
Report of the Head of Planning and Development

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 20-Oct-2022

Subject: Planning Application 2020/93800 Outline application for one detached dwelling adj, 100, Birchencliffe Hill Road, Lindley, Huddersfield, HD3 3NH

APPLICANT

P Plant

DATE VALID

13-Nov-2020

TARGET DATE

08-Jan-2021

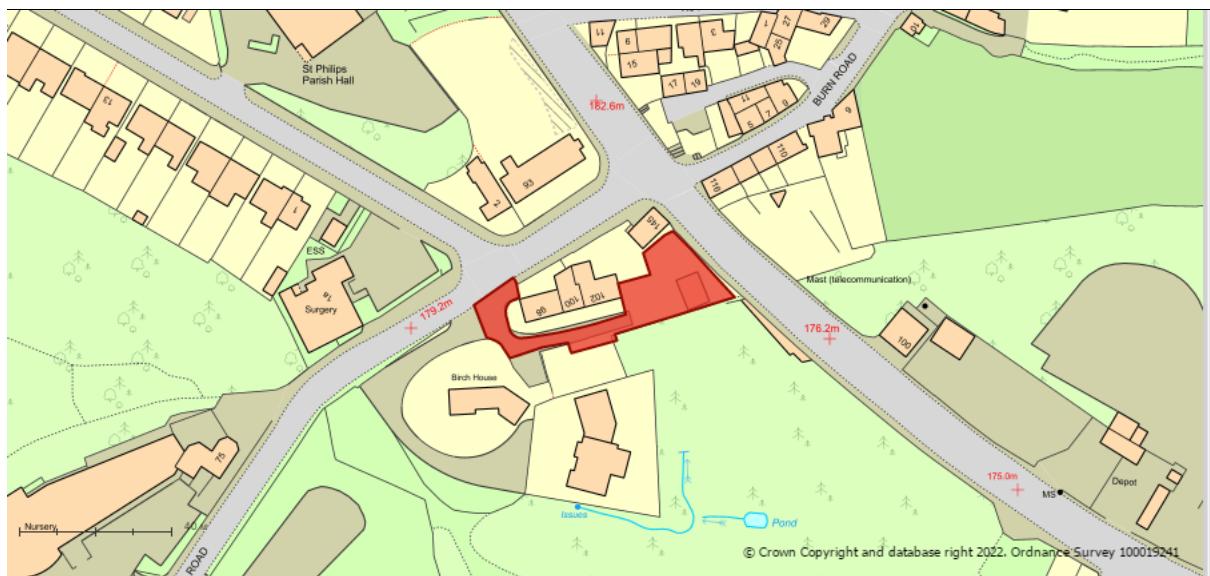
EXTENSION EXPIRY DATE

27-May-2022

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[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Lindley

Ward Councillors consulted: No

Public or private: Public

RECOMMENDATION: REFUSE

1. Due to the constraints of the site, it is concluded that habitable room windows to the proposed development would be liable to experience severely limited light and outlook by reason of the constraints posed by the topography and dimensions of the site, the woodland to the south, and the presence of parked cars in close proximity to the new dwelling. It is therefore considered that the dwelling would fail to provide an acceptable standard of living for future occupants by reason of inadequate natural light and outlook, contrary to the aims of Policy LP24(b) of the Kirklees Local Plan, paragraph 130(f) of the National Planning Policy Framework and Principle 6 of the Housebuilders Design Guide Supplementary Planning Document (SPD).

2. Due to the constraints of the site, it is concluded that a new dwelling would overlap the root protection zone of a tree which forms part of a group of semi-mature trees deemed to be valuable to the biodiversity and visual amenity of the area and especially the visual amenity of the Urban Greenspace allocation (UGS1232), of which they form part. Replacing the existing workshop, a lightweight, single-storey building, with a two-storey permanent building, would give rise to the need for deeper foundations, leading to the risk of significant root damage to trees. It has not been demonstrated that the erection of a dwelling could be undertaken without serious harm to the health of the trees and their long-term viability. Furthermore, notwithstanding the conclusions of the submitted Arboricultural Impact Assessment, six of the seven trees identified therein are described as semi-mature, and as such they are likely to continue to grow, giving rise to long-term issues of shading and debris fall to future occupants of the new dwelling, leading to pressure to fell. The development would therefore conflict with the aims of Policy LP33 of the Kirklees Local Plan and Principles 2, 3 and 9 of the Housebuilders Design Guide SPD.

1.0 INTRODUCTION:

1.1 This application is brought before Huddersfield Planning Sub-Committee for determination under the terms of the Delegation Agreement following a request from Ward Councillor Cahal Burke. Cllr Burke's grounds for requesting a Committee decision are as follows:

"We would like to refer to committee for decision. We believe the Arboriculturist report and various communications have proven by calculations or British Standards that the concerns of planning are not valid reasons to be concerned. The layout and density of building is acceptable."

1.2 The Committee Chair has confirmed that Cllr Burke's request is valid having regard to the Councillor's Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 The site comprises a plot of land located near the junction of Halifax Road (to the east) and Birchencliffe Hill Road (to the north), accessed from the latter. The shared paved access track, which runs west to east, provides access to nos. 98-102 Birchencliffe Hill Road, a terrace of three cottages built mainly in stone (except for no. 102 at the eastern end which is rendered with stone quoins). It also provides access to a two-storey detached house with an undercroft, no. 145 Halifax Road, which is located adjacent to the junction. On the southern side of the shared track are some small residential garden plots.
- 2.2 At the eastern end of the shared driveway, set below the high retaining wall to Halifax Road, is a large shed comprised of painted corrugated metal, described as a workshop. The wider area is mostly residential, but to the south and south-east of the site is deciduous woodland.
- 2.3 There is a general fall in ground levels from north to south.

3.0 PROPOSAL:

- 3.1 The proposal seeks outline permission for the erection of a single detached dwelling. Access and scale are applied for in addition to the principle of development; appearance, landscaping and layout are reserved matters.
- 3.2 The site plan shows the new dwelling would be erected approximately on the footprint of the existing outbuilding, but at 10.0m by 6.5m it would be marginally bigger. It would also be rotated a little counter-clockwise and moved slightly further to the north. The indicative internal layout shows it to be two-storey, with two bedrooms and a bathroom at ground floor with a third bedroom, bathroom and kitchen / living / dining area at first floor.
- 3.3 Two parking spaces would be formed in front of the dwelling (to the west) and a new turning head to the north. A new parallel parking space to serve the existing dwelling is to be formed adjacent to the southern side of the shared driveway opposite nos. 100 and 102 Birchencliffe Hill Road.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2019/93891 – Outline application for one detached dwelling. Withdrawn owing to officer concerns about impact on trees and the living conditions of future occupants.

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

- 5.1 06-Oct-2021: Amended tree survey, Arboricultural Impact Assessment and Method Statement. This was not re-advertised because it was for clarification purposes only and was not deemed to raise substantial new planning issues.
- 5.2 18-May-2022: Alteration to proposed site plan to provide a fourth parking space in addition to turning space. Minor changes to indicative internal layout and annotations to confirm that it would comply with minimum internal space requirements as set out in Nationally Described Space Standards. Again, the amendments were not considered to raise substantial new planning issues requiring the opportunity for public comment.

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) and the Holme Valley Neighbourhood Development Plan (adopted 8th December 2021).

6.2 Kirklees Local Plan (2019):

The site is without designation within the Kirklees Local Plan. It adjoins Urban Green Space and Wildlife Habitat Network. It is also within a Source Protection Zone. There is a grade II Listed Building, historically known as 96-102 Birchenclyffe Hill Road, adjacent to the north-west of the site.

- **LP 1:** Achieving sustainable development
- **LP 2:** Place shaping
- **LP 7:** Efficient and effective use of land and buildings
- **LP 21:** Highways and access
- **LP 22:** Parking
- **LP 24:** Design
- **LP 28:** Drainage
- **LP 30:** Biodiversity and geodiversity
- **LP 33:** Trees
- **LP34:** Water Environment
- **LP 35:** Historic environment
- **LP 52:** Protection and improvement of environmental quality
- **LP 53:** Contamination/Unstable Land

6.3 Supplementary Planning Guidance / Documents:

- KC Highways Design Guide 2019
- Housebuilders Design Guide Supplementary Planning Document 2021

6.4 Other Documents

- Biodiversity Net Gain Technical Advice Note 2021
- Climate Change Guidance for Planning Applications 2021

6.5 National Planning Guidance:

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 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes

- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flood risk and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Publicity period expired 29-Dec-2021. Publicity by site notice and press advertisement in addition to neighbour letters since the proposal is deemed to potentially affect the setting of a Listed Building.

Two representations made (both objection). Summary of concerns raised:

1. Concerns about further felling or pruning of trees.
2. Three cottages on the nearby land are Grade II Listed and are understood to be in a conservation area. Further details should be submitted to show that the new property will be in keeping;
3. The new parking space for 100 Birchenclyffe Hill Road is directly adjacent to a neighbouring garden resulting in decreased privacy, hazardous vehicle fumes and noise pollution, and the vehicles (depending on their size) may block light to our gardens.
4. Part of the area designated as a parking space encroaches on to our land;
5. We are concerned about living on a building site for potentially months or years on account of increased noise and air pollution, increased use of private driveway and possible blocking of access to the turning head.
6. If it is approved, we would like written assurances that no vehicles will be parked on the private driveway and that maintenance costs will be fairly shared.
7. Legal right of access from front door of existing property to Halifax Road and Birchenclyffe Hill Road will be blocked or compromised by the development.
8. Privacy – there would be large windows over two floors facing our garden and the front and side of our property.
9. Our view of the woods will be dramatically changed by parked cars.

7.2 Ward Councillor comments (Ward Councillor Cahal Burke) - Requests a Sub-Committee decision, as set out in the "Introduction" section at paragraph 1.1.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

Environment Agency – Response is awaited and will be reported in the Update to members (consulted on the grounds of the site being within a Source Protection Zone).

KC Conservation & Design are a statutory consultee for proposals that are considered to affect the setting of a Listed Building. They were consulted on application 2019/93891 and raised no concerns. Since the previous application was very recent and was also for Outline permission (the principle of development plus access and scale) it was considered that it would not be productive to consult the Conservation & Design Team again and their previous response is still applicable to this application.

8.2 Non-statutory:

- KC Highways Development Management – No objection in principle
- KC Arboricultural Officer – Recommend refusal
- KC Ecology – Response awaited and shall be provided as a written update for Committee.

8.3 The following teams or services were consulted on the previous application (also for outline permission), 2019/93891. These consultations have not been repeated here because the proposal is of a similar nature and is therefore not considered to raise new issues:

- Environmental Health – Raised no objection in principle but recommended contaminated land and noise conditions.
- Highways Structures – Raised no objection in principle subject to a standard condition.

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Trees
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

10.1 Paragraph 47 of the National Planning Policy Framework (NPPF) which is a material consideration in planning decisions, confirms that planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. This approach is confirmed within Policy LP1 of the Kirklees Local Plan, which states that when considering development proposals, the Council would take a positive approach that reflects the presumption in favour of sustainable development contained within the Framework. Policy LP1 also clarifies that proposals that accord with the policies in the Kirklees Local Plan would be approved without delay unless material considerations indicate otherwise.

10.2 The Local Plan identifies a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. As set out in the Authority Monitoring Report 2020/2021 (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 5.17 years supply. The 5% buffer is required following the publication of the 2020 Housing Delivery Test results for Kirklees (published 19th January 2021). As the Kirklees Local Plan 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 boost significantly the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development.

- 10.3 The provision of housing needs however to be balanced against all policies and material planning considerations considered below. The site occupies land without designation within the Local Plan, which means that in principle new build housing may be an appropriate use of the land. It is however adjacent to land designated Urban Green Space and Wildlife Habitat Network, and upon which semi-mature deciduous woodland grows, and which are potentially affected by the development proposed. Policies LP30 and LP33 are therefore applicable.
- 10.4 When making decisions on planning applications for development that would affect a Listed Building or its setting, there is a duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to have special regard to the desirability of preserving the building and its setting, and any features of interest it possesses. In this context preservation means not harming the interests of the building as opposed to keeping it unchanged. Furthermore Chapter 16 of the NPPF states that in determining applications local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets. If harm would result this should not be allowed without a proportionate justification.
- 10.5 Under Policy LP7 of the Local plan, supported by Principle 4 of the Housebuilders' Design Guide SPD, the planning process should encourage the efficient use of previously-developed land in sustainable locations, aiming for a net density of at least 35 dwellings per hectare as long as this is in keeping with local character. The application will further be considered having regard to the aims of Policies LP24(a), in ensuring that design and appearance are sympathetic to the character of the host building on site and the wider surroundings, and LP24(b) and LP52, in that it ensures a good standard of amenity is delivered or retained both for future, and existing neighbouring occupiers. Furthermore, it should not interfere with the free and safe use of the highway, as required by Policies LP20 and LP21. The Housebuilders' Design Guide SPD and the Highways Design Guide SPD are material considerations and will inform the assessment of the proposed new dwellings.
- 10.6 The site is in an accessible location, being approximately 230m walking distance from a bus stop on Halifax Road with a frequent service to Huddersfield Town Centre.
- 10.7 In the event of an approval additional measures to combat climate change could be incorporated into the development (including, but not limited to, electric vehicle charging points), sought and secured by condition. Further reference to, and assessment of, the sustainability of the proposed development is provided later in this report in relation to transport and other relevant planning considerations where appropriate.

Urban Design issues

- 10.8 The proposal will be considered having regard to the aims of LP7 and LP24a, and also those of the Housebuilders' Design Guide SPD, in particular:

Principle 2 – New development should take cues from the character of the natural and built environment and complement the surrounding built form.

Principle 5 – Development should maintain open space and residential amenity.

Principle 8 – Transition to open land to be carefully considered.

Principle 13 – Materials should be appropriate to the site's context.

Principle 14 – Design of windows and doors should relate well to the street frontage and other neighbouring properties.

Principle 15 – The design of the roofline should relate well to the site context.

- 10.9 The surroundings of the site do not have a strongly defined character, having been developed sporadically. No 145 Halifax Road, a two-storey dwelling, is built on the corner of Halifax Road, leaving no space before the public highway on the Halifax Road side and only minimal space on the Birchencliffe Hill Road side. Nos. 98-102 Birchencliffe Hill Road present their rear elevations to the highway, separated by a narrow sunken yard, whilst opposite, on the northern side of Birchencliffe Hill Road are two individually designed detached houses which are set back substantially from the highway.

- 10.10 The opposite (north-eastern) side of Halifax Road is dominated by 19th Century development, mainly small, terraced houses, while further down Halifax Road to the south-east, residential gives way to woodland, a large vehicle hire depot and car park, and then more rows of terraced housing fronting the highway.

- 10.11 In this context it is considered that the presence of existing dwellings quite close to the site would not necessarily rule out development. The new dwelling would be only 11m from the south-eastern wall of no. 145 but would be placed on land that is much lower. It would be situated only 3.0m (average measurement) from the boundary with Halifax Road, but this is a greater separation distance than that achieved by no. 145 Halifax Road or the gable end of 116 Halifax Road that faces it. It would be placed 14.3m from the gable end of no. 102 Birchencliffe Hill Road.

- 10.12 The site area (including the two private parking spaces but excluding the turning head and shared access track) amounts to roughly 280sqm, which would mean that the erection of a single dwelling would give rise to a density equivalent to 36 units per hectare. This is considered an efficient use of land and an appropriate density to achieve in the context of the neighbouring plots which have higher net densities. It would therefore be compatible with the aims of LP7 of the Local Plan and Principle 4 of the SPD. It is considered that, in principle, a dwelling could be erected without giving rise to the appearance of overdevelopment, having regard to the layout and scale of the existing dwellings. Whilst it would represent a somewhat abrupt change from built development to semi-natural woodland, being sited only 1.6m from the site boundary with the woodland, this would only apply to the end elevation of the property, and it is considered that this relationship would not in itself be harmful to the visual amenity of the area. It is considered that the proposed development would, owing to its scale and being sited among established development, have no adverse impact upon the wider landscape.

10.13 The proposed new dwelling would be sited approximately 20m from the Listed Building, 98-102 Birchencliffe Hill Road. Based on site observations, it is probable that finished ground floor level would be lower than that of the Listed Building. The visual and historical links between the listed building and the plot of land where the house would be located do not appear to be of any great significance. Conservation and Design have previously raised no concerns about the proposed development on heritage grounds. It is therefore considered that the principle of one dwelling on this site could be undertaken without harm to the significance of the designated heritage assets. The details of reserved matters for the site would need to be thoroughly assessed against relevant design Policies of the Local Plan, and national Policy in NPPF Chapter 16.

10.14 It is therefore considered that, in principle, a development of the siting and layout shown on the indicative drawings, and subject to satisfactory reserved matters, would respect the appearance of its surroundings and accord with the aims of LP24(a) and the Principles within the SPD listed above in as far as they relate to visual amenity.

Residential Amenity

10.15 It is noted that both the internal layout, and the positioning of the dwelling within the site, as shown on the submitted drawings, are indicative only. The likely impacts upon existing occupiers, and the quality of life it would offer to future occupiers, will however be assessed having regard to the constraints of the site. The following principles within the Housebuilders Design Guide are of particular importance:

Principle 6 – Residential layouts must ensure privacy and avoid negative impacts on light, having regard to the following standards:

- 21 metres between facing windows of habitable rooms at the backs of dwellings;
- 12 metres between windows of habitable rooms that face onto windows of a non-habitable room;
- 10.5 metres between a habitable room window and the boundary of adjacent undeveloped land; and
- for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary.

Principle 16 – all new dwellings to have sufficient floor space to meet basic lifestyle needs, having regard to the Nationally Described Space Standards.

Principle 17 – All new houses should have adequate access to private outdoor amenity space that is functional and proportionate to the size of the dwelling and the character and context of the site.”

- 10.16 The indicative layout shows that internal space would be in excess of the minimum set out in the Nationally Described Space Standards. The amount of garden space provided is considered adequate for the number of occupants. The main amenity space, based on the indicative layout, would be to the north of the dwelling. This area would be liable to be overshadowed by the high retaining wall and by the new dwelling itself, but this would be mitigated by it being at a higher level than the floor of the new dwelling and associated hardstanding. It is considered on balance that this aspect of the proposal complies with the aims of Principle 17.
- 10.17 Assuming the new dwelling were to have no primary habitable room windows in its northern elevation, it would comply with the 21m standard, but not quite comply with the 12m standard in relation to no. 145 Halifax Road. However, as no. 145 is set higher, it is considered that the effect would not be overbearing or cause undue loss of light. Regarding its relationship with no. 102 Birchenclyffe Hill Road, it is noted that this property has no side-facing windows, so based on the orientation shown there would be no possibility of significant window-to-window overlooking. It would be more than 12m from this property's amenity space, which is considered far enough away to avoid intrusive overlooking.
- 10.18 Based on the indicative internal layout, the first ground-floor bedroom (from the north) would not experience any built or permanent obstructions to outlook, but it would look out over the parking spaces at a distance of about 1m. This room's outlook would therefore be significantly obstructed by parked cars, and light could also be compromised as a result. The second ground floor bedroom would have a corner window. Its southerly outlook and receipt of light would be considerably limited by the trees; that to the west would be towards some existing ornamental shrubs at a distance of 4m, although these could be removed to provide a more open outlook as they are within the applicant's ownership. The first-floor habitable rooms would be somewhat less affected by the obstructions to light and outlook caused by the existing vegetation and topography.
- 10.19 In theory it might be possible to arrange the internal space differently so as to have one or more north-facing windows, giving occupants an improved outlook across their own garden, but this would lead to mutual overlooking with regard to the south-east facing window in no. 145 Halifax Road (a problem that would not be overcome by turning the dwelling 90 degrees because it would still fall considerably short of the 21m standard). Any windows in the eastern elevation would of course experience very poor light and outlook on account of the rising land and highway retaining wall.
- 10.20 In conclusion, it is considered that the overall level of outlook from, and natural light to, windows in a proposed dwelling would be unsatisfactory. Any rooms located at the south-western corner of the dwelling would possibly have better light and outlook than the others since the western outlook would be towards a landscaped area and if a secondary south-facing window were to be added this would provide some additional light (albeit limited because of the presence of the trees – see section 5 below). Receipt of light would be somewhat better for the upper floor windows (at least those that face west), but outlook would still feel rather limited since they would only overlook the narrow, landscaped strip along the southern boundary, the parking spaces and driveway, not the main amenity spaces to the north and east. Whilst the upper floor rooms and the

south-western ground floor room, as shown on the indicative layout, would all have living conditions that are less than ideal owing to their limited outlook, it is considered that occupants of rooms located nearer the northern end of the dwelling at ground floor would have a worse outlook as they would look directly out on to parked cars.

- 10.21 It is accepted that the layout shown on the submitted drawing is illustrative only since appearance and layout are not being applied for at this stage. It is considered however that owing to the constraints of the site, it would not be possible to design a dwelling house that would provide an acceptable standard of living for future occupants, since occupants would experience poor natural light and outlook, contrary to the aims of LP24(b), paragraph 30(f) of the NPPF and Principle 6 of the SPD.

Highway issues

- 10.22 The most relevant parts of the SPD are Principle 12 (a suitable amount of car parking should be included in a scheme) and 19 (waste storage should be incorporated in a manner suitable both for collection and use).
- 10.23 The Highway Officer has assessed the proposal and concluded that it would not generate sufficient traffic to have a severe adverse impact on the functioning of the local highway network. The dwelling would use the existing access point to Birchencliffe Hill Road which is more than wide enough to accommodate two-way vehicle movement.
- 10.24 The Highway Design Guide SPD (Key Design Driver 20) states that as an initial point of reference new 2- or 3-bedroom dwellings be provided with a minimum of two off-road parking spaces, but that a lower level of provision may be acceptable having regard to the criteria in paragraph 5.1 (accessibility, type of development, public transport accessibility, local car ownership levels). The illustrative plans indicate that the new dwelling would have three bedrooms. As such it would be expected to be provided with two spaces, which are shown on the plans at standard dimensions.
- 10.25 The latest version of the plans shows a further two spaces laid out for the use of the existing dwelling, no. 100 – one on the southern side of the access track, one at right-angles to the two spaces to serve the proposed new dwelling. Whilst a larger turning head would ideally be preferred, it is considered that both the parking spaces and turning head are of an adequate size and layout to be conveniently usable and that the scheme would not result in unsafe parking, or drivers having to carry out turning movements within the public highway or the junction.
- 10.26 The site plan does not show a refuse storage point, but incorporating one into the layout should not present any difficulties and this could be conditioned, or agreed through negotiation, if officers were minded to approve. A standard refuse collection vehicle would not be able to safely enter the site or turn within it, so it is assumed that kerbside collection would be undertaken. This would mean that householders would have to drag bins more than the recommended maximum of 25m on collection day, but this is not an uncommon situation for dwellings served by informal roads and it would be difficult to justify a refusal on this issue alone.

- 10.27 The dwelling would be in close proximity to the highway retaining wall and there is a possibility that any excavation works required for the erection of a new dwelling could affect its stability. As recommended by Highways Structures when consulted on the 2019 application, this could be addressed by a condition requiring engineer's drawings and calculations before development commences, if officers were minded to approve. It would thereby accord with the aims of LP53 and Chapter 15 (paragraph 174 and 183).
- 10.28 Finally, the proposed highway improvement scheme for Halifax Road (application 2021/92734) will not have any implications for this development proposal since it does not involve widening the carriageway or footway adjacent to the application site.
- 10.29 In conclusion, it is considered that the development of the site for one dwelling, with the indicative layout shown, could be achieved without compromising the safe or convenient use of the highway, thereby according with the aims of Policies LP21, 22, 24(d)(vi) of the Local Plan and Principles 4 and 19 of the Housebuilders' Design Guide SPD.

Impact on trees

- 10.30 Under Policy LP33 of the Local Plan, consideration must be given both to direct effects on trees (root damage) and indirect effects (future amenity issues leading to pressure to fell). Similarly, Principles 2 and 3 require developers to illustrate how landscape opportunities have been used and to map out the constraints of the site and seek the integration of existing green infrastructure.
- 10.31 The Arboricultural Officer expressed concerns about the impact of the proposal on the grounds of both direct and indirect impacts. In response an amended tree survey, Impact Assessment and Method Statement were submitted 6th October 2021. The trees on the adjacent land to the south are not covered by a Tree Preservation Order. They are on Council-owned land and therefore cannot be removed without the consent of the Council acting as corporate landlord, although overhanging branches can be pruned without the consent of the Council. They are however considered to make a significant positive contribution to the visual amenity of the area and the Council should therefore seek to ensure their retention in line with Policy LP33.
- 10.32 The Arboricultural Report identifies 7 individual trees (all sycamores) on land adjacent to the site. All except T7 are classed as semi-mature. The trees no longer overhang the site owing to recent pruning on the applicant's side. All but one (T7) is deemed to have low amenity value and their structural and physiological condition is deemed to be "fair". The case officer and Council Arboriculturalist do not dispute these findings in so far as they relate to individual trees, but the collective value of the trees as part of a tract of woodland, which also forms part of an Urban Greenspace (UGS) allocation, is considerable. The land upon which they grow lies within a 3.42ha UGS allocation UG128, known as Hopkinson Recreation Ground and Lindley Methodist Churchyard. Paragraph 19.39 of the Local Plan, forming part of the justification statement to Policy LP61, states that: "Green spaces close to where people live...are also an essential component of the quality and local character of areas, providing visual amenity and wildlife value."

10.33 The new dwelling, as shown on the proposed site plan, would overlap the root protection zone of T1. The developer's intention, according to the report, is to retain all trees. The Impact Assessment states that "when the root protection area is plotted as a circle then the proposed building covers only 15% of the root protection area of T1 – this is a significant improvement to the existing site condition." Whilst it is noted that the existing workshop intrudes into the root protection zone, it appears to be a building of lightweight construction and as such it is unlikely to have deep foundations. Replacing it with a substantial, permanent, two-storey building would give rise to the need for deeper foundations and it has not been demonstrated that this could be done without serious harm to the tree. The report also conjectures that few or no significant roots are likely to be found beneath the existing workshop – this is unproven and could only be verified by investigation. The Method Statement proposes that a "no dig" construction method incorporating a cellular confinement system could be employed but only a generic diagram is shown so it has not been proven that this would be an appropriate solution here. It is noted that "scale" has been applied for in addition to the principle of development, "layout" has not, but in practice, owing to the topographical and other constraints of the site, it would be extremely difficult to change the site layout in such a way as the dwelling is significantly further away from the trees and avoids their root protection zone altogether.

10.34 Pages 4-8 of the Impact Assessment deal with predicted indirect effects upon trees. It makes the following points in support:

- Partial shading may be desirable to future occupants in reducing glare or excessive solar heating.
- The level and type of shade from retained trees has been quantified in accordance with BS5837:2021 and is found to be well within reasonable levels. Point B (a point 2.5m in from the right-hand or southern end of the front elevation) is affected by some loss of both daylight and sunlight, but still enjoys acceptable levels, the visible sky component being 26.5, the angle of visible sky (Θ) is 69 in summer and 77 in winter, the annual probable sunlight hours are 30% including 5% in winter.
- No tree has been removed in Kirklees in the last 10 years as a result of falling leaves, honeydew, or other detritus. Where potential conflicts between tree retention and residential amenity are predicted to occur, BS5837:2021 recommends that design solutions such as non-slip paving, leaf guards and grilles, can be used.
- Safety concerns based on mere apprehension would not provide grounds for removing a tree.

10.35 The assessment appears to demonstrate that the degree of shade cast by the trees, in their present condition, would be within reasonable levels. Notwithstanding this, it should be noted that 6 of the 7 trees are classed as "semi-mature" and are expected to continue to grow. Even if the erection of a new dwelling would not give rise to immediate conflict between tree retention and residential amenity, this would still be a cause for concern in the medium to long term because the proximity of the adjacent woodland gives rise to considerable potential for conflict on account of shading and debris fall. Most of the trees are sycamores which are known to shed a sticky residue during the summer months, which would increase their potential nuisance value.

- 10.36 In summary, it is considered that there are still unresolved concerns about direct impacts arising from the digging of foundations, and even if this could be overcome, the possible indirect impacts – pressure to fell or prune the trees as a result of perceived nuisance to future occupiers – would be a long-term threat to their retention. The development would therefore be in conflict with the aims of Policy LP33 of the Local Plan and Principle 3 of the Housebuilders' Design Guide SPD.

Representations

- 10.37 The comments made are summarised here with officer responses.

Concerns about further felling or pruning of trees;

Response: This concern is considered to be substantiated.

Three cottages on the nearby land are Grade II Listed and are understood to be in a conservation area. Further details should be submitted to show that the new property will be in keeping;

Response: It is considered that the details submitted are sufficient to allow an adequate assessment to be made for outline planning purposes.

The new parking space for 100 Birchencliffe Hill Road is directly adjacent to a neighbouring garden resulting in decreased privacy, hazardous vehicle fumes and noise pollution, and the vehicles (depending on their size) may block light to our gardens.

Response: It would not be possible to substantiate a refusal based on noise or fumes associated with domestic parking since these would not exceed a level that is normal in a residential area. The parking space would be about 8m away from the southern elevation of the nearest dwelling not in the applicant's ownership and it is considered that any obstruction to light would be immaterial.

Part of the area designated as a parking space encroaches on to our land.

Response: According to Land Registry data available to Kirklees Council, the whole of the development area of the site, including the proposed new dwelling, turning head and all parking spaces, are within the same ownership and it appears that no part of the development would intrude onto third party land. The application is therefore presumed to be valid and no documentary evidence has been submitted to counter this.

We are concerned about living on a building site for potentially months or years on account of increased noise and air pollution, increased use of private driveway and possible blocking of access to the turning head.

Response: Given the limited space available on the shared driveway and turning area, the parking of contractors' vehicles may be a concern, and if officers were minded to approve, the option of conditioning a construction management plan could be considered. Pollution impacts arising from construction, such as noise and dust, could be acted upon as a statutory nuisance if they were to occur, and it is considered that for a development of only one dwelling it would not be proportionate to seek to manage them by means of a planning condition.

If it is approved, we would like written assurances that no vehicles will be parked on the private driveway and that maintenance costs will be fairly shared.

Response: For reasons set out above in section (4) of the Assessment, it is considered unlikely that the development would lead to inappropriate parking. The sharing of maintenance costs would normally be deemed a private civil matter and it would not be appropriate to seek to control it through the planning system.

Legal right of access from front door of existing property to Halifax Road and Birchencliffe Hill Road will be blocked or compromised by the development.

Response: Any interference with a private right of access is generally deemed to be a private civil matter and it would therefore not be possible to substantiate a refusal on such grounds. The granting of planning permission would not extinguish such rights.

Privacy – there would be large windows over two floors facing our garden and the front and side of our property.

Response: The issue of mutual overlooking has been examined in part (3) of the Assessment.

Our view of the woods will be dramatically changed by parked cars.

Response: Any obstruction to a private view over third-party land is a private interest and does not amount to a material planning consideration.

- 10.38 Ward Councillor comments (Ward Councillor Cahal Burke): We would like to refer to committee for decision. We believe the Arboriculturist report and various communications have proven by calculations or British Standards that the concerns of planning are not valid reasons to be concerned. The layout and density of building is acceptable.

Response: The latest Arboricultural report, and the implications of the proposal for the survival and long-term health of trees, are examined and commented on in 10.29-32 above.

Other Matters

10.39 *Ecology:*

The site is in the bat alert layer. In its present condition the site is likely to have very limited biodiversity value, including as a bat roost or foraging ground. On this basis, the Council's Ecologist has been consulted and it is expected that the comments of the Ecologist will be included as a written update to Members.

- 10.40 Paragraphs 174, 180, 181 and 182 of Chapter 15 of the National Planning Policy Framework are relevant. The Conservation of Habitats and Species Regulations 2017 protect, by law, bats. The Biodiversity Net Gain Technical Advice Note sets out that minor developments are subject to the mitigation hierarchy outlined within Chapter 2.2 and will still be required to demonstrate a net gain for biodiversity. Chapter 2.2 of the advice note details a mitigation hierarchy of avoid, mitigate, compensate, offset and finally enhance. Principle 9 of the Council's adopted Housebuilders Design Guide SPD also requires that proposals provide net gains in biodiversity.

10.41 The adjacent land, comprising deciduous woodland, is likely to have considerable biodiversity value, and forms part of the Wildlife Habitat Network. The proposed development would be liable to have significant short-term and long-term adverse impacts on trees, for the reasons set out at length in paragraph nos. 10.30-36 of the Assessment. In commenting on the 2019 application, the Council's Ecologist concurred with the Arboricultural Officer's concerns that the proposed development would pose a risk to the adjacent trees, which would be likely to affect the function and connectivity of the network. As noted above, Officers have consulted the Council's Ecologist on this application and it is expected that these comments are to be provided as a written update to Members. Following this, Officer advice will take the comments of the Ecologist into account. Nonetheless, for the above reasons Officers have significant concerns that the proposal would not comply with the aims of Policy LP30 of the Kirklees Local Plan, Principle 9 of the Housebuilders Design Guide SPD or NPPF Chapter 15 and the recommended second reason for refusal reflects this.

10.42 *Drainage:*

The site is not known to be at risk from flooding. It is proposed that disposal of surface water would be by the main sewer, whereas the arrangements for foul sewage have yet to be determined. In the event of the Council approving the application, foul drainage arrangements could be conditioned. As for surface water drainage, a soakaway would probably not be practicable because of the limited space within the site, and since the proposal is for a single dwelling, it is considered it would be disproportionate to seek the installation of a sustainable drainage system, so direct discharge to mains can be allowed in this instance.

10.43 *Source Protection Zone*

The site is within an area identified by the Environment Agency as a source protection zone. This applies to the area around any groundwater abstraction intended for human consumption. Proposed development must be appropriate to the sensitivity of the site and, in accordance with Policy LP34 of the Local Plan, must ensure no deterioration of by conserving – amongst other things water quality. Planners have sought the views of the Environment Agency, whose response is awaited.

11.0 CONCLUSION

11.1 It is considered that the owing to the constraints of the site it would not, in principle, be possible to erect a new dwelling on this site that would deliver an acceptable level of amenity for future occupiers whilst not detracting from those of existing residential properties. It has also not been demonstrated that the erection of a new dwelling could be undertaken without causing either long-term or short-term harm to trees adjacent to the site that are deemed to collectively have considerable value, both in terms of visual amenity and because of their contribution to the value of the Wildlife Habitat Network.

11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF taken as a whole. The application is therefore recommended for refusal.

12.0 Recommendation: REFUSE

Background Papers:

[Link to application details](#)

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f93800>

Certificate of Ownership A signed.