
Report of the Head of Development Management

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 09-Mar-2017

Subject: Planning Application 2016/93871 Erection of detached dwelling (within the curtilage of a Listed Building) Fenay Lodge, Thorpe Lane, Almondbury, Huddersfield, HD5 8TA

APPLICANT

J Harris

DATE VALID

12-Dec-2016

TARGET DATE

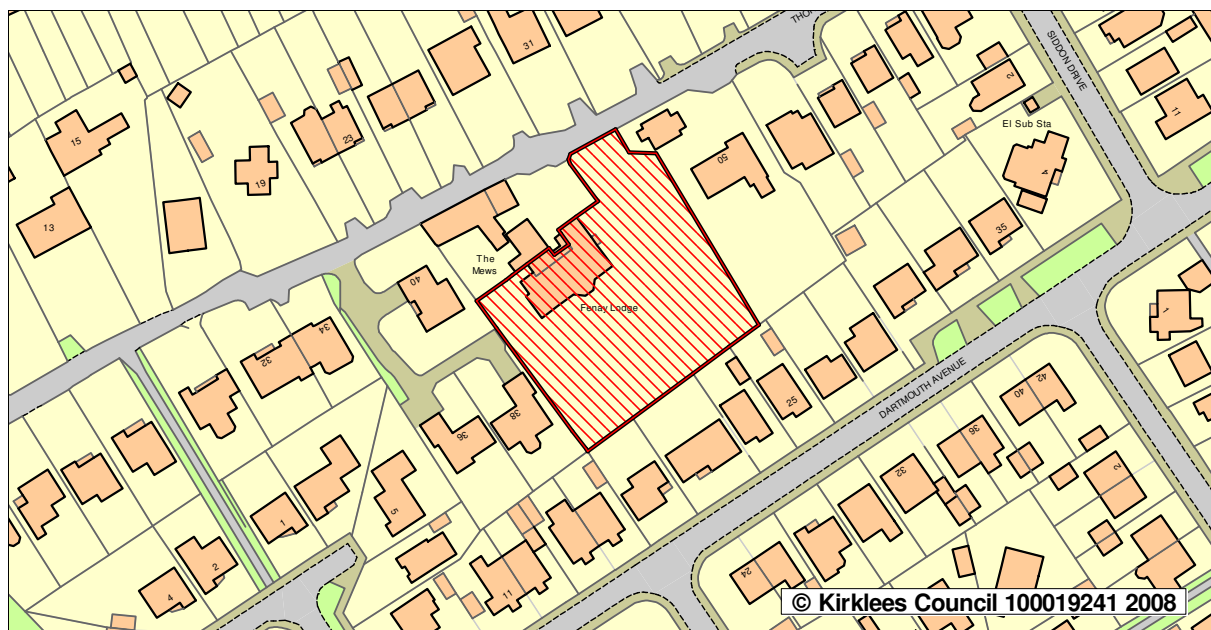
06-Feb-2017

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: Almondbury

No

Ward Members consulted
(referred to in report)

**RECOMMENDATION:
REFUSE for the following reason:**

1. The proposed development, by virtue of siting and scale, would fail to preserve the special interest and setting of the listed building (Fenay Lodge) by substantially reducing the rear garden area which is a component part of the assets' significance. The harm to the asset is less than substantial in accordance with paragraph 134 of the National Planning Policy Framework. Set against this, the public benefits associated with the development do not outweigh the harm. The development is therefore contrary to Policy BE2 of the Unitary Development Plan (UDP) chapter 12 of the National Planning Policy Framework.

1.0 INTRODUCTION:

1.1 The application is brought before the Sub-Committee at the request of Councillor Hughes:

"I would like to object to the above planning application based on its proximity to the Grade 2 listed building Fenay Lodge. A similar application was refused in 2016 and at appeal the inspector upheld the committees' decision. Even though the building is smaller than before it still encroaches onto the listed building."

If you are minded to approve the application I would ask for it to be forwarded to the planning committee."

The Chair of the Sub-Committee has confirmed that Councillor Hughes' reasons for making their requests are valid having regard to the Councillors' Protocol for Planning Sub Committees.

In addition to the above, a total of 62 representations have been received, a total of 51 of these are in support of the application, contrary to officer recommendation.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application is for the erection of a detached dwelling within the grounds of Fenay Lodge. The site comprises includes a Grade II listed Georgian style mansion set within a substantial garden area. The proposal would be located to the rear of the existing dwelling and towards the rear of the garden area.
- 2.2 The site lies within a residential area with numbers 19-25 Dartmouth Avenue lying at lower level to the rear, numbers 38 and 40 Thorpe Lane beyond the western site boundary and number 50 Thorpe Lane to the east.
- 2.3 The site lies on the southern side of Thorpe Lane. Thorpe lane is made up of varied detached units and the street narrows and is enclosed near the application site by mature trees and traditional boundary walls and buildings.
- 2.4 The proposed development proposes to utilise the existing grounds of Fenay Lodge. The proposal takes the existing access from Thorpe Lane and proposes to 'fork' the existing driveway in order to provide a separate access which would run in a southerly direction, close to the north eastern boundary of the plot, before terminating at the southern point of the existing grounds where a gravel parking area would be provided.
- 2.5 Close to the southern boundary it is proposed to erect a single storey dwelling which would consist of two distinct blocks which would be linked in the middle by a glazed central block. The dwelling would contain three bedrooms with a courtyard area immediately to the west and a garden area beyond.
- 2.6 The dwelling would be set down within the existing garden so that it would not be visible above the garden area associated with Fenay Lodge. Further mitigation would be provided in the form of vegetation planting along the boundary with the garden of Fenay Lodge along with a ha-ha wall. The elevations would be dressed in a sandstone cladding with Ashlar stone surrounds to the windows. The roof would be lawned to complement the existing lawn adjacent. The proposed development takes on a contemporary form.

3.0 RELEVANT PLANNING HISTORY:

- 3.1 Members may recall that a planning application for a detached dwelling on the same site (ref – 2015/93052) was considered in March 2016 with a resolution to refuse planning permission, although no detailed reasons were formulated at the time of the committee. In May 2016 Members were asked to formulate reasons to support the resolution to refuse planning permission. By this time the applicant had appealed against non-determination. At the May 2016 Planning Sub-Committee meeting Members resolved that the following reasons should form the basis of the Local Planning Authority's Statement to the Planning Inspectorate:

1. *The proposed dwelling, by virtue of its siting, scale and design, would harm the setting of the listed building (Fenay Lodge) by substantially reducing the curtilage of the building and introducing a form of development to the site that fails to sustain the significance of the designated heritage asset. The development is therefore contrary to Policy BE1 criteria i of the Unitary Development Plan (UDP) and to chapter 12 of the National Planning Policy Framework.*

2. *The proposed dwelling, by virtue of its proximity and scale, would harm the amenity of 21 Dartmouth Avenue by having an overbearing and dominant impact on the main private garden space belonging to this neighbouring property and by introducing a form of development that would detrimentally affect the outlook at the rear of number 21. The proposal is therefore contrary to Policy D2 criteria v of the Kirklees Unitary Development Plan and guidance in the National Planning Policy Framework.*

3.2 The appeal was dismissed by the Inspector on 12th July 2016. In his written summary the Inspector drew the following conclusions:

“Although I have found no harm in relation to highway safety, the proposal would harm the living conditions of adjoining occupiers at 21 Dartmouth Avenue. It would also fail to preserve the setting of Fenay Lodge, a Grade II Listed Building. The stated benefits of the proposal would not outweigh this collective harm. Therefore having regard to all matters raised, the appeal is dismissed.”

3.3 The current application has been submitted in an attempt to address the reasons why the appeal was dismissed. In summary the current application differs from the previous submission (ref - 2015/93052) in the following areas:

- The proposed dwelling is single storey as opposed to two storeys.
- The design of the dwelling has been altered and it now represents two primary rectangular blocks linked by a glazed central block, although it remains a contemporary design.
- Small alterations have been made to the driveway which has been reduced in width.
- The north facing terrace has been removed and there are no terraces at first floor level.
- The courtyard area to the west of the proposed dwelling has been extended.

3.4 Detailed history:

2015/93053 Listed Building Consent for erection of new entrance gates – Undetermined.

2015/93052 - Erection of detached dwelling and associated landscaping – Appeal against non-determination by the Council.

Subsequent appeal reference (APP/Z4718/W/16/3149647) dismissed. More detail contained within the main body of this officer report.

2005/90042 – Erection of detached dwelling and associated landscaping.

4.0 PLANNING POLICY:

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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was published for consultation on 7th November 2016 under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The Council considers that, as at the date of publication, its Local Plan has limited weight in planning decisions. However, as the Local Plan progresses, it may be given increased weight in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. Pending the adoption of the Local Plan, the UDP (saved 2007) remains the statutory Development Plan for Kirklees.

Development Plan:

The site is unallocated on the UDP Proposals Map.

BE1 – Design principles
BE2 – Quality of design
BE11 – Materials
BE12 – Space about buildings
H1- Housing needs of the district
T10 – Highway safety
T19 – Parking standards
NE9 – Retention of mature trees

National Policies and Guidance:

Paragraph 14 – Presumption in favour of sustainable development
Paragraph 17 – Core planning principles
Chapter 4 -Promoting sustainable transport.
Chapter 6 - Delivering a wide choice of high quality homes
Chapter 7 - Requiring good design
Chapter 8 - Promoting healthy communities
Chapter 10 - Meeting the challenge of climate change, flooding and coastal change
Chapter 11- Conserving and enhancing the natural environment
Chapter 12 - Conserving and enhancing the historic environment

Other Policy Guidance:

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA)

5.0 CONSULTATIONS

The following is a brief summary of consultee advice. Further information is contained within the assessment, where necessary:

5.1 Statutory:

KC Highways Development Management – Raise concerns with the entrance width of the Fenay Lodge entrance. More details contained in the remainder of this report.

5.2 Non-Statutory:

KC Conservation & Design – No objection.

“Conservation and Design conclude that in terms of its size, scale, design and material palette the addition of the proposed dwelling would not cause undue harm to the setting of the neighbouring listed building and furthermore, is of an innovative design to which great weight needs to be given to, in accordance with paragraph 63 of the NPPF.

Therefore this application (subject to conditions) is considered to be compliant with the objectives of paragraphs 17, 56, 58, 60, 63 131, & 132 of the NPPF as well as policies BE1, BE2 & BE11 of the UPD. As such this application can be supported by the Conservation & Design Team.”

KC Arboricultural Officer – Object on the basis that no tree survey has been provided.

KC Ecology – No objection subject to a condition concerning hedgerow and tree removal outside the bird nesting season.

6.0 REPRESENTATIONS

The application was originally advertised by site notice, neighbour notification letters and press advert.

A total of 11 representations from 10 parties have been received objecting to the proposal. The objections are mostly from properties within close proximity of the site including no's 38 and 40 Thorpe Lane and no's 19, 21 and 23 Dartmouth Avenue. Other representations received are from the Huddersfield area with one being received from Wakefield.

A total of 51 representations have been received in support of the application. The supporting comments are geographically varied including Bristol, Bath, Driffield, Wakefield, London, Sussex as well as a number from the Huddersfield area. However, there is a single letter of support from no27 Thorpe Lane which lies opposite the site entrance.

In addition to the above, two representations objecting to the application have been received from Ward Councillors.

6.1 **Summary of objections**

Impact on Listed Building

- Proposed dwelling not in keeping with the Lodge
- Development of grounds of Fenay Lodge would be sacrilege
- It is an important listed building and any building work would be detrimental to its character. How can it be worth degrading this piece of heritage just to build one more residence
- Harm to the setting of Fenay Lodge; in the past it enjoyed much land which has already reduced significantly over the years now left with approx. 29m from the front of the building to the fence bordering the houses on Dartmouth Ave and smaller areas to the sides. The garden remaining is therefore crucial in giving a sense of the buildings historical importance
- Area of the car parks for the proposed building would be larger than the garden left at the front of the Lodge
- New application continues to jeopardise the space around Fenay Lodge ruining the landscape setting which is in keeping with the formal architecture of the grand building
- Views would also be diminished of Fenay Lodge from a distance
- Agree with Inspector that “heritage assets are irreplaceable.....and great weight should be given to their conservation”
- Proposed reduction in height does not address the fundamental concerns about the effect of the development would have on the size of the setting of Fenay Lodge
- Appearance and nature of the setting of Fenay Lodge would be changed entirely and would be entirely unsuitable for a heritage asset
- What is being suggested would be a blight, an eyesore with the building materials not in keeping with the old building

Impact on highway safety

- Thorpe Lane is very narrow, already dangerous for pedestrians due to a lack of pavement
- Entry and exit to Thorpe Lane would increase dangers and difficulties
- Narrowness of Thorpe Lane where the drive is to enter and exit, would it be safe for large emergency vehicles to turn into the narrow driveway?
- The gates and walls of Fenay Lodge do not allow clear sight lines either up or down Thorpe Lane, further exacerbating the problems caused by the traffic to and from the development

- Consultation responses from Highways Development Management raise concerns about the access to the site and to the width of the access gate in particular, increasing the concerns raised above

Impact on amenity

- Security lights from Fenay Lodge already shine into bedroom window all night and intrusion could be exacerbated by yet more lights from a prospective car park which could be further lit
- Proximity of new house will be exacerbate potential neighbour problems such as noise, security lights, privacy, high hedges, late night movements, car park activity, which together with the actual proximity and bulk of the new house will diminish the enjoyment of the garden and be harmful to the living conditions of the occupiers of No. 21
- Proposed to be built close to the perimeter of houses on Dartmouth Avenue and would overlook and spoil enjoyment of their gardens
- Sad to spoil the look of stately Georgian house with the building of a modern monstrosity so close to it
- Proposed building would run the whole length of the back garden of No. 21 Dartmouth Avenue which is too close given its size and would disrupt the enjoyment of the property and garden
- Too close to No. 23 and from the plan it seems that the distance is less than that recommended by the Council for new developments
- Proposed substantial planting to screen the proposed dwelling from Fenay Lodge and a single storey development will clearly interrupt the view of Fenay Lodge from the surrounding lower properties
- In line with Ecology consultation, it is not known whether a grass roof will grow or be maintained successfully and this is not a matter that can be enforced. Failed grass roof would be an eyesore
- Would be closer to No. 19 Dartmouth Avenue than the previous application and would sit on higher ground than No. 19
- New development and associated planting, fencing and landscaping would dominate views from No. 19's kitchen and rear garden and very substantially diminish the enjoyment of the property
- Proposed courtyard and garden area of the proposed dwelling would immediately adjoin garden of No. 19 and enjoyment of only private amenity space would be greatly reduced by the significant intensification of user which would result from the immediate proximity of the amenity space of a new 3 bedroom dwelling

Comment made in respect of how this proposal relates to the previous appeal

- Paragraphs 5 and 7 of the appeal decision refers to the preservation of the setting of Fenay Lodge and space around the building. The new proposal takes up about 50% of the depth of the present garden and the balance of the new house against the harm to the heritage asset has hardly changed
- Totally agree with the statement made previously by the Inspector
- The grounds have already been disposed of for the purpose of further building

- Proposal for building is unnecessary, just for financial gain by the owners who obviously don't value the property they have for the right reasons. It should be refused
- Proposed development fails to address the principal reason why the appeal against the previous application failed

Design

- Design would be totally out of keeping with Fenay Lodge which is of Georgian design and age and will leave the imposing older house with very little garden not in keeping with its size

Other matters

- Altered plans merely add a greater fear of spectacular subsidence caused by deep excavation close to old walls which already threaten to collapse
- Would create a precedent and soon open the floodgates for any owner of such dwellings until now protected by strict regulations

6.2 Summary of support

Impact on Listed Building

- Single storey building, discreetly positioned at the lowest level of the steeply sloping garden overcomes any detrimental impact on Fenay Lodge or neighbouring properties
- Proposed dwelling and its position gives a 'nod' to this historical characteristic by being out of sight of the main property not only preserving but also enhancing the character and appearance of Fenay Lodge
- Sympathetic proposal within the grounds of this Listed Building

Design

- Proposal offers an exciting and innovative architectural solution which compliments rather than challenges its neighbours incorporating strong sustainable features such as the sedum roof which should be commended
- Would be an architectural asset to the area
- Would blend seamlessly into its surroundings
- Demonstrates a sustainable quality of architecture and will enhance its environment
- Impressed with how the proposed dwelling and its design site well in the grounds of Fenay Lodge
- Innovative and modern design with planted roof would minimal the visual impact and avoid contrast or comparison with Fenay Lodge
- Please to see a single storey fully accessible (no steps) dwelling within the extensive grounds. Accessible properties like the one proposed are extremely rare in this area
- The design ensure the building would contrast and complement the existing buildings

- Visual impact will not interfere with other properties and the design has been sympathetically created

Impact on amenity

- Property virtually invisible to neighbouring dwellings
- Minimal amount of garden lost to the house leaving a substantial amount remaining with Fenay Lodge thus making the overall plot more sustainable in the future
- Really high quality design that will do nothing to detract from the area and would enhance the immediate environment
- Cannot see any negative impact on the surrounding properties, particularly as the proposed building is so attractive in style and being just one storey in height
- By utilising an unused area of garden for a new building whilst still retaining a large garden for Fenay Lodge, the site will become more sustainable
- The dwelling would be unobtrusive and tastefully positioned, innovatively designed to offer beauty, sustainability and to minimise the environmental impact

Impact on highway safety

- Access is adequate and is a quiet road and one house will make little impact
- Will cause no problems regarding access, traffic or the highway
- Availability of building material storage space within the grounds should avoid interference to traffic during construction

Other matters

- By making it single storey, addresses all the concerns raised by the committee including the impact on the Listed Building and neighbouring properties
- Grass roof is a great way to encourage biodiversity
- Georgian houses traditionally have some kind of outbuilding in the form of 'orangeries'
- Sedum roof maintains the visual flow of the lawn encouraging biodiversity and sustainability
- Will be of architectural interest and should help to protect the site from any less desirable future development
- Comments from Sub-Committee and Planning Inspector have been addressed and the proposed dwelling redesigned to minimise any impact on Fenay Lodge and neighbouring properties whilst still maintaining a unique architectural approach
- Scale of the dwelling has been reduced and redesigned as single storey whilst incorporating environmental attributes to encourage biodiversity and to maintain the visual aesthetics of the existing lawn
- Local businesses and services in the high street rely on local residents to survive and support this and other carefully planned proposals in the interest of keeping the high street alive

- The area of garden or the proposed dwelling extends beyond the needs of the property and over the years it has not provided purpose or been in use by either the current or previous owners of Fenay Lodge and future generations may struggle to maintain
- Hope that the application is approved especially in a time where housing is short the and applicant has gone above and beyond to make this development fit into its environment with minimal impact
- Providing another house in an already built up area will help to save a little more of the Green Belt
- Plus sides for the local authority is the increase in Council Tax applied to the new property, employment of local labour and resources for the build and owners sympathetic to the existing building wishing to maintain it for posterity

6.3 Ward Member Comments:

- Councillor McGuin – “I wish to make formal representation for the planning application above to be formally put to the Huddersfield Area sub-committee of the planning authority. My reason being that this is likely to be a contentious issue and should be open to democratic scrutiny. As a ward member of Almondbury, I have received an e-mail notifying me of the opposition to this application.”
- Councillor Hughes – “I would like to object to the above planning application based on its proximity to the Grade II listed building Fenay Lodge. A similar application was refused in 2016 and at appeal the Inspector upheld the committee decision. Even though the building is smaller than before it still encroaches onto the listed building.”

7.0 MAIN ISSUES

- Principle of development
- Impact on setting of Heritage Assets
- Design
- Residential Amenity
- Highways
- Trees and Ecology
- Drainage
- Other issues

8.0 ASSESSMENT

General principle

- 8.1 The site is on unallocated land on the Unitary Development Plan (UDP) proposals map and therefore Policy D2 is applicable. Policy D2 of the UDP states “planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]”. All these considerations are

addressed later in this assessment. Subject to these not being prejudiced, the development of the site would be acceptable in principle in relation to policy D2 of the UDP.

8.2 The site forms residential garden and is therefore classed as 'greenfield'. Whilst the NPPF encourages the use of brownfield land for development, there is nothing within the NPPF to preclude development on greenfield land. The site lies within an area of existing housing stock and is considered to represent an accessible location by different modes.

8.3 Paragraph 14 of the National Planning Policy Framework (NPPF) outlines a presumption in favour of sustainable development. It goes on to state that, for decision making:

where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- specific policies in this Framework indicate development should be restricted.*

8.4 The Council is currently unable to demonstrate a five year housing land supply and ordinarily this would mean that planning permission should be granted *unless any adverse impacts of doing so would significantly and demonstrably outweigh benefits* (taken from the first limb of para14 of NPPF above). However, and crucially in this case, the 'weighted balance' in favour set out in the first limb of para 14 above does not apply where a proposed development has to be assessed against another policy in the NPPF which is restrictive, and which cuts across the underlying presumption in favour of sustainable development. As the proposed development involves works within the curtilage of the Grade II listed Fenay Lodge, and there is a specific restrictive policy in the NPPF relating to heritage assets, the weight applied to the provision of a single dwelling in light of a lack of 5 year housing supply hinges on whether the proposal affects the setting of Fenay Lodge.

8.5 The remainder of this report will go on to identify that the proposal does have an impact on the setting of Fenay Lodge and therefore, in accordance with the above, a non-weighted planning balance should be applied in this case.

Impact on the setting of Heritage Assets

8.6 In accordance with the statutory duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), special regard must be paid to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. Policies BE1 and BE2 of the UDP focus on good quality design. Chapter 7 of the NPPF focuses on good design, chapter 12 relates to heritage assets.

8.7 Fenay Lodge, which is a Grade II listed building, was constructed in mid-19th Century and is a large two storey building with a hipped roof and sash windows. The dwelling sits on a large plot and there is a well-established large garden to the side and rear which is commensurate with the large scale of the dwelling.

8.8 The Conservation and Design team have assessed the proposal and conclude that the land levels between the informal and formal gardens is of a sufficient distance to ensure that low profile development could be accommodated without undermining the significance of the formal garden, and if sensitively and innovatively designed would not be detrimental to the overall setting of Fenay Lodge. However, in the recent appeal decision on the same site for a dwelling with a similar footprint, the importance of the spacious garden area in its determining the significance of the heritage asset was a point noted by the Planning Inspector in the appeal decision (ref - APP/Z4718/W/16/3149647).

“The loss of space around the building would compromise its formal character, which is in part provided by its spacious setting. It would also diminish the quality of views of the asset by reducing the opportunity to appreciate the building from a distance.”

8.9 Having carefully considered the detailed comments provided by the Conservation and Design Team and the equally detailed appraisal of the perceived ‘setting’ of Fenay Lodge detailed in the recent appeal decision; it is considered that the proposed dwelling, parking and landscaping, by virtue of its position on the on the southern portion of the rear garden of Fenay Lodge, would significantly reduce the area of the existing rear garden associated with the lodge. The loss of the garden area is considered to deprive the Lodge of its spacious setting. The reduction in height of the dwelling proposed over and above the previous proposal (ref – 2015/93052), whilst reducing the visibility of the proposal when viewed from the Lodge and its immediate surroundings, would not address concerns in respect of the large loss of garden space which in itself makes a significant contribution to the significance of the heritage asset.

8.10 In short, and having regard to the recent appeal decision and consultee comments, the proposed development is considered to reduce the spaciousness and sense of space surrounding the Lodge and consequently, it is considered to represent an impact on the setting of the listed building to which considerable importance and weight should be applied, in accordance with the overarching statutory duty set out in S66 of the LBCA. The harm to the setting of the listed building is considered to be less than substantial and in accordance with the NPPF, this harm should be weighed against the public benefits of the scheme.

Design

- 8.11 A number of representations received in support of the application have commented on the innovative design. The scheme has been designed so as to utilise the slope of the rear garden in order to reduce views of the proposed dwelling from the surrounding area, including views from within the grounds of the listed building. The front elevation would include a heavily glazed entrance. The remainder of the dwelling would include natural stone features which would dress the elevations so that they replicated a dry stone wall. The central portion of the building would be glazed to add contrast.
- 8.12 The Conservation and Design team have commented extensively on the proposed design and consider it to be extremely innovative.
- 8.13 It is acknowledged that the proposed design of the building represents a bespoke and contemporary design which has a geometric, understated appearance, yet utilises traditional materials which are representative of the local vernacular. In this regard, para 63 of the NPPF notes that 'great weight' should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.
- 8.13 Para 61 of the NPPF makes it clear that securing high quality design goes beyond aesthetics. Development should address the integration with the natural, built and historic environment. Therefore, despite a contemporary and innovative design approach, the proposal fails to address the heritage asset in which it is set due to the impact on the setting of Fenay Lodge. Therefore, the development cannot be said to constitute a high quality design given its spatial setting.

Residential Amenity

- 8.14 Policy BE12 of the UDP sets out the Council's policy in relation to space about buildings. New dwellings should be designed to provide privacy and open space for their occupants and physical separation from adjacent property and land. Distances less than those specified in the policy will be acceptable if it can be shown that by reason of permanent screening, changes in level or innovative design no unacceptable detriment would be caused to existing or future occupiers of the dwellings or to any adjacent premises or potential development land.
- 8.15 The main impact of the proposal relates to properties to the rear, no's 19, 21 and 23 Dartmouth Avenue. No 21 Dartmouth Avenue is closest and lies at a lower level immediately to the rear of the proposed dwelling. The rear wall of no.21 is 11.8m from the mutual boundary with its main private garden space lying in between and sloping up gently towards the application site. The existing boundary treatment mainly comprises of timber fencing. The proposed development has addressed previous concerns in respect of the impact on residential amenity. As the development comprises a single storey, it would not represent an overbearing presence and it therefore, addresses the concerns expressed by the Inspector as part of the recent appeal decision

(ref - APP/Z4718/W/16/3149647). Whilst it is acknowledged that the site is particularly close to the boundary of no's 19, 21 and 23; there would be a sufficient gap between the dwelling and proposed garden area to introduce a suitable boundary treatment in order to protect the amenity of the nearest properties. This could be secured by condition.

- 8.16 The windows facing east would not adversely affect the garden space of no50 Thorpe Lane. In respect of spacing standards and amenity impacts, the proposed development is considered to comply with policy BE12 of the UDP.
- 8.17 In respect of general disturbance associated with the proposed dwelling; an appropriate boundary screen and vegetation could be placed along the boundaries with rear gardens on Dartmouth Avenue. This would reduce any potential impact from lighting/car lights. There is sufficient distance between the properties on Dartmouth Avenue and the proposed parking area to ensure no unacceptable amenity impacts and the submitted plans indicate that the proposed dwelling would be sunk into the ground and be screened behind a hedge. A planning condition could be imposed in the event that planning permission is granted to address the boundary of the site.

Highways

- 8.18 Access to the site is via the existing point of access for Fenay Lodge off Thorpe Lane. A new gravel access route is to be formed off the existing driveway which would lead to a parking and turning area. The site plan also shows parking and turning space being retained for Fenay Lodge.
- 8.19 The scheme provides adequate parking space and turning facilities for both the existing and proposed dwellings.
- 8.20 Visibility onto Thorpe Lane is constrained by the height of boundary walls to each side of the access and there is very limited scope for the boundary walling to be lowered because of the listed status of the property and some of the walling being in separate ownership. Whilst sightlines are substandard, the development relates to a long established access where the intensification in its use would be modest. Furthermore, there have not been any recorded accidents within the vicinity of the access within the last 5 years which suggests that it is operating effectively despite sightline issues and a lack of footway along this part of Thorpe Lane. It is also to be noted that there are similar types of access onto Thorpe Lane close to the site.
- 8.21 Kirklees Highways raise concerns with regards the width of the access to Fenay Lodge. However, it is noted that access remains unchanged from the appeal scheme (ref - APP/Z4718/W/16/3149647) and in that case the Inspector concluded that there was no significant impact upon highway safety.
- 8.22 Taking the above into account, it is considered that the development would not result in any material harm to highway safety and the application accords with Policies T10 and D2 of the UDP.

Trees and Ecology

- 8.23 Development affecting trees would ordinarily require a tree survey. However, the previous application (ref – 2015/93052) was assessed on the basis of no tree survey and as it was found that the development would not affect protected trees. The proposal offers to retain existing trees towards the south west and north east boundaries as well as a large mature tree which sits adjacent to the proposed gravel track. Subject to a condition requiring tree protection measures, the proposed development is considered to comply with policy NE9 of the UDP.
- 8.24 The Council's ecology officer has assessed the impact of the development on biodiversity interests and raises no objection subject to a condition ensuring no tree/hedgerow removal outside the bird nesting season without an appropriate survey. A condition could be implemented in order to secure biodiversity improvements. The development is considered to comply with the NPPF in this respect.

Drainage

- 8.25 It is proposed to connect the dwelling to the existing drain which runs adjacent to the existing driveway. This could be conditioned in the event planning permission is granted.

Other Issues

- 8.26 A number of concerns have been raised by objectors. In no particular order, the concerns that have been raised are addressed as follows:
- 8.27 Noise

Officer response: Concerns have been raised about increased noise as a result of the proposed parking area which is close to the rear site boundary. The amount of vehicular activity associated with the dwelling is likely to be very modest and as such Officers do not consider that the use of the parking area would result in any material harm to the amenity of adjacent properties. The parking spaces would be screened along the rear boundary by a new hedge which would help to mitigate the limited amount of noise generated and also block glare from headlights.

Some concern has also been raised about noise associated with construction; nuisance caused by construction noise would be dealt with under separate environmental health legislation.

- 8.28 Height of proposed hedge on rear boundary

Officer response: Full details of the proposed hedge have not been supplied although the elevation drawings indicate that the hedge would be approximately 3m in height. There is a gradual change in ground levels along the length of the rear boundary but the plans suggest that the hedge would

generally be around 1.3m above the height of the existing boundary fence; this would screen the ground floor of the proposal as well as the garden and parking areas. It is noted that there have previously been numerous mature trees along this boundary and the hedge would be significantly lower in height than these. A condition is recommended requiring full details of the hedge in the interests of residential amenity.

8.29 Impact on amenity from lighting

Officer response: No lighting is proposed in the prospective parking area and adjacent properties could be protected from car lights by appropriate boundary treatment.

8.30 Possible subsidence and impact on stability of adjacent land

Officer response: The NPPF indicates that planning decisions should take into account ground conditions and land instability. Given the scale of the proposed development and the nature of the site it is considered that adequate control over such matters would be provided through the Building Regulations regime.

8.31 Impact on structural integrity of boundary walls

Officer response: The dwelling and its garden area are reasonably well separated from the nearest stone boundary walls and it is considered that any potential impact on the structural integrity of existing boundary walls would be sufficiently controlled through the Building Regulations regime.

8.32 Absence of information on finished levels

Officer response: A condition regarding finished levels is recommended

8.33 Grass roof maintenance

Officer response: In response to concerns raised about the maintenance of the proposed grass roof, a condition could be imposed dealing with landscaping and subsequent maintenance of landscaped areas and the proposed grass roof. Comments from a resident and the Council's ecologist have commented that the grass roof could be beneficial for biodiversity.

9.0 Conclusion

9.1 The site involves a proposed development comprising an innovatively designed single storey dwelling located in the rear garden area of the Grade II listed Fenay Lodge. The proposed dwelling would take up a large amount of the rear garden associated with Fenay Lodge and consequently it is considered to adversely affect the setting of Fenay Lodge. There is a statutory duty contained in the LBCA to give considerable weight to the desirability of preserving the setting of listed buildings.

- 9.2 Whilst changes have been made to the scheme to reduce its visual impact over and above the recent appeal decision (ref - APP/Z4718/W/16/3149647), the impact on the setting of Fenay Lodge is considered to be less than substantial in NPPF terms.
- 9.3 Conversely, weight has also to be given to the provision of a single dwelling in light of the Council's inability to demonstrate a 5 year housing land supply. In addition, the innovative and high quality design and appearance of the dwelling would ordinarily attract great weight in accordance with para 63 of the NPPF, but the fact that the proposed development affects the setting of the listed building means that it does not integrate into the historic environment, contrary to the requirements of para 61. It cannot be considered a high quality design.
- 9.4 Overall the public benefits associated with the provision of one additional dwelling and associated design merits are not sufficient to outweigh the less than substantial harm, and the considerable weight attached to the preservation of heritage assets.
- 9.5 All other matters including highways, amenity, ecology and trees have been adequately addressed. However, the proposed development does not constitute a sustainable form of development and conflicts with policy BE2 of the UDP. Contrary to the requirements of chapter 12 of the NPPF, the public benefits of the scheme do not outweigh the less than substantial harm.

10.0 RECOMMENDATION

The proposed development, by virtue of siting and scale, would fail to preserve the special interest and setting of the listed building (Fenay Lodge) by substantially reducing the rear garden area which is a component part of the assets' significance. The harm to the asset is less than substantial in accordance with paragraph 134 of the National Planning Policy Framework. Set against this, the public benefits associated with the development do not outweigh the harm. The development is therefore contrary to Policy BE2 of the Unitary Development Plan (UDP) chapter 12 of the National Planning Policy Framework.

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f93871>

Certificate of Ownership –Certificate A signed