
Report of the Head of Development and Master Planning

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Aug-2019

Subject: Planning Application 2019/91048 Change of use of land to domestic curtilage and erection fences to the sides (within a Conservation Area) 2, Garfield Place, Marsden, Huddersfield, HD7 6DA

APPLICANT

D Doward

DATE VALID

15-Jul-2019

TARGET DATE

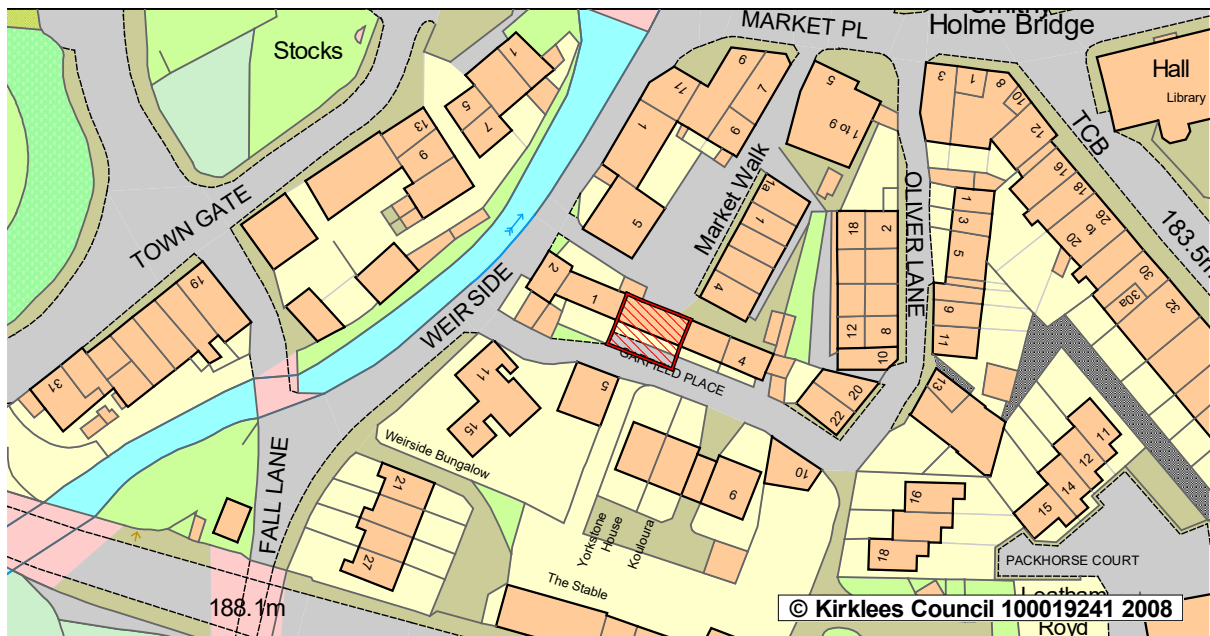
09-Sep-2019

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Colne Valley

No

Ward Members consulted

RECOMMENDATION: REFUSE

1. The change of use proposed, by reason of its impact on the width and layout of the highway and the displacement of on street parking, would detrimentally impact on the highway safety of Garfield Place and Oliver Place. The development would cause conflicts between pedestrians, cyclists and vehicles by the narrowing of Garfield Place compromising the safe and efficient flow of traffic within the land forming the application site and on the surrounding highway network. This conflict would cause more dangerous manoeuvres to be required for vehicles to pass one another due to the narrowing of the highway. The proposal also disperses parking in an area where off-street parking is at a premium and does not satisfy the parking need of the area. For these reasons the proposal is deemed to be contrary to LP21 (a) and LP22 of the Kirklees Local Plan and Chapters 9 and 12, Paragraphs 110 (c) and 127 (a) of the National Planning Policy Framework respectively.

1.0 INTRODUCTION:

1.1 The applications is brought to Planning Committee at the request of former Cllr Bellamy on 28th April 2019, who has provided the following reason:

“Can I please request if you are mindful to refuse this application that it is heard by committee, with a site visit, for committee to determine if it would have any impact on the street scene, or have any detrimental impact on neighbouring properties,”

1.2 The Chair of the Sub-Committee has confirmed that former Cllr Bellamy’s reason for making this request is valid having regard to the Councillor’s Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS

2.1 2 Garfield Place is a mid-terrace, two storey property located towards the centre of Marsden. The dwelling is faced in natural stone with a slate tiled roof. It is set within a very small curtilage with a strip of land approx. 2m deep by 11.5m wide to the front of the property. Although it is stated the deeds show the property ‘owns’ land to the centre of the highway at Garfield Place, this relates to the subsoil as the highway itself is adopted.

2.2 The dwelling is set within the Marsden Conservation Area and is of vernacular appearance of dwellings built in the Victorian era. The historic sense of place in this part of Marsden is characterised by tight knit development, which includes narrow roads some without footways. Most of the housing in the immediate vicinity is terraced. Garfield Place is not specifically mentioned with the Marsden Conservation Area Appraisal.

3.0 PROPOSAL

3.1 This is for the change of use of the highway to domestic curtilage and the erection of a boundary treatment.

3.2 The land encompassing this application is currently part of the adopted highway, comprising the surface of that area no.2 Garfield Place have a subsoil ownership of. The plot of land being proposed for change of use is 11.5m wide and 2.6m deep.

3.3 In conjunction with the change of use, the applicant proposes to erect a 1m high fence at the side of the dwelling to demonstrate the boundary between no.2 and its adjoined properties. The fence shall extend 3.8m from the front elevation to leave a 3.8m gap for the highway.

3.4 The applicant stated that the fence shall match the existing and therefore it is likely it shall be painted in a grey colour.

4.0 RELEVANT PLANNING HISTORY

4.1 None

4.2 It would appear that at some point in the past, land forward of no.1 Garfield Place has been enclosed in a similar manner to that now proposed. Kirklees Highways Registry confirm this was done pre-adoption of the road, and therefore the owner would have had full ownership of the land at that point. Since the adoption of Garfield Place in the 1980s, the dwellings now only have subsoil ownership of the land.

5.0 HISTORY OF NEGOTIATIONS

5.1 The applicant was asked to submit further justification for the scheme, as this in essence seeks to 'stop up' part of the highway. This was submitted as supporting information on 29/03/19.

5.2 The applicant provided additional information on 26/06/19 to describe the proposed boundary treatment.

5.3 It was noted on 21/05/19 that certificate A was signed. Subsequently the applicant was informed to sign certificate B and serve notice on Kirklees Council as the land in the application site is part of the public highway. A signed copy of certificate B was received on 16/07/19. The application was re-validated from the date the revised notice was received.

6.0 POLICY

- 6.1 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 is the Local Plan adopted February 2019.

The application site is unallocated on the Kirklees Local Plan but is designated as being within the Marsden Conservation Area

6.2 Kirklees Local Plan

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP21- Highway safety and access
- LP22 - Parking
- LP24 – Design
- LP35 – Historic Environment

6.3 National Planning Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published February 2019, together with Circulars, Parliamentary Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

Chapter 9: Promoting sustainable transport

Chapter 12: Achieving well-designed places.

Chapter 16: Conserving and enhancing the historic environment.

6.4 Other:

- Marsden Conservation Area Appraisal

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The application was advertised by site notice on 12/04/19, by neighbour letters scheme on 03/04/19 and in the press. Final publicity expired on 5th May 2019.

- 7.2 24 comments have received from 5 individuals.

- 7.3 Below is a summary of the comments received regarding material planning considerations:

- Dispersal of available on street parking where off-street parking is at a premium.
- Stop access for emergency vehicles.
- Dangerous impact on highway.
- Future cumulative impact if precedent set.
- Cause difficulties for pedestrians to avoid cars.
- Make access difficult for driveways and access roads nearby.
- Road would become impassable if two cars meet or if a larger vehicle parks up.

- Plans not detailed enough.
- unauthorised fence already constructed
- Where will be bins be stored?

7.4 Other matters

- Neighbours not correctly notified as some neighbours are rented so owner may not know.

7.5 Non-material planning considerations

- Comments regarding personal character judgements have no weight to determining this application.
- Council tax has been paid to maintain the road while it has been adopted so cannot be changed to domestic curtilage.
- Damage to boundary treatments.

7.6 One further representation was received following the service of Certificate B in July 2019. The representation but did not raise any additional points to those set out above, but advised that if to be approved a condition should prevent any boundary treatment to be erected.

8.0 CONSULTATION RESPONSES

8.1 Statutory:

KC Conservation and Design were consulted at stated as follows:

‘A fence projecting beyond the kerb line in to the highway would be incongruous in the streetscene of the Conservation Area’.

8.2 Non-statutory:

KC Highways Development Management -

In response to the documents initially submitted KC Highways DM stated:

“This application seeks approval for the change of use of land to domestic curtilage and erection of wall and gates (within a conservation area) at 2 Garfield Place, Marsden.

The proposal consists of the creation of a small, gated parking area to the front of 2 Garfield Place. This would be created by extinguishing the existing public highway.

Although minimal detail is given in terms of construction. Highways DM would raise concerns regarding the narrowing of the carriageway to less than 4.5m as this could be detrimental to the ability of two vehicles to pass safely and make access to the stables more difficult. Further concern would be raised by the reduction in unallocated off-street parking in a location where this is at a premium.

Given the above, Highways DM would not be able to support the scheme in its present form.”

This response was provided before the supporting statement was received. In response to the supporting statement KC Highways DM made additional comments as follows:

“It is most unusual for the local authority to allow such a “land grab” of the public highway to allow for private parking. I would maintain concern that this could lead to further applications from other residents on the street and also set a precedent for others in the district to make similar applications (those on town centre streets, particularly at the end of a cul-de-sac for example). Although the point is eloquently argued by the applicant, this application could still exacerbate the issue of drivers being unable to pass and repass on this narrow street which may see an increase in the undesirable manoeuvre of drivers reversing back out into Weir Side or Oliver Lane when two vehicles meet without room to pass safely.

As such, Highways DM maintain the objection to the scheme for the reasons cited above and those mentioned in the initial formal comments as per the below:

Highways DM would raise concerns regarding the narrowing of the carriageway to less than 4.5m as this could be detrimental to the ability of two vehicles to pass safely and make access to the stables more difficult. Further concern would be raised by the reduction in unallocated off-street parking in a location where this is at a premium.”

9.0 MAIN ISSUES

- Principle of Development
- Heritage
- Highway Amenity
- Residential Amenity
- Design
- Representations

10.0 APPRAISAL

Principle of Development

- 10.1 The development would result in a section of the adopted highway becoming enclosed, to form domestic curtilage for the purpose of vehicular parking. In principle the main assessment is whether this would have an unacceptable impact on highway safety. This is separate to the requirement the applicants would have to ‘stop-up’ the highway.
- 10.2 Chapter 9 of the NPPF seeks to promote sustainable transport. In regards directly to assessing proposal on highway grounds, paragraph 109 states:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

- 10.3 It then goes on further to state within paragraph 110 and considering the context of highways and transport, development should...

“c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;”

- 10.4 LP21 of the Kirklees Local Plan sets out guidance which determines whether the impact of proposals are acceptable in regards to highway safety and access. LP21 (a) is directly applicable to this application. LP21 states all proposal shall:

Ensure the safe and efficient flow of traffic within the development and on the highway network;

- 10.5 As the application site is in the conservation area, heritage policy must too be considered. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that LPAs have a general duty in that

“special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area”.

- 10.6 Similarly paragraphs 193 and 194 of the NPPF indicate that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting”.

- 10.7 The Kirklees Local Plan echoes the NPPF in regards to ensuring the character of the conservation area is maintained. LP35 states that ‘Proposals should retain those elements of the historic environment which contribute to the distinct identity of the Kirklees area and ensure they are appropriately conserved, to the extent warranted by their significance, also having regard to the wider benefits of development’.

- 10.8 Whilst LP35 controls design and a proposals impact on the historic environment, LP24 is also directly applicable as this policy helps to establish whether proposal are of good design. LP24 (a) states that proposal should:

‘The form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape;’

LP24 (c) goes on further to protect the residential amenity of neighbouring properties by ensuring development is:

‘in keeping with the existing buildings in terms of scale, materials and details and minimise impact on residential amenity of future and neighbouring occupiers;’.

10.9 Chapter 12 of the NPPF goes on further to ensure proposals have a positive impact on the place to ensure the settlement is well-designed for the future. Paragraph 127, states that:

‘Planning policies and decisions should ensure that developments:

a. will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;’

10.10 These policies set the guidance to which the proposal shall be assessed against.

Background

10.11 As explained within the ‘Relevant Planning History’ section, the enclosure of land at no.1 Garfield Place was commenced in the early 1980s which was pre adopted of the highway, and therefore lawful. For context, Garfield Place was adopted in October 1984.

10.12 Garfield Place and its neighbouring roads such as Oliver Lane are densely populated streets with narrow highways. Due to the age of the dwellings in the area, the vast majority do not have off-street parking provision and rely on the ability to park on street. Given the tight nature of the lanes, there is only a limited supply of on street parking.

Highway Safety

10.13 Chapter 9 of the NPPF promotes sustainable transport. In terms of the highway safety, any proposal affecting it should ensure there are not any detrimental effects regarding the safety of highway users and so as to preserve local character. The proposed scheme would see the narrowing of the carriageway to less than 4.5m and this would hinder the ability of two vehicles to pass safely. This in turn would impact on highway safety as vehicles would have to conduct unsafe manoeuvres including reversing out of junctions, primarily the junction with Weir Side, to allow other vehicles to pass. In consequence this would conflict with the safety of pedestrian and cyclists using the highway. For these reasons, the scheme is deemed to have a detrimental impact the highway safety as it would cause additional conflict between vehicles and between vehicles and other users of the highway and therefore the scheme does not accord with Chapter 9, Paragraph 110, point (c) of the NPPF.

10.14 Chapter 12 of the NPPF promotes well-designed places. Significantly, paragraph 127, point (a) states that development should function well and add to the overall quality of the area over the lifetime of the development. Given the layout of this scheme, the proposed boundary fence would see the highway narrowed and have detrimental effects regarding vehicle conflict as stated above in regards to Chapter 9. This vehicle conflict created by the scheme would not constitute a well-functioning place nor would it improve the quality of the area for the future, but in fact have an opposite effect. Therefore the development would not comply with chapter 12 of the NPPF.

- 10.15 As stated within the principle of development; LP21 seeks to ensure the safe and efficient flow of traffic within the development and on the surrounding highway network. With regards to policy LP21 (a), this development would narrow the highway and remove a parcel of land from highway use which can provide informal space for motor vehicles to give way to other road users entering Garfield Place from Weir Side. Whilst it is acknowledged that when a vehicle is parked there it cannot be used for this purpose, this is not a permanent obstruction. The fact that this land is adopted highway and can be used to provide passing space, amongst other functions, is material to the assessment of this application and the impact the proposal would have on the efficient traffic flow of the highway. For similar reasons as to why the scheme does not accord with paragraph 110 (c) of the NPPF, the implementation of this proposal would severely impact the flow of traffic creating a longer single lane stretch of highway which would lead to dangerous manoeuvres being conducted to allow for vehicles to pass one another as well as creating an extended blockage when larger vehicles visit Garfield Place: such as emergency and service vehicles. Therefore it can be stated this detrimental effect is contrary to LP21 (a).
- 10.16 The applicants have provided information in support of the change of use. This is to create additional domestic curtilage for the purpose of parking, which would greatly help satisfy the need for the residents of no.2 Garfield Place to have safe and private parking space. However, the wider implications of this change of use would not meet the parking needs of Garfield Place nor the wider area given the reliance on unrestricted on street parking for most residents. In an area where off street parking is at a premium, the most convenient parking arrangement in the area is unrestricted on street parking as this allows for all residents in the area to park within a the vicinity on most occasions. Very rarely will residents have to park a substantial distance away from their dwelling. If Garfield Place and Oliver Lane was to see highway land currently used for on street parking changed in domestic curtilage to create private parking spaces, this would reduce the ability to park on street for the surrounding residents and therefore creating a more inconvenient parking arrangement in the street. An approval of this application could set a precedent for other applications in the vicinity of the site. If these were also approved some dwellings would be left with no parking or nearby on street parking available to use. This would detrimentally impact on the existing, most convenient parking arrangement for Garfield Place and cause parking dispersal and a loss in parking facilities and therefore is deemed to be contrary to LP22.
- 10.17 Within the supporting statement, photographs have been provided to show that the residents of no.2 Garfield Place could get 2no. vehicles on the land proposed for the change of use by using the strip of land directly in front of their dwelling which they own as confirmed by KC Highways Registry. This information suggests that parking dispersal is not an issue as by parking over the strip of land the applicant already owns and the application area, they can park 2 vehicles in the application site whereas a member of the public cannot use this strip of land to park and therefore the parking area can only be used to park one vehicle if left open as unrestricted on street parking. Therefore there is a case that this application would create one additional parking space on the street scene, but given that the most convenient parking arrangement for the area is unrestricted parking, this would not overcome the issues mentioned above.

Heritage

- 10.18 Due to the nature of the proposal, whilst there would be no harm directly to the dwellings, the fence would protrude in to the Highway and appear incongruous within the Street Scene. Given the street in is the Marsden Conservation Area, any harm must be outweighed by public benefit. Considering that the proposal appear incongruous in the street scene visually and there is no wider public benefit, it can be determined that the fence considered as part of the proposal does not adhere to the Heritage setting and is contrary to LP35 of the Kirklees Local Plan. If the principle of development was acceptable the fence could be omitted from the scheme which would overcome the harm caused.

Residential Amenity

- 10.19 LP24 (b) of the LP states proposals should promote good design by ensuring:

“they provide a high standard of amenity for future and neighbouring residents...”

- 10.20 Another consequence of the enclosure of land is that the concerns related to highway safety would in turn affect the amenity of neighbouring residents. This has already been detailed in the preceding paragraphs and in essence the development would not provide a high standard of amenity for residents in the future. As well as the users of Garfield Place, the scheme would potentially impact upon the ability to access the unadopted road that serves the stables behind Yorkstone House on Garfield Place. This access is directly opposite the application site. Given the likelihood that the occupier of the stables could require a horsebox to be driven up Garfield Place and be able to turn in to this access road, the enclosure of this land would make the access very challenging. This is captured in the reason for refusal on highway safety grounds.

Other Matters

- 10.21 It should be noted that permitted development rights to erect boundary treatment to the front of the property do not necessarily exist. This is because Article 3(6) of the Town and Country Planning (General Permitted Development) (England) Order 2015 does not authorise any development which... “creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons”. This would prevent the erection of a means of enclosure if it created an obstruction as set out above.
- 10.22 Before a person can wall off or access a subsoil title, they will require a legal Order to extinguish or ‘stop up’ the public road that’s above the subsoil. A legal stopping up Order is granted by the Department for Transport (DfT) under S247 of the Town & Country Planning Act 1990, but the DfT can only grant an Order if there’s a valid planning permission that requires the stopping up of the public highway.

Representations

10.23 24 comments were received from 5 individuals.

Below is a summary of the comments received regarding material planning considerations and responses to them:

10.24 Highway Safety

- Stop access for emergency vehicles.
- Dispersal of available on street parking where off-street parking is at a premium.
- Dangerous impact on highway.
- Future cumulative impact if precedent set.
- Cause difficulties for pedestrians to avoid cars.
- Road become impassable if two cars meet or if a larger vehicle parks up.

Response: Assessed with Highway Safety appraisal.

- Fence to the side only is an improvement however condition no additional fencing to be constructed to the front.

Response: Noted and reflected in 'other matters' section

- A condition should prevent any boundary treatment to be erected.

Response: This point is noted, however it is not considered that this would on its own overcome the issues as set out above.

10.25 Residential Amenity

- Make access difficult for driveways and access roads nearby.

Response: Assessed with Residential Amenity appraisal

10.26 Design

- Plans not detailed enough.
- Illegal fence already constructed
- Where will be bins be stored

Response: Assessed with Design appraisal. Any obstruction in the highway would be dealt with outside the scope of this application

10.27 Non material planning considerations cannot be given any weight in the assessment of this application.

11.0 CONCLUSION

- 11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.2 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the Kirklees Local Plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits when assessed against policies in the NPPF taken as a whole.

Background papers

Link to application file

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f91048>

Certificate B signed with the application dated 12th July 2019, received 16th July 2019. Notice served on Kirklees Highways.