, the building appeared to be well sealed, and no evidence of bat roosts or bat roost potential was found. This accords with the aims of Policy LP30 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.
- 10.24 *Carbon Budget*: The proposal is a domestic development to an existing dwelling. As such, no special measures were required in terms of the planning application with regards to carbon emissions. However, there are controls in terms of Building Regulations which will need to be adhered to as part of the construction process which will require compliance with national standards. For this reason, the proposed development is considered to comply with policy LP51 of the KLP and chapter 14 of the NPPF.
- 10.25 There are no other matters for consideration.

Representations

- 10.26 Two letters of support received from neighbouring residents which stated that the proposal would not result in the loss of light or amenity space and would provide off-street parking. The letters also stated that “there are many similar extensions already built” in the street and surrounding area.

11.0 CONCLUSION

- 11.1 This application to erect single and two storey extensions and formation of vehicular access at 40 Beckett Crescent, Dewsbury Moor, Dewsbury, has been assessed against relevant policies in the development plan, as listed in the policy section of the report, the NPPF and other material considerations.
- 11.2 Officers consider that the amended proposal does not overcome the previous reasons for refusal.
- 11.3 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. As set out above, this application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material considerations.

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f91940>

Certificate of Ownership –Certificate B signed (notice served on Kirklees Council due to proposed formation of vehicle access).